



Building Agreement

Memorandum of Agreement made and entered into and concluded by and between

SEASONS 4 CONSTRUCTION PTY LTD

(The “Contractor”)

AND

And

(The “Client”)

SCHEDULE

A. CONTRACTOR'S PARTICULARS

Full Name:	SEASONS 4 CONSTRUCTION PTY LTD
Registration Number:	2026/116358/07
Physical Address:	SG101A South Wing, Great Westerford, 240 Main Road, Newlands, 7700
Contact Person:	Cornelius van der Westhuizen
E-mail Address:	tollie@m3tdev.co.za

B. CLIENT'S PARTICULARS

Full Name:	
Identity Number / Registration Number:	
Marital Status:	
Residential Address:	
E-mail Address:	
Contact Person (if legal entity)	
Contact Number/s:	
Resident of South Africa (Y/N):	
SARS Income Tax Number:	

Full Name:	
Identity Number/Registration Number	
Marital Status:	
Residential Address:	
E-mail Address:	
Contact Person (if legal entity)	
Contact Number/s:	
Resident of South Africa (Y/N):	
SARS Income Tax Number:	

C. PROPERTY

Plot Number _____ being a portion of the development Site, consisting of Erven 19765 Mossel Bay.

D. CONTRACT PRICE (INCLUSIVE OF VALUE ADDED TAX)

Contract Price:	R _____
Purchase Price in words	_____

E. BUILDING LOAN (COMPLETE IF REQUIRED) Answer

yes or no: _____

Amount required (to correspond with the amount noted in the Sale Agreement for the financing of the Building Works, if applicable)	R _____
Date by which bond must be granted:	by the "Loan Approval Date" – as such term is defined in clause 1.1.16 of this Agreement
Recommended bond originator for the Development	Mortgage Max.

DETAILS OF PURCHASE PRICE R _____

1. Purchase Price for Erf R _____

2. Purchase Price for Building Works on Property R _____
(as stipulated in the Building Contract)

3. Upgrade to Specifications & Additional Costs R _____

4. TOTAL PURCHASE PRICE CONSIDERATION R _____

5. Deposit referred to in Clause 3.2 R 25 000.00
(amount in words)

6. Further deposit/balance of the purchase price (referred to in Clause 3.3)
Bank Guarantee of Investment R _____
Bank Guarantee of Other Cash R _____
Sale of Property _____ R _____

7. Loan/Bond amount R _____
(referred to in Clause 16)

8. Estimated monthly levy R 750.00

F. ANNEXURES

Annexure "A" – Site Development Plan

Annexure "B" – Building Plan

Annexure "C" – Specifications and Finishes

CONSUMER PROTECTION ACT NOTICE

A In complying with the Consumer Protection Act (hereafter the “**CPA**”), certain portions of the agreement have been printed in **bold**. The reason for this is to specifically draw the Client’s attention to these clauses as they either: Limit in some way the risk or liability of the Contractor or any other person, constitute an assumption of risk or liability by the Client, impose an obligation on the Client to indemnify the Contractor or any other person for some cause; or are acknowledgement of a fact by the Client.

B It is further recommended that:

- B2 the Client consults a suitable qualified person to assist the Client in the interpretation and conclusion of this Agreement; and
- B3 the Client advises the Contractor in writing of any information furnished to the Client in a manner or form which the Client deems not to be plain and understandable language.

I DECLARE HERewith THAT I HAVE READ THE IMPORTANT NOTICES SET OUT ABOVE

Signed at _____ on _____ 20____

Client, who warrants that he/she is duly authorized thereto

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

- 1.1. For the purposes of this Agreement, the following words and expressions shall bear the meanings assigned to them below and cognate expressions bear corresponding meanings, unless the context indicates a contrary intention.
- 1.1.1. "**Agreement**" means this agreement and shall include any schedules, annexures or amendments hereto;
- 1.1.2. "**Anticipated Completion Date**" means 8 (eight) months after the Transfer Date or the Construction Commencement Date, whichever date is the earlier;
- 1.1.3. "**Architect**" means the architect employed by the Contractor to design the Dwelling and frame the Building Plans, which as at the Signature Date is Chantel Patten of Architect.co.za, Office D1, 11 Alberto Drive, Devonbosch, Lifestyle Estate, Bottelary Road, Stellenbosch, 7605 or any architect as may be appointed by the Contractor to attend to the applicable matters stipulated in this Agreement;
- 1.1.4. "**Attorneys**" means Abrahams Kiewitz Inc Cape situated at Penthouse, 6th Floor, Imperial Terraces, Carl Cronje Drive, Tyger Waterfront, Tygervally, Cape Town, 7530, contact number 021 914 4842 (kevin@ak.law.za), the attorneys appointed by the Contractor to hold the Contract Price or any portion thereof in trust until payment thereof is due, and to supervise the payment of the Contract Price to the Contractor strictly in accordance with the provisions of this Agreement;
- 1.1.5. "**Building Loan**" means, if applicable, a building loan to be secured by the registration of a mortgage bond over the Property which the Client shall obtained from a registered South African bank or financial institution to finance the payment of Contract Price or part thereof;
- 1.1.6. "**Building Plan**" means the detailed building plan of the Dwelling annexed hereto marked "A", which the Contractor has submitted or will submitted to the Local Authority for approval prior to the Construction Commencement Date, and which may be altered in accordance with this Agreement;
- 1.1.7. "**Building Works**" means all the building works necessarily undertaken or to be undertaken by the Contractor (or its duly appointed sub-contractors) to ensure that the Dwelling achieves the state of Practical Completion;
- 1.1.8. "**Client**" means the person or entity whose particulars more fully appear in item B of the Schedule, who has acquired the Property in terms of the Sale Agreement and will become the registered owner thereof;
- 1.1.9. "**Completion Date**" means the date on which the Practical Completion Certificate is issued, which shall be on or as soon as reasonably after the Anticipated Completion Date;

