

ORIGINAL



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO.: 21/26641

In the matter between:

**GVK-SIYA ZAMA BUILDING CONTRACTORS (EP)
(PTY) (LTD)**

First Applicant

ITHA PLUMBING AND CIVIL CONSTRUCTION CC

Second Applicant

and

ACMR CAPITAL (PTY) LTD

Respondent



NOTICE OF MOTION

PLEASE TAKE NOTICE that the abovenamed Applicants intend to make application to the above Honourable Court for an order in the following terms:

1. The Respondent is to make payment to the Applicants in the total amount of R28 570 265.58;
2. The Respondent is directed to make payment of interest on payment certificates 2 – 6 as follows:

- a) payment certificate 2 at the rate of 11.2 per annum compounded monthly from 7 December 2020 to date of final payment;
 - b) payment certificate 3 at the rate of 11.2 per annum compounded monthly from 22 December 2020 to date of final payment;
 - c) payment certificate 4 at the rate of 11.2 per annum compounded monthly from 8 February 2021 to date of final payment;
 - d) payment certificate 5 at the rate of 11.2 per annum compounded monthly from 9 March 2021 to date of final payment;
 - e) payment certificate 6 at the rate of 11.2 per annum compounded monthly from 8 April 2021 to date of final payment;
3. The Respondent is to pay the costs of this application on an attorney and client scale; and
 4. Further and/or alternative relief.

TAKE NOTICE FURTHER that the founding affidavit of **JACOBUS JOHANNES GEYSER** and confirmatory affidavit of **NTOMBOMZI SWEETNESS MBAZA** annexed hereto will be used in support of this application.

TAKE NOTICE FURTHER that the Applicants have appointed the address of their attorneys which appears at the foot of this notice, as being the address at which they will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that if you intend on opposing this application, you are required:

- (a) to notify the Applicants' attorneys in writing within 5 days of this application being served upon you;
- (b) within 15 days of notifying your intention to oppose, to file your answering affidavit, if any; and
- (c) to appoint in such notification an address referred to in Rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings; such an address being one within 15 kilometres of the office of the Registrar of this Court.

TAKE NOTICE FURTHER that the Applicants are prepared to accept service of all subsequent documents and notices in the application in a manner other than a physical or postal address, with their preference being service by electronic mail to: pbarnard@coxyeats.co.za / smchunu@coxyeats.co.za.

TAKE NOTICE FURTHER that the Applicants hereby request that the Respondent deliver its consent, in writing, to the exchange or service by all parties of all subsequent documents and notices in the application by way of facsimile or electronic mail.

If no such notice of intention to oppose is delivered, then application will be made for the relief set out herein on a date to be determined by the Registrar whereafter counsel will be heard for an order as prayed for herein.

DATED at SANDTON on this 2nd day of JUNE 2021.



COX YEATS

Applicants' Attorneys
8th Floor, Ncondo Chambers
Vuna Close
Umhlanga Ridge
Tel: 031 536 8500

Email: pbarnard@coxyeats.co.za
smchunu@coxyeats.co.za

Ref: P Barnard / S Mchunu / 032G00450000014
c/o **COX YEATS**

(JOHANNESBURG)

Ground Floor, North Wing
4 Sandown Valley Crescent
Sandton

Tel: 010 015 5800

Email: pcronje@coxyeats.co.za

Ref: P Cronje

TO:
**THE REGISTRAR
OF THE ABOVE HONOURABLE COURT
JOHANNESBURG**

AND TO:
ACMR CAPITAL (PTY) LTD
Respondent
8 Stompneus Road
Randpark Ext 2
Randburg
Gauteng
2092

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

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..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date 27/6/2021

CASE NO.: 21/26641

In the matter between:

**GVK-SIYA ZAMA BUILDING CONTRACTORS (EP)
(PTY) LTD**

First Applicant

ITHA PLUMBING AND CIVIL CONSTRUCTION CC

Second Applicant

and

ACMR CAPITAL (PTY) LTD

Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

JACOBUS JOHANNES GEYSER

do hereby make oath and state:

1.

I am an adult male General Manager of the First Applicant and am duly authorised to depose to this affidavit on behalf of the First and Second Applicants.

N.S.M. 


2.

The confirmatory affidavit of Ntombomzi Sweetness Mbaza, the Managing Member of the Second Applicant is attached, confirming my authority.

3.

The facts deposed to herein are within my knowledge and belief.

THE PARTIES

| | |
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| <p>It is hereby certified that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person.</p> | <p>Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanduidings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie.</p> |
| <p></p> | <p>KA Boag Ex-Officio Commissioner of Oaths 81 - 83 Warbler Street Cotswold, Port Elizabeth</p> |
| <p>Date: 27/6/2021</p> | |

4.

The First Applicant is **GVK-SIYA ZAMA BUILDING CONTRACTORS (EP) (PTY) LTD**, a private company with a share capital and limited liability, duly registered and incorporated in accordance with the Company Laws of the Republic of South Africa, with its trading address at 38 Mangold Street, Newton Park, Port Elizabeth.

5.

The Second Applicant is **ITHA PLUMBING AND CIVIL CONSTRUCTION CC**, a close corporation duly incorporated in terms of the company laws of the Republic of South Africa with its registered address at 50 Echola Street N U 5 Swartkops Valley, Motherwell, Port Elizabeth.

6.

The Respondent is **ACMR CAPITAL (PTY) LTD**, a company with limited liability duly registered in accordance with the Company Laws of the Republic of South Africa, with

NSM 

its registered address at 8 Stompneus Road, Randpark Ext 2, Randburg, Gauteng, 2092.

APPOINTMENT

7.

On or about November 2020 and at Johannesburg the Respondent appointed the Applicants as an unincorporated joint venture to be the building contractors for a project described as “the construction of a new Addo Senior Primary School” (“**the Project**”) in terms of a written JBCC Building Agreement.

8.

A copy of the letter of appointment is annexed marked “**A**” and a copy of the JBCC building agreement is annexed hereto marked “**B**”.

9.

The Respondent appointed **MDA Architects** as the principal agent on the project and to act as such in accordance with the written terms of annexure “**B**” for the duration of the contract. A copy of the contract data is annexed hereto marked “**C**”.

10.


The material terms of the agreement were as follows:

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| <p>..... KA Boag</p> | <p>Ex- Officio Commissioner of Oaths</p> |
| <p>Date: 27/5/2021</p> | <p>81 - 83 Warbler Street Cotswold, Port Elizabeth</p> |

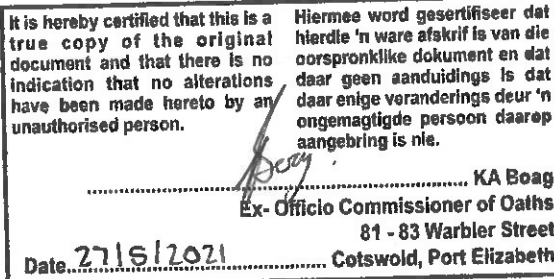
N.S.M. 

- 10.1 The Applicants were to attend to the completion of the construction project at Addo Primary School in the Sarah Baartman District;
- 10.2 The contract sum for the project was R97 739 642.12 (inclusive of value added tax);
- 10.3 The Respondent appointed MDA Architects as its principal on or about 26 August 2020;
- 10.4 Upon being given possession of the site, the Applicants would carry out the construction work continuously, industriously and with due skill and appropriate physical resources to bring the works to practical completion, works to completion and thereafter practical completion (clause 15.3 of the PBA);
- 10.5 An interim payment certificate would be issued every month by the Respondent's principal agent until the issue of the final payment certificate (clause 31.1 of the PBA);
- 10.6 The Respondent would pay to the contractor the amount certified in an interim payment certificate within seven calendar days of the date for issue of the payment certificate (clause 31.9 of the PBA);

Where payment was not made by the due date, the Respondent would be liable for default interest on the amount. The interest would be compounded monthly and be calculated from the due date of payment up to including the date on which the Applicants receive payment. The default interest is calculated at 110% of the defined interest rate (clause 31.11 of the PBA);

N.S.M. 

true copy of the original
 document and that there is no
 indication that no alterations
 have been made hereto by an
 unauthorised person.
 hierdie 'n ware afskrif is van die
 oorspronklike dokument en dat
 daar geen aanduidings is dat
 daar enige veranderinge deur 'n
 ongemagtigde persoon daarep
 aangebring is nie.
 Date: 27/5/2021
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cotswold, Port Elizabeth
 KA Boz3



10.8 Interest was defined as:

“The bank rate that is applicable from time to time to registered banks and borrowing money from the Central or Reserve Bank of the country names in the contract data. The ruling bank rate of the first calendar day of each month shall be in calculating the interest due for such month”.

10.9 The current bank lending rate as at the launch of these proceedings is 7% per annum. The default interest rate in terms of the agreement between the parties is calculated at 11.2% per annum compounded monthly, being 160% of the default interest.

ON SITE

11.

The Applicants commenced work on site towards the end of 2020.

12.

In accordance with its obligations under clause 31 of the agreement, the Respondent' principal agent MDA Architects issued the following interim monthly payment certificates, namely:

12.1 Certificate 2 in the sum of R18 791 809.05 on 30 November 2020, and the Respondent was obliged to make payment by 7 December 2020;

12.2 Certificate 3 in the sum of R3 918 868.25 on 14 December 2020, and the Respondent was obliged to make payment by 22 December 2020;

N.S.M. 

12.3 Certificate 4 in the sum of R2 255 656.44 on 1 February 2021, and the Respondent was obliged to make payment by 8 February 2021;

12.4 Certificate 5 in the sum of R1 801 966.59 on 2 March 2021, and the Respondent was obliged to make payment by 9 March 2021; and

12.5 Certificate 6 in the sum of R1 801 965.25 on 11 April 2021, and the Respondent was obliged to make payment by 8 April 2021.

13.

Annexed hereto marked "D1" to "D5" are certificates 2 to 6.

14.

The Respondent failed to make payment of any of the aforementioned certificates , on the due date or at all and as a result, the Applicants are entitled to:

14.1 payment of the sum of R 28 570 265.58, being the cumulative total of payment certificates 2 to 6 above; and

14.2 interest on each overdue certificate at the rate agreed in terms of the contract as set out above.

WHEREFORE the Applicants pray for judgment in terms of the Notice of Motion prefixed hereto.



JACOBUS JOHANNES GEYSER

| | |
|--|--|
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| <p>..... KA Boag Ex-Officio Commissioner of Oaths 81 - 83 Warbler Street Cotswold, Port Elizabeth</p> | |
| <p>Date... 27/5/2021</p> | |



The Deponent has acknowledged that he knows and understands the contents of this Affidavit which was signed and sworn to at Port Elizabeth before me this 27 day of May 2021 and that the provisions of the regulations contained in Government Notices R1258 of 21 July 1972 and R1648 of 16 August 1977 having been complied with.

| | |
|--|---|
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| <p style="text-align: right;"><i>KA Boag</i> Ex-Officio Commissioner of Oaths COMMISSIONER OF OATHS Date: <u>27/05/2021</u> Cotswold, Port Elizabeth</p> | |

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| <p style="text-align: right;"><i>KA Boag</i> Ex-Officio Commissioner of Oaths 81 - 83 Warbler Street Date: <u>27/05/2021</u> Cotswold, Port Elizabeth</p> | |

N.S.M.


"A"



ACMR

Reg No 2016/502942/07 No. 8 Stompneus Road Randpark / Ext 2/ Randburg

Tel: +2782 847 7992 Fax: +27 86 730 4032

Reference: ADD-2020/1

ITHA PLUMBING & CIVIL CONSTRUCTION / GVK JOINT VENTURE

50 Echola Street NU5 Swaartkops Valley

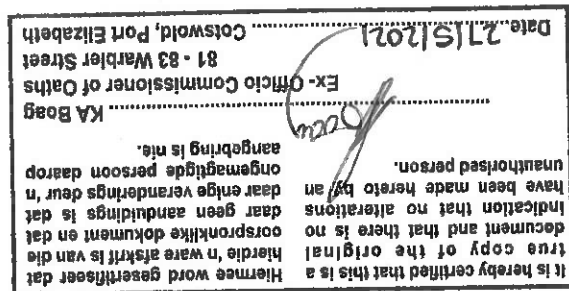
Port Elizabeth

6211

Tel Numbers : 041 516 0019 / 0827224108

E mail : sweetnessitha@yahoo.com/ info@ithagroup.co.za

For the attention: Mrs Sweetness



Dear Madam,

THE CONSTRUCTION OF NEW ADDO PRIMARY SCHOOL – VALENCIA OFFER OF APPOINTMENT FOR CONSTRUCTION OF NEW PRIMARY SCHOOL WITH CONCOMITANT SERVICES AND REMOVAL OF EXISTING PREFABRICATED STRUCTURES TO ANOTHER SITE.

We hereby take pleasure in confirming the award for building new Addo Primary School Valencia as a Main Contractor.

The work is to be carried out under the direction of and the entire satisfaction of the principal Investor ACMR Capital (Pty) Ltd.

The contract sum is the amount of R85 000 000.00 (Eight Five Million Rand) for the new building is exclusive of VAT. The final contract value is subject to the re measurement of the works and approval of the works by the Principal Agent. All site instructions and variations will be confirmed by the Principal Agent.

All documentations, including copies of insurances, registration certificates, Health and Safety plans, programmes etc, must be returned to us within one week hereof, where after copy of document will be forwarded to you.

NSN.

All correspondence in respect of this project must be addressed to:

ACMR Capital (Pty) Ltd at e-mail majesticsilvertrading@gmail.com

For Attention: Mr Rashid Khan at telephone number 082 847 7992

Please note that the following reference numbers must be included in all correspondence and documentation:

ADD-2020/1 – Addo Primary School

Kindly reply, by return email and post, to the ACMR Capital (Pty) Ltd, confirming your acceptance of this offer all subject to your compliance with all the conditions as set out above and included in the attached documentation.

You are further requested to:

Please advise of the names of the registered staff member(s) who will be managing and responsible for this project, and please inform us immediately if any changes to this arrangement should take place.

