

LONDON UNDERGROUND

ADJUDICATION RULES

Edition: May 2022

Incorporation of the Adjudication Rules

1. The following rules:
 - (a) are, where specifically adopted, incorporated into any Contract with London Underground Limited where the Contract refers to the LUL Adjudication Rules (the "Rules") which expression shall mean the most recent edition of these Rules as at the date of any notice requiring adjudication;
 - (b) meet the requirements of adjudication procedure as set out in Section 108 and Section 108A of the Housing Grants, Construction and Regeneration Act 1996 (as amended); Part I of the Scheme for Construction Contracts under the Scheme for Construction Contracts (England and Wales) Regulations 1998 shall not apply.

Definitions

2. In the Rules:

"Contract" means the agreement between the Parties which includes the agreement to adjudicate in accordance with these Rules;

"Party" means any party to the Contract and "Parties" shall be construed accordingly;

"Referring Party" means the Party referring the dispute, arising out of, under, or in connection with the Contract.

For the purposes of these Rules periods of time shall be calculated as follows:

(1) Where an act is required to be done within a specified period after or from a specified date, the period begins immediately after that date.

(2) Where the period would include Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales or, as the case may be, in Scotland, that day shall be excluded.

Any references to singular shall include the plural and vice versa.

Any references to the feminine include the masculine and vice versa and the neuter includes the feminine or the masculine and vice versa.

Conflict

3. If a conflict arises between the Rules and the Contract, unless the Contract says otherwise, the Rules prevail.

- Language** 4. The language of any adjudication under these Rules shall be English.
- Purpose of adjudication** 5. The purpose of adjudication is to resolve disputes within the scope of the adjudication as quickly and economically as possible.
- Notice of Adjudication** 6.1 Either Party may give written notice ("Notice of Adjudication") to the other Party at any time requiring adjudication on any dispute arising out of, under or in connection with the Contract. The notice shall set out briefly (taking up no more than 2 single sided pages of A4): -
- (a) the issues in dispute and in respect of which adjudication is required;
 - (b) a statement of the nature of the dispute and the material facts to be relied on;
 - (c) the Clauses in the Contract to be relied on; and
 - (d) the redress sought (including the quantum of any monetary relief).
- 6.2 The Referring Party shall endeavour to secure the appointment of an Adjudicator in accordance with rule 7 and with the object of referring the dispute to him within 7 days of the date of the Notice of Adjudication.
- 6.3 More than one Notice of Adjudication may be given in relation to disputes arising out of the same Contract. An Adjudicator may act in more than one adjudication under the same Contract at the same time.
- Appointing the Adjudicator** 7.1 If a person is named as Adjudicator in the Contract, or if the Parties agree on the identity of the Adjudicator, the Referring Party requiring adjudication shall send that person and the other Party:
- (i) a copy of the Notice of Adjudication;
 - (ii) the Parties' names and addresses;
 - (iii) the Contract
 - (iv) a copy of the Rules; and
 - (v) a written request for him to confirm to the Parties his availability to act within 1 day of receipt of the request from the Referring Party.
- If such person does so confirm to the Parties his availability to act, he shall be the Adjudicator for any dispute stated in the Notice of Adjudication.
- 7.2 If the Parties do not agree on the identity of the Adjudicator and more than one person is named as Adjudicator in the Contract, then the Referring Party requiring adjudication shall follow the procedure set out in Rule 7.1 to request the first person named to act as Adjudicator.
- (a) If that person confirms to the Parties within 1 day of a request to do so that he is available to act, he shall be the Adjudicator for any dispute stated in the Notice of Adjudication; or
 - (b) If that person does not so confirm availability to act, and if the Parties do not agree an extension of time, the Referring Party shall use the procedure in Rule 7.1 to request the second person named to act, and so on down the list, taking the next

named person until a person confirms availability to act or, failing that, until all named persons have been requested to act as Adjudicator.