- 1.1.10. **"Completion Date Notice"** shall have the meaning ascribed thereto in clause 11.4 of this Agreement;
- 1.1.11. **"Construction Commencement Date"** means the date on which preparation for the casting of the foundations of the Dwelling commences, which shall be as soon as possible after the Transfer Date;
- 1.1.12. **"Contract Price"** means the amount stipulated in item D of the Schedule which specifically excludes any Extra/s or Variation/s;
- 1.1.13. **"Contractor"** means the entity whose details more fully appear in item A of the Schedule;
- 1.1.14. **"Dwelling"** means the residential dwelling house which the Contractor will construct and complete or cause to be constructed and completed on the Property, substantially in accordance with the approved Building Plan and the Specifications, for the Contract Price;
- 1.1.15. **"Extra"** or **"Extras"** means items that are in accordance with this Agreement either in addition to, in replacement of or alterations to the Specifications and which may result in additional costs (over and above the Contract Price) which shall be for the cost of the Client;
- 1.1.16. **"Loan Approval Date"** means the date occurring 30 (thirty) days after the Signature Date, or if the Sale Agreement is subject to mortgage finance, the date by which the Client's mortgage bond must be approved/granted in accordance with the provisions of the Sale Agreement (which shall include any extensions thereof), whichever date is the later;
- 1.1.17. **"Local Authority"** means the Mossel Bay Municipality;
- 1.1.18. **"Occupancy Certificate"** means the certificate issued by the Local Authority confirming that the Dwelling has been erected in accordance with the National Building Regulations and Building Standards Act;
- 1.1.19. **"Parties"** means the Contractor and the Client (and "Party" shall mean either one of them);
- 1.1.20. **"Practical Completion"** means that the Dwelling (save for the provisions of clause 12 relating to the rectification of defects, if applicable), has been erected in accordance with the Building Plan and Specifications and is sufficiently complete so as to be available for use as a residential dwelling;
- 1.1.21. **"Practical Completion Certificate"** means a certificate signed by the Architect confirming Practical Completion;
- 1.1.22. **"Progress Payment/s"** shall have the meaning ascribed thereto in clause 5.1 of this Agreement;

- 1.1.23. **"Progress Payment Due Date"** means the date on which the Contractor furnishes the Client with a certificate by the Architect confirming that the Building Works have been completed to the relevant stage stipulated in clause 5.4 of this Agreement, obliging the Client to settle the applicable Progress Payment in favour of the Contractor;
- 1.1.24. **"Sale Agreement"** means the agreement of sale concluded between M3T FIVE PTY LTD, Registration Number 2024/627759/07 (as seller), and the Client (as purchaser) on or about the Signature Date, whereby the Client has acquired the Property from the said seller, which Sale Agreement is subject to this Agreement being concluded and becoming unconditional in accordance with its terms;
- 1.1.25. **"Schedule"** means pages 2 to 3 of this Agreement;
- 1.1.26. **"Signature Date"** means the date on which this Agreement is signed by the Party signing last in time;
- 1.1.27. **"Specifications"** means the detailed schedule of specifications and finishes constituting the specifications for the Building Works, annexed hereto marked annexure "C";
- 1.1.28. **"Transfer Date"** means the date on which the Client becomes the registered owner of the Property; and
- 1.1.29. **"Variation"** or **"Variations"** means an alteration or variation to or omission from the Building Plan requested at the instance of the Client which, if agreed to or implemented, may result in additional costs (over and above the Contract Price) or reductions in the Contract Price for the account or benefit of the Client, as the case may be;
- 1.1.30. **"VAT"** means value added tax payable and as defined in the [Value-Added Tax Act 89 of 1991](#).
- 1.2. Unless the context indicates otherwise, words in this Agreement importing any one gender shall include the other, and words importing the singular shall include the plural and vice versa.
- 1.3. The headings to the clauses in this Agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4. The Parties have chosen English as the preferred language of this Agreement.
- 1.5. The rule of interpretation in terms of which an agreement will be interpreted against the Party responsible for the drafting and preparation thereof will not apply to this Agreement.
- 1.6. If any provision of this Agreement is in conflict or inconsistent with law, the invalidity of any such provision shall not affect the validity of the remainder of the provisions hereof.
- 1.7. Where figures are referred to in words and in numerals, if there is any conflict between the two, the words shall prevail.
- 1.8. When any number of days is prescribed in this Agreement, the same shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a Saturday, Sunday or proclaimed public holiday in the Republic of South Africa, in which event the last day will be the next succeeding day which is not a Saturday, Sunday or public holiday. Unless the context indicates otherwise, wherever a number of days is indicated, this shall be calendar days.

2. APPOINTMENT AND RECORDAL

- 2.1. The Client appoints the Contractor to complete the construction of the Dwelling on the Property on its behalf and for the Contract Price, in accordance with the provisions of this Agreement.
- 2.2. The Contractor accepts the Client's appointment and shall complete the Dwelling for and on the Client's behalf and for the Contract Price, in accordance with the provisions of this Agreement.
- 2.3. The Parties wish to record their agreement relating to the Contract Price and payment thereof, the construction of the Dwelling and matters ancillary thereto, in this Agreement.
- 2.4. The Contractor shall be entitled to nominate or substitute any contractor, subcontractor, or professional consultant at its sole discretion.
- 2.5. This Agreement shall become fully effective upon registration of transfer of the Property into the Client's name.

3. STATUS OF THIS AGREEMENT

- 3.1. This Agreement shall lapse and be of no force and effect if the Sale Agreements fails to become unconditional in accordance with its terms, other than a condition therein which requires that this Agreement is concluded.
- 3.2. If the Sale Agreement is cancelled prior to the Transfer Date, then this Agreement will automatically (without the need for any further action by the Parties) be terminated.
- 3.3. The Parties shall have no claims against each other arising out of the lapse or the termination of this Agreement for the reasons stipulated in this clause 3 and, if the Client has paid any monies on account of the Contract Price prior to any such lapse or termination such monies will be refunded to the Client together with interest thereon forthwith thereafter.

4. SECURITY FOR PAYMENT OF THE CONTRACT PRICE AND BUILDING LOAN

- 4.1. If the Contract Price or part thereof, is to be financed by a Building Loan then this Agreement will be subject to the Client furnishing the Attorneys with confirmation that a Building Loan, in the amount stated in item E of the Schedule (or such lesser amount as the Client may in writing accept) has been approved by the Loan Approval Date, and if the Client has accepted a Building Loan for a lesser amount than stipulated in this Agreement, then the Client will deposit the difference (between amount stipulated in item E of the Schedule and the lesser amount accepted by the Client) into the Attorney's trust account by way of electronic funds transfer within 10 (ten) days of the Loan Approval Date.
- 4.2. If the Contract Price or part thereof is not to be financed by a Building Loan, then the Client shall deposit the full Contract Price (or such amount thereof not financed by the Building Loan) into the Attorneys Trust Account by way of electronic funds transfer within 7 (seven) days of request therefor, provided that the Attorneys shall not be entitled to request payment of the Contract Price as aforesaid until the earlier of the date on which (i) the of Building Plan is approved by the Local Authority or (ii) the conditions in Sale Agreement relating to the approval of the purchaser's mortgage bond and the sale of the purchaser's

other property (as applicable, and expressly excluding any other condition to which the Sale Agreement may be subject to or conditional upon) have been fulfilled.

