



N/S SUBCONTRACT AGREEMENT

Project	
Contractor	
N/S Subcontractor	
Service	
Contract Date	File Code

prepared by the **JOINT BUILDING CONTRACTS COMMITTEE Inc**

RECOMMENDED BY THE JBCC CONSTITUENTS

Association of Construction Project Managers
Association of South African Quantity Surveyors
Master Builders South Africa
South African Association of Consulting Engineers
South African Institute of Architects
South African Property Owners Association
Specialist Engineering Contractors Committee

JBCC SERIES 2000 EDITION 5.0 CODE 2102 © JULY 2007

JBCC SERIES 2000

Nominated / Selected Subcontract Agreement - Edition 5.0

Preface

JBCC documents are compiled in the interests of standardisation and portray the consensus view of the Joint Building Contracts Committee of good practice and an equitable distribution of contractual risk. The documentation sets out a clear, balanced and enforceable set of procedures, rights and obligations which, when competently managed and administered, protect the employer, contractor and subcontractors alike. It should be noted that each of the documents has been formulated for use specifically as part of the Series 2000 and is most unlikely to be suitable for use with other forms of contract

The Agreement Structure

The JBCC document suite has been structured for use by both the Private and State sectors. However it has been found that the direct inclusion of State requirements as was the case in previous editions produced difficulties in accommodating the necessary differences in a single document. Therefore where the employer is a State institution the document will require an Addendum to be compiled of all the substitutions that are needed to the standard clauses as published

The N/S Agreement brings about a strong consistency in the contractual language used and the administrative procedures required. The agreement clauses are divided into sections that correspond as closely as possible to the project execution sequence. The previously separately published Preliminaries has been incorporated into this Agreement with the variables dealt with therein being replaced by Contract Data Addendums for both Contractor and N/S Subcontractor requirements

The Agreement covers both nominated and selected subcontractors and mimics the Principal Building Agreement with all common clauses retaining the same numbering. A few 'blank' clause numbers occur to maintain the common numbering system. 'No clause' is used where this occurs. A comprehensive set of legally compatible certificates and forms for use in administering the Agreement and other primary documents are available

Warning!

This Edition 5.0 results in most support documents having been revised to remain compatible. Persons entering into or preparing contracts using the JBCC Series 2000 are warned of the dangers inherent in modifying any part of it. Where it is considered essential to make changes, users are advised to ensure that such changes are drafted by qualified legal persons with extensive knowledge of the JBCC documentation and the construction industry. Experience has shown that changes drafted by others, including members of the building professions, often have results very different from those intended which may be prejudicial to either or both parties

JBCC Documentation Services

Documents Availability: Series 2000 documents are obtainable through most regional offices of JBCC constituents as listed on the cover of this document. The JBCC supplies documents exclusively to constituents and does not sell direct to users. JBCC can be contacted at jbcc@mweb.co.za in relation to these services

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1 DEFINITIONS**1.0 DEFINITIONS AND INTERPRETATION**

- 1.1 The definitions used in this document and the interpretation thereof are listed below. The word or phrase of a definition is highlighted in the text and shall bear the meaning assigned to it in this 1.1. Where such word or phrase is not highlighted it shall bear the meaning consistent with the context of its use. The listed defined word or phrase does not qualify as a definition where information required to be stated in the **n/s contract data** has not been provided

ADJUDICATOR: The person appointed by the **parties** to decide any dispute arising out of this **n/s agreement**

ADVANCE PAYMENT GUARANTEE: A guarantee at call obtained by the **subcontractor** from an institution approved by the **employer** on the **JBCC Advance Payment Guarantee** form in the amount as stated in the **n/s contract data**

AGENT: A party named in the **n/s contract data** and/or appointed by the **employer** to deal with specific aspects of the **n/s works**

ARBITRATOR: The person appointed by the **parties** to decide any dispute arising out of this **n/s agreement**

BUDGETARY ALLOWANCE: A sum of money included in the **n/s contract 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 **working** and **non-working days**

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

CERTIFICATE OF INTERIM COMPLETION: A certificate issued by the **contractor** to the **subcontractor** stating the date on which **interim completion** of the **n/s works** was achieved. Such certificate shall not take precedence over the **certificates of practical, works and final completion**

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

CERTIFICATE OF WORKS COMPLETION: A certificate issued by the **principal agent** to the **contractor** stating the date on which **works completion** of the **works** was achieved

CONTRACTOR: The **party** contracting with the **subcontractor** for the execution of the **n/s works** as named in the **n/s contract data**

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

CPAP: The **JBCC Contract Price Adjustment Provisions** used for the adjustment of the **n/s contract value** as stated in the **n/s contract data**

DEFECT: Any aspect of materials and workmanship forming part of the **n/s works** that, in the opinion of the **principal agent**, is due to the failure of the **subcontractor** to comply with his obligations in terms of the **n/s agreement**

DIRECT CONTRACTOR: A party appointed directly by the **employer** to do specialist work on **site** prior to **practical completion**

EMPLOYER: The party contracting with the **contractor** for the execution of the **works** as named in the **n/s contract data**

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

INTEREST: The bank rate which is applicable from time to time to registered banks when borrowing money from the Central or Reserve Bank of the country named in the **n/s contract data**. 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 where the **n/s works** is substantially complete as certified by the **contractor**

JBCC: The Joint Building Contracts Committee Incorporated

LATENT DEFECT: A **defect** that a reasonable inspection of the **n/s works** by the **principal agent** would not have revealed before the issue of the **defects** list

LAW: The law of the country stated in the **n/s contract data**

MATERIALS AND GOODS: Materials and goods delivered to the **subcontractor** for inclusion in the **n/s works** whether stored on or off the **site** or in transit but not yet part of the **n/s works**

MEDIATOR: The party appointed by the **parties** to mediate any dispute arising out of this **n/s agreement**

N/S AGREEMENT: This **JBCC** Nominated/Selected Subcontract Agreement and other **n/s contract documents** that together form the contract between the **parties**

N/S CONSTRUCTION GUARANTEE: A guarantee at call obtained by the **subcontractor** from an institution approved by the **contractor** in terms of the **JBCC** N/S Construction Guarantee form as elected in the **n/s contract data**

N/S CONSTRUCTION PERIOD: The period commencing on the date on which the **subcontractor** shall commence work according to the **programme** and ending on the date of **interim completion**

N/S CONTRACT DATA: The defined listed variables applicable to this **n/s agreement**

N/S CONTRACT DOCUMENTS: This document, the **n/s contract drawings**, the **n/s priced document** and such other documents as are identified in the **n/s contract data**

N/S CONTRACT DRAWINGS: The drawings stated in the **n/s contract data** upon which the accepted tender or negotiated amount was based

N/S CONTRACT SUM: The tender or negotiated amount, inclusive of **tax**, as accepted by the **employer** and stated in the **n/s contract data** that is not subject to adjustment

N/S CONTRACT VALUE: A monetary value that initially is equal to the **n/s contract sum** that is subject to adjustment

N/S FINAL ACCOUNT: The document, prepared by the **principal agent**, which reflects the **n/s contract value** of the **n/s works** at **final completion** or termination

N/S PAYMENT GUARANTEE: A guarantee in the amount as stated in the **n/s contract data** obtained by the **contractor** from an institution approved by the **subcontractor** in terms of the **JBCC** N/S Payment Guarantee form

N/S PRICED DOCUMENT: The schedule of rates or other documents as are appropriate to this **n/s agreement**

N/S PROGRAMME: A diagrammatic representation of the planned execution of units of work or events of the **n/s works** indicating the dates for commencement and completion thereof

N/S RECOVERY STATEMENT: The statement prepared monthly by the **contractor** in terms of the **JBCC N/S Recovery Statement form**

N/S WORKS: The portion of the **works** described in general terms in the **n/s contract data**, detailed in the **n/s contract documents**, ordered in **contractor's instructions** and including the **subcontractor's** temporary works. **N/s works** includes **materials and goods** and those supplied free or otherwise by the **employer** to the **subcontractor**

PARTY: The **contractor** and/or **subcontractor**

PAYMENT ADVICE STATEMENT: A document issued monthly by the **contractor** certifying the amount due and payable by the **contractor** to the **subcontractor** or vice versa in terms of the **JBCC Payment Advice Form**

PAYMENT CERTIFICATE: A document issued monthly by the **principal agent** certifying the amount due and payable by the **employer** to the **contractor** or vice versa in terms of the **JBCC Payment Certificate form**

PRACTICAL COMPLETION: The stage of completion where the **works** or a **section** thereof, as certified by the **principal agent**, is substantially complete and can effectively be used for the purposes intended

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

PRINCIPAL AGENT: The party named in the **n/s contract data** and/or appointed by the **employer**

PRINCIPAL AGREEMENT: The **JBCC Principal Building Agreement** and other contract documents which together form the contract between the **employer** and the **contractor**

PROGRAMME: A diagrammatic representation of the planned execution of units of work or events of the **n/s works** and **works** indicating the dates for commencement and completion thereof

SECTION: A defined portion of the **works** for which **practical completion** is required on the date stated in the **n/s contract data** that is earlier than that required for the **works** as a whole

SECURITY: The form of guarantee provided by the **contractor** or **subcontractor**, as stated in the **n/s contract data**, from which a **party** may recover expense and loss in the event of default

SITE: The land or place on, over, under, in or through which the **works** is to be executed and as defined in the **n/s contract data**

SUBCONTRACTOR: The **party** contracting with the **contractor** for the execution of the **n/s works** as stated in the **n/s contract data**

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

WORKING DAYS: Twenty-four (24) hour days commencing at midnight (00:00) which excludes Saturdays and Sundays, statutory holidays and any recognised annual building holiday period

WORKS: The works as described in the **principal agreement** and recited in the **n/s contract data**

WORKS COMPLETION: The stage of completion where the work on the **works completion** list has been completed as certified by the **principal agent**

- 1.2 The **parties** each choose their physical address as stated in the **n/s contract data** where notices or processes arising out of or concerning this **n/s agreement** may validly be delivered to and served on them. Either **party** may, at any time, by notice to the other change its physical address to another address provided that it is in the same country as that initially stated in the **n/s contract data**

- 1.3 Documents and legislation referred to in this **n/s agreement** shall mean the current edition thereof with all amendments thereto at the date of submission of the **subcontractor's** tender unless otherwise stated
- 1.4 In the interpretation of second level subclauses (e.g. 1.6.4) in this document:
- 1.4.1 Where one of several subclause options is to be selected, the word 'or' links such subclauses
- 1.4.2 Where consecutive subclauses apply these are linked by the word 'and'
- 1.4.3 All other such subclauses are interpreted on a 'stand alone' basis - any or all apply
- 1.5 In this document, unless inconsistent with the context:
- 1.5.1 The word "deemed" shall be conclusive that something is fact, regardless of the objective truth
- 1.5.2 The words "accept, appoint, approve, certify, decide, grant, inform, instruct, issue, notice, object, record, refuse, reduce, request, state" and their derivatives indicate an act carried out in writing
- 1.5.3 The masculine gender includes the feminine and neuter genders and vice versa, the singular includes the plural and vice versa, and a person includes corporate bodies
- 1.5.4 Clause numbers written as [54.1.5] means "in terms of" to such referenced clauses where [54.1.5-8] means the subclauses 5, 6, 7 and 8 inclusively and [54.1.5,8] means the subclauses 5 and 8 only
- 1.5.5 The headings of clauses are for reference purposes only and shall not be taken as construing the context thereof
- 1.6 Notice shall be presumed to have been duly given when:
- 1.6.1 Delivered by hand - on the **working day** of delivery
- 1.6.2 Sent by registered post - five (5) **working days** after posting
- 1.6.3 Sent by telefax - one (1) **working day** after transmission
- 1.6.4 Sent by e-mail - one (1) **working day** after transmission
- 1.7 For the purposes of sentence in relation to a **payment advice statement** only, the **parties** consent to the jurisdiction of any court of the country as stated in the **n/s contract data** although the amount of the claim by either of the **parties** against the other may exceed the jurisdiction of such court
- 1.8 This **n/s agreement** is the entire contract between the **parties** regarding the matters addressed in this **n/s agreement**. No representations, terms, conditions or warranties not contained in this **n/s agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, deleting or terminating this **n/s agreement** including this clause shall be effective unless reduced to writing and signed by the **parties**

