



NATIONAL ADJUDICATORS' LIST (NAMIBIA)  
ADMINISTRATED BY THE ENGINEERING PROFESSIONS ASSOCIATION OF NAMIBIA



## **INDEPENDENT NOMINATING AUTHORITY**

FOR THE NOMINATION OF MEMBERS OF DISPUTE ADJUDICATION BOARDS IN THE  
CONSTRUCTION INDUSTRY

# **Overview of the Procedures and Guidelines for the Nomination of Adjudicators**

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## FOREWORD

Construction disputes have in the past often been very disruptive, time consuming and expensive. It is thus positive to note that *adjudication* as a means of alternative dispute resolution has been introduced in most construction contracts in Namibia, and internationally.

Increasing demand for adjudication – and the need to have a cheaper, more cost effective dispute resolution procedure for SMEs, led the City of Windhoek, the Roads Authority as well as other larger employers in the industry to approach the Engineering Professions Association (EPA) with a proposal to establish and manage the National Adjudicators' List (NAL) to serve the whole construction industry in Namibia. The establishment of the NAL by the EPA was officially launched by the then Minister for Works, Transport and Communication, the Hon. Joel Kaapanda, on 27 November 2007, followed immediately by a workshop for Engineers and other Professionals to become familiar with the new tool.

It is well known that smaller construction firms and particularly SME contractors cannot afford the expensive and time consuming dispute mechanisms used in the past. Adjudication will thus be of value especially on construction contracts designed for execution by SME contractors. In this way SME contractors can also have access to the significant knowledge base of NAL-registered adjudicators.

This compilation of the applicable procedures and guidelines as well as applicable documents for the nomination of adjudicators will be useful to all who are involved in construction contracts in Namibia, as it not only clarifies all aspects of the process, but also explains the other functions of the independent nominating authority, the NAL.

Lastly I would like to use this opportunity to thank InWend (International Capacity Building, Germany) which has been supporting this project from inception.

A Al Jaf  
**PRESIDENT OF THE EPA**

## 1 INTRODUCTION

### 1.1 What is Dispute Adjudication

Due to the complexity and size of construction contracts, it is not unusual that disputes arise between the parties. These disputes can be settled through litigation (a court procedure) or through alternative, often more efficient processes. There are several forms of alternative dispute resolution contained in modern construction contracts. One of these is dispute adjudication which is a process by which a party to a construction contract can refer a dispute arising out of the contract to an impartial third party for a decision. For this purpose, modern standard forms of contract such as the NEC or FIDIC, commonly used in Namibia, provide for a Dispute Adjudication Board (DAB) to be established for every construction contract. This usually happens at the time the parties enter into the contract. A DAB consists of one or three adjudicators, depending on project size and complexity, which must be agreed upon by both the Employer and the Contractor.

**There are many benefits of adjudication when compared to other dispute resolution processes such as litigation or arbitration:**

**Cheaper:** Practical experience suggests that adjudication costs about 10% of the amount that the same dispute would cost to litigate or arbitrate. Only mediation is comparable in cost.

**Faster:** Adjudication is usually somewhat faster than mediation, and much faster than litigation or arbitration. Whereas a relatively complex construction litigation or arbitration will take about 2 to 3 years, the adjudication of such a dispute, including preparation time before and enforcement afterwards, typically takes 2 to 3 months.

**Fewer disputes:** Adjudication leads to less disputation, and to a faster cash flow down the contractual chain. The speed and relative cheapness of adjudication soon dispel a climate where contractors up the contractual chain hold up the cash flow by spurious disputation.

**Fewer insolvencies:** Without a right to adjudication, many smaller contractors have become insolvent due to the burden of lengthy delays in receiving payment for their work and/ or legal costs.

**Merits decide:** In traditional litigation or arbitration, it is not uncommon for a case to be decided on legal technicalities regardless of the merits in the underlying dispute. In adjudication, a decision is typically given only on the dispute itself.

### 1.2 Adjudicator Nominating Authority

There are various ways in which adjudicators can be selected for the purposes of establishing a DAB, The most efficient remains the use of an independent Nominating Authority. This involves a fairly uncomplicated process of the parties requesting an independent body to nominate an impartial, well qualified and experienced adjudicator. This is done with no interference of the parties, and leads to a nomination within a few days.

### 1.3 The National Adjudicators' List of Namibia (NAL)

Since modern standard forms of contract have been introduced in Namibia some ten years ago, the value of adjudication as a most effective form of dispute resolution became evident. However, the

need arose for competent adjudicators was recognised by some of the larger employers in the construction industry. The City of Windhoek, later joined by the Roads Authority of Namibia, embarked on accrediting persons with the necessary experience for their own use. Further training in contracts and dispute resolution was also offered. However it was soon realised that this was of national interest and the process should be managed on a national scale. It would further be necessary that an independent Nominating Authority be established, that could nominate as well as register suitably qualified adjudicators, provide training and development opportunities, and ensure that an adequate standard is maintained.

The Engineering Professions Association (EPA) has since established the National Adjudicators' List and now acts as a national Nominating Authority. The establishment of the NAL by the EPA was officially launched by the then Minister for Works, Transport and Communication, the Hon. Joel Kaapanda, on 27 November 2007.

The NAL is overseen by the **NAL Committee**, the members of which include representatives from major role players in the construction industry, as well as representatives from the EPA, including its President.

The NAL currently provides a service to the industry through the accreditation, registration and development of adjudicators and the impartial, rules-based nomination of adjudicators to a DAB, normally at the request of an Employer. The nomination service is provided at a fee that contributes towards making the NAL self-sustaining.

The NAL can further be approached to nominate knowledgeable persons in the construction industry that can assist contractors or junior staff of employers in dealing with contractual matters, or simply to give advice for purposes of dispute avoidance.

