

LOW VALUE DISPUTE ADJUDICATION RULES

2023



Foreword and Acknowledgements

All too often contractors, and more particularly subcontractors, forego referring an entitlement arising under the contract to adjudication, solely due to the cost and time involved. The reality is that the majority of these disputes are relatively simple and of low value, yet the recovery of these amounts are critical to the sustainability of their business.

This is especially true in the context of the South African construction industry, where a significant percentage of the contract value must be subcontracted to small, medium and micro enterprises.

With this in mind the Construction Adjudication Association of Southern Africa (CAASA) has developed the Low Value Dispute Adjudication Model and these Rules. The fee charged by the adjudicator is capped and the time in which he must provide his decision restricted. Employers, consultants, contractors and subcontractors are urged to include these Rules in their agreements.

CAASA would like to thank Vaughan Hattingh (MDA Attorneys) and the CAASA EXCO members for their contributions.

We believe that this Model fills a gap in our industry and provides smaller contractors and subcontractors with the means to pursue an entitlement to the fullest.

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First edition: published November 2023

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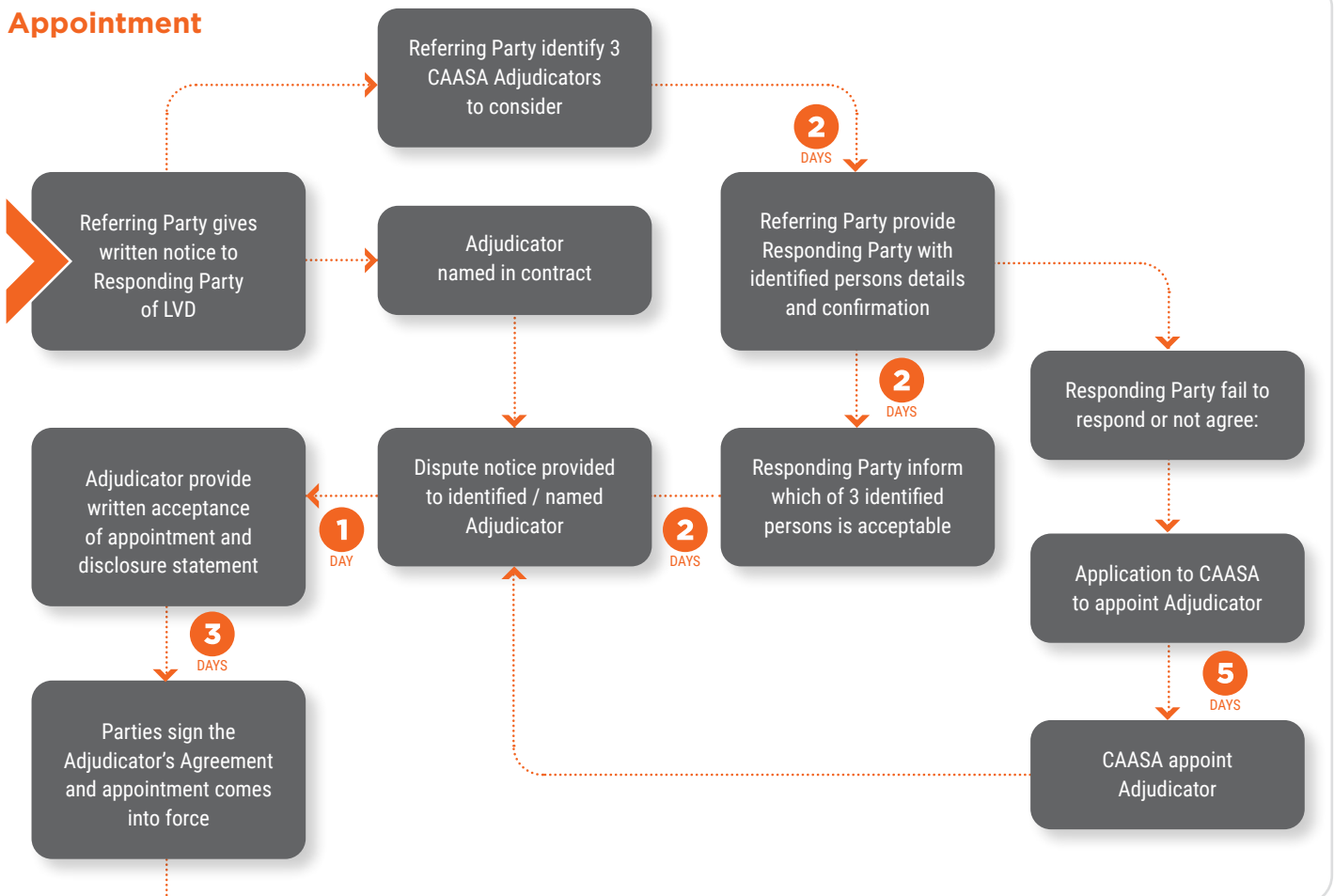
Introduction