OBJECTIVE AND PREPARATION

2.0 OFFER, ACCEPTANCE AND PERFORMANCE OBLIGATIONS

- 2.1 The objective of this **n/s agreement** is the execution of and payment for the **n/s works** for which there has been an offer by the **subcontractor** and an acceptance thereof by the **contractor**
- 2.2 In pursuance of the objective the **parties** undertake to carry out their reciprocal obligations

3.0 DOCUMENTS AND PRINCIPAL BUILDING AGREEMENT

- 3.1 The **contractor** shall provide a **n/s payment guarantee** where:
- 3.1.1 Required by the **subcontractor** in the accepted tender. The guarantee shall be according to the relevant **JBCC** Payment Guarantee form in the amount of ten per cent (10%) of the **n/s contract sum** and shall be provided within twenty-one (21) **calendar days** of acceptance of the tender
- 3.1.2 The **contractor** has failed to make payment to the **subcontractor** [31.9.2, 31.15, 34.10.2, 34.14] for the unpaid balance of the **n/s contract value**. Such guarantee shall be provided within seven (7) **calendar days** of a request for such guarantee from the **subcontractor**
- 3.2 The **subcontractor** shall provide:
- 3.2.1 A **n/s construction guarantee** [14.3-4] where so elected in the Form of Offer and Acceptance
- 3.2.2 An **advance payment guarantee** to the **employer** where so required in the **subcontractor's** accepted tender. The guarantee shall be according to the **JBCC** Advance Payment Guarantee form in the amount as stated in the **n/s contract data**
- 3.2.3 A copy of the **n/s priced document** comprising the **subcontractor's** accepted tender
- 3.3-4 *No clause*
- 3.5 The **contractor** shall complete the **n/s contract data** and arrange the formal signing of this **n/s agreement** once the **n/s contract documents** have been provided and effected. Formal signatures are not required to render this **n/s agreement** binding
- 3.6 The **parties** shall sign, in original, the number of sets of **n/s contract documents** required by the **parties**. The **contractor** or other party as stated in the **n/s contract data** shall hold a signed set of **n/s contract documents** to be produced as and when required by the **parties**. The **subcontractor** shall be entitled to receive one (1) set of **n/s contract documents** at no expense to the **subcontractor**
- 3.7 The **contractor** shall provide the number of copies of drawings, unpriced **n/s priced document** and documents as stated in the **n/s contract data** at no cost to the **subcontractor**. The **subcontractor** shall keep on **site** a copy of such documents required for construction as well as **contractor's instructions** to which the **employer, contractor, principal agent** and **agents** shall have access at all times
- 3.8 Information contained in the **n/s contract documents** and other documents flowing from this **n/s agreement** shall be used only for the purposes of this **n/s agreement** and shall not be published or disclosed without the prior written consent of the **employer**
- 3.9 The **n/s priced document** shall not be used as a specification of **materials and goods** or methods unless so selected in the **n/s contract data**.
- 3.10 Where the **priced document** is not a bills of quantities the **subcontractor** shall provide a schedule of rates in the **n/s contract data** which meets with the **principal agent's** approval
- 3.11 The **principal agent** shall identify in detail any changes made to the provisions of **JBCC** standard documentation in the **n/s contract data**

4.0 DESIGN RESPONSIBILITY

- 4.1 The **subcontractor** shall not be responsible for the design of the **n/s works**, other than the **subcontractor's** or his subcontractor's temporary works, unless otherwise stated in the **n/s**

contract data. The **subcontractor** shall not be responsible for the primary coordination of design elements

- 4.2 Any design responsibility undertaken by the **subcontractor** shall not devolve upon the **contractor**. All contractual or other rights the **contractor** has against the **subcontractor** arising from any design responsibility undertaken are hereby ceded to the **employer**. The rights flowing from a warranty regarding such design responsibility are hereby ceded to the **employer** [26.7] whether or not such design warranty is referred to in this **n/s agreement**
- 4.3 A **subcontractor** undertaking design shall be responsible for ensuring the timeous preparation of the design documentation for acceptance by the **principal agent** to avoid delay to the intended dates or any revision thereof for:
- 4.3.1 Stage completions in terms of the **programme**
- 4.3.2 **Interim completion** [23.0]
- 4.3.3 **Practical completion** [24.0]

5.0 EMPLOYER'S AGENTS

- 5.1 The **employer** has appointed the **principal agent** and other **agents** in terms of the **principal agreement** as stated in the **n/s contract data**
- 5.2 The **principal agent** shall inform the **contractor** and **subcontractor** where an **agent** [5.1] is relevant to the **n/s works**. Such **agent** shall be delegated authority to issue **contract instructions** and perform such duties as may be required for specific aspects of the **n/s works**
- 5.3 *No clause*
- 5.4 Should an **agent** be unable to act or cease to be an **agent**, the **employer** shall inform the **contractor** and **subcontractor** of the new **agent** to be appointed. The **employer** shall not appoint such **agent** against whom the **subcontractor** makes a reasonable objection in writing within five (5) **working days** of receipt of such notice
- 5.5 Should the **principal agent** or any **agents** have a legal interest or involvement in the project constituting the **works**, other than a professional interest, such shall be stated in the **n/s contract data** or immediately upon the acquisition of such interest or involvement

6.0 SUBCONTRACTOR'S SITE REPRESENTATIVE

- 6.1 The **subcontractor** shall keep a representative competent to administer and control the **n/s works** continuously on the **site** during the execution of the **n/s works**. Notice shall be given of the names of representatives by each **party** to the other
- 6.2 A **contractor's instruction** given to the **subcontractor's** representative shall be deemed to have been given to the **subcontractor**

7.0 COMPLIANCE WITH LAWS AND REGULATIONS

- 7.1 The **parties** shall comply with all **laws**, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the **n/s works**. The **parties** shall give all notices and pay all charges required by such authorities. The **principal agent** shall deal with the amounts thus paid [32.4, 33.2.1]

8.0 N/S WORKS RISK

- 8.1 The **subcontractor** shall take full responsibility for the **n/s works** during the **n/s construction period**. On the date of issue of the **certificate of interim completion** or the deemed achievement of **interim completion** responsibility for the **n/s works** shall pass to the **contractor**
- 8.2 The **subcontractor** shall make good physical loss and repair damage to the **n/s works**, including clearing away and removing from the **site** all debris resulting therefrom, which occurs after the commencement of the **n/s construction period** and up to the date of **final completion** [26.0] and resulting from:
- 8.2.1 Any cause arising up to the date of **practical completion** [24.0]
- 8.2.2 The **subcontractor** or his domestic subcontractors carrying out any operation complying with the **subcontractor's** obligations after the date of **interim completion**
- 8.3 The liability of the **subcontractor** [8.2] shall include:
- 8.3.1 The cost of making good physical loss and repairing damage
- 8.3.2 The replacement value of **materials and goods** supplied by the **employer** to the **subcontractor**
- 8.3.3 The additional professional services of the **employer's agents**
- 8.4 The limit of the **subcontractor's** liability shall not exceed the amount of the contract works insurance as stated in the **n/s contract data**
- 8.5 The **subcontractor** shall not be liable for the cost of making good physical loss and repairing damage to the **n/s works** where this results from any of the following circumstances:
- 8.5.1 War, whether declared or not, invasion and hostile acts of foreign enemies
- 8.5.2 Rebellion, insurrection, revolution, terrorism, military or usurped power or civil war
- 8.5.3 Civil commotion, riot, strike, lockout or disorder by persons other than the **subcontractor's** personnel and other employees or his subcontractors
- 8.5.4 Confiscation, nationalisation or requisition by any public or local authority
- 8.5.5 Sonic shock waves caused by aircraft or other aerial devices and ionising radiation or contamination except where attributable to the **subcontractor's** use of such technology
- 8.5.6 The use or occupation of any part of the **n/s works** by the **employer** or the **contractor**, their servants or agents and those for whose acts or omissions they are responsible
- 8.5.7 An act or omission of the **employer** or the **contractor**, their servants or agents and those for whose acts or omissions they are responsible
- 8.5.8 An act or omission by **direct contractors** appointed in terms of the **principal agreement**
- 8.5.9 Design of the **n/s works** where the **subcontractor** is not responsible [4.0]
- 8.5.10 A **latent defect** in **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 **materials and goods**
- 8.6 Where the **subcontractor** is not liable for the costs [8.5] such making good physical loss and repairing damage shall be measured and valued [32.0] and added to the **n/s contract value**

- 8.7 The **subcontractor** shall forthwith notify the **contractor, principal agent** and insurer of any physical loss and damage to the **n/s works** that comes to his attention

9.0 INDEMNITIES

- 9.1 Subject to the 9.2 provisions the **subcontractor** indemnifies and holds the **contractor** harmless against any loss in respect of all claims, proceedings, damages, costs and expenses arising from:

- 9.1.1 Claims from other parties consequent upon death or bodily injury or illness of any person or physical loss or damage to any property, other than the **n/s works**, arising out of or due to the execution of the **n/s works** or occupation of the **site** by the **subcontractor**

- 9.1.2 Noncompliance by the **subcontractor** with any **law**, regulation or bylaw of any local or other authority arising out of or due to the execution of the **n/s works** or occupation of the **site** by the **subcontractor**

- 9.1.3 Physical loss or damage to any plant, equipment or other property belonging to the **subcontractor**

- 9.2 The **contractor** indemnifies and holds the **subcontractor** harmless against loss in respect of all claims, proceedings, damages, costs and expenses arising from:

- 9.2.1 An act or omission of the **employer** or the **contractor**, their servants or agents and those for whose acts or omissions they are responsible

- 9.2.2 An act or omission of a **direct contractor** or other **subcontractor** [22.0]

- 9.2.3 Design of the **n/s works** where the **subcontractor** is not responsible [4.0]

- 9.2.4 The occupation of any part of the **n/s works** by the **employer** or his tenants

- 9.2.5 The right of the **employer** to have the **n/s works** or any part thereof executed at the **site**

- 9.2.6 Interference with any servitude or other right that is the unavoidable result of the execution of the **n/s works** including the weakening of or interference with the support of land adjacent to the **site** unless resulting from any negligent act or omission by the **subcontractor** or his subcontractors

- 9.2.7 Physical loss or damage to an existing structure and the contents thereof in respect of which this **n/s agreement** is for alteration or addition to the existing structure

- 9.2.8 Physical loss or damage to the contents of the **works** where **practical completion** has been achieved [24.0]

- 9.2.9 The use or occupation of the **site** by the **n/s works**

- 9.2.10 *No clause*

- 9.2.11 A **defect** in materials or goods supplied by the **employer** for incorporation in the **n/s works** including any consequential damage caused by such **defect**

10.0 GENERAL INSURANCES

- 10.1 The following general insurances are required to be effected in the joint names of the **employer** and **contractor** in terms of the **principal agreement**:

- 10.1.1 Contract works insurance which shall include the **contractor's** subcontractors and the full value of **materials and goods** supplied by the **employer** to the **contractor**

- 10.1.2 Supplementary insurance for the **works** in respect of civil commotion, riot and strike

- 10.1.3 Public liability insurance generally covering accidental injury or death of a person and accidental loss or damage to material property
- 10.2 The insured amounts, deductibles and durations of cover shall be as stated in the **n/s contract data**
- 10.3 Where this **n/s agreement** is cancelled [37.0] and the **subcontractor** is not required to make good the physical loss or repair damage to the **works**, the right to the proceeds of a contract works insurance claim shall vest in the **employer**
- 10.4 Subject to 10.3 the right to any claims paid or payable in terms of the insurances [10.1] shall vest in the **party** entitled to indemnity thereunder and such **party** shall be liable for the deductible

11.0 SPECIAL INSURANCES

- 11.1 The following special insurances may be required to be effected. Such insurances shall be in the joint names of the **employer** and **contractor**:
- 11.1.1 Temporary lateral support insurance where the **employer** considers that the execution of the **works** could cause the weakening of or interference with the support of land adjacent to the **site** and the consequences thereof
- 11.1.2 Geotechnics insurance where the **employer** considers that the ground conditions of the **site** could be unsuitable to support the **works**
- 11.1.3 Such other specialised insurance as the **employer** deems necessary as stated in the **n/s contract data**