## 1.4 Forums

The **NAL Committee** has set up two forums described in more detail below, for the purpose of interfacing with key role players in the industry. It has appointed a 'Forum Convener' to facilitate communications on both forums, mainly by means of electronic mail.

### 1.4.1 The DAB FORUM

All registered adjudicators are enrolled as members of the DABFORUM. This forum is used by the NAL Committee to communicate matters to registered adjudicators, and may be used by members to raise any matter of common interest, but particularly:

- Submissions of adjudicators for continuous learning credits (refer to section 2.4).
- Matters of common interest such as applicable remuneration structures or similar.

#### 1.4.2 The NATDAB

The NATDAB was initially formed by the City of Windhoek and Roads Authority to communicate with other industry role players (particularly larger employer organisations with an interest in the construction industry). The NATDAB is constituted by representatives of some 15 such organisations, all having an interest in the availability of local adjudicators.

## 2 REGISTERED ADJUDICATORS

### 2.1 Evaluation and Accreditation

The evaluation and accreditation of Adjudicators is done in accordance with a strict set of requirements.

#### APPLICABLE DOCUMENT

- i Evaluation Criteria – attached as Appendix B1*
- ii Rules for Scoring Accreditation – Attached as Appendix B2*

The NAL requires Adjudicators to possess, among others, a professional qualification and statutory registration relevant to the field of expertise in which the Adjudicator is to be employed. Extensive experience in the administration of contracts and application of contract law is required, but a qualification in law is not.

The evaluation and accreditation of Adjudicators is done by the **Evaluation Committee** of the NAL, the members of which are representatives of major employer organisations in the construction industry, banks and the EPA.

### 2.2 Registration Categories

Accreditation provides for a career path, beginning at Trainee Adjudicator and progressing to Senior Adjudicator. Accreditation is dependent on relevant qualifications, training, experience and Continuing Professional Development credits.

The following registration categories are available:

Registration Categories	Credits Required
Minimum score for NAL adjudicator panel: Trainee Adjudicator	10
Minimum score for NAL adjudicator panel: Junior Adjudicator	25
Minimum score for NAL adjudicator panel: Adjudicator	40
Minimum score for NAL adjudicator panel: Senior Adjudicator	65

#### Maximum Contract Value\* per Category

Junior Adjudicators:	contracts up to N\$5,0 million
Adjudicators:	contracts up to N\$30.0 million

Senior Adjudicators: all contracts and consulting agreements

\* these are merely guidelines and may differ for some employers

## 2.3 Memorandum of Understanding

Accredited persons that wish to be registered on the NAL must enter into a Memorandum of Understanding with the EPA.

### APPLICABLE DOCUMENT

*Memorandum of Understanding - Adjudicators – attached as Appendix B3*

In essence the understanding is that the Adjudicator will conform to the procedures and requirements of the NAL, for example:

Upon nomination of a candidate for appointment as an adjudicator to the Dispute Adjudication Board of an Employer's project, the ultimate conclusion of such appointment is at the discretion of the Adjudicator, the Employer, and his Contractor for the project; subject to the EPA making such nomination in accordance with the applicable rules and procedures for the nomination of adjudicators registered on the NAL.

Recommending to the Employer such Adjudicator's professional and retainer fees as the EPA may from time to time determine as recommended fees; the negotiation and ultimate acceptance of fees being at the discretion of the Adjudicator, the Employer, and his Contractor for the project.

A nomination establishes no contractual relationship between the EPA, the Adjudicator and/or the Employer and Contractor, and any contractual relationship will, if at all, only exist between the Adjudicator, the Employer and the Contractor, as may be provided for in any Dispute Adjudication Agreement applicable to the Employer's project.

Adjudicators are issued with formal registration certificates indicating their registered category as well as the period for which they shall remain registered. The period of registration is usually two years, after which Adjudicators must prove that they have fulfilled certain continued learning requirements.

## 2.4 Continued Learning Requirement

The NAL Committee has adopted a policy requiring registered adjudicators to earn continuous learning credits for the purpose of maintaining the currency of their registration. The intention is to ensure regular exposure of adjudicators to this field, ensuring that the adjudicator stays up to date with industry trends and the law pertaining to construction contracts. The relevant requirements are compiled in a specific document which must be returned by adjudicators usually on an annual basis.

### APPLICABLE DOCUMENT

*i Continued Learning Rules – attached as Appendix B4*

*ii Continued Learning Return form – Attached as Appendix B5*

Adjudicators are required to keep track of their own points and to report these points to the Convener of the **DAB FORUM** (a platform used for publication of continued learning submissions) at specified intervals. Such report is made available to the Evaluation Committee to reconfirm the Adjudicator's registration status.

The continued learning credits are to be earned for the purpose of the adjudicator's registration **remaining current**. Therefore, the credits do not count towards the credits required for getting registered in, or upgraded to, a specific adjudicator category unless the credits happen to be scored for an item that is also included under the adjudicator application form's scoring rules

The process will be facilitated by means of a scorecard template, which Adjudicators will need to keep up to date themselves.

## 2.5 Adjudicator Performance Evaluation

In order to conforming to its commitment of ensuring an adequate standard of registered adjudicators the NAL is interested to monitor adjudicator performance. This is done by means of requesting information from employers and contractors that make use of adjudicators. This is done by means of the following document:

### APPLICABLE DOCUMENT

*Adjudicator Performance Report* – attached as **Appendix B6**

## 3 EMPLOYERS

### 3.1 Employer Categories

Employers are usually the initiators of construction contracts, and prescribe the type of contract to be used. Since most larger employer bodies in Namibia, such as parastatals and municipalities, use modern forms of contract, it has become necessary for them to have access to adjudicators.

