THE JOINT BUILDING CONTRACTS COMMITTEE

JBCC

PRINCIPAL BUILDING AGREEMENT

Project
Employer
Contractor
Contract Date
File Code

JBCC Edition 6.2 © MAY 2018

The Joint Building Contracts Committee® - NPC
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

For more information about the JBCC®, frequently asked questions, where documents may be purchased as well as training courses visit www.jbcc.co.za. The JBCC® does not sell directly to users but may be contacted at info@jbcc.co.za

Principal Building Agreement structure

The agreement clauses follow the project execution sequence. The documents aim to set out clear, balanced and enforceable procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. The following additional documents form part of the suite of contract agreements

- The JBCC® Principal Building Agreement - Contract Data that incorporates specific employer and contractor requirements;
- The JBCC® General Preliminaries that generally covers all aspects of preliminaries for most types of projects;
- The JBCC® Nominated/Selected Subcontract Agreement that replicates the JBCC® Principal Building Agreement with common clauses retaining the same numbering; and
- A comprehensive set of certificate forms and support documents for use in the administration of the agreement

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 Prelimnaries 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

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Actions by the parties / principal agent within a given time

Clause	Time period	Party	Purpose
2.4	1WD-7 CD	parties or principal agent	notices deemed to be received
6.4	5 WD	contractor > principal agent	non-performance of an agent i.t.o. this agreement
6.5	10 WD	employer	appoint another agent/contractor may object
10.6	10 WD notice	contractor > employer	failure to insure - notice – insure + recover expense
11.1	15 WD	contractor	provide guarantee for construction
11.2.1	20 WD	contractor	replace securities
11.5.1-2	15/20 WD	employer	provide / replace guarantee for payment
11.6	10 WD notice	contractor > employer	no security, contractor notice to suspend works
11.8	10 WD	parties	return original/replacement security forms
12.2.2	15 WD	contractor	submit priced document
12.2.6	15 WD	contractor	submit programme
14.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to nominated subcontractor
14.5	5 WD proof payment	employer (principal agent)	pay nominated subcontractor on default by contractor
14.6	5 WD notice	contractor + subcontractor	termination of subcontractor appointment on default
15.4.2	15 WD guarantee	contractor > subcontractor	provide guarantee for payment to selected subcontractor
15.5	5 WD proof payment	employer (principal agent)	pay selected subcontractor on default by contractor
17.3	5 WD	contractor	proceed with a contract instruction, where practical
19.2.2	5 WD	contractor > principal agent	works ready for inspection
19.4	5+5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
19.6	5+agreed WD	principal agent > contractor	employer occupies portion of the works, list for completion, fix defects
21.3.1	10 WD	contractor	inspect before expiry of defects liability period
21.3.2	5 WD	contractor > principal agent	invite PA to inspect list for completion
21.5	5 WD notice	contractor > principal agent	inspect > list for final completion > certificate
21.6	10 WD notice	principal agent > contractor	no list for final completion > notice > complete
21.7.3	5 WD notice	principal agent > contractor	inspect > list for final completion > certificate
21.9	5+5 WD	contractor > principal agent	no list for final completion / deemed final completion
23.4.2*	20 WD notice	contractor > principal agent	notice of a possible delay, no details yet
23.5	40 WD claim	contractor > principal agent	delay ceased, details of delay and expenses
23.7	20 WD award	principal agent > contractor	assess claim – accept/reduce/reject
25.2	date [CD]	principal agent > contr/empl	issue payment certificate and support forms
25.10	14 CD payment	employer pay contractor	make payment from date of payment certificate
25.11	21 CD	contractor pay employer	make payment i.t.o. schedule from principal agent
25.13	7 CD payment	contractor pay subcontractor	pay subcontractors i.t.o. schedule from principal agent
25.14	5 WD notice	contractor > employer	no/partial payment > suspend etc
25.15	7 CD payment	principal agent > contractor	final payment certificate after acceptance of final account
26.5*	20 WD notice	contractor > principal agent	notice of possible expense and loss
26.6	40 WD claim	contractor > principal agent	substantiated claim
26.7	20 WD award	principal agent > contractor	assess claim = accept/reduce/reject
26.10	60 WD issue FA	principal agent > contractor	issue final account
26.11	30 WD accept FA	contractor > principal agent	accept final account
26.12	10 WD notice	contractor + principal agent	agree final account or deemed acceptance
27.2.9	5 WD notice	notice to contractor	remedy default before next recovery statement
28.1	10 WD notice	contractor > employer	list of defaults to be remedied > suspend works
28.2	notice	contractor > employer	suspension of works where defaults not remedied
29.2	10 WD	employer > contractor	intention to terminate if defaults not remedied
29.3	notice	employer > contractor	default not remedied, termination forthwith
29.14	notice	contractor > employer	intention to terminate if guarantee for payment not provided/maintained
29.15	10 WD notice	contractor > employer	intention to terminate if defaults not remedied
29.16	forthwith	contractor > employer	default not remedied, termination forthwith
29.17.1	forthwith	contractor > subcontractor	termination where PBA terminated
29.17.2	10 WD notice	contractor	remove construction equipment, temporary works, etc
29.21	10 WD	either party	intention to terminate > impossible to complete
29.24.3	10 WD	contractor	remove construction equipment
29.25.2	20 WD	principal agent	prepare status report
29.25.4	60 WD	principal agent	complete final account
30.2	10 WD	either party	disagreement not resolved > dispute
30.3	10 WD	aggrieved party	refer to adjudication
30.6.4	10 WD	aggrieved party	dissatisfied with adjudication
30.6.5	10 WD	aggrieved party	no adjudication/not accept adjudication ruling > arbitration

Abbreviations: WD = working days CD = calendar days, *No notice, forfeits the opportunity to claim

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PRINCIPAL BUILDING AGREEMENT

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INTERPRETATION

1.0 DEFINITIONS and INTERPRETATION

1.1 Definitions

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

AGENT: An entity [CD] appointed by the **employer** to deal with specific aspects of the **works**

AGREEMENT: The completed **JBCC®** Principal Building Agreement and **JBCC® contract data**, the **contract drawings**, the **priced document** and any other documents reduced to writing and signed by the authorised representatives of the **parties**

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

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

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

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

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

COMPENSATORY INTEREST: Interest due to the **contractor** at the ruling rate of **interest** on amounts certified after thirty-one (31) **calendar days** of the date of **practical completion**, compounded monthly until the date of payment

