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**PRINCIPAL BUILDING AGREEMENT**

<b>Project</b>	
<b>Employer</b>	
<b>Contractor</b>	
<b>Contract Date</b>	<b>File Code</b>

prepared by the JOINT BUILDING CONTRACTS  
COMMITTEE Inc

RECOMMENDED BY THE JBCC  
CONSTITUENTS  
Association of Construction Project  
Managers  
Association of South African Quantity  
Surveyors  
Master Builders South  
Africa  
South African Association of Consulting Engineers  
South African Institute of Architects  
South African Property Owners Association  
Specialist Engineering Contractors Committee

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# JBCC SERIES 2000

## Principal Building Agreement - Edition 5.0 R1

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### **Preface**

*JBCC documents are compiled in the interests of standardisation and portray the consensus view of the Joint Building Contracts Committee of good practice and an equitable distribution of contractual risk. The documentation sets out a clear, balanced and enforceable set of procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. It should be noted that each of the documents has been formulated for use specifically as part of the Series 2000 and is most unlikely to be suitable for use with other forms of contract*

### **The Agreement Structure**

The JBCC document suite has been structured for use by both the Private and State sectors. However it has been found that the direct inclusion of State requirements as was the case in previous editions produced difficulties in accommodating the necessary differences in a single document. Therefore when the employer is a State institution the document will require an Addendum to be compiled of all the substitutions that are required to the standard clauses as published

The Agreement, in catering for both bills of quantities and lump sum contracts, brings about a strong consistency in the contractual language used and the administrative procedures required. The agreement clauses are divided into sections that correspond as closely as possible to the project execution sequence. The previously separately published Preliminaries has been incorporated into this Agreement with the variables dealt with therein being replaced by Contract Data Addendums for both Employer and Contractor requirements

The N/S Subcontract Agreement covers both nominated and selected subcontractors and mimics the Principal Building Agreement with all common clauses retaining the same numbering. A few 'blank' clause numbers occur to maintain the common numbering system. 'No clause' is used where this occurs. A comprehensive set of legally compatible certificates and forms for use in administering the Agreement and other primary documents are available

### **Warning!**

*This Edition 5.0 results in most support documents having been revised to remain compatible. Persons entering into or preparing contracts using the JBCC Series 2000 are warned of the dangers inherent in modifying any part of it. Where it is considered essential to make changes, users are advised to ensure that such changes are drafted by qualified legal persons with extensive knowledge of the JBCC documentation and the construction industry. Experience has shown that changes drafted by others, including members of the building professions, often have results very different from those intended which may be prejudicial to either or both parties*

### **JBCC Documentation Services**

Series 2000 documents are obtainable through most regional offices of JBCC constituents as listed on the cover of this document. The JBCC supplies documents exclusively to constituents and does not sell direct to users. JBCC can be contacted [atjbcc@mweb.co.za](mailto:atjbcc@mweb.co.za) in relation to these services

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# PRINCIPAL BUILDING AGREEMENT

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# DEFINITIONS

## 1.0 DEFINITIONS AND INTERPRETATION

- 1.1 The definitions used in this document and the interpretation thereof are listed below. The word or phrase of a definition is highlighted in the text and shall bear the meaning assigned to it in this 1.1. Where such word or phrase is not highlighted it shall bear the meaning consistent with the context of its use. The listed defined word or phrase does not qualify as a definition where information required to be stated in the **contract data** has not been provided

**ADJUDICATOR:** The person appointed by the **parties** to decide any dispute arising out of this **agreement**

**ADVANCE PAYMENT GUARANTEE:** A guarantee at call obtained by the **contractor** from an institution approved by the **employer** on the **JBCC** Advance Payment Guarantee form in the amount as stated in the **contract data**

**AGENT:** A party named in the **contract data** and/or appointed by the **employer** to deal with specific aspects of the **works**

**AGREEMENT:** This **JBCC** Principal Building Agreement and other **contract documents** that together form the contract between the **parties**

**ARBITRATOR:** The person appointed by the **parties** to decide any dispute arising out of this **agreement**

**BILLS OF QUANTITIES:** The document drawn up in accordance with the measuring system as stated in the **contract data**. The **contractor** shall have priced the document to reflect the **contract sum**

**BUDGETARY ALLOWANCE:** A sum of money 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 **working** and non-**working days**

**CERTIFICATE OF FINAL COMPLETION:** A certificate issued by the **principal agent** to the **contractor** stating the date on which **final completion** of the **works** was achieved

**CERTIFICATE OF PRACTICAL COMPLETION:** A certificate issued by the **principal agent** to the **contractor** stating the date on which **practical completion** of the **works** was achieved

**CERTIFICATE OF WORKS COMPLETION:** A certificate issued by the **principal agent** to the **contractor** stating the date on which **works completion** of the **works** was achieved

**CONSTRUCTION GUARANTEE:** A guarantee at call obtained by the **contractor** from an institution approved by the **employer** in terms of the **JBCC** Construction Guarantee form as elected in the **contract data**

**CONSTRUCTION PERIOD:** The period commencing on the intended date as stated in the **contract data** that possession of the **site** shall be given to the **contractor** and ending on the date of **practical completion**

**CONTRACTOR:** The **party** contracting with the **employer** for the execution of the **works** as named in the **contract data**

**CONTRACT DATA:** The defined listed variables applicable to this **agreement**

**CONTRACT DOCUMENTS:** This document, **contract drawings**, **priced document** and such other documents as are identified in the **contract data**

**CONTRACT DRAWINGS:** The drawings stated in the **contract data** upon which the accepted tender or negotiated amount was based

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

**CONTRACT SUM:** The tender or negotiated amount, inclusive of **tax**, as accepted by the **employer** and stated in the **contract data** that is not subject to adjustment

**CONTRACT VALUE:** A monetary value that initially is equal to the **contract sum** that is subject to adjustment

**CPAP:** The **JBCC** Contract Price Adjustment Provisions used for the adjustment of the **contract value** as stated in the **contract data**

**DEFECT:** Any aspect of materials and workmanship forming part of the **works** that, in the opinion of the **principal agent**, is due to the failure of the **contractor** to comply with his obligations in terms of the **agreement**

**DIRECT CONTRACTOR:** A party appointed directly by the **employer** to do specialist work on **site** prior to **practical completion**

**EMPLOYER:** The **party** contracting with the **contractor** for the execution of the **works** as named in the **contract data**

**FINAL ACCOUNT:** The document, prepared by the **principal agent**, which reflects the **contract value** of the **works** at **final completion** or termination

**FINAL COMPLETION:** The stage of completion where the **works** is free of all **defects** as certified by the **principal agent**

**INTEREST:** The bank rate that is applicable from time to time to registered banks when borrowing money from the Central or Reserve Bank of the country named in the **contract data**. 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 Incorporated

**LATENT DEFECT:** A **defect** that a reasonable inspection of the **works** by the **principal agent** would not have revealed before the issue of the **defects** list

**LAW:** The law of the country stated in the **contract data**

**MATERIALS AND GOODS:** Materials and goods delivered to the **contractor** or his subcontractors for inclusion in the **works** whether stored on or off the **site** or in transit but not yet part of the **works**

**MEDIATOR:** The party appointed by the **parties** to mediate any dispute arising out of this **agreement**

**NOMINATED SUBCONTRACTOR:** The party executing work provided for in a nominated subcontract amount included in the **contract sum** or, in respect of additional specialist work, a subcontractor appointed as a **nominated subcontractor** in terms of a **contract instruction**

**N/S AGREEMENT:** The **JBCC** Nominated / Selected Subcontract Agreement and the n/s contract documents that together form the contract between the **contractor** and the **nominated subcontractor** or **selected subcontractor**

**N/S SUBCONTRACTOR:** A **nominated subcontractor** or a **selected subcontractor**

**PARTY:** The **employer** and/or **contractor**

**PAYMENT CERTIFICATE:** A document issued monthly by the **principal agent** certifying the amount due and payable by the **employer** to the **contractor** or vice versa in terms of the **JBCC** Payment Certificate form

**PAYMENT GUARANTEE:** A guarantee in the amount as stated in the **contract data** obtained by the **employer** from an institution approved by the **contractor** in terms of the **JBCC** Payment Guarantee form

**PENALTY:** A monetary value determined at a rate per calendar day as stated in the contract data

**PRACTICAL COMPLETION:** The stage of completion where the **works** or a **section** thereof, as certified by the **principal agent**, is substantially complete and can effectively be used for the purposes intended

**PRICED DOCUMENT:** **Bills of quantities**, schedule of rates or other documents as are appropriate to this **agreement**

**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 party named in the **contract data** and/or appointed by the **employer** with full authority and obligation to act in terms of the **agreement**

**PROGRAMME:** A diagrammatic representation of the planned execution of units of work or events of the **works** indicating the dates for commencement and completion thereof

**RECOVERY STATEMENT:** The statement prepared monthly by the **principal agent** in terms of the **JBCC** Recovery Statement form

**SECTION:** A defined portion of the **works** for which **practical completion** is required on the date stated in the **contract data** that is earlier than that required for the **works** as a whole

**SECURITY:** The form of guarantee provided by the **employer** or **contractor**, as stated in the **contract data**, from which a **party** may recover expense and loss in the event of default

**SELECTED SUBCONTRACTOR:** A party executing work provided for in a selected subcontract amount included in the **contract sum** or, in respect of additional specialist work, a subcontractor appointed as a **selected subcontractor** in terms of a **contract instruction**

**SITE:** The land or place on, over, under, in or through which the **works** is to be executed as defined in the **contract data**

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

**WORKING DAYS:** Twenty-four (24) hour days commencing at midnight (00:00) which excludes Saturdays and Sundays, statutory holidays and any recognised annual building holiday period

**WORKS:** The works described in general terms in the **contract data**, detailed in the **contract documents**, ordered in **contract instructions** and including the **contractor's** and **n/s subcontractors'** temporary works. **Works** includes **materials and goods** and those supplied free or otherwise by the **employer** to the **contractor** and exclude work or installations to be executed by **direct contractors**

**WORKS COMPLETION:** The stage of completion where the work on the **works completion** list has been completed as certified by the **principal agent**

- 1.2 The **parties** each choose their physical address as stated in the **contract data** where notices or processes arising out of or concerning this **agreement** may validly be delivered to and served on them. Either **party** may, at any time, by notice to the other change its physical address provided that it is in the same country as that initially stated in the **contract data**
- 1.3 Documents and legislation referred to in this **agreement** shall mean the current edition thereof with all amendments thereto at the date of submission of the **contractors** tender unless otherwise stated
- 1.4 In the interpretation of second level subclauses (e.g. 1.6.4), in this document:
  - 1.4.1 Where one of several subclause options is to be selected, the word 'or' links such subclauses
  - 1.4.2 Where consecutive subclauses apply these are linked by the word 'and'
  - 1.4.3 All other such subclauses are interpreted on a 'stand alone' basis - any or all apply
- 1.5 In this document, unless inconsistent with the context:
  - 1.5.1 The word "deemed" shall be conclusive that something is fact, regardless of the objective Truth

