



NATIONAL CONSTRUCTION COUNCIL

ADJUDICATION PROCEDURAL RULES 2017

NATIONAL CONSTRUCTION COUNCIL

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PREAMBLE

The National Construction Council (NCC) is a Government institution enacted by Act of Parliament No.20 of 1979 as revised by Act No.162 of 2008. Among its core functions is to facilitate efficient resolution of disputes in the construction industry.

One of the recent developments in dispute resolution in the construction industry is the introduction of Adjudication. National Construction Council (NCC) has noted that resolution of disputes through adjudication has gained momentum but there are no published procedural rules to guide the process.

National Construction Council has published these Adjudication Procedural Rules as a guiding tool for efficient and smooth administration of the adjudication process. These rules are intended for use in resolving all types of disputes arising out of any construction contract through adjudication process.

These rules shall apply where there is an adjudication clause in the contract and where the National Construction Council is named as an appointing authority for the adjudicator under the contract. Where there is no prior agreement between the parties to adjudicate, the parties may enter into an agreement to refer their dispute to adjudication under these Rules.

Matters not covered in these rules shall be subject to the agreement of the parties and the laws of the United Republic of Tanzania in the case of disputes arising out of or in connection with domestic contracts or in accordance with the law agreed by the parties in case of disputes arising out of or in connection with international contracts.

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1.0 DEFINITION OF TERMS

In these rules;

“Adjudicator” is a person jointly appointed by parties to the contract to resolve disputes in the first instance.

“Adjudication Agreement” means an agreement between an adjudicator and parties to the adjudication

“Contract” refers an agreement between the parties in which adjudication arises

“Days” means calendar days

“Notice” means a written notification of adjudication given by a party to another party requesting for adjudication and identifying the dispute in respect of which the adjudication is sought

“Referring Party” means a party referring a dispute for adjudication

“Responding Party” means a party responding to a dispute referred for adjudication

“The Referral” means a written statement referring a dispute to the adjudicator accompanied by such other documents as the referring party intends to rely upon.

2.0 GENERAL PRINCIPLES

2.1 Value for Money

- a. The object of adjudication is to reach a fair, speed and inexpensive determination of disputes arising under the Contract.
- b. The adjudicator shall use reasonable endeavors to adjudicate the dispute between the parties in the shortest time and at the lowest cost possible.
- c. The adjudicator shall ensure that the procedure adopted is commensurate with the nature and value of the dispute and shall promptly notify the parties of any matter that will slow down or increase the cost of making a determination.

2.2 Impartiality

The adjudicator shall observe the principles of procedural fairness and act impartially and independently and without bias.

2.3 Conflict of Interest

A person requested to act as adjudicator shall notify the parties of any conflict of interest or external factors which would give rise to a reasonable apprehension of bias; such a person shall decline the appointment unless satisfied it would be appropriate to accept. After appointment, the adjudicator shall immediately notify the parties of any such conflict or factors that arise during the course of the adjudication. The adjudicator shall

not act as conciliator, mediator, arbitrator or witness in any related action without the written agreement of the parties.

2.4 Confidentiality

- a. Any document or information supplied and/or disclosed in the course of the Adjudication will be kept confidential. An adjudicator will only disclose the same if required to do so by law, or pursuant to an order of a court, or with the consent of all the relevant parties.
- b. All communications to the Adjudicator are to be copied to the other party in the same manner and at the same time.

2.5 Confidentiality

National Construction Council shall coordinate the adjudication proceedings. Any document submitted to the adjudicator shall be copied to National Construction Council.

3.0 APPOINTMENT OF ADJUDICATOR

- 3.1 The Adjudicator shall be jointly appointed by the parties and may be named in the contract.
- 3.2 Where the adjudicator is not named in the contract or the parties fail to appoint the adjudicator, the Referring Party shall apply to the National Construction Council to be provided with a list of adjudicators and select three names within 7 days and submit to National Construction Council. Upon confirmation of their availability National Construction Council will require the Responding Party to select one name out of the three names within 7 days. If the responding party is not in agreement with the three names or will not respond to National Construction Council within 7 days, the National Construction Council shall proceed to appoint an adjudicator who shall not be one of the names proposed by the referring party.

4.0 NOTICE OF ADJUDICATION

- 4.1 Either party may give notice at any time of its intention to refer a dispute arising under the contract by giving a written notice of adjudication to the other party.

5.0 THE REFERRAL

- 5.1 The Referring Party shall within seven days of the date of the notice of adjudication send to the Adjudicator, with a copy to the other party, a written statement of the case which shall include but not limited to;
 - (a) Name and address and contact details of the parties
 - (c) The details and date of the contract between the Parties
 - (d) The issues which the Adjudicator is being asked to decide
 - (e) The information regarding the dispute and supporting documents
 - (f) The redress sought.

