



## Definitions

**Approval** means any license, permit, registration, consent, approval, determination, certificate, administrative decision, permission or other requirement of under any applicable Law, which must be obtained or satisfied for in relation to the carrying out of the Works or the use or occupation of the completed Works.

**Authority** includes any government, governmental, semi-governmental or local government authority, department or local council, administrative or judicial body or tribunal, commission, agency, public authority, Ministerial, statutory corporation instrumentality or regulator; or other person having the ability to impose a requirement, or whose consent is required, under Law in connection with any part of the Works or the Subcontractor's carrying out of the Works or activities incidental thereto.

**Base Work** means any base building work, structure or substrate the Works will be carried out on or affixed to or integrated into.

**Business Day** means a day other than:

- (a) a Saturday or Sunday; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
- (c) any day occurring within any of the following periods:
  - 26 to 26 December; and
  - 31 December to 1 January

**Building Legislative Requirements** means, to the extent applicable in the State or Territory in which the Site is located and the Works are or have been carried out – all Laws, construction codes, standards and the like in relation to building and construction practice, quality of building and construction work, works approvals and inspections, the licensing of builders and construction industry practitioners and participants, and contracting arrangements for building work, including where applicable, domestic and residential building work.

**Claim** means any claim, including any claim for an increase in the Subcontract Sum, for payment of money (including damages) or for an EOT:

- (d) under, arising out of, or in any way in connection with the Subcontract, including a breach of the Subcontract;
- (e) arising out of, or in any way in connection with, the Works or the Subcontractor's activities of an incidental to carrying out of the Works; or
- (f) otherwise at Law or in equity, including by statute, in tort for negligence or otherwise including negligent misrepresentation, or for restitution.



**Completion** means the stage in the execution of the Works when in Johns Lyng's assessment, the Works are complete in accordance with the Subcontract, except for minor omissions and minor defects, and that the Subcontractor has completed all other obligations under the Subcontract and complied with any other reasonable requirements of Johns Lyng relating to or incidental to the Works.

**Date for Commencement of works** means the date specified as such in the Schedule.

**Date for Completion of Works** means the date, or period of time, specified as such in Schedule, as adjusted under the Subcontract.

**Date of Completion** means the date on which Johns Lyng determines the Subcontractor has achieved Completion.

**Defect** means any aspect of the Works, or any part thereof, which is not in accordance with the requirements of the Subcontract.

**Defects Liability Period** means the period specified as such in the Schedule, as may be extended pursuant to the provisions of the Subcontract.

**Due date for Payment** means the date specified in the Schedule.

**EOT** means an extension of time for the Date for Completion of Works.

**Head Contract** means, where relevant, the head contract that Johns Lyng or a related body corporate may have entered with a third-party principal or client and to which the Works relate or may form part of.

**Environmental Legislative Requirements** means the requirements of all Laws and applicable regulations and industry practices within the State or Territory in which the Site is located, governing or relevant to environmental and waste management, applicable in relation to the Works or the Subcontractor's activities of and incidental to the carrying out of the Works.

**Johns Lyng's Program** means the program as specified in Annexure F, or as otherwise notified by Johns Lyng.

**Law** means:

- (a) all statutes, regulations, rules, by-laws, orders, ordinances and subordinate legislation of the Commonwealth, a State or Territory or an Authority;
- (b) principles of common Law and equity established by decisions of courts; and
- (c) Approvals (including the conditions and requirements (if any) of those Approvals), having application to the Works including the Subcontractor's activities of and incidental to the carrying out of the Works.



**Latent Conditions** are physical conditions on the Site and its near surrounds, including artificial things, but excluding weather conditions and the effects of weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor in the position of the Subcontractor had the subcontractor inspected all reasonably obtainable information, made reasonable enquiries and inspected the Site, its near surrounds and other foreseeable factors that may give rise to a latent condition.

**Legislative Requirements** means the requirements of all Laws within the State or Territory in which the Site is located, applicable in relation to the Works or the Subcontractor's activities of and incidental to the carrying out of the Works including, without limitation:

- (a) OH&S Legislative Requirements;
- (b) Environmental Legislative Requirements;
- (c) Building Legislative Requirements; and
- (d) Workplace Legislative Requirements.

**Loss** means any loss, cost (including legal costs, deductibles or increased premiums), expense, fee, compensation, charge, damage (including damages at common Law or in equity), liability, debt or other amount or, to the extent not prohibited by Law, fine or penalty.

**OH&S Authority** means each of the following Authorities having jurisdiction over the Works and the Site with respect to OH&S Legislative Requirements and workplace and occupational health & safety generally:

- (a) Victoria – Worksafe Victoria
- (b) NSW – Safe Work NSW
- (c) ACT – WorkSafe ACT
- (d) QLD – WorkSafe QLD; and
- (e) Elsewhere – the equivalent or like Authority or Authorities to the forgoing having jurisdiction in respect of or incidental to the Works.

**OH&S Legislative Requirements** means those Legislative Requirements governing or relevant to occupational health and safety, dangerous goods and electrical safety and construction work practices, including without limitation, the Occupational Health and Safety Act 2004 (Vic) and the Dangerous Goods Act 1985 (Vic) and relevant and applicable regulations and industry practises (or equivalent or like legislation, regulations and industry practices within the State or Territory in which the Site is located).

**Plant and Equipment** means those things used, by the Subcontractor to carry out the Works, but which will not form part of the Works.

**PPSA** means the Personal Property Securities Act 2009 (Cth) and regulations made under that Act.



**Proportionate Liability Scheme** means the following legislation to the extent that it applies in State or Territory in which the Works are or have been carried out:

- (a) Part IVAA of the Wrongs Act 1958 (Vic);
- (b) Part 4 of the Civil Liability Act 2002 (NSW);
- (c) Chapter 2, Part 2 of the Civil Liability Act 2003 (Qld);
- (d) Part 1F of the Civil Liability Act 2002 (WA);
- (e) Part 3 of the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001 (SA);  
and
- (f) Chapter 7A of the Civil Law (Wrongs) Act 2002 (ACT).

**QBCC LAW** means the Queensland Building and Construction Commission Act 1991 (Qld) and applicable regulations, and any rulings, directives or the like made or issued by the Queensland Building Control Commission relating thereto.

**RCTI** means a recipient created tax invoice.

**Scheduled Amount** means the amount of the progress payment specified by Johns Lyng pursuant to clause 11.2.

**Security** means security by way of a retention as specified in the Schedule.

**Security Interest** means a mortgage, charge, lien, pledge, security interest, title retention, preferential right, trust arrangement, encumbrance or contractual right of set off and includes a security interest within the meaning of the PPSA.

**Separate Defects Liability Period** means any additional Defects Liability Period Johns Lyng may impose under clause 14.3.

**Site** means the place or premises made available or designated by Johns Lyng to the Subcontractor to perform the Works, being at the address or as otherwise shown or described or in the Instrument of Agreement.

**SOPA Law** means the following legislation to the extent that it applies in the jurisdiction where the Site is located, and the Works are being carried out:

- (a) the Building and Construction Industry Security of Payment Act 1999 (NSW);
- (b) the Building and Construction Industry Security of Payment Act 2002 (Vic);
- (c) the Building Industry Fairness (Security of Payment) Act 2017 (Qld);
- (d) the Building and Construction Industry (Security of Payment) Act 2021 (WA);
- (e) the Building and Construction Industry Security of Payment Act 2009 (SA); and
- (f) the Building and Construction Industry (Security of Payment) Act 2009 (ACT).



