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**PRINCIPAL BUILDING  
AGREEMENT**

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## PRINCIPAL BUILDING AGREEMENT

<b>Project</b> ABLUTIONS: PHIRI PRIMARY SCHOOL
<b>Employer</b> INDEPENDENT DEVELOPMENT TRUST (IDT)
<b>Contractor</b> GO-LUTHI CONSTRUCTION AND VALUERS
<b>Contract Date</b> 17 APRIL 2012 <b>File Code</b>

prepared by the JOINT BUILDING CONTRACTS COMMITTEE Inc

RECOMMENDED BY THE JBCC CONSTITUENTS

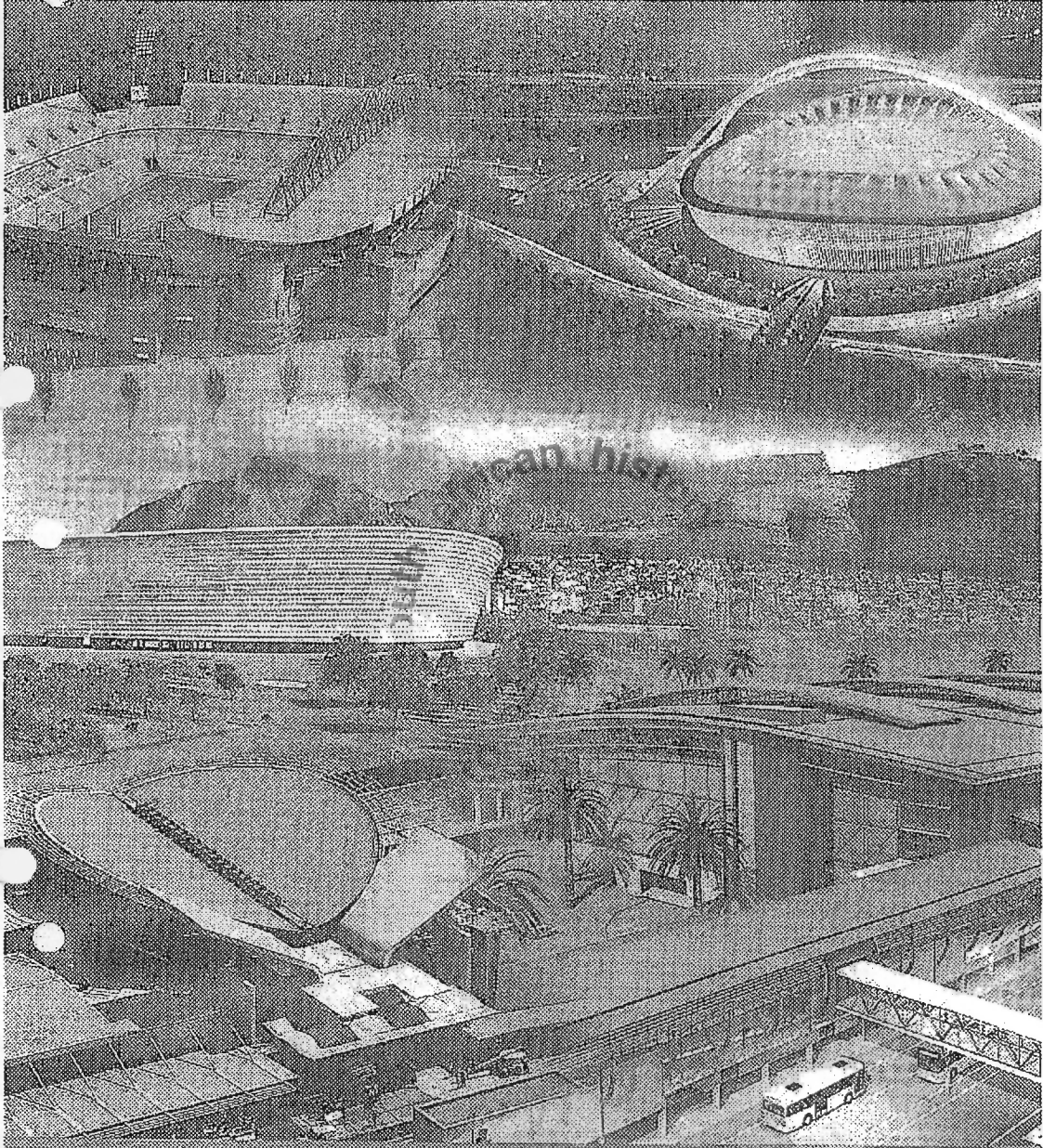
Association of Construction Project Managers  
Association of South African Quantity Surveyors  
Master Builders South Africa  
South African Association of Consulting Engineers  
South African Institute of Architects  
South African Property Owners Association  
Specialist Engineering Contractors Committee



