



MINOR WORKS AGREEMENT

Project	
Employer	
Contractor	
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



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JBCC SERIES 2000

Minor Works Agreement - Edition M4.0

Preface

JBCC documents are compiled in the interests of standardisation and portray the consensus view of the Joint Building Contracts Committee of good practice in the building industry. The documentation sets out a clear, balanced and enforceable set of procedures, rights and obligations, which when competently managed and administered, protect the employer and contractor alike. The other objectives of the JBCC are to:

- ▶ Foster good and consistent management by all concerned
- ▶ Provide standardisation of defined terminology, thereby eliminating ambiguities in interpretation
- ▶ Clearly define and identify the responsibilities of the contracting parties
- ▶ Set standard methodology for dealing with contractual responsibilities and obligations
- ▶ Promote contractual protection of the innocent party in the event of default
- ▶ Provide practical options within the contracting process
- ▶ Provide for reciprocal guarantees between the contracting parties
- ▶ Set payment conditions that offer significant protection to the contractor
- ▶ Ensure the maintenance of the independent duty of the principal agent to act fairly between the parties

Warning!

Persons entering into or preparing contracts using the JBCC Minor Works Agreement are warned of the dangers inherent in modifying any part thereof. If it is considered essential to make changes, users are advised that it is necessary for such changes to be 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

Special Note

Although this Minor Works Agreement is part of the JBCC Series 2000 documents it has been formulated for use specifically with its own supplementary documents. Documentation designed specifically for the Principal Building Agreement and N/S Subcontract Agreement is not suitable and should not be used with the Minor Works Agreement

This agreement is designed for use where:

- ◆ The contract is for minor works of simple content
- ◆ The employer appoints:
 - ◆ a principal agent only to administer the contract
 - ◆ such other agents for specific aspects of the works
 - ◆ direct contractors for specialised work or installation not to be undertaken by the contractor

and is suitable but not limited for use where:

- ◆ The contractor is a small to medium enterprise
- ◆ The employer carries the major liabilities related to the works
- ◆ The employer is responsible for the primary insurances related to the works

This agreement is not designed or intended for use where the works:

- ◆ Requires the use of nominated or selected subcontractors
- ◆ Contract price adjustment (escalation) provisions are required

and is not considered suitable where:

- ◆ The works is of a complex nature
- ◆ The construction period is anticipated to be more than nine months
- ◆ The necessary contract documentation is not complete and available at tender stage
- ◆ Sectional completions are required

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TABLE OF CONTENTS

Section	Clause	Description	Page
DEFINITIONS	1.0	Definitions and Interpretations	1
PREPARATION	2.0	Security and Guarantees	4
	3.0	Risk and Insurance	4
	4.0	Documents, Design and Assignment	5
EXECUTION	5.0	Employer	5
	6.0	Employer's Agents	6
	7.0	Contractor	7
	8.0	Employer's Direct Contractors	8
COMPLETION	9.0	Practical Completion	8
	10.0	Final Completion and Latent Defects Liability	9
	11.0	Revision of Date for Practical Completion	9
	12.0	Penalty for Noncompletion	10
PAYMENT	13.0	Valuation and Payment to Contractor	10
	14.0	Adjustment to the Contract Value	12
TERMINATION	15.0	Termination by Employer	13
	16.0	Termination or Suspension by Contractor	13
	17.0	Termination - Impossibility of Performance	14
DISPUTES	18.0	Settlement of Disputes	15
CONTRACT AGREEMENT	19.0	Post Tender Provisions	16
	20.0	Contractual Agreement	17
NOTES			18 and 19
ADDENDUM		Schedule of Modifications to Previous Edition	20

JBCC Documentation Services

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

MINOR WORKS AGREEMENT

DEFINITIONS

1.0 DEFINITIONS AND INTERPRETATIONS

- 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 **contract data** has not been provided

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

AGENT: A party named in the **contract data** and/or appointed by the **employer** to deal with specific aspects of the **works**. Such **agent's** duties shall not be related directly to the **contractor**

AGREEMENT: This **JBCC** Minor Works Agreement and other **contract documents** that together form the contract between the **parties**

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

BILLS OF QUANTITIES: The document drawn up according to the measuring system as stated in the **contract data**. The **contractor** shall have priced the document to reflect the **contract sum**

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

CONSTRUCTION GUARANTEE: A guarantee obtained by the **contractor** from an institution approved by the **employer** in terms of the **JBCC** Minor Works Construction Guarantee form as elected in the **contract data**

CONSTRUCTION PERIOD: The period commencing on the intended date as stated in the **contract data** that possession of the **site** shall be given to the **contractor** and ending on the date of **practical completion**

CONTRACTOR: The **party** contracting with the **employer** for the execution of the **works** as stated in the **contract data**

CONTRACT DATA: The defined listed variables applicable to this **agreement**

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

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

CONTRACT INSTRUCTION: A written instruction signed and issued by or under the authority of the **principal agent** to the **contractor** and shall include drawings and other construction information

CONTRACT MINUTES: A comprehensive set of minutes prepared by the **principal agent** in which all the pertinent contractual information that arises at meetings is progressively recorded

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

CONTRACT VALUE: A monetary value that initially is equal to the **contract sum** that is subject to adjustment

