

## Section A – Overview

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### Cooperative contracting

- A1**
- .1 Under this subcontract, the Subcontractor and the Contractor must:
    - a act reasonably
    - b cooperate in all matters
    - c avoid obstructing the other.
  - .2 These obligations do not affect either party's rights or responsibilities under this subcontract.

### Obligations of Subcontractor

- A2**
- .1 The Subcontractor must:
    - a diligently carry out all *\*necessary work* and complete the *\*subcontract works* to the standard set out in the *\*subcontract documents*
    - b begin the *\*subcontract works* within 10 *\*working days* after being given access to the *\*site*
    - c comply with all instructions issued under this subcontract by the Contractor
    - d obtain any statutory approvals required before commencement until completion of this subcontract and obtain any *\*official documents* shown in **item 1** of **Schedule 1**
    - e comply with all other obligations under this subcontract
    - f comply with all *\*relevant legislation*
    - g bring the *\*subcontract works* to *\*substantial completion* in accordance with **clause M1**.
  - .2 If the Subcontractor's capacity to complete the *\*subcontract works* under this subcontract is altered to the extent that it may be unable to meet its obligations, it must immediately inform the Contractor in writing.

### Warranties by Subcontractor

- A3**
- .1 The Subcontractor warrants that it:
    - a has the capacity to enter into this subcontract
    - b has the skill, and the technological, human and financial resources necessary to perform its obligations.
    - c has been allocated an Australian Business Number (ABN) shown in **item 2** of the **Introduction** for taxation purposes and that it is registered for *\*GST*
    - d is registered or licensed, as the case may be, to carry out the *\*subcontract works* in accordance with the *\*relevant legislation* and the registration or licence number is shown in **item 2** of the **Introduction**
    - e will advise the Contractor *\*promptly* of any change in its ABN, *\*GST* registration or the status of its licence or registration to carry out the *\*subcontract works*.

### Obligations of Contractor

- A4**
- .1 The Contractor must:
    - a pay the Subcontractor the *\*subcontract price* as adjusted in accordance with this subcontract
    - b give the Subcontractor reasonable access to the *\*site* in accordance with this subcontract
    - c comply with any other obligation under this subcontract.
  - .2 If the Contractor's financial position alters to the extent that it may be unable to meet its obligations under this subcontract, it must immediately inform the Subcontractor in writing.

## Section A – Overview

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### Warranties by Contractor

- A5**
- .1 If the Contractor has shown an ABN in **item 1** of the **Introduction** it warrants that:
    - a the ABN is correct
    - b it will notify the Subcontractor if it is not registered for \*GST
    - c it will \*promptly notify the Subcontractor if its ABN or registration status changes.

### Contractor to administer subcontract

- A6**
- .1 The Contractor will administer this subcontract.
  - .2 Unless particular circumstances otherwise require, all dealings between the Contractor and the Subcontractor in the administration of this subcontract must be conducted through the parties' representatives specified in the **Introduction** or their successors.

### Contractor's instruction

- A7**
- .1 The Contractor may issue an instruction at any time during the performance of this subcontract provided that the instruction is given in writing.

### Disputing Contractor's payment statement, written decision, notice or failure to act

- A8**
- .1 If the Subcontractor wishes to dispute a payment statement, notice, written decision or written assessment issued by the Contractor, or to dispute the failure of the Contractor to issue something, the Subcontractor must give the Contractor written notice under this clause within 15 \*working days after:
    - a receiving the payment statement, notice, written decision or written assessment or
    - b becoming aware of the failure of the Contractor to issue something.
  - .2 If the Subcontractor fails to give a notice under **clause A8.1**, the Subcontractor will not be entitled to dispute the matter at all.
  - .3 The Contractor must assess a notice given under **clause A8.1** and give a written decision to the Subcontractor within 15 \*working days.

### Failure to give payment statement, written decision or notice

- A9**
- .1 If the Contractor fails to issue a payment statement, notice, written decision or written assessment required under this subcontract in respect of a claim, this does not mean that the claim has been accepted or is valid.

### Compensation is sole remedy

- A10**
- .1 Where the Subcontractor is entitled to compensation as determined under this subcontract, that compensation, when paid in full, is a sole and complete remedy for the Subcontractor in those circumstances.

## Section B – Documents

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### Discrepancies or omissions in documents

- B1** .1 If either party discovers a discrepancy or omission in, or between, any of the *\*subcontract documents*, that party must *\*promptly* give written notice to the other party. The Contractor must *\*promptly* resolve the discrepancy or omission by giving a written instruction to the Subcontractor.

### Order of precedence of subcontract documents

- B2** .1 Unless otherwise shown in **Schedule 3**, the order of precedence of the *\*subcontract documents* is as follows:
- a any special conditions shown in **Schedule 2**
  - b the conditions set out in this subcontract, the **Introduction** and **Schedule 1**
  - c the specifications for the *\*subcontract works* in the order shown in **Schedule 3**
  - d the drawings for the *\*subcontract works* shown in **Schedule 3**
  - e any other document in the order shown in **Schedule 3**.
- .2 Large scale drawings take precedence over small scale drawings.
- .3 An instruction from the Contractor to resolve a discrepancy, an ambiguity or an omission that is not in accordance with the order of precedence referred to in **clause B2**, is an instruction for a *\*variation*.

### Subcontractor and Contractor must supply copies of relevant documents

- B3** .1 The Subcontractor must *\*promptly* give to the Contractor or the Contractor must *\*promptly* give to the Subcontractor a copy of any *\*official document* either in or coming into its possession in relation to the *\*subcontract works*.
- .2 An *\*official document* is:
- a any report, notice, order, permit, licence, approval or other document required or issued by an *\*authorised person* in relation to the *\*subcontract works*
  - b any document listed in **item 1** of **Schedule 1**
  - c any approval for provision of *\*infrastructure services* to the *\*site*, such as gas, electricity, telecommunications, water, storm water or sewerage
  - d any other document required under any relevant legislation.

## Section C – Security

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### Security provided to Contractor

- C1** .1 The Subcontractor must provide security for its performance of its obligations under this subcontract by either:
- a allowing the Contractor to withhold a cash retention sum or
  - b providing the Contractor with *\*unconditional guarantee(s)*.
- .2 The type of security is shown in **item 2 of Schedule 1**.

### Security to Contractor by cash retention

- C2** .1 If the type of Subcontractor's security is cash retention, the Contractor may withhold up to 10 per cent of each progress payment until the value held equates to the percentage shown in **item 3 of Schedule 1** of the *\*subcontract price*.
- .2 The Contractor must show under the progress payment statement required by **clause N4.1** the cash retention being held under **clause C2.1**.

### Security by *\*unconditional guarantee(s)*

- C3** .1 If the security is *\*unconditional guarantee(s)*, the Subcontractor must within 10 *\*working days* after this subcontract is executed give to the Contractor two *\*unconditional guarantee(s)* each equal in value to the percentage shown in **item 4 of Schedule 1** of the *\*subcontract price*.
- .2 An *\*unconditional guarantee(s)* is an unconditional undertaking or a performance undertaking from a recognised financial institution approved by the Contractor. The *\*unconditional guarantee(s)* must be of an approved type. The type shown in **Schedule 5** is approved.
- .3 If the Subcontractor is registered for *\*GST* and able to claim an *\*input tax credit* the value of the *\*unconditional guarantee(s)* which must be provided to the Contractor is exclusive of the *\*GST* component of the *\*subcontract price*.

### Contractor's right to draw on security provided to it

- C4** .1 Subject to **clause C6**, the Contractor may draw on the security provided by the Subcontractor under **clause C1** if:
- a a payment statement issued by the Contractor in its favour under any of **clauses N4, N11 or Q17** is not paid by the Subcontractor within the period shown in **item 5 of Schedule 1** or
  - b the Subcontractor's engagement is terminated by the Contractor under **clauses Q1 or Q2** and the Contractor has issued a payment statement under **clause Q9**, and
- the Subcontractor has not disputed the Contractor's rights under **clause A8**.

### Procedure for Contractor to draw on security provided to it

- C5** .1 To draw on the security, the Contractor must notify the Subcontractor in writing of the basis and extent of its entitlement, unless the Contractor has issued a payment statement under **clause Q9 or Q17**.
- .2 If the security is cash retention, the Contractor may then draw on the cash retention to the extent of its entitlement.
- .3 If the security is *\*unconditional guarantee(s)*, the Contractor must give to the security provider a written demand for payment.

## Section C – Security

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### Release of security on *\*practical completion*

- C6**
- .1 When the Contractor receives the notice of *\*practical completion*, the Subcontractor is entitled to the release of 50 per cent of the value of the security then held.
  - .2 If the security is cash retention:
    - a the Contractor must give to the Subcontractor a payment statement equal to 50 per cent of the value of the security then held at the same time that the notice of *\*practical completion* is issued
    - b the Subcontractor on receiving the payment statement must prepare a *\*tax invoice* in accordance with **clause N5** and give both documents to the Contractor for payment
    - c the amount stated in the payment statement must be paid in accordance with **clause N6**.
  - .3 If the security is *\*unconditional guarantee(s)* the Contractor must give to the Subcontractor one of the *unconditional guarantee(s)* within the time shown in **item 5 of Schedule 1**.

### Release of security on final payment statement

- C7**
- .1 When the Contractor issues a final payment statement under **clause N11**, or a payment statement under **Q9** or **Q17** as the case may be, the Contractor must release to the Subcontractor any remaining security, less any amount owing to the Contractor under the payment statement.
  - .2 If the security is cash retention, the Contractor must take into account any remaining security when preparing the final payment statement.
  - .3 If the security is *\*unconditional guarantee(s)* and:
    - a the payment statement is in favour of the Subcontractor, the Contractor must give to the Subcontractor the remaining *\*unconditional guarantee(s)* within the time shown in **item 5 of Schedule 1**
    - b the payment statement is in favour of the Contractor, the Contractor may draw on the security under **clause C5**, and the payment statement is evidence of the basis and extent of the Contractor's entitlement under **clause C5**.

## Section D – Liability

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### **Risk before *\*practical completion***

- D1** .1 Subject to **clause D2**, from the time the Subcontractor commences the *\*subcontract works* on the *\*site* until 4.00 pm on the day the Contractor receives the notice of *\*practical completion*, the Subcontractor bears the risks described in the following subclauses.
- .2 The risk of injury to or illness, disease or death of any person occurring as a result of the *\*subcontract works*, on or in the immediate vicinity of the *\*site*.
- .3 The risk of loss of or damage to, the property of any person occurring as a result of the *\*subcontract works*, on or in the vicinity of the *\*site*.
- .4 The risk of loss of, or damage to, any of the following items on or in the immediate vicinity of the *\*site* :
- a the *\*works*
  - b the *\*subcontract works*
  - c materials or equipment intended to be incorporated in the *\*subcontract works*, including any items shown in **Schedule 8**
  - d plant, tools and equipment.

