

# CEDR Solve Rules for Construction Adjudication

*Incorporating provisions for mediation*

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## CEDR Solve Rules for Construction Adjudication

(incorporating provisions for mediation)

### Commencing adjudication and nomination of the Adjudicator

- 1 Any party to a construction contract (the "referring party") may give written notice (the "notice of adjudication") of their intention to refer any dispute arising under or in connection with the contract, to adjudication.

The notice of adjudication shall be given to every other party to the contract.

The notice of adjudication shall set out briefly the:

- nature and a brief description of the dispute and of the parties involved.
- details of where and when the dispute arose.
- nature of the redress which is sought, and
- names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices).

A copy of the notice of adjudication shall be sent by the referring party to the Adjudicator, if named in the contract, at the same time as it is sent to the other Party(ies). The Adjudicator shall, within 2 days of receiving the Notice, confirm in writing to the Parties that he or she is available to act.

- 2 If no Adjudicator is named in the contract, or if the named Adjudicator does not confirm his or her availability to act, then the Referring Party shall immediately apply to the Centre for Effective Dispute Resolution ('CEDR Solve') using CEDR Solve's application form to nominate an Adjudicator. CEDR Solve shall nominate an Adjudicator and communicate the nomination to all the Parties within 3 days of receipt of:

- the completed application form
- a copy of the notice of adjudication

The Adjudicator shall, within 24 hours of receipt of the nomination, confirm in writing to the Parties that he or she is available to act, whether in response to receiving the Notice or to a nomination by CEDR Solve. The Adjudicator shall provide to them and to CEDR Solve, at the same time, a copy of the terms on which he or she is prepared to act including information regarding fees and expenses.

### Conduct of the adjudication

- 3 Where an adjudicator has been selected in accordance with paragraphs 1 or 2, the referring party shall, not later than seven days from the date of the notice of adjudication, refer the dispute in writing (the "referral notice") to the adjudicator. Copies of, or relevant extracts from, the construction contract and such other documents as the referring party intend to rely upon shall accompany the referral notice.
- 4 The referring party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs 1 and 2, send copies of those documents to every other party to the dispute.
- 5 Under these rules the "date of referral" is the date on which both the Adjudicator and the other party(ies) receive the documents referred to paragraphs 1 and 2 from the referring party.
- 6 The Adjudicator shall reach a decision within 28 days of the date of referral. Subject to the Adjudicator's agreement, this period may be extended by 14 days with the consent of the referring party or longer if agreed by all the parties.
- 7 The Adjudicator may take the initiative in ascertaining the facts and the law.
- 8 The Adjudicator shall establish the timetable and procedure for the adjudication which may include the consideration of:
  - the extent, form and time limits applying to any documentary or oral submission of the parties
  - site visits or inspections
  - meeting the parties
  - issuing particular directions
  - the appointment of an Expert or Assessor subject to paragraph 13 of these rules.
- 9 Copies of all documents submitted by a party to the Adjudicator shall be sent simultaneously and by the same method to the other party(ies). Similarly, all documents issued by the Adjudicator shall be sent simultaneously to the parties.
- 10 The Adjudicator shall not take into consideration any document or statement, whether of a party or Witness, that has not been made available to the other party(ies) for comment.
- 11 Any failure by any party to respond to any request or direction by the Adjudicator shall not invalidate the adjudication or the Adjudicator's decision.
- 12 A party may at any time request additional parties to be joined in the adjudication. Joinder of additional parties shall be subject to the agreement of the Adjudicator, the existing parties and additional parties.

13 The Adjudicator may, at any time, obtain legal or technical advice on any matter provided that the parties are informed with reasons beforehand. Prior to making the decision, the Adjudicator shall provide the parties with copies of any written advice so obtained.

### **Decision of the Adjudicator**

14 The Adjudicator shall decide the dispute acting impartially and in good faith. The Adjudicator shall have the power to open up, review and revise any certificate, decision, direction, instruction, notice, requirement or valuation made under the contract to which the dispute relates except where the contract precludes this.