5.2 The Responding Party shall submit response to the adjudicator within 7 days of the date of referral. The period of response may be extended on the discretion of the Adjudicator.

5.3 The date of referral of the dispute to adjudication shall be the date upon which the Adjudicator receives the documents referred to in Rule 4.1 and the Adjudicator shall notify the Parties forthwith of the date.

6.0 POWERS OF ADJUDICATOR

6.1 The Adjudicator shall determine the matters set out in the notice of adjudication together with any other matters which the Parties and the Adjudicator agree that should be within the scope of the adjudication. Any question regarding the jurisdiction of the Adjudicator shall be determined by the Adjudicator.

6.2 The Adjudicator shall have complete discretion as to how to conduct the adjudication, and may establish the procedure and timetable, subject to any limitation that there may be in the Contract. Adjudicator may not be required to observe any rule of evidence, procedure or otherwise of any Court. Without prejudice to the generality of these powers, may;

- a) Direct the means of communication
- b) Ask for further written information
- c) Meet and question the parties and their representatives
- d) Open up, review and revise any decision opinion, instruction, direction, certificate or valuation made under or in connection with the Contract and which is relevant to the dispute
- e) Order and direct the payment of a sum of money
- f) Visit the site
- g) Request the production of documents or the attendance of people who could assist
- h) Set times for activities
- i) Proceed with the adjudication and reach a decision even if a Party fails to provide information as requested by the Adjudicator
- j) Issue such further directions as may be appropriate
- k) Obtain legal or technical advice having first notified the Parties of his intention.

7.0 THE DECISION

7.1 The Adjudicator shall reach a decision and notify the Parties within the time set out in the Contract. The Adjudicator may extend the period of making decision up to 14 days by notification to the parties. The adjudicator shall give reasons for decision.

7.2 The Adjudicator may on his own initiative, or at the request of either Party, correct a decision so as to remove any clerical or typographical error or ambiguity arising by accident or omission provided that the initiative is taken, or the request is made within 7

days of the notification of the decision to the Parties. The Adjudicator shall make corrections within 7 days of any request by a Party.

8.0 PAYMENT OF ADJUDICATOR'S FEES AND EXPENSES

- 8.1 The Parties shall be jointly and severally responsible for the adjudicator's fees and expenses including those of any legal or technical adviser (if any).
- 8.2 The Adjudicator may direct a Party to pay all or part of his fees and expenses. In the absence of such direction the Parties shall pay the fees and expenses in equal shares.
- 8.3 Fees and expenses in connection with adjudication shall be paid to the National Construction Council.

9.0 REPLACEMENT OF AN ADJUDICATOR

- 9.1 In the event an adjudicator dies or fails to act or resigns, a substitute adjudicator shall be appointed by the National Construction Council.
- 9.2 If the adjudicator is replaced, hearing previously held may be repeated at the discretion of the substitute adjudicator.

10.0 IMMUNITY OF ADJUDICATOR

- 10.1 No suit or other legal proceedings shall lie against an adjudicator with respect to anything done or omitted to be done in good faith in the discharge of the duties and functions of the adjudicator under these rules. Adjudicator shall not be compelled or required to give evidence in any arbitration or the court in connection with the same dispute where the adjudicator has acted or decided.

ADJUDICATION AGREEMENT

This agreement is made on the day of 20

Between

M/S
..... (Referring Party)
.....

M/S
..... (Responding Party)
.....

Hereinafter called '**the Parties**' of the one part

AND

.....
.....

Hereinafter called '**the Adjudicator**' of the other part.

WHEREAS disputes or differences have arisen between the parties under a contract dated and known as
..... and
these disputes or differences have been referred to adjudication in accordance with the NCC Adjudication rules (hereinafter called 'the Rules') and the Adjudicator has been requested to act.

IT IS NOW AGREED as follows.

- i. The rights and obligations of the Adjudicator and the parties shall be as set out in the rules.
 - ii. The Adjudicator hereby accepts the appointment and agrees to conduct the adjudication in accordance with the rules.
 - iii. The parties bind themselves jointly and severally to pay the Adjudicator's fees and expenses, in consideration of the carrying out of the adjudication in accordance with the rules as follows;
 - a. Hourly fees of TZS/USD
- OR**
- b. Lump sum fees of TZS/USD
 - iv. In consideration of the fees and other payments to be made by the parties herein, the adjudicator undertakes to act in accordance with the rules.

- v. The Parties and the Adjudicator shall at all times maintain the confidentiality of the adjudication and shall endeavor to ensure that anyone acting on their behalf or through them will do likewise, save with the consent of the other party which consent shall not be unreasonably refused.

Signed on behalf of:

Referring Party:

Name:

Signature:

Date:

Responding Party:

Name:

Signature:

Date:

Adjudicator:

Name:

Signature:

Date: