## PRINCIPAL BUILDING AGREEMENT

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The Joint Building Contracts Committee® - NPC

Preface

JBCC® Constituents

The Joint Building Contracts Committee® NPC (JBCC®) is representative of building owners and developers, professional consultants and general and specialist contractors who contribute their knowledge and experiences to the compilation of the JBCC® documents. The JBCC® documents portray the consensus view of the constituent members and are published in the interests of standardisation and good practice with an equitable distribution of contractual risk. The constituents are:

- Association of Construction Project Managers
- Association of South African Quantity Surveyors
- Consulting Engineers South Africa
- Master Builders South Africa
- South African Black Technical and Allied Careers Organisation
- South African Institute of Architects
- South African Property Owners Association
- Specialist Engineering Contractors Committee

The Principal Building Agreement structure

The agreement clauses follow the project execution sequence. The documents set out clear, balanced and enforceable procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. Specific employer and contractor requirements are recorded in a separate JBCC® PBA Contract Data form.

The JBCC® Nominated/Selected Subcontract Agreement replicates the JBCC® Principal Building Agreement with common clauses retaining the same numbering. JBCC® publishes a comprehensive set of compatible forms and certificates for use in the administration of this agreement.

Warning!

The JBCC® Principal Building Agreement Edition 6.1 has been coordinated with the JBCC® Nominated/Selected Subcontract Agreement Edition 6.1 and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with the JBCC® Principal Building Agreement Edition 6.1.

Persons entering into or preparing contracts using the JBCC® suite of contract agreements and support documents are warned of the dangers inherent in modifying any part of it. Experience has shown that changes drafted by others, including members of the building professions, often have results different from those intended that may be prejudicial to either, or both, parties.

The JBCC® Documents

The JBCC® documents are obtainable from constituent members’ regional offices in South Africa listed on this page. The JBCC® does not sell directly to users but may be contacted at info@jbcc.co.za.

The JBCC® Web Page www.jbcc.co.za provides current information regarding:
- Scheduled Seminars
- Frequently Asked Questions (FAQ’s)
- New Developments

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Abbreviations: WD = working days, CD = calendar days, *no notice, forfeit the opportunity to claim

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INTERPRETATION

1.0 DEFINITIONS and INTERPRETATION

1.1 Definitions

A word or phrase in bold type in this agreement shall have the meaning assigned to it in these definitions. A word or phrase not in bold type shall be interpreted in the context of its usage.

AGENT: An entity appointed by the employer to deal with specific aspects of the works.

AGREEMENT: This JBCC® Principal Building Agreement and the completed JBCC® PBA contract data.

BILLS OF QUANTITIES: The document drawn up in accordance with the measuring system [CD].

BUDGETARY ALLOWANCE: An amount included in the contract sum for work intended for execution by the contractor, the extent of which is identified but not detailed.

CALENDAR DAYS: Twenty four (24) hour days commencing at midnight (00:00) which include Saturdays, Sundays, proclaimed public holidays and recorded annual builders' holiday periods [CD].

CERTIFICATE of FINAL COMPLETION: A certificate issued by the principal agent to the contractor with a copy to the employer stating the date on which final completion of the works, or of a section thereof, was achieved.

CERTIFICATE of PRACTICAL COMPLETION: A certificate issued by the principal agent to the contractor with a copy to the employer stating the date on which practical completion of the works, or of a section thereof, was achieved.

CONSTRUCTION EQUIPMENT: Equipment and/or plant provided by or belonging to the contractor and/or the subcontractor used during the construction period.

CONSTRUCTION INFORMATION: All information issued by the principal agent and/or agents including the contract documents, specifications, drawings, schedules, notices and contract instructions required for the execution of the works.

CONSTRUCTION PERIOD: The period commencing on the intended date [CD] of possession of the site by the contractor and ending on the date of practical completion, excluding annual industry holiday periods.

CONTRACT DATA: The document listing the contract variables.

[CD]: The notation used where project specific information is recorded in the contract data.

CONTRACT DOCUMENTS: This agreement, the contract drawings, the priced document and other identified documents [CD].

CONTRACT DRAWINGS: The drawings listed on which the accepted tender or the negotiated amount was based [CD].

CONTRACT INSTRUCTION: A written instruction issued by or under the authority of the principal agent to the contractor, which may include drawings and other construction information.

CONTRACT SUM: The accepted tender amount, inclusive of tax, that is not subject to adjustment [CD].

CONTRACT VALUE: A monetary value initially equal to the contract sum that is subject to adjustment in terms of this agreement.

CONTRACTOR: The party [CD] contracting with the employer for the execution of the works.

DEFECT: Any aspect of materials and workmanship forming part of the works that does not conform to the contract documents.

DIRECT CONTRACTOR: An entity appointed under separate agreement by the employer to do work on site prior to practical completion [CD].

EMPLOYER: The party [CD] contracting with the contractor for the execution of the works.
FINAL ACCOUNT: The document prepared by the principal agent that reflects the final contract value of the works at final completion or termination.

FINAL COMPLETION: The stage of completion of the works as certified by the principal agent as being free of defects.

FINAL PAYMENT CERTIFICATE: The certificate issued by the principal agent after the issue of the certificate of final completion after the final account has been agreed, or deemed to have been agreed.

FORCE MAJEURE: An exceptional event or circumstance that:

(a) could not have been reasonably foreseen
(b) is beyond the control of the parties, and
(c) could not reasonably have been avoided or overcome.

Such an event may include but is not limited to:

- Acts of war (declared or not), invasion, and hostile acts of foreign enemies
- Insurrection, rebellion, revolution, military or usurped power, war (whether declared or not), terrorism
- Civil commotion, disorder, riots, strike, lockout by persons other than the contractor's employees or his subcontractors
- Sonic shock waves caused by aircraft or other aerial devices, and ionising or radioactive contamination
- Explosive materials, except where attributable to the contractor's use of such technology
- Natural catastrophes including earthquakes, floods, hurricanes, or volcanic activity

FREE ISSUE: Materials and goods provided at no cost to the contractor by the employer for inclusion in the works whether stored on or off the site or in transit [CD]

GUARANTEE for ADVANCE PAYMENT: A security in terms of the JBCC® Guarantee for Advance Payment form obtained by the contractor from an institution approved by the employer [CD]

GUARANTEE for CONSTRUCTION: A security in terms of the JBCC® Guarantee for Construction form obtained by the contractor from an institution approved by the employer [CD]

GUARANTEE for PAYMENT: A security in terms of the JBCC® Guarantee for Payment form obtained by the employer from an institution approved by the contractor [CD]

INTEREST: The bank rate applicable from time to time to registered banks borrowing money from the Central or Reserve Bank of the country [CD]. The ruling bank rate on the first calendar day of each month shall be used in calculating the interest due for such month.

JBCC©: The Joint Building Contracts Committee© NPC

LATENT DEFECT: A defect that a reasonable inspection of the works by the principal agent and/or agents would not have revealed.

LAW: The law of the country [CD]

LIST for COMPLETION: A list issued by the principal agent where practical completion has been certified, listing defects and/or outstanding work to be completed.

LIST for FINAL COMPLETION: An updated list for completion issued by the principal agent after the inspection of the works for final completion, where final completion has not been achieved, listing defects and/or outstanding work to be completed to achieve final completion.

LIST for PRACTICAL COMPLETION: A comprehensive and conclusive list issued by the principal agent after the inspection of the works for practical completion, where practical completion has not been achieved, listing the defects and/or outstanding work to be completed to achieve practical completion.

MATERIALS AND GOODS: Unfixed materials, goods and/or items fabricated for inclusion in the works whether stored on or off the site or in transit.

MORA INTEREST: The rate of interest applicable from time to time prescribed in the relevant Act.

NOTICE: A communication issued by either party, the principal agent and/or agents to the other party or any agent to, inter alia, record an event, request for outstanding information and/or where suspension and/or resumption of the works, or termination of this agreement is contemplated.

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N/S SUBCONTRACT AGREEMENT: The JBCC® Nominated/Selected Subcontract Agreement (NSSA) and the completed JBCC® NSSA contract data, between the contractor and the subcontractor used in conjunction with the JBCC® Principal Building Agreement

PARTY: The employer or the contractor and “parties” shall refer to both of them

PAYMENT CERTIFICATE: A certificate issued at regular agreed intervals [CD] by the principal agent to the parties certifying the amount due and payable in terms of the JBCC® Payment Certificate format

PENALTY: The stipulated amount per calendar day [CD] payable by the contractor to the employer where the date or the revised date for practical completion, whichever is the later, has not been met

PRACTICAL COMPLETION: The stage of completion as certified by the principal agent where the works or a section thereof has been completed free of patent defects other than minor defects identified in the list for completion and can be used for the intended purpose [CD]

PRELIMINARIES: The priced items listed in the preliminaries document with any additions, alterations or modifications thereof incorporated in the contract documents

PRICED DOCUMENT: Bills of quantities, schedule of rates or other documents appropriate to this agreement [CD]

PRIME COST AMOUNT: An amount included in the contract sum for the delivered cost of materials and goods obtained from a supplier as instructed by the principal agent

PRINCIPAL AGENT: The entity [CD] appointed by the employer with full authority and obligation to act in terms of this agreement

PROGRAMME: A diagrammatic representation of the planned execution of units of work or activities indicating the dates for commencement and completion prepared and maintained by the contractor

PROVISIONAL SUM: An amount included in the contract sum for the supply and installation of work by a subcontractor