12.0 EFFECTING INSURANCES

- 12.1 The party responsible as stated in the **n/s contract data** [12.6] shall effect and keep in force:
- 12.1.1 General insurance [10.1] from the date of the handover of the **site** and until the **contractor's** responsibility [8.0] has ended, and
- 12.1.2 Special insurances where required [11.1] until the date of **practical completion**
- 12.2 Before the commencement of the **n/s construction period**, the **contractor** shall provide to the **subcontractor** documentary evidence that the contract works insurance [10.1] has been effected. Likewise the **subcontractor**, where responsible, shall provide to the **contractor** documentary evidence that public liability insurance [11.1] has been effected. Where required, the relevant **party** shall provide evidence of renewal to the other **party** before the expiry of the current period of insurance
- 12.3 Where the **party** responsible [12.1] fails to effect any of the required insurances or to keep them in force, the other **party** may effect such insurances. Where the **contractor** effects such insurances, consequent on the **subcontractor's** default, the **contractor** may recover expense and loss resulting therefrom [33.0]. Where the **subcontractor** effects or keeps in force such insurances, consequent on the **contractor's** or **employer's** default, the cost thereof shall be addressed [32.4]
- 12.4 Before effecting support insurance [11.1.1] the **employer** shall engage an engineer or technologist [5.2] to design and inspect the provision of the necessary support. The **principal agent** shall delegate to such engineer or technologist the authority to issue contract instructions in relation to the support provisions
- 12.5 *No clause*
- 12.6 Where **practical completion** in **sections** is required [28.0] or the **works** is for alterations or renovations to an existing building(s) the effecting of contract works insurance [10.1.1] shall be the responsibility of the **employer**

13.0 ASSIGNMENT

- 13.1 Neither **party** shall assign or cede their rights or obligations without the written consent of the other **party**, which consent shall not be withheld without good reason
- 13.2 The **contractor** shall not consent to a nominated **subcontractor** assigning or ceding his rights or obligations in terms of this **n/s agreement** without obtaining the prior approval of the **principal agent**

14.0 SECURITY

- 14.1 The **subcontractor** shall have the right to choose the **security** to be provided [14.3-4] as stated in the **n/s contract data**. The choice of **security** shall be included in the **subcontractor's** tender, failing which a variable **n/s construction guarantee** [14.3] shall be deemed to have been chosen. Such **security** shall be provided to the **contractor** within twenty-one (21) **calendar days** of acceptance of the **subcontractor's** tender
- 14.2 *No clause*
- 14.3 Where **security** as a variable **n/s construction guarantee** has been chosen the following shall apply:
- 14.3.1 The **subcontractor** shall provide the **contractor** with a variable **n/s construction guarantee** equal in value to ten per cent (10%) of the **n/s contract sum**
- 14.3.2 The variable **n/s construction guarantee** shall come into force, be administered and expire in terms of the **JBCC N/S Construction Guarantee** form
- 14.3.3 The **contractor** shall return the variable **n/s construction guarantee** to the **subcontractor** within fourteen (14) **calendar days** of its expiring
- 14.3.4 Where the **contractor** has a right of recovery against the **subcontractor** [33.0], the **contractor** may issue a written demand in terms of the variable **n/s construction guarantee**
- 14.4 Where **security** as a fixed **n/s construction guarantee** and payment reduction of the value certified has been chosen the following shall apply:
- 14.4.1 The **subcontractor** shall provide a fixed **n/s construction guarantee** to the **contractor** equal in value to five per cent (5%) of the **n/s contract sum**
- 14.4.2 The fixed **n/s construction guarantee** shall come into force, be administered and expire in terms of the **JBCC Construction Guarantee** form
- 14.4.3 The **contractor** shall return the fixed **n/s construction guarantee** to the **subcontractor** within fourteen (14) **calendar days** of its expiring
- 14.4.4 The payment reduction to the value certified in a **payment certificate** shall be made [31.8, 34.8]
- 14.4.5 Where the **contractor** has a right of recovery against the **subcontractor** [33.0], the **contractor** may issue a written demand in terms of the fixed **construction guarantee** or may recover from the payment reduction [33.4] or both
- 14.5 Where **security** as an **advance payment guarantee** is to be provided by the **subcontractor** to the **employer**:
- 14.5.1 The guaranteed amount shall be equal in value to the cash advance requirement stated in the accepted tender, and

- 14.5.2 Such guarantee shall come into force, be administered and expire in terms of the **JBCC Advance Payment Guarantee** form, and
- 14.5.3 The **employer** shall return such guarantee to the **subcontractor** within fourteen (14) **calendar days** of it expiring
- 14.6 Payments made by the guarantor to the **contractor** or **employer** in terms of a **n/s construction guarantee** or an **advance payment guarantee** shall not prejudice the rights of the **employer**, **contractor** or **subcontractor**
- 14.7 Should the **subcontractor** fail to provide the **security** [14.1] the **contractor**, in his sole discretion, may either:
- 14.7.1 Allow the **subcontractor** to commence the **n/s works** and withhold payment from the **subcontractor** until the amount withheld is equal in value to ten per cent (10%) of the **n/s contract sum**. Such amount shall be reduced to two per cent (2%) of the **n/s contract sum** on the achievement of **practical completion** [24.0] and to zero per cent (0%) [34.8] in the final **payment advice**, or
- 14.7.2 **Terminate** this **n/s agreement** [36.1.1]
- 14.8 A **security** held by the **contractor** [14.3-4] or **employer** [14.5] shall be for the due fulfilment of the **subcontractor's** liability only and the **contractor** or **employer** hereby waive all common law rights to recover from or set-off against such **security**

EXECUTION

15.0 PREPARATION FOR AND EXECUTION OF THE N/S WORKS

- 15.1 After acceptance of the tender or negotiated amount the **subcontractor** shall submit to the **contractor** within the period stated in the **n/s contract data**:
- 15.1.1 The **n/s priced document** with all items properly priced, extended and cast. Priced items are deemed to include all costs, overheads and profit. The **principal agent** may instruct the **subcontractor** to adjust prices which are considered to be imbalanced or unreasonable and to eliminate errors or discrepancies. Such adjustments shall be effected to the approval of the **principal agent** and shall not change the **n/s contract sum**, and
- 15.1.2 Such other documents and information identified in the **n/s contract data**
- 15.2 The **contractor** shall:
- 15.2.1 Give access to the **site** to the **subcontractor** on the date stated in the **n/s contract data**, and
- 15.2.2 Prepare, implement and, where necessary, modify the **programme** allowing sufficient time for the **subcontractor** to achieve stage completions and **interim completion** of the **n/s works** all as agreed with the **subcontractor** to enable the **contractor**, in turn, to achieve **practical completion** [24.0], and
- 15.2.3 *No clause*
- 15.2.4 Make payment to the **subcontractor** [31.0, 34.0]
- 15.3 On being allowed to commence the **n/s works** in terms of the **programme** and, subject to 31.18.3, the **subcontractor** shall proceed continuously, industriously and with due skill and appropriate physical resources to bring the **n/s works** to stage completions as may be required in terms of the **programme** and to:
- 15.3.1 **Interim completion** [23.0], and

- 15.3.2 **Practical completion** [24.0], and
- 15.3.3 **Works completion** [25.0], and
- 15.3.4 **Final completion** [26.0]
- 15.4 Where completion in **sections** is required in terms of the **n/s contract data** the further provisions of 28.0 shall be applicable
- 15.5 The **subcontractor** shall provide everything necessary for the proper execution of the **n/s works** and shall carry out and complete the **n/s works** in compliance with the **n/s contract documents**, using materials and workmanship of the quality and standards specified therein, provided that such quality and standards shall be to the reasonable satisfaction of the **principal agent**
- 15.6 The **contractor** in consultation with the **subcontractor** shall:
- 15.6.1 Regularly update the **subcontractor's** programme in relation to the **n/s works** together with a schedule of outstanding construction information in sufficient detail to enable the **principal agent** to assess the progress of the **n/s works** and timeously provide the information required, and
- 15.6.2 Coordinate the **subcontractor's** programme with his own, and
- 15.6.3 Continuously revise and modify the **programme** and the schedule of outstanding construction information and issue copies timeously to the **subcontractor** and **principal agent**
- 15.7 The **subcontractor** shall:
- 15.7.1 Provide all reasonable assistance to the **contractor** in the preparation of cash flow projections where required by the **employer**. The projections shall be based on the **contractor's programme** and shall be updated as and when necessary, and
- 15.7.2 Inform the **contractor** of all cash advances and the quantum of each to be provided to the **subcontractor** by the **employer**
- 15.8 The **contractor** and **subcontractor** shall hold regular meetings related to the progress of the **n/s works** and at such other times as may be necessary. The **contractor** shall record and distribute the minutes of the meetings. At the request of the **principal agent** or the **contractor** meetings shall be held to deal with technical and **subcontractors'** coordination matters
- 15.9 The **subcontractor** shall maintain daily records of the number and categories of persons and plant employed on the **works** and shall provide copies thereof to the **contractor** on request

16.0 SITE AND ACCESS

- 16.1 The **subcontractor** shall have reasonable access to the **site, works, n/s works** or **sections** thereof that have achieved **interim completion**, to fulfil his obligations. Any restrictions to the **site** area, including servitudes and the like, that the **subcontractor** may not occupy are defined in the **n/s contract data**. The **subcontractor** shall not extend his operations into such defined areas
- 16.2 Where a geotechnic investigation has been undertaken the results thereof, where relevant, shall be provided in the **n/s contract data**
- 16.3 The **subcontractor** shall be deemed to have inspected the **site** and any existing structures thereon and to be thoroughly acquainted with the conditions under which the **n/s works** is to be executed including the means of access to the **n/s works**, the condition of the roads and generally of all matters which may influence the execution of the **n/s works**

- 16.4 Where existing premises will be in use and occupied during the **n/s construction period** the **subcontractor** shall execute the **n/s works** with the least interference with the general routine of the occupants of the premises and minimise any nuisance from dust, noise or other causes. Specific requirements of the **employer** or **contractor** are described in detail in the **n/s contract data**
- 16.5 Where prior work has been undertaken on the **site** the **subcontractor** shall, within a reasonable period after being appointed, but not exceeding ten per cent (10%) of the **n/s construction period** or twenty (20) **working days** whichever is the lesser, check the existing levels, lines, profiles and the like of work previously executed that may affect the **n/s works**. The **subcontractor** shall forthwith notify the **contractor** and request a **contractor's instruction** regarding any inaccuracy found in work previously executed
- 16.6 The **subcontractor**, on becoming aware of a defect in previously executed work, shall request a **contractor's instruction** in relation thereto
- 16.7 The **employer** has recorded all known services in the **n/s contract documents** where applicable and annotated as to whether such services are to be terminated, diverted or continue in use either temporarily or permanently. Where undocumented services are encountered the **subcontractor** shall immediately suspend all affected work in the vicinity and request the **contractor** to issue a **contractor's instruction** in regard thereto
- 16.8 Trees and shrubs shall not be removed, cut back or disturbed without a **contractor's instruction**. Specific requirements of the **employer** are described in the **n/s contract data**
- 16.9 Any relics, treasure or other articles of potential value found on the **site** shall remain the property of the **employer** and shall be handed over to the **principal agent** who shall be the sole arbiter of what is an article of value
- 16.10 The **employer**, **principal agent**, **agents** and **contractor** shall have reasonable access to the **n/s works**, workshops and other places where work in terms of this **n/s agreement** is being prepared, executed or stored
- 16.11 The **subcontractor** shall have reasonable access to the **works** and any **section** thereof that has achieved **practical completion** to fulfil his obligations

17.0 CONTRACTOR'S INSTRUCTIONS

- 17.1 The **contractor** may issue **contractor's instructions** to the **subcontractor** regarding:
- 17.1.1 Alteration to design, quality or quantity of the **n/s works** provided that such **contractor's instructions** shall not substantially change the scope of the **n/s works**
- 17.1.2 Rectification of discrepancies, errors in description or omissions in **n/s contract documents** other than this document
- 17.1.3 Removal of any **materials and goods** from the **site** and the substitution of any other **materials and goods** therefor
- 17.1.4 Removal or re-execution of any work
- 17.1.5 Opening up of work for inspection
- 17.1.6 Provision and testing of samples of **materials and goods**, specimens of finishes and assemblies of elements of the **n/s works**
- 17.1.7 Protection of the **n/s works**
- 17.1.8 Making good physical loss and repairing damage to the **n/s works** [8.0]
- 17.1.9 Removal from the **site** of any party employed on the **n/s works**