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

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

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

CONTRACT DATA: The document listing the project specific information

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

CONTRACT DRAWINGS: The drawings listed [CD]

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

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

CONTRACT VALUE: A monetary value initially equal to the **contract sum**, subject to adjustment in terms of this **agreement**

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

DEFAULT INTEREST: Interest at six (6) percentage points per annum above the ruling rate of **interest** where payment has not been received within the stipulated period, compounded monthly from the due date for payment until the date of payment

DEFECT: Any aspect of materials and workmanship forming part of the **works** that does not conform to the **agreement** and/or **construction information**

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

EMPLOYER: The **party** [CD] contracting with the **contractor**

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

FINAL COMPLETION: The stage of completion as certified by the **principal agent** where the **works**, or a **section** thereof, has been completed and is free of **defects**

FINAL PAYMENT CERTIFICATE: The certificate issued by the **principal agent** after the issue of the **certificate of final completion** and after the **final account** has been agreed

FORCE MAJEURE: An exceptional event or circumstance that:

- Could not have been reasonably foreseen
- Is beyond the control of the **parties**, and
- Could not reasonably have been avoided or overcome

Such an event may include but is not limited to:

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

FREE ISSUE: Materials and goods provided at no cost to the **contractor** by the **employer** for inclusion in the **works** [CD]

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

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

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

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

JBCC®: The Joint Building Contracts Committee® NPC

LATENT DEFECT: A **defect** that an inspection of the **works** by the **principal agent** and/or **agents** would not reasonably have revealed

LAW: The law of the country [CD]

LIST FOR COMPLETION: A list that may include marked up drawings and photographs issued by the **principal agent** where **practical completion** has been certified, listing **defects** and/or outstanding work to be completed

LIST FOR FINAL COMPLETION: A **list for completion** that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **final completion**, where **final completion** has not been achieved, listing **defects** and/or outstanding work to be completed to achieve **final completion**

LIST FOR PRACTICAL COMPLETION: A comprehensive and conclusive list that may include marked up drawings and photographs issued by the **principal agent** after the inspection of the **works** for **practical completion**, where **practical completion** has not been achieved, listing the **defects** and/or outstanding work to be completed to achieve **practical completion**

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

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

N/S SUBCONTRACT AGREEMENT: The completed **JBCC®** Nominated/Selected Subcontract Agreement (NSSA) and **JBCC®** NSSA contract data, the subcontract drawings, the subcontact priced document and any other documents reduced to writing and signed by the authorised representatives of the **contractor** and of the **subcontractor**

PARTY: The **employer** or the **contractor** and 'parties' shall refer to both of them

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

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

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

PRELIMINARIES: The **JBCC®** General Preliminaries and/or the items listed in the preliminaries section of the **priced document**

PRICED DOCUMENT: The document incorporating quantities and/or rates used in the compilation of the **contract sum** such as **bills of quantities**, **preliminaries** and schedules of rates

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

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

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

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

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

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

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

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

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

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

SUSPENSION: The temporary cessation of the **works** by the **contractor**

TAX: Value-added tax, general sales tax or similar consumption tax applicable by **law**

WORKING DAYS: **Calendar days** which exclude Saturdays, Sundays, proclaimed public holidays and recorded **contractor**'s annual holiday periods [CD]

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

1.2 Interpretation

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

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

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

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

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

2.0 LAW, REGULATIONS AND NOTICES

2.1 The **contractor** shall comply with the **law** [CD], obtain permits, licences and approvals required and pay related charges for the execution of the **works** [17.1.4]. The **employer** shall comply with the **law** [CD], obtain permits, planning, building or similar permissions and pay charges for the **works** other than those which are the responsibility of the **contractor** [26.4.1]

2.2 All communication or **notices** between the **parties** shall be in the language of this **agreement** and in a format that can be read, copied and recorded

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

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

2.4.1 Delivered by hand - on the day of delivery

2.4.2 Sent by electronic mail, excluding social media - within one (1) **working day**

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

3.0 OFFER AND ACCEPTANCE

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

3.2 The currency applicable to this **agreement** is as recorded [CD]

3.3 This **agreement** shall come into force on the date of acceptance by the **employer** 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]

3.4 Should any provision of this **agreement** be unenforceable the **parties** shall act in good faith to agree alternative provisions in terms of this **agreement**

3.5 Failure or omission by a **party** to enforce any provision of this **agreement** shall not constitute a waiver of such provision or affect such **party**'s rights to require the performance of such provision in the future

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4.0 CESSION AND ASSIGNMENT

4.1 Neither **party** shall cede rights or assign rights and obligations under this **agreement** without the prior written consent of the other **party**, which consent shall not be unreasonably withheld

4.2 The **contractor** shall not consent to a nominated **subcontractor** ceding rights or assigning rights and obligations under this **agreement** without obtaining the prior written consent of the **principal agent**

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

5.0 DOCUMENTS

5.1 Documents referred to in this **agreement** shall mean the current edition thereof with all amendments thereto as at the date of submission of the **contractor**'s tender

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

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

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

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

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

6.0 EMPLOYER'S AGENTS

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

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

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

6.4 Where the **principal agent** fails to act in terms of this **agreement** and/or an **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **principal agent**, with a copy to the **employer**, to rectify such default within five (5) **working days.** Where such default has not been rectified, the **contractor** may give **notice** to suspend the **works** [28.0]

6.5 Where the **principal agent** and/or an **agent** fails to act or is unable to act or ceases to be the **principal agent** or an **agent** in terms of this **agreement**, the **employer** shall appoint another **principal agent** and/or an **agent** within ten (10) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint a **principal agent** and/or an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment

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

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7.0 DESIGN RESPONSIBILITY

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

7.2 Any design responsibility undertaken by a **subcontractor** shall not devolve on the **contractor**. All contractual or other rights the **contractor** has against such **subcontractor** arising from any design responsibility undertaken shall be ceded to the **employer** on the date of **final completion** or the date of termination of this **agreement** [9.2.3]

7.3 The **contractor** shall be responsible for the timeous submission of design documentation by a selected **subcontractor** for acceptance and coordination by the **principal agent** and/or **agents** [23.2.8]

INSURANCES AND SECURITIES

8.0 WORKS RISK

8 .1 The **contractor** shall take full responsibility for the **works** from the date on which possession of the **site** is given to the **contractor** and up to the date of issue of the **certificate of practical completion** or deemed achievement of **practical completion** for the **works** as a whole, or a **section** thereof. Thereafter responsibility for the **works** as a whole, or a **section** thereof, shall pass to the **employer**

