

# The Joint Building Contracts Committee® - NPC Principal Building Agreement – Edition 6.1 - March 2014

## Preface

### JBCC® Constituents

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

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

### The Principal Building Agreement structure

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

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

### Warning!

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

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

### The JBCC® Documents

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

The JBCC® Web Page [www.jbcc.co.za](http://www.jbcc.co.za) provides current information regarding:

Scheduled Seminars  
Frequently Asked Questions (FAQ's)  
New Developments

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## Actions by the parties / principal agent within a given time

Clause	Time period	Action	Purpose
1.0			
2.0	1-7 CD	parties or principal agent	notices deemed to be received by e-Mail/post
3.0			
4.0			
5.0			
6.4	5 WD	contractor > principal agent	non-performance of an agent i.t.o. this agreement
6.5	5 WD	employer	appoint another agent/contractor may object
7.0			
8.0			
9.0			
10.3	10 WD	party responsible	proof/renewal of insurance – other party to accept
10.7	5 WD notice	party responsible	failure to insure - notice – insure + recover expense
10.8	10 WD	notice - contractor	no insurance = contractor suspend the works
11.1-4	15 WD	parties	provide securities [CD]
11.1.5/4.2	20 WD	parties	provide replacement security
11.4.1	15 WD	employer > contractor	provide guarantee for payment [CD]
11.6	10 WD	notice > employer	no security, contractor notice to suspend works
11.7	10 WD	parties	return original/replacement security forms
12.2.2	15 WD	contractor	submit priced document
12.2.3		contractor	provide guarantee for construction/ advance payment [CD]
12.2.6	15 WD	contractor	submit works programme
12.2.17	10 WD	contractor	start work on site
13.0			
14.4.2	15 WD	contractor > subcontractor	submit security
14.5	5 WD	employer (principal agent)	pay subcontractor on default by contractor
14.6	5 WD notice	contractor + subcontractor	termination of subcontractor
15.2.2	15 WD	contractor > subcontractor	submit security
15.5	5 WD notice	employer (principal agent)	pay subcontractor on default by contractor
16.0			
17.3	5 WD	contractor	carry out a contract instruction, where practical
18.0			
19.1.1/3	days [CD]	principal agent > contractor	inspection for practical completion
19.3.4		contractor	rectify items on list for completion
19.4	5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
19.6	5 WD/ 30 WD	principal agent > contractor	employer occupies, list for completion, fix defects
20.0			
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
21.4	5 WD notice	contractor > principal agent	inspect > list for final completion > certificate
21.5	5 WD notice	principal agent > contractor	no list for final completion > notice > complete
22.0			
23.4.2*	20 WD notice	contractor > principal agent	notice of a possible delay, no details yet
23.5	40 WD	contractor > principal agent	delay ceased, details of delay and expenses
23.7	20 WD	principal agent > contractor	asses claim – accept/reduce/reject
24.0			
25.2	date [CD]	principal agent > contr/empl	issue payment certificate and support forms
25.7	14 CD	employer > contractor	make payment from date of payment certificate
25.8	21 CD	contractor > employer	i.t.o. schedule from principal agent
25.11	7 CD	contractor > subcontractor	pay subcontractors i.to schedule from principal agent
25.12	5 WD notice	contractor > employer	no/partial payment > suspend etc
25.12	5 WD	principal agent > contractor	final payment certificate after certificate of final completion
26.5*	20 WD notice	contractor > principal agent	notice of possible expense and loss
26.6	40 WD	contractor > principal agent	substantiated claim
26.7	20 WD	principal agent > contractor	assess claim = accept/reduce/reject
26.10	90 CD	principal agent > contractor	issue final account
26.11	45 CD	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 to contractor	remedy default before next recovery statement
28.1	5 WD notice	contractor > employer	- list of defaults to be remedied > suspend works
28.2	5 WD 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	10 WD	employer > contractor	default not remedied, termination forthwith
29.7	10 WD	employer > contractor	instruction to vacate works and site
29.15	10 WD	contractor > employer	intention to terminate if defaults not remedied
29.17.1	forthwith	contractor > employer	default not remedied, termination forthwith
29.17.2	forthwith	contractor	remove construction equipment, temporary works, etc
29.21	10 WD	either party	intention to terminate > impossible to complete
29.29	20 WD	principal agent + contractor?	prepare status report
29.31	90 CD	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
30.7.5	15 WD	parties	agree appointment of an arbitrator

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

# 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 appointed by the **employer** to deal with specific aspects of the **works**

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

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

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

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

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

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

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

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

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

**CONTRACT DATA:** The document listing the contract variables

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

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

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

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

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

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

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

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

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

**EMPLOYER:** The **party** [CD] contracting with the **contractor** for the execution of the **works**

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

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

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

**FORCE MAJEURE:** An exceptional event or circumstance that:

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

Such an event may include but is not limited to:

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

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

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

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

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

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

**JBCC®:** The Joint Building Contracts Committee® NPC

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

**LAW:** The law of the country [CD]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 1.2 Interpretation

- 1.2.1 In this document, unless inconsistent with the context, the words 'accept, allow, appoint, approve, authorise, certify, decide, demand, designate, grant, instruct, issue, list, **notice**, notify, object, record, reduce, refuse, request, state and their derivatives require such acts to be in writing
- 1.2.2 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes juristic or artificial persons
- 1.2.3 The headings of clauses are for reference purposes only and shall not be used in interpretation
- 1.2.4 Reference to a clause number written as [54.3.2] means that specific clause; clause [54.3.2-4] means the sub-clauses 2 to 4 inclusively; clause [54.3.2 & 4] means the sub-clauses 2 and 4 only
- 1.2.5 The word 'deemed' shall be conclusive that something is fact, regardless of the objective truth

## 2.0 LAW, REGULATIONS AND NOTICES

- 2.1 The **contractor** shall comply with the **law**, obtain permits, licenses and approvals required and pay related charges for the execution of the **works**. The **employer** shall comply with the **law**, obtain permits, planning, building or similar permissions and pay charges for the **works** other than those which are the responsibility of the **contractor** [26.4.1] [CD]
- 2.2 Documents referred to in this **agreement** shall mean the current edition thereof with all amendments thereto as at the date of submission of the **contractor's** offer unless otherwise stated [CD]
- 2.3 All communication or **notices** between the **parties** shall be in the language of this **agreement** and in a format that can be read, copied and recorded [CD]
- 2.4 Legal processes arising out of or concerning this **agreement** may validly be delivered to and served on the **parties** at the physical address of the **parties** recorded in this **agreement**. Either **party** may, at any time, by **notice** to the other, change its physical address provided it is in the same country
- 2.5 **Notices** given in terms of this **agreement** shall be deemed to have been received where:
- 2.5.1 Delivered by hand - on the day of delivery
- 2.5.2 Sent by electronic mail - within one (1) **working day**
- 2.5.3 Sent by registered post - within seven (7) **calendar days** after posting

## 3.0 OFFER AND ACCEPTANCE

- 3.1 The objective of this **agreement** is the execution of and payment for the **works** for which there has been an offer by the **contractor** and an acceptance by the **employer**
- 3.2 This **agreement** shall come into force on the date of acceptance by the **employer** (the contract date) and continue to be of force and effect until the end of the latent defects liability period - notwithstanding termination or the certification of **final completion** and final payment [11.0; 29.0 & 30.0]
- 3.3 Where any provision of this **agreement**, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable under any **law**, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The **parties** shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision
- 3.4 Failure by a **party** to enforce any provision of this **agreement** shall not constitute a waiver of terms of this **agreement** or affect such **party's** rights to require the performance at any time in the future

## 4.0 ASSIGNMENT AND CESSION

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

- 4.2 The **contractor** shall not consent to a nominated **subcontractor** assigning or ceding rights or obligations in terms of this **agreement** without obtaining the prior written consent of the **principal agent**
- 4.3 Notwithstanding the above, where a **party** cedes any right to any monies due or to become due under this **agreement** as security in favour of a financial institution, consent shall not be required provided **notice** of such cession is given to the other **party**

## 5.0 CONTRACT DOCUMENTS

- 5.1 The **parties** shall sign the original **contract documents** and shall each be issued with a copy thereof. The original signed **contract documents** shall be held by the **principal agent** [CD]
- 5.2 Persons authorised to act on behalf of the **parties** and/or **agents** appointed by the **employer** shall be identified in the **construction information**. Such authorised person may be changed by **notice** to the other **party**
- 5.3 The **priced document** shall not be used as a specification of **materials and goods** or methods
- 5.4 The **contract documents** shall not be published or disclosed or used for any purpose other than that specified in this **agreement** by one **party** without the prior written consent of the other **party**
- 5.5 The **principal agent** shall timeously provide the number of copies [CD] of drawings, un-priced **bills of quantities** and other **construction information** at no cost to the **contractor**
- 5.6 The **contract documents** shall be deemed to be mutually explanatory of one another. In the event of ambiguity, discrepancy, divergence or inconsistency in or between them, this **agreement** shall prevail over all other **contract documents**

## 6.0 EMPLOYER'S AGENTS

- 6.1 The **employer** warrants that the **principal agent** has full authority and obligation to act and bind the **employer** in terms of this **agreement**. The **principal agent** has no authority to amend this **agreement**
- 6.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority to issue **contract instructions** and perform duties for specific aspects of the **works** is delegated to **agents**. An **agent** appointed in terms of this clause shall not be entitled to subdelegate its authority without the prior written consent of the **employer**
- 6.3 The **principal agent** and **agents** shall declare any interest or involvement in the **works** other than a professional interest where applicable [CD]
- 6.4 Where any **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **principal agent** to rectify such default within five (5) **working days**. Where such default has not been rectified, the **contractor** may give **notice** to suspend the **works** [28.0]
- 6.5 Where any **agent** fails to act or is unable to act, or ceases to be an **agent**, in terms of this **agreement**, the **employer** shall appoint another **agent** within five (5) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment
- 6.6 The **employer** shall not interfere with or prevent the **principal agent** or an **agent** from exercising fair and reasonable judgement when performing their obligations in terms of this **agreement**

## 7.0 DESIGN RESPONSIBILITY

- 7.1 The **contractor** shall not be responsible for the design of the **works** other than the **contractor's** and **subcontractors'** temporary works. The **contractor** shall not be responsible for the coordination of design elements
- 7.2 Any design responsibility undertaken by a **subcontractor** shall not devolve on the **contractor**. All contractual or other rights the **contractor** has against such **subcontractor** arising from any design responsibility undertaken shall be ceded to the **employer** on the date of **final completion** or the date of termination of this **agreement** [9.2.3]