RECOVERY STATEMENT: The statement prepared and issued in conjunction with each payment certificate by the principal agent in terms of the JBCC® Recovery Statement format

SECTION: An identified portion of the works for which practical completion is required by a date earlier than that required for the works as a whole [CD]

SECURITY: A monetary guarantee provided by the employer to the contractor, or the contractor to the employer in terms of this agreement [CD] from which either party may recover expense and loss in the event of default

SITE: The land or place where the works is to be executed [CD]

STATUS REPORT: A report compiled by the principal agent and/or agents in the event of termination of the agreement, or where the works has been suspended due to a force majeure event, or in the event of termination of the n/s subcontract agreement by the contractor, to record the state of completion or otherwise of the works or the n/s subcontract works, as the case may be. Such status report may include marked up drawings and photographs

SUBCONTRACTOR: A nominated or a selected subcontractor appointed in terms of the n/s subcontract agreement by the contractor in accordance with a contract instruction for the supply and installation of work for which a provisional sum has been included in the contract sum [CD]

SUSPENSION: The temporary cessation of the works by the contractor

TAX: Value-added tax or any other tax, duty or levy applicable by law

WORKING DAYS: Calendar days which exclude Saturdays, Sundays, proclaimed public holidays and recorded annual builders’ holiday periods [CD]

WORKS: The extent of work to be executed by the contractor described in the contract documents and contract instructions, which includes free issue, and materials and goods. Work or installations to be executed by direct contractors and others responsible to the employer are excluded [CD]
1.2 **Interpretation**

1.2.1 In this document, unless inconsistent with the context, the words ‘accept, allow, appoint, approve, authorise, certify, decide, demand, designate, grant, instruct, issue, list, notice, notify, object, record, reduce, refuse, request, state and their derivatives require such acts to be in writing

1.2.2 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes juristic or artificial persons

1.2.3 The headings of clauses are for reference purposes only and shall not be used in interpretation

1.2.4 Reference to a clause number written as [54.3.2] means that specific clause; clause [54.3.2-4] means the sub-clauses 2 to 4 inclusively; clause [54.3.2 & 4] means the sub-clauses 2 and 4 only

1.2.5 The word ‘deemed’ shall be conclusive that something is fact, regardless of the objective truth

2.0 **LAW, REGULATIONS AND NOTICES**

2.1 The contractor shall comply with the law, obtain permits, licenses and approvals required and pay related charges for the execution of the works. The employer shall comply with the law, obtain permits, planning, building or similar permissions and pay charges for the works other than those which are the responsibility of the contractor [26.4.1] [CD]

2.2 Documents referred to in this agreement shall mean the current edition thereof with all amendments thereto as at the date of submission of the contractor’s offer unless otherwise stated [CD]

2.3 All communication or notices between the parties shall be in the language of this agreement and in a format that can be read, copied and recorded [CD]

2.4 Legal processes arising out of or concerning this agreement may validly be delivered to and served on the parties at the physical address of the parties recorded in this agreement. Either party may, at any time, by notice to the other, change its physical address provided it is in the same country

2.5 Notices given in terms of this agreement shall be deemed to have been received where:

2.5.1 Delivered by hand - on the day of delivery

2.5.2 Sent by electronic mail - within one (1) working day

2.5.3 Sent by registered post - within seven (7) calendar days after posting

3.0 **OFFER AND ACCEPTANCE**

3.1 The objective of this agreement is the execution of and payment for the works for which there has been an offer by the contractor and an acceptance by the employer

3.2 This agreement shall come into force on the date of acceptance by the employer (the contract date) and continue to be of force and effect until the end of the latent defects liability period - notwithstanding termination or the certification of final completion and final payment [11.0; 29.0 & 30.0]

3.3 Where any provision of this agreement, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The parties shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision

3.4 Failure by a party to enforce any provision of this agreement shall not constitute a waiver of terms of this agreement or affect such party’s rights to require the performance at any time in the future

4.0 **ASSIGNMENT AND CESSION**

4.1 Neither party shall assign or cede rights or obligations under this agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld
4.2 The **contractor** shall not consent to a nominated **subcontractor** assigning or ceding rights or obligations in terms of this **agreement** without obtaining the prior written consent of the **principal agent**

4.3 Notwithstanding the above, where a **party** cedes any right to any monies due or to become due under this **agreement** as security in favour of a financial institution, consent shall not be required provided **notice** of such cession is given to the other **party**

### 5.0 CONTRACT DOCUMENTS

5.1 The **parties** shall sign the original **contract documents** and shall each be issued with a copy thereof. The original signed **contract documents** shall be held by the **principal agent** [CD]

5.2 Persons authorised to act on behalf of the **parties** and/or **agents** appointed by the **employer** shall be identified in the **construction information**. Such authorised person may be changed by **notice** to the other **party**

5.3 The **priced document** shall not be used as a specification of **materials and goods** or methods

5.4 The **contract documents** shall not be published or disclosed or used for any purpose other than that specified in this **agreement** by one **party** without the prior written consent of the other **party**

5.5 The **principal agent** shall timeously provide the number of copies [CD] of drawings, un-priced bills of quantities and other **construction information** at no cost to the **contractor**

5.6 The **contract documents** shall be deemed to be mutually explanatory of one another. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them, this **agreement** shall prevail over all other **contract documents**

### 6.0 EMPLOYER’S AGENTS

6.1 The **employer** warrants that the **principal agent** has full authority and obligation to act and bind the **employer** in terms of this **agreement**. The **principal agent** has no authority to amend this **agreement**

6.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority to issue **contract instructions** and perform duties for specific aspects of the **works** is delegated to **agents**. An **agent** appointed in terms of this clause shall not be entitled to subdelegate its authority without the prior written consent of the **employer**

6.3 The **principal agent** and **agents** shall declare any interest or involvement in the **works** other than a professional interest, where applicable [CD]

6.4 Where any **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **principal agent** to rectify such default within five (5) **working days**. Where such default has not been rectified, the **contractor** may give **notice** to suspend the **works** [28.0]

6.5 Where any **agent** fails to act or is unable to act, or ceases to be an **agent**, in terms of this **agreement**, the **employer** shall appoint another **agent** within five (5) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment

6.6 The **employer** shall not interfere with or prevent the **principal agent** or an **agent** from exercising fair and reasonable judgement when performing their obligations in terms of this **agreement**

### 7.0 DESIGN RESPONSIBILITY

7.1 The **contractor** shall not be responsible for the design of the **works** other than the **contractor’s** and **subcontractors’** temporary works. The **contractor** shall not be responsible for the coordination of design elements

7.2 Any design responsibility undertaken by a **subcontractor** shall not devolve on the **contractor**. All contractual or other rights the **contractor** has against such **subcontractor** arising from any design responsibility undertaken shall be ceded to the **employer** on the date of **final completion** or the date of termination of this **agreement** [9.2.3]
7.3 The contractor shall be responsible for the timeous submission of design documentation by a selected subcontractor for acceptance by the principal agent and/or agents [23.2.8]

**INSURANCE AND SECURITY**

**8.0 WORKS RISK**

8.1 The contractor shall take full responsibility for the works from the date on which possession of the site is given to the contractor and up to the date of issue of the certificate of practical completion or deemed achievement of practical completion for a section or the works as a whole. Thereafter responsibility for the works shall pass to the employer.

8.2 The contractor shall make good physical loss and repair damage to the works caused by or arising from:

8.2.1 Any cause before the date of practical completion [19.0]

8.2.2 Any act or omission of the contractor in the course of any work carried out in pursuance of the contractor’s obligations after the date of practical completion

8.3 The liability of the contractor in respect of any loss or damage shall include, but not be limited to:

8.3.1 The cost of making good such physical loss and repairing damage to the works including clearing away and removing all debris, and any other costs to reinstate the works

8.3.2 The new replacement value of free issue [12.1.11] [CD]

8.3.3 The cost of additional professional services

8.4 The limit of the contractor’s liability shall not exceed the Contract Works Insurance [CD]. Where the contract value exceeds the contract sum by more than ten per cent (10%) or the percentage stated [CD] the insurance provisions shall be adjusted at the employer’s expense. The party responsible for effecting insurance shall provide written proof of such adjustment [10.0]

8.5 The contractor shall not be liable for the cost of making good physical loss and repairing damage to the works caused by or arising from:

8.5.1 The use or occupation of any part of the works by the employer, the employer’s employees or agents and those for whose acts they are responsible

8.5.2 An act or omission of the employer, the employer’s employees or agents and those for whose acts they are responsible

8.5.3 An act or omission by a direct contractor

8.5.4 The design of the works for which the contractor is not responsible [7.1]

8.5.5 A defect in free issue or materials and goods specified by trade name where the contractor has no right of substitution. The contractor hereby cedes any right of action to the employer that may exist against the supplier and/or manufacturer of such free issue, and/or materials and goods

8.5.6 Force majeure

8.6 Where the contractor is not liable for the cost of making good physical loss or repairing damage [8.5] such making good and/or expense and/or loss shall be measured and valued and added to the contract value by the principal agent [17.1.10]

8.7 The contractor shall immediately give notice to the principal agent on becoming aware of physical loss or damage to the works

**9.0 INDEMNITIES**

9.1 The contractor indemnifies the employer, the employer’s employees or agents from all claims or proceedings for damages, expense and/or loss (including legal fees and expenses) in respect of or arising from the following events (except those attributable to an act or omission of the employer, the employer’s employees or agents):

