

The Joint Building Contracts Committee® - NPC

## CONTRACT DATA

For use by *ORGANS OF STATE* and other *PUBLIC SECTOR Bodies*

### Principal Building Agreement

Edition 6.2 - May 2018

#### JBCC®

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

#### Application of JBCC® agreements

The definitions contained in the JBCC® Principal Building Agreement apply to this document. A word or phrase in bold type in the text has the same meaning assigned to it in the definitions of such agreement. Where a word or phrase is not in bold type it has the meaning consistent with the context of its use

This contract data contains changes made to the JBCC® Principal Building Agreement to suit Organs of State and other Public Sector Bodies' requirements, as well as unique requirements applicable to the project and variables referred to in the JBCC® Principal Building Agreement and the JBCC® General Preliminaries. The information provided in this document is complete and accurate at the time of calling for tenders. Where additional information becomes available, all tenderers will be informed in writing. Reference to clause numbers in the JBCC® Principal Building Agreement are shown in [square brackets] in this contract data e.g. [3.2.1]. Spaces requiring information must be filled in, or marked as 'not applicable' but not left blank

Where the contractor is appointed, the contract documents comprise the completed and signed Form of Offer and Acceptance, the signed JBCC® Principal Building Agreement, this completed contract data, the priced document, drawings and other listed documents

#### Endorsement of JBCC® agreements

The JBCC® Edition 6.2 agreements have been endorsed by the Construction Industry Development Board (CIDB) for use by Organs of State and other Public Sector Bodies

#### Warning!

The JBCC® Principal Building Agreement Edition 6.2 has been coordinated with the JBCC® Nominated/Selected Subcontract Agreement Edition 6.2, the JBCC® General Preliminaries and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with the JBCC® Principal Building Agreement Edition 6.2

Persons entering into or preparing contracts using the JBCC® suite of contract agreements and support documents are warned of the dangers inherent in modifying any part of it

Experience has shown that changes drafted by others, including members of the building professions, often have unintended results that may be prejudicial to either, or both, parties

#### Disclaimer

While the JBCC® aims to ensure that its publications represent best practice it does not accept or assume any liability or responsibility for any events or consequences which derive from the use of JBCC® documents

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## A PROJECT INFORMATION

### A 1.0 Works [1.1]

Project name	
Reference number	
<b>Works</b> description	Alterations, additions and refurbishment

### A 2.0 Site [1.1]

Erf / stand number	
Township / Suburb	
<b>Site</b> address	
Local authority	City of Cape Town

### A 3.0 Employer [1.1]

Official Name of Organ of State / Public Sector Body	Prasa Cres		
Business registration number			
VAT/GST number	4090110612		
Country	RSA		
Employer's representative: Name			
E-mail		Telephone number	
Mobile number			
Postal address	P O Box 1039		
	Cape Town	Postal code	8000
Physical address	Cape Town Station Building, 1 Adderley Street		
	Cape Town	Postal code	8001

### A 4.0 Principal agent [1.1]

Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country	RSA	E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 5.0 Agent** [1.1; 6.2]

Discipline

Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country	RSA	E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 6.0 Agent** [1.1; 6.2]

Discipline

Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 7.0 Agent** [1.1; 6.2]

Discipline

Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 8.0 Agent** [1.1; 6.2]

Discipline

Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 9.0 Agent** [1.1; 6.2]

Discipline	
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Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 10.0 Agent** [1.1; 6.2]

Discipline	
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Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 11.0 Agent** [1.1; 6.2]

Discipline	
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Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	

**A 12.0 Agent** [1.1; 6.2]

Discipline	
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Name			
Legal entity of above		Contact person	
Practice number		Telephone number	
		Mobile number	
Country		E-mail	
Postal address			
		Postal code	
Physical address			
		Postal code	



## B 5.0 Employer's agents [6.0]

<p>Authority is delegated to the following <b>agents</b> to issue <b>contract instructions</b> and perform duties for specific aspects of the <b>works</b> [6.2]</p>
<p>The PA is delegated to issue Site Instructions that are approved by the Employer, as evidence by written concurrence by the relevant project manager appointed by the Employer</p>
<p>The PA is delegated to communicate the award for Delay Claims that are approved by the Employer, as evidence by written concurrence by the relevant project manager appointed by the Employer</p>
<p>The PA may issue construction or contract instructions for work not bearing any additional costs including cost overrun or scope increase to the project. <b>Only the Principle Agent is allowed with the approval from the Employer. Where the contract /construction instruction will have the effect of increasing the cost for the Employer or the project, the specific written approval of the Employer as evidenced by a letter from the project manager.</b></p>
<p><b>1 The Principle Agent is delegated to issue the contract instruction however the contractor may only act when the approval of such is granted by the employer, as evidenced by a letter from the project manager.</b></p>
<p><b>The PA or any Agent does not have authority to issue instructions that have the effect of changing the designs, the works programme or the Bills of Quantity without the approval by the Employer as evidenced by a letter from the project manager.</b> <b>Refer to annexure A for all other matters that require the explicit written occurrence of the Employer</b></p>