JBCC SERIES 2000 EDITION 5.0 CODE 2101 © JULY 2007

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## JBCC SERIES 2000

### Principal Building Agreement - Edition 5.0

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#### **Preface**

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

#### **The Agreement Structure**

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

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

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

#### **Warning!**

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

#### **JBCC Documentation Services**

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

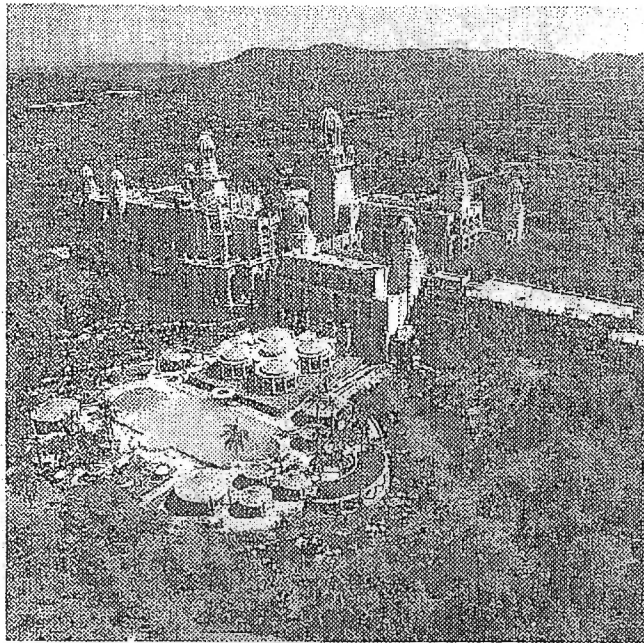
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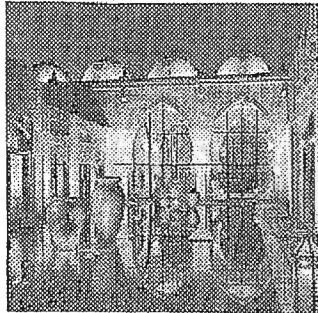
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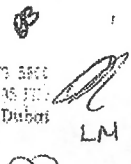


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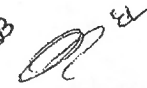
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# PRINCIPAL BUILDING AGREEMENT

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## DEFINITIONS

### 1.0 DEFINITIONS AND INTERPRETATION

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

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

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

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

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

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

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

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

**CALENDAR DAYS:** Twenty-four (24) hour days commencing at midnight (00:00) which include working and non-working days

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**JBCC:** The Joint Building Contracts Committee Incorporated

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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- 1.5.1 The word "deemed" shall be conclusive that something is fact, regardless of the objective truth;
- 1.5.2 The words "accept, appoint, approve, certify, decide, grant, inform, instruct, issue, notice, object, record, reduce, refuse, request, state" and their derivatives indicate an act carried out in writing
- 1.5.3 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes corporate bodies
- 1.5.4 Clause numbers written as [54.1.5] means 'in terms of' to such referenced clauses where [54.1.5-8] means the subclauses 5, 6, 7 and 8 inclusively and [54.1.5,8] means the subclauses 5 and 8 only
- 1.5.5 The headings of clauses are for reference purposes only and shall not be taken as construing the context thereof
- 1.6 Notices shall be presumed to have been duly given when:
- 1.6.1 Hand delivered - on the working day of delivery
- 1.6.2 Sent by registered post - five (5) working days after posting
- 1.6.3 Sent by telefax - one (1) working day after transmission
- 1.6.4 Sent by e-mail - one (1) working day after transmission
- 1.7 For the purposes of sentence in relation to a payment certificate only, the parties consent to the jurisdiction of any court of the country as stated in the contract data although the amount of the claim by either of the parties against the other may exceed the jurisdiction of such court
- 1.8 This agreement is the entire contract between the parties regarding the matters addressed in this agreement. No representations, terms, conditions or warranties not contained in this agreement shall be binding on the parties. No agreement or addendum varying, adding to, deleting or terminating this agreement including this clause shall be effective unless reduced to writing and signed by the parties

## OBJECTIVE AND PREPARATION

### 2.0 OFFER, ACCEPTANCE AND PERFORMANCE OBLIGATIONS

- 2.1 The objective of this agreement is the execution of and payment for the works for which there has been an offer by the contractor and an acceptance thereof by the employer
- 2.2 In pursuance of the objective the parties undertake to carry out their reciprocal obligations

### 3.0 DOCUMENTS

- 3.1 The employer shall provide a payment guarantee where required by the contractor in the accepted tender. The guarantee shall be according to the relevant JBCC Payment Guarantee form in the amount as stated in the contract data and shall be provided within twenty-one (21) calendar days of acceptance of the tender. Such security shall be for the due fulfilment of the employer's liability only and the contractor hereby waives all common law rights to recover from or set-off against such security
- 3.2 The contractor shall provide:
- 3.2.1 A construction guarantee [14.3-4] where so elected in the Form of Offer and Acceptance
- 3.2.2 An advance payment guarantee where so required in the contractor's accepted tender. The guarantee shall be according to the JBCC Advance Payment Guarantee form in the amount as stated in the contract data