Contact Mr Rashid Khan from ACMR Capital (Pty) Ltd at e-mail majesticsilvertrading@gmail.com or telephone number 082 847 7992 to make the necessary arrangements for any project related queries.

We look forward to working with you and to the successful completion of this project.

Your Sincerely,




MR RASHID KAHN

CEO OF ACMR CAPITAL (PTY) LTD

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..... KA Boag
Ex- Officio Commissioner of Oaths
81 - 83 Warbler Street
Date...27.5.2021..... Cotswold, Port Elizabeth

N.S.M. 

"B"



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..... KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cotswold, Port Elizabeth
 Date 27/5/2021

PRINCIPAL BUILDING AGREEMENT

| | |
|---------------|--|
| Project | <i>The Construction of a new Adelo Senior Primary School</i> |
| Employer | <i>ACMR Capital (Pty) Ltd.</i> |
| Contractor | <i>Itha Plumbing & Civil Construction/GUL Siza Zama (Pty) Ltd.</i> |
| Contract Date | <i>26 August 2020</i> |
| 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 (Reprint 1) Code 2101 © JULY 2007

[Handwritten signatures and initials]
 N.S.M.
[Handwritten signature]

JBCC SERIES 2000

Principal Building Agreement - Edition 5.0 R1

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 when the employer is a State Institution the document will require an Addendum to be compiled of all the substitutions that are required to the standard clauses as published

The Agreement, in catering for both bills of quantities and lump sum contracts, 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 Employer and Contractor requirements

The N/S Subcontract 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!

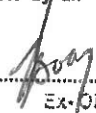
This Edition 5.0 results in most support documents having been revised to remain compatible. Persons entering into or preparing contracts using the JBCC Series 2000 are warned of the dangers inherent in modifying any part of it. Where it is considered essential to make changes, users are advised to ensure 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

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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| | |
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|  KA Boag Ex-Officio Commissioner of Oaths | |
| 27/5/2021 | 81 - 83 Warbler Street Cotswold, Port Elizabeth |



N.S.M.


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 | D | Lump Sum Document | N | Priced Document |
| A | Bills of Quantities | A | Mediator | A | Principal Agent |
| D | CIDB | N | N/S Agreement | N | Programme |
| N | Contract Data | N | N/S Subcontractor | A | Section |
| A | Contract Documents | N | Party | D | State |
| A | Contract Instruction | A | Payment Certificate | A | Working Days |
| A | CPAP | A | Penalty | | |
| A | Defect | A | Practical Completion | | |

Table of modifications to clauses:

| | | | | | |
|-------------------------------|------------------------------------|--|---------------------------------|---------------------------------------|--------------------------------|
| N 1.4 A 1.5.2 A 1.5.4 | R 10.0 R 10.1.4 R 11.0 | N 15.8-9 A 16.0 N 16.1 | A 26.1 D 26.1.1-2 N 27.3 | D 31.11.1-2 A 31.12 D 31.12.1-2 | N 38.3 A 38.5.4 R 39.0 |
| D 1.5.6 A 1.6.1 D 1.9 | N 11.1 N 11.1.1-3 N 12.1.1-2 | R 16.2-3 N 16.4-9 A 17.5 | A 29.2.4 A 29.3 A 29.7 | A 31.15 A 31.16.3 A 32.2.1-2,5 | A 39.1 A 39.3.7 A 40.2-7 |
| A 3.1 D 3.4 A 3.6 | N 12.5-6 N 13.0 N 13.1-2 | R 19.0 N 19.1-3 A 20.4-5,7 | A 29.7.1-3 R 30.0 A 30.1 | A 34.1 A 34.3 A 34.5 | R 40.9 D 40.10-11 N 41.0 |
| D 3.6.1-2 A 3.10 R 3.11 | A 14.3.1 A 14.4.1 A 14.7.1 | A 24.1 A 24.1.1-2 A 24.1.3 | A 30.2 N 30.2.1-2 N 30.3 | A 34.13 R 36.0 A 36.5.9-10 | N 41.1-4 N 42.0 |
| A 5.1 N 5.5-6 N 8.2.11 | A 15.1 A 15.1.2-3 A 15.3 | N 24.8-10 N 24.10.1-2 D 25.3.1-2 | A 31.8.2-3 A 31.9 A 31.11 | R 37.0 A 37.3.5 R 38.0 | |

Reprint 1

| | |
|------------|--|
| 3.2.1 | "contract data" replaces "Form of Offer and Acceptance" |
| 31.3 | "post tender provisions [41.7]" replaces "contract data" |
| 36.2, 37.2 | After "principal agent" "or the employer" is added |
| 40.2.2 | 2nd line "no body" replaces "nobody" |
| 41.4 | Renumbered 41.6 |
| 41.4 | Specific provision made for recording Employer Payment Guarantee |
| 41.5 | Specific provision made for recording Annual Building Holiday Period |

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..... KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Date: 27/5/2021 Cotswold, Port Elizabeth

[Handwritten signatures and initials]
 N.S.M.

PRINCIPAL BUILDING AGREEMENT

TABLE OF CONTENTS

| Section | Clause No | Title | Page |
|----------------------------------|------------------|--|--|
| DEFINITIONS | 1.0 | Definitions and Interpretation. | 1 |
| OBJECTIVE AND PREPARATION | 2.0 | Offer, Acceptance and Performance Obligations | 4 |
| | 3.0 | Documents | 4 |
| | 4.0 | Design Responsibility | 5 |
| | 5.0 | Employer's Agents | 5 |
| | 6.0 | Contractor's Site Representative | 6 |
| | 7.0 | Compliance with Laws and Regulations | 6 |
| | 8.0 | Works Risk | 6 |
| | 9.0 | Indemnities | 7 |
| | 10.0 | General Insurances | 8 |
| | 11.0 | Special Insurances | 8 |
| | 12.0 | Effecting Insurances | 8 |
| | 13.0 | Assignment | 9 |
| | 14.0 | Security | 9 |
| | EXECUTION | 15.0 | Preparation for and Execution of the Works |
| 16.0 | | Site and Access | 11 |
| 17.0 | | Contract Instructions | 12 |
| 18.0 | | Setting out of the Works | 13 |
| 19.0 | | Temporary Works and Plant | 13 |
| 20.0 | | Nominated Subcontractors | 14 |
| 21.0 | | Selected Subcontractors | 15 |
| 22.0 | | Employer's Direct Contractors | 15 |
| 23.0 | | Contractor's Domestic Subcontractors | 15 |
| COMPLETION | | 24.0 | Practical Completion |
| | 25.0 | Works Completion | 17 |
| | 26.0 | Final Completion | 18 |
| | 27.0 | Latent Defects Liability Period | 18 |
| | 28.0 | Sectional Completion | 19 |
| | 29.0 | Revision of Date for Practical Completion | 19 |
| | 30.0 | Penalty for Late or Noncompletion | 21 |
| PAYMENT | 31.0 | Interim Payment | 21 |
| | 32.0 | Adjustment to the Contract Value | 23 |
| | 33.0 | Recovery of Expense and Loss | 25 |
| | 34.0 | Final Account and Final Payment | 26 |
| | 35.0 | Payment to Other Parties | 27 |
| TERMINATION | 36.0 | Termination by Employer - Contractor's Default | 27 |
| | 37.0 | Termination by Employer - Loss and Damage | 28 |
| | 38.0 | Termination by Contractor - Employer's Default | 29 |
| | 39.0 | Termination - Cessation of the Works | 30 |
| DISPUTE | 40.0 | Settlement of Disputes | 30 |
| CONTRACT AGREEMENT | 41.0 | Post Tender Provisions | 32 |
| | 42.0 | Contractual Agreement | 33 |

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..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date... 27/5/2021

[Handwritten signatures and initials]

N.S.M.

[Handwritten signature]

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 contract data has not been provided

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

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 in 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

AGREEMENT: This JBCC Principal Building 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 in accordance with the measuring system as stated in the contract data. The contractor shall have priced the document to reflect the contract sum

BUDGETARY ALLOWANCE: A sum of money included in the contract sum for work intended for execution by the contractor, 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 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

CONSTRUCTION GUARANTEE: A guarantee at call obtained by the contractor from an institution approved by the employer in terms of the JBCC 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 named 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

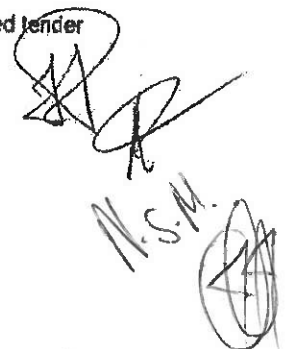
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Principal Building Agreement Page 1

..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date 27/5/2021



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

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

CFAP: The JBCC Contract Price Adjustment Provisions used for the adjustment of the contract value as stated in the contract data

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

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 or his subcontractors for inclusion in the works whether stored on or off the site or in transit but not yet part of the works

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

NOMINATED SUBCONTRACTOR: The party executing work provided for in a nominated subcontract amount included in the contract sum or, in respect of additional specialist work, a subcontractor appointed as a nominated subcontractor in terms of a contract instruction

N/S AGREEMENT: The JBCC Nominated / Selected Subcontract Agreement and the n/s contract documents that together form the contract between the contractor and the nominated subcontractor or selected subcontractor

N/S SUBCONTRACTOR: A nominated subcontractor or a selected subcontractor

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 Payment Guarantee form

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

Principal Building Agreement Page 2

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..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date: 27/6/2021

A
P
N.S.M.
(Signature)

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

PRICED DOCUMENT: Bills of quantities, 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

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

RECOVERY STATEMENT: The statement prepared monthly by the principal agent in terms of the JBCC Recovery Statement form

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

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

SELECTED SUBCONTRACTOR: A party executing work provided for in a selected subcontract amount included in the contract sum or, in respect of additional specialist work, a subcontractor appointed as a selected subcontractor in terms of a contract instruction

SITE: The land or place on, over, under, in or through which the works is to be executed as defined in the 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 described in general terms in the contract data, detailed in the contract documents, ordered in contract instructions and including the contractor's and n/s subcontractors' temporary works. Works 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

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 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 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

Hiermee word gesertifiseer dat hierdie 'n ware afskrif van die oorspronklike dokument is en dat daar geen aandruidings is dat daar enige veranderinge deur 'n ongemagtigde persoon daareop aangebring is nie.

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KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date: 27/5/2021

R

NSM

- 1.5.2 The words "accept, appoint, approve, certify, decide, grant, inform, instruct, issue, notice, object, record, 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] 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 Hand 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

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|---|--|
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|---|--|

OBJECTIVE AND PREPARATION

2.0 OFFER, ACCEPTANCE AND PERFORMANCE OBLIGATIONS

- 2.1 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
- 2.2 In pursuance of the objective the parties undertake to carry out their reciprocal obligations

3.0 DOCUMENTS

- 3.1 The employer shall provide a payment guarantee where required by the contractor in the accepted tender. The guarantee shall be according to the relevant JBCC Payment Guarantee form in the amount as stated in the contract data and shall be provided within twenty-one (21) calendar days of acceptance of the tender. Such security shall be for the due fulfilment of the employer's liability only and the contractor hereby waives all common law rights to recover from or set-off against such security
- 3.2 The contractor shall provide:
- 3.2.1 A construction guarantee [14.3-4] where so elected in the contract data
- 3.2.2 An advance payment guarantee where so required in the contractor's accepted tender. The guarantee shall be according to the JBCC Advance Payment Guarantee form in the amount as stated in the contract data
- 3.3 Where the employer requires the contractor to waive his lien or right of continuing possession of the works as stated in the contract data, the contractor shall do so within seven (7) calendar days of

having received a payment guarantee from the employer [3.1]. The waiver shall be according to the JBCC Waiver of Contractor's Lien form or such other form as stated in the contract data

- 3.4 No clause
- 3.5 The principal agent shall complete the contract data and arrange the formal signing of this agreement once the contract documents have been provided and effected. Formal signatures are not required to render this agreement binding
- 3.6 The parties shall sign, in original, the number of sets of contract documents required by the parties. The contractor shall be entitled to receive one (1) set of contract documents for this agreement and two (2) sets of contract documents for each n/s subcontract agreement at no expense to the contractor. The original signed set of contract documents shall be held by the principal agent or such other party as stated in the contract data
- 3.7 The principal agent shall provide the number of copies of drawings, unpriced bills of quantities and documents as stated in the contract data at no cost to the contractor. The contractor shall keep on site a copy of such documents and any other documents required for construction as well as contract instructions to which the employer, principal agent and agents shall have access at all times
- 3.8 Information contained in the contract documents and other documents flowing from this agreement shall be used only for the purposes of this agreement and shall not be published or disclosed without the prior written consent of the employer
- 3.9 The priced document shall not be used as a specification of materials and goods or methods unless so selected in the contract data
- 3.10 Where the priced document is not a bills of quantities the contractor shall provide a schedule of rates in the 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 contract data

4.0 DESIGN RESPONSIBILITY

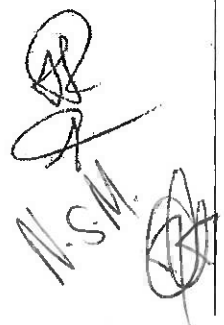
- 4.1 The contractor shall not be responsible for the design of the works other than the contractor's or his subcontractors' temporary works. The contractor shall not be responsible for the coordination of design elements
- 4.2 Any design responsibility undertaken by a n/s subcontractor shall not devolve upon the contractor. The rights flowing from a warranty regarding such design responsibility are hereby ceded to the employer. All contractual or other rights the contractor has against such n/s subcontractor arising from any design responsibility undertaken are hereby ceded to the employer [26.7]
- 4.3 The contractor shall be responsible for ensuring the timely preparation of the design documentation undertaken by a selected subcontractor for acceptance by the principal agent to avoid delay to the intended date for practical completion or any revision thereof [29.0]

5.0 EMPLOYER'S AGENTS

- 5.1 The employer warrants that the principal agent as stated in the contract data has full authority and obligation to act in terms of the agreement
- 5.2 The employer shall appoint agents as stated in the contract data and may appoint further agents with the contractor being informed thereof
- 5.3 The principal agent shall be the only party having the authority to bind the employer, except where agents issue contract instructions under delegated authority [5.3.2]. Without detracting from the above, the principal agent shall be the only party empowered to:

