



N/S SUBCONTRACT AGREEMENT

Project :

Contractor :

Subcontractor :

Contract Date :

File Code :



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The Joint Building Contracts Committee® - NPC Nominated /Selected Subcontract Agreement Edition 6.2 – May 2018

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

Nominated Selected Subcontract agreement structure

The JBCC® Nominated/Selected Subcontract Agreement replicates the JBCC® Principal Building Agreement with common clauses retaining the same numbering. The agreement clauses follow the project execution sequence. The documents set out clear, balanced and enforceable procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. The following additional documents form part of the suite of subcontract agreements:

- The JBCC® Nominated/Selected Subcontract Agreement - Contract Data that incorporates specific contractor and subcontractor requirements;
- The JBCC® General Preliminaries that generally covers all aspects of preliminaries for most types of projects;
- A comprehensive set of certificate forms and support documents for use in the administration of the agreement

Warning!

The JBCC® Principal Building Agreement Edition 6.2 has been coordinated with the JBCC® Nominated/Selected Subcontract Agreement Edition 6.2, the JBCC® General Preliminaries and the JBCC® certificate forms and support documents. Forms from previous editions are not compatible with this JBCC® Nominated/Selected Subcontract Agreement Edition 6.2

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 unintended results that may be prejudicial to either, or both, parties

Disclaimer

While the JBCC® aims to ensure that its publications represent best practice, it does not accept or assume any liability or responsibility for any events or consequences which derive from the use of the JBCC® documents

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Actions by the parties / principal agent within a given time

Clause	Time period	Action	Purpose
2.0	1 WD/7 CD	parties or principal agent	notices deemed to be received
6.4	5 WD	contractor > principal agent	non-performance of an agent i.t.o. this agreement
6.5	5 WD	employer	appoint another agent/contractor may object
7.2	to be agreed	subcontractor	submit design information, where applicable
10.3	as soon as possible	employer/contractor	proof/renewal of insurance – other party to accept
10.6	5 WD notice	subcontractor	failure to insure > suspension > expense and loss
11.2.1	20 WD	subcontractor	provide a replacement security
11.5.1	15 WD	contractor	provide guarantee for payment
11.5.2	20WD	contractor	provide a replacement security
11.6	10 WD	notice > contractor	no security, subcontractor notice to suspend works
11.8	10 WD	parties	return original/replacement security forms
12.3.2	15 WD	subcontractor	submit subcontract priced document
12.3.6	15 WD	subcontractor	submit subcontract works programme
12.4	10 WD	contractor>subcontractor	before construction equipment is to be removed
14.4.2	15 WD	contractor > subcontractor	submit specified guarantee for payment
14.4.5	date in agreement	contractor > subcontractor	payment
14.5	5 WD	subcontractor > employer	direct payment on default by contractor
15.4.2	15 WD	contractor > subcontractor	submit specified guarantee for payment
15.4.5	date in agreement	contractor > subcontractor	payment
15.5	5 WD	subcontractor > employer	direct payment on default by contractor
17.3	5 WD	subcontractor	carry out a contractor's instruction, where practical
18.2.2	5 WD	subcontractor > contractor	subcontract works ready for interim inspection
18.4	5 WD	subcontractor > contractor	no list for interim completion = deemed ...
21.3.1	10 WD	subcontractor > contractor	rectify items on extract from list for completion
21.3.2	5 WD notice	subcontractor > contractor	subcontract works ready for final inspection
21.5	5 WD notice	subcontractor > contractor	subcontract works ready for final completion
21.6	10 WD	contractor > subcontractor	list for final completion/certificate of final completion
21.7.3	5 WD	contractor > subcontractor	(updated) subcontract list for final completion
21.9	5+5 WD notice	principal agent > contractor	list for final completion after inspection
23.4.2*	15 WD notice	subcontractor > contractor	notice of a possible delay, no details yet
23.5	20 WD	subcontractor > contractor	delay ceased, details of delay and expenses
23.7	25 WD	contractor > subcontractor	assess claim – accept/reduce/reject
25.3	7 CD	contractor > subcontractor	issue subcontract payment advice
25.10	21 CD	contractor > subcontractor	make payment from date of payment certificate
25.13	5 WD	subcontractor > contractor	no/partial payment > suspend / demand from security, etc
25.14	30 CD	contractor > subcontractor	moratorium to pay subcontractor if contractor not been paid
25.16	7 CD	contractor > subcontractor	final payment advice after certificate of final completion
26.5*	15 WD notice	subcontractor > contractor	notice of possible expense and loss
26.6	20 WD	subcontractor > contractor	substantiated claim
26.7	20 WD	principal agent > subcontractor	assess claim – accept/reduce/reject
26.10	30 WD	principal agent > subcontractor	issue subcontract final account
26.11	20 WD	subcontractor > principal agent	accept subcontract final account
26.12	10 WD notice	subcontractor + principal agent	object to subcontract final account or deemed acceptance
26.13	7 CD	contractor > subcontractor	issue final subcontract payment advice
27.2.9	5 WD	contractor > subcontractor	remedy default before claiming expense and/or loss
28.1	5 WD notice	subcontractor > contractor	intention to suspend
29.2	5 WD	contractor > subcontractor	intention to terminate if defaults not remedied
29.3	forthwith	contractor > subcontractor	default not remedied, termination forthwith
29.15	10 WD	subcontractor > contractor	intention to terminate if defaults not remedied
29.17	forthwith	subcontractor > contractor	default not remedied, termination forthwith
29.21	10 WD	either party	intention to terminate > impossible to complete
29.24.3	10 WD	subcontractor	remove subcontract construction equipment
29.25.2	20 WD	PA, contractor and/or subcontractor	prepare status report
29.25.4	30 WD	principal agent + subcontractor	complete and agree final account
30.2	10 WD	either party	disagreement not resolved > dispute
30.3	10 WD	aggrieved party	appointment of adjudicator
30.6.4	10 WD	aggrieved party	notice of dissatisfaction with determination
30.6.5	15 WD	parties	adjudication failed – refer dispute to arbitration

Abbreviations: WD = working days, CD = calendar days, *no notice, forfeit the opportunity to claim

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NOMINATED / SELECTED SUBCONTRACT AGREEMENT

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ERRATA

Page 21 Cl 24.1: ... for damages damages ... for interim and or practical completion of...
 Cl 24.1.1: ... date of practical interim completion of ...
 Cl 24.2: ... such damages damages on ...

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**

BUDGETARY ALLOWANCE: An amount included in the **subcontract sum** for work intended for execution by the **subcontractor**, the extent of which is identified but not detailed

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**, or of a **section** thereof, was achieved

CERTIFICATE OF INTERIM COMPLETION: A certificate issued by the **contractor** to the **subcontractor** stating the date on which **interim completion** of the **subcontract works**, or of a **section** thereof, 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**, or of a **section** thereof, was achieved

COMPENSATORY INTEREST: Interest due to the **subcontractor** at the ruling rate of **interest** on amounts certified after thirty-one (31) **calendar days** of the date of **practical completion**, compounded monthly until the date of payment

CONSTRUCTION PERIOD: The period commencing on the intended date [PBA-CD] of possession of the **site** by the **contractor** and ending on the date of **practical completion**

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

CONTRACT DRAWINGS: The drawings listed [PBA-CD]

CONTRACTOR: The **party** contracting with the **subcontractor** for the execution of **subcontract works**

CONTRACTOR'S INSTRUCTION: A written instruction issued by or under the authority of the **contractor** to the **subcontractor** that may include drawings, photographs and other construction information

DAMAGES: Proven expense and/or loss that may be recovered by the **contractor** due to a breach of this **subcontract agreement** by the **subcontractor** or vice versa

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 **subcontract works** that does not conform to this **subcontract agreement** and/or **subcontract 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** contracting with the **contractor**

FINAL COMPLETION: The stage of completion as certified by the **principal agent** where the **works**, or a **section** thereof, 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** and 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 **contractor'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** and/or the **subcontractor** by the **employer** for inclusion in the **subcontract works** [CD]

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

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

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

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

INTERIM COMPLETION: The state of completion as certified by the **contractor** where the **subcontract works**, or a **section** thereof, is substantially complete

JBCC®: The Joint Building Contracts Committee® NPC

LATENT DEFECT: A **defect** that an inspection of the **subcontract works** by the **contractor**, the **principal agent** and/or **agents** would not reasonably 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 for completion** 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 INTERIM COMPLETION: A list that may include marked up drawings and photographs issued by the **contractor** after the inspection of the **subcontract works** for **interim completion**, where **interim completion** has not been achieved, listing the **defects** and/or outstanding work to be completed to achieve **interim 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 fabricated for inclusion in the **subcontract 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 outstanding **subcontract construction information** or where **suspension** or resumption of the **subcontract works** and/or termination of this **subcontract agreement** is contemplated

PARTY: The **contractor** or the **subcontractor** and 'parties' shall refer to both of them

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

[PBA-CD]: The notation used where project specific information is recorded in the Principal Building Agreement contract data

PENALTY: The stipulated amount per **calendar day** [PBA-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**, or a **section** thereof, 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 **subcontract priced document**

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

PRINCIPAL AGENT: The entity appointed by the **employer** with full authority and obligation to act in terms of the JBCC® Principal Building Agreement in conjunction with the **subcontract agreement**

PRINCIPAL BUILDING AGREEMENT: The JBCC® Principal Building Agreement recording the contract between the **employer** and the **contractor**

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

PROVISIONAL SUM: An amount included in the **subcontract sum** for the supply and installation of work by a subcontractor or a supplier