**SOPA Reference Party** means, unless otherwise nominated by Johns Lyng, the applicable adjudicating body specified in the Schedule:

- (a) For VIC - one of the following:
  - (i) Resolution Institute, Compass Office, Level 10, Tower 4, World Trade Centre, 611 Flinders Street, Melbourne, VIC 3005;
  - (ii) Rialto Adjudications Pty Ltd, Level 9, 440 Collins Street, Melbourne, VIC 3000; or
  - (iii) RICS Dispute Resolution Service Level 38, Riparian Plaza, 71 Eagle Street Brisbane, QLD 4000,
- (b) For NSW, SA, WA, or ACT - the Resolution Institute;
- (c) For Queensland - as may be notified by Johns Lyng.

**Subcontract Sum** means the contract sum stated in the Schedule.

**Variation Direction** means a direction by Johns Lyng that may amend, increase, decrease or change the quality, character, or extent of the Works or may require the Subcontractor to execute additional work.

**Workplace Legislative Requirements** means those Legislative Requirements applicable to the Works to be performed by the Subcontractor under the Subcontract or the building and construction industry generally dealing with industrial awards, site agreements and registered or approved industrial, enterprise, or other agreements that regulate terms and conditions of employment, including superannuation, long service leave and redundancy.

**Works** means the physical works which the Subcontractor must complete and hand over to Johns Lyng under the Contract.



## Terms and Conditions

### 1. Works

**1.1** The Subcontractor shall:

- (a) carry out the Works in accordance with the Scope of Works and the Plans and Specifications;
- (b) bring the Works to Completion by the Date for Completion of Works; and
- (c) otherwise comply with and be bound by the terms of the Subcontract.

**1.2** The Subcontractor warrants and represents to Johns Lyng that:

- (a) it has examined and has actual knowledge of the Site and all information made available to, or provided to, or obtained by, the Subcontractor, including and/or in relation to:
  - (i) the Scope of Works and Plans and Specifications;
  - (ii) the physical conditions or obstructions upon and below the surface of the Site including, without limitation, support for the Works, sub-surface stability and variation and other latent site conditions that may have an effect on the Works;
  - (iii) the local and environmental conditions including, without limitation, climatic conditions;
  - (iv) how the Works are to be coordinated with other works at the Site;
  - (v) any other conditions or characteristics of the Site affecting, or which may affect the Subcontractor's performance of this Subcontract; and
  - (vi) the risks, contingencies and other circumstances that may impact the Works;
- (b) it has satisfied itself as to the correctness and sufficiency of the Subcontract for complying with all its obligations under this Subcontract and at Law necessary for the due and proper performance of the Subcontract and the Works; and
- (c) it has made proper allowance for all award payments, site allowances, registered or approved industrial or other agreements that regulate terms and conditions of employment and insurance requirements payable by the Subcontractor to or in respect of its employees, agents or subcontractors for all labour, material and other resources and things necessary to enable it to comply with its obligations under the Subcontract;
- (d) all goods, materials and equipment supplied and used by the Subcontractor for the Works are suitable, new and free of defects;
- (e) it shall perform the Works in a proper and workmanlike manner to the reasonable satisfaction of Johns Lyng;
- (f) all necessary consents, permits or other Approvals have been, or will be, obtained by the Subcontractor in order for the Subcontractor to carry out and complete the Works;
- (g) it shall at all times be suitably licensed, qualified and experienced, and will exercise due skill, care and diligence in the carrying out and Completion of the Works;
- (h) it shall provide sufficient and adequate resources to bring the Works to Completion expeditiously and without delay;
- (i) it shall, upon request, provide to Johns Lyng all documents and information necessary and incidental to the carrying out, Completion, use and occupation (if applicable) of the Works, including, without limitation, all as installed / built drawings and service manuals, warranties and guarantees, testing and calibration records, shop drawings, samples, and certificates of compliance;
- (j) it shall comply with and ensure that the Works comply with all Legislative Requirements
- (k) it shall control, carry out and bring the Works to Completion in a proper and workmanlike manner so that the Works, when completed, will be free of defects, comply with all the requirements of the Subcontract and Legislative Requirements, and shall be fit for their intended purpose.
- (l) it shall give Johns Lyng, and any other party nominated by Johns Lyng, access to the Works at all times required by Johns Lyng;
- (m) it shall carry out the Works pursuant to the Subcontract as and when directed by Johns Lyng and/or within the working hours directed or program provided by Johns Lyng from time to time; and



**1.3** Minor items and works not expressly mentioned in the Subcontract but which are necessary for the due and proper performance and completion of the Works to achieve a standard of work which is fit for purpose and within a level of finish consistent with the Subcontract are deemed to be included as a part of the Works. The Subcontractor warrants that all such items and works are provided for in the Subcontract Sum and will be supplied and executed by the Subcontractor at without additional charge or cost to Johns Lyng.

**1.4** The Subcontractor acknowledges that Johns Lyng has entered into the Head Contract.

**1.5** The Subcontractor acknowledges and agrees that it has been given a reasonable opportunity to inspect and familiarize itself with the terms of the Head Contract (with sensitive financial information redacted) prior to entering into the Subcontract, and that in addition to its other obligations under the Subcontract, the Subcontractor:

- (a) must observe, perform and comply with all provisions of the Head Contract on the part of Johns Lyng to be observed, performed and complied with, insofar as they relate to and apply to the Works and the Subcontract, and are not inconsistent with the express provisions of the Subcontract, as if those obligations were expressly set out in the Subcontract as the Subcontractor's obligations;
- (b) must do all things reasonably requested by Johns Lyng to ensure that Johns Lyng complies with (and is able to comply with) its obligations under the Head Contract; and
- (c) unconditionally and irrevocably indemnifies Johns Lyng from and against any Claim that Johns Lyng suffers or incurs in relation to the Subcontractor failing to satisfy its obligations under the Subcontract, including any Loss that Johns Lyng suffers as a result of claims arising out of or under the Head Contract.

## 2. Subcontract Sum

**2.1** In consideration of the Subcontractor performing its obligations under the Subcontract, Johns Lyng agrees to pay the Subcontractor the Subcontract Sum, as adjusted only pursuant to the Subcontract.

**2.2** The Subcontract Sum is a fixed lump sum price and is not subject to adjustment except as expressly provided in the Subcontract.

**2.3** Without limiting Clause 2.1, there shall be no adjustment to the Subcontract Sum for any:

- (a) rise or fall in labour or material costs or other fees or charges (including those due to new or changed statutory costs, fees, charges, sales taxes or other taxes and or overheads introduced after entering into the Subcontract);
- (b) time lost from or events caused by inclement weather or industrial action;
- (c) error in measurements or quantities used by the Subcontractor in compiling its tender, quotation or pricing offer for the Works;
- (d) item or expenditure necessary for the Completion of the Works even though that item may not be specifically mentioned in the Subcontract; or
- (e) Changes in Legislative Requirements or requirements of Authorities.

**2.4** Notwithstanding anything else in this Subcontract, Johns Lyng shall in no event be liable to the Subcontractor for any Loss arising out of or associated with any delay or disruption to the Works, including, without limitation, any claims for loss of productivity or for consequential loss (whether direct or indirect), or for loss of profit, loss of contract or loss of opportunity.

## 3. Legislative and Other Requirements

**3.1** The Subcontractor must:

- (a) inform itself and comply with, and ensure all persons engaged by the Subcontractor in the Works inform themselves and comply with, all Legislative Requirements (and all relevant policies, practices, procedures and measures) applicable to the Works from time to time.
- (b) institute and maintain good safety, environmental and waste management procedures in accordance with all OH&S Legislative Requirements and Environmental Legislative Requirements;
- (c) comply with all general Site safety procedures and required standards of general Site safety as may be required or otherwise advised or required from time to time by Johns Lyng.

