

# Nationwide Academy of Dispute Resolution UK Ltd

Stockland Cottage 11 James St, Treforest, Pontypridd Wales CF37 1BU UK : Phone +44(0)1443 486122 : Fax + 44(0)1443 404171

## NOTICE OF APPOINTMENT TO ADJUDICATOR CADJ 04

Date: ▶ NADR CASE No CONST/ADJ▶

REFERING PARTY:

RESPONDING PARTY:

In response to the applicant's request to nominate / appoint an adjudicator, accompanied by a copy of the **NOTICE OF INTENTION TO APPOINT** sent to the respondent by the applicant,

NADR hereby nominates / appoints you, the below mentioned to adjudicate on the above captioned case, which is governed by **Part II Housing Grants Construction and Regeneration Act 1996**.

Unless consent is withheld by either of the parties to this dispute, conduct of the adjudication will be subject to the UK Construction Adjudication Rules of NADR UK Ltd., which are drafted in compliance with The Act and The Scheme of Construction Contracts. In the event of any doubt or ambiguity the provisions of The Act and Scheme will prevail.

### NOMINATED / APPOINTED ADJUDICATOR

Name ▶ DATE ▶  
Address ▶  
Post Code ▶ Tel ▶ Fax ▶

Should any of the above contact details contain any errors, please advise NADR by return.

### CERTIFICATE OF SERVICE

I hereby certify that the below listed parties, directly or where applicable, through their representatives, have been notified of your appointment by post and fax, on this :-

▶ day of ▶ Year ▶

Certified by : ▶  
Nominating Officer : NADR UK Ltd

REFERERERING PARTY : Applicant

RESPONDENT

Officer ▶  
Address ▶

Officer ▶  
Address ▶

Tel ▶ Fax ▶ Tel ▶ Fax ▶

REFERER'S REPRESENTATIVE (if any)

RESPONDENT'S REPRESENTATIVE (if known)

Name ▶  
Officer ▶  
Address ▶

Name ▶  
Officer ▶  
Address ▶

Tel ▶ Fax ▶ Tel ▶ Fax ▶

**Attachments** : This notice of appointment is accompanied by a copy of the applicant's **Notice of Intention to Appoint** and a copy of his **Application for Nomination/appointment** of a construction adjudicator, to the above mentioned dispute.

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## ADJUDICATION RULES OF NADR UK Ltd

For England and Wales

### INTRODUCTION

These Rules are published by NADR pursuant to **Section 108 Housing Grants Construction and Regeneration Act 1996** for incorporation into a construction contract by reference in the contract, viz:

A party to the contract has a right to refer a dispute arising under the contract for adjudication, in accordance with the Adjudication Rules of NADR (as applicable to England / Wales) which Adjudication Rules are deemed to be incorporated by reference as if written out in full.

NADR will upon payment of a fee of £200.00

- a) confirm the appointment, by a party or jointly by the parties, of an NADR Registered Adjudicator specified in a construction contract or agreed by the parties after a dispute has arisen, upon written application being made to it in accordance with these Adjudication Rules.
- b) appoint an NADR Registered Adjudicator after a dispute has arisen, upon written application being made to it, where NADR is named in a contract as the nominating / appointing body by whom the selection of the Adjudicator is to be made in accordance with provisions of that contract.

In all such cases the conduct of the adjudication will be governed by these Adjudication Rules.

Notwithstanding the above, NADR will upon payment of a fee of £200.00 (acting as an adjudicator nominating body where a contract does not otherwise specify or where the parties have agreed to call upon the services of NADR in lieu of the contract provisions) appoint an NADR Registered Adjudicator after a dispute has arisen, upon written application being made to it. The conduct of an ad hoc adjudication will be subject to the Scheme of Construction Contracts, SI 1998 No649. In addition, both parties are invited to agree to the conduct of the adjudication being subject to these Adjudication Rules.