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

## **INSURANCE AND SECURITY**

### **8.0 WORKS RISK**

- 8.1 The **contractor** shall take full responsibility for the **works** from the date on which possession of the **site** is given to the **contractor** and up to the date of issue of the **certificate of practical completion** or deemed achievement of **practical completion** for a **section** or the **works** as a whole. Thereafter responsibility for the **works** shall pass to the **employer**
- 8.2 The **contractor** shall make good physical loss and repair damage to the **works** caused by or arising from:
- 8.2.1 Any cause before the date of **practical completion** [19.0]
- 8.2.2 Any act or omission of the **contractor** in the course of any work carried out in pursuance of the **contractor's** obligations after the date of **practical completion**
- 8.3 The liability of the **contractor** in respect of any loss or damage shall include, but not be limited to:
- 8.3.1 The cost of making good such physical loss and repairing damage to the **works** including clearing away and removing all debris, and any other costs to reinstate the **works**
- 8.3.2 The new replacement value of **free issue** [12.1.11] [CD]
- 8.3.3 The cost of additional professional services
- 8.4 The limit of the **contractor's** liability shall not exceed the Contract Works Insurance [CD]. Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%) or the percentage stated [CD] the insurance provisions shall be adjusted at the **employer's** expense. The **party** responsible for effecting insurance shall provide written proof of such adjustment [10.0]
- 8.5 The **contractor** shall not be liable for the cost of making good physical loss and repairing damage to the **works** caused by or arising from:
- 8.5.1 The use or occupation of any part of the **works** by the **employer**, the **employer's** employees or **agents** and those for whose acts they are responsible
- 8.5.2 An act or omission of the **employer**, the **employer's** employees or **agents** and those for whose acts they are responsible
- 8.5.3 An act or omission by a **direct contractor**
- 8.5.4 The design of the **works** for which the **contractor** is not responsible [7.1]
- 8.5.5 A **defect** in **free issue** or **materials and goods** specified by trade name where the **contractor** has no right of substitution. The **contractor** hereby cedes any right of action to the **employer** that may exist against the supplier and/or manufacturer of such **free issue**, and/or **materials and goods**
- 8.5.6 **Force majeure**
- 8.6 Where the **contractor** is not liable for the cost of making good physical loss or repairing damage [8.5] such making good and/or expense and/or loss shall be measured and valued and added to the **contract value** by the **principal agent** [17.1.10]
- 8.7 The **contractor** shall immediately give **notice** to the **principal agent** on becoming aware of physical loss or damage to the **works**

### **9.0 INDEMNITIES**

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

- 9.1.1 Death or bodily injury or illness of any person or physical loss or damage to any property other than the **works** [9.2.7] arising out of or due to the execution of the **works** or presence on and/or occupation of the **site** by the **contractor**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.1.2 Non-compliance by the **contractor** with any **law**, regulation, or bylaw of any local or other authority and the failure by the **contractor** to obtain any permit, license or approval that the **contractor** is required to obtain in terms of this **agreement** [2.1]
- 9.1.3 Physical loss or damage to **construction equipment** or other property belonging to the **contractor** or the **contractor's subcontractors** but excluding **direct contractors' construction equipment** or other property
- 9.2 The **employer** indemnifies and holds the **contractor** harmless from all claims or proceedings for damages, expense and/or loss (including legal fees and expenses) in respect of or arising from:
- 9.2.1 An act or omission of the **employer**, the **employer's** employees or **agents** and those for whose acts they are responsible
- 9.2.2 An act or omission of a **direct contractor** [16.0]
- 9.2.3 Design of the **works** [7.1] where the **contractor** is not responsible for such design
- 9.2.4 The use or occupation of any part of the **works** by the **employer**, tenants, **direct contractors** or others authorised by the **employer**
- 9.2.5 Proceeding with the **works** on instruction from the **employer** without the **employer** obtaining the required permission under the **law** in terms of this **agreement** [2.1]
- 9.2.6 Interference with any servitude or other right not depicted in **construction information** issued to the **contractor** that is the unavoidable result of the execution of the **works** including the removal of or weakening of or interference with the support of land and property adjacent to or within the **site** unless resulting from any negligent act or omission by the **contractor** or his **subcontractors**. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.7 Physical loss or damage to an existing structure and the contents thereof where this **agreement** is for alterations or additions to the existing structure [CD]. Should such an event occur, the **contractor** shall forthwith give **notice** to the **principal agent**
- 9.2.8 A **defect in free issue** [CD]
- 9.2.9 Physical loss or damage to the **works** where **practical completion** has been certified [19.0] or deemed to have been achieved
- 9.2.10 Advance payments certified and paid by the **contractor** to **subcontractors** [27.1.7; 27.2.4]

## 10.0 INSURANCES

- 10.1 The **party** responsible for the respective insurances [CD] shall effect and keep in force in the joint names of the **parties** from the date of possession of the **site** until the **contractor's** responsibility has ended:
- 10.1.1 Contract Works Insurance [CD] for the **works** that shall include **free issue** [CD], **materials and goods** and temporary works (as defined in the insurance policy) and adequate cover for the clearing away and removing of all debris, and any other costs to reinstate the **works** and where required, damage to **employer** owned surrounding property [CD] in the care, custody or control of the **contractor** or to be worked upon by the **contractor**
- 10.1.2 Public Liability Insurance [CD] providing indemnity in respect of accidental death or injury to any person and accidental loss of or physical damage to tangible property, to remain in force until the date of **final completion**
- 10.1.3 Supplementary Insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the Contract Works Insurance
- 10.1.4 Removal of Lateral Support Insurance [CD] where the **employer** considers that the execution of the **works** could cause the removal of or weakening of or interference with the support of land or property adjacent to or within the **site** and the consequences thereof. The **employer** shall appoint an **agent** to design and monitor appropriate support structures for use in excavations and/or in existing property that form part of the **works** and/or the **site**

- 10.2 Where **practical completion in sections** is required [20.0] or the **works** is for alterations and additions the **employer** shall effect and keep in force Contract Works Insurance, Public Liability Insurance, Supplementary Insurance and where applicable, Removal of Lateral Support Insurance, in the joint names of the **parties** until the date of **final completion**
- 10.3 The **party** responsible [10.1] for effecting insurances [10.1.1-4 and/or 10.2] shall provide proof of the insurances effected to the other **party** before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such policy before expiry of the existing policy. Approval by the other **party** shall be deemed unless a reasonable objection is lodged within ten (10) **working days** of receipt of such proof
- 10.4 Upon request the **party** responsible for effecting insurance shall provide the other **party** with the entire policy wording of such policies
- 10.5 The **contractor** shall be responsible for the policy deductibles [CD] in respect of the insurances arranged by the **employer** where an action or inaction by **contractor** is the cause of a claim
- 10.6 Where this **agreement** is terminated [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 insurance shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, Public Liability Insurance, Supplementary Insurance and Removal of Lateral Support Insurance
- 10.7 Where a **party** [CD] fails to effect or maintain the required insurances [10.1] or fails to provide proof of such insurance [10.4] the other **party** may give five (5) **working days notice** to comply failing which the other **party** may, without prejudice to any other remedy, effect such insurance and recover the expense and/or cost so incurred from the defaulting **party**
- 10.8 Where the **employer** fails to effect the specified insurances within ten (10) **working days** after **notice** to do so by the **contractor**, the **contractor** may, on expiry of the notice period, suspend the **works** until such insurances have been effected [28.1.4]
- 10.9 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** (as the case may be) in accordance with their respective obligations, liabilities and responsibilities under this **agreement**. However, where a **party** fails to effect and maintain insurance under this **agreement**, and the other **party** does not waive its right to demand such insurance be effected or maintained by that **party** and does not effect the insurance itself [10.7], any loss or damage which should have been recoverable under the insurance in question will be borne by the **party** responsible for effecting the insurance [CD]
- 10.10 The **employer** shall effect separate insurance in respect of **direct contractors** outside this **agreement** [CD]
- 10.11 The **party** responsible for effecting the insurance shall keep insurers informed of any relevant changes in respect of this **agreement**

## 11.0 SECURITY

- 11.1 The **contractor** shall:
- 11.1.1 Provide to the **employer** a JBCC® **Guarantee for Construction**, where applicable [CD], within fifteen (15) **working days** of acceptance of the **contractor's** offer and choose:
- 11.1.2 A JBCC® **Guarantee for Construction** – (variable) [CD] initially equal to ten per cent (10%) of the **contract sum** and keep such **security** valid and enforceable until the **final payment certificate** has been issued to the **contractor** [25.6]
- Or ...
- 11.1.3 A JBCC® **Guarantee for Construction** - (fixed) set at five per cent (5%) of the **contract sum** [CD] and a payment reduction of 5% of the value of each **payment certificate** up to a maximum of five per cent (5%) of the **contract sum** [25.3.3]. The **contractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued
- 11.1.4 A JBCC® **Guarantee for Advance Payment** where an advance payment is required equal in value to the aggregate amount of all such advance payments [CD]. The **contractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.2]

- 11.1.5 Extend or provide a replacement JBCC® **Guarantee for Construction** - (variable) or (fixed) and/or a JBCC® **Guarantee for Advance Payment** at least twenty (20) **working days** before such **security** is due to expire [11.1.2-4]
- 11.2 The amount of the JBCC® **Guarantee for Advance Payment** may be reduced by the amount repaid by the **contractor** as certified by the **principal agent** in **payment certificates**. If the advance payment is not repaid by the date a **certificate of practical completion** is issued or **practical completion** is deemed achieved, or by the date of termination by the **employer** due to **contractor** default [29.9], the entire outstanding amount shall immediately become due and payable
- 11.3 Where the **contractor** fails to provide the **security** the **employer** may:
- 11.3.1 Hand over the **site** to the **contractor** and withhold in interim **payment certificates** to the **contractor** an amount equal to ten per cent (10%) of the **contract sum**. The amount withheld shall be reduced at **practical completion** [19.0] to two and one half per cent (2.5%) of the **contract sum** and to zero per cent (0%) in the **final payment certificate** [25.6]
- Or ...
- 11.3.2 Terminate this **agreement** [29.1.1]
- 11.4 The **employer** shall:
- 11.4.1 Provide to the **contractor** a JBCC® **Guarantee for Payment** where required in the accepted offer [CD] within fifteen (15) **working days** of acceptance of the **contractor's** offer
- 11.4.2 Keep such JBCC® **Guarantee for Payment** valid and enforceable in terms of the **security** form and/or provide a replacement JBCC® **Guarantee for Payment** at least twenty (20) **working days** before such **security** is due to expire [11.4.1]
- 11.5 Where the **employer** fails to provide the JBCC® **Guarantee for Payment** [CD], or such **security** has expired, the **contractor** may, after ten (10) **working days** notice forthwith suspend the **works** until such **security** has been provided [28.1.1]
- 11.6 Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%) the applicable **security** shall be adjusted at the **employer's** expense. The **party** responsible for adjusting the **security** value shall provide written proof of such adjustment
- 11.7 A **security** held by either **party** shall be for the due fulfilment of the other **party's** obligations in terms of this **agreement**
- 11.8 The **parties** shall return the original or the replacement **security** form within ten (10) **working days** after the expiry date, or after the date of termination
- 11.9 Where a **party** makes an unjustified call on a **security**, the amount paid and **mora interest** shall be paid to the other **party**
- 11.10 The **contractor** shall waive his lien on receipt of JBCC® **Guarantee for Payment** from the **employer**