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

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

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

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

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

8.3.2 The new replacement value of **free issue** [12.1.10]

8.3.3 The cost of additional professional services

8.4 Notwithstanding subclause 8.3, the limit of the **contractor's** liability shall not exceed the amount of the contract works insurance [10.1.1] [CD]

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

8.5.1 The use or occupation of any part of the **works** by the **employer**, the **employer**'s employees and/or **agents** and those for whose actions they are responsible

8.5.2 An act or omission of the **employer**, the **employer**'s employees and/or an **agent** and those for whose actions they are responsible

8.5.3 An act or omission by a **direct contractor**

8.5.4 The use or occupation of any part of the **works** by a **direct contractor**

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

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

8.5.7 **Force majeure**

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

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

9.0 INDEMNITIES

9.1 The **contractor** indemnifies and holds harmless the **employer**, the **employer**'s employees and/or **agents** from all claims or proceedings for damages, expense and/or loss including legal fees and expenses in respect of or arising from:

9.1.1 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 presence on and/or occupation of the **site** by the **contractor**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**

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

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

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

9.2.1 An act or omission of the **employer**, the **employer**'s employees and/or **agents** and those for whose actions they are responsible

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

9.2.3 Design of the **works** [7.2] where the **contractor** is not responsible for such design

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

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

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

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

9.2.8 A **defect** in **free issue**

9.2.9 Physical loss or damage to the **works** where a **certificate of practical completion** has been issued [19.0] or **practical completion** has been deemed to have been achieved

9.2.10 Advance payments certified by the **principal agent** and paid by the **contractor** to **subcontractors** [27.1.8; 27.2.4]

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10.0 INSURANCES

10.1 The **party** responsible shall effect and keep the respective insurances [CD] in force in the joint names of the **parties** from the date of possession of the **site** until the issue of the **certificate of practical completion** with an extension to cover the **contractor**'s obligations after the date of **practical completion** [8.2.2]:

10.1.1 Contract works insurance [CD] for the **works** that shall make provision for **direct contractors** [CD], **free issue** [CD], **materials and goods**, professional fees, temporary works, clearing away and removing of all debris and any other costs to reinstate the **works** and where required, damage to **employer** owned surrounding property [CD] where not covered under the removal of lateral support insurance

10.1.2 Supplementary insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the contract works insurance

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

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

10.1.5 Other insurances [CD]

10.2 Where **practical completion** in **sections** is required [20.0], or where the **works** is for alterations and additions, the **employer** shall effect and keep in force contract works insurance [10.1.1], supplementary insurance [10.1.2], public liability insurance [10.1.3] and where applicable, removal of lateral support insurance [10.1.4] and other insurances [10.1.5] in the joint names of the **parties** until the date of **final completion**

10.3 The **party** responsible for effecting insurances [10.1.1-5; 10.2] shall provide proof of the insurances effected to the other **party** before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such insurances before their expiry. Upon request the **party** responsible for effecting insurances shall provide the other **party** with the entire policy wording of such insurances

10.4 The **contractor** shall be responsible for the deductible amounts [CD] other than where a claim against an insurance cover is due to default of the **employer**, the **employer**'s employees and/or **agents** and those for whose actions they are responsible

10.5 The **employer** may, at his expense, require the cover of the contract works insurance [10.1.1] to be increased. The **party** responsible for effecting insurances shall provide written proof of such adjustment

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

10.7 Where this **agreement** is terminated [29.0] and the **contractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of an insurance claim shall vest solely in the **employer**. The **party** responsible for the insurances shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, public liability insurance, supplementary insurance and removal of lateral support insurance

10.8 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** in accordance with their respective obligations under this **agreement**

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

10.10 The **parties** shall at their discretion effect insurances for aspects not insured such as **construction equipment** and work by **direct contractors** after **practical completion**

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11.0 SECURITIES

11.1 The **contractor** shall provide to the **employer** a **guarantee for construction** within fifteen (15) **working days** of acceptance of the **contractor**'s tender and choose:

11.1.1 A **guarantee for construction** – (variable) initially equal to ten per cent (10%) of the **contract sum** and keep such **security** valid and enforceable until the **final payment certificate** has been issued to the **contractor** [25.15]

or ...

11.1.2 A **guarantee for construction** - (fixed) equal to five per cent (5%) of the **contract sum** and a payment reduction of five per cent (5%) of the value of each **payment certificate** up to a maximum of five per cent (5%) of the **contract sum** [25.3.3; 25.12]. The **contractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued

11.2 The **contractor** shall:

11.2.1 Maintain and/or replace a **guarantee for construction** - (variable or fixed) [11.1.1-2] at least twenty (20) **working days** before such **security** is due to expire

11.2.2 Provide a **guarantee for advance payment** where an advance payment is required. The **contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.3]

11.3 The amount of the **guarantee for advance payment** shall be reduced by the amount repaid by the **contractor** as certified by the **principal agent** in **payment certificates**. If the advance payment is not repaid by the date a **certificate of practical completion** is issued or deemed achievement of **practical completion** or by the date of termination by the **employer** due to **contractor** default [29.9.3], the entire outstanding amount shall immediately become due and payable

11.4 Where the **contractor** fails to provide the specified **guarantee for construction** the **employer** may:

11.4.1 Hand over the **site** to the **contractor** and withhold an amount in interim **payment certificates** to the **contractor** until the total amount withheld is equal to ten per cent (10%) of the **contract sum**. The amount withheld shall be reduced at **practical completion** [19.0] to two and one half per cent (2.5%) of the **contract sum** and to zero per cent (0%) in the **final payment certificate** [25.9; 25.15]

or ...

