

## EXECUTION

### 12.0 OBLIGATIONS OF THE PARTIES

12.1 The **employer** shall:

- 12.1.1 Provide a **guarantee for payment** [11.5], where applicable [CD]
- 12.1.2 Record specific requirements [CD] where the existing premises will be in use and occupied during the execution of the **works** including restriction of working hours [CD]
- 12.1.3 Record and describe relevant natural features and known services [CD] where the **contractor** shall be responsible for their preservation
- 12.1.4 Define any restrictions to the **site** or areas that the **contractor** may not occupy [CD]
- 12.1.5 Give possession of the **site** to the **contractor** on the agreed date [CD]
- 12.1.6 Effect and keep in force insurances in the joint names of the **parties**, where the **employer** is responsible for providing insurances [CD]
- 12.1.7 Make payments by the due date [25.10] [CD]
- 12.1.8 Make advance payments, where required [CD]
- 12.1.9 Permit reasonable access to the **works** by the **contractor** and/or **subcontractors** subsequent to **practical completion** to fulfil outstanding obligations [17.1.17; 19.7]
- 12.1.10 Supply **free issue** [CD] to suit the **programme**
- 12.1.11 Define the extent of work to be carried out by **direct contractors** [CD]
- 12.1.12 Ensure that the **principal agent** and/or **agents** provide adequate **construction information** timeously to the **contractor**
- 12.1.13 At the **employer's** discretion make direct payment where the **contractor** has failed to honour a n/s subcontract payment advice after **notice** of default by a **subcontractor** to the **principal agent**, the **employer** and the **contractor** [14.5 and/or 15.5]

12.2 The **contractor** shall:

- 12.2.1 Have inspected the **site** and any existing structures and be thoroughly acquainted with the conditions under which the **works** is to be executed including means of access and any matters which may influence the execution and/or the pricing of the **works**
- 12.2.2 Within fifteen (15) **working days** of acceptance of the **contractor's** tender submit to the **principal agent** the **priced document** with items priced to include all costs, overheads and profit, extended and cast. Where the **priced document** contains errors or discrepancies and/or prices considered by the **principal agent** to be imbalanced or unreasonable the **principal agent** and the **contractor** shall adjust such prices without any change to the **contract sum**
- 12.2.3 Provide a **guarantee for construction** [11.1; 11.2.1]
- 12.2.4 Provide a **guarantee for advance payment** [11.2.2], where applicable [CD]
- 12.2.5 Effect and keep in force insurances in the joint names of the **parties** where the **contractor** is responsible for providing insurances [10.0] [CD]
- 12.2.6 Prepare and submit to the **principal agent** within fifteen (15) **working days** of receipt of **construction information** a **programme** for the **works** in sufficient detail to enable the **principal agent** to monitor the progress of the **works**
- 12.2.7 On being given possession of the **site** commence the **works** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **works** to **practical completion** and to **final completion** [21.12]
- 12.2.8 Provide everything necessary for the proper execution of the **works** in compliance with the **agreement**

- 12.2.9 Coordinate the **programme** with **subcontractors'** and **direct contractors' programmes**
- 12.2.10 Regularly update the **programme** to illustrate progress of the **works** and revise the **programme** where the **principal agent** has revised the date for **practical completion**
- 12.2.11 Regularly submit to the **principal agent** a progress report and a schedule of outstanding **construction information** to avoid delays to the **works**
- 12.2.12 Cooperate with the **principal agent** in the preparation of cash flow projections and the compilation of **payment certificates** [25.1]
- 12.2.13 Designate a competent person to continuously administer and control the **works** and to receive and implement **notices** and **contract instructions** on behalf of the **contractor**
- 12.2.14 Maintain daily records of categories of persons and **construction equipment** employed on the **works** and regularly provide copies to the **principal agent**
- 12.2.15 Keep on **site** a copy of all **construction information** required for execution of the **works** to which the **employer** and **principal agent** and/or **agents** shall have reasonable access
- 12.2.16 Allow the **employer** and **principal agent** and/or **agents** reasonable access to the **works**, workshops and other places where work is being prepared, executed and/or stored
- 12.2.17 Give **notice** forthwith to the **principal agent** and/or the **employer** where items of **free issue** have been received damaged prior to storage or, where on unpacking, are found not to be in good order before installing such items
- 12.2.18 Provide, maintain and remove on **practical completion** all temporary structures, **construction equipment** and notice boards
- 12.2.19 On achievement of **practical completion** hand over to the **principal agent** all information for the preparation of 'as built' documentation and applicable statutory and/or regulatory approval certificates as well as all operating and instruction manuals and the like
- 12.2.20 Cede to the **employer** on the date of issue of the **certificate of final completion** any guarantees, product warranties or indemnities pertaining to the **works**. This cession shall not prejudice any other rights that the **employer** may have [21.11]
- 12.2.21 Forthwith notify all **subcontractors** where a **certificate of practical completion** and/or a **certificate of final completion** has been issued by the **principal agent** for the **works**, or a **section** thereof
- 12.3 The **principal agent** and the **contractor** shall hold regular meetings to monitor progress of the **works** and to deal with technical and coordination matters. The **principal agent** shall record and timeously distribute the minutes of such meetings

## 13.0 SETTING OUT

- 13.1 The **principal agent** and/or an **agent** with delegated authority shall:
  - 13.1.1 Point out boundary pegs or beacons identifying the **site** and the datum level
  - 13.1.2 Define the setting out points and **levels** required for the execution of the **works**
- 13.2 The **contractor** shall:
  - 13.2.1 Be responsible for accurate setting out of the **works** notwithstanding checking by others
  - 13.2.2 Be responsible for the preservation and the reinstatement of boundary pegs, beacons and other survey information and, where disturbed or destroyed, replace such items at his expense
  - 13.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the **contractor**. In such event the **contractor** may be entitled to a revision of the date for **practical completion** [23.2.5] and/or an adjustment of the **contract value** [26.0]
  - 13.2.4 Immediately suspend affected work to an appropriate extent where encroachments of adjoining structures occur and where undocumented services, natural features, articles of value or relics are uncovered on **site** and forthwith give **notice** to the **principal agent** who shall issue a **contract instruction** on how to proceed with the **works**. Any relics or other articles of value found on the **site** shall remain the property of the **employer**