15 The Adjudicator may decide any other matters which the Adjudicator determines should be taken into account in deciding the dispute.

16 On reaching his / her decision the Adjudicator will communicate the fact to the parties and may invite them to take part in mediation in accordance with the time limits set out in paragraphs 28-31. If the parties decline the offer to mediate the Adjudicator shall communicate the decision in writing to the parties in accordance with the time limits set out in paragraph 6.

17 The Adjudicator shall give reasons with the decision unless the parties otherwise agree.

18 The Adjudicator may, on his or her own initiative or at the request of a party made within 5 days of the date that the decision is communicated to the parties, correct the decision in respect of any typographical or arithmetical error as a result of an accidental slip or omission.

19 The Adjudicator's decision shall be binding unless or until the dispute is finally determined by agreement, court proceedings or by reference to arbitration in accordance with the contract. Unless otherwise agreed by the parties, the Court or the Arbitrator(s) shall not be bound by the Adjudicator's decision.

### **Enforcement**

20 The parties shall implement the Adjudicator's decision without delay and shall be entitled to such relief or remedies as are set out in the decision.

21 Any payment to be made in accordance with the Adjudicator's decision shall be paid in full without the paying party(ies) having a right of set-off, counterclaim or abatement.

### **Parties' costs**

- 22 Each party shall bear its own costs. The Adjudicator may not decide the parties' legal and other costs arising out of or in connection with the adjudication unless the parties otherwise agree.

### **Fees and expenses of the Adjudicator**

- 23 The parties shall be jointly and severally responsible for the Adjudicator's fees and expenses including the fees and expenses of any legal or technical adviser instructed under paragraph 13.
- 24 In the decision, the Adjudicator shall have discretion to apportion liability with regard to the Adjudicator's fees and expenses referred to in paragraph 23.

### **Resignation of the Adjudicator**

- 25 The Adjudicator shall resign if:
- the dispute has already been referred to Adjudication and a decision has been made
  - the Adjudicator is not competent to decide because the nature of the dispute is significantly different to the dispute referred in the notice of adjudication, or
  - the Adjudicator becomes unable to give a decision in accordance with the timescales set out in paragraph 6.
- 26 The Adjudicator shall notify the parties of his or her resignation in writing and the parties shall be liable for the Adjudicator's fees and expenses up to the date of resignation in accordance with paragraph 23.
- 27 In the event of an Adjudicator resigning CEDR Solve will nominate a new Adjudicator only upon receipt of a new Notice of Adjudication.

### **Mediation**

- 28 When the Adjudicator communicates to the parties under paragraph 16 that a decision is ready for publication, the parties may agree to refer the dispute to mediation. In that case each party shall notify the Adjudicator in writing and CEDR Solve will appoint the Adjudicator as Mediator. The Adjudicator will thereupon withhold the Decision (sealed) until the parties end the mediation or upon request of either party since that request will end the mediation.

29 If the dispute is settled by mediation, the adjudication shall be at an end and the parties shall promptly settle the Adjudicator's fees and expenses referred to in paragraph 23. If a settlement is not reached within 28 days from the date on which the parties agree to refer the dispute to mediation, or if at any time a party abandons the mediation, the Adjudicator will communicate his / her decision to the parties.

#### **Fees and expenses of the Mediator**

30 The parties shall be jointly and severally responsible for the Mediator's fees and expenses.

#### **Other provisions**

31 If at any time after the date of referral the Adjudicator is unable or unwilling to act or fails to reach a decision in accordance with the time limits in paragraph 6, a party may apply to CEDR Solve to nominate a replacement Adjudicator.

32 The Adjudicator shall not be liable for anything done or omitted in the discharge of his or her functions unless the act or omission was in bad faith. The same immunity shall extend to CEDR Solve as the Adjudicator Nominating Body and any employee or agent of the Adjudicator or CEDR Solve.

33 The Adjudicator's decision may not be relied upon by third parties to whom the Adjudicator shall owe no duty of care.

#### **Law**

34 These rules shall be governed by English Law and under the jurisdiction of the English Courts.