5.3.1 Issue contract instructions, except as provided [5.3.2]

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| <p>..... KA Beag .. Office Commissioner of Oaths 81 - 83 Warbler Street Cotswold, Port Elizabeth</p> | <p>Principal Building Agreement Page 5</p> |
| <p>Date: 27/5/2021</p> | |



- 5.3.2 Delegate to other agents authority to issue contract instructions and perform such duties as may be required for specific aspects of the works, provided that the contractor is given notice of such delegation
- 5.3.3 Receive notices on behalf of the employer
- 5.4 Should the principal agent or any agent be unable to act or cease to be an agent, the employer shall inform the contractor of the new principal agent or agent to be appointed. The employer shall not appoint such a principal agent or agent against whom the contractor 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 contract data or immediately upon the acquisition of such interest or involvement
- 5.6 The employer shall not interfere with or prevent the principal agent from exercising his independent judgement when performing his obligations in terms of this agreement

6.0 CONTRACTOR'S SITE REPRESENTATIVE

- 6.1 The contractor shall keep a representative competent to administer and control the works continuously on the site during the execution of the works. The contractor shall inform the principal agent of the name of the representative
- 6.2 A contract instruction given to the contractor's representative shall be deemed to be given to the contractor

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 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 WORKS RISK

- 8.1 The contractor shall take full responsibility for the works from the date on which possession of the site is given to the contractor and up to the date of issue of the certificate of practical completion or deemed achievement of practical completion. Thereafter responsibility for the works shall pass to the employer
- 8.2 The contractor shall make good physical loss and repair damage to the works, including clearing away and removing from the site all debris resulting therefrom, which occurs after the date on which possession of the site is given 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 carrying out of any operation complying with the contractor's obligations after the date of practical completion
- 8.3 The liability of the contractor [8.2] shall include:
- 8.3.1 The cost of such making good physical loss and repairing damage
- 8.3.2 The replacement value of materials and goods supplied by the employer to the contractor
- 8.3.3 The additional professional services of the employer's agents
- 8.4 The limit of the contractor's liability shall not exceed the amount of the contract works insurance as stated in the contract data

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Principal Building Agreement Page 6

..... KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cotswold, Port Elizabeth

Date: 27/5/2021

Handwritten signatures and initials, including "NSM" and a large circular stamp.

- 8.5 The contractor shall not be liable for the cost of making good physical loss and repairing damage to the 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 contractor'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 contractor's use of such technology
 - 8.5.6 The use or occupation of any part of the works by the employer, the employer's servants or agents and those for whose acts or omissions they are responsible
 - 8.5.7 An act or omission of the employer, the employer's servants or agents and those for whose acts or omissions they are responsible
 - 8.5.8 An act or omission by a direct contractor appointed [22.0]
 - 8.5.9 Design of the works where the contractor is not responsible [4.0]
 - 8.5.10 A latent defect in materials and goods specified by trade name where the contractor has no right of substitution. The contractor 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 contractor 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 contract value
- 8.7 The contractor shall forthwith notify the principal agent and insurer of any physical loss and damage to the works that comes to his attention

9.0 INDEMNITIES

- 9.1 Subject to the 9.2 provisions the contractor indemnifies and holds the employer 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 works, arising out of or due to the execution of the works or occupation of the site by the contractor
 - 9.1.2 Noncompliance by the contractor with any law, regulation or bylaw of any local or other authority arising out of or due to the execution of the works or occupation of the site by the contractor
 - 9.1.3 Physical loss or damage to any plant, equipment or other property belonging to the contractor or his subcontractors
- 9.2 The employer indemnifies and holds the contractor 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, the employer's servants or agents and those for whose acts or omissions they are responsible
 - 9.2.2 An act or omission of a direct contractor appointed [22.0]
 - 9.2.3 Design of the works where the contractor is not responsible [4.0]
 - 9.2.4 The occupation of any part of the works by the employer or his tenants
 - 9.2.5 The right of the employer to have the works or any part thereof executed at the site

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Principal Building Agreement Page 7

..... KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street

Date: 27.12.2021 Cotswold, Port Elizabeth

Handwritten signatures and initials:
 J.J. N.S.M.
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 [Circular stamp]

- 9.2.6 Interference with any servitude or other right that is the unavoidable result of the execution of the 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 contractor or his subcontractors
- 9.2.7 Physical loss or damage to an existing structure and the contents thereof in respect of which this 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 works
- 9.2.10 Advance payments where certified [31.6.5] and duly made by the contractor to n/s subcontractors
- 9.2.11 A defect in materials or goods supplied by the employer for incorporation in the 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 parties in terms of this 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 contract data
- 10.3 Where this agreement is cancelled [37.0] and the contractor 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 parties in terms of this agreement:
 - 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 contract data

12.0 EFFECTING INSURANCES

- 12.1 The party responsible as stated in the contract data [12.6] shall effect and keep in force:

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Principal Building Agreement Page 8

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 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cotswold, Port Elizabeth

Date: 27/6/2021

Handwritten signatures and initials:
 J.R. N.S.M.
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 [Circular stamp]

- 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 The party responsible [12.6] for effecting such insurances shall make available to the other party, before the commencement of the construction period, documentary evidence that insurances have been effected. A copy of the insurance policies shall be provided to the other party within thirty (30) calendar days of the commencement of the construction period. Approval by the other party shall be deemed unless a reasonable objection is lodged within fourteen (14) calendar days of receipt of such policies. Where required, the party responsible 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 employer effects such insurances, consequent on the contractor's default, the employer may recover expense and loss resulting therefrom [33.0]. Where the contractor effects or keeps in force such insurances, consequent on the 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 as an agent [5.3.2] 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 Where the employer has not ascertained the need for or effected any of the insurances [11.0] the contractor, on demonstrating reasonable cause, may give the employer five (5) working days notice to do so. Where the employer fails to act thereon the contractor may give three (3) working days notice of suspension of the works. Where the employer fails to act on such notice the contractor may give notice of termination [38.1.4]
- 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 his 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 the JBCC Nominated Subcontract Agreement without obtaining the prior approval of the principal agent

14.0 SECURITY

- 14.1 The contractor shall have the right to choose the security to be provided [14.3-4] as stated in the contract data. The choice of security shall be included in the contractor's tender, failing which a variable construction guarantee [14.3] shall be deemed to have been chosen. Such security shall be provided to the employer within twenty-one (21) calendar days of acceptance of the contractor's tender
- 14.2 *No clause*
- 14.3 Where security as a variable construction guarantee has been chosen the following shall apply:
 - 14.3.1 The contractor shall provide the employer with a variable construction guarantee initially equal in value to ten per cent (10%) of the contract sum
 - 14.3.2 The variable construction guarantee shall come into force, be administered and expire in terms of the JBCC Construction Guarantee form
 - 14.3.3 The employer shall return the variable construction guarantee to the contractor within fourteen (14) calendar days of its expiring

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- 14.3.4 Where the employer has a right of recovery against the contractor [33.0], the employer may issue a written demand in terms of the variable construction guarantee
- 14.4 Where security as a fixed construction guarantee and payment reduction of the value certified has been chosen the following shall apply:
- 14.4.1 The contractor shall provide a fixed construction guarantee to the employer equal in value to five per cent (5%) of the contract sum
- 14.4.2 The fixed construction guarantee shall come into force, be administered and expire in terms of the JBCC Construction Guarantee form
- 14.4.3 The employer shall return the fixed construction guarantee to the contractor 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 employer has a right of recovery against the contractor [33.0], the employer 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 contractor:
- 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 contractor within fourteen (14) calendar days of its expiring
- 14.6 Payments made by the guarantor to the employer in terms of a construction guarantee or an advance payment guarantee shall not prejudice the rights of the employer or contractor
- 14.7 Should the contractor fail to provide the security [14.1] the employer, in his sole discretion, may either:
- 14.7.1 Hand over the site to the contractor and withhold payment from the contractor until the amount withheld is equal to ten per cent (10%) of the contract sum. Such amount shall be reduced to two per cent (2%) of the contract sum on the achievement of practical completion [24.0] and to zero per cent (0%) in the final payment certificate [34.8], or
- 14.7.2 Terminate this agreement [36.1.1]
- 14.8 A security held by the employer [14.3-5] shall be for the due fulfilment of the contractor's liability only and the employer hereby waives all common law rights to recover from or set-off against such security

EXECUTION

15.0 PREPARATION FOR AND EXECUTION OF THE WORKS

- 15.1 After acceptance of the tender or negotiated amount the contractor shall submit to the principal agent within the period stated in the contract data:
- 15.1.1 The 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 contractor 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 contract sum, and
- 15.1.2 Such other documents and information identified in the contract data

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- 15.2 The employer shall:
- 15.2.1 Give possession of the site to the contractor on the date stated in the contract data, and
 - 15.2.2 Where required in the contract data, provide an advance payment on receipt of an advance payment guarantee from the contractor, and
 - 15.2.3 Inform the contractor of all cash advances and the quantum of each to be provided to n/s subcontractors, and
 - 15.2.4 Make payment to the contractor [31.0, 34.0]
- 15.3 On being given possession of the site the contractor shall commence the works within the working days period stated in the contract data and, subject to 31.15-16, shall proceed continuously, industriously and with due skill and appropriate physical resources to bring the works to:
- 15.3.1 *No clause*
 - 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 contract data the further provisions of 28.0 shall be applicable
- 15.5 The contractor shall provide everything necessary for the proper execution of the works and shall carry out and complete the works in compliance with the 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 shall:
- 15.6.1 Prepare a programme of the works together with a schedule of outstanding construction information in sufficient detail to enable the principal agent to assess the progress of the works and timeously provide the necessary contract instructions, and
 - 15.6.2 Coordinate the n/s subcontractors' and direct contractors' programmes 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 principal agent
- 15.7 The contractor shall provide all reasonable assistance to the principal agent 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
- 15.8 The principal agent and contractor shall hold regular meetings related to the progress of the works and at such other times as may be necessary. The principal agent 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 n/s subcontractors' coordination matters
- 15.9 The contractor shall maintain daily records of the number and categories of persons and plant employed on the works and shall provide copies thereof to the principal agent on request

16.0 SITE AND ACCESS

- 16.1 The contractor shall have unrestricted access to the site on being given possession thereof to fulfil his obligations [15.2.1]. Any restrictions to the site area, including servitudes and the like, that the contractor may not occupy are defined in the contract data. The contractor shall not extend his operations into such defined areas
- 16.2 The employer, principal agent and agents shall have reasonable access to the works, workshops and other places where work in terms of this agreement is being prepared, executed or stored

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- 16.3 The contractor and n/s subcontractors shall be given reasonable access to the works and any section thereof subsequent to practical completion to fulfil their obligations [25.0, 26.0]
- 16.4 Where a geotechnic investigation has been undertaken by the employer the results thereof shall be provided in the contract data
- 16.5 The contractor shall be deemed to have inspected the site and any existing structures thereon and to be thoroughly acquainted with the conditions under which the works is to be executed including the means of access to the works, the condition of the roads and generally of all matters which may influence the execution of the works
- 16.6 Where the existing premises will be in use and occupied during the execution of the works the contractor shall execute the 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 are described in detail in the contract data
- 16.7 The employer has recorded all known services in the contract documents 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 contractor shall immediately suspend all affected work in the vicinity and request the principal agent to issue a contract instruction in regard thereto
- 16.8 Trees and shrubs shall not be removed, cut back or disturbed without a contract instruction from the principal agent. Specific requirements of the employer are described in the 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

17.0 CONTRACT INSTRUCTIONS

- 17.1 The principal agent may issue contract instructions to the contractor regarding:
- 17.1.1 Alteration to design, quality or quantity of the works provided that such contract instructions shall not substantially change the scope of the works
- 17.1.2 Rectification of discrepancies, errors in description or omissions in 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 works
- 17.1.7 Protection of the works
- 17.1.8 Making good physical loss and repairing damage to the works [8.0]
- 17.1.9 Removal from the site of any party employed on the works
- 17.1.10 Removal from the site of any persons not engaged on or connected with the works
- 17.1.11 The appointment of n/s subcontractors, the n/s subcontract amounts and the work to be executed thereunder
- 17.1.12 Proof of payment to n/s subcontractors [20.6 and 21.6]
- 17.1.13 Notices to nominated subcontractors
- 17.1.14 Prime cost amounts and the purchase of materials and goods included therein

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Date 27/5/2021

- 17.1.15 Budgetary allowances and work executed by the contractor thereunder
- 17.1.16 Contingency and other monetary provisions included in the contract sum
- 17.1.17 Work by a direct contractor [22.0]
- 17.1.18 The lists for 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 contractor shall comply with and duly execute all contract instructions subject to 24.6
- 17.3 An oral instruction given by the principal agent or any other agent shall be of no force or effect. Neither the contractor nor the employer may rely upon an oral instruction for any purpose
- 17.4 Should the contractor fail to proceed with due diligence with a contract instruction, the principal agent may notify the contractor to proceed within five (5) working days from receipt of such notice. Without further notice, on default by the contractor, the employer may employ other parties to give effect to such contract instruction in addition to any other rights that the employer may have. The employer may recover expense and loss [33.0] resulting from such employment
- 17.5 The contractor shall cooperate with and assist the principal agent where execution of a contract instruction could cause an adjustment to the contract value [32.2]

18.0 SETTING OUT OF THE WORKS

- 18.1 The employer shall appoint an agent to establish the boundary pegs or beacons identifying the site and the correctness of the datum level. At the commencement of the construction period such agent shall point out the pegs, beacons and datum level to the contractor in the presence of the principal agent
- 18.2 The principal agent shall define the levels required for the execution of the works and provide such information as shall enable the contractor to set out the works correctly
- 18.3 The contractor shall provide all assistance and everything necessary to enable the accuracy of the setting out to be checked. Checking of the setting out by others shall not relieve the contractor of his responsibility for correctness thereof. The contractor shall rectify any errors in the works that arise from incorrect setting out without adjustment to the contract value. The contractor shall not be liable for incorrect setting out should information given [18.1-2] cause incorrect setting out of the works
- 18.4 The contractor shall take all precautions to preserve such pegs, beacons, datum levels and other aids used in setting out the works and should any be disturbed have them replaced by the employer's agent at the contractor's expense