## 14.0 NOMINATED SUBCONTRACTORS

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

- 14.1.1 Prepare tender documents in conformity with the **n/s subcontract agreement** and this **agreement** for work intended to be executed by a nominated **subcontractor**
- 14.1.2 Call for tenders
- 14.1.3 Scrutinise the received tenders for compliance with the tender documents in consultation with the **contractor**, where appointed
- 14.1.4 Nominate a **subcontractor** and instruct the **contractor** [17.1.14] to appoint such **subcontractor** as a nominated **subcontractor** in terms of the **n/s subcontract agreement** and other tender requirements
- 14.1.5 Inform the **contractor** where an advance payment is to be made to the **subcontractor** for an amount included in the accepted tender and that a **guarantee for advance payment** shall be provided by the **subcontractor** for the amount stated [NSSA-CD]

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

- 14.2.1 Against whom the **contractor** makes a reasonable objection
- 14.2.2 Who refuses or fails to enter into a **n/s subcontract agreement** and/or to comply with other tender requirements
- 14.2.3 Who has failed to provide a required security [NSSA-CD]
- 14.3 Where such **subcontractor** is not appointed by the **contractor** for the reasons stated [14.2], or where the appointment of a **subcontractor** has been terminated, another **subcontractor** shall be nominated and appointed in accordance with a **contract instruction** issued by the **principal agent**

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

- 14.4.1 Appoint the **subcontractor** as a nominated **subcontractor** and forward a copy of the signed **n/s subcontract agreement** to the **principal agent**
- 14.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** of such appointment, where required in the **n/s subcontract agreement** [CD]
- 14.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agents** by the date stated [NSSA-CD]
- 14.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **JBCC®** n/s subcontract payment advice and a **JBCC®** n/s subcontract recovery statement to reconcile the amount due for payment with the amount stated in the **JBCC®** n/s subcontract payment notification issued by the **principal agent**
- 14.4.5 Pay the **subcontractor** the amount certified by the date stated in the **JBCC®** NSSA contract data [25.13]

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

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

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

- 14.7.1 Due to default or insolvency of the **subcontractor** [23.2.10], or default of the **employer**, the **principal agent** and/or **agents** [23.2.11] any variation in the cost of completing such subcontract works shall be for the account of the **employer**
- 14.7.2 Due to default or insolvency of the **contractor** any variation in the cost of completing such subcontract works shall be for the account of the **contractor**. The **employer** may recover expense and/or loss [27.2.8]

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

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

## 15.0 SELECTED SUBCONTRACTORS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 15.7.1 Due to default of the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing such subcontract works shall be for the account of the **employer** [25.3.7]
- 15.7.2 Other than due to the default by the **employer**, the **principal agent** and/or **agents** any variation in the cost of completing the subcontract works shall be for the account of the **contractor** [25.3.7]
- 15.7.3 The **principal agent** shall instruct the **contractor** to appoint another selected **subcontractor** [15.1.4] to complete the subcontract works
- 15.8 There shall be no privity of contract between the **employer** and a **subcontractor** appointed by the **contractor**

## 16.0 DIRECT CONTRACTORS

- 16.1 The **contractor** shall:
  - 16.1.1 In accordance with a **contract instruction** [17.1.16] permit **direct contractors** [CD] to execute and/or install work as part of the **works**. Such access to the **works** shall not constitute deemed achievement of **practical completion** or occupation by the **employer** [19.6]
  - 16.1.2 Make reasonable allowance in the **programme** for such work or installation
  - 16.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [23.2.9; 27.1.7]
- 16.2 Payment of **direct contractors** shall be the responsibility of the **employer** outside this **agreement**
- 16.3 There shall be no privity of contract between the **contractor** and a **direct contractor** appointed by the **employer**

## 17.0 CONTRACT INSTRUCTIONS

- 17.1 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
  - 17.1.1 Rectification of discrepancies, errors in description or quantity or omission of items in the **agreement** other than in the **JBCC®** Principal Building Agreement
  - 17.1.2 Alteration to design, standards or quantity of the **works** provided that such **contract instructions** shall not substantially change the scope of the **works**
  - 17.1.3 The **site** [13.0]
  - 17.1.4 Compliance with the **law**, regulations and bylaws [2.1]
  - 17.1.5 Provision and testing of samples of **materials and goods** and/or of finishes and assemblies of elements of the **works**
  - 17.1.6 Opening up of work for inspection, removal or re-execution [23.2.4; 26.4.2]
  - 17.1.7 Removal or re-execution of work
  - 17.1.8 Removal or substitution of any **materials and goods**
  - 17.1.9 Protection of the **works**
  - 17.1.10 Making good physical loss and repairing damage to the **works** [23.2.2]
  - 17.1.11 Rectification of **defects** [21.2]
  - 17.1.12 A **list for practical completion** specifying outstanding or defective work to be rectified to achieve **practical completion**, a **list for completion** and a **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
  - 17.1.13 Expenditure of **budgetary allowances**, **prime cost amounts** and **provisional sums**
  - 17.1.14 Appointment of a **subcontractor** [14.0; 15.0]

- 17.1.15 Termination of a nominated **n/s subcontract agreement** [14.6]
- 17.1.16 Work by **direct contractors** [16.0]
- 17.1.17 Access by others or previous contractors to remedy defective work
- 17.1.18 Removal from the **site** of any person employed on the **works**
- 17.1.19 Removal from the **site** of any person not engaged on or connected with the **works**
- 17.1.20 On **suspension** or termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [29.0]
- 17.2 The **contractor** shall comply with and duly execute all **contract instructions**
- 17.3 Should the **contractor** fail to proceed with a **contract instruction** with due diligence, the **principal agent** may give **notice** to the **contractor** to proceed within five (5) **working days** of receipt of such **notice**. Where the **contractor** remains in default, the **employer** may engage others to carry out such **contract instruction** and recover expense and/or loss incurred [27.2.3]
- 17.4 The **contractor** shall not be obliged to execute **contract instructions** for additional work issued after the certified or deemed date of **practical completion**
- 17.5 Oral instructions shall be of no force or effect

