

The Joint Building Contracts Committee® - NPC Minor Works Agreement – Edition 5.1 – March 2014

JBCC® Constituents

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

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

The Minor Works Agreement structure

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

This agreement is intended for use where:

- The works are not complex

The employer appoints:

- A principal agent to administer the agreement
- Other agents for specific aspects of the works
- Direct contractors for specialised work or installation not undertaken by the contractor

This agreement is suitable but not limited for use where:

- The contractor is a small to medium enterprise
- The employer carries the major liabilities related to the works
- The employer is responsible for the primary insurances related to the works

This agreement is *not* suitable where the works requires:

- The appointment of nominated or selected subcontractors
- Contract price adjustment (escalation) provisions

and is *not* considered suitable where:

- The works is of a complex nature
- The anticipated construction period is longer than nine months
- The necessary contract documentation is not complete and available at tender stage
- Sectional completions are required

Warning!

This JBCC® Minor Works Agreement Edition 5.1 has been coordinated with the JBCC® Certificates and other support documents. Forms from previous editions are not compatible with this JBCC® Minor Works Agreement Edition 5.1. Parties using the JBCC® suite of contract agreements are warned of the dangers inherent in modifying any part of it. . Experience has shown that changes drafted by others, including members of the building professions, often have results different from those intended that may be prejudicial to either, or both, parties

Forms used with the JBCC® Principal Building Agreement and the JBCC® Nominated/Selected Subcontract Agreement are not compatible with the JBCC® Minor Works Agreement

The JBCC® Documents

The JBCC® documents are obtainable from constituent members' regional offices in South Africa listed in this document. The JBCC® does not sell directly to users but may be contacted at info@jbcc.co.za

The JBCC® Web Page www.jbcc.co.za provides current information regarding:

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

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Actions by the parties / principal agent within a given time

Clause	Time period	Action	Purpose
1.0			
2.5	1-7 CD		parties or principal agent, notices deemed to be received by e-Mail/post
3.0			
4.0			
5.4	5 WD	contractor > PA > employer	non-performance of an agent i.t.o. this agreement
5.5	5 WD	contractor > PA > employer	non-performance of an agent i.t.o. this agreement
6.0			
7.0		principal agent + agents	design
8.0	before start	employer	works risk/public liability/supplementary insurance
9.1.1	15 WD	parties	provide securities [CD]
9.1.2	20 WD	parties	provide replacement securities [CD]
9.1.3	15 WD	parties	adjust security value if contract value increased by 10%+
9.1.4	10 WD	parties	return original security form on expiry [CD]
10.0			
11.0	15 WD	contractor	provide security/priced document/programme
12.0	before start	principal agent + agents	setting out information
13.0		principal agent	instruction regarding direct contractor(s)
14.3	5 WD	contractor	carry out a contract instruction, where practical
15.2.2		contractor > principal agent	ready for inspection for practical completion
15.3	5 WD	principal agent > contractor	list for practical completion after inspection
15.3.4	30 WD	contractor	CoPC issued, resolve items on list for completion
15.4	5 + 5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
16.3	5 WD	contractor > contractor	updated list for final completion after inspection
17.4.1	10 WD	principal agent	revised date for practical completion
17.4.2	10 WD	principal agent	adjustment of the contract value
18.0		employer (principal agent)	penalties?
19.2	date [CD]	PA > contractor/employer	issue payment certificate and support forms
19.7	14 CD	employer pay contractor	make payment from date of payment certificate
19.8	21 CD	contractor pay employer	i.t.o. schedule from principal agent
19.12	3 WD notice	contractor > employer	no payment, notice to suspend/call on security/termination
19.13	5 WD	principal agent > contractor	final payment certificate after certificate of final completion/accept final account
20.4	notice	contractor > principal agent	notice of possible expense and loss
20.7	45 CD	principal agent	prepare final account after date of practical completion
20.8	21 CD	contractor	accept final account
20.9	10 WD +7 CD	contractor > principal agent	notice dispute final account/resolve issues and issue final account
21.2	10 WD notice	employer (PA) > contractor	list of defaults to be remedied > suspend works
21.3	forthwith	employer > contractor	default not remedied, termination
21.8	5 WD	contractor > employer	intention to suspend/terminate if defaults not remedied
21.11	5 WD	contractor > employer	if default not remedied > termination
21.12	forthwith	contractor > employer	default not remedied, termination forthwith
21.19	20 WD	principal agent (+ contractor?)	prepare status report
21.21	45 CD	principal agent (+ contractor?)	complete and agree final account
22.1	notice	either party	notice of a disagreement
22.2	10 WD	either party	disagreement not resolved > dispute
22.3	10 WD	either party	appointment of adjudicator
22.4.3	10 + 10 WD	either party	no determination > notice, no determination > arbitration
22.5.3	15 WD	either party	appointment of arbitrator