19.0 TEMPORARY WORKS AND PLANT

- 19.1 Where required in the priced document the contractor shall erect, maintain and remove at completion:
 - 19.1.1 Hoardings with gables, fans, safety screens, barriers, access gates, covered gangways and the like as necessary for the enclosure of the works and elements thereof all for the protection of the public and others or to meet the specific hoarding requirements of the employer, and
 - 19.1.2 Office accommodation for meetings held on the site which shall be kept clean and fit for use at all times
- 19.2 All advertising rights on the site and the hoardings are reserved exclusively for the employer. Specific requirements of the employer are described in the priced document. The contractor shall provide and erect notice boards of an approved design as instructed by the principal agent. No individual boards or advertising material shall be allowed on the site without the principal agent's approval

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- 19.3 The contractor shall provide, maintain and remove on completion all plant, equipment, scaffolding, tools, temporary sheds, enclosures and the like required by the contractor for the due and proper fulfilment of the works

20.0 NOMINATED SUBCONTRACTORS

20.1 The principal agent shall:

20.1.1 Prepare tender documents in conformity with the n/s agreement and this agreement for work intended to be executed by a nominated subcontractor and thereafter call for tenders, and

20.1.2 Nominate a subcontractor and instruct the contractor to appoint such subcontractor as a nominated subcontractor in terms of the n/s agreement and other tender requirements, and

20.1.3 Inform the contractor that an advance payment shall be made to the nominated subcontractor where such requirement is included in the accepted tender and that recovery thereof will be effected [33.2.4]

20.2 The contractor may refuse to appoint such subcontractor:

20.2.1 Against whom the contractor makes a reasonable objection, or

20.2.2 Who refuses to enter into a subcontract in terms of the n/s agreement and other tender requirements, or

20.2.3 Who is unable to provide security in terms of the n/s agreement

20.3 Where such subcontractor is not appointed by the contractor for reasons [20.2] another subcontractor shall be nominated and appointed [20.1]

20.4 The contractor shall provide a payment guarantee in terms of the n/s agreement where required by the nominated subcontractor

20.5 The contractor shall make payment to the nominated subcontractor of the amount certified and identified [31.13.1] in terms of the n/s agreement

20.6 The contractor shall, within five (5) working days of receipt of a contract instruction provide proof to the principal agent [17.1.12], that the contractor's payment obligations [20.5] have been discharged. Failure by the contractor to provide such proof to the satisfaction of the principal agent shall entitle the employer to instruct the principal agent to certify payment direct to the nominated subcontractor [35.1.2]. The contractor shall have no recourse to recover such amounts from the employer. Such direct payment shall not create privity of contract between the employer and the nominated subcontractor. The employer may recover such direct payment from the contractor [33.2.8]

20.7 Where, after notification by the contractor, the principal agent agrees that the nominated subcontractor is in default of a material term of the n/s agreement the principal agent shall instruct the contractor to notify the nominated subcontractor to rectify such default. The principal agent may instruct the contractor to terminate the n/s agreement should such default continue for five (5) working days after such notice

20.8 Where termination of the nominated subcontract occurs another subcontractor shall be nominated and appointed to carry out and complete the balance of the nominated subcontract works

20.9 Where the n/s agreement is terminated due to default or insolvency of the nominated subcontractor, or default by the employer or his agents, any variation in the cost of carrying out and completing the nominated subcontract works shall be adjusted [32.5-6]

20.10 Where the n/s agreement is terminated due to default or insolvency of the contractor, any variation in the cost of carrying out and completing the nominated subcontract works shall be for the account of the contractor. Expense and loss suffered by the employer from such termination may be recovered [33.2.3]

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21.0 SELECTED SUBCONTRACTORS

21.1 The principal agent shall:

- 21.1.1 Prepare tender documents in conformity with the n/s agreement and this agreement for work intended to be executed by a selected subcontractor. Such preparation shall be carried out in consultation with and to the reasonable approval of the contractor, and
- 21.1.2 Call for tenders from a list of tenderers agreed between the contractor and the principal agent, and
- 21.1.3 In consultation with the contractor, choose the successful tenderer to be appointed as a selected subcontractor in terms of the n/s agreement and other tender requirements, and
- 21.1.4 Inform the contractor that an advance payment shall be made to the selected subcontractor where such an advance payment requirement is included in the accepted tender and that recovery thereof will be effected [33.2.4]

21.2 The contractor shall within ten (10) working days of such selection [21.1.3] determine that such subcontractor can:

- 21.2.1 Meet the requirements of the n/s agreement and other tender requirements, and
- 21.2.2 Provide security in terms of the n/s agreement

21.3 The contractor [21.2] shall forthwith either:

- 21.3.1 Appoint such subcontractor as a selected subcontractor and inform the principal agent accordingly, or
- 21.3.2 Provide reasonable cause to the satisfaction of the principal agent for not making such appointment in which event another subcontractor shall be chosen [21.1.3]

21.4 The contractor shall provide a payment guarantee in terms of the n/s agreement where required by the selected subcontractor

21.5 The contractor shall make payment to the selected subcontractor of the amount certified and identified [31.13.1] and in terms of the n/s agreement

21.6 The contractor shall, within five (5) working days of receipt of a contract instruction provide proof to the principal agent [17.1.12] that the contractor's payment obligations [21.5] have been discharged. Failure by the contractor to provide such proof to the satisfaction of the principal agent shall entitle the employer to instruct the principal agent to certify payment direct to the selected subcontractor [35.1.2]. The contractor shall have no recourse to recover such amounts from the employer. Such direct payment shall not create privity of contract between the employer and the selected subcontractor. The employer may recover such direct payment amounts from the contractor [33.2.8]

21.7 Where the selected subcontractor is in default of a material term of the n/s agreement the decision of whether or not to terminate the n/s agreement is that of the contractor

21.8 Where termination of the selected subcontract occurs the contractor shall appoint another subcontractor subject to the approval of the principal agent

21.9 Where the n/s agreement is terminated due to default by the employer or his agents, any variation in the cost of carrying out and completing the selected subcontract works shall be adjusted [32.5-6]

21.10 Where the n/s agreement is terminated, other than due to employer default [21.9], any variation in the cost of carrying out and completing the selected subcontract works shall be for the account of the contractor

22.0 EMPLOYER'S DIRECT CONTRACTORS

22.1 On instruction of the principal agent [17.1.17] the contractor shall permit work to be executed and installed in the works by a direct contractor. The direct contractor, the work or installation to be

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undertaken, the insurances related thereto and the associated risks shall be the direct responsibility of the employer [9.2.2]

- 22.2 The type and extent of such work shall be described in the contract data. The contractor shall make reasonable allowance in his programme for such work or installation
- 22.3 A direct contractor executing such work or installation shall be subject to reasonable controls as required by the contractor
- 22.4 The contractor shall be entitled to claim expense or loss caused by a direct contractor [32.5.4]
- 22.5 The payment of a direct contractor shall be the responsibility of the employer and shall not be dealt with in terms of this agreement

23.0 CONTRACTOR'S DOMESTIC SUBCONTRACTORS

- 23.1 The contractor shall appoint all domestic subcontractors in terms of an agreement that provides for fair and equitable conditions of contract compatible with this agreement
- 23.2 All work or installations and the associated risks related to domestic subcontractors shall be the direct responsibility of the contractor

COMPLETION

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 issue of the certificate of practical completion
- 24.2 The contractor shall inspect the works to satisfy himself that the state of completion of the works [24.1] has been achieved
- 24.3 The contractor shall give timeous notice of the anticipated date of practical completion to the principal agent to inspect the works so as to meet such date. Where, in the opinion of the principal agent, after such inspection the works either:
 - 24.3.1 Has reached practical completion, the principal agent shall forthwith issue a certificate of practical completion to the contractor with a copy to the employer. The certificate of practical completion, unless otherwise agreed by the parties, shall not be issued before the date for practical completion as stated in the contract data or the revised date [29.0], or
 - 24.3.2 Has not reached practical completion, the principal agent shall forthwith issue a practical completion list to the contractor defining the incomplete work and defects to be rectified to achieve practical completion
- 24.4 Where, in the opinion of the contractor, the work on the practical completion list has been completed, the contractor shall inform the principal agent who shall inspect such work within seven (7) calendar days of receipt thereof. Where, in the opinion of the principal agent, the work on the practical completion list either:
 - 24.4.1 Has been satisfactorily completed, the principal agent shall forthwith issue a certificate of practical completion [24.3.1], or

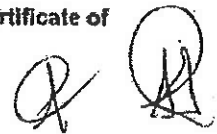

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- 24.4.2 Has not been satisfactorily completed, the principal agent shall forthwith identify the items on the practical completion list that are not yet complete and inform the contractor thereof. The contractor shall repeat the procedure [24.4]
- 24.5 Should the principal agent not issue a practical completion list [24.3.2] or the updated list [24.4.2], within seven (7) calendar days of the end of the inspection period, the contractor shall notify the employer and principal agent. Should the principal agent not issue such practical completion list within seven (7) calendar days of receipt of such notice practical completion shall be deemed to have been achieved either:
- 24.5.1 On the date that practical completion was anticipated [24.3], or
- 24.5.2 On the date of expiry of the notice given by the contractor [24.5]
- 24.6 The contractor shall not be obliged to carry out any contract 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 applicable date for practical completion [24.0, 28.0] then practical completion shall be deemed to have taken place and the applicable certificate of practical completion shall be issued
- 24.9 Upon the achievement of practical completion the contractor shall hand over to the principal agent all operating and instruction manuals, product guarantees and manufacturers' instructions as stated in the contract data and information for the preparation of as built drawings as required by the principal agent
- 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 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

25.0 WORKS COMPLETION

- 25.1 Within seven (7) calendar days of the date of practical completion the principal agent shall issue to the contractor a works completion list defining the incomplete work and defects apparent at the date of practical completion to be completed or rectified to achieve works completion
- 25.2 Where, in the opinion of the contractor, the works completion list has been completed the contractor shall notify the principal agent who shall inspect within seven (7) calendar days of receipt of such notice. Where, in the opinion of the principal agent, the works completion list either:
- 25.2.1 Has been satisfactorily completed, the principal agent shall forthwith issue a certificate of works completion to the contractor with a copy to the employer, or
- 25.2.2 Has not been satisfactorily completed, the principal agent shall forthwith identify the items on the works completion list that are not yet complete and inform the contractor thereof. The contractor shall repeat the procedure [25.2]
- 25.3 Should the principal agent not issue a works completion list [25.1, 25.2.2] within seven (7) calendar days of the end of the inspection period, the contractor shall notify the employer and principal agent. Should the principal agent not issue such works completion list within seven (7) calendar days of receipt of such notice, the certificate of works completion shall be deemed to have been issued on the date of expiry of the initial notice period and works completion shall be deemed to have been achieved on such date

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- 25.4 Should the works completion list not be completed within a period of twenty (20) working days of the issue thereof the contractor 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 or 25.3]

26.0 FINAL COMPLETION

- 26.1 The defects liability period for the works shall commence on the date of works completion and end at midnight (00:00) ninety (90) calendar days from such date
- 26.2 At the end of the defects liability period the principal agent shall forthwith inspect the works and where the works either:
- 26.2.1 Has reached final completion the principal agent shall forthwith issue a certificate of final completion to the contractor with a copy to the employer, or
- 26.2.2 Has not reached final completion the principal agent shall forthwith issue a defects list to the contractor defining the defects, which have appeared during the defects liability period, to be rectified to achieve final completion
- 26.3 Where, in the opinion of the contractor, the defects list has been completed, the contractor shall notify the principal agent who shall inspect within seven (7) calendar days of receipt of such notice. Where, in the opinion of the principal agent, the defects list either:
- 26.3.1 Has been satisfactorily completed the principal agent shall forthwith issue a certificate of final completion to the contractor with a copy to the employer, or
- 26.3.2 Has not been satisfactorily completed or where further defects have become apparent, the principal agent shall forthwith identify such items on the updated defects list and inform the contractor thereof. The contractor shall repeat the procedure [26.3]
- 26.4 Should the principal agent not issue a defects list [26.2.2, 26.3.2] within seven (7) calendar days from the end of the defects liability period, the contractor shall notify the employer and principal agent. Should the principal agent not issue such defects list within seven (7) calendar days of receipt of such notice, the certificate of final completion shall be deemed to have been issued on the date of expiry of the initial notice period and final completion shall be deemed to have been achieved on such date
- 26.5 Where a n/s subcontractor's defects liability period extends beyond the contractor's defects liability period [26.1]:
- 26.5.1 The contractor's obligations and liability concerning such subcontractor's defects shall nevertheless end on the issue of the certificate of final completion, and
- 26.5.2 The remaining portion of such subcontractor's defects liability period shall be subject to a direct agreement between the employer and the subcontractor and shall no longer be the responsibility of the contractor
- 26.6 An issued certificate of final completion [26.2.1, 26.3.1] shall be conclusive evidence as to the sufficiency of the works and that the contractor's obligations [2.2, 15.3] have been fulfilled other than for latent defects
- 26.7 Where a subcontractor is required to give a guarantee, warranty or indemnity related to subcontract work, other than a security to the contractor, the rights under such guarantee, warranty or indemnity shall be ceded to the employer on the date of issue of the certificate of final completion [4.2]. 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 works shall commence at the start of the construction period and end five (5) years from the date of achievement of final completion [26.0]

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Date: 27/5/2021

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- 27.2 Where termination of this 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 contractor shall make good all defects that appear up to the date of final completion [24.0-28.0]

28.0 SECTIONAL COMPLETION

- 28.1 Where sections are required to be completed as stated in the contract data, terms and conditions applicable to the works without sections shall apply to each section. The following documents, which shall include each section, shall be issued by the principal agent for the works as a whole:
 - 28.1.1 Interim payment certificates [31.1]
 - 28.1.2 Recovery statements [33.1]
 - 28.1.3 Final account [34.1]
 - 28.1.4 Final payment certificate [34.5]
 - 28.1.5 Certificate of final completion [26.0] that shall incorporate the certificate of final completion of the last section
- 28.2 The following documents shall be issued by the principal agent individually for each section:
 - 28.2.1 No clause
 - 28.2.2 A certificate of practical completion [24.0]
 - 28.2.3 A certificate of works completion [25.0]
 - 28.2.4 A certificate of final completion [26.0] other than in terms of 28.1.5