- 1.5.2 The words "accept, appoint, approve, certify, decide, grant, inform, instruct, issue, notice, object, record, reduce, refuse, request, state" and their derivatives indicate an act carried out in writing
- 1.5.3 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes corporate bodies
- 1.5.4 Clause numbers written as [54.1.5] means "in terms of to such referenced clauses where [54.1.5-8] means the subclauses 5, 6, 7 and 8 inclusively and [54.1.5, 8] means the subclauses 5 and 8 only
- 1.5.5 The headings of clauses are for reference purposes only and shall not be taken as construing the context thereof
- 1.6 Notice shall be presumed to have been duly given when:
- 1.6.1 Hand delivered - on the **working day** of delivery
- 1.6.2 Sent by registered post - five (5) **working days** after posting
- 1.6.3 Sent by telefax - one (1) **working day** after transmission
- 1.6.4 Sent by e-mail - one (1) **working day** after transmission
- 1.7 For the purposes of sentence in relation to a **payment certificate** only, the **parties** consent to the jurisdiction of any court of the country as stated in the **contract data** although the amount of the claim by either of the **parties** against the other may exceed the jurisdiction of such court
- 1.8 This **agreement** is the entire contract between the **parties** regarding the matters addressed in this **agreement**. 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**

## **OBJECTIVE AND PREPARATION**

### **2.0 OFFER, ACCEPTANCE AND PERFORMANCE OBLIGATIONS**

- 2.1 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 thereof by the **employer**
- 2.2 In pursuance of the objective the **parties** undertake to carry out their reciprocal obligations

### **3.0 DOCUMENTS**

- 3.1 The employer shall provide a **payment guarantee** where required by the **contractor** in the accepted tender. The guarantee shall be according to the relevant **JBCC** Payment Guarantee form in the amount as stated in the **contract data** and shall be provided within twenty-one (21) **calendar days** of acceptance of the tender. Such **security** shall be for the due fulfillment of the **employer's** liability only and the **contractor** hereby waives all common law rights to recover from or set-off against such **security**
- 3.2 The **contractor** shall provide
- 32.1 A **construction guarantee** [14.3-4] where so elected in the **contract data**
- 32.2 In **advance payment guarantee** where so required in the **contractor's** accepted tender. The guarantee shall be according to the **JBCC** Advance Payment Guarantee form in the amount as stated in the **contract data**
- 3.3.1 Where the **employer** requires the **contractor** to waive his lien or right of continuing possession of the **works** as stated in the **contract data**, the **contractor** shall do so within seven (7) **calendar days** of

having received a **payment guarantee** from the **employer** [3.1]. The waiver shall be according to the **JBCC Waiver of Contractor's Lien** form or such other form as stated in the **contract data**

- 3.4 No clause
- 3.5 The **principal agent** shall complete the **contract data** and arrange the formal signing of this **agreement** once the **contract documents** have been provided and affected. Formal signatures are not required to render this **agreement** binding
- 3.6 The **parties** shall sign, in original, the number of sets of **contract documents** required by the **parties**. The **contractor** shall be entitled to receive one (1) set of **contract documents** for this **agreement** and two (2) sets of **contract documents** for each n/s subcontract agreement at no expense to the **contractor**. The original signed set of **contract documents** shall be held by the **principal agent** or such other party as stated in the **contract data**
- 3.7 The **principal agent** shall provide the number of copies of drawings, unpriced **bills of quantities** and documents as stated in the **contract data** at no cost to the contractor. The **contractor** shall keep on **site** a copy of such documents and any other documents required for construction as well as **contract instructions** to which the **employer**, **principal agent** and **agents** shall have access at all times
- 3.8 Information contained in the **contract documents** and other documents flowing from this **agreement** shall be used only for the purposes of this **agreement** and shall not be published or disclosed without the prior written consent of the **employer**
- 3.9 The **priced document** shall not be used as a specification of **materials and goods** or methods unless so selected in the **contract data**
- 3.10 Where the **priced document** is not a **bill of quantities** the **contractor** shall provide a schedule of rates in the **contract data** which meets with the **principal agent's** approval
- 3.11 The **principal agent** shall identify in detail any changes made to the provisions of **JBCC** standard documentation in the **contract data**

#### 4.0 DESIGN RESPONSIBILITY

- 4.1 The **contractor** shall not be responsible for the design of the **works** other than the **contractor's** or his subcontractors' temporary works. The **contractor** shall not be responsible for the coordination of design elements
- 4.2 Any design responsibility undertaken by an n/s **subcontractor** shall not devolve upon the **contractor**. The rights flowing from a warranty regarding such design responsibility are hereby ceded to the **employer**. All contractual or other rights the **contractor** has against such n/s **subcontractor** arising from any design responsibility undertaken are hereby ceded to the **employer** [26.7]
- 4.3 The **contractor** shall be responsible for ensuring the timeous preparation of the design documentation undertaken by a **selected subcontractor** for acceptance by the **principal agent** to avoid delay to the intended date for **practical completion** or any revision thereof [29.0]

#### 5.0 EMPLOYER'S AGENTS

- 5.1 The **employer** warrants that the **principal agent** as stated in the **contract data** has full authority and obligation to act in terms of the **agreement**
- 5.2 The **employer** shall appoint **agents** as stated in the **contract data** and may appoint further **agents** with the **contractor** being informed thereof
- 5.3 The **principal agent** shall be the only party having the authority to bind the **employer**, except where **agents** issue **contract instructions** under delegated authority [5.3.2]. Without detracting from the above, the **principal agent** shall be the only party empowered to:
  - 5.3.1.1 Issue **contract instructions**, except as provided [5.3.2]



- 5.3.2 Delegate to other **agents** authority to issue **contract instructions** and perform such duties as may be required for specific aspects of the **works**, provided that the **contractor** is given notice of such delegation
- 5.3.3 Receive notices on behalf of the **employer**
- 5.4 Should the **principal agent** or any **agent** be unable to act or cease to be an **agent**, the **employer** shall inform the **contractor** of the new **principal agent** or **agent** to be appointed. The **employer** shall not appoint such a **principal agent** or agent against whom the **contractor** makes a reasonable objection in writing within five (5) **working days** of receipt of such notice
- 5.5 Should the **principal agent** or any **agents** have a legal interest or involvement in the project constituting the **works**, other than a professional interest, such shall be stated in the **contract data** or immediately upon the acquisition of such interest or involvement
- 5.6 The **employer** shall not interfere with or prevent the **principal agent** from exercising his independent judgment when performing his obligations in terms of this **agreement**

## 6.0 CONTRACTOR'S SITE REPRESENTATIVE

- 6.1 The **contractor** shall keep a representative competent to administer and control the **works** continuously on the **site** during the execution of the **works**. The **contractor** shall inform the **principal agent** of the name of the representative
- 6.2 A **contract instruction** given to the **contractor's** representative shall be deemed to be given to the **contractor**

## 7.0 COMPLIANCE WITH LAWS AND REGULATIONS

- 7.1 The **parties** shall comply with all **laws**, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the **works**. The **parties** shall give all notices and pay all charges required by such authorities. The **principal agent** shall deal with the amounts thus paid [32.4, 33.2.1]

## 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**. 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**, including clearing away and removing from the **site** all debris resulting there from, which occurs after the date on which possession of the **site** is given and up to the date of **final completion** [26.0] and resulting from:
- 8.2.1 Any cause arising up to the date of **practical completion** [24.0]
- 8.2.2 The carrying out of any operation complying with the **contractor's** obligations after the date of practical completion
- 8.3 The liability of the **contractor** [8.2] shall include:
- 8.3.1 The cost of such making good physical loss and repairing damage
- 8.3.2 The replacement value of **materials and goods** supplied by the **employer** to the **contractor**
- 8.3.3 The additional professional services of the **employer's agents**
- 8.4 The limit of the **contractor's** liability shall not exceed the amount of the contract works insurance as stated in the **contract data**

- 8.5 The **contractor** shall not be liable for the cost of making good physical loss and repairing damage to the **works** where this results from any of the following circumstances:
- 8.5.1 War, whether declared or not, invasion and hostile acts of foreign enemies
  - 8.5.2 Rebellion, insurrection, revolution, terrorism, military or usurped power or civil war
  - 8.5.3 Civil commotion, riot, strike, lockout or disorder by persons other than the **contractor's** personnel and other employees or his subcontractors
  - 8.5.4 Confiscation, nationalisation or requisition by any public or local authority
  - 8.5.5 Sonic shock waves caused by aircraft or other aerial devices and ionizing radiation or contamination except where attributable to the **contractor's** use of such technology
  - 8.5.6 The use or occupation of any part of the **works** by the **employer**, the **employer's** servants or agents and those for whose acts or omissions they are responsible
  - 8.5.7 An act or omission of the **employer**, the **employer's** servants or agents and those for whose acts or omissions they are responsible
  - 8.5.8 An act or omission by a **direct contractor** appointed [22.0]
  - 8.5.9 Design of the **works** where the **contractor** is not responsible [4.0]
  - 8.5.10 A **latent defect** in **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 **materials and goods**
- 8.6 Where the contractor is not liable for the costs [8.5] such making good physical loss and repairing damage shall be measured and valued [32.0] and added to the **contract value**
- 8.7 The **contractor** shall forthwith notify the **principal agent** and insurer of any physical loss and damage to the works that comes to his attention

## 9.0 INDEMNITIES

- 9.1 Subject to the 9.2 provisions the **contractor** indemnifies and holds the **employer** harmless against any loss in respect of all claims, proceedings, damages, costs and expenses arising from:
- 9.1.1 Claims from other parties consequent upon death or bodily injury or illness of any person or physical loss or damage to any property, other than the **works**, arising out of or due to the execution of the works or occupation of the **site** by the contractor
  - 9.1.2 Noncompliance by the **contractor** with any law, regulation or bylaw of any local or other authority arising out of or due to the execution of the **works** or occupation of the site by the **contractor**
  - 9.1.3 Physical loss or damage to any plant, equipment or other property belonging to the **contractor** or his subcontractors
- 9.2 The **employer** indemnifies and holds the **contractor** harmless against loss in respect of all claims, proceedings, damages, costs and expenses arising from:
- 9.2.1 An act or omission of the **employer**, the **employer's** servants or agents and those for whose acts or omissions they are responsible
  - 9.2.2 An act or omission of a direct **contractor** appointed [22.0]
  - 9.2.3 Design of the **works** where the **contractor** is not responsible [4.0]
  - 9.2.4 The occupation of any part of the **works** by the **employer** or his tenants
  - 9.2.5 The right of the **employer** to have the **works** or any part thereof executed at the site

- 9.2.6 Interference with any servitude or other right that is the unavoidable result of the execution of the **works** including the weakening of or interference with the support of land adjacent to the **site** unless resulting from any negligent act or omission by the **contractor** or his subcontractors
- 9.2.7 Physical loss or damage to an existing structure and the contents thereof in respect of which this **agreement** is for alteration or addition to the existing structure
- 9.2.8 Physical loss or damage to the contents of the **works** where **practical completion** has been achieved [24.0]
- 9.2.9 The use or occupation of the **site** by the **works**
- 9.2.10 Advance payments where certified [31.6.5] and duly made by the **contractor** to n/s **subcontractors**
- 9.2.11 A **defect** in materials or goods supplied by the **employer** for incorporation in the **works** including any consequential damage caused by such **defect**

## 10.0 GENERAL INSURANCES

- 10.1 The following general insurances are required to be effected in the joint names of the **parties** in terms of this **agreement**:
- 10.1.1 Contract works insurance which shall include the **contractor's** subcontractors and the full value of **materials and goods** supplied by the **employer** to the contractor
- 10.1.2 Supplementary insurance for the **works** in respect of civil commotion, riot and strike
- 10.1.3 Public liability insurance generally covering accidental injury or death of a person and accidental loss or damage to material property
- 10.2 The insured amounts, deductibles and durations of cover shall be as stated in the **contract data**
- 10.3 Where this **agreement** is cancelled [37.0] and the **contractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of a contract works insurance claim shall vest in the **employer**
- 10.4 Subject to 10.3 the right to any claims paid or payable in terms of the insurances [10.1] shall vest in the **party** entitled to indemnity there under and such **party** shall be liable for the deductible