MINOR WORKS AGREEMENT

TABLE OF CONTENTS

Section	Clause No	Description	Page
INTERPRETATION	1.0	Definitions and Interpretation	4
	2.0	Law, Regulations and Notices	6
	3.0	Offer, Acceptance and Assignment	7
	4.0	Contract Documents	7
	5.0	Employer's Agents	7
	6.0	Principal Agent	8
	7.0	Design Responsibility	8
INSURANCE AND SECURITY	8.0	Risks, Indemnities and Insurances	8
	9.0	Security	9
EXECUTION	10.0	Employer	10
	11.0	Contractor	10
	12.0	Setting out	11
	13.0	Direct Contractors	11
	14.0	Contract Instructions	11
COMPLETION	15.0	Practical Completion	12
	16.0	Defects Liability Period and Final Completion	13
	17.0	Revision of the Date for Practical Completion	14
	18.0	Penalty for Non-Completion	15
PAYMENT	19.0	Payment	15
	20.0	Adjustment of the Contract Value and Final Account	16
SUSPENSION AND TERMINATION	21.0	Termination	17
DISPUTE RESOLUTION	22.0	Dispute Resolution	19
AGREEMENT		Agreement	20

INTERPRETATION

1.0 DEFINITIONS and INTERPRETATION

1.1 Definitions

A word or phrase in bold type in this agreement shall have the meaning assigned to it in these definitions

A word or phrase not in bold type shall be interpreted in the context of its usage

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

AGREEMENT: This JBCC® Minor Works Agreement and the completed JBCC® MWA **contract data**

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

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

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

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

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

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

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

CONTRACT DATA: The document listing the contract variables

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

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

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

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

CONTRACT MINUTES: A comprehensive set of minutes prepared by the **principal agent** in which all pertinent contractual information that arises at meetings is progressively recorded

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

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

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

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

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

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

EMPLOYER'S ALLOWANCE: An amount included in the **contract sum** for work intended for execution by the **contractor**, or others, including the **contractor's** mark-up, the extent of which is identified but not detailed

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

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

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

FORCE MAJEURE: An exceptional event or circumstance that:

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

Such an event may include but is not limited to:

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

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

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

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

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

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

JBCC®: The Joint Building Contracts Committee® NPC

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

LAW: The law of the country [CD]

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

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

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

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

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

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

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

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

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

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

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

PRICED DOCUMENT: **Bills of quantities**, schedule of rates or other pricing methods [CD]

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

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

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

RETENTION: The **security** selected by the **contractor** as a payment reduction from the value certified in a **payment certificate**

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

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

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

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

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

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

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

1.2 Interpretation

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

2.0 LAW, REGULATIONS AND NOTICES

- 2.1 The **parties** shall comply with the **law**, regulations, bylaws, **notices** and charges by authorities applicable to the **works** [20.3.1] [CD]
- 2.2 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** offer unless otherwise stated [CD]
- 2.3 All communication or **notices** between the **parties** shall be in the language of this **agreement** and in a form that can be read, copied and recorded [CD]

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

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

2.5.1 Delivered by hand - on the day of delivery

2.5.2 Sent by electronic mail - within one (1) **working day**

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

3.0 OFFER, ACCEPTANCE AND ASSIGNMENT

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

3.2 This **agreement** shall come into force on the date of acceptance by the **employer** (the contract date) and continue to be of force and effect until the end of the latent defects liability period - notwithstanding termination or the certification of **final completion** and final payment [9.0; 21.0 & 22.0]

3.3 Where any provision of this **agreement** is rendered void, illegal or unenforceable under any **law**, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. The **parties** shall endeavour in good faith to agree an alternative provision to the void, illegal or unenforceable provision

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

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

4.0 CONTRACT DOCUMENTS

4.1 The **parties** shall sign the original **contract documents** and shall each be issued with a copy thereof. The original signed **contract documents** shall be held by the **principal agent**

4.2 The **priced documents** shall not be used as a specification of **materials and goods** or methods, nor be used for any other purpose, published or disclosed without the written consent of the **parties**

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

5.0 EMPLOYER'S AGENTS

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

5.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority to issue **contract instructions** and perform duties for specific aspects of the **works** is delegated to **agents**

5.3 All **agents** shall declare any interest or involvement in the **works** other than a professional interest, where applicable [CD]

5.4 Where any **agent** fails to act in terms of delegated authority, the **contractor** shall give **notice** to the **employer** with a copy to the **principal agent** to rectify such default within five (5) **working days**. Where such default has not been rectified, the **contractor** may give **notice** to terminate the **works**

5.5 Where any **agent** fails to act or is unable to act, or ceases to be an **agent**, in terms of this **agreement**, the **employer** shall appoint another **agent** within five (5) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint an **agent** against whom the **contractor** makes reasonable objection within five (5) **working days** of receipt of **notice** of intention to make such an appointment [21.8.4]

5.6 The **employer** shall not interfere with or prevent the **principal agent** or an **agent** from exercising fair and reasonable judgement when performing their obligations in terms of this **agreement** [6.0; 14.0]

6.0 PRINCIPAL AGENT

- 6.1 The **principal agent** shall:
- 6.1.1 Administer this **agreement**
 - 6.1.2 Meet regularly with the **contractor** and **agents** to monitor progress of the **works**, and to deal with technical and coordination matters. The **principal agent** shall record and timeously distribute the **contract minutes** of such meetings
 - 6.1.3 Issue **construction information** timeously
 - 6.1.4 Give the **contractor** interpretations and direction on the standard of work and the state of completion of the **works** required of the **contractor** to achieve **practical completion** and **final completion**
 - 6.1.5 Revise the date for **practical completion** [17.0]
 - 6.1.6 Issue a **certificate of practical completion** and a **certificate of final completion** where the **works** has reached the specified standard of completion [15.3.3; 16.2.2]
 - 6.1.7 Issue interim **payment certificates** to the **contractor** by the due date [CD] with a copy to the **employer** until the issue of the **final payment certificate** [19.2]
 - 6.1.8 Adjust the **contract value** and prepare the **final account** [20.0]