## THE RULES

### Referral of a dispute to adjudication

- 1 Should any dispute or difference arise between the parties under the contract, including any dispute as to the giving or a failure to give any decision, opinion, instruction, direction, certificate or valuation by any person stated in the contract to be so empowered, either party shall have the right to refer that dispute or difference at any time for adjudication in accordance with the following conditions. The following conditions are drafted to comply with **Part II Housing Grants, Construction and Regeneration Act 1996**. Any ambiguities shall be resolved accordingly and subject to any subsequent statutory amendments that may from time to time apply to adjudication under the Act.
- 2(i) If any such dispute or difference arises then one party, the "**Applicant**", may serve upon the other, the "**Respondent**", a notice in writing of an intention to refer the dispute to adjudication. The "**Notice of Intention to Refer**", shall state in sufficient detail the nature of the dispute and the remedy sought, together with :-
  - (a) notification that a request has been simultaneously made to an NADR Registered adjudicator specified in the contract to act as an adjudicator and that an application has been made to NADR for acknowledgement of the appointment of the specified adjudicator, for the adjudication of the dispute ; or
  - (b) notification that an application has been simultaneously made to NADR for acknowledgement in due course of the appointment of an NADR Registered adjudicator to be agreed between the parties, pursuant to the terms of the contract, for the adjudication of the dispute together with a request that the other party cooperate promptly to agree an adjudicator to be requested to act in the adjudication of the dispute by the Applicant (It is the duty of the parties to make such an agreement and for the "Applicant" to promptly make a request to that agreed person to act as an adjudicator and to notify NADR of the request) ; or
  - (c) notification that an application has been made to NADR for the selection and appointment of an NADR Registered adjudicator for the adjudication of the dispute.
- 2(ii) The date on which the "**Notice of Intention to Refer**" is served ("**Date of Notice of Intention to Refer**") shall be the commencement date of the period during which the appointment of an Adjudicator shall be made in accordance with Rule 3 below.

### Appointment of the Adjudicator (The timetable)

- 3(i) The Adjudicator to decide the dispute to be referred to adjudication under the "**Notice of Intention to Refer**" shall be appointed within seven days of the "**Date of Notice of Intention to refer**" in Rule 2(ii) above either:
  - (a) by having been agreed and named in the contract between the parties and having been duly requested to act in the dispute by the **Applicant** in accordance with 4(i)(a) below ; or

*continued on next page ►*

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- (b) by having been subsequently agreed by the parties after the dispute arose, and having been duly requested to act by the **Applicant** in accordance with 4(i) below ; or
  - (c) where the agreed adjudicator is unable or willing to act, NADR will upon receiving a prompt **Request to Nominate** an adjudicator, nominate an adjudicator for the adjudication of the dispute within seven days of the “**Date of Notice of Intention to Refer**” in Rule 2(ii) above ; or
  - (d) in the absence of an adjudicator agreed by the parties in the contract or after a dispute has arisen, NADR will upon receiving a prompt **Request to Nominate** an adjudicator, nominate an adjudicator for the adjudication of the dispute within seven days of the “**Date of Notice of Intention to Refer**” in Rule 2(ii) above.
  - (ii) In all cases both parties are requested to confirm to NADR, the other party and to the adjudicator acceptance of the appointment forthwith and to confirm that the adjudication be conducted in accordance with the Adjudication Rules of NADR.
  - (iii) In the absence of prompt notification by the **Applicant** to NADR of rejection of an NADR nomination under 3(i)(c) and (d) above, appointment will be deemed to have occurred upon service of the **Notification of Nomination** by NADR.
  - (iv) In the case of an “ad hoc” reference where there is no mutual agreement or consent by both parties to the adjudication being conducted in accordance with the Adjudication Rules of NADR, these rules will not apply and the **SCHEME for Construction Contracts** will automatically apply to the conduct of the adjudication.
- 4(i) Any appointment made directly by the **Applicant** to the agreed adjudicator should be made on an NADR Appointment Form and be accompanied by a copy of the **Notice of Intention to Refer**.
- ii) Any application to NADR under Rule 3(i)(a)&(b) complying with Rules 2(i)(a) or (b), as applicable, for acknowledgement of the appointment of a named NADR Registered Adjudicator should be made on NADR's Appointment Form.
  - iii) Any application to NADR under Rule 3(iii) and (iv) for the nomination / appointment of an NADR Registered Adjudicator should be made on NADR's Appointment Form, setting out all the relevant details, including a copy of the **Notice of Intention to Refer** together with any preferred specialisms or qualifications of the Adjudicator and the names of any Adjudicators who have either been rejected by one of the parties or have declined to accept the appointment.
- 5 Within three days of receipt by NADR of the **Request to Nominate** under Rule 4 NADR shall notify both parties in writing of the name and address of the appointed Registered Adjudicator and the date of his appointment.
- 6 No Adjudicator shall accept an appointment without first giving the parties and NADR a written declaration confirming that he:
- (i) is impartial; and
  - (ii) has no previous or subsisting connection with either party or the matters in dispute such that objectively viewed a serious risk of injustice might occur; and
  - (iii) can give a decision within the period determined under Rule 8.