Not all employers have the same need for adjudicators, or to the same extent. Some smaller employers, for example in the private sector, may let only a few contracts every year, while others may let numerous contracts. The NAL has made provision for three categories of 'Employer', depending on the individual needs. Employers requiring several adjudicator nominations annually can register with the NAL and enjoy reduced fees per nomination.

#### Categories of Employer:

- Employer not registered with the NAL (once off nomination)
- Employer registered as Minor Employer
- Employer registered as Major Employer

Each of the above categories have a unique annual fee (not applicable for employers that are not registered), and corresponding nomination fee.

### 3.2 Memorandum of Agreement

Employers that wish to have reduced nomination fees need to register as either Major or Minor Employers, and must enter into a Memorandum of Agreement with the EPA.

#### APPLICABLE DOCUMENT

#### *Memorandum of Agreement - Employers – attached as Appendix B7*

In such cases the EPA shall subscribe the Employer to the National Adjudicators' List for a period of one year, within which period the EPA will provide impartial adjudicator nomination services to the Employer / Contractors jointly for Adjudicators to be nominated to the Dispute Adjudication Boards of such projects, awarded to such Contractors, as the Employer may from time to time register with the EPA within the subscription period.

The agreements are based on the EPA's standard form but are subject to amendment upon discussion about employer's specific requirements.

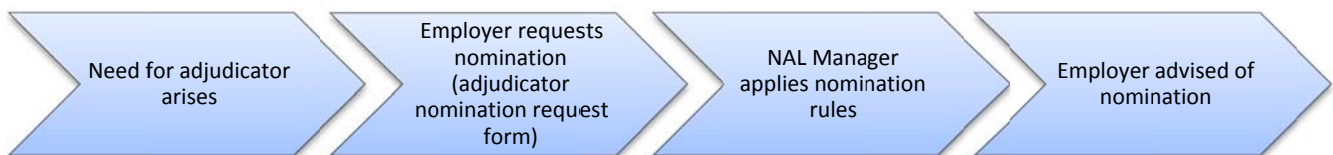
## 4 NOMINATION PROCESS

The EPA acts through the NAL as independent Nominating Authority. It fulfils this role by implementing a process that ensures impartiality and prevents interference or manipulation.

### APPLICABLE DOCUMENT

*Rules and Procedures for the Nomination of Adjudicators – attached as Appendix B8*

#### Overview of the nomination process:



### 4.1 The Need for Adjudicator Arises

Most modern standard forms of construction contract prescribe the formation of a Dispute (Adjudication) Board upon conclusion of the Contract, i.e. as soon as the parties enter into the contract. At this point the need for adjudicator(s) arises.

### 4.2 Request for Adjudicator

The Employer will request the EPA - NAL for the nomination of one or three adjudicators (as the case may be). The request form is available on the EPA website at [www.engineers-namibia.org](http://www.engineers-namibia.org).

### APPLICABLE DOCUMENT

*NAL Adjudicator Nomination Request Form – attached as Appendix A1*

Certain project related information is included on the request form, as well as preferences or requirements that may be relevant, such as the discipline preferred, or the location of the office of the adjudicator for improved logistics, or the category of adjudicator required depending on contract value (Junior Adjudicator / Adjudicator / Senior Adjudicator).

### 4.3 Sourcing an Adjudicator

The NAL Manager and Registrar make use of a computerised spreadsheet that automatically selects a registered Adjudicator from the NAL List, taking the Employer's / Contractor's preferences into account.

The NAL Manager will then approach the selected Adjudicator and enquire his availability for the particular project, as well as obtain confirmation of the Adjudicator's impartiality of either the Employer or the Contractor.

**APPLICABLE DOCUMENT**

*NAL Adjudicator Availability Enquiry Form* – **attached as Appendix A2**

#### 4.4 Nomination

The Registrar will inform the Employer of the nomination.

**APPLICABLE DOCUMENT**

*NAL Adjudicator Nomination Form* – **attached as Appendix A3**

The entire process usually takes around 7 days from receipt of the request form to submission of the nomination results to the Employer.

#### 4.5 Nomination Fees for Adjudicator Nomination

The nomination fee charged by the EPA covers its cost of maintaining the NAL and administering the nomination process. It varies for each category of Employer, and can be obtained upon request to the Registrar of the NAL.

## 5 REMUNERATION OF ADJUDICATORS

Remuneration of adjudicators is agreed between the parties of the dispute adjudication agreement, i.e. the Adjudicator, the Employer and the Contractor. The NAL Committee provide a recommended fee, which is agreed upon through consultation with the body of registered adjudicators and representatives of larger employer bodies.

At date of printing, the recommended hourly fee is as follows:

**Hourly fee: as a percentage of Government Gazetted Fee (currently N\$890.00)**

	% of gazetted fee	N\$
<b>Junior Adjudicator</b>	100	890.00
<b>Adjudicator</b>	120	1,068.00
<b>Senior Adjudicator</b>	140	1,246.00

THE END



## APPENDIX A

- A1 NAL Adjudicator Nomination Request Form
- A2 NAL Adjudicator Availability Enquiry Form
- A3 NAL Adjudicator Nomination Form

**APPENDIX A1: ENGINEERING PROFESSIONS ASSOCIATION - NAL****NAL ADJUDICATOR NOMINATION REQUEST**

The Employer and Contractor listed below herewith request the Engineering Professions Association of Namibia (EPA) to nominate:

One  or Three  (Please check applicable)

Adjudicator(s) registered on the National Adjudicators' List (NAL) to serve on the Dispute Adjudication Board of the Project listed below. The nomination shall be performed in accordance with the EPA-NAL RULES AND PROCEDURES FOR THE NOMINATION OF ADJUDICATORS ON THE NATIONAL ADJUDICATORS' LIST (copy available on request, or may be downloaded from [www.engineers-namibia.org](http://www.engineers-namibia.org)).