### **Indemnity before *\*practical completion***

- D2** .1 While the Subcontractor bears the risks described in **clause D1** the Subcontractor must indemnify the Contractor in respect of any liability arising from negligence or breach of contract or breach of statutory duty, by the Subcontractor or any of the Subcontractor's employees, agents or sub-subcontractors.
- .2 The obligation of the Subcontractor to indemnify the Contractor is reduced to the extent to which the Contractor or any of its employees, agents or separate contractors or any of their respective employees, agents or sub-subcontractors, or the Owner or any of the Owner's employees, agents or separate contractors is responsible, for the personal injury, illness, disease, death or loss or damage.
- .3 Except if expressly provided otherwise in this subcontract, if the Subcontractor is to indemnify, reimburse, pay a contribution or pay damages to the Contractor under this clause or under any other clause, the amount the Subcontractor must pay the Contractor is:
- a reduced by any *\*input tax credit* directly obtained or obtainable by the Contractor
  - b increased by *\*GST* the Contractor has paid or will pay on that indemnity, reimbursement, contribution or damages.

### **Risk after *\*practical completion***

- D3** .1 Subject to **clause D4**, from 4.00pm on the day the Contractor receives the notice of *\*practical completion*, the Contractor bears the risks described in the following subclauses:
- a the risk of injury to, or illness, disease or death of any person on or in the immediate vicinity of the *\*site*
  - b the risk of loss of, or damage to, the property of any person on or in the immediate vicinity of the *\*site*
  - c the risk of loss of, or damage to, any of the following items on or in the immediate vicinity of the *\*site*:
    - (i) the *\*works*
    - (ii) the *\*subcontract works*
    - (iii) materials or equipment intended to be incorporated in the *\*subcontract works*, including any items shown in **Schedule 8**.

## Section D – Liability

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### **Indemnity after *\*practical completion***

- D4** .1 While the Contractor bears the risks described in **clause D3** the Contractor must indemnify the Subcontractor in respect of any liability arising from negligence or breach of contract or breach of statutory duty, by the Contractor or any of the Contractor's employees, agents or other contractors or any of their respective employees, agents or subcontractors or the Owner or any of the Owner's employees, agents or separate contractors.
- .2 The obligation of the Contractor to indemnify the Subcontractor is reduced to the extent to which the Subcontractor or any of its employees, agents or sub-subcontractors, is responsible for the personal injury, illness, disease, death or loss or damage.
- .3 Except if expressly provided otherwise in this subcontract, if the Contractor is to indemnify, reimburse, pay a contribution or pay damages to the Subcontractor under this clause or under any other clause, the amount the Contractor must pay the Subcontractor is:
- a reduced by any *\*input tax credit* directly obtained or obtainable by the Subcontractor
  - b increased by *\*GST* the Subcontractor has paid or will pay on that indemnity, reimbursement, contribution or damages.

### **Reinstatement during period when Subcontractor bears risk**

- D5** .1 If an event occurs which causes loss or damage during the period when the Subcontractor bears the risk, the Subcontractor must *\*promptly* reinstate, at its own expense, the lost or damaged items referred to in **clause D1.4**.
- .2 The Contractor must indemnify the Subcontractor for the cost of reinstatement under this clause to the extent to which the Contractor, its employees, agents or separate subcontractors or any of their respective employees, agents or subcontractors, or the Owner or any of the Owner's employees, agents or separate contractors was responsible for the event which caused the loss or damage.

## Section E – Insurance

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### Public liability insurance

- E1** .1 From the time the Subcontractor is provided with access to the *\*site* until 4:00 pm on the day the Contractor receives the notice of *\*practical completion* the party nominated in **item 6 of Schedule 1** must take out and maintain insurance naming the Subcontractor and its sub-subcontractors as insureds, against:
- a injury to or illness, disease or death of, any person occurring as a result of the *\*works*, on or in the immediate vicinity of the *\*site* (excluding liability in respect of worker's compensation and employer's liability)
  - b loss of, or damage to the property of, any person occurring as a result of the *\*works*, on or in the immediate vicinity of the *\*site* (except the *\*works*, materials or equipment on *\*site* that are intended to be incorporated in the *\*works*, or plant, tools and equipment used on the *\*site*).

### *\*Subcontract works insurance*

- E2** .1 From the time the Subcontractor is provided with access to the *\*site* until 4.00 pm on the day the Contractor receives the notice of *\*practical completion* the party named in **item 7 of Schedule 1** must take out and maintain insurance naming the Subcontractor and its sub-subcontractors as insureds against loss of or damage to the items referred to in **clause D1.4**.

### Terms of public liability and *\*subcontract works* insurances

- E3** .1 The public liability and *\*subcontract works* insurances required under **clauses E1 and E2** must contain any term required by law in the state or territory where the *\*subcontract works* are located and each of the following:
- a the insurance covers the interests of the Contractor and any other person involved in the *\*subcontract works*
  - b the policy does not apply to loss or liability caused by breach of professional duty by the Owner's and the Contractor's consultants
  - c that notice of a claim given by any one insured is effective in relation to each of the insureds
  - d the insurer's rights of subrogation against any insured are excluded, although this exclusion may be limited to the right of subrogation against an insured to the extent of that insured's interest under the policy.

### Entitlement to *\*input tax credit*

- E4** .1 The parties must each notify their insurer(s) of their respective entitlement to an *\*input tax credit* on the insurance premium within 20 *\*working days* of the insurance being taken out. Each party must indemnify the other for any loss arising out of the party's failure to notify the insurer. On request by a party the other party must provide evidence that it has complied with this clause.

### Insurance cover

- E5** .1 The insurance against loss of or damage to the items referred to in **clause E2** must cover:
- a the full reinstatement or replacement cost of the *\*subcontract works*, materials and equipment on the *\*site* that are intended to be incorporated in the *\*subcontract works*, and plant, tools and equipment used on the *\*site*
  - b additional consultants' fees relating to the reinstatement or replacement for the percentage shown in **item 8 of Schedule 1**
  - c any necessary demolition and removal of debris, for the percentage shown in **item 9 of Schedule 1**
  - d all *\*GST* associated with reinstatement and replacement of the *\*subcontract works*.
- .2 The insurance against liability for injury, illness, disease or death must be at least for the amount shown in **item 10 of Schedule 1**.



## Section E – Insurance

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### **Subcontractor and Contractor not to affect insurance**

- E6** .1 The Subcontractor and the Contractor must not do or fail to do anything, or allow anything to be done or not done, which might affect any insured's right to recover from the insurer in respect of damage or liability covered by an insurance.

### **Worker's compensation and employer's liability insurance**

- E7** .1 The Subcontractor must maintain worker's compensation and employer's liability insurance in accordance with the statutory worker's compensation scheme that applies under this subcontract until the final payment statement is issued under **clause N11**. If that scheme does not provide for an indemnity against a common law damages claim by a worker, the Subcontractor must also maintain insurance against that risk.
- .2 The Subcontractor must ensure that each of its sub-subcontractors maintains similar insurances.

### **Obligations when making insurance claim**

- E8** .1 The following are the obligations of the Subcontractor when making an insurance claim for any loss or damage arising from an insured event:
- a the Subcontractor must *\*promptly* notify the Contractor in writing of the claim on becoming aware of the event giving rise to the insurance claim and *\*promptly* make the claim
  - b the notice must contain details of the insurance claim
  - c the Subcontractor must provide all information which is required under the relevant insurance policy
  - d the Subcontractor must *\*promptly* give the Contractor any additional information the Contractor reasonably requests.

### **Payment of excess**

- E9** .1 The party making a claim under an insurance policy arranged under **clauses E1** or **E2** must pay the excess. That party may recover the excess from the other party in proportion to the extent to which the personal injury, illness, disease or death or loss of damage is the result of negligence, or breach of subcontract or breach of statutory duty by the other party. The excess is the amount shown in **item 11** of **Schedule 1**.

### **Subcontractor entitled to make progress claim as result of loss or damage**

- E10** .1 If an event occurs which causes loss or damage to the *\*subcontract works*, or materials or equipment on the *\*site* that are or are intended to be incorporated into the *\*subcontract works* the Subcontractor is entitled to submit an additional progress claim to the Contractor for the *\*subcontract works*, or materials or equipment on the *\*site* that were or were intended to be incorporated into the *\*subcontract works* up to the time that the event giving rise to the loss or damage occurred.

### **Contractor's right to suspend**

- E11** .1 The Contractor either may not commence or may suspend the *\*subcontract works* if the Subcontractor fails to:
- a Satisfy the Contractor that the insurances are in place at the time access to the *\*site* is given
  - b Comply *\*promptly* with a request from the Contractor for either a statement in writing setting out all provisions of the insurances or insurance documentation to the satisfaction of the Contractor, or
  - c Satisfy the Contractor that the insurance remains in place.

## Section F – The *\*site*

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### **Contractor to give Subcontractor access to the *\*site***

- F1** .1 The Contractor must give the Subcontractor reasonable access to the *\*site* within 10 *\*working days* after being given a copy of this subcontract executed by both parties and any other document required under *\*relevant legislation*.

### **Subcontractor's obligations in relation to the *\*subcontract works***

- F2** .1 The Subcontractor's obligations in relation to the *\*subcontract works*, include the following:
- a giving the Contractor access at all times to the *\*subcontract works* and all other places at which work is carried out in relation to the *\*subcontract works* by or on behalf of the Subcontractor
  - b keeping the area around the *\*subcontract works* clean and tidy at all times.

### **Contractor warrants that it has given Subcontractor *\*site information***

- F3** .1 The Contractor warrants that it has given the Subcontractor all information in its possession regarding the *\*site* and the physical conditions on and underlying the *\*site* relevant to the *\*subcontract works*. That *\*site information* is shown in **Schedule 4**.
- .2 *\*Site information* includes any reports, surveys, test results, plans, specifications, computations or other information such as foundations data, soil tests or geotechnical tests and any other information shown in **Schedule 4**.

### **Subcontractor to examine *\*site information***

- F4** .1 The Subcontractor must have examined and reviewed the *\*site information* and have inspected the *\*site* and its surroundings and is entitled to rely on the *\*site information* to the extent that it is reasonable to do so, having regard to the nature of the *\*site* and its surroundings.
- .2 The Subcontractor must indemnify the Contractor against a claim for any loss, expense or damage incurred by a sub-subcontractor or any other person engaged by the Subcontractor as a result of the Subcontractor failing to examine the *\*site information* or inspect the *\*site*.