## Procedure for the adjudication

- 7(i) Immediately upon the Adjudicator being appointed but no later than seven days from service of the **Notice of Intention to Refer**, the Applicant shall forthwith serve upon the Adjudicator and The Respondent copies of the **Notice of Referral of Dispute** and the date on which the Adjudicator receives this shall be the date the dispute is referred to him (**Date of Referral**).
- 7(ii) The **Notice of Referral of Dispute** will contain a written statement of the dispute and what is claimed, together with copies of all documents on which it relies, suitably annotated (**Statement of Dispute**). *Pursuant to the Guidance issued by the Construction Umbrella Bodies Adjudication Task Group in July 2002 this statement should contain a concise statement of the applicant's case, cross referenced to the bundle of back-up documentation, and a chronology of events.*
- 7(iii) The Respondent shall within 7 days of receipt of the **Notice of Referral of Dispute** and **Statement of Dispute** serve simultaneously upon the Applicant and the Adjudicator its written **Statement of Response** together with copies of all documents on which it relies, suitably annotated.  
*Pursuant to the Guidance issued by the Construction Umbrella Bodies Adjudication Task Group in July 2002 this statement should contain at the very least a concise statement of the Respondent's case, cross referenced to the bundle of back-up documentation, and a chronology of events.*

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- 8 The appointed Adjudicator shall begin the adjudication immediately after the Date of Referral and shall conclude it by making his Decision within 28 days thereafter unless:
- (i) the period of 28 days is extended by the Adjudicator by up to a further 14 days with the consent of the Applicant; or
  - (ii) a longer period is agreed by the parties after the dispute has been referred and such agreement is notified immediately in writing to the Adjudicator.
- 9 The Adjudicator shall act fairly, reasonably and honestly. He shall have complete discretion as to how to conduct the adjudication, subject to any relevant statutory provisions and express provisions in the contract between the parties, and his appointment contract and the time constraints imposed on him under Rule 8. Providing he notifies both parties in advance of any particular procedural requirement, subject as aforesaid, he shall not be required to observe any rule of evidence, procedure or otherwise, of any court or tribunal. Without prejudice to the generality of the foregoing he may:
- (i) ask for oral or written submissions;
  - (ii) meet and question both parties and their representatives;
  - (iii) visit the site;
  - (iv) require the production of particular documents or other evidence;
  - (v) request the attendance of any persons whom he considers could assist him;
  - (vi) seek such clarifications and other information as is considered relevant;
  - (vii) impose time periods in which the parties must act;
  - (viii) in the event of a party or other person failing to attend when requested, or a document or other evidence not being produced within a stipulated time scale, continue with the adjudication drawing any reasonable and proper inferences from any such failures.