The Construction Adjudication Association of Southern Africa (NPC) Low Value Dispute Adjudication Rules provide an accessible, expeditious and cost effective adjudication procedure for resolving a single dispute.

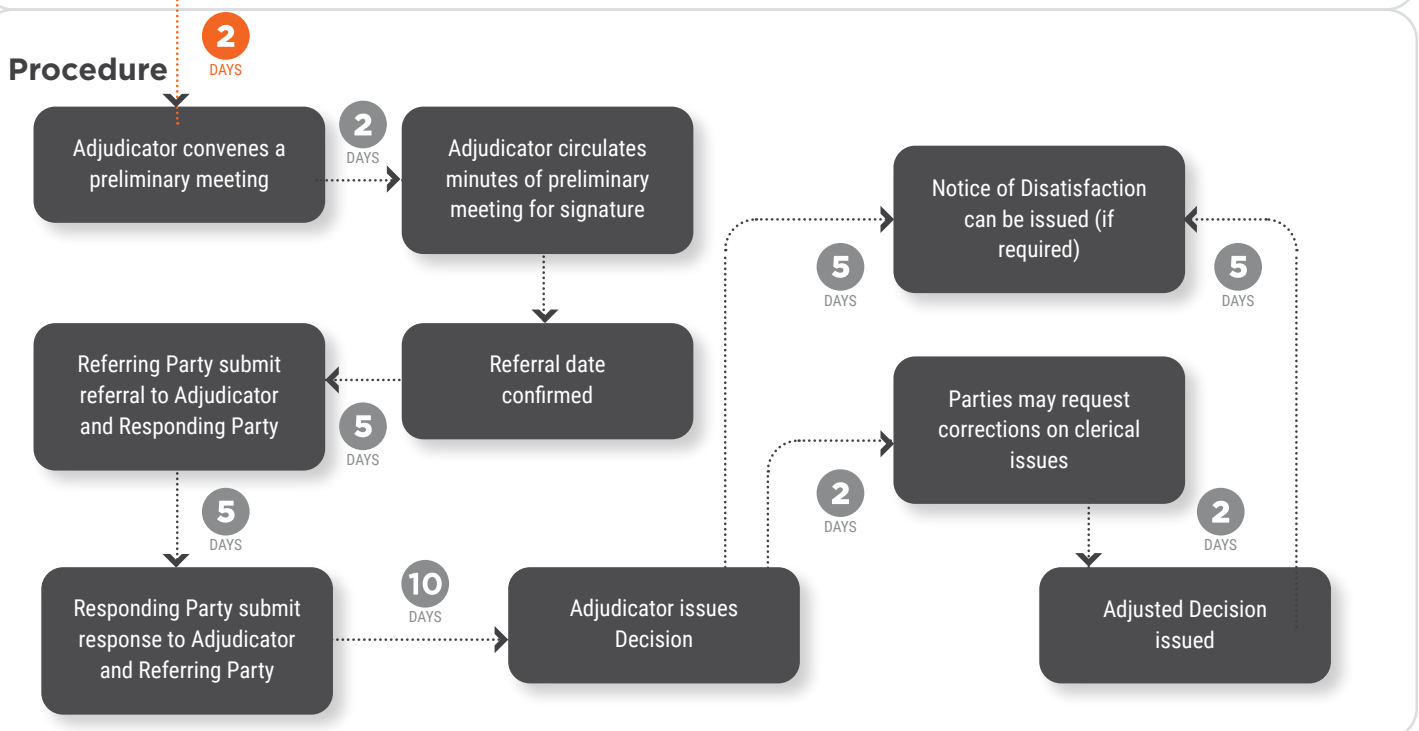
The Adjudicator determines a single dispute limited to maximum value of R1 500 000.00 (excl. VAT), is paid a fixed hourly rate capped to a maximum amount determined on a sliding scale linked to the amount claimed, and publishes a binding (but not necessarily final) Decision within 20 business days of the date upon which the Referring Party submits the referral to the Adjudicator and Responding Party.

