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The Society for Computers & Law Adjudication Rules

Version 2.1 (April 2021)

Definitions

Adjudicator means the adjudicator appointed under the SCL Rules to decide the dispute between the parties.

Counterclaim means any claim by the Respondent against the Claimant arising from the contract or subject-matter to which the dispute between the parties relates.

Decision means the decision or determination of the Adjudicator in relation to matters referred to him or her in accordance with the SCLA Rules, and may include (without limitation) a determination (i) that damages and/or a debt is payable and the amount, (ii) that a party must do or refrain from doing a thing, (iii) as to the rights and obligations of the parties.

Guidance Notes means the notes that accompany the SCLA Rules and explain how the rules are intended to operate.

Effective Date of the Decision means five Working Days after the Decision is sent by email and secure post to the parties.

Panel Member means an Adjudicator who is a member of the SCL Adjudication Panel and a natural person acting in his or her personal capacity.

SCL means the Society for Computers & Law a Registered Charity (1133537) and company limited by guarantee (266331), Unit 4.5, Paintworks, Arnos Vale, Bristol, BS4 3EH, United Kingdom.

SCL Adjudicator Eligibility Criteria means the criteria adopted by the SCL when appointing Panel Members to the SCL Adjudication Panel.

SCL Adjudication Panel means the panel of adjudicators formed by the SCL for the purposes of the SCLA Rules and in accordance with the SCL Adjudicator Eligibility Criteria.

SCL Chairman means the Chairman from time to time of the Society for Computers & Law or such other person authorised to act in his or her place for the purposes of the SCLA Rules.

SCL Model Adjudication Clauses means the clauses in the Guidance Notes.

SCLA Rules means The Society for Computers & Law Adjudication Rules.

SCL Schedule of Charges means the charges payable to the SCL, its Panel Members and third parties in accordance with the SCLA Rules.



Technology contract means a contract for the provision of technology-related goods and services. This includes (but is not limited to) software development contracts, outsourcing arrangements, system integration contracts, IT consulting contracts, software licensing arrangements, blockchain or ‘smart contracts’ and cloud computing contracts.

Working Day means a day of the week starting at 9am and ending at 5pm GMT, excluding Saturday and Sunday and Bank Holidays in England and Wales.

Incorporation of the SCL Rules into technology contracts

- 1 The SCLA Rules may be incorporated into any Technology Contract and the SCL Model Adjudication Clauses may be (but are not required to be) used for that purpose.

Commencement

- 2 The referring party (the “**Claimant**”) shall serve written notice (the “**Dispute Notice**”) on the responding party (the “**Respondent**”) to refer any dispute between them to adjudication under the SCLA Rules.
- 3 The Dispute Notice shall:
 - 3.1 attach evidence of agreement by the parties to adjudicate under the SCLA Rules;
 - 3.2 name the parties to the dispute, together with their addresses and contact details, including external representatives (if known);
 - 3.3 explain, in neutral terms, the nature and scope (including approximate value) of the dispute;
 - 3.4 explain the nature of the technology or technical solution involved in the dispute;
 - 3.5 state, with reasons, any preference the Claimant may have for the dispute to be adjudicated by a legally qualified person or non-legally qualified technology specialist, as defined in the SCL Adjudicator Eligibility Criteria.
 - 3.6 be copied to the SCL Chairman.
- 4 The Dispute Notice, excluding the evidence of agreement under Rule 3.1 and names of the parties and their representatives, shall not exceed two A4 sized pages in double spaced 12-point font.
- 5 Within three Working Days of receiving a copy of a Dispute Notice, the Respondent(s) to the dispute shall each serve a Response Notice on all other parties, copied to the SCL Chairman.



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- 6 The Response Notice, which shall comply with Rule 4 above, shall state:
- 6.1 Whether the Respondent(s) agrees with the position of the Claimant in relation to the matters set out in the Dispute Notice pursuant to paragraphs 3.1 to 3.5 above; and
 - 6.2 The Respondent(s) position in relation to any matters where it does not agree with that of the Claimant.
 - 6.3 Whether the Respondent(s) intends to bring a Counterclaim, and if so, brief details in accordance with paragraphs 3.3 to 3.5 above.