7.0 DESIGN RESPONSIBILITY

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

INSURANCE AND SECURITY

8.0 RISKS, INDEMNITIES AND INSURANCES

- 8.1 The **employer** shall be at risk for and indemnifies and holds the **contractor** harmless from claims or proceedings for damages, expenses and/or loss (including legal fees and expenses) in respect of or arising from or out of the execution of the **works** or occupation of the **site** by the **contractor** due to:
- 8.1.1 Death or bodily injury or illness to any person
 - 8.1.2 Physical loss or damage to any property other than the **works**
 - 8.1.3 The cost of making good physical loss and repairing damage to the **works** including existing structures and the contents thereof
 - 8.1.4 The support of structures being altered or added to
 - 8.1.5 Removal of or weakening of or interference with the support of land and/or property adjacent to or within the **site**
 - 8.1.6 A defect in **free issue**
 - 8.1.7 Work to be executed and/or installed in the **works** by a **direct contractor**
 - 8.1.8 Design of the **works** (other than **contractor's** temporary works)
 - 8.1.9 **Force majeure**
- 8.2 The **contractor** shall be at risk for his employees, **construction equipment** and vehicles
- 8.3 The **employer** shall effect and keep in force in the joint names of the **parties** the following insurance policies from handover of the **site** until the **contractor's** responsibility has ended:
- 8.3.1 Contract Works Insurance [CD] including the value of **free issue** and of **direct contractor's** works and temporary works (as defined in the insurance policy) and adequate cover for the clearing away and removing of all debris and any other costs to reinstate the **works** and where required, damage to the **employer's** surrounding property [CD] in the care, custody or control of the **contractor** or to be worked upon

- 8.3.2 Supplementary Insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbances and lockout to the extent not insured under the Contract Works Insurance
- 8.3.3 Public Liability Insurance [CD] providing indemnity in respect of accidental death or bodily injury contracted by any person and accidental loss of or physical damage to tangible property (other than property of the **contractor** and/or his employees) to remain in force to **final completion**
- 8.3.4 Removal of Lateral Support Insurance [CD] where the **employer** considers that the execution of the **works** could cause the removal of or weakening of or interference with the support of land or property adjacent to or within the **site** and the consequences thereof. The **employer** shall appoint an **agent** to design and monitor appropriate support structures for use in excavations and/or in an existing property that forms part of the **works** and/or the **site**
- 8.4 The **employer** shall provide the **contractor** with the entire policy wording of such policies
- 8.5 The **employer** shall notify the insurers of any relevant changes in respect of this **agreement**
- 8.6 The **contractor** shall be responsible for the policy deductibles [CD] in respect of the insurances arranged by the **employer** where an action or inaction by **contractor** is the cause of a claim
- 8.7 Should any incident or event occur which could give rise to a potential claim in terms of the insurances arranged by the **employer**, the **contractor** shall give **notice** to the **principal agent**
- 8.8 The **contractor** shall effect and keep in force until the **contractor's** responsibility has ended insurance in respect of the:
- 8.8.1 **Contractor's** employees
- 8.8.2 **Contractor's** vehicles and **construction equipment**
- 9.0 SECURITY**
- 9.1 The **parties** shall:
- 9.1.1 Provide to the other **party** the **security** [CD] within fifteen (15) **working days** of acceptance of the offer
- 9.1.2 Provide to the other **party** a replacement **security** where the date for **practical completion** is extended to suit the revised **construction period** for an appropriate value twenty (20) **working days** prior to its expiry date
- 9.1.3 Where the **contract value** exceeds the **contract sum** by more than ten per cent (10%), provide an adjusted **security** at the **employer's** expense and provide written proof of such adjustment to the respective **parties**
- 9.1.4 Return the original (adjusted) **security** form within ten (10) **working days** after the expiry date
- 9.2 The **contractor** shall waive his lien on receipt of JBCC® **Guarantee for Payment** from the **employer**
- 9.3 The **contractor** may choose the **security** to be provided [CD]:
- 9.3.1 JBCC® **Guarantee for Construction** (variable) [CD] initially equal to six per cent (6%) of the **contract sum**
Or...
- 9.3.2 A payment reduction certified by the **principal agent** equal to eight per cent (8%) of the value of each **payment certificate** up to a maximum of four per cent (4%) of the **contract sum** is reached; reduced at **practical completion** to two per cent (2%) of the **contract sum** and to zero per cent (0%) in the **final payment certificate**
- 9.4 Where an advanced payment is required for work prior to installation or for **materials and goods** stored off **site**, the **contractor** shall provide a JBCC® **Guarantee for Deposit** equal in value to the aggregate amount of all such advanced payments [CD]
- 9.5 The **employer** shall provide to the **contractor** a JBCC® **Guarantee for Payment**, where required in the accepted offer [CD], within fifteen (15) **working days** of acceptance of the **contractor's** offer
- 9.6 Either **party** may issue a written demand in terms of the applicable **security** with a copy to the **principal agent**. Payments made by the guarantor to the **party** in terms of such **security** shall not prejudice the rights of the other **party**
- 9.7 A **security** held by either **party** shall be for the due fulfilment of the other **party's** obligations in terms of this **agreement**
- 9.8 Where a **party** makes an unjustified call on a **security**, the amount paid and **mora interest** shall be paid to the other **party**

