



# NSSA Guarantee for Construction

For use with the JBCC® N/S Subcontract Agreement

edition/ date

## GUARANTOR DETAILS

Guarantor:

Physical Address:

Guarantor's signatory 1:  Capacity

Guarantor's signatory 2:  Capacity

Employer:

Contractor:

Subcontractor:

Principal Agent:

N/S Works:

Site:

Subcontract Sum: Accepted amount inclusive of **tax** Currency

... amount in words:

Guaranteed Sum: The maximum aggregate amount Currency

... amount in words:

Guarantee Expiry Date:

## AGREEMENT DETAILS

Contractor issues JBCC® format Interim Payment Advices and a Final Payment Advice

- 1.0 The Guarantor acknowledges that:
- 1.1 Any reference in this NSSA Guarantee for Payment to the Agreement is made for the purpose of convenience and shall not be construed as any intention to create an accessory obligation or any intention to create a suretyship;
  - 1.2 Its obligation under this NSSA Guarantee for Payment is restricted to the payment of money; and
  - 1.3 Reference to a Payment Advice or a final Payment Advice shall mean such advice issued by the Contractor.
- 2.0 Subject to the Guarantor's maximum liability in terms of the Guaranteed Sum, the Guarantor undertakes to pay the Subcontractor the sum certified upon receipt of the documents identified in 2.1 to 2.3:
- 2.1 A copy of a first written demand notice issued by the Subcontractor to the Contractor stating that payment of a sum certified in the Payment Advice has not been made in terms of the Agreement and that:
    - 2.1.1 The Contractor has failed to notify the Subcontractor of payment default by the Employer and has failed to make payment to the Subcontractor within seven (7) calendar days after due date for payment to the Contractor by the Employer; or
    - 2.1.2 The Contractor has received timeous payment from the Employer and has failed to make payment to the Subcontractor within seven (7) calendar days after due date for payment to the Contractor by the Employer; or
    - 2.1.3 The Contractor has received late payment from the Employer and has failed to make payment to the Subcontractor within seven (7) calendar days of the Contractor receiving payment from the Employer; or
    - 2.1.4 The Contractor has failed to pay to the Subcontractor within thirty (30) calendar days after the due date for payment to the Contractor by the Employer and failing payment of the sum certified by the Contractor in the Payment Advice statement within seven (7) calendar days, the Subcontractor intends to call upon the Guarantor to make payment in terms of 2.2.

- 2.2 A written demand notice issued by the Subcontractor to the Guarantor at the Guarantor's Physical Address with a copy to the Contractor stating that a period of seven (7) calendar days has elapsed since date of issue of the first written demand notice in terms of 2.1 and that the sum certified has not been paid to date. The Subcontractor herewith calls up this NSSA Guarantee for Payment and demands payment of the sum certified from the Guarantor.
- 2.3 A copy of the Payment Advice issued by the Contractor and which entitles the Subcontractor to receive payment of the sum certified in 2.0.
- 3.0 Subject to the Guarantor's maximum liability in terms of the Guaranteed Sum, the Guarantor hereby undertakes to pay the Subcontractor the demanded sum upon the receipt of the documents identified in 3.1 and 3.2:
- 3.1 A copy of a first written demand notice issued by the Subcontractor to the Contractor stating that the Subcontractor demands the issue of a Payment Advice and failing such issue within seven (7) calendar days, the Subcontractor intends to call upon the Guarantor to make payment in terms of 3.2 of the sum as set out in the demand; and
- 3.2 A written demand notice issued by the Subcontractor to the Guarantor at the Guarantor's Physical Address with a copy to the Contractor stating that a period of seven (7) calendar days has elapsed since the issue of a first written demand notice in terms of 3.1 and that a Payment Advice has not been issued. The Subcontractor herewith calls up this NSSA Guarantee for Payment and demands payment of the sum as set out in the demand from the Guarantor.
- 4.0 The aggregate amount of payments to be made by the Guarantor in terms of 2.0 and 3.0 shall not exceed the Guaranteed Sum.
- 5.0 Where the Guarantor is a registered insurer the Subcontractor shall within one hundred and twenty (120) calendar days of receipt of payment submit an expense account to the Guarantor showing how all monies received in terms of the NSSA Guarantee for Payment have been expended, or will be expended, and shall refund to the Guarantor any surplus amount. All monies refunded to the Guarantor in terms of this NSSA Guarantee for Payment shall bear interest at the prime overdraft rate of the Subcontractor's bank compounded monthly and calculated from the date of payment by the Guarantor to the Subcontractor.
- 6.0 Payment by the Guarantor in terms of 2.0 or 3.0 shall be made within seven (7) calendar days upon receipt of the written demand notice to the Guarantor.
- 7.0 The Subcontractor shall have the absolute right to arrange its affairs with the Contractor in any manner which it deems fit and the Guarantor shall not have the right to claim its release on account of any conduct alleged to be prejudicial to the Guarantor.
- 8.0 The Guarantor chooses the Physical Address stated above for all notices and correspondences in connection with this Guarantee.
- 9.0 This NSSA Guarantee for Payment is neither negotiable nor transferable and shall expire upon payment of the Final Payment Advice in terms of the Agreement or on payment in full of the Guaranteed Sum or on the Guarantee Expiry Date, whichever is the earlier, whereafter no claims will be considered by the Guarantor. The original NSSA Guarantee for Payment form shall be returned to the Guarantor after it has expired.
- 10.0 This NSSA Guarantee for Payment, with the required demand notices in terms of 2.0 or 3.0, shall be regarded as a liquid document for the purpose of obtaining a court order.
- 11.0 Where this NSSA Guarantee for Payment is issued in the Republic of South Africa, this NSSA Guarantee for Payment shall be governed by the laws of the Republic of South Africa. A competent court in the Republic of South Africa shall have sole jurisdiction in terms of this NSSA Guarantee for Payment. Where this NSSA Guarantee for Payment is issued outside the Republic of South Africa, the laws of the guarantor who issued this NSSA Guarantee for Payment shall prevail. A competent court, in the jurisdiction in which the guarantor is domiciled, shall prevail.

Signed at:

Date:

Guarantor's Signatory 1: -----

Guarantor's Signatory 2: -----

Witness: -----

Witness: -----

Guarantor's seal or stamp