**3.2** The Subcontractor must immediately notify Johns Lyng of any accident or injury that occurs on Site during the carrying out of the Works.

**3.3** The Subcontractor is liable for and shall keep Johns Lyng indemnified against all Losses and Claims whatsoever arising out of any breach of this clause 3.





## 4. Site Instructions, Meetings and Coordination

**4.1** Johns Lyng may issue, and the Subcontractor shall comply with, instructions, directions, notices or orders to the Subcontractor in respect of any work or thing under the Subcontract including, but not limited to the programming, execution, quality, character or extent of the Works, and the Subcontractor shall comply with such instructions, directions, notices or orders.

**4.2** The Subcontractor shall ensure there is a Subcontractor's representative for the purpose of this Subcontract at all times:

- (a) whose contact details (email and mobile) shall be made known to Johns Lyng;
- (b) who must be fully informed about and authorised to deal with Johns Lyng on matters pertinent to the Works generally as required by Johns Lyng; and
- (c) who attends and participates at all meetings as requested by Johns Lyng (including without limitation coordination meetings) and supply all necessary time and resources to coordinate the Works with Johns Lyng and all other subcontractors.

**4.3** The Subcontractor is responsible to ensure the Works are coordinated with all other contractors and parties on Site and shall not be entitled to recover any additional payment or to make any Claim otherwise resulting from or in connection with failure of co-ordination on site.

## 5. Awards, Working Hours, and Delays

**5.1** The Subcontractor shall not carry out any part of the Works outside normal working hours without the prior written consent of Johns Lyng or unless so directed by Johns Lyng in writing where Johns Lyng considers it necessary in order to maintain Johns Lyng's Program. Any associated overtime costs shall be borne by the Subcontractor, except where Johns Lyng expressly agrees to pay such costs.

**5.2** The Subcontractor must avoid any conduct which might result in industrial unrest or disputation or otherwise disrupt the progress of works under the Head Contract or any other activity of Johns Lyng or Johns Lyng's other subcontractors at the Site.

**5.3** The Subcontractor shall comply with and shall ensure any of its subcontractors engaged in the Works comply with, all Workplace Legislative Requirements.

## 6. Variations

**6.1** Johns Lyng may direct the Subcontractor to vary the Works by issuing a direction expressly stated to be a "Variation Direction". The Subcontractor shall comply with all such Variation Directions.

**6.2** The Subcontractor must not vary the Works in any way, other than as directed in writing by Johns Lyng pursuant to clause 6.1.

**6.3** The Subcontractor must within 3 Business Days of receiving a Variation Direction give Johns Lyng a notice in writing which identifies:

- (a) the date Johns Lyng's direction was given;
- (b) the substance of the direction;
- (c) the approximate cost of, and breakdown of the costs, of the variation; and
- (d) whether a Claim will be made for an extension of time because of the variation and, if so, an estimate of the period.

Johns Lyng may then request the Subcontractor to provide a quotation for the Variation Direction supported by measurements and other evidence of costs.

**6.4** Where the Subcontractor wishes to make a Claim for an extension of time because of a variation, in addition to the notices it is required to give under clause 6.3, the Subcontractor must also give all notices required under clause 21 in accordance with that clause.

**6.5** Failure by the Subcontractor to comply with the timing and notice requirements set out in clauses 6.3 and 6.4 shall be an absolute bar to any Claim by the Subcontractor for any Loss (including for an extension of time) in relation to, arising out of or in connection with a Variation Direction.

**6.6** The price of a variation resulting from a Variation Direction is that amount:

- (a) agreed between Johns Lyng and the Subcontractor; or
- (b) failing agreement, then an amount reasonably determined by Johns Lyng;

and the Subcontract Sum shall be adjusted accordingly.

**6.7** If the Subcontractor considers that any direction given by Johns Lyng, other than a direction that expressly states that it is "Variation Direction", is a direction to vary the Works, then prior to carrying out any work to which the direction relates, the Subcontractor must give to Johns Lyng a notice in writing within 3 Business Days of issue of the direction stating that it considers that the direction is a direction to vary the Works and identifying all of the matters under clause 6.3.

**P:** 1300 73 6000

**E:** [customercare@johnslyng.com.au](mailto:customercare@johnslyng.com.au)

**W:** [johnslyng.com.au](http://johnslyng.com.au)





**6.8** Upon receiving a notice from the Subcontractor under clause 6.7, Johns Lyng may determine to direct the Subcontractor to carry out a variation by issuing to the Subcontractor a "Variation Direction" under clause 6.1.

**6.9** If the Subcontractor fails to give written notice strictly in accordance with clause 6.7 and/or Johns Lyng does not direct a variation by issuing a Variation Direction under clause 6.8, the Subcontractor is not entitled to:

- (a) later assert that the direction amounted to a direction to vary the Works;
- (b) any compensation (including any losses, expenses, or damages) on the basis that the direction amounted to a direction to vary the Works; or
- (c) make a Claim otherwise on the basis that the direction amounted to a direction to vary the Works,
- (d) and the Subcontractor will otherwise comply with the direction given by Johns Lyng regardless of whether the direction to vary the Works is disputed.

## 7. Site

**7.1** Johns Lyng makes no representation and gives no warranty to the Subcontractor in respect of the conditions of the Site or any structures or things in, above or adjacent to, or under the surface, of the Site.

**7.2** Johns Lyng shall give the Subcontractor access to the Site or sufficient of the Site to enable the Subcontractor to inspect the Site and to commence the Works and from time to time give the Subcontractor access to such further parts of the Site as may be necessary to enable the Subcontractor to execute the Works in accordance with the requirements of the Subcontract.

**7.3** The Subcontractor accepts the risk of all Latent Conditions, including all time and cost implications and is not entitled to any Claim (including without limitation, an extension of time to the Date for Completion, costs including delay, disruption or prolongation costs) arising from, relating to or in connection with any Latent Condition, unless otherwise expressly stated in Annexure A.

**7.4** Upon becoming aware of a Latent Condition, the Subcontractor must immediately and where possible before the Latent Condition is disturbed, and in any event, within 3 days of encountering the Latent Condition, give written notice to Johns Lyng of:

- (a) the Latent Condition encountered and in what respects in which it differs materially from the physical conditions which should have reasonably been anticipated by the contractor in accordance with clause 7.3;

- (b) the additional work and additional resources which the Subcontractor estimates to be necessary to deal with the Latent Condition;
- (c) the time the Subcontractor anticipates will be required to deal with the Latent Condition and the expected delay in achieving Completion;
- (d) the Subcontractor's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by Johns Lyng.

**7.5** The Subcontractor must co-operate with all workers and other contractors on the Site and comply with all directions given by Johns Lyng under the Subcontract regarding such co-operation.

## 8. Care of Works, Insurance, and Indemnity

**8.1** Until the date the Works are brought to Completion:

- (a) risk in the Works remains with the Subcontractor, and the Subcontractor shall be liable for any loss, damage to, or destruction of the Works from any cause (including theft and vandalism) whatsoever, except to the extent caused by a negligent act, omission or default of Johns Lyng or any of Johns Lyng's other subcontractors, and the Subcontractor must make good any such loss, damage or destruction at its own cost;
- (b) the Subcontractor's obligations regarding caring for the Works extend to taking all necessary steps, including the provision of temporary covers, to prevent loss or damage to adjacent or underlying works and property. To the extent any such loss or damage occurs and is caused by failure of the Subcontractor to comply with such obligations, or the act or omission of the Subcontractor's employees, agents or contractors otherwise, Johns Lyng may either:
  - (i) require the Subcontractor to make good any such loss or damage at no cost to Johns Lyng; or
  - (ii) make good such loss or damage itself, and Johns Lyng's costs in doing so shall be a debt due and payable on demand by the Subcontractor to Johns Lyng.