### **If Subcontractor discovers *\*latent condition* or *\*valuable item***

- F5** .1 The Subcontractor must notify the Contractor in writing and seek instructions within 3 *\*working days* if the Subcontractor discovers:
- a a *\*latent condition* affecting the *\*site* which the Subcontractor considers may result in it incurring loss, expense or damage, or may affect its ability to bring the *\*subcontract works* to *\*substantial completion* by the date for *\*substantial completion* as adjusted or
  - b a *\*valuable item* on the *\*site*.
- .2 A *\*latent condition* is a physical condition on, underlying or adjacent to the *\*site* which a competent subcontractor would not have anticipated if the Subcontractor had examined the *\*site information* and inspected the *\*site* before executing this subcontract.
- .3 A *\*valuable item* includes minerals, money, treasure, fossils, archaeological remains, historic objects or relics.
- .4 Any *\*valuable item* remains the property of the Owner and the Subcontractor must take all necessary steps to avoid removal, loss of or damage to any *\*valuable item*.

## Section F – The *\*site*

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### Contractor to instruct in relation to *\*latent condition* or *\*valuable item*

- F6** .1 The Contractor must *\*promptly* give the Subcontractor a written instruction regarding a *\*latent condition* or *\*valuable item*.

### Subcontractor entitled to claim for *\*latent condition* or *\*valuable item*

- F7** .1 The Subcontractor is entitled to make a *\*claim to adjust the subcontract* in relation to a written instruction given by the Contractor regarding the discovery of a *\*latent condition* or a *\*valuable item*.
- .2 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.

### Encroachments

- F8** .1 If the Subcontractor discovers that:
- a A structure on a neighbouring Owner's property encroaches onto the *\*site*, or
  - b Carrying out the *\*necessary work* will prejudice the right of support of a neighbouring owner's property and there is no provision for this situation in the *\*subcontract documents*
- Then the Subcontractor must:
- (i) Do nothing to adversely change the situation except to ensure that any adjoining structure is stable;
  - (ii) Immediately suspend the *\*necessary works* in the vicinity of the situation;
  - (iii) *\*promptly* request an instruction from the Contractor; and
  - (iv) Treat the encroaching structure as a *\*latent condition* for the purpose of a *\*claim to adjust the subcontract*.
- .2 The Subcontractor must continue any *\*necessary work* which will not adversely affect a situation in **clause F8.1**.

### If Subcontractor discovers *\*dangerous or contaminated material*

- F9** .1 If the Subcontractor discovers on the *\*site* any *\*dangerous or contaminated material*, it must immediately notify the Contractor.
- .2 The Subcontractor must take all necessary action in accordance with an *\*official document* in relation to the *\*dangerous or contaminated material* and copy the document to the Contractor immediately. **Clauses J5, J6, and J7** do not apply in relation to this **clause F9**.
- .3 The Subcontractor is only entitled to make a *\*claim to adjust the subcontract* that results from complying with an *\*official document* in relation to *\*dangerous or contaminated material*, if the presence, disturbance or release of the *\*dangerous or contaminated material* was beyond the Subcontractor's control.
- .4 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**. If the *\*claim to adjust the subcontract* is in relation to an *\*official document* the requirement for making the claim are stated in **clause J8**.

## Section G – Building the *\*subcontract works*

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### Contractor's obligations

- G1** .1 The Contractor must give the Subcontractor the necessary information to allow the Subcontractor to properly set out the *\*subcontract works*.

### Subcontractor's obligations

- G2** .1 The Subcontractor must:
- a if applicable, set out the *\*subcontract works* and, if requested to do so by the Contractor have the setting out certified by a licensed surveyor
  - b direct the manner of performance of the *\*necessary work*
  - c supervise the *\*necessary work* competently
  - d unless instructed otherwise by the Contractor, take responsibility for industrial relations in relation to the *\*subcontract works*
  - e maintain a satisfactory occupational health and safety system for the *\*subcontract works*
  - f diligently progress the *\*subcontract works* in accordance with the Contractor's program for the *\*works*
  - g bring the *\*subcontract works* to *\*substantial completion* in accordance with **clause M1**
  - h conduct and complete the *\*subcontract works* in a proper and workmanlike manner
  - i provide the Contractor with proof of all matters and documents specified in this subcontract
  - j Cooperate with other subcontract trades in the coordination of the various *\*subcontract works*.

### Subcontractor to appoint representative

- G3** .1 The person named in **item 2** of the **Introduction** is the Subcontractor's representative for the purposes of this subcontract, particularly for receiving instructions from, and giving information to, the Contractor. The Subcontractor may change its representative by giving a written notice to the Contractor.
- .2 The Subcontractor must ensure that a Subcontractor's representative is appointed at all times.

### Subcontracting

- G4** .1 The Subcontractor must not subcontract the *\*subcontract works* as a whole. The Subcontractor must not subcontract any part of the *\*subcontract works* without the prior written approval of the Contractor, such approval may not to be unreasonably withheld. The Subcontractor is liable for the *\*necessary work* done by its sub-subcontractors.
- .2 The Subcontractor must take responsibility for any acts and omissions of its suppliers and sub-subcontractors.
- .3 The relevant provisions of this subcontract must be included in contracts the Subcontractor makes with its suppliers or sub-subcontractors. The Subcontractor must fully inform all potential suppliers or sub-subcontractors of the Subcontractor's relevant obligations under this subcontract.

## Section G – Building the *\*subcontract works*

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### Contractor's program and Subcontractor's works program

- G5**
- .1 The Contractor must give the Subcontractor a copy of the Contractor's program for the *\*works* on or before the date the Subcontractor is given access to the *\*site* and each time the Contractor's program for the *\*works* is to be updated.
  - .2 The Contractor may instruct the Subcontractor to give the Contractor a *\*subcontract works* program within 5 *\*working days* after being given access to the *\*site* and/or after being given the Contractor's updated program for the *\*works*. Each *\*subcontract works* program must be consistent with, after consultation if necessary, the Contractor's program for the *\*works* and must include each of the following:
    - a the dates of commencement and completion of the major stages of the *\*subcontract works*
    - b the date for *\*substantial completion* as defined in **clause M1**
    - c the start and completion dates of relevant trades
    - d a critical path.
  - .3 The *\*subcontract works* program is not part of this subcontract.

### Subcontractor to give updated program

- G6**
- .1 Where the Subcontractor has provided a *\*subcontract works* program under **clause G5**, the Subcontractor must give the Contractor an updated *\*subcontract works* program when the date for *\*substantial completion* has been adjusted by 5 *\*working days* or more or such other period as agreed. The updated program must indicate how the previous program has been affected by any adjustments of time.
  - .2 The Subcontractor's obligations under this clause do not require any prior instruction from the Contractor.

### Contractor may instruct opening up or testing of the *\*subcontract works*

- G7**
- .1 The Contractor may at any time give to the Subcontractor a written instruction to open up or carry out tests on elements of the *\*subcontract works* other than as required by the *\*subcontract documents*. The Subcontractor must *\*promptly* comply with the instruction.

### Subcontractor entitled to claim for costs of opening up or testing

- G8**
- .1 The Subcontractor is entitled to make a *\*claim to adjust the subcontract* in relation to any loss, expense or damage that results from an instruction under **clause G7**, only if the opening up or testing does not reveal *\*defective work*.
  - .2 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.

### Contractor may instruct suspension of the *\*subcontract works*

- G9**
- .1 If the Contractor receives an instruction from the architect to suspend the whole of the *\*work*, the Contractor must instruct the Subcontractor in writing to suspend the whole of the *\*subcontract works*. The Subcontractor must *\*promptly* comply with the instruction. If the suspension continues for 15 *\*working days* or more, the Subcontractor may remove from the *\*site* any materials or equipment intended to be incorporated in the *\*subcontract works* and not paid for by the Contractor, and any plant, tools and equipment belonging to the Subcontractor.
  - .2 If the suspension continues for more than 20 *\*working days* the Subcontractor may terminate its engagement in accordance with **clause Q13** as if it has already given the notice of termination under **clause Q12**.

## **Section G – Building the *\*subcontract works***

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### **Entitlement to unfixated or demolished materials**

- G10**
- .1 The Contractor owns and will own all demolished materials.
  - .2 The Subcontractor owns all unfixated materials supplied by the Subcontractor, but only until the Contractor has paid for the materials.
  - .3 Clauses G10.1 and G10.2 apply unless the *\*subcontract documents* state otherwise.

## Section H – Claims to adjust the subcontract

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### Time for making *\*claim to adjust the subcontract*

- H1**
- .1 The Subcontractor is entitled to make a *\*claim to adjust the subcontract* only if the Subcontractor:
    - a *\*promptly* notifies the Contractor in writing of its intention to make a claim after receiving an instruction or, if no instruction is issued, *\*promptly* notifies the Contractor after becoming aware of an event that will result in a claim and
    - b submits the detailed *\*claim to adjust the subcontract* to the Contractor within a time agreed in writing between the Subcontractor and the Contractor or, if no time is agreed, within 10 *\*working days* after receiving an instruction or, if no instruction is issued, within 10 *\*working days* after becoming aware of the event that has resulted in the claim and, for these purposes, an event is not a consequence of an instruction.
  - .2 If the claim results from an instruction to proceed with a *\*variation*, the requirements for submission of the claim are set out in **clause J4**.
  - .3 If the claim results from a delay in the progress of the *\*subcontract works*, the Subcontractor is not required to give the first notification required under **clause H1.1** but the detailed claim must be submitted within 10 *\*working days* after the end of the delay, whichever occurs first.

### Details required for claim

- H2**
- .1 A *\*claim to adjust the subcontract* must contain the following details:
    - a identification of the Contractor's instruction that caused the claim, or if no instruction has been issued, details of the event and the basis for the claim
    - b a breakdown, on a trade by trade basis, of any extra costs or savings including the cost of preliminaries and a reasonable allowance for Subcontractor's overheads and profit not greater than the rate shown in **item 12 of Schedule 1**
    - c reference to the rates and unit prices in any bill of quantities, if applicable
    - d reference to schedules of rates, if applicable
    - e any documentation required to be provided under any *\*relevant legislation*
    - f any required adjustment to the date for *\*substantial completion*
    - g any *\*adjustment of time costs* associated with the claim
    - h detailed records of the cost of carrying out a *\*variation* for which an instruction to proceed was issued under **clause J3**, including details of any quotation accepted under **clause J3**.

### Contractor to assess claim

- H3**
- .1 The Contractor must *\*promptly* assess the *\*claim to adjust the subcontract* and in so doing the Contractor must consider the detailed claim submitted by the Subcontractor and any further information the Contractor requests the Subcontractor to supply.
  - .2 If the Contractor needs additional information to assess the claim, the Contractor must issue a written request to the Subcontractor.
  - .3 The Subcontractor must *\*promptly* give to the Contractor any additional information the Contractor reasonably requests.

### Contractor to give assessment

- H4**
- .1 The Contractor must, within 25 *\*working days* after receiving the claim, issue to the Subcontractor its written decision specifying any adjustment to the *\*subcontract price* or any adjustment to the date for *\*substantial completion*, or both.
  - .2 The Subcontractor may dispute the Contractor's decision issued under this clause in accordance with **clause A8** but in accordance with **clause P1** must continue to perform its contractual obligations.