SECTION: An identified portion of the **works** for which **practical completion** is required by a date earlier than that required for the **works** as a whole [CD]

SECURITY: A monetary guarantee [CD] provided by the **contractor** to the **subcontractor**, or vice versa, in terms of this **subcontract agreement** 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** and/or the **contractor** and/or the **subcontractor** in the event of termination of the **principal building agreement** or the **subcontract agreement**, or where the **works** has been suspended due to a **force majeure** event, or in the event of termination of the **subcontract agreement** by the **contractor**, to record the state of completion or otherwise of the **works** or the **subcontract works**. Such **status report** may include marked up drawings and photographs

SUBCONTRACTOR: A nominated or a selected subcontractor appointed in terms of this **subcontract agreement** by the **contractor** in accordance with a **contract instruction** for the supply and installation of work for which a **provisional sum** has been included in the contract sum [PBA-CD]

SUBCONTRACT AGREEMENT: The completed JBCC® Nominated/Selected Subcontract Agreement and the completed JBCC® Nominated/Selected Subcontract Agreement Contract Data, the specification, the **subcontract drawings**, the **subcontract priced documents** and agreed special conditions between the **contractor** and the **subcontractor** used in conjunction with the JBCC® Principal Building Agreement

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

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

SUBCONTRACT CONSTRUCTION INFORMATION: All information issued by the **principal agent** and/ or **agents** including this **subcontract agreement**, specifications, drawings, schedules, **notices** and **contractor's instructions** required for the execution of the **subcontract works**

SUBCONTRACT CONSTRUCTION PERIOD: The period commencing on the intended date [CD] of access to the **subcontract works** and ending on the date of **interim completion**

SUBCONTRACT CONTRACT DATA: The document listing the subcontract project specific information

SUBCONTRACT DRAWINGS: The drawings listed [CD]

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

SUBCONTRACT PAYMENT ADVICE: A document issued at regular intervals [CD] by the **contractor** stating the amount due and payable by the **contractor** to the **subcontractor** or vice versa using the JBCC® Subcontract Payment Advice format

SUBCONTRACT PAYMENT NOTIFICATION: A document issued with each **payment certificate** by the **principal agent** stating the amount due and payable by the **contractor** to the **subcontractor** or vice versa using the **JBCC®** Subcontract Payment Notification format

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

SUBCONTRACT 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 **subcontractor** in conformity with the **contractor's programme**

SUBCONTRACT RECOVERY STATEMENT: The statement prepared and issued in conjunction with each **payment advice** by the **contractor** in terms of the **JBCC®** Subcontract Recovery Statement format

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

SUBCONTRACT VALUE: A monetary value initially equal to the **subcontract sum**, subject to adjustment in terms of this **subcontract agreement**

SUBCONTRACT WORKS: The extent of work to be executed by the **subcontractor** described in the **subcontract agreement** and **contractor's 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]

SUSPENSION: The temporary cessation of the **subcontract works** by the **contractor** or the **subcontractor**

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 **contractor's** annual holiday periods [CD]

WORKS: The extent of work to be executed in terms of the **JBCC®** Principal Building Agreement by the **contractor** described in the construction information 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 [PBA-CD]

1.2 Interpretation

- 1.2.1 In this document, unless inconsistent with the context, 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; 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

2.0 LAW, REGULATIONS AND NOTICES

- 2.1 The **subcontractor** shall comply with the **law** [CD], obtain permits, licences and approvals required and pay related charges for the execution of the **subcontract works** [17.1.4]. The **employer** shall comply with the **law** [CD], obtain permits, planning, building or similar permissions and pay charges for the **subcontract works** other than those which are the responsibility of the **subcontractor** [26.4.1]
- 2.2 All communication or **notices** between the **parties** shall be in the language of this **subcontract agreement** and in a format that can be read, copied and recorded
- 2.3 Legal processes arising out of or concerning this **subcontract agreement** may validly be delivered to and served on the **parties** at the physical address of the **parties** recorded in this **subcontract agreement**. Either **party** may, at any time, by **notice** to the other, change his physical address provided it is in the same country as the original address
- 2.4 **Notices** given in terms of this **subcontract 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 AND ACCEPTANCE

- 3.1 The objective of this **subcontract agreement** is the execution of and payment for the **subcontract works** for which there has been an offer by the **subcontractor** and an acceptance by the **contractor**
- 3.2 The currency applicable to this **subcontract agreement** is as recorded [CD]
- 3.3 This **subcontract agreement** shall come into force on the date of acceptance by the **subcontractor** and continue to be of force and effect until the end of the **latent defects** liability period [22.0] notwithstanding termination [29.0] or the certification of **final completion** [21.0] and final payment [25.0]
- 3.4 Should any provision of this **subcontract agreement** be unenforceable the **parties** shall act in good faith to agree alternative provisions in terms of this **subcontract agreement**
- 3.5 Failure or omission by a **party** to enforce any provision of this **subcontract 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

4.0 CESSION AND ASSIGNMENT

- 4.1 Neither **party** shall cede rights or assign rights and obligations under this **subcontract agreement** without the prior written consent of the other **party**, which consent shall not be unreasonably withheld
- 4.2 The **contractor** shall not consent to a nominated **subcontractor** ceding rights or assigning rights and obligations under this **subcontract agreement** without obtaining the prior written consent of the **principal agent**
- 4.3 Notwithstanding the above, where a **party** cedes any right to any monies due or to become due under this **subcontract agreement** as security in favour of a financial institution, consent shall not be required provided **notice** of such cession is timeously given to the other **party**

5.0 DOCUMENTS

- 5.1 Documents referred to in this **subcontract agreement** shall mean the current edition thereof with all amendments thereto as at the date of submission of the **subcontractor's** tender
- 5.2 The **parties** shall sign the original **subcontract agreement** and shall each be issued with a copy thereof by the **contractor**. The original signed **subcontract agreement** shall be held by the **contractor** [CD]
- 5.3 The **contractor** shall not add to, vary or alter any terms of the appointment, and/or the **subcontract agreement** without the written consent of the **principal agent**, which consent shall not be unreasonably withheld
- 5.4 Persons authorised to act on behalf of the **parties** and/or **agents** appointed by the **employer** shall be identified in the **subcontract construction information**. Such authorised person may be changed by **notice** to the other **party**
- 5.5 The **subcontract priced document** shall not be used as a specification of **materials and goods** or methods
- 5.6 The content of this **subcontract agreement** shall not be published or disclosed or used for any purpose other than that specified in this **subcontract agreement** by one **party** without the prior written consent of the other **party**
- 5.7 The **principal agent** and/or **agents** shall timeously provide the number of copies [CD] of drawings, un-priced **bills of quantities** and other **subcontract construction information** at no cost to the **subcontractor**

6.0 EMPLOYER'S AGENTS

- 6.1 The **employer** warrants that the **principal agent** has full authority and obligation to act on behalf of and bind the **employer** in terms of the **principal building agreement**. The **principal agent** has no authority to amend this **subcontract agreement**
- 6.2 The **employer** may appoint **agents** to deal with specific aspects of the **works** in terms of this **subcontract agreement** [CD]. The **principal agent** shall give **notice** to the **contractor** where such authority is delegated to **agents** to issue **contract instructions** and perform duties for specific aspects of the **works**. An **agent** appointed in terms of this clause shall not be entitled to sub-delegate his authority without the prior written consent of the **employer** and **notice** to the **contractor**

- 6.3 The **principal agent** and/or **agents** shall declare any interest or involvement in the **works** other than a professional interest, where applicable [CD]
- 6.4 Where the **principal agent** fails to act in terms of the **principal building agreement** and/or an **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** [28.0]
- 6.5 Where the **principal agent** and/or an **agent** fails to act or is unable to act or ceases to be the **principal agent** or an **agent** in terms of the **principal building agreement**, the **employer** shall appoint another **principal agent** and/or an **agent** within ten (10) **working days** of the date of such **notice** from the **contractor**. The **employer** shall not appoint a **principal agent** and/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
- 6.6 The **employer** shall not interfere with or prevent the **principal agent** and/or **agents** from exercising fair and reasonable judgement when performing their obligations in terms of the **principal building agreement**

7.0 DESIGN RESPONSIBILITY

- 7.1 Unless otherwise stated [CD], the **subcontractor** shall not be responsible for the design of the **subcontract works** other than the **subcontractor's** temporary works. The **subcontractor** shall not be responsible for the coordination of design elements
- 7.2 Where the **subcontractor** is appointed to design, supply and to install an element [CD]:
- 7.2.1 The **subcontractor** shall submit design documentation to suit dates in the **programme** to the **contractor** for review by the **principal agent** or relevant **agent** for conformity with this **subcontract agreement**
- 7.2.2 The **principal agent** and/or **agents** shall be responsible for review and coordination of design documentation [23.2.8]
- 7.2.3 The **subcontractor** indemnifies the **contractor** for consequences of such design and shall cede such indemnity, warranties, and other rights to the **employer** [9.1; 12.3.20 & 21]
- 7.2.4 The **subcontractor** shall provide proof of professional indemnity insurance, where required [CD] [10.1.5]