Appointment

- 7 The SCL Chairman shall, if satisfied that the Dispute Notice is valid (and within five Working Days of receipt of the Dispute Notice) nominate a Panel Member from the SCL's Adjudication Panel as the Adjudicator and inform all parties of that decision.
- 8 At the same time, the SCL Chairman shall supply written confirmation from the Adjudicator that:
- 8.1 he or she is free to act;
 - 8.2 he or she is impartial and independent and that the appointment complies with the IBA Guidelines on Conflicts of Interest in International Arbitration then in force;¹ and
 - 8.3 he or she is able to devote sufficient time to the adjudication.
- And the Adjudicator shall send proposed engagement terms to the parties with a copy to the SCL Chairman.
- 9 Within two Working Days of the nomination under Rule 7, the parties may, if they agree, appoint a different Adjudicator from the SCL Adjudication Panel. If they do not, the Adjudicator nominated by the SCL Chairman under Rule 7 will apply.
- 10 Any person appointed as Adjudicator must be a natural person acting in his or her personal capacity.
- 11 An Adjudicator may resign at any time provided there are bona fide reasons for the decision and on giving written notice, with reasons, to the parties.
- 12 The parties may, at any time, agree to revoke the appointment of the Adjudicator.

¹ See https://www.ibanet.org/publications/publications_iba_guides_and_free_materials.aspx



- 13 Where an Adjudicator resigns or has his or her appointment revoked under Rules 11 or 12 a new procedure may be commenced under the SCLA Rules.

Scope of the Adjudication

- 14 The scope of the adjudication shall be the dispute set out in the Dispute Notice and any Response Notice(s). Any Counterclaim that does not arise from the contract or subject-matter to which the original dispute relates will not be considered by the Adjudicator.
- 15 The Adjudicator may, with agreement of the parties, modify the scope of the adjudication set out in the Dispute Notice and any Response Notice(s) to maximise the effectiveness of the procedure.

Purpose of the Adjudication

- 16 The Adjudicator will decide the matters set out in the Dispute Notice and in any Response Notice(s) and any other matters agreed to be referred to him pursuant to Rule 15 above. The Adjudicator shall conduct the procedure in a timely and cost-effective manner and avoid incurring unnecessary expense.

Good faith

- 17 The parties shall act in good faith throughout the adjudication procedure.

Statement of Case, Response and Reply

- 18 The Claimant shall, within ten Working Days of the date of the Dispute Notice, serve on the Respondent(s), with a copy to the Adjudicator, a Statement of Case.
- 19 The Respondent(s) shall serve a Response and any Counterclaim on all other parties to the dispute, with a copy to the Adjudicator, within ten Working Days of receiving the Claimant's Statement of Case.
- 20 The Claimant shall serve its Response to Counterclaim and any Reply, with a copy to the Adjudicator, within five Working Days of receiving the Response.
- 21 The Respondent(s) shall serve a Reply within five Working Days of receiving the Claimant's Response to Counterclaim.
- 22 Each Statement of Case, Response and Reply must be accompanied by all documents relied upon in support of the claim or counterclaim made subject to the limits set out under Rule 23.2 below.
- 23 Unless the parties agree, or the Adjudicator directs otherwise, none of the Statement of Case, Response, Reply or any Counterclaim shall:



- 23.1 exceed 10 A4 pages in double-line spaced 12-point font excluding the names of the parties and their representatives;
- 23.2 be accompanied by supporting documents exceeding the equivalent of one standard-sized A4 lever arch file, meaning one A4 50mm 2 ring file containing single sided documents.

Procedure and conduct

- 24 On receipt of the Statement of Case, Response, Reply and any Counterclaim and Response thereto, the Adjudicator shall have the power in his or her absolute discretion to give further directions for the conduct of the adjudication.
- 25 The Adjudicator shall have the following powers, which may be exercised upon the application of any party or upon his or her own initiative:
 - 25.1 To require a party to produce documents and/or to make software or other technical artefacts available for inspection;
 - 25.2 To conduct tests or experiments;
 - 25.3 To ask specific written questions of any party;
 - 25.4 To invite written submissions and to limit the length or the scope thereof;
 - 25.5 To meet and question the parties in the presence of the other party;
 - 25.6 To conduct site visits or inspections in the presence of the parties;
 - 25.7 To hold an oral hearing and determine the arrangements for that hearing;
 - 25.8 To seek specialist advice from consultants or experts on technical or accounting issues provided that any consultant or expert so consulted complies with the IBA Guidelines on Conflicts of Interest in International Arbitration;
 - 25.9 If the adjudicator is not a lawyer, to seek input from a lawyer on the SCL Adjudication Panel or otherwise provided that any lawyer so consulted complies with the IBA Guidelines on Conflicts of Interest in International Arbitration;
 - 25.10 To conduct the adjudication on a proactive and inquisitorial or adversarial basis;
 - 25.11 To decide on the admissibility of evidence and as to what (if any) rules of evidence will apply; and



25.12 To extend or abridge time provided always that the overall time for the Decision shall not exceed the three calendar months period for delivering the Decision provided for in Rule 30 below.

26 If a party fails, without sufficient justification, to comply with the SCLA Rules including any directions or timetables set by the Adjudicator, the Adjudicator may draw inferences as he or she sees fit and continue with the adjudication and proceed to make the Decision notwithstanding any such failures.