11.4.2 Terminate this **agreement** [29.1.1; 29.2]

11.5 The **employer** shall:

11.5.1 Provide to the **contractor** a **guarantee for payment** where required in the accepted tender [CD] within fifteen (15) **working days** of acceptance of the **contractor**'s tender

11.5.2 Keep such **guarantee for payment** valid and enforceable in terms of the **security** form and/or provide a replacement **guarantee for payment** at least twenty (20) **working days** before such **security** is due to expire

11.6 Where the **employer** fails to provide the **guarantee for payment** [CD], or such **security** has expired, the **contractor** may, after giving ten (10) **working days notice**, where such default has not been remedied, forthwith suspend the **works** until such **security** has been provided [12.1.1; 28.1.1] or by further **notice** terminate this **agreement** [29.14.2; 29.15]

11.7 Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%) the **guarantee for payment** shall be adjusted at the **employer**'s expense. The **employer** shall provide written proof of such adjustment

11.8 The original or the replacement **security** form(s) shall be returned to the other **party** within ten (10) **working days** after the expiry date

11.9 Where a **party** makes an unjustified call on a **security**, the amount paid and **default interest** shall be paid to the other **party** [27.1.2; 27.1.5]

11.10 The **contractor** shall waive his lien or right of continuing possession of the **works** on receipt of a **guarantee for payment** from the **employer**

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EXECUTION

12.0 OBLIGATIONS OF THE PARTIES

12.1 The **employer** shall:

12.1.1 Provide a **guarantee for payment** [11.5], where applicable [CD]

12.1.2 Record specific requirements [CD] where the existing premises will be in use and occupied during the execution of the **works** including restriction of working hours [CD]

12.1.3 Record and describe relevant natural features and known services [CD] where the **contractor** shall be responsible for their preservation

12.1.4 Define any restrictions to the **site** or areas that the **contractor** may not occupy [CD]

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

12.1.6 Effect and keep in force insurances in the joint names of the **parties**, where the **employer** is responsible for providing insurances [CD]

12.1.7 Make payments by the due date [25.10] [CD]

12.1.8 Make advance payments, where required [CD]

12.1.9 Permit reasonable access to the **works** by the **contractor** and/or **subcontractors** subsequent to **practical completion** to fulfil outstanding obligations [17.1.17; 19.7]

12.1.10 Supply **free issue** [CD] to suit the **programme**

12.1.11 Define the extent of work to be carried out by **direct contractors** [CD]

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

12.1.13 At the **employer**'s discretion make direct payment where the **contractor** has failed to honour a n/s subcontract payment advice after **notice** of default by a **subcontractor** to the **principal agent**, the **employer** and the **contractor** [14.5 and/or 15.5]

12.2 The **contractor** shall:

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

12.2.2 Within fifteen (15) **working days** of acceptance of the **contractor**'s tender submit to the **principal agent** the **priced document** with items priced to include all costs, overheads and profit, extended and cast. Where the **priced document** contains errors or discrepancies and/or prices considered by the **principal agent** to be imbalanced or unreasonable the **principal agent** and the **contractor** shall adjust such prices without any change to the **contract sum**

12.2.3 Provide a **guarantee for construction** [11.1; 11.2.1]

12.2.4 Provide a **guarantee for advance payment** [11.2.2], where applicable [CD]

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

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

12.2.7 On being given possession of the **site** commence the **works** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **works** to **practical completion** and to **final completion** [21.12]

12.2.8 Provide everything necessary for the proper execution of the **works** in compliance with the **agreement**

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12.2.9 Coordinate the **programme** with **subcontractors'** and **direct contractors' programmes**

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

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

12.2.12 Cooperate with the **principal agent** in the preparation of cash flow projections and the compilation of **payment certificates** [25.1]

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

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

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

12.2.16 Allow the **employer** and **principal agent** and/or **agents** reasonable access to the **works**, workshops and other places where work is being prepared, executed and/or stored

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

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

12.2.19 On achievement of **practical completion** hand over to the **principal agent** all information for the preparation of 'as built' documentation and applicable statutory and/or regulatory approval certificates as well as all operating and instruction manuals and the like

12.2.20 Cede to the **employer** on the date of issue of the **certificate of final completion** any guarantees, product warranties or indemnities pertaining to the **works**. This cession shall not prejudice any other rights that the **employer** may have [21.11]

12.2.21 Forthwith notify all **subcontractors** where a **certificate of practical completion** and/or a **certificate of final completion** has been issued by the **principal agent** for the **works**, or a **section** therof

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

13.0 SETTING OUT

13.1 The **principal agent** and/or an **agent** with delegated authority shall:

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

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

13.2 The **contractor** shall:

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

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

13.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the **contractor**. In such event the **contractor** may be entitled to a revision of the date for **practical completion** [23.2.5] and/or an adjustment of the **contract value** [26.0]

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

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14.0 NOMINATED SUBCONTRACTORS

14.1 The **principal agent** and/or **agents** shall:

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

14.1.2 Call for tenders

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

14.1.4 Nominate a **subcontractor** and instruct the **contractor** [17.1.14] to appoint such **subcontractor** as a nominated **subcontractor** in terms of the **n/s subcontract agreement** and other tender requirements

14.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted tender and that a **guarantee for advance payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]

14.2 The **contractor** may refuse to appoint such **subcontractor**:

14.2.1 Against whom the **contractor** makes a reasonable objection

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

14.2.3 Who has failed to provide a required security [NSSA-CD]

14.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [14.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be nominated and appointed in accordance with a **contract instruction** issued by the **principal agent**

14.4 Where the **subcontractor** has complied with the tender requirements, in accordance with a **contract instruction** issued by the **principal agent** [17.1.14], the **contractor** shall:

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

14.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** of such appointment, where required in the **n/s subcontract agreement** [CD]

14.4.3 Forward the **subcontractor**'s regular payment claims to the **principal agent** and/or **agents** by the date stated [NSSA-CD]

14.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **JBCC**® n/s subcontract payment advice and a **JBCC**® n/s subcontract recovery statement to reconcile the amount due for payment with the amount stated in the **JBCC**® n/s subcontract payment notification issued by the **principal agent**

14.4.5 Pay the **subcontractor** the amount certified by the date stated in the **JBCC**® NSSA contract data [25.13]

14.5 Where the **contractor** fails to provide proof of payment to the **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [27.2.7]

14.6 Where a nominated **subcontractor** has been declared insolvent, or where, after notification by the **contractor**, the **principal agent** agrees that a nominated **subcontractor** is in default of a material term of the **n/s subcontract agreement**, the **principal agent** shall instruct the **contractor** to give **notice** to the **subcontractor** to rectify such default. The **principal agent** shall instruct the **contractor** to terminate the **n/s subcontract agreement** should such default continue for five (5) **working days** after such **notice** [17.1.15]

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

14.7.1 Due to default or insolvency of the **subcontractor** [23.2.10], or default of the **employer**, the **principal agent** and/or **agents** [23.2.11] any variation in the cost of completing such subcontract works shall be for the account of the **employer**

14.7.2 Due to default or insolvency of the **contractor** any variation in the cost of completing such subcontract works shall be for the account of the **contractor**. The **employer** may recover expense and/or loss [27.2.8]