4.3. The Client hereby confirms that:

- 4.3.1. this Agreement shall not be subject to a Building Loan in the event that Item E of the Schedule has not been completed if full;
- 4.3.2. the provisions of clause 10.1 (and all sub-paragraphs thereof) of the Sale Agreement shall, mutatis mutandis, apply to the approval of the Building Loan, and that such clauses are incorporated into this Agreement by reference; and that
- 4.3.3. the provisions of clauses 4.2 to 4.8 of the Sale Agreement shall, mutatis mutandis, apply to payment of all monies by the Client on account of the Contract Price and held by the Attorneys in trust for the Client's benefit pending payment thereof in terms of this Agreement, as well as to any guarantees issued or to be issued in respect of the Building Loan.

5. PAYMENT OF THE CONTRACT PRICE (DRAWDOWNS / PROGRESS PAYMENTS)

- 5.1. After the Transfer Date and as the Building Works progress, the Contractor will be entitled to receive payment of the Contract Price from the Client by way of monthly drawdowns from the Building Loan in the amount to be determined by the bank or financial institutions valuer's at the time of the Contractor making a request for payment under the Building Loan.
- 5.2. If the Contract Price has not been secured by a Building Loan, then the Contractor shall be entitled to receive payment of the Contract Price from the Client by way of 7 (seven) drawdowns (hereafter "**Progress Payments**" and each one a "**Progress Payment**") of the Contract Price (as guarantee or held in trust by the Attorneys) as and when due in terms of the provisions of clause 5.4 below.
- 5.3. Notwithstanding the provisions of clauses 5.1 and 5.2 or anything to the contrary contained in this Agreement, the Contractor shall not be entitled to request settlement of a payment under the Building Loan or of a Progress Payment (even if due) until the Transfer Date has occurred.
- 5.4. The Progress Payments shall be due on the date on which the Building Works have progressed to the relevant stage indicated in clauses 5.4.1 to 5.4.7 below (each a "**Progress Payment Due Date**"):
 - 5.4.1. **Progress Payment 1:** 15% (fifteen percent) of the Contract Price against receipt by the Client of a certificate by the Contractor that that the foundation of the Dwelling has been cast;
 - 5.4.2. **Progress Payment 2:** 15% (fifteen percent) of the Contract Price against receipt by the Client of a certificate by the Contractor that the ground floor slab of the Dwelling is complete;
 - 5.4.3. **Progress Payment 3:** 15% (fifteen percent) of the Contract Price against receipt by the Client of a certificate by the Contractor that the Dwelling has been constructed to the extent required to enable the installation of the roof structure;
 - 5.4.4. **Progress Payment 4:** 15% (fifteen percent) of the Contract Price, against receipt

by the Client of a certificate by the Contractor that the roof structure of the Dwelling has been installed;

- 5.4.5. **Progress Payment 5:** 15% (fifteen percent) of the Contract Price, against receipt by the Client of a certificate by the Contractor that all ceilings, windows and doors have been installed and that all plaster work has been completed;
- 5.4.6. **Progress Payment 6:** 20% (twenty percent) of the Contract Price against receipt by the Client of a certificate by the Contractor that all joinery / cupboards and sanitaryware have been completed and installed; and
- 5.4.7. **Progress Payment 7:** 5% (five percent) of the Contract Price against receipt by the Client the Occupancy Certificate.

5.5. Each Progress Payment or drawdown under the Building Loan (or part thereof) to which the Contractor is entitled to in terms of this Agreement shall be made/paid by no later than 3 (three) days after the applicable Progress Payment Due Date or the date on which payment under the Building Loan has been requested from the bank or financial institution.

5.6. Should any Progress Payment or other amounts due in terms of this Agreement not be settled in favour of the Contractor by the Client when due, then interest will be charged in accordance with provisions of clause 13.

5.7. If the Contract Price is financed by a Building Loan, the Client hereby empowers and authorises the Contractor to receive Progress Payments from the bank or financial Institution as determined by them, and the Client acknowledges that it will be liable for any interim interest/costs charged by the bank or financial institution in respect of the Building Loan or any Progress Payment made thereunder.

5.8. If the Contract Price (or part thereof) is held in trust by the Attorneys as envisaged in clause 4 of this Agreement, the Client hereby irrevocably instructs the Attorneys to release each Progress Payment to the Contractor when due, strictly in accordance with the provisions of this clause 5 (more specifically clause 5.4).

5.9. If the provisions of clause 5.8 are applicable, then the Client acknowledges that it shall be liable to pay a fee of (i) R450.00 (four hundred and fifty Rand) plus VAT to the Attorneys as an administration fee for each Progress Payment made to the Contractor by the Attorneys on behalf of the Client in term of this Agreement, and the Client hereby consents to the Attorney's applying any interest accrued in its favour in settlement of such fees.

5.10. The Contractor shall be entitled to suspend construction in the event of non-payment.

6. VARIATIONS TO BUILDING PLAN, SPECIFICATIONS AND EXTRAS BY THE CONTRACTOR

6.1. The Dwelling, shall be constructed, completed and finished in accordance with the Building Plan and Specifications, which Building Plan and Specifications are annexed to this Agreement and accepted by the Client subject to the provisions of this clause 6 below.

6.2. Notwithstanding the above provisions, the Contractor or the Architect, shall:

- 6.2.1. be entitled to substitute any item reflected in the Specifications with an item of a similar

standard and quality to give effect to any changes in materials, finishes or fittings which the Contractor or the Architect considers to be appropriate, whether for technical or aesthetic reasons, or which may not be readily available at the time due to shortages in the supply of such materials, finishes or fittings; and

- 6.2.2. be entitled to vary the Building Plan should the Contractor or the Architect consider the variation reasonably necessary for technical reasons, or reasonably necessary to comply with:

6.2.2.1. any special features of the Property;

6.2.2.2. any special impediments such as water, sewer or electrical lines either above or underground or any rock or other soil condition;

provided that such substitutions and variations do not materially affect the Building Plan and the Specifications, nor detract from the quality thereof. It is specifically recorded that the Contract Price shall not be affected because of the Contractor or Architect having to implement substitutions or variations in accordance with this clause 6.2 above.

- 6.3. If amendments to the Building Plan for the purposes noted above are necessary, then the Client hereby irrevocably gives power of attorney to the Contractor to submit all necessary documentation to the City of Cape Town as may be required to obtain the approval for any such amendment/s.