**8.2** Unless otherwise directed by Johns Lyng, the Subcontractor shall at its own cost, prior to commencing the Works, effect and maintain until expiry of the Defects Liability the following insurance policies on terms acceptable to Johns Lyng:

- (a) an insurance policy for Loss or damage in relation to the Works, including all Plant and Equipment, for an amount not less than the total of the Subcontract Sum plus 10%;
- (b) public liability insurance for an amount not less than that stated in the Schedule; and
- (c) workers compensation or Workcover insurance or personal accident and disability insurance for cover equivalent to that provided to employees under workers compensation.

**8.3** The Subcontractor must promptly on request by Johns Lyng substantiate the existence and currency of all insurances required of the Subcontractor under the Subcontract.

**8.4** The Subcontractor shall be liable for any excess or deductible payable under any insurance policies effected pursuant to the Subcontract.

**8.5** If the Works are lost, damaged or destroyed, Johns Lyng may elect to require the Subcontractor to rebuild and/or reinstate the Works or parts thereof that are lost, damaged or destroyed at no cost to Johns Lyng from the proceeds of Subcontractor's insurances.

## 9. Suspension

**9.1** Johns Lyng may, subject to complying with applicable Legislative Requirements, suspend the whole or any part of the Works by giving written notice to the Subcontractor. The Subcontractor must not otherwise suspend the Works unless permitted to do so under any Legislative Requirements.

**9.2** The Subcontractor will not be entitled to any payment in relation to a lawful suspension of the Works except:

- (a) to the extent of an entitlement under an applicable Law; or
- (b) where the suspension is consequent upon a suspension directed under the terms of the Head Contract, in which event the Subcontractor will be entitled to extra costs (excluding profit and Site overheads) reasonably incurred by reason of the suspension to be determined by agreement, or in the absence of agreement, by Johns Lyng, provided that the amount so determined does not exceed the amount allowed under the terms of the Head Contract in respect of the Works.

## 10. Notices

**10.1** A notice under this Subcontract shall be deemed to have been given and received:

- (a) if addressed or delivered to the relevant address in the Subcontract or last communicated in writing to the person giving the notice; and
- (b) on the earliest date of:
  - (i) actual receipt;
  - (ii) confirmation of correct transmission of fax or email; or
  - (iii) 3 days after posting.

**10.2** Johns Lyng and the Subcontractor shall keep each other notified of address changes.

## 11. Payment

**11.1** The Subcontractor may submit to Johns Lyng payment claims for the progress of Works at the times stated in the Schedule, identifying the value of the Works carried out to the date of the payment claim, together with a breakdown of the Works completed and calculations of the amount claimed. With any payment claim and as a precondition to payment, the Subcontractor must provide:

- (a) a signed Statutory Declaration in substantially the same form attached to the Subcontract that all payments due to the Subcontractor's employees, subcontractors and suppliers in connection with the Works have been paid;
- (b) any Security required under clause 12 unless such Security is by way of retention; and
- (c) evidence to Johns Lyng's satisfaction that the Subcontractor has or continues to have affected and maintained all insurances required under the Subcontract.

**11.2** Within 10 Business Days after the Subcontractor gives Johns Lyng a payment claim, Johns Lyng must, having regard to the retention of Security pursuant to clause 12.1 and to any amount which Johns Lyng may set off under the Subcontract, give the Subcontractor a payment schedule that:

- (a) identifies the payment claim to which it relates;
- (b) states the Scheduled Amount, if any, that Johns Lyng proposes to make;
- (c) if the amount proposed to be paid is less than the amount stated in the payment claim, states why the amount proposed to be paid is less (including Johns Lyng's reasons for withholding any payment);
- (d) includes any other information which Annexure A states is required to be included.



If the Scheduled Amount is Nil, Johns Lyng may include in the payment schedule a statement of the amount (if any) which the Subcontractor must pay to Johns Lyng.

**11.3** Within the earlier of the Due Date for Payment and 30 days after the Subcontractor gives the payment claim to Johns Lyng;

- (a) if the Scheduled Amount is an amount that Johns Lyng must pay the Subcontractor, Johns Lyng must pay the Subcontractor the Scheduled Amount; and
- (b) if Johns Lyng includes in a payment schedule an amount which the Subcontractor must pay Johns Lyng, the Subcontractor must pay Johns Lyng that amount.
- (c) If the payment schedule states an amount that Johns Lyng is to pay the Subcontractor, the Subcontractor must first give Johns Lyng a tax invoice before Johns Lyng is required to pay the Subcontractor unless the parties have agreed to implement a practice of Johns Lyng issuing RCTI on behalf of the Subcontractor.

**11.4** The payment of moneys under a payment schedule by Johns Lyng shall be on account only and will not be evidence of approval or the value of the Works done or that the Works have been executed satisfactorily.

**11.5** The Subcontractor agrees, if requested by Johns Lyng, to provide original receipts from its suppliers and contractors engaged by the Subcontractor verifying that payment has been completed for goods supplied and or services rendered that relate to the Subcontract. Johns Lyng shall be entitled at its sole discretion to either of the following:

- (a) withhold an amount equal to the value of the goods and or services rendered pending verification of payment; or
- (b) make payment direct to the provider of the goods and or services rendered on behalf of the Subcontractor and deduct such amount from progress payments otherwise due to the Subcontractor under this clause 11.5.

**11.6** The Subcontract irrevocably authorises Johns Lyng to make direct payments to the Subcontractor's employees or contractors at any time in circumstances where Johns Lyng in good faith determines it is in the interests of ensuring the Works progressing that it do so, and any such payment will be a debt due and payable by the Subcontractor to Johns Lyng.

**11.7** The Subcontractor acknowledges and agrees that it must not, without Johns Lyng's prior written approval, include in any payment claim the value of any unfixed or off-site goods or materials intended for but not yet incorporated into the Works, and shall not be entitled to make any Claim against Johns Lyng arising out of or in connection with such goods or materials. Johns Lyng's written approval may be given if:

- (a) the Subcontractor provides security to the value of the unfixed or off-site goods or materials in a form and from a financial institution approved by Johns Lyng; and/or
- (b) Johns Lyng provides evidence satisfactory to Johns Lyng that the unfixed or off-site goods or materials are:
  - (i) in the Subcontractor's possession at all times (except where otherwise directed by Johns Lyng);
  - (ii) not subject to any charge, lien or any other matter which may affect Johns Lyng's ownership of the goods or materials;
  - (iii) stored in adequate facilities separately from other goods or materials;
  - (iv) fully paid for and clearly identifiable;
  - (v) marked in the name of the project and Johns Lyng or as directed by Johns Lyng; and
  - (vi) insured for their replacement value in the joint names of the Subcontractor and Johns Lyng.