EXECUTION

10.0 EMPLOYER

10.1 The **employer** shall:

- 10.1.1 Appoint **agents** to deal with specific aspects of the **works** in terms of this **agreement**
- 10.1.2 Ensure the **principal agent** and/or **agents** provide all **construction information** timeously to the **contractor**
- 10.1.3 Record specific requirements [CD] where the existing premises will be in use during the execution of the **works** including restriction of working hours
- 10.1.4 Record and describe relevant natural features and known services where the **contractor** shall be responsible for their preservation [CD]
- 10.1.5 Provide access to water, sewer and/or electricity connections to the **site** [CD]
- 10.1.6 Define any restrictions to the **site** or areas that the **contractor** may not occupy [CD]
- 10.1.7 List statutory and other **notices** the **contractor** must submit and/or comply with before possession of the **site** can be given
- 10.1.8 Give possession of the **site** to the **contractor** on the agreed date [CD]
- 10.1.9 Effect and keep in force insurances in the joint names of the **parties**
- 10.1.10 Provide a JBCC® **Guarantee for Payment** [9.5], where applicable [CD]
- 10.1.11 Make payments by the due date [CD], [19.7, 21.8.3]
- 10.1.12 Pay deposits where required [CD]
- 10.1.13 Permit reasonable access to the **works** by the **contractor** subsequent to **practical completion** to fulfil outstanding obligations [15.5]
- 10.1.14 Supply **free issue** to suit the **programme** [CD]

10.2 The **employer** may employ:

- 10.2.1 **Direct contractors** [CD]
- 10.2.2 Others to rectify any default of the **contractor** and recover expense and loss resulting from such action

11.0 CONTRACTOR

11.1 The **contractor** shall submit to the **principal agent** within fifteen (15) **working days** of acceptance of tender:

- 11.1.1 The **security**, where selected [CD]
- 11.1.2 A JBCC® format Waiver of Lien, where applicable [CD]
- 11.1.3 The **priced document** [CD]
- 11.1.4 A **programme** for the **works** in sufficient detail to monitor the progress of the **works**

11.2 The **contractor**, on being given possession of the **site**, shall:

- 11.2.1 Submit all statutory notices for the **works**
- 11.2.2 Designate a competent person to continuously administer and control the **works** as the **contractor's** representative. A **contract instruction** given to the **contractor's** representative shall be deemed to be given to the **contractor**
- 11.2.3 Maintain daily records in compliance with the **law** and provide regular copies to the **principal agent**

- 11.2.4 Provide everything necessary for the proper execution of the **works** in compliance with the **contract documents**, using materials and workmanship of the quality and standards specified to the approval of the **principal agent**
- 11.2.5 Provide, maintain and remove on completion any temporary structures and **construction equipment**
- 11.2.6 On being given possession of the **site** commence the **works** within ten (10) **working days** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **works** to **practical completion** and to **final completion**
- 11.2.7 Keep on **site** a copy of all **construction information** required for execution of the **works** to which the **employer** and **principal agent** and/or **agents** shall have reasonable access
- 11.2.8 Assist the **principal agent** in the preparation of **payment certificates** [19.1-2]
- 11.2.9 Allow the **employer** and **agents** reasonable access to the **works**, workshops and other places where work is being prepared, executed or stored
- 11.2.10 On achievement of **practical completion** hand over to the **principal agent** all information for the preparation of 'as built' documentation and applicable statutory/regulatory approval certificates
- 11.2.11 On achievement of **final completion** hand over to the **principal agent** all operating and instruction manuals, product guarantees and the like

12.0 SETTING OUT

- 12.1 The **principal agent**, or delegated **agent** shall:
 - 12.1.1 Point out boundary pegs or beacons identifying the **site** and the datum level
 - 12.1.2 Define the setting out points and levels required for the execution of the **works**
- 12.2 The **contractor** shall be responsible for the:
 - 12.2.1 Accurate setting out of the **works** notwithstanding checking by others
 - 12.2.2 Preservation and the reinstatement of boundary pegs, beacons and other survey information
- 12.3 The **contractor** shall immediately suspend affected work to an appropriate extent where undocumented services, natural features, articles of value or relics are uncovered on the **site**, and notify the **principal agent** who shall issue a **contract instruction** on how to proceed with the **works**. Any relics or other articles found on the **site** shall remain the property of the **employer**

13.0 DIRECT CONTRACTORS

- 13.1 The **contractor** shall:
 - 13.1.1 On instruction by the **principal agent** permit **direct contractors** to execute and/or install work as part of the **works** [CD]. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [15.5]
 - 13.1.2 Make reasonable allowance in the **programme** for such work or installation [CD]
 - 13.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [20.0]
- 13.2 Payment of a **direct contractor** shall be the responsibility of the **employer** outside this **agreement**
- 13.3 There shall be no privity of contract between the **contractor** and a **direct contractor** appointed by the **employer**

14.0 CONTRACT INSTRUCTIONS

- 14.1 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
 - 14.1.1 Rectification of discrepancies, errors in description or omissions in **contract documents** other than this **agreement**