Low Value Adjudication Process

Appointment



Procedure



1. Definitions and Interpretations

- 1.1. “**Adjudicator**” – means the person appointed by the Parties in terms of the Adjudicators Agreement to decide the Low Value Dispute in accordance with these LVDA Rules.
- 1.2. “**Adjudicator’s Agreement**” – means the written agreement entered between the Parties and the Adjudicator inter alia appointing the Adjudicator.
- 1.3. “**Adjudicator’s fees**” – means the fees, disbursements and expenses referred to in Schedule One, charged by the Adjudicator and paid by the Parties.
- 1.4. “**Appointment Date**” – means the day upon which the Adjudicator’s Agreement is signed by the last Party signing it.
- 1.5. “**CAASA**” – means the Construction Adjudication Association of Southern Africa (NPC).
- 1.6. “**Claimant**” or “**Referring Party**” – means the party who has notified the Low Value Dispute and initiated the Low Value Dispute Adjudication procedure.
- 1.7. “**Contract**” – means the construction contract entered into between the Parties, identified in the Adjudicator’s Agreement and in connection with which the Low Value Dispute has arisen.
- 1.8. “**Day**” – means business day, excluding proclaimed public holidays and the annual builders break declared by the South African Forum of Civil Engineering Contractors (SAFCEC). Where any particular number of days is prescribed in the LVDA Rules for the doing of any act, or for any other purpose, the same shall be reckoned exclusively of the first and inclusively of the last day.
- 1.9. “**Decision**” – means the written determination of the Low Value Dispute published by the Adjudicator and issued to the Parties in accordance with these LVDA Rules.
- 1.10. “**Low Value Dispute**” – means a single dispute in respect whereof the total amount claimed and referred to the Adjudicator shall not be more than R1 500 000.00 (excl. VAT).
- 1.11. “**Low Value Dispute Adjudication**” – means the adjudication procedure prescribed in terms of these LVDA Rules.
- 1.12. “**LVDA Rules**” – means these CAASA Low Value Dispute Adjudication Rules.
- 1.13. “**Parties**” – means the Referring Party and Responding Party collectively.
- 1.14. “**Referral Date**” – means the day 5 (five) Days after the Appointment Date upon which the Referring Party submits the referral to the Adjudicator and Responding Party.
- 1.15. “**Respondent**” or “**Responding Party**” – means the party to whom the Low Value Dispute has been notified, and who will defend their position in the Low Value Dispute Adjudication.
- 1.16. “**Stipulated Period**” – means the period for concluding the Low Value Dispute Adjudication, which is either within 20 (twenty) Days or a further 5 (five) Days if the Parties and Adjudicator agree to extend the period in writing, calculated from the Referral Date up to and including the date upon which the Adjudicator publishes the Decision.

