



## **Association of Arbitrators (Southern Africa)**

### **PROCEDURE FOR THE CONDUCT OF ADJUDICATIONS**

#### **UNDER THE JBCC 2003 CONTRACT**

**DATE THIS VERSION 16.01.03**

#### **PREAMBLE**

This Procedure is intended to be used as the Procedure for the Conduct of Adjudications under the provisions of Clause 40 of the JBCC 2003.

The Adjudicator shall be the person appointed in terms of the Schedule or nominated by the Chairman, or his nominee, of the Association of Arbitrators (Southern Africa).

This Procedure is binding on the parties in terms of Clause 40-4 and is to be given effect to in terms of Clause 40-7

#### **THE PROCEDURE**

- 1 The party raising the dispute (for convenience hereinafter referred to as the "Claimant") shall submit to the Adjudicator and to the other party:
  - A copy of the notice in terms of Clause 40-2;
  - Full details of the dispute together with such supporting documentation as the Claimant deems appropriate;
  - Such other documentation as the Claimant deems appropriate to support its position;
- 2 The 28 day time period contemplated by Clause 40-6 shall commence the day after delivery of the above documentation to the Adjudicator.
- 3 The opposing party (for convenience hereinafter referred to as the "Defendant") shall be entitled, but not obliged, to submit its response to the Claimant and to the Adjudicator. Such response shall be submitted not later than 14 days after receipt by the Adjudicator of the Claimant's submissions.
- 4 The Adjudicator may request additional information from either of the parties and such information shall be provided within 5 (five) days of the Adjudicator's request. Such request and the reply thereto shall be in writing and shall be copied to the other parties simultaneously. Any failure to respond to such a request without explanation therefor shall entitle the Adjudicator to draw such inferences as he deems appropriate.
- 5 In considering the dispute the Adjudicator shall be free to consult with the parties jointly or

individually and for this purpose may make such arrangements to meet with the party/ies as are appropriate.

- 6 The Adjudicator shall also be free to consult with any of the other parties connected with the Contract, inter alia, the Architect, Project Manager, Quantity Surveyor and any other persons who may have had an involvement in the contract which, in the Adjudicator's opinion, would be of assistance to the Adjudicator in coming to a decision.
- 7 The Adjudicator may, without reference to the parties, seek additional legal or technical advice as may, in the Adjudicator's opinion, be necessary for him to come to a decision. The Adjudicator shall not however incur expenses for such additional advice in excess of R10 000 (ten thousand) without the prior written consent of the parties. Any request by the Adjudicator for authority to incur such additional expense shall be in writing to both parties and shall provide a ceiling expenditure figure. The parties shall respond to the Adjudicator within 3 (three) days of such request indicating their acceptance or rejection of the request. Should either party fail to respond within the 3 day period the Adjudicator may take the failure to respond as deemed acceptance of the request.
- 8 The parties shall arrange such access to the site of the works as may be required by the Adjudicator.
- 9 The time periods for Adjudication shall not be extended without the agreement in writing of the parties.
- 10 The Adjudicator shall deliver his decision in writing to the parties at the address stipulated in the contract or such other addresses as may have been agreed upon in writing during the adjudication process.

#### **COSTS OF ADJUDICATION**

- 11 In accordance with Clause 40-8 each party shall bear its own costs of the adjudication and the Adjudicator's fees and disbursements shall be shared equally.
- 12 If the Adjudicator has required that security be furnished for his fees and disbursements, same shall be provided within 2 (two) days of request. Should one party default in this regard the Adjudicator shall invite the other party to fulfill the requirement for security and same shall be provided within a further 2 (two) days of the request. Should the security not be provided the Adjudicator shall be entitled to terminate his appointment and thereafter the parties shall proceed to arbitration in terms of Clause 40-12.
- 13 Where one party pays the whole or a disproportionate share of the Adjudicator's fees and disbursements, the parties agree that such action shall be not constitute any form of prejudice to the adjudication process.
- 14 The Adjudicator shall have a lien over his decision and shall not be obliged to deliver same to the parties until his fees and disbursements have been fully paid. No such failure to deliver his decision shall invalidate the decision notwithstanding that it may only be delivered after the expiration of the period for adjudication providing the Adjudicator has notified the parties that his decision is available within the relevant period. Should the parties pay the fees and disbursements in disproportionate amounts this shall be taken into account in the decision which shall include a statement of payments as part of the decision to allow the one party to recover the relevant share from the other party. This portion of the Adjudicator's