DEFECT: Any aspect of materials and workmanship forming part of the **works** that, in the opinion of the **principal agent**, is due to the failure of the **contractor** to comply with his obligations in terms of the **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 **contract data**

EMPLOYER ALLOWANCES: The contingency and budget allowances included in the **contract sum**

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

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

INTEREST: The bank rate that is applicable from time to time to registered banks when borrowing money from the Central or Reserve Bank of the country named in the **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

JBCC: The Joint Building Contracts Committee Incorporated

LATENT DEFECT: A **defect** that a reasonable inspection of the **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 **contract data**

MATERIALS AND GOODS: Materials and goods delivered to the **contractor** for inclusion in the **works** stored on the **site** but not yet part of the **works**

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

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

PAYMENT GUARANTEE: A guarantee in the amount as stated in the **contract data** obtained by the **employer** from an institution approved by the **contractor** in terms of the JBCC Minor Works Payment Guarantee form

PENALTY: A monetary value determined at a rate per **calendar day** as stated in the **contract data**

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

PRICED DOCUMENT: **Bills of quantities, lump sum document, schedule of rates** or other documents as are appropriate to this **agreement**

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

PRINCIPAL AGENT: The **party** named in the **contract data** and/or appointed by the **employer** with full authority and obligation to act in terms of the **agreement**

RETENTION: The **security** selected by the **contractor** as a payment reduction from the value certified in a **payment certificate**

SECURITY: The form of guarantee provided by the **employer** or **contractor**, as stated in the **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 stated in the **contract data**

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

TENDER: The completed **JBCC** Form of Tender submitted by the tenderer and accepted by the employer

WORKING DAYS: Twenty-four (24) hour days commencing at midnight (00.00) which excludes Saturdays and Sundays, statutory holidays and any annual building holiday period stated in the **contract data**

WORKS: The works described in general terms in the **contract data**, detailed in the **contract documents**, ordered in **contract instructions** and including the **contractor's** and his subcontractors' temporary works. **Works** also includes **materials and goods** and those supplied free or otherwise by the **employer** to the **contractor** and excludes work or installations to be executed by **direct contractors**

- 1.2 The **parties** each choose their physical addresses as stated in the **contract data** where notices or processes arising out of or concerning this **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 provided that it is in the same country as that initially stated in the **contract data**
- 1.3 Documents and legislation referred to in this **agreement** shall mean the current edition thereof with all amendments thereto at the date of submission of the **contractor's** tender unless otherwise stated
- 1.4 The date of issue of any certificate referred to in this **agreement** shall be the date on which the **principal agent** signs the certificate
- 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, request, reduce, refuse, 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] indicate "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 - 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 certificate** only, the **parties** consent to the jurisdiction of any court of the country as stated in the **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 **agreement** is the entire contract between the **parties** regarding the matters addressed in this **agreement**. 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**
- 1.9 The objective of this **agreement** is the execution of and payment for the **works** for which there has been an offer by the **contractor** and an acceptance thereof by the **employer**. In pursuance of the objective the **parties** undertake to carry out their reciprocal obligations
- 1.10 The **parties** shall comply with all **laws**, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the **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 [14.0]

PREPARATION

2.0 SECURITY AND GUARANTEES

- 2.1 The **contractor** shall have the right to select the **security** to be provided [2.2-3]. The **contractor** shall state the choice of **security** in his **contract data**, failing which he shall be deemed to have selected **retention**. [2.3]
- 2.2 Where **security** as a **construction guarantee** has been selected:
- 2.2.1 The **contractor** shall provide the guarantee to the **employer** within twenty-one (21) **calendar days** of acceptance of the **tender**. Such guarantee shall be issued by a guarantor to the reasonable approval of the **employer**
- 2.2.2 The **employer** shall return the guarantee to the **contractor** within fourteen (14) **calendar days** of it expiring
- 2.3 Where **security** as **retention** has been selected the **principal agent** shall deduct such **retention** [13.9]
- 2.4 Should the **contractor** fail to provide the **security** [2.2] the **employer**, in his sole discretion, shall either:
- 2.4.1 Apply the **security** provision [2.3], or
- 2.4.2 Terminate this **agreement** [15.0] where the **site** has not been handed over
- 2.5 The **employer** shall provide a **payment guarantee** within fourteen (14) **calendar days** where required by the **contractor** in the **contract data**
- 2.6 The **contractor** shall provide a **JBCC Waiver of Lien** to the **employer** only on receipt of the **payment guarantee**
- 2.7 The **contractor** shall provide the **employer** with an **advance payment guarantee** equal in value to the cash advance requirement stated in the accepted **contract data**