## Section H – Claims to adjust the subcontract

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### Sum recoverable for claim for adjustment of time costs

- H5** | .1 Where a sum or sums per day is shown in **item 13** of **Schedule 1**, a claim by the Subcontractor is limited to that sum. If no sum or sums per day is shown, the Subcontractor is entitled to an adjustment to the *\*subcontract price* equal to the loss, expense or damage it incurs as a result of the approval of an adjustment by the Contractor to the date for *\*substantial completion*.

### Contractor may adjust subcontract in absence of claim

- H6** | .1 If the Subcontractor has not made a *\*claim to adjust the subcontract* in relation to any change which results from complying with any instruction given under **section J** for a *\*variation* to the *\*subcontract works* or from causes of delay noted in **clause L1**, the Contractor may adjust the subcontract at any time up to the issue of the final payment statement under **clause N11** or a payment statement under **clauses Q9** or **Q17**.



## Section J – *\*Variation to the \*subcontract works*

### Contractor may instruct *\*variation to the \*subcontract works*

- J1**
- .1 The Contractor may give to the Subcontractor a written instruction for a *\*variation* at any time before the date of *\*practical completion* of the *\*works*. However except if **clause J2.2** applies, the Subcontractor must continue to perform the *\*subcontract works* in accordance with the *\*subcontract documents* until it receives an instruction to proceed under **clause J3**.
  - .2 The instruction for a *\*variation* may include an instruction to provide one or more of the following:
    - a a detailed estimate of the whole, or any part, of the cost of or any saving as a result of the *\*variation*
    - b an estimate of the effect of the *\*variation* on the date for *\*substantial completion*
    - c a quotation for the whole, or any part, of the cost of the *\*variation*.
  - .3 The Subcontractor may request an instruction from the Contractor if it considers that a *\*variation* may be required. A request by the Subcontractor under this clause must be in writing.
  - .4 A *\*variation* may be a change to:
    - a the scope of the *\*subcontract works* as contemplated by the *\*subcontract documents* and capable of being executed under this subcontract
    - b a dimension or level of the *\*subcontract works*
    - c the materials, workmanship or quality of any part of the *\*subcontract works*
    - d a detail of the *\*subcontract works* or
    - e the order of precedence of the *\*subcontract documents* referred to in **clause B2**.
  - .5 If the Subcontractor receives an official notice or order from an *\*authorised person* which requires a *\*variation*, the procedures in **clauses J5 to J7** apply.

### Subcontractor to review instruction

- J2**
- .1 The Subcontractor must review any written instruction issued by the Contractor under **clause J1**.
  - .2 If the instruction for a *\*variation* will not:
    - a result in an adjustment in the *\*subcontract price* or
    - b require an adjustment to the date for *\*substantial completion*,then the Subcontractor:
    - c must carry out the instruction *\*promptly*
    - d is not required to obtain an instruction to proceed, and is not entitled to any adjustment to the subcontract as a result of carrying out the instruction.
  - .3 If the instruction will:
    - a result in an adjustment to the *\*subcontract price* or
    - b require an adjustment to the date for *\*substantial completion* or both,the Subcontractor must:
    - c notify the Contractor in writing within 15 *\*working days*, unless it has received an instruction to provide information under **clause J1.2**
    - d continue to carry out the *\*subcontract works* until a further instruction is received under **clause J3**.
  - .4 The Subcontractor is not entitled to any adjustment to the subcontract as a result of carrying out an instruction to which **clause J2.3** applies, unless it receives an instruction to proceed following its notification under **clause J2.3**.
  - .5 If the Contractor instructs the Subcontractor under **clause J1.2** then within a further 15 *\*working days* the Subcontractor must give the Contractor the information requested.

## Section J – *\*Variation to the \*subcontract works*

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- J3**      **Contractor to instruct whether *\*variation* is to proceed**
- .1 Within 10 *\*working days* after receiving a detailed written quotation under **clause J1.2** or notification under **clause J2.3**, the Contractor must either:
    - a instruct the Subcontractor whether or not to proceed, or
    - b instruct or further instruct the Subcontractor, as the case may be, under **clause J1.2**.
  - .2 Within 25 *\*working days* after receiving all requested or further requested information under **clause J1.2**, the Contractor must instruct the Subcontractor whether or not to proceed with the *\*variation*.
  - .3 An instruction to proceed under **clause J3.2** may confirm acceptance of any quotation but, unless it does so, any quotation supplied in relation to the instruction for the *\*variation* is rejected.

- J4**      **If Subcontractor receives written instruction to proceed**
- .1 If the Contractor instructs the Subcontractor to proceed with the *\*variation*, the Subcontractor must do so *\*promptly*.
  - .2 If the instruction to proceed does not confirm acceptance of a quotation for the whole of the *\*variation*, the Subcontractor must:
    - a maintain *\*day records* of any cost of carrying out the *\*variation*, except for any part of the *\*variation* for which a quotation has been confirmed as accepted in accordance with **clause J3**
    - b maintain *\*day records* of the effect on the date for *\*substantial completion*, if any, of the *\*variation* not covered by an accepted quotation
    - c notify the Contractor in writing after completion of all of the *\*necessary work required* to carry out the *\*variation*
    - d submit the detailed *\*claim to adjust* the subcontract within a further 20 *\*working days* after giving the notice in accordance with **clause J4.2c**.
  - .3 The details required for a *\*claim to adjust the subcontract* are stated in **clause H2**.
  - .4 *Day records* are written records maintained by the Subcontractor of the hours worked by the Subcontractor and each of its employees, agents or sub-subcontractors in carrying out the *\*variation*.
  - .5 If the instruction to proceed includes acceptance of a quotation the *\*subcontract price* will be adjusted in accordance with the quotation.

- J5**      **If *\*authorised person* issues *\*official document***
- .1 If an *\*authorised person* issues an *\*official document* to the Subcontractor which requires a *\*variation* to the *\*subcontract works*, the Subcontractor must notify the Contractor in writing within 12 hours of receiving the *\*official document*. The notification must request an instruction from the Contractor and provide a copy of the *\*official document* to the Contractor.

- J6**      **Contractor to give instruction**
- .1 If the Contractor receives a notice from the Subcontractor under **clause J5** the Contractor must *\*promptly* issue a written instruction to the Contractor regarding the *\*official document*.

- J7**      **Subcontractor entitled to make claim for *\*official document***
- .1 The Subcontractor is only entitled to make a *\*claim to adjust the subcontract* for any loss, expense or damage that results from a written instruction issued under **clause J6** where the circumstances giving rise to the *\*official document* or order being issued were beyond the Subcontractor's control.
  - .2 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.

## Section J – *\*Variation to the \*subcontract works*

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- J8**
- Claim for *\*variation for \*dangerous or contaminated material***
- .1 If the Subcontractor receives an *\*official document* under **clause F9** which requires a *\*variation* to the *\*subcontract works*, the Subcontractor must immediately notify the Contractor and comply with the *\*official document*.
  - .2 The Subcontractor may only make a *\*claim to adjust the subcontract* if the circumstances giving rise to the issue of the *\*official document* requiring a *\*variation* were beyond the Subcontractor's control, and the Subcontractor:
    - a *\*promptly* notifies the contractor of its intention to make a claim
    - b maintains *\*detailed records* of the cost of carrying out the variation and the effect, if any, on the date for substantial completion.
    - c Notifies the Contractor in writing when the *\*variation work has been completed*
    - d Submits the detailed *\*claim to adjust the subcontract* within 15 *\*working days* after completion of the *\*necessary work* in accordance with the *\*official document* which required the *\*variation*.
  - .3 The details required for a *\*claim to adjust the subcontract* are stated in **clause H2**.

## Section K – Adjustment of *\*provisional* and *\*prime cost sum*

### ***\*Provisional and \*prime cost sums included in subcontract***

- K1**
- .1 A *\*provisional sum* shown in **schedule 6** is a sum exclusive of *\*GST* included in the subcontract for:
    - a performance of foreseeable *\*necessary work* including the supply of materials not fully described by the *\*subcontract documents* on the date that this subcontract was executed.
    - b connection of an *\*infrastructure service* to the *\*site*, where the details of the *\*infrastructure service* required and/or the supplier of the *\*infrastructure service* was not known or had not been finally decided on the date that this subcontract was executed.
  - .2 A *\*prime cost sum* shown in **schedule 7** is a sum exclusive of *\*GST* included in the subcontract for:
    - a a foreseeable item of material or equipment, the precise identify of which was not known or had not been specified at the date of the subcontract, or
    - b an allowance for payment of a fee or charge to a *\*relevant authority*.
  - .3 The Subcontractor agrees that it has made adequate allowance in the *\*cost of building work* for the scheduled *\*provisional sums* and *\*prime cost sums* including but not limited to, its preliminaries, overheads and profit.
  - .4 The Subcontractor agrees that the subcontract period contains an adequate allowance of time for any work to be performed under any *\*provisional sum* or *\*prime cost sum* to the extent that the work was reasonably described in the *\*subcontract documents* at the time that the subcontract was executed.

### ***Contractor may instruct regarding \*provisional or \*prime cost sum***

- K2**
- .1 Subject to **clause K2.6** nothing is to be done for which a *\*provisional sum* or a *\*prime cost sum* has been included in the subcontract except in accordance with an instruction from the Contractor.
  - .2 The Contractor may instruct the Subcontractor to provide a written quotation for anything for which a *\*provisional sum* or a *\*prime cost sum* has been included in the subcontract.
  - .3 The quotation must be for the direct cost to the Subcontractor of performing the *\*necessary work*, connection of an *\*infrastructure service*, supplying or supplying and installing an item or the amount of the fee or charge to a *\*relevant authority*, excluding any margins for preliminaries, overheads, profit or *\*GST*. The Subcontractor must notify the Contractor in writing if *\*GST* is not applicable to the fee or charge to a *\*relevant authority*.
  - .4 If the Contractor agrees with the quotation, the Contractor may issue an instruction to proceed and the *\*cost of building work* will be adjusted in accordance with **clause K4**, when the next payment statement is issued.
  - .5 If the Contractor does not agree with the quotation, the Contractor may instruct the Subcontractor to proceed, in which case the Contractor must issue a decision in accordance with **clause H4**.
  - .6 The Subcontractor may pay a fee or charge to a *\*relevant authority* for which a *\*provisional sum* or a *\*prime cost sum* has been included in the *\*cost of building work* without first receiving an instruction from the Contractor.

### ***Contractor may instruct Subcontractor to use particular person for \*provisional or \*prime cost sum***

- K3**
- .1 Except for payment of a fee or charge to a *\*relevant authority* the Contractor may give an instruction to the Subcontractor for a person other than the Subcontractor to perform work or to supply or supply and install an item for which a *\*provisional sum* or *\*prime cost sum* has been allowed. The person will become a sub-subcontractor.
  - .2 The Contractor may only issue an instruction under this clause where the person is named in **Schedule 6** or **Schedule 7** or the intention to use a particular person, whose identity was not known at the time the subcontract was executed, is shown in **Schedule 6** or **Schedule 7**.