<p><b>Principal agent's and agents' interest or involvement in the works</b> other than a professional interest [6.3]</p>
<p>The PA on the project is expected to execute their work professionally on the project</p>
<p>The PA is expected to disclose any other interest on the project besides the service for which they are appointed to do <b>The Principal Agent must disclose upfront any interest in works as they are expected to only provide professional services that they are employed for.</b></p>
<p><b>Where construction / contract instruction results or may result in a change of designs / plans, the concurrence of the Employer is required, as evidenced by a letter from the project manager. The Contractor will ensure that the project manager of the Employer is apprised of such anticipated changes in writing.</b></p>

## B 6.0 Insurances [10.0]

Insurances by <b>employer</b>		Amount including tax	Deductible amount including tax
Yes/no?	<b>No</b>		
Contract works insurance:			
	New <b>works</b> [10.1.1] (contract sum or amount)		
or	<b>Works</b> with <b>practical completion</b> in <b>sections</b> [10.2] (contract sum or amount)		
or	<b>Works</b> with alterations and additions [10.3] (reinstatement value of existing structures with or including new <b>works</b> )		
	<b>Direct contractors</b> [10.1.1; 10.2] where applicable, to be included in the contract works insurance		
	<b>Free issue</b> [10.1.1; 10.2] where applicable, to be included in the contract works insurance		
	Escalation, professional fees and reinstatement costs if not included above		
Total of the above contract works insurance amount			



Natural features and known services to be preserved by the <b>contractor</b> [12.1.3]		Yes/no?	Yes
If yes, description	Trees and service around the station		
Restrictions to the <b>site</b> or areas that the <b>contractor</b> may not occupy [12.1.4]		Yes/no?	No
If yes, description			
Supply of <b>free issue</b> [12.1.10]		Yes/no?	No
If yes, description			

**B 8.0 Nominated subcontractors [14.0]**

Yes/no?	If yes, description of specialisation
	Specialisation 1
	Specialisation 2
	Specialisation 3
	Specialisation 4
	Specialisation 5

**B 9.0 Selected subcontractors [15.0]**

Yes/no?	If yes, description of specialisation
	Specialisation 1
	Specialisation 2
	Specialisation 3
	Specialisation 4
	Specialisation 5

**B 10.0 Direct contractors [16.0]**

Yes/no?	If yes, description of extent of work
	Extent of work [12.1.11]

**B 11.0 Description of sections [20.1]**

<b>Section 1</b>	
<b>Section 2</b>	

<b>Section 3</b>		
<b>Section 4</b>		
<b>Section 5</b>		
<b>Section 6</b>		
<b>Section</b>		Remainder of the <b>works</b>

**B 12.0 Possession of site [12.1.5], practical completion [19.0; 20.0] and penalty [24.0]**

<b>Practical completion for the works as a whole</b>	Intended date of possession of the <b>site</b> Refer B17.0 [12.1.5; 12.2.22]	Period for inspection by the <b>principal agent</b> [19.3]	The date for <b>practical completion</b> shall be the period as indicated below from the date of possession of the <b>site</b> by the <b>contractor</b> [12.2.7; 24.1]	<b>Penalty</b> for late completion [24.1]
	<del> </del>	<b>working days</b>	Period in months	Penalty amount per <b>calendar day</b>
	<del> </del>	5 (clause 19.22)		R... per day

or where **sections** are applicable

<b>Practical completion of a section of the works</b>	Intended date of possession of a <b>section</b> Refer B17.0 [12.1.5; 12.2.22]	Period for inspection by the <b>principal agent</b> [19.3]	The date for <b>practical completion</b> shall be the period as indicated below from the date of possession of the <b>site</b> by the <b>contractor</b> [12.2.7; 24.1]	<b>Penalty</b> for late completion [24.1]
	<del> </del>	<b>working days</b>	Period in months	Penalty amount per <b>calendar day</b>
	<del> </del>			
<b>Section 1</b>	<del> </del>			
<b>Section 2</b>	<del> </del>			
<b>Section 3</b>	<del> </del>			
<b>Section 4</b>	<del> </del>			
<b>Section 5</b>	<del> </del>			
<b>Section 6</b>	<del> </del>			
<b>Section 7</b>	<del> </del>			
<b>Section 8</b>	<del> </del>			
Remainder of the <b>works</b>	<del> </del>			

Criteria to achieve <b>practical completion</b> not covered in the definition of <b>practical completion</b>

**B 13.0 Defects liability period [21.0]**

Extended defects liability period: Refer B17.0 [21.13]		Yes/no?	
If yes, description of applicable elements	eg: Electrical reticulation / Air conditioning system / Landscaping		
	13.1		
	13.2		
	13.3		
	13.4		
	13.5		
	13.6		