- 17.1.10 Removal from the **site** of any person not engaged on or connected with the **n/s works**
- 17.1.11 The **programme** [15.6]
- 17.1.12 *No clause*
- 17.1.13 Notices to **selected subcontractors**
- 17.1.14 **Prime cost amounts** and the purchase of **materials and goods** included therein
- 17.1.15 **Budgetary allowances** and work executed by the **subcontractor** thereunder
- 17.1.16 Contingency and other monetary provisions included in the **n/s contract sum**
- 17.1.17 Work by the **contractor's** domestic subcontractors, other subcontractors and **direct contractors** [22.0]
- 17.1.18 The lists for **interim completion, practical completion, works completion, final completion and defects**
- 17.1.19 Compliance with **laws**, regulations and bylaws [7.0]
- 17.1.20 Access for previous contractors and subcontractors to remedy defective work
- 17.2 The **subcontractor** shall comply with and duly execute all **contractor's instructions** subject to 24.6
- 17.3 An oral instruction given by the **contractor** shall be of no force or effect. Neither the **subcontractor** nor the **contractor** may rely upon an oral instruction for any purpose
- 17.4 Should the **subcontractor** fail to proceed with due diligence with a **contractor's instruction**, the **contractor** may notify the **subcontractor** to proceed within four (4) **working days** from receipt of such notice. Without further notice, on default by the **subcontractor**, the **contractor** may employ other parties to give effect to such **contractor's instruction** in addition to any other rights which the **contractor** may have. The **contractor** may recover expense and loss [33.0] resulting from such employment
- 17.5 The **subcontractor** shall cooperate with and assist the **contractor** and **principal agent** where execution of a **contractor's instruction** could cause an adjustment to the **n/s contract value** [32.2]

18.0 SETTING OUT OF THE N/S WORKS

- 18.1 The **contractor** shall point out all necessary pegs, beacons and datum levels and where necessary provide drawings to the **subcontractor** to enable the **subcontractor** to set out the **n/s works**
- 18.2 The **subcontractor** shall be responsible for the setting out of the **n/s works** within the **works** and shall provide everything necessary for this purpose
- 18.3 The **subcontractor** shall provide all assistance and everything necessary to enable the **contractor** to check the accuracy of the setting out of the **n/s works**. Such checking shall not relieve the **subcontractor** of his responsibility for correctness thereof. The **subcontractor** shall rectify any errors in the **n/s works** that arise from incorrect setting out without adjustment to the **n/s contract value**. The **subcontractor** shall not be liable for incorrect setting out should information given [18.1] cause incorrect setting out of the **n/s works**
- 18.4 The **subcontractor** shall take all precautions to preserve such pegs, beacons, datum levels and other aids used in setting out the **n/s works** and should any be disturbed have them replaced at his own expense

19.0 No Clause

20.0 CONTRACTOR'S ATTENDANCE

- 20.1 The **contractor** shall at his own expense provide the following general attendance on the **subcontractor** executing the **n/s works**:
- 20.1.1 Access to the **site** and places where the subcontract work is to be carried out, including the reasonable use of any temporary personnel hoists erected by the **contractor**
- 20.1.2 The provision of water and lighting and of single phase electric power to a position within 50 metres of the place where the **subcontractor's** work is to be carried out other than water, fuel and power for commissioning of any installation
- 20.1.3 The provision of an area for the **subcontractor** to establish temporary office accommodation and workshops and for the storage of plant and **materials and goods**
- 20.1.4 The use of erected scaffolding belonging to the **contractor**, in common with others having the like right, while it remains erected on the **site**
- 20.1.5 The use of ablution facilities and the like, where provided
- 20.1.6 The use of the **site** telecommunication facilities, where provided, subject to payment by the **subcontractor** for usage thereof

21.0 SUBCONTRACTOR'S PLANT AND SERVICES

- 21.1 Other than where provided by the **contractor** in terms of the **principal agreement** the **subcontractor** at his own expense for the due and proper fulfilment of the **n/s works** shall provide, maintain and remove the following:
- 21.1.1 Office accommodation, temporary workshops, sheds or other structures as required [20.1.3]
- 21.1.2 Hoardings with gantries, fans, safety screens, barriers, access gates, covered gangways and the like as necessary for the enclosure of the **n/s works** and elements thereof all for the protection of the public and others
- 21.1.3 Scaffolding for internal and external use
- 21.1.4 All equipment and labour for hoisting his plant and **materials and goods**. Should the **contractor** have erected hoisting equipment the **subcontractor** shall be allowed the use of such equipment at reasonable times by arrangement with the **contractor**
- 21.2 Where the **subcontractor** has not performed in terms of this **n/s agreement** and the provisions of the **programme**, the **subcontractor** shall be liable for any cost incurred by the **contractor** in providing additional scaffolding or leaving erected scaffolding in position for a longer period
- 21.3 The **subcontractor** shall regularly clear away all rubbish and excess materials related to the execution of the **n/s works** and leave the **works** and **n/s works** in a clean and satisfactory state to the reasonable satisfaction of the **contractor**

22.0 OTHER SUBCONTRACTORS

- 22.1 The **subcontractor** shall cooperate with the **contractor's** domestic subcontractors, other subcontractors and **direct contractors**. On instruction [17.1] the **subcontractor** shall permit work to be executed and installed in the **n/s works** by such other subcontractors
- 22.2 Where such other subcontractors cause the **subcontractor** expense and loss for which the **subcontractor** was not required to provide in the **n/s contract sum**, such expense and loss shall be the subject of a claim for adjustment of the **n/s contract value** [32.5-6]

- 22.3 Such other subcontractors shall be subject to reasonable control by the **contractor** as required by the **subcontractor**

COMPLETION

23.0 INTERIM COMPLETION

- 23.1 The **subcontractor** shall inform the **contractor** of the anticipated date for **interim completion**. The **contractor** shall inspect the **n/s works** with the **subcontractor** on a date to be agreed. Where a specialist **agent** is appointed in relation to the **n/s works**, the **contractor** may request the assistance of such an **agent** in making the inspection. Where in the opinion of the **contractor** the **n/s works** either:
- 23.1.1 Has reached **interim completion**, the **contractor** shall forthwith issue a **certificate of interim completion**, or
- 23.1.2 Has not reached **interim completion**, the **contractor** shall forthwith issue an **interim completion** list defining the outstanding work and **defects** to be rectified to achieve **interim completion**
- 23.2 Where, in the opinion of the **subcontractor**, the work on the **interim completion** list has been completed the **subcontractor** shall inform the **contractor** who shall inspect such work within seven (7) **calendar days** of receipt thereof. If satisfied, the **contractor** shall issue a **certificate of interim completion** or otherwise issue further **interim completion** lists
- 23.3 Should the **contractor** not issue an **interim completion** list [23.1.2] within seven (7) **calendar days** of the inspection date, the **subcontractor** may notify the **contractor** and **principal agent**. Should the **contractor** not issue such list within seven (7) **calendar days** of receipt of such notice **interim completion** shall be deemed to have been achieved either:
- 23.3.1 On the date that **interim completion** was anticipated [23.2], or
- 23.3.2 On the date of expiry of the notice given by the **subcontractor** [23.1]
- 23.4 Where the **n/s works** or a portion thereof includes mechanical or electrical systems that are put to use for the convenience of the **contractor** with the permission of the **subcontractor** then any guarantee period concerning such system shall nevertheless commence only on the date of the granting of **practical completion** [24.0]

24.0 PRACTICAL COMPLETION

- 24.1 The **principal agent** at appropriate intervals shall:
- 24.1.1 Inspect the **works** to give the **contractor** interpretations and guidance on the building standards and the state of completion of the **works** which the **contractor** will be required to achieve for **practical completion**, and
- 24.1.2 Where necessary timeously issue a contract instruction [17.1.4] consequent upon such inspection, and
- 24.1.3 Inform the **contractor** of the period required for inspection of the **works** related to the achievement of **practical completion**
- 24.2 The **contractor**, on being informed by the **principal agent** [24.1.2-3], shall instruct and inform the **subcontractor** accordingly
- 24.3 Where the **principal agent** after the inspection in terms of the **principal agreement** either:

- 24.3.1 Grants **practical completion**, the **contractor** shall forthwith inform the **subcontractor** accordingly, or
- 24.3.2 Does not grant **practical completion**, the **contractor** shall, on receipt of the **practical completion** list, forthwith issue an extract from such list of the incomplete work and defects related to the **n/s works** to be rectified by the **subcontractor**
- 24.4 Where, in the opinion of the **subcontractor**, the **practical completion** list extract has been completed, the **subcontractor** shall inform the **contractor** who shall arrange for the **principal agent** to inspect the **works** in terms of the **principal agreement**. Where, the **principal agent**, after such inspection either:
- 24.4.1 Grants **practical completion**, the **contractor** shall forthwith inform the **subcontractor** accordingly, or
- 24.4.2 Does not grant **practical completion**, the **contractor** shall, on receipt of the revised **practical completion** list, forthwith issue a revised extract thereof to the **subcontractor**. The **subcontractor** shall repeat the procedure [24.4]
- 24.5 The **contractor** shall inform the **subcontractor** where **practical completion** is deemed to have been achieved in terms of the **principal agreement**
- 24.6 The **subcontractor** shall not be obliged to carry out any **contractor's instruction** for additional work [17.2] issued after the date of **practical completion**
- 24.7 Upon the issue of the **certificate of practical completion** the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien or right of continuing possession of the **works**
- 24.8 Where the **employer** at any time takes possession of the whole or part of the **works** by agreement with the **contractor** [24.3.1, 28.2.2] prior to the achievement of **practical completion** then **practical completion** shall be deemed to have taken place
- 24.9 Upon the achievement of **practical completion** the **subcontractor** shall hand over to the **contractor** all operating and instruction manuals, product guarantees and manufacturers' instructions as stated in the **n/s contract data**. The **subcontractor** shall provide the **principal agent** with as built drawings or information for the preparation of as built drawings as required by the **principal agent** in terms of the **n/s contract data**
- 24.10 On **practical completion** of a **section** of the **works** [28.0] and where the **principal agent** instructs that tenant installation work is to be executed by others therein [22.0]:
- 24.10.1 The **contractor** shall allow the **subcontractor** reasonable access to such **section**, and
- 24.10.2 The **principal agent** shall inspect and record the state of completion to such **section** and include a list of **defects** pertaining thereto. Where appropriate the **contractor** shall issue an extract from such list for the attention of the **subcontractor**

25.0 WORKS COMPLETION

- 25.1 The **contractor** shall, on receipt of the **works completion** list from the **principal agent**, issue an extract related to the **n/s works** to the **subcontractor**
- 25.2 Where, in the opinion of the **subcontractor**, such extract has been completed the **subcontractor** shall notify the **contractor**, who shall arrange for the **principal agent** to inspect the **works** in terms of the **principal agreement**. Where the **principal agent** after such inspection either:
- 25.2.1 Grants **works completion**, the **contractor** shall forthwith inform the **subcontractor** accordingly, or

- 25.2.2 Does not grant **works completion**, the **contractor** shall, on receipt of the revised **works completion** list, forthwith issue an extract from such list to be rectified by the **subcontractor**. The **subcontractor** shall repeat the procedure [25.2]
- 25.3 The **contractor** shall inform the **subcontractor** should **works completion** be deemed to have been achieved in terms of the **principal agreement**
- 25.4 Should such extract not be completed within a period of twenty (20) **working days** of the issue thereof the **subcontractor** shall not be entitled to compensatory interest [31.10] on the value of the outstanding work so listed
- 25.5 The **defects** liability period [26.1] shall commence with the issue of the **certificate of works completion** or deemed achievement of **works completion** [25.2.1, 25.3]