## GENERAL

- 15 The Adjudicator shall not be bound by the rules of natural justice, his primary function being to make a decision without unnecessary delay and expense, making appropriate use of all means at his disposal within the framework of this Procedure. He acts as an expert and **NOT** as an arbitrator.
- 16 The Adjudicator shall not accept the appointment if he has any concerns as to his impartiality and during the currency of his appointment he shall not accept any other appointment which would be in conflict with this appointment in so far as his impartiality is concerned. By accepting his appointment the Adjudicator states his impartiality and thereafter there shall be no challenge to the appointment.
- 17 Any failure of the one party to co-operate shall entitle the Adjudicator to draw such inferences as he deems meet.
- 18 All communications under this Procedure which are required to be exchanged between the parties shall be in a form which can be read, copied and recorded.
- 19 All submissions and communications from the Claimant, Defendant and/ or Adjudicator shall, to the extent it is practical to do so, be simultaneously delivered to the other two parties.
- 20 Days shall mean calendar days unless otherwise stated.
- 21 Should a situation arise whereby the Adjudicator is unable to complete his mandate, as a result of death, resignation, ill health or the like, but excluding a simple failure by the Adjudicator to deliver a decision within the time period for adjudication:
  - 21.1 The parties shall jointly agree upon a new Adjudicator or
  - 21.2 The Association of Arbitrators (South Africa) shall, when requested by either party to do so, nominate a new Adjudicator. The request must state the reason why the original Adjudicator is no longer able to act and be accompanied by the relevant fee charged by the said Association.
  - 21.3 Once the replacement Adjudicator has been appointed or agreed, the adjudication shall start *de novo*
- 22 The adjudication procedure shall be treated as one of utmost confidentiality and the requirements for confidentiality shall survive the termination of the Procedure howsoever caused.
- 23 The effective date of this Procedure shall be.....



## Association of Arbitrators (Southern Africa)

### ADJUDICATOR'S CONTRACT

#### Introduction

This contract is intended to be entered into between the Adjudicator and the parties to the dispute for use with the JBCC2000 (as amended 2003) contract under the provisions of the amended clause 40.

This is a multi-party agreement intended to be entered into at the time of the initial appointment of the Adjudicator either pursuant to a consent between the Parties, alternatively following the nomination of an Adjudicator under the procedure as laid down in clause 40 - 3.

#### Form of Agreement

This agreement is made on the                      day of                      20                      between:

\* 1.                      ..... (The Employer)

\* 2.                      ..... (The Main Contractor)

\* 3.                      ..... (The Sub Contractor)

(\* Delete as appropriate.)

4.                      ..... (The Adjudicator)

whose domicilia citandi et executandi are as set out below:

1. For the Employer: .....  
.....  
.....  
.....  
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2. For the Main Contractor: .....

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3 For the Sub Contractor: .....

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4. For the Adjudicator: .....

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The above named parties hereby appoint the Adjudicator in accordance with the JBCC  
Conditions of Contract

The Adjudicator hereby accepts the appointment and undertakes to carry out the function of  
Adjudicator in accordance with the JBCC Contract and the Procedure for the Conduct of  
Adjudications as published by the Association of Arbitrators (Southern Africa).

**Signed on behalf of the Parties:** .....

Name : .....

Position: .....

On behalf of: .....

**Signed on behalf of the Parties:** .....

Name : .....

On behalf of: .....

**Signed on behalf of the Parties:** .....

Name : .....

Position: .....

On behalf of: .....

**Signed on behalf of the Adjudicator:** .....

Name: .....

Position: .....

On behalf of: .....