Adjudicator's fees and expenses

27 The parties shall be jointly and severally responsible for the Adjudicator's fees and expenses which shall be charged in accordance with the SCL Schedule of Charges. Where the Adjudicator engages a third-party advisor under Rule 25.8 or Rule 25.9 he or she shall be entitled to require the parties to make a payment on account in respect of those costs. Any third-party charges incurred must also comply with the SCL Schedule of Charges.

28 Where an Adjudicator resigns under Rule 11 or the appointment is revoked by the parties under Rule 12 he or she shall be entitled to be paid fees and expenses incurred to that point.

29 The Adjudicator shall not be entitled to be paid any fees or expenses if the appointment comes to an end due to a previously undisclosed conflict of interest or bias (or other non-compliance with the SCL Protocol on Conflicts of Interest) or where there has been default or misconduct by the Adjudicator.

The Decision

30 The Adjudicator shall act fairly and impartially and deliver the Decision containing his or her decision no later than three calendar months from the date of his or her appointment.

31 The Decision shall be in writing and provide reasons for the decision. It will be sent by the Adjudicator to all parties to the dispute at the same time.

32 In making the Decision, the Adjudicator shall consider relevant information provided by the parties and shall disclose any information taken into account that was not provided by the parties during the adjudication procedure, including any information or advice received from third party advisors appointed under Rule 25.8 or 25.9.

33 The Adjudicator may award the payment of simple or compound interest on any amounts found due from one party to another; the rates, period and basis being in the Adjudicator's discretion.



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- 34 The Decision is not an arbitration award and will not prevent any party from subsequently litigating or arbitrating the dispute referred to the Adjudicator. However, unless and until the underlying dispute is finally determined by a Court or (where that dispute is subject to an arbitration agreement) an arbitrator, the Decision will be binding on the parties.
- 35 The Adjudicator may on his or her own initiative or at the suggestion of the parties correct minor clerical or typographical errors provided that any proposed corrections are notified to the Adjudicator and parties (as the case may be), within three Working Days of issue, in which case the Adjudicator shall issue a revised Decision, or confirm that the Decision stands as issued on or before the Effective Date of the Decision.

Time for commencing litigation or arbitration

- 36 The parties are free to commence litigation or arbitration proceedings in relation to the matters referred to the Adjudicator at any time after the Effective Date of the Adjudicator's Decision but must do so within six calendar months thereof.
- 37 The Decision, and all submissions and evidence submitted to the Adjudicator, may be submitted to the court or arbitral tribunal by either party.
- 38 If no proceedings in the courts or arbitration (as appropriate) has been commenced within six months of the Effective Date of the Adjudicator's Decision, the Decision shall become final and binding for all purposes.

Enforcement

- 39 Unless the Adjudicator otherwise directs, the parties shall comply with the Decision immediately on of the Effective Date of the Decision and the successful party shall be entitled to enforce the Decision including on any expedited basis that may be available under the procedures of the Technology & Construction Court, London or in any other suitable Court.

Party costs

- 40 Unless the parties agree otherwise, the Adjudicator shall have the power to order either party to pay some or all of the reasonable costs incurred by the other party in relation to the adjudication, whether incurred before or after the issue of the Dispute Notice. The Adjudicator shall also have the power to order either party to reimburse any other party in relation to its share of the adjudicator's fees and expenses. Any award of costs pursuant to this paragraph shall be made as part of the Decision save that the Adjudicator may make a subsequent Decision as to the amount of costs payable to the receiving party or parties after receiving submissions in relation to that question.



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Immunity and non-compellability

- 41 Neither the Adjudicator, nor the SCL Chairman, nor SCL, nor any of their employees or agents nor any third-party advisors engaged to assist the Adjudicator will be liable to any party howsoever for any act or omission in the course of their functions in relation to the adjudication procedure save: (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; and (ii) the extent to which any part of this provision is prohibited by any applicable law.
- 42 If the parties (or any one of them) refers to the dispute referred to the Adjudicator for final resolution in litigation or arbitration, the Adjudicator shall not be joined as a party or be required to give evidence or produce documents relating to the adjudication procedure.

Communications protocol and confidentiality

- 43 Where the SCL Rules require service of documents by the parties and for documents to be copied to the SCL Chairman, all such documents shall be sent by secure email and secure post.
- 44 Unless the parties agree otherwise or where litigation or arbitration follows in relation to matters referred to the Adjudicator (in the way contemplated by Rule 36), the adjudication procedure and all documents produced in relation thereto, including the Decision, are and shall remain confidential.

Law and jurisdiction

- 45 The SCLA Rules and this adjudication procedure are governed by English law and any disputes in relation thereto or arising therefrom are subject to the exclusive jurisdiction of the English courts.