- 6.4. **The Client shall be obliged to accept delivery of the Dwelling completed in accordance with the Building Plan and Specifications and subject to any aforesaid amendments, alterations or variations and shall have no claim of whatsoever nature against the Contractor as a result thereof.**

- 6.5. In the event of there being any dispute between the Parties as to the selection of finishes or any other aspect referred to in this clause 6, the dispute shall be referred to the Architect (acting as an expert) for determination and its decision in relation to any such dispute shall be final and binding on the Parties.

7. CLIENT REQUEST FOR VARIATIONS, EXTRAS AND OMISSIONS

- 7.1. The Client shall, in accordance with the provisions of clause 7.3, be entitled to request Variation/s or Extra/s (hereafter the "**Variation Request**") for a period of **30 (thirty)** days after the Signature Date, whereafter no Variation request shall be considered unless the Contractor in its sole and unfettered discretion consents thereto in writing.

- 7.2. Notwithstanding clause 7.1, the Client acknowledges that the Contractor shall not be obliged to entertain any Variation Request (other than a request for Extra/s) made at any time after the Transfer Date.

- 7.3. Any Variation Request shall be subject to the following:

- 7.3.1. a Variation Request may only be made by the Client (or by the Client's duly appointed representative) and shall be in writing.

- 7.3.2. Within 14 (fourteen) days of receipt of the Variation Request, the Contractor shall inform the Client in writing whether or not the Variation Request is possible to implement. The Contractor's decision in this regard is final and binding on the Parties. If the Contractor informs the Client that the Variation Request is not possible, then the Client shall not have any recourse whatsoever against the Contractor arising out of the Contractor decision,

nor shall the Contractor be obliged to substantiate its findings that the Variation Request (or any part thereof) is not possible to implement.

- 7.3.3. If the Contractor informs the Client that the Variation Request (or part thereof) is possible, then the Contractor shall instruct the professional consultants it deems necessary in its sole discretion, to prepare the necessary variations to the Plans of the Dwelling and to determine the costs that will be incurred in the implementation such Variations and the scope of the works to be undertaken or Extra's to be installed in terms thereof (the "**Variation Order**") and, if the Contractor deems it necessary, it shall be entitled to request payment of a reasonable deposit from the Client prior to engaging such consultants to ensure that their fees (which shall be payable by the Client, in accordance with the provisions of clause 7.3.9) are covered should the Client elect not to proceed with the Variation Order.
- 7.3.4. It is agreed that the cost of the works or Extra/s stipulated in the Variation Order shall include all additional costs and expenses (which for the avoidance of doubt shall include, but not be limited to, the Contractor's margin and/or project management fees, contractors allowable mark-ups and the cost of any professional consultants) that will be incurred in respect of such Variations, as well as all additional costs and expenses which may be incurred by the Contractor in completing the Dwelling as varied, as well as any conditions and terms applicable.
- 7.3.5. The Contractor shall furnish the Variation Order to the Client in writing and, if accepted by the Client, the Variation Order shall become final and binding on the Parties.
- 7.3.6. The Client shall, within **5 (five)** days of receipt of the Variation Order, confirm that it wishes to proceed with the Variations as stipulated in the Variation Order by furnishing the Contractor with its duly signed acceptance of the Variation Order.
- 7.3.7. The Client shall make payment of the amount stipulated in the Variation Order to the Contractor within 7 (seven) days of the date of its acceptance of the Variation Order.
- 7.3.8. In the event that the Client fails to timeously (i) notify the Contractor that it wishes to proceed with the Variation Order (as envisaged in clause 7.3.6) or (ii) make payment of the amount of the Variation Order (as envisaged in clause 7.3.7) the Client shall be deemed to have elected not to proceed with the Variation Order (unless otherwise agreed to by Parties in writing).
- 7.3.9. The Client expressly agrees that it will be liable for the costs of any professional consultants engaged by the Contractor in relation to the Variation Request (as envisaged in clause 7.3.3) if a Variation Order is for any reason not accepted or proceeded with by the Client, and hereby undertakes to pay to the Contractor the amount due in respect of such costs within **3 (three)** days of request therefor by the Contractor, and any deposit paid to the Contractor in accordance with clause 7.3.3 shall be set off against the amount due.
- 7.3.10. If any Variation/s or Extra/s result in a reduction of the Contract Price, then the Contractor shall furnish the Client with a credit note in respect of such omission which will be credited against the next Progress Payment due to the Contractor.

8. POSSESSION, OCCUPATION AND RISK

- 8.1. The Contractor will be given possession of the Property on the Transfer Date, and the Contractor will retain possession of the Property until the date on which the Occupancy Certificate is issued or the date on which the Client has complied with all its obligations to make payments of amounts due to the Contractor in terms of this Agreement, whichever date is the later, whereafter possession of the Property will pass to the Client.
- 8.2. With effect from the date on which Contractor is given possession of the Property it shall be entitled to erect its signs, construction huts, and anything else which in the opinion of the Contractor shall be necessary to comply with its obligations to complete the Building Works in terms of this Agreement, at the Property. The Contractor shall furthermore be entitled to invite the public by advertisement or otherwise to inspect the Building Works or to use the Dwelling as a 'show house' at any time prior to the Client being entitled to take occupation of the Property, provided that any damages, soiling of furnishing and finishes incurred during a show house event or in the course of such inspection shall be made good by the Contractor and at its expense.
- 8.3. Any materials and/or goods and equipment required in connection with the completion of the Building Works or intended for or placed on or adjacent to Building Works, not paid for by the Client shall at all times remain the exclusive property of the Contractor and remain in the Contractor's possession.
- 8.4. **Occupation and all risk and benefit in the Dwelling shall pass to the Client on the Completion Date, subject to the Contractor's right to retain possession of the Property as provided for in this clause 8 above as well as clause 16 of this Agreement below.**

9. INSURANCE

- 9.1. The Contractor undertakes with effect from the Construction Commencement Date and up to the date on which the Practical Completion Certificate is issued, to maintain comprehensive contractors' all risk insurance in respect of the Building Works for the full value of the Contract Price as well as to maintain adequate public liability insurance.
- 9.2. Notwithstanding any provision to the contrary in this Agreement, all risk relating to the Building Works shall pass to the Client on the date of issue of the Practical Completion Certificate, from which date the Client shall be liable to insure the Dwelling.