**B 14.0 Payment [25.0]**

Date of month for issue of regular <b>payment certificates</b> [25.2]	25 <sup>th</sup>		
Contract price adjustment / Cost fluctuations [25.3.4; 26.9.5]	Yes/no?	No	
If yes, method to calculate	N/A		
<b>Employer</b> shall pay the <b>contractor</b> within: [25.10]	Thirty (30) <b>calendar days</b>		

**B 15.0 Dispute resolution [30.0]** All dispute resolution processes are applicable (the Employer will provide)

Adjudication [30.6.1; 30.10] Name of nominating body			
Applicable rules for adjudication [30.6.2]			
Arbitration [30.7.4; 30.10] If Yes, name of nominating body * If No, then dispute will be referred to litigation	Yes/no? *		Litigation
Applicable rules for arbitration [30.7.5]			

**B 16.0 JBCC® General Preliminaries - selections**

Provisional bills of quantities [P2.2]	Yes/no?	Yes	
Availability of construction information [P2.3]	Yes/no?	Yes	
Previous work - dimensional accuracy - details of previous contract(s) [P3.1]	Not Applicable		
Previous work - <b>defects</b> - details of previous contract(s) [P3.2]	Not Applicable		
Inspection of adjoining properties - details [P3.3]	Not Applicable		
Handover of <b>site</b> in stages - specific requirements [P4.1]	Not Applicable		
Enclosure of the <b>works</b> - specific requirements [P4.2]	Yes. Barricade the works		
Geotechnical and other investigations - specific requirements [P4.3]	Not applicable		
Existing premises occupied - details [P4.5]	Yes		
Services - known - specific requirements [P4.6]	Electrical cabling underground and overhead.		

Water [P8.1]	By <b>contractor</b>	Yes/no?	Yes	By the Contractor (Metered)
	By <b>employer</b>	Yes/no?		
	By <b>employer</b> - metered	Yes/no?		
Electricity [P8.2]	By <b>contractor</b>	Yes/no?	Yes	By the Contractor
	By <b>employer</b>	Yes/no?		
	By <b>employer</b> - metered	Yes/no?		
Ablution and welfare facilities [P8.3]	By <b>contractor</b>	Yes/no?	Yes	By the Contractor
	By <b>employer</b>	Yes/no?		
Communication facilities - specific requirements [P8.4]	Not Applicable			
Protection of the <b>works</b> - specific requirements [P11.1]	All work shall be barricaded and secured by the Contractor			
Protection / isolation of existing <b>works</b> and <b>works</b> occupied in <b>sections</b> - specific requirements [P11.2]	Not Applicable			
Disturbance - specific requirements [P11.5]	Not Applicable			
Environmental disturbance - specific requirements [P11.6]	Not Applicable			

## B 17.0 Changes made to JBCC® documentation

Reference may be made to other documents forming part of this **agreement**

### 1.1 Definitions

**AGREEMENT:** The completed Form of Offer and Acceptance, the completed **JBCC®** Principal Building Agreement and **JBCC® contract data for organs of state and other public sector bodies**, the **contract drawings**, the **priced document** and any other documents reduced to writing and signed by the authorised representatives of the **parties**

**CONSTRUCTION PERIOD:** The period commencing on the date of possession of the **site** by the **contractor** and ending on the date of **practical completion**

**CONTRACT DATA FOR ORGANS OF STATE AND OTHER PUBLIC SECTOR BODIES:** The document listing the Organs of State and other Public Sector Bodies' requirements and the project specific information

**INTEREST:** The interest rates applicable on this contract, whether specifically indicated in the relevant clauses or not, will be the rate as determined by the Minister of Finance from time to time, in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No 1 of 1999), calculated as simple interest, in respect of debts owing to the State, and will be the rate as determined by the Minister of Justice and Constitutional Development from time to time, in terms of section 1(2) of the Prescribed Rate of Interest Act, 1975 (Act No 55 of 1975), calculated as simple interest, in respect of debts owing by the State

**PRINCIPAL AGENT:** The person or entity appointed by the **employer** and named in the **contract data for organs of state and other public sector bodies**. In the event of a **principal agent** not being appointed, then all the duties and obligations of a **principal agent** as detailed in the **agreement** shall be fulfilled by the employer's representative as named in the **contract data for organs of state and other public sector bodies**

### 3.0 Offer and Acceptance

Amend 3.3 to read as follows:

This **agreement** shall come into force on the date as stated on the Form of Offer and Acceptance and continue to be of force and effect until the end of the **latent defects** liability period [22.0] notwithstanding termination [29.0] or the certification of **final completion** [21.0] and final payment [25.0]

### 6.0 Employer's Agents

Add the following as 6.7:

In terms of the clauses listed hereunder, the **employer** has retained its authority and has not given a mandate to the **principal agent**. The **employer** shall sign all documents in relation to clauses 4.2, 14.1.2, 14.1.4, 14.4.1, 14.6, 23.1, 23.2, 23.3, 23.7, 23.8, 26.1, 26.7, 26.12 and 28.4