**11.8** The Subcontractor agrees that, to the extent permitted and for the purposes of the SOPA Law, each:

- (a) date prescribed in clause 11.1 as a date on which the Subcontractor is entitled to make a payment claim is a 'reference date' (as defined in the SOPA Law);
- (b) a payment schedule given by Johns Lyng under clause 11.2 constitutes a 'payment schedule' (as defined in the SOPA Law); and amount stated as then payable to the Subcontractor in a payment schedule is the amount of the 'progress payment' (as defined in SOPA Law) calculated in accordance with the terms of the Subcontract;
- (c) the Subcontractor is taken to have irrevocably chosen the SOPA Reference Party for adjudication purposes under the SOPA Law, that is to say:
  - (i) in the case of New South Wales, Victoria, South Australia or the Australian Capital Territory, the 'authorized nominating Authority'
  - (ii) In the case of Queensland, the 'prescribed appointer'; or
  - (iii) In the case of Western Australia, the 'prescribed appointer';



- (d) Where Johns Lyng may have paid a SOPA Law adjudicated amount to the Subcontractor, such amount shall be paid on account and subject to adjustment as between the parties pending any subsequent determination of such adjudicated amount by a court or tribunal of competent jurisdiction on review or appeal;
- (e) If Johns Lyng becomes aware that a subcontractor of the Subcontractor is entitled to or intends to suspend work forming part of the Works Johns Lyng receives a payment withholding request or the like under the SOPA Law, Johns Lyng may:
  - (iv) after reasonable prior notice to the Subcontractor, pay directly to the subcontractor; or
  - (v) withhold from any monies otherwise due to the Subcontractor, the amount (or any part) claimed by the subcontractor to be owed to it by the Subcontractor;
- (f) Any amount paid by Johns Lyng to a subcontractor of the Subcontract as authorized or required by the SOPA Law shall be a debt due and payable by the Subcontractor to Johns Lyng.

## 12. Retention and Set-Off

**12.1** The Subcontractor agrees to provide or allow Johns Lyng the Security as security for the performance of the Subcontractor's obligations under the Subcontract. No Security shall be held on trust and any interest earned on the Security accrues to Johns Lyng.

**12.2** Upon Completion of the Works, and subject to Johns Lyng's right of recourse and the Subcontractor executing and returning to Johns Lyng a Deed of Release in substantially the same form attached to the Subcontract, 50% of any Security then held by Johns Lyng shall be released to the Subcontractor.

**12.3** Subject to Johns Lyng's right of recourse, the remaining Security shall be held by Johns Lyng and released to the Subcontractor upon the later of expiry of the Defects Liability Period or the Separate Defects Liability Period (if it is directed by Johns Lyng) or the last Defects Liability Period under the Head Contract as the case may be.

**12.4** The Subcontractor shall be indebted to Johns Lyng under this Subcontract for any amount:

- (a) which is owing or payable by the Subcontractor to Johns Lyng under the Subcontract or under any other contract or agreement between Johns Lyng and the Subcontractor; or

- (b) for which Johns Lyng otherwise has a bona fide Claim on any ground in Law.

**12.5** Subject to complying with any Legal Requirements on giving of notice:

- (a) Johns Lyng may have recourse to the Security to recover any amount referred to in clause 12.4; and
- (b) set off against and deduct from any monies owing or payable to the Subcontractor any amount referred to in clause 12.4.

**12.6** Johns Lyng's right of recourse to the Security and set-off under this clause survive termination of the Subcontract and nothing in this Subcontract shall limit Johns Lyng's right to recover from the Subcontractor the debt, costs, damages, Loss, expense or Claim otherwise or any balance that remains owing after such recourse or set-off.

**12.7** If Johns Lyng has had recourse to the Security, Johns Lyng shall be entitled to retain further Security for the amount Johns Lyng has had recourse to.

## 13. Scaffold, Plant and Equipment

**13.1** The Subcontractor shall provide all Plant and Equipment and provide and erect all scaffolding necessary to effectively and safely carry out and complete the Works unless otherwise stated in the Schedule or Annexure A.

**13.2** The Subcontractor may use Johns Lyng's erected scaffolding only with the express permission of Johns Lyng and on the condition that the Subcontractor shall be fully responsible for ensuring compliance with any scaffolding regulations and other Legislative Requirements for ensuring the safety of all persons using scaffolding. The Subcontractor shall indemnify Johns Lyng against any Claim Johns Lyng may suffer or incur as a result of or in connection with non-compliance by the Subcontractor with this clause 13.2.

**13.3** The Subcontractor shall be responsible for the cost of making good any damage or other Loss of Johns Lyng's scaffolding, plant, machinery, tools and equipment caused by the Subcontractor its employees, agents or subcontractors, and such costs shall be a debt due by the Subcontractor to Johns Lyng, which may be deducted by Johns Lyng from any monies due to the Subcontractor or from the Security.

**13.4** The Subcontractor shall supply its own site office, crib and storage sheds to a standard acceptable to Johns Lyng. Johns Lyng is to supply an ablution block for the Subcontractor's workers unless otherwise agreed.



## 14. Defect Liability Period

**14.1** Each party must advise the other party of any defects in the Works (including any work or material that is not in accordance with the Subcontract) as soon as practicable.

**14.2** The Defects Liability Period commences on the Date of Completion or end of the period for Practical Completion of Johns Lyng's works under the Head Contract or if no such date or period, upon Completion of the Works.

**14.3** If any defects are identified during the Defects Liability Period, Johns Lyng may direct in respect of those defects that there shall be a separate Defects Liability Period not exceeding 12 months to commence on the date the rectification work is completed.

**14.4** Without limiting any other rights Johns Lyng may have with respect to defects, Johns Lyng may direct the Subcontractor to rectify, remove or replace any defective Works at the Subcontractor's own cost before Completion or during the Defects Liability Period and the Separate Defects Liability Period.

**14.5** The Subcontractor must within 3 Business Days of a direction from Johns Lyng under clause 14.4 rectify at its own cost all defects directed to be rectified before Completion or before the expiry of the Defects Liability Period and the Separate Defects Liability Period (as the case may be).

## 15. Quality, Making Good And Testing

**15.1** The Subcontractor acknowledges and agrees that it shall, at its own cost, store, handle, move, unpack, remove protect and/or replace any materials used by the Subcontractor pursuant to Johns Lyng's directions.

**15.2** Johns Lyng may at any time require the Subcontractor to submit samples, prototypes and mock-ups of any work or materials which the Subcontractor intends to use in the Works for Johns Lyng's review. Acceptance by Johns Lyng of any samples does not constitute acceptance of the Works or that the Works have been carried out in accordance with the Subcontract.

**15.3** The Subcontractor must provide at its own cost, tests and facilitate inspections and testings required by Johns Lyng to demonstrate compliance with the Subcontract. The Subcontractor remains responsible for the quality of the Works even though Johns Lyng may have had work tested or otherwise indicated that the work is in accordance with the Subcontract or otherwise acceptable.

## 16. Labour, Hours, Subcontracting and Assignment

**16.1** Johns Lyng reserves the right, and the Subcontractor shall allow Johns Lyng, to inspect at any reasonable time, the payroll records of the Subcontractor to ensure compliance with applicable Employment and Workplace Legislative Requirements.

**16.2** Johns Lyng reserves the right to approve all labour employed or otherwise engaged by the Subcontractor in connection with the Works, and the right to direct removal from Site any person that Johns Lyng believes is not performing in a diligent, competent, safe and tradesman like manner or whose presence otherwise at the Site is prejudicial to the Works.

**16.3** Pursuant to or in respect of the Head Contract, Johns Lyng may enter into a tripartite agreement with the financier of the principal under the Head Contract, and the Subcontractor agrees:

- (a) to execute any deeds in favour of such financier and or the relevant principal in accordance with such tripartite agreement; and
- (b) to do or cause to be done anything reasonably requested by Johns Lyng, the principal or the principal's financier in respect of such tripartite agreement or to facilitate compliance by Johns Lyng.