29.0 REVISION OF DATE FOR PRACTICAL COMPLETION

- 29.1 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall not adjust the contract value [32.12] are delays to practical 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 contractor has taken all practical steps to avoid or reduce such delay
 - 29.1.3 Making good physical loss and repairing damage to the works [8.0] where the contractor 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 amount item where the contractor has taken all reasonable steps to avoid or reduce such delay
 - 29.1.6 Default by a nominated subcontractor where the contractor has taken all reasonable steps to avoid or reduce such delay
- 29.2 The circumstances for which the contractor is entitled to a revision of the date for practical completion and for which revision the principal agent shall adjust the contract value [32.12] are delays to practical completion caused by one or more of the following:
 - 29.2.1 Failure to give possession of the site to the contractor [15.2.1]

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- 29.2.2 Making good physical loss and repairing damage to the works [8.0] where the contractor is not at risk
- 29.2.3 Contract instructions [17.0] not occasioned by default by the contractor
- 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 contractor's obligations [4.3] have been met
- 29.2.6 Suspension or termination invoked by a n/s subcontractor due to default by the employer or the principal agent [38.1]
- 29.2.7 Insolvency of a nominated subcontractor
- 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 contract documents
- 29.2.10 The execution of additional work for which the quantity included in the bills of quantities is not sufficiently accurate
- 29.2.11 Late or failure to supply materials and goods for which the employer is responsible
- 29.2.12 Suspension of the works [12.5, 31.15]
- 29.3 Further circumstances for which the contractor is entitled to a revision of the date for practical completion are delays to practical completion by any other cause beyond the contractor's reasonable control that could not have reasonably been anticipated and provided for. The principal agent shall adjust the contract value where such delay is due to the employer exercising his rights in terms of the 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 contractor, cause a delay to practical completion the contractor shall:
 - 29.4.1 Give the principal agent 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 twenty (20) working days from the date upon which the contractor became aware or ought reasonably to have become aware of the potential delay notify the principal agent of his intention to submit a claim for a revision to the date for practical completion or any previous revision thereof resulting from such delay, failing which the contractor's right to claim shall lapse
- 29.5 The contractor shall, within forty (40) working days of the delay ceasing, submit such claim to the principal agent, failing which the contractor shall forfeit such claim
- 29.6 Where the contractor requests a revision of the date for practical 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 contractor relies, and
 - 29.6.2 The particulars of the effect of the delay on critical progress towards practical completion, and
 - 29.6.3 The extension period claimed in working days, and the calculation thereof
- 29.7 The principal agent shall within fifteen (15) working days of receipt of a claim [29.6] grant in full, reduce, or refuse the working days claimed. The principal agent shall:
 - 29.7.1 Determine the revised date for practical 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

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- 29.7.3 Give reasons for refusing such claim
- 29.8 Where the principal agent fails to act [29.7] the claim shall be deemed to be refused

30.0 PENALTY FOR LATE OR NONCOMPLETION

- 30.1 Where the contractor fails to bring the works or sections thereof to practical completion on the date or dates stated in the contract data or revision thereof [29.0], the contractor shall be liable to the employer for the determined penalty
- 30.2 Where the employer elects to levy such penalty [33.1.1] the principal agent shall detail the penalty amount due at the rate(s) per calendar day stated in the contract data from the current date of practical completion [29.0] up to and including:
 - 30.2.1 The actual or deemed date of practical completion of the works [24.8] or section thereof [28.2], or
 - 30.2.2 The date of termination [36.3]
- 30.3 Where possession of part of the works is taken [24.8] and no penalty related to sections is stated in the contract data the principal agent shall prorate the penalty as stated for the works as a whole in the ratio of the contract value of the occupied part of the works to that of the works as a whole

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 cooperate with and assist the principal agent in the preparation of the payment claim information for an interim payment certificate by providing to the principal agent all relevant documents and assessments of quantified amounts of work completed. For a contract without bills of quantities the contractor shall compile such information for work completed and materials and goods in such form as agreed by the principal agent. The principal agent shall not be relieved of his responsibility to issue an interim payment certificate [31.4] whether or not such information is provided by the contractor
- 31.3 An interim payment certificate shall be issued to the contractor with a copy to the employer by not later than the day of the month stated in the post tender conditions [41.7]
- 31.4 The value certified in an interim payment certificate shall separately include:
 - 31.4.1 A reasonable estimate of the value of the work executed taking into account the information submitted by the contractor [31.2] and making due allowance for adjustments to the 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 of amounts previously certified [31.4.1-2]
- 31.5 The following adjustments shall be made to the amounts certified [31.4.1-2] and shall separately include the following:
 - 31.5.1 No clause
 - 31.5.2 Security adjustment [14.0, 31.8]
 - 31.5.3 CPAP adjustment where elected in the contract data

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- 31.5.4 The amounts due to the employer or contractor in the recovery statement [33.1] excluding interest amounts [31.5.6]
- 31.5.5 Tax on the net total of the amounts [31.4, 31.5.1-4]
- 31.5.6 Interest amounts included in the recovery statement [33.1]
- 31.6 The value of materials and goods [31.4.2] shall be included in the value certified only where, to the satisfaction of the principal agent, the 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 requirements of the principal agent, 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 construction guarantee and payment reduction [14.4] has been chosen the value of the works [31.4.1] and materials and goods [31.4.2] that exceeds the contract sum and any CPAF adjustment shall be certified in full. The value certified that does not exceed the contract sum shall be subject to the following percentage adjustments:
- 31.8.1 Ninety-five per cent (95%) of such value in interim payment certificates issued up to the date of practical completion
- 31.8.2 Ninety-seven per cent (97%) of such value in interim payment certificates 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 certificates issued on the date of final completion and up to but excluding the final payment certificate [34.6]
- 31.8.4 One hundred per cent (100%) of such value in the final payment certificate 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 certificate [34.6]
- 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
- 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 principal agent shall calculate such compensation 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 contractor and include such amount in the recovery statement [33.0]
- 31.11 Where the contractor does not receive payment of the amount due by the due date [31.9], the employer shall be liable for default interest on the amount without prejudice to any other rights the contractor may have. Such interest amount shall be compounded monthly from the due date for payment up to and including the date on which the contractor is to receive payment and included in the recovery statement [33.0]. The principal agent shall calculate such default interest at the rate of one hundred and sixty per cent (160%) of the interest
- 31.12 Where a payment certificate reflects an amount in favour of the employer, the contractor shall pay the amount certified within twenty-one (21) calendar days of the date of issue of the payment certificate. Where such amount has not been paid, the contractor shall be liable for default interest [31.11] and the principal agent shall include such amount in the next recovery statement [33.0]. The principal agent shall calculate such interest at the rate of one hundred and sixty per cent (160%) of the interest

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- 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 n/s subcontractor
- 31.13.2 A notification to each n/s 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 parties 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 works and materials and goods are in terms of this agreement
- 31.15 Where the principal agent fails to issue a payment certificate [31.1] or the employer fails to make payment [31.9] the contractor may give three (3) working days notice to suspend the works to the employer, with a copy to the principal agent
- 31.16 Where the employer has not paid or has made a partial payment only of the amount due in an issued payment certificate [31.1] the contractor may:
- 31.16.1 Issue a demand to the employer in terms of the payment guarantee where such is provided [3.1], or
- 31.16.2 Exercise his lien or right of continuing possession where this has not been waived in terms of the contract data and where practical completion has not been achieved, or
- 31.16.3 Give notice of suspension of the works [31.15]. Where the employer fails to act in relation to such notice the contractor may give notice of termination [38.1.4,6]

32.0 ADJUSTMENT TO THE CONTRACT VALUE

- 32.1 The principal agent shall determine the value of adjustments to the contract value according to the priced document. Where items of additional work are required the principal agent and the contractor may agree on the adjustment before the commencement of such work
- 32.2 Adjustment to the contract value resulting from a contract instruction [17.5] for additional work shall be determined as follows:
- 32.2.1 Work of similar character executed under similar conditions shall be priced at the rates in the priced document, or
- 32.2.2 Where 32.2.1 is not applicable at rates based on those in the priced document and adjusted to suit the changed circumstances, or
- 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 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 priced document as provisional, the principal agent shall omit the value thereof from the contract value and the work as executed shall be valued [32.2] and added to the contract value
- 32.4 Where the contractor has made payment for items that are not included in the priced document, the actual amounts paid plus a ten per cent (10%) markup shall be added to the 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 contractor shall bear the cost thereof should the test show that the work is not according to the contract documents

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- 32.4.3 The cost of insurance [12.3]
- 32.4.4 The cost of support insurance [11.1.1]
- 32.5 Where the contractor has incurred expense and loss due to no fault of the contractor for which provision was not required in the contract sum and for which reasonable compensation has not been made [32.2.12], the contractor shall provide details of such expense and loss to the principal agent [32.6]. Such circumstances are:
- 32.5.1 The issue of a contract instruction
- 32.5.2 Failure to issue or the late issue of a contract instruction following a timeous request from the contractor [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 a direct contractor [22.4]
- 32.5.5 Default by the employer or his agents
- 32.5.6 Suspension or termination of a n/s subcontract due to default by the employer or his agents
- 32.5.7 Default or insolvency of a nominated subcontractor
- 32.5.8 Suspension of the works [31.15]
- 32.6 The contractor shall notify the principal agent within forty (40) working days from becoming aware or from when he ought reasonably to have become aware of such expense and loss [32.5] falling which no compensation will be made. Where such notification has been given:
- 32.6.1 The contractor 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 the n/s subcontract amounts from the contract value and determine the amounts as the final account value of the respective subcontract works to be added to the contract value
- 32.8 The principal agent shall prorate the contractor's attendance and profit provision on the n/s subcontractor amounts in the 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 contract value and determine the value of work related thereto [32.0] to be added to the contract value
- 32.10 The principal agent shall omit prime cost amounts [17.1.14] 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
- 32.11 The principal agent shall prorate the contractor's allowances for overheads and profit on prime cost amounts in the contract sum to the value of each item [32.10]
- 32.12 The preliminary and general amounts in the priced document shall be adjusted and paid in terms of the alternative chosen by the contractor as stated in the contract data
- 32.13 Where applicable the contract value shall be adjusted according to CPAP using the information stated in the contract data
- 32.14 Where adjustments need to be measured on the site the contractor shall be given the opportunity to be present and shall be supplied with a copy of the measurement

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- 32.15 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

33.0 RECOVERY OF EXPENSE AND LOSS

- 33.1 The principal agent shall issue a recovery statement monthly to the parties simultaneously with the payment certificate. Explanatory documentation as may be necessary to support the calculation of the amounts stated shall accompany the recovery statement. The principal agent shall show on the recovery statement amounts due to the employer for:

- 33.1.1 Penalties levied where the employer so elects [30.2]
33.1.2 Default interest [31.12]
33.1.3 Expense and loss [33.2]

and amounts due to the contractor for:

- 33.1.4 Compensatory interest [31.10]
33.1.5 Default interest [31.11]
33.1.6 Damages [36.5.6]
33.1.7 Advance payments granted [14.5]

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

- 33.2.1 The employer paying charges or effecting insurance upon the contractor's default [7.1, 12.3]
33.2.2 Work executed by other parties [17.4]
33.2.3 Termination of a nominated subcontract [20.10]
33.2.4 Recoupment of advance payments [14.5, 20.1.3, 21.1.4]
33.2.5 The contractor not paying the amount due to the employer [31.12]
33.2.6 The agreement being terminated [36.0]
33.2.7 Default by the contractor where not less than seven (7) calendar days notice detailing such default has been given before the issue of the next recovery statement to allow the contractor the opportunity to remedy such default
33.2.8 Amounts paid direct to n/s subcontractors [20.6, 21.6]

- 33.3 The principal agent shall include an amount due in terms of the recovery statement in the accompanying payment certificate. Where the payment certificate reflects an amount in favour of the employer and the contractor has not paid [31.12], such amount may be recovered by the employer from any or all of the following in no specific sequence:

- 33.3.1 Subsequent payment certificates
33.3.2 Security [14.0]
33.3.3 The contractor as a debt

- 33.4 Where the employer decides to recover amounts due [33.3] from a payment reduction [14.4.5], the employer shall notify the contractor and the principal agent thereof. Should such amount not be paid to the employer within seven (7) calendar days of the date of receipt of such notice by the contractor, the employer may recover such amount from the security

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[Signature]

- 33.5 Where the employer decides to recover an amount due [33.3] from a construction guarantee or advance payment guarantee held as security, the employer shall issue a written demand to the contractor 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 contractor or this agreement is terminated [36.0], the employer may issue a demand to the guarantor in terms of the construction guarantee or advance payment guarantee held as security

34.0 FINAL ACCOUNT AND FINAL PAYMENT

- 34.1 The contractor shall cooperate with and assist the principal agent in the preparation of the final account by timeously providing all relevant documents on request. The principal agent shall issue the final account to the contractor within ninety (90) working days of the date of practical completion
- 34.2 *No clause*
- 34.3 The contractor shall accept or object to the final account within forty-five (45) working days of receipt thereof. On acceptance, or should the contractor not object with reasons to the final account within such period, the principal agent shall issue the final payment certificate [34.5]
- 34.4 Should the contractor dispute the correctness of the final account and such dispute not be resolved within the period [34.3], or such an extended period as the principal agent may allow on a request from the contractor, the final payment certificate shall nevertheless be issued [34.5]
- 34.5 The principal agent shall issue the final payment certificate within seven (7) calendar days to the contractor [34.3-4]. Notwithstanding the foregoing such final payment certificate shall not be issued before the issue of the certificate of final completion other than where termination occurs [36.0, 39.0]
- 34.6 The amount certified in the final payment certificate shall separately include:
- 34.6.1 The gross amount of the final account, and
- 34.6.2 The amounts previously certified [31.4.1-2]
- 34.7 Where applicable the following adjustments shall be made to the net amount certified [34.6] and shall separately include:
- 34.7.1 *No clause*
- 34.7.2 Amounts due to the employer or contractor in the final recovery statement [33.1] excluding interest amounts [34.7.4], and
- 34.7.3 Tax on the net total of the amounts [34.7.2], and
- 34.7.4 Interest amounts included in the final recovery statement [33.1]
- 34.8 The principal agent shall certify one hundred per cent (100%) of the amount of the final account in the final payment certificate
- 34.9 *No clause*
- 34.10 The employer shall pay the contractor the amount certified in the final payment certificate within seven (7) calendar days of the date of issue of the final payment certificate
- 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 principal agent shall calculate the compensatory interest amount due to the contractor 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 contractor as stated in the recovery statement [33.0]
- 34.12 Where the contractor does not receive payment of the amount due in the final payment certificate by the due date [34.10], the employer shall be liable for default interest on such amount. The interest