### 9.0 Indemnities

9.2.7: Add the following to the end of the first sentence: " .... due to no fault of the **contractor**"

### 10.0 Insurances

Add the following as 10.1.5.1:

#### High Risk Insurance

In the event of the project being executed in a geological area classified as a "High Risk Area", that is an area which is subject to highly unstable sub-surface conditions that might result in catastrophic ground movement evident by sinkhole or doline formation the following will apply:

#### 10.1.5.1.1 Damage to the works

The contractor shall, from the date of possession of the **site** until the date of the **certificate of practical completion**, bear the full risk of and hereby indemnifies and holds harmless the **employer** against any damage to and/or destruction of the **works** consequent upon a catastrophic ground movement as

mentioned above. The **contractor** shall take such precautions and security measures and other steps for the protection of the **works** as he may deem necessary

When so instructed to do so by the **principal agent**, the **contractor** shall proceed immediately to remove and/or dispose of any debris arising from damage to or destruction of the **works** and to rebuild, restore, replace and/or repair the **works**, at the **contractor's** own costs

#### 10.1.5.1.2 Injury to persons or loss of or damage to property

The **contractor** shall be liable for and hereby indemnifies and holds harmless the **employer** against any liability, loss, claim or proceeding arising at any time during the period of the contract whether arising in common law or by statute, consequent upon personal injuries to or the death of any person whomsoever resulting from, arising out of or caused by a catastrophic ground movement as mentioned above

The **contractor** shall be liable for and hereby indemnifies the **employer** against any and all liability, loss, claim or proceeding consequent upon loss of or damage to any moveable, or immovable property, or personal property, or property contiguous to the **site**, whether belonging to or under the control of the **employer** or any other body or person whomsoever arising out of or caused by a catastrophic ground movement, as mentioned above, which occurred during the period of the contract

#### 10.1.5.1.3

It is the responsibility of the **contractor** to ensure that he has adequate insurance to cover his risk and liability as mentioned in 10.1.5.1.1 and 10.1.5.1.2. Without limiting the **contractor's** obligations in terms of the contract, the **contractor** shall, within twenty-one (21) **calendar days** of the date of possession of the site, but before commencement of the **works**, submit to the **employer** proof of such insurance policy, if requested to do so

#### 10.1.5.1.4

The **employer** shall be entitled to recover any and all losses and/or damages of whatever nature suffered or incurred consequent upon the **contractor's** default of his obligations as set out in 10.1.5.1.1; 10.1.5.1.2 and 10.1.5.1.3. Such losses or damages may be recovered from the **contractor** or by deducting the same from any amounts still due under this contract or under any other contract presently or hereafter existing between the **employer** and the **contractor** and for this purpose all these contracts shall be considered one indivisible whole

### 11.0 Securities

Amend 11.10 to read as follows:

There shall be no lien or right of retention held by any **contractor** in respect of the **works** executed on **site**

### 12.0 Obligations of the Parties

Amend 12.1.5 to read as follows:

Give possession of the **site** to the **contractor** within ten (10) **working days** of the **contractor** complying with the terms of 12.2.22

12.2.2: Not applicable

Add the following as 12.2.22:

Within fifteen (15) **working days** of the date of the **agreement** submit to the **principal agent** an acceptable health and safety plan, required in terms of the Occupational Health and Safety Act, 1993 (Act No 85 of 1993)

### 19.0 Practical Completion

19.5: Delete the words "subject to the **contractor's** lien or right of continuing possession of the **works** where this has not been waived"

### 21.0 Defects Liability Period and Final Completion

Add the following as 21.13:

The ninety (90) **calendar days** defects liability period for the **works** [21.1] is replaced with a period of three hundred and sixty five (365) **calendar days** in respect of the listed applicable elements

**25.0 Payment**

25.7.5: Not applicable

25.10: Delete the words “and/or **compensatory interest**”

25.14.2: Not applicable

**27.0 Recovery of Expense and/or Loss**

27.1.5: Not applicable

**29.0 Termination**

Add the following after 29.1.3:

or where ...

29.1.4: The **contractor** is, other than for the purposes of a *bona fide* reconstruction or amalgamation, placed under voluntary or compulsory liquidation (whether provisional or final), or under judicial management, receivership, sequestration or business rescue, or under the equivalent of any of the foregoing

29.1.5: The **contractor** has engaged in corrupt or fraudulent practices in competing for or in executing the contract

Refer to the attached Annexure A and changes made to the JBCC documentation.