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- 3.3 Where the employer requires the contractor to waive his lien or right of continuing possession of the works as stated in the contract data, the contractor shall do so within seven (7) calendar days of having received a payment guarantee from the employer [3.1]. The waiver shall be according to the JBCC Waiver of Contractor's Lien form or such other form as stated in the contract data
- 3.4 *No clause*
- 3.5 The principal agent shall complete the contract data and arrange the formal signing of this agreement once the contract documents have been provided and effected. Formal signatures are not required to render this agreement binding
- 3.6 The parties shall sign, in original, the number of sets of contract documents required by the parties. The contractor shall be entitled to receive one (1) set of contract documents for this agreement and two (2) sets of contract documents for each n/s subcontract agreement at no expense to the contractor. The original signed set of contract documents shall be held by the principal agent or such other party as stated in the contract data
- 3.7 The principal agent shall provide the number of copies of drawings, unpriced bills of quantities and documents as stated in the contract data at no cost to the contractor. The contractor shall keep on site a copy of such documents and any other documents required for construction as well as contract instructions to which the employer, principal agent and agents shall have access at all times
- 3.8 Information contained in the contract documents and other documents flowing from this agreement shall be used only for the purposes of this agreement and shall not be published or disclosed without the prior written consent of the employer
- 3.9 The priced document shall not be used as a specification of materials and goods or methods unless so selected in the contract data
- 3.10 Where the priced document is not a bill of quantities the contractor shall provide a schedule of rates in the contract data which meets with the principal agent's approval
- 3.11 The principal agent shall identify in detail any changes made to the provisions of JBCC standard documentation in the contract data

#### 4.0 DESIGN RESPONSIBILITY

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

#### 5.0 EMPLOYER'S AGENTS

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

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

## 6.0 CONTRACTOR'S SITE REPRESENTATIVE

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

## 7.0 COMPLIANCE WITH LAWS AND REGULATIONS

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

## 8.0 WORKS RISK

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

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- 8.5 The contractor shall not be liable for the cost of making good physical loss and repairing damage to the works where this results from any of the following circumstances:
- 8.5.1 War, whether declared or not, invasion and hostile acts of foreign enemies
  - 8.5.2 Rebellion, insurrection, revolution, terrorism, military or usurped power or civil war
  - 8.5.3 Civil commotion, riot, strike, lockout or disorder by persons other than the contractor's personnel and other employees or his subcontractors
  - 8.5.4 Confiscation, nationalisation or requisition by any public or local authority
  - 8.5.5 Sonic shock waves caused by aircraft or other aerial devices and ionising radiation or contamination except where attributable to the contractor's use of such technology
  - 8.5.6 The use or occupation of any part of the works by the employer, the employer's servants or agents and those for whose acts or omissions they are responsible
  - 8.5.7 An act or omission of the employer, the employer's servants or agents and those for whose acts or omissions they are responsible
  - 8.5.8 An act or omission by a direct contractor appointed [22.0]
  - 8.5.9 Design of the works where the contractor is not responsible [4.0]
  - 8.5.10 A latent defect in materials and goods supplied by trade name where the contractor has no right of substitution. The contractor hereby cedes any right of action to the employer that may exist against the supplier and/or manufacturer of such materials and goods
- 8.6 Where the contractor is not liable for the costs [8.5] such making good physical loss and repairing damage shall be measured and valued [32.0] and added to the contract value
- 8.7 The contractor shall forthwith notify the principal agent and insurer of any physical loss and damage to the works that comes to his attention

## 9.0 INDEMNITIES

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

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

## 10.0 GENERAL INSURANCES

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

## 11.0 SPECIAL INSURANCES

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

## 12.0 EFFECTING INSURANCES

- 12.1 The party responsible as stated in the contract data [12.6] shall effect and keep in force:
  - 12.1.1 General insurance [10.1] from the date of the handover of the site and until the contractor's responsibility [8.0] has ended, and

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

### 13.0 ASSIGNMENT

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

### 14.0 SECURITY

- 14.1 The contractor shall have the right to choose the security to be provided [14.3-4] as stated in the contract data. The choice of security shall be included in the contractor's tender, failing which a variable construction guarantee [14.3] shall be deemed to have been chosen. Such security shall be provided to the employer within twenty-one (21) calendar days of acceptance of the contractor's tender
- 14.2 *No clause*
- 14.3 Where security as a variable construction guarantee has been chosen the following shall apply:
- 14.3.1 The contractor shall provide the employer with a variable construction guarantee initially equal in value to ten per cent (10%) of the contract sum
- 14.3.2 The variable construction guarantee shall come into force, be administered and expire in terms of the JBCC Construction Guarantee form
- 14.3.3 The employer shall return the variable construction guarantee to the contractor within fourteen (14) calendar days of its expiry
- 14.3.4 Where the employer has a right of recovery against the contractor [33.0], the employer may issue a written demand in terms of the variable construction guarantee

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

## EXECUTION

### 15.0 PREPARATION FOR AND EXECUTION OF THE WORKS

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

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

## 16.0 SITE AND ACCESS

- 16.1 The contractor shall have unrestricted access to the site on being given possession thereof to fulfil his obligations [15.2.1]. Any restrictions to the site area, including servitudes and the like, that the contractor may not occupy are defined in the contract data. The contractor shall not extend his operations into such defined areas
- 16.2 The employer, principal agent and agents shall have reasonable access to the works, workshops and other places where work in terms of this agreement is being prepared, executed or stored
- 16.3 The contractor and n/s subcontractors shall be given reasonable access to the works and any section thereof subsequent to practical completion to fulfil their obligations [25.0, 26.0]