1.17. Where the context requires:

1.17.1. Words importing the singular also include the plural, and vice versa, and

1.17.2. Words importing the masculine gender also include the feminine.

2. Notice of Low Value Dispute and Adjudicator's Appointment

2.1. The Referring Party shall give written notice to the Responding Party that a Low Value Dispute has arisen. This dispute notice shall:

2.1.1. specify when the dispute arose, briefly describe the nature of the Low Value Dispute;

2.1.2. specify the basis in terms of the Contract and applicable law for the Low Value Dispute;

2.1.3. state the value of the Low Value Dispute;

2.1.4. broadly describe the relief the Referring Party intends requesting; and

2.1.5. identify three persons from the CAASA adjudicators panel whom the Parties will consider jointly appointing as the Adjudicator.

2.2. Unless the Adjudicator is named in the Contract, within 10 (ten) Days of the Responding Party receiving the dispute notice the Parties shall jointly appoint the Adjudicator in terms of the Adjudicator's Agreement or failing such appointment CAASA shall do so, as follows:

2.2.1. The Referring Party shall confirm in writing with each person identified in the dispute notice is willing, able and has capacity to accept the appointment as Adjudicator and publish the Decision within the Stipulated Period.

2.2.2. The Referring Party shall within 2 (two) Days of the Responding Party receiving the dispute notice provide the Responding Party with written notification of each of the identified persons details and copy of the written confirmation obtained in accordance with sub-clause 2.2.1.

2.2.3. The Responding Party shall within 2 (two) Days of receiving the Referring Party's written notification in terms of sub-clause 2.2.2, inform the Responding Party which of the three identified persons is acceptable to the Responding Party to be jointly appointed as the Adjudicator.

2.2.4. The Referring Party shall within 2 (two) Days of receiving the Responding Party's written notification in terms of sub-clause 2.2.3 in writing provide a copy of the dispute notice to and inform the identified person accepted by the Responding Party, the Responding Party and CAASA that the Parties have agreed to the identified person being appointed as the Adjudicator.

- 2.2.5. Should the Responding Party either fail to respond within 2 (two) Days in accordance with sub-clause 2.2.3 or not agree to jointly appoint any one of the three identified persons as the Adjudicator, either party may then apply to CAASA to appoint the Adjudicator.
- 2.2.6. If either Party applies to CAASA to appoint the Adjudicator, CAASA shall make the appointment within 5 (five) Days of receiving the duly completed application to appoint the Adjudicator, a copy of the dispute notice and the Referring Party's written notification to the Respondent in terms of sub-clause 2.2.2.
- 2.2.7. The Adjudicator shall within 1 (one) Day of receiving either the Referring Party's written notification in terms of sub-clause 2.2.5 or CAASA's written notification of appointment, in writing addressed to the Parties and CAASA confirm acceptance of either the Parties joint appointment or CAASA's appointment and provide a written disclosure statement confirming their impartiality and commitment to publish the Decision within the Stipulated Period.
- 2.2.8. CAASA's involvement in the Low Value Dispute Adjudication ends with the appointment of the Adjudicator.
- 2.2.9. The Parties and Adjudicator shall within 3 (three) Days of receiving the Adjudicator's written acceptance of appointment and disclosure statement in terms of sub-clause 2.2.7 conclude and sign the Adjudicators Agreement.
- 2.2.10. The Referring Party shall co-ordinate the conclusion and signing of the Adjudicators Agreement, at all times ensuring transparent communications with and between the Parties and Adjudicator.
- 2.3. The Adjudicator's appointment shall come into force and effect on the day upon which the Adjudicator's Agreement is signed by the last Party signing it.
- 2.4. The Adjudicator's appointment shall be valid for the notified Low Value Dispute Adjudication only. The Parties may by written agreement with the Adjudicator extend the Adjudicator's appointment for further disputes.
- 2.5. If the Adjudicator cannot continue as the Adjudicator, or is unable to publish the Decision within the Stipulated Period the Adjudicator shall immediately inform the Parties and CAASA in writing that he/she cannot do so, and CAASA will appoint a new Adjudicator in the same manner as set out herein.