## 11.0 SPECIAL INSURANCES

- 11.1 The following special insurances may be required to be effected. Such insurances shall be in the joint names of the **parties** in terms of this **agreement**:
- 11.1.1 Temporary lateral support insurance where the **employer** considers that the execution of the **works** could cause the weakening of or interference with the support of land adjacent to the **site** and the consequences thereof
- 11.1.2 Geotechnics insurance where the **employer** considers that the ground conditions of the **site** could be unsuitable to support the **works**
- 11.1.3 Such other specialised insurance as the **employer** deems necessary as stated in the **contract data**

## 12.0 EFFECTING INSURANCES

- 12.1 The **party** responsible as stated in the **contract data** [12.6] shall effect and keep in force:

- 12.1.1 General insurance [10.1] from the date of the handover of the **site** and until the **contractor's** responsibility [8.0] has ended, and
- 12.1.2 Special insurances where required [11.1] until the date of **practical completion**
- 12.2 The **party** responsible [12.6] for effecting such insurances shall make available to the other **party**, before the commencement of the **construction period**, documentary evidence that insurances have been effected. A copy of the insurance policies shall be provided to the other **party** within thirty (30) **calendar days** of the commencement of the **construction period**. Approval by the other **party** shall be deemed unless a reasonable objection is lodged within fourteen (14) **calendar days** of receipt of such policies. Where required, the **party** responsible shall provide evidence of renewal to the other **party** before the expiry of the current period of insurance
- 12.3 Where the **party** responsible [12.1] fails to affect any of the required insurances or to keep them in force, the other **party** may affect such insurances. Where the **employers** affect such insurances, consequent on the **contractor's** default, the **employer** may recover expense and loss resulting there from [33.0]. Where the **contractor** effects or keeps in force such insurances, consequent on the **employer's** default, the cost thereof shall be addressed [32.4]
- 12.4 Before effecting support insurance [11.1.1] the **employer** shall engage an engineer or technologist as an **agent** [5.3.2] to design and inspect the provision of the necessary support. The **principal agent** shall delegate to such engineer or technologist the authority to issue **contract instructions** in relation to the support provisions
- 12.5 Where the **employer** has not ascertained the need for or effected any of the insurances [11.0] the **contractor**, on demonstrating reasonable cause, may give the **employer** five (5) **working days** notice to do so. Where the **employer** fails to act thereon the **contractor** may give three (3) **working days** notice of suspension of the **works**. Where the **employer** fails to act on such notice the **contractor** may give notice of termination [38.1.4]
- 12.6 Where **practical completion** in **sections** is required [28.0] or the **works** is for alterations or renovations to an existing building(s) the effecting of contract works insurance [10.1.1] shall be the responsibility of the **employer**

## 13.0 ASSIGNMENT

- 13.1 Neither **party** shall assign or cede his rights or obligations without the written consent of the other **party**, which consent shall not be withheld without good reason
- 13.2 The **contractor** shall not consent to a **nominated subcontractor** assigning or ceding his rights or obligations in terms of the **JBCC** Nominated Subcontract Agreement without obtaining the prior approval of the **principal agent**

## 14.0 SECURITY

- 14.1 The **contractor** shall have the right to choose the **security** to be provided [14.3-4] as stated in the **contract data**. The choice of **security** shall be included in the **contractor's** tender, failing which a variable **construction guarantee** [14.3] shall be deemed to have been chosen. Such **security** shall be provided to the **employer** within twenty-one (21) **calendar days** of acceptance of the **contractor's** tender
- 14.2 No clause
- 14.3 Where **security** as a variable **construction guarantee** has been chosen the following shall apply:
- 14.3.1 The **contractor** shall provide the **employer** with a variable **construction guarantee** initially equal in value to ten per cent (10%) of the **contract sum**
- 14.3.2 The variable **construction guarantee** shall come into force, be administered and expire in terms of the **JBCC** Construction Guarantee form
- 14.3.3 The **employer** shall return the variable **construction guarantee** to the **contractor** within fourteen (14) **calendar days** of its expiring

- 14.3.4 Where the **employer** has a right of recovery against the **contractor** [33.0], the **employer** may issue a written demand in terms of the variable **construction guarantee**
- 14.4 Where **security** as a fixed **construction guarantee** and payment reduction of the value certified has been chosen the following shall apply:
- 14.4.1 The **contractor** shall provide a fixed **construction guarantee** to the **employer** equal in value to five per cent (5%) of the **contract sum**
- 14.4.2 The fixed **construction guarantee** shall come into force, be administered and expire in terms of the **JBCC Construction Guarantee form**
- 14.4.3 The **employer** shall return the fixed **construction guarantee** to the **contractor** within fourteen (14) **calendar days** of its expiring
- 14.4.4 The payment reduction to the value certified in a **payment certificate** shall be made [31.8, 34.8]
- 14.4.5 Where the **employer** has a right of recovery against the **contractor** [33.0], the **employer** may issue a written demand in terms of the fixed **construction guarantee** or may recover from the payment reduction [33.4] or both
- 14.5 Where **security** as an **advance payment guarantee** is to be provided by the **contractor**:
- 14.5.1 The guaranteed amount shall be equal in value to the cash advance requirement stated in the accepted tender, and
- 14.5.2 Such guarantee shall come into force, be administered and expire in terms of the **JBCC Advance Payment Guarantee form**, and
- 14.5.3 The **employer** shall return such guarantee to the **contractor** within fourteen (14) **calendar days** of its expiring
- 14.6 Payments made by the guarantor to the **employer** in terms of a **construction guarantee** or an **advance payment guarantee** shall not prejudice the rights of the **employer** or **contractor**
- 14.7 Should the **contractor** fail to provide the **security** [14.1] the **employer**, in his sole discretion, may either:
- 14.7.1 Hand over the site to the **contractor** and withhold payment from the **contractor** until the amount withheld is equal to ten per cent (10%) of the **contract sum**. Such amount shall be reduced to two per cent (2%) of the **contract sum** on the achievement of **practical completion** [24.0] and to zero per cent (0%) in the final **payment certificate** [34.8], or
- 14.7.2 Terminate this **agreement** [36.1.1]
- 14.8 A **security** held by the **employer** [14.3-5] shall be for the due fulfillment of the **contractor's** liability only and the **employer** hereby waives all common law rights to recover from or set-off against such **security**

## EXECUTION

### 15.0 PREPARATION FOR AND EXECUTION OF THE WORKS

- 15.1 After acceptance of the tender or negotiated amount the **contractor** shall submit to the **principal agent** within the period stated in the **contract data**:
- 51.1.1 The **priced document** with all items properly priced, extended and cast. Priced items are deemed to include all costs, overheads and profit. The **principal agent** may instruct the **contractor** to adjust prices which are considered to be imbalanced or unreasonable and to eliminate errors or discrepancies. Such adjustments shall be effected to the approval of the **principal agent** and shall not change the **contract sum**, and
- 15.1.2 Such other documents and information identified in the **contract data**

- 15.2 The **employer** shall:
- 15.2.1 Give possession of the **site** to the **contractor** on the date stated in the **contract data**, and
  - 15.2.2 Where required in the **contract data**, provide an advance payment on receipt of an **advance payment guarantee** from the contractor, and
  - 15.2.3 Inform the **contractor** of all cash advances and the quantum of each to be provided to n/s **subcontractors**, and
  - 15.2.4 Make payment to the **contractor** [31.0, 34.0]
- 15.3 On being given possession of the **site** the **contractor** shall commence the **works** within the **working days** period stated in the **contract data** and, subject to 31.15-16, shall proceed continuously, industriously and with due skill and appropriate physical resources to bring the **works** to:
- 15.3.1 No clause
  - 15.3.2 **Practical completion** [24.0], and
  - 15.3.3 **Works completion** [25.0], and
  - 15.3.4 **Final completion** [26.0]
- 15.4 Where completion in **sections** is required in terms of the **contract data** the further provisions of 28.0 shall be applicable
- 15.5 The **contractor** shall provide everything necessary for the proper execution of the **works** and shall carry out and complete the **works** in compliance with the **contract documents**, using materials and workmanship of the quality and standards specified therein, provided that such quality and standards shall be to the reasonable satisfaction of the **principal agent**
- 15.6 The **contractor** shall:
- 15.6.1 Prepare a **programme** of the **works** together with a schedule of outstanding construction information in sufficient detail to enable the **principal agent** to assess the progress of the works and timeously provide the necessary **contract instructions**, and
  - 15.6.2 Coordinate the **n/s subcontractors'** and **direct contractors'** programmes with his own, and
  - 15.6.3 Continuously revise and modify the **programme** and the schedule of outstanding construction information and issue copies timeously to the **principal agent**
- 15.7 The **contractor** shall provide all reasonable assistance to the **principal agent** in the preparation of cash flow projections where required by the **employer**. The projections shall be based on the **contractor's programme** and shall be updated as and when necessary
- 15.8 The **principal agent** and **contractor** shall hold regular meetings related to the progress of the **works** and at such other times as may be necessary. The **principal agent** shall record and distribute the minutes of the meetings. At the request of the **principal agent** or the **contractor** meetings shall be held to deal with technical and n/s **subcontractors'** coordination matters
- 15.9 The **contractor** shall maintain daily records of the number and categories of persons and plant employed on the **works** and shall provide copies thereof to the **principal agent** on request

## 16.0 SITE AND ACCESS

- 16.1 The **contractor** shall have unrestricted access to the **site** on being given possession thereof to fulfill his obligations [15.2.1]. Any restrictions to the **site** area, including servitudes and the like, that the **contractor** may not occupy are defined in the **contract data**. The contractor shall not extend his operations into such defined areas
- 16.2 The **employer**, **principal agent** and **agents** shall have reasonable access to the **works**, workshops and other places where work in terms of this **agreement** is being prepared, executed or stored

- 16.3 The **contractor** and **n/s subcontractors** shall be given reasonable access to the **works** and any section thereof subsequent to **practical completion** to fulfill their obligations [25.0, 26.0]
- 16.4 Where a geotechnical investigation has been undertaken by the **employer** the results thereof shall be provided in the **contract data**
- 16.5 The **contractor** shall be deemed to have inspected the **site** and any existing structures thereon and to be thoroughly acquainted with the conditions under which the **works** is to be executed including the means of access to the **works**, the condition of the roads and generally of all matters which may influence the execution of the **works**
- 16.6 Where the existing premises will be in use and occupied during the execution of the **works** the contractor shall execute the **works** with the least interference with the general routine of the occupants of the premises and minimize any nuisance from dust, noise or other causes. Specific requirements of the **employer** are described in detail in the **contract data**
- 16.7 The **employer** has recorded all known services in the **contract documents** and annotated as to whether such services are to be terminated, diverted or continue in use either temporarily or permanently. Where undocumented services are encountered the **contractor** shall immediately suspend all affected work in the vicinity and request the **principal agent** to issue a **contract instruction** in regard thereto
- 16.8 Trees and shrubs shall not be removed, cut back or disturbed without a **contract instruction** from the **principal agent**. Specific requirements of the **employer** are described in the **contract data**
- 16.9 Any relics, treasure or other articles of potential value found on the **site** shall remain the property of the **employer** and shall be handed over to the **principal agent** who shall be the sole arbiter of what is an article of value