## EXECUTION

### 12.0 DUTIES OF THE PARTIES

- 12.1 The **employer** shall:
- 12.1.1 Provide a JBCC® **Guarantee for Payment** [11.4.1], where applicable [CD]
- 12.1.2 Record specific requirements [CD] where the existing premises will be in use and occupied during the execution of the **works**, including restriction of working hours
- 12.1.3 Record and describe relevant natural features and known services [CD] where the **contractor** shall be responsible for their preservation
- 12.1.4 Define any restrictions to the **site** or areas that the **contractor** may not occupy [CD]
- 12.1.5 Identify access to water, sewer, stormwater and/or electricity connections to the **site** [CD]

- 12.1.6 List statutory and other **notices** the **contractor** must submit and/or comply with before possession of the **site** can be given
- 12.1.7 Give possession of the **site** to the **contractor** on the agreed date [CD]
- 12.1.8 Effect and keep in force insurances in the joint names of the **parties**, where the **employer** is responsible for procuring insurance [10.0] [CD]
- 12.1.9 Make payments by the due date [25.7] [CD]
- 12.1.10 Make advance payments, where required [CD]
- 12.1.11 Permit reasonable access to the **works** by the **contractor** and/or **subcontractors** subsequent to **practical completion** to fulfil outstanding obligations [17.1.16]
- 12.1.12 Supply **free issue** to suit the **programme** [CD]
- 12.1.13 Define the extent of work to be carried out by a **direct contractor** [CD]
- 12.1.14 Ensure that the **principal agent** and/or **agents** provide adequate **construction information** timeously to the **contractor**
- 12.1.15 Make direct payment where the **contractor** has failed to honour a n/s subcontract payment advice after **notice** of default by a **subcontractor** [14.5 and/or 15.5] at the **employer's** discretion
- 12.2 The **contractor** shall:
- 12.2.1 Have inspected the **site** and any existing structures and be thoroughly acquainted with the conditions under which the **works** is to be executed including means of access and any matters which may influence the execution and/or the pricing of the **works**
- 12.2.2 Submit to the **principal agent** the **priced document** with items priced to include all costs, overheads and profit, extended and cast within fifteen (15) **working days** of acceptance of the **contractor's** offer. The **principal agent** may instruct the **contractor** to adjust prices considered to be imbalanced or unreasonable and to eliminate errors or discrepancies without any change to the **contract sum**
- 12.2.3 Provide a JBCC® **Guarantee for Construction** [11.1.2-3, 11.1.5], where applicable [CD]
- 12.2.4 Provide a JBCC® **Guarantee for Advance Payment** [11.1.4; 11.1.5; 11.2], where applicable [CD]
- 12.2.5 Effect and keep in force insurances in the joint names of the **parties** where the **contractor** is responsible for procuring insurance [10.0] [CD]
- 12.2.6 Prepare and submit to the **principal agent** within fifteen (15) **working days** of receipt of **construction information** a **programme** for the **works** in sufficient detail to enable the **principal agent** to monitor the progress of the **works**
- 12.2.7 Coordinate the **programme** with **subcontractors'** and **direct contractors' programmes**
- 12.2.8 Regularly submit to the **principal agent** a progress report and a schedule of outstanding **construction information** to avoid delays to the **works**
- 12.2.9 Regularly update the **programme** to illustrate progress of the **works**, and revise the **programme** where the **principal agent** has revised the date for **practical completion**
- 12.2.10 Cooperate with the **principal agent** in the preparation of cash flow projections and the compilation of **payment certificates** [25.1-2]
- 12.2.11 Designate a competent person to continuously administer and control the **works** and to receive and implement **notices** and **contract instructions** on behalf of the **contractor**
- 12.2.12 Maintain daily records of categories of persons and **construction equipment** employed on the **works** and regularly provide copies to the **principal agent**
- 12.2.13 Keep on **site** a copy of all **construction information** required for execution of the **works** to which the **employer** and **principal agent** and/or **agents** shall have reasonable access
- 12.2.14 Allow the **employer** and **principal agent** and/or **agents** reasonable access to the **works**, workshops and other places where work is being prepared, executed or stored

- 12.2.15 Provide everything necessary for the proper execution of the **works** in compliance with the **contract documents**
- 12.2.16 Give **notice** forthwith to the **principal agent** and/or the **employer** where items of **free issue** have been received damaged prior to storage or, where on unpacking, are found not to be in good order before installing such items
- 12.2.17 On being given possession of the **site** commence the **works** within ten (10) **working days** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **works** to **practical completion** and to **final completion**
- 12.2.18 Provide, maintain and remove on **practical completion** all temporary structures, **construction equipment** and notice boards
- 12.2.19 On achievement of **practical completion** hand over to the **principal agent** all information for the preparation of 'as built' documentation and applicable statutory/regulatory approval certificates
- 12.2.20 On achievement of **practical completion** hand over to the **principal agent** all operating and instruction manuals, product guarantees and the like
- 12.2.21 Cede to the **employer** on the date of issue of the **certificate of final completion** any guarantee, warranty or indemnity, pertaining to the **works**. This cession shall not prejudice any other rights that the **employer** may have
- 12.3 The **principal agent** and the **contractor** shall hold regular meetings to monitor progress of the **works** and to deal with technical and coordination matters. The **principal agent** shall record and timeously distribute the minutes of such meetings [CD]

## 13.0 SETTING OUT

- 13.1 The **principal agent** shall:
- 13.1.1 Point out boundary pegs or beacons identifying the **site** and the datum level
- 13.1.2 Define the setting out points and levels required for the execution of the **works**
- 13.2 The **contractor** shall:
- 13.2.1 Be responsible for accurate setting out of the **works** notwithstanding checking by others
- 13.2.2 Be responsible for the preservation and the reinstatement of boundary pegs, beacons and other survey information and, where disturbed or destroyed, replace such items at his expense
- 13.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the **contractor**. [9.2.6] In such event the **contractor** may be entitled to a revision of the date for **practical completion** and/or an adjustment of the **contract value** [23.2.5]
- 13.2.4 Immediately suspend affected work to an appropriate extent where undocumented services, natural features, articles of value or relics are uncovered on **site**, and give **notice** to the **principal agent** who shall issue a **contract instruction** on how to proceed with the **works**. Any relics or other articles found on the **site** shall remain the property of the **employer**

## 14.0 NOMINATED SUBCONTRACTORS

- 14.1 The **principal agent** and/or **agents** shall:
- 14.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** for work intended to be executed by a **nominated subcontractor**
- 14.1.2 Call for tenders
- 14.1.3 Scrutinise the received tenders for compliance with the tender documents, in consultation with the **contractor**, where appointed
- 14.1.4 Nominate a **subcontractor** and instruct the **contractor** [17.1.13] to appoint such **subcontractor** as a **nominated subcontractor** in terms of the **n/s subcontract agreement** and other tender requirements

- 14.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted offer and that a JBCC® **Guarantee for Advance Payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]
- 14.2 The **contractor** may refuse to appoint such **subcontractor**:
- 14.2.1 Against whom the **contractor** makes a reasonable objection
- 14.2.2 Who refuses or fails to enter into a **n/s subcontract agreement** and/or to comply with other tender requirements
- 14.2.3 Who is unable to provide a **security**, where specified [NSSA-CD]
- 14.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [14.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be nominated and appointed on instruction from the **principal agent**
- 14.4 Where the **subcontractor** has complied with the tender requirements, on instruction from the **principal agent**, the **contractor** shall:
- 14.4.1 Appoint the **subcontractor** as a *nominated subcontractor* and forward a copy of the signed **n/s subcontract agreement** to the **principal agent**
- 14.4.2 Provide a JBCC® **NSSA Guarantee for Payment** in the amount stated in the n/s subcontract data within fifteen (15) **working days** [14.1.5], where specified [NSSA-CD]
- 14.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agent** by the date stated [NSSA-CD] for inclusion in the **contractor's** regular payment claim
- 14.4.4 Notify the **subcontractor** of the amount included in the **payment certificate** using the JBCC® n/s subcontract payment advice *format* and the n/s subcontract recovery statement *format* to reconcile the amount due for payment with the amount stated in the n/s subcontract payment notification *format* issued by the **principal agent**, and forward a copy to the **principal agent**
- 14.4.5 Pay the **subcontractor** the amount certified by the date stated in the **n/s subcontract data** [25.11] [NSSA-CD]
- 14.5 Where the **contractor** fails to provide proof of payment to the **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [25.11]
- 14.6 Where a *nominated subcontractor* has been declared insolvent, or where after notification by the **contractor**, the **principal agent** agrees that a *nominated subcontractor* is in default of a material term of the **n/s subcontract agreement**, the **principal agent** shall instruct the **contractor** to give **notice** to the **subcontractor** to rectify such default. The **principal agent** shall instruct the **contractor** to terminate the **n/s subcontract agreement** should such default continue for five (5) **working days** after such **notice**
- 14.7 Where a **n/s subcontract agreement** with a *nominated subcontractor* is terminated:
- 14.7.1 The **principal agent** shall instruct the **contractor** to appoint another *nominated subcontractor* [14.1.4] to complete the n/s subcontract works
- 14.7.2 Due to default or insolvency of the **subcontractor**, or default of the **employer** and/or **agents**, the n/s subcontract value shall be adjusted to include the cost of completing such n/s subcontract works [25.3.7]
- 14.7.3 Due to default or insolvency of the **contractor** any variation in the cost of completing the n/s subcontract works shall be for the account of the **contractor**. The **employer** may recover expense and/or loss [25.3.7]
- 14.8 There shall be no privity of contract between the **employer** and a **subcontractor** appointed by the **contractor**