26.0 FINAL COMPLETION

- 26.1 The **defects** liability period for the **n/s works** shall commence on the date of **works completion** in terms of the **principal agreement** and end at midnight (00:00) ninety (90) **calendar days** from such date
- 26.2 Where, after the inspection of the **works** at the end of the **defects** liability period in terms of the **principal agreement**, the **principal agent** either:
- 26.2.1 Grants **final completion** the **contractor** shall forthwith inform the **subcontractor** accordingly, or
- 26.2.2 Does not grant **final completion**, the **contractor** shall inform the **subcontractor** accordingly and on receipt of the **defects** list forthwith issue an extract from such list to be rectified by the **subcontractor**
- 26.3 Where, in the opinion of the **subcontractor**, such extract has been completed, the **subcontractor** shall inform the **contractor** thereof who shall arrange for the **principal agent** to inspect in terms of the **principal agreement**. Where the **principal agent** after such inspection either:
- 26.3.1 Grants **final completion**, the **contractor** shall forthwith inform the **subcontractor** accordingly, or
- 26.3.2 Does not grant **final completion**, the **contractor** shall, on receipt of the updated **defects** list, forthwith issue an extract from such list to be rectified by the **subcontractor**. The **subcontractor** shall repeat the procedure [26.3]
- 26.4 Where **final completion** has been deemed to have been granted in terms of the **principal agreement** the **contractor** shall forthwith inform the **subcontractor** accordingly
- 26.5 Where the **subcontractor's defects** liability period extends beyond the **contractor's defects** liability period in terms of the **principal agreement**:
- 26.5.1 The initial portion of the **subcontractor's defects** liability period in respect of this **n/s agreement** shall terminate on the granting of **final completion** and shall no longer be the responsibility of the **contractor**, and
- 26.5.2 The remaining portion of the **subcontractor's defects** liability period shall be subject to a direct agreement between the **employer** and the **subcontractor**
- 26.6 The granting of **final completion** [26.0] shall be conclusive evidence as to the sufficiency of the **n/s works** and that the **subcontractor's** obligations [2.0, 15.0] have been fulfilled other than for **latent defects**
- 26.7 Where the **subcontractor** is required to give a guarantee, warranty or indemnity related to the subcontract work, other than the **security**, the rights under such guarantee, warranty or indemnity

shall be deemed to be ceded to the **employer** on the date of granting **final completion**. This cession shall not prejudice any other rights that the **employer** may have

27.0 LATENT DEFECTS LIABILITY PERIOD

- 27.1 The **latent defects** liability period for the **n/s works** shall commence at the start of the **n/s construction period** and end five (5) years from the date of achievement of **final completion** [26.0]
- 27.2 Where termination of this **n/s agreement** occurs before the achievement of **final completion** the **latent defects** liability period shall end either:
- 27.2.1 Five (5) years from the date of termination [36.0, 39.0], or
- 27.2.2 On the date of termination [37.0, 38.0]
- 27.3 The **subcontractor** shall make good all **defects** related to the **n/s works** that appear up to the date of **final completion** [24.0-26.0]

28.0 SECTIONAL COMPLETION

- 28.1 Where **sections** are required to be completed as stated in the **n/s contract data**, terms and conditions applicable to the **n/s works** without **sections** shall apply to each **section**. The following documents, which shall include each **section**, shall be issued for the **works** as a whole:
- 28.1.1 Payment certificate notifications [31.13.2] and **payment advice statements** [31.5]
- 28.1.2 **N/s recovery statements** [33.1]
- 28.1.3 **N/s final account** [34.1]
- 28.1.4 Final **payment certificate** [34.5] and final **payment advice statement** [34.7]
- 28.1.5 **Certificate of final completion** [26.0] that shall incorporate the **certificate of final completion** of the last **section**
- 28.2 The **contractor** shall individually for each **section**:
- 28.2.1 Issue a **certificate of interim completion** [23.0]
- 28.2.2 Inform the **subcontractor** when **practical completion** has been achieved [24.0]
- 28.2.3 Inform the **subcontractor** when **works completion** has been achieved [25.0]
- 28.2.4 Inform the **subcontractor** when **final completion** has been achieved [26.0] other than in terms of 28.1.5

29.0 REVISION OF DATE FOR INTERIM COMPLETION

- 29.1 The circumstances for which the **subcontractor** is entitled to a revision of the date for **interim completion** and for which revision the **n/s contract value** shall not be adjusted [32.12] are delays to **interim completion** caused by one or more of the following:
- 29.1.1 The adverse effect of weather conditions
- 29.1.2 The inability to obtain **materials and goods** where the **subcontractor** has taken all practical steps to avoid or reduce such delay

- 29.1.3 Making good physical loss and repairing damage to the **n/s works** [8.0] where the **subcontractor** is at risk
- 29.1.4 An event that neither party could prevent, civil commotion, riot, strike or lockout
- 29.1.5 Late supply of a prime cost item where the **subcontractor** has taken all practical steps to avoid or reduce such delay
- 29.2 The circumstances for which the **subcontractor** is entitled to a revision of the date for **interim completion** and for which revision the **n/s contract value** shall be adjusted [32.12] are delays to **interim completion** caused by one or more of the following:
- 29.2.1 Failure by the **contractor** to give the **subcontractor** access to the area of the **n/s works** on the date agreed in the **programme**
- 29.2.2 Making good physical loss and repairing damage to the **n/s works** [8.0] where the **subcontractor** is not at risk
- 29.2.3 **Contractor's instructions** not occasioned by the default of the **subcontractor**
- 29.2.4 Failure to issue construction information timeously [15.6]
- 29.2.5 Late acceptance by the **principal agent** of a design undertaken by a **selected subcontractor** where the **subcontractor's** obligations [4.3] have been met
- 29.2.6 Suspension of the **n/s works** or termination of the **n/s agreement** by the **subcontractor** due to default by the **contractor**, **employer** or the **principal agent** [38.0]
- 29.2.7 *No clause*
- 29.2.8 A **direct contractor**
- 29.2.9 Opening up and testing of work and **materials and goods** [17.1.5-6] where such work is in accordance with the **n/s contract documents**
- 29.2.10 The execution of additional work for which the quantity included in the **n/s priced document** is not sufficiently accurate
- 29.2.11 Late or failure to supply **materials and goods** for which the **employer** is responsible
- 29.2.12 Payment default by the **contractor** [31.9.2] where 31.15 is not applicable, irrespective of whether the **n/s works** have been suspended [29.2.6]
- 29.2.13 The **contractor** or others employed by the **contractor**
- 29.3 Further circumstances for which the **subcontractor** is entitled to a revision of the date for **interim completion** are delays to **interim completion** by 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 **n/s contract value** where such delay is due to the **employer** exercising his rights in terms of the **principal agreement** or by the default of the **employer**
- 29.4 Should a circumstance as listed [29.1-3] occur which could, in the opinion of the **subcontractor**, cause a delay to **interim completion** the **subcontractor** shall:
- 29.4.1 Give the **contractor** reasonable and timeous notice of such circumstance, and
- 29.4.2 Take all reasonable steps to avoid or reduce the delay
- 29.4.3 Within fifteen (15) **working days** from the date upon which the **subcontractor** became aware or ought reasonably to have become aware of the potential delay notify the **contractor** of his intention to submit a claim for a revision to the date for **interim**

completion or any previous revision thereof resulting from such delay, failing which the **subcontractor's** right to claim shall lapse

- 29.4.4 Failure of the **subcontractor** to give notice [29.4.3] shall not prejudice his entitlement to a revision of the date for **interim completion** should the circumstances causing the delay have occurred before the **subcontractor** commenced work on **site** or where the **contractor** ought reasonably to have been aware of the delay or has claimed a revision of the date for **practical completion** in terms of the Principal Building Agreement for the particular circumstance causing the delay
- 29.5 Once the **subcontractor** can quantify the delay caused by such circumstance details of the claim shall be submitted within twenty (20) **working days** to the **contractor**
- 29.6 Where the **subcontractor** requests a revision of the date for **interim completion** the claim shall in respect of each circumstance separately state:
- 29.6.1 The relevant clause or clauses [29.1-3] on which the **subcontractor** relies, and
- 29.6.2 The particulars of the effect of the delay on critical progress towards **interim completion**, and
- 29.6.3 The extension period claimed in **working days**, and the calculation thereof
- 29.7 The **contractor** shall within twenty-five (25) **working days** of receipt of a claim [29.6] grant in full, reduce or refuse the **working days** claimed. The **contractor** shall:
- 29.7.1 Determine the revised date for **interim completion** in relation to the **working days** granted, and
- 29.7.2 Identify each circumstance and relevant subclause for each revision granted or amended, or
- 29.7.3 Give reasons for refusing such claim
- 29.8 Where the **contractor** fails to act [29.7] the claim shall be deemed to be refused

30.0 DAMAGES FOR NONPERFORMANCE

- 30.1 The **subcontractor** shall be liable to the **contractor** for damages where the **subcontractor** fails to meet any of the completion dates, which include **section** completion dates, set for:
- 30.1.1 Stage completion according to the **programme**
- 30.1.2 **Interim completion** [23.0]
- 30.1.3 **Practical completion** [24.0]
- 30.1.4 The **practical completion**, **works completion** or **defects** lists extracts [24.3.2, 25.1, 26.2.2] as agreed between the **contractor** and **subcontractor**
- 30.2 Where the **subcontractor** is prevented from fulfilling his obligations due to default by the **contractor** or other subcontractors, other than delay [29.2.10], the **contractor** shall be liable to the **subcontractor** for damages
- 30.3 The **contractor** shall include the amount of such damages [30.1-2] in the **n/s recovery statement** [33.0]

PAYMENT**31.0 INTERIM PAYMENT**

- 31.1 The **principal agent** shall issue an interim **payment certificate** every month until the issue of the final **payment certificate**. The **payment certificate** shall be based on a valuation prepared within seven (7) **calendar days** before the date stated [31.3] and may be for a nil or negative amount
- 31.2 The **contractor** shall apply to the **principal agent** for payment to the **subcontractor** in respect of the **n/s works**. The **subcontractor** shall cooperate with and assist the **contractor** in the preparation of the payment claim information by providing to the **contractor** all relevant documents and assessments of quantified amounts of work completed and **materials and goods**. For a lump sum contract the **subcontractor** shall compile such information in a form as agreed by the **principal agent** and **contractor**
- 31.3 The **principal agent** shall issue each interim **payment certificate** to the **contractor** with a copy to the **employer** by not later than the day of the month stated in the **n/s contract data**
- 31.4 The value certified in an interim **payment certificate** shall separately include:
- 31.4.1 A reasonable estimate of the value of the subcontract work executed taking into account the information submitted by the **subcontractor** [31.2] and making due allowance for adjustments to the **n/s contract value** [32.0], and
- 31.4.2 A reasonable estimate of the value of **materials and goods** [31.6], and
- 31.4.3 The total subcontract amounts previously certified [31.4.1-2]
- 31.5 The **contractor** shall, within seven (7) **calendar days** of the date of issue of the interim **payment certificate**, draw up a **payment advice statement** to be issued forthwith to the **subcontractor**. Such **payment advice statement** shall separately include the following:
- 31.5.1 The subcontract amounts certified in the interim **payment certificate** [31.4]
- 31.5.2 **Security** adjustment [14.0, 31.8]
- 31.5.3 **CPAP** adjustment where elected in the **n/s contract data**
- 31.5.4 The amounts due to the **contractor** or **subcontractor** in the **n/s recovery statement** [33.1] excluding interest amounts [31.5.6]
- 31.5.5 **Tax**, where applicable, on the net total of the amounts [31.4, 31.5.1-4]
- 31.5.6 Interest amounts included in the **n/s recovery statement** [33.1]
- 31.6 The value of subcontract **materials and goods** [31.4.2] shall be included in the value certified only where, to the satisfaction of the **principal agent**, the subcontract **materials and goods** are:
- 31.6.1 Not prematurely delivered or offered for delivery in terms of the **programme**, and
- 31.6.2 Timeously delivered or offered for delivery where the placing of the order was in terms of the **programme**, and
- 31.6.3 Stored and protected against loss or damage, and
- 31.6.4 Covered by insurance [10.1], and
- 31.6.5 Where stored off the **site**, covered by an **advance payment guarantee** or such other **security** as may be accepted by the **employer**

