



# Guarantee for Construction

For use with the JBCC® Principal Building Agreement

edition /date

## GUARANTOR DETAILS AND DEFINITIONS

Guarantor:

Physical Address:

Guarantor's signatory 1:  Capacity

Guarantor's signatory 2:  Capacity

Employer:

Contractor:

Principal Agent:

Works:

Site:

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

... amount in words:

Guaranteed Sum: The maximum aggregate amount Currency

... amount in words:

Guarantee for Construction: *(Insert Variable or Fixed)*

Expiry Date:

## AGREEMENT DETAILS

Sections: Total number / not applicable  Last Section

Principal Agent issues JBCC® format Interim Payment Certificates, the Final Payment Certificate, the Certificate of Practical Completion and the Certificate of Final Completion

### 1.0 GUARANTEE FOR CONSTRUCTION (Variable)

1.1 Where a Guarantee for Construction (Variable) in terms of the Agreement has been selected this clause 1.0 and 3.0 to 13.0 shall apply. The Guarantor's liability shall be limited to the diminishing amounts of the Guaranteed Sum as follows:-

#### GUARANTOR'S LIABILITY

1.1.1 Maximum Guaranteed Sum (not exceeding 10% of the contract sum) in the amount of :

Amount in words :

#### PERIOD OF LIABILITY

From and including the date of issue of this Guarantee for Construction and up to and including the date of issue of the Interim Payment Certificate certifying in excess of 50% of the contract sum

1.1.2 Reducing to the Guaranteed Sum (not exceeding 6.0% of the contract sum) in the amount of:

From and including the day after the date of the aforesaid Interim Payment Certificate and up to and including the date of issue of the only Certificate of Practical Completion or last Certificate of Practical Completion where there are sections

**Amount in words:**

1.1.3 Reducing to the Guaranteed Sum (not exceeding 4.0% of the contract sum) in the amount of:

From and including the day after the date of the applicable Certificate of Practical Completion and up to and including the date of issue of the only Certificate of Final Completion or the last Certificate of Final Completion where there are sections

**Amount in words:**

1.1.4 Reducing to the Guaranteed Sum (not exceeding 2.0% of the contract) in the amount of:

From and including the day after the date of the applicable Certificate of Final Completion and up to and including the date of issue of the Final Payment Certificate where payment is due to the Contractor, whereafter this Guarantee for Construction shall expire. Where the Final Payment Certificate reflects payment due to the Employer, this Guarantee for Construction shall expire upon payment of the full amount certified

**Amount in words:**

1.2 The Guarantor's liability limits set out in 1.1.1 to 1.1.4 shall apply in respect of any claim received by the Guarantor during the guarantee validity period

**2.0 FIXED N/S CONSTRUCTION GUARANTEE**

2.1 Where a Guarantee for Construction (fixed) in terms of the Agreement has been selected this clause 2.0 and 3.0 to 13.0 shall apply. The Guarantor's liability shall be limited to the amount of the Guaranteed Sum as follows:

**GUARANTOR'S LIABILITY**

**PERIOD OF LIABILITY**

Maximum Guaranteed Sum (not exceeding 5.0% of the contract sum) in the amount of:

From and including the date of issue of this Guarantee for Construction and up to and including the date of the only Certificate of Practical Completion or the last Certificate of Practical Completion where there are sections, whereafter this Guarantee for Construction shall expire

**Amount in words:**

3.0 The Guarantor acknowledges that:

3.1 Any reference in this Guarantee for Construction to the Agreement is made for the purpose of convenience and shall not be construed as any intention whatsoever to create an accessory obligation or any intention to create a suretyship;

3.2 Its obligation under this Guarantee for Construction is restricted to the payment of money; and

3.3 Reference to a Recovery Statement or an Interim or Final Payment Certificate, or a Certificate(s) of Practical or Final Completion shall mean such certificate issued by the Principal Agent

4.0 Subject to the Guarantor's maximum liability referred to in 1.0 or 2.0, the Guarantor hereby undertakes to pay the Employer the sum certified upon receipt of the documents identified in 4.1 to 4.3:

4.1 A copy of a first written demand notice issued by the Employer to the Contractor stating that payment of a sum certified by the Principal Agent in an Interim or Final Payment Certificate has not been made in terms of the Agreement and failing such payment within seven (7) calendar days, the Employer intends to call upon the Guarantor to make payment in terms of 4.2;

- 4.2 A first written demand notice issued by the Employer 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 the first written demand notice in terms of 4.1 and that the sum certified has not been paid to date. The Employer herewith calls up this Guarantee for Construction and demands payment of the sum certified from the Guarantor; and
- 4.3 A copy of the applicable payment certificate which entitles the Employer to receive payment in terms of the Agreement of the sum certified in 4.0
- 5.0 Subject to the Guarantor's maximum liability referred to in 1.0 or 2.0, the Guarantor undertakes to pay the Employer the Guaranteed Sum or the full outstanding balance upon receipt of a first written demand notice from the Employer to the Guarantor at the Guarantor's Physical Address calling up this Guarantee for Construction stating that:
  - 5.1 The Agreement has been terminated due to the Contractor's default and that the Guarantee for Construction is called up in terms of 5.0. The demand shall enclose a copy of the notice of termination; or
  - 5.2 A provisional sequestration or liquidation court order has been granted against the Contractor and that the Guarantee for Construction is called up in terms of 5.0. The demand notice shall enclose a copy of the court order.
- 6.0 The aggregate amount of payments to be made by the Guarantor in terms of 4.0 and 5.0 shall not exceed the Guarantor's maximum liability in terms of 1.0 or 2.0.
- 7.0 Where the Guarantor is a registered insurer and has made payment in terms of 5.0, the Employer shall within one hundred and eighty (180) calendar days of receipt of payment submit an expense account to the Guarantor showing how all monies received in terms of the Guarantee for Construction 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 Guarantee for Construction shall bear interest at the prime overdraft rate of the Employer's bank compounded monthly and calculated from the date of payment by the Guarantor to the Employer until the date of refund.
- 8.0 Payment by the Guarantor in terms of 4.0 or 5.0 shall be made within seven (7) calendar days upon receipt of the first written demand notice to the Guarantor.
- 9.0 The Employer shall have the absolute right to arrange his affairs with the Contractor in any manner which the Employer deems fit and the Guarantor shall not have the right to claim its release from this Guarantee for Construction on account of any conduct alleged to be prejudicial to the Guarantor.
- 10.0 The Guarantor chooses the Physical Address stated above for all notices and correspondences in relation to this Guarantee.
- 11.0 This Guarantee for Construction is neither negotiable nor transferable and shall expire in terms of either 1.1.4 or 2.1, or payment in full of the Guaranteed Sum or on the Expiry Date, whichever is the earlier, whereafter no claims will be considered by the Guarantor. The original Guarantee for Construction form shall be returned to the Guarantor after it has expired.
- 12.0 This Guarantee for Construction, with the required demand notices in terms of 4.0 or 5.0, shall be regarded as a liquid document for the purpose of obtaining a court order.
- 13.0 Where this Guarantee for Construction is issued in the Republic of South Africa this Guarantee for Construction 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 Guarantee for Construction. Where this Guarantee for Construction is issued outside the Republic of South Africa, the laws of the guarantor who issued this Guarantee for Construction shall prevail. A competent court, in the jurisdiction in which the guarantor is domicile shall prevail.

Signed at:

Date:

Guarantor's Signatory 1: .....

Guarantor's Signatory 2: .....

Witness: .....

Witness: .....

Guarantor's seal or stamp