## 17. Set Out and Levels

**17.1** The Subcontractor shall be responsible for all levels and dimensions as set out by its employees, agents or subcontractors from set out points, recovery marks and datum levels as established by Johns Lyng.

**17.2** All items of work not complying with the set out and tolerances of the Subcontract documents shall be removed and replaced by the Subcontractor at its expense and to the satisfaction of Johns Lyng. Any rectification costs incurred due to inaccurate taking up of levels, set-out and plumbing work by the Subcontractor which effect later trades must be paid by the Subcontractor.





## 18. Acceptance of Base Work

**18.1** Commencement of Works on Site shall be evidence that the Subcontractor:

- (a) accepts all Base Work as satisfactory for the Works to be carried out and completed;
- (b) requires no additional payment or EOT to deal with any unsatisfactory situation of the Base Works; and
- (c) has no Claim nor shall make a Claim asserting unsatisfactory Base Work as causation for any resultant or consequent defects or damage in the Works.

**18.2** The Subcontractor shall not proceed to carry out its Works on Site if in the Subcontractor's opinion the previous work is unsatisfactory and unless Johns Lyng has issued a written instruction expressly overriding such objection and accepting responsibility for such work proceeding.

## 19. Documents

**19.1** The Subcontractor's tender for the Works (whether called a tender or quotation or otherwise) shall only form part of the Subcontract to the extent that it is expressly incorporated into the Subcontract or confirmed expressly in writing by Johns Lyng to the Subcontractor. In no circumstances otherwise shall any term of the Subcontractor's tender limit or exclude any provision of the Subcontract.

**19.2** The Subcontractor is responsible for ongoing review of the documents comprising the Subcontract, including the Scope of Works and Plans and Specifications and, subject to clause 19.3, must seek Johns Lyng's direction as to the interpretation in relation to any inconsistency, ambiguity or discrepancy therein.

**19.3** The documents comprising the Subcontract are to be taken as mutually explanatory of one another and figured dimensions shall prevail over scaled dimensions. The higher quality and/or quantity and/or greater scope of work shall prevail over lower quality, quantity and/or lower scope of work in the Scope of Works and Plans and Specifications. Johns Lyng will otherwise direct the Subcontract as to the interpretation to be followed.

**19.4** The Subcontractor bears all risk (and shall not be entitled to any Claim relating to, arising out of or in connection with any ambiguity, discrepancy, inconsistency, or lack of co-ordination or integration of, between or in any documents comprising the Subcontract (including the Scope of Works and Plans and Specifications) and/or which cause a problem, difficulty, additional cost, additional time, or complexity relating to:

- (a) the means, methods or techniques by which the Works are to be performed by the Subcontractor; or
- (b) the co-ordination, integration or buildability of the Works; or
- (c) the suitability of the Works with regard to their intended purpose.

**19.5** The Subcontractor shall supply to Johns Lyng four copies of the shop drawings, or such other number as required. Perusal, comment upon or return of shop drawings or other information submitted by the Subcontractor does not:

- (a) indicate acceptance or approval by Johns Lyng; or
- (b) relieve the Subcontractor of any of its obligations or liabilities, including the responsibility for correctness of shop drawings or other information submitted by the Subcontractor.

## 20. Maintenance Manuals and Guarantees

**20.1** The Subcontractor must present draft copies of all as-built drawings, maintenance manuals, guarantees and warranties for approval of Johns Lyng prior to finalising the same.

**20.2** As-built drawings shall reflect the Works as actually constructed and shall be completely and legibly dimensioned to locate and identify all concealed services above and below ground.

**20.3** All warranties and guarantees provided by the Subcontractor shall be

- (a) on terms jointly in favour of the subcontractor and any principal under the Head Contract and shall be endorsed as such; and
- (b) be for the period and in the form (if any) as specified in the Head Contract or as otherwise reasonably specified by Johns Lyng



## 21. Commencement, Completion and Delay

**21.1** The Subcontractor shall commence the Works on the Commencement Date stated in the Schedule or as otherwise directed by Johns Lyng and shall proceed with the Works with due diligence and without delay at all times in accordance with Johns Lyng's Program or as otherwise notified or modified by Johns Lyng to the Subcontractor from time to time. Time is of the essence for the performance of the Subcontractor's obligations under the Subcontract.

**21.2** The Subcontractor must carry out and bring the Works to Completion in accordance with the Subcontract, including, without limitation the Scope of Works, Plans and Specifications and Johns Lyng's Program, and by the Date for Completion stated in the Schedule.

**21.3** The Subcontractor must engage sufficient and suitable trades persons and labour to carry out the Works in accordance with Johns Lyng's Program. If in the opinion of Johns Lyng the Subcontractor is not sufficient labour to carry out the Works it may after giving the Subcontractor 5 days' notice (or such lesser period deemed necessary by Johns Lyng in the circumstances) itself engage additional resources towards the Works, and Johns Lyng's costs of so doing shall be a debt due and payable by the Subcontractor to Johns Lyng.

**21.4** The Subcontractor may be entitled to claim an extension of time to the Date for Completion of Works as reasonably determined by Johns Lyng if:

- (a) the progress of the Works is delayed by:
  - (i) a negligent act or omission or an act of default of Johns Lyng (including its principal, agents, or consultants);
  - (ii) Johns Lyng directing a variation to the Works pursuant to clause 6.1 of the Subcontract;
  - (iii) Johns Lyng suspending the Works (or part of the Works) pursuant to clause 9.1 of the Subcontract, unless such suspension is made as a result of a failure by the Subcontractor to comply with its obligations under the Subcontract; and
- (b) the delay adversely impacts the critical path of the Works and/or Johns Lyng's Program;
- (c) the delay will prevent the Subcontractor from achieving Completion by the Date for Completion; and

- (d) on condition that the Subcontractor gives written notice to Johns Lyng of the delay as soon as practicable, and in any event, within 5 Business Days of its occurrence, setting out a sufficient description of the event, the date of the event, the nature, cause and likely extent of the delay, and the EOT sought.

**21.5** The Subcontractor's entitlement to Claim an EOT shall be reduced to the extent that the Subcontractor has contributed to the delay, or the Subcontractor has not demonstrated to Johns Lyng's satisfaction that:

- (a) the Subcontractor has taken appropriate steps to avoid or minimise the delay;
- (b) the delay impacts the critical path of the Works and/or Johns Lyng's Program; and
- (c) the delay will prevent the Subcontractor from achieving Completion by the Date for Completion.

**21.6** Johns Lyng will within 20 Business Days of receiving the Subcontractor's Claim for an EOT determine what, if any, EOT is to be granted. If Johns Lyng does not grant the full EOT claimed, then it shall provide the Subcontractor with reasons. Johns Lyng's delay or failure to determine the Subcontractor's Claim for an EOT within the time stated in this clause does not cause the Date for Completion to be set at large.

**21.7** Notwithstanding that the Subcontractor is not entitled to or has not claimed an EOT, Johns Lyng may at any time and for any reason in its sole discretion and for its sole benefit, without being obliged to act reasonably or fairly, grant an EOT or extend the Date for Completion.

**21.8** The right of the Subcontractor to make a Claim for an EOT under this clause 21 is the Subcontractor's sole remedy for any delay or disruption to the progress of the Works, and the Subcontractor is not entitled to any other Claim whether by compensation or damages or adjustment to the Subcontract Sum or otherwise by reason of any delay or disruption to the progress of the Works, including delay costs or damages or prolongation costs.