INSURANCES AND SECURITIES

8.0 SUBCONTRACT WORKS RISK

- 8.1 The **subcontractor** shall take full responsibility for the **subcontract works** for the duration of the **subcontract construction period**. On the date of issue of the **certificate of interim completion** or deemed achievement of **interim completion** of the **subcontract works** as a whole, or a **section** thereof, the responsibility for the **subcontract works** shall pass to the **contractor**
- 8.2 The **subcontractor** shall make good physical loss and repair damage to the **subcontract works** caused by or arising from:
- 8.2.1 Any cause arising before the date of **practical completion** [19.0]
- 8.2.2 Any act or omission of the **subcontractor** in the course of any work carried out in pursuance of the **subcontractor's** obligations after the date of **practical completion**
- 8.3 The liability of the **subcontractor** in respect of any loss or damage shall include, but not be limited to:
- 8.3.1 Physical loss and repairing damage to the **subcontract works** including clearing away and removing all debris and any other costs to reinstate the **subcontract works**
- 8.3.2 The new replacement value of **free issue** [12.1.10]
- 8.3.3 The cost of additional professional services
- 8.4 Notwithstanding sub-clause 8.3, the limit of the **subcontractor's** liability shall not exceed the amount of the contract works insurance [10.1.1] [CD]
- 8.5 The **subcontractor** shall not be liable for the cost of making good physical loss and repairing damage to the **subcontract works** caused by or arising from:

- 8.5.1 The use or occupation of any part of the **subcontract works** by the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 8.5.2 An act or omission of the **employer**, the **employer's** employees and/or **agents** and those for whose actions they are responsible
- 8.5.3 An act or omission by a **direct contractor**
- 8.5.4 The use or occupation of any part of the **works**
- 8.5.5 The design of the **subcontract works** for which the **subcontractor** is not responsible [7.2]
- 8.5.6 A **defect** in **free issue** or **materials and goods** specified by trade name where the **subcontractor** has no right of substitution. The **subcontractor** hereby cedes any right of action to the **employer** that may exist against the supplier and/or manufacturer of such **free issue**, and/or **materials and goods**
- 8.5.7 **Force majeure**
- 8.6 Where the **subcontractor** is not liable for the cost of making good physical loss or repairing damage [8.5] such making good and/or expense and/or loss shall be measured and valued and included in the **subcontract value** by the **principal agent** [17.1.10]
- 8.7 The **subcontractor** shall immediately give **notice** to the **contractor** with a copy to the **principal agent** on becoming aware of physical loss or damage to the **subcontract works**

9.0 INDEMNITIES

- 9.1 The **subcontractor** indemnifies and holds harmless the **contractor**, the **contractor's subcontractors**, the **contractor's** employees, the **employer**, the **employer's** employees and/or **agents** from all claims or proceedings for damages, expenses and/or loss including legal fees and expenses in respect of or arising from:
 - 9.1.1 Death or bodily injury or illness of any person or physical loss or damage to any property other than the **subcontract works** arising out of or due to the execution of the **subcontract works** or presence on and/or occupation of the **site** by the **subcontractor**. Should such an event occur, the **subcontractor** shall forthwith give **notice** to the **contractor** with a copy to the **principal agent**
 - 9.1.2 Non-compliance by the **subcontractor** with the **law**, regulation or bylaw of any local or other authority and the failure by the **subcontractor** to obtain any permit, licence or approval that the **subcontractor** is required to obtain in terms of this **subcontract agreement** [2.1]
 - 9.1.3 Physical loss or damage caused by the **subcontractor** to **construction equipment** or other property belonging to the **contractor** and/or the **contractor's** subcontractors but excluding **direct contractors'** equipment or property
- 9.2 The **contractor** and the **employer** indemnify and hold the **subcontractor** harmless from all claims or proceedings for damages, expense and/or loss including legal fees and expenses in respect of or arising from:
 - 9.2.1 An act or omission of the **contractor** and/or the **contractor's** employees and the **employer** and/or the **employer's** employees and/or **agents** and those for whose actions they are responsible
 - 9.2.2 An act or omission of a **direct contractor** [PBA -16.0]
 - 9.2.3 Design of the **subcontract works** [7.1] where the **subcontractor** is not responsible for such design
 - 9.2.4 The use or occupation of any part of the **works** by the **employer**, tenants, **direct contractors** or others authorised by the **employer**
 - 9.2.5 Proceeding with the **subcontract works** on instruction from the **contractor** and/or the **employer** without the **employer** obtaining the required permission under the **law** in terms of this **subcontract agreement** [2.1]
 - 9.2.6 Interference with any servitude or other right not recorded in **subcontract construction information** issued to the **subcontractor** that is the unavoidable result of the execution of the **subcontract works** including the removal of or weakening of or interference with the support of land and property adjacent to or within the **site** unless resulting from any negligent act or omission by the **subcontractor** or his subcontractors. Should such an event occur, the **subcontractor** shall forthwith give **notice** to the **contractor** with a copy to the **principal agent**
 - 9.2.7 Physical loss or damage to an existing structure and the contents thereof where this **subcontract agreement** is for alterations or additions to an existing structure [CD]. Should such an event occur, the **subcontractor** shall forthwith give **notice** to the **contractor** with a copy to the **principal agent**

- 9.2.8 A **defect** in **free issue** [CD]
- 9.2.9 Physical loss or damage to the **works** where a **certificate of practical completion** has been issued [19.0] or **practical completion** has been deemed to have been achieved

10.0 INSURANCES

- 10.1 The **employer** and/or the **contractor** [PBA-CD] shall effect the respective insurances [CD] and keep in force in their joint names from the date of possession of the **site** until the issue of the **certificate of practical completion** with an extension to cover the **contractor's** obligations after the date of **practical completion** [8.2.2]:
- 10.1.1 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, clearing away and removing of all debris and any other costs to reinstate the **works** and where required, damage to **employer** owned surrounding property [CD] where not covered under the removal of lateral support insurance
- 10.1.2 Supplementary insurance [CD] for the **works** against loss or damage caused by civil commotion, riot, strike, labour disturbance and lockout to the extent not insured under the contract works insurance
- 10.1.3 Public liability insurance [CD] providing indemnity in respect of accidental death of or injury to any person and accidental loss of or physical damage to tangible property, to remain in force until the date of **final completion**
- 10.1.4 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** (also 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 existing property that form part of the **works** and/or the **site**
- 10.1.5 Other insurances [CD]
- 10.2 Where **practical completion** in **sections** is required [20.0], where the **works** is for alterations and additions, the **employer** shall effect and keep in force contract works insurance [10.1.1], supplementary insurance [10.1.2], public liability insurance [10.1.3] and where applicable, removal of lateral support insurance [10.1.4] and other insurances [10.1.5] in the joint names of the **employer** and the **contractor** until the date of **final completion**
- 10.3 The **employer** or the **contractor** shall provide proof of the insurances effected [10.1.1-5; 10.2] to the other party before the commencement of the **construction period** and, where required, provide proof of extension or renewal of such insurances before their expiry. Upon request the party responsible for effecting insurances shall provide the other party with the entire policy wording of such insurances
- 10.4 The **subcontractor** shall be responsible for the deductible amounts [CD] where an action or inaction by the **subcontractor** is the cause of a claim
- 10.5 The **employer** may, at his expense, require the cover of the contract works insurance [10.1.1] to be increased. The party responsible for effecting insurances shall provide written proof of such adjustment
- 10.6 Where the **employer** or the **contractor** fails to effect the required insurances the **subcontractor** may give five (5) **working days notice** to the **contractor** to comply failing which the **subcontractor** may suspend the **subcontract works** [28.1.4]
- 10.7 Where this **subcontract agreement** is terminated [29.0] and the **contractor** and/or the **subcontractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of an insurance claim shall vest solely in the **employer**. The party responsible for the insurances shall give **notice** to the insurer to clarify the status of the insurance cover and/or further insurance obligations applicable to the **works**, public liability insurance, supplementary insurance and removal of lateral support insurance
- 10.8 Any amounts not recovered from insurers shall be borne by the **employer** or **contractor** in accordance with their respective obligations under this **agreement**
- 10.9 The **employer** or the **contractor** shall keep insurers informed of any relevant changes in respect of this **subcontract agreement**
- 10.10 The **employer** or the **contractor** shall at their discretion effect insurances for aspects not insured such as **construction equipment** and work by **direct contractors** after **practical completion**

11.0 SECURITIES

- 11.1 The **subcontractor** shall provide to the **contractor** a **guarantee for construction** within fifteen (15) **working days** of acceptance of the **subcontractor's** tender and choose:

- 11.1.1 A **guarantee for construction** – (variable) initially equal to ten per cent (10%) of the **subcontract sum** and keep such **security** valid and enforceable until the final **payment advice** has been issued to the **subcontractor** [25.15]
- or ...
- 11.1.2 A **guarantee for construction** - (fixed) equal to five per cent (5%) of the **subcontract sum** and a payment reduction of five per cent (5%) of the value of each **subcontract payment advice** up to a maximum of five per cent (5%) of the **subcontract sum** [25.3.3; 25.12]. The **subcontractor** shall keep such **security** valid and enforceable until the only or last **certificate of practical completion** has been issued
- 11.2 The **subcontractor** shall:
- 11.2.1 Maintain and/or replace a **guarantee for construction** - (variable or fixed) [11.1.1-2] at least twenty (20) **working days** before such **security** is due to expire
- 11.2.2 Provide a **guarantee for advance payment** where an advance payment is required. The **subcontractor** shall keep such **security** valid and enforceable until the advance payment is repaid [11.3]
- 11.3 The amount of the **guarantee for advance payment** shall be reduced by the amount repaid by the **subcontractor** as certified by the **principal agent** in the **subcontract payment notification** format. If the advance payment is not repaid by the date a **certificate of practical completion** is issued or deemed achievement of **practical completion** or by the date of termination by the **employer** due to **contractor** default [PBA 29.9.3], the entire outstanding amount shall immediately become due and payable
- 11.4 Where the **subcontractor** fails to provide the specified **guarantee for construction** the **contractor** may:
- 11.4.1 Give access to the **subcontract works** to the **subcontractor** and withhold an amount in **payment advices** until the total amount withheld is equal to ten per cent (10%) of the **subcontract sum**. The amount withheld shall be reduced at **practical completion** [19.0] to two and one half per cent (2.5%) of the **subcontract sum** and to zero per cent (0%) in the **final payment advice** [25.9]
- or
- 11.4.2 Terminate this **subcontract agreement** [29.1.1; 29.2]
- 11.5 The **contractor** shall:
- 11.5.1 Provide to the **subcontractor** a **guarantee for payment** equal to ten per cent (10%) of the **subcontract sum** where required in the accepted tender [CD] within fifteen (15) **working days** of acceptance of the **subcontractor's** tender
- 11.5.2 Keep such **guarantee for payment** valid and enforceable in terms of the **security** form and/or provide a replacement **guarantee for payment** at least twenty (20) **working days** before such **security** is due to expire
- 11.6 Where the **contractor** fails to provide a **guarantee for payment** [CD], or such **security** has expired, the **subcontractor** may, after giving ten (10) **working days** notice, where such default has not been remedied, forthwith suspend the **subcontract works** until such **security** has been provided [28.1.1] or by further **notice** terminate this **subcontract agreement** [29.14.2; 29.15]
- 11.7 Where the **subcontract value** exceeds the **subcontract sum** by more than ten per cent (10%) the applicable **security** shall be adjusted at the **employer's** expense. The **party** responsible for adjusting the **security** value shall provide written proof of such adjustment
- 11.8 The original or the replacement **security** form(s) shall be returned to the other **party** within ten (10) **working days** after the expiry date
- 11.9 Where a **party** makes an unjustified call on a **security**, the amount paid and **default interest** shall be paid to the other **party** [27.1.2; 27.1.5]

EXECUTION

12.0 OBLIGATIONS OF THE PARTIES

- 12.1 The **employer** shall in terms of the JBCC® Principal Building Agreement:
- 12.1.1 Provide a **guarantee for payment** to the **contractor**, where applicable

- 12.1.2 Record specific requirements where the existing premises will be in use and occupied during the execution of the **works** including restriction of working hours
- 12.1.3 Record and describe relevant natural features and known services 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
- 12.1.5 Give possession of the **site** to the **contractor** on the agreed date
- 12.1.6 Effect and keep in force insurances in the joint names of the **parties**, where the **employer** is responsible for providing insurances
- 12.1.7 Make payments by the due date
- 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
- 12.1.10 Supply **free issue** to suit the **programme**
- 12.1.11 Define the extent of work to be carried out by a **direct contractor**
- 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 **subcontract payment advice** after **notice** of default by a **subcontractor** to the **principal agent**, the **employer** and the **contractor**
- 12.2 The **contractor** shall:
 - 12.2.1 Appoint the **subcontractor** in terms of the **subcontract agreement** on receipt of a **contract instruction** to do so from the **principal agent**
 - 12.2.2 Provide a **guarantee for payment** to the **subcontractor** [11.5], where applicable
 - 12.2.3 Define any restrictions to the **site** or areas that the **subcontractor** may not occupy [CD]
 - 12.2.4 List statutory and other **notices** the **subcontractor** must submit and/or comply with before access to the **site** can be given
 - 12.2.5 Give access to the **subcontract works** on the agreed date [CD]
 - 12.2.6 Effect and keep in force insurances in terms of the JBCC® Principal Building Agreement where the **contractor** is responsible for providing insurance [10.0] [PBA-CD]
 - 12.2.7 Issue to the **subcontractor** a **subcontract recovery statement** and a **subcontract payment advice** using information issued by the **principal agent** following every interim **payment certificate** and the **final payment certificate**
 - 12.2.8 Make payment by the due date [25.10] [CD]
 - 12.2.9 Make advance payments, where specified [CD]
 - 12.2.10 Designate an area for the **subcontractor** to establish temporary site facilities
 - 12.2.11 Allow the use of personnel welfare facilities, where provided
 - 12.2.12 Provide water, lighting and single phase electric power to a position within 50m of the place where the **subcontract works** is to be carried out, other than fuel or power for commissioning of any installation
 - 12.2.13 Permit the **subcontractor** to use erected scaffolding, hoisting facilities, etc provided by the **contractor**, in common with others having the like right while it remains erected on the **site**
 - 12.2.14 Arrange with the **employer** to permit the **subcontractor** reasonable access to the **subcontract works**, or a **section** thereof, subsequent to **practical completion** to fulfil outstanding obligations
 - 12.2.15 Hold regular meetings with the **subcontractor** to monitor progress of the works, and to deal with technical and coordination matters. The **contractor** shall record and promptly distribute the minutes of such meetings

- 12.2.16 Facilitate the timeous acceptance by the **principal agent** and/or **agents** of a design proposal and/or a method statement where a **subcontractor** is appointed for the design, supply and installation of an element [7.2]
- 12.2.17 Issue a **certificate of interim completion** where the **subcontract works** has reached the specified standard of completion, on application by the **subcontractor** [18.0]
- 12.2.18 Regularly update the **programme** to illustrate progress of the **subcontract works**, and revise the **programme** where the **principal agent** has revised the date for **practical completion**
- 12.2.19 Inform the **subcontractor** of progress and/or the result where a revision of the date of **practical completion** or an adjustment of the **contract value** has been applied for in terms of the **principal building agreement**
- 12.2.20 Issue **contractor's instructions** to the **subcontractor** [17.0]
- 12.2.21 Appoint another **subcontractor** on instruction from the **principal agent** where the nominated **subcontractor** fails to execute the **subcontract works** in accordance with the **subcontract agreement** and/or the **programme**, and recover expense and/or loss so incurred [14.7; 27.2.6]
- 12.2.22 Appoint another **subcontractor** where the selected **subcontractor** fails to execute the **subcontract works** in accordance with this **subcontract agreement** and/or the **programme**
- 12.3 The **subcontractor** shall:
 - 12.3.1 Have inspected the **site** and any existing structures and be thoroughly acquainted with the conditions under which the **subcontract works** is to be executed including means of access and any matters which may influence the execution and/or the pricing of the **subcontract works**
 - 12.3.2 Within fifteen (15) **working days** of acceptance of the **subcontractor's** tender submit to the **contractor** who in turn shall submit to the **principal agent** the **subcontract priced document** with items priced to include all costs, overheads and profit, extended and cast. Where the **subcontract priced document** contains errors or discrepancies and/or prices considered by the **principal agent** to be imbalanced or unreasonable the **principal agent** and the **subcontractor** shall adjust such items without any change to the **subcontract contract sum**
 - 12.3.3 Provide a **guarantee for construction** [11.1; 11.2.1]
 - 12.3.4 Provide a **guarantee for advance payment** in favour of the **employer** [11.2.2], where applicable [CD]
 - 12.3.5 Be entitled to request proof of insurances [10.0]
 - 12.3.6 Prepare and submit to the **contractor** within fifteen (15) **working days** of receipt of **subcontract construction information** a **subcontract programme** in sufficient detail to enable the **contractor** to monitor the progress of the **subcontract works**
 - 12.3.7 On being given access to the **subcontract works** area commence the **subcontract works** and proceed with due diligence, regularity, expedition, skill and appropriate resources to bring the **subcontract works** to **interim, practical and final completion**
 - 12.3.8 Provide everything necessary for the proper execution of the **subcontract works** in compliance with this **subcontract agreement**
 - 12.3.9 Coordinate the **subcontract programme** with the **contractor's** programme
 - 12.3.10 Regularly update the **subcontract programme** to illustrate progress of the **subcontract works** and revise the **subcontract programme** where the **principal agent** has revised the date for **practical completion**
 - 12.3.11 Regularly submit to the **contractor** a progress report and a schedule of outstanding **subcontract construction information** to avoid delays to the **subcontract works**
 - 12.3.12 Cooperate with the **contractor** in the preparation of the **subcontractor's** claim for **payment** and cash flow projections
 - 12.3.13 Designate a competent person to continuously administer and control the **subcontract works** and to receive and implement **contractor's instructions** on behalf of the **subcontractor**
 - 12.3.14 Maintain daily records of categories of persons and **construction equipment** employed on the **subcontract works** and regularly provide copies to the **contractor**
 - 12.3.15 Keep on **site** a copy of all **subcontract construction information** required for execution of the **subcontract works** to which the **contractor, principal agent** and/or **agents** shall have reasonable access

- 12.3.16 Allow the **contractor, employer, principal agent** and/or **agents** reasonable access to the **subcontract works**, workshops and other places where work is being prepared, executed and/or stored
- 12.3.17 Give **notice** forthwith to the **contractor**, 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
- 12.3.18 Where not provided by the **contractor** [CD], provide, maintain and remove on **interim completion** temporary structures, **subcontract construction equipment** and notice boards
- 12.3.19 On achievement of **interim completion** hand over to the **contractor** 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
- 12.3.20 Cede to the **employer** on the date of issue of the **certificate of final completion** any guarantees, product warranties or indemnities pertaining to the **subcontract works**. This cession shall not prejudice any other rights that the **employer** may have
- 12.3.21 Regularly clear away all rubbish and **materials and goods** surplus to the **subcontract works**
- 12.3.22 Where applicable, submit **subcontract** design information [7.2] [CD] in terms of the **programme** to the **contractor** for submission to the **principal agent** and/or **agents** for approval
- 12.3.23 Provide consumables for commissioning
- 12.3.24 Be subject to reasonable control by the **contractor** [2.1]
- 12.4 The **contractor** shall give **notice** to the **subcontractor** ten (10) **working days** before temporary structures and other **construction equipment** is due to be removed defining the cost to the **subcontractor** for each additional **calendar day** that such equipment remains on **site**
- 12.5 The **contractor, agents** and the **subcontractor(s)** shall hold regular meetings to monitor progress of the **subcontract works** and to deal with technical and coordination matters. The **contractor** shall record and timeously distribute the minutes of such meetings