*NOTE : In the course of fulfilling the above requirements, the adjudicator should where appropriate take note of the Guidance for Adjudicators provided by the Construction Umbrella Bodies Adjudication Task Group in July 2002.*

## Duties and Powers of the Adjudicator

- 10 The Adjudicator shall, upon accepting the appointment, communicate acceptance of appointment to both parties. The **Notice of Acceptance of Appointment** shall contain the terms and conditions upon which the adjudicator accepts the appointment and in particular the adjudicator's hourly rate for work spent on the adjudication, which will include all reasonable travelling time. In addition the adjudicator is entitled to require remuneration for:
- (a) all reasonable costs and expenses necessarily incurred in the adjudication;
  - (b) costs of any legal or technical advice obtained in accordance with Rule 14;
  - (c) VAT, if the adjudicator is registered for same.
- 11 The Adjudicator shall, unless otherwise agreed in the contract between the parties, have the power to open up, review any opinion, decision or certificate issued under the construction contract between the parties.
- 12 The Adjudicator shall have the power to take the initiative in ascertaining the facts and the law.
- 13 The Adjudicator is under a duty to act impartially.
- 14 The Adjudicator may take relevant legal or technical advice from others but his Decision shall be his alone. Any fees or expenses incurred in obtaining such advice shall form part of the Adjudicator's fees and expenses and shall become due and payable by the parties.
- 15 The Adjudicator shall notify the parties in writing of any advice sought and any person providing such advice. The Adjudicator may make any such advice known to the parties prior to making his Decision, if this is reasonably practicable.
- 16 The Adjudicator shall, unless otherwise agreed by the parties, be required to state reasons for his Decision.
- 17 The Adjudicator shall make his Decision in writing on or before the latest date determined under Rule 8. The Adjudicator shall then straightaway serve his Decision on the parties by first class post, subject only to any request for prior payment of his fees and expenses being complied with by the parties.
- 18(i) The Adjudicator shall not divulge any information, document, or submission in the adjudication to anyone other than the parties unless such is strictly necessary in order to reach his Decision.
- 18(ii) The Adjudicator shall be entitled to retain all submissions and documents in the adjudication for a period not exceeding three months after the date of his Decision. Thereafter he shall be at liberty to dispose of same unless a prior written request is received from a party to return them to the issuer(s).

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## Obligations of the parties

- 19(i) In all cases, and in particular where the Adjudicator has been appointed by NADR pursuant to an NADR Adjudication Clause in the contract, both parties are requested to confirm to NADR, the other party and to the adjudicator acceptance of the appointment forthwith and to confirm that the adjudication be conducted in accordance with the Adjudication Rules of NADR.
- 19(ii) Both parties shall declare any known previous or subsisting connections with the Adjudicator forthwith upon being notified of his appointment. A party who fails to comply with this provision shall not be permitted to subsequently challenge the Adjudicator's appointment.
- 20 The parties shall be jointly and severally liable to the Adjudicator for his fees and expenses.
- 21 Unless the Adjudicator shall decide otherwise in his Decision, the parties shall each pay the Adjudicator's fees and expenses in equal shares.
- 22 Payment of the Adjudicator's fees and expenses shall be in accordance with the details set out by the Adjudicator in his **Notice of Acceptance of Appointment** to the parties and shall be made forthwith upon receiving a proper written demand from the Adjudicator. Providing the parties have received such a demand before publication of the Decision then it shall be a condition for release of that Decision that full prior payment shall be made.
- 23 Should the payment to the Adjudicator not be made as aforesaid then interest at the rate of 2% above the base rate of the Bank of England, compounded monthly will accrue on all overdue amounts and be payable in addition by the parties.
- 24(i) The parties shall, so far as they are legally able, provide timeous access to the site and all other relevant working areas to the Adjudicator upon any reasonable request being made by him.
- 24(ii) Should an oral meeting be directed by the Adjudicator, then unless otherwise agreed by the Adjudicator at that meeting, each party shall nominate one spokesperson to speak on their behalf.
- 25(i) The parties shall provide all information requested in writing by the Adjudicator and comply within any time limit specified and with all written directions of the Adjudicator in connection with the adjudication. Any failure to comply with this provision shall not vitiate this agreement. The Adjudicator shall be entitled to take whatever further steps he deems appropriate or draw whatever inferences he deems reasonable and proper following any such failure to comply.
- 25(ii) A party, when giving the Adjudicator any document or information whatsoever, shall simultaneously send to the other party a copy of that document or information.
- 26 The parties hereby indemnify the Adjudicator (and any employee or agent) for anything done in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith.
- 27 Each party shall bear its own costs of the adjudication.

