JBCC

THE JOINT BUILDING CONTRACTS COMMITTEE

MINOR WORKS AGREEMENT

Project : Electrical Maintenance Services

Employer : South African Revenue Service

Contractor : Name of Successful Bidder

Contract Date : .....

File Code : .....

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The Joint Building Contracts Committee® - NPC
Minor Works Agreement
Edition 5.2 – June 2024

JBCC®

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

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

Minor Works Agreement structure

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

- The JBCC® Minor Works Agreement Contract Data that incorporates specific employer and contractor requirements
- The JBCC® General Preliminaries that covers all aspects of preliminaries for most types of projects

This agreement is intended for use where:

- The works are not complex

The employer appoints:

- A principal agent to administer the agreement and or 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
- Cost fluctuations

and is *not* considered suitable where:

- The anticipated construction period is longer than nine months
- The necessary contract documentation is not complete and available at tender stage
- Completion in sections is required

Warning!

The JBCC® Minor Works Agreement Edition 5.2 has been coordinated with the JBCC® General Preliminaries and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with the JBCC® Minor Works Agreement Edition 5.2

Persons entering into or preparing contracts using the JBCC® suite of contract agreements and support documents are warned of the dangers inherent in modifying any part of it

Experience has shown that changes drafted by others, including members of the building professions, often have results that may be prejudicial to either, or both, parties

This contract ought not to be used where interim payments would be required. In that instance, a different JBCC contract ought to be used (refer to JBCC Quick Guide)

Disclaimer

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Actions by the parties / principal agent within a given time

Clause	Time period	Action	Purpose
2.4	1WD-7 CD	parties or principal agent,	notices deemed to be received
5.4	5 WD	contractor > PA > employer	non-performance of an agent i.t.o. this agreement
5.5	10 WD	employer	inability to act, replace/appoint another agent i.t.o. this agreement
5.5	5 WD	contractor > employer	not appoint agent on reasonable objection
8.0	before start	employer	works risk/public liability/supplementary insurance
9.3.1	15 WD	parties	provide securities
9.3.2	20 WD	parties	provide replacement securities
9.3.3		parties	adjust security value if contract value increased by 10%+
9.3.4	10 WD	parties	return original security form on expiry
11.1	15 WD	contractor	provide security/priced document/programme
11.2.6	10 WD	contractor	commence works
12.0	before start	principal agent + agents	setting out information
14.3	5 WD	contractor	carry out a contract instruction, where practical
15.2.2	5 WD	contractor > principal agent	notice to inspect for practical completion
15.3		principal agent > contractor	list for practical completion after inspection
15.4	5 + 5 WD	contractor > principal agent	no 'list' > notice > deemed practically complete
16.3	5 WD	principal agent > 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
19.2	date [CD]	PA > contractor/employer	issue payment certificate and support forms
19.9	14 CD	employer pay contractor	make payment from date of payment certificate
19.10	21 CD	contractor pay employer	i.t.o. schedule from principal agent
19.11	3 WD notice	contractor > employer	no payment, notice to suspend/call on security/termination
19.12	5 WD	principal agent > contractor	final 'pay' certificate after certificate of final completion/accept final account
20.5	notice	contractor > principal agent	notice of possible expense and loss
20.8	30 WD	principal agent	prepare final account after date of practical completion
20.9	15 WD	contractor	accept final account
20.10	10 WD	contractor > principal agent	notice dispute final account/resolve issues and issue final account
21.2	5 WD notice	employer (PA) > contractor	list of defaults to be remedied > suspend works
21.4	5 WD notice	employer > contractor	intention to terminate if default not remedied
21.5	forthwith	employer > contractor	termination
21.7	10 WD	contractor > employer	intention to suspend/terminate if defaults not remedied
21.14.1	10 WD	contractor	remove construction equipment after termination
21.20	20 WD	principal agent (+ contractor?)	prepare status report
21.22	30 WD	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
22.5.4	10 + 10 WD	either party	no determination > notice, no determination > arbitration

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SCHEDULE OF CHANGES TO PREVIOUS EDITION