## COMPLETION

### 18.0 INTERIM COMPLETION

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

### 19.0 PRACTICAL COMPLETION

- 19.1 The **principal agent** shall:
  - 19.1.1 Inspect the **works** at appropriate intervals to give the **contractor** interpretations and direction on the standard of work and the state of completion of the **works** required of the **contractor** to achieve **practical completion** [CD]
  - 19.1.2 Issue a **contract instruction** [17.1] consequent on each such inspection, where necessary
- 19.2 The **contractor** shall:
  - 19.2.1 Inspect the **works** in advance of the anticipated date for **practical completion** to confirm that the standard of work required and the state of completion of the **works** for **practical completion** has been achieved
  - 19.2.2 Give at least five (5) **working days notice** to the **principal agent** of the anticipated date for the inspection for **practical completion** of the **works** to meet the anticipated date for **practical completion**
- 19.3 The **principal agent** shall inspect the **works**, or a **section** thereof, within the period stated [CD] and forthwith issue to the **contractor**:
  - 19.3.1 A comprehensive and conclusive **list for practical completion** [17.1.12] where the **works** has not reached **practical completion** specifying the **defects** to be rectified and work to be completed to achieve **practical completion**
  - 19.3.2 An updated **list for practical completion** limited to items on the **list for practical completion** that have not been attended to satisfactorily. The **contractor** shall repeat the procedure until all items on the **list for practical completion** have been attended to satisfactorily before the **certificate of practical completion** is issued by the **principal agent**

or ...

- 19.3.3 A **certificate of practical completion** with a copy to the **employer** stating the date on which **practical completion** of the **works**, or a **section** thereof, was achieved
- 19.3.4 A **list for completion** with a copy to the **employer**
- 19.4 Should the **principal agent** not issue a **list for practical completion** or the updated list within five (5) **working days** after the inspection period, or the **certificate of practical completion** [19.3], the **contractor** shall give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **practical completion** shall be deemed to have been achieved on the date of such **notice** and the **principal agent** shall issue the **certificate of practical completion** forthwith
- 19.5 On issue of the only or last **certificate of practical completion** the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien or right of continuing possession of the **works** where this has not been waived. On issue of the **certificate of practical completion** for a **section**, the **employer** shall be entitled to possession of such **section**
- 19.6 Where the **employer** takes possession of the whole or a portion of the **works** by agreement with the **contractor**, **practical completion** shall be deemed to have occurred. The **principal agent** shall after inspection of the **works** [19.3] issue a **certificate of practical completion** to the **contractor** with a copy to the **employer** within five (5) **working days** of the date of possession of the whole or a portion of the **works** by the **employer** and the **list for completion** of items to be rectified and work to be completed within a period agreed between the **parties**
- 19.7 On issue of the **certificate of practical completion** of the **works**, or a **section** thereof, where the **principal agent** instructs that installation work is to be executed by others, the **employer** and/or **contractor** shall allow access for such installations

## 20.0 COMPLETION IN SECTIONS

- 20.1 Where completion in **sections** is required [CD] the terms and conditions applicable to the **works** as a whole shall apply to each **section**
- 20.2 The **principal agent** shall for each **section** issue:
  - 20.2.1 A **certificate of practical completion** [19.3]
  - 20.2.2 A **certificate of final completion** indicating where applicable, if it is for the last **section** to reach **final completion** [21.6.2]

## 21.0 DEFECTS LIABILITY PERIOD AND FINAL COMPLETION

- 21.1 The defects liability period for the **works** shall commence on the **calendar day** following the date of **practical completion** and end at midnight (00:00) ninety (90) **calendar days** from the date of **practical completion** [CD] or when work on the **list for completion** has been satisfactorily attended to [21.6], whichever is the later
- 21.2 Where **defects** become apparent during the defects liability period the **principal agent** may instruct the **contractor** [17.1.11] to progressively attend to such items, whilst at all times minimising inconvenience to the occupants
- 21.3 The **contractor** shall:
  - 21.3.1 Inspect and forthwith rectify all items on the **list for completion** no later than ten (10) **working days** before the expiry of the defects liability period [19.3.4]
  - 21.3.2 Give **notice** to the **principal agent** to inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.4 Where items on the **list for completion** have not been attended to the **principal agent** shall give **notice** to the **contractor** of such outstanding items. The process [21.3] shall be repeated until all items on the **list for completion** have been attended to

- 21.5 The **contractor** shall give **notice** to the **principal agent** when the outstanding items on the **list for completion** have been attended to. The **principal agent** shall inspect the **works** within five (5) **working days** of receipt of such **notice**
- 21.6 On the expiry of the ninety (90) **calendar days** defects liability period [21.1] or when all items on the **list for completion** have been attended to and on receipt of the **contractor's notice** to the **principal agent**, whichever is the later, the **principal agent** shall inspect the **works** and within ten (10) **working days** either:
- 21.6.1 Issue a **list for final completion** detailing all outstanding work or **defects** that must be attended to, or rectified to achieve **final completion**
- or ...
- 21.6.2 Issue the **certificate of final completion** to the **contractor** with a copy to the **employer**
- 21.7 Where the **principal agent** issues a **list for final completion**:
- 21.7.1 The **contractor** shall forthwith complete all outstanding work and rectify all the **defects**
- 21.7.2 The **contractor** shall give **notice** to the **principal agent** when all outstanding work has been completed and all the **defects** have been rectified
- 21.7.3 The **principal agent** shall, within five (5) **working days** of receipt of the **contractor's notice(s)** [21.7.2] give **notice** to the **contractor** either that the items on the **list for final completion** have been completed, or issue an updated **list for final completion** of the items not completed and of any further **defects** that have become evident since the last inspection
- 21.8 Where the **principal agent** gives **notice** to the **contractor** of items on the **list for final completion** or an updated **list for final completion** specifying all outstanding work to be completed and/or **defects** to be rectified to achieve **final completion** the process [21.7.2-3] shall be repeated until all items on the (updated) **list for final completion** have been completed. On completion of all items on the (updated) **list for final completion** the **principal agent** shall forthwith issue the **certificate of final completion** to the **contractor** with a copy to the **employer**
- 21.9 Where the **principal agent** has not issued the **list for final completion** or the updated list within five (5) **working days** after the inspection period [21.6], the **contractor** shall forthwith give **notice** to the **employer** and the **principal agent**. Should the **principal agent** not issue such list within a further five (5) **working days** of receipt of such **notice**, **final completion** shall be deemed to have been achieved on expiry of such **notice** period and the **principal agent** shall forthwith issue the **certificate of final completion**
- 21.10 Where a **subcontractor's** defects liability period extends beyond the **contractor's** defects liability period:
- 21.10.1 The **contractor's** obligations and liability concerning the **subcontractor's defects** shall end on the date of issue of the **certificate of final completion**
- 21.10.2 The remaining portion of the **subcontractor's** defects liability period shall be ceded to the **employer** on the date of issue of the **certificate of final completion**
- 21.11 Where the **contractor**, a **subcontractor** or a supplier is required to give a guarantee, warranty or indemnity, other than a **security** to the **contractor**, the rights and obligations under such guarantee, warranty or indemnity shall be ceded to the **employer** on the date of issue of the **certificate of final completion**. This cession shall not prejudice any other rights the **employer** may have [12.2.20]
- 21.12 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **contractor's** obligations [12.2.7] have been fulfilled other than for **latent defects**