## 15.0 SELECTED SUBCONTRACTORS

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

- 15.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** and this **agreement** for work intended to be executed by a *selected subcontractor*. Such preparation shall be carried out in consultation with and to the reasonable approval of the **contractor**
- 15.1.2 Call for tenders from a list of tenderers agreed between the **contractor** and the **principal agent**
- 15.1.3 Scrutinise the received offers for compliance with the tender documents in consultation with the **contractor**
- 15.1.4 In consultation with the **contractor**, choose the successful tenderer to be appointed as a *selected subcontractor* in terms of the **n/s subcontract agreement**
- 15.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted offer and that a JBCC® **Guarantee for Advance Payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]
- 15.2 Where the **subcontractor** has complied with the tender requirements, on instruction from the **principal agent**, the **contractor** shall:
- 15.2.1 Appoint the **subcontractor** as a *selected subcontractor* and forward a copy of the signed **n/s subcontract agreement** to the **principal agent**
- 15.2.2 Provide a JBCC® **NSSA Guarantee for Payment** in the amount stated in the *n/s subcontract data* within fifteen (15) **working days** [15.1.5], where specified [NSSA-CD]
- 15.2.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agent** by the date stated [NSSA-CD] for inclusion in the **contractor's** regular payment claim
- 15.2.4 Notify the **subcontractor** of the amount included in the **payment certificate** using the *n/s subcontract payment advice format* and the *n/s subcontract recovery statement format* to reconcile the amount due for payment with the amount stated in the *n/s subcontract payment notification format* issued by the **principal agent**, and forward a copy to the **principal agent**
- 15.2.5 Pay the **subcontractor** the amount certified by the date stated in the **n/s subcontract data** [25.11] [NSSA-CD]
- 15.3 The **contractor** may refuse to appoint such **subcontractor**:
- 15.3.1 Who refuses or fails to enter into a **n/s subcontract agreement** and/or to comply with other tender requirements
- 15.3.2 Who is unable to provide a **security**, where specified [NSSA-CD]
- 15.4 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [15.3], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be chosen and be appointed on instruction from the **principal agent**
- 15.5 Where the **contractor** fails to provide proof of payment to a **subcontractor** within five (5) **working days** of a **notice** by the **principal agent**, the **employer** may instruct the **principal agent** to certify direct payment to the **subcontractor** and recover such amount from the **contractor** [25.11]
- 15.6 Where the *selected subcontractor* is in default of a material term of the **n/s subcontract agreement**, the decision of whether or not to terminate the **n/s subcontract agreement** is that of the **contractor**
- 15.7 Where a **n/s subcontract agreement** with a *selected subcontractor* is terminated:
- 15.7.1 The **contractor** shall appoint another *selected subcontractor* [15.1.4] to complete the *n/s subcontract works* in consultation with the **principal agent** and/or **agents**
- 15.7.2 Due to default by the **employer** or **agents**, the *n/s subcontract value* shall be adjusted to include the cost of completing such *n/s subcontract works* [25.3.7]
- 15.7.3 Other than due to default by the **employer** or **agents**, any variation in the cost of carrying out and completing the *n/s subcontract works* shall be for the account of the **contractor** [25.3.7]
- 15.8 There shall be no privity of contract between the **employer** and a **subcontractor** appointed by the **contractor**



## 16.0 DIRECT CONTRACTORS

- 16.1 The **contractor** shall:
- 16.1.1 On instruction by the **principal agent** permit a **direct contractor(s)** to execute and/or install work as part of the **works** [CD]. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [19.6]
  - 16.1.2 Make reasonable allowance in the **programme** for such work or installation [CD]
  - 16.1.3 Be entitled to claim expense and/or loss caused by a **direct contractor(s)** [26.5.4]
- 16.2 Payment of a **direct contractor** shall be the responsibility of the **employer** outside this **agreement**
- 16.3 There shall be no privity of contract between the **contractor** and a **direct contractor** appointed by the **employer**

## 17.0 CONTRACT INSTRUCTIONS

- 17.1 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
- 17.1.1 Rectification of discrepancies, errors in descriptions or omissions in **contract documents** other than this **agreement**
  - 17.1.2 Alteration to design, standards or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the **works**
  - 17.1.3 The **site** [13.1-2]
  - 17.1.4 Compliance with the **law**, regulations and bylaws [2.1]
  - 17.1.5 Provision and testing of samples of **materials and goods**, of finishes and assemblies of elements of the **works**
  - 17.1.6 Opening up of work for inspection, removal or re-execution
  - 17.1.7 Removal or re-execution of work
  - 17.1.8 Removal or substitution of any **materials and goods**
  - 17.1.9 Protection of the **works**
  - 17.1.10 Making good physical loss and repairing damage to the **works** [8.0]
  - 17.1.11 Rectification of **defects** [21.2]
  - 17.1.12 A **list for practical completion** specifying outstanding or defective work to be rectified to achieve **practical completion** and a **list for completion** and a **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
  - 17.1.13 Expenditure of **budgetary allowances, prime cost amounts** and **provisional sums**
  - 17.1.14 Appointment of a **subcontractor** [14.0; 15.0]
  - 17.1.15 Termination of a nominated **n/s subcontract agreement** [27.2.8]
  - 17.1.16 Work by (a) **direct contractor(s)** [16.0]
  - 17.1.17 Access by other or previous contractors to remedy defective work
  - 17.1.18 Removal from the **site** of any person employed on the **works**
  - 17.1.19 Removal from the **site** of any person not engaged on or connected with the **works**
  - 17.1.20 On termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [29.0]

- 17.2 The **contractor** shall comply with and duly execute all **contract instructions**
- 17.3 Should the **contractor** fail to proceed with a **contract instruction** with due diligence, the **principal agent** may give **notice** to the **contractor** to proceed within five (5) **working days** of receipt of such **notice**. Where the **contractor** remains in default, the **employer** may engage others to carry out such **contract instruction**. The **employer** may recover expense and/or loss incurred [27.2.3]
- 17.4 The **contractor** shall not be obliged to execute **contract instructions** for additional work issued after the certified date of **practical completion**
- 17.5 Oral instructions shall be of no force or effect

## COMPLETION

### 18.0 INTERIM COMPLETION

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

### 19.0 PRACTICAL COMPLETION

- 19.1 The **principal agent** shall:
- 19.1.1 Inspect the **works** at appropriate intervals to give the **contractor** interpretations and direction on the standard of work and the state of completion of the **works** required of the **contractor** to achieve **practical completion** [CD]
- 19.1.2 Issue a **contract instruction** [17.1.5-10] consequent on each such inspection, where necessary
- 19.1.3 Inspect the **works** within the period stated [CD]
- 19.2 The **contractor** shall:
- 19.2.1 Inspect the **works** in advance of the (revised) date for **practical completion** to confirm that the standard of work required and the state of completion of the **works** for **practical completion** [CD] has been achieved
- 19.2.2 Give timely **notice** to the **principal agent** of the anticipated date for the inspection for **practical completion** of the **works** to meet the (revised) date for **practical completion** [CD]
- 19.3 The **principal agent** shall after inspection of the **works**, or a **section** of the **works**, within the period stated [19.1.3] forthwith issue:
- 19.3.1 A comprehensive and conclusive **list for practical completion** [17.1.12] to the **contractor** where the **works** has not reached **practical completion** specifying the **defects** to be rectified and work to be completed to achieve **practical completion**
- 19.3.2 An updated **list for practical completion** to the **contractor**, limited to items on the **list for practical completion** that have not been attended to satisfactorily to be rectified and work to be completed to achieve **practical completion**. The **contractor** shall repeat the procedure until all items on the **list for practical completion** have been dealt with satisfactorily before the **certificate of practical completion** is issued by the **principal agent**
- Or ...
- 19.3.3 A **certificate of practical completion** to the **contractor** with a copy to the **employer** stating the date on which **practical completion** of the **works**, or of a **section**, was achieved
- 19.3.4 A **list for completion** of items to be rectified and work to be completed with a copy to the **employer** that may include marked up drawings and photographs
- 19.4 Should the **principal agent** not issue a **list for practical completion** or the updated list within five (5) **working days** after the inspection period, [19.3] the **contractor** shall give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **practical completion** shall be deemed to have been achieved on the

intended/revised date for **practical completion** and the **principal agent** shall issue the **certificate of practical completion** forthwith

- 19.5 On issue of the **certificate of practical completion**, the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien, where applicable
- 19.6 Where the **employer** takes possession of the whole or a portion of the **works** by agreement with the **contractor**, **practical completion** shall be deemed to have occurred. The **principal agent**, after inspection of the **works**, [19.3.3] shall issue a **certificate of practical completion** to the **contractor** with a copy to the **employer** within five (5) **working days** certifying the date of possession of the **works** by the **employer** and the **list for completion** of items to be rectified and work to be completed within thirty (30) **working days**, or such additional period as the **principal agent** may allow
- 19.7 On achievement of **practical completion** of the **works** or a **section** of the **works** and where the **principal agent** instructs that installation work is to be executed by others, the **employer** and/or **contractor** shall allow access to the **works** or a **section** of the works for such other installations

## 20.0 SECTIONAL COMPLETION

- 20.1 Where completion of **sections** is required [CD] the terms and conditions applicable to the **works** as a whole shall apply to each **section**
- 20.2 The **principal agent** shall issue:
- 20.2.1 A **certificate of practical completion** [19.3.3] for each **section**, and
- 20.2.2 A **certificate of final completion** for each section, indicating if it is for the last section to reach **final completion** [21.4.2]

## 21.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

- 21.1 The defects liability period for the **works** shall commence on the **calendar day** following the date of **practical completion** and end at midnight (00:00) ninety (90) **calendar days** from the date of **practical completion** [CD] or when work on the **list for final completion** has been satisfactorily completed [21.4.1], whichever is the later
- 21.2 Where **defects** become apparent during the defects liability period the **principal agent** may instruct the **contractor** to progressively attend to such items, whilst at all times minimising inconvenience to the occupants
- 21.3 The **contractor** shall:
- 21.3.1 Inspect and forthwith rectify all items on the **list for completion** at least ten (10) **working days** before the expiry of the defects liability period [19.3.4]
- 21.3.2 Give **notice** to the **principal agent** to inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.4 Where items on the **list for completion** have not been attended to the **principal agent** shall notify the **contractor** of such outstanding items. The process [21.3] shall be repeated until all items on the **list for completion** have been attended to
- 21.5 The **contractor** shall notify the **principal agent** when the items on the **list for completion** have been attended to. The **principal agent** shall inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.6 On the expiry of the ninety (90) **calendar days** defects liability period [21.1] or on **notice** from the **contractor** that all items on the **list for completion** have been completed, whichever is the later, the **principal agent** shall inspect the **works** and within ten (10) **working days** either:
- 21.6.1 Issue a **list for final completion** detailing all outstanding work or **defects** that must be attended to or rectified to achieve **final completion**
- Or ...
- 21.6.2 Issue the **certificate of final completion** to the **contractor** with a copy to the **employer**

- 21.7 Where the **principal agent** issues a **list for final completion** the **contractor** shall promptly complete all outstanding work and rectify all the **defects**
- 21.7.1 The **contractor** shall notify the **principal agent** when all outstanding work has been completed and all the **defects** have been rectified
- 21.7.2 The **principal agent** shall, within five (5) **working days** of receipt of the **contractor's notice(s)** [21.7.1] notify the **contractor** either that the items on the **list for final completion** have been completed, or issue an updated **list for final completion** of the items not completed and of any further **defects** that have become evident since the last inspection.
- 21.8 Where the **principal agent** gives **notice** to the **contractor** of items on the **list for final completion** or an updated **list for final completion** that have not been completed and / or where further **defects** have become evident since the last inspection, the process [21.7.1-2] shall be repeated until all items on the (updated) **list for final completion** have been completed. On completion of all items on the (updated) **list for final completion** the **principal agent** shall forthwith issue the **certificate of final completion** to the **contractor** with a copy to the **employer**
- 21.9 Where the **principal agent** has not issued the **list for final completion** or the updated list within five (5) **working days** after the inspection period, [21.4] the **contractor** shall give **notice** to the **employer** and the **principal agent** forthwith. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **final completion** shall be deemed to have been achieved on expiry of such **notice** and the **principal agent** shall issue the **certificate of final completion** forthwith
- 21.10 Where a **subcontractor's** defects liability period extends beyond the **contractor's** defects liability period:
- 21.10.1 The **contractor's** obligations and liability concerning the **subcontractor's defects** shall end on the date of issue of the **certificate of final completion**
- 21.10.2 The remaining portion of the **subcontractor's** defects liability period shall be ceded to the **employer** on the date of issue of the **certificate of final completion**
- 21.11 Where the **contractor**, a **subcontractor** or a supplier is required to give a guarantee, warranty or indemnity, other than a **security** to the **contractor**, the rights under such guarantee, warranty or indemnity shall be ceded to the **employer** on the date of issue of the **certificate of final completion**. This cession shall not prejudice any other rights the **employer** may have
- 21.12 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **contractor's** obligations [12.2.17] have been fulfilled other than for **latent defects**