7.3 If:

- (a) no person is named in the Contract as Adjudicator, or the named person (or each named person, if more than one) does not within 1 day of a request to do so confirm his availability to act; and
- (b) the Parties cannot agree on an Adjudicator willing and suitable to act as Adjudicator within 2 days of the Notice of Adjudication,

the Referring Party requiring adjudication shall send to the nominating body named in the Contract (or if none is named LCIA, The International Dispute Resolution Centre, 1 Paternoster Lane, London, EC4M 7BQ: “the Nominating Authority”:

- (i) a copy of the Notice of Adjudication
- (ii) parties' names and addresses
- (iii) a copy of the Rules
- (iv) anything else required by the Nominating Authority for them to select an Adjudicator.

The Nominating Authority shall endeavour to appoint the Adjudicator within 3 days of receiving the application.

Following selection, unless the selected Adjudicator has already done so, the Referring Party shall send a written request to the selected Adjudicator for him to confirm to the Parties within 1 day of receipt his availability to act. If he confirms to the Parties his availability to act within 1 day, he shall be the Adjudicator for any dispute stated in the Notice of Adjudication. If not, the Referring Party shall send a further request to the Nominating Authority.

7.4 If for any reason an Adjudicator:

- (a) resigns or is unable to act, or
- (b) fails to reach his decision within the time required by these Rules, and if the Parties are unable to agree upon a replacement Adjudicator the Referring Party shall:
 - (i) follow the procedure at Rule 7.2 to ask the next person named in the Contract to act, or
 - (ii) if no such person is named, follow the procedure set out in Rule 7.3.

7.5 An Adjudicator shall declare to the Parties and shall not act if he is or has been an employee, agent or consultant of either Party, save where both Parties consent, and shall declare any interest, financial or otherwise, in any dispute referred to in the Notice of Adjudication.

7.6 Subject to Rule 7.5 if a Party objects to a person selected as

Adjudicator by the Nominating Authority, that objection shall not prevent the Adjudicator being appointed, and it shall not invalidate the appointment or any decision he may reach.

The Adjudicator's appointment, costs and fees

- 8.1 The terms of remuneration of the Adjudicator shall be agreed by the Parties and the Adjudicator with the object of securing appointment of the Adjudicator within 7 days of the Notice of Adjudication. If any one Party (but not all Parties) rejects the terms of the remuneration of the Adjudicator the same shall be settled (and binding upon the Parties) by agreement between the Nominating Authority and the Adjudicator (provided that the level of the Adjudicator's fees shall not exceed the level originally proposed to the Parties by the Adjudicator). If all the Parties reject the terms of remuneration proposed by an Adjudicator another person shall be appointed as Adjudicator in accordance with Rule 7.
- 8.2 After the giving of a Notice of Adjudication, the Parties may seek to agree how the Adjudicator allocates the costs and fees of the adjudication (excluding his fees and expenses which are dealt with in Rule 8.3) as between the Parties. If such a written agreement is reached between the Parties, they shall notify the Adjudicator who shall allocate the costs and fees of the adjudication in accordance with such agreement. The Parties agree to be bound by the Adjudicator's allocation of costs and fees and shall pay such costs and fees in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised in accordance with Rule 11.7.
- 8.3 Unless the Adjudicator resigns before sending the Parties his decision, he shall be entitled to charge the Parties his fees and expenses for the adjudication. Subject to any agreement of the Parties, the Adjudicator shall allocate payment of his remuneration and expenses as between the Parties. Unless the Parties otherwise agree, the Adjudicator shall award the payment of his remuneration and expenses on the general principle that the costs should follow the event, except where it appears to the Adjudicator that in the circumstances this is not appropriate in relation to the whole or part of his remuneration or expenses. The Parties agree to be bound by the Adjudicator's allocation of payment of his expenses and remuneration and shall pay such remuneration and expenses in accordance with the Adjudicator's direction unless and until the direction of the Adjudicator is set aside or revised in accordance with Rule 11.7.
- 8.4 If the terms of the Adjudicator's appointment provide for the payment of his remuneration and expenses before giving notice of his decision to the Parties pursuant to Rule 11, the Parties shall pay such remuneration and expenses in equal amounts, and shall make adjustment payments between themselves following any direction made by the Adjudicator pursuant to Rule 8.3.