- 31.7 **Materials and goods** certified [31.6] shall become the property of the **employer** and shall not be removed without the written authority of the **principal agent**
- 31.8 Where **security** as a fixed **n/s construction guarantee** and payment reduction [14.4] has been chosen the value of the **n/s works** [31.4.1] and **materials and goods** [31.4.2] that exceeds the **n/s contract sum** and any **CPAP** adjustment shall be certified in full. The value certified that does not exceed the **n/s contract sum** shall be subject to the following percentage adjustments:
- 31.8.1 Ninety-five per cent (95%) of such value in interim **payment advices** issued up to the date of **practical completion**
- 31.8.2 Ninety-seven per cent (97%) of such value in interim **payment advices** issued on the date of **practical completion** and up to but excluding the date of **final completion**
- 31.8.3 Ninety-nine per cent (99%) of such value in interim **payment advices** issued on the date of **final completion** and up to but excluding the final **payment advice** [34.7]
- 31.8.4 One hundred per cent (100%) of such value in the final **payment advice** except where the amount certified is in favour of the **employer**. In such an event the payment reduction shall remain at the adjustment level applicable to the final **payment advice** [34.7]
- 31.9 The **employer** shall pay to the **contractor** the amount certified in an interim **payment certificate** within seven (7) **calendar days** of the date for issue of the **payment certificate**. Payment to the **subcontractor** by the **contractor** or vice versa of the amount certified in the **payment advice** shall:
- 31.9.1 Become due on the date for the issue of the interim **payment certificate** in terms of the **principal agreement**, and
- 31.9.2 Be made within seven (7) **calendar days** after the due date for payment to the **contractor** by the **employer**
- 31.10 The **employer** shall pay the **contractor** compensatory interest on all amounts certified in an interim **payment certificate** issued after thirty-one (31) **calendar days** of the date of **practical completion**. Subject to 25.4 the **contractor** shall calculate such compensation due to the **subcontractor** at the **interest rate** compounded monthly from the date of **practical completion** up to and including the date on which payment is due to the **subcontractor** and include such amount in the **n/s recovery statement** [33.0]
- 31.11 Where the **subcontractor** does not receive payment of the amount due by the due date [31.9], the **contractor** shall be liable for default interest on the amount without prejudice to any other rights the **subcontractor** may have. Such interest amount shall be compounded monthly from the due date for payment up to and including the date on which the **subcontractor** is to receive payment and included in the **n/s recovery statement** [33.0]. The **contractor** shall calculate such interest at the rate of one hundred and sixty per cent (160%) of the **interest**
- 31.12 Where a **payment advice** reflects an amount in favour of the **contractor**, the **subcontractor** shall pay the amount certified within twenty-one (21) **calendar days** of the date of issue of the **payment advice**. Where such amount has not been paid, the **subcontractor** shall be liable for default interest [31.11] and the **contractor** shall include such amount in the next **n/s recovery statement** [33.0]. The **contractor** shall calculate such interest at the rate of one hundred and sixty per cent (160%) of the **interest**
- 31.13 The **principal agent** shall concurrently with the issue of each interim **payment certificate** also issue the following:
- 31.13.1 A statement to the **contractor** showing the formulation of the amount identified and certified for each **subcontractor**
- 31.13.2 A notification to each **subcontractor** showing the formulation of the subcontract amount included in the **payment certificate** and its date of issue

31.13.3 A statement to the **employer** and the **contractor** showing the total amount certified to date of all adjusted amounts [31.5]

31.14 An interim **payment certificate** shall not be evidence that the **n/s works** and **materials and goods** are in terms of the **principal agreement**

31.15 Where the **employer** has not paid the **contractor** in terms of an interim **payment certificate** to enable the **contractor** to meet his obligations [31.9.2] the **contractor** shall notify the **subcontractor** within five (5) **working days** of the **employer's** default and make payment to the **subcontractor** within the earlier of:

31.15.1 Seven (7) **calendar days** of receipt of payment by the **contractor** from the **employer**, or

31.15.2 Ninety (90) **calendar days** of the due date for payment [31.9.2]

31.16 The **subcontractor** shall be entitled to recover money from the **n/s payment guarantee** where such is provided [3.1] where the **contractor**:

31.16.1 Has failed to notify the **subcontractor** of the default of the **employer** [31.15] and has failed to make payment of the amount due to the **subcontractor** [31.9], or

31.16.2 Has received payment from the **employer** and has failed to make payment of the amount due to the **subcontractor** [31.9, 31.15.1], or

31.16.3 Has not received payment from the **employer** and has failed to make payment to the **subcontractor** [31.15.2]

31.17 Where the **subcontractor** decides to recover an amount due from the **n/s payment guarantee** [3.1] the **subcontractor** shall issue a written demand to the **contractor** in terms of such guarantee

31.18 Where the **contractor** has not paid or has made a partial payment only of the amount due to the **subcontractor** in terms of the **principal agent's** notification [31.13.2] the **subcontractor** may:

31.18.1 Issue a demand to the **contractor** in terms of the **payment guarantee** where such is provided [3.1.1], or

31.18.2 Issue a demand to the **contractor** [3.1.2] to provide the **payment guarantee**, or

31.18.3 Give three (3) **working days** notice of suspension of the **works** [38.1]. Where the **contractor** fails to act in relation to such notice the **subcontractor** may give notice of termination [38.1.7]

32.0 ADJUSTMENT TO THE N/S CONTRACT VALUE

32.1 The **principal agent** shall determine the value of adjustments to the **n/s contract value** according to the **n/s priced document** and the **principal agreement**. Where items of additional work are required the **principal agent** together with the **contractor** and **subcontractor** may agree on the adjustment before the commencement of such work

32.2 Where an adjustment results from a **contractor's instruction** [17.2] consequent upon a contract instruction in terms of the **principal agreement**, adjustment to the **n/s contract value** shall be determined as follows:

32.2.1 Items of additional work of similar character and executed under similar conditions shall be priced at the rates in the **n/s priced document**, or

32.2.2 Items of additional work not of a similar character or not executed under similar conditions shall be priced, where applicable, at rates based on those in the **n/s priced document** and adjusted to suit the changed circumstances

- 32.2.3 Where 32.2.1-2 cannot be used such work shall be priced at new rates that take into account the labour, engineering, drawings, material, transport and plant necessary for executing the work plus an allowance of ten per cent (10%) markup thereon
- 32.2.4 Work omitted shall be valued at the rates in the **n/s priced document**, but where the omission of such work alters the circumstances in which the remaining work is carried out, the value of the remaining work shall be determined by the method [32.2.2]
- 32.3 Where work has been identified in the **n/s priced document** as provisional, the **principal agent** shall omit the value thereof from the **n/s contract value** and the work as executed shall be valued [32.2] and added to the **n/s contract value**
- 32.4 Where the **subcontractor** has made payment for items that are not included in the **n/s priced document**, the actual amounts paid plus a ten per cent (10%) markup shall be added to the **n/s contract value** for the following:
- 32.4.1 Charges by authorities [7.1]
- 32.4.2 The cost of opening up and testing [17.1.5-6], provided that the **subcontractor** shall bear the cost thereof, should the test show that the work is not according to the **n/s contract documents**
- 32.4.3 The cost of insurance [12.3]
- 32.5 Where the **subcontractor** has incurred expense and loss due to no fault of the **subcontractor** for which provision was not required in the **n/s contract sum** and for which reasonable compensation has not been made [32.2,12], the **subcontractor** shall provide details of such expense and loss to the **principal agent** [32.6]. Such circumstances are:
- 32.5.1 The issue of a **contractor's instruction** consequent upon a contract instruction issued in terms of the **principal agreement**
- 32.5.2 Failure to issue or the late issue of a **contractor's instruction** following a timeous request from the **subcontractor** [15.6]
- 32.5.3 Nondisclosure of changes made to the provisions of **JBCC** standard documentation [3.11]
- 32.5.4 Expense and loss caused by **direct contractors** [22.4]
- 32.5.5 Default by the **employer** or his **agents**
- 32.5.6 Suspension of the **works** by the **contractor**
- 32.6 The **subcontractor** shall notify the **contractor** within thirty-five (35) **working days** from becoming aware or from when he ought reasonably to have become aware of such expense and loss [32.5] failing which no compensation will be made. Where such notification has been given:
- 32.6.1 The **subcontractor** shall submit details of the expense and loss once these can be quantified, and
- 32.6.2 The **principal agent** shall make a reasonable assessment of the compensation to be added to the **contract value** within twenty (20) **working days** of receipt of such details
- 32.6.3 The claim shall be deemed to have been refused where the **principal agent** fails to make such an assessment
- 32.7 The **principal agent** shall omit any provisional subcontract amounts from the **n/s contract value** and determine the amounts as the final account value of the respective subcontract works to be added to the **n/s contract value**

- 32.8 The **principal agent** shall prorate the **subcontractor's** attendance and profit on the provisional amounts in the **n/s contract sum** to the value of each subcontract [32.7] excluding any allowance for **CPAP**
- 32.9 The **principal agent** shall omit **budgetary allowances** and any other monetary provisions [17.1.15, 16] from the **n/s contract value** and determine the value of work related thereto [32.0] to be added to the **n/s contract value**
- 32.10 The **principal agent** shall omit **prime cost amounts** [17.1.14] from the **n/s contract value** and the actual delivered cost of such items, including a reasonable allowance for waste, shall be added to the **n/s contract value**
- 32.11 The **principal agent** shall prorate the **subcontractor's** allowances for overheads and profit on **prime cost amounts** to the value of each item [32.10]
- 32.12 The preliminary and general amount in the **n/s priced document** shall be adjusted and paid in terms of the alternative chosen by the **subcontractor** as stated in the **n/s contract data**
- 32.13 Where applicable the **n/s contract value** shall be adjusted according to **CPAP** using the information stated in the **n/s contract data**
- 32.14 Where adjustments need to be measured on the **site** the **subcontractor** shall be given the opportunity to be present and shall be supplied with a copy of the measurement
- 32.15 The **principal agent** shall rectify all identified discrepancies, errors in description or quantity, or omission of items from the **n/s contract documents**. Such rectification shall be treated as an adjustment to the **n/s contract value** where there is a monetary implication

33.0 RECOVERY OF EXPENSE AND LOSS

- 33.1 The **contractor** shall issue a **n/s recovery statement** monthly to the **subcontractor** simultaneously with the **payment advice statement**. Explanatory documentation as may be necessary to support the calculation of the amounts stated shall accompany the **n/s recovery statement**. The **contractor** shall show on the **n/s recovery statement** amounts due to the **contractor** for:

- 33.1.1 Damages due [30.2]
- 33.1.2 Default interest [31.12]
- 33.1.3 Expense and loss [33.2]

and amounts due to the **subcontractor** for:

- 33.1.4 Compensatory interest [31.10]
- 33.1.5 Default interest [31.11]
- 33.1.6 Damages due [30.2, 38.5.6]
- 33.1.7 Advance payments granted [14.5]
- 33.1.8 A variation resulting from a **contractor's instruction** not consequent upon a contract instruction issued in terms of the **principal agreement**

- 33.2 The **contractor** may recover expense and loss incurred or to be incurred resulting from:

- 33.2.1 The **contractor** paying charges or effecting insurance upon the **subcontractor's** default [7.1, 12.3]
- 33.2.2 Work executed by other parties [17.4]

- 33.2.3 Damages due [30.1]
- 33.2.4 *No clause*
- 33.2.5 The **subcontractor** not paying the amount due to the **contractor** [31.12]
- 33.2.6 The **n/s agreement** being terminated [36.0]
- 33.2.7 Default by the **subcontractor** where not less than seven (7) **calendar days** notice detailing such default has been given before the issue of the next **n/s recovery statement** to allow the **subcontractor** the opportunity to remedy such default
- 33.2.8 Additional costs of scaffolding [21.4]
- 33.3 The **contractor** shall include an amount due in terms of the **n/s recovery statement** in the accompanying **payment advice statement**. Where the **payment advice statement** reflects an amount in favour of the **contractor** and the **subcontractor** has not paid [31.12], such amount may be recovered by the **contractor** from any or all of the following in no specific sequence:
- 33.3.1 Subsequent **payment advice statements**
- 33.3.2 **Security** [14.0]
- 33.3.3 The **subcontractor** as a debt
- 33.4 Where the **contractor** decides to recover amounts due [33.3] from a payment reduction [14.4.5], the **contractor** shall notify the **subcontractor** thereof. Should such amount not be paid to the **contractor** within seven (7) **calendar days** of the date of receipt of such notice by the **subcontractor**, the **contractor** may deduct such amount from such **security**
- 33.5 Where the **contractor** decides to recover an amount due [33.3] from a **n/s construction guarantee** held as **security**, the **contractor** shall issue a written demand to the **subcontractor** in terms of such guarantee
- 33.6 Where a provisional sequestration or provisional liquidation order has been granted or where an order has been granted which commences sequestration, liquidation, bankruptcy, receivership, winding-up or any similar effect against the **subcontractor** or this **n/s agreement** is terminated [36.0], the **contractor** may issue a demand to the guarantor in terms of the **n/s construction guarantee** held as **security**