## Section K – Adjustment of *\*provisional* and *\*prime cost sum*

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### Adjustment for *\*provisional* or *\*prime cost sum*

- K4**
- .1 Following receipt of the Subcontractor's claim the *\*subcontract price* is to be adjusted by the Contractor to take account of any difference between a *\*provisional sum* or *\*prime cost sum* and the cost of the performance of the *\*necessary work*, connection of an *\*infrastructure service* or supply, or supply and installation. The Contractor must show any adjustment in the next relevant progress payment statement.
  - .2 If the cost of the performance of the *\*necessary work*, connection of an *\*infrastructure service* or supply, or supply and installation, is more than the *\*provisional sum* or *\*prime cost sum*, the extra cost will be increased by the percentage shown in **item 14 of Schedule 1** and added to the *\*cost of building work*.
  - .3 If the cost of the performance of the *\*necessary work*, connection of an *\*infrastructure service* or supply, or supply and installation, is less than the *\*provisional sum* or *\*prime cost sum*, the difference will be deducted from the *\*cost of building work*.
  - .4 In relation to a fee or charge to a *\*relevant authority* the Contractor must adjust the *\*cost of building work* by deducting, or adding, the net difference between the *\*provisional sum* or *\*prime cost sum* included in the *\*cost of building work* and the actual fee or charge.

## Section L – Adjustment of time

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### Causes of delay which entitle making claim for *\*adjustment of time costs*

- L1**
- .1 The Subcontractor may make a claim for an adjustment to the date for *\*substantial completion* without an *\*adjustment of time costs*, in respect of a delay affecting *\*working days*, caused by:
    - a loss of or damage to the *\*subcontract works*, or materials or equipment on or in the immediate vicinity of the *\*site* that are intended to be incorporated in the *\*subcontract works*, or plant, or equipment used on the *\*site*, provided that loss or damage was not caused by an act or omission of the Subcontractor or any person under the Subcontractor's control
    - b *\*relevant authorities*, including a private building surveyor, failing to *\*promptly* give approval for the *\*subcontract works* (except when the delay is caused by an act or omission of the Subcontractor)
    - c a dispute with another Subcontractor on or off site or an occupier (except one caused by an act or omission of the Subcontractor)
    - d widespread industrial unrest not limited to the *\*site* or to any other sites on which only the Subcontractor or any of its sub-subcontractors is working
    - e disruptive weather conditions exceeding the allowance shown in **item 15 of Schedule 1**
    - f any other circumstances exceeding the allowance shown in **item 16 of Schedule 1**.
  - .2 The Subcontractor must take all reasonable steps to minimise the impact of the delay on the progress of the *\*subcontract works*.
  - .3 *\*Adjustment of time costs* includes any loss, expense or damage reasonably incurred by the Subcontractor that results from a delay due to the causes referred to in **clause L1.6**.
  - .4 A claim to adjust the date for *\*substantial completion* with or without *\*adjustment of time costs* is a *\*claim to adjust the subcontract*.
  - .5 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H** but the **L2.1** time period of 2 *\*working days* replaces the **H1** period as the time bar for the delay.
  - .6 The Subcontractor may make a claim for an adjustment to the date for *\*substantial completion* with an *\*adjustment of time costs* in respect of a delay affecting *\*working days* caused by:
    - a the Contractor failing to give access to the *\*site* in accordance with **clause F1**
    - b the Contractor failing to *\*promptly* provide necessary information which is properly due to the Subcontractor or which the Subcontractor has specifically requested in writing.

### Subcontractor to notify of delay

- L2**
- .1 When progress of the *\*subcontract works* is delayed by any of the causes in **clause L1**, the Subcontractor must, within 2 *\*working days* of becoming aware of the start, or end of a delay, as the case may be, notify the Contractor in writing:
    - a that the *\*subcontract works* are being delayed, and state when the delay began, give a description of the cause of the delay and give an estimate of the number of *\*working days* affected
    - b that the delay has ended, stating when the delay ended.
  - .2 Subject to **clause L2.1**, delays of less than 2 *\*working days* may be notified in the same notice.

## Section L – Adjustment of time

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### Subcontractor to allow for delays

- L3** .1 The Subcontractor warrants that the number of *\*working days* it has allowed to complete the *\*subcontract works* includes a reasonable allowance for:
- a delay due to weather conditions or the effect of weather conditions, that is reasonable having regard to the time of the year when the work is likely to be carried out and which will disrupt a *\*critical construction activity*. The Subcontractor's allowance is shown in **item 15 of Schedule 1**
  - b other delays that it is reasonable to allow having regard to the nature of the subcontract. The Subcontractor's allowance is shown in **item 16 of Schedule 1**.
- .2 A *\*critical construction activity* is an activity in the construction of the *\*subcontract works* that if delayed will have a direct effect on subsequent activities such that the Subcontractor's ability to achieve *\*substantial completion* by the date for *\*substantial completion* will be affected.

### Adjustment of provisional allowance for delays

- L4** .1 The Subcontractor is not entitled to an adjustment of time for any of the causes under **clause L3** until the provisional allowance stated in **Schedule 1** has been exceeded for that cause.

### Overlapping delays

- L5** .1 Subject to **clauses L3** and **L4** when one or more *\*critical construction activity* is delayed by more than one cause at the same time, the Contractor must assess any *\*claim to adjust the subcontract* in accordance with this **clause L5**.
- .2 If one overlapping cause of delay further extends the delay resulting from another overlapping cause, the Subcontractor is entitled to:
- a an adjustment of time equal to the time from the commencement of the first occurring delay to the end of the last overlapping delay
  - b *\*adjustment of time costs* for that part of the delay due to an event described in **clause L1.6**.
- .3 If one overlapping cause of delay does not further extend the delay resulting from another overlapping cause, the Subcontractor is entitled to an *\*adjustment of time costs* equal to the period of time from the first occurring delay *\*adjustment of time costs* for that part of the delay due to an event described in **clause L1.6**.

## Section M – Completion of the *\*subcontract works*

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### ***\*Substantial completion***

- M1** .1 The Subcontractor must bring the *\*subcontract works* to *\*substantial completion* by the date for *\*substantial completion* shown in **item 17 of Schedule 1** as adjusted in accordance with this subcontract. The *\*subcontract works* are at *\*substantial completion* when, in the reasonable opinion of the Contractor:
- a they are substantially complete and any incomplete work or *\*defects* remaining in the *\*subcontract works* are of a minor nature and number, the completion or rectification of which is not practicable at that time and which will not delay the Contractor from completing the *\*works*
  - b all commissioning tests in relation to the plant and equipment shown in **item 18 of Schedule 1** have been carried out successfully
  - c any relevant approvals required for occupation have been obtained from the *\*relevant authorities* and copies of documents evidencing the approvals have been provided to the Contractor.
- .2 Subject to **clause M9**, at 4.00pm on the date the Contractor issues the notice of *\*substantial completion*, the Subcontractor ceases to have access to the *\*site* except by prior arrangement with the Contractor.

### **Inspection by Subcontractor**

- M2** .1 At least 10 *\*working days* before the date the Subcontractor expects that *\*substantial completion*, will be reached the Subcontractor must inspect the *\*subcontract works* and prepare a detailed list of *\*defects* and incomplete work and give a copy to the Contractor.
- .2 At the same time, the Subcontractor must give the Contractor a written timetable for the correction of *\*defects* and incomplete work.

### **Notification to Contractor of *\*substantial completion***

- M3** .1 When the Subcontractor considers that the *\*subcontract works* are at *\*substantial completion*, the Subcontractor must notify the Contractor in writing and give a copy of the detailed schedule of *\*defects* and incomplete work to the Contractor indicating that each item has been corrected or completed to the satisfaction of the Subcontractor.
- .2 The Contractor must commence its inspection of the *\*subcontract works* *\*promptly* and complete the inspection within an agreed time or if none is agreed within 10 *\*working days*. The Contractor must issue a notice, instruction or statement under **clause M4, M5, or M6**.
- .3 Within the agreed time for the Contractor's inspection or if none is agreed within 10 *\*working days*, the Subcontractor must give the Contractor any *\*official documents* required for occupation and must give the Contractor evidence that the commissioning tests shown in **item 18 of Schedule 1** have been successful.

### **Contractor to decide if the *\*subcontract works* have reached *\*substantial completion***

- M4** .1 If the Contractor decides that the *\*subcontract works* have reached *\*substantial completion*, the Contractor must issue to the Subcontractor a notice of *\*substantial completion* within 10 *\*working days* after completing the inspection. The notice must state the date when *\*substantial completion* was reached.



## Section M – Completion of the *\*subcontract works*

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### **If the *\*subcontract works* not at, but near, *\*substantial completion***

- M5** .1 If the Contractor considers that the *\*subcontract works* are not at *\*substantial completion*, but are near to *\*substantial completion*, the Contractor must give a written instruction or instructions to the Subcontractor listing what is to be done for *\*substantial completion* to be reached. The Contractor must give the Subcontractor a list of all that is to be done within 10 *\*working days* after completing the inspection.

### **If the *\*subcontract works* not at, and not near, *\*substantial completion***

- M6** .1 If the Contractor considers that the *\*subcontract works* are not at *\*substantial completion*, and are not near *\*substantial completion*, the Contractor must give to the Subcontractor a written statement summarising the reasons for its decision that the *\*subcontract works* are not at, and are not near, *\*substantial completion*. The Contractor's instruction must be given within 10 *\*working days* after completing the inspection.

### **Subcontractor to bring the *\*subcontract works* to *\*substantial completion***

- M7** .1 If the Contractor gives to the Subcontractor an instruction or statement under **clause M5** or **M6** the Subcontractor must *\*promptly* do whatever is necessary for *\*substantial completion* to be reached. The Subcontractor must notify the Contractor in writing when it considers the *\*subcontract works* have reached *\*substantial completion*. The procedures under **clauses M2** to **M7** apply until the Contractor decides that the *\*subcontract works* have reached *\*substantial completion*.

### **If Contractor fails to issue notice of *\*substantial completion***

- M8** .1 If the Contractor fails to issue a notice, instruction or statement under **clause M4**, **M5** or **M6** within 10 *\*working days* of completion of the inspection, the Subcontractor may request in writing that the Contractor issue a notice, instruction or statement.
- .2 If the Contractor fails to issue a notice within 5 *\*working days* of the request:
- a the Subcontractor may make a *\*claim to adjust the subcontract* for any loss, expense or damage that results from the failure of the Contractor to issue a notice and
  - b the date of *\*substantial completion* will be the date identified in the Subcontractor's notice made under **clause M 3.1**.
- .3 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.

### **Possession of the *\*subcontract works* before *\*substantial completion***

- M9** .1 If the Owner takes possession of the whole of the *\*subcontract works* before the Contractor receives notice that the *\*works* are at *\*practical completion*, the whole of the *\*subcontract works* are to be treated as having reached *\*substantial completion*.