10. CONDITIONS APPLICABLE PENDING THE COMPLETION DATE

- 10.1. **With effect from the Signature Date until the Completion Date, the Client shall not be entitled to sell the Property unless with the consent of the Contractor.** The Contractor shall not be under any obligation to consent to sale of the Property (by the Client) unless the proposed purchaser agrees to bind itself to the rights and obligations contained in this Agreement relating to the construction and completion of the Dwelling by the Contractor or unless the proposed purchaser is, to the satisfaction of the Contractor, able to secure the balance of the Contract Price payable to the Contractor to complete the Dwelling.
- 10.2. The Client shall not, unless by prior arrangement with the Contractor (which shall not be unreasonably withheld), be entitled to access to the Property prior to the Completion Date.

- 10.3. The Client shall not at any time prior to the Completion Date be permitted to employ, instruct nor allow any sub-contractor, artisan, craftsman, or any other person whatsoever to do any work of whatsoever nature on or at the Property without the written consent of the Contractor (and then on any condition imposed by the Contractor), which consent shall not be unreasonably withheld, and any costs necessarily incurred by the Contractor in having to manage, assist or make good any work undertaken by the Client's employees shall be for the Client's account and payable upon demand.
- 10.4. The Client may not in any manner instruct any of the employees, sub-contractors, artisans, or craftsmen employed by the Contractor in relation to the Building Works or the Dwelling.
- 10.5. The Client shall not in any manner whatsoever interfere with the work being done by the Contractor or any of its employees, sub-contractors, artisans, or craftsmen and/or do anything nor cause anything to be done that will delay any of the work being done by them.

11. COMMENCEMENT AND COMPLETION OF BUILDING WORKS

- 11.1. The Building Works will commence as soon as possible after the Transfer Date and provided that the Contract Price has been fully secured as provided for in this Agreement. If the Contractor has commenced the Building Works prior to this time, it acknowledges that it shall only be entitled to request Progress Payments from the Client after the Transfer Date.
- 11.2. The Contractor shall use its best endeavours to ensure that the Building Works will be completed on or as soon as reasonably possible after the Anticipated Completion Date, and the Client shall ensure that it promptly complies with any requests from the Contractor that directly relate to the completion of the Building Works and which require the Client's confirmation and/or input (for example choices relating to fitted carpets, tiles, light fittings, and the like), which if not provided or confirmed timeously could delay the Anticipated Completion Date.
- 11.3. **Should the Anticipated Completion Date be delayed by *vis major*, exceptionally inclement weather, non-availability of any materials or labour, or for any reason beyond control of the Contractor, the Client shall have no claim against the Contractor arising as result of delays to the Completion Date (as anticipated).** In such instance, the Contractor will be entitled to an extension of the time to complete the Building Works in a reasonable time without recourse as aforesaid.
- 11.4. In anticipation of the issue of the Practical Completion Certificate, and for no reason other than to assist the Client in planning for occupation of the Dwelling and managing arrangement pertinent to furnishing Client Inclusions to the Patent Defects List (as such terms are defined in clause 12.1), the Contractor shall give the Client at least **30 (thirty)** days' notice of the date on which the Contractor with good reason, expects the Practical Completion Certificate to be issued. The Client shall not have any claims whatsoever against the Contractor if the issue of the Practical Completion Certificate occurs later than the anticipated date stipulated in the aforementioned notice.
- 11.5. **Proof of completion of the Building Works (and accordingly the Completion Date) will be deemed to have occurred on the date of issue of the Practical Completion Certificate.**
- 11.6. The Completion Date shall not in any way be affected by the failure of the Client (whether personally or represented by an agent) to accept the keys or take physical occupation of the Dwelling.

- 11.7. Notwithstanding the above, the Contractor will be under no obligation whatsoever to hand over the keys of the Dwelling nor give occupation thereof to the Client or its agent, until all the Progress Payments as well as any other costs due by the Client in terms of this Agreement, including but not limited to the costs of any Variation/s or Extra/s specified in clause 7 above) have been paid to the Contractor in full.
- 11.8. The Client acknowledges that:
- 11.8.1. **the Practical Completion Certificate shall be a final and binding confirmation that the Dwelling has reached the stage of Practical Completion; and**
- 11.8.2. notwithstanding Practical Completion, there may still be defects in the Dwelling which defects shall be remedied by the Contractor as provided for in this Agreement.
- 11.9. **The Completion Date shall under no circumstances be deferred nor shall the Dwelling be considered unsuitable for occupation by reason of any works that are not stipulated in the Building Plan or Specifications (as may be varied in terms of clause 6 of 7), being incomplete.**

12. RECTIFICATION OF DEFECTS

12.1. Patent defects and Final Completion Certificate

- 12.1.1. The Contractor shall cause the project manager to submit a written list of all patent defects, if any, which the Architect may have identified at the Property (the “**Patent Defects List**”), simultaneously with the issue of the Practical Completion Certificate (i.e. on the Completion Date).
- 12.1.2. The Architect shall forthwith submit the Patent Defects List to the Client.
- 12.1.3. The Client (or its duly authorised representative) shall, within 7 (seven) days of receipt of the Patent Defects List, make arrangements to view the Dwelling for the purpose stipulated in clause
- 12.1.4. Subject to the applicable provisions contained in clause 12.3, the Client (or its duly authorised representative) shall at the time above meeting be entitled to notify the Architect in writing of any defects or failures which in its opinion were omitted from the Patent Defects List and need to be added thereto (the “**Client inclusions**”) and the Architect will add any Client Inclusions which are acceptable to it (to the Patent Defects List as furnished to the Purchaser initially).
- 12.1.5. The updated Patent Defects List noting any accepted Client Inclusions, as signed off by the Architect and be presented to the Contractor as the final Patent Defects List.
- 12.1.6. The Contractor shall, cause reasonable repairs to items on the Patent Defects List (or the final list), to be effected as soon as reasonably possible thereafter, but in any event within 21 (twenty-one) days of receipt thereof. For this purpose, the Client shall be obliged to render the Dwelling available to the Contractor, for a period of no less than 21 (twenty-one), between the hours of 08h00 and 17h00, from the date on which the finally signed-off Patent Defects List was submitted to the Contractor, to enable the defects to be remedied.

- 12.1.7. If the Client (i) fails to timeously arrange a meeting to view the Dwelling (as envisaged in clause 12.1.3) or (ii) at the arranged meeting, fails to notify the Architect of any Client Inclusions or (iii) fails to attend any meeting as may have been arranged, or (iv) fails to let the Contractor have access to the Property for the purpose of remedying the defects noted on the signed off Patent Defects List, the Client shall be deemed to have accepted the Dwelling in good order and condition free of any patent defects and the Contractor shall bear no liability or responsibility whatsoever in respect thereof.