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shall be calculated from the due date for payment up to and including the date on which the contractor receives payment. The amount due and the interest thereon shall be recoverable by the contractor from the employer 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 the final payment certificate reflects an amount in favour of the employer, the contractor shall pay the amount certified within twenty-one (21) calendar days of the date of issue of the final payment certificate
- 34.14 Where such an amount certified [34.10, 13] has not been paid the defaulting party shall be liable for default interest [34.12]. The amount due and the interest thereon shall be recoverable as a debt

35.0 PAYMENT TO OTHER PARTIES

- 35.1 The principal agent shall issue separate payment certification to other parties with copies to the contractor where the employer:
- 35.1.1 Engages other parties to execute work [17.4, 36.5.5]
- 35.1.2 Elects to pay a n/s subcontractor direct [20.6, 21.6]
- 35.2 The employer may recover expense or loss resulting from such payments [33.2]

TERMINATION

36.0 TERMINATION BY EMPLOYER - CONTRACTOR'S DEFAULT

- 36.1 The employer may terminate this agreement where the contractor:
- 36.1.1 Fails to comply [3.3, 14.1, 15.1.3], or
- 36.1.2 Refuses to comply with a contract instruction [17.1] subject to 17.2
- 36.2 Where the employer considers terminating this agreement, the principal agent or the employer shall notify the contractor of such default [36.1]. The issuing of such notice shall be without prejudice to any rights that the employer may have
- 36.3 The employer may give notice of termination should the contractor remain in default for ten (10) working days after the date of receipt of such notice of default
- 36.4 No clause
- 36.5 Where this agreement is terminated the following shall apply:
- 36.5.1 The employment of the contractor shall be terminated and execution of the works shall cease. The contractor shall vacate the works and the site [36.5.6]. The contractor shall remain responsible for the works [8.1] until possession is relinquished to the employer
- 36.5.2 The principal agent shall forthwith compile a report on the status of the portion of the works executed by the contractor and shall issue such report to the parties
- 36.5.3 The principal agent shall timeously commence and complete a final account [34.0]
- 36.5.4 The contractor shall not be relieved of any of his liabilities concerning that portion of the works executed by the contractor
- 36.5.5 The employer may employ other parties to safeguard the works, complete the outstanding work and to rectify defects in that portion of the works executed by the contractor. The cost of work thus carried out shall be certified by the principal agent and paid direct to such parties [35.0]
- 36.5.6 The employer may use the contractor's materials and goods, temporary buildings, plant and machinery on the site for proceeding with the works

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Principal Building Agreement Page 27

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Ex-Officio Co- sioner of Oaths
Warbler Street
Port Elizabeth

Date: 27/15/2021 Cr:

- 36.5.7 When informed by the principal agent or employer the contractor shall remove from the site his temporary buildings, plant, machinery and surplus materials and goods within such reasonable time as determined by the principal agent, in default of which the employer, 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 contractor
- 36.5.8 Where applicable [30.1] the employer shall be entitled to apply the penalty up to the date of termination and thereafter may recover damages from the contractor including, but not limited to, extra costs incurred in the completion of the outstanding work
- 36.5.9 Where the current practical completion date [30.1] has not occurred the employer may recover damages [36.5.8]
- 36.5.10 The principal agent shall continue to issue interim payment certificates in a nil amount until the quantum of damages [36.5.8] has been determined and the final account [36.5.3] has been completed. The final payment certificate shall then be issued
- 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 employer is in material breach of this agreement

37.0 TERMINATION BY EMPLOYER - LOSS AND DAMAGE

- 37.1 The employer may terminate this agreement where:
- 37.1.1 The completed portion of the works constructed has been substantially destroyed howsoever caused, or
- 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 Where the employer considers terminating this agreement [37.1] the principal agent or employer shall notify the contractor accordingly
- 37.3 Where this agreement is terminated the following shall apply:
- 37.3.1 The principal agent shall issue a contract instruction specifying protective measures necessary to be executed by the contractor before cessation of work. Termination shall only take effect after completion thereof
- 37.3.2 Execution of the works shall cease. The contractor shall remain responsible for the works [6.1] until possession is relinquished to the employer
- 37.3.3 On relinquishing possession of the works, the contractor 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 works executed by the contractor before the destruction occurred [37.1] including all work executed [37.3.1] and shall issue such report to the parties
- 37.3.5 The principal agent shall timeously commence and complete a final account [34.0]
- 37.3.6 The employer shall be liable to the contractor for the cost of materials and goods including those ordered before such termination where the contractor is bound to accept and make payment. The contractor 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 the value of 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

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81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date: 27/11/2021

[Handwritten signatures and initials]
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38.0 TERMINATION BY CONTRACTOR - EMPLOYER'S DEFAULT

38.1 The contractor may terminate this agreement where:

The employer fails to:

- 38.1.1 Provide a payment guarantee [3.1], or
- 38.1.2 Appoint a principal agent or agents [5.1-2, 4], or
- 38.1.3 Allow the principal agent to exercise his judgement [5.6], or
- 38.1.4 Effect special insurances [11.0, 12.5], or
- 38.1.5 Give possession of the site to the contractor [15.2], or
- 38.1.6 Pay the amount certified [31.9, 31.16.3, 34.10], or

The principal agent fails to:

- 38.1.7 Issue a statement to the contractor [31.13.1], or
 - 38.1.8 Issue any payment certificate [2.1, 15.2.4], or
 - 38.1.9 Issue any completion certificate [2.1, 15.3]
- 38.2 Where the contractor considers terminating this agreement, notice shall be given to the employer and the principal agent of the default [38.1]. Should such default persist for ten (10) working days after the date of issue of such notice the contractor may give notice of termination to the employer and the principal agent. Such termination shall be without prejudice to any rights that the contractor may have
- 38.3 Where default is due to non-performance of the principal agent [38.0] the contractor may take such actions as are deemed necessary to fulfil the obligations of the principal agent [38.5]
- 38.4 *No clause*
- 38.5 Where the contractor terminates this agreement the following shall apply:
- 38.5.1 Execution of the works shall cease. The contractor shall remain responsible for the works [8.1] until possession is relinquished to the employer
 - 38.5.2 On relinquishing possession of the works, the contractor 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 works executed by the contractor and shall issue such report to the parties
 - 38.5.4 The principal agent shall timeously commence and complete a final account [34.0]
 - 38.5.5 The employer shall be liable to the contractor for the cost of materials and goods including those ordered before such termination where the contractor is bound to accept and make payment. The contractor shall deliver such materials and goods to the employer in good order
 - 38.5.6 The employer shall be liable to the contractor for damages resulting from such termination
 - 38.5.7 The principal agent shall continue to certify the value of the work executed and the value of materials and goods for payment by the employer [31.1]
 - 38.5.8 The security [14.3-4] shall expire and be returned by the employer to the contractor
 - 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 contractor is in material breach of the agreement

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..... KA Boag
Ex Officio Co-ordinator
..... Cr-

..... KA Boag
..... of Oaths
..... Street
..... Elizabeth

Date... 27/6/2021

39.0 TERMINATION - CESSATION OF THE WORKS

- 39.1 Either party may terminate this 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 agreement is terminated the following shall apply:
- 39.3.1 The principal agent shall forthwith issue a contract instruction specifying the continuation of work and protective measures required to bring the works to specific points of cessation. The contractor may cease work should the contractor be prevented from carrying out such contract instruction due to reasons entirely beyond his control
- 39.3.2 Execution of the works shall cease. The contractor shall remain responsible for the works [8.1] until possession is relinquished to the employer
- 39.3.3 On relinquishing possession of the works, the contractor 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 works executed before the termination and shall issue such record to the parties
- 39.3.5 The principal agent shall timeously commence and complete a final account [34.0]
- 39.3.6 The employer shall be liable to the contractor for the cost of materials and goods including those ordered before such termination where the contractor is bound to accept and make payment. The contractor 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 contractor and the value of materials and goods for payment by the employer until a final payment certificate is issued
- 39.3.8 The security [14.0] shall reduce to the value applicable after the issue of the certificate 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 employer, including his principal agent or agents, and the contractor arising out of or concerning this 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 no body 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

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81 - 83 Warbler Street

Date 27/11/2021 Cotswold, Port Elizabeth

[Handwritten signatures and initials]
N.S.M.

- 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 employer consents to the joining of any n/s subcontractor with the contractor as a party to any of the proceedings contemplated in terms of this 40.0
- 40.9 The termination of this agreement shall not affect the validity of this clause 40.0

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Cotswold, Port Elizabeth

Date: 27/5/2021

[Handwritten initials]

N.S.M.

CONTRACT AGREEMENT

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 [40.2.2] selected by the parties is:

41.4 The employer shall provide a Payment Guarantee (amount)

41.5 An annual building industry holiday period is applicable

(yes/no)

41.6 Further provisions and information agreed by the parties:

Addendum "A" Bills of Quantities

R (ACMR Subject to All needed amendments)

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Ex-Officio Commissioner of Oaths

81 - 83 Warbler Street

Cotswold, Port Elizabeth

Date 2021/05/27

N.S. [Signature]

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) **Employer** ACMR Capital (Pty) Ltd
 Physical address No 8 Stompneus Road, Randpark
 Tel 082 847 7992 Fax 086 730 4108 E-mail majestic silver trading@gmail
 Tax / VAT No _____

(2) **Contractor** The Plumbing & Civil Construction / Gut Sijka Zaanse
 Physical address 38 Mangold Street
Newton Park, Port Elizabeth
 Tel 082 722 4108 Fax 086 617 2522 E-mail sweetneritha@yahoo.com
 Tax / VAT No TBC

42.3 The accepted contract sum (Amount inclusive of tax) R 97,739,642.12
 in words Ninety Seven million, Seven Hundred and Thirty Nine Thousand Rand, Six Hundred and Forty Two and 4/100 Cents

42.4 Signature of the contracting parties:

Thus done and signed at JHB on 14/11/2020
M. R. KHAN (ACMR Capital) for and on behalf of the employer who by
 Name of signatory signature hereof warrants authorisation hereto
CEO Capacity of signatory _____
 _____ as Witness (1)

Thus done and signed at _____ on _____
 _____ for and on behalf of the contractor who by
 Name of signatory signature hereof warrants authorisation hereto
 _____ Capacity of signatory _____
 _____ as Witness (2)

Details of Witness (1) Details of Witness (2)
 Name: _____ Name: _____
 Address: _____ Address: _____

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104



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Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street

Date: 27/05/2021 Cotswold, Port Elizabeth

PRINCIPAL BUILDING AGREEMENT Contract Data EC

| | |
|---------------|--|
| Project | The Construction of a new Adeb Senior Primary School |
| Employer | ACMR Capital (Pty) Ltd. |
| Contractor | Itha Plumbing & Civil Construction / GIK Sijezama (JV) |
| Contract Date | 26 August 2020 |
| 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 Edition 5.0 Code 2101-EC © JULY 2007

N.S.M.

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JBCC SERIES 2000
Principal Building Agreement Edition 5.0

Contract Data - Employer to Contractor
Employer Addendum Code 2101-EC

Introduction

This addendum contains all variables referred to in the Principal Building Agreement that are the responsibility of the Employer to provide the appropriate information that is necessary for the Contractor to complete his tender. The Addendum must be completed in full and included in the tender documents. The applicable addendums "Contract Data - EC", "Contract Data - CE", "Contract Data - ES" and "Contract Data - SE" form part of the contract between the parties

Definitions

The definitions used in this document and the interpretation thereof are as listed in the Principal Building Agreement. The word or phrase of a definition is in bold text and shall bear the meaning assigned to it in the Principal Building Agreement. 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

Provision of Contract Data

Spaces requiring information must be filled in, shown as 'not applicable' or deleted and not left blank. Where choices are offered, the non-applicable items are to be clearly struck out. Where insufficient space is provided the additional information should be annexed hereto and cross referenced to the applicable clause of the contract data

Reference Clauses

Where relevant the Principal Building Agreement clause applicable to the required information is printed in italics under the Contract Data clause number i.e. [27.4.2]

TABLE OF CONTENTS

| Section No | Description | Page |
|------------|--|------|
| 1.0 | CONTRACTING AND OTHER PARTIES | 2 |
| 2.0 | CONTRACT AND SITE INFORMATION | 3 |
| 3.0 | INSURANCES AND SECURITIES | 5 |
| 4.0 | PRACTICAL COMPLETION DATES AND PENALTIES | 5 |
| 5.0 | DOCUMENTS AND GENERAL | 6 |
| 6.0 | CHANGES MADE TO THE STANDARD JBCC DOCUMENT | 6 |
| 7.0 | DECLARATION BY THE PRINCIPAL AGENT | 6 |

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Contract Data - Employer - Page 1

N.S.M.