13.0 SETTING OUT

- 13.1 The **contractor** and/or an **agent** with delegated authority shall:
 - 13.1.1 Point out boundary pegs or beacons identifying the **subcontract works** and the datum level
 - 13.1.2 Define the setting out points and levels required for the execution of the **subcontract works**
- 13.2 The **subcontractor** shall:
 - 13.2.1 Be responsible for accurate setting out of the **subcontract works** within 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 used to set out the **subcontract works** 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 **subcontractor**. In such event the **subcontractor** may be entitled to a revision of the date for **interim completion** and/or an adjustment of the **subcontract 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 **contractor**, with a copy to the **principal agent**, who shall issue a **contractor's instruction** on how to proceed with the **subcontract 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 this **subcontract 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** [PBA 17.1.14] to appoint such **subcontractor** as a nominated **subcontractor** in terms of this **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 [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 **subcontract agreement** and/or to comply with other tender requirements
 - 14.2.3 Who has failed to provide a required **security**
- 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 the **contractor** shall:
 - 14.4.1 Appoint the **subcontractor** as a nominated **subcontractor** in accordance with a **contract instruction** issued by the **principal agent** [PBA 17.1.14] and forward a copy of the signed **subcontract agreement** to the **principal agent**
 - 14.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** [11.5.1] of such appointment, where required in the **subcontract agreement** [CD]
 - 14.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agents** for inclusion in the **contractor's** payment claim
 - 14.4.4 Issue to each **subcontractor** (with a copy to the **principal agent**) a **subcontract payment advice** and a **subcontract recovery statement** to reconcile the amount due for payment with the amount stated in the **subcontract payment notification** issued by the **principal agent**
 - 14.4.5 Pay the **subcontractor** the amount certified by the date stated [25.10]
- 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** [PBA 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 this **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 this **subcontract agreement** should such default continue for five (5) **working days** after such **notice** [PBA 17.1.15]
- 14.7 Where a **subcontract agreement** with a nominated **subcontractor** is terminated:
 - 14.7.1 Due to default or insolvency of the **subcontractor** [23.2.10], or the 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 the **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 this **subcontract agreement** for work intended to be executed by a selected **subcontractor**. Such preparation shall be carried out in consultation with and to the reasonable approval of the **contractor**
- 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 this **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 [CD]
- 15.2 The **contractor** may refuse to appoint such **subcontractor**:
 - 15.2.1 Who refuses to enter into a **subcontract agreement** and/or to comply with other tender requirements
 - 15.2.2 Who has failed to provide a required **security**
 - 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 be 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** [PBA 17.1.14] the **contractor** shall:
 - 15.4.1 Appoint the **subcontractor** as a selected **subcontractor** and forward a copy of the signed **subcontract agreement** to the **principal agent**
 - 15.4.2 Provide a **guarantee for payment** in the amount stated within fifteen (15) **working days** [11.5.1] of such appointment, where required in the **subcontract agreement** [CD]
 - 15.4.3 Forward the **subcontractor's** regular payment claims to the **principal agent** and/or **agents** for inclusion in the **contractor's** payment claim
 - 15.4.4 Issue to each **subcontractor** with a copy to the **principal agent** a **subcontract payment advice** and a **subcontract recovery statement** to reconcile the amount due for payment with the amount stated in the **subcontract payment notification** issued by the **principal agent**
 - 15.4.5 Pay the **subcontractor** the amount certified by the date stated [25.10]
- 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** [PBA 27.2.7]
- 15.6 Where the selected **subcontractor** is in default of a material term of this **subcontract agreement** the decision of whether or not to terminate this **subcontract agreement** is that of the **contractor**
- 15.7 Where a **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 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 COOPERATION WITH OTHER CONTRACTORS

- 16.1 The **subcontractor** shall cooperate with other contractors engaged on the **works** and with **direct contractors**. The **subcontractor** shall permit work to be executed and installed in the **subcontract works** by others

- 16.2 Where other contractors cause the **subcontractor** expense and/or loss for which no provision was required to be made in the **subcontract sum**, such expense and/or loss may be claimed as an adjustment to the **subcontract value** [26.5]

17.0 CONTRACTOR'S INSTRUCTIONS

- 17.1 The **contractor** may issue **contractor's instructions** to the **subcontractor** regarding:
- 17.1.1 Rectification of discrepancies, errors in description or quantity or omission of items in the **subcontract agreement** other than in the **JBCC® Nominated/Selected Subcontract Agreement**
 - 17.1.2 Alteration to design, standards or quantity of the **subcontract works** provided that such **contractor's instructions** shall not substantially change the extent of the **subcontract 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 **subcontract 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 **subcontract works**
 - 17.1.10 Making good physical loss and repairing damage to the **subcontract works** [23.2.2]
 - 17.1.11 Rectification of **defects** [21.2]
 - 17.1.12 A **list for interim completion** specifying outstanding or defective work to be rectified to achieve **interim completion** and extracts from the **list for practical completion**, the **list for completion** and the **list for final completion** specifying outstanding or defective work to be rectified to achieve **final completion**
 - 17.1.13 Expenditure of **budgetary allowances** and **prime cost amounts** and **provisional sums**
 - 17.1.14 Suspension of the **subcontract works** where the **works** is suspended
 - 17.1.15 No clause (PBA = termination of the **subcontract agreement**)
 - 17.1.16 Work by **direct contractors** [PBA 16.0]
 - 17.1.17 Access by others or previous contractors and **subcontractors** to remedy defective work
 - 17.1.18 Removal from the **site** of any person employed on the **subcontract works**
 - 17.1.19 No clause (PBA = removal from the **site** of any person not connected with the **contract works**)
 - 17.1.20 On **suspension** or termination, protection of the **subcontract works**, removal of **subcontract construction equipment** and surplus **materials and goods** [29.0]
 - 17.2 The **subcontractor** shall comply with and duly execute all **contractor's instructions**
 - 17.3 Should the **subcontractor** fail to proceed with a **contractor's instruction** with due diligence, the **contractor** may give **notice** to the **subcontractor** to proceed within five (5) **working days** of receipt of such **notice**. Where the **subcontractor** remains in default, the **contractor** may engage others to carry out such **contractor's instruction** and may recover expense and/or loss incurred [27.2.3]
 - 17.4 The **subcontractor** shall not be obliged to execute **contractor's 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



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COMPLETION

18.0 INTERIM COMPLETION

- 18.1 The **contractor**, in consultation with the **principal agent** and/or applicable **agent**, shall:
- 18.1.1 Inspect the **subcontract works** at appropriate intervals to give the **subcontractor** interpretations and direction on the standard of work and the state of completion of the **subcontract works** required of the **subcontractor** to achieve **interim completion** [CD]
- 18.1.2 Issue a **contractor's instruction** [17.1] consequent on each such inspection, where necessary
- 18.2 The **subcontractor** shall:
- 18.2.1 Inspect the **subcontract works** in advance of the anticipated date for **interim completion** to confirm that the standard of work required and the state of completion of the **subcontract works** for **interim completion** [CD] has been achieved
- 18.2.2 Give at least five (5) **working days notice** to the **contractor** of the anticipated date for the inspection for **interim completion** of the **subcontract works** to meet the anticipated date for **interim completion**
- 18.3 The **contractor** shall inspect the **subcontract works**, or a **section** thereof, within the period stated [CD] and forthwith issue to the **subcontractor**:
- 18.3.1 A **list for interim completion** [17.1.12] to the **subcontractor** where the **subcontract works** has not reached **interim completion** specifying the **defects** to be rectified and work to be attended to to achieve **interim completion**
- or ...
- 18.3.2 A **certificate of interim completion** to the **subcontractor** with a copy to the **principal agent** and/or **agents** stating the date on which **interim completion** of the **subcontract works**, or a **section** thereof, was achieved
- 18.4 Should the **contractor** not issue a **list for interim completion** or the updated list within five (5) **working days** after the inspection period, or the **certificate of interim completion** [18.3.1-2] the **subcontractor** shall forthwith give **notice** to the **contractor** and the **principal agent** and/or **agent**. Should the **contractor** not issue such list within a further five (5) **working days** of receipt of such **notice**, **interim completion** shall be deemed to have been achieved on the initial/revised date of such **notice** and the **contractor** shall issue the **certificate of interim completion** forthwith
- 18.5 On achievement of **interim completion** the **subcontractor** shall hand over to the **contractor** all operating and instruction manuals, product guarantees and information for the preparation of 'as built' documentation by the **principal agent** and/or **agent** and applicable statutory/regulatory approval certificates
- 18.6 Where the **subcontract works** or a portion thereof includes mechanical and/or electrical systems that are put to use for the convenience of the **contractor** with the permission of the **subcontractor**, the guarantee period for such systems shall commence on the date of **practical completion** [19.0]