The Applicant's registration status with the EPA-NAL is (Please check applicable):

Registered as a Major Employer  Registered as a Minor Employer  Not Registered

1. CONTACT DETAILS	Employer	Employer's Engineer	Contractor
Name			
Physical Address			
Postal Address			
Town / City			
Representative's Name			
Telephone			
Fax			
Cellphone			
Email			

2. PROJECT DETAILS	Description		
Number / Title of Contract			
Tender Value [N\$]		Site Location	
Commencement Date		Time for Completion	
Short Project Description <sup>1</sup>			

**3. SPECIAL NOMINATION REQUESTS (Should the Applicant have any special requests regarding the**

<sup>1</sup> E.g.: construction of roads and bridges; sewer reticulation; pump station; civil works for plant x, etc.

*(nomination of an Adjudicator, these should please be stated below)*

#### 4. CONDITIONS

The Applicant takes note that the EPA-NAL fees for the nomination of an Adjudicator are as follows, and undertakes to pay the nomination fees on receipt of an invoice from the EPA:

Registered as Major Employer	N\$ 1 000.00
Registered as Minor Employer	N\$ 1 500.00
Non-Registered	N\$ 2 000.00

#### 5. SIGNED BY APPLICANT

Signed At		Date	
Name of Applicant's Organisation			
Name of Applicant's Representative			
Signature of Applicant's Representative			

6. EPA – NAL REGISTRATION DETAILS	Description
Nomination Request Number Allocated	
Application Received by Date	
Application Received by Name	
Acknowledgment of Receipt by Date	
Nomination Fulfilled by Date	

**APPENDIX A2: ENGINEERING PROFESSIONS ASSOCIATION - NAL**

**NAL ADJUDICATOR AVAILABILITY ENQUIRY**

The Engineering Professions Association of Namibia (EPA) has received a request for the nomination of (an) Adjudicator(s) registered on the National Adjudicators' List (NAL) to serve on the Dispute Adjudication Board of the Project of which the details are provided below.

1. CONTACT DETAILS	Employer	Employer's Engineer	Contractor
Name			
Physical Address			
Postal Address			
Town / City			
2. PROJECT DETAILS	Description		
Number / Title of Contract			
Tender Value [N\$]		Site Location	
Commencement Date		Completion Time	
Short Project Description			
3. ADJUDICATOR'S AVAILABILITY	Information		
I, the undersigned Adjudicator, am:	<i>(Please check applicable)</i>		
Available for nomination	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
In the employ of either of the contracting parties, either as an agent or otherwise	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
Part of the 'named personnel' on any project involving either contracting party	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
In a professional or other relationship with either party at the time of enquiry	Yes	<input type="checkbox"/>	No <input type="checkbox"/>
4. SIGNED BY ADJUDICATOR			
Signed At		Date	
Adjudicator's Name		Signature	

**APPENDIX A3: ENGINEERING PROFESSIONS ASSOCIATION - NAL**

**NAL ADJUDICATOR NOMINATION**

The Head of Organisation

Organisation Name

Address Line 1

Address Line 2

City or Town

Nomination No.:	
Date:	

**ATTENTION:**

Dear Sir / Madam,

**NOMINATION OF AN ADJUDICATOR REGISTERED ON THE NATIONAL ADJUDICATORS' LIST**

In response to your request, dated yyyy-mm-dd for the nomination of:

One  or Three  (Please check applicable)

Adjudicator(s) registered on the National Adjudicators' List (NAL) to serve on the Dispute Adjudication Board (DAB) of your Project:

Number / Title of Contract:

EPA herewith has the pleasure of nominating the following Adjudicator(s):

1. NOMINATION	Adjudicator 1	Adjudicator 2	Adjudicator 3
Name			
Adjudicator Category	<Choose from list>	<Choose from list>	<Choose from list>
Postal Address			
City / Town			
Telephone			
Fax			
Mobile Phone			

Email

## 2. ADJUDICATOR(S) RECOMMENDED FEES

The tender value determines the **recommended category and hourly professional fee** of the registered Adjudicator as tabulated below. It should be noted that the fees, retainers and disbursement allowances constitute a recommendation, and that the final agreement on these rests with the Employer and the Adjudicator(s) concerned.

### Category

Junior Adjudicator: for contracts up to N\$5,0 million

Adjudicator: for contracts up to N\$30.0 million

Senior Adjudicators: all contracts and consulting agreements

### Hourly Fee as % of Gazetted Fee

100 %

120 %

140 %

Where an Adjudicator registered in the categories 'Senior' or 'Adjudicator' serves on the DAB of a contract of lower value than the maximum value indicated for a lower adjudicator category, such Adjudicator may be reimbursed at the lower fees as applicable for the lower category.

Please note that currently no Senior Adjudicators are registered on the National Adjudicators' List. If the EPA has made a nomination of an Adjudicator for the DAB of a project with a value exceeding the maximum project value recommended for the appointment of an Adjudicator, this was done with the understanding that you requested a nomination despite being advised of this fact.

The **recommended retainer fee** payable to an Adjudicator (irrespective of grading) shall be as follows:

### Contract Value

Contract Value < N\$5 million

Contract Value N\$5 million to N\$15 million

Contract Value > N\$15 million

Where multiple small contracts can be combined to make up one large Project

### Retainer Fee

Nil

N\$ 1 500 / month

N\$ 2 000 / month

N\$ 1 000 / month /  
N\$ 10 million or pro  
rata

The Retainer Fee shall be paid per calendar month, and shall be considered as payment in full for:

- a) Being available on 7 days notice for all site visits and hearings;
- b) Becoming and remaining conversant with the minutes of official site meetings between the Parties, and maintaining a relevant file; and
- c) All office expenses relating to these services.