3. Adjudicator's Jurisdiction

- 3.1. The Adjudicator shall take the initiative in ascertaining both the facts and the law necessary to determine the Low Value Dispute and shall determine the procedure to be followed in the Low Value Dispute Adjudication to ensure the Decision is published strictly within the Stipulated Period.

- 3.2. The Adjudicator shall have complete discretion to determine his/her own jurisdiction in relation to the determination of the Low Value Dispute. The Adjudicator's authority shall include, but not necessarily be limited to, the following:
 - 3.2.1. Open-up, review or revise any ruling or decisions, order, instruction, certificate, or valuation previously issued in terms of the Contract and relevant to the Low Value Dispute.
 - 3.2.2. Request further information, documents, written statements, and details relevant to the Low Value Dispute.
 - 3.2.3. Meet with and question either of the Parties and conduct site visits at such date and time directed by the Adjudicator. These meetings and site visits shall be in the presence of both Parties and their representatives, if any.
 - 3.2.4. Apply his/her own expert knowledge and experience to determining the Low Value Dispute.
 - 3.2.5. Obtain legal or other technical advice that the Adjudicator may require in determining the Low Value Dispute. This only after having notified the Parties in writing of the intention to do so and securing their consent.
 - 3.2.5.1. The Parties shall respond to the Adjudicator's request within 1 (one) Day of receipt of the request, failing which the Parties shall be deemed to have accepted the Adjudicator's request and the Adjudicator shall be entitled to proceed as requested.
 - 3.2.6. Order the payment of any sum or sums of money in relation to the Low Value Dispute, including the payment of interest in accordance with the Contract and a Party's liability for payment of the Adjudicator's costs.
 - 3.2.7. Direct the specific performance by either Party of that Party's obligation in relation to the Low Value Dispute Adjudication.
- 3.3 The Adjudicator may conduct the Low Value Dispute Adjudication in any manner the Adjudicator considers appropriate, subject to the Contract and these LVDA Rules, and all in accordance with the principles of fairness and impartiality.
- 3.4 The Adjudicator shall comply with the rules of natural justice. The Adjudicator is not required to observe the rules of evidence.
- 3.5 The Low Value Dispute Adjudication shall be completed within the Stipulated Period. The Adjudicator shall give directions as to the timetable for the Low Value Dispute Adjudication and issue any other directions relating to the conduct of the Low Value Dispute Adjudication as the Adjudicator may deem necessary.
- 3.6 The Adjudicator has no authority to extend the Stipulated Period. The Stipulated Period may be extended by a further 5 (five) Days by written agreement between the Parties and the Adjudicator.

4. Adjudicator's Obligations

4.1 The Adjudicator shall:

- 4.1.1 conduct and conclude the Low Value Dispute Adjudication within the Stipulated Period strictly in accordance with the LVDA Rules, the Contract and the rules of natural justice as efficiently as practically possible and avoid incurring unnecessary delay and/or expense;
- 4.1.2 publish the Decision in accordance with the LVDA Rules and the Adjudicator's Agreement within the Stipulated Period.
- 4.1.3 at all times observe the rules of natural justice;
- 4.1.4 at all times remain impartial and independent and have no interest, financial or otherwise in the Contract, or the outcome of the Low Value Dispute Adjudication;
- 4.1.5 inform the Parties and CAASA immediately if there is anything, including (but not limited to) a conflict of interest, which could (or could be construed to) affect the Adjudicator's impartiality or independence;
- 4.1.6 neither meet alone nor correspond either in writing or verbally with either the Parties and / or their respective representatives (if any) without including both the other Party and / or their respective representatives (if any) in such meeting and / or correspondence and / or communication;
- 4.1.7 ensure that all correspondence and communication submitted to one Party and / or its representatives (if any) is simultaneously submitted to the Party and / or its representatives (if any);
- 4.1.8 not have been previously employed by or consulted to either or both of the Parties, except as may have been disclosed and accepted by the Parties in writing;
- 4.1.9 comply fully with the Contract, the Adjudicator's Agreement and these LVDA Rules;
- 4.1.10 not give advice to the Parties concerning any aspect of the dispute/s, or any other matter which may arise during the resolution of the Low Value Dispute Adjudication; and
- 4.1.11 neither be eligible to be appointed as arbitrator in any subsequent arbitration nor be called as a witness by either Party to give evidence in any forum nor be obliged to either disclose or make available to either Party, their respective representatives or any third party the Adjudicator's notes and / or drafts and / or record of either or both the Low Value Dispute Adjudication and the Decision.