## 17.0 CONTRACT INSTRUCTIONS

- 17.1 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
- 17.1.1 Alteration to design, quality or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the works
- 17.1.2 Rectification of discrepancies, errors in description or omissions in **contract documents** other than this document
- 17.1.3 Removal of any **materials** and goods from the site and the substitution of any other **materials and goods** therefore
- 17.1.4 Removal or re-execution of any work
- 17.1.5 Opening up of work for inspection
- 17.1.6 Provision and testing of samples of **materials and goods**, specimens of finishes and assemblies of elements of the **works**
- 17.1.7 Protection of the **works**
- 17.1.8 Making good physical loss and repairing damage to the **works** [8.0]
- 17.1.9 Removal from the **site** of any party employed on the **works**
- 17.1.10 Removal from the **site** of any persons not engaged on or connected with the **works**
- 17.1.11 The appointment of **n/s subcontractors**, the n/s subcontract amounts and the work to be executed there under
- 17.1.12 Proof of payment to **n/s subcontractors** [20.6 and 21.6]
- 17.1.13 Notices to **nominated subcontractors**
- 17.1.14.1 **Prime cost amounts** and the purchase of **materials and goods** included therein

- 17.1.15 **Budgetary allowances** and work executed by the **contractor** there under
- 17.1.16 Contingency and other monetary provisions included in the **contract sum**
- 17.1.17 Work by a **direct contractor** [22.0]
- 17.1.18 The lists for **practical completion, works completion, final completion** and **defects**
- 17.1.19 Compliance with **laws**, regulations and bylaws [7.0]
- 17.1.20 Access for previous contractors and subcontractors to remedy defective work
- 17.2 The **contractor** shall comply with and duly execute all **contract instructions** subject to 24.6
- 17.3 An oral instruction given by the **principal agent** or any other **agent** shall be of no force or effect. Neither the **contractor** nor the **employer** may rely upon an oral instruction for any purpose
- 17.4 Should the **contractor** fail to proceed with due diligence with a **contract instruction**, the **principal agent** may notify the **contractor** to proceed within five (5) **working days** from receipt of such notice. Without further notice, on default by the **contractor**, the **employer** may employ other parties to give effect to such **contract instruction** in addition to any other rights that the **employer** may have. The employer may recover expense and loss [33.0] resulting from such employment
- 17.5 The contractor shall cooperate with and assist the **principal agent** where execution of a **contract instruction** could cause an adjustment to the **contract value** [32.2]

## 18.0 SETTING OUT OF THE WORKS

- 18.1 The **employer** shall appoint an **agent** to establish the boundary pegs or beacons identifying the site and the correctness of the datum level. At the commencement of the **construction period** such **agent** shall point out the pegs, beacons and datum level to the **contractor** in the presence of the **principal agent**
- 18.2 The **principal agent** shall define the levels required for the execution of the **works** and provide such information as shall enable the **contractor** to set out the **works** correctly
- 18.3 The **contractor** shall provide all assistance and everything necessary to enable the accuracy of the setting out to be checked. Checking of the setting out by others shall not relieve the contractor of his responsibility for correctness thereof. The **contractor** shall rectify any errors in the **works** that arise from incorrect setting out without adjustment to the **contract value**. The **contractor** shall not be liable for incorrect setting out should information given [18.1-2] cause incorrect setting out of the **works**
- 18.4 The **contractor** shall take all precautions to preserve such pegs, beacons, datum levels and other aids used in setting out the **works** and should any be disturbed have them replaced by the **employer's agent** at the **contractor's** expense

## 19.0 TEMPORARY WORKS AND PLANT

- 19.1 Where required in the **priced document** the **contractor** shall erect, maintain and remove at completion:
- 19.1.1 Hoardings with gantries, fans, safety screens, barriers, access gates, covered gangways and the like as necessary for the enclosure of the **works** and elements thereof all for the protection of the public and others or to meet the specific hoarding requirements of the **employer**, and
- 19.1.2 Office accommodation for meetings held on the **site** which shall be kept clean and fit for use at all times
- 19.2 All advertising rights on the **site** and the hoardings are reserved exclusively for the **employer**. Specific requirements of the **employer** are described in the **priced document**. The **contractor** shall provide and erect notice boards of an approved design as instructed by the **principal agent**. No individual boards or advertising material shall be allowed on the **site** without the **principal agent's** approval



- 19.3 The **contractor** shall provide, maintain and remove on completion all plant, equipment, scaffolding, tools, temporary sheds, enclosures and the like required by the **contractor** for the due and proper fulfillment of the **works**

## 20.0 NOMINATED SUBCONTRACTORS

- 20.1 The principal agent shall:

- 20.1.1 Prepare tender documents in conformity with the **n/s agreement** and this **agreement** for work intended to be executed by a **nominated subcontractor** and thereafter call for tenders, and
- 20.1.2 Nominate a subcontractor and instruct the **contractor** to appoint such subcontractor as a **nominated subcontractor** in terms of the **n/s agreement** and other tender requirements, and
- 20.1. Inform the **contractor** that an advance payment shall be made to the **nominated subcontractor** where such requirement is included in the accepted tender and that recovery thereof will be effected [33.2.4]

- 20.2 The **contractor** may refuse to appoint such subcontractor:

- 20.2.1 Against whom the **contractor** makes a reasonable objection, or
- 20.2.2 Who refuses to enter into a subcontract in terms of the **n/s agreement** and other tender requirements, or
- 20.2.3 Who is unable to provide **security** in terms of the **n/s agreement**

- 20.3 Where such subcontractor is not appointed by the **contractor** for reasons [20.2] another subcontractor shall be nominated and appointed [20.1]

- 20.4 The **contractor** shall provide a payment guarantee in terms of the **n/s agreement** where required by the **nominated subcontractor**

- 20.5 The **contractor** shall make payment to the **nominated subcontractor** of the amount certified and identified [31.13.1] in terms of the **n/s agreement**

- 20.6 The **contractor** shall, within five (5) **working days** of receipt of a **contract instruction** provide proof to the **principal agent** [17.1.12], that the **contractor's** payment obligations [20.5] have been discharged. Failure by the **contractor** to provide such proof to the satisfaction of the principal agent shall entitle the **employer** to instruct the **principal agent** to certify payment direct to the **nominated subcontractor** [35.1.2]. The **contractor** shall have no recourse to recover such amounts from the **employer**. Such direct payment shall not create privity of contract between the **employer** and the **nominated subcontractor**. The **employer** may recover such direct payment from the **contractor** [33.2.8]

- 20.7 Where, after notification by the **contractor**, the **principal agent** agrees that the **nominated subcontractor** is in default of a material term of the **n/s agreement** the **principal agent** shall instruct the contractor to notify the **nominated subcontractor** to rectify such default. The **principal agent** may instruct the **contractor** to terminate the **n/s agreement** should such default continue for five (5) **working days** after such notice

- 20.8 Where termination of the nominated subcontract occurs another subcontractor shall be nominated and appointed to carry out and complete the balance of the nominated subcontract works

- 20.9 Where the **n/s agreement** is terminated due to default or insolvency of the **nominated subcontractor**, or default by the **employer** or his **agents**, any variation in the cost of carrying out and completing the nominated subcontract works shall be adjusted [32.5-6]

- 20.10 Where the **n/s agreement** is terminated due to default or insolvency of the **contractor**, any variation in the cost of carrying out and completing the nominated subcontract works shall be for the account of the **contractor**. Expense and loss suffered by the **employer** from such termination may be recovered [33.2.3]

## 21.0 SELECTED SUBCONTRACTORS

21.1 The **principal agent** shall:

21.1.1 Prepare tender documents in conformity with the **n/s 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**, and

21.1.2 Call for tenders from a list of tenderers agreed between the **contractor** and the **principal agent**, and

21.1.3 In consultation with the **contractor**, choose the successful tenderer to be appointed as a **selected subcontractor** in terms of the **n/s agreement** and other tender requirements, and

21.1.4 Inform the **contractor** that an advance payment shall be made to the **selected subcontractor** where such an advance payment requirement is included in the accepted tender and that recovery thereof will be effected [33.2.4]

21.2 The **contractor** shall within ten (10) **working days** of such selection [21.1.3] determine that such subcontractor can:

21.2.1 Meet the requirements of the **n/s agreement** and other tender requirements, and

21.2.2 Provide **security** in terms of the **n/s agreement** MA

21.3 The **contractor** [21.2] shall forthwith either:

21.3.1 Appoint such subcontractor as a **selected subcontractor** and inform the **principal agent** accordingly, or

21.3.2 Provide reasonable cause to the satisfaction of the **principal agent** for not making such appointment in which event another subcontractor shall be chosen [21.1.3]

21.4 The contractor shall provide a payment guarantee in terms of the **n/s agreement** where required by the **selected subcontractor**

21.5 The **contractor** shall make payment to the **selected subcontractor** of the amount certified and identified [31.13.1] and in terms of the **n/s agreement**

21.6 The **contractor** shall, within five (5) **working days** of receipt of a **contract instruction** provide proof to the **principal agent** [17.1.12] that the **contractor's** payment obligations [21.5] have been discharged. Failure by the **contractor** to provide such proof to the satisfaction of the **principal agent** shall entitle the **employer** to instruct the **principal agent** to certify payment direct to the **selected subcontractor**. Such direct payment shall not create privity of contract between the employer and the **selected subcontractor**. The **employer** may recover such direct payment amounts from the **contractor** [33.2.8]

21.7 Where the **selected subcontractor** is in default of a material term of the **n/s agreement** the decision of whether or not to terminate the **n/s agreement** is that of the **contractor**

21.8 Where termination of the selected subcontract occurs the **contractor** shall appoint another subcontractor subject to the approval of the **principal agent**

21.9 Where the **n/s agreement** is terminated due to default by the **employer** or his **agents**, any variation in the cost of carrying out and completing the selected subcontract works shall be adjusted [32.5-6]

21.10 Where the **n/s agreement** is terminated, other than due to **employer** default [21.9], any variation in the cost of carrying out and completing the selected subcontract works shall be for the account of the **contractor**

## 22.0 EMPLOYER'S DIRECT CONTRACTORS

22.1 On instruction of the **principal agent** [17.1.17] the **contractor** shall permit work to be executed and installed in the **works** by a direct **contractor**. The **direct contractor**, the work or installation to be

undertaken, the insurances related thereto and the associated risks shall be the direct responsibility of the **employer** [9.2.2]

- 22.2 The type and extent of such work shall be described in the **contract data**. The **contractor** shall make reasonable allowance in his **programme** for such work or installation
- 22.3 A direct **contractor** executing such work or installation shall be subject to reasonable controls as required by the **contractor**
- 22.4 The **contractor** shall be entitled to claim expense or loss caused by a **direct contractor** [32.5.4]
- 22.5 The payment of a direct **contractor** shall be the responsibility of the employer and shall not be dealt with in terms of this **agreement**

## 23.0 CONTRACTOR'S DOMESTIC SUBCONTRACTORS

- 23.1 The **contractor** shall appoint all domestic subcontractors in terms of an agreement that provides for fair and equitable conditions of contract compatible with this **agreement**
- 23.2 All work or installations and the associated risks related to domestic subcontractors shall be the direct responsibility of the **contractor**