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

## 17.0 CONTRACT INSTRUCTIONS

- 17.1 The principal agent may issue contract instructions to the contractor regarding:
- 17.1.1 Alteration to design, quality or quantity of the works provided that such contract instructions shall not substantially change the scope of the works
- 17.1.2 Rectification of discrepancies, errors in description or omissions in contract documents other than this document
- 17.1.3 Removal of any materials and goods from the site and the substitution of any other materials and goods therefor
- 17.1.4 Removal or re-execution of any work
- 17.1.5 Opening up of work for inspection
- 17.1.6 Provision and testing of samples of materials and goods, specimens of finishes and assemblies of elements of the works
- 17.1.7 Protection of the works
- 17.1.8 Making good physical loss and repairing damage to the works [B.0]
- 17.1.9 Removal from the site of any party employed on the works
- 17.1.10 Removal from the site of any persons not engaged on or connected with the works
- 17.1.11 The appointment of n/s subcontractors, the n/s subcontract amounts and the work to be executed thereunder
- 17.1.12 Proof of payment to n/s subcontractors [20.6 and 21.6]
- 17.1.13 Notices to nominated subcontractors
- 17.1.14 Prime cost amounts and the purchase of materials and goods included therein
- 17.1.15 Budgetary allowances and work executed by the contractor thereunder

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

**18.0 SETTING OUT OF THE WORKS**

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

**19.0 TEMPORARY WORKS AND PLANT**

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

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

## 20.0 NOMINATED SUBCONTRACTORS

20.1 The principal agent shall:

20.1.1 Prepare tender documents in conformity with the n/s agreement and this agreement for work intended to be executed by a nominated subcontractor and thereafter call for tenders, and

20.1.2 Nominate a subcontractor and instruct the contractor to appoint such subcontractor as a nominated subcontractor in terms of the n/s agreement and other tender requirements, and

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

20.2 The contractor may refuse to appoint such subcontractor:

20.2.1 Against whom the contractor makes a reasonable objection, or

20.2.2 Who refuses to enter into a subcontract in terms of the n/s agreement and other tender requirements, or

20.2.3 Who is unable to provide security in terms of the n/s agreement.

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

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

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

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

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

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

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

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

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## 21.0 SELECTED SUBCONTRACTORS

- 21.1 The principal agent shall:
- 21.1.1 Prepare tender documents in conformity with the n/s agreement and this agreement for work intended to be executed by a selected subcontractor. Such preparation shall be carried out in consultation with and to the reasonable approval of the contractor, and
  - 21.1.2 Call for tenders from a list of tenderers agreed between the contractor and the principal agent, and
  - 21.1.3 In consultation with the contractor, choose the successful tenderer to be appointed as a selected subcontractor in terms of the n/s agreement and other tender requirements, and
  - 21.1.4 Inform the contractor that an advance payment shall be made to the selected subcontractor where such an advance payment requirement is included in the accepted tender and that recovery thereof will be effected [33.2.4]
- 21.2 The contractor shall within ten (10) working days of such selection [21.1.3] determine that such subcontractor can:
- 21.2.1 Meet the requirements of the n/s agreement and other tender requirements, and
  - 21.2.2 Provide security in terms of the n/s agreement
- 21.3 The contractor [21.2] shall forthwith either:
- 21.3.1 Appoint such subcontractor as a selected subcontractor and inform the principal agent accordingly, or
  - 21.3.2 Provide reasonable cause to the satisfaction of the principal agent for not making such appointment in which event another subcontractor shall be chosen [21.1.3]
- 21.4 The contractor shall provide a payment guarantee in terms of the n/s agreement where required by the selected subcontractor
- 21.5 The contractor shall make payment to the selected subcontractor of the amount certified and identified [31.13.1] and in terms of the n/s agreement
- 21.6 The contractor shall, within five (5) working days of receipt of a contract instruction provide proof to the principal agent [17.1.12] that the contractor's payment obligations [21.5] have been discharged. Failure by the contractor to provide such proof to the satisfaction of the principal agent shall entitle the employer to instruct the principal agent to certify payment direct to the selected subcontractor [35.1.2]. The contractor shall have no recourse to recover such amounts from the employer. Such direct payment shall not create privity of contract between the employer and the selected subcontractor. The employer may recover such direct payment amounts from the contractor [33.2.8]
- 21.7 Where the selected subcontractor is in default of a material term of the n/s agreement the decision of whether or not to terminate the n/s agreement is that of the contractor
- 21.8 Where termination of the selected subcontract occurs the contractor shall appoint another subcontractor subject to the approval of the principal agent
- 21.9 Where the n/s agreement is terminated due to default by the employer or his agents, any variation in the cost of carrying out and completing the selected subcontract works shall be adjusted [32.5-6]
- 21.10 Where the n/s agreement is terminated, other than due to employer default [21.9], any variation in the cost of carrying out and completing the selected subcontract works shall be for the account of the contractor