5. Adjudicator's Fees

5.1 The Parties are jointly and severally liable to the Adjudicator for the payment of the Adjudicator's fees, disbursements, expenses and costs determined strictly in accordance with the provisions of Schedule One hereto, which shall be shared equally by the Parties, unless otherwise determined by the Adjudicator in the Decision.

- 5.2 The Adjudicator shall be entitled to:
- 5.2.1 Require that the Parties pay an initial deposit in respect of his/her anticipated fees and expenses.
 - 5.2.2 Payment of the Adjudicator's reasonable expenses, disbursement and costs in relation to the Low Value Dispute Adjudication, which reasonable expenses, disbursement and costs shall include, but not necessarily be limited to the services of any additional and agreed experts required to provide further opinion and details to the Adjudicator in relation to the Low Value Dispute.
- 5.3 The Adjudicator's invoices shall be paid in full without deduction or set off within 10 (ten) Days of the date of receipt of the Adjudicator's invoice by the Parties, or such other period as the Parties and Adjudicator may agree in writing.
- 5.4 The Adjudicator shall be entitled, on written notice to the Parties, to suspend the Low Value Dispute Adjudication, including publication of the Decision, until any and all payments due, owing and payable to the Adjudicator have been received by the Adjudicator in full.
- 5.5 Where in terms of sub-clause 5.4 the Adjudicator suspends the Low Value Dispute Adjudication, the Stipulated Period shall automatically be extended by a period equal to the suspension period.
- 5.6 The Adjudicator may exercise a lien on the Decision until all outstanding amounts due, owing and payable to the Adjudicator have been received by the Adjudicator in full.
- 5.7 Where a Party fails to pay its portion of the Adjudicator's fees and expenses, the other Party may pay such portion and recover the amounts paid from the defaulting Party.
- 5.8 In the event of the Adjudicator resigning from the appointment, or where the Parties settle the Dispute prior to the publication of the Decision, the Adjudicator shall be entitled to receive payment for his time and involvement in the procedure up until that date. Where the Adjudicator resigns from the appointment due to the Adjudicator not being able to publish the Decision within the Stipulated Period, the Adjudicator shall not be entitled to any payment whatsoever.
- 5.9 However, in the instance where the Adjudicator's Agreement is terminated due to the Adjudicator's willful breach of any of the material provisions of Contract, the Adjudicator's Agreement or these Rules, the Adjudicator shall not be entitled to payment of any fees or disbursements and shall reimburse the Parties for all payments received in relation to the matter.
- 5.10 The Adjudicator shall not be liable for any claims in respect of any act or omission in discharging their duties unless such act or omission is shown to have been made in bad faith.

6. Obligations of the Parties

- 6.1 The Parties shall comply with any request or direction of the Adjudicator in relation to the Low Value Dispute Adjudication, within the period for complying directed by the Adjudicator.