CONTRACT DATA - EMPLOYER

1.0 CONTRACTING AND OTHER PARTIES

1.1 Employer ACMR Capital (Pty) Ltd
 Postal address No 8 Stompneus Road, Randpark
 Code 2194
 Tel 062 847 2992 Fax 066 730 1032 E-mail majesticsilvertrading@gmail.com
 Tax / VAT registration No PENDING
 (1.2) Physical address No 8 Stompneus Road, Randpark

1.2 Principal Agent MDA Architects
 (5.1) Postal address 18 Park Lane, Central
Port Elizabeth Code 6001
 Tel 041-373-0228 Fax 041-373-1529 E-mail admin@mdaarchitects.co.za

1.3 Agent (1) MDA Architects
 (5.2) Agent's service Architects
 Postal address 18 Park Lane, Central
Port Elizabeth Code 6001
 Tel 041-373-0228 Fax 041-373-1529 E-mail admin@mdaarchitects.co.za

1.4 Agent (2) BVI Consulting Engineers
 (5.2) Agent's service Civil and Structural Engineering
 Postal address PO Box 5396
Walmer Code 6065
 Tel 041-373-0343 Fax 041-373-7135 E-mail plz@bviec.co.za

1.5 Agent (3) Kuma Trading - (Pty) Ltd
 (5.2) Agent's service Electrical Engineer
 Postal address _____ Code _____
 Tel 062 583 2960 Fax 066 704 11237 E-mail nawknizumal@gmail.com

1.6 Agent (4) BNUM Quantity Surveyors
 (5.2) Agent's service Quantity Surveyors
 Postal address Suite 4 Lindow
114 Park Drive Code 6001
 Tel 041-585 2125 Fax 041-585 2127 E-mail colinn@gq.s.bnum.co.za

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 Date 27/05/2021 Cotswold, Port Elizabeth

[Handwritten signature]

[Handwritten signature]

1.7
[5.2]

Agent (5) C.A du Toit
Agent's service Mechanical Engineers
Postal address P O Box 71630 Port Elizabeth
Port Elizabeth Code 6005
Tel 041-586 7559 Fax 041-586 1194 E-mail ca@cadutoit.ec.co.za

1.8
[5.2]

Agent (6) Sebenza Risk Management
Agent's service Health and Safety Agent
Postal address 25 Wickwood Avenue
Linksdale, Port Elizabeth Code 6001
Tel 083 573 3949 Fax - E-mail sullivan@sebenzarisk.co.za

1.9
[5.5]

Interest of principal agent or other agents in the project (yes/no) no
Details where "yes" _____

1.10

The principal agent named in 1.2 above is responsible for the preparation of the contract data schedule and must be contacted should the contractor be uncertain of the information provided or to be provided. Failure to complete the contract data schedule in full may result in the tender being disqualified

2.0

CONTRACT AND SITE INFORMATION

South Africa

2.1
[1.7]

The law applicable to this agreement (country/state)

2.2
[1.1]

Works identification

Construction of a New Addo Senior Primary School consisting of: Administration Block, Computer Lab, Library, Multi-Purpose Classroom, Three Classroom Blocks, Three Classroom Block plus HOD, Four Classroom plus HOD, Five Classroom plus Ablution, Science Lab plus HOD, Nutrition Centre, Double Gender Block plus ablution, Three Classroom plus ablution Guard House & Refuse, Cantina Area, Concrete netball court, Paths & gravel areas, Covered walkways, Steel section water tank, Water reticulation, Sewerage & stormwater installation, New Parking area

2.3
[1.1]

Site description

Addo Primary School, located at Rantz Drive, Cell # NR 1174, Addo in the Eastern Cape Province, Sarah Baartman District.

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Contract Data - Employer - Page 3

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81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date 27/05/2021

2.4 Possession of the site is to be given on [15.2.1] (date) 26 August 2020

2.5 Period for the commencement of the works after [15.3] the contractor takes possession of the site (working days) 7

2.6 Completion of the works in sections is required [15.4, 28.0] (yes/no) (Nº of sections) no

2.7 Waiver of the contractor's lien or right of continuing possession is required [3.3, 31.16.2] (yes/no) YES

2.8 Defined restrictions to the site area. Where "yes" the specific requirements are [16.1] described below or detailed in the contract documents (yes/no) YES

Adjacent Properties

2.9 Geotechnic investigation of the site has been undertaken [16.4] Where "yes" results are included in the contract documents (yes/no) YES

2.10 Existing premises will be occupied. Where "yes" the specific requirements [16.6] are described below or detailed in the contract documents (yes/no) NO

N/A

2.11 Provision of temporary services is required. Where "yes" the specific requirements [16.7] are described below or detailed in the contract documents (yes/no) YES

2.11.1 Water Option A Contractor - his cost
Option B Employer - free of charge
Option C Employer - metered (contractor cost) (A, B or C) B

2.11.2 Electricity Option A Contractor - his cost
Option B Employer - free of charge
Option C Employer - metered (contractor cost) (A, B or C) B

2.11.3 Telecom Option A Contractor - his cost
Option B Employer - free of charge
Option C Employer - metered (contractor cost) (A, B or C) A

2.11.4 Ablutions Option A Contractor - his cost
Option B Employer - free of charge (A or B) A

2.12 Protection of existing trees and shrubs is required [16.8] Where "yes" the specific requirements are described below or detailed in the contract documents (yes/no) no

N/A

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Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanduidings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie.

[Handwritten signatures and initials]
N.S.M.

..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Date 27/05/2021 Cotswold, Port Elizabeth

3.0 INSURANCES AND SECURITIES

- 3.1 Contract works insurance to be effected by
 [10.1.1, 12.6] (Employer/Contractor) Contractor
 For the sum of (amount) Contract Value + 10%
 With a deductible of (amount) Not exceeding 5%
- 3.2 Supplementary/Special insurance to be effected by
 [10.1.2, 11.1-3, 12.6] (Employer/Contractor) Contractor
 For the sum of (amount) Minimum value + 10%
 With a deductible of (amount) _____
- 3.3 Public liability insurance to be effected by
 [10.1.3, 12.6] (Employer/Contractor) Contractor
 For the sum of (amount) R 5 000 000 or
 With a deductible of (amount) not exceed 5% of value of claim
- 3.4 Support insurance to be effected by the employer
 [11.1.1] For the sum of (amount) N/A
 With a deductible of (amount) N/A
- 3.5 Special insurance to be effected by
 [11.1.2-3, 12.1] (Employer/Contractor) N/A
 Type _____
 For the sum of (amount) N/A
 With a deductible (amount) N/A

4.0 PRACTICAL COMPLETION DATES AND PENALTIES

4.1 For the works as a whole:
 [24.3.1] The date for practical completion
 [30.1-3] and the penalty per calendar day

| Date | Penalty amount |
|----------------------|-------------------------|
| <u>30 April 2020</u> | <u>R1.25c per 2 hrs</u> |

or

4.2 For the works in sections:
 [24.3.1] The date for practical completion
 [28.1] and the penalty per calendar day

| | Date | Penalty amount |
|-----------|------|----------------|
| Section 1 | | |
| Section 2 | | |
| Section 3 | | |
| Section 4 | | |
| Section 5 | | |
| Section 6 | | |
| Section 7 | | |
| Section 8 | | |

[Handwritten signatures and initials]
 N.S.M.


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..... KA Boag
 Es-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cotswold, Port Elizabeth

Date 27/5/2021

5.0 DOCUMENTS AND GENERAL

- 5.1 [3.7] Construction document copies to be supplied to the contractor free of charge (N° of)
- 5.2 [3.9] The priced document may be used as a specification of materials and goods and work methods (yes/no)
- 5.3 [3.10] The contractor shall provide a schedule of rates (yes/no) (Addendum No)
- 5.4 [3.11] Changes made to JBCC standard documents (yes/no) (Addendum No)
- 5.5 [15.1.1] On acceptance of the tender the priced document is to be submitted within the stated working days (N° of)
- 5.6 [22.2] Work to be undertaken by direct contractors (yes/no) (Addendum No)
- 5.7 [24.9] On achievement of practical completion the contractor is to hand over manuals etc related to the works as listed below
 - (1) _____ (2) _____
 - (3) _____ (4) _____
 - (5) _____ (6) _____
 - (7) _____ (8) _____
- 5.8 [31.1] Interim payment certificate to be issued by (Date of month)

6.0 CHANGES MADE TO THE STANDARD JBCC DOCUMENT

Note: All changes in detail must be listed below or provided in (Addendum N°)

N/A

7.0 DECLARATION BY THE PRINCIPAL AGENT

I, the principal agent named in 1.2 above, declare that the information provided above is complete and accurate at the time of calling for tenders. Where necessary, should any of the above information need to be varied, tenderers will be forthwith informed thereof in writing

Principal Agent

Date

[Handwritten signatures and initials]
N.S.M

It is hereby certified that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person.

Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanduidings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie.

..... KA Boag
Ex-Officio Commissioner of Oaths
81 - 83 Warbler Street
Cotswold, Port Elizabeth

Date 27/6/2021



MDA ARCHITECTS

IN TERMS OF THE CONTRACT FOR THE WORKS DESCRIBED AS
ADDO PRIMARY SCHOOL: THE CONSTRUCTION OF A NEW ADDO SENIOR PRIMARY SCHOOL (VALENCIA)

ON THE SITE:
Jakaranda Lane, Valencia, Addo, Eastern Cape

PAYMENT IS DUE BY THE EMPLOYER:
ACMR Capital (PTY) LTD
8 Stompeneus Road
Rand Park

VAT Reg No.:

PAYMENT CERTIFICATE FOR USE WITH THE JBCC PRINCIPAL BUILDING AGREEMENT

CERTIFICATE TYPE: **INTERIM**
 DATE OF VALUATION: **24-Nov-20**
 CERTIFICATE N°: **2 (Two)**
 PROJECT N°: **MDA250C**

CONTRACT NO.: **SCMU - 15/16/01045B**

TO THE CONTRACTOR:
GVK-Siyazama
38 Mangold Street
Newton Park, PE
6000
 VAT Reg No.:


Hiermee word geertifiseer dat hierdie word geertifiseer dat true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person.

KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street

IN THE CERTIFIED AMOUNT AS SET OUT IN ITEMS 10.0 BELOW

| | A CONTRACT SUM | B CURRENT CONTRACT VALUE | C CURRENT VALUATION | D CURRENT AMOUNT CERTIFIED |
|---|-------------------|-----------------------------|------------------------|-------------------------------|
| 1.0 Value of work executed | | | R 14 318 834,03 | |
| 2.1 Materials on site | | | R 2 021 869,49 | |
| 2.2 Materials off site | | | R 0,00 | |
| 3.0 Security adjustment | | YES 100,00% | R 16 340 703,52 | R 16 340 703,52 |
| 4.0 Net contract amount | R 81 490 993,15 | R 81 490 993,15 | | |
| 5.0 Authorised Variations | | R 0,00 | | |
| 6.0 Contract Price Adjustments | R 3 500 000,00 | R 3 500 000,00 | R 0,00 | R 0,00 |
| 7.0 GROSS AMOUNT CERTIFIED | | | | R 16 340 703,52 |
| 8.0 Less: Previous Gross Amount Certified | | | | (R 0,00) |
| 9.0 NETT AMOUNT CERTIFIED | | | | R 16 340 703,52 |
| 10.1 Less: Expense or Loss due to employer | | | | () |
| 10.2 Less: Penalties due to employer | | | | () |
| 10.3 Add: Damages due to contractor | | | | |
| 11.0 SUB TOTAL | R 84 990 993,15 | R 84 990 993,15 | | R 16 340 703,52 |
| 12.0 ADD: VAT on 11.0 | R 12 748 648,97 | R 12 748 648,97 | | R 2 451 105,53 |
| 13.1 Less: Interest due to employer | | | | () |
| 13.2 Add: Interest due to contractor | | | | |
| 14.0 TOTAL | R 97 739 642,12 | R 97 739 642,12 | | R 18 791 809,05 |
| 15.0 AMOUNT DUE FOR PAYMENT TO THE CONTRACTOR | | (Contractor / Employer) | | R 18 791 809,05 |
| 16.0 Percentage of contract sum executed | | | | 19,23% |



SIGNED: 

DATED: 30.11.2020

Certified by the Architect who as agent for the Employer acknowledges that the amount as per Items 11.0 above is due and payable to the Contractor

N.S.M. 

MDA ARCHITECTS

PAYMENT CERTIFICATE FOR USE WITH THE JBCC PRINCIPAL BUILDING AGREEMENT

CERTIFICATE TYPE: INTERIM
 DATE OF VALUATION: 09-Dec-20
 CERTIFICATE N^o.: 3 (Three)
 PROJECT N^o.: MDA250C

IN TERMS OF THE CONTRACT FOR THE WORKS DESCRIBED AS
ADDO PRIMARY SCHOOL: THE CONSTRUCTION OF A NEW ADDO SENIOR PRIMARY SCHOOL (VALENCIA)

CONTRACT NO.: 5CMU - 15/16/01045B

ON THE SITE:
Jakaranda Lane, Valencia, Addo, Eastern Cape

PAYMENT IS DUE BY THE EMPLOYER:
ACMR Capital (PTY) LTD
8 Stompeneus Road
Rand Park

TO THE CONTRACTOR:
GVK-Siyazama
38 Mangold Street
Newton Park, PE
6000
 VAT Reg No.:

VAT Reg No.:

IN THE CERTIFIED AMOUNT AS SET OUT IN ITEMS 10.0 BELOW

| | A CONTRACT SUM | B CURRENT CONTRACT VALUE | C CURRENT VALUATION | D CURRENT AMOUNT CERTIFIED |
|--|-------------------|-----------------------------|------------------------|-------------------------------|
| 1.0 Value of work executed | | | R 17 160 496,15 | |
| 2.1 Materials on site | | | R 2 587 918,89 | |
| 2.2 Materials off site | | | R 0,00 | |
| 3.0 Security adjustment | | YES 100,00% | R 19 748 415,04 | R 19 748 415,04 |
| 4.0 Net contract amount | R 81 490 993,15 | R 81 490 993,15 | | |
| 5.0 Authorised Variations | | R 0,00 | | |
| 6.0 Contract Price Adjustments | R 3 500 000,00 | R 3 500 000,00 | R 0,00 | R 0,00 |
| 7.0 GROSS AMOUNT CERTIFIED | | | | R 19 748 415,04 |
| 8.0 Less: Previous Gross Amount Certified | | | | (R 16 340 703,52) |
| 9.0 NETT AMOUNT CERTIFIED | | | | R 3 407 711,52 |
| 10.1 Less: Expense or Loss due to employer | | | | () |
| 10.2 Less: Penalties due to employer | | | | () |
| 10.3 Add: Damages due to contractor | | | | |
| 11.0 SUB TOTAL | R 84 990 993,15 | R 84 990 993,15 | | R 3 407 711,52 |
| 12.0 ADD: VAT on 11.0 | R 12 748 648,97 | R 12 748 648,97 | | R 511 156,73 |
| 13.1 Less: Interest due to employer | | | | () |
| 13.2 Add: Interest due to contractor | | | | |
| 14.0 TOTAL | R 97 739 642,12 | R 97 739 642,12 | | R 3 918 868,25 |
| 15.0 AMOUNT DUE FOR PAYMENT TO THE | CONTRACTOR | (Contractor / Employer) | | R 3 918 868,25 |
| 16.0 Percentage of contract sum executed | | | | 23,24% |

Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanwysings is dat daar enige veranderinge deur 'n ongemagtigde persoon daartoe aangebring is nie.
 I am hereby certified that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person.
 KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 73-1017071



SIGNED: 

DATED: 15.12.2020

Certified by the Architect who as agent for the Employer acknowledges that the amount as per items 11.0 above is due



"D3"

MDA ARCHITECTS

PAYMENT CERTIFICATE FOR USE WITH THE JBCC PRINCIPAL BUILDING AGREEMENT

CERTIFICATE TYPE: INTERIM
 DATE OF VALUATION: 29-Jan-21
 CERTIFICATE N^o.: 4 (Four)
 PROJECT N^o.: MDA250C

IN TERMS OF THE CONTRACT FOR THE WORKS DESCRIBED AS
ADDO PRIMARY SCHOOL: THE CONSTRUCTION OF A NEW ADDO SENIOR PRIMARY SCHOOL (VALENCIA)

CONTRACT NO.: SCMU - 15/16/01045B

ON THE SITE:
Jakaranda Lane, Valencia, Addo, Eastern Cape

PAYMENT IS DUE BY THE EMPLOYER:
ACMR Capital (PTY) LTD
8 Stompeneus Road
Rand Park

TO THE CONTRACTOR:
GVK-Siyazama
38 Mangold Street
Newton Park, PE
6000
 VAT Reg No.:

VAT Reg No.:

IN THE CERTIFIED AMOUNT AS SET OUT IN ITEMS 10.0 BELOW

| | A CONTRACT SUM | B CURRENT CONTRACT VALUE | C CURRENT VALUATION | D CURRENT AMOUNT CERTIFIED |
|--|-------------------|-----------------------------|------------------------|-------------------------------|
| 1.0 Value of work executed | | | R 18 736 936,53 | |
| 2.1 Materials on site | | | R 2 587 918,89 | |
| 2.2 Materials off site | | | R 0,00 | |
| 3.0 Security adjustment | | YES 100,00% | R 21 324 855,42 | R 21 324 855,42 |
| 4.0 Net contract amount | R 81 490 993,15 | R 81 490 993,15 | | |
| 5.0 Authorised Variations | | R 0,00 | | |
| 6.0 Contract Price Adjustments | R 3 500 000,00 | R 3 500 000,00 | R 0,00 | R 385 000,00 |
| 7.0 GROSS AMOUNT CERTIFIED | | | | R 21 709 855,42 |
| 8.0 Less: Previous Gross Amount Certified | | | | (R 19 748 415,04) |
| 9.0 NETT AMOUNT CERTIFIED | | | | R 1 961 440,38 |
| 10.1 Less: Expense or Loss due to employer | | | | () |
| 10.2 Less: Penalties due to employer | | | | () |
| 10.3 Add: Damages due to contractor | | | | () |
| 11.0 SUB TOTAL | R 84 990 993,15 | R 84 990 993,15 | | R 1 961 440,38 |
| 12.0 ADD: VAT on 11.0 | R 12 748 648,97 | R 12 748 648,97 | | R 294 216,06 |
| 13.1 Less: Interest due to employer | | | | () |
| 13.2 Add: Interest due to contractor | | | | () |
| 14.0 TOTAL | R 97 739 642,12 | R 97 739 642,12 | | R 2 255 656,44 |
| 15.0 AMOUNT DUE FOR PAYMENT TO THE | CONTRACTOR | (Contractor / Employer) | | R 2 255 656,44 |
| 16.0 Percentage of contract sum executed | | | | 25,54% |

Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aandoings is dat daar enige veranderinge deur 'n ongemagtigde persoon daarop aangebring is nie.
 Ex-Officio Commissioner of Oaths
 KA Boag
 81 - 83 Warbler Street
 Cape Town, South Africa
 27 15/12/21



SIGNED: _____

DATED: 01.02.2021

Certified by the Architect who as agent for the Employer acknowledges that the amount as per items 11.0 above is due and payable to the Contractor

N.S.A.

MDA ARCHITECTS

PAYMENT CERTIFICATE FOR USE WITH THE JBCC PRINCIPAL BUILDING AGREEMENT

CERTIFICATE TYPE: INTERIM
 DATE OF VALUATION: 22/02/2021
 CERTIFICATE N^o.: 5 (Five)
 PROJECT N^o.: MDA250C

IN TERMS OF THE CONTRACT FOR THE WORKS DESCRIBED AS
ADDO PRIMARY SCHOOL: THE CONSTRUCTION OF A NEW ADDO SENIOR PRIMARY SCHOOL (VALENCIA)

CONTRACT NO.: SCMU - 15/16/01045B

ON THE SITE:
Jakaranda Lane, Valencia, Addo, Eastern Cape

PAYMENT IS DUE BY THE EMPLOYER:
ACMR Capital (PTY) LTD
 8 Stompeneus Road
 Rand Park

TO THE CONTRACTOR:
GVK-Slyazama
 38 Mangold Street
 Newton Park, PE
 6000
 VAT Reg No.:

VAT Reg No.:

IN THE CERTIFIED AMOUNT AS SET OUT IN ITEMS 10.0 BELOW

| | A CONTRACT SUM | B CURRENT CONTRACT VALUE | C CURRENT VALUATION | D CURRENT AMOUNT CERTIFIED |
|--|-------------------|-----------------------------|------------------------|-------------------------------|
| 1.0 Value of work executed | | | R 20 233 864,00 | |
| 2.1 Materials on site | | | R 2 587 918,89 | |
| 2.2 Materials off site | | | R 0,00 | |
| 3.0 Security adjustment | | YES 100,00% | R 22 821 782,89 | R 22 821 782,89 |
| 4.0 Net contract amount | R 81 490 993,15 | R 81 490 993,15 | | |
| 5.0 Authorised Variations | | R 0,00 | | |
| 6.0 Contract Price Adjustments | R 3 500 000,00 | R 3 500 000,00 | R 0,00 | R 455 000,00 |
| 7.0 GROSS AMOUNT CERTIFIED | | | | R 23 276 782,89 |
| 8.0 Less: Previous Gross Amount Certified | | | | (R 21 709 855,42) |
| 9.0 NETT AMOUNT CERTIFIED | | | | R 1 566 927,47 |
| 10.1 Less: Expense or Loss due to employer | | | | () |
| 10.2 Less: Penalties due to employer | | | | () |
| 10.3 Add: Damages due to contractor | | | | () |
| 11.0 SUB TOTAL | R 84 990 993,15 | R 84 990 993,15 | | R 1 566 927,47 |
| 12.0 ADD: VAT on 11.0 | R 12 748 648,97 | R 12 748 648,97 | | R 235 039,12 |
| 13.1 Less: Interest due to employer | | | | () |
| 13.2 Add: Interest due to contractor | | | | () |
| 14.0 TOTAL | R 97 739 642,12 | R 97 739 642,12 | | R 1 801 966,59 |
| 15.0 AMOUNT DUE FOR PAYMENT TO THE | CONTRACTOR | (Contractor / Employer) | | R 1 801 966,59 |
| 16.0 Percentage of contract sum executed | | | | 27,39% |

Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanwysings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie.

KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 Cadournaal Dorst Elizabeth

27/15/2021



SIGNED: _____

DATED: 02.03.2021

Certified by the Architect who as agent for the Employer acknowledges that the amount as per Items 11.0 above is due and payable by the Employer

MSA

"DS"



PAYMENT CERTIFICATE FOR USE WITH THE JBCC PRINCIPAL BUILDING AGREEMENT

CERTIFICATE TYPE: INTERIM
 DATE OF VALUATION: 26/03/2021
 CERTIFICATE N^o.: 6 (Six)
 PROJECT N^o.: MDA250C

IN TERMS OF THE CONTRACT FOR THE WORKS DESCRIBED AS
ADDO PRIMARY SCHOOL: THE CONSTRUCTION OF A NEW ADDO SENIOR PRIMARY SCHOOL (VALENCIA)

CONTRACT NO.: SCMU - 15/16/01045B

ON THE SITE:
Jakaranda Lane, Valencia, Addo, Eastern Cape

PAYMENT IS DUE BY THE EMPLOYER:
ACMR Capital (PTY) LTD
8 Stompeneus Road
Rand Park

TO THE CONTRACTOR:
GVK-Siyazama
38 Mangold Street
Newton Park, PE
6000
 VAT Reg No.:

VAT Reg No.:

IN THE CERTIFIED AMOUNT AS SET OUT IN ITEMS 10.0 BELOW

| | A CONTRACT SUM | B CURRENT CONTRACT VALUE | C CURRENT VALUATION | D CURRENT AMOUNT CERTIFIED |
|--|-------------------|--------------------------------|---------------------------|----------------------------------|
| 1.0 Value of work executed | | | R 21 730 790,30 | |
| 2.1 Materials on site | | | R 2 587 918,89 | |
| 2.2 Materials off site | | | R 0,00 | |
| 3.0 Security adjustment | | YES 100,00% | R 24 318 709,19 | R 24 318 709,19 |
| 4.0 Net contract amount | R 81 490 993,15 | R 81 490 993,15 | | |
| 5.0 Authorised Variations | | R 0,00 | | |
| 6.0 Contract Price Adjustments | R 3 500 000,00 | R 3 500 000,00 | R 0,00 | R 525 000,00 |
| 7.0 GROSS AMOUNT CERTIFIED | | | | R 24 843 709,19 |
| 8.0 Less: Previous Gross Amount Certified | | | | (R 23 276 782,89) |
| 9.0 NETT AMOUNT CERTIFIED | | | | R 1 566 926,30 |
| 10.1 Less: Expense or Loss due to employer | | | | () |
| 10.2 Less: Penalties due to employer | | | | () |
| 10.3 Add: Damages due to contractor | | | | () |
| 11.0 SUB TOTAL | R 84 990 993,15 | R 84 990 993,15 | | R 1 566 926,30 |
| 12.0 ADD: VAT on 11.0 | R 12 748 648,97 | R 12 748 648,97 | | R 235 038,95 |
| 13.1 Less: Interest due to employer | | | | () |
| 13.2 Add: Interest due to contractor | | | | () |
| 14.0 TOTAL | R 97 739 642,12 | R 97 739 642,12 | | R 1 801 965,25 |
| 15.0 AMOUNT DUE FOR PAYMENT TO THE | CONTRACTOR | (Contractor / Employer) | | R 1 801 965,25 |
| 16.0 Percentage of contract sum executed | | | | 29,23% |

I hereby certify that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person.
 Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aantekeninge is dat daar enige veranderinge deur 'n ongemagtigde persoon daartoe aangebring is nie.
 KA Boag
 Ex-Officio Commissioner of Oaths
 81 - 83 Warbler Street
 771017071



SIGNED:

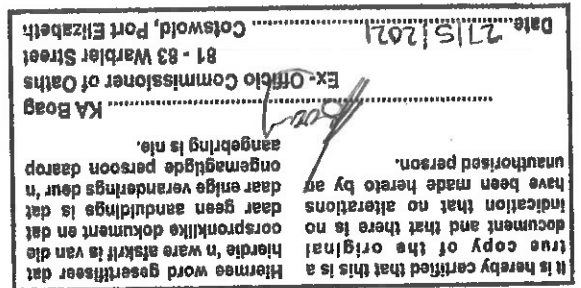
[Handwritten Signature]

DATED: 01.04.2021

Certified by the Architect who as agent for the Employer acknowledges that the amount as per Items 11.0 above is due

[Handwritten Signature]

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**



CASE NO.: 21/26641

In the matter between:

**GVK-SIYA ZAMA BUILDING CONTRACTORS (EP)
(PTY) LTD**

First Applicant

ITHA PLUMBING AND CIVIL CONSTRUCTION CC

Second Applicant

and

ACMR CAPITAL (PTY) LTD

Respondent

CONFIRMATORY AFFIDAVIT

I, the undersigned,

NTOMBOMZI SWEETNESS MBAZA

do hereby make oath and state:

1.

I am an adult female and Managing Member of the Second Applicant and duly authorised to depose to this affidavit.

N.S.M.

2.

The contents of this affidavit are within my own personal knowledge and are to the best of my belief both true and correct.

3.

I have read the founding affidavit of **JACOBUS JOHANNES GEYSER** and I confirm its contents insofar as they relate to me.

NTOMBOMZI SWEETNESS MBAZA

I HEREBY CERTIFY that the deponent to this affidavit has acknowledged to me that she has read and knows and understands its contents and that in compliance with the regulations contained in Government Notice No.R1258 of the 21st July 1972 as amended by Notice No.R1648 of the 19th August 1977 it was signed and sworn to by her before me at Port Elizabeth on this 27 day of May 2021

| | |
|---|---|
| It is hereby certified that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person. | Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanduidings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie. |
| KA Boag COMMISSIONER OF OATHS 81 - 83 Warbler Street Date..... <u>27/05/2021</u> Cotswold, Port Elizabeth | |

| | |
|---|---|
| It is hereby certified that this is a true copy of the original document and that there is no indication that no alterations have been made hereto by an unauthorised person. | Hiermee word gesertifiseer dat hierdie 'n ware afskrif is van die oorspronklike dokument en dat daar geen aanduidings is dat daar enige veranderings deur 'n ongemagtigde persoon daarop aangebring is nie. |
| KA Boag Ex-Officio Commissioner of Oaths 81 - 83 Warbler Street Cotswold, Port Elizabeth Date..... <u>27/05/2021</u> | |