## 22.0 LATENT DEFECTS LIABILITY PERIOD

- 22.1 The **latent defects** liability period for the **works** shall commence at the start of the **construction period** and end five (5) years from the certified date of **final completion**
- 22.2 The **contractor** shall make good all **latent defects** that appear up to the date of expiry of the **latent defects** liability period [3.3]
- 22.3 Where termination of this **agreement** occurs before the date of **final completion**, the **latent defects** liability period shall end:



- 22.3.1 Five (5) years from the date of termination [29.10] for the completed portion of the **works** only or ...
- 22.3.2 On the date of termination where execution of the **works** has become impossible due to circumstances beyond the control of either **party** [29.20], or on the date of termination by the **contractor** due to default by the **employer**, the **principal agent** and/or **agents** [29.17.3; 29.23]

## 23.0 REVISION OF THE DATE FOR PRACTICAL COMPLETION

- 23.1 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** without an adjustment of the **contract value** for a delay to **practical completion** caused by one or more of the following events:
- 23.1.1 Adverse weather conditions
- 23.1.2 Inability to obtain **materials and goods** where the **contractor** has taken reasonable steps to avoid or reduce such a delay
- 23.1.3 Making good physical loss and repairing damage to the **works** [8.2] where such risk is beyond the reasonable control of the **parties**
- 23.1.4 Late supply of a **prime cost amount** item where the **contractor** has taken reasonable steps to avoid or reduce such delay
- 23.1.5 Exercise of statutory power by a body of state or public or local authority that directly affects the execution of the **works**
- 23.1.6 **Force majeure**
- 23.2 The **contractor** is entitled to a revision of the date for **practical completion** by the **principal agent** with an adjustment of the **contract value** [26.7] for a delay to **practical completion** caused by one or more of the following events:
- 23.2.1 Delayed possession of the **site** [12.1.5]
- 23.2.2 Making good physical loss and repairing damage to the **works** [8.5] where the **contractor** is not at risk
- 23.2.3 **Contract instructions** [17.1-2] not occasioned by the **contractor's** default
- 23.2.4 Opening up and testing of work and **materials and goods** where such work is in accordance with the **agreement** [17.1.6]
- 23.2.5 Late or incorrect issue of **construction information** [12.1.12; 13.2.3]
- 23.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible [12.1.10]
- 23.2.7 Late appointment of a **subcontractor** in terms of the agreed **programme** where the **contractor** has taken reasonable steps to avoid or reduce such delay [14.4.1; 15.4.1]
- 23.2.8 Late acceptance by the **principal agent** and/or **agents** of a design undertaken by a selected **subcontractor** where the **contractor's** obligations have been met [7.3]
- 23.2.9 An act or omission by a nominated **subcontractor** [14.0] or a **direct contractor** [16.0]
- 23.2.10 Insolvency or termination of a nominated **subcontractor** [14.7.2]
- 23.2.11 **Suspension** or termination by a **subcontractor** due to default of the **employer**, the **principal agent** and/or **agents**
- 23.2.12 Execution of additional work for which the quantity in the **bills of quantities** is not sufficiently accurate
- 23.2.13 **Suspension** of the **works** [28.0]

- 23.3 Further circumstances for which the **contractor** may be entitled to a revision of the date for **practical completion** and an adjustment of the **contract value** are delays to **practical completion** due to any other cause beyond the **contractor's** reasonable control that could not have reasonably been anticipated and provided for. The **principal agent** shall adjust the **contract value** where such delay is due to the **employer** and/or **agents**
- 23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for **practical completion**, the **contractor** shall:
- 23.4.1 Take reasonable steps to avoid or reduce such delay
- 23.4.2 Within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of such delay, give **notice** to the **principal agent** of the intention to submit a claim for a revision to the date for **practical completion**, failing which the **contractor** shall forfeit such claim
- 23.5 The **contractor** shall submit a claim for the revision of the date for **practical completion** to the **principal agent** within forty (40) **working days**, or such extended period as the **principal agent** may allow, from when the **contractor** is able to quantify the delay in terms of the **programme**
- 23.6 Where the **contractor** submits a claim for a revision of the date for **practical completion** the claim shall in respect of each circumstance separately state:
- 23.6.1 The relevant clause [23.1-3] on which the **contractor** relies
- 23.6.2 The cause and effect of the delay on the current date for **practical completion**, where appropriate, illustrated by a change to the critical path on the current **programme**
- 23.6.3 The extension period claimed in **working days** and the calculation thereof
- 23.7 The **principal agent** shall, within twenty (20) **working days** of receipt of the claim, grant in full, reduce or refuse the **working days** claimed, and:
- 23.7.1 Determine the revised date for **practical completion** as a result of the **working days** granted
- 23.7.2 Identify each event and the reference clause for each revision granted or amended
- 23.7.3 Give reasons where such claim is refused or reduced
- 23.8 Where the **principal agent** fails to act within the period [23.7] such claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where the **principal agent** refuses a claim, alternatively reduces a claim, or fails to act

## 24.0 PENALTY FOR LATE OR NON-COMPLETION

- 24.1 Where the **contractor** fails to bring the **works**, or a **section** thereof, to **practical completion** by the date for **practical completion** [CD], or the revised date for **practical completion**, the **contractor** shall be liable to the **employer** for the **penalty** [CD]
- 24.2 Where the **employer** elects to levy such **penalty** the **employer**, or the **principal agent** on instruction from the **employer**, shall give **notice** thereof to the **contractor**. The **principal agent** shall determine the **penalty** due from the later of the date for **practical completion** [CD], or the revised date for **practical completion**, up to and including the earlier of:
- 24.2.1 The actual or deemed date of **practical completion** of the **works**, or a **section** thereof [23.7.1]
- 24.2.2 The date of termination [29.8]
- 24.3 The **principal agent** shall include the **penalty** in regular interim **payment certificates** from the date on which the **employer's** entitlement to **penalties** commences