- 14.1.2 Alteration to design, quality or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the **works**
- 14.1.3 The **site** [12.0]
- 14.1.4 Compliance with the **law**, regulations and bylaws [2.1]
- 14.1.5 Provision and testing of samples of **materials and goods**, finishes or assemblies of elements of the **works**
- 14.1.6 Opening up of work for inspection, removal or re-execution
- 14.1.7 Removal or re-execution of work
- 14.1.8 Removal or substitution of any **materials and goods**
- 14.1.9 Protection of the **works**
- 14.1.10 Making good physical loss and repairing damage to the **works** [8.0]
- 14.1.11 Rectification of **defects** [16.4, 16.8]
- 14.1.12 A **list for practical completion** specifying outstanding or defective work to be rectified to achieve **practical completion** and a **list for completion** and a **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
- 14.1.13 Expenditure of **employer allowances** and/or **prime cost amounts**
- 14.1.14 Work by **direct contractors** [13.0]
- 14.1.15 Access by other or previous contractors to remedy defective work
- 14.1.16 Removal from the **site** of any person employed on the **works**
- 14.1.17 Removal from the **site** of any person not engaged on or connected with the **works**
- 14.1.18 On termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [21.4.3]
- 14.2 The **contractor** shall comply with and duly execute all **contract instructions**
- 14.3 Should the **contractor** fail to proceed with a **contract instruction** with due diligence, the **principal agent** may give **notice** to the **contractor** to proceed within five (5) **working days** of receipt of such **notice**. Where the **contractor** remains in default, the **employer** may engage others to carry out such **contract instruction**. The **employer** may recover expense and/or loss incurred [20.6]
- 14.4 The **contractor** shall not be obliged to carry out a **contract instruction** for additional work issued after the certified date of **practical completion**
- 14.5 Oral instructions shall be of no force or effect

COMPLETION

15.0 PRACTICAL COMPLETION

- 15.1 The **principal agent** shall:
- 15.1.1 Inspect the **works** at appropriate intervals to give the **contractor** interpretations and direction on the standard of work and the state of completion of the **works** that the **contractor** will be required to achieve for **practical completion** [CD]
- 15.1.2 Issue a **contract instruction** [14.1.5-10] consequent on such inspection, where necessary
- 15.1.3 Inspect the **works** within the period stated [CD]
- 15.2 The **contractor** shall:
- 15.2.1 Inspect the **works** in advance of the date for **practical completion** to confirm that the standard of work required and the state of completion of the **works** for **practical completion** [CD] has been achieved

- 15.2.2 Give timeous **notice** to the **principal agent** of the anticipated date for the inspection for **practical completion** of the **works** to meet the date for **practical completion** [CD]
- 15.3 The **principal agent** shall after inspection of the **works**, or a **section** of the **works**, within the period stated [15.1.3] forthwith issue:
- 15.3.1 A comprehensive and conclusive **list for practical completion** [14.1.12] to the **contractor** where the **works** has not reached **practical completion** specifying the **defects** to be rectified and work to be completed to achieve **practical completion**
- 15.3.2 An updated **list for practical completion** to the **contractor** specifying items on the **list for practical completion** that have not been attended to satisfactorily to be rectified and work to be completed to achieve **practical completion**. The **contractor** shall repeat the procedure until all items on the **list for practical completion** have been dealt with satisfactorily before the **certificate of practical completion** is issued by the **principal agent**
- Or ...
- 15.3.3 A **certificate of practical completion** to the **contractor** with a copy to the **employer** stating the date on which **practical completion** of the **works** was achieved
- 15.3.4 A **list for completion** of items to be rectified and work to be completed to the **contractor** with a copy to the **employer** that may include marked up drawings and photographs
- 15.4 Should the **principal agent** not issue a **list for practical completion** or the updated list within five (5) **working days** after the inspection period, [15.3] the **contractor** shall give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **practical completion** shall be deemed to have been achieved on the intended/revised date for **practical completion** and the **principal agent** shall issue the **certificate of practical completion** forthwith
- 15.5 On issue of the **certificate of practical completion** the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien, if applicable [CD]

16.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

- 16.1 The defects liability period for the **works** shall commence on the **calendar day** following the date of **practical completion** and end at midnight (00:00) ninety (90) **calendar days** from the date of **practical completion** [CD] or when work on the **list for final completion** has been satisfactorily completed [16.3], whichever is the later
- 16.2 On expiry of the **defects** liability period the **principal agent** shall inspect the **works** and forthwith issue:
- 16.2.1 A **list for final completion** (an updated **list for completion**) specifying all outstanding work to be completed and / or **defects** to be rectified to achieve **final completion** where the **works** has not reached **final completion**. The **contractor** shall promptly attend to the items listed, and repeat the procedure until the **certificate of final completion** is issued by the **principal agent**
- Or...
- 16.2.2 A **certificate of final completion** to the **contractor** with a copy to the **employer** where the **works** has reached **final completion**
- 16.3 Should the **principal agent** not issue a **list for final completion** or the updated list within five (5) **working days** after the inspection period, [16.2.1] the **contractor** shall notify the **employer** and the **principal agent** forthwith. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **final completion** shall be deemed to have been achieved on the date of expiry of the **notice**
- 16.4 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **contractor's** obligations [11.2.6] have been fulfilled other than for **latent defects**
- 16.5 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 **final completion** [16.2.2]
- 16.6 Where termination of this **agreement** occurs before the date of **final completion**, the latent defects liability period shall end:
- 16.6.1 Five (5) years from the date of termination [21.5]
- Or...