12.2. Latent Defects

- 12.2.1. The Client shall be entitled to submit a written list listing any latent defects in the Dwelling (the "**Latent Defects List**") to the Contractor no later than **30 (thirty)** days after the Completion Date.
- 12.2.2. If the Latent Defects List is not furnished to the Contractor within the period stipulated in clause 12.2.1, then the Client shall be deemed to have accepted the Dwelling to be in a fit and proper condition and free of any latent defects.
- 12.2.3. If the Latent Defects List is furnished to the Contractor timeously then, subject always to the provisions of 12.3, the Contractor shall cause reasonable repairs to items on the Latent Defects List for which it is responsible, to be effected as soon as reasonably possible after receipt thereof.

12.3. General provisions relating to all defects

- 12.3.1. After the Contractor has attended to remedying the defects for which it is liable in accordance with the provisions of clause 12 above, no liability shall attach to the Contractor in respect of any further defects (whether patent or latent) in the Dwelling (save as may be elsewhere provided) and the Client shall have no further claim in respect of the Dwelling against the Contractor.
- 12.3.2. The Contractor's obligations to remedy defects whether in terms of clause 12.1.1 and 12.2 above shall:-
- 12.3.2.1. only apply in respect of defects arising as a result of faulty workmanship or materials used in the construction of Dwelling and for no other defects, howsoever arising;
- 12.3.2.2. only apply, for so long as the Client is the registered owner of the Property (and subject to the Client having submitted the Patent Defects List or the Latent Defects List timeously);
- 12.3.2.3. not apply in respect of or arising in any way from any work, carried out by any person appointed directly by the Client or by any consultant, designer, agent, employee, or other person authorised by the Client and effected at the instance of the Client;
- 12.3.2.4. not apply to any defects in the Dwelling directly or indirectly caused by the willful or negligent acts or omission of the Client or any occupant who occupies or uses the Dwelling (or part thereof) with the knowledge of the Client after the Completion Date;
- 12.3.2.5. not apply to any defect manifesting itself subsequent to the submission of the Patent Defects List or Latent Defects List, as the case may be; and
- 12.3.2.6. not entitle the Client to claim any consequential damages from the Contractor.

- 12.3.3. A certificate by the Architect (acting as an expert and not as an arbitrator):**
- 12.3.3.1. stating whether or not the Contractor is responsible for the repair of any item on the Patent Defects List or Latent Defects List shall be final and binding on the Parties and shall, if applicable, relieve the Contractor from any further obligations or liability whatsoever or howsoever arising, in respect of such defect; and**
- 12.3.3.2. confirming that any defect for which the Contractor is liable has been made good, shall be final and binding on the Parties.**
- 12.3.4. The Client acknowledges and agrees that:**
- 12.3.5. it shall have no claim against the Contractor in respect of defects, whether latent, patent or otherwise in the Dwelling save for defects of which the Client has notified the Contractor of pursuant to the provisions of (and within the time frames set out in) this clause 12 above.**
- 12.4. Notwithstanding the provisions of this clause 12, the Contractor shall not, at any time after the Completion Date, be liable for any defects in the Dwelling relating to:**
- 12.4.1.1. Hairline and/or settlement cracks in the plaster work, ceilings, cornices or skirtings;**
- 12.4.1.2. any minor shrinkages/movement in expansion cracks between the different components or materials used for the controlled movements of joints;**
- 12.4.2. any paint touch-ups (other than as arising from the Contractor's obligation to rectify defects in accordance with this clause 12 above).**
- 12.4.3. The Client shall, with effect from the Completion Date, be entitled to the following protection and warranties against the Contractor in accordance with the provisions of section 17 of the Housing Consumer Protection Measures Act 95 of 1998 (as amended):**
- 12.4.3.1. the 5 year liability period relating to major structural defects; and**
- 12.4.3.2. the 12 (twelve) months liability period relating to a roof leak/s attributable to workmanship, design or materials.**
- 12.4.4. The Client acknowledges that the Contractor shall enforce any guarantee or warranty which it may have under any contract concluded between the Contractor and any contractor or sub-contractor for the Client's benefit and cede all its rights under contractors' warranties relating to the Dwelling to the Client.**
- 12.4.5. The Contractor gives no warranties as to the cede-ability of such rights, the effectiveness of enforcing such rights nor anything relating thereto.**
- 12.4.6. Subject always to the provisions of clause 12.1.6, the Client shall, after the Completion Date, be obliged to give the Contractor and/or the Contractor's duly authorised agent or appointed contractors such reasonable access to the Land and Dwelling required by the Contractor for the purpose of complying with its obligations in terms of this clause 12, and the Client shall have no claim against the Contractor for any disturbance in its occupation of the Dwelling arising out of the Contractor exercising its rights in terms of this clause.**

13. INTEREST (IN THE CASE OF BREACH OR DELAYED PAYMENTS)

In the event of the Contract Price or any portion thereof or any other amounts owed by the Client to the Contractor not being paid to the Contractor on due date, the balance outstanding shall bear interest from due date of payment at the then prevailing prime rate plus 4% (four percent) charged per annum by ABSA Bank Limited to its best customers in the private sector on unsecured loans, more commonly known as the prime rate.

14. INDEMNITY

- 14.1. The Client hereby waives all claims against the Contractor for any loss or damage to property or any injury or death to person which the Client or any member of the Client's family or the Client's invitees, employees, or agents may sustain in or about the Land, the Land or the Dwelling and indemnifies the Contractor against any such claim (including but not limited to any claim for costs and to attorney and own client costs in accordance with the non-litigious tariff recommended by the Legal Practice Council or its successors) that may be made against the Contractor by the Client, any member of the Client's family or the Client's invitees, employees, or agents for any loss or damage to property or injury to person suffered in or about the Property or the Dwelling howsoever such loss or damage to property or injury to person may be caused.
- 14.2. Without limiting the generality of clause 14.1, the Contractor, its shareholders, directors, employees and agents, shall bear no liability whatsoever to the Client, the Client's family, invitees, employees or agents in respect of the Land and Dwelling or any part thereof or any matter arising therefrom.