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14.7.3 The **principal agent** shall instruct the **contractor** to appoint another nominated **subcontractor** [14.1.4] to complete the subcontract works

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

15.0 SELECTED SUBCONTRACTORS

15.1 The **principal agent** and/or **agents** shall:

15.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** and this **agreement** for work intended to be executed by a selected **subcontractor** in consultation with and to the reasonable approval of the **contractor**

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

15.1.3 Scrutinise the received tenders for compliance with the tender documents in consultation with the **contractor**

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

15.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted tender and that a **guarantee for advance payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]

15.2 The **contractor** may refuse to appoint such **subcontractor**:

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

15.2.2 Who has failed to provide a required security [NSSA-CD]

15.2.3 Against whom the **contractor** makes a reasonable objection where circumstances have changed

15.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [15.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be chosen in consultation with the **contractor** and appointed in accordance with a **contract instruction** issued by the **principal agent**

15.4 Where the **subcontractor** has complied with the tender requirements, in accordance with a **contract instruction** issued by the **principal agent** [17.1.14], the **contractor** shall:

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

15.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** of such appointment, where required in the **n/s subcontract agreement** [CD]

15.4.3 Forward the **subcontractor**'s regular payment claims to the **principal agent** and/or **agents** by the date stated [NSSA-CD]

15.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **JBCC®** n/s subcontract payment advice and a **JBCC®** n/s subcontract recovery statement to reconcile the amount due for payment with the amount stated in the **JBCC®** n/s subcontract payment notification issued by the **principal agent**

15.4.5 Pay the **subcontractor** the amount certified by the date stated in the **JBCC®** NSSA contract data [25.13]

15.5 Where the **contractor** fails to provide proof of payment to a **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [27.2.7]

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

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

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15.7.1 Due to default of the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing such subcontract works shall be for the account of the **employer** [25.3.7]

15.7.2 Other than due to the default by the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing the subcontract works shall be for the account of the **contractor** [25.3.7]

15.7.3 The **principal agent** shall instruct the **contractor** to appoint another selected **subcontractor** [15.1.4] to complete the subcontract works

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

16.0 DIRECT CONTRACTORS

16.1 The **contractor** shall:

16.1.1 In accordance with a **contract instruction** [17.1.16] permit **direct contractors** [CD] to execute and/or install work as part of the **works**. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [19.6]

16.1.2 Make reasonable allowance in the **programme** for such work or installation

16.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [23.2.9; 27.1.7]

16.2 Payment of **direct contractors** shall be the responsibility of the **employer** outside this **agreement**

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

17.0 CONTRACT INSTRUCTIONS

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

17.1.1 Rectification of discrepancies, errors in description or quantity or omission of items in the **agreement** other than in the **JBCC**® Principal Building Agreement

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

17.1.3 The **site** [13.0]

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

17.1.5 Provision and testing of samples of **materials and goods** and/or of finishes and assemblies of elements of the **works**

17.1.6 Opening up of work for inspection, removal or re-execution [23.2.4; 26.4.2]

17.1.7 Removal or re-execution of work

17.1.8 Removal or substitution of any **materials and goods**

17.1.9 Protection of the **works**

17.1.10 Making good physical loss and repairing damage to the **works** [23.2.2]

17.1.11 Rectification of **defects** [21.2]

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

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

17.1.14 Appointment of a **subcontractor** [14.0; 15.0]

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17.1.15 Termination of a nominated **n/s subcontract agreement** [14.6]

17.1.16 Work by **direct contractors** [16.0]

17.1.17 Access by others or previous contractors to remedy defective work

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

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

17.1.20 On **suspension** or termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [29.0]

17.2 The **contractor** shall comply with and duly execute all **contract instructions**

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

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

17.5 Oral instructions shall be of no force or effect

COMPLETION

18.0 INTERIM COMPLETION

18.1 This clause applies only to the **n/s subcontract agreement** and is included to retain the same clause numbers between the two agreements

19.0 PRACTICAL COMPLETION

19.1 The **principal agent** shall:

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

19.1.2 Issue a **contract instruction** [17.1] consequent on each such inspection, where necessary

19.2 The **contractor** shall:

19.2.1 Inspect the **works** in advance of the anticipated date for **practical completion** to confirm that the standard of work required and the state of completion of the **works** for **practical completion** has been achieved

19.2.2 Give at least five (5) **working days notice** to the **principal agent** of the anticipated date for the inspection for **practical completion** of the **works** to meet the anticipated date for **practical completion**

19.3 The **principal agent** shall inspect the **works**, or a **section** thereof, within the period stated [CD] and forthwith issue to the **contractor**:

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

19.3.2 An updated **list for practical completion** limited to items on the **list for practical completion** that have not been attended to satisfactorily. The **contractor** shall repeat the procedure until all items on the **list for practical completion** have been attended to satisfactorily before the **certificate of practical completion** is issued by the **principal agent**

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or ...

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

19.3.4 A **list for completion** with a copy to the **employer**

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

19.5 On issue of the only or last **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** where this has not been waived. On issue of the **certificate of practical completion** for a **section**, the **employer** shall be entitled to possession of such **section**

19.6 Where the **employer** takes possession of the whole or a portion of the **works** by agreement with the **contractor**, **practical completion** shall be deemed to have occurred. The **principal agent** shall after inspection of the **works** [19.3] issue a **certificate of practical completion** to the **contractor** with a copy to the **employer** within five (5) **working days** of the date of possession of the whole or a portion of the **works** by the **employer** and the **list for completion** of items to be rectified and work to be completed within a period agreed between **the parties**

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

20.0 COMPLETION IN SECTIONS

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

20.2 The **principal agent** shall for each **section** issue:

20.2.1 A **certificate of practical completion** [19.3]

20.2.2 A **certificate of final completion** indicating where applicable, if it is for the last **section** to reach **final completion** [21.6.2]

21.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

21.1 The defects liability period for the **works** shall commence on the **calendar day** following the date of **practical completion** and end at midnight (00:00) ninety (90) **calendar days** from the date of **practical completion** [CD] or when work on the **list for completion** has been satisfactorily attended to [21.6], whichever is the later

21.2 Where **defects** become apparent during the defects liability period the **principal agent** may instruct the **contractor** [17.1.11] to progressively attend to such items, whilst at all times minimising inconvenience to the occupants

21.3 The **contractor** shall:

21.3.1 Inspect and forthwith rectify all items on the **list for completion** no later than ten (10) **working days** before the expiry of the defects liability period [19.3.4]

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

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

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

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

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

or ...