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9.1.1 Death or bodily injury or illness of any person or physical loss or damage to any property other than the works [9.2.7] arising out of or due to the execution of the works or presence on and/or occupation of the site by the contractor. Should such an event occur, the contractor shall forthwith give notice to the principal agent

9.1.2 Non-compliance by the contractor with any law, regulation, or bylaw of any local or other authority and the failure by the contractor to obtain any permit, license or approval that the contractor is required to obtain in terms of this agreement [2.1]

9.1.3 Physical loss or damage to construction equipment or other property belonging to the contractor or the contractor’s subcontractors but excluding direct contractors’ construction equipment or other property

9.2 The employer indemnifies and holds the contractor harmless from all claims or proceedings for damages, expense and/or loss (including legal fees and expenses) in respect of or arising from:

9.2.1 An act or omission of the employer, the employer’s employees or agents and those for whose acts they are responsible

9.2.2 An act or omission of a direct contractor [16.0]

9.2.3 Design of the works [7.1] where the contractor is not responsible for such design

9.2.4 The use or occupation of any part of the works by the employer, tenants, direct contractors or others authorised by the employer

9.2.5 Proceeding with the works on instruction from the employer without the employer obtaining the required permission under the law in terms of this agreement [2.1]

9.2.6 Interference with any servitude or other right not depicted in construction information issued to the contractor that is the unavoidable result of the execution of the works including the removal of or weakening of or interference with the support of land and property adjacent to or within the site unless resulting from any negligent act or omission by the contractor or his subcontractors. Should such an event occur, the contractor shall forthwith give notice to the principal agent

9.2.7 Physical loss or damage to an existing structure and the contents thereof where this agreement is for alterations or additions to the existing structure [CD]. Should such an event occur, the contractor shall forthwith give notice to the principal agent

9.2.8 A defect in free issue [CD]

9.2.9 Physical loss or damage to the works where practical completion has been certified [19.0] or deemed to have been achieved

9.2.10 Advance payments certified and paid by the contractor to subcontractors [27.1.7; 27.2.4]

10.0 INSURANCES

10.1 The party responsible for the respective insurances [CD] shall effect and keep in force in the joint names of the parties from the date of possession of the site until the contractor’s responsibility has ended:

10.1.1 Contract Works Insurance [CD] for the works that shall include free issue [CD], materials and goods and temporary works (as defined in the insurance policy) and adequate cover for the clearing away and removing of all debris, and any other costs to reinstate the works and where required, damage to employer owned surrounding property [CD] in the care, custody or control of the contractor or to be worked upon by the contractor

10.1.2 Public Liability Insurance [CD] providing indemnity in respect of accidental death or injury to any person and accidental loss of or physical damage to tangible property, to remain in force until the date of final completion

10.1.3 Supplementary Insurance [CD] for the works against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the Contract Works Insurance

10.1.4 Removal of Lateral Support Insurance [CD] where the employer considers that the execution of the works could cause the removal of or weakening of or interference with the support of land or property adjacent to or within the site and the consequences thereof. The employer shall appoint an agent to design and monitor appropriate support structures for use in excavations and/or in existing property that form part of the works and/or the site

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10.2 Where **practical completion** in sections is required [20.0] or the **works** is for alterations and additions the **employer** shall effect and keep in force Contract Works Insurance, Public Liability Insurance, Supplementary Insurance and where applicable, Removal of Lateral Support Insurance, in the joint names of the **parties** until the date of **final completion**

10.3 The **party** responsible [10.1] for effecting insurances [10.1.1-4 and/or 10.2] shall provide proof of the insurances effected to the other **party** before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such policy before expiry of the existing policy. Approval by the other **party** shall be deemed unless a reasonable objection is lodged within ten (10) **working days** of receipt of such proof

10.4 Upon request the **party** responsible for effecting insurance shall provide the other **party** with the entire policy wording of such policies

10.5 The **contractor** shall be responsible for the policy deductibles [CD] in respect of the insurances arranged by the **employer** where an action or inaction by **contractor** is the cause of a claim

10.6 Where this **agreement** is terminated [28.0] and the **contractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of an insurance claim shall vest solely in the **employer**. The **party** responsible for the insurance shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, Public Liability Insurance, Supplementary Insurance and Removal of Lateral Support Insurance

10.7 Where a **party** [CD] fails to effect or maintain the required insurances [10.1] or fails to provide proof of such insurance [10.4] the other **party** may give five (5) **working days notice** to comply failing which the other **party** may, without prejudice to any other remedy, effect such insurance and recover the expense and/or cost so incurred from the defaulting **party**

10.8 Where the **employer** fails to effect the specified insurances within ten (10) **working days** after **notice** to do so by the **contractor**, the **contractor** may, on expiry of the notice period, suspend the **works** until such insurances have been effected [28.1.4]

10.9 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** (as the case may be) in accordance with their respective obligations, liabilities and responsibilities under this **agreement**. However, where a **party** fails to effect and maintain insurance under this **agreement**, and the other **party** does not waive its right to demand such insurance be effecteded or maintained by that **party** and does not effect the insurance itself [10.7], any loss or damage which should have been recoverable under the insurance in question will be borne by the **party** responsible for effecting the insurance [CD]

10.10 The **employer** shall effect separate insurance in respect of **direct contractors** outside this **agreement** [CD]

10.11 The **party** responsible for effecting the insurance shall keep insurers informed of any relevant changes in respect of this **agreement**

11.0 **SECURITY**

11.1 The **contractor** shall:

11.1.1 Provide to the **employer** a JBCC® **Guarantee for Construction**, where applicable [CD], within fifteen (15) **working days** of acceptance of the **contractor**’s offer and choose:

11.1.2 A JBCC® **Guarantee for Construction** - (variable) [CD] initially equal to ten per cent (10%) of the **contract sum** and keep such **security** valid and enforceable until the **final payment certificate** has been issued to the **contractor** [25.6]

Or ...

11.1.3 A JBCC® **Guarantee for Construction** - (fixed) set at five per cent (5%) of the **contract sum** [CD] and a payment reduction of 5% of the value of each **payment certificate** up to a maximum of five per cent (5%) of the **contract sum** [25.3.3]. The **contractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued

11.1.4 A JBCC® **Guarantee for Advance Payment** where an advance payment is required equal in value to the aggregate amount of all such advance payments [CD]. The **contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.2]
11.1.5 Extend or provide a replacement JBCC® Guarantee for Construction - (variable) or (fixed) and/or a JBCC® Guarantee for Advance Payment at least twenty (20) working days before such security is due to expire [11.1.2-4]

11.2 The amount of the JBCC® Guarantee for Advance Payment may be reduced by the amount repaid by the contractor as certified by the principal agent in payment certificates. If the advance payment is not repaid by the date a certificate of practical completion is issued or practical completion is deemed achieved, or by the date of termination by the employer due to contractor default [29.9], the entire outstanding amount shall immediately become due and payable

11.3 Where the contractor fails to provide the security the employer may:

11.3.1 Hand over the site to the contractor and withhold in interim payment certificates to the contractor an amount equal to ten per cent (10%) of the contract sum. The amount withheld shall be reduced at practical completion [19.0] to two and one half per cent (2.5%) of the contract sum and to zero per cent (0%) in the final payment certificate [25.8]

Or...

11.3.2 Terminate this agreement [29.1.1]

11.4 The employer shall:

11.4.1 Provide to the contractor a JBCC® Guarantee for Payment where required in the accepted offer (CD) within fifteen (15) working days of acceptance of the contractor's offer

11.4.2 Keep such JBCC® Guarantee for Payment valid and enforceable in terms of the security form and/or provide a replacement JBCC® Guarantee for Payment at least twenty (20) working days before such security is due to expire [11.4.1]

11.5 Where the employer fails to provide the JBCC® Guarantee for Payment (CD), or such security has expired, the contractor may, after ten (10) working days notice forthwith suspend the works until such security has been provided [28.1.1]

11.6 Where the contract value exceeds the contract sum by more than ten per cent (10%) the applicable security shall be adjusted at the employer's expense. The party responsible for adjusting the security value shall provide written proof of such adjustment

11.7 A security held by either party shall be for the due fulfilment of the other party's obligations in terms of this agreement

11.8 The parties shall return the original or the replacement security form within ten (10) working days after the expiry date, or after the date of termination

11.9 Where a party makes an unjustified call on a security, the amount paid and mora interest shall be paid to the other party

11.10 The contractor shall waive his lien on receipt of JBCC® Guarantee for Payment from the employer

EXECUTION

12.0 DUTIES OF THE PARTIES

12.1 The employer shall:

12.1.1 Provide a JBCC® Guarantee for Payment [11.4.1], where applicable (CD)

12.1.2 Record specific requirements (CD) where the existing premises will be in use and occupied during the execution of the works, including restriction of working hours

12.1.3 Record and describe relevant natural features and known services (CD) where the contractor shall be responsible for their preservation

12.1.4 Define any restrictions to the site or areas that the contractor may not occupy (CD)

12.1.5 Identify access to water, sewer, stormwater and/or electricity connections to the site (CD)
12.1.6 List statutory and other notices the contractor must submit and/or comply with before possession of the site can be given

12.1.7 Give possession of the site to the contractor on the agreed date [CD]

12.1.8 Effect and keep in force insurances in the joint names of the parties, where the employer is responsible for procuring insurance [10.0] [CD]