16.6.2 On the date of termination where execution of the **works** has become impossible due to circumstances beyond the control of either **party** [21.16], or on the date of termination by the **contractor** due to default by the **employer** [21.12; 21.13.2]

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

16.8 The **contractor** shall make good all **latent defects** that appear up to the date of expiry of the latent **defects** liability period [3.2]

17.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

17.1 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** without an adjustment of the **contract value** [20.0], for a delay to **practical completion** caused by one or more of the following events:

17.1.1 Adverse weather conditions

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

17.1.3 Making good physical loss and repairing damage to the **works** [8.0] where such risk is beyond the reasonable control of the **parties**

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

17.1.5 **Force majeure**

17.2 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** with an adjustment of the **contract value** [26.0], for a delay to **practical completion** caused by one or more of the following events:

17.2.1 Delayed possession of the **site** [10.1.7]

17.2.2 Making good physical loss and repairing damage to the **works** where the **contractor** is not at risk

17.2.3 **Contract instructions** [14.0] not occasioned by the **contractor's** default

17.2.4 Opening up [14.1.6; 14.1.7] and testing of work and **materials and goods** [14.1.5] where such work is in accordance with the **contract documents**

17.2.5 Late or incorrect issue of **construction information** [10.1.2; 12.1; 14.1]

17.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible

17.2.7 Default by the **principal agent** or the **employer**

17.2.8 An act or omission of a **direct contractor** [13.0]

17.2.9 Utilities connections not available

17.2.10 **Suspension of the works**

17.3 The **contractor** shall:

17.3.1 Report at the next site meeting the cause of such delay and the **working days** claimed and expense and loss incurred where applicable

17.4 The **principal agent** shall:

17.4.1 Determine the revised date for **practical completion** by granting, reducing or refusing each extension claimed at intervals no greater than ten (10) **working days**

17.4.2 Determine the adjustment of the **contract value** where claimed at intervals no greater than ten (10) **working days**

17.4.3 Record the details of the delay and adjustment to the **contract value** in the **contract minutes**

17.5 Where the **contractor** disagrees with such a decision, the **principal agent** shall give reasons for his decision to revise the date for **practical completion** and/or to adjust the **contract value** and shall record such information in the **contract minutes**. The **contractor** may dispute such reasons and the effects thereof

18.0 PENALTY FOR NON-COMPLETION

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

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

18.2.1 The actual or deemed date of **practical completion** of the **works** [15.3.3]

18.2.2 The date of termination [21.17]

18.3 The **principal agent** shall include penalty amounts [18.2] in interim **payment certificates** from the date on which the **employer's** entitlement to **penalties** commences

PAYMENT

19.0 PAYMENT

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

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

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

19.3.1 A fair estimate of the value of work executed

19.3.2 A fair estimate of **materials and goods** [CD]

19.3.3 **Security** adjustment [9.3.2]

19.3.4 The gross amount certified

19.3.5 The value previously certified

19.3.6 Amounts due to either **party** excluding **interest** amounts and other non-taxable amounts

19.3.7 **Tax**

19.3.8 Interest due [19.4; 19.11]

19.3.9 Other non-taxable amounts

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

19.4 The **principal agent** shall concurrently with each **payment certificate** determine default interest at six percentage points (6%) per annum above the ruling rate of interest where payment has not been received within the stipulated period [19.7, 19.8], compounded monthly from the due date for payment until the date of payment

19.5 An interim **payment certificate** shall not be evidence that the **works** and **materials and goods** are in terms of the **contract documents**

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

19.7 The **employer** shall pay the **contractor** the amount certified in an issued **payment certificate** including default interest, if due, within fourteen (14) **calendar days** of the date of issue of the **payment certificate** [CD]

- 19.8 The **contractor** shall pay the **employer** the amount certified in an issued **payment certificate** including default interest, if due, within twenty one (21) **calendar days** of the date of issue of the **payment certificate** [CD]
- 19.9 **Materials and goods** supplied and certified shall become the property of the **employer** on payment thereof
- 19.10 Where the **employer** has made a partial or no payment of the amount due in an issued **payment certificate** or where the **principal agent** fails to issue a **payment certificate**, the **contractor** may give three (3) **working days** notice to comply, failing which the **contractor** may:
- 19.10.1 **Suspend the works** [21.9]
- 19.10.2 Exercise the lien, where this has not been waived
- 19.10.3 Call up the JBCC® **Guarantee for Payment** [9.5]
- 19.11 The **principal agent** shall issue the **final payment certificate** to the **employer** and the **contractor** within seven (7) **calendar days** of acceptance of the **final account** by the **contractor**, but not before the issue of the **certificate of final completion**, other than on termination [20.8]
- 19.12 Where the **contractor** disputes the correctness of the **final account** within the period allowed [20.9], the **principal agent** shall issue a(n) interim **payment certificate(s)** to the **employer** and the **contractor** by the due date [CD] for the undisputed amount(s)
- 19.13 For the purposes of provisional sentence in relation to a **payment certificate** only, the **parties** consent to the jurisdiction of any court of law of the country [CD]