3.0 RISK AND INSURANCE

- 3.1 The party responsible for insurance in terms of the **contract data** indemnifies the other against any loss in respect of claims from other parties arising out of or due to the execution of the **works** or occupation of the **site** by the **contractor** consequent upon:
- 3.1.1 Death or bodily injury or illness of any person
- 3.1.2 Physical loss and damage to any property other than the **works**
- 3.1.3 Removal of or interference with lateral support of an adjoining property
- 3.2 The **employer** shall be at risk for:
- 3.2.1 The cost of making good physical loss and repairing damage to the **works** subject to 3.6, including existing buildings and the contents thereof
- 3.2.2 The support of structures being altered or added to
- 3.2.3 Work to be executed and installed in the **works** by a **direct contractor**
- 3.3 The **contractor** shall be at risk for his employees, construction plant and vehicles
- 3.4 The party [3.1] shall take out and provide written evidence to the **principal agent** regarding:
- 3.4.1 Public liability insurance to insure the interests of both parties for the amount stated in the **contract data** and
- 3.4.2 Contract works insurance which shall be in the joint names of the **employer** and the **contractor** for the amount and deductible stated in the **contract data**. Where applicable such amount shall

include existing buildings and their contents. The amount payable by the **contractor** [14.9] shall be stated in the **contract data**

- 3.4.3 Insurance to cover the interests of both parties where lateral support of an adjoining property is required [3.1.3] where detailed in the **tender**
- 3.5 The insurances are to remain in force from the date of **site** handover until the date of **final completion**
- 3.6 Where, in the opinion of the **principal agent**, loss and damage to the **works** [3.2.1] is due to the **contractor's** negligence the **contractor** shall be liable for such loss and damage. Such liability shall not exceed the insurance deductible stated in the **contract data** in any particular instance

4.0 DOCUMENTS, DESIGN AND ASSIGNMENT

- 4.1 The **contractor** shall provide a copy of the **priced document** and such other documents that make up the **tender** to the **principal agent** within ten (10) **working days** of being requested to do so
- 4.2 This **agreement** applies and comes into force on acceptance in writing of the **tender** by the **employer**
- 4.3 The **principal agent** shall complete the **contract data** and arrange for the formal signing of this **agreement** once the parties have provided and taken out the **security**, insurances and guarantees
- 4.4 The parties shall sign, in original, the number of sets of **contract documents** required by the parties. The **principal agent** shall hold a signed set of **contract documents** to be produced as and when required
- 4.5 The **employer** shall furnish the **contractor** without any charge with one (1) set of the signed **contract documents** and as many copies of drawings and/or specifications and such additional drawings as are reasonably necessary for the carrying out of the **works**
- 4.6 The **contractor** shall keep one (1) copy of all drawings and all **contract instructions** and **contract minutes** at the **site** to which the **principal agent** shall have access at all reasonable times
- 4.7 The **principal agent** shall correct any errors in the **contract documents** [6.2.2]. Where applicable the **principal agent** shall treat such correction as an adjustment [14.0]
- 4.8 The **contractor** shall not be responsible for the design of the **works**
- 4.9 Neither the **employer** nor **contractor** shall assign or cede his rights or obligations without the written consent of the other party, which consent shall not be withheld without good reason

EXECUTION

5.0 EMPLOYER

- 5.1 The **employer** shall:
 - 5.1.1 Provide the **contractor** with a **payment guarantee** [2.5]
 - 5.1.2 Take out the necessary insurances [3.4] where so required in terms of the **contract data**
 - 5.1.3 Give possession of the **site** to the **contractor** by the date stated in the **contract data**. The **construction period** and **latent defects** liability period shall commence with the handover of the **site**
 - 5.1.4 Arrange for the boundary pegs or beacons identifying the **site** and datum level to be pointed out to the **contractor** and provide the **contractor** with a **JBCC site** possession certificate at the handover of the **site**
 - 5.1.5 Arrange for water, sewer and electrical connections as required and pay all fees where so required in terms of the **contract data**

- 5.1.6 Provide water and electricity for the execution of the **works** free of charge where so required in terms of the **contract data**
- 5.1.7 Make payment to the **contractor** [13.0]
- 5.1.8 Appoint the **principal agent** and in the event of the **principal agent's** inability to act, or ceasing to be the **principal agent**, another **principal agent** to the reasonable approval of the **contractor**
- 5.1.9 Not issue instructions to, interfere with, hinder or obstruct any of the **contractor's** workers or any other persons employed or acting on behalf of the **contractor**
- 5.1.10 Not prevent nor interfere with the **principal agent** or other **agents** from exercising their independent judgement regarding the discharging of their duties to the prejudice of the **contractor**
- 5.1.11 Comply with all **laws**, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the **works**
- 5.2 The **employer** may employ:
 - 5.2.1 **Direct contractors** as listed in the **contract data**
 - 5.2.2 Other parties to rectify the default by the **contractor** [6.3] and recover expense and loss resulting from such action [13.7.1]
 - 5.2.3 Other **agents** to assist the **principal agent**

6.0 EMPLOYER'S AGENTS

- 6.1 The **principal agent** shall:
 - 6.1.1 Administer the contract, monitor the progress of the **works** and carry out the duties assigned to him in terms of this **agreement**
 - 6.1.2 Define on drawings the levels and coordinates and any other information required by the **contractor** which is required for setting out and the execution of the **works**
 - 6.1.3 Meet regularly with the **contractor** to inspect and facilitate the progress of the **works**
 - 6.1.4 Record all the actions taken by the parties including discussions held, progress of the **works**, **contract instructions** and drawings issued and claims and decisions regarding delays and payment in the **contract minutes** at the periods stated in the **contract data**. Such **contract minutes** shall be issued to the **employer** and the **contractor** for action. The **contract minutes** shall be tabled for approval at the following meeting
 - 6.1.5 Issue **payment certificates** and completion certificates in terms of the **agreement**
 - 6.1.6 Adjust the **contract value** [14.0]
 - 6.1.7 Prepare the **final account** [13.10]
 - 6.1.8 Revise the **construction period** [11.0]
 - 6.1.9 Delegate to other **agents** authority to perform such duties as may be required for specific aspects of the **works** provided that such delegation is accepted by the **contractor** and recorded in the **contract minutes**
- 6.2 The **principal agent** may issue **contract instructions** to the **contractor** regarding:
 - 6.2.1 Alteration to design, quality or quantity of the **works** where such **contract instructions** do not substantially change the scope of the **works**
 - 6.2.2 Rectification of discrepancies, errors in description or omissions in **contract documents**