## Section M – Completion of the *\*subcontract works*

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- M10**      **Liquidated damages may be payable**
- .1 If the *\*subcontract works* have not reached *\*substantial completion* by the date for *\*substantial completion* as adjusted, the Contractor must *\*promptly* notify the Subcontractor in writing of the Contractor's entitlement to liquidated damages.
  - .2 Up to 20 *\*working days* after the issue of the notice of *\*substantial completion* the Contractor may notify the Subcontractor in writing whether it will enforce its entitlement to liquidated damages against the Subcontractor.
  - .3 The Subcontractor is liable to pay or allow to the Contractor liquidated damages at the rate shown in **item 19** of **Schedule 1**.
- M11**      **Deduction of liquidated damages**
- .1 If the Contractor has notified the Subcontractor in writing under **clause M10.2**, the Contractor must deduct liquidated damages from the next and subsequent payment statement as applicable.
  - .2 If, after the Contractor has issued a progress payment statement in which an allowance for the Contractor's entitlement to liquidated damages has been made, an adjustment is made to the date for *\*substantial completion*, with the result that the Contractor's entitlement to liquidated damages is altered, or the Contractor has advised that it no longer wishes to enforce its entitlement to liquidated damages, the Contractor must make an appropriate adjustment in the next progress payment statement.
- M12**      **Subcontractor to correct *\*defects* and finalise work**
- .1 The Subcontractor must correct any *\*defects* or finalise any incomplete work, whether before or after the date of *\*substantial completion*, within the agreed time as stated in an instruction or if no time is stated, within 5 *\*working days* after receiving a written instruction from the Contractor to do so.
- M13**      **If the Subcontractor fails to correct *\*defects* and finalise work**
- .1 If the Subcontractor fails to correct a *\*defect* or finalise any incomplete work within the time nominated under **clause M12** or fails to show reasonable cause for the failure together with a timetable for correcting the problem that is acceptable to the Contractor, the Contractor may use another person to correct the problem at the cost of the Subcontractor.
  - .2 If the Contractor is required to use another person to rectify a problem, the Contractor is entitled to make a *\*claim to adjust the subcontract*.
  - .3 If the Contractor makes a *\*claim to adjust the subcontract* the Contractor must *\*promptly* assess the claim and may issue a payment statement under **clause N4**.
- M14**      **Defects liability period**
- .1 The defects liability period is shown in **item 20** of **Schedule 1** and commences on the date of *\*practical completion* of the *\*works*.
  - .2 The Contractor may notify that, in respect of any part of the *\*subcontract works* that has undergone significant correction within the first defects liability period, a further defects liability period of equal length to the first defects liability period may run for that part. The notification must be given at the time of acceptance of the corrected work.

## **Section M – Completion of the *\*subcontract works***

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### **Subcontractor's obligations during and after defects liability period**

#### **M15**

- .1 If there is any remaining *\*defect* or incomplete work, or the Subcontractor becomes aware by instruction from the Contractor or from its own observations of any *\*defect* or incomplete work during the defects liability period, it must *\*promptly* return to the *\*site* and correct the *\*defect* or finalise the incomplete work. This obligation continues until the *\*defect* is corrected or the incomplete work is finalised, and does not come to an end when the defects liability period is over.
- .2 The Contractor cannot give the first instruction to correct an outstanding *\*defect* or to finalise any incomplete work after the end of the defects liability period, unless it is for the correction of a latent *\*defect* and the final payment statement has not been issued.

## Section N – Payment for the *\*subcontract works*

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### ***\*Subcontract price***

- N1** .1 The *\*subcontract price*, shown in **item 3** of the **Introduction** is a lump sum and the Subcontractor represents that the *\*subcontract price* allows for:
- a everything reasonably required in accordance with this subcontract to complete the *\*subcontract works*
  - b all *\*provisional sums* and *\*prime cost sums* shown in **Schedule 6** and **Schedule 7**
  - c installation of any items shown in **Schedule 8** to be supplied by the Contractor and installed by the Subcontractor
  - d rise and fall
  - e all statutory taxes and charges applying 5 *\*working days* before the closing of tenders
  - f import duties and tariffs on imported materials or equipment to be incorporated in or used in the completion of the *\*subcontract works* applying 5 *\*working days* before the closing date for tenders
  - g exchange rates applying 5 *\*working days* before the closing date for tenders
  - h relevant industrial awards and workplace agreements, site allowances, building industry superannuation levies and long service leave levies
  - i *\*GST*.
- .2 The *\*subcontract price* does not include any items to be supplied and installed by the Contractor, shown in **Schedule 8** or specifically identified elsewhere in the *\*subcontract documents*.

### **Contractor's obligation to pay *\*subcontract price***

- N2** .1 The Contractor must pay the *\*subcontract price*, adjusted in accordance with this subcontract, progressively in accordance with **clauses N4** to **N7**.

### **Progress payments – procedure for Subcontractor**

- N3** .1 The Subcontractor may submit to the Contractor one claim for a progress payment each month, on or after the date in each month shown in **item 21** of **Schedule 1** unless a different date is agreed in writing with the Contractor. The claim is not a *\*tax invoice*.
- .2 The claim must set out the Subcontractor's valuation of the work completed and the value of materials and equipment delivered to the *\*site* for incorporation in the *\*subcontract works* up to and including the day of the claim. The claim must identify any amount of *\*GST* that has been included in the claim. The claim must be supported by any information shown in **item 22** of **Schedule 1** and a declaration made by the Subcontractor that:
- a all wages and other entitlements including building industry superannuation and long service leave levies due at the date of the declaration have been paid to or on behalf of all employees of the Subcontractor
  - b all monies due to sub-subcontractors at the date of the declaration have been paid
  - c all insurances required to be maintained by the Subcontractor are in force.

## Section N – Payment for the *\*subcontract works*

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### Progress payments – procedure for Contractor

- N4**
- .1 The Contractor must assess a claim for a progress payment and issue to the Subcontractor a payment statement setting out any payment due to either the Contractor or the Subcontractor within 20 *\*business days* after receiving a claim for a progress payment.
  - .2 When assessing a claim for a progress payment the Contractor must take account of each of the following:
    - a any adjustments to the *\*cost of building work* since any previous assessment
    - b the proportion of the *\*cost of building work* representing the value of the work completed up to and including the day of the claim, making allowance for the cost of rectifying *\*defects* if any
    - c the proportion of the *\*cost of building work* representing the value of materials and equipment delivered to the *\*site* for incorporation in the *\*subcontract works* up to and including the day of the claim, provided title has passed to the Subcontractor
    - d an allowance for cash retention where **clause C2** applies
    - e any claim by the Contractor for set off of monies due under this subcontract
    - f the Contractor's entitlement to liquidated damages, in accordance with **clause M10**, since any previous payment statement, calculated up to the date of the payment statement
    - g any other matter to be taken into account in accordance with this subcontract
    - h *\*GST*.
  - .3 The progress payment statement must identify the amount of *\*GST* that has been included and the Contractor must give written reasons for any difference between the (*\*GST* exclusive) amount certified and the (*\*GST* exclusive) amount claimed.
  - .4 If the Contractor reasonably needs additional information to assess the claim, the Contractor must *\*promptly* ask the Subcontractor for it. If that information is needed to assess only part of the claim, the Contractor must assess the rest of the claim.

### *\*Tax invoice*

- N5**
- .1 On receiving a progress payment statement from the Contractor, the party to be paid must prepare a *\*tax invoice* (if applicable) equal in value to the payment statement and present both documents to the other party for payment.

### Progress payment statements – obligation to pay

- N6**
- .1 The amount stated as owing in any payment statement must be paid within the period shown in **item 5 of Schedule 1** after delivery of the progress payment statement and the *\*tax invoice* (if applicable).

### Before making first progress payment

- N7**
- .1 Before the Contractor is obliged to make the first progress payment:
    - a the security must be in place in accordance with **section C1**
    - b insurances in accordance with **section E** to be taken out by the Subcontractor must be in place
    - c where applicable, the *\*subcontract works* program must have been given to the Contractor in accordance with **clause G5**.

### If Contractor fails to issue payment statement

- N8**
- .1 If the Contractor fails to issue a payment statement on time the Subcontractor may issue a notice in writing requesting the Contractor to issue the payment statement. If the Contractor fails to issue the payment statement within 5 *\*working days* of the date of issue of the notice, the Subcontractor may immediately suspend the *\*necessary work* under **clause Q12**.

## Section N – Payment for the *\*subcontract works*

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- N9**      **Subcontractor entitled to make claim**
- .1      The Subcontractor is entitled to make a *\*claim to adjust the subcontract* for any loss, damage or expense that results from the suspension of the *\*necessary work* under **clause Q12**.
  - .2      The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.
- N10**      **Final claim – procedure for Subcontractor**
- .1      The Subcontractor is entitled to submit to the Contractor a claim for final payment ('final claim') when:
    - a      all defects liability periods have ended
    - b      the Subcontractor has rectified all *\*defects* and finalised all incomplete work it became aware of by instruction from the Contractor or from its own observations during the defects liability period
    - c      the *\*subcontract works* have been completed in accordance with this subcontract.
  - .2      The Subcontractor's final claim must identify any *\*GST* included in the claim.
  - .3      The Subcontractor must submit a final claim within 15 *\*working days* after receiving a written request to do so from the Contractor.
  - .4      If the Subcontractor fails to comply with a written request made under **clause N10.3** the Contractor may determine the final claim.
  - .5      After a final claim has been made under **clause N10** or is treated as having been made under **clause N10.4**, the Subcontractor is not entitled to make any further claims under this subcontract.
- N11**      **Final payment statement – procedure for Contractor**
- .1      The Contractor must *\*promptly* assess the final claim. If the Contractor reasonably needs additional information to do so, the Contractor may ask the Subcontractor for it. The Subcontractor must *\*promptly* give the Contractor any additional information the Contractor requests. The Contractor must, within a reasonable time (not exceeding 25 *\*business days*) after receiving the final claim (or the additional information if requested) issue to the Subcontractor a final payment statement setting out the amount due for payment.
  - .2      The payment statement must:
    - a      identify the amount of *\*GST* that has been included
    - b      give written reasons for any difference between the (*\*GST* exclusive) amount certified and the (*\*GST* exclusive) amount claimed
    - c      acknowledge the Contractor's obligation to release any remaining security under **clause C7**.
  - .3      If the Subcontractor fails to give the Contractor any additional information the Contractor asks for within a reasonable time, the Contractor must *\*promptly* assess the claim on the basis of the information the Contractor has.
  - .4      If the engagement of the Subcontractor is terminated under **clause Q1** or **Q2**, a payment statement will be issued in accordance with **clause Q9**.
- N12**      **Final payment statement – *\*tax invoice***
- .1      On receiving the final payment statement from the Contractor, the party to be paid must prepare a *\*tax invoice* (if applicable) equal in value to the final payment statement and present both documents to the other party for payment.