21.6.2 Issue the **certificate of final completion** to the **contractor** with a copy to the **employer**

21.7 Where the **principal agent** issues a **list for final completion**:

21.7.1 The **contractor** shall forthwith complete all outstanding work and rectify all the **defects**

21.7.2 The **contractor** shall give **notice** to the **principal agent** when all outstanding work has been completed and all the **defects** have been rectified

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

21.8 Where the **principal agent** gives **notice** to the **contractor** of items on the **list for final completion** or an updated **list for final completion** specifying all outstanding work to be completed and/or **defects** to be rectified to achieve **final completion** the process [21.7.2-3] shall be repeated until all items on the (updated) **list for final completion** have been completed. On completion of all items on the (updated) **list for final completion** the **principal agent** shall forthwith issue the **certificate of final completion** to the **contractor** with a copy to the **employer**

21.9 Where the **principal agent** has not issued the **list for final completion** or the updated list within five (5) **working days** after the inspection period [21.6], the **contractor** shall forthwith give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **final completion** shall be deemed to have been achieved on expiry of such **notice** period and the **principal agent** shall forthwith issue the **certificate of final completion**

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

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

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

21.11 Where the **contractor**, a **subcontractor** or a supplier is required to give a guarantee, warranty or indemnity, other than a **security** to the **contractor**, the rights and obligations under such guarantee, warranty or indemnity shall be ceded to the **employer** on the date of issue of the **certificate of final completion**. This cession shall not prejudice any other rights the **employer** may have [12.2.20]

21.12 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **contractor**'s obligations [12.2.7] have been fulfilled other than for **latent defects**

22.0 LATENT DEFECTS LIABILITY PERIOD

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

22.2 The **contractor** shall make good all **latent defects** that appear up to the date of expiry of the **latent defects** liability period [3.3]

22.3 Where termination of this **agreement** occurs before the date of **final completion**, the **latent defects** liability period shall end:

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

or ...

22.3.2 On the date of termination where execution of the **works** has become impossible due to circumstances beyond the control of either **party** [29.20], or on the date of termination by the **contractor** due to default by the **employer**, the **principal agent** and/or **agents** [29.17.3; 29.23]

23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

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

23.1.1 Adverse weather conditions

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

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

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

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

23.1.6 **Force majeure**

23.2 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** with an adjustment of the **contract value** [26.7] for a delay to **practical completion** caused by one or more of the following events:

23.2.1 Delayed possession of the **site** [12.1.5]

23.2.2 Making good physical loss and repairing damage to the **works** [8.5] where the **contractor** is not at risk

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

23.2.4 Opening up and testing of work and **materials and goods** where such work is in accordance with the **agreement** [17.1.6]

23.2.5 Late or incorrect issue of **construction information** [12.1.12; 13.2.3]

23.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible [12.1.10]

23.2.7 Late appointment of a **subcontractor** in terms of the agreed **programme** where the **contractor** has taken reasonable steps to avoid or reduce such delay [14.4.1; 15.4.1]

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

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

23.2.10 Insolvency or termination of a nominated **subcontractor** [14.7.2]

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

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

23.2.13 **Suspension** of the **works** [28.0]

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

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

23.4.1 Take reasonable steps to avoid or reduce such delay

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

23.5 The **contractor** shall submit a claim for the revision of the date for **practical completion** to the **principal agent** within forty (40) **working days**, or such extended period as the **principal agent** may allow, from when the **contractor** is able to quantify the delay in terms of the **programme**

23.6 Where the **contractor** submits a claim for a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:

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

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

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

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

23.7.1 Determine the revised date for **practical completion** as a result of the **working days** granted

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

23.7.3 Give reasons where such claim is refused or reduced

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

24.0 PENALTY FOR LATE OR NON-COMPLETION

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

24.2 Where the **employer** elects to levy such **penalty** the **employer**, or the **principal agent** on instruction from the **employer**, shall give **notice** thereof to the **contractor**. The **principal agent** shall determine the **penalty** due from the later of the date for **practical completion** [CD], or the revised date for **practical completion**, up to and including the earlier of:

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

24.2.2 The date of termination [29.8]

24.3 The **principal agent** shall include the **penalty** in regular interim **payment certificates** from the date on which the **employer**'s entitlement to **penalties** commences

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PAYMENT

25.0 PAYMENT

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

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

25.3 Each **payment certificate** shall separately include:

25.3.1 A fair estimate of the value of work executed

25.3.2 A fair estimate of the value of **materials and goods** [25.4; 25.5]

25.3.3 **Security** adjustment [11.1.2; 11.4.1]

25.3.4 Cost fluctuations, if applicable

25.3.5 The gross amount certified

25.3.6 The amount previously certified

25.3.7 Amounts due to either **party** in the **recovery statement** [27.1]

25.3.8 **Tax**

25.3.9 Interest amounts included in the **recovery statement**

25.3.10 Other non-taxable amounts

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

25.4 The value of **materials and goods** [25.3.2] (excluding **materials and goods** off **site** or in transit) shall be included in the amount certified only where:

25.4.1 Not prematurely delivered or offered for delivery in terms of the **programme**

25.4.2 Stored and suitably protected against loss and damage

25.4.3 Covered by insurances [10.0]

25.5 The value of **materials and goods** [25.3.2] stored off **site** and/or in transit shall be included in the amount certified only where covered by a **guarantee for advance payment** or such other **security** acceptable to the **employer**

25.6 **Materials and goods** when certified [25.4] and paid for shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**

25.7 The **principal agent** shall concurrently with each **payment certificate** issue:

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

25.7.2 To the **contractor** a statement showing the amount certified for each **subcontractor**

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

25.7.4 The determination of **default interest**

25.7.5 The determination of **compensatory interest**

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25.8 An interim **payment certificate** shall not be evidence that the **works** and **materials and goods** are in terms of the **agreement**

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

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

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

25.12 Where a **guarantee for construction** (fixed) and payment reduction [11.1.2] has been chosen the value of the **works** [26.0] and **materials and goods** [25.3.2] that exceeds the **contract sum** and any contract price adjustments (cost fluctuations) [25.3.4; 26.9.5] [CD] shall be certified in full. The value certified that does not exceed the **contract sum** shall be subject to the following percentage adjustments:

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

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

25.12.3 One hundred per cent (100%) of such value in the **final payment certificate**

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

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

25.14.1 **Suspend** the **works** [28.1.3]