- 6.2.3 Removal of any **materials and goods** from the **site** and the substitution of any other **materials and goods** therefor
- 6.2.4 Removal or re-execution of any work
- 6.2.5 Opening up of work for inspection and the testing of work and **materials and goods**
- 6.2.6 Protection of the **works**
- 6.2.7 Making good physical loss and repairing damage to the **works** [3.2]
- 6.2.8 Removal from the **site** of any person not engaged on or not connected with the **works**
- 6.2.9 **Prime cost amounts** and the purchase of **materials and goods** related thereto
- 6.2.10 The expenditure of **employer allowances**
- 6.2.11 Work by a **direct contractor** [8.0]
- 6.2.12 The lists for **practical completion, final completion** and **defects**
- 6.2.13 Compliance with **law**, regulations and bylaws
- 6.3 Should the **contractor** fail to proceed with a **contract instruction** the **principal agent** may notify the **contractor** to proceed within five (5) **working days** of receipt of such notice. The **employer** may employ others [5.2.2] on default by the **contractor**

7.0 CONTRACTOR

7.1 The **contractor** shall:

- 7.1.1 Submit to the **principal agent** prior to taking possession of the **site**:
 - The **security** [2.2] where so selected
 - A **JBCC Waiver of Lien** [2.6]
 - Where responsible proof of insurance [3.4]
 - The **priced document** [4.1]
- 7.1.2 On being given possession of the **site** commence the **works** within the period stated in the **contract data** and:
 - Proceed continuously, industriously and with due skill and appropriate physical resources
 - Comply with all **contract instructions** [6.2] issued in good time
 - Bring the **works**, within the **construction period**, to **practical completion** [9.0]
 - Bring the **works** to **final completion** [10.0]
- 7.1.3 Provide temporary toilet facilities except where provided by the **employer**
- 7.1.4 Submit all local authority notices required for the **works**
- 7.1.5 Comply with all **laws**, regulations and bylaws of local or other authorities having jurisdiction regarding the execution of the **works** and obtain all certificates and other documents required by such authorities
- 7.1.6 Notify the **principal agent** where compliance with any **law**, regulation or bylaw requires a change or variation to the **works**. Such change shall be deemed to be a **contract instruction**
- 7.1.7 Preserve the boundary pegs, beacons and datum pegs and should they become disturbed have them replaced at his own expense to the satisfaction of the **principal agent**
- 7.1.8 Be on the **site** continuously during the execution of the **works**. The **contractor** may appoint a competent representative to administer and control the **works** in his stead. The **principal agent** shall be informed of the name of such representative where so appointed. A **contract instruction** given to the **contractor's** representative shall be deemed to be given to the **contractor**

8.0 EMPLOYER'S DIRECT CONTRACTORS

8.1 The **principal agent** shall:

8.1.1 Record in the **contract data** the type, extent and estimated value of work or installation to be undertaken by a **direct contractor** described in the **tender documents**

8.1.2 Instruct the **contractor** [6.2.11] to allow such work to be carried out and installed in the **works**

8.2 The **contractor** shall:

8.2.1 Make reasonable allowance in the construction programme for work or installation to be undertaken by a **direct contractor**

8.2.2 Have the right to impose reasonable controls on a **direct contractor**

8.3 The **contractor** shall not be responsible for the performance and payment of a **direct contractor** nor for risks associated therewith

COMPLETION

9.0 PRACTICAL COMPLETION

9.1 The **principal agent** shall inspect the **works** from time to time to give the **contractor** interpretations and guidance on the standard and state of completion of the **works** which will be required to achieve **practical completion**

9.2 The **contractor** shall inform the **principal agent** of the date on which **practical completion** is expected to be achieved

9.3 The **principal agent** shall inspect the **works** on or before the date requested by the **contractor**. Where the **works**:

9.3.1 Has reached **practical completion** the **principal agent** shall forthwith issue a certificate of **practical completion** to the **contractor**

9.3.2 Has not reached **practical completion** the **principal agent** shall issue a **practical completion** list to the **contractor** defining the outstanding work and **defects** to be rectified to achieve **practical completion**

9.3.3 Is not ready for a **practical completion** inspection the **principal agent** shall issue a list as a general guide to the **contractor** of the outstanding areas of work and **defects** to be attended to before he can request a further inspection

9.4 Where **practical completion** has not been achieved [9.3.2-3] the **contractor** shall continue with the **works** and may only request a further inspection once he has addressed the **principal agent's** requirements

9.5 The **principal agent** shall make further **practical completion** inspections until the **contractor** achieves **practical completion** [9.3.1]