Where travelling and accommodation disbursements arise due to the Adjudicator having to travel to an area outside the area of the municipality where he is usually resident, such disbursements must be reimbursed at cost.



## APPENDIX B

- B1 Evaluation Criteria
- B2 Rules for Scoring
- B3 Memorandum of Understanding - Adjudicators
- B4 Continued Learning Rules
- B5 Continued Learning Return form
- B6 Adjudicator Performance Report
- B7 Memorandum of Agreement - Employers
- B8 Rules and Procedures for the Nomination of Adjudicators

APPENDIX B1: ENGINEERING PROFESSIONS ASSOCIATION – NAL

**APPLICATION FORM FOR REGISTRATION ON THE EPA NATIONAL ADJUDICATORS' LIST**

APPLICANT'S FULL NAME:  
 RESIDENTIAL ADDRESS:  
 POSTAL ADDRESS:  
 TELEPHONE / FAX:  
 EMAIL:

**NEW APPLICANTS: Enter score claimed**  
**UPGRADING ONLY: Enter additional score. Enter current score under NEW APPLICANTS**

ITEM	SELF-EVALUATION OF APPLICANT FOR REGISTRATION / UPGRADING			
A	PROFESSIONAL	CREDITS	SCORE	SCORE
A.1	Registration with Professional Council or Institute	6		
A.2	Completed 8 yrs experience after registration	5		
A.3	Each year beyond 8 yrs after registration	0.5 (6 pts max)		
A4.	Qualification in ARBITRATION (Diploma: 4; certificate: 2)	2 or 4		
A.5	Registered as ARBITRATOR with a professional body	2		
<b>SUBTOTAL A</b>				

B	ADJUDICATION/CONTRACT EXPERIENCE	CREDITS	SCORE	SCORE
B.1	Each adjudicator course attended	3		
B.2	Each course in construction contract law attended	2		
B.3	Each FIDIC accredited adjudicator / dispute resolution course attended	4		
B.4	Listing on the FIDIC President's List	5		
B.5	Each year acting as 'the Engineer' on Contracts (appointed/named)	1		
B.6	Each year acting as 'the Engineer's Representative' (delegated)	1		
B.7	Each year acting as Contractor's Representative	1		
B.8	Each year being appointed as Adjudicator (DAB Agreement)	2		
B.9	Each Adjudicator's decision	1		
B.10	Each position paper prepared on behalf of disputing party	1		
<b>SUBTOTAL B</b>				

<b>TOTAL SCORE [A + B]</b>		
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*Rules for Scoring are attached*  
*Documentary proof for points scored to be attached*

Notes	Credits Required
Minimum score for NAL adjudicator panel: Junior Adjudicator	25
Minimum score for NAL adjudicator panel: Adjudicator	40
Minimum score for NAL adjudicator panel: Senior Adjudicator	65
Junior Adjudicators: for contracts up to N\$5,0 million	
Adjudicators: for contracts up to N\$30.0 million	
Senior Adjudicators: all contracts and consulting agreements	

## APPENDIX B2: ENGINEERING PROFESSIONS ASSOCIATION - NAL

### RULES FOR SCORING APPLICANTS FOR LISTING ON THE EPA NATIONAL ADJUDICATORS' LIST

#### A PROFESSIONAL

##### A.1 Registration with Professional Council or Institute

This is part of the minimum criteria and must be fulfilled by all Applicants. The Applicant must be registered as Professional Engineer, Incorporated Engineer, Architect, Quantity Surveyor or Legal Practitioner with the relevant professional council or institute. Proof: Academic education certificate and professional registration certificate. Full credits scored: 6

##### A.2 8 yrs experience after registration

This is part of the minimum criteria that must be fulfilled by Applicants for being listed as Adjudicator or Senior Adjudicator. Eight years of occupation in the field of registration as required under A.1. Proof: Applicant's curriculum vitae. Full credits scored: 5

##### A.3 Each year after 8 yrs after registration

Each year of occupation in the field of registration as required under A.1 and A.2 above, counted from the 9th year. 0.5 credits scored per year. Maximum credits: 6

##### A.4 Qualification in ARBITRATION

Proof: Qualification certificate. 4 credits scored for a diploma or 2 for a certificate in arbitration.

##### A.5 Registered as ARBITRATOR with a professional body

Proof: Registration certificate.

#### B ADJUDICATION/CONTRACT EXPERIENCE

##### B.1 Each adjudicator course attended (except as scored elsewhere)

Proof: Certificate. 3 credits scored per individual course attended.

##### B.2 Each course in construction contract law attended (except as scored elsewhere)

This need not be FIDIC courses specifically, but could include other forms of construction contract such as NEC, GCC etc. Proof: Certificate. Credits scored per individual course.

##### B.3 Each FIDIC accredited adjudicator / dispute resolution course attended (except as scored elsewhere)

FIDIC offers courses in adjudication and dispute resolution directly. Proof: Certificate. Credits scored per individual course.

##### B.4 Listing on the FIDIC President's List

To become listed on the FIDIC President's List generally requires that a FIDIC accredited adjudicator workshop be attended. Proof: Listing on the FIDIC President's Adjudicator list.

##### B.5 Each year acting as 'the Engineer' on Contracts (appointed/named)

Proof: Letter of (named) appointment, or the relevant pages of the construction contract. Only years where such duties were executed for more than 9 months of that year are to be counted; e.g. if there were two contracts of 6 months each, only 1 year will be counted. 1 credit per such year scored.

##### B.6 Each year acting as 'the Engineer's Representative' (delegated)

Proof: Delegation by Engineer or otherwise. Only years where such duties were executed for more than 9 months of that year are to be counted; e.g. if there were two contracts of 6 months each, only 1 year will be counted. 1 credit per such year scored.