**C TENDERER'S SELECTIONS** Contractor chose to submit a letter confirming deductions of 10% as per LOA item 5.

**C 1.0 Securities [11.0]**

**Guarantee for construction:** Select Option A or B

Option A	<b>Guarantee for construction</b> (variable) by <b>contractor</b> [11.1.1]
Option B	<b>Guarantee for construction</b> (fixed) by <b>contractor</b> [11.1.2]
<b>Guarantee for payment by employer</b> [11.5.1; 11.10]	Not applicable
Advance payment, subject to a <b>guarantee for advance payment</b> [11.2.2; 11.3]	Not applicable

**C 2.0 Contractor's annual holiday periods during the construction period**

Year 1 <b>contractor's</b> annual holiday period	start date	15/12/2020	end date	11/1/2021
Year 2 <b>contractor's</b> annual holiday period	start date		end date	
Year 3 <b>contractor's</b> annual holiday period	start date		end date	

**C 3.0 Payment of preliminaries [25.0]****Contractor's selection**

Select Option A or B  B

Where the **contractor** does not select an option, Option A shall apply

**Payment methods**

Option A	The <b>preliminaries</b> shall be paid in accordance with an amount prorated to the value of the <b>works</b> executed in the same ratio as the amount of the <b>preliminaries</b> to the <b>contract sum</b> , which <b>contract sum</b> shall exclude the amount of <b>preliminaries</b> . Contingency sum(s) and any provision for cost fluctuations shall be excluded for the calculation of the aforesaid ratio
Option B	The <b>preliminaries</b> shall be paid in accordance with an amount agreed by the <b>principal agent</b> and the <b>contractor</b> in terms of the <b>priced document</b> to identify an initial establishment charge, a time-related charge and a final dis-establishment charge. Payment of the time-related charge shall be assessed by the <b>principal agent</b> and adjusted from time to time as may be necessary to take into account the rate of progress of the <b>works</b>

**Lump sum contract**

Where the amount of **preliminaries** is not provided it shall be taken as 7.5% (seven and a half per cent) of the **contract sum**, excluding contingency sum(s) and any provision for cost fluctuations

**C 4.0 Adjustment of preliminaries [26.9.4]****Contractor's selection**

Select Option A or B  A

Where the **contractor** does not select an option, Option A shall apply

**Provision of particulars**

The **contractor** shall provide the particulars for the purpose of the adjustment of **preliminaries** in terms of his selection. Where completion in **sections** is required, the **contractor** shall provide an apportionment of **preliminaries per section**

Option A	An allocation of the <b>preliminaries</b> amounts into Fixed, Value-related and Time-related amounts as defined for adjustment method Option A below, within fifteen (15) <b>working days</b> of the date of acceptance of the tender
Option B	A detailed breakdown of the <b>preliminaries</b> amounts within fifteen (15) <b>working days</b> of possession of the <b>site</b> . Such breakdown shall include, inter alia, the administrative and supervisory staff, the use of <b>construction equipment</b> , establishment and dis-establishment charges, insurances and guarantees, all in terms of the <b>programme</b>

### Adjustment methods

The amount of **preliminaries** shall be adjusted to take account of the effect which changes in time and/or value have on **preliminaries**. Such adjustment shall be based on the particulars provided by the **contractor** for this purpose in terms of Options A or B, shall preclude any further adjustment of the amount of **preliminaries** and shall apply notwithstanding the actual employment of resources by the **contractor** in the execution of the **works**

Option A	<p>The <b>preliminaries</b> shall be adjusted in accordance with the allocation of <b>preliminaries</b> amounts provided by the <b>contractor</b>, apportioned to <b>sections</b> where completion in <b>sections</b> is required</p> <p>Fixed - An amount which shall not be varied</p> <p>Value-related - An amount varied in proportion to the <b>contract value</b> as compared to the <b>contract sum</b>. Both the <b>contract sum</b> and the <b>contract value</b> shall exclude the amount of <b>preliminaries</b>, contingency sum(s) and any provision for cost fluctuations</p> <p>Time-related - An amount varied in proportion to the number of <b>calendar days</b> extension to the date of <b>practical completion</b> to which the <b>contractor</b> is entitled with an adjustment of the <b>contract value</b> [23.2; 23.3] as compared to the number of <b>calendar days</b> in the initial <b>construction period</b> [26.9.4]</p>
Option B	<p>The adjustment of <b>preliminaries</b> shall be based on the number of <b>calendar days</b> extension to the date of <b>practical completion</b> to which the <b>contractor</b> is entitled with an adjustment of the <b>contract value</b> [23.2; 23.3] as compared to the number of <b>calendar days</b> in the initial <b>construction period</b> [26.9.4]</p> <p>The adjustment shall take into account the resources as set out in the detailed breakdown of the <b>preliminaries</b> for the period of construction during which the delay occurred</p>

### Failure to provide particulars within the period stated

Option A	<p>Where the allocation of <b>preliminaries</b> amounts for Option A is not provided, the following allocation of <b>preliminaries</b> amounts shall apply:</p> <p>Fixed - Ten per cent (10%) Value-related - Fifteen per cent (15%) Time-related - Seventy-five per cent (75%)</p> <p>Where the apportionment of the <b>preliminaries per section</b> is not provided, the categorised amounts shall be prorated to the cost of each <b>section</b> within the <b>contract sum</b> as determined by the <b>principal agent</b></p>
Option B	Where the detailed breakdown of <b>preliminaries</b> amounts for Option B is not provided, Option A shall apply