15. CONTRACTORS' WARRANTIES

- 15.1. Save as specifically set out in this Agreement, the Contractor has made no representations and given no warranties in respect of the Building Work and, other than as provided for in clause 12, the Contractor shall not be liable for any defects in the Dwelling or in respect of anything relating thereto, whether patent or latent.
- 15.2. Except for the standard building warranties given by the Contractor or its duly employed contractor(s) in accordance with the Housing Consumer Protection Measures Act, the Contractor gives no representations or warranties in respect of the Dwelling.
- 15.3. Other than warranties relating to the Dwelling (e.g. contractors' warranties, undertaking to rectify defects etc.) all warranties and undertakings that may be given to the Client in terms of this Agreement are personal to the Client and cannot be alienated or disposed of by the Client in any way.
- 15.4. The Contractor warrants that:
- 15.4.1. it shall be registered as a home builder in terms of the provisions of the Housing Consumers Protection Measures Act;
- 15.4.2. the Dwelling will be enrolled with the National Home Builders Registration Council ("NHBRC") in accordance with the provisions of the Housing Consumers Protection Measures Act;
- 15.4.3. it shall procure that the Building Works and, any necessary repairs to, the Dwelling are carried out in a manner that shall ensure that the terms and conditions of any warranty provided by the NHBRC in respect of the Dwelling will be honoured; and

- 15.4.4. it shall execute the Building Works in a good and workmanlike manner with due skill and diligence and in accordance with good building practice and, furthermore undertakes to comply with all statutory and other regulatory obligations, including health and safety, planning and other obligations when performing the Building Works.

16. DEFAULT BY THE CLIENT

- 16.1. If the Client fails to pay any amount due in terms of this Agreement, on its due date, or commits a breach of any other of the terms and conditions of this Agreement and remain in default for **7 (seven)** days after dispatch of a written notice requiring payment and/or requiring such breach to be remedied; or in the event of the Client's estate being sequestrated (or liquidated as the case may be voluntarily or compulsory) or should any judgement by competent court remain unsatisfied for more than 5 (five) days from date of judgement then, without prejudice to any other rights the Contractor may have in law, including the right to claim damages, the Contractor shall be entitled to:

- 16.1.1. to claim immediate performance and/or payment, of all the Client obligations in terms of this Agreement, in which event:

- 16.1.1.1. the full balance of the Contract Price not yet paid to the Contractor on the date on which the Client was required, but failed to remedy its default shall, notwithstanding the provisions of clause 5, become immediately due and payable by the Client to the Contractor; and

- 16.1.1.2. upon payment and receipt of the full balance of the Contract Price as aforesaid, the Contractor shall be obliged to complete the Dwelling as provided for in this Agreement and deliver the Property to the Client on the Completion Date.

or to

- 16.1.2. cancel this Agreement, in which event:

- 16.1.2.1. the Contractor shall as soon as reasonably possible remove all its, machinery and materials from the Property (and cause its sub-contractors to do likewise)

- 16.1.2.2. the Client shall within 7 (seven) days of the cancellation make payment to the contractor of the following amounts:

- 16.1.2.2.1. the value of the Building Works completed at the date of such cancellation which, for the avoidance of doubt shall include the Contractor's margin and any other costs or fees howsoever arising;

- 16.1.2.2.2. the costs of materials and goods or the hiring of any equipment ordered and/or delivered to the Property and paid for by the Contractor or charged to the Contractor's account (and which the Contractor is bound to accept delivery of);

- 16.1.2.2.3. any loss or damage howsoever arising suffered by the Contractor by virtue of such cancellation; and
- 16.1.2.2.4. the costs of removal as provided for in clause 16.1.2.1.
- 16.1.2.3. In addition to all other remedies which the Contractor may have against the Client against the cancellation of this Agreement, the Contractor shall retain possession of the Property and shall have a lien over all materials and/or goods intended for the Building Works which may have become the property of the Client in terms of the provisions of this Agreement, until such time that all monies due to the Contractor by the Client arising out of the cancellation of this Agreement, shall have been settled in full.
- 16.1.2.4. All payments made by the Client on account of the Contract Price and held in trust by the Attorneys in terms of this Agreement, shall be retained by the Attorneys and set off against and without prejudice to the claims which the Contractor may have against the Client as a result of the cancellation of this Agreement by the Contractor.
- 16.2. Should the Contractor take steps against the Client pursuant to a breach of this Agreement, then, without prejudice to any other rights which it may have, the Contractor shall be entitled to recover from the defaulting party all legal costs incurred by it, including attorney-and-client charges and such collection commission.

17. DEFAULT BY THE CONTRACTOR

- 17.1. Should the contractor without reasonable cause wholly or partly suspend the Building Works at any time before the Anticipated Completion Date and/or fail to proceed with the Building Works with reasonable diligence, then if such default continues for 14 (fourteen) days after written notice given to the Contractor by the Client (requiring the Contractor to remedy the default as noted therein), the Client may without prejudice to any other rights it may have in law, including the right to claim damages, elect to cancel this Agreement forthwith.
- 17.2. **Notwithstanding the provisions of clause 17.1, the Client agrees that it shall not give any default notice to the Contractor unreasonably or vexatiously nor shall it be entitled to give any such notice if the Client is in default of its obligations under this Agreement.**
- 17.3. Any notice given to the Contractor in terms of this clause 17 whilst the Client is in default of its obligations in terms of this Agreement, shall be void.
- 17.4. The Contractor shall not be liable for any delay in the commencement or completion of the Works caused directly or indirectly by any circumstance beyond the Contractor's reasonable control, including but not limited to:
 - 17.4.1. delays in obtaining approvals from the Mossel Bay Municipality or any statutory authority;
 - 17.4.2. delays in building plan approval or occupation certification;
 - 17.4.3. delays in connection or installation of municipal or utility services;
 - 17.4.4. shortages or delays in supply of materials, labour, or subcontractors;
 - 17.4.5. adverse weather conditions;
 - 17.4.6. regulatory changes; or

17.4.7. any force majeure event.

17.5. Any such delay shall automatically extend the construction period by a reasonable period.

18. JURISDICTION

The Parties hereby agree and consent to institute any legal proceedings which may arise out of or in connection with this Agreement in the Cape Town magistrate's court, notwithstanding the fact that the claim or value of the matter in dispute might exceed the jurisdiction of such magistrate's court in respect of the cause of action or the amount claimed. A Party shall however be entitled to institute action in the High Court, Western Cape Division

19. CESSION AND ASSIGNMENT

19.1. The Contractor may cede or sign this contract in whole or in part and/or employ sub-contractors to execute the Building Works or any portion thereof.