##### B.7 Each year acting as Contractor's Representative

Proof: Appointment as Site Agent or Contractor's Representative / Contract Manager on contracts of value exceeding N\$2.0 million. Only years where such duties were executed for more than 9 months of that year are to be counted; e.g. if there were two contracts of 6 months each, only 1 year will be counted. 1 credit per such year scored.

##### B.8 Each year being appointed as Adjudicator (DAB Agreement)

Proof: Tri-partite agreement. 2 credits scored per such year.

##### B.9 Each Adjudicator's decision

Only decisions taken as the appointed adjudicator on the relevant contract will be counted. Proof: Reference to each relevant decision, the parties, and date of the decision. 1 credit scored per decision.

##### B.10 Each position paper prepared on behalf of disputing party

Only position papers prepared on behalf of one of the parties in adjudication, mediation or arbitration cases will be counted. The mere handling of contractor's or employer's claims, for example, does not qualify. Proof: Reference to the relevant decision, the parties, and date of the decision, as well as the party represented. 1 credit scored per decision.

#### C GENERAL APPLICATION REQUIREMENTS

##### C.1 Form of Application

1. The Applicant must submit a completed application on the EPA-NAL application form, in electronic form only. It is the Applicant's responsibility to fill in his or her own assessment of the score earned under each item, in accordance with the above rules for scoring. An incomplete application may be referred back to the Applicant, and could result in missing the closing date for applications.
2. NAL-registered adjudicators applying for an upgrade of their registration need only enter the additional scores claimed, over and above those scores that have previously been awarded by the NAL Evaluation Committee. A registered adjudicator may request the NAL Registrar to provide a copy of his or her previous scores as awarded by the Committee.

##### C.2 Documentary Proof

1. The required proof is briefly indicated in the description of each item under parts A and B above. Regarding such proof, the Applicant should carefully take note of the following:
2. NAL-registered adjudicators applying for an upgrade of their registration need only submit additional proof for the additional points claimed. Please note that an updated CV should always be submitted.
3. In the case of educational and professional registration certificates, only certificates issued by accredited or otherwise recognised institutions will be accepted.
4. In the case of courses, only course certificates issued by accredited or otherwise recognised training institutions will be accepted. Only courses with materially different content will be scored individually – no score will be awarded for a repetition of courses.
5. In the case of all required proof, the applicable documents must be submitted together with the application in electronic format only. It is the Applicant's responsibility to scan hardcopies of documents into electronic form as necessary. Electronic documents will be accepted in the following formats: Microsoft Office suite, Adobe PDF, TIF, JPG and TXT.
6. Whilst documents submitted in accordance with the above instructions will be accepted by the NAL Evaluation Committee for the purpose of evaluating an application, the EPA and the Committee nevertheless reserve the right to subsequently require the Applicant to submit an original, certified, or signed hardcopy, as the case may be, of any document for verification purposes.

##### C.3 Submission of Applications

Applications must be submitted fully in electronic form, as specified above, either by email or hand-delivery to the NAL Registrar, not later than such closing date and time as may be specified.

**APPENDIX B3: ENGINEERING PROFESSIONS ASSOCIATION - NAL**

**MEMORANDUM OF UNDERSTANDING**

**Between:**

The Engineering Professions Association of Namibia

As the one Party ("the EPA")

Herein represented by the President of the EPA

**And:**

Name \_\_\_\_\_

Of \_\_\_\_\_

\_\_\_\_\_

*(Insert address and contact details above)*

As the other Party ("the Adjudicator")

**The EPA intending to present to Employers its**

**OFFER FOR THE ESTABLISHMENT AND MANAGEMENT OF THE NATIONAL ADJUDICATORS' LIST ("THE NAL") BY THE EPA ("THE OFFER")**

**And the Adjudicator having taken note of the intentions of the EPA and the contents of the Offer;**

**The Parties have reached the following common understanding:**

- 1) The Adjudicator is desirous to be registered as an adjudicator in such grade as may from time to time be determined by the EPA in accordance with the rules, procedures and standards applicable to the registration of adjudicators on the NAL.
- 2) The Adjudicator has no objection to the EPA:
  - a) Publishing his or her name as being registered on the NAL as an adjudicator in the applicable grade;
  - b) Nominating the Adjudicator as a candidate for appointment as an adjudicator to the Dispute Adjudication Board of an Employer's project, the ultimate conclusion of such appointment being at the discretion of the Adjudicator, the Employer, and his Contractor for the project; subject to the EPA making such nomination in accordance with the applicable rules and procedures for the nomination of adjudicators registered on the NAL; and
  - c) Recommending to the Employer such Adjudicator's professional and retainer fees as the EPA may from time to time determine as recommended fees; the negotiation and ultimate acceptance of fees being at the discretion of the Adjudicator, the Employer, and his Contractor for the project.
- 3) The Adjudicator has taken note and accepts that this Memorandum of Understanding:
  - a) Establishes no contractual relationship between the EPA, the Adjudicator and/or the Employer and Contractor, and that any contractual relationship will, if at all, only exist between the Adjudicator, the Employer and the Contractor, as may be provided for in any Dispute Adjudication Agreement applicable to the Employer's project; and
  - b) Entails no consideration between the EPA and the Adjudicator.

- 4) The Adjudicator acknowledges having been informed that the rendering of his or her adjudication services may expose the Adjudicator to risks and claims that might not be covered by normal professional indemnity insurance, that the Adjudicator is responsible for procuring adequate protection against such risks and claims, and that the EPA accepts no liability in respect thereof.
- 5) The term of this Memorandum shall be a period of two years from the date of the Adjudicator's registration or re-registration on the NAL, unless rescinded by either Party giving not less than 60 days' written notice to the other Party.