## Decision of the Adjudicator

- 28 The Decision of the Adjudicator shall be binding upon the parties until the dispute is finally determined by legal proceedings, by arbitration (if the contract between the parties provides for arbitration or the parties otherwise agree to arbitration) or by agreement.
- 29 The parties agree to fully implement the Decision of the Adjudicator immediately upon receipt of his Decision unless otherwise stipulated therein and, in any event, before the dispute is finally determined by legal proceedings, by arbitration (if the parties' contract provides for arbitration or the parties otherwise agree to arbitration), or by agreement.
- 30 The Decision of the Adjudicator shall be enforceable as a matter of contract between the parties.

## Termination

- 31 The parties may jointly agree that the Adjudicator's appointment is terminated before the date when he is required to give his Decision and shall notify the Adjudicator forthwith in writing of such agreement.
- 32 In the event of any such termination under Rule 31, both parties shall, subject to Rule 33, forthwith pay the Adjudicator any outstanding fees and expenses reasonably incurred prior to the termination.
- 33 Where the parties agree to terminate the Adjudication Agreement because of a culpable failure by the Adjudicator to give his Decision within the time scale determined under Rule 8, the Adjudicator shall not be entitled to any fees or expenses.

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## Failure of Adjudicator to act in accordance with these Rules

- 34(i) In the event that the Adjudicator, for whatsoever reasons, fails to make his Decision in accordance with these Rules, then either party may make written application to NADR for an alternative appointment in accordance with Rule 3 above.
- 34(ii) Notwithstanding that an Adjudicator's Decision is not served on the parties within the time scale set down in Rules 8 and 16 above, such Decision will not be vitiated providing it is served on the parties prior to the date a replacement Adjudicator is appointed.
- 34(iii) Any such appointment by NADR shall bind both parties immediately NADR notifies both parties in writing of the alternative appointment and shall forthwith terminate the appointment of the original Adjudicator.

## Service of Notices

- 35(i) A notice or other document may be served on a person by any effective means.
- 35(ii) If a notice or other document is properly addressed and either personally delivered or prepared and delivered by post:
- (a) to the addressee's last known principal residence, or if he is or has been carrying on a trade, profession or business, his last known principal business address; or
  - (b) where the addressee is a body corporate, to the body's registered or principal office, it shall be treated as effectively served.
- 35(iii) If a notice or other document is sent by facsimile a copy must be sent the same day by personal delivery or post as specified in 35(ii) above.

## Reckoning of time

- 36 For the purposes of the above conditions, periods of time shall be reckoned as follows:
- (i) 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.
  - (ii) 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, that day shall be excluded.

## Precedence of the Rules

- 37 Should there be any conflict between the terms of the contract between the parties and these Rules, then unless otherwise agreed in writing by the parties, these Rules shall take precedence,

## Interpretation of the Rules

- 38 All references in the masculine shall include the feminine and all references to the singular shall include the plural, unless the context otherwise requires.

Registered in England. Company Registration Number 3760409

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