9.6 Where the **contractor** achieves **practical completion** the **employer** shall be entitled to possession of the **works** and the **site** subject to the **contractor's** lien [2.6]

9.7 The **contractor** shall not be obliged to carry out any **contract instruction** for additional work issued after the date of **practical completion**

9.8 Where the **employer** at any time takes possession of the whole or part of the **works** by agreement with the **contractor** prior to the applicable date for **practical completion** then **practical completion** shall be deemed to have taken place and the **certificate of practical completion** shall be issued

10.0 FINAL COMPLETION AND LATENT DEFECTS LIABILITY

- 10.1 Within seven (7) **calendar days** of the achievement of **practical completion** the **principal agent** shall issue a **final completion** list setting a reasonable period in which the detailed incomplete work and **defects** is to be rectified by the **contractor**
- 10.2 The **defects** liability period of ninety (90) **calendar days** shall commence on the date of **practical completion**
- 10.3 On the expiry of the **defects** liability period the **principal agent** shall immediately inspect the **works** for **final completion**. Where the **works**:
- 10.3.1 Has reached **final completion** the **principal agent** shall forthwith issue a certificate of **final completion** to the **contractor**
- 10.3.2 Has not reached **final completion** the **principal agent** shall forthwith issue to the **contractor** a **defects** list detailing any incomplete work and **defects** to be rectified before a further inspection is undertaken
- 10.4 The achievement of **final completion** [10.3.1] shall be conclusive evidence as to the sufficiency of the **works** other than for the **contractor's** liability for **latent defects**
- 10.5 The **latent defects** liability period for the **works** shall commence at the start of the **construction period** and end five (5) years from the date of achievement of **final completion** [10.4]
- 10.6 Where, before the achievement of **final completion**, termination of this **agreement** occurs the **latent defects** liability period shall end:
- 10.6.1 Five (5) years from the date of termination where the **contractor** is in default [15.0], or
- 10.6.2 On the date of termination [17.0], or
- 10.6.3 Where the **employer** is in default [16.0]
- 10.7 The **contractor** shall promptly address **defects** that appear up to the date of **final completion**

11.0 REVISION OF DATE FOR PRACTICAL COMPLETION

- 11.1 The **contractor** shall be entitled to a revision of the date for **practical completion** where the **works** is delayed by any condition, event or activity beyond the **contractor's** reasonable control. The **contractor** shall report the cause and effect of such delay and the **working days** claimed to the **principal agent** at the next meeting held [6.1.4]
- 11.2 The **principal agent** shall record the details of the delay in the **contract minutes**
- 11.3 In considering the **contractor's** claim the **principal agent** shall make allowance for public and other holidays recognised in the building industry
- 11.4 At intervals no greater than ten (10) **working days** the **principal agent** shall grant, reduce or refuse each extension claimed and determine the revised date for **practical completion** accordingly
- 11.5 Where additional time is granted the **principal agent** shall also determine whether the **contractor** is entitled to additional payment [14.8.2]. The **contractor** shall be entitled to additional payment due to a delay caused by:
- 11.5.1 The late handing over of the **site** to the **contractor**
- 11.5.2 Repairing damage to the **works** excluding damage related to the **contractor's** default
- 11.5.3 **Contract instructions** excluding those related to the **contractor's** default
- 11.5.4 Default by the **principal agent** or the **employer**
- 11.5.5 A required water, electrical or sewerage connection not being available

- 11.5.6 **Direct contractors** appointed [8.0]
- 11.5.7 Any other cause beyond the **contractor's** control or reasonable anticipation
- 11.6 Where the **contractor** disagrees with a decision made [11.4-5] the **principal agent** shall give reasons for his decision on both additional time and payment and shall record in the **contract minutes** such reasons and the effect on the **construction period** and **contract value**. The **contractor** may dispute such reasons and the effects thereof [18.1]

12.0 PENALTY FOR NONCOMPLETION

- 12.1 Where **practical completion** is not achieved by the date stated in the **contract data** or by the revised date granted by the **principal agent** [11.4] the **contractor** shall be liable to the **employer** for the **penalty** determined by the **principal agent** at the **penalty** rate stated in the **contract data**
- 12.2 Where the **employer** decides to levy such a **penalty** the **principal agent** shall apply the **penalty** due to the certified amount [13.7.2] in any **payment certificate** still to be issued to the **contractor**
- 12.3 Where the **penalty** causes the amount due in a **payment certificate** to favour the **employer** [13.12] the **employer** may recover the amount due, in no specific sequence, from any or all the following:
 - 12.3.1 The amount due to the **contractor** [13.11] in subsequent **payment certificates**
 - 12.3.2 **Security** [2.0]
 - 12.3.3 The **contractor** as a debt