# PAYMENT

## 25.0 PAYMENT

- 25.1 The **contractor** shall cooperate with and assist the **principal agent** in the preparation of cash flow statements and payment valuations by providing all required documents and quantified amounts of work duly executed. Where the **contractor** has not provided such information the **principal agent** shall make a fair estimate of the work executed
- 25.2 The **principal agent** shall regularly by the due date [CD] issue **payment certificates** to the **contractor** with a copy to the **employer** until and including the issue of the **final payment certificate**. A **payment certificate** may be for a nil or negative amount
- 25.3 Each **payment certificate** shall separately include:
- 25.3.1 A fair estimate of the value of work executed
  - 25.3.2 A fair estimate of the value of **materials and goods** [25.4; 25.5]
  - 25.3.3 **Security** adjustment [11.1.2; 11.4.1]
  - 25.3.4 Cost fluctuations, if applicable
  - 25.3.5 The gross amount certified
  - 25.3.6 The amount previously certified
  - 25.3.7 Amounts due to either **party** in the **recovery statement** [27.1]
  - 25.3.8 **Tax**
  - 25.3.9 Interest amounts included in the **recovery statement**
  - 25.3.10 Other non-taxable amounts
  - 25.3.11 The net amount certified due to the **contractor** or the **employer**
- 25.4 The value of **materials and goods** [25.3.2] (excluding **materials and goods** off **site** or in transit) shall be included in the amount certified only where:
- 25.4.1 Not prematurely delivered or offered for delivery in terms of the **programme**
  - 25.4.2 Stored and suitably protected against loss and damage
  - 25.4.3 Covered by insurances [10.0]
- 25.5 The value of **materials and goods** [25.3.2] stored off **site** and/or in transit shall be included in the amount certified only where covered by a **guarantee for advance payment** or such other **security** acceptable to the **employer**
- 25.6 **Materials and goods** when certified [25.4] and paid for shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**
- 25.7 The **principal agent** shall concurrently with each **payment certificate** issue:
- 25.7.1 To the **employer** and the **contractor** a **recovery statement** showing the amounts due to either **party** in the current **payment certificate**
  - 25.7.2 To the **contractor** a statement showing the amount certified for each **subcontractor**
  - 25.7.3 To each **subcontractor** a n/s subcontract payment notification showing the amount included in the **payment certificate** and its date of issue
  - 25.7.4 The determination of **default interest**
  - 25.7.5 The determination of **compensatory interest**

- 25.8 An interim **payment certificate** shall not be evidence that the **works** and **materials and goods** are in terms of the **agreement**
- 25.9 The **principal agent** shall certify one hundred per cent (100%) of the amount of the **final account** including adjustments [26.0; 27.0] in the **final payment certificate**
- 25.10 The **employer** shall pay the **contractor** the amount certified in an issued **payment certificate** within fourteen (14) **calendar days** of the date for issue of the **payment certificate** [CD] including **default interest** and/or **compensatory interest**
- 25.11 The **contractor** shall pay the **employer** the amount certified in an issued **payment certificate** within twenty-one (21) **calendar days** of the date of issue of the **payment certificate** [CD] including **default interest**
- 25.12 Where a **guarantee for construction** (fixed) and payment reduction [11.1.2] has been chosen the value of the **works** [26.0] and **materials and goods** [25.3.2] that exceeds the **contract sum** and any contract price adjustments (cost fluctuations) [25.3.4; 26.9.5] [CD] shall be certified in full. The value certified that does not exceed the **contract sum** shall be subject to the following percentage adjustments:
- 25.12.1 Ninety-five per cent (95%) of such value in interim **payment certificates** issued up to the date of **practical completion**
- 25.12.2 Ninety-seven and one half per cent (97.5%) of such value in interim **payment certificates** issued up to but excluding the **final payment certificate**
- 25.12.3 One hundred per cent (100%) of such value in the **final payment certificate**
- 25.13 The **contractor** shall pay all **subcontractors** within seven (7) **calendar days** of the due date for payment by the **employer** [CD] and on request provide proof thereof to the **principal agent** within seven (7) **calendar days** of a request to do so
- 25.14 Where the **employer** has made a partial or no payment of the amount due in an issued **payment certificate** by the due date or where the **principal agent** fails to issue a **payment certificate**, the **contractor** may give five (5) **working days notice** to comply, failing which the **contractor** may:
- 25.14.1 **Suspend the works** [28.1.3]
- 25.14.2 Exercise the lien or right of continuing possession of the **works** where this has not been waived
- 25.14.3 Call up the **guarantee for payment** [11.5]
- 25.15 The **principal agent** shall issue the **final payment certificate** to the **contractor** with a copy to the **employer** within seven (7) **calendar days** of acceptance of the **final account** by the **contractor**, but not before the issue of the **certificate of final completion**, other than on termination [26.11; 29.0]
- 25.16 Where the **contractor** disputes the correctness of the **final account** within the period allowed [26.12], the **principal agent** shall issue interim **payment certificates** to the **contractor** with a copy to the **employer** by the due date [CD] for the undisputed amount(s)
- 25.17 For the purposes of provisional sentence in relation to a **payment certificate** only, the **parties** consent to the jurisdiction of any court of **law** of the country [CD]

## 26.0 ADJUSTMENT OF THE CONTRACT VALUE AND FINAL ACCOUNT

- 26.1 The **principal agent** shall determine the value of adjustments to the **contract value** in cooperation with the **contractor** in the preparation of the **final account**. Where such adjustments require measurement on **site**, the **contractor** shall have the right to be present
- 26.2 Adjustments to the **contract value** resulting from a **contract instruction** [17.1] shall be determined as follows:
- 26.2.1 Work of a similar character executed under similar conditions shall be priced at the rates in the **priced document**
- 26.2.2 Work not of a similar character shall be priced at rates based on those in the **priced document** and adjusted to suit the changed circumstances
- 26.2.3 If the above methods do not apply, work shall be priced at rates based on the necessary use of **labour**, **construction equipment** and/or **materials and goods** for executing the work plus an allowance of ten per cent (10%) mark-up