25.14.2 Exercise the lien or right of continuing possession of the **works** where this has not been waived

25.14.3 Call up the **guarantee for payment** [11.5]

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

25.16 Where the **contractor** disputes the correctness of the **final account** within the period allowed [26.12], the **principal agent** shall issue interim **payment certificates** to the **contractor** with a copy to the **employer** by the due date [CD] for the undisputed amount(s)

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

26.0 ADJUSTMENT OF THE CONTRACT VALUE AND FINAL ACCOUNT

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

26.2 Adjustments to the **contract value** resulting from a **contract instruction** [17.1] shall be determined as follows:

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

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

26.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary use of labour, **construction equipment** and/or **materials and goods** for executing the work plus an allowance of ten per cent (10%) mark-up

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26.2.4 Work omitted shall be valued at the rates in the **priced document**, but where the omission of such work alters the circumstances under which the remaining work is carried out, the value of the remaining work shall be determined by the above methods

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

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

26.4.1 Charges by authorities [2.1]

26.4.2 The cost of opening up and testing [17.1.6], where the work is according to this **agreement**

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

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

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

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

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

26.9 The **principal agent** shall:

26.9.1 Omit **prime cost amounts** and **budgetary allowances** [17.1.13] from the **contract sum** and determine the actual value of such work to be added to the **contract value**

26.9.2 Omit **provisional sums** [17.1.13] from the **contract sum** and determine the actual value of such **subcontractors'** work to be added to the **contract value**

26.9.3 Prorate the **contractor**'s allowances for profit and attendance on **provisional sums** and **prime cost amounts** excluding any allowance for cost fluctuations

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

26.9.5 Adjust the **contract value** to include contract price adjustments (cost fluctuations), if applicable [CD]

26.9.6 Rectify discrepancies, errors in description or quantity or omission of items in this **agreement** other than in the **JBCC**® Principal Building Agreement [17.1.1]

26.10 The **principal agent** shall prepare and issue the **final account** to the **contractor** within sixty (60) **working days** of the date of **practical completion**

26.11 The **contractor** shall accept the **final account** within thirty (30) **working days** of receipt thereof or give **notice** of non-acceptance with reasons failing which the **final account** shall be deemed to be accepted

26.12 Should the reasons for non-acceptance of the **final account** [26.11] not be resolved within ten (10) **working days** of the **notice** of non-acceptance, or within such extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a disagreement

26.13 The **principal agent** shall issue the **final payment certificate** to the **contractor** within seven (7) **calendar days** of acceptance of the **final account**

27.0 RECOVERY OF EXPENSE AND/OR LOSS

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

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The **employer** resulting from:

27.1.1 **Penalty** [24.3]

27.1.2 **Default interest** [25.7.4]

27.1.3 Expense and/or loss [27.2]

The **contractor** resulting from:

27.1.4 **Default interest** [25.7.4]

27.1.5 **Compensatory interest** [25.7.5]

27.1.6 Damages

27.1.7 Expense or loss caused by a **direct contractor** [16.1.3]

27.1.8 Advance payments [9.2.10; 12.1.8]

27.1.9 Termination of a **n/s subcontract agreement** due to default of the **employer**, the **principal agent** and/or **agents** [14.7.1; 15.7.1]

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

27.2.1 Paying charges [2.1]

27.2.2 Effecting insurances due to the **contractor**'s default [10.0]

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

27.2.4 Recoupment of advance payments [9.2.10; 11.3]

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

27.2.6 Termination of this **agreement** by the **employer** [29.1]

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

27.2.8 Termination of a **n/s subcontract agreement** (14.7.2; 15.7.2]

27.2.9 Default by the **contractor** where not less than five (5) **working days notice** detailing such default has been given before the issue of the next **recovery statement** to allow the **contractor** the opportunity to remedy such default

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

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

27.3.1 Subsequent **payment certificates** [25.0]

27.3.2 A demand in terms of the **security** [11.0]

27.3.3 The defaulting **party** as a debt

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

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SUSPENSION AND TERMINATION

28.0 SUSPENSION BY THE CONTRACTOR

28.1 The **contractor** may give ten (10) **working days notice** to the **employer** and the **principal agent** of the intention to suspend the **works** where the **employer** or the **principal agent** has failed to:

28.1.1 Provide and/or maintain a **guarantee for payment**, where required [11.5-6]

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

28.1.3 Make payment in full of an amount certified in an interim **payment certificate** by the due date [25.10] [CD]

28.1.4 Effect insurances [10.1.1-5; 10.2], where applicable [CD]

28.1.5 Appoint another **principal agent** and/or another **agent**, where applicable [6.5] or where an **agent** has failed to act in terms of delegated authority [6.4]

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

28.3 Where the **works** is suspended the **contractor** shall instruct each **subcontractor** to suspend the n/s subcontract works forthwith

28.4 Where the **works** has been suspended by the **contractor** [23.2.13] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** with an adjustment of the **contract value**

29.0 TERMINATION

Termination by the employer

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

29.1.1 Provide and maintain a **guarantee for construction** [CD]

29.1.2 Proceed with the **works** [12.2.7]

29.1.3 Comply timeously with a **contract instruction** [17.0]

29.2 Where the **employer** contemplates terminating this **agreement** the **employer** or the **principal agent** on instruction from the **employer** shall give **notice** thereof to the **contractor** of a specified default [29.1.1-3], to be remedied within ten (10) **working days** of the date of receipt of such **notice**

29.3 Where the **contractor** has not remedied a specified default within such period [29.2] the **employer** may forthwith give **notice** to the **contractor** of termination of this **agreement**

29.4 The **employer** may employ others to safeguard the **works**, complete the outstanding work and rectify defects in that portion of the **works** executed by the **contractor** [27.2.3]. The **contractor** shall be liable to the **employer** for such costs that shall be included in the **final account** [26.10]

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

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

29.7 The **employer**, on **notice** to the **contractor**, may recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the remaining work [25.3.7; 27.1.3]

29.8 The **employer** may apply the **penalty** [24.0] up to the date of termination where the initial or revised date for **practical completion** has passed

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29.9 The **employer** has the right of recovery against the **contractor**, where applicable, [CD] from:
The **guarantee for construction** (variable) until the final payment has been made; or
The **guarantee for construction** (fixed) until the date of **practical completion**; or
The payment reduction until the final payment is made; or
The **guarantee for advance payment** until the outstanding balance has been repaid to the **employer**

29.10 The **latent defects** liability period for the completed portion of the **works** shall end [22.3.1] five (5) years from the date of termination