Legend			
New	A clause has been added	→	The clause has been renumbered
Amended	The clause has been changed	*10.2/7*	The sequence of the clause 10.2 to 10.7
Deleted	The clause has been removed	*No clause*	No retained or inserted to avoid renumbering or provide alternatives
Redrafted	The clause has been reworded		
[]	Clause reference has been added or changed		

Clause	Revision
3.1	Amended
3.3	Redrafted
14.1.6	[ ]
14.1.10	[ ]

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MINOR WORKS AGREEMENT

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INTERPRETATION

1.0 DEFINITIONS and INTERPRETATION

1.1 Definitions

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

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

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

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

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

CERTIFICATE of FINAL COMPLETION: A certificate issued by the **principal agent** to the **contractor** with a copy to the **employer** stating the date on which **final completion** of the **works** 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 this **agreement**, 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** by the **contractor** and ending on the date of **practical completion**

CONTRACT DATA: The document listing the project specific information

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

CONTRACT DRAWINGS: The drawings listed [CD]

CONTRACT INSTRUCTION: A written instruction issued by or under the authority of the **principal agent** to the **contractor** which may include drawings, photographs 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** [CD] that is not subject to adjustment

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

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

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

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

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**

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EMPLOYER'S ALLOWANCE: An amount including the **contractor**'s mark-up included in the **contract sum** for work intended for execution by the **contractor**, or by others, 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** where the **works** has been completed and is free of **defects**

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

FORCE MAJEURE: An exceptional event or circumstance that:

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

Such an event may include but is not limited to:

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

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

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

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

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**

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

JBCC®: The Joint Building Contracts Committee® NPC

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

LAW: The law of the country [CD]

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

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

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

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

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

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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

PAYMENT REDUCTION: The **security** selected by the **contractor** as a payment reduction from the value certified in a **payment certificate**. The **principal agent** shall withhold ten per cent (10%) of each **payment certificate** until five per cent (5%) of the **contract sum** is reached. Half this amount is released at **practical completion** and the remainder included in the **final payment certificate**

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 and is free of patent **defects** other than minor **defects** identified in the **list for completion** and can be used for the intended purpose [CD]

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

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

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

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

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

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

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

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

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

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

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

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

1.2 Interpretation

1.2.1 The words 'accept, allow, appoint, approve, authorise, certify, decide, demand, designate, grant, inform, instruct, issue, list, **notice**, notify, object, record, reduce, refuse, request, state' and their derivatives require such acts to be in writing

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

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

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

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

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2.0 LAW, REGULATIONS AND NOTICES

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

2.2 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

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

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

2.4.1 Delivered by hand - on the day of delivery

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

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

3.0 OFFER, ACCEPTANCE AND ASSIGNMENT

3.1 The objective of this **minor works agreement** is the execution of and payment for the **contractors works** for which there has been an offer by one **party** and acceptance by the other **party**

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

3.3 This **minor works agreement** shall come into force on the date of acceptance of the offer [3.1] and continue to be of force and effect until the end of the **latent defects** liability period [16.0] or the certification of **final completion** [16.2.2] and final payment [19.8]

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

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

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

4.0 DOCUMENTS

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

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

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

4.4 The content of this **agreement** shall not be published or disclosed or used for any purpose other than that specified in this **agreement**

4.5 The **principal agent** and/or **agents** 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 is delegated to issue **contract instructions** and perform duties for specific aspects of the **works**

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

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

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

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 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

INSURANCES AND SECURITIES

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 ~~Physical loss and repairing damage to the **works** including existing structures and the contents thereof~~

8.1.2 ~~The support of structures being altered or added to and/or the removal of or weakening of or interference with the support of land and/or property adjacent to or within the **site**~~

8.1.3 ~~A defect in **free issue** and/or work to be executed and/or installed in the **works** by a **direct contractor**~~

8.1.4 ~~Design of the **works** (other than **contractor**'s temporary works)~~

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8.1.5 ~~**Force majeure**~~

8.2 ~~The **employer** shall effect and keep in force in the joint names of the **parties** the following insurances from the date of possession of the **site** until the issue of the **certificate of practical completion**~~