## Section N – Payment for the *\*subcontract works*

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- N13** | **Final payment statement – obligation to pay**  
|.1 The amount stated as owing in the final payment statement must be paid within the period shown in **item 5 of Schedule 1** after delivery of the payment statement and the *\*tax invoice* (if applicable).
- N14** | **Effect of final payment statement**  
|.1 The final payment statement must state the Contractor's assessment of all outstanding entitlements under this subcontract. The final payment statement is evidence of the parties' entitlements under this subcontract and that the Subcontractor has performed its obligations under this subcontract subject to any matter already in dispute under **section P**.
- N15** | **Interest on overdue amounts**  
|.1 Each party must pay interest on any money that it owes the other but fails to pay on time. In the case of the Contractor, this includes any delay caused by the failure of the Contractor to issue a progress payment statement on time.  
|.2 The interest rate is shown in **item 23 of Schedule 1**.  
|.3 The interest is calculated daily, from the date the money should have been paid. The interest must be paid on the last day of each month. If interest due on the last day of a month is not paid, it is immediately capitalised and added to the money outstanding.

## Section P – Dispute resolution

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### Each party must continue to perform its obligations

- P1** .1 If a dispute or difference arises out of or in relation to this subcontract, the parties must continue to perform their obligations under this subcontract.

### Compulsory conference

- P2** .1 If a dispute or difference between the parties arises out of or in relation to this subcontract:
- a either party may deliver a written dispute notice to the other which requires the representatives of the parties to meet within 5 *\*working days* after the dispute notice is delivered to make a bona fide attempt to resolve the dispute or difference.
  - b If the dispute or difference is not resolved within 5 *\*working days* after the dispute notice is delivered, the Contractor and the Subcontractor must meet within 10 *\*working days* after the dispute notice is delivered and make a bona fide attempt to resolve the dispute or difference.

### Mediation

- P3** .1 If the dispute or difference is not resolved within 10 *\*working days* after the dispute notice is delivered, representatives of the parties with authority to settle a dispute must mediate the dispute or difference, and within 25 *\*working days* after a dispute notice is delivered, the parties must agree in writing on the identity of the mediator, or if not, the party that issued the dispute notice must request in writing, copied to the other party, that the chairperson of the Resolution Institute in the state or territory shown in **item 24 of Schedule 1**, nominates the mediator.
- .2 Subject to **clause P3.3**, the mediation must be conducted in accordance with the Rules for Mediation of The Institute of Arbitrators & Mediators Australia unless the parties agree alternative rules in writing within 5 *\*working days* after agreement or nomination of the mediator.
- .3 The mediation must commence within 10 *\*working days* after agreement or appointment of the mediator under **clause P3.1**, unless the parties agree in writing to a longer period.
- .4 If the mediation has failed to resolve the dispute or difference when the mediator confirms the mediation is concluded, either party may begin any legal proceedings available to it.

### Legal rights

- P4** .1 Nothing in this section prevents either party from taking action at any time to enforce payment due under a payment statement issued in accordance with this subcontract or to seek urgent court relief to prevent the detrimental action of the other party.



## Section Q – Termination of engagement

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### **Contractor may require Subcontractor to remedy default**

- Q1**
- .1 If the Subcontractor fails to meet a substantial obligation under this subcontract, the Contractor may give the Subcontractor a written notice requiring the Subcontractor to remedy the default within 10 *working days*. The notice must specify the default, and state that it is given under this clause.
  - .2 If the default is not remedied, or the Subcontractor fails to show reasonable cause why it cannot be remedied, within 10 *working days*, or such additional days as agreed with the Contractor, the Contractor may terminate the engagement of the Subcontractor by giving the Subcontractor a written notice of termination.
  - .3 The notice of termination must state that it is given under this clause.

### **Contractor may immediately terminate**

- Q2**
- .1 If an *insolvency event* occurs in relation to the Subcontractor, the Contractor may immediately terminate the engagement of the Subcontractor under this subcontract by giving the Subcontractor a written notice of termination.
  - .2 The notice of termination must state that it is given under this clause.

### **Exclusion of Subcontractor from the *site***

- Q3**
- .1 If the Contractor terminates the engagement of the Subcontractor under **clause Q1** or **Q2** the Contractor may exclude the Subcontractor from the *site*.
  - .2 The Contractor may take possession of any documents, plant, tools, unused materials and equipment on the *site*, belonging to the Subcontractor, and may use them in completing the *subcontract works*. The Contractor must make available for collection by the Subcontractor, the items of which it has taken possession, as soon as it gives the payment statement issued under **clause Q9**. The Contractor is not liable for fair wear and tear of anything of which the Contractor has taken possession.
  - .3 At any time after termination of the Subcontractor's engagement, the Contractor may instruct the Subcontractor to remove all or some of its property from the *site*. The Subcontractor must comply within 10 *working days*, failing which the Contractor may remove the property identified in the Contractor's instruction, and dispose of it. The Contractor must give notice in writing to the Subcontractor of the amount the property is disposed for. The Contractor must pay the Subcontractor the amount the property is disposed for, less the costs of removal and disposal.

### **Assignment of Subcontractor's rights**

- Q4**
- .1 Where the engagement of the Subcontractor has been terminated under **clause Q1** or **Q2**, the Subcontractor must assign to the Contractor all of its rights under any sub-subcontract relating to the supply of labour, services, materials or equipment for the *subcontract works* if directed to do so by the Contractor.

### **Contractor may contract with others to complete the *subcontract works***

- Q5**
- .1 If the Contractor terminates the engagement of the Subcontractor under **clause Q1** or **Q2**, the Contractor may subcontract with others to complete the *subcontract works*.

### **Contractor not bound to make any further payment to Subcontractor**

- Q6**
- .1 If the engagement of the Subcontractor has been terminated under **clause Q1** or **Q2** the Contractor will not be bound to make any further payment to the Subcontractor unless an obligation to pay arises under **clause Q9**.

## Section Q – Termination of engagement

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### Contractor may pay sub-subcontractors or suppliers

- Q7** .1 If the Contractor terminates the engagement of the Subcontractor under **clause Q1** or **Q2**, the Contractor may at its sole discretion directly pay any sub-subcontractor or supplier for any work, materials or equipment necessary to complete the *\*subcontract works*. Any sum paid by the Contractor to the sub-subcontractor or supplier is to be taken into account by the Contractor in preparing its payment statement under **clause Q9**, provided the Contractor has not already paid the Subcontractor for the same work, materials or equipment.

### Contractor to give assessment of cost of completing the *\*subcontract works*

- Q8** .1 If the engagement of the Subcontractor has been terminated under **clause Q1** or **Q2**, the Contractor must *\*promptly* make a written assessment of the cost to the Contractor of completing the *\*subcontract works* and issue to the Subcontractor a copy of that assessment. For this purpose, the cost to the Contractor of completing the *\*subcontract works* excludes any amount paid by the Contractor under **clause Q7**. That assessment is to be reflected in the payment statement made under **clause Q9**.

### Contractor to give payment statement of amount payable to Subcontractor or Contractor

- Q9** .1 Where the engagement of the Subcontractor has been terminated under **clause Q1** or **Q2**, and the assessment required under **clause Q8** has been made, the Contractor must *\*promptly* prepare a payment statement as to the amount payable, including *\*GST*, by one party to the other and issue it to the Subcontractor. That payment statement is to be calculated using the following procedure.
- .2 The Contractor is to determine the amount of the *\*subcontract price* as adjusted at the date of termination of the engagement of the Subcontractor.
- .3 The Contractor is to determine the total of:
- a the value of building work completed, including *\*GST*, assessed in the last payment statement issued under **clause N4**
  - b the cost to the Contractor of completing the *\*subcontract works*, including *\*GST*, as assessed by the Contractor under **clause Q8**
  - c any sum paid directly by the Contractor to a sub-subcontractor or supplier, including *\*GST*, under **clause Q7** not already paid to the Subcontractor for the same work, materials or equipment necessary to complete the *\*subcontract works*
  - d the Contractor's assessment of any claim by the Contractor under this contract for a set off of monies due
  - e any liquidated damages in accordance with **clause M10**, since any previous payment statement, calculated up to the date of termination of the engagement of the Subcontractor.
- .4 The Contractor is to determine the total of:
- a the amount of security drawn or appropriated to date
  - b the amount of any security by cash retention held by the Contractor in accordance with **clause C2**.
- .5 The certified amount payable to the Contractor or the Subcontractor, as the case may be, is the total determined in **clause Q9.2**, less the total determined in **clause Q9.3**, plus the total determined in **clause Q9.4**.
- .6 The Contractor must also state on the payment statement the value of any remaining security by *\*unconditional guarantee(s)*.
- .7 If a payment statement is issued under this clause, it takes the place of a final payment statement under **clause N11**, and **clause C7** applies.

## Section Q – Termination of engagement

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- Q10**      **Subcontractor or Contractor to pay under clause Q9**
- .1 If the balance calculated by the Contractor under **clause Q9** is a positive figure, the Contractor must pay the Subcontractor the balance. If the balance is negative, the Subcontractor must pay the Contractor the balance.
  - .2 On receiving the payment statement, the party to be paid must prepare a *\*tax invoice* (if applicable) equal in value to the payment statement and present both documents to the other party for payment.
  - .3 The amount stated as owing must be paid within the period shown in **item 5 of Schedule 1** after delivery of the payment statement and the *\*tax invoice*.
- Q11**      **Subcontractor may require Contractor to remedy default**
- .1 If the Contractor defaults by:
    - a failing to make a progress payment on time, or
    - b failing to meet any other substantial obligation under this subcontractthe Subcontractor may give the Contractor a written notice stating that:
    - c it is given under this clause
    - d the Contractor must rectify the default within 10 *\*working days* after receipt
    - e if the default is not so rectified, the Subcontractor will be entitled to proceed under **clause Q12** to suspend the *\*necessary work*, or subsequently under **clause Q13** to terminate its engagement.
- Q12**      **Subcontractor may suspend if default not remedied**
- .1 If after receiving a notice under **clause Q11**:
    - a the Contractor fails to rectify the default
    - b the Contractor fails to show reasonable cause why it cannot be remedied within time or
    - c **clause N8** appliesthe Subcontractor may immediately suspend the *\*necessary work* by giving the Contractor written notice.
  - .2 The notice must state that it is given under this clause.
  - .3 If, after the suspension of the *\*necessary work*, the Contractor rectifies the default, the Subcontractor is entitled to make a *\*claim to adjust the subcontract* for any loss, expense or damage that results from the suspension of work.
  - .4 The requirements for making a *\*claim to adjust the subcontract* and the procedures to be followed are stated in **section H**.
- Q13**      **Subcontractor's subsequent right to terminate**
- .1 After the Subcontractor has given the Contractor written notice of suspension under **clause Q12** the Subcontractor may terminate its engagement under this subcontract by giving the Contractor written notice of termination.
  - .2 The notice must state that it is given under this clause.
- Q14**      **Subcontractor may immediately terminate**
- .1 If an *\*insolvency event* occurs in relation to the Contractor, the Subcontractor may immediately terminate its engagement under this subcontract by giving the Contractor written notice.
  - .2 The notice must state that it is given under this clause.