PAYMENT

13.0 VALUATION AND PAYMENT TO CONTRACTOR

- 13.1 Where **bills of quantities** are not available the **contractor** shall within fourteen (14) **calendar days** of the date of **site handover**, submit to the **principal agent** for agreement an analysis of the **contract sum** in sufficient detail to enable the **principal agent** to make interim valuations of the **works**. Should the **contractor** fail to submit such an analysis the **principal agent** shall prepare the analysis
- 13.2 The **contractor** shall cooperate and assist in the preparation of the valuation for a **payment certificate** by providing relevant documents and assessments of work completed and **materials and goods** to the **principal agent**
- 13.3 Within seven (7) **calendar days** of each valuation date as stated in the **contract data** the **principal agent** shall issue to the **contractor** with copies to the **employer**:
 - 13.3.1 A statement detailing the current **contract value** of the **works** and
 - 13.3.2 An interim **payment certificate** even where it is for a nil or negative amount
- 13.4 The **principal agent** shall issue interim **payment certificates** until the issue of the final **payment certificate** whether or not the **contractor** provides the information required [13.2]
- 13.5 The **contract value** certified in each interim **payment certificate** shall separately include the following:
 - 13.5.1 A reasonable estimate of the value of the work done [13.3.1] and adjustments [13.9, 14.0]
 - 13.5.2 A reasonable estimate of the value of **materials and goods**
 - 13.5.3 Amounts previously certified [13.5.1-2]
- 13.6 The **principal agent** shall adjust the net amount certified to separately include the following:
 - 13.6.1 Amounts due to the **employer** [13.7] or to the **contractor** [13.8]
 - 13.6.2 **Tax** on the net total of the amounts [13.5, 13.6.1]

- 13.6.3 **Interest** due [13.13-14]
- 13.7 The **principal agent** shall include in the **payment certificate** amounts due to the **employer** for:
- 13.7.1 Work done by others [6.3]
- 13.7.2 **Penalties** levied [12.2]
- 13.7.3 Expense and loss incurred due to default by the **contractor's** negligence [3.6] or on termination [15.0]
- 13.8 The **principal agent** shall include in the **payment certificate** amounts due to the **contractor** for expense and loss incurred due to default by the **employer** on termination [16.0]
- 13.9 Where **security** [2.3] has been selected **retention** on the value [13.5.1-2] shall be deducted at:
- 13.9.1 Eight per cent (8%) of such value to a limit of four per cent (4%) of the **contract sum** to the date of **practical completion**
- 13.9.2 Two cent (2%) of the **contract sum** after the date of **practical completion** to the date of issue of the final **payment certificate**. The **retention** held shall include any unpaid amount due [13.12] in the previous **payment certificate**
- 13.9.3 Nil per cent (0%) of the **contract value** in the final **payment certificate**. The **retention** held shall include any unpaid amount due [13.12] in the previous **payment certificate**
- 13.10 The **principal agent** shall within forty-five (45) **calendar days** of the date of **practical completion** [9.0] submit to the **contractor** a detailed **final account** reflecting the total **contract value** due in terms of the **agreement** for acceptance or rejection within ten (10) **working days**. Where the **final account**:
- 13.10.1 Is accepted the **principal agent** shall concurrently with the issue of the certificate of **final completion**, issue a final **payment certificate** in terms of the agreed **contract value**
- 13.10.2 Is rejected the **contractor** shall inform the **principal agent** of the reasons for rejecting such **final account**. Where considered necessary the **principal agent** shall revise the **final account** within ten (10) **working days** and resubmit such **final account** to the **contractor**
- 13.10.3 Is not accepted by the **contractor** within forty-five (45) **working days** of the resubmission [13.10.2] the **principal agent** shall issue the certificate of **final completion** and a final **payment certificate** in terms of the determined **contract value**
- 13.11 The **employer** shall pay the **contractor** the amount certified [13.3, 10] within seven (7) **calendar days** of the date of issue of the **payment certificate**
- 13.12 Where the amount certified in a **payment certificate** favours the **employer** the terms of 13.11 shall apply to the **employer** in a like manner
- 13.13 Where the **contractor** does not receive payment of the amount due by the due date [13.11] the **employer** shall be liable for **interest** on the amount. The **principal agent** shall calculate the **interest** at one hundred and sixty per cent (160%) of the current rate compounded monthly from the due date for payment up to and including the date on which the **contractor** is to receive payment. The **principal agent** shall include such **interest** in the next **payment certificate** [13.6.3]
- 13.14 Where the **employer** does not receive payment of the amount due [13.12] the terms of 13.13 shall apply to the **contractor** in a like manner
- 13.15 The **contractor** may recover an unpaid amount [13.13] from the **payment guarantee** where provided [2.5]
- 13.16 The **employer** may recover an unpaid amount [13.14] from the **construction guarantee** where provided [2.2]
- 13.17 The issue of a **payment certificate** by the **principal agent**:
- 13.17.1 Shall not be evidence that the **works** and **materials and goods** valued in an interim **payment certificate** are in terms of this **agreement**