**21.9** Johns Lyng may, at any time, vary Johns Lyng's Program, which shall not cause the Date for Completion to be set at large. The Subcontractor must comply with, and not without reasonable cause depart from, Johns Lyng's Program as in place from time to time, and shall not be entitled to any Claim against Johns Lyng (whether for extra costs, an EOT or otherwise) arising out of or in connection with a variation of Johns Lyng's Program.





## 22. Liquidated Damages

**22.1** If the Subcontractor fails to bring the Works to Completion by the Date for Completion, the Subcontractor shall be indebted to and shall indemnify Johns Lyng for Liquidated Damages, calculated at the rate for Liquidated Damages stated in the Schedule, for every day after the Date for Completion until the earlier of the date the Works are brought to Completion or the termination of the Subcontract.

**22.2** The parties agree that the amount for Liquidated Damages stated in the Subcontract is an agreed genuine pre-estimate of the Loss that Johns Lyng will suffer if the Works are not brought to Completion by the Date for Completion.

## 23. PPSA and Title to Goods

**23.1** In this clause 23, capitalised expressions have the meaning given to them in the PPSA.

**23.2** Ownership and property in all goods and/or materials supplied and or provided by the Subcontractor under the Subcontract shall pass to Johns Lyng immediately upon delivery to Johns Lyng and/or the Site.

**23.3** To the maximum extent permitted by Law, the Subcontractor:

- (a) acknowledges and agrees that if Johns Lyng considers that any transaction with the Subcontractor gives rise or will give rise to a Security Interest, including in relation to any unfixed or off-site materials, then the Subcontractor must take such steps (including signing documents, providing information and giving consents) as are required by Johns Lyng for the purposes of enabling Johns Lyng to: (i) register the Security Interest on the Register or otherwise perfect the Security Interest; and (ii) achieve the highest ranking security position Johns Lyng considers necessary or desirable under the PPSA;
- (b) must not register, and must use its best endeavours to ensure that neither it, nor any third party, registers a Security Interest on the Register or takes any steps to enforce or exercise rights in connection with a Security Interest if and to the extent that such action would adversely impact Johns Lyng's security position referred to in clause 23.3(a) or Johns Lyng's rights under the Subcontract;
- (c) must promptly notify Johns Lyng in writing should it become aware of any registration or step of the nature contemplated by clause 23.3(b) and do anything that is

required by Johns Lyng for the purposes of overcoming any adverse impacts;

- (d) acknowledges and agrees that, by entering into the Subcontract, the Subcontractor grants Johns Lyng a Security Interest in any security and in any item of unfixed plant and materials for which the Subcontractor seeks any payment by Johns Lyng;
- (e) warrants and must ensure that upon payment by Johns Lyng, all equipment and materials supplied by the Subcontractor are free from any Security Interest and all other claims and encumbrances whatsoever which may adversely affect Johns Lyng's rights in and title to such equipment and materials;
- (f) waives its rights under section 157 of the PPSA to receive notice of any verification statement given to Johns Lyng by the Registrar; and
- (g) in accordance with section 115 of the PPSA, agrees that sections 95, 120, 121(4), 125, 132(3) (d), 135, 142 and 143 of the PPSA do not apply to the enforcement of Security Interests by Johns Lyng.

## 24. Disputes

**24.1** Notwithstanding the existence of a dispute, the Subcontractor shall continue to perform its obligations under the Subcontract and comply with Johns Lyng's directions. Nothing herein shall prejudice the right of either party to seek injunctive or urgent declaratory relief in respect of any matter arising under the Subcontract.

**24.2** A party claiming that a dispute has arisen under the Subcontract shall, within 7 days of the dispute arising, give written notice of dispute to the other party providing particulars of the dispute and nominating a person with authority to settle the dispute and the other party shall promptly give notice in writing to the first party of its representative with the authority to settle the dispute.

**24.3** The authorised persons shall, within 14 days of the giving of the notice of the dispute, confer at least twice and in good faith and without prejudice to seek to resolve the dispute.

**24.4** If the dispute is not resolved within 28 days of the notice of dispute, then either party must within a further 7 days, by giving written notice to the other refer the dispute to expert determination. Any other dispute may be litigated.



**24.5** Expert determination is to be conducted by a suitably qualified, independent expert agreed by the parties or, failing agreement within 7 days, by an expert appointed by the Resolution Institute. The expert determination shall be conducted in accordance with the Resolution Institute Expert Determination Rules (as amended from time to time).

## 25. Default, Suspension and Termination

**25.1** The Subcontractor is in default of the Subcontract if:

- (a) it fails to comply with any of its obligations under or is in breach of the Subcontract;
- (b) being an individual, commits an act of bankruptcy, has a bankruptcy petition presented against them or is made bankrupt; or
- (c) being a company, is placed under official management, has a receiver, liquidator or administrator appointed to it or has a winding up order made in respect of it.

**25.2** If the Subcontractor does not remedy a default of the Subcontract within 3 days after Johns Lyng has given the Subcontractor written notice requiring the default to be remedied then, without prejudice to any other rights or remedies under the Subcontract or at Law, Johns Lyng may:

- (a) itself or by others remedy the default, and the costs of remediation (including any administrative, supervision and legal costs) shall be a debt due and payable by the Subcontractor to Johns Lyng; and/or
- (b) take the whole or any part of the Works out of the control of the Subcontractor and complete or engage others to complete the Works at the expense of the Subcontractor, which expense shall be a debt due by the Subcontractor to Johns Lyng and which Johns Lyng may offset (in whole or part) towards repayment of such debt against any monies which may be or become due to the Subcontractor under the Subcontract; and/or;
- (c) by giving a further written notice, temporarily suspend or terminate the Subcontract.

**25.3** If a temporary suspension by Johns Lyng is lifted, the Subcontractor must recommence the Works as soon as reasonably practicable following Johns Lyng lifting the suspension, and the Subcontractor shall not be entitled to make any Claim against Johns Lyng for or arising out of or in connection with such suspension.

**25.4** In addition to and without prejudice to any of its other rights and entitlements under the Subcontract, Johns Lyng may at any time, by notice in writing to the Subcontractor, suspend the Works (or any part of the Works) and/or terminate the Subcontract:

- (a) if the Head Contract is suspended or terminated; and/or
- (b) if the Johns Lyng reasonably forms the view that the continuation of the Subcontract is no longer viable.

**25.5** Johns Lyng is in default of the Subcontract if fails to pay the Subcontractor the Subcontract Sum in accordance with the Subcontract or is placed under official management, has a receiver, liquidator or administrator appointed to it or has a winding up order made in respect of it.

**25.6** If Johns Lyng remains in default of the Subcontract 5 Business Days after the Subcontractor has given it a written notice requiring the default to be remedied, then the Subcontractor may:

- (a) by giving a further written notice, suspend the Subcontract; and
- (b) by giving a further final written notice no less than 7 Business Days after its notice of suspension, terminate the Subcontract.