8.2.1 ~~Contract works insurance [CD] for the **works** that shall make provision for **direct contractors** [CD], **free issue** [CD], **materials and goods**, professional fees, temporary works, the clearing away and removing of all debris, any other costs to reinstate the **works** and where required and damage to **employer** owned surrounding property [CD]~~

8.2.2 ~~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~~

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

8.2.4 ~~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** (including **employer** owned surrounding property) and the consequences thereof. The **employer** shall appoint an **agent** to design and monitor appropriate support structures for use in excavations and/or in an existing property that forms part of the **works** and/or the **site**~~

8.2.5 ~~Other insurances [CD]~~

8.3 ~~The **employer** shall provide the **contractor** with the entire policy wording of such policies~~

8.4 ~~The **employer** shall give **notice** to the insurers of any relevant changes in respect of this **agreement**~~

8.5 ~~The **contractor** shall effect and keep in force until the **contractor**'s responsibility has ended insurances in respect of his:~~

8.5.1 ~~Employees~~

8.5.2 ~~**Construction equipment**~~

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 the **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**~~

9.0 SECURITIES

9.1 The **contractor** shall offer one of the following to the **employer**:

9.1.1 A **guarantee for construction**

or…

9.1.2 **Payment reduction**

9.2 The **employer** shall provide to the **contractor** a **guarantee for payment** where required in the accepted tender [CD]. On receipt of such **security** the **contractor** shall waive his lien or right of continuing possession of the **works**, where this has not been waived

9.3 The **parties** shall:

9.3.1 Provide to the other **party** the **security** [CD] within fifteen (15) **working days** of acceptance of the tender

9.3.2 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 at least twenty (20) **working days** prior to its expiry date

9.3.3 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**

9.3.4 Return the original (adjusted) **security** form within ten (10) **working days** after its expiry date

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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 **guarantee for advance payment** equal in value to the aggregate amount of all such advanced payments [CD]

9.5 Where a **party** makes an unjustified call on a **security**, the amount paid and **default interest** shall be paid to the other **party**

EXECUTION

10.0 OBLIGATIONS OF THE 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 and occupied during the execution of the **works** including restriction of working hours [CD]

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

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

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

10.1.7 ~~Effect and keep in force insurances in the joint names of the **parties** [CD]~~

10.1.8 ~~Provide a **guarantee for payment** [9.2], where applicable [CD]~~

10.1.9 Make payments by the due date [19.9] [CD]

10.1.10 Make advance payment(s), where required [9.4] [CD]

10.1.11 Permit reasonable access to the **works** by the **contractor** subsequent to **practical completion** to fulfil outstanding obligations [15.6]

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

10.1.13 Define the extent of work to be carried out by a **direct contractor** [13.0] [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 OBLIGATIONS OF THE CONTRACTOR

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

11.1.1 The **priced document** [CD]

11.1.2 A **programme** for the **works** in sufficient detail to monitor the progress of the **works**

~~11.1.3~~ ~~A **guarantee for construction** [9.1.1] [CD]~~

~~11.1.4~~ ~~A **JBCC®** format waiver of lien, where applicable [CD]~~

11.2 The **contractor**, on appointment, shall:

11.2.1 Forthwith submit statutory notices for the **works**

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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 **agreement** 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 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]

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 an **agent** with delegated authority 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:

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

12.2.2 Be responsible for the preservation and the reinstatement of boundary pegs, beacons and other survey information

12.2.3 Not be responsible for incorrect setting out if incorrect information was issued to the **contractor**

12.3 The **contractor** shall 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 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 of value found on the **site** shall remain the property of the **employer**

13.0 DIRECT CONTRACTORS

13.1 The **contractor** shall:

13.1.1 In accordance with a **contract instruction** from the **principal agent** 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**

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

13.1.3 Be entitled to claim expense and/or loss caused by **direct contractors** [20.0]

13.2 Payment of **direct contractors** 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**

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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 quantity or omissions in this **agreement** other than in the **JBCC®** Minor Works 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** and/or finishes or assemblies of elements of the **works**

14.1.6 Opening up of work for inspection, removal or re-execution [17.2.4;20.4.2]

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** [17.2.2]

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 **suspension** or termination, protection of the **works**, removal of **construction equipment** and surplus **materials and goods** [21.6.1]

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** and may recover expense and/or loss incurred [20.7]

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]

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15.1.2 Issue a **contract instruction** [14.0] consequent on such inspection, where necessary

15.2 The **contractor** shall:

15.2.1 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** [CD] has been achieved

15.2.2 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**

15.3 The **principal agent** shall inspect the **works** within the period stated [CD] and forthwith issue to the **contractor**:

15.3.1 A comprehensive and conclusive **list for practical completion** [14.1.12] where the **works** has not reached **practical completion** specifying the **defects** to be rectified and work to be completed to achieve **practical completion**

15.3.2 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 ...