13.17.2 Shall be regarded as a liquid document for obtaining a court order

14.0 ADJUSTMENT TO THE CONTRACT VALUE

- 14.1 The **principal agent** and the **contractor** may agree upon the value of any **contract instruction** issued [6.2] before the work is done. Failure to agree the value shall not relieve the **contractor** of his responsibility to comply with the **contract instruction**
- 14.2 Where agreement [14.1] has not been reached the **principal agent** shall determine a fair value of the **contract instruction** as follows:
- 14.2.1 Work of similar character executed under similar conditions shall be priced at the rates in the **priced document**
- 14.2.2 Where the **priced document** cannot be used to determine the value of additional work such work shall be priced at new rates plus an allowance of ten per cent (10%) markup thereon
- 14.2.3 Work omitted that varies the circumstance in which the remaining work is carried out the remaining work shall be valued in a similar manner [14.2.2]
- 14.3 The preliminaries amounts in the **priced document** shall be paid and adjusted in terms of the alternatives selected by the **contractor** as stated in the **contract data**
- 14.4 Where the **contract sum** includes **employer allowances** the **principal agent** shall omit the amount thereof from the **contract value** and the work as done shall be valued [14.1-2] and added to the **contract value**
- 14.5 The **principal agent** shall omit **prime cost amounts** from the **contract value** and the actual delivered cost of such items, including a reasonable allowance for waste, shall be added to the **contract value**
- 14.6 The **principal agent** shall prorate the **contractor's** allowances for overheads and profit on **prime cost amounts** to the value of each item [14.5]
- 14.7 Where the **contractor** has paid charges for items which are not included in the **contract sum** the actual amounts paid by the **contractor** plus a ten per cent (10%) markup shall be added to the **contract value** for:
- 14.7.1 Compliance with regulations related to the **works**
- 14.7.2 Opening up and testing where such tests show that the work is according to the **agreement**
- 14.8 Where the **contractor** has incurred expense and loss arising from a circumstance for which provision was not required in the **contract sum** the **contractor** shall provide details thereof to the **principal agent** for approval and adjustment of the **contract value**. Such circumstances are:
- 14.8.1 Unreasonable delay in or failure to issue a **contract instruction** following a request from the **contractor**
- 14.8.2 Extension of the **construction period** [11.5]
- 14.8.3 Work by a **direct contractor** [8.0]
- 14.8.4 Default by the **employer** or the **principal agent** [16.2]
- 14.8.5 Suspension of the **works** [16.1]
- 14.9 Where the **employer** has incurred expense and loss arising from an insurance claim [3.4.2] for which the **contractor** was responsible the **employer** shall provide details thereof to the **principal agent** for adjustment of the **contract value** in the amount as stated in the **contract data** for each such event
- 14.10 The **principal agent** shall rectify all identified discrepancies, errors in description or quantity, or omission of items from the **contract documents**. Such rectification shall be treated as an adjustment to the **contract value** where there is a monetary implication

TERMINATION

15.0 TERMINATION BY EMPLOYER

- 15.1 The **employer** may terminate this **agreement** where the **contractor** defaults by failing to:
- 15.1.1 Provide the **security** [2.2] and the **employer** elects to terminate [2.4.2]
 - 15.1.2 Execute the **works** [7.1.2]
 - 15.1.3 Comply within a reasonable period with a **contract instruction** issued [6.2]
 - 15.1.4 Continue work on **site** without reasonable cause for more than a continuous period of ten (10) **working days**
 - 15.1.5 Provide evidence of insurance where responsible [3.4]
- 15.2 Where the **employer** decides to terminate this **agreement** [15.1] the **principal agent** shall notify the **contractor** of the default and of the **employer's** intention to terminate should the default continue for five (5) **working days**
- 15.3 Where the **employer** gives notice to the **contractor** of termination of this **agreement**:
- 15.3.1 The **contractor** shall immediately give up possession of the **site** and the **works**
 - 15.3.2 The **principal agent** shall prepare and complete the **final account** within thirty (30) **working days**
 - 15.3.3 The **employer** may appoint **direct contractors** to complete the **works**
 - 15.3.4 The **principal agent** shall inform the **contractor** when his plant, equipment and surplus materials are to be removed from **site**
 - 15.3.5 The **employer** may recover expense and loss resulting from this termination where the **penalty** is not applicable [12.0]
 - 15.3.6 The **employer** shall not be required to make further payments to the **contractor** until the final **payment certificate** is issued
 - 15.3.7 Where applicable, the **security** [2.2] shall remain in force at the value at the time of termination until the final **payment certificate** is issued. Where the final **payment certificate** favours the **employer** the **security** shall expire when the **contractor** makes payment
 - 15.3.8 Where applicable, the **retention** [2.3], at the value at the time of termination, shall be retained until the final **payment certificate** is issued
 - 15.3.9 The **latent defects** liability period shall end five (5) years from the date of termination
- 15.4 The right to terminate may not be exercised where the **employer** is in material breach of the **agreement**

16.0 TERMINATION OR SUSPENSION BY CONTRACTOR

- 16.1 The **contractor** may terminate this **agreement** where the **employer**:
- 16.1.1 Fails to provide the **payment guarantee** [5.1.1]
 - 16.1.2 Fails to hand over the **site** [5.1.3]
 - 16.1.3 Fails to make payment [5.1.7]
 - 16.1.4 Fails to appoint a **principal agent** [5.1.8]
 - 16.1.5 Interferes with or prevents the **principal agent** from discharging his duty [5.1.10]