## 22.0 EMPLOYER'S DIRECT CONTRACTORS

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

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

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

### 23.0 CONTRACTOR'S DOMESTIC SUBCONTRACTORS

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

## COMPLETION

### 24.0 PRACTICAL COMPLETION

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

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- 24.4.2 Has not been satisfactorily completed, the principal agent shall forthwith identify the items on the practical completion list that are not yet complete and inform the contractor thereof. The contractor shall repeat the procedure [24.4]
- 24.5 Should the principal agent not issue a practical completion list [24.3.2] or the updated list [24.4.2], within seven (7) calendar days of the end of the inspection period, the contractor shall notify the employer and principal agent. Should the principal agent not issue such practical completion list within seven (7) calendar days of receipt of such notice practical completion shall be deemed to have been achieved either:
- 24.5.1 On the date that practical completion was anticipated [24.3], or
- 24.5.2 On the date of expiry of the notice given by the contractor [24.5]
- 24.6 The contractor shall not be obliged to carry out any contract instruction for additional work [17.2] issued after the date of practical completion
- 24.7 Upon the issue of the certificate of practical completion the employer shall be entitled to possession of the works and the site subject to the contractor's lien or right of continuing possession of the works
- 24.8 Where the employer at any time takes possession of the whole or part of the works by agreement with the contractor [24.3.1, 26.2.2] prior to the applicable date for practical completion [24.0, 28.0] then practical completion shall be deemed to have taken place and the applicable certificate of practical completion shall be issued
- 24.9 Upon the achievement of practical completion the contractor shall hand over to the principal agent all operating and instruction manuals, product guarantees and manufacturers' instructions as stated in the contract data and information for the preparation of as built drawings as required by the principal agent
- 24.10 On practical completion of a section of the works [28.0] and where the principal agent instructs that tenant installation work is to be executed by others [22.0]:
- 24.10.1 The contractor shall allow reasonable access to such section, and
- 24.10.2 The principal agent shall inspect and record the state of completion to such section and include a list of defects pertaining thereto

## 25.0 WORKS COMPLETION

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

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25.4 Should the works completion list not be completed within a period of twenty (20) working days of the issue thereof the contractor shall not be entitled to compensatory interest (31.10) on the value of the outstanding work so listed

25.5 The defects liability period (26.1) shall commence with the issue of the certificate of works completion or deemed achievement of works completion (25.2.1 or 25.3)

## 26.0 FINAL COMPLETION

26.1 The defects liability period for the works shall commence on the date of works completion and end at midnight (00:00) ninety (90) calendar days from such date

26.2 At the end of the defects liability period the principal agent shall forthwith inspect the works and where the works either:

26.2.1 Has reached final completion the principal agent shall forthwith issue a certificate of final completion to the contractor with a copy to the employer, or

26.2.2 Has not reached final completion the principal agent shall forthwith issue a defects list to the contractor defining the defects, which have appeared during the defects liability period, to be rectified to achieve final completion

26.3 Where, in the opinion of the contractor, the defects list has been completed, the contractor shall notify the principal agent who shall inspect within seven (7) calendar days of receipt of such notice. Where, in the opinion of the principal agent, the defects list either:

26.3.1 Has been satisfactorily completed the principal agent shall forthwith issue a certificate of final completion to the contractor with a copy to the employer, or

26.3.2 Has not been satisfactorily completed or where further defects have become apparent, the principal agent shall forthwith identify such items on the updated defects list and inform the contractor thereof. The contractor shall repeat the procedure (26.3)

26.4 Should the principal agent not issue a defects list (26.2.2, 26.3.2) within seven (7) calendar days from the end of the defects liability period, the contractor shall notify the employer and principal agent. Should the principal agent not issue such defects list within seven (7) calendar days of receipt of such notice, the certificate of final completion shall be deemed to have been issued on the date of expiry of the initial notice period and final completion shall be deemed to have been achieved on such date

26.5 Where a n/s subcontractor's defects liability period extends beyond the contractor's defects liability period (26.1):

26.5.1 The contractor's obligations and liability concerning such subcontractor's defects shall nevertheless end on the issue of the certificate of final completion, and

26.5.2 The remaining portion of such subcontractor's defects liability period shall be subject to a direct agreement between the employer and the subcontractor and shall no longer be the responsibility of the contractor

26.6 An issued certificate of final completion (26.2.1, 26.3.1) shall be conclusive evidence as to the sufficiency of the works and that the contractor's obligations (2.2, 15.3) have been fulfilled other than for latent defects

26.7 Where a subcontractor is required to give a guarantee, warranty or indemnity related to subcontract work, other than a security to the contractor, the rights under such guarantee, warranty or indemnity shall be ceded to the employer on the date of issue of the certificate of final completion (4.2). This cession shall not prejudice any other rights that the employer may have

## 27.0 LATENT DEFECTS LIABILITY PERIOD

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

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27.2 Where termination of this agreement occurs before the achievement of final completion the latent defects liability period shall end either:

27.2.1 Five (5) years from the date of termination [36.0, 39.0], or

27.2.2 On the date of termination [37.0, 38.0]

27.3 The contractor shall make good all defects that appear up to the date of final completion [24.0-26.0]

## 28.0 SECTIONAL COMPLETION

28.1 Where sections are required to be completed as stated in the contract data, terms and conditions applicable to the works without sections shall apply to each section. The following documents, which shall include each section, shall be issued by the principal agent for the works as a whole:

28.1.1 Interim payment certificates [31.1]

28.1.2 Recovery statements [33.1]

28.1.3 Final account [34.1]

28.1.4 Final payment certificate [34.2]

28.1.5 Certificate of final completion [26.0] that shall incorporate the certificate of final completion of the last section

28.2 The following documents shall be issued by the principal agent individually for each section:

28.2.1 No clause

28.2.2 A certificate of practical completion [24.0]

28.2.3 A certificate of works completion [25.0]

28.2.4 A certificate of final completion [26.0] other than in terms of 28.1.5

## 29.0 REVISION OF DATE FOR PRACTICAL COMPLETION

29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value [32.12] are delays to practical completion caused by one or more of the following:

29.1.1 The adverse effect of weather conditions

29.1.2 The inability to obtain materials and goods where the contractor has taken all practical steps to avoid or reduce such delay

29.1.3 Making good physical loss and repairing damage to the works [8.0] where the contractor is at risk

29.1.4 An event that neither party could prevent, civil commotion, riot, strike or lockout

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

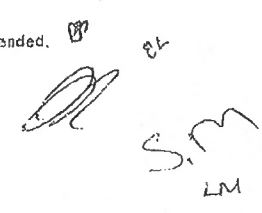
29.1.6 Default by a nominated subcontractor where the contractor has taken all reasonable steps to avoid or reduce such delay

29.2 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value [32.12] are delays to practical completion caused by one or more of the following:

29.2.1 Failure to give possession of the site to the contractor [15.2.1]

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


  
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- 29.7.3 Give reasons for refusing such claim
- 29.8 Where the principal agent fails to act [29.7] the claim shall be deemed to be refused

**30.0 PENALTY FOR LATE OR NONCOMPLETION**

- 30.1 Where the contractor fails to bring the works or sections thereof to practical completion on the date or dates stated in the contract data or revision thereof [29.0], the contractor shall be liable to the employer for the determined penalty
- 30.2 Where the employer elects to levy such penalty [33.1.1] the principal agent shall detail the penalty amount due at the rate(s) per calendar day stated in the contract data from the current date of practical completion [29.0] up to and including:
  - 30.2.1 The actual or deemed date of practical completion of the works [24.8] or section thereof [28.2], or
  - 30.2.2 The date of termination [36.3]
- 30.3 Where possession of part of the works is taken [24.8] and no penalty related to sections is stated in the contract data the principal agent shall prorate the penalty as stated for the works as a whole in the ratio of the contract value of the occupied part of the works to that of the works as a whole

**PAYMENT**

**31.0 INTERIM PAYMENT**

- 31.1 The principal agent shall issue an interim payment certificate every month until the issue of the final payment certificate. The payment certificate shall be based on a valuation prepared within seven (7) calendar days before the date stated [31.3] and may be for a nil or negative amount
- 31.2 The contractor shall cooperate with and assist the principal agent in the preparation of the payment claim information for an interim payment certificate by providing to the principal agent all relevant documents and assessments of quantified amounts of work completed. For a contract without bills of quantities the contractor shall compile such information for work completed and materials and goods in such form as agreed by the principal agent. The principal agent shall not be relieved of his responsibility to issue an interim payment certificate [31.4] whether or not such information is provided by the contractor
- 31.3 An interim payment certificate shall be issued to the contractor with a copy to the employer by not later than the day of the month stated in the contract data
- 31.4 The value certified in an interim payment certificate shall separately include:
  - 31.4.1 A reasonable estimate of the value of the work executed taking into account the information submitted by the contractor [31.2] and making due allowance for adjustments to the contract value [32.0], and
  - 31.4.2 A reasonable estimate of the value of materials and goods [31.6], and
  - 31.4.3 The total of amounts previously certified [31.4.1-2]
- 31.5 The following adjustments shall be made to the amounts certified [31.4.1-2] and shall separately include the following:
  - 31.5.1 No clause
  - 31.5.2 Security adjustment [14.0, 31.8]
  - 31.5.3 CPAP adjustment where elected in the contract data

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

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- 31.13 The principal agent shall concurrently with the issue of each interim payment certificate also issue the following:
- 31.13.1 A statement to the contractor showing the formulation of the amount identified and certified for each n/s subcontractor
  - 31.13.2 A notification to each n/s subcontractor showing the formulation of the subcontract amount included in the payment certificate and its date of issue
  - 31.13.3 A statement to the parties showing the total amount certified to date of all adjusted amounts [31.5]
- 31.14 An interim payment certificate shall not be evidence that the works and materials and goods are in terms of this agreement
- 31.15 Where the principal agent fails to issue a payment certificate [31.1] or the employer fails to make payment [31.9] the contractor may give three (3) working days notice to suspend the works to the employer, with a copy to the principal agent
- 31.16 Where the employer has not paid or has made a partial payment only of the amount due in an issued payment certificate [31.1] the contractor may:
- 31.16.1 Issue a demand to the employer in terms of the payment guarantee where such is provided [3.1], or
  - 31.16.2 Exercise his lien or right of continuing possession where this has not been waived in terms of the contract data and where practical completion has not been achieved, or
  - 31.16.3 Give notice of suspension of the works [31.15]. Where the employer fails to act in relation to such notice the contractor may give notice of termination [38.1.4.6]