## COMPLETION

### 24.0 PRACTICAL COMPLETION

- 24.1 The **principal agent** at appropriate intervals shall:
  - 24.1.1 Inspect the **works** to give the **contractor** interpretations and guidance on the building standards and the state of completion of the **works** which the **contractor** will be required to achieve for **practical completion**, and
  - 24.1.2 Where necessary timeously issue a **contract instruction** [17.1.4] consequent upon such inspection, and
  - 24.1.3 Inform the **contractor** of the period required for inspection of the **works** related to the issue of the **certificate of practical completion**
- 24.2 The **contractor** shall inspect the **works** to satisfy himself that the state of completion of the **works** [24.1] has been achieved
- 24.3 The **contractor** shall give timeous notice of the anticipated date of **practical completion** to the **principal agent** to inspect the **works** so as to meet such date. Where, in the opinion of the **principal agent**, after such inspection the **works** either:
  - 24.3.1 Has reached **practical completion**, the **principal agent** shall forthwith issue a certificate of **practical completion** to the **contractor** with a copy to the **employer**. The **certificate of practical completion**, unless otherwise agreed by the **parties**, shall not be issued before the date for **practical completion** as stated in the **contract data** or the revised date [29.0], or
  - 24.3.2 Has not reached **practical completion**, the **principal agent** shall forthwith issue a **practical completion list** to the **contractor** defining the incomplete work and **defects** to be rectified to achieve **practical completion**
- 24.4 Where, in the opinion of the **contractor**, the work on the **practical completion list** has been completed, the **contractor** shall inform the **principal agent** who shall inspect such work within seven (7) **calendar days** of receipt thereof. Where, in the opinion of the **principal agent**, the work on the **practical completion list** either:
  - 24.4.1 Has been satisfactorily completed, the **principal agent** shall forthwith issue a **certificate of practical completion** [24.3.1], or

- 24.4.2 Has not been satisfactorily completed, the **principal agent** shall forthwith identify the items on the **practical completion** list that are not yet complete and inform the **contractor** thereof. The **contractor** shall repeat the procedure [24.4]
- 24.5 Should the **principal agent** not issue a **practical completion** list [24.3.2] or the updated list [24.4.2], within seven (7) **calendar days** of the end of the inspection period, the **contractor** shall notify the **employer** and **principal agent**. Should the **principal agent** not issue such **practical completion** list within seven (7) **calendar days** of receipt of such notice **practical completion** shall be deemed to have been achieved either:
- 24.5.1 On the date that **practical completion** was anticipated [24.3], or
- 24.5.2 On the date of expiry of the notice given by the **contractor** [24.5]
- 24.6 The **contractor** shall not be obliged to carry out any **contract instruction** for additional work [17.2] issued after the date of **practical completion**
- 24.7 Upon the 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 or right of continuing possession of the **works**
- 24.8 Where the **employer** at any time takes possession of the whole or part of the **works** by agreement with the **contractor** [24.3.1, 28.2.2] prior to the applicable date for **practical completion** [24.0, 28.0] then **practical completion** shall be deemed to have taken place and the **applicable certificate of practical completion** shall be issued
- 24.9 Upon the achievement of **practical completion** the **contractor** shall hand over to the **principal agent** all operating and instruction manuals, product guarantees and manufacturers' instructions as stated in the **contract data** and information for the preparation of as built drawings as required by the **principal agent**
- 24.10 On **practical completion** of a section of the **works** [28.0] and where the **principal agent** instructs that tenant installation work is to be executed by others therein [22.0]:
- 24.10.1 The **contractor** shall allow reasonable access to such **section**, and
- 24.10.2 The **principal agent** shall inspect and record the state of completion to such **section** and include a list of **defects** pertaining thereto

## 25.0 WORKS COMPLETION

- 25.1 Within seven (7) **calendar days** of the date of **practical completion** the **principal agent** shall issue to the **contractor** a **works completion** list defining the incomplete work and **defects** apparent at the date of **practical completion** to be completed or rectified to achieve **works completion**
- 25.2 Where, in the opinion of the **contractor**, the **works completion** list has been completed the **contractor** shall notify the **principal agent** who shall inspect within seven (7) **calendar days** of receipt of such notice. Where, in the opinion of the **principal agent**, the **works completion** list either:
- 25.2.1 Has been satisfactorily completed, the **principal agent** shall forthwith issue a **certificate of works completion** to the **contractor** with a copy to the **employer**, or
- 25.2.2 Has not been satisfactorily completed, the **principal agent** shall forthwith identify the items on the **works completion** list that are not yet complete and inform the **contractor** thereof. The **contractor** shall repeat the procedure [25.2]
- 25.3 Should the **principal agent** not issue a **works completion** list [25.1, 25.2.2] within seven (7) **calendar days** of the end of the inspection period, the **contractor** shall notify the **employer** and **principal agent**. Should the **principal agent** not issue such **works completion** list within seven (7) **calendar days** of receipt of such notice, the **certificate of works completion** shall be deemed to have been issued on the date of expiry of the initial notice period and **works completion** shall be deemed to have been achieved on such date

- 25.4 Should the **works completion** list not be completed within a period of twenty (20) **working days** of the issue thereof the **contractor** shall not be entitled to compensatory interest [31.10] on the value of the outstanding work so listed
- 25.5 The **defects** liability period [26.1] shall commence with the issue of the **certificate of works completion** or deemed achievement of **works completion** [25.2.1 or 25.3]

## 26.0 FINAL COMPLETION

- 26.1 The **defects** liability period for the **works** shall commence on the date of **works completion** and end at midnight (00:00) ninety (90) **calendar days** from such date
- 26.2 At the end of the defects liability period the **principal agent** shall forthwith inspect the **works** and where the **works** either:
- 26.2.1 Has reached final completion the **principal agent** shall forthwith issue a **certificate of final completion** to the **contractor** with a copy to the **employer**, or
- 26.2.2 Has not reached **final completion** the **principal agent** shall forthwith issue a **defects** list to the **contractor** defining the **defects**, which have appeared during the defects liability period, to be rectified to achieve **final completion**
- 26.3 Where, in the opinion of the **contractor**, the **defects** list has been completed, the **contractor** shall notify the **principal agent** who shall inspect within seven (7) **calendar days** of receipt of such notice. Where, in the opinion of the **principal agent**, the defects list either:
- 26.3.1 Has been satisfactorily completed the **principal agent** shall forthwith issue a **certificate of final completion** to the **contractor** with a copy to the **employer**, or
- 26.3.2 Has not been satisfactorily completed or where further **defects** have become apparent, the **principal agent** shall forthwith identify such items on the updated **defects** list and inform the **contractor** thereof. The **contractor** shall repeat the procedure [26.3]
- 26.4 Should the **principal agent** not issue a defects list [26.2.2, 26.3.2] within seven (7) **calendar days** from the end of the **defects** liability period, the **contractor** shall notify the **employer** and **principal agent**. Should the **principal agent** not issue such **defects** list within seven (7) **calendar days** of receipt of such notice, the **certificate of final completion** shall be deemed to have been issued on the date of expiry of the initial notice period and **final completion** shall be deemed to have been achieved on such date
- 26.5 Where a **n/s subcontractor's defects** liability period extends beyond the **contractor's defects** liability period [26.1]:
- 26.5.1 The **contractor's** obligations and liability concerning such subcontractor's **defects** shall nevertheless end on the issue of the **certificate of final completion**, and
- 26.5.2 The remaining portion of such subcontractor's **defects** liability period shall be subject to a direct agreement between the **employer** and the subcontractor and shall no longer be the responsibility of the **contractor**
- 26.6 An issued **certificate of final completion** [26.2.1, 26.3.1] shall be conclusive evidence as to the sufficiency of the **works** and that the **contractor's** obligations [2.2, 15.3] have been fulfilled other than for **latent defects**
- 26.7 Where a subcontractor is required to give a guarantee, warranty or indemnity related to subcontract work, 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** [4.2]. This cession shall not prejudice any other rights that the **employer** may have

## 27.0 LATENT DEFECTS LIABILITY PERIOD

- 27.1 The **latent defects** liability period for the **works** shall commence at the start of the **construction period** and end five (5) years from the date of achievement of **final completion** [26.0]

- 27.2 Where termination of this **agreement** occurs before the achievement of **final completion** the **latent defects** liability period shall end either
- 27.2.1 Five (5) years from the date of termination [36.0, 39.0], or
- 27.2.2 On the date of termination [37.0, 38.0]
- 27.3 The **contractor** shall make good all **defects** that appear up to the date of **final completion** [24.0-26.0]

## 28.0 SECTIONAL COMPLETION

- 28.1 Where **sections** are required to be completed as stated in the **contract data**, terms and conditions applicable to the **works** without **sections** shall apply to each **section**. The following documents, which shall include each section, shall be issued by the **principal agent** for the **works** as a whole:
- 28.1.1 Interim **payment certificates** [31.1]
- 28.1.2 **Recovery statements** [33.1]
- 28.1.3 **Final account** [34.1]
- 28.1.4 Final **payment certificate** [34.5]
- 28.1.5 **Certificate of final completion** [26.0] that shall incorporate the **certificate of final completion** of the last **section**
- 28.2 The following documents shall be issued by the **principal agent** individually for each **section**:
- 28.2.1 No clause
- 28.2.2 A **certificate of practical completion** [24.0]
- 28.2.3 A **certificate of works completion** [25.0]
- 28.2.4 A **certificate of final completion** [26.0] other than in terms of 28.1.5

## 29.0 REVISION OF DATE FOR PRACTICAL COMPLETION

- 29.1 The circumstances for which the **contractor** is entitled to a revision of the date for **practical completion** and for which revision the **principal agent** shall not adjust the **contract value** [32.12] are delays to **practical completion** caused by one or more of the following:
- 29.1.1 The adverse effect of weather conditions
- 29.1.2 The inability to obtain **materials and goods** where the **contractor** has taken all practical steps to avoid or reduce such delay
- 29.1.3 Making good physical loss and repairing damage to the **works** [8.0] where the **contractor** is at risk
- 29.1.4 An event that neither party could prevent, civil commotion, riot, strike or lockout
- 29.1.5 Late supply of a **prime cost amount** item where the **contractor** has taken all reasonable steps to avoid or reduce such delay
- 29.1.6 Default by a **nominated subcontractor** where the **contractor** has taken all reasonable steps to avoid or reduce such delay
- 29.2 The circumstances for which the **contractor** is entitled to a revision of the date for practical completion and for which revision the **principal agent** shall adjust the **contract value** [32.12] are delays to **practical completion** caused by one or more of the following:
- 29.2.1 Failure to give possession of the **site** to the **contractor** [15.2.1]