or where the **principal agent**

- 16.1.6 Fails to issue a **payment certificate** or completion certificates [6.1.5]
- 16.2 Where the **employer** or **principal agent** is in default [16.1.3-6] the **contractor** may give three (3) **working days** notice to the **employer** prior to suspending work until the default is remedied
- 16.3 Where the **contractor** decides to terminate this **agreement** [16.1-2] the **contractor** shall notify the **employer** and the **principal agent** of the default and of the **contractor's** intention to terminate this **agreement** should the default continue for five (5) **working days**
- 16.4 Where the **contractor** thereafter notifies the **employer** of termination of this **agreement**:
 - 16.4.1 Execution of the **works** shall stop
 - 16.4.2 The **contractor** shall remove his plant, equipment and materials from **site** without delay
 - 16.4.3 The **principal agent** shall prepare and complete the **final account** within thirty (30) **working days**
 - 16.4.4 The **contractor** may recover expense and loss resulting from this termination
 - 16.4.5 The **principal agent** shall continue to issue **payment certificates** to the **contractor** until the **final account** has been determined and included in the issued **final payment certificate** [13.10.1]
 - 16.4.6 The **employer** shall make payment in respect of **payment certificates** issued [16.4.5]
 - 16.4.7 Where applicable, the **security** [2.2] shall expire and be returned to the **contractor**
 - 16.4.8 Where applicable, the **retention** [2.3] shall be reduced to nil per cent (0%) in all subsequent **payment certificates** issued [16.4.5]
 - 16.4.9 The **latent defects** liability period shall end on the date of termination
- 16.5 The right to terminate may not be exercised where the **contractor** is in material breach of the **agreement**

17.0 TERMINATION - IMPOSSIBILITY OF PERFORMANCE

- 17.1 Either party may terminate this **agreement** where the **works** is:
 - 17.1.1 Stopped for forty-five (45) **calendar days** due to circumstances beyond the control of either party
 - 17.1.2 Substantially damaged or destroyed
- 17.2 Where either party decides to terminate this **agreement** [17.1]:
 - 17.2.1 The cancelling party shall give notice of termination to the other party
 - 17.2.2 The **principal agent** shall issue a **contract instruction** specifying such work and protective measures as are required to bring the **works** to a specific point of cessation
 - 17.2.3 Where possible the **principal agent** shall prepare and complete the **final account** within thirty (30) **working days** of the date of termination
 - 17.2.4 The **principal agent** shall continue to issue **payment certificates** to the **contractor** until the **final account** has been determined and included in the **final payment certificate**
 - 17.2.5 The **employer** shall make payment in respect of **payment certificates** issued [17.2.4]
 - 17.2.6 Where applicable, the **security** [2.2] shall reduce to the value applicable after the issue of the **practical completion** certificate and shall further reduce and expire in terms of the **construction guarantee**
 - 17.2.7 Where applicable, the **retention** [2.3] shall be adjusted [13.9.2] and reduce to nil in the **final payment certificate** [13.9.3]

- 17.2.8 Neither party shall be liable to the other party for any expense and loss resulting from this termination
- 17.2.9 The **latent defects** liability period shall end on the date of termination

DISPUTES

18.0 SETTLEMENT OF DISPUTES

- 18.1 Should any dispute between the **employer** or his **principal agent** on the one hand and the **contractor** on the other arise out of this **agreement**, such dispute shall be referred to arbitration by the party which gave such notice
- 18.2 The appointment of the arbitrator shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The edition of the Summary Procedure Rules for the Conduct of Arbitrations, published by the Association of Arbitrators (Southern Africa) and current when the dispute is declared, shall apply
- 18.3 Recording of a dispute [18.1] shall not relieve the parties from any liability for the due and timeous performance of their obligations in terms of this **agreement**
- 18.4 The termination of this **agreement** [15.0, 16.0, 17.0] shall not affect the validity of this 18.0

20.0 CONTRACTUAL AGREEMENT

20.1 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**

20.2 Contracting Parties

20.2.1 **Employer** _____
Physical address _____
Tel _____ Fax _____ E-mail _____
Tax / VAT No _____

20.2.2 **Contractor** _____
Physical address _____
Tel _____ Fax _____ E-mail _____
Tax / VAT No _____

20.3 The accepted **contract sum** inclusive of tax (Amount)
In words _____

20.4 Signature of the contracting parties:
Thus done and signed at _____ on _____

Name of signatory

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

Capacity of signatory

Signed as Witness (1)

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

Signed as Witness (2)

Details of Witness (1)

Details of Witness (2)

Name: _____ Name: _____

Address: _____ Address: _____

SCHEDULE OF MODIFICATIONS IN EDITION 4.0

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
 - 3 The change of "contract data" for "schedule" and "termination" for "cancellation" in general text is not listed

Table of Modifications to Definitions listed in clause 1.0:

A	Bills of Quantities	A	Penalty	A	Security
A	Contract Data	N	Priced Document	A	Tax
D	Lump Sum Document	D	Schedule		

Table of modifications to clauses:

N 1.3-4	N 6.1.9	A 13.3	N 14.2.3	A 16.2	R 20.0
R 1.3-8	N 6.2.13	A 13.9.1-2	N 14.8.5	R 17.0	D 20.1-2
D 1.9	N 7.1.8	A 13.10.3	R 15.0	A 17.2.7	
N 1.5.5	N 9.7-8	A 13.11	R 16.0	A 18.1	
N 1.9-10	N 10.5-7	A 14.2	A 16.1.2	A 18.2	
A 6.0	N 11.5.7	A 14.2.1-2	R 16.1.3-7	R 19.0	