20.0 ADJUSTMENT TO THE CONTRACT VALUE AND FINAL ACCOUNT

- 20.1 The **principal agent** shall determine the value of adjustments to the **contract value** in cooperation with the **contractor** in the preparation of the **final account**. Where such adjustments require measurement on **site**, the **contractor** shall have the right to be present
- 20.2 Adjustment to the **contract value** resulting from a **contract instruction** [14.1.2] shall be determined as follows:
- 20.2.1 Work of a similar character executed under similar conditions shall be priced at the rates in the **priced document**
- 20.2.2 Work not of a similar character shall be priced at rates based on those in the **priced document** and adjusted to suit the changed circumstances
- 20.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary elements for executing the work plus an allowance of ten per cent (10%) mark-up
- 20.3 Where the **contractor** has made payment for items not included in the **priced document**, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the **contract value** limited to:
- 20.3.1 Charges by authorities
- 20.3.2 The cost of opening up and testing [14.1.6] where the work is according to the **contract documents**
- 20.4 The **contractor** shall notify the **principal agent** on becoming aware of expense and loss for which provision was not required in the **contract sum** [events listed in 17.2]
- 20.5 The **principal agent** shall determine the value of adjustments to the **contract value** on receipt of such details for inclusion in the next **payment certificate**:
- 20.5.1 Omit **employer allowances** [14.1.12] and **prime cost amounts** from the **contract sum** and determine the actual value of such work to be added to the **contract value**
- 20.5.2 Prorate the **contractor's** allowances for profit and attendance on **employer allowances** and **prime cost amounts**
- 20.5.3 Adjust the **preliminaries** in the **priced document**
- 20.5.4 Rectify discrepancies, errors in description or quantity, or omission of items in the **contract documents** other than in this **agreement** [14.1.1]
- 20.6 The **principal agent** shall adjust the **contract value** where the **employer** has incurred expense and loss:
- 20.6.1 Due to the default of the **contractor** to proceed with the **works**

- 20.6.2 Arising from an insurance claim for which the **contractor** was responsible
- 20.7 The **principal agent** shall prepare and issue the **final account** to the **contractor** within forty five (45) **calendar days** of the date of **practical completion**
- 20.8 The **contractor** shall accept the **final account** or object with substantiated reasons within twenty one (21) **calendar days** of receipt thereof failing which the **final account** shall be issued
- 20.9 Should the **contractor** give **notice** objecting to the correctness of the **final account** within the period [20.8] and such objection not be resolved within ten (10) **working days**, or such an extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a disagreement

TERMINATION

21.0 TERMINATION

Termination by the employer

- 21.1 The **employer** may give **notice** of intention to terminate this **agreement** where the **contractor** has not:
- 21.1.1 Provided a JBCC® **Guarantee for Construction** [CD] [9.1]
- 21.1.2 Proceeded with the **works** [11.2.6]
- 21.1.3 Complied timeously with a **contract instruction** [14.0]
- 21.2 Where the **employer** contemplates terminating this **agreement** [21.1], the **principal agent** shall give **notice** to the **contractor** of a specified default [21.1.1-3] to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 21.3 Where the **contractor** has not remedied a specified default within such period [21.2] the **employer** may give **notice** to the **contractor** of termination of this **agreement** forthwith
- 21.4 The **employer** may:
- 21.4.1 Employ others to safeguard the **works**, complete the outstanding work and rectify defects in that portion of the **works** executed by the **contractor** [10.2.2]
- 21.4.2 Use **materials and goods** and temporary structures on the **site** for which payment shall be included in the **final account**
- 21.4.3 Sell temporary structures or **construction equipment** where the **contractor** fails to remove such items on **notice** to do so, without being responsible for any loss or damage
- 21.4.4 Recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the **works**
- 21.4.5 Apply the **penalty** [18.2] up to the date of termination where the initial or revised date for **practical completion** has passed
- 21.4.6 Issue a demand in terms of the **security** form, where provided [CD]
- 21.5 The latent defects liability period for the completed portion of the **works**, shall end [16.6] five (5) years from the date of termination
- 21.6 Termination of the **works** shall not prejudice any rights the **employer** may have
- 21.7 The right to terminate may not be exercised where the **employer** is in material breach of this **agreement**

Suspension or termination by the contractor

- 21.8 The **contractor** may give **notice** of intention to suspend or terminate this **agreement** where the **employer** has failed to:
- 21.8.1 Provide a JBCC® **Guarantee for Payment** [CD] [9.5]
- 21.8.2 Give possession of the **site** to the **contractor** [10.1.7]

- 21.8.3 Pay the amount certified [19.7]
- 21.8.4 Appoint another **principal agent** and/or **agents** [5.5]
- 21.8.5 Allow the **principal agent** and/or **agents** to exercise fair judgement [5.6]
- 21.8.6 Effect insurances [8.3]
- 21.8.7 Or where the **principal agent** has failed to issue a **payment certificate to the contractor** [19.2]
- 21.9 Where the **employer** or **principal agent** is in default [21.8.1 – 7] the **contractor** may give five (5) **working days notice** to the **employer** of intention to suspend the **works**. Where a specified default in terms of the **notice** has not been remedied the **contractor** may suspend execution of the **works** until such default has been remedied without prejudice to any rights the **contractor** may have
- 21.10 Where the **works** has been suspended [21.9] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** [17.2.10]
- 21.11 Where the **contractor** decides to terminate this **agreement** [21.8], the **contractor** shall give **notice** to the **employer** and/or the **principal agent** of a specified default [21.8.1-7], to be remedied within five (5) **working days** of the date of receipt of such **notice**
- 21.12 Where the **employer** has not remedied a specified default within such period [21.11] the **contractor** may give **notice** to the **employer** and the **principal agent** of the termination of this **agreement** forthwith
- 21.13 Where this **agreement** is terminated:
- 21.13.1 The **contractor** shall remove temporary structures, **construction equipment** and surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**
- 21.13.2 The latent defects liability period for the completed portion of the **works** shall end on the date of termination [16.5]
- 21.13.3 The **contractor** may be entitled to damages
- 21.14 Termination of the **works** shall not prejudice any rights the **contractor** may have
- 21.15 The right to terminate may not be exercised where the **contractor** is in material breach of this **agreement**