- 29.2.2 Making good physical loss and repairing damage to the **works** [8.0] where the contractor is not at risk
- 29.2.3 **Contract instructions** [17.0] not occasioned by default by the **contractor**
- 29.2.4 Failure to issue construction information timeously [15.6]
- 29.2.5 Late acceptance by the **principal agent** of a design undertaken by a **selected subcontractor** where the **contractor's** obligations [4.3] have been met
- 29.2.6 Suspension or termination invoked by a n/s **subcontractor** due to default by the **employer** or the **principal agent** [38.1]
- 29.2.7 Insolvency of a **nominated subcontractor**
- 29.2.8 A direct **contractor**
- 29.2.9 Opening up and testing of **work** and **materials and goods** [17.1.5-6] where such **work** is in accordance with the **contract documents**
- 29.2.10 The execution of additional work for which the quantity included in the bills of quantities is not sufficiently accurate
- 29.2.11 Late or failure to supply **materials and goods** for which the **employer** is responsible
- 29.2.12 Suspension of the **works** [12.5, 31.15]
- 29.3 Further circumstances for which the **contractor** is entitled to a revision of the date for **practical completion** are delays to **practical completion** by 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 exercising his rights in terms of the agreement or by the default of the employer**
- 29.4 Should a circumstance as listed [29.1-3] occur which could, in the opinion of the **contractor**, cause a delay to **practical completion** the **contractor** shall:
- 29.4.1 Give the **principal agent** reasonable and timeous notice of such circumstance, and
- 29.4.2 Take all reasonable steps to avoid or reduce the delay
- 29.4.3 Within twenty (20) **working days** from the date upon which the contractor became aware or ought reasonably to have become aware of the potential delay notify the **principal agent** of O his intention to submit a claim for a revision to the date for **practical completion** or any previous revision thereof resulting from such delay, failing which the **contractor's** right to claim shall lapse
- 29.5 The **contractor** shall, within forty (40) **working days** of the delay ceasing, submit such claim to the **principal agent**, failing which the **contractor** shall forfeit such claim
- 29.6 Where the **contractor** requests a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:
- 29.6.1 The relevant clause or clauses [29.1-3] on which the **contractor** relies, and
- 29.6.2 The particulars of the effect of the delay on critical progress towards **practical completion**, and
- 29.6.3 The extension period claimed in **working days**, and the calculation thereof
- 29.7 The **principal agent** shall within fifteen (15) **working days** of receipt of a claim [29.6] grant in full, reduce or refuse the **working days** claimed. The **principal agent** shall:
- 29.7.1 Determine the revised date for **practical completion** in relation to the **working days** granted, and
- 29.7.2 Identify each circumstance and relevant subclause for each revision granted or amended, or

29.7.3 Give reasons for refusing such claim

29.8 Where the **principal agent** fails to act [29.7] the claim shall be deemed to be refused

## 30.0 PENALTY FOR LATE OR NONCOMPLETION

30.1 Where the **contractor** fails to bring **the works** or sections thereof to **practical completion** on the date or dates stated in the contract data or revision thereof [29.0], the **contractor** shall be liable to the **employer** for the determined **penalty**

30.2 Where the **employer** elects to levy such **penalty** [33.1.1] the **principal agent** shall detail the **penalty** amount due at the rate(s) per calendar day stated in the **contract data** from the current date of **practical completion** [29.0] up to and including:

30.2.1 The actual or deemed date of **practical completion** of the **works** [24.8] or section thereof [28.2], or

30.2.2 The date of termination [36.3]

]

30.3 Where possession of part of the **works** is taken [24.8] and no **penalty** related to sections is stated in the **contract data** the **principal agent** shall prorate the **penalty** as stated for the works as a whole in the ratio of the **contract value** of the occupied part of the works to that of the **works** as a whole I

## PAYMENT

### 31.0 INTERIM PAYMENT

31.1 The **principal agent** shall issue an interim **payment certificate** every month until the issue of the final **payment certificate**. The **payment certificate** shall be based on a valuation prepared within seven (7) **calendar days** before the date stated [31.3] and may be for a nil or negative amount

31.2 The **contractor** shall cooperate, with and assist the **principal agent** in the preparation of the payment claim information for an interim **payment certificate** by providing to the **principal agent** all relevant documents and assessments of quantified amounts of work completed. For a contract without **bills of quantities** the **contractor** shall compile such information for work completed and **materials and goods** in such form as agreed by the **principal agent**. The **principal agent** shall not be relieved of his responsibility to issue an interim **payment certificate** [31.4] whether or not such information is provided by the **contractor**

31.3 An interim **payment certificate** shall be issued to the **contractor** with a copy to the **employer** by not later than the day of the month stated in the post tender conditions [41.7]

31.4 The value certified in an interim **payment certificate** shall separately include:

31.4.1 A reasonable estimate of the value of the work executed taking into account the information submitted by the contractor [31.2] and making due allowance for adjustments to the **contract value** [32.0], and

31.4.2 A reasonable estimate of the value of **materials and goods** [31.6]. and

31.4.3 The total of amounts previously certified [31.4.1-2]

31.5 The following adjustments shall be made to the amounts certified [31.4.1-2] and shall separately include the following:

31.5.1 No clause

31.5.2 **Security** adjustment [14.0, 31.8]

31.5.3 **CPAP** adjustment where elected in the **contract data**



- 31.5.4 The amounts due to the **employer** or **contractor** in the **recovery statement** [33.1] excluding interest amounts [31.5.6]
- 31.5.5 **Tax** on the net total of the amounts [31.4, 31.5.1-4]
- 31.5.6 Interest amounts included in the **recovery statement** [33.1]
- 31.6 The value of **materials and goods** [31.4.2] shall be included in the value certified only where, to the satisfaction of the **principal agent**, the materials and goods are:
- 31.6.1 Not prematurely delivered or offered for delivery in terms of the **programme**, and
- 31.6.2 Timeously delivered or offered for delivery where the placing of the order was in terms of the requirements of the **principal agent**, and
- 31.6.3 Stored and protected against loss or damage, and
- 31.6.4 Covered by insurance [10.1], and
- 31.6.5 Where stored off the **site**, covered by an **advance payment guarantee** or such other security as may be accepted by the **employer**
- 31.7 **Materials and goods** certified [31.6] shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**
- 31.8 Where security as a fixed **construction guarantee** and payment reduction [14.4] has been chosen the value of the works [31.4.1] and **materials and goods** [31.4.2] that exceeds the **contract sum** and any **CPAP** adjustment shall be certified in full. The value certified that does not exceed the **contract sum** shall be subject to the following percentage adjustments:
- 31.8.1 Ninety-five per cent (95%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 31.8.2 Ninety-seven per cent (97%) of such value in interim **payment certificates** issued on the date of **practical completion** and up to but excluding the date of **final completion**
- 31.8.3 Ninety-nine per cent (99%) of such value in interim **payment certificates** issued on the date of **final completion** and up to but excluding the final **payment certificate** [34.6]
- 31.8.4 One hundred per cent (100%) of such value in the final **payment certificate** except where the amount certified is in favour of the **employer**. In such an event the **payment reduction** shall remain at the adjustment level applicable to the final **payment certificate** [ 34.6]
- 31.9 The **employer** shall pay to the contractor the amount certified in an interim **payment certificate** within seven (7) **calendar days** of the date for issue of the **payment certificate**
- 31.10 The **employer** shall pay the **contractor** compensatory interest on all amounts certified in an interim **payment certificate** issued after thirty-one (31) **calendar days** of the date of **practical completion**. Subject to 25.4 the **principal agent** shall calculate such compensation at the interest rate compounded monthly from the date of **practical completion** up to and including the date on which **payment** is due to the **contractor** and include such amount in the **recovery statement** [33.0]
- 31.11 Where the **contractor** does not receive payment of the amount due by the due date [31.9], the **employer** shall be liable for default interest on the amount without prejudice to any other rights the **contractor** may have. Such interest amount shall be compounded monthly from the due date for payment up to and including the date on which the **contractor** is to receive payment and included in the **recovery statement** [33.0]. The **principal agent** shall calculate such default interest at the rate of one hundred and sixty per cent (160%) of the **interest**
- 31.12 Where a **payment certificate** reflects an amount in favour of the **employer**, the **contractor** shall pay the amount certified within twenty-one (21) **calendar days** of the date of issue of the **payment certificate**. Where such amount has not been paid, the **contractor** shall be liable for default interest [31.11] and the **principal agent** shall include such amount in the next **recovery statement** [33.0]. The **principal agent** shall calculate such interest at the rate of one hundred and sixty per cent (160%) of the **interest**

- 31.13 The **principal agent** shall concurrently with the issue of each interim **payment certificate** also issue the following:
- 31.13.1 A statement to the **contractor** showing the formulation of the amount identified and certified for each **n/s subcontractor**
  - 31.13.2 A notification to each **n/s subcontractor** showing the formulation of the **subcontract** amount included in the **payment certificate** and its date of issue
  - 31.13.3 A statement to the **parties** showing the total amount certified to date of all adjusted amounts [31.5]
  - 31.14 An interim **payment certificate** shall not be evidence that the **works** and **materials and goods** are in terms of this agreement
  - 31.15 Where the **principal agent** fails to issue a **payment certificate** [31.1] or the **employer fails** to make payment [31.9] the **contractor** may give three (3) **working days** notice to suspend the works to the **employer**, with a copy to the **principal agent**
  - 31.16 Where the **employer** has not paid or has made a partial payment only of the amount due in an issued **payment certificate** [31.1] the **contractor** may:
    - 31.16.1 Issue a demand to the **employer** in terms of the **payment guarantee** where such is provided [3.1], or
    - 31.16.2 Exercise his lien or right of continuing possession where this has not been waived in terms of the **contract data** and where **practical completion** has not been achieved, or
    - 31.16.3 Give notice of suspension of the **works** [31.15]. Where the **employer** fails to act in relation to such notice the **contractor** may give notice of termination [38.1.4,6]

## 32.0 ADJUSTMENT TO THE CONTRACT VALUE

- 32.1 The **principal agent** shall determine the value of adjustments to the **contract value** according to the **priced document**. Where items of additional work are required the **principal agent** and the **contractor** may agree on the adjustment before the commencement of such work
- 32.2 Adjustment to the contract value resulting from a **contract instruction** [17.5] for additional work shall be determined as follows:
  - 32.2.1 Work of similar character executed under similar conditions shall be priced at the rates in the **priced document**, or
  - 32.2.2 Where 32.2.1 is not applicable at rates based on those in the **priced document** and adjusted to suit the changed circumstances, or
  - 32.2.3 Where 32.2.1-2 cannot be used such work shall be priced at new rates that take into account the labour, engineering, drawings, material, transport and plant necessary for executing the work plus an allowance of ten per cent (10%) markup thereon
  - 32.2.4 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 [32.2.2]
- 32.3 Where work has been identified in the **priced document** as provisional, the **principal agent** shall omit the value thereof from the **contract value** and the work as executed shall be valued [32.2] and added to the **contract value**
- 32.4 Where the **contractor** has made payment for items that are not included in the **priced document**, the actual amounts paid plus a ten per cent (10%) markup shall be added to the **contract value** for the following:
  - 32.4.1 Charges by authorities [7.1]
  - 31.4.2 The cost of opening up and testing [17.1.5-6], provided that the **contractor** shall bear the cost thereof should the test show that the work is not according to the **contract documents**