**Signed:**

At \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

For the EPA: \_\_\_\_\_

Name / Designation: JA Cilliers, President, EPA

Witness

For the Adjudicator: \_\_\_\_\_

Name

Witness

## NATIONAL ADJUDICATORS' LIST

### CONTINUOUS LEARNING REQUIREMENTS

In order that an adjudicator listed on the National Adjudicators' List (NAL) stays abreast of developments in dispute resolution, he must contribute on the DABFORUM (a forum initiated especially for listed adjudicators). This can be done in either of several ways:

- |  |                                    |
|--|------------------------------------|
| 1. Inform the forum of a relevant, interesting website, giving a brief introduction to the website and why it should be of interest to adjudicators.   | 1 credit each                      |
| 2. Inform the forum of interesting statistics involving dispute resolution in other countries.   | 2 credits each                     |
| 3. Case law: past case law relevant to construction claims and / or disputes (RSA, Namibia or SADC) giving a brief overview of the case.   | 4 credits each                     |
| 4. Case law: past case law relevant to construction claims and / or disputes (internationally) giving a brief overview of the case.  | 3 credits each                     |
| 5. Give examples of actual adjudication cases (including possible decision), but ensuring no reference is made to the particular contract or either of the parties or the engineer involved. | 4 credits each                     |
| 6. Put a case or problem to the forum and convene the resultant/ pursuant discussion for a maximum period of 3 weeks.  | 5 credits for the event and period |
| a) Convener  |                                    |
| b) Participant   | 3 credits for the event and period |
| 7. Paste an interesting article pertaining to adjudication of contract law or similar relevant material.   | 3 credits each                     |
| 8. Present an adjudicated case that was brought before a court of law, stating the reason and presenting the outcome of the case.  | 2 credits each                     |

### REQUIRED CREDITS

In order to qualify for continued listing, the Adjudicator must achieve at least 7 credits per year.

Adjudicators are required to keep track of their own points and to report these points to the Evaluation Committee on an annual or biennial basis (as required by the Evaluation Committee from time to time and upon its giving prior notice of 14 days) to reconfirm the adjudicator's registration.

The 'continuous learning' credits are to be earned for the purpose of the adjudicator's registration **remaining current**. Therefore, the credits do not count towards the credits required for getting registered in, or upgraded to, a specific adjudicator category unless the credits happen to be scored for an item that is also included under the adjudicator application form's scoring rules.

# NATIONAL ADJUDICATOR LIST (NAL)

## CONTINUED LEARNING CREDITS REPORT

ADJUDICATOR:.....

PERIOD:.....

EVENT	CREDITS	DATE	CREDITS ACHIEVED
1. Inform the forum of a relevant, interesting website, giving a brief introduction to the website and why it should be of interest to adjudicators.	1 credit each		
2. Inform the forum of interesting statistics involving dispute resolution in other countries.	2 credits each		
3. Case law: past case law relevant to construction claims and / or disputes (RSA, Namibia or SADC) giving a brief overview of the case.	4 credits each		
4. Case law: past case law relevant to construction claims and / or disputes (internationally) giving a brief overview of the case.	3 credits each		
5. Give examples of actual adjudication cases (including possible decision), but ensuring no reference is made to the particular contract or either of the parties or the engineer involved.	4 credits each		
6. Put a case or problem to the forum and convene the resultant/ pursuant discussion for a maximum period of 3 weeks. a) Convener b) Participant	5 credits for the event and period 3 credits for the event and period		
7. Paste an interesting article pertaining to adjudication of contract law or similar relevant material.	3 credits each		
8. Present an adjudicated case that was brought before a court of law, stating the reason and presenting the outcome of the case.	2 credits each		
		<b>TOTAL:</b>	

### REQUIRED CREDITS

In order to qualify for continued listing, the Adjudicator must achieve at least 7 credits per year. Adjudicators are required to keep track of their own points and to report these points to the Evaluation Committee on an annual or biennial basis (as required by the Evaluation Committee from time to time and upon its giving prior notice of 14 days) to reconfirm the adjudicator's registration. The 'continuous learning' credits are to be earned for the purpose of the adjudicator's registration remaining current. Therefore, the credits do not count towards the credits required for getting registered in, or upgraded to, a specific adjudicator category unless the credits happen to be scored for an item that is also included under the adjudicator application form's scoring rules.

The above record is true and correct:

.....  
signature / date

PO Box 21885 • Windhoek • Namibia  
Tel/Fax: +264-61-223009  
Website: [www.engineers-namibia.org](http://www.engineers-namibia.org)  
E-mail: [epa@africaonline.com.na](mailto:epa@africaonline.com.na)



*Engineering Professions  
Association of Namibia*



**APPENDIX B7: ENGINEERING PROFESSIONS ASSOCIATION - NAL**

**Memorandum of Agreement – Employers**

**Between:**

The Engineering Professions Association of Namibia

As the one Party ("the EPA")

Herein represented by the President of the EPA

**And:**

The \_\_\_\_\_

Of \_\_\_\_\_

*(Insert address and contact details above)*

As the other Party ("the Employer")

Herein represented by \_\_\_\_\_

Name

Designation

**The EPA having presented to the Employer its**

**OFFER FOR THE ESTABLISHMENT AND MANAGEMENT OF THE NATIONAL ADJUDICATORS' LIST ("THE NAL") BY THE EPA ("THE OFFER")**

**And the Employer having accepted the Offer;**

**The Parties agree as follows** *(insert the applicable information, delete which is not applicable\*, and both Parties to countersign for the deletion(s) and/or insertion(s) as the case may be):*

\*1. The EPA shall provide to the Employer / Contractor jointly an impartial ad-hoc adjudicator nomination service for \*one / \*three Adjudicators to be nominated to the Dispute Adjudication Board (DAB) for the project specified below:

Number / Title of contract: \_\_\_\_\_

Contractor's name: \_\_\_\_\_

Engineer's name: \_\_\_\_\_

Tender Value: N\$ \_\_\_\_\_

Location of the site: \_\_\_\_\_

Short description of contract (eg construction of \_\_\_\_\_

roads and bridges; sewer reticulation; \_\_\_\_\_

civil works for plant x, etc): \_\_\_\_\_

Commencement date and time for completion: \_\_\_\_\_

For a Nomination Fee, per adjudicator per DAB of N\$ \_\_\_\_\_

**Or: \*2.** The EPA shall subscribe the Employer to the National Adjudicators' List for a period of one year, within which period the EPA will provide impartial adjudicator nomination services to the Employer / Contractors jointly for Adjudicators to be nominated to the Dispute Adjudication Boards of such projects, awarded to such Contractors, as the Employer may from time to time register with the EPA within the subscription period:

For the subscription period from: \_\_\_\_\_ to \_\_\_\_\_

As a: \*Major / \*Minor Employer

For an Annual Subscription Fee of N\$ \_\_\_\_\_

And a Nomination Fee, per adjudicator per DAB of N\$ \_\_\_\_\_

3. The Employer hereby agrees to indemnify the EPA against any claim whatsoever arising as a result of the Parties exercising their obligations and/or rights in accordance with this Memorandum of Agreement.

**Signed:**

At \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_

For the EPA: \_\_\_\_\_

Name / Designation: JA Cilliers, President, EPA

Witness

For the Employer: \_\_\_\_\_

Name / Designation

Witness

Of Authorised Signatory

## APPENDIX B8: ENGINEERING PROFESSIONS ASSOCIATION - NAL

### RULES AND PROCEDURES FOR THE NOMINATION OF ADJUDICATORS ON THE NATIONAL ADJUDICATORS' LIST

Version: July 2008

- 1) Nominations of adjudicators registered on the NAL will be made at the request of Employer organisations (contracting party) for a nomination.
- 2) The **request for nomination** shall be addressed to the Registrar of the NAL, and shall contain the following information regarding the contract:
  - a) Number of Adjudicators required (one or three);
  - b) Title and number of contract;
  - c) Employer's name;
  - d) Contractor's name;
  - e) Engineer's name;
  - f) Tender Value;
  - g) Location of the site;
  - h) Short description of contract (eg construction of roads and bridges; sewer reticulation; pump station; civil works for plant x, etc); and
  - i) Commencement date and time for completion.
- 3) The **request for nomination** shall be forwarded by the Registrar to adjudicators registered on the NAL as an **enquiry for availability**, as follows:
  - a) A strict rotational basis shall be used;
  - b) The tender value shall be used to determine the required grade and recommended hourly professional fee of the registered adjudicator as follows:

Grade	Hourly Fee as % of Gazetted Fee
Junior Adjudicator: for contracts up to N\$5,0 million	100 %
Adjudicator: for contracts up to N\$30.0 million	120 %
Senior Adjudicators: all contracts and consulting agreements	140 %

- c) Adjudicators registered in the grades 'Senior' or 'Adjudicator' may be approached for contracts of lower values but would then be reimbursed at the lower fees as applicable for the lower grades.
- 4) The **recommended retainer fee** payable to an Adjudicator (irrespective of grading) shall be as follows:
  - a) Contract Value < N\$5 million – no retainer fee
  - b) Contract Value N\$5 million to N\$15 million – retainer fee N\$1500 per month.
  - c) Contract Value > N\$15 million – retainer fee N\$2000 per month

- d) Where multiple small contracts can be combined to make up one large Project: retainer fee to be N\$1000 per month for every N\$10 million, or pro-rata thereof.
  - e) The Retainer Fee shall be paid per calendar month, and shall be considered as payment in full for:
    - i) Being available on 7 days notice for all site visits and hearings;
    - ii) Becoming and remaining conversant with the minutes of official site meetings between the Parties, and maintaining a relevant file; and
    - iii) All office expenses relating to these services.
  - f) Where travelling and accommodation disbursements arise due to the Adjudicator having to travel to an area outside the area of the municipality where he is usually resident, such disbursements must be reimbursed at cost.
- 5) Upon receipt of the **enquiry**, the registered adjudicator shall reply to the Registrar of the NAL within 3 working days (failing which such enquiry would become void and the Registrar would approach the following registered adjudicator on the NAL), as follows:
    - a) The registered adjudicator shall confirm his or her a) availability to act as adjudicator on the particular contract, or b) his or her unavailability;
    - b) In case of a), availability, confirm that s/he is not in the employ of either of the contracting parties, either as agent or otherwise, is not part of the 'named personnel' on any project where either contracting party is involved, and that no professional or other relationship exists at the time of enquiry.
  - 6) On receipt of confirmation of availability of a registered adjudicator and the acceptance of the adjudicator by both contracting parties, the Registrar shall reply to the Employer as follows (**nomination**):
    - a) Provide the name and category of the nominated adjudicator;
    - b) Provide contact details of the registered adjudicator;
    - c) Provide the proposed fees (retainer fee and hourly fee) for adjudication;
    - d) Attach a copy of the invoice for the nomination fee.
  - 7) The **nomination fee** shall be the responsibility of the two contracting parties (Employer and Contractor), and shall be payable upon receipt of the invoice for the nomination fee.
  - 8) The **nomination fee** shall be as determined by the EPA from time to time, in consultation with the NAL Committee, and will be made available on request to a party requesting a nomination.
  - 9) If the contracting parties cannot agree on a nomination made by the EPA, the EPA will make a new nomination free of charge.
  - 10) If the contracting parties cannot agree on nominations made by any other party than the EPA, the President of the EPA may be approached for an impartial decision, subject to such fee as may be agreed in the specific case.