## 22.0 LATENT DEFECTS LIABILITY PERIOD

- 22.1 The latent defects liability period for the **works** shall commence at the start of the **construction period** and end five (5) years from the certified date of **final completion**
- 22.2 Where termination of this **agreement** occurs before the date of **final completion**, the latent defects liability period shall end:
- 22.2.1 Five (5) years from the date of termination [29.10] for the completed portion of the **works** only
- Or ...
- 22.2.2 On the date of termination where execution of the **works** has become impossible due to circumstances beyond the control of either **party** [29.20], or on the date of termination by the **contractor** due to default by the **employer** [29.16]
- 22.3 The **contractor** shall make good all **latent defects** that appear up to the date of expiry of the latent defects liability period [3.2]

## 23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

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

- 23.1.2 Inability to obtain **materials and goods** where the **contractor** has taken reasonable steps to avoid or reduce such a delay
- 23.1.3 Making good physical loss and repairing damage to the **works** [8.2] where such risk is beyond the reasonable control of the **parties**
- 23.1.4 Late supply of a **prime cost amount** item where the **contractor** has taken reasonable steps to avoid or reduce such delay
- 23.1.5 Exercise of statutory power by a body of state or public or local authority that directly affects the execution of the **works**
- 23.1.6 **Force majeure**
- 23.2 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** with an adjustment of the **contract value** [26.0], for a delay to **practical completion** caused by one or more of the following events:
- 23.2.1 Delayed possession of the **site** [12.1.6]
- 23.2.2 Making good physical loss and repairing damage to the **works** [8.2] where the **contractor** is not at risk
- 23.2.3 **Contract instructions** [17.1-2] not occasioned by the **contractor's** default
- 23.2.4 Opening up and testing of work and **materials and goods** where such work is in accordance with the **contract documents** [17.1.5-7]
- 23.2.5 Late or incorrect issue of **construction information** [5.5; 6.4; 13.2.3; 17.1.1-2]
- 23.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible [12.1.11]
- 23.2.7 Late appointment of a **subcontractor** in terms of the agreed **programme** where the **contractor** has taken reasonable steps to avoid or reduce such delay [14.4; 15.2]
- 23.2.8 Late acceptance by the **principal agent** and/or **agents** of a design undertaken by a selected **subcontractor** where the **contractor's** obligations have been met [7.3]
- 23.2.9 An act or omission by a *nominated subcontractor* [14.0] or a **direct contractor** [16.0]
- 23.2.10 Insolvency of a *nominated subcontractor* [14.7.2]
- 23.2.11 **Suspension** or termination by a **subcontractor** due to default of the **employer**, the **principal agent** and/or any **agent**
- 23.2.12 Execution of additional work for which the quantity in the **bills of quantities** is not sufficiently accurate
- 23.2.13 **Suspension** of the **works** [28.0]
- 23.3 Further circumstances for which the **contractor** may be entitled to a revision of the date for **practical completion** and an adjustment of the **contract value** are delays to **practical completion** due to any other cause beyond the **contractor's** reasonable control that could not have reasonably been anticipated and provided for. The **principal agent** shall adjust the **contract value** where such delay is due to the **employer** and/or **agents**
- 23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for **practical completion**, the **contractor** shall:
- 23.4.1 Take reasonable steps to avoid or reduce such delay
- 23.4.2 Within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of such delay, give **notice** to the **principal agent** of the intention to submit a claim for a revision to the date of **practical completion**, failing which the **contractor** shall forfeit such claim
- 23.5 The **contractor** shall submit a claim for the revision of the date of **practical completion** to the **principal agent** within forty (40) **working days**, or such extended period the **principal agent** may allow, from when the **contractor** is able to quantify the delay in terms of the **programme**

- 23.6 Where the **contractor** requests a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:
- 23.6.1 The relevant clause [23.1-3] on which the **contractor** relies
- 23.6.2 The cause and effect of the delay on the current date for **practical completion**, where appropriate, illustrated by a change to the critical path on the current **programme**
- 23.6.3 The extension period claimed in **working days** and the calculation thereof
- 23.7 The **principal agent** shall, within twenty (20) **working days** of receipt of the claim, grant in full, reduce or refuse the **working days** claimed, and:
- 23.7.1 Determine the revised date for **practical completion** as a result of the **working days** granted, where applicable
- 23.7.2 Identify each event and the reference clause for each revision granted or amended
- 23.7.3 Give reasons where such claim is refused or reduced
- 23.8 Where the **principal agent** fails to act within the period [23.7] such claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where the **principal agent** refuses a claim, alternatively reduces a claim, or fails to act

## 24.0 PENALTY FOR LATE OR NON-COMPLETION

- 24.1 Where the **contractor** fails to bring the **works** or a **section** thereof [CD] to **practical completion** by the date for **practical completion** [CD], or the revised date for **practical completion**, the **contractor** shall be liable to the **employer** for the **penalty** [CD]
- 24.2 Where the **employer** elects to levy such **penalty**, on **notice** thereof to the **contractor**, the **principal agent** shall determine the amount due from the later of the date for **practical completion** [CD], or the revised date for **practical completion** up to and including the earlier of:
- 24.2.1 The actual or deemed date of **practical completion** of the **works** [23.7.1] or a **section** thereof
- 24.2.2 The date of termination [29.0]
- 24.3 The **principal agent** shall include penalty amounts [24.2] in regular **recovery statements** and interim **payment certificates** from the date on which the **employer's** entitlement to **penalties** commences

## PAYMENT

### 25.0 PAYMENT

- 25.1 The **contractor** shall cooperate with and assist the **principal agent** in the preparation of cash flow statements and payment valuations by providing all required documents and quantified amounts of work duly executed. Where the **contractor** has not provided such information the **principal agent** shall make a fair estimate of the work executed
- 25.2 The **principal agent** shall regularly by the due date [CD] issue **payment certificates** to the **contractor** until and including the issue of the final **payment certificate**. A **payment certificate** may be for a nil or negative amount. The **principal agent** shall provide a copy of each **payment certificate** to the **employer**
- 25.3 Each **payment certificate** shall separately include:
- 25.3.1 A fair estimate of the value of work executed
- 25.3.2 A fair estimate of the value of **materials and goods** [CD]
- 25.3.3 **Security** adjustment [11.1.3]
- 25.3.4 Contract price adjustments, if applicable [CD]
- 25.3.5 The gross amount certified

- 25.3.6 The value previously certified
- 25.3.7 Amounts due to either **party** in the **recovery statement** [27.1], excluding **interest** and other non-taxable amounts
- 25.3.8 **Tax**
- 25.3.9 Interest amounts included in the **recovery statement**
- 25.3.10 Other non-taxable amounts
- 25.3.11 The net amount certified due to the **contractor** or the **employer**
- 25.4 The **principal agent** shall concurrently with each **payment certificate** issue:
- 25.4.1 To the **employer** and the **contractor** a **recovery statement** showing the amounts due to either **party** in the current **payment certificate**
- 25.4.2 To the **contractor** a statement showing the amount certified for each **subcontractor**
- 25.4.3 To each **subcontractor** a n/s subcontract payment notification showing the amount included in the **payment certificate** and its date of issue
- 25.4.4 The determination of default interest at six percentage points (6%) per annum above the ruling rate of **interest** where payment has not been received within the stipulated period [25.7 or 25.8], as the case may be, compounded monthly from the due date for payment until the date of payment
- 25.4.5 The determination of compensatory interest at the ruling rate of **interest** on amounts certified after thirty-one **calendar days** of the date of **practical completion**, compounded monthly until the date of payment [25.7]
- 25.5 An interim **payment certificate** shall not be evidence that the **works** and **materials and goods** are in terms of the **contract documents**
- 25.6 The **principal agent** shall certify one hundred per cent (100%) of the amount of the **final account** including adjustments [26.0; 27.0] in the **final payment certificate**
- 25.7 The **employer** shall pay the **contractor** the amount certified in an issued **payment certificate** within fourteen (14) **calendar days** of the date for issue of the **payment certificate** [CD] including default and/or compensatory interest
- 25.8 The **contractor** shall pay the **employer** the amount certified in an issued **payment certificate** within twenty one (21) **calendar days** of the date of issue of the **payment certificate** [CD] including default interest
- 25.9 **Materials and goods** supplied and certified shall become the property of the **employer** on payment thereof
- 25.10 Where a JBCC® **Guarantee for Construction** (fixed) and payment reduction [11.1.3] has been chosen the value of the **works** [26.0] and **materials and goods** [25.3.2] that exceeds the **contract sum** and any contract price adjustments [CD] shall be certified in full. The value certified that does not exceed the **contract sum** shall be subject to the following percentage adjustments:
- 25.10.1 Ninety-five per cent (95%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 25.10.2 Ninety-seven and one half per cent (97.5%) of such value in interim **payment certificates** issued up to but excluding the **final payment certificate**
- 25.10.3 One hundred per cent (100%) of such value in the **final payment certificate** [26.10]
- 25.11 The **contractor** shall pay all **subcontractors** within seven (7) **calendar days** of the due date for payment by the **employer** [CD] and on request provide proof thereof to the **principal agent** within seven (7) **calendar days** of a request to do so
- 25.12 Where the **employer** has made a partial or no payment of the amount due in an issued **payment certificate** by the due date or where the **principal agent** fails to issue a **payment certificate**, the **contractor** may give five (5) **working days notice** to comply, failing which the **contractor** may:
- 25.12.1 **Suspend the works** [28.0]

- 25.12.2 Exercise the lien, where this has not been waived
- 25.12.3 Call up the JBCC® **Guarantee for Payment** [11.4]
- 25.13 The **principal agent** shall issue the **final payment certificate** to the **employer** and the **contractor** within seven (7) **calendar days** of acceptance of the **final account** by the **contractor**, but not before the issue of the **certificate of final completion**, other than on termination [29.0] [26.11]
- 25.14 Where the **contractor** disputes the correctness of the **final account** within the period allowed [26.12], the **principal agent** shall issue a(n) interim **payment certificate(s)** to the **employer** and the **contractor** by the due date [CD] for the undisputed amount(s)
- 25.15 For the purposes of provisional sentence in relation to a **payment certificate** only, the **parties** consent to the jurisdiction of any court of law of the country [CD]