- 32.4.3 The cost of insurance [12.3]
- 32.4.4 The cost of support insurance [11.1.1]
- 32.5 Where the **contractor** has incurred expense and loss due to no fault of the **contractor** for which provision was not required in the **contract sum** and for which reasonable compensation has not been made [32.2,12], the **contractor** shall provide details of such expense and loss to the **principal agent** [32.6]. Such circumstances are:
- 32.5.1 The issue of a **contract instruction**
- 32.5.2 Failure to issue or the late issue of a **contract instruction** following a timeous request from the **contractor** [15.6]
- 32.5.3 Nondisclosure of changes made to the provisions of **JBCC** standard documentation [3.11]
- 32.5.4 Expense and loss caused by a **direct contractor** [22.4]
- 32.5.5 Default by the **employer** or his **agents**
- 32.5.6 Suspension or termination of a n/s subcontract due to default by the **employer** or his **agents**
- 32.5.7 Default or insolvency of a **nominated subcontractor**
- 32.5.8 Suspension of the **works** [31.15]
- 32.6 The **contractor** shall notify the **principal agent** within forty (40) **working days** from becoming aware or from when he ought reasonably to have become aware of such expense and loss [32.5] failing which no compensation will be made. Where such notification has been given:
- 32.6.1 The **contractor** shall submit details of the expense and loss once these can be quantified, and
- 32.6.2 The **principal agent** shall make a reasonable assessment of the compensation to be added to the **contract value** within twenty (20) **working days** of receipt of such details
- 32.6.3 The claim shall be deemed to have been refused where the **principal agent** fails to make such an assessment
- 32.7 The **principal agent** shall omit the n/s subcontract amounts from the **contract value** and determine the amounts as the final account value of the respective subcontract works to be added to the **contract value**
- 32.8 The **principal agent** shall prorate the **contractor's** attendance and profit provision on the **n/s subcontractor** amounts in the **contract sum** to the value of each subcontract [32.7] excluding any allowance for CPAP
- 32.9 The **principal agent** shall omit **budgetary allowances** and any other monetary provisions [17.1.15, 16] from the **contract value** and determine the value of work related thereto [32.0] to be added to the **contract value**
- 32.10 The **principal agent** shall omit **prime cost amounts** [17.1.14] from the **contract value** and the actual delivered cost of such items, including a reasonable allowance for waste, shall be added to the **contract value**
- 32.11 The **principal agent** shall prorate the **contractor's** allowances for overheads and profit on prime cost amounts in the **contract sum** to the value of each item [32.10]
- 32.12 The preliminary and general amounts in the **priced document** shall be adjusted and paid in terms of the alternative chosen by the **contractor** as stated in the **contract data**
- 32.13 Where applicable the **contract value** shall be adjusted according to **CPAP** using the information stated in the **contract data**
- 32.14 Where adjustments need to be measured on the **site** the **contractor** shall be given the opportunity to be present and shall be supplied with a copy of the measurement

- 32.15 The **principal agent** shall rectify all identified discrepancies, errors in description or quantity, or omission of items from the **contract documents**. Such rectification shall be treated as an adjustment to the **contract value** where there is a monetary implication

### 33.0 RECOVERY OF EXPENSE AND LOSS

- 33.1 The **principal agent** shall issue a recovery statement monthly to the **parties** simultaneously with the **payment certificate**. Explanatory documentation as may be necessary to support the calculation of the amounts stated shall accompany the **recovery statement**. The **principal agent** shall show on the recovery statement amounts due to the **employer** for:

33.1.1 Penalties levied where the **employer** so elects [30.2]

33.1.2 Default interest [31.12]

33.1.3 Expense and loss [33.2]  
and amounts due to the **contractor** for:

33.1.4 Compensatory interest [31.10]

33.1.5 Default interest [31.11]

33.1.6 Damages [38.5.6]

33.1.7 Advance **payments** granted [14.5]

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

33.2.1 The **employer** paying charges or effecting insurance upon the **contractor's** default [7.1, 12.3]

33.2.2 Work executed by other **parties** [17.4]

33.2.3 Termination of a nominated subcontract [20.10]

33.2.4 Recoupment of advance payments [14.5, 20.1.3, 21.1.4]

33.2.5 The **contractor** not paying the amount due to the **employer** [31.12]

33.2.6 The **agreement** being terminated [36.0]

33.2.7 Default by the **contractor** where not less than seven (7) **calendar 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

33.2.8 Amounts paid direct to **n/s subcontractors** [20.6, 21.6]

33.3 The **principal agent** shall include an amount due in terms of the recovery statement in the accompanying **payment certificate**. Where the **payment certificate** reflects an amount in favour of the **employer** and the contractor has not paid [31.12], such amount may be recovered by the **employer** from any or all of the following in no specific sequence:

33.3.1 Subsequent **payment certificates**

33.3.2 Security [14.0]

33.3.3 The **contractor** as a debt

33.4 Where the **employer** decides to recover amounts due [33.3] from a payment reduction [14.4.5], the **employer** shall notify the **contractor** and the **principal agent** thereof. Should such amount not be paid to the **employer** within seven (7) **calendar days** of the date of receipt of such notice by the **contractor**, the **employer** may recover such amount from the **security**

- 33.5 Where the **employer** decides to recover an amount due [33.3] from a **construction guarantee** or advance **payment guarantee** held as **security**, the **employer** shall issue a written demand to the **contractor** in terms of such guarantee
- 33.6 Where a provisional sequestration or provisional liquidation order has been granted or where an order has been granted which commences sequestration, liquidation, bankruptcy, receivership, winding-up or any similar effect against the **contractor** or this **agreement** is terminated [36.0], the **employer** may issue a demand to the guarantor in terms of the **construction guarantee** or **advance payment guarantee** held as **security**

#### 34.0 FINAL ACCOUNT AND FINAL PAYMENT

- 34.1 The **contractor** shall cooperate with and assist the **principal agent** in the preparation of the **final account** by timeously providing all relevant documents on request. The **principal agent** shall issue the **final account** to the **contractor** within ninety (90) **working days** of the date of practical completion
- 34.2 *No clause*
- 34.3 The **contractor** shall accept or object to the **final account** within forty-five (45) **working days** of receipt thereof. On acceptance, or should the **contractor** not object with reasons to the **final account** within such period, the **principal agent** shall issue the final **payment certificate** [34.5]
- 34.4 Should the **contractor** dispute the correctness of the **final account** and such dispute not be resolved within the period [34.3], or such an extended period as the **principal agent** may allow on a request from the **contractor**, the final **payment certificate** shall nevertheless be issued [34.5]
- 34.5 The **principal agent** shall issue the final **payment certificate** within seven (7) **calendar days** to the **contractor** [34.3-4]. Notwithstanding the foregoing such final **payment certificate** shall not be issued before the issue of the **certificate of final completion** other than where termination occurs [36.0, 39.0]
- 34.6 The amount certified in the final **payment certificate** shall separately include:
- 34.6.1 The gross amount of the **final account**, and
- 34.6.2 The amounts previously certified [31.4.1-2]
- 34.7 Where applicable the following adjustments shall be made to the net amount certified [34.6] and shall separately include:
- 34.7.1 *No clause*
- 34.7.2 Amounts due to the **employer** or **contractor** in the final **recovery statement** [33.1] excluding interest amounts [34.7.4], and
- 34.7.3 Tax on the net total of the amounts [34.7.2], and
- 34.7.4 Interest amounts included in the final **recovery statement** [33.1]
- 34.8 The **principal agent** shall certify one hundred per cent (100%) of the amount of the **final account** in the final **payment certificate**
- 34.9 *No clause*
- 34.10 The **employer** shall pay the **contractor** the amount certified in the final **payment certificate** within seven (7) **calendar days** of the date of issue of the final **payment certificate**
- 34.11 Subject to 25.4 the **employer** shall pay the **contractor** compensatory interest on the net amount certified in the final **payment certificate**. The **principal agent** shall calculate the compensatory interest amount due to the **contractor** at the ruling interest rate compounded monthly from the date of **practical completion** up to and including the date on which payment is due to the **contractor** as stated in the **recovery statement** [33.0]
- 34.12 Where the **contractor** does not receive payment of the amount due in the final **payment certificate** by the due date [34.10], the **employer** shall be liable for default interest on such amount. The interest

shall be calculated from the due date for payment up to and including the date on which the **contractor** receives payment. The amount due and the interest thereon shall be recoverable by the **contractor** from the **employer** as a debt. Such interest shall be calculated at the rate of one hundred and sixty per cent (160%) of the **interest**

34.13 Where the final **payment certificate** reflects an amount in favour of the **employer**, the **contractor** shall pay the amount certified within twenty-one (21) **calendar days** of the date of issue of the final **payment certificate**

34.14 Where such an amount certified [34.10, 13] has not been paid the defaulting **party** shall be liable for default interest [34.12]. The amount due and the interest thereon shall be recoverable as a debt

## **35.0 PAYMENT TO OTHER PARTIES**

35.1 The **principal agent** shall issue separate **payment certification** to other parties with copies to the contractor where the **employer**:

35.1.1 Engages other parties to execute work [17.4, 36.5.5]

35.1.2 Elects to pay a **n/s subcontractor** direct [20.6, 21.6]

35.2 The **employer** may recover expense or loss resulting from such payments [33.2]

## **TERMINATION**

### **36.0 TERMINATION BY EMPLOYER - CONTRACTOR'S DEFAULT**

36.1 The **employer** may terminate this **agreement** where the **contractor**:

36.1.1 Fails to comply [3.3, 14.1, 15.1,3], or

36.1.2 Refuses to comply with a **contract instruction** [17.1] subject to 17.2

36.2 Where the **employer** considers terminating this **agreement**, the **principal agent** or the **employer** shall notify the **contractor** of such default [36.1]. The issuing of such notice shall be without prejudice to any rights that the **employer** may have

36.3 The **employer** may give notice of termination should the **contractor** remain in default for ten (10) **working days** after the date of receipt of such notice of default

36.4 No clause

36.5 Where this **agreement** is terminated the following shall apply:

36.5.1 The employment of the **contractor** shall be terminated and execution of the **works** shall cease. The contractor shall vacate the **works** and the site [36.5.6]. The **contractor** shall remain responsible for the works [8.1] until possession is relinquished to the **employer**

36.5.2 The **principal agent** shall forthwith compile a report on the status of the portion of the **works** executed by the **contractor** and shall issue such report to the **parties**

36.5.3 The **principal agent** shall timeously commence and complete a **final account** [34.0]

36.5.4 The **contractor** shall not be relieved of any of his liabilities concerning that portion of the **works** executed by the **contractor**

36.5.5 The **employer** may employ other parties to safeguard the **works**, complete the outstanding work and to rectify **defects** in that portion of the **works** executed by the **contractor**. The cost of work thus carried out shall be certified by the **principal agent** and paid direct to such parties [35.0]

36.5.6 The **employer** may use the **contractor's materials and goods**, temporary buildings, plant and machinery on the **site** for proceeding with the **works**

- 36.5.7 When informed by the **principal agent** or **employer** the **contractor** shall remove from the **site** his temporary buildings, plant, machinery and surplus **materials and goods** within such reasonable time as determined by the **principal agent**, in default of which the **employer**, without being responsible for any loss or damage, may have the same removed and sold. The net profit or loss of such sales shall be for the account of the **contractor**
- 36.5.8 Where applicable [30.1] the **employer** shall be entitled to apply the **penalty** up to the date of termination and thereafter may recover damages from the **contractor** including, but not limited to, extra costs incurred in the completion of the outstanding work
- 36.5.9 Where the current **practical completion** date [30.1] has not occurred the **employer** may recover damages [36.5.8]
- 36.5.10 The **principal agent** shall continue to issue interim **payment certificates** in a nil amount until the quantum of damages [36.5.8] has been determined and the final account [36.5.3] has been completed. The final **payment certificate** shall then be issued
- 36.5.11 The **latent defects** liability period shall end [27.2.1]
- 36.6 The right to terminate may not be exercised where the **employer** is in material breach of this **agreement**

