

VARIABLE CONSTRUCTION GUARANTEE – JBCC 2000 PRINCIPAL BUILDING AGREEMENT (Edition 4.1 of March 2005)

Regional Manager
KZN Department of Public Works
Private Bag X_____

Sir,

VARIABLE CONSTRUCTION GUARANTEE FOR THE EXECUTION OF A CONTRACT IN TERMS OF JBCC 2000 (4.1 EDITION OF MARCH 2005)

1. With reference to the contract between _____
_____ (hereinafter referred to as the “**contractor**”) and the KwaZulu-Natal Provincial Administration, in its Department of Public Works, (hereinafter referred to as the “**employer**”), Contract/Tender No: _____, for the _____ (insert name of institution and description of service) (hereinafter referred to as the “**contract**”) in the amount of R..... (hereinafter referred as the **contract sum**),

I/We, _____

In my/our capacity as _____ and hereby

representing _____ (hereinafter referred to as the “**guarantor**”) advise that the **guarantor** holds at the employer’s disposal the sum of R, (.....) being 10% of the **contract sum** (excluding VAT), for the due fulfilment of the contract.
2. I/We advise that the **guarantor’s** liability in terms of this guarantee shall be reduced as follows:
 - (a) From and including the date on which this guarantee is issued and up to and including the date of payment of the amount in the last **payment certificate**, the **guarantor** will be liable in terms of this guarantee to the maximum amount of 10% of the **contract sum** (excluding VAT);
 - (b) From and including the day after the date of the last **certificate of practical completion** and up to and including the date of the last **final completion certificate**, the **guarantor’s** liability will be reduced to 3% of the value of the Works (excluding VAT);
 - (c) From and including the day after the date of the last **final completion certificate** and up to and including the date of settlement of the amount in the last final **payment certificate**, the **guarantor’s** liability will be reduced to 1% of the value of Works (excluding VAT);
 - (d) This guarantee **shall expire** on the date of payment of the amount in the last **final payment certificate**.
3. The **guarantor** hereby renounces the benefits of the exceptions *non numerate pecunia; non causa debiti; excussionis et divisionis*; and *de duobus vel pluribus reis dependi* which could be pleaded against the enforcement of this guarantee, with the meaning and effect whereof I/we declare myself/ourselves to be conversant, and undertake to pay the **employer** the amount guaranteed on receipt of a written demand from the **employer** to do so, and which demand the **employer** may make if the **employer** has a right of recovery against the **contractor** in terms of 33.0 of the contract.
4. Subject to the above, but without in any way detracting for the **employer’s** rights to adopt any of the procedures provided for in the contract, the said demand can be made by the **employer** at any stage prior to the expiry of this guarantee.

5. The amounts paid by the **guarantor** in terms of this guarantee may be retained by the **employer** on condition that upon the issue of the last final **payment certificate**, the **employer** shall account to the **guarantor** showing how this amount has been expended and refund any balance due to the **guarantor**.
6. 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 his release on account of any conduct alleged to be prejudicial to the **guarantor**. Without derogating from the foregoing, any compromise, extension of the construction period, indulgence, release or variation of the **contractor's** obligation shall not affect the validity of this guarantee.
7. The **guarantor** reserves the right to withdraw from this guarantee at any time by depositing the guaranteed amount with the **employer**, whereupon the **guarantor's** liability ceases.
8. This undertaking is neither negotiable nor transferable, and
 - (a) must be surrendered to the **guarantor** at the time when the **employer** accounts to the **guarantor** in terms of clause 5 above, or
 - (b) shall lapse in accordance with clause 2(d) above; and
 - (c) shall not be interpreted as extending the **guarantor's** liability to anything more than the payment of the amount guaranteed.

SIGNED AT _____ ON THIS _____ DAY OF _____ 200__

AS WITNESSES

1. _____
2. _____

By and on behalf of

(insert the name and physical address of the guarantor)

NAME: _____

CAPACITY: _____

(duly authorised thereto by resolution attached marked Annexure A)

DATE: _____

- A. No alterations and/or additions of the wording of this form will be accepted.
- B. The physical address of the guarantor must be clearly indicated and will be regarded as the guarantor's *domicilium citandi et executandi*, for all purposes arising from this guarantee.
- C. This GUARANTEE must be returned to: _____