## 26.0 ADJUSTMENT OF THE CONTRACT VALUE AND FINAL ACCOUNT

- 26.1 The **principal agent** shall determine the value of adjustments to the **contract value** in cooperation with the **contractor** in the preparation of the **final account**. Where such adjustments require measurement on **site**, the **contractor** shall have the right to be present
- 26.2 Adjustments to the **contract value** resulting from a **contract instruction** for additional work [17.1.2] shall be determined as follows:
- 26.2.1 Work of a similar character executed under similar conditions shall be priced at the rates in the **priced document**
- 26.2.2 Work not of a similar character shall be priced at rates based on those in the **priced document** and adjusted to suit the changed circumstances
- 26.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary elements for executing the work plus an allowance of ten per cent (10%) mark-up
- 26.2.4 Work omitted shall be valued at the rates in the **priced document**, but where the omission of such work alters the circumstances in which the remaining work is carried out, the value of the remaining work shall be determined by the method [26.2.2]
- 26.3 Where work is identified as provisional in the **priced document** the **principal agent** shall omit such value from the **contract value** and add the value of work as executed to the **contract value**
- 26.4 Where the **contractor** has made payment for items not included in the **priced document**, by virtue of a **contract instruction**, or otherwise with the approval of the **principal agent**, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the **contract value** limited to:
- 26.4.1 Charges by authorities [2.1]
- 26.4.2 The cost of opening up and testing [17.1.6], where the work is according to the **contract documents**
- 26.4.3 The cost of insurance [10.0], where applicable [CD]
- 26.5 The **contractor** shall give **notice** to the **principal agent** within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of expense and/or loss for which provision was not required in the **contract sum** failing which such claim shall be forfeited
- 26.6 Following **notice** [26.5], the **contractor** shall submit a detailed and substantiated claim for the adjustment of the **contract value** to the **principal agent** within forty (40) **working days**, or such additional period as the **principal agent** may allow
- 26.7 The **principal agent** shall make a fair assessment of the claim [26.6] and adjust the **contract value** within twenty (20) **working days** of receipt of such details
- 26.8 Where the **principal agent** fails to act within such period [26.7] the claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where no assessment is received
- 26.9 The **principal agent** shall:
- 26.9.1 Omit **prime cost amounts** and **budgetary allowances** [17.1.12] from the **contract sum** and determine the actual value of such work to be added to the **contract value**



- 26.9.2 Omit **provisional sums** [17.1.12] from the **contract sum** and determine the actual value of such **subcontractors'** work to be added to the **contract value**
- 26.9.3 Prorate the **contractor's** allowances for profit and attendance on **provisional sums** and **prime cost amounts** excluding any allowance for contract price adjustments
- 26.9.4 Adjust the **preliminaries** amounts in accordance with the method selected [CD]
- 26.9.5 Adjust the **contract value** according to the contract price adjustment method, if applicable [CD]
- 26.9.6 Rectify discrepancies, errors in description or quantity, or omission of items in the **contract documents** other than in this **agreement** [17.1.1]
- 26.10 The **principal agent** shall prepare and issue the **final account** to the **contractor** within ninety (90) **calendar days** of the date of **practical completion**
- 26.11 The **contractor** shall accept the **final account** within forty five (45) **calendar days** of receipt thereof failing which the **final account** shall be issued
- 26.12 Should the **contractor** give **notice** objecting to the correctness of the **final account** within the period [26.11] and such objection not be resolved within ten (10) **working days**, or such an extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a disagreement

## 27.0 RECOVERY OF EXPENSE AND/OR LOSS

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

The **employer**:

- 27.1.1 **Penalties** [24.2]
- 27.1.2 Default interest [25.4.4]
- 27.1.3 Expense and/or loss [27.2]

The **contractor**:

- 27.1.4 Compensatory interest [25.4.5]
- 27.1.5 Default interest [25.4.4]
- 27.1.6 Damages
- 27.1.7 Advance payments [12.1.9]
- 27.1.8 Termination of a *nominated n/s subcontract agreement* [14.7.2]
- 27.2 The **employer** may recover expense and/or loss incurred or to be incurred resulting from:
- 27.2.1 Paying charges [2.1]
- 27.2.2 Effecting insurance due to the **contractor's** default [10.0]
- 27.2.3 Work executed by others due to the **contractor's** default [17.3]
- 27.2.4 Recoupment of advance payments [11.2]
- 27.2.5 The **contractor** not paying the amount due to the **employer** [25.3.7]
- 27.2.6 Termination of this **agreement** [29.0]
- 27.2.7 Amounts paid directly to **subcontractors** on default by the **contractor** [14.5; 15.5]
- 27.2.8 Termination of a *nominated n/s subcontract agreement* [14.7.3]

- 27.2.9 Default by the **contractor** where not less than five (5) **working days notice** detailing such default has been given before the issue of the next **recovery statement** to allow the **contractor** the opportunity to remedy such default
- 27.2.10 Adjustment of the n/s subcontract preliminaries due to the **subcontractor** as a result of a default by the **contractor**
- 27.3 Where an amount is due to either **party** and has not been paid, the other **party** may recover the amount from any of the following:
- 27.3.1 Subsequent **payment certificates** [25.0]
- 27.3.2 A demand in terms of the **security** [11.0]
- 27.3.3 The defaulting **party** as a debt
- 27.4 Where either **party** has been liquidated, or this **agreement** terminated, the other **party** may exercise rights in terms of the **security** [11.0]

## **SUSPENSION AND TERMINATION**

### **28.0 SUSPENSION BY THE CONTRACTOR**

- 28.1 The **contractor** may give five (5) **working days notice** to the **employer** and the **principal agent** of the intention to suspend the **works** where the **employer** or the **principal agent** has failed to:
- 28.1.1 Provide and/or maintain a JBCC® **Guarantee for Payment**, where specified [11.4]
- 28.1.2 Issue a **payment certificate** by the due date [25.2] [CD]
- 28.1.3 Make payment in full of an amount certified in an interim **payment certificate** by the due date [25.7] [CD]
- 28.1.4 Effect insurances [10.1.1-4], where applicable [CD]
- 28.1.5 Appoint another **principal agent** or other **agent**, where applicable [6.5]
- 28.2 Where the **employer** has not remedied a defect in terms of a **notice** [28.1] the **contractor** may suspend execution of the **works** until such default has been remedied without prejudice to any rights the **contractor** may have
- 28.3 The **contractor** shall instruct each **subcontractor** to suspend the n/s subcontract works forthwith where the **works** is suspended by the **contractor**
- 28.4 Where the **works** has been suspended [28.2] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** [23.2.13]

### **29.0 TERMINATION**

#### **Termination by the employer**

- 29.1 The **employer** may give **notice** of intention to terminate this **agreement** where the **contractor** has failed to:
- 29.1.1 Provide a JBCC® **Guarantee for Construction** [CD] within fifteen (15) **working days** [11.1; 12.2.3] of the date of acceptance of the **contractor's** offer
- 29.1.2 Proceed with the **works** [12.2.17] within the period stated [CD]
- 29.1.3 Comply timeously with a **contract instruction** [17.0]
- 29.2 Where the **employer** contemplates terminating this **agreement** [29.1], the **principal agent** shall give **notice** to the **contractor** of a specified default [29.1.1-3], to be remedied within ten (10) **working days** of the date of receipt of such **notice**

- 29.3 Where the **contractor** has not remedied a specified default within such period [29.2] the **employer** may give **notice** to the **contractor** of termination of this **agreement** forthwith
- 29.4 The **employer** may employ others to safeguard the **works**, complete the outstanding work and rectify defects in that portion of the **works** executed by the **contractor** [27.2.3]. The **contractor** shall be liable to the **employer** for such costs that shall be included in the **final account** [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 removed or sold. Resulting costs and/or income shall be included in the **final account**
- 29.7 The **employer**, on **notice** to the **contractor**, may recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the remaining work [25.3.7, 27.1]
- 29.8 The **employer** may apply the **penalty** [24.1] up to the date of termination where the initial or revised date for **practical completion** has passed
- 29.9 The **employer** has the right of recovery against the **contractor**, where applicable, [CD] from the:  
JBCC® **Guarantee for Construction** (variable) - until the final payment has been made; or  
JBCC® **Guarantee for Construction** (fixed) - until the date of **practical completion** or from the payment reduction until the final payment is made  
JBCC® **Guarantee for Advance Payment** - until the outstanding balance has been repaid to the **employer**;  
Thereafter the original **security** form(s) shall be returned to the **contractor** within ten (10) **working days**
- 29.10 The latent defects liability period for the completed portion of the **works**, shall end [22.2.1] five (5) years from the date of termination
- 29.11 Where this **agreement** is terminated, the **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.12 Termination of the **works** shall not prejudice any rights the **employer** may have
- 29.13 The right to terminate may not be exercised where the **employer** is in material breach of this **agreement**
- Termination by the contractor**
- 29.14 The **contractor** may give **notice** of intention to terminate this **agreement** where the **employer** has failed to:
- 29.14.1 Provide a JBCC® **Guarantee for Payment** [11.4], within fifteen (15) **working days** of acceptance of the **contractor's** offer, where applicable [CD]
- 29.14.2 Give possession of the **site** to the **contractor** [12.1.6]
- 29.14.3 Allow the **principal agent** and/or **agents** to exercise fair judgement as contemplated in this **agreement** [6.6]
- 29.14.4 Effect insurances [10.1.1-4], where applicable [CD]
- 29.14.5 Pay the amount certified [25.7] by the due date [CD]
- 29.14.6 Appoint another **principal agent**, and/or **agents**, where applicable [6.5]
- 29.14.7 Or where the **principal agent** has failed to issue a **payment certificate** to the **contractor** by the due date [CD]
- 29.15 Where the **contractor** contemplates terminating this **agreement** [29.14], the **contractor** shall give **notice** to the **employer** and/or the **principal agent** of a specified default [29.14.1-7], to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 29.16 Where the **employer** has not remedied a specified default within such period [29.15] the **contractor** may give **notice** to the **employer** and the **principal agent** of the termination of this **agreement** forthwith

- 29.17 Where this **agreement** is terminated:
- 29.17.1 The **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.17.2 The **contractor** shall remove temporary structures, **construction equipment** and, on **notice**, surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**
- 29.17.3 The latent defects liability period for the completed portion of the **works** shall end [22.2.2]
- 29.17.4 The **contractor** may be entitled to damages
- 29.17.5 The JBCC® **Guarantee for Construction** [11.1.1], where applicable [CD], shall expire on the date of termination; the JBCC® **Guarantee for Advance Payment** [11.1.4], where applicable [CD], shall expire on repayment of amounts due to the **employer**. The original **security** form(s) shall be returned to the **contractor** within ten (10) **working days**
- 29.17.6 The JBCC® **Guarantee for Payment** [11.4.1] where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum, or on the **security** expiry date, whichever is the earlier. The original **security** form shall be returned to the **employer** within ten (10) **working days** of receipt of the final payment
- 29.18 Termination of the **works** shall not prejudice any rights the **contractor** may have
- 29.19 The right to terminate may not be exercised where the **contractor** is in material breach of this **agreement**