### Lump sum contract

Where the amount of **preliminaries** is not provided it shall be taken as 7.5% (seven and a half per cent) of the **contract sum**, excluding contingency sum(s) and any provision for cost fluctuations

## **Additional Definitions and Additional Interpretation for Consideration in the Contract Data**

### **DEFINITIONS AND ADDITIONAL INTERPRETATION**

#### **Budgetary Allowances**

Budgetary allowances are for all work not defined during tender stage. The related scope of works once known and agreed between the client and the professional team, the sub-contract tenders are called for from an agreed list between the Contractor and the Principal Agent with a minimum of 3 sub-contractors. A recommendation is submitted to the client for approval and a contract instruction is issued formalising the sub-contractor appointment.

#### **Compensatory Interest**

Once the practical completion is reached a payment certificate is agreed upon and the contractor submits the invoice to the Employer, the Employer must pay the contractor within 31 days of issuing of the payment certificate. Payment cycles are run twice a month, on the 15<sup>th</sup> and on the 30<sup>th</sup> to mitigate for potential delay in the payment cycle. Failure to do so the contractor can claim interest based on the applied interest rate at that period. The interest due to late payments could be based on the interest data from the client's bank.

No Compensatory Interest applies unless the delay for failure to pay is directly attributable to the default by the Employer. The Employer is not liable for the default of the Principal Agent

#### **17.0 Contract Instruction**

In general, the approval of any deviation which does not form part of the original scope of works must be approved by the Employer. The contractor shall await the approval of the deviation before executing the works on site, as evidenced by a specific written instruction to the PA issued under the hand of the project manager of the Employer

The ability of the Agents to issue instruction regarding the works is critical for successful management of the project. The limitation of authority should not be intended to prevent the PA from exercising his duties in terms of the contract but to identify specific decisions which need to be authorized by the Employer (for project governance) not for the client to make a different decision. All the work that needs to be approved that has a cost bearing over and above the may works and report such to the Employer. The Employer allows the PA to make a fair assessment in the administration of the project and advise the Employer of any deviations in the works.

Where the contract instructions will result in a cost adjustment (up or down) to the contract sum or value, the PA in consultation with other agents on the project (such as the QS) will prepare a cost variation for such contract instruction prior to the carrying out the specific works. Such a variation will have to be recommended for approval to the Employer and once approved the PA will issue a contract instruction on site. The employer approval will be evidenced by a specific written instruction to the PA issued under the hand of the project manager of the Employer

Any instruction that may have the effect of changing the designs or plan for the works or the works programme must be approved by the Employer prior to the execution thereof. The Employer's approval must be evidenced by a specific written instruction to the PA issued under the hand of the project manager of the Employer

#### **Default Interest**

Once the interim payment certificate is agreed upon and the contractor submits the invoice to the Employer, the Employer must pay the contractor within 31 days..

No default Interest applies unless the delay for failure to pay is directly attributable to the default by the Employer. The Principal Agent default is not attributable to the Employer.

#### **25.0 & 26.0 Final Payment Certificate**

Final Payment Certificate shall be administered according to Clause 25 and 26 of the main agreement.

#### **Principal Authority**

In terms of this Contract Data the PA has limited authority from the Employer's perspective but full authority from the contractor's perspective. In the former, the PA recommends changes to the Employer for the Employer's approval and in the latter the PA issue and instruction that is approved by the Employer. The employer's approval must be evidenced by a specific written instruction to the PA issued under the hand of the project manager of the Employer

## **25.0 Payment Certificate**

The PA in signing the payment certificates recommends an interim payment due to the contractor to the Employer, for the works that the PA certifies has been executed by the contractor. The PA needs to communicate all approved payment certificates to the contractor prior to payment. The contractor warrants that and will ensure that all the works as exhibited to have been executed under the payment certificate have been properly executed employing Good Industry Practice before issuing an invoice for such works.

## **27.0 Recovery Statement [issued with Payment Certificate]**

All Recoveries are to be administered in accordance with Clause 27. These are either recoveries due to Employer or Contractor. Recovery Statement deals with financial transactions between the Employer and the contractor that do not affect the contract value and are therefore not part of the valuation of work in progress or the final account. The Employer may recover from the contractor default interest and advance payment recoupment. Contractor may recover compensatory interest or damages.

## **14.0 & 15.0 Nominated/Select Sub-Contractor**

Appointments of Selected sub-contractors are proposed by Contractor with the PA's involvement (in consultation with the Employer) for final approval. The PA issues a contract instruction to Contractor for the appointment of Nominated Sub-contractors. Sub-contract works would be tendered out to 3 sub-contractors minimum in line with the budgetary allowances. The processes for the appointment of and the appointment of a subcontractor will comply with the supply chain prescripts applicable to the Employer

The contractor has to submit a full list of their subcontractors for approval by the Employer in order to mitigate delays on the project. The contractor must ensure that the subcontractors comply with the supply chain prescripts applicable to the Employer

### **The Employer is Responsible for the Permit and Building Plans**

The Employer devolves this responsibility to the consultants through the consultancy agreement and scope of work/service for permit and building plan approvals.