12.1.9 Make payments by the due date [25.7] [CD]

12.1.10 Make advance payments, where required [CD]

12.1.11 Permit reasonable access to the works by the contractor and/or subcontractors subsequent to practical completion to fulfill outstanding obligations [17.1.16]

12.1.12 Supply free issue to suit the programme [CD]

12.1.13 Define the extent of work to be carried out by a direct contractor [CD]

12.1.14 Ensure that the principal agent and/or agents provide adequate construction information timeously to the contractor

12.1.15 Make direct payment where the contractor has failed to honour a n/s subcontract payment advice after notice of default by a subcontractor [14.5 and/or 15.5] at the employer’s discretion

12.2 The contractor shall:

12.2.1 Have inspected the site and any existing structures and be thoroughly acquainted with the conditions under which the works is to be executed including means of access and any matters which may influence the execution and/or the pricing of the works

12.2.2 Submit to the principal agent the priced document with items priced to include all costs, overheads and profit, extended and cast within fifteen (15) working days of acceptance of the contractor’s offer. The principal agent may instruct the contractor to adjust prices considered to be imbalanced or unreasonable and to eliminate errors or discrepancies without any change to the contract sum

12.2.3 Provide a JBCC® Guarantee for Construction [11.1.2-3, 11.1.5], where applicable [CD]

12.2.4 Provide a JBCC® Guarantee for Advance Payment [11.1.4; 11.1.5; 11.2], where applicable [CD]

12.2.5 Effect and keep in force insurances in the joint names of the parties where the contractor is responsible for procuring insurance [10.0] [CD]

12.2.6 Prepare and submit to the principal agent within fifteen (15) working days of receipt of construction information a programme for the works in sufficient detail to enable the principal agent to monitor the progress of the works

12.2.7 Coordinate the programme with subcontractors’ and direct contractors’ programmes

12.2.8 Regularly submit to the principal agent a progress report and a schedule of outstanding construction information to avoid delays to the works

12.2.9 Regularly update the programme to illustrate progress of the works, and revise the programme where the principal agent has revised the date for practical completion

12.2.10 Cooperate with the principal agent in the preparation of cash flow projections and the compilation of payment certificates [25.1-2]

12.2.11 Designate a competent person to continuously administer and control the works and to receive and implement notices and contract instructions on behalf of the contractor

12.2.12 Maintain daily records of categories of persons and construction equipment employed on the works and regularly provide copies to the principal agent

12.2.13 Keep on site a copy of all construction information required for execution of the works to which the employer and principal agent and/or agents shall have reasonable access

12.2.14 Allow the employer and principal agent and/or agents reasonable access to the works, workshops and other places where work is being prepared, executed or stored
12.2.15 Provide everything necessary for the proper execution of the works in compliance with the contract documents

12.2.16 Give notice forthwith to the principal agent and/or the employer where items of free issue have been received damaged prior to storage or, where on unpacking, are found not to be in good order before installing such items

12.2.17 On being given possession of the site commence the works within ten (10) working days and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the works to practical completion and to final completion

12.2.18 Provide, maintain and remove on practical completion all temporary structures, construction equipment and notice boards

12.2.19 On achievement of practical completion hand over to the principal agent all information for the preparation of ‘as built’ documentation and applicable statutory/regulatory approval certificates

12.2.20 On achievement of practical completion hand over to the principal agent all operating and instruction manuals, product guarantees and the like

12.2.21 Cede to the employer on the date of issue of the certificate of final completion any guarantee, warranty or indemnity, pertaining to the works. This cession shall not prejudice any other rights that the employer may have

12.3 The principal agent and the contractor shall hold regular meetings to monitor progress of the works and to deal with technical and coordination matters. The principal agent shall record and timeously distribute the minutes of such meetings [CD]

13.0 SETTING OUT

13.1 The principal agent shall:

13.1.1 Point out boundary pegs or beacons identifying the site and the datum level

13.1.2 Define the setting out points and levels required for the execution of the works

13.2 The contractor shall:

13.2.1 Be responsible for accurate setting out of the works notwithstanding checking by others

13.2.2 Be responsible for the preservation and the reinstatement of boundary pegs, beacons and other survey information and, where disturbed or destroyed, replace such items at his expense

13.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the contractor. [9.2.6] In such event the contractor may be entitled to a revision of the date for practical completion and/or an adjustment of the contract value [23.2.5]

13.2.4 Immediately suspend affected work to an appropriate extent where undocumented services, natural features, articles of value or relics are uncovered on site, and give notice to the principal agent who shall issue a contract instruction on how to proceed with the works. Any relics or other articles found on the site shall remain the property of the employer

14.0 NOMINATED SUBCONTRACTORS

14.1 The principal agent and/or agents shall:

14.1.1 Prepare tender documents in conformity with the n/s subcontract agreement for work intended to be executed by a nominated subcontractor

14.1.2 Call for tenders

14.1.3 Scrutinise the received tenders for compliance with the tender documents, in consultation with the contractor, where appointed

14.1.4 Nominate a subcontractor and instruct the contractor [17.1.13] to appoint such subcontractor as a nominated subcontractor in terms of the n/s subcontract agreement and other tender requirements
14.1.5 Inform the contractor where an advance payment is to be made to the subcontractor for an amount included in the accepted offer and that a JBCC® Guarantee for Advance Payment shall be provided by the subcontractor for the amount stated [NSSA-CD].

14.2 The contractor may refuse to appoint such subcontractor:

14.2.1 Against whom the contractor makes a reasonable objection

14.2.2 Who refuses or fails to enter into a n/s subcontract agreement and/or to comply with other tender requirements

14.2.3 Who is unable to provide a security, where specified [NSSA-CD]

14.3 Where such subcontractor is not appointed by the contractor for the reasons stated [14.2], or where the appointment of a subcontractor has been terminated, another subcontractor shall be nominated and appointed on instruction from the principal agent.

14.4 Where the subcontractor has complied with the tender requirements, on instruction from the principal agent, the contractor shall:

14.4.1 Appoint the subcontractor as a nominated subcontractor and forward a copy of the signed n/s subcontract agreement to the principal agent.

14.4.2 Provide a JBCC® NSSA Guarantee for Payment in the amount stated in the n/s subcontract data within fifteen (15) working days [14.1.5], where specified [NSSA-CD].

14.4.3 Forward the subcontractor's regular payment claims to the principal agent and/or agent by the date stated [NSSA-CD] for inclusion in the contractor's regular payment claim.

14.4.4 Notify the subcontractor of the amount included in the payment certificate using the JBCC® n/s subcontract payment advice format and the n/s subcontract recovery statement format to reconcile the amount due for payment with the amount stated in the n/s subcontract payment notification format issued by the principal agent, and forward a copy to the principal agent.

14.4.5 Pay the subcontractor the amount certified by the date stated in the n/s subcontract data [25.11] [NSSA-CD]

14.5 Where the contractor fails to provide proof of payment to the subcontractor within five (5) working days of a notice by the principal agent, the employer may instruct the principal agent to certify direct payment to the subcontractor and recover such amount from the contractor [25.11].

14.6 Where a nominated subcontractor has been declared insolvent, or where after notification by the contractor, the principal agent agrees that a nominated subcontractor is in default of a material term of the n/s subcontract agreement, the principal agent shall instruct the contractor to give notice to the subcontractor to rectify such default. The principal agent shall instruct the contractor to terminate the n/s subcontract agreement should such default continue for five (5) working days after such notice.

14.7 Where a n/s subcontract agreement with a nominated subcontractor is terminated:

14.7.1 The principal agent shall instruct the contractor to appoint another nominated subcontractor [14.1.4] to complete the n/s subcontract works.

14.7.2 Due to default or insolvency of the subcontractor, or default of the employer and/or agents, the n/s subcontract value shall be adjusted to include the cost of completing such n/s subcontract works [25.3.7].

14.7.3 Due to default or insolvency of the contractor any variation in the cost of completing the n/s subcontract works shall be for the account of the contractor. The employer may recover expense and/or loss [25.3.7].

14.8 There shall be no privity of contract between the employer and a subcontractor appointed by the contractor.

15.0 SELECTED SUBCONTRACTORS

15.1 The principal agent and/or agents shall:
15.1.1 Prepare tender documents in conformity with the n/s subcontract agreement and this agreement for work intended to be executed by a selected subcontractor. Such preparation shall be carried out in consultation with and to the reasonable approval of the contractor.

15.1.2 Call for tenders from a list of tenderers agreed between the contractor and the principal agent.

15.1.3 Scrutinise the received offers for compliance with the tender documents in consultation with the contractor.

15.1.4 In consultation with the contractor, choose the successful tenderer to be appointed as a selected subcontractor in terms of the n/s subcontract agreement.

15.1.5 Inform the contractor where an advance payment is to be made to the subcontractor for an amount included in the accepted offer and that a JBCC® Guarantee for Advance Payment shall be provided by the subcontractor for the amount stated [NSSA-CD].

15.2 Where the subcontractor has complied with the tender requirements, on instruction from the principal agent, the contractor shall:

15.2.1 Appoint the subcontractor as a selected subcontractor and forward a copy of the signed n/s subcontract agreement to the principal agent.

15.2.2 Provide a JBCC® NSSA Guarantee for Payment in the amount stated in the n/s subcontract data within fifteen (15) working days [15.1.5], where specified [NSSA-CD].

15.2.3 Forward the subcontractor’s regular payment claims to the principal agent and/or agent by the date stated [NSSA-CD] for inclusion in the contractor’s regular payment claim.

