



N/S Construction Guarantee

for use with the
JBCC Nominated/Selected Subcontract Agreement

GUARANTOR DETAILS AND DEFINITIONS

Guarantor means _____

Physical address _____

Guarantor's signatory 1 _____ Capacity _____

Guarantor's signatory 2 _____ Capacity _____

Contractor means _____

Subcontractor means _____

Principal Agent means _____

N/S Works means _____

Site means _____

Agreement means The JBCC Series 2000 Nominated/Selected Subcontract Agreement

Subcontract Sum means The accepted amount inclusive of tax of

Amount in words _____

Guaranteed Sum means the maximum aggregate amount of

Amount in words _____

N/S Construction Guarantee (*Insert Variable or Fixed*) (*Insert expiry date*)

AGREEMENT DETAILS

Sections: Total sections (*No or n/a*) Last section (*No / Identification or n/a*)

Contractor issues: Interim payment advices, Final payment advice

Principal Agent issues: Interim payment certificates, Final payment certificate, Practical completion certificate/s and Final completion certificate/s

1.0 VARIABLE N/S CONSTRUCTION GUARANTEE

1.1 Where a variable N/S Construction Guarantee in terms of the Agreement has been selected this 1.0 with 3.0 to 13.0 shall apply. The Guarantor's liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:

GUARANTOR'S LIABILITY

1.1.1 Maximum Guaranteed Sum (not exceeding 10.0% of the subcontract sum) in the amount of:

Amount in words: _____

1.1.2 Reducing to the Guaranteed Sum (not exceeding 6.0% of the subcontract sum) in the amount of:

Amount in words: _____

PERIOD OF LIABILITY

From and including the date of issue of this N/S Construction Guarantee and up to and including the date of the interim payment advice certifying in excess of 50% of the subcontract sum

From and including the day after the date of the aforesaid interim payment advice and up to and including the date of the only practical completion certificate or the last practical completion certificate where there are sections

- 1.1.3 Reducing to the Guaranteed Sum (not exceeding 4.0% of the subcontract sum) in the amount of: From and including the day after the date of the applicable practical completion certificate and up to and including the only or last final completion certificate

Amount in words: _____

- 1.1.4 Reducing to the Guaranteed Sum (not exceeding 2.0% of the subcontract sum) in the amount of: From and including the day after the date of the applicable final completion certificate and up to and including the date of the final payment advice where payment is due to the Subcontractor, whereupon this N/S Construction Guarantee shall expire. Where the final payment advice reflects payment due to the Contractor, this N/S Construction Guarantee shall expire upon payment of the full amount certified

Amount in words: _____

- 1.2 For avoidance of doubt the Guarantor's liability limits set out in 1.1.1 to 1.1.4 shall apply in respect of any claim received by the Guarantor during the period in question

2.0 FIXED N/S CONSTRUCTION GUARANTEE

- 2.1 Where a fixed N/S Construction Guarantee in terms of the Agreement has been selected this 2.0 with 3.0 to 13.0 shall apply. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum as follows:

GUARANTOR'S LIABILITY

Maximum Guaranteed Sum (not exceeding 5.0% of the subcontract sum) in the amount of:

PERIOD OF LIABILITY

From and including the date of issue of this N/S Construction Guarantee and up to and including the date of the last practical completion certificate and up to and including the only practical completion certificate or last practical completion certificate where there are sections upon which this N/S Construction Guarantee shall expire

Amount in words: _____

- 3.0 The Guarantor hereby acknowledges that:

- 3.1 Any reference in this Guarantee to the Agreement is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention whatsoever to create a suretyship

- 3.2 Its obligation under this Guarantee is restricted to the payment of money

- 4.0 Subject to the Guarantor's maximum liability referred to in 1.0 or 2.0, the Guarantor hereby undertakes to pay the Contractor the sum certified upon receipt of the documents identified in 4.1 to 4.3 below:

- 4.1 A copy of a first written demand issued by the Contractor to the Subcontractor stating that payment of a sum certified by the Contractor in an interim or final payment advice has not been made in terms of the Agreement and failing such payment within seven (7) calendar days, the Contractor intends to call upon the Guarantor to make payment in terms of 4.2

- 4.2 A first written demand issued by the Contractor to the Guarantor at the Guarantor's physical address with a copy to the Subcontractor stating that a period of seven (7) calendar days has elapsed since the first written demand in terms of 4.1 and that the sum certified has still not been paid therefore the Contractor calls up this N/S Construction Guarantee and demands payment of the sum certified from the Guarantor

- 4.3 A copy of the said payment advice which entitles the Contractor to receive payment in terms of the Agreement of the sum certified in 4.0

- 5.0 Subject to the Guarantor's maximum liability referred to in 1.0 or 2.0, the Guarantor undertakes to pay the Contractor the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand from the Contractor to the Guarantor at the Guarantor's physical address calling up this N/S Construction Guarantee stating that:

- 5.1 The Agreement has been cancelled due to the Subcontractor's default and that the N/S Construction Guarantee is called up in terms of 5.0. The demand shall enclose a copy of the notice of cancellation; or

- 5.2 A provisional sequestration or liquidation court order has been granted against the Subcontractor and that the N/S Construction Guarantee is called up in terms of 5.0. The demand shall enclose a copy of the court order

- 6.0 It is recorded that the aggregate amount of payments required to be made by the Guarantor in terms of 4.0 and 5.0 shall not exceed the Guarantor's maximum liability in terms of 1.0 or 2.0
- 7.0 Where the Guarantor is a registered insurer in terms of the Short-Term Insurance Act No 53 of 1998 and has made payment in terms of 5.0, the Contractor shall upon the date of issue of the final payment certificate submit an expense account to the Guarantor showing how all monies received in terms of the N/S Construction Guarantee have been expended and shall refund to the Guarantor any resulting surplus. All monies refunded to the Guarantor in terms of this N/S Construction Guarantee shall bear interest at the prime overdraft rate of the Contractor's bank compounded monthly and calculated from the date payment was made by the Guarantor to the Contractor until the date of refund
- 8.0 Payment by the Guarantor in terms of 4.0 or 5.0 shall be made within seven (7) calendar days upon receipt of the first written demand to the Guarantor
- 9.0 The Contractor shall have the absolute right to arrange his affairs with the Subcontractor in any manner which the Contractor deems fit and the Guarantor shall not have the right to claim his release from this N/S Construction Guarantee on account of any conduct alleged to be prejudicial to the Guarantor
- 10.0 The Guarantor chooses the physical address as stated above for all purposes in connection herewith
- 11.0 This N/S Construction Guarantee is neither negotiable nor transferable and shall expire in terms of either 1.1.4 or 2.1, or payment in full of the Guaranteed Sum or on the Guarantee expiry date, whichever is the earlier, where after no claims will be considered by the Guarantor. The original of this N/S Construction Guarantee shall be returned to the Guarantor after it has expired
- 12.0 This N/S Construction Guarantee, with the required demand notices in terms of 4.0 or 5.0, shall be regarded as a liquid document for the purpose of obtaining a court order
- 13.0 Where this Construction Guarantee is issued in the Republic of South Africa the Guarantor hereby consents in terms of Section 45 of the Magistrate's Courts Act No 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court of any district having jurisdiction in terms of Section 28 of the said Act, notwithstanding that the amount of the claim may exceed the jurisdiction of the Magistrate's Court

Signed at _____ Date _____

Guarantor's Signatory 1 _____ Guarantor's Signatory 2 _____

Witness _____ Witness _____

Guarantor's seal or stamp