- 6.2 If a Party fails to comply with any request, direction or timetable stipulated by the Adjudicator, and/or fails to produce any document or written statement or information requested by the Adjudicator, or in any way fails to comply with a requirement under these LVDA Rules, the Adjudicator may:
- 6.2.1 continue the Low Value Dispute Adjudication in the absence of that Party's compliance or of the document or written statement or information requested;
 - 6.2.2 draw such inference from that failure to comply as circumstances may, in the Adjudicator's opinion, justify; and
 - 6.2.3 make a decision on the basis of the information submitted by the Parties.
- 6.3 The Parties shall at all times act in good faith.
- 6.4 The Parties shall be free to settle the Low Value Dispute amicably between each other at any time. The Parties shall jointly notify the Adjudicator in writing that the Low Value Dispute has been settled amicably. The Adjudicator's jurisdiction in the Low Value Dispute Adjudication shall terminate upon the Adjudicator receiving the joint written notification from the Parties.

7. Procedure

To ensure that the Low Value Dispute Adjudication is completed within the Stipulated Period, the Parties and the Adjudicator shall comply with the following procedure:

- 7.1. Within 2 (two) Days of the Appointment Date, the Adjudicator shall convene a preliminary meeting and inter alia confirm:
- 7.1.1. that a Low Value Dispute has crystallized;
 - 7.1.2. the Parties (and their representative's, if any) company and VAT registration numbers or personal identity numbers if not a company, physical addresses, contact details and the agreed methods for communications including email addresses;
 - 7.1.3. the Adjudicator's preferences for the presentation of the submissions;
 - 7.1.4. whether the Responding Party intends raising a counter claim and, if so, the nature of the counterclaim, the basis in terms of the Contract and applicable law for the counter claim and the value of the counter claim;
 - 7.1.5. the Referral Date and date upon which the Responding Party shall submit the response to the Referring Party's submission;
 - 7.1.6. the date upon which the Decision shall be published; and
 - 7.1.7. the Adjudicator's fee cap in accordance with Schedule One.
- 7.2. The Adjudicator shall within 2 (two) Days after the preliminary meeting prepare and circulate a minute of the preliminary meeting for signature by the Parties.

- 7.3. The Parties shall deliver their respective referral and response submissions as follows:
- 7.3.1. The documentation (including annexures) submitted by each Party in the referral and response respectively shall be strictly limited to not more than 500 (five hundred) pages.
 - 7.3.2. The Referring Party shall submit its fully substantiated referral to the Adjudicator, with a copy to the Responding Party, within 5 (five) Days of the Referral Date.
 - 7.3.3. The Responding Party shall within 5 (five) Days of receiving the referral submit its fully substantiated response to the Adjudicator, with a copy to the Referring Party.
- 7.4. Any additional submission (if any) by either Party shall only be made on direction of the Adjudicator, at the Adjudicator's discretion and in accordance with the timelines and the volume for such additional submission as may be stipulated by the Adjudicator.

8. The Decision

- 8.1. The Decision shall:
- 8.1.1. be issued to the Parties 10 (ten) Days after the Responding Party's fully substantiated response is received by the Adjudicator and the Referring Party;
 - 8.1.2. be in writing;
 - 8.1.3. include the Adjudicator's reasons for the Decision; and
 - 8.1.4. be issued to the Parties by electronic mail, unless agreed otherwise in which case the Decision shall be delivered to the Parties confirmed physical addresses.
- 8.2. Either Party may in writing request the Adjudicator to correct any patent clerical or arithmetical errors or ambiguity present in the Decision. Such request must be made in writing within 2 (two) Days of publication of the Decision.
- 8.3. Should a request for correction be made by a Party, the Adjudicator shall immediately consider the request and, if necessary, issue a corrected Decision within 2 (two) Days of the Adjudicator receiving the request.
- 8.4. Should the Adjudicator fail to timeously comply with the request, and no extension of this period is agreed between the Parties in writing, the Adjudicator's initial Decision shall remain binding on the Parties.
- 8.5. The Parties shall give immediate effect to the Decision, which Decision shall be promptly implemented by the Parties, and be binding on the Parties, unless and until the Decision is overturned by either agreement, arbitration (if the Contract provides for arbitration, or the Parties otherwise agree to arbitration), or through court proceedings.
- 8.6. The Decision shall be enforceable as a matter of contractual obligation. Should a Party fail to promptly comply with the Decision, the aggrieved Party may apply to the High Court of the Republic of South Africa for the enforcement of the Decision.