15.3.3 A **certificate of practical completion** 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** with a copy to the **employer** of items to be rectified and work to be completed

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 date of such **notice** and the **principal agent** shall issue the **certificate of practical completion** forthwith

15.5 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 [15.3.3-4]

15.6 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, or right of continuing possession of the **works**, where this has not been waived

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 completion** has been satisfactorily completed [16.4], 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** 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 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, [16.2.1] 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 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**

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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 [21.11]

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** [21.17], or on the date of termination by the **contractor** due to default by the **employer**, the **principal agent** and/or **agents** [21.6]

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 [3.3]

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** 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 directly 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** [20.0], for a delay to **practical completion** caused by one or more of the following events:

17.2.1 Delayed possession of the **site** [10.1.6]

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] and testing of work and **materials and goods** [14.1.5] where such work is in accordance with the **agreement**

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

17.2.8 **Suspension** of the **works**

17.3 Where the circumstances in 17.1 or 17.2 do not apply or due to any other cause beyond the **contractor**'s control the **contractor** may give **notice** of a possible claim to the **principal agent** on becoming aware of such delay

17.4 The **contractor** shall give **notice** at the next site meeting of the cause of such delay and the **working days** claimed and expense and loss incurred where applicable

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17.5 The **principal agent** shall:

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

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

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

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

18.0 PENALTY FOR LATE OR NON-COMPLETION

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

18.2 Where the **employer** elects to levy such **penalty** the employer, or the principal agenton instruction fror the employer, shall give notice thereof to the contractor. The **principal agent** shall determine the **penalt** due from the later of the date for **practical completion** [CD], or the revised date for **practical completion**, u 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 [21.6]

18.3 The **principal agent** shall include the **penalty** in regular interim **payment certificates** from the date on whic 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 valuation by providing all required documents and quantified amounts of work duly executed. Where the **contractor** ha 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** with a copy to the **employer** until and including the issue of the final **payment certificate**. A **payment certificate** ma be for a nil or negative amount

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 [9.1.2]~~

19.3.4 The gross amount certified

19.3.5 The amount previously certified

19.3.6 Amounts due to either **party**

19.3.7 **Tax**

19.3.8 Interest due [19.9]

19.3.9 Other non-taxable amounts

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

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19.4 The value of **materials and goods** [19.3.2] (excluding **materials and goods** off **site** or in transit) shall be included in the amount certified only where:

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

19.4.2 Stored and suitably protected against loss and damage

19.5 The value of **materials and goods** [19.3.2] 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** as may be acceptable to the **employe**r [CD]

19.6 **Materials and goods** when certified [19.4] and paid for shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**

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

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

19.9 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]

19.10 The **contractor** shall pay the **employe**r the amount certified in an issued **payment certificate** including **default interest**, if due, within ~~twenty-one (21)~~ 30 days **calendar days** of the date of issue of the **payment certificate** [CD]

19.11 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 three (3) **working days notice** to comply, failing which the **contractor** may:

19.11.1 **Suspend** the **works** [21.1]

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

19.11.3 Call up the **guarantee for payment** [9.2]

19.12 The **principal agent** shall issue the **final payment certificate** to the **contractor** with a copy to the **employer** within five (5) **working 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]

19.13 Where the **contractor** disputes the correctness of the **final account** within the period allowed [20.9], 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)

19.1.4 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 **contracto**r shall have the right to be present

20.2 The **principal agent** shall rectify discrepancies, errors in description or quantity, or omission of items in the **agreement** other than in this **agreement** [14.1.1]