**25.7** If the Subcontract is terminated and/or rescinded by either party for whatever reason or is otherwise frustrated:

- (a) then the Subcontractor shall:
  - (i) cease the execution of the Works within the time stipulated by Johns Lyng;
  - (ii) demobilise and ensure that the Site is left in a safe condition and that the Works are properly secured;
  - (iii) hand over to Johns Lyng all documentation and information in its possession or control relating to the Works; and
  - (iv) otherwise do all reasonable things to mitigate the cost to the Subcontractor of such termination,
- (b) if such termination is made pursuant to clause 25.4 or arises from frustration of the Subcontract, then subject to the Subcontractor's compliance with clause 25.7(a), Johns Lyng's liability to the Subcontractor and the Subcontractor's entitlement to a Claim (including in contract, tort, negligence, under statute or otherwise) will be limited solely to the total of:
  - (i) the unpaid value of the Works completed in accordance with the Subcontract prior to termination (to be determined by Johns Lyng in its sole discretion, including on a cost to complete basis, and excluding any margin for profit or overheads), less amounts previously paid to the Subcontractor in respect of such work (including an allowance for any set offs that Johns Lyng is entitled to under the Subcontract); and



- (ii) the cost of materials properly ordered and intended for incorporation in the Works as at the date of termination for which the Subcontractor has paid or is legally bound to pay, provided that title in the materials and title to them will pass to Johns Lyng upon payment by Johns Lyng,

up to a maximum amount of the balance of the Subcontract Sum (as may be adjusted pursuant to the Subcontract) unpaid at the date of termination, and any other amounts expressly payable to the Subcontractor pursuant to the Subcontract at the date of termination.

- (c) The Subcontractor acknowledges and agrees that the amounts to which it is entitled under clause 25.7(b) shall be in full and final satisfaction and compensation to the Subcontractor in relation to the termination, rescission or frustration of the Subcontract or otherwise in relation to the carrying out of the Works under the Subcontract.

## 26. Entire Agreement

**26.1** This Subcontract comprises the entire understanding and agreement between the Subcontractor and Johns Lyng as to the subject matter of the Subcontract and all previous agreements, negotiations, warranties, understandings or representations, express or implied, in relation to that subject matter are superseded by the Subcontract and have no effect, and no party shall be liable to the other party in respect of same.

**26.2** The Subcontractor acknowledges that in entering the Subcontract, it has not relied upon any representation or undertaking given by or on behalf of Johns Lyng which is not expressly set out in the Subcontract.

**26.3** None of the terms of the Subcontract shall be varied, amended, waived, discharged or released (including, without limitation, by an action, omission, conduct or representation) except by further written agreement between the parties.

## 27. Taxation, Goods and Services Tax

**27.1** For the purposes of this clause 27, "GST" and "Tax Invoice" have the meaning given by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**27.2** Unless otherwise indicated, each amount, of whatever description, specified as payable by Johns Lyng to the Subcontractor under the Subcontract is expressed exclusive of GST. In addition, at the time any such amount becomes payable, Johns Lyng also must pay to the Subcontractor the GST payable by the Subcontractor in respect of that amount upon the receipt of a valid Tax Invoice from the Subcontractor.

**27.3** Notwithstanding anything to the contrary, payments to be made by Johns Lyng will not require payment of GST on any amount which is itself inclusive of GST or in respect of which GST has been or should have been previously paid by the Subcontractor or any other party.

**27.4** The Subcontractor acknowledges and authorises Johns Lyng to issue RCTI's on its behalf in respect of all payments made under the Subcontract.

**27.5** The Subcontractor must comply with all tax, PAYG, payroll tax and any other taxes or like imposts as required by Legislative Requirements. The Subcontractor and its agents, servants, workers or employees must not hold themselves to be employees' servants or agents of Johns Lyng. If Johns Lyng incurs a liability for PAYG, payroll tax, workers compensation insurance premiums or otherwise under any other Legislative Requirement as a result of the Subcontractor's actions, activities or omissions, Johns Lyng is entitled to be reimbursed by the Subcontractor for such liability, together with any other associated costs, as a debt due and payable by the Subcontractor to Johns Lyng on demand.

## 28. Subcontracting and Other Dealings

**28.1** The Subcontractor shall not subcontract any of the Works or assign the Subcontract or any right, benefit or interest under the Subcontract without prior consent of Johns Lyng. Johns Lyng may impose conditions on any such consent at its absolute discretion. No consent by Johns Lyng under this clause shall relieve the Subcontractor of any of its obligations or liabilities under the Subcontract and the Subcontractor shall be liable for the acts, defaults and omissions of its subcontractors as if they were the acts, defaults or omissions of the Subcontractor.

**28.2** Johns Lyng may at any time by notice in writing to the Subcontractor novate the Subcontract to any other person and require the Subcontractor to enter into a deed of novation in a form acceptable to Johns Lyng (between the Subcontractor, Johns Lyng and the other party nominated by Johns Lyng), so that:



- (a) Johns Lyng is released from further involvement with the Subcontract, and ongoing liability to the Subcontractor for payment obligations post novation; and
- (b) The Subcontract is taken over by the other party in place of Johns Lyng on the same terms and conditions as applying to Johns Lyng under the Subcontract, which party shall covenant for the benefit of the Subcontractor to fulfill the obligations to the Subcontractor under the Subcontract post novation.

## 29. Copyright and Intellectual Property Rights

**29.1** Copyright in the Plans and Specifications, and any designs or drawings otherwise supplied by Johns Lyng to the Subcontractor, or its subcontractors, remains with Johns Lyng.

**29.2** All intellectual property rights in all designs and other information specifically provided or prepared by, or on behalf of, the Subcontractor for, or in connection with the works, vests in Johns Lyng on creation subject to reservation of a licence to the Subcontractor allowing use of such designs and other information for the purpose of only carrying out its obligations under the Subcontract.

**29.3** The Subcontractor agrees to keep, confidential and not disclose to any third-party information relating to the commercial terms of the Subcontract or any other information or material concerning or relating to the Works which Johns Lyng makes expressly known to be confidential in nature or which could otherwise reasonably be apprehended as being confidential in nature. This clause shall not apply to restrict the Subcontractor from making disclosure to the extent:

- 29.4** Reasonably required to carry out its obligations the Subcontract;
- (a) required by Law; or
  - (b) for the purpose of the Subcontractor taking legal advice.

## 30. General

**30.1** In the interpretation of the Subcontract, no rule of construction applies to the disadvantage of the party preparing the document on the basis that it prepared the documents forming part of the Subcontract or any part of it.

**30.2** If a provision in the Subcontract is held to be illegal, invalid, void, voidable or unenforceable, that provision shall be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down a provision, as required by this clause 30.2, that provision is severable without affecting the validity and enforceability of the remaining parts of that or other provisions in the Subcontract.

**30.3** All its obligations, warranties, representations and indemnities given by the Subcontractor and rights of Johns Lyng, arising out of or in connection with the Subcontract capable of surviving termination or expiration of the Subcontract, shall survive the termination or expiration of the Subcontract, each constitute separate and independent obligations from its other obligations under the Subcontract and are given with the intent that liability is not confined to breaches discovered prior to the date of the Subcontract.

**30.4** Except as otherwise set out in the Subcontract, Johns Lyng may give or withhold an approval or consent to be given under the Subcontract in its absolute discretion and subject to any conditions determined by Johns Lyng. Johns Lyng is not obliged to give its reasons for giving or withholding a consent, or for giving a consent subject to conditions.

**30.5** Each party shall exercise all such powers as are available to it, do all such acts, matters and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full force and effect to the provisions of the Subcontract.

**30.6** No waiver or partial waiver will vitiate the remainder of the Subcontract which will continue to apply, nor will it prevent the exercise of any other provision or part of this document or any other right arising under it. None of the terms of the Subcontract shall be varied, amended, waived, discharged or released except as agreed in writing.

**30.7** Nothing in this Subcontract shall be construed to entitle Johns Lyng or Subcontractor to any rights or liabilities whatsoever of partnership or employer/employee relationship.

Both parties acknowledge that the Subcontractor is a contractor of Johns Lyng and that neither the Subcontractor nor its employees are employees or agents of Johns Lyng.