19.2. **The Client shall not assign, cede, make over its obligations under this Agreement or any portion thereof, unless with the prior written consent of the Contractor.**

20. CERTIFICATE OF INDEBTEDNESS

20.1. **A certificate signed by the Contractor's project manager specifying the amount due and payable by the Client to the Contractor shall be full and sufficient proof of the amount due payable to the Contractor for the purpose of obtaining judgement whether summary, by default or otherwise or provisional sentence against the Client in any court of law having jurisdiction in respect thereof.**

21. MULTIPLE CLIENTS, TRUSTEES OF LEGAL ENTITIES TO BE FORMED, NOMINATIONS, SURETYSHIPS AND AUTHORITY

21.1. If more than one Client is a party to this agreement, then such Clients shall jointly, severally and *in solidum* (joint and several) be liable for the due performance of their respective obligations in terms of this agreement and the parties hereby renounce all benefits arising from the legal exemptions *de duobus vel pluribus, reis debendi*. (the debtor from whom the full amount is claimed cannot avail himself of the benefit that he is only liable for his share and thereby avoid having to pay the full debt).

21.2. If the Client nominates another person to fulfil its obligations in terms of this Agreement, and the person thus nominated does not accept the nomination or accepts the nomination but fails to perform timeously in terms of this Agreement, then the Client shall in his personal capacity be liable for the due fulfilment of all the obligations of such party in terms of this contract.

21.3. If the Client is acting for or as a nominee of as a Trustee for a Company, Close Corporation to be formed, or in any other representative capacity, then the Client shall be personally liable as Client in terms of this Agreement unless the said Company/Close Corporation is formed and in addition adopts, ratifies and confirms the terms of this Agreement, within 30 (thirty) days after being required to do so by the Attorneys. If the said Company/Close Corporation so formed adopts the nomination and ratifies and confirms all the terms of this Agreement then the Client by his signature hereto binds himself to the Contractor as Surety and co-principal debtor *in solidum* (joint and several) with the said Company/Close Corporation under renunciation of the benefits or excussion, division and cession of action for the due

performance by the said Company/Close Corporation of its obligation in terms hereof.

- 21.4. In the event of a registered Company/Close Corporation or the Trustees of a Trust being the Client of the Property, the signature on behalf of such Company/Close Corporation or the Trust, by virtue of his signature hereto, binds himself as surety and co-principal debtor jointly and severally with the Company/Close Corporation or Trust for the fulfilment of all the terms and conditions of this Agreement.
- 21.5. In the event that this Agreement is signed by a signatory on behalf of the Client in a representative capacity, that is on behalf of another natural person, a company, close corporation or trust (whether already formed or to be formed) or if nominated in terms hereof as the case may be, then the said signatory hereby warrants that it is duly authorised to sign this Agreement on behalf of the other natural person, company, close corporation or trust

22. DISPUTE RESOLUTION: NEGOTIATION, MEDIATION THEN ARBITRATION

- 22.1. Should any dispute, disagreement or claim arise between the Parties (**"the dispute"**) concerning this Agreement the Parties shall endeavour to resolve the dispute by negotiation.
- 22.2. This entails one of the Parties inviting the other Party in writing to meet and to attempt to resolve the dispute within 14 (fourteen) days from date of written invitation.
- 22.3. If the dispute has not been resolved by such negotiation within 14 (fourteen) days of the commencement thereof by agreement between the Parties, then the Parties shall:
- 22.3.1. submit the dispute to mediation to be administered by the Arbitration Foundation of Southern Africa (**"AFSA"**), upon such terms as agreed between the parties and the secretariat of AFSA; and
- 22.3.2. failing agreement as aforesaid within 14 (fourteen) days of the dispute being submitted to mediation, the parties shall refer the dispute to arbitration as provided in clause 22.5.
- 22.4. The decision of the mediator shall become final and binding within 14 (fourteen) days of delivery thereof to the parties, unless one or either of the parties disputes the mediator's decision by written notice to the other party within the aforesaid 14 (fourteen) day period, in which event the dispute shall be referred to arbitration in accordance with the provisions of clause 22.5.
- 22.5. Failing agreement as referred to in clause 22.3.2 above or in the event of either of the parties furnishing its notice of dispute within 14 (fourteen) days of the mediator's decision as envisaged in terms of clause 22.4 above, the dispute shall be submitted to arbitration for final resolution in accordance with the rules of AFSA by an arbitrator or arbitrators appointed by AFSA.

- 22.6. Unless otherwise agreed in writing by all the Parties, any such negotiation, mediation or arbitration shall be held in Cape Town.

23. NOTICES AND DOMICILIA

- 23.1. Any notices which may be required to be served or delivered by either Party in terms of this Agreement shall be in writing, and shall be served or delivered on the recipient at the address (which for avoidance of doubt specifically includes any electronic mail address) indicated in items A and B of the information Schedule forming part of this Agreement or at such address as may be notified from time to time by the relevant Party for the purpose of receipt of notices, provided that such address shall be a physical address in the Republic of South Africa, it being agreed that any written notice sent care of the Attorneys and addressed by either the Contractor or the Client to the other of them, shall constitute service in terms of this clause 23.
- 23.2. Any notice served:
- 23.2.1. By hand, shall be deemed to have been received on the day of delivery;
- 23.2.2. By electronic mail, shall be deemed to have been received within twelve hours of transmission, provided that same have been sent to the electronic mail addresses as notified by either Party to the other for purposes of receiving such communications); and
- 23.2.3. By prepaid registered post, shall be deemed to have been received on the fifth day after the date of posting.
- 23.3. Notwithstanding anything to the contrary herein contained, any written notice or communication actually received by a Party to this Agreement shall be an adequate written notice or communication to it/him notwithstanding that it was not sent to or delivered at the chosen notice address or transmitted to such Party's e-mail address as stipulated herein.

24. GENERAL

- 24.1. The Parties acknowledge that this Agreement represents the entire agreement between them and that no other conditions, stipulations, warranties and/or representations whatsoever whether express or implied have been made by either Party or their agents other than as set forth in this Agreement.
- 24.2. The terms of this Agreement form the sole contractual relationship between the Parties hereto and no variation of this Agreement shall affect the terms hereof unless such variation shall be reduced to writing under the hands of the Parties hereto.
- 24.3. No extension of time or indulgence granted by either Party to the other shall be deemed in any way to affect, prejudice or derogate from the rights of such Party in respect of this Agreement, nor shall it in any way be regarded as a waiver of any rights hereunder, or a novation of this Agreement.

SIGNED at on..... 20....

for and on behalf of Seasons 4 Construction
Proprietary Limited

duly authorised signatory

SIGNED at on..... 20....

Client

Client