15.2.4 Notify the subcontractor of the amount included in the payment certificate using the n/s subcontract payment advice format and the n/s subcontract recovery statement format to reconcile the amount due for payment with the amount stated in the n/s subcontract payment notification format issued by the principal agent, and forward a copy to the principal agent.

15.2.5 Pay the subcontractor the amount certified by the date stated in the n/s subcontract data [25.11] [NSSA-CD].

15.3 The contractor may refuse to appoint such subcontractor:

15.3.1 Who refuses or fails to enter into a n/s subcontract agreement and/or to comply with other tender requirements.

15.3.2 Who is unable to provide a security, where specified [NSSA-CD].

15.4 Where such subcontractor is not appointed by the contractor for the reasons stated [15.3], or where the appointment of a subcontractor has been terminated, another subcontractor shall be chosen and be appointed on instruction from the principal agent.

15.5 Where the contractor fails to provide proof of payment to a subcontractor within five (5) working days of a notice by the principal agent, the employer may instruct the principal agent to certify direct payment to the subcontractor and recover such amount from the contractor [25.11].

15.6 Where the selected subcontractor is in default of a material term of the n/s subcontract agreement, the decision of whether or not to terminate the n/s subcontract agreement is that of the contractor.

15.7 Where a n/s subcontract agreement with a selected subcontractor is terminated:

15.7.1 The contractor shall appoint another selected subcontractor [15.1.4] to complete the n/s subcontract works in consultation with the principal agent and/or agents.

15.7.2 Due to default by the employer or agents, the n/s subcontract value shall be adjusted to include the cost of completing such n/s subcontract works [25.3.7].

15.7.3 Other than due to default by the employer or agents, any variation in the cost of carrying out and completing the n/s subcontract works shall be for the account of the contractor [25.3.7].

15.8 There shall be no privity of contract between the employer and a subcontractor appointed by the contractor.
16.0 DIRECT CONTRACTORS

16.1 The contractor shall:

16.1.1 On instruction by the principal agent permit a direct contractor(s) to execute and/or install work as part of the works [CD]. Such access to the works shall not constitute deemed achievement of practical completion or occupation by the employer [19.6]

16.1.2 Make reasonable allowance in the programme for such work or installation [CD]

16.1.3 Be entitled to claim expense and/or loss caused by a direct contractor(s) [26.5.4]

16.2 Payment of a direct contractor shall be the responsibility of the employer outside this agreement

16.3 There shall be no privity of contract between the contractor and a direct contractor appointed by the employer

17.0 CONTRACT INSTRUCTIONS

17.1 The principal agent may issue contract instructions to the contractor regarding:

17.1.1 Rectification of discrepancies, errors in descriptions or omissions in contract documents other than this agreement

17.1.2 Alteration to design, standards or quantity of the works provided that such contract instructions shall not substantially change the scope of the works

17.1.3 The site [13.1-2]

17.1.4 Compliance with the law, regulations and bylaws [2.1]

17.1.5 Provision and testing of samples of materials and goods, of finishes and assemblies of elements of the works

17.1.6 Opening up of work for inspection, removal or re-execution

17.1.7 Removal or re-execution of work

17.1.8 Removal or substitution of any materials and goods

17.1.9 Protection of the works

17.1.10 Making good physical loss and repairing damage to the works [8.0]

17.1.11 Rectification of defects [21.2]

17.1.12 A list for practical completion specifying outstanding or defective work to be rectified to achieve practical completion and a list for completion and a list for final completion specifying outstanding or defective work to be rectified to achieve final completion

17.1.13 Expenditure of budgetary allowances, prime cost amounts and provisional sums

17.1.14 Appointment of a subcontractor [14.0; 15.0]

17.1.15 Termination of a nominated n/s subcontract agreement [27.2.8]

17.1.16 Work by (a) direct contractor(s) [16.0]

17.1.17 Access by other or previous contractors to remedy defective work

17.1.18 Removal from the site of any person employed on the works

17.1.19 Removal from the site of any person not engaged on or connected with the works

17.1.20 On termination, protection of the works, removal of construction equipment and surplus materials and goods [29.0]
17.2 The contractor shall comply with and duly execute all contract instructions.

17.3 Should the contractor fail to proceed with a contract instruction with due diligence, the principal agent may give notice to the contractor to proceed within five (5) working days of receipt of such notice. Where the contractor remains in default, the employer may engage others to carry out such contract instruction. The employer may recover expense and/or loss incurred [27.2.3]

17.4 The contractor shall not be obliged to execute contract instructions for additional work issued after the certified date of practical completion.

17.5 Oral instructions shall be of no force or effect.

**COMPLETION**

18.0 INTERIM COMPLETION

This clause applies only in the JBCC® N/S Subcontract Agreement and is included to retain matching clause numbers between the two agreements.

19.0 PRACTICAL COMPLETION

19.1 The principal agent shall:

19.1.1 Inspect the works at appropriate intervals to give the contractor interpretations and direction on the standard of work and the state of completion of the works required of the contractor to achieve practical completion [CD]

19.1.2 Issue a contract instruction [17.1.5-10] consequent on each such inspection, where necessary.

19.1.3 Inspect the works within the period stated, [CD]

19.2 The contractor shall:

19.2.1 Inspect the works in advance of the (revised) date for practical completion to confirm that the standard of work required and the state of completion of the works for practical completion [CD] has been achieved.

19.2.2 Give timely notice to the principal agent of the anticipated date for the inspection for practical completion of the works to meet the (revised) date for practical completion [CD]

19.3 The principal agent shall after inspection of the works, or a section of the works, within the period stated [19.1.3] forthwith issue:

19.3.1 A comprehensive and conclusive list for practical completion [17.1.12] to the contractor where the works has not reached practical completion specifying the defects to be rectified and work to be completed to achieve practical completion.

19.3.2 An updated list for practical completion to the contractor, limited to items on the list for practical completion that have not been attended to satisfactorily to be rectified and work to be completed to achieve practical completion, The contractor shall repeat the procedure until all items on the list for practical completion have been dealt with satisfactorily before the certificate of practical completion is issued by the principal agent.

Or ...

19.3.3 A certificate of practical completion to the contractor with a copy to the employer stating the date on which practical completion of the works, or of a section, was achieved.

19.3.4 A list for completion of items to be rectified and work to be completed with a copy to the employer that may include marked up drawings and photographs.

19.4 Should the principal agent not issue a list for practical completion or the updated list within five (5) working days after the inspection period, [19.3] the contractor shall give notice to the employer and the principal agent. Should the principal agent not issue such list within a further five (5) working days of receipt of such notice, practical completion shall be deemed to have been achieved on the
intended/revised date for practical completion and the principal agent shall issue the certificate of practical completion forthwith.

19.5 On issue of the certificate of practical completion, the employer shall be entitled to possession of the works and the site subject to the contractor's lien, where applicable.

19.6 Where the employer takes possession of the whole or a portion of the works by agreement with the contractor, practical completion shall be deemed to have occurred. The principal agent, after inspection of the works, [19.3.3] shall issue a certificate of practical completion to the contractor with a copy to the employer within five (5) working days certifying the date of possession of the works by the employer and the list for completion of items to be rectified and work to be completed within thirty (30) working days, or such additional period as the principal agent may allow.

19.7 On achievement of practical completion of the works or a section of the works and where the principal agent instructs that installation work is to be executed by others, the employer and/or contractor shall allow access to the works or a section of the works for such other installations.

20.0 SECTIONAL COMPLETION

20.1 Where completion of sections is required [CD] the terms and conditions applicable to the works as a whole shall apply to each section.

20.2 The principal agent shall issue:

20.2.1 A certificate of practical completion [19.3.3] for each section, and

20.2.2 A certificate of final completion for each section, indicating if it is for the last section to reach final completion [21.4.2].

21.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

21.1 The defects liability period for the works shall commence on the calendar day following the date of practical completion and end at midnight (00:00) ninety (90) calendar days from the date of practical completion [CD] or when work on the list for final completion has been satisfactorily completed [21.4.1], whichever is the later.

21.2 Where defects become apparent during the defects liability period the principal agent may instruct the contractor to progressively attend to such items, whilst at all times minimising inconvenience to the occupants.

21.3 The contractor shall:

21.3.1 Inspect forthwith rectify all items on the list for completion at least ten (10) working days before the expiry of the defects liability period [19.3.4].

21.3.2 Give notice to the principal agent to inspect the works within five (5) working days of receipt of such notice.

21.4 Where items on the list for completion have not been attended to by the principal agent shall notify the contractor of such outstanding items. The process [21.3] shall be repeated until all items on the list for completion have been attended to.

21.5 The contractor shall notify the principal agent when the items on the list for completion have been attended to. The principal agent shall inspect the works within five (5) working days of receipt of such notice.

21.6 On the expiry of the ninety (90) calendar days defects liability period [21.1] or on notice from the contractor that all items on the list for completion have been completed, whichever is the later, the principal agent shall inspect the works and within ten (10) working days either:

21.6.1 Issue a list for final completion detailing all outstanding work or defects that must be attended to or rectified to achieve final completion.

Or ...

21.6.2 Issue the certificate of final completion to the contractor with a copy to the employer.
21.7 Where the principal agent issues a list for final completion the contractor shall promptly complete all outstanding work and rectify all the defects

21.7.1 The contractor shall notify the principal agent when all outstanding work has been completed and all the defects have been rectified

21.7.2 The principal agent shall, within five (5) working days of receipt of the contractor’s notice(s) [21.7.1] notify the contractor either that the items on the list for final completion have been completed, or issue an updated list for final completion of the items not completed and of any further defects that have become evident since the last inspection.