Where the permit and approved building plans are required, the Contractor will not commence with the execution of the works until the same have been procured.

The PA is responsible for the submission and securing plan approval of work plans with the local authority. Employer must secure work permits for working on PRASA's station properties. Employer must ensure access is granted to occupied facilities during construction.

### **The Consent Granted on Nominated Sub-Contractor by Principal Agent**

All appointments or additional or change of any sort in the project must be approved by the Employer.

### **Principal Agent authority**

The PA's role is to administer the JBCC contract on behalf of the Employer and Contractor, in collaboration with other project team members. This role is limited as stated herein the Contract Data.

### **Sub-Delegation**

The PA shall not delegate their authority to a sub-agent without consent by the Employer.

### **The Default of the Principal Agent**

Prior to the issuing of default notices, extensive engagements with all parties would have taken place, in the form of meetings, cost analysis, etc. Where either party fails to fulfil such instructions, the time bars stipulated in the contract would kick in and cost incurred would be recovered through the recovery statement. The converse to Clause 6.4 is Clause 17.3 where the default is by Contractor. If this is due to the fault of the PA then the costs will be recovered from the professional indemnity.

### **The Default of the Contractor**

Clause 6.4 is adequate because it is intended to limit losses incurred as a result of the PA not acting in terms of the contract such as the extension of date of completion, standing time and P&Gs which the contractor will be entitled to. If this is due to the fault of the PA then the costs will be recovered from the professional indemnity.

### **The Default Notice**

The default notice shall be changed from 5 days to 30 days.

### **Replacement of Principal Agent**

The impact on the project for not having a PA on site would result in time related cost. The Employer is granted 30 days to resolve the appointment of the replacement PA on the project.

The PA is appointed by the Employer and that responsibility lies with the Employer. The contractor has to be informed if a replacement PA is appointed, for ease of project governance.

### **6.0 Principal Agent**

The PA's role is to administer the contract between the Employer and Contractor in a fair and reasonable manner as stated in Clause 6.6. The contract is designed in good faith protecting both parties' rights and responsibilities.

#### **Design Work Undertaken by Sub-Contractor**

This clause refers to the design and supply responsibility for specialist work carried out by Nominated or Direct Sub-Contracts. Although the Sub-Contract works is specialist work, the Contractor is responsible for co-ordinating all works programmed from design leading to completion by Sub-Contractor.

#### **Approval of the Sub-Contractor Design by Principal Agent**

The PA is responsible for administering the contract and must be an independent party to the Employer. The PA does not approve design but coordinates and recommends approval of designs from all, professional service providers and the sub-contractors. The professional service providers shall be responsible for their designs covered under their professional indemnity covers. The main contractor shall be responsible for all domestic sub-contractors designs.

#### **Deemed Practical Completion**

Risk (full responsibility) lies with Contractor from site hand over until Practical Completion (PC). Contractor is relieved of (full responsibility) including penalties as they cease after PC. After PC, the (full responsibility) transfers from Contractor to Employer, implying risk is transferred to the Employer.

### **10.0 Insurances**

These are works insurances for any loss or damage to the works. The contract works insurance inter alia related insurances are the responsibility of the Contractor and these insurances covers the works described in the bill of quantities, JBCC Suite of agreements and construction drawings, etc. The quantum cover equals to contract sum plus 10%.

#### **Liability for Free Issue**

The clause refers to incidents where Contractor has no say in the selection of products or materials. Normally alternatives that are equally approved would be considered. Contractor would be held liable for workmanship in the installation of such goods/materials.

#### **Force Majeure**

Force majeure referred to in Clause 23.1.6 is for an unforeseen event, such as COVID-19 pandemic where the Contractor may be entitled to an extension of time with no adjustment to Contract value. Clause 23.2.2 refers to making good for works under clause 8.5. Clause 17.1.10 refers to general making good and is not related to Force majeure. The Contractor shall provide evidence on how they've been impacted beyond reasonable doubt and the Employer may at its sole discretion determine its contribution, if any

#### **The Contractor will advise of Force Majeure Damages to the PA.**

Giving immediate notice is to bring such damage or loss to PA's attention, identify the cause and apportion remedy, either to the Contractor as stated in clause 8.2 and to the Employer as stated in clause 6.6. The Contractor shall provide evidence on how they've been impacted beyond reasonable doubt.

## **9.0 Employer Indemnity**

The contracting is about risk and how it is managed. Each party must be able to measure and limited the risk through rights and responsibility entered into. The Employer does not indemnify the contractor or the professional service providers.

### **Executing the works where the Employer has not sought the required permits**

The PA is responsible for the submission and securing plan approval of work plans with the local authority, including procuring the approval of the subcontractor's designs. Failure by the Professional Service Providers is not attributable to the Employer.