34.0 N/S FINAL ACCOUNT AND FINAL PAYMENT

- 34.1 The **subcontractor** shall cooperate with and assist the **principal agent** and the **agent** in the preparation of the **n/s final account** by timeously providing all relevant documents on request. The **principal agent** shall prepare a **final account** for issue to the **contractor** and **subcontractor** within sixty (60) **working days** of the date of **practical completion**
- 34.2 *No clause*
- 34.3 The **subcontractor** shall accept or object to the **n/s final account** within thirty (30) **working days** of receipt thereof. On acceptance or should the **subcontractor** not object to the **n/s final account** within such period, the **contractor** shall notify the **principal agent** to include the amount of the **n/s final account** in the final **payment certificate** [34.5]
- 34.4 Should the **subcontractor** dispute the correctness of the **n/s final account** and such dispute not be resolved within the period [34.3], or such extended period as the **principal agent** may allow on a request from the **subcontractor**, the final **payment certificate** shall nevertheless be issued [34.5]
- 34.5 The final **payment certificate** shall be issued to the **contractor** in terms of the **principal agreement**. Notwithstanding the foregoing such final **payment certificate** shall not be issued before the granting of **final completion** other than where termination occurs [36.0 or 39.0]

- 34.6 The gross amount certified in the final **payment certificate** shall separately include:
- 34.6.1 The gross amount of the **n/s final account**, and
- 34.6.2 The amounts previously certified [31.4.1-2]
- 34.7 The **contractor**, within seven (7) **calendar days** of the date of issue of the final **payment certificate**, shall draw up a final **payment advice statement** to be issued forthwith to the **subcontractor**. Such **payment advice statement** shall separately include:
- 34.7.1 The net amount of the **n/s final account** certified in the final **payment certificate** [34.6], and
- 34.7.2 The amounts due to the **contractor** or **subcontractor** in the final **n/s recovery statement** [33.1] excluding interest amounts [34.7.4], and
- 34.7.3 **Tax** on the net total of the amounts [34.7.1, 34.7.2], and
- 34.7.4 Interest amounts included in the final **n/s recovery statement** [33.1]
- 34.8 The **contractor** shall make payment of one hundred per cent (100%) of the amount of the **n/s final account** in the final **payment certificate**
- 34.9 *No clause*
- 34.10 The **contractor** shall pay the **subcontractor** the amount certified in the final **payment certificate** in terms of the **principal agreement** within seven (7) **calendar days** of the due date for payment to the **contractor** by the **employer**
- 34.11 Subject to 25.4 the **employer** shall pay the **contractor** compensatory interest on the net amount certified in the final **payment certificate**. The **contractor** shall calculate the compensatory interest amount due to the **subcontractor** at the ruling **interest** rate compounded monthly from the date of **practical completion** up to and including the date on which payment is due to the **subcontractor** as stated in the **n/s recovery statement** [33.0]
- 34.12 Where the **subcontractor** does not receive payment of the amount due in the final **payment advice** by the due date [34.10], the **contractor** shall be liable for default interest on such amount. The interest shall be calculated from the due date for payment up to and including the date on which the **subcontractor** receives payment. The amount due and the interest thereon shall be recoverable by the **subcontractor** from the **contractor** as a debt. Such interest shall be calculated at the rate of one hundred and sixty per cent (160%) of the **interest**
- 34.13 Where a final **payment certificate** reflects an amount in favour of the **employer**, the **contractor** shall calculate the amount, if any, that is due by the **subcontractor**. Where such amount has not been paid to the **contractor** within seven (7) **calendar days** after the date for payment by the **contractor** to the **employer**, the **subcontractor** shall be liable for default interest [34.12] with the necessary changes. The **contractor** shall calculate the amount of such interest due by the **subcontractor**. The amount due and the interest thereon shall be recoverable by the **contractor** from the **subcontractor** as a debt
- 34.14 Where the **employer** has not paid the **contractor** in terms of the final **payment certificate** to enable the **contractor** to meet his obligations [34.10.2], the **contractor** shall notify the **subcontractor** within five (5) **working days** of the **employer's** default and make payment to the **subcontractor** within the earlier of:
- 34.14.1 Seven (7) **calendar days** of receipt of payment from the **employer**, or
- 34.14.2 Ninety (90) **calendar days** of the due date for payment [34.10.2]
- 34.15 The **subcontractor** shall be entitled to recover money from the **n/s payment guarantee** [3.1-2] where the **contractor**:

- 34.15.1 Has failed to notify the **subcontractor** of the default of the **employer** [34.14] and has failed to make payment of the amount due to the **subcontractor** [34.10], or
- 34.15.2 Has received payment from the **employer** and has failed to make payment of the amount due to the **subcontractor** [34.10, 34.14.1], or
- 34.15.3 Has not received payment from the **employer** and has failed to make payment to the **subcontractor** [34.14.2]
- 34.16 Where the **subcontractor** decides to recover an amount due from a **n/s payment guarantee** the **subcontractor** shall issue a written demand to the **contractor** in terms of such guarantee
- 34.17 Where the **contractor** fails to pay the sum stated in the demand within the required period the **subcontractor** may give notice to the guarantor in terms of such guarantee

35.0 DIRECT PAYMENT TO SUBCONTRACTOR

- 35.1 The **subcontractor** may request direct payment from the **employer** where the **contractor** has failed to:
- 35.1.1 Provide a **n/s payment guarantee** [3.1]
- 35.1.2 Make payment [31.16-17, 34.15-16]

TERMINATION

36.0 TERMINATION BY CONTRACTOR - SUBCONTRACTOR'S DEFAULT

- 36.1 The **contractor** may terminate this **n/s agreement** where the **subcontractor**:
- 36.1.1 Fails to comply [3.2, 15.1, 3]
- 36.1.2 Refuses to comply with a **contractor's instruction** subject to 17.2
- 36.2 Where the **contractor** considers terminating this **n/s agreement**, the **contractor** shall notify the **subcontractor** of such default [36.1]. The issuing of such notice shall be without prejudice to any rights that the **contractor** may have
- 36.3 The **contractor** may give notice of termination should the **subcontractor** remain in default for five (5) **working days** after the date of receipt of such notice of default
- 36.4 *No clause*
- 36.5 Where this **n/s agreement** is terminated the following shall apply:
- 36.5.1 The employment of the **subcontractor** shall be terminated and execution of the **n/s works** shall cease. The **subcontractor** shall vacate the **n/s works** and the **site** [36.5.6]. The **subcontractor** shall remain responsible for the **n/s works** [8.1] until possession is relinquished to the **contractor**
- 36.5.2 The **principal agent** shall forthwith compile a report on the status of the portion of the **n/s works** executed by the **subcontractor** and shall issue such report to the **employer**, **contractor** and the **subcontractor**
- 36.5.3 The **principal agent** shall timeously commence and complete a **n/s final account** [34.0]
- 36.5.4 The **subcontractor** shall not be relieved of any of his liabilities concerning that portion of the **n/s works** executed by the **subcontractor**

- 36.5.5 The **employer** or the **contractor** may employ other parties to safeguard the **n/s works**, complete the outstanding work and to rectify **defects** in that portion of the **n/s works** executed by the **subcontractor**. The cost of work thus carried out shall be certified by the **principal agent** or determined by the **contractor** and paid direct to such parties [35.0]
- 36.5.6 The **contractor** may use the **subcontractor's materials and goods**, temporary buildings, plant and machinery on the **site** for proceeding with the **n/s works**
- 36.5.7 When instructed by the **contractor**, the **subcontractor** shall remove from the **site** his temporary buildings, plant, machinery and surplus **materials and goods** within such reasonable time as determined by the **contractor**, in default of which the **contractor**, without being responsible for any loss or damage, may have the same removed and sold. The net profit or loss of such sales shall be for the account of the **subcontractor**
- 36.5.8 The **contractor** shall be entitled to recover damages related to this termination from the **subcontractor**
- 36.5.9 The **contractor** shall determine the delay to **practical completion** of the **works** which such termination caused and the **subcontractor** shall be liable to the **contractor** for damages [30.1] for such delay
- 36.5.10 The **principal agent** shall continue to issue interim **payment certificates** in a nil amount until the issue of the final **payment certificate**
- 36.5.11 The **latent defects** liability period shall end [27.2.1]
- 36.6 The right to terminate may not be exercised where the **subcontractor** is in material breach of this **n/s agreement**

37.0 TERMINATION BY CONTRACTOR - LOSS AND DAMAGE

- 37.1 Where the **employer** terminates the **principal agreement** consequent on:
- 37.1.1 The completed portion of the **works** constructed has been substantially destroyed howsoever caused
- 37.1.2 The **works** is for alterations and/or additions to an existing building(s) which has been substantially destroyed howsoever caused
- 37.2 The **principal agent** shall notify the **contractor** to terminate the **n/s agreement**
- 37.3 Where the **contractor** terminates this **n/s agreement** [37.2] the following shall apply:
- 37.3.1 The **contractor** shall issue a **contractor's instruction** specifying protective measures necessary to be executed by the **subcontractor** before cessation of work. Termination shall only take effect after completion thereof
- 37.3.2 Execution of the **n/s works** shall cease. The **subcontractor** shall remain responsible for the **n/s works** [8.1] until possession is relinquished to the **contractor**
- 37.3.3 On relinquishing possession of the **n/s works**, the **subcontractor** shall remove from the **site** his temporary buildings, plant and machinery without delay
- 37.3.4 The **principal agent** shall forthwith compile a report on the status of the portion of the **n/s works** executed by the **subcontractor** before the destruction occurred [37.1] including all work executed [37.3.1] and shall issue such report to the **employer**, **contractor** and the **subcontractor**
- 37.3.5 The **principal agent** shall timeously commence and complete the **n/s final account** [34.0]

- 37.3.6 The **employer** shall be liable to the **subcontractor** for the cost of **materials and goods** including those ordered before such termination where the **subcontractor** is bound to accept and make payment. The **subcontractor** shall deliver such **materials and goods** to the **employer** in good order
- 37.3.7 The **principal agent** shall continue to certify the value of the work executed and **materials and goods** for payment until the issue of the final **payment certificate** [31.1]
- 37.3.8 The **latent defects** liability period shall end [27.2.2]
- 37.4 Neither **party** shall be liable for any expense and loss resulting from this termination other than the liabilities [37.3] related hereto