Referral of the dispute

- 9.1 Within 7 days of the date of the Notice of Adjudication (or, if an Adjudicator has not been appointed within the 7 day period, promptly upon receipt of an Adjudicator's confirmation of his availability to act), the Referring Party shall refer the dispute by notice in writing (the

"Referral Notice") to the Adjudicator:

- 9.2 A Referral Notice shall be accompanied by complete copies of:
- (a) the Contract (or relevant extracts) and;
 - (b) any documentary or other evidence on which the Referring Party intends to rely in the adjudication, to the extent not already supplied by Rule 7.1.
- 9.3 The Referring Party shall, at the same time as it sends to the Adjudicator the documents referred to in Rules 9.1 and 9.2, send copies of those documents to every other party to the dispute.
- 9.4 The date of referral shall be the date on which the Adjudicator receives the Referral Notice in accordance with Rules 9.1, 9.2 and 9.3 ("the Date of Referral"). The Adjudicator shall confirm the date of receipt of the Referral Notice in writing to the Parties.

Scope of the adjudication

- 10.1 The scope of the adjudication shall be the dispute identified in the Notice of Adjudication, together with any further dispute which the Parties agree should be within the scope of the adjudication.
- 10.2 The Adjudicator may rule upon his own substantive jurisdiction.

The adjudication and the decision

- 11.1 The Adjudicator shall:
- (a) decide on the dispute referred to in the Notice of Adjudication on the basis of the Parties' legal entitlements;
 - (b) act fairly and impartially, giving each Party a reasonable opportunity in light of the timetable, set out in these rules to put its case;
 - (c) be entitled to take the initiative in ascertaining the facts and the law; and
 - (d) avoid incurring unnecessary expense.
- 11.2 The Adjudicator shall reach a decision on the dispute set out in the Notice of Adjudication and send a copy to each Party within 28 days of the Date of Referral. This 28 day period may be extended:
- (a) to such longer period as may be agreed by the Parties after the dispute has been referred;
 - (b) by the Adjudicator by up to 14 days, with the consent of the Referring Party.
- 11.3 The Adjudicator is not empowered to act as an arbitrator.
- 11.4 Any decision of the Adjudicator shall be in writing. The Adjudicator shall provide written reasons for any decision if any or all of the Parties

so request within 7 days of the Date of Referral. If such reasons are requested by one Party, the reasons shall be delivered to all Parties.

- 11.5 Any decision of the Adjudicator shall include a copy of any advice the Adjudicator has received from any legal or technical adviser.
- 11.6 The Parties may agree to accept the decision of the Adjudicator as finally determining the dispute.
- 11.7 Decisions of the Adjudicator shall be binding unless and until the dispute is finally determined by court proceedings, arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or by agreement.
- 11.8 The Adjudicator or any employee or agent of the Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith.
- 11.9 The Parties shall continue to observe and perform all obligations contained in the Contract, notwithstanding any reference to the Adjudicator.

Powers of the Adjudicator

- 12.1 The Adjudicator shall establish the timetable and procedure for the adjudication, with which the Parties will comply, subject always to the time limits in Rule 11.2.
- 12.2 Without prejudice to the generality of Rule 12.1, the Adjudicator may if he thinks fit:
 - (a) make directions for the conduct of the adjudication;
 - (b) review and revise any of his previous directions;
 - (c) require delivery of a written statement of case from any Party;
 - (d) submit lists of questions to any Party to be answered in such meetings or in writing within such reasonable time as he may require;
 - (e) require any Party to produce a bundle of key documents or any other documents (other than documents which would be privileged from production to a court), whether helpful or otherwise to that Party's case;
 - (f) draw such inference from any failure to produce any documents (other than documents which would be privileged from production to a court) as he considers appropriate;
 - (g) limit the length of any written or oral submission;
 - (h) reach his decision with or without holding an oral hearing, and with or without having endeavoured to facilitate agreement between the Parties;
 - (i) make use of his own specialist knowledge;
 - (j) with the consent of the Parties, seek legal or technical advice from consultants whose appointment by the Adjudicator (including remuneration) is subject to the approval of the Parties;
 - (k) convene meetings upon reasonable notice to the Parties at which such Parties and their representatives shall be entitled to be present;
 - (l) make site visits and carry out any tests or experiments, provided the same can reasonably be arranged within the timetable for the

adjudication;