The Employer must secure work permits for working on PRASA's station properties. Employer must ensure access is granted to occupied facilities during construction.

For the design, this may include those of the contractor's sub-contractor

The clause refers to the design for works by Nominated or Direct Sub-Contracts. Works listed under these are works included in the Budgetary Allowances.

Where the permit and approved building plans are required, the Contractor will not commence with the execution of the works until the same have been procured. The provision of clause 23.1 [revision of the contract date] will apply with applicable changes.

### **Interference with servitude or weakening of land support in the execution of the works**

The Professional Service Providers must ensure all servitudes/underground services are identified and recorded on construction plans for works by the Contractor. The contractor shall ensure that support insurances are taken out to cover the works.

Failure by the Professional Service Providers is not attributable to the Employer.

## **22.0 Physical damage or loss after PC or where it is deemed to be issued**

This refers to an existing structure and contents that could have inherent damage or loss. An audit report of the existing structure/s should be carried out prior to commencement of the works. Where specialist equipment exist, Employer would be responsible for the removal/relocation of such equipment and re-installation after PC. Clause 19.0 outlines sequence to be followed towards achieving PC. If no audit was done prior to commencement, it would be impossible to apportion loss or damage after PC.

## **11.0 Advance Payment given by PA**

Clause 25.5 outlines the use of an advanced payment guarantee and is usually for specialist imported material for Nominated/Selected sub-contract installation. Clause 11.2.2 and 11.3 outlines how the advanced payments are repaid. Traditionally, the contractor is not paid in advance. This will need to be motivated to the Employer prior to commencement.

### **11.0 Guarantee for Payment**

Employer undertakes to make payment of all amounts due and payable under the contract. In return the Contractor provides a guarantee for construction. In this contract the contractor shall retain their right of possession of the site as a payment guarantee.

## **14.0, 15.0 & 16.0 Nominate Sub-Contractor**

The Employer shall nominate a contractor for specialised work. Majority of the works described under budgetary allowances in this contract would be tendered out as selected sub-contracts. The main contractor shall take full responsibility for such sub-contractors' work.

### **14.0 The authority of the PA in particular. clause 14.1.4**

Employer's requirements will be referenced when calling for Nominated/Selected sub-contractor tenders in line with Clause 14. This must form part of both contracts: The Employer and the contractor contract, the Employer and the contractor. All appointments or additional works by others or change of any sort in the project must be approved by the Employer. The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Employer, including any change in the Contract Price, shall be agreed between the Service Provider and the Employer.

#### **14.0 The Contractor may refuse to appoint the sub-contractor**

Mutual agreement between PA (with delegated authority to do so) and Contractor must be reached in the selection of Nominated sub-contractor. The Contractor's objection must be addressed, thus limiting risk exposure the appointment could cause to the entire project deliverables. The Contractor's refusal conditions may only be those on 14.2.1, 14.2.2 and 14.2.3.

As above, selected sub-contractors shall be dealt with in a similar manner. The Contractor shall provide the PA with a list of Selected sub-contractors for the works, however, the final decision would still require buy in from Contractor.

#### **26.0 Liability for increase of the Contract Value i.e. Adjustment**

The Quantity Surveyor appointed by the Employer will work with the PA in resolving and adjudication contractual claims, prepare contract instructions and motivate for Employer's approval, maintain financial control systems, prepare monthly valuations and prepare final account. The default by the PA or Quantity Surveyor or the contractor and their agents may not result in the Employer being liable for contract adjustments.

The Employer's approval must be evidenced by a specific written instruction to the PA issued under the hand of the project manager of the Employer

#### **26.0 Liability when the BOQ is not sufficiently accurate**

The BOQ is measured in full (with provisional trades, namely Earthworks, Plumbing and site works subject to re-measurement) Contractor must program all the works described in the BOQ.

The BOQ is fixed as part of this contract. The budget is fixed and will be administered by the QS so that there are no variations of cost.

#### **28.0 & 29.0 Suspension and Termination of Works**

The Contractor will not suspend or terminate the execution of the works unless such suspension or termination is caused by a breach of a material provision of this contract by the Employer and the Employer has failed to remedy such material breach within the period specified in the contract or such reasonable time;

Liability for increase of the contract value i.e. adjustment due to suspension of work will be thoroughly assessed by the parties to the contract and as such any changes, up or down are motivated to the Employer. If suspension is due to the fault of the professional service providers then the Employer is not liable under this contract for such failure. The Employer representative must be invited to, and will be in attendance in, all meetings where decisions are made hence the Employer will be advised timeously of any material changes to the contract due to suspension of works.

#### **26.0 Adjustment of Contract Value and Final Account**

Employer's approval will have to be sourced for cost bearing CI's. Approved contract instructions will be recorded in the monthly cost report, reflecting cost movement. The ultimate cost will be reconciled at preparation of the Final Account.