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

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

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

Termination by the contractor

29.14 The **contractor** may give **notice** of intention to terminate this **agreement** where:

29.14.1 The **employer** has failed to provide and maintain a **guarantee for payment**, where applicable [CD]

29.14.2 The **employer** has failed to give possession of the **site** to the **contractor** [12.1.5]

29.14.3 The **employer** has failed to allow the **principal agent** and/or **agents** to exercise fair and reasonable judgement as contemplated by this **agreement** [6.6]

29.14.4 The **employer** has failed to effect insurances, where applicable [CD]

29.14.5 The **employer** has failed to pay the amount certified by the due date [25.10]

29.14.6 The **employer** has failed to appoint another **principal agent** and/or **agents**, where applicable [6.5]

29.14.7 The **principal agent** has failed to issue a **payment certificate** to the **contractor** by the due date [25.2]

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

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

29.17 Where this **agreement** is terminated by the **contractor**:

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

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

29.17.3 The **latent defects** liability period shall end on the date of termination [22.3.2]

29.17.4 The **contractor** may be entitled to recover damages [27.1.6]

29.17.5 The **guarantee for construction** shall expire on the date of termination

29.17.6 The **guarantee for advance payment**, where applicable [CD], shall expire on repayment of amounts due to the **employer**

29.17.7 The **guarantee for payment** [11.5-6], where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum or on the **security** expiry date, whichever is the earlier

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

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

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Termination by either party

29.20 Either **party** may give **notice** of intention to terminate this **agreement** where:

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

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

29.21 The **party** contemplating termination of this **agreement** shall give ten (10) **working days notice** to the other **party.** Where this **agreement** is terminated by either **party**:

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

29.21.2 The **party** responsible for insurance [CD] shall inform the insurer and the other **party** of the date of termination of the **agreement**

29.21.3 The **guarantee for payment**, where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum or on the **security** expiry date, whichever is the earlier

29.21.4 The **guarantee for construction** shall expire on the date of termination

29.21.5 The **guarantee for advance payment** [11.2.2; 11.3], where applicable [CD], shall expire on repayment of amounts due to the **employer**

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

29.23 The **latent defects** liability period for the **works** shall end on the date of termination [22.3.2]

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

29.24 On termination of this **agreement** the **contractor** shall:

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

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

29.24.3 Remove temporary structures, **construction equipment** and, on **notice** from the **principal agent**, surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**

29.25 On termination of this **agreement** the **principal agent** shall:

29.25.1 Prepare and hand over to the **employer** all compliance certificates, as built drawings and product warranties in conjunction with **agents**, the **contractor** and **subcontractors**

29.25.2 In consultation with the **contractor** where possible, compile and issue to the **parties a status report** recording completed and incomplete work on the date of termination of the **works** within twenty (20) **working days** of such date

29.25.3 Continue to certify the value of the work executed and **materials and goods** for payment by the **employer** or the **contractor** until the issue of the **final payment certificate** [25.15]

29.25.4 Prepare and issue the **final account** to the **contractor** within sixty (60) **working days** of the date of termination including the cost of **materials and goods** and those ordered before termination that the **contractor** is bound to accept and make payment for

29.26 Termination shall take effect after completion of the procedure [29.24.1]

29.27 The **employer** shall arrange appropriate insurances to suit the stage of completion of the **works**

29.28 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

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DISPUTE RESOLUTION

30.0 DISPUTE RESOLUTION

Settlement by the parties

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

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

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

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

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

Adjudication

30.6 Where a dispute is referred to adjudication:

30.6.1 The adjudicator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**

30.6.2 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the adjudicator, failing which the rules shall be determined by the adjudicator. Neither **party** shall be entitled to legal representation, unless otherwise agreed in writing by the **parties**

30.6.3 A determination given by the adjudicator shall be immediately binding upon and implemented by the **parties** notwithstanding that either **party** may give **notice** to refer the dispute to arbitration

30.6.4 Where the adjudicator has given a determination, either **party** may give notice of dissatisfaction to the other **party** and to the adjudicator within ten (10) **working days** of receipt of the determination, or an extended time period provided in the applicable rules for adjudication whereafter such dispute shall be referred to arbitration

30.6.5 Where the adjudicator has not given a determination within the time period allowed or extended time period provided in the applicable rules for adjudication either **party** may give **notice** to the other **party** and to the adjudicator that if such determination is not received within ten (10) **working days** of receipt of this **notice** his appointment is thereupon automatically terminated and such dispute shall be referred to further adjudication or arbitration, at the option of the referring **party**

30.6.6 The adjudicator shall not be eligible for subsequent appointment as the arbitrator

Arbitration

30.7 Where the dispute is referred to arbitration:

30.7.1 Arbitration shall not be construed as a review or appeal of an adjudicator's determination. Any determination by the adjudicator shall remain in force and continue to be implemented unless and until overturned by an arbitration award

30.7.2 The resolution of the dispute shall commence anew

30.7.3 The referring **party** in the adjudication shall be the claimant in the arbitration

30.7.4 The arbitrator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**

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30.7.5 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the arbitrator, failing which the rules shall be determined by the arbitrator

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

30.7.7 The arbitrator's award shall be final and binding on the **parties**

Mediation

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

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

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

30.8.3 Regardless of the outcome of a mediation the **parties** shall bear their own costs concerning the mediation and equally share the costs of the mediator and related expenses

General

30.9 The **employer** consents to the joining of any **subcontractor** with the **contractor** as a party to any proceedings

30.10 Where the **parties** fail to specify a body to nominate the adjudicator [30.6.1] or the arbitrator [30.7.4] the referring **party** shall have the right to choose a local recognised body to suggest one or more persons with appropriate skills to be appointed as an adjudicator or an arbitrator. Such nomination shall be binding on the **parties**

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

30.12 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

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AGREEMENT

The **agreement** comprises the entire contract between the **parties.** 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 duly authorised representatives of the **parties**

The contracting **parties**

The **parties**	**Employer**	**Contractor**
Business name		
Business type		
Business registration		
Tax number (VAT/GST)		
Contact person		
Telephone		
Mobile number		
E-mail		
Address: Building name		
Address: Street		
Address: Suburb		
Address: City		
Address: P O Box		
Address: Post Office		
Address: Province		
Address: Country		
Project name		
Project location		
Currency		
Accepted **contract sum** including **tax**		
Accepted **contract sum** including **tax** in words		
Signed – who by signature hereto warrants authority		
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of witness		

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