21.8 Where the principal agent gives notice to the contractor of items on the list for final completion or an updated list for final completion that have not been completed and / or where further defects have become evident since the last inspection, the process [21.7.1-2] shall be repeated until all items on the (updated) list for final completion have been completed. On completion of all items on the (updated) list for final completion the principal agent shall forthwith issue the certificate of final completion to the contractor with a copy to the employer.

21.9 Where the principal agent has not issued the list for final completion or the updated list within five (5) working days after the inspection period, [21.4] the contractor shall give notice to the employer and the principal agent forthwith. Should the principal agent not issue such list within a further five (5) working days of receipt of such notice, final completion shall be deemed to have been achieved on expiry of such notice and the principal agent shall issue the certificate of final completion forthwith.

21.10 Where a subcontractor’s defects liability period extends beyond the contractor’s defects liability period:

21.10.1 The contractor’s obligations and liability concerning the subcontractor’s defects shall end on the date of issue of the certificate of final completion.

21.10.2 The remaining portion of the subcontractor’s defects liability period shall be ceded to the employer on the date of issue of the certificate of final completion.

21.11 Where the contractor, a subcontractor or a supplier is required to give a guarantee, warranty or indemnity, other than a security to the contractor, the rights under such guarantee, warranty or indemnity shall be ceded to the employer on the date of issue of the certificate of final completion. This cession shall not prejudice any other rights the employer may have.

21.12 A certificate of final completion shall be conclusive as to the sufficiency of the works and that the contractor’s obligations [12.2.17] have been fulfilled other than for latent defects.

22.0 LATENT DEFECTS LIABILITY PERIOD

22.1 The latent defects liability period for the works shall commence at the start of the construction period and end five (5) years from the certified date of final completion.

22.2 Where termination of this agreement occurs before the date of final completion, the latent defects liability period shall end.

22.2.1 Five (5) years from the date of termination [29.10] for the completed portion of the works only

Or …

22.2.2 On the date of termination where execution of the works has become impossible due to circumstances beyond the control of either party [29.20], or on the date of termination by the contractor due to default by the employer [29.16].

22.3 The contractor shall make good all latent defects that appear up to the date of expiry of the latent defects liability period [3.2].

23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

23.1 The contractor is entitled to a revision of the date for practical completion by the principal agent without an adjustment of the contract value for a delay to practical completion caused by one or more of the following events:

23.1.1 Adverse weather conditions
23.1.2 Inability to obtain materials and goods where the contractor has taken reasonable steps to avoid or reduce such a delay

23.1.3 Making good physical loss and repairing damage to the works [8.2] where such risk is beyond the reasonable control of the parties

23.1.4 Late supply of a prime cost amount item where the contractor has taken reasonable steps to avoid or reduce such delay

23.1.5 Exercise of statutory power by a body of state or public or local authority that directly affects the execution of the works

23.1.6 Force majeure

23.2 The contractor is entitled to a revision of the date for practical completion by the principal agent with an adjustment of the contract value [29.0], for a delay to practical completion caused by one or more of the following events:

23.2.1 Delayed possession of the site [12.1.6]

23.2.2 Making good physical loss and repairing damage to the works [8.2] where the contractor is not at risk

23.2.3 Contract instructions [17.1-2] not occasioned by the contractor’s default

23.2.4 Opening up and testing of work and materials and goods where such work is in accordance with the contract documents [17.1.5-7]

23.2.5 Late or incorrect issue of construction information [5.5, 6.4; 13.2.3; 17.1.1-2]

23.2.6 Late supply of free issue, materials and goods for which the employer is responsible [12.1.11]

23.2.7 Late appointment of a subcontractor in terms of the agreed programme where the contractor has taken reasonable steps to avoid or reduce such delay [14.4; 15.2]

23.2.8 Late acceptance by the principal agent and/or agents of a design undertaken by a selected subcontractor where the contractor’s obligations have been met [7.3]

23.2.9 An act or omission by a nominated subcontractor [14.0] or a direct contractor [16.0]

23.2.10 Insolvency of a nominated subcontractor [14.7.2]

23.2.11 Suspension or termination by a subcontractor due to default of the employer, the principal agent and/or any agent

23.2.12 Execution of additional work for which the quantity in the bills of quantities is not sufficiently accurate

23.2.13 Suspension of the works [28.0]

23.3 Further circumstances for which the contractor may be entitled to a revision of the date for practical completion and an adjustment of the contract value are delays to practical completion due to any other cause beyond the contractor’s reasonable control that could not have reasonably been anticipated and provided for. The principal agent shall adjust the contract value where such delay is due to the employer and/or agents.

23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for practical completion, the contractor shall:

23.4.1 Take reasonable steps to avoid or reduce such delay

23.4.2 Within twenty (20) working days of becoming aware, or ought reasonably to have become aware of such delay, give notice to the principal agent of the intention to submit a claim for a revision to the date of practical completion, failing which the contractor shall forfeit such claim

23.5 The contractor shall submit a claim for the revision of the date of practical completion to the principal agent within forty (40) working days, or such extended period the principal agent may allow, from when the contractor is able to quantify the delay in terms of the programme.
23.6 Where the contractor requests a revision of the date for practical completion the claim shall in respect of each circumstance separately state:

23.6.1 The relevant clause [23.1-3] on which the contractor relies

23.6.2 The cause and effect of the delay on the current date for practical completion, where appropriate, illustrated by a change to the critical path on the current programme

23.6.3 The extension period claimed in working days and the calculation thereof

23.7 The principal agent shall, within twenty (20) working days of receipt of the claim, grant in full, reduce or refuse the working days claimed, and:

23.7.1 Determine the revised date for practical completion as a result of the working days granted, where applicable

23.7.2 Identify each event and the reference clause for each revision granted or amended

23.7.3 Give reasons where such claim is refused or reduced

23.8 Where the principal agent fails to act within the period [23.7] such claim shall be deemed to be refused. The contractor may give notice of a disagreement [30.1] where the principal agent refuses a claim, alternatively reduces a claim, or fails to act

24.0 PENALTY FOR LATE OR NON-COMPLETION

24.1 Where the contractor fails to bring the works or a section thereof (CD) to practical completion by the date for practical completion (CD), or the revised date for practical completion, the contractor shall be liable to the employer for the penalty (CD)

24.2 Where the employer elects to levy such penalty, on notice thereof to the contractor, the principal agent shall determine the amount due from the later of the date for practical completion (CD), or the revised date for practical completion up to and including the earlier of:

24.2.1 The actual or deemed date of practical completion of the works [23.7.1] or a section thereof

24.2.2 The date of termination [29.0]

24.3 The principal agent shall include penalty amounts [24.2] in regular recovery statements and interim payment certificates from the date on which the employer’s entitlement to penalties commences

PAYMENT

25.0 PAYMENT

25.1 The contractor shall cooperate with and assist the principal agent in the preparation of cash flow statements and payment valuations by providing all required documents and quantified amounts of work duly executed. Where the contractor has not provided such information the principal agent shall make a fair estimate of the work executed

25.2 The principal agent shall regularly by the due date (CD) issue payment certificates to the contractor until and including the issue of the final payment certificate. A payment certificate may be for a nil or negative amount. The principal agent shall provide a copy of each payment certificate to the employer

25.3 Each payment certificate shall separately include:

25.3.1 A fair estimate of the value of work executed

25.3.2 A fair estimate of the value of materials and goods [CD]

25.3.3 Security adjustment [11.1.3]

25.3.4 Contract price adjustments, if applicable [CD]

25.3.5 The gross amount certified
25.3.6 The value previously certified

25.3.7 Amounts due to either party in the recovery statement [27.1], excluding interest and other non-taxable amounts

25.3.8 Tax

25.3.9 Interest amounts included in the recovery statement

25.3.10 Other non-taxable amounts

25.3.11 The net amount certified due to the contractor or the employer

25.4 The principal agent shall concurrently with each payment certificate issue:

25.4.1 To the employer and the contractor a recovery statement showing the amounts due to either party in the current payment certificate

25.4.2 To the contractor a statement showing the amount certified for each subcontractor

25.4.3 To each subcontractor a n/s subcontract payment notification showing the amount included in the payment certificate and its date of issue

25.4.4 The determination of default interest at six percentage points (6%) per annum above the ruling rate of interest where payment has not been received within the stipulated period [25.7 or 25.8], as the case may be, compounded monthly from the due date for payment until the date of payment

25.4.5 The determination of compensatory interest at the ruling rate of interest on amounts certified after thirty-one calendar days of the date of practical completion, compounded monthly until the date of payment [25.7]

25.5 An interim payment certificate shall not be evidence that the works and materials and goods are in terms of the contract documents

25.6 The principal agent shall certify one hundred per cent (100%) of the amount of the final account including adjustments [26.0; 27.0] in the final payment certificate

25.7 The employer shall pay the contractor the amount certified in an issued payment certificate within fourteen (14) calendar days of the date for issue of the payment certificate [CD] including default and/or compensatory interest

25.8 The contractor shall pay the employer the amount certified in an issued payment certificate within twenty one (21) calendar days of the date of issue of the payment certificate [CD] including default interest