19.0 PRACTICAL COMPLETION

- 19.1 The **principal agent** shall:
- 19.1.1 Give direction to the **contractor** on the standard of work and the state of completion of the **works** required of the **subcontractor** to achieve **practical completion**
- 19.1.2 Give **notice** to the **contractor** who shall give **notice** to the **subcontractor** where **practical completion** has not been achieved and issue the **list for practical completion** applicable to the **subcontract works** specifying defective work and work required to be attended to by the **subcontractor**
- 19.1.3 Give **notice** to the **contractor** who shall give **notice** to the **subcontractor** where the **certificate of practical completion** has been issued and issue the **list for completion** applicable to the **subcontract works** specifying defective work and work required to be attended to by the **subcontractor**
- 19.2 The **subcontractor** shall timeously complete items on the **list for practical completion** and give **notice** to the **contractor** to inspect the **subcontract works** until the **certificate of practical completion** is issued
- 19.3 On **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 **subcontract works** as a whole shall apply to each **section**
- 20.2 The **contractor** shall for each **section**:
 - 20.2.1 Issue a **certificate of interim completion** [18.3.2]
 - 20.2.2 Inform the **subcontractor** of the date when **practical completion** was achieved [19.2]
 - 20.2.3 Inform the **subcontractor** of the date when **final completion** was achieved [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** or when work on the **list for completion** has been satisfactorily attended to [21.5], whichever is the later
- 21.2 Where **defects** become apparent during the defects liability period the **principal agent** may instruct the **contractor** [PBA 17.1.11] and/or the **subcontractor** [17.1.11] to progressively attend to such items, whilst at all times minimising inconvenience to the occupants
- 21.3 The **subcontractor** shall:
 - 21.3.1 Inspect and forthwith rectify items on the **list for completion** applicable to the **subcontract works** no later than ten (10) **working days** before the expiry of the defects liability period
 - 21.3.2 Give **notice** to the **contractor** and/or **agent** to inspect the **subcontract works** within five (5) **working days** of receipt of such **notice**
- 21.4 Where applicable items on the **list for completion** have not been attended to the **contractor** shall give **notice** to the **subcontractor** 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 **subcontractor** shall give **notice** to the **contractor** when the outstanding items on the **list for completion** have been attended to. The **contractor** and/or the **principal agent** and/or the **agent** shall inspect the **subcontract 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 on **notice** from the **subcontractor** that applicable items on the **list for completion** have been attended to, whichever is the later, the **contractor** shall inspect the **subcontract works** and within ten (10) **working days** either:
 - 21.6.1 Issue the **list for final completion** applicable to the **subcontract works**
or ...
 - 21.6.2 Inform the **subcontractor** when the **certificate of final completion** has been issued
- 21.7 Where the **contractor** issues the **list for final completion** applicable to the **subcontract works**:
 - 21.7.1 The **subcontractor** shall forthwith complete all outstanding work and rectify all the **defects**
 - 21.7.2 The **subcontractor** shall give **notice** to the **contractor** when all outstanding work has been completed and all the **defects** have been rectified
 - 21.7.3 The **contractor** shall, within five (5) **working days** of receipt of the **subcontractor's notice(s)** [21.7.2] give **notice** to the **subcontractor** 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 **contractor** gives **notice** to the **subcontractor** of items on the **list for final completion** or an updated **list for final completion** that are required to be completed by the **subcontractor**, the **subcontractor** shall promptly attend to and complete such items and give **notice** to the **contractor** when all such items have been completed. The process shall be repeated until the **certificate of final completion** is issued. The **contractor** shall give **notice** to the **subcontractor** when the **certificate of final completion** is issued

- 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, [21.4] 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 **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
- 21.12 A **certificate of final completion** shall be conclusive as to the sufficiency of the **works** and that the **subcontractor's** obligations [12.3.7] have been fulfilled other than for **latent defects**

22.0 LATENT DEFECTS LIABILITY PERIOD

- 22.1 The latent defects liability period for the **subcontract 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 **subcontractor** 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 **subcontract 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 **subcontract works** only
or ...
- 22.3.2 On the date of termination where execution of the **subcontract works** has become impossible due to circumstances beyond the control of either **party** [29.20], or due to default by the **contractor**, the **employer** or the **principal agent** and/or **agents** [29.17.3; 29.23]

23.0 REVISION OF DATE FOR INTERIM COMPLETION

- 23.1 The **subcontractor** is entitled to a revision of the date for **interim completion** by the **contractor** without an adjustment of the **subcontract value** for a delay to **interim 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 **subcontractor** has taken reasonable steps to avoid or reduce such a delay
- 23.1.3 Making good physical loss and repairing damage to the **subcontract 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 **subcontractor** 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 **subcontractor** is entitled to a revision of the date for **interim completion** by the **contractor** with an adjustment of the **subcontract value** [26.7] by the **principal agent** for a delay to **interim completion** caused by one or more of the following events:
- 23.2.1 Delayed access to the **subcontract works** [12.2.5; 12.3.7]

- 23.2.2 Making good physical loss and repairing damage to the **subcontract works** [8.5] where the **subcontractor** is not at risk
- 23.2.3 **Contractor's instructions** [17.1-2] not occasioned by the **subcontractor's** default
- 23.2.4 Opening up and testing of work and **materials and goods** where such work is in accordance with this **subcontract agreement** [17.1.6]
- 23.2.5 Late or incorrect issue of **subcontract construction information**
- 23.2.6 Late supply of **free issue, materials and goods** for which the **employer** is responsible [12.1.10]
- 23.2.7 No clause (PBA = late appointment of a **subcontractor**)
- 23.2.8 Late acceptance by the **principal agent** and/or **agents** of a design undertaken by a **subcontractor** where the **subcontractor's** obligations have been met [7.2]
- 23.2.9 An act or omission by a nominated **subcontractor** [14.0] or a **direct contractor** [16.0]
- 23.2.10 No clause (PBA = insolvency of a nominated **subcontractor**)
- 23.2.11 **Suspension** or termination of this **subcontract agreement** by the **subcontractor** due to default by the **contractor**, the **employer** or the **principal agent** and/or **agents** [14.7.2]
- 23.2.12 Execution of additional work for which the quantity in the **subcontract bills of quantities** is not sufficiently accurate
- 23.2.13 **Suspension** of the **subcontract works** [28.0]
- 23.2.14 Payment default by the **contractor** [25.10]
- 23.3 Further circumstances for which the **subcontractor** may be entitled to a revision of the date for **interim completion** and an adjustment of the **subcontract value** are delays to **interim completion** due to any other cause beyond the **subcontractor's** reasonable control that could not have reasonably been anticipated and provided for. The **principal agent** shall adjust the **subcontract value** where such delay is due to the **contractor**, or the **employer**, or the **principal agent** and/or **agents**
- 23.4 Should a listed circumstance occur [23.1-3] which could cause a delay to the date for **interim completion**, the **subcontractor** shall:
 - 23.4.1 Take reasonable steps to avoid or reduce such delay
 - 23.4.2 Within fifteen (15) **working days** of becoming aware, or ought reasonably to have become aware of such delay including delays due to the **employer's** action or inaction, give **notice** to the **contractor** of the intention to submit a claim for a revision to the date of **interim completion**, failing which the **subcontractor** shall forfeit such claim
 - 23.4.3 Failure by the **subcontractor** to give **notice** [23.4.2] shall not prejudice his entitlement to a revision of the date for **interim completion** if the delay occurred before the **subcontractor** commenced work on the **site** or if the **contractor** is granted a revision of the date for **practical completion** in terms of the **principal building agreement** for the particular circumstances causing the delay
- 23.5 The **subcontractor** shall submit a claim for the revision of the date for **interim completion** to the **contractor** within twenty (20) **working days**, or such extended period as the **contractor** may allow, from when the **subcontractor** is able to quantify the delay in terms of the **subcontract programme**
- 23.6 Where the **subcontractor** submits a claim for a revision of the date for **interim completion** the claim shall in respect of each circumstance separately state:
 - 23.6.1 The relevant clause [23.1-3] on which the **subcontractor** relies
 - 23.6.2 The cause and effect of the delay on the current date for **interim completion**, where appropriate, illustrated by a change to the critical path on the current **subcontract programme**
 - 23.6.3 The extension period claimed in **working days**, and the calculation thereof
- 23.7 The **contractor** shall, within twenty-five (25) **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 **interim 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 **contractor** fails to act within the period [23.7] such claim shall be deemed to be refused. The **subcontractor** may give **notice** of a disagreement [30.1] where the **contractor** refuses a claim, alternatively reduces a claim, or fails to act

24.0 DAMAGES FOR NON-PERFORMANCE

- 24.1 The **subcontractor** shall be liable to the **contractor** for damages from the later of the initial or revised date(s) for **interim** and/or **practical completion** of a **section** or the **subcontract works** as a whole [CD] up to and including the earlier of:
 - 24.1.1 The actual or deemed date of **practical completion** of the **works** [23.7.1] or a **section** thereof
 - 24.1.2 The date of termination [29.0]
- 24.2 Where the **contractor** elects to recover such damages, on **notice** thereof to the **subcontractor**, the **contractor** shall include such amounts in subsequent **subcontract recovery statements** [12.2.7] and **subcontract payment advices** [27.1.6] from the date on which the **contractor's** entitlement to recover **damages** commences
- 24.3 Where the **subcontractor** is prevented from fulfilling obligations due to default of the **contractor**, other **subcontractors** or a **direct contractor**, the **subcontractor** shall be entitled to **damages**