20.3 The **principal agent** shall adjust the **contract value** resulting from a **contract instruction** [14.1.2] determined as follows:

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

20.3.2 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

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

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20.4 Where the **contractor** has made payment for items not included in the **priced document**, the actua amounts paid plus a ten per cent (10%) mark-up shall be added to the **contract value** limited to:

20.4.1 Charges by authorities

20.4.2 The cost of opening up and testing [14.1.6] where the work is according to the **agreement**

20.5 The **contractor** shall give **notice** to the **principal agent** of becoming aware of expense and/or loss for which provision was not required in the **contract sum**

20.6 The **principal agent** shall:

20.6.1 Omit **employer allowances** [14.1.13] and **prime cost amounts** from the **contract sum** and determine the actual value of such work to be added to the **contract value**

20.6.2 Prorate the **contractor**'s allowances for profit and attendance on **employer allowances** and **prime cost amounts**

20.6.3 Adjust the **preliminaries** in the **priced document**

20.7 Where the **employer** has incurred expense and loss arising from an insurance claim for which the **contractor** was responsible the **employer** shall provide details thereof to the **principal agent** for adjustment of the **contract value** in the amount stated

20.8 The **principal agent** shall prepare and issue the **final account** to the **contractor** within thirty (30) **working days** of the date of **practical completion**

20.9 The **contractor** shall accept the **final account** or object with substantiated reasons within fifteen (15) **working days** of receipt thereof failing which the **final account** shall be deemed to be accepted

20.10 Should the **contractor** give **notice** objecting to the correctness of the **final account** within the period [20.9] 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

SUSPENSION OR TERMINATION

21.0 SUSPENSION OR TERMINATION

Suspension or termination by the contractor

21.1 The **contractor** may give **notice** of intention to suspend or terminate this **agreement** where the **employer** has failed to timeously:

21.1.1 Provide and/or maintain a **guarantee for payment** [CD] [9.2]

21.1.2 Give possession of the **site** to the **contractor** [10.1.6]

21.1.3 Pay the amount certified [19.11.1]

21.1.4 Appoint another **principal agent** and/or **agents** [5.5]

21.1.5 Allow the **principal agent** and/or **agents** to exercise fair judgement [5.6]

21.1.6 ~~Effect insurances [8.2]~~

or ...

21.1.7 Where the **principal agent** has failed to timeously issue to the **contractor construction information** [10.1.2] or a **payment certificate** [19.2]

21.2 Where the **employer** or **principal agent** is in default [21.1.1 – 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

21.3 Where the **works** has been suspended [21.1] the **principal agent** shall revise the date for **practical completion** on resumption of the **works** [17.2.8]

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21.4 Where the **contractor** decides to terminate this **agreement** the **contractor** shall give **notice** to the **employer** and/or the **principal agent** of a specified default [21.1.1-7] to be remedied within five (5) **working days** of the date of receipt of such **notice**

21.5 Where a specified default has not been remedied within such period [21.4] the **contractor** may give **notice** to the **employer** and the **principal agent** of the termination of this **agreement** forthwith

21.6 Where this **agreement** is terminated:

21.6.1 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**

21.6.2 The latent defects liability period for the completed portion of the **works** shall end on the date of termination [16.5]

21.6.3 The **contractor** may be entitled to damages

21.6.4 The **guarantee for payment**, where applicable [CD], shall expire on payment of the **final payment certificate**

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

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

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

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

Termination by the employer

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

21.9.1 ~~Provide and/or maintain a **guarantee for construction** [CD] [9.1.1]~~

21.9.2 Proceed with the **works** [11.2.6]

21.9.3 Comply timeously with a **contract instruction** [14.3]

21.10 Where the **employer** contemplates terminating this **agreement** the **principal agent** shall give **notice** to the **contractor** of a specified default [21.9.1-3] to be remedied within ten (10) **working days** of the date of receipt of such **notice**

21.11 Where a specified default has not been remedied within such period [21.10] the **employer** may give **notice** to the **contractor** of termination of this **agreement** forthwith

21.12 The **employer** may:

21.12.1 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]

21.12.2 Use **materials and goods** and temporary structures on the **site** for which payment shall be included in the **final account**