25.9 Materials and goods supplied and certified shall become the property of the employer on payment thereof

25.10 Where a JBCC® Guarantee for Construction (fixed) and payment reduction [11.1.3] has been chosen the value of the works [26.0] and materials and goods [25.3.2] that exceeds the contract sum and any contract price adjustments [CD] shall be certified in full. The value certified that does not exceed the contract sum shall be subject to the following percentage adjustments:

25.10.1 Ninety-five per cent (95%) of such value in interim payment certificates issued up to the date of practical completion

25.10.2 Ninety-seven and one half per cent (97.5%) of such value in interim payment certificates issued up to but excluding the final payment certificate

25.10.3 One hundred per cent (100%) of such value in the final payment certificate [26.10]

25.11 The contractor shall pay all subcontractors within seven (7) calendar days of the due date for payment by the employer [CD] and on request provide proof thereof to the principal agent within seven (7) calendar days of a request to do so

25.12 Where the employer has made a partial or no payment of the amount due in an issued payment certificate by the due date or where the principal agent fails to issue a payment certificate, the contractor may give five (5) working days notice to comply, failing which the contractor may:

25.12.1 Suspend the works [28.0]
25.12.2 Exercise the lien, where this has not been waived

25.12.3 Call up the JBCC® Guarantee for Payment [11.4]

25.13 The principal agent shall issue the final payment certificate to the employer and the contractor within seven (7) calendar days of acceptance of the final account by the contractor, but not before the issue of the certificate of final completion, other than on termination [29.0] [26.11]

25.14 Where the contractor disputes the correctness of the final account within the period allowed [26.12], the principal agent shall issue a(n) interim payment certificate(s) to the employer and the contractor by the due date [CD] for the undisputed amount(s)

25.15 For the purposes of provisional sentence in relation to a payment certificate only, the parties consent to the jurisdiction of any court of law of the country [CD]

26.0 ADJUSTMENT OF THE CONTRACT VALUE AND FINAL ACCOUNT

26.1 The principal agent shall determine the value of adjustments to the contract value in cooperation with the contractor in the preparation of the final account. Where such adjustments require measurement on site, the contractor shall have the right to be present

26.2 Adjustments to the contract value resulting from a contract instruction for additional work [17.1.2] shall be determined as follows:

26.2.1 Work of a similar character executed under similar conditions shall be priced at the rates in the priced document

26.2.2 Work not of a similar character shall be priced at rates based on those in the priced document and adjusted to suit the changed circumstances

26.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary elements for executing the work plus an allowance of ten per cent (10%) mark-up

26.2.4 Work omitted shall be valued at the rates in the priced document, but where the omission of such work alters the circumstances in which the remaining work is carried out, the value of the remaining work shall be determined by the method [26.2.2]

26.3 Where work is identified as provisional in the priced document the principal agent shall omit such value from the contract value and add the value of work as executed to the contract value

26.4 Where the contractor has made payment for items not included in the priced document, by virtue of a contract instruction, or otherwise with the approval of the principal agent, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the contract value limited to:

26.4.1 Charges by authorities [2.1]

26.4.2 The cost of opening up and testing [17.1.6], where the work is according to the contract documents

26.4.3 The cost of insurance [10.0], where applicable [CD]

26.5 The contractor shall give notice to the principal agent within twenty (20) working days of becoming aware, or ought reasonably to have become aware of expense and/or loss for which provision was not required in the contract sum failing which such claim shall be forfeited

26.6 Following notice [26.5], the contractor shall submit a detailed and substantiated claim for the adjustment of the contract value to the principal agent within forty (40) working days, or such additional period as the principal agent may allow

26.7 The principal agent shall make a fair assessment of the claim [26.6] and adjust the contract value within twenty (20) working days of receipt of such details

26.8 Where the principal agent fails to act within such period [26.7] the claim shall be deemed to be refused. The contractor may give notice of a disagreement [30.1] where no assessment is received

26.9 The principal agent shall:

26.9.1 Omit prime cost amounts and budgetary allowances [17.1.12] from the contract sum and determine the actual value of such work to be added to the contract value

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26.9.2 Omit **provisional sums** [17.1.12] from the **contract sum** and determine the actual value of such **subcontractors’ work** to be added to the **contract value**

26.9.3 Prorate the **contractor’s allowances** for profit and attendance on **provisional sums** and **prime cost amounts** excluding any allowance for contract price adjustments

26.9.4 Adjust the **preliminaries** amounts in accordance with the method selected [CD]

26.9.5 Adjust the **contract value** according to the contract price adjustment method, if applicable [CD]

26.9.6 Rectify discrepancies, errors in description or quantity, or omission of items in the **contract documents** other than in this **agreement** [17.1.1]

26.10 The **principal agent** shall prepare and issue the **final account** to the **contractor** within ninety (90) **calendar days** of the date of **practical completion**

26.11 The **contractor** shall accept the **final account** within forty five (45) **calendar days** of receipt thereof failing which the **final account** shall be issued

26.12 Should the **contractor** give **notice** objecting to the correctness of the **final account** within the period [26.11] and such objection not be resolved within ten (10) **working days**, or such an extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a **disagreement**

### 27.0 RECOVERY OF EXPENSE AND/OR LOSS

27.1 The **principal agent** shall issue a **recovery statement** with each **payment certificate** to the **parties** with explanatory documentation to support the calculation of amounts due to:

The **employer**:

27.1.1 **Penalties** [24.2]

27.1.2 Default interest [25.4.4]

27.1.3 Expense and/or loss [27.2]

The **contractor**:

27.1.4 Compensatory interest [25.4.5]

27.1.5 Default interest [25.4.4]

27.1.6 Damages

27.1.7 Advance payments [12.1.9]

27.1.8 Termination of a **nominated n/s subcontract agreement** [14.7.2]

27.2 The **employer** may recover expense and/or loss incurred or to be incurred resulting from:

27.2.1 **Paying charges** [2.1]

27.2.2 Effecting insurance due to the **contractor’s default** [10.0]

27.2.3 Work executed by others due to the **contractor’s default** [17.3]

27.2.4 Recoupment of advance payments [11.2]

27.2.5 The **contractor** not paying the amount due to the **employer** [25.3.7]

27.2.6 Termination of this **agreement** [29.0]

27.2.7 Amounts paid directly to **subcontractors** on default by the **contractor** [14.5; 15.5]

27.2.8 Termination of a nominated **n/s subcontract agreement** [14.7.3]
27.2.9 Default by the contractor where not less than five (5) working days notice detailing such default has been given before the issue of the next recovery statement to allow the contractor the opportunity to remedy such default.

27.2.10 Adjustment of the n/s subcontract preliminaries due to the subcontractor as a result of a default by the contractor.

27.3 Where an amount is due to either party and has not been paid, the other party may recover the amount from any of the following:

27.3.1 Subsequent payment certificates [25.0]

27.3.2 A demand in terms of the security [11.0]

27.3.3 The defaulting party as a debt.

27.4 Where either party has been liquidated, or this agreement terminated, the other party may exercise rights in terms of the security [11.0]

**SUSPENSION AND TERMINATION**

**28.0 SUSPENSION BY THE CONTRACTOR**

28.1 The contractor may give five (5) working days notice to the employer and the principal agent of the intention to suspend the works where the employer or the principal agent has failed to:

28.1.1 Provide and/or maintain a JBCC® Guarantee for Payment, where specified [11.4]

28.1.2 Issue a payment certificate by the due date [25.2] [CD]

28.1.3 Make payment in full of an amount certified in an interim payment certificate by the due date [25.7] [CD]

28.1.4 Effect insurances [10.1.1-4], where applicable [CD]

28.1.5 Appoint another principal agent or other agent, where applicable [6.5]

28.2 Where the employer has not remedied a defect in terms of a notice [28.1] the contractor may suspend execution of the works until such default has been remedied without prejudice to any rights the contractor may have.

28.3 The contractor shall instruct each subcontractor to suspend the n/s subcontract works forthwith where the works is suspended by the contractor.

28.4 Where the works has been suspended [28.2] the principal agent shall revise the date for practical completion on resumption of the works [23.2.13]

**29.0 TERMINATION**

**Termination by the employer**

29.1 The employer may give notice of intention to terminate this agreement where the contractor has failed to:

29.1.1 Provide a JBCC® Guarantee for Construction [CD] within fifteen (15) working days [11.1; 12.2.3] of the date of acceptance of the contractor's offer

29.1.2 Proceed with the works [12.2.17] within the period stated [CD]

29.1.3 Comply timeously with a contract instruction [17.0]

29.2 Where the employer contemplates terminating this agreement [29.1], the principal agent shall give notice to the contractor of a specified default [29.1.1-3], to be remedied within ten (10) working days of the date of receipt of such notice.
29.3 Where the contractor has not remedied a specified default within such period [29.2] the employer may give notice to the contractor of termination of this agreement forthwith.

29.4 The employer may employ others to safeguard the works, complete the outstanding work and rectify defects in that portion of the works executed by the contractor [27.2.3]. The contractor shall be liable to the employer for such costs that shall be included in the final account [28.10].

29.5 The employer may use materials and goods and temporary structures on the site for which payment shall be included in the final account.

29.6 Should the contractor default on removing temporary structures or construction equipment from the site the employer, without being responsible for any loss or damage, may have such items removed or sold. Resulting costs and/or income shall be included in the final account.

29.7 The employer, on notice to the contractor, may recover damages from the contractor from the date of termination including, but not limited to, additional costs incurred in the completion of the remaining work [25.3.7, 27.1].