PAYMENT

25.0 PAYMENT

- 25.1 The **contractor** shall apply for **payment certificates**, which shall include work and materials included in the **subcontract**. The **subcontractor** shall cooperate with the **contractor** in the preparation of payment claim valuations providing all required documents and quantified amounts
- 25.2 The **principal agent** shall regularly by the due date [PBA-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. The **principal agent** shall concurrently with each **payment certificate** issue a schedule to the **contractor** indicating amounts due to each **subcontractor** and a **subcontract payment notification** to each **subcontractor** to separately include:
 - 25.2.1 A fair estimate of the value of the **subcontract works** executed
 - 25.2.2 A fair estimate of the value of **materials and goods**
- 25.3 The **contractor** shall within seven (7) **calendar days** of the date of issue of the **payment certificate** issue to the **subcontractor** a **subcontract payment advice** to separately include:
 - 25.3.1 The amount included in an interim **payment certificate** for the **subcontract works** executed
 - 25.3.2 The amount included in an interim **payment certificate** for **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 [CD]
 - 25.3.5 The gross amount certified
 - 25.3.6 The amount previously certified
 - 25.3.7 Amounts due to either **party** in the **subcontract recovery statement** [27.1]
 - 25.3.8 **Tax**
 - 25.3.9 Interest amounts included in the **subcontract recovery statement**
 - 25.3.10 Other non-taxable amounts
 - 25.3.11 The net amount certified due to the **subcontractor** or the **contractor**

- 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 [10.1.5], where applicable
- 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** [CD]
- 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 **contractor** shall concurrently with each **subcontract payment advice** issue to the **subcontractor**:
- 25.7.1 A **subcontract recovery statement** identifying possible differences between the **subcontract payment notification** and the **subcontract payment advice**
 - 25.7.2 The determination of **default interest**
 - 25.7.3 The determination of **compensatory interest**
- 25.8 An interim **subcontract payment advice** shall not be evidence that the **subcontract works** and **materials and goods** are in terms of the **subcontract agreement**
- 25.9 The **contractor** shall certify one hundred per cent (100%) of the amount of the **subcontract final account** including adjustments [26.0; 27.0] in the final **subcontract payment advice**
- 25.10 The **contractor** shall pay the **subcontractor** the amount certified in an issued **subcontract payment advice** within twenty-one (21) **calendar days** of the date for issue of the **payment certificate** [CD] including **default interest** and/or **compensatory interest**
- 25.11 The **subcontractor** shall pay the **contractor** the amount certified in an issued **subcontract payment advice** within twenty-one (21) **calendar days** of the date of issue of the **subcontract payment advice** [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 **subcontract works** [26.0] and **materials and goods** [25.3.2] that exceeds the **subcontract sum** and any contract price adjustments [CD] shall be certified in full. The value certified that does not exceed the **subcontract sum** shall be subject to the following percentage adjustments:
- 25.12.1 Ninety-five per cent (95%) of such value in an interim **subcontract payment advice** 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 **subcontract payment advices** issued up to but excluding the final **payment advice**
 - 25.12.3 One hundred per cent (100%) of such value in the final **subcontract payment advice** [25.15]
- 25.13 Where the **contractor** has made a partial or no payment of the amount due on an issued **subcontract payment advice**, the **subcontractor** may give five (5) working **days notice** to comply, failing which the **subcontractor** may:
- 25.13.1 Suspend the **subcontract works** [28.1.3]
 - 25.13.2 Exercise the lien, or any right of retention of the **site**, where this has not been waived
 - 25.13.3 Call up the **guarantee for payment** [11.5]
- 25.14 Where the **employer** has not paid the **contractor** in terms of an issued **payment certificate** to enable the **contractor** to meet his obligations the **contractor**, on presentation of an affidavit to the **subcontractor**, may defer payment for not more than thirty (30) **calendar days** to resolve such non- or part payment
- 25.15 Where the **subcontractor** disputes the correctness of the **subcontract final account**, within the period allowed [26.12], the **principal agent** shall issue interim **payment certificates** to the **contractor** with a **subcontract payment notification** to the **subcontractor** by the due date [CD] for the undisputed amount(s)
- 25.16 The **contractor** shall issue the final **subcontract payment advice** to the **subcontractor** within seven (7) **calendar days** of the date of acceptance of the **subcontract final account** by the **subcontractor** [26.11] but not before the date of issue of the **certificate of final completion**, other than on termination [29.0]

- 25.17 For the purposes of provisional sentence in relation to **subcontract payment advice** only, the **parties** consent to the jurisdiction of any court of **law** of the country [CD]

26.0 ADJUSTMENT OF THE SUBCONTRACT VALUE AND FINAL ACCOUNT

- 26.1 The **principal agent** shall determine the value of adjustments to the **subcontract value** in cooperation with the **subcontractor** and the **contractor** in the preparation of the **subcontract final account**. Where such adjustments require measurement on **site**, the **subcontractor** shall have the right to be present
- 26.2 Adjustments to the **subcontract value** resulting from a **contractor's 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 **subcontract priced document**
- 26.2.2 Work not of a similar character shall be priced at rates based on those in the **subcontract 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 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 **subcontract 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 **subcontract priced document** the **principal agent** shall omit such value from the **subcontract sum** and add the value of work as executed to the **subcontract value**
- 26.4 Where the **subcontractor** has made payment for items not included in the **subcontract priced document** in accordance with a **contractor's instruction**, the actual amounts paid plus a ten per cent (10%) mark-up shall be added to the **subcontract 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 **subcontract agreement**
- 26.4.3 The cost of insurances [10.0], where applicable [CD]
- 26.5 The **subcontractor** shall give **notice** to the **contractor** within fifteen (15) **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 **subcontract sum** failing which such claim shall be forfeited. The **contractor** shall forthwith submit such claim to the **principal agent**
- 26.6 Following **notice** [26.5], the **subcontractor** shall submit a detailed and substantiated claim for the adjustment of the **subcontract value** to the **contractor** to submit to the **principal agent** within twenty (20) **working days** or such period as the **principal agent** may allow
- 26.7 The **principal agent** shall make a fair assessment of the claim and adjust the **subcontract 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 **subcontractor** 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 **subcontract sum** and determine the actual value of such work to be added to the **subcontract value**
- 26.9.2 No clause (PBA = Omit **provisional sums** ...)
- 26.9.3 No clause (PBA = Prorate allowances for profit and attendance ...)
- 26.9.4 Adjust the **preliminaries** amounts in accordance with the method selected [CD]
- 26.9.5 Adjust the **subcontract 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 the **subcontract agreement** other than in this **JBCC® Nominated/Selected Subcontract Agreement** [17.1.1]

- 26.10 The **principal agent** shall prepare and issue the **subcontract final account** to the **subcontractor** within thirty (30) **working days** of the date of **practical completion**
- 26.11 The **subcontractor** shall accept the **subcontract final account** within twenty (20) **working days** of receipt thereof or give **notice** of non-acceptance with reasons failing which the **subcontract final account** shall be deemed to be accepted
- 26.12 Should the reasons for non-acceptance of the **subcontract 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 **subcontractor**, the **subcontractor** may give **notice** of a disagreement
- 26.13 The **contractor** shall issue the final **subcontract payment advice** to the **subcontractor** within seven (7) **calendar days** of issue of the **final payment certificate**

27.0 RECOVERY OF EXPENSE AND/OR LOSS

- 27.1 The **contractor** shall issue a **subcontract recovery statement** with each **subcontract payment advice** to the **subcontractor** with explanatory documentation to support the calculation of amounts due to:

The **contractor** resulting from:

- 27.1.1 Damages [24.3]
- 27.1.2 **Default interest** [25.7.2]
- 27.1.3 Expense and/or loss [27.2]

The **subcontractor** resulting from:

- 27.1.4 **Default interest** [25.7.2]
- 27.1.5 **Compensatory interest** (25.7.3)
- 27.1.6 **Damages** [24.2]
- 27.1.7 Expense or loss caused by a **direct contractor** [PBA 16.1.3]
- 27.1.8 Advance payments [11.3; 12.1.8]
- 27.1.9 Termination of the **subcontract agreement** due to default of the **employer**, the **principal agent** and/or **agents** [14.7.2; 15.7.2]
- 27.1.10 A **contractor's instruction** not consequent on a contract instruction
- 27.1.11 Adjustment of the **subcontractor's** preliminaries due to default by the **contractor**
- 27.2 The **contractor** 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 **subcontractor's** default [10.1]
- 27.2.3 Work executed by others due to the **subcontractor's** default [17.3]
- 27.2.4 Recoupment of advance payments [11.3]
- 27.2.5 The **subcontractor** not paying amounts due to the **contractor** [25.3.7]
- 27.2.6 Termination of a nominated **subcontract agreement** [14.7.2]
- 27.2.7 No clause (PBA = amounts paid directly to **subcontractors**)
- 27.2.8 No clause (PBA = termination of other **subcontract agreements**)
- 27.2.9 Default by the **subcontractor** where not less than five (5) **working days notice** detailing such default has been given before the issue of the next **subcontract recovery statement** to allow the **subcontractor** the opportunity to remedy such default
- 27.2.10 Additional cost of scaffolding/hoisting equipment due to default by the **subcontractor**

- 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 **subcontract payment advices** [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 **subcontract agreement** terminated, the other **party** may exercise rights in terms of the **security** [11.0]