Termination by either party

On termination of this **agreement**:

- 21.16 The **contractor** shall:
- 21.16.1 Cease work and ensure that the **works** is safe in terms of the **law**
- 21.16.2 Remain responsible for the **works** [11.2] until possession is relinquished to the **employer**
- 21.17 Termination shall take effect after completion [21.13.1] and such date shall be recorded by the **principal agent**
- 21.18 The **securities** [9.3; 9.4 & 9.5], where applicable, shall expire and be returned to the **contractor** or **employer** as the case may be
- 21.19 The **principal agent**, in consultation with the **contractor** where possible, shall within twenty (20) **working days** of the date of termination compile and issue to the **parties** a **status report** of the **works** including marked up drawings and photographs recording completed and incomplete work on the date of termination of the **works**
- 21.20 The **principal agent** shall continue to certify the value of the work executed and **materials and goods** until the issue of the **final payment certificate** [19.6]
- 21.21 The **principal agent** shall commence and complete the **final account** [20.0] within forty five (45) **calendar days** of the date of termination including the cost of **materials and goods** and those ordered before termination that the **contractor** is bound to accept and make payment
- 21.22 This clause [21.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement** [3.2]

DISPUTE RESOLUTION

22.0 DISPUTE RESOLUTION

- 22.1 Should any disagreement arise between the **employer** (or the **principal agent** or an **agent**) and the **contractor** out of or concerning this **agreement**, its validity or termination, either **party** may give **notice** of disagreement. The **parties** shall attempt to resolve the disagreement between them and record such resolution in writing signed by both **parties**
- 22.2 Where the disagreement is not resolved within ten (10) **working days** of receipt of the **notice** of disagreement, such disagreement shall be deemed to be a dispute and may be referred to adjudication or to arbitration by either **party**
- 22.3 The dispute shall be referred to adjudication within ten (10) **working days** of the expiry of the period [22.2] by means of a **notice** of adjudication (clearly defining the scope of the dispute and the relief sought by adjudication) by the **party** which gave the **notice** of disagreement. Failure to follow this procedure shall cause the dispute to be resolved by arbitration and not by adjudication
- 22.4 Where a dispute is referred to adjudication:
- 22.4.1 The adjudicator, who shall not be eligible for subsequent appointment as the arbitrator, shall be appointed in accordance with JBCC® Rules for Adjudication current at the time when the dispute was declared. The adjudication shall be conducted in terms of such rules
- 22.4.2 A determination given by the adjudicator shall be immediately binding upon, and implemented by the **parties**
- 22.4.3 Where the adjudicator has given a determination, either **party** may give **notice** of dissatisfaction to the other **party** and to the adjudicator within ten (10) **working days** of receipt of the determination. Where the adjudicator has not given a determination within the time period allowed or extended time period provided in the JBCC® Rules for Adjudication, either **party** may give **notice** to the other **party** and to the adjudicator that if such determination is not received within ten (10) **working days** of receipt of such **notice** the appointment is thereupon automatically terminated and such dispute is then referred to arbitration
- 22.5 Where the dispute is referred to arbitration:
- 22.5.1 The resolution of the dispute shall commence anew. The arbitration shall not be construed as a review or appeal from any adjudicator's determination and that any such determination by the adjudicator shall remain in force and continue to be implemented until overturned by an arbitration award
- 22.5.2 Neither **party** shall be entitled to legal representation unless otherwise agreed by both **parties** and the arbitrator
- 22.5.3 The arbitrator shall be appointed in accordance with the Rules for Arbitration current at the time when the dispute was declared by agreement between the **parties** within fifteen (15) **working days** of **notice** by either **party** inviting the other to do so, failing which, on application by either **party**, by the Chairman for the time being of the Association of Arbitrators (Southern Africa)
- 22.5.4 The arbitrator shall have the power to finally determine the dispute including the power to make, open up and revise any certification, opinion, decision, determination, requisition or **notice** relating to the dispute as if no such certificate, opinion, decision, determination, requisition or **notice** had been issued or given
- 22.6 Notwithstanding the provisions relating to the resolution of a disagreement, adjudication or arbitration [22.4; 22.5], the **parties** may, by agreement and at any time, refer a dispute to mediation, in which event:
- 22.6.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until **notice** by either **party** that they be resumed
- 22.6.2 The appointment of a mediator, the procedure and the status of the outcome shall be agreed between the **parties**
- 22.7 The **parties** shall continue to perform their obligations in terms of this **agreement**, notwithstanding that a disagreement or dispute exists between them
- 22.8 This clause [22.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement** [3.2]

AGREEMENT

This **agreement**, the **contract data** and the documents listed comprise the entire contract between the **parties**. No variations, representations, terms, conditions or warranties shall be binding unless signed by the **parties**.

The contracting **parties**

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