29.8 The employer may apply the penalty [24.1] up to the date of termination where the initial or revised date for practical completion has passed.

29.9 The employer has the right of recovery against the contractor, where applicable, [CD] from the:

- JBCC® Guarantee for Construction (variable) - until the final payment has been made; or
- JBCC® Guarantee for Construction (fixed) - until the date of practical completion or from the payment reduction until the final payment is made.
- JBCC® Guarantee for Advance Payment - until the outstanding balance has been repaid to the employer.

Thereafter the original security form(s) shall be returned to the contractor within ten (10) working days.

29.10 The latent defects liability period for the completed portion of the works, shall end [22.2.1] five (5) years from the date of termination.

29.11 Where this agreement is terminated, the contractor shall forthwith give notice of termination of the n/s subcontract agreement to each subcontractor.

29.12 Termination of the works shall not prejudice any rights the employer may have.

29.13 The right to terminate may not be exercised where the employer is in material breach of this agreement.

Termination by the contractor

29.14 The contractor may give notice of intention to terminate this agreement where the employer has failed to:

29.14.1 Provide a JBCC® Guarantee for Payment [11.4], within fifteen (15) working days of acceptance of the contractor’s offer, where applicable [CD]

29.14.2 Give possession of the site to the contractor [12.1.6]

29.14.3 Allow the principal agent and/or agents to exercise fair judgement as contemplated in this agreement [6.6]

29.14.4 Effect insurances [10.1.1-4], where applicable [CD]

29.14.5 Pay the amount certified [25.7] by the due date [CD]

29.14.6 Appoint another principal agent, and/or agents, where applicable [6.5]

29.14.7 Or where the principal agent has failed to issue a payment certificate to the contractor by the due date [CD]

29.15 Where the contractor contemplates terminating this agreement [29.14], the contractor shall give notice to the employer and/or the principal agent of a specified default [29.14.1-7], to be remedied within ten (10) working days of the date of receipt of such notice.

29.16 Where the employer has not remedied a specified default within such period [29.15] the contractor may give notice to the employer and the principal agent of the termination of this agreement forthwith.
29.17 Where this agreement is terminated:

29.17.1 The contractor shall forthwith give notice of termination of the n/s subcontract agreement to each subcontractor

29.17.2 The contractor shall remove temporary structures, construction equipment and, on notice, surplus materials and goods from the site within ten (10) working days, or such period agreed by the principal agent

29.17.3 The latent defects liability period for the completed portion of the works shall end [22.2.2]

29.17.4 The contractor may be entitled to damages

29.17.5 The JBCC® Guarantee for Construction [11.1.1], where applicable [CD], shall expire on the date of termination; the JBCC® Guarantee for Advance Payment [11.1.4], where applicable [CD], shall expire on repayment of amounts due to the employer. The original security form(s) shall be returned to the contractor within ten (10) working days

29.17.6 The JBCC® Guarantee for Payment [11.4.1] where applicable [CD], shall expire on payment of the final payment certificate or on payment in full of the guaranteed sum, or on the security expiry date, whichever is the earlier. The original security form shall be returned to the employer within ten (10) working days of receipt of the final payment

29.18 Termination of the works shall not prejudice any rights the contractor may have

29.19 The right to terminate may not be exercised where the contractor is in material breach of this agreement

Termination by either party

29.20 Either party may terminate this agreement where:

29.20.1 The works is for alterations and/or additions to (an) existing building(s), or a new building, which has been substantially destroyed regardless of the cause other than by the party seeking termination

29.20.2 Progress on the works has ceased for a continuous period of ninety (90) calendar days, or an intermittent period totalling one hundred and twenty (120) calendar days as a result of a force majeure event or the exercise of statutory power by a body of state or public or local authority that directly affects the execution of the works

29.21 The party contemplating termination of this agreement shall give ten (10) working days notice to the other party

29.22 Neither party shall be liable to the other party for expense and/or loss resulting from the termination

29.23 The latent defects liability period for the works shall end on the date of termination [22.2.2]

29.24 The JBCC® Guarantee for Payment [11.4.1], where applicable [CD], shall expire on payment of the final payment certificate or on payment in full of the guaranteed sum, or on the security expiry date, whichever is the earlier. The original security form shall be returned to the employer within ten (10) working days of receipt of the final payment

29.25 The JBCC® Guarantee for Construction [11.1.1], where applicable [CD], shall expire on the date of termination. The original security form shall be returned to the contractor within ten (10) working days [22.9]

Termination procedure by the employer, the contractor, or by the parties

On termination of this agreement:

29.26 The contractor shall:

29.26.1 Cease work and ensure that the works is safe in terms of the law

29.26.2 Remain responsible for the works [8.1] until possession is relinquished to the employer

29.27 Termination shall take effect after completion of the procedure [29.26] and such date recorded by the principal agent
The employer shall arrange appropriate insurance cover to suit the stage of completion of the works.

The principal agent, in consultation with the contractor where possible, shall within twenty (20) working days of the date of termination compile and issue to the parties a status report of the works including marked up drawings and photographs recording completed and incomplete work on the date of termination of the works.

The principal agent shall continue to certify the value of the work executed and materials and goods for payment by the employer, or the contractor, as the case may be, until the issue of the final payment certificate [25.6].

The principal agent shall commence and complete the final account [26.10] within ninety (90) calendar days of the date of termination including the cost of materials and goods and those ordered before termination that the contractor is bound to accept and make payment.

This clause [29.0] shall, to the extent necessary to fulfil its purpose, exist independently of this agreement [3.2].

**DISPUTE RESOLUTION**

**30.0 DISPUTE RESOLUTION**

**Settlement by the parties**

Should any disagreement arise between the employer (or the principal agent or an agent) and the contractor arising out of or concerning the action or inaction of the employer (or principal agent or an agent) or the contractor, or any other matter concerning this agreement (including the validity thereof), either party may give notice of a disagreement to the other. The parties shall attempt to resolve such disagreement between them and record such resolution in writing signed by them.

Where the disagreement is not resolved within ten (10) working days of receipt of the notice of disagreement, the disagreement shall be deemed to be a dispute.

The dispute shall be referred to adjudication within ten (10) working days of the expiry of the period [30.2] by means of a notice of adjudication by the party (the referring party) which gave the notice of disagreement.

The notice of adjudication shall clearly define the scope of the dispute and the relief sought by adjudication.

Failure to comply with the procedure described [30.3-4] shall cause the dispute to be resolved by arbitration and not by adjudication.

**Adjudication**

Where a dispute is referred to adjudication:

- The adjudicator shall be appointed in accordance with JBCC® Rules for Adjudication current at the time when the dispute was declared and the adjudication shall be conducted in terms of such rules.
- The adjudicator shall not be eligible for subsequent appointment as the arbitrator.
- A determination given by the adjudicator shall be immediately binding upon, and implemented by the parties.
- Where the adjudicator has given a determination, either party may give notice of dissatisfaction to the other party and to the adjudicator within ten (10) working days of receipt of the determination, or an extended time period provided in the JBCC® Rules for Adjudication, wherein such dispute is referred to arbitration.
- Where the adjudicator has not given a determination within the time period allowed or extended time period provided in the JBCC® Rules for Adjudication, either party may give notice to the other party and to the adjudicator that if such determination is not received within ten (10) working days of receipt of this notice his appointment is thereupon automatically terminated and such dispute is then referred to further adjudication or arbitration, at the option of the claimant.
Arbitration

30.7 Where the dispute is referred to arbitration:

30.7.1 The arbitration shall not be construed as a review or appeal from any adjudicator’s determination and that any such determination by the adjudicator shall remain in force and continue to be implemented until overturned by an arbitration award

30.7.2 The resolution of the dispute shall commence anew

30.7.3 The referring party in the adjudication shall be the claimant in the arbitration; and

30.7.4 The arbitrator shall be appointed by agreement between the parties [CD], within fifteen (15) working days of notice by either party inviting the other to do so - failing which, on application by either party:

(a) By the body stated in the [CD] failing which:

(b) By the Chairman for the time being of the Association of Arbitrators (Southern Africa)

30.7.5 The applicable rules shall be by agreement between the parties and the arbitrator, failing which, shall be determined by the arbitrator

30.7.6 The arbitrator shall have the power to finally determine the dispute including the power to make, open up and revise any certification, opinion, decision, determination, requisition, or notice relating to the dispute as if no such certificate, opinion, decision, determination, requisition, or notice had been issued or given

Mediation

30.8 Notwithstanding the provisions relating to adjudication and arbitration [30.3-7], the parties may, by agreement and at any time, refer a dispute to mediation, in which event:

30.8.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until notice by either party that they be resumed

30.8.2 The appointment of a mediator, the procedure, and the status of the outcome shall be agreed between the parties

General

30.9 The parties shall continue to perform their obligations in terms of this agreement, notwithstanding that a disagreement or a dispute exists between them

30.10 This clause [30.0] shall, to the extent necessary to fulfil its purpose, exist independently of this agreement [3.2]
**AGREEMENT**

This **agreement**, the completed **contract data** and the listed documents [CD] comprise the entire contract between the **parties**. Any provision in this **agreement** that may confer a right or benefit on a **subcontractor** shall be binding on the **parties** and be capable of acceptance by such **subcontractor** at any time. No representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, deleting or terminating this **agreement** including this clause shall be effective unless reduced to writing and signed by the **parties**.

The contracting **parties**

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<th>The <strong>parties</strong></th>
<th>Employer</th>
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