#### **Termination by either party**

- 29.20 Either **party** may terminate this **agreement** where:
- 29.20.1 The **works** is for alterations and/or additions to (an) existing building(s), or a new building, which has been substantially destroyed regardless of the cause other than by the **party** seeking termination
- 29.20.2 Progress on the **works** has ceased for a continuous period of ninety (90) **calendar days**, or an intermittent period totalling one hundred and twenty (120) **calendar days** as a result of a **force majeure** event or the exercise of statutory power by a body of state or public or local authority that directly affects the execution of the **works**
- 29.21 The **party** contemplating termination of this **agreement** shall give ten (10) **working days notice** to the other **party**
- 29.22 Neither **party** shall be liable to the other **party** for expense and/or loss resulting from the termination
- 29.23 The latent defects liability period for the **works** shall end on the date of termination [22.2.2]
- 29.24 The JBCC® **Guarantee for Payment** [11.4.1], where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum, or on the **security** expiry date, whichever is the earlier. The original **security** form shall be returned to the **employer** within ten (10) **working days** of receipt of the final payment
- 29.25 The JBCC® **Guarantee for Construction** [11.1.1], where applicable [CD], shall expire on the date of termination. The original **security** form shall be returned to the **contractor** within ten (10) **working days** [29.9]

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

On termination of this **agreement**:

- 29.26 The **contractor** shall:
- 29.26.1 Cease work and ensure that the **works** is safe in terms of the **law**
- 29.26.2 Remain responsible for the **works** [8.1] until possession is relinquished to the **employer**
- 29.27 Termination shall take effect after completion of the procedure [29.26] and such date recorded by the **principal agent**

- 29.28 The **employer** shall arrange appropriate insurance cover to suit the stage of completion of the **works**
- 29.29 The **principal agent**, in consultation with the **contractor** where possible, shall within twenty (20) **working days** of the date of termination compile and issue to the **parties** a **status report** of the **works** including marked up drawings and photographs recording completed and incomplete work on the date of termination of the **works**
- 29.30 The **principal agent** shall continue to certify the value of the work executed and **materials and goods** for payment by the **employer**, or the **contractor**, as the case may be, until the issue of the **final payment certificate** [25.6]
- 29.31 The **principal agent** shall commence and complete the **final account** [26.10] within ninety (90) **calendar days** of the date of termination including the cost of **materials and goods** and those ordered before termination that the **contractor** is bound to accept and make payment
- 29.32 This clause [29.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement** [3.2]

## **DISPUTE RESOLUTION**

### **30.0 DISPUTE RESOLUTION**

#### **Settlement by the parties**

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

### Arbitration

- 30.7 Where the dispute is referred to arbitration:
- 30.7.1 The arbitration shall not be construed as a review or appeal from any adjudicator's determination and that any such determination by the adjudicator shall remain in force and continue to be implemented until overturned by an arbitration award
- 30.7.2 The resolution of the dispute shall commence anew
- 30.7.3 The referring **party** in the adjudication shall be the claimant in the arbitration; and
- 30.7.4 The arbitrator shall be appointed by agreement between the **parties** [CD], within fifteen (15) **working days** of **notice** by either **party** inviting the other to do so - failing which, on application by either **party**:
- (a) By the body stated in the [CD] failing which:
- (b) By the Chairman for the time being of the Association of Arbitrators (Southern Africa)
- 30.7.5 The applicable rules shall be by agreement between the **parties** and the arbitrator, failing which, shall be determined by the arbitrator
- 30.7.6 The arbitrator shall have the power to finally determine the dispute including the power to make, open up and revise any certification, opinion, decision, determination, requisition, or **notice** relating to the dispute as if no such certificate, opinion, decision, determination, requisition, or **notice** had been issued or given

### Mediation

- 30.8 Notwithstanding the provisions relating to adjudication and arbitration [30.3-7], the **parties** may, by agreement and at any time, refer a dispute to mediation, in which event:
- 30.8.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until **notice by either party** that they be resumed
- 30.8.2 The appointment of a mediator, the procedure, and the status of the outcome shall be agreed between the **parties**

### General

- 30.9 The **parties** shall continue to perform their obligations in terms of this **agreement**, notwithstanding that a disagreement or a dispute exists between them
- 30.10 This clause [30.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement** [3.2]

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JBCC education copy

## AGREEMENT

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

The contracting **parties**

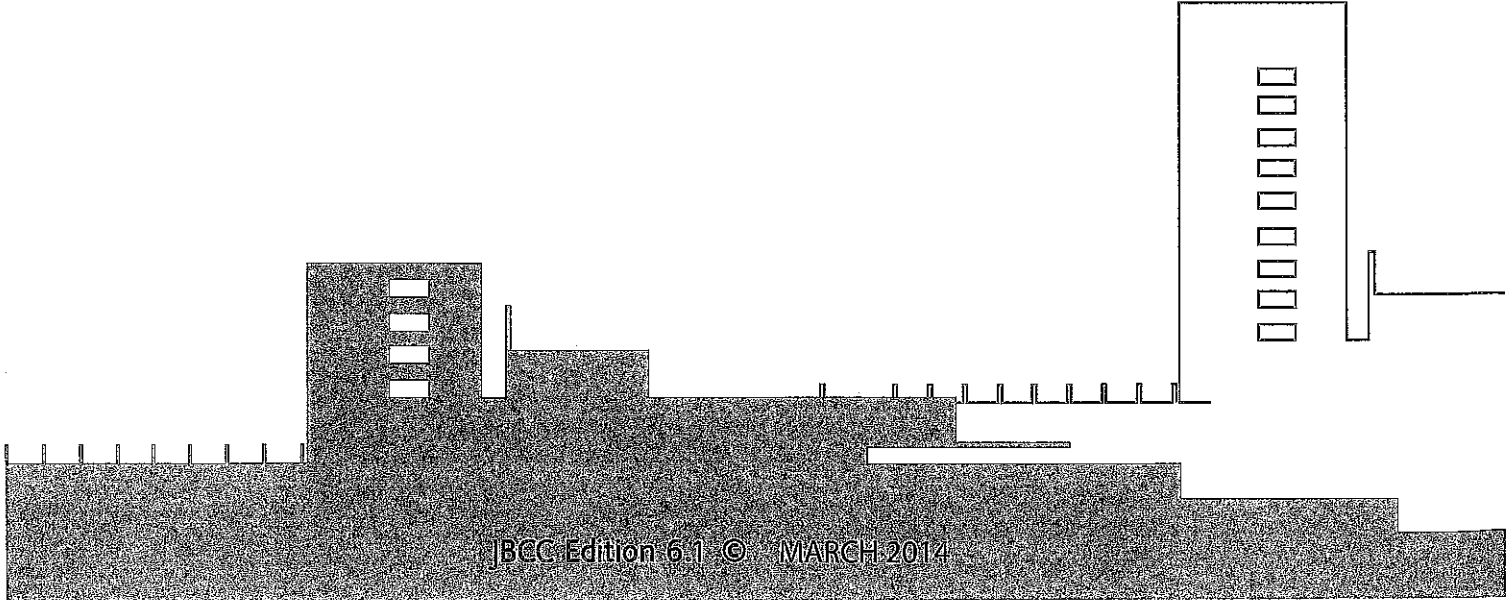
The <b>parties</b>	Employer	Contractor
Business name		
Business type		
Business registration		
Tax number (VAT/GST)		
Contact person		
ID Number		
Address: Building name		
Address: Street		
Address: Suburb		
Address: City		
Address: P O Box		
Address: Post Office		
Address: Province		
Address: Country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





**PRINCIPAL BUILDING AGREEMENT: CONTRACT DATA**

Project
Employer
Contractor
Contract Date
File Code



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# CONTRACT DATA

*used in conjunction with the*

## JBCC® Principal Building Agreement

Edition 6.1 - published March 2014

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### Preface

#### JBCC® Constituents

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

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

#### Application of JBCC® Contract Documents

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

This contract data contains unique requirements applicable to the project and variables referred to in the JBCC® Principal Building Agreement. The information provided in this document by the principal agent is complete and accurate at the time of calling for tenders. Where additional information becomes available, all tenderers will be informed in writing. Reference to clause numbers in the JBCC® Principal Building Agreement are shown in [square brackets] in this contract data eg [3.2.1]. Spaces requiring information must be filled in, or marked as 'not applicable' but not left blank. This contract data, when completed and submitted by the contractor, becomes the form of tender. Where the contractor is appointed, the contract documents comprise the signed JBCC® Principal Building Agreement, this completed contract data, the priced document, drawings and other listed documents

#### Warning

The JBCC® Principal Building Agreement, the JBCC® Nominated / Selected Subcontract Agreement and respective Contract Data Edition 6.1 have been coordinated with JBCC® Certificates and other support documents. Forms from previous editions are not compatible with Edition 6.1

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**A TENDER INFORMATION**

A1 Project name

--

A2 Works description

--

A3 Site description

Erf No /Township	
Local authority	
Street address	

A4 Employer

Name			
Business-eg: public company			
Business registration number		VAT/GST	
Contact person		Mobile	
E-mail			
Registered street address			
Postal address		Code	
Telephone		Fax	

A5 Principal agent

Name			
Practice registration number		VAT/GST	
Contact person		Mobile	
E-mail			
Registered street address			
Postal address		Code	
Telephone		Fax	

A 6 Agent   
Name   
Practice registration number  VAT/GST   
Contact person  Mobile   
E-mail   
Registered street address   
Postal address  Code   
Telephone  Fax

A 7 Agent   
Name   
Practice registration number  VAT/GST   
Contact person  Mobile   
E-mail   
Registered street address   
Postal address  Code   
Telephone  Fax

A 8 Agent   
Name   
Practice registration number  VAT/GST   
Contact person  Mobile   
E-mail   
Registered street address   
Postal address  Code   
Telephone  Fax

A 9 Agent   
Name   
Practice registration number  VAT/GST   
Contact person  Mobile   
E-mail   
Registered street address   
Postal address  Code   
Telephone  Fax

A 10 Agent  
Name  
Practice registration number VAT/GST  
Contact person Mobile  
E-mail  
Registered street address  
Postal address Code  
Telephone Fax

A 11 Agent  
Name  
Practice registration number VAT/GST  
Contact person Mobile  
E-mail  
Registered street address  
Postal address Code  
Telephone Fax

A 12 Agent  
Name  
Practice registration number VAT/GST  
Contact person Mobile  
E-mail  
Registered street address  
Postal address Code  
Telephone Fax

A 13 Agent  
Name  
Practice registration number VAT/GST  
Contact person Mobile  
E-mail  
Registered street address  
Postal address Code  
Telephone Fax



**6.0 Employer's agents**

6.3

Description of interests of <b>agents</b> in the project other than professional services, if applicable	
--	--

**10.0 Insurances**

By the **employer** in the joint names of the **parties**, yes/no ?