- (m) proceed with the adjudication and reach a decision even if a Party fails to comply with a request or direction with which he has been given the opportunity to comply;
- (n) adopt any other procedures (including any variation of the procedures provided for under this Rule 12) which may be agreed between the Parties for determination of the dispute;
- (o) otherwise take such action and adopt such procedures as do not conflict with any of the provisions of these Rules and shall be reasonable and proper for the just, expeditious and economical determination of the dispute.

12.3 The Adjudicator may open up, review and revise any decision (other than that of an Adjudicator, unless agreed by the Parties), certificate, statement, opinion, instruction, direction, action, in-action, assessment, or valuation made in connection with the Contract and which is relevant to the dispute being adjudicated (except any final certificate or final statement).

12.4 The Adjudicator may in any decision, direct the payment of such interest from such dates and at such rates as permitted by the Contract or if no such rate is set out in the Contract the Adjudicator may apply a commercially reasonable rate.

12.5 The Adjudicator may not:

- (a) require any advance payment of or security for his fees;
- (b) receive any written submissions from one Party that are not made available to the other Parties;
- (c) hear oral submissions from or meet with one Party, unless the other Parties have been given a reasonable opportunity to attend;
- (d) act or continue to act in the face of a conflict of interest.

12.6 All information of whatever nature provided to the Adjudicator by any Party shall be copied to the other Parties or (where copying is not practicable) the other Party shall be entitled to inspect it.

12.7 The Adjudicator may on his own initiative or on the application of a Party correct his decision so as to remove a clerical or typographical error arising by accident or omission and:

- (a) Any correction of a decision must be made within 7 days of the delivery of a decision to the Parties;
- (b) As soon as possible after correcting a decision in accordance with this sub-paragraph 12.7, the Adjudicator must deliver a copy of the corrected decision to each of the Parties;
- (c) Any correction of a decision forms part of the decision.

adjudication

- (a) a dispute arises out of, under or in connection with each of the Contract and any subcontract relating to the Contract, and
- (b) both the Contract and the subcontract allow for, or the Parties and the subcontractor agree to, a joint adjudication

at the same time as the dispute under the Contract is referred to the Adjudicator, a Party may request that the subcontract dispute is joined into the adjudication for a decision in relation to both the Contract and its subcontract. The Adjudicator shall decide the dispute under both contracts in accordance with the Rules and references in the Rules to "Parties" shall in such circumstances include the subcontractor.

Enforcement

- 14.1 Every decision of the Adjudicator shall be implemented without delay subject to final determination by court or arbitration proceedings. The Parties shall be entitled to such reliefs and remedies as are set out in the decision, and shall be entitled to summary enforcement thereof, even if the decision is or becomes the subject of any court proceedings or arbitration challenge or review. No issue decided by one Adjudicator may be referred to another Adjudicator for a decision, unless agreed by the Parties.

Law

- 15.1 These Rules shall be governed by English law and are subject to the jurisdiction of the English courts.
- 15.2 No Party shall, save in case of bad faith on the part of the Adjudicator, make any application to the courts whatsoever in relation to the conduct of the Adjudication or the decision of the Adjudicator until such time as the Adjudicator has made his decision, or refused to make a decision.
- 15.3 In the event that any term, condition or provision contained in these Rules shall be held to be contrary to, inconsistent or non-compliant with the requirements of the Housing Grants, Construction and Regeneration Act 1996 (as amended), such term, condition or provision shall, to that extent be omitted from these Rules and the rest of these Rules shall stand, without affecting the remaining terms, conditions and provisions.