SUSPENSION AND TERMINATION

28.0 SUSPENSION BY THE SUBCONTRACTOR

- 28.1 The **subcontractor** may give five (5) **working days notice** to the **contractor** of the intention to suspend the **subcontract works** where the **contractor**, **employer** or **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**, **subcontract payment notification** or a **subcontract payment advice** by the due date [CD] [25.2-3]
 - 28.1.3 Make payment in full of an amount certified in an interim **payment certificate**, or in a **subcontract payment advice** by the due date [25.10]
 - 28.1.4 Effect insurances [10.1.1-6; 10.2; 10.3 or 10.1.6], 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 **contractor** and/or the **employer** has not remedied a default in terms of a **notice** [28.1] the **subcontractor** may suspend execution of the **subcontract works** until such default has been remedied without prejudice to any rights the **subcontractor** may have
- 28.3 Where the **contractor** suspends the works, the **subcontractor** shall suspend the **subcontract works** forthwith in terms of a **contractor's instruction**
- 28.4 Where the **subcontract works** has been suspended [17.1.14] the **contractor** shall revise the date for **interim completion** [23.2.13] on resumption of the **subcontract works** with an adjustment of the **subcontract value** [26.7]

29.0 TERMINATION

Termination by the contractor

- 29.1 The **contractor** may give **notice** of intention to terminate this **subcontract agreement** where the **subcontractor** has failed to:
- 29.1.1 Provide and maintain a **guarantee for construction** [CD]
 - 29.1.2 Proceed with the **subcontract works** [12.3.7]
 - 29.1.3 Comply timeously with a **contractor's instruction** [17.2]
- 29.2 Where the **contractor** contemplates terminating this **subcontract agreement** the **contractor** shall give **notice** to the **subcontractor** of a specified default [29.1.1-3] to be remedied within five (5) **working days** of the date of receipt of such **notice**
- 29.3 Where the **subcontractor** remains in default [29.2] the **contractor**:
- 29.3.1 Shall, on receipt of a **contract instruction**, terminate the appointment of a nominated **subcontractor**
 - 29.3.2 May terminate the appointment of a selected **subcontractor**

- 29.4 The **contractor** may employ others to safeguard the **subcontract works**, complete the outstanding work and rectify defects in that portion of the **subcontract works** executed by the **subcontractor** [17.3: 27.2.3]. The **subcontractor** shall be liable to the **contractor** for such costs which shall be included in the **subcontract final account** [26.10]
- 29.5 The **contractor** may use **materials and goods** and temporary structures on the **site** for which payment shall be included in the **subcontract final account**
- 29.6 Should the **subcontractor** default on removing temporary structures or **subcontract construction equipment** from the **site** the **contractor**, without being responsible for any loss or damage, may have such items belonging to the **subcontractor** removed and/or sold. Resulting costs and/or income shall be included in the **subcontract final account**
- 29.7 The **contractor**, on **notice** to the **subcontractor**, may recover expense and/or loss caused by the default of the **subcontractor** 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 **contractor** shall be entitled to recover **damages** [24.1.2] resulting from the termination of this **subcontract agreement**
- 29.9 The **contractor** has the right of recovery against the **subcontractor**, 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 **subcontract works** shall end [22.3.1] five (5) years from the date of termination
- 29.11 Where the **principal building agreement** is terminated, the **contractor** shall forthwith give **notice** of termination of the **subcontract agreement** to each **subcontractor**. The **subcontractor** shall follow the termination procedures [29.24] and:
- 29.11.1 The **subcontractor** may be entitled to **damages**
- 29.11.2 The latent defects liability period for the completed portion of the **subcontract works**, shall end [22.3.2]
- 29.11.3 The **security** [CD] shall expire and the original **security** form shall be returned to the **subcontractor** within ten (10) **working days** of receipt of the final payment
- 29.12 Termination of the **subcontract agreement** shall not prejudice any rights the **contractor** may have
- 29.13 The right to terminate may not be exercised where the **contractor** is in material breach of this **subcontract agreement**

Termination by the subcontractor

- 29.14 The **subcontractor** may give **notice** of intention to terminate this **subcontract agreement** where:
- 29.14.1 The **contractor** has failed to provide and/or maintain a **guarantee for payment**, where applicable [11.1]
- 29.14.2 The **contractor** has failed to give access to the **subcontract works** portion of the **site** to the **subcontractor** [12.2.5]
- 29.14.3 The **employer** has failed to allow the **principal agent** and/or **agents** to exercise fair and reasonable judgement as contemplated in this **subcontract agreement** [6.6]
- 29.14.4 The **contractor** has failed to effect insurances, where applicable [10.1] [CD]
- 29.14.5 The **contractor** has failed to pay the amount certified by the due date [25.10] [CD]
- 29.14.6 The **contractor** has failed to issue a **subcontract payment advice** [25.3] and/or **subcontract recovery statement** [25.7.1] to the **subcontractor** by the due date [CD]
- 29.14.7 The **employer** has failed to appoint another **principal agent** and/or **agents**, where applicable [6.5]
- 29.15 Where the **subcontractor** contemplates terminating this **subcontract agreement**, the **subcontractor** shall give **notice** to the **contractor** with a copy to the **principal agent** of a specified default [29.14.1-8] 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 **subcontractor** may forthwith give **notice** to the **contractor** with a copy to the **principal agent** of the termination of this **subcontract agreement**
- 29.17 Where this **subcontract agreement** is terminated by the **subcontractor**:
- 29.17.1 No clause (PBA = contractor to notify subcontractor where PBA is terminated by the employer)
- 29.17.2 The **subcontractor** shall on receipt of a **contractor's instruction** remove temporary structures, **subcontract construction equipment** and surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **contractor**
- 29.17.3 The latent defects liability period for the completed portion of the **subcontract works**, shall end on the date of termination [22.3]
- 29.17.4 The **subcontractor** may be entitled to recover **damages** [27.1.6]
- 29.17.5 The **guarantee for construction** [11.1; 11.2.1] shall expire on the date of termination
- 29.17.6 The **guarantee for advance payment** [11.2.2; 11.3], 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 **subcontract works** shall not prejudice any rights the **subcontractor** may have
- 29.19 The right to terminate may not be exercised where the **subcontractor** is in material breach of this **subcontract agreement**

Termination by either party

- 29.20 Either **party** may terminate this **subcontract agreement** where:
- 29.20.1 The **subcontract 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 on the **subcontract 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 **subcontract works**
- 29.21 The **party** contemplating termination of this **subcontract agreement** shall give ten (10) **working days notice** to the other **party**. Where this **subcontract agreement** is terminated by either **party**:
- 29.21.1 No clause (PBA = contractor to give notice of termination to each subcontractor)
- 29.21.2 No clause (PBA = party responsible for insurance to inform the insurer of date of termination)
- 29.21.3 The **guarantee for payment**, [11.5-6] where applicable [CD], shall expire on payment of the **final payment advice** 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** [11.1; 11.2.1] 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 completed portion of the **subcontract works** shall end [22.3.2]

Termination procedure by the contractor, the subcontractor, or by the parties

- 29.24 On termination of this **subcontract agreement** the **subcontractor** shall:
- 29.24.1 Cease work and ensure that the **subcontract works** is safe in terms of the **law**
- 29.24.2 Remain responsible for the **subcontract works** [8.1] until access to that portion of the **site** is relinquished to the **contractor** and/or the **employer**

- 29.24.3 On receipt of a **contractor's instruction** remove temporary structures, **subcontract construction equipment** and surplus **materials and goods** from the **site** within ten (10) **working days**, or such period agreed by the **contractor**
- 29.25 On termination of this **subcontract 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 **subcontractor** and/or **agents**, where possible, compile and issue to the **parties** a **status report** recording completed and incomplete work on the date of termination of the **subcontract 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 **contractor** or the **subcontractor**, until the issue of the **final payment advice** [25.15]
- 29.25.4 Prepare and issue the **subcontract final account** [26.10] within thirty (30) **working days** of the date of termination including the cost of **materials and goods** and those ordered before termination that the **subcontractor** is bound to accept and make payment for
- 29.26 Termination shall take effect after completion of the procedure [29.24]
- 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 **subcontract agreement** [3.3]

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** (or the **contractor** and the **subcontractor**) 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 **subcontract 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 and 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 where after such dispute shall be referred to arbitration

30.6.5 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 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 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 Should the **subcontractor** give **notice** of any disagreement relating to the **subcontract works** consequent on a determination, action or inaction of the **employer** and/or **agent**, then the **contractor** shall allow the **subcontractor** to use the **contractor's** name to institute proceedings as provided for in the **principal building agreement**. The **contractor** may elect to join the **subcontractor** in instituting such proceedings. Should the **subcontractor** elect to proceed, the **subcontractor** shall:

30.10.1 Provide the **contractor** with an indemnity and **security** as reasonably required by the **contractor**

30.10.2 Certify that the outcome of such proceedings shall be binding on him

30.10.3 Initiate the proceedings as provided for in the **principal building agreement**

30.11 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**

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

30.13 This clause shall, to the extent necessary to fulfil its purpose, exist independently of this **subcontract agreement**

JBCC[®] N/S SUBCONTRACT AGREEMENT

This **subcontract agreement** comprises the entire contract between the **parties**. No representations, terms, conditions or warranties not contained in this **subcontract 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	Contractor		Subcontractor	
Business name				
Business type				
Business registration				
Tax number (VAT/GST)				
Contact Person				
Telephone				
Mobile number				
E-mail				
Address: Building name				
Address: Street				
Address: Suburb				
Address: City				
Address: P O Box				
Address: Post Office				
Address: Province				
Address: Country				
Project name				
Project Location				
Currency				
Accepted contract sum including tax				
Accepted contract sum including tax in words				
Signed – who by signature hereto warrants authority				
Name of signatory				
Signed: Date				
Signed: Location				
Signed: Witness				
Name of witness				