## **37.0 TERMINATION BY EMPLOYER - LOSS AND DAMAGE**

- 37.1 The **employer** may terminate this **agreement** where:
- 37.1.1 The completed portion of the **works** constructed has been substantially destroyed howsoever caused, or
- 37.1.2 The **works** is for alterations and/or additions to an existing building(s) which has been substantially destroyed howsoever caused
- 37.2 Where the **employer** considers terminating this **agreement** [37.1] the **principal agent** or **employer** shall notify the **contractor** accordingly
- 37.3 Where this **agreement** is terminated the following shall apply:
- 37.3.1 The **principal agent** shall issue a **contract instruction** specifying protective measures necessary to be executed by the **contractor** before cessation of work. Termination shall only take effect after completion thereof
- 37.3.2 Execution of the **works** shall cease. The **contractor** shall remain responsible for the **works** [8.1] until possession is relinquished to the **employer**
- 37.3.3 On relinquishing possession of the **works**, the **contractor** shall remove from the **site** his temporary buildings, plant and machinery without delay
- 37.3.4 The **principal agent** shall forthwith compile a report on the status of the portion of the **works** executed by the **contractor** before the destruction occurred [37.1] including all work executed [37.3.1] and shall issue such report to the **parties**
- 37.3.5 The **principal agent** shall timeously commence and complete a **final account** [34.0]
- 37.3.6 The **employer** shall be liable to the **contractor** for the cost of materials and goods including those ordered before such termination where the **contractor** is bound to accept and make payment. The **contractor** shall deliver such materials and goods to the **employer** in good order
- 37.3.7 The **principal agent** shall continue to certify the value of the work executed and the value of **materials and goods** for payment until the issue of the final **payment certificate** [31.1]
- 37.3.8 The **latent defects** liability period shall end [27.2.2]
- 37.4 Neither **party** shall be liable for any expense and loss resulting from this termination other than the liabilities [37.3] related hereto

## 38.0 TERMINATION BY CONTRACTOR - EMPLOYER'S DEFAULT

38.1 The **contractor** may terminate this **agreement** where:

The **employer** fails to:

- 38.1.1 Provide a **payment guarantee** [3.1], or
- 38.1.2 Appoint a **principal agent** or agents [5.1-2, 4], or
- 38.1.3 Allow the **principal agent** to exercise his judgement [5.6], or
- 38.1.4 Effect special insurances [11.0,12.5], or
- 38.1.5 Give possession of the site to the **contractor** [15.2], or
- 38.1.6.1.1 Pay the amount certified [31.9, 31.16.3, 34.10], or

The **principal agent** fails to:

- 38.1.7 Issue a statement to the **contractor** [31.13.1], or
- 38.1.8 Issue any **payment certificate** [2.1, 15.2.4], or
- 38.1.9 Issue any **completion certificate** [2.1, 15.3]

38.2 Where the **contractor** considers terminating this **agreement**, notice shall be given to the **employer** and the **principal agent** of the default [38.1]. Should such default persist for ten (10) **working days** after the date of issue of such notice the **contractor** may give notice of termination to the **employer** and the **principal agent**. Such termination shall be without prejudice to any rights that the **contractor** may have

38.3 Where default is due to non-performance of the **principal agent** [38.0] the **contractor** may take such actions as are deemed necessary to fulfill the obligations of the **principal agent** [38.5]

38.4 No clause

38.5 Where the **contractor** terminates this **agreement** the following shall apply:

- 38.5.1 Execution of the **works** shall cease. The **contractor** shall remain responsible for the **works** [8.1] until possession is relinquished to the **employer**
- 38.5.2 On relinquishing possession of the **works**, the **contractor** shall remove from the **site** his temporary buildings, plant and machinery without delay
- 38.5.3 The **principal agent** shall forthwith compile a report on the status of the portion of the **works** executed by the **contractor** and shall issue such report to the **parties**
- 38.5.4 The **principal agent** shall timeously commence and complete a **final account** [34.0]
- 38.5.5 The **employer** shall be liable to the **contractor** for the cost of materials and goods including those ordered before such termination where the **contractor** is bound to accept and make payment. The **contractor** shall deliver such **materials and goods** to the **employer** in good order
- 38.5.6 The **employer** shall be liable to the **contractor** for damages resulting from such termination
- 38.5.7 The **principal agent** shall continue to certify the value of the work executed and the value of materials and goods for payment by the **employer** [31.1]
- 38.5.8 The **security** [14.3-4] shall expire and be returned by the **employer** to the **contractor**
- 38.5.9 The **latent defects** liability period shall end [27.2.2]
- 38.6.1 The right to terminate may not be exercised where the **contractor** is in material breach of the **agreement**



## 39.0 TERMINATION - CESSATION OF THE WORKS

- 39.1 Either **party** may terminate this **agreement** on the cessation of the **works** for a continuous period of ninety (90) **calendar days**, or an intermittent period totaling one hundred and twenty (120) **calendar days**, due to circumstances beyond their control. The terminating **party** shall give notice to the other. Such termination shall be without prejudice to any rights that either **party** may have
- 39.2 No clause
- 39.3 Where this **agreement** is terminated the following shall apply:
- 39.3.1 The **principal agent** shall forthwith issue a **contract instruction** specifying the continuation of work and protective measures required to bring the **works** to specific points of cessation. The **contractor** may cease work should the **contractor** be prevented from carrying out such contract instruction due to reasons entirely beyond his control
- 39.3.2 Execution of the **works** shall cease. The **contractor** shall remain responsible for the **works** [8.1] until possession is relinquished to the **employer**
- 39.3.3 On relinquishing possession of the **works**, the **contractor** may remove from the **site** his temporary buildings, plant and machinery
- 39.3.4 The **principal agent** shall forthwith compile a record of the status of the **works** executed before the termination and shall issue such record to the **parties**
- 39.3.5 The **principal agent** shall timeously commence and complete a **final account** [34.0]
- 39.3.6 The **employer** shall be liable to the **contractor** for the cost of **materials and goods** including those ordered before such termination where the **contractor** is bound to accept and make payment. The **contractor** shall deliver such **materials and goods** to the **employer** in good order
- 39.3.7 The **principal agent** shall continue to certify the value of the **work** executed by the **contractor** and the value of **materials and goods** for payment by the employer until a final **payment certificate** is issued
- 39.3.8 The **security** [14.0] shall reduce to the value applicable after the issue of the **certificate of practical completion**
- 39.3.9 The **latent defects** liability period shall end [27.2.1]
- 39.4 Neither **party** shall be liable to the other for any expense and loss resulting from this termination

## **DISPUTE**

### 40.0 SETTLEMENT OF DISPUTES

- 40.1 Should any disagreement arise between the **employer**, including his **principal agent** or **agents**, and the **contractor** arising out of or concerning this **agreement** or its termination, either **party** may give notice to the other to resolve such disagreement
- 40.2 Where such disagreement is not resolved within ten (10) **working days** of receipt of such notice it shall be deemed to be a dispute and shall be referred by the party which gave such notice to either:
- 40.2.1 Adjudication [40.3] where the adjudication shall be conducted in terms of the edition of the **JBCC** Rules for Adjudication current at the time when the dispute was declared, or
- 40.2.2 Arbitration [40.4] where the arbitrator is to be appointed by the body selected by the parties [41.3] whose rules shall apply. Where no body is stated or where the stated body is unable or unwilling to act, the appointment shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The appropriate rules current at the time when the dispute is declared shall apply

- 40.3 Where a dispute is referred to adjudication the following shall apply:
- 40.3.1 The **adjudicator** shall be appointed in terms of the Rules [40.2.1]
- 40.3.2 The **adjudicator** shall not be eligible for subsequent appointment as the arbitrator
- 40.3.3 The **adjudicator's** decision shall be binding on the **parties** who shall give effect to it without delay unless and until it is subsequently revised by an **arbitrator** [40.4]
- 40.3.4 Should either party be dissatisfied with the decision given by the **adjudicator**, or should no decision be given within the period set in the Rules, such **party** may give notice of dissatisfaction to the other **party** and to the **adjudicator** within ten (10) **working days** of receipt of the decision or, should no decision be given, within ten (10) **working days** of expiry of the date by which the decision was required to be given the dissatisfied party shall refer the dispute to arbitration
- 40.4 Where a dispute is referred to arbitration the following shall apply:
- 40.4.1 The **arbitrator** shall be appointed at the request of either **party** by the body stated in 40.2.2
- 40.4.2 The arbitration shall be conducted by the **arbitrator** in accordance with the rules of the body stated in the **contract data**
- 40.4.3 The **arbitrator** shall have the power to open or revise any certificate, opinion, decision, requisition, or notice relating to the dispute as if no such certificate, opinion, decision, requisition or notice had been issued or given
- 40.4.4 The arbitrator's decision shall be binding on the **parties** who shall give effect to it without delay
- 40.5 The above provisions [40.2-4] shall not be construed as a waiver of the **parties'** entitlement to resolve a dispute by mediation at any time
- 40.6 Where a dispute is submitted to mediation the following shall apply:
- 40.6.1 The **parties** shall agree on and appoint the **mediator** within ten (10) **working days** of the date on which the dispute was declared. Whether or not the mediation resolves the dispute, the **parties** shall bear their own costs concerning the mediation and share the costs of the **mediator** and related costs equally
- 40.6.2 The **mediator** shall agree the procedures, representation and dates for the mediation process with the **parties**. The **mediator** may meet the **parties** together or individually to help reach a settlement
- 40.6.3 Where the **parties** reach settlement of the dispute or any part thereof, the mediator shall record such agreement and on signing thereof by the **parties** the agreement shall be final and binding
- 40.7 Recording of a dispute [40.1] shall not relieve the **parties** from liability for the due and timeous performance of their obligations
- 40.8 The **employer** consents to the joining of any **n/s subcontractor** with the **contractor** as a party to any of the proceedings contemplated in terms of this 40.0
- 40.9 The termination of this **agreement** shall not affect the validity of this clause 40.0
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## CONTRACT AGREEMENT

## 41.0 POST TENDER PROVISIONS

- 41.1 All information provided in this section requires consultation with the **parties** to the **agreement**. The **principal agent** shall not preselect any of the alternatives available to the **contractor**
- 41.2 The completed **Contract Data - Employer** and **Contract data - Contractor** addenda and such other pertinent documents as listed below shall form part of this **agreement**:
- 41.3 The dispute resolution body [40.2.2] selected by the **parties** is:

41.4 The **employer** shall provide a **Payment Guarantee** (amount)

41.5 An annual building industry holiday period is applicable

(yes/no)

41.6 Further provisions and information agreed by the parties:

## 42.0 CONTRACTUAL AGREEMENT

42.1 This **agreement** is the entire contract between the **parties** regarding the matters addressed herein. 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**

### 42.2 Contracting Parties

(1) **Employer** \_\_\_\_\_

Physical address \_\_\_\_\_

Tel \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Tax / VAT No \_\_\_\_\_

(2) **Contractor** \_\_\_\_\_

Physical address \_\_\_\_\_

Tel \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Tax / VAT No \_\_\_\_\_

42.3 The accepted **contract sum** (Amount inclusive of **tax**)

In words \_\_\_\_\_

42.4 Signature of the contracting **parties**:

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
for and on behalf of the **employer** who by signature hereof warrants authorization hereto

\_\_\_\_\_  
Capacity of signatory

\_\_\_\_\_  
as Witness (1)

Thus done and signed at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
Name of signatory

\_\_\_\_\_  
for and on behalf of the **contractor** who by signature hereof warrants authorization hereto

\_\_\_\_\_  
Capacity of signature

\_\_\_\_\_  
as Witness (2)

Details of Witness (1)

Details of Witness (2)

Name: \_\_\_\_\_

Name \_\_\_\_\_

Address: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_