## 32.0 ADJUSTMENT TO THE CONTRACT VALUE

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

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- 32.4.3 The cost of insurance [12.3]
- 32.4.4 The cost of support insurance [11.1.1]
- 32.5 Where the contractor has incurred expense and loss due to no fault of the contractor for which provision was not required in the contract sum and for which reasonable compensation has not been made [32.2,12], the contractor shall provide details of such expense and loss to the principal agent [32.6]. Such circumstances are:
- 32.5.1 The issue of a contract instruction
- 32.5.2 Failure to issue or the late issue of a contract instruction following a timeous request from the contractor [15.6]
- 32.5.3 Nondisclosure of changes made to the provisions of JBCC standard documentation [3.1.1]
- 32.5.4 Expense and loss caused by a direct contractor [22.4]
- 32.5.5 Default by the employer or his agents
- 32.5.6 Suspension or termination of a n/s subcontract due to default by the employer or his agents
- 32.5.7 Default or insolvency of a nominated subcontractor
- 32.5.8 Suspension of the works [31.16]
- 32.6 The contractor shall notify the principal agent within forty (40) working days from becoming aware or from when he ought reasonably to have become aware of such expense and loss [32.5] failing which no compensation will be made. Where such notification has been given:
- 32.6.1 The contractor shall submit details of the expense and loss once these can be quantified, and
- 32.6.2 The principal agent shall make a reasonable assessment of the compensation to be added to the contract value within twenty (20) working days of receipt of such details
- 32.6.3 The claim shall be deemed to have been refused where the principal agent fails to make such an assessment
- 32.7 The principal agent shall omit the n/s subcontract amounts from the contract value and determine the amounts as the final account value of the respective subcontract works to be added to the contract value
- 32.8 The principal agent shall prorate the contractor's attendance and profit provision on the n/s subcontractor amounts in the contract sum to the value of each subcontract [32.7] excluding any allowance for CPAP
- 32.9 The principal agent shall omit budgetary allowances and any other monetary provisions [7.1.15, 16] from the contract value and determine the value of work related thereto [32.0] to be added to the contract value
- 32.10 The principal agent shall omit prime cost amounts [17.1.14] from the contract value and the actual delivered cost of such items, including a reasonable allowance for waste, shall be added to the contract value
- 32.11 The principal agent shall prorate the contractor's allowances for overheads and profit on prime cost amounts in the contract sum to the value of each item [32.10]
- 32.12 The preliminary and general amounts in the priced document shall be adjusted and paid in terms of the alternative chosen by the contractor as stated in the contract data
- 32.13 Where applicable the contract value shall be adjusted according to CPAP using the information stated in the contract data
- 32.14 Where adjustments need to be measured on the site the contractor shall be given the opportunity to be present and shall be supplied with a copy of the measurement

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

### 33.0 RECOVERY OF EXPENSE AND LOSS

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

- 33.1.1 Penalties levied where the employer so elects [30.2]  
33.1.2 Default interest [31.12]  
33.1.3 Expense and loss [33.2]

and amounts due to the contractor for:

- 33.1.4 Compensatory interest [31.10]  
33.1.5 Default interest [31.11]  
33.1.6 Damages [38.5.6]  
33.1.7 Advance payments granted [14.5]

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

- 33.2.1 The employer paying charges or effecting insurance upon the contractor's default [7.1, 12.3]  
33.2.2 Work executed by other parties [17.4]  
33.2.3 Termination of a nominated subcontract [20.10]  
33.2.4 Recoupment of advance payments [14.5, 20.1.3, 21.1.4]  
33.2.5 The contractor not paying the amount due to the employer [31.12]  
33.2.6 The agreement being terminated [36.0]  
33.2.7 Default by the contractor where not less than seven (7) calendar days notice detailing such default has been given before the issue of the next recovery statement to allow the contractor the opportunity to remedy such default  
33.2.8 Amounts paid direct to n/s subcontractors [20.6, 21.6]

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

- 33.3.1 Subsequent payment certificates  
33.3.2 Security [14.0]  
33.3.3 The contractor as a debt

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

  
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33.5 Where the employer decides to recover an amount due [33.3] from a construction guarantee or advance payment guarantee held as security, the employer shall issue a written demand to the contractor in terms of such guarantee

33.6 Where a provisional sequestration or provisional liquidation order has been granted or where an order has been granted which commences sequestration, liquidation, bankruptcy, receivership, winding-up or any similar effect against the contractor or this agreement is terminated [35.0], the employer may issue a demand to the guarantor in terms of the construction guarantee or advance payment guarantee held as security

#### 34.0 FINAL ACCOUNT AND FINAL PAYMENT

34.1 The contractor shall cooperate with and assist its principal agent in the preparation of the final account by timely providing all relevant documents on request. The principal agent shall issue the final account to the contractor within ninety (90) working days of the date of practical completion

34.2 *No clause*

34.3 The contractor shall accept or object to the final account within forty-five (45) working days of receipt thereof. On acceptance, or should the contractor not object with reasons to the final account within such period, the principal agent shall issue the final payment certificate [34.5]

34.4 Should the contractor dispute the correctness of the final account and such dispute not be resolved within the period [34.3], or such an extended period as the principal agent may allow on a request from the contractor, the final payment certificate shall nevertheless be issued [34.5]

34.5 The principal agent shall issue the final payment certificate within seven (7) calendar days to the contractor [34.3-4]. Notwithstanding the foregoing such final payment certificate shall not be issued before the issue of the certificate of final completion other than where termination occurs [36.0 or 39.0]

34.6 The amount certified in the final payment certificate shall separately include:

34.6.1 The gross amount of the final account, and

34.6.2 The amounts previously certified [34.4.1-2]

34.7 Where applicable the following adjustments shall be made to the net amount certified [34.6] and shall separately include:

34.7.1 *No clause*

34.7.2 Amounts due to the employer or contractor in the final recovery statement [33.1] excluding interest amounts [34.7.4], and