	Obligation	Currency	Insured amount
Contract Works Insurance (CWI) (including <b>materials and goods</b> , temporary works)			<i>contract sum</i>
Allowance for professional fees and escalation of the insured value at 25% pa, or ? %		%	
<b>Free issue</b> material at new replacement value, added to CWI, where applicable			
<b>Employer</b> owned surrounding property (care, custody, control or worked on)			
Public Liability Insurance (each and <u>every claim</u> OR <u>unlimited</u> / value ?)			
Supplementary Insurance (incl CWI extensions)			<i>per CWI</i>
Removal of Lateral Support Insurance	employer		
Other: <input type="text"/>			
Policy deductibles		Currency	Amount
- <b>Works / free issue</b>	contractor		
- <b>Employer</b> owned surrounding properties	contractor		
- Public Liability	contractor		
- Supplementary Insurance	contractor		
- Removal of Lateral Support	contractor		
- Other: <input type="text"/>	contractor		

Or...

By the **contractor** in the joint names of the **parties**, yes/no ?

	Obligation	Currency	Insured amount
Contract Works Insurance (CWI) (including <b>materials and goods</b> , temporary works)			<i>contract sum</i>
Allowance for professional fees and escalation of the insured value at 25% pa, or ? %		%	
<b>Free issue</b> material at new replacement value			
Public Liability Insurance (each and <u>every claim</u> OR <u>unlimited</u> for the period)			
Supplementary Insurance (incl CWI extensions)			<i>per CWI</i>
Policy deductibles			
Other: <input type="text"/>			

**11.0 Security**

11.1.1-5

The **contractor** shall provide a **Guarantee for Construction** to the **employer**>D11.2-3 

yes / no?	<input type="checkbox"/>
-----------	--------------------------

**12.0 Duties of the parties = employer = site**

9.2.7

Alterations & additions to existing premises?

12.1.2

Premises occupied - yes/no? identify area?

12.1.3

Relevant natural features to be retained / relocated / removed

12.1.4 Areas the **contractor** may not occupy?

--

12.1.5 Utilities connections - location

--

12.1.6 Statutory and/or other notices to be complied with by the contractor before possession of site can be given

--

Due date / yyyyymmdd

12.1.7 Possession of the **site** - intended date

12.1.12 Description of **free issue** by **employer**  
(Attach separate page for multiple items)

--

NOTE: If insufficient space, please see annexure:-	
--	--

**14.0 Nominated subcontractors**

14.1.4 Specialisation:

--

14.1.4 Specialisation:

--

14.1.4 Specialisation:

--

14.1.4 Specialisation:

--

14.1.4 Specialisation:

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NOTE: If insufficient space, please see annexure:-	
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**16.0 Direct contractors**

**Employer** to define extent of work by a **direct contractor** [12.1.2]

16.1 Specialisation:

--

16.1 Specialisation:

--

16.1 Specialisation:

--

NOTE: If insufficient space, please see annexure:-	
--	--

**19/20/24 Practical completion / penalty for late completion**

19.0 **Practical completion** of the works as a whole

**OR ...only one option can apply !**

Inspection = working days	Date for practical completion yyyyymmdd	Penalty Currency	Penalty amount per calendar day

19/20/24 **Practical completion** of the works in sections: 1

19/20/24 **Practical completion** of the works in sections: 2

19/20/24 **Practical completion** of the works in sections: 3

19/20/24 **Practical completion** of the works in sections: 4

19/20/24 **Practical completion** of the works in sections: 5


NOTE: If insufficient space, please see annexure:-	
--	--



**19.0 Practical completion**

19.1.1 Items that do not have to be complete to achieve **practical completion**

--

NOTE: If insufficient space, please see annexure:-	
--	--

19.1.1 Criteria to achieve **practical completion** (the BoQ may contain a more detailed description)

--

NOTE: If insufficient space, please see annexure:-	
--	--

**25.0 Payment**

- 25.0 Currency:
- 25.2 Issue of regular payment certificates on
- 25.3.2 **Materials and goods off site** - paid subject to ...
- 25.3.4/26.9.5 Contract price adjustment provisions

date@month		or... day of week	
<b>Guarantee for Advance Payment provided ?</b>			
Method?			

NOTE: If insufficient space, please see annexure:-	
--	--

**30.0 Dispute resolution**

30.6.1 Alternative Dispute Resolution nominating body

--

## Changes made to JBCC® documentation

Note: The amendments contained herein or in the single referenced Annexure constitute the only amendments to the standard JBCC Agreement that will apply. No other amendments shall be of any force or effect."
NOTE: If insufficient space, please see annexure:-

### C TENDER CLOSING

Tender closing: date	<input style="width: 150px;" type="text"/>	Tender closing: time	<input style="width: 50px;" type="text"/>
Tender closing: place	<input style="width: 600px;" type="text"/>		
SUBMISSION ADDRESS	<input style="width: 600px;" type="text"/>		
Delivered in electronic format?	yes / no? <input style="width: 50px;" type="text"/>	E-mail address	<input style="width: 300px;" type="text"/>
Alternate offer considered ?	yes / no? <input style="width: 50px;" type="text"/>	Only if original tender submitted	yes / no? <input style="width: 50px;" type="text"/>

### D TENDERER'S SELECTION (to be completed by the tenderer)

<b>11.0</b>	<b>Securities</b>	Obligation	
11.1.2	<b>Guarantee for Construction</b> (variable)	If specified, <b>contractor's</b> choice	yes/no ? <input style="width: 50px;" type="text"/>
11.1.3	or <b>Guarantee for Construction</b> (fixed)	If specified, <b>contractor's</b> choice	yes/no ? <input style="width: 50px;" type="text"/>
11.1.4	<b>Guarantee for Advance Payment</b>	Provided by the <b>contractor</b>	yes/no ? <input style="width: 50px;" type="text"/>
	(where the <b>contractor</b> requests the <b>employer</b> to pay an advance for <b>materials and goods</b> )		
	Purpose <input style="width: 250px;" type="text"/>	Currency <input style="width: 50px;" type="text"/>	Amount <input style="width: 50px;" type="text"/>
11.4	<b>Guarantee for Payment</b>	Provided by the <b>employer</b>	yes/no ? <input style="width: 50px;" type="text"/>
		Currency <input style="width: 50px;" type="text"/>	Amount <input style="width: 50px;" type="text"/>
<b>19.0</b>	<b>Contractor's holiday periods during the construction period ?</b>		
	<b>Contractor's</b> annual holiday period - year 1 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>
	<b>Contractor's</b> 'other' holiday period - year 1 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>
	<b>Contractor's</b> annual holiday period - year 2 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>
	<b>Contractor's</b> 'other' holiday period - year 2 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>
	<b>Contractor's</b> annual holiday period - year 3 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>
	<b>Contractor's</b> 'other' holiday period - year 3 from ...	<input style="width: 150px;" type="text"/>	until <input style="width: 150px;" type="text"/>

NOTE: If insufficient space, please see annexure:-
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## 26.0 Payment / Adjustment of Preliminaries

### Payment of preliminaries

Option A Assessed by **principal agent**, an amount pro rated to the value of the **works** executed in the same ratio as the **preliminaries** to the **contract sum**, (including **tax**); shall exclude the amount of **preliminaries**, all contingency sum(s) and any allowance for CPAP

Or ...

Or ...

Option B An amount agreed by the **principal agent** and the **contractor** in terms of the **Bills of Quantities** or the **priced document** to identify an initial establishment charge / a monthly charge / and a final disestablishment charge

Where the **contractor** does not indicate option 'A' or option 'B' - option 'A' shall apply

### Adjustment of preliminaries [26.9.4]

Option A For the adjustment of **preliminaries** both the **contract sum** and the **contract value** (including **tax**) shall exclude the amount of **preliminaries**, all contingency sum(s) and any provision for Cost Price Adjustment Provisions:-

- An amount which shall not be varied
- An amount varied in proportion to the **contract value** as compared to the **contract sum**
- An amount varied in proportion to the **construction period** as compared to the initial **construction period** (excluding revisions to the **construction period** to which the **contractor** is not entitled) to adjustment of the **contract value** in terms of the **agreement**

The **contractor** shall provide a breakdown of charges (including **tax**) within 15 **working days** of the date of acceptance of tender and, where applicable, an apportionment of preliminaries per section

Where such information is not provided the following subdivision shall be deemed to apply:

- 10% of the amount shall not be varied
- 15% varied in proportion of the **contract value** to the **contract sum**
- 75% varied in proportion to the revised **construction period** compared to the initial **construction period** ...

Or ...

Or ...

Option B The **contractor** shall within 15 **working days** of the date of possession of the **site** provide the **principal agent** with a detailed breakdown of **preliminaries** amounts for the **works** as a whole, or per **section** where applicable, including administrative and supervisory staff charges and for the use of **construction equipment** in terms of the **programme**.

Where the **contractor** does not indicate option 'A' or option 'B' - option 'A' shall apply

### Notes

- 1 By submission of this tender to the **employer** the tenderer offers and agrees to execute and complete the **works** and remedy any **defects** in conformity with the specification for the tender sum stated - to be paid in instalments as work is completed
- 2 The tender shall remain in full legal force for forty five (45) **calendar days** from the closing date of the tender. The tenderer accepts liability for **damages** that may be suffered by the **employer** should the tender validity period not be honoured
- 3 The lowest or any offer will not necessarily be accepted by the **employer** - nor need reasons be given for such a decision
- 4 Any provision in this agreement that may confer any benefit or right in favour of any **subcontractor** shall be binding on the **parties** and be capable of acceptance by such **subcontractor** at any time
- 5 Annexures ... marked

A	
B	
C	

# TENDER SUM COMPILATION

Tenderer's work excluding <b>tax</b>		Currency	<input type="text"/>	amount	<input type="text"/>
<b>Tax</b> ... at percentage	<input type="text"/>		<input type="text"/>	amount	<input type="text"/>
<b>Total TENDER SUM inclusive of tax</b>			<input type="text"/>	amount	<input type="text"/>
Tender sum in words					
<input style="width: 100%; height: 40px;" type="text"/>					

---

(print) TENDERER      Capacity      who, by its SIGNATURE warrants authority thereto      Date      Location

---

WITNESS print name      Capacity      SIGNATURE      Date      Location

## TENDERER'S DETAILS

Name	<input style="width: 100%; height: 20px;" type="text"/>				
Business-eg: public company	<input style="width: 100%; height: 20px;" type="text"/>				
Business registration number	<input style="width: 50%; height: 20px;" type="text"/>	VAT/GST	<input style="width: 40%; height: 20px;" type="text"/>		
Contact person	<input style="width: 50%; height: 20px;" type="text"/>	Mobile	<input style="width: 40%; height: 20px;" type="text"/>		
E-mail	<input style="width: 100%; height: 20px;" type="text"/>				
Registered street address	<input style="width: 100%; height: 40px;" type="text"/>				
Postal address	<input style="width: 70%; height: 20px;" type="text"/>			Code	<input style="width: 10%; height: 20px;" type="text"/>
Telephone	<input style="width: 50%; height: 20px;" type="text"/>	Fax	<input style="width: 40%; height: 20px;" type="text"/>		