- 26.2.4 Work omitted shall be valued at the rates in the **priced document**, but where the omission of such work alters the circumstances under which the remaining work is carried out, the value of the remaining work shall be determined by the above methods
- 26.3 Where work is identified as provisional in the **priced document** the **principal agent** shall omit such value from the **contract value** and add the value of work as executed to the **contract value**
- 26.4 Where the **contractor** has made payment for items not included in the **priced document** in accordance with a **contract instruction** with the approval of the **principal agent**, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the **contract value** limited to:
- 26.4.1 Charges by authorities [2.1]
- 26.4.2 The cost of opening up and testing [17.1.6], where the work is according to this **agreement**
- 26.4.3 The cost of insurances [10.0], where applicable [CD]
- 26.5 The **contractor** shall give **notice** to the **principal agent** within twenty (20) **working days** of becoming aware, or ought reasonably to have become aware of expense and/or loss for which provision was not required in the **contract sum** failing which such claim shall be forfeited
- 26.6 Following **notice** [26.5], the **contractor** shall submit a detailed and substantiated claim for the adjustment of the **contract value** to the **principal agent** within forty (40) **working days**, or such additional period as the **principal agent** may allow
- 26.7 The **principal agent** shall make a fair assessment of the claim [26.6] and adjust the **contract value** within twenty (20) **working days** of receipt of such details
- 26.8 Where the **principal agent** fails to act within such period [26.7] the claim shall be deemed to be refused. The **contractor** may give **notice** of a disagreement [30.1] where no assessment is received
- 26.9 The **principal agent** shall:
- 26.9.1 Omit **prime cost amounts** and **budgetary allowances** [17.1.13] from the **contract sum** and determine the actual value of such work to be added to the **contract value**
- 26.9.2 Omit **provisional sums** [17.1.13] from the **contract sum** and determine the actual value of such **subcontractors'** work to be added to the **contract value**
- 26.9.3 Prorate the **contractor's** allowances for profit and attendance on **provisional sums** and **prime cost amounts** excluding any allowance for cost fluctuations
- 26.9.4 Adjust the **preliminaries** amounts in accordance with the method selected [CD]
- 26.9.5 Adjust the **contract value** to include contract price adjustments (cost fluctuations), if applicable [CD]
- 26.9.6 Rectify discrepancies, errors in description or quantity or omission of items in this **agreement** other than in the **JBCC®** Principal Building Agreement [17.1.1]
- 26.10 The **principal agent** shall prepare and issue the **final account** to the **contractor** within sixty (60) **working days** of the date of **practical completion**
- 26.11 The **contractor** shall accept the **final account** within thirty (30) **working days** of receipt thereof or give **notice** of non-acceptance with reasons failing which the **final account** shall be deemed to be accepted
- 26.12 Should the reasons for non-acceptance of the **final account** [26.11] not be resolved within ten (10) **working days** of the **notice** of non-acceptance, or within such extended period as the **principal agent** may allow on request from the **contractor**, the **contractor** may give **notice** of a disagreement
- 26.13 The **principal agent** shall issue the **final payment certificate** to the **contractor** within seven (7) **calendar days** of acceptance of the **final account**

## 27.0 RECOVERY OF EXPENSE AND/OR LOSS

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

The **employer** resulting from:

- 27.1.1 **Penalty** [24.3]
- 27.1.2 **Default interest** [25.7.4]
- 27.1.3 Expense and/or loss [27.2]

The **contractor** resulting from:

- 27.1.4 **Default interest** [25.7.4]
- 27.1.5 **Compensatory interest** [25.7.5]
- 27.1.6 Damages
- 27.1.7 Expense or loss caused by a **direct contractor** [16.1.3]
- 27.1.8 Advance payments [9.2.10; 12.1.8]
- 27.1.9 Termination of a **n/s subcontract agreement** due to default of the **employer**, the **principal agent** and/or **agents** [14.7.1; 15.7.1]

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

- 27.2.1 Paying charges [2.1]
- 27.2.2 Effecting insurances due to the **contractor's** default [10.0]
- 27.2.3 Work executed by others due to the **contractor's** default [17.3]
- 27.2.4 Recoupment of advance payments [9.2.10; 11.3]
- 27.2.5 The **contractor** not paying amounts due to the **employer** [25.3.7]
- 27.2.6 Termination of this **agreement** by the **employer** [29.1]
- 27.2.7 Amounts paid directly to **subcontractors** on default by the **contractor** [14.5; 15.5]
- 27.2.8 Termination of a **n/s subcontract agreement** [14.7.2; 15.7.2]
- 27.2.9 Default by the **contractor** where not less than five (5) **working days notice** detailing such default has been given before the issue of the next **recovery statement** to allow the **contractor** the opportunity to remedy such default
- 27.2.10 Adjustment of the **n/s subcontract preliminaries** due to the **subcontractor** as a result of a default by the **contractor**

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

- 27.3.1 Subsequent **payment certificates** [25.0]
- 27.3.2 A demand in terms of the **security** [11.0]
- 27.3.3 The defaulting **party** as a debt

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

## SUSPENSION AND TERMINATION

### 28.0 SUSPENSION BY THE CONTRACTOR

- 28.1 The **contractor** may give ten (10) **working days notice** to the **employer** and the **principal agent** of the intention to suspend the **works** where the **employer** or the **principal agent** has failed to:
- 28.1.1 Provide and/or maintain a **guarantee for payment**, where required [11.5-6]
  - 28.1.2 Issue a **payment certificate** by the due date [25.2] [CD]
  - 28.1.3 Make payment in full of an amount certified in an interim **payment certificate** by the due date [25.10] [CD]
  - 28.1.4 Effect insurances [10.1.1-5; 10.2], where applicable [CD]
  - 28.1.5 Appoint another **principal agent** and/or another **agent**, where applicable [6.5] or where an **agent** has failed to act in terms of delegated authority [6.4]
- 28.2 Where the **employer** has not remedied a default in terms of a **notice** the **contractor** may suspend execution of the **works** until such default has been remedied without prejudice to any rights the **contractor** may have
- 28.3 Where the **works** is suspended the **contractor** shall instruct each **subcontractor** to suspend the n/s subcontract works forthwith
- 28.4 Where the **works** has been suspended by the **contractor** [23.2.13] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** with an adjustment of the **contract value**