38.0 SUSPENSION OR TERMINATION BY SUBCONTRACTOR - CONTRACTOR'S / EMPLOYER'S DEFAULT

- 38.1 Where the **subcontractor** decides to suspend the **n/s works**, the **subcontractor** shall notify the **contractor** and the **principal agent** of the default. The notice period shall be two (2) **working days** in respect of default [38.1.7] and ten (10) **working days** in respect of the other defaults listed below.
The **employer** fails to:
- 38.1.1 Appoint **agents** [5.1,3]
- 38.1.2 Allow the **contractor** to exercise his independent judgement regarding the performance of his obligations in terms of this **n/s agreement** and the **subcontractor** is prejudiced by such action or the **principal agent** fails to:
- 38.1.3 Issue any **payment certificate** [31.0, 34.0]
- 38.1.4 Issue a notification of the formulation of the subcontract amount [31.13.2] or the **contractor** fails to:
- 38.1.5 Provide a **n/s payment guarantee** [15.4]
- 38.1.6 Issue any **payment advice statement** [31.5]
- 38.1.7 Pay the amount certified [31.9, 34.10]
- 38.2 Should such default persist for a further five (5) **working days** after the date of receipt of the notice of suspension by the **contractor** the **subcontractor** may give further notice to the **contractor** with copies to the **employer** and **principal agent** of his intended termination of this **n/s agreement**. The **subcontractor** may give notice of termination should the default continue for fifteen (15) **working days** after issue of the notice of intended termination. Such termination shall be without prejudice to any rights that the **subcontractor** may have
- 38.3 The **subcontractor** may give summary notice of termination to the **contractor** in the event of termination by the **contractor** or **employer** in terms of the **principal agreement**
- 38.4 *No clause*
- 38.5 Where the **subcontractor** terminates this **n/s agreement** [38.0] the following shall apply:
- 38.5.1 Execution of the **n/s works** shall cease. The **subcontractor** shall remain responsible for the **n/s works** [8.1] until possession is relinquished to the **contractor**
- 38.5.2 On relinquishing possession of the **n/s works** the **subcontractor** shall remove from the **site** his temporary buildings, plant and machinery without delay

- 38.5.3 The **principal agent** shall forthwith compile a report on the status of the portion of the **n/s works** executed by the **subcontractor** and shall issue such report to the **employer, contractor** and the **subcontractor**
- 38.5.4 The **principal agent** shall timeously commence and complete the **n/s final account** [34.0]
- 38.5.5 The **employer** shall be liable to the **subcontractor** for the cost of **materials and goods** including those ordered before such termination where the **subcontractor** is bound to accept and make payment. The **subcontractor** shall deliver such **materials and goods** to the **employer** in good order
- 38.5.6 The **contractor** shall be liable to the **subcontractor** for damages resulting from such termination
- 38.5.7 The **principal agent** shall continue to certify the value of the **n/s works** executed by the **subcontractor** and the value of **materials and goods** for payment by the **employer**
- 38.5.8 The **security** [14.5] shall expire and be returned by the **employer** to the **subcontractor**
- 38.5.9 The **latent defects** liability period shall end [27.2.2]
- 38.6 The right to terminate may not be exercised where the **subcontractor** is in material breach of this **n/s agreement**

39.0 TERMINATION - CESSATION OF THE WORKS

- 39.1 Either **party** may terminate this **n/s agreement** on the cessation of the **works** for a continuous period of ninety (90) **calendar days**, or an intermittent period totalling one hundred and twenty (120) **calendar days**, due to circumstances beyond their control. The terminating **party** shall give notice to the other. Such termination shall be without prejudice to any rights that either **party** may have
- 39.2 *No clause*
- 39.3 Where this **n/s agreement** is terminated the following shall apply:
- 39.3.1 The **contractor** shall forthwith issue a **contractor's instruction** specifying the continuation of work and protective measures required by the **principal agent** to bring the **n/s works** to specific points of cessation. The **subcontractor** may cease work should the **subcontractor** be prevented from carrying out such **contractor's instruction** due to reasons entirely beyond his control
- 39.3.2 Execution of the **n/s works** shall cease. The **subcontractor** shall remain responsible for the **n/s works** [8.1] until possession is relinquished to the **contractor**
- 39.3.3 On relinquishing possession of the **n/s works**, the **subcontractor** may remove from the **site** his temporary buildings, plant and machinery
- 39.3.4 The **principal agent** shall forthwith compile a record of the status of the portion of the **works** executed by the **n/s contractor** before the termination of the **principal agreement** and shall issue such record to the **parties**
- 39.3.5 The **principal agent** shall timeously commence and complete a **n/s final account** [34.0]
- 39.3.6 The **employer** shall be liable to the **subcontractor** for the cost of **materials and goods** including those ordered before such termination where the **subcontractor** is bound to accept and make payment. The **subcontractor** shall deliver such **materials and goods** to the **employer** in good order

- 39.3.7 The **principal agent** shall continue to certify the value of the work executed by the **subcontractor** and the value of **materials and goods** for payment by the **contractor** until a final **payment certificate** is issued
- 39.3.8 The **security** [14.0] shall reduce to the value applicable after the granting of **practical completion**
- 39.3.9 The **latent defects** liability period shall end [27.2.1]
- 39.4 Neither **party** shall be liable to the other for any expense and loss resulting from this termination

DISPUTE

40.0 SETTLEMENT OF DISPUTES

- 40.1 Should any disagreement arise between the **contractor** and the **subcontractor** arising out of or concerning this **n/s agreement** or its termination, either **party** may give notice to the other to resolve such disagreement
- 40.2 Where such disagreement is not resolved within ten (10) **working days** of receipt of such notice it shall be deemed to be a dispute and shall be referred by the party which gave such notice to either:
- 40.2.1 Adjudication [40.3] where the adjudication shall be conducted in terms of the edition of the **JBCC Rules for Adjudication** current at the time when the dispute was declared, or
- 40.2.2 Arbitration [40.4] where the arbitrator is to be appointed by the body selected by the parties [41.3] whose rules shall apply. Where nobody is stated or where the stated body is unable or unwilling to act, the appointment shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The appropriate rules current at the time when the dispute is declared shall apply
- 40.3 Where a dispute is referred to adjudication the following shall apply:
- 40.3.1 The **adjudicator** shall be appointed in terms of the Rules [40.2.1]
- 40.3.2 The **adjudicator** shall not be eligible for subsequent appointment as the **arbitrator**
- 40.3.3 The **adjudicator's** decision shall be binding on the **parties** who shall give effect to it without delay unless and until it is subsequently revised by an **arbitrator** [40.4]
- 40.3.4 Should either **party** be dissatisfied with the decision given by the **adjudicator**, or should no decision be given within the period set in the Rules, such **party** may give notice of dissatisfaction to the other **party** and to the **adjudicator** within ten (10) **working days** of receipt of the decision or, should no decision be given, within ten (10) **working days** of expiry of the date by which the decision was required to be given the dissatisfied party shall refer the dispute to arbitration
- 40.4 Where a dispute is referred to arbitration the following shall apply:
- 40.4.1 The **arbitrator** shall be appointed at the request of either **party** by the body stated in 40.2.2
- 40.4.2 The arbitration shall be conducted by the **arbitrator** in accordance with the rules of the body stated in the **contract data**
- 40.4.3 The **arbitrator** shall have the power to open or revise any certificate, opinion, decision, requisition, or notice relating to the dispute as if no such certificate, opinion, decision, requisition or notice had been issued or given

- 40.4.4 The **arbitrator's** decision shall be binding on the **parties** who shall give effect to it without delay
- 40.5 The above provisions [40.2-4] shall not be construed as a waiver of the **parties'** entitlement to resolve a dispute by mediation at any time
- 40.6 Where a dispute is submitted to mediation the following shall apply:
- 40.6.1 The **parties** shall agree on and appoint the **mediator** within ten (10) **working days** of the date on which the dispute was declared. Whether or not the mediation resolves the dispute, the **parties** shall bear their own costs concerning the mediation and share the costs of the **mediator** and related costs equally
- 40.6.2 The **mediator** shall agree the procedures, representation and dates for the mediation process with the **parties**. The **mediator** may meet the **parties** together or individually to help reach a settlement
- 40.6.3 Where the **parties** reach settlement of the dispute or any part thereof, the **mediator** shall record such agreement and on signing thereof by the **parties** the agreement shall be final and binding
- 40.7 Recording of a dispute [40.1] shall not relieve the **parties** from liability for the due and timeous performance of their obligations
- 40.8 The termination of this **agreement** shall not affect the validity of this clause 40.0
- 40.9 Should any disagreement arise between the **contractor** and the **subcontractor** consequent upon a decision, action or inaction of the **employer** or **agent**, then the **contractor** shall allow the **subcontractor** to use the **contractor's** name to institute proceedings as are provided for in the **principal agreement**. Further, the **contractor** may elect to join the **subcontractor** in instituting such proceedings. Should the **subcontractor** elect to proceed, the **subcontractor** shall:
- 40.9.1 Provide the **contractor** with an indemnity and security as reasonably required by the **contractor**
- 40.9.2 Certify that the outcome of such proceedings shall be binding on him
- 40.9.3 Initiate the proceedings as provided for in the **principal agreement**

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41.0 POST TENDER PROVISIONS

41.1 All information provided in this section requires consultation with the **parties** to the **agreement**. The **principal agent** shall not preselect any of the alternatives available to the **contractor**

41.2 The completed **Contract Data - Employer** and **Contract data - Contractor** addenda and such other pertinent documents as listed below shall form part of this **agreement**:

41.3 The dispute resolution body selected by the **parties** is:

41.4 Further provisions and information agreed by the parties:

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NOTES:

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42.0 CONTRACTUAL AGREEMENT

42.1 This **agreement** is the entire contract between the **parties** regarding the matters addressed herein. No representations, terms, conditions or warranties not contained in this **agreement** shall be binding on the **parties**. No agreement or addendum varying, adding to, deleting or terminating this **agreement** including this clause shall be effective unless reduced to writing and signed by the **parties**

42.2 Contracting Parties

(1) **Contractor** _____

Physical address _____

Tel. _____ Fax _____ E-mail _____

Tax / VAT No _____

(2) **Subcontractor** _____

Physical address _____

Tel. _____ Fax _____ E-mail _____

Tax / VAT No _____

42.3 The accepted **n/s contract sum (tax inclusive)** (Amount)

In words _____

42.4 Signature of the contracting **parties**:

Thus done and signed at _____ on _____

Name of signatory

for and on behalf of the **contractor** who by signature hereof warrants authorisation hereto

Capacity of signatory

as Witness (1)

Thus done and signed at _____ on _____

Name of signatory

for and on behalf of the **subcontractor** who by signature hereof warrants authorisation hereto

Capacity of signatory

as Witness (2)

Details of Witness (1)

Details of Witness (2)

Name: _____

Name: _____

Address: _____

Address: _____

SCHEDULE OF MODIFICATIONS IN EDITION 5.0

Legend

A	Amended	A clause has been changed or reworded
D	Deleted	A clause has been removed or designated as "No clause"
N	New	A clause has been added
R		A clause has been renumbered or renamed
2.1-5, 8		The sequence of clauses from 2.1 to 2.5 and 2.8

Note: 1 Inconsequential wording, grammar and previous typographical corrections are not listed
2 Reprints of this edition may include further inconsequential corrections that will not be listed

Table of modifications to definitions listed in clause 1.0:

A	Arbitrator	A	Mediator	D	N/S Schedule
A	Contractor's Instruction	D	N/S Bills of Quantities	N	Party
A	CPAP	N	N/S Contract Data	A	Practical Completion
A	Defect	A	N/S Contract Documents	A	Programme
A	Final Completion	N	N/S Payment Guarantee	D	State
D	Lump Sum Document	N	N/S Priced Document		

Table of modifications to clauses:

A 1.4	D 7.2	A 14.7.1	N 24.7-10	A 31.12	N 41.0
A 1.5.2	A 8.2.1-2	A 15.1	A 25.2.1-2	A 34.1	N 41.1-4
A 1.5.4	N 9.2.10-11	A 15.1.1-2	A 26.1	R 36.0	A 42.0
D 1.5.6	R 10.0	A 15.3	D 26.1.1-2	A 36.1-10	A 42.1-4
A 1.6.1	A 10.1,4	N 15.5-9	N 27.3	R 37.0	
D 1.9	R 11.0	R 16.0	A 29.2.4	A 37.3.5	
D 3.3-4	N 11.1-3	A 16.1	A 29.3	R 38.0	
A 3.6	D 11.2	A 16.2-3	R 29.4.4	A 38.1,3	
	N 12.1.1-2	N 16.3-11	A 29.7	A 38.5.4	
A 3.7-10	A 12.2.3	A 17.1.13	A 29.7.2	R 39.0	
A 3.11	N 12.5-6	R 19.0	D 29.7.4	A 39.1	
D 3.12-13	R 13.0		R 30.0	R 39.2	
A 5.1	N 13.1-2	A 24.1	A 31.8.2-3	A 39.3.7	
N 5.4-5	A 14.3.1	A 24.1-2	A 31.11	A 40.2-8	
R 6.0	A 14.4.1	N 24.1.3	D 31.11.1-2	D 40.9-10	