34.7.3 Tax on the net total of the amounts [34.7.2], and

34.7.4 Interest amount(s) included in the final recovery statement [33.1]

34.8 The principal agent shall certify one hundred per cent (100%) of the amount of the final account in the final payment certificate

34.9 *No clause*

34.10 The employer shall pay the contractor the amount certified in the final payment certificate within seven (7) calendar days of the date of issue of the final payment certificate

34.11 Subject to 25.A the employer shall pay the contractor compensatory interest on the net amount certified in the final payment certificate. The principal agent shall calculate the compensatory interest amount due to the contractor at the ruling interest rate compounded monthly from the date of practical completion up to and including the date on which payment is due to the contractor as stated in the recovery statement [33.0]

34.12 Where the contractor does not receive payment of the amount due in the final payment certificate by the due date [34.10], the employer shall be liable for default interest on such amount. The interest

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

- 34.13 Where the final payment certificate reflects an amount in favour of the employer, the contractor shall pay the amount certified within twenty-one (21) calendar days of the date of issue of the final payment certificate
- 34.14 Where such an amount certified [34.10, 13] has not been paid the defaulting party shall be liable for default interest [34.12]. The amount due and the interest thereon shall be recoverable as a debt

### 35.0 PAYMENT TO OTHER PARTIES

- 35.1 The principal agent shall issue separate payment certification to other parties with copies to the contractor where the employer:
- 35.1.1 Engages other parties to execute work [17.4, 35.5]
- 35.1.2 Elects to pay a his subcontractor direct [20.6, 21.6]
- 35.2 The employer may recover expense or loss resulting from such payments [33.2]

## TERMINATION

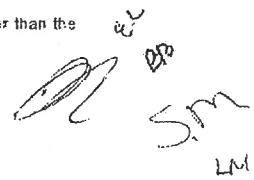
### 36.0 TERMINATION BY EMPLOYER - CONTRACTOR'S DEFAULT

- 36.1 The employer may terminate this agreement where the contractor:
- 36.1.1 Falls to comply [3.3, 14.1, 15.1.3]
- 36.1.2 Refuses to comply with a contract instruction subject to 17.2
- 36.2 Where the employer considers terminating this agreement, the principal agent shall be instructed to notify the contractor of such default [36.1]. The issuing of such notice shall be without prejudice to any rights that the employer may have
- 36.3 The employer may give notice of termination should the contractor remain in default for ten (10) working days after the date of receipt of such notice of default
- 36.4 No clause
- 36.5 Where this agreement is terminated the following shall apply:
- 36.5.1 The employment of the contractor shall be terminated and execution of the works shall cease. The contractor shall vacate the works and the site [36.5.6]. The contractor shall remain responsible for the works [8.1] until possession is relinquished to the employer
- 36.5.2 The principal agent shall forthwith compile a report on the status of the portion of the works executed by the contractor and shall issue such report to the parties
- 36.5.3 The principal agent shall immediately commence and complete a final account [34.0]
- 36.5.4 The contractor shall not be relieved of any of his liabilities concerning that portion of the works executed by the contractor
- 36.5.5 The employer may employ other parties to safeguard the works, complete the outstanding work and to rectify defects in that portion of the works executed by the contractor. The cost of work thus carried out shall be certified by the principal agent and paid direct to such parties [35.0]
- 36.5.6 The employer may use the contractor's materials and goods, temporary buildings, plant and machinery on the site for proceeding with the works

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

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

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


  
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## 38.0 TERMINATION BY CONTRACTOR - EMPLOYER'S DEFAULT

38.1 The contractor may terminate this agreement where:

The employer fails to:

- 38.1.1 Provide a payment guarantee [3.1], or
- 38.1.2 Appoint a principal agent or agents [5.1-2.4], or
- 38.1.3 Allow the principal agent to exercise his judgement [5.6], or
- 38.1.4 Effect special insurances [11.0,12.5], or
- 38.1.5 Give possession of the site to the contractor [15.2], or
- 38.1.6 Pay the amount certified [31.9, 31.16.3, 34.10], or

The principal agent fails to:

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

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

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

38.4 No clause

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

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

GP  
SM  
LM

## 39.0 TERMINATION - CESSATION OF THE WORKS

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

## DISPUTE

### 40.0 SETTLEMENT OF DISPUTES

- 40.1 Should any disagreement arise between the employer, including his principal agent or agents, and the contractor arising out of or concerning this agreement or its termination, either party may give notice to the other to resolve such disagreement
- 40.2 Where such disagreement is not resolved within ten (10) working days of receipt of such notice it shall be deemed to be a dispute and shall be referred by the party which gave such notice to either:
- 40.2.1 Adjudication [40.3] where the adjudication shall be conducted in terms of the edition of the JBCC Rules for Adjudication current at the time when the dispute was declared, or
- 40.2.2 Arbitration [40.4] where the arbitrator is to be appointed by the body selected by the parties (41.3) whose rules shall apply. Where nobody is stated or where the stated body is unable or unwilling to act, the appointment shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The appropriate rules current at the time when the dispute is declared shall apply
- 40.3 Where a dispute is referred to adjudication the following shall apply:

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

Handwritten initials and signatures, including "AL", "BB", "SM", and "LM".