### 29.0 TERMINATION

#### Termination by the employer

- 29.1 The **employer** may give **notice** of intention to terminate this **agreement** where the **contractor** has failed to:
- 29.1.1 Provide and maintain a **guarantee for construction** [CD]
  - 29.1.2 Proceed with the **works** [12.2.7]
  - 29.1.3 Comply timeously with a **contract instruction** [17.0]
- 29.2 Where the **employer** contemplates terminating this **agreement** the **employer** or the **principal agent** on instruction from the **employer** shall give **notice** thereof to the **contractor** of a specified default [29.1.1-3], to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 29.3 Where the **contractor** has not remedied a specified default within such period [29.2] the **employer** may forthwith give **notice** to the **contractor** of termination of this **agreement**
- 29.4 The **employer** may employ others to safeguard the **works**, complete the outstanding work and rectify defects in that portion of the **works** executed by the **contractor** [27.2.3]. The **contractor** shall be liable to the **employer** for such costs that shall be included in the **final account** [26.10]
- 29.5 The **employer** may use **materials and goods** and temporary structures on the **site** for which payment shall be included in the **final account**
- 29.6 Should the **contractor** default on removing temporary structures or **construction equipment** from the **site** the **employer**, without being responsible for any loss or damage, may have such items belonging to the **contractor** removed or sold. Resulting costs and/or income shall be included in the **final account**
- 29.7 The **employer**, on **notice** to the **contractor**, may recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the remaining work [25.3.7; 27.1.3]
- 29.8 The **employer** may apply the **penalty** [24.0] up to the date of termination where the initial or revised date for **practical completion** has passed

- 29.9 The **employer** has the right of recovery against the **contractor**, where applicable, [CD] from:  
 The **guarantee for construction** (variable) until the final payment has been made; or  
 The **guarantee for construction** (fixed) until the date of **practical completion**; or  
 The payment reduction until the final payment is made; or  
 The **guarantee for advance payment** until the outstanding balance has been repaid to the **employer**
- 29.10 The **latent defects** liability period for the completed portion of the **works** shall end [22.3.1] five (5) years from the date of termination
- 29.11 Where this **agreement** is terminated, the **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.12 Termination of the **works** shall not prejudice any rights the **employer** may have
- 29.13 The right to terminate may not be exercised where the **employer** is in material breach of this **agreement**

#### **Termination by the contractor**

- 29.14 The **contractor** may give **notice** of intention to terminate this **agreement** where:
- 29.14.1 The **employer** has failed to provide and maintain a **guarantee for payment**, where applicable [CD]
- 29.14.2 The **employer** has failed to give possession of the **site** to the **contractor** [12.1.5]
- 29.14.3 The **employer** has failed to allow the **principal agent** and/or **agents** to exercise fair and reasonable judgement as contemplated by this **agreement** [6.6]
- 29.14.4 The **employer** has failed to effect insurances, where applicable [CD]
- 29.14.5 The **employer** has failed to pay the amount certified by the due date [25.10]
- 29.14.6 The **employer** has failed to appoint another **principal agent** and/or **agents**, where applicable [6.5]
- 29.14.7 The **principal agent** has failed to issue a **payment certificate** to the **contractor** by the due date [25.2]
- 29.15 Where the **contractor** contemplates terminating this **agreement**, the **contractor** shall give **notice** to the **employer** and/or the **principal agent** of a specified default [29.14.1-7], to be remedied within ten (10) **working days** of the date of receipt of such **notice**
- 29.16 Where a specified default has not been remedied within such period [29.15] the **contractor** may forthwith give **notice** to the **employer** and the **principal agent** of the termination of this **agreement**
- 29.17 Where this **agreement** is terminated by the **contractor**:
- 29.17.1 The **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.17.2 The **contractor** shall remove temporary structures, **construction equipment** and, on **notice**, surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**
- 29.17.3 The **latent defects** liability period shall end on the date of termination [22.3.2]
- 29.17.4 The **contractor** may be entitled to recover damages [27.1.6]
- 29.17.5 The **guarantee for construction** shall expire on the date of termination
- 29.17.6 The **guarantee for advance payment**, where applicable [CD], shall expire on repayment of amounts due to the **employer**
- 29.17.7 The **guarantee for payment** [11.5-6], where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum or on the **security** expiry date, whichever is the earlier
- 29.18 Termination of the **works** shall not prejudice any rights the **contractor** may have
- 29.19 The right to terminate may not be exercised where the **contractor** is in material breach of this **agreement**



## Termination by either party

- 29.20 Either **party** may give **notice** of intention to terminate this **agreement** where:
- 29.20.1 The **works** is for alterations and/or additions to (an) existing building(s), or a new building, which has been substantially destroyed regardless of the cause other than by the **party** seeking termination
- 29.20.2 Progress of the **works** has ceased for a continuous period of ninety (90) **calendar days**, or an intermittent period totalling one hundred and twenty (120) **calendar days** as a result of a **force majeure** event or the exercise of statutory power by a body of state or public or local authority that directly affects the execution of the **works**
- 29.21 The **party** contemplating termination of this **agreement** shall give ten (10) **working days notice** to the other **party**. Where this **agreement** is terminated by either **party**:
- 29.21.1 The **contractor** shall forthwith give **notice** of termination of the **n/s subcontract agreement** to each **subcontractor**
- 29.21.2 The **party** responsible for insurance [CD] shall inform the insurer and the other **party** of the date of termination of the **agreement**
- 29.21.3 The **guarantee for payment**, where applicable [CD], shall expire on payment of the **final payment certificate** or on payment in full of the guaranteed sum or on the **security** expiry date, whichever is the earlier
- 29.21.4 The **guarantee for construction** shall expire on the date of termination
- 29.21.5 The **guarantee for advance payment** [11.2.2; 11.3], where applicable [CD], shall expire on repayment of amounts due to the **employer**
- 29.22 Neither **party** shall be liable to the other **party** for expense and/or loss resulting from the termination
- 29.23 The **latent defects** liability period for the **works** shall end on the date of termination [22.3.2]