21.12.3 Sell temporary structures or **construction equipment** belonging to the **contractor** where the **contractor** fails to remove such items on **notice** to do so, without being responsible for any loss or damage

21.12.4 Recover damages from the **contractor** from the date of termination including, but not limited to, additional costs incurred in the completion of the **works**

21.12.5 Apply the **penalty** [18.2] up to the date of termination where the initial or revised date for **practical completion** has passed

21.13 The **employer** has the right of recovery against the **contractor**, where applicable, [CD], from the:

21.13.1 ~~**Guarantee for construction** until the final payment has been made~~

or …

21.13.2 **Payment reduction**

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or ...

21.13.3 ~~**Guarantee for advance payment** until the outstanding balance has been repaid to the **employer**~~

21.14 The latent defects liability period for the completed portion of the **works** shall end [16.6] five (5) years from the date of termination

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

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

Termination due to impossibility of performance

21.17 Either party may terminate this **agreement** where the **works** is:

21.17.1 Stopped for forty-five **calendar days** due to circumstances beyond the control of either **party**

21.17.2 Substantially damaged or destroyed

21.18 Where either **party** decides to terminate this **agreement** the party seeking termination shall give **notice** to the other **party**

21.19 The **contractor** shall:

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

21.19.2 Remain responsible for the **works** [11.2] until possession is relinquished to the **employer**

21.20 Termination shall take effect from the date recorded by the **principal agent** [21.19.2]

21.21 The **securities**, where applicable, shall expire and be returned to the **contractor** or **employer**:

21.21.1 The **guarantee for payment** 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

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

21.21.3 The **guarantee for advance payment** shall expire on repayment of amounts due to the **employer**

21.22 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**

21.23 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** [19.2; 19.8]

21.24 The **principal agent** shall commence and complete the **final account** [20.0] within thirty (30) **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

21.25 This clause [21.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

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 such disagreement between them and record such resolution in writing signed by them

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 by either **party**

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

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22.4 Failure to comply with the procedure described [22.5] shall cause the dispute to be resolved by arbitration and not by adjudication

22.5 Where a dispute is referred to adjudication:

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

22.5.2 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**

22.5.3 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 determination to arbitration

22.5.4 Where the adjudicator has not given a determination within the time period allowed or an 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 claimant

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

22.6 Where the dispute is referred to arbitration:

22.6.1 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

22.6.2 The resolution of the dispute shall commence anew

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

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

22.6.5 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

22.6.6 The arbitrator shall have the authority to finally determine the dispute including the power to make, open up and revise any certificate, 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

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

22.7 Where the body to nominate an adjudicator [CD] or an arbitrator [CD] is not specified the referring **party** shall be entitled to stipulate the body that is to nominate the adjudicator or the arbitrator binding the other **party** to accept such nomination

22.8 Notwithstanding the provisions relating to the resolution of a disagreement, adjudication or arbitration [22.5; 22.6], the **parties** may, by agreement and at any time, refer a dispute to mediation, in which event:

22.8.1 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

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

22.8.3 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

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

22.10 This clause [22.0] shall, to the extent necessary to fulfil its purpose, exist independently of this **agreement**

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AGREEMENT

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

The contracting **parties**

The **parties**	**Employer**	**Contractor**
Business name	South African Revenue Service	
Business type	Revenue Collection	
Business registration	N/A	
Tax number (VAT/GST)	N/A	
Contact person		
Telephone		
Mobile number		
E-mail		
Address: Building name	Lehae La SARS	
Address: Street	299 Bronkhorst Street	
Address: Suburb	Nieuw Muckleneuk	
Address: City	Pretoria	
Address: P O Box	Private Bag X923	
Address: Post Office	Nieuw Muckleneuk	
Address: Province	Gauteng	
Address: Country	South Africa	
Project name	Electrical Maintenance Services	
Project location	299 Bronkhorst Street, Nieuw Muckleneuk	
Currency	Rand	
Accepted **contract sum** including **tax**		
Accepted **contract sum** including **tax** in words		
Signed – who by signature hereto warrants authority		
Signed: Date		
Signed: Location		
Signed: Witness		
Name of witness		

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