## Section Q – Termination of engagement

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- Q15** .1 **Termination by Subcontractor for default by Contractor**  
If the Subcontractor terminates its engagement under **clause Q13** or **Q14** the Contractor must pay the Subcontractor the amount the Contractor would have had to pay if the Contractor had wrongfully repudiated the subcontract.
- Q16** .1 **Procedure for Subcontractor to make claim**  
Within a reasonable time of terminating its engagement under **clause Q13** or **Q14** the Subcontractor must submit to the Contractor a claim setting out the Subcontractor's entitlement, calculated on the same basis as if the Contractor had wrongfully repudiated the subcontract.
- Q17** .1 **Contractor to give payment statement**  
The Contractor must *\*promptly* assess any claim made by the Subcontractor under **clause Q16** and must *\*promptly* issue to the Subcontractor a payment statement specifying the amount for payment, if any.  
.2 If a payment statement is issued under this clause, it takes the place of a final payment statement under **clause N11**, and **clause C7** applies.
- Q18** .1 **Subcontractor or Contractor to pay under clause Q17**  
If the balance certified by the Contractor under **clause Q17** is a positive figure, the Contractor must pay the Subcontractor the balance. If the balance is negative, the Subcontractor must pay the Contractor the balance.  
.2 On receiving the payment statement, the party to be paid, if registered for the *\*GST*, must prepare a *\*tax invoice* equal in value to the payment statement and present both documents to the other for payment.  
.3 The amount stated as owing must be paid within the period shown in **item 5 of Schedule 1** after delivery of the payment statement and the *\*tax invoice*.
- Q19** .1 **If this subcontract is frustrated**  
If this subcontract is frustrated at law or the parties agree that the subcontract is frustrated, the Subcontractor is entitled to submit a claim for:  
a the value of the *\*subcontract works* at the date of frustration, less any progress payments that have already been made  
b the value of any security then held by the Contractor  
c the non-recoverable costs the Subcontractor has incurred, or entered into an agreement to incur, to enable the Subcontractor to complete the *\*subcontract works*  
d the non-recoverable costs the Subcontractor has incurred or will incur in order to cease *\*necessary work*  
e loss of profit.  
.2 The Contractor must *\*promptly* assess the claim and issue to the Subcontractor and to the Contractor a final payment statement specifying the amount for payment. If a final payment statement is issued under this clause, it takes the place of a final payment statement under **clause N11**, and **clause C7** applies.  
.3 A final payment statement issued under this clause must be paid in accordance with **clause Q18**.

## Section R – Miscellaneous

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### Transmission of documents

- R1** .1 A party may only deliver a document to another party under this subcontract by:
- a delivering it to the party or the party's representative by hand or mail at the address shown in **item 1** or **item 2** of the **Introduction**
  - b faxing it to the party at the fax number shown in **item 1** or **item 2** of the **Introduction**
  - c emailing it, to the party, or attaching an electronic copy to the email, provided a signed copy of the transmitted document is also sent by hand, fax or mail to the party in accordance with the above. However, email may only be used to deliver a document if the receiving party has given an email address in **item 1** or **item 2** of the **Introduction**, or the party has confirmed in writing that email communication to the party is acceptable for use under this subcontract.
- .2 If the fax numbers, or email addresses of the party and the party's representative are different, the document must be sent to both the representative and the party's address.
- .3 If a party has had 5 *\*working days* written notice from another party of a change of postal address, email address, or fax number, a document may then only be delivered to that person at the latest address, email address or fax number.

### Time document is delivered

- R2** .1 A document that is hand delivered is to be treated as having been received when it is left at the relevant address.
- .2 A document that is sent by mail is to be treated as having been received 3 *\*working days* (7 *\*working days* in the case of overseas mail) after posting.
- .3 A document sent by fax is to be treated as having been received as soon as the sender receives an error free transmission report from the correct fax number. If a document is delivered, or an error free transmission report is received after 5.00pm the document is to be treated as having been delivered at the beginning of the next *\*working day*.
- .4 A document sent by email is to be treated as having been received when the earliest copy sent by hand, fax or mail is treated as having been received under **clauses R2.1, R2.2 or R2.3**.

### Assignment

- R3** .1 Neither of the parties may assign any rights under this subcontract, without obtaining the other's prior written consent. That consent may not be unreasonably withheld.

### Entire contract

- R4** .1 This subcontract contains everything the Contractor has agreed with the Subcontractor in relation to the matters it deals with. Neither party may rely on an earlier subcontract, or on anything else said or done by the other party (or by an officer, agent or employee of the other party) before this subcontract was entered into.

### Subcontract to benefit successors and assignees

- R5** .1 This subcontract continues for the benefit of, and binds, a successor in title of a party, including a person to whom a party's rights and obligations are assigned in accordance with this subcontract.

### Severability

- R6** .1 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of a clause is to be treated as removed from this subcontract and the rest of this subcontract is not affected. This does not apply if the clause or part of a clause goes to the heart of the transaction contemplated by this subcontract.

## Section R – Miscellaneous

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### Waiver

- R7** .1 The fact that a party fails to do, or delays in doing, something it is entitled to do under this subcontract, does not amount to a waiver of that party's right to do it. Any waiver by a party must be in writing. A written waiver is only effective in relating to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

### Governing law

- R8** .1 This subcontract is governed by the law of the state or territory shown in **item 24 of Schedule 1** and the parties submit to the non-exclusive jurisdiction of its courts.

### Compliance with law

- R9** .1 Both parties must comply with any requirement under any legislation, regulation, order, code or ordinance of relevant government authorities applicable to the *\*subcontract works* and this subcontract.

### Change in *\*relevant legislation*

- R10** .1 If on or after the date of this subcontract any *\*relevant legislation* changes, or new legislation comes into force, after the date of this subcontract which requires a change in the *\*subcontract works*, the Subcontractor must *\*promptly* notify the Contractor in writing giving details of the effect on the *\*contract works*. The Contractor must *\*promptly* issue an instruction to the Subcontractor.

### General Interpretation

- R11** .1 The headings in this subcontract are used as a guide only and do not form part of it.  
.2 A reference to the singular includes the plural and the plural includes the singular.

## Section S – Definitions

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The following terms have the following meanings:

<i>adjustment of time costs</i>	see <b>clause L1.3</b>
<i>authorised person</i>	is a building inspector or certifier or other person authorised under <i>*relevant legislation</i> having jurisdiction over the <i>*subcontract works</i>
<i>business day</i>	any day other than a Saturday, Sunday, or statutory public holiday in the state or territory shown in <b>item 24 of Schedule 1</b>
<i>claim to adjust the subcontract</i>	is a claim made to the Contractor to adjust the <i>*subcontract price</i> (including <i>*adjustment of time costs</i> ) or the date for <i>*substantial completion</i> or both
<i>cost of building work</i>	the actual net cost of the <i>*subcontract works</i> excluding any amounts for <i>*GST</i>
<i>critical construction activity</i>	see <b>clause L3.2</b>
<i>day records</i>	see <b>clause J4.4</b>
<i>defect or defective work</i>	work that is: <ul style="list-style-type: none"><li>• in breach of any of the warranties set out in the <i>*subcontract documents</i></li><li>• not in accordance with the standard or quality of building work specified in the <i>*subcontract documents</i></li></ul>
<i>GST</i>	goods and services tax levied under the <i>*GST Act</i>
<i>GST Act</i>	<i>A New Tax System (Goods and Services Tax) Act 1999</i>
<i>head contract</i>	the contract between the Contractor and the Owner governing the construction of the <i>*works</i>
<i>Infrastructure service</i>	A service to the <i>*site</i> where there is an alternative source of supplier or supply
<i>input tax credit</i>	has the same meaning as <i>'input tax credit'</i> under the <i>*GST Act</i>
<i>insolvency event</i>	in relation to a person, means anything that indicates that the person is or will become unable to pay their debts as and when they become due or payable including: <ul style="list-style-type: none"><li>• the person is declared, made or becomes insolvent</li><li>• an executive or distress process is levied against the person's assets which include the person's income</li><li>• the person enters into a deed of company arrangement with the person's creditors</li><li>• the person fails to comply with a bankruptcy notice or a statutory demand served under the corporations law</li><li>• a provisional liquidator, liquidator, receiver, receiver and manager, administrator, scheme administrator, controller or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets</li><li>• a trustee in bankruptcy, interim receiver, controlling trustee or other such administrator is appointed (whether by a court, creditor or otherwise) to the person or over the person's assets.</li></ul>

## Section S – Definitions

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<i>latent condition</i>	see <b>clause F5.2</b>
<i>necessary work</i>	All work, including any temporary work necessary to complete the <i>*subcontract works</i>
<i>non-working days</i>	statutory public holidays and rostered days off and recognised industry shut-down periods in the state or territory shown in <b>item 24 of Schedule 1</b>
<i>official document</i>	see <b>clause B3.2</b>
<i>practical completion</i>	the <i>*subcontract works</i> are at <i>*practical completion</i> when the <i>*works</i> are at <i>*practical completion</i>
<i>prime cost sum</i>	see <b>clause K1.2</b>
<i>promptly</i>	as soon as practicable
<i>provisional sum</i>	see <b>clause K1.1</b>
<i>relevant authority</i>	a body or organisation, statutory or otherwise which has authority over the <i>*subcontract works</i> in accordance with <i>*relevant legislation</i>
<i>relevant legislation</i>	Acts, Regulations, <i>*official documents</i> and official interpretations of them that have a real relationship to the <i>*subcontract works</i> being carried out by an authority having jurisdiction over the <i>*subcontract works</i>
<i>site</i>	the place at which the <i>*works</i> are to be constructed, and any other place made available by the Contractor to the Subcontractor under this subcontract
<i>site information</i>	see <b>clause F3.2</b>
<i>subcontract documents</i>	any special conditions shown in <b>Schedule 2</b> , the conditions of this subcontract, the specifications, the drawings and any other documents shown in <b>Schedule 3</b>
<i>subcontract price</i>	see <b>clause N1.1</b>
<i>subcontract works</i>	the completed construction set out in the <i>*subcontract documents</i> (briefly described in <b>item 4</b> of the <b>Introduction</b> )
<i>substantial completion</i>	see <b>clause M1.1</b>
<i>tax invoice</i>	an invoice for payment complying with the requirements of the <i>*GST Act</i>
<i>unconditional guarantee(s)</i>	see <b>clause C3.2</b>
<i>valuable item</i>	see <b>clause F5.3</b>
<i>variation</i>	see <b>clause J1.4</b>
<i>working day</i>	Monday to Friday excluding <i>*non-working days</i>
<i>works</i>	work the subject of the <i>*head contract</i> , of which the <i>*subcontract works</i> form a part.