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

- 29.24 On termination of this **agreement** the **contractor** shall:
- 29.24.1 Cease work and ensure that the **works** is safe in terms of the **law**
- 29.24.2 Remain responsible for the **works** [8.1] until possession is relinquished to the **employer**
- 29.24.3 Remove temporary structures, **construction equipment** and, on **notice** from the **principal agent**, surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **principal agent**
- 29.25 On termination of this **agreement** the **principal agent** shall:
- 29.25.1 Prepare and hand over to the **employer** all compliance certificates, as built drawings and product warranties in conjunction with **agents**, the **contractor** and **subcontractors**
- 29.25.2 In consultation with the **contractor** where possible, compile and issue to the **parties** a **status report** recording completed and incomplete work on the date of termination of the **works** within twenty (20) **working days** of such date
- 29.25.3 Continue to certify the value of the work executed and **materials and goods** for payment by the **employer** or the **contractor** until the issue of the **final payment certificate** [25.15]
- 29.25.4 Prepare and issue the **final account** to the **contractor** within sixty (60) **working days** of the date of termination including the cost of **materials and goods** and those ordered before termination that the **contractor** is bound to accept and make payment for
- 29.26 Termination shall take effect after completion of the procedure [29.24.1]
- 29.27 The **employer** shall arrange appropriate insurances to suit the stage of completion of the **works**
- 29.28 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

# DISPUTE RESOLUTION

## 30.0 DISPUTE RESOLUTION

### Settlement by the parties

- 30.1 Should any disagreement arise between the **employer** (or the **principal agent** or an **agent**) and the **contractor** arising out of or concerning the action or inaction of the **employer** (or the **principal agent** or an **agent**) or the **contractor**, or any other matter concerning this **agreement** (including the validity thereof), either **party** may give **notice** of a disagreement to the other. The **parties** shall attempt to resolve such disagreement between them and record such resolution in writing signed by them
- 30.2 Where the disagreement is not resolved within ten (10) **working days** of receipt of the **notice** of disagreement, the disagreement shall be deemed to be a dispute
- 30.3 The dispute shall be referred to adjudication within ten (10) **working days** of the expiry of the period [30.2] by means of a **notice** of adjudication by the **party** (the referring party) which gave the **notice** of disagreement
- 30.4 The **notice** of adjudication shall clearly define the scope of the dispute and the relief sought by adjudication
- 30.5 Failure to comply with the procedure described [30.3-4] shall cause the dispute to be resolved by arbitration and not by adjudication

### Adjudication

- 30.6 Where a dispute is referred to adjudication:
- 30.6.1 The adjudicator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**
- 30.6.2 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the adjudicator, failing which the rules shall be determined by the adjudicator. Neither **party** shall be entitled to legal representation, unless otherwise agreed in writing by the **parties**
- 30.6.3 A determination given by the adjudicator shall be immediately binding upon and implemented by the **parties** notwithstanding that either **party** may give **notice** to refer the dispute to arbitration
- 30.6.4 Where the adjudicator has given a determination, either **party** may give notice of dissatisfaction to the other **party** and to the adjudicator within ten (10) **working days** of receipt of the determination, or an extended time period provided in the applicable rules for adjudication whereafter such dispute shall be referred to arbitration
- 30.6.5 Where the adjudicator has not given a determination within the time period allowed or extended time period provided in the applicable rules for adjudication either **party** may give **notice** to the other **party** and to the adjudicator that if such determination is not received within ten (10) **working days** of receipt of this **notice** his appointment is thereupon automatically terminated and such dispute shall be referred to further adjudication or arbitration, at the option of the referring **party**
- 30.6.6 The adjudicator shall not be eligible for subsequent appointment as the arbitrator

### Arbitration

- 30.7 Where the dispute is referred to arbitration:
- 30.7.1 Arbitration shall not be construed as a review or appeal of an adjudicator's determination. Any determination by the adjudicator shall remain in force and continue to be implemented unless and until overturned by an arbitration award
- 30.7.2 The resolution of the dispute shall commence anew
- 30.7.3 The referring **party** in the adjudication shall be the claimant in the arbitration
- 30.7.4 The arbitrator shall be nominated by the nominating body [CD] and shall be deemed to have been appointed by the **parties**

- 30.7.5 The applicable rules shall be stated [CD] or shall be by agreement between the **parties** and the arbitrator, failing which the rules shall be determined by the arbitrator
- 30.7.6 The arbitrator shall have the authority to finally determine the dispute including the authority to make, open up and revise any certificates, opinion, decision, determination, requisition or **notice** relating to the dispute as if no such certificate, opinion, decision, determination, requisition or **notice** had been issued or given
- 30.7.7 The arbitrator's award shall be final and binding on the **parties**

### **Mediation**

- 30.8 Notwithstanding the provisions relating to adjudication and arbitration the **parties** may, by agreement and at any time, refer a dispute to mediation, in which event:
- 30.8.1 The provisions relating to adjudication and/or arbitration shall be deemed to be suspended from the time of such agreement until **notice** by either **party** that they be resumed
- 30.8.2 The appointment of a mediator, the procedure, and the status of the outcome shall be agreed between the **parties**
- 30.8.3 Regardless of the outcome of a mediation the **parties** shall bear their own costs concerning the mediation and equally share the costs of the mediator and related expenses

### **General**

- 30.9 The **employer** consents to the joining of any **subcontractor** with the **contractor** as a party to any proceedings
- 30.10 Where the **parties** fail to specify a body to nominate the adjudicator [30.6.1] or the arbitrator [30.7.4] the referring **party** shall have the right to choose a local recognised body to suggest one or more persons with appropriate skills to be appointed as an adjudicator or an arbitrator. Such nomination shall be binding on the **parties**
- 30.11 The **parties** shall continue to perform their obligations in terms of this **agreement**, notwithstanding any disagreement or dispute that exists between them
- 30.12 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

# AGREEMENT

The **agreement** comprises the entire contract between the **parties**. No representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, deleting or terminating this **agreement** including this clause shall be effective unless reduced to writing and signed by the duly authorised representatives of the **parties**

The contracting **parties**

The <b>parties</b>	Employer	Contractor
Business name	TCTA	unknown
Business type		
Business registration		
Tax number (VAT/ <del>EOT</del> )	4360104923	
Contact person	Nompumelelo Msezane	
Telephone	+27 12 683 1239	
Mobile number		
E-mail	nmsezane@tcta.co.za	
Address: Building name	Building 9 Blysbridge office Park	
Address: Street	TCorner Olivenhoutbosch and Jean Avenue Doringkloof	
Address: Suburb	Centurion 0157	
Address: City		
Address: P O Box		
Address: Post Office		
Address: Province	Gauteng	
Address: Country	South Africa	
Project name	Skuifraam Shelter	
Project location	Berg River Dam, Franschhoek	
Currency	South African Rands	
Accepted <b>contract sum</b> including <b>tax</b>		
Accepted <b>contract sum</b> including <b>tax</b> in words		
Signed – who by signature hereto warrants authority		
Name of signatory		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of witness		