8.7. If either Party is dissatisfied with the Decision, then the dissatisfied Party may within 5 (five) Days after receiving the Decision, give notice to the other Party of their dissatisfaction. The Decision shall remain binding and the Parties shall promptly implement the Decision notwithstanding the dissatisfied Party having given notice of dissatisfaction.

8.8. If the notice of dissatisfaction has not been given by either Party within the 5 (five) Day period, then the Decision shall become final and binding upon the Parties.

9. Termination

9.1. The Adjudicator may for good cause resign at any time upon giving notice in writing to the Parties.

9.2. The Adjudicator's appointment may be terminated at any time by the written mutual agreement of the Parties notified by the Parties to the Adjudicator in writing.

9.3. The Adjudicator's appointment shall expire on the date upon which the Low Value Dispute has either been withdrawn or settled amicably, or on the date five days after the Decision has been published.

10. Confidentiality

10.1. The entire Low Value Dispute Adjudication procedure, including the nature of the Low Value Dispute, and the Decision shall at all times be treated by the Parties and Adjudicator as private and confidential, except where disclosure is necessary for the purpose of enforcing the Decision.

SCHEDULE 1

THE ADJUDICATOR'S FEES, PAYMENT BY THE PARTIES AND INTEREST ON OVERDUE AMOUNTS

1. Adjudicator's fees, disbursements, expenses and costs

- 1.1. The Adjudicator's invoices shall be paid in full without deduction or set off within 10 (ten) Days of the date of receipt of the Adjudicator's invoice by the Parties, or such other period as the Parties and Adjudicator may agree in writing.
- 1.2. The Adjudicator shall be remunerated at a fixed hourly rate of R2 000.00 per hour irrespective of the Low Value Dispute amount for each hour (or part thereof) spent in the Low Value Dispute Adjudication and capped to the amount detailed below:

Low Value Dispute Amount	Adjudicator's Fee Cap
Up to R 250 000.00	R 40 000.00
R 250 001.00 - R 500 000.00	R 60 000.00
R 500 001.00 - R 1 000 000.00	R 80 000.00
R 1 000 001.00 - R 1 500 000.00	R 100 000.00

- 1.3. Where the Adjudicator meets and / or attends a site visit with the Parties, the Adjudicator will be paid a fixed hourly rate (inclusive of time spent travelling, if any) of R2 500.00 (excl. VAT) per hour (or part thereof) capped at R25 000.00 (excl. VAT) plus reasonable travel expenses.
- 1.4. The Adjudicator shall, in addition to the Adjudicator's fee, be re-imbursed at cost for all disbursements, expenses and costs reasonably incurred in the Low Value Dispute Adjudication.
- 1.5. The Adjudicator shall together with each invoice in respect of the fees, disbursements, expenses and costs furnish the Parties with:
 - 1.5.1. a schedule detailing each hour (or part thereof) spent by the Adjudicator in the Low Value Dispute Adjudication and succinctly describing the activity performed during each hour (or part thereof) detailed in this schedule; and
 - 1.5.2. copies of each invoice and receipt in respect of every disbursement, expense and cost (inclusive of reasonable travel expense) incurred by the Adjudicator in the Low Value Dispute Adjudication and claimed in the Adjudicator's invoice.

2. Interest of outstanding amounts due, owing, and payable to the Adjudicator

- 2.1. All amounts not paid to the Adjudicator within the period for payment specified in the Rules, shall bear interest at the prime overdraft rate charged by the Adjudicator's bankers compounded monthly and calculated from the date upon which payment is due up to and including the date upon which payment is made, both days inclusive.



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