

**CONSTRUCTION SKILLS CERTIFICATION SCHEME LIMITED**

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**TERMS OF REFERENCE FOR THE RESOLUTION  
OF APPEALS FROM DISPUTES  
RELATING TO UNITED KINGDOM  
CERTIFICATION MARK 00003442193  
CSCS IN CLASSES 37 AND 41**

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## TERMS OF REFERENCE FOR THE RESOLUTION OF APPEALS FROM DISPUTES RELATING TO UNITED KINGDOM CERTIFICATION MARK 00003442193 CSCS IN CLASSES 37 AND 41

### Introduction

1. Construction Skills Certification Scheme Limited ("**CSCS**") is the proprietor of (*inter alia*) a UK certification mark, namely No. 00003442193 **CSCS** in Classes 37 and 41 ("the Mark"), details of which are at  
<https://trademarks.ipo.gov.uk/ipo-tmcase/page/Results/1/UK00003442193>
2. Certification marks provide a guarantee that the goods or services bearing the mark meet standards or possess characteristics to be defined by its proprietor.
3. The characteristics certified by the Mark are that each entity authorised to use it (an ('**Authorised User**') is, by virtue of issuing one of the categories of CSCS card ('**Cards**') specified from time to time in the *CSCS Scheme Requirements*, qualified to verify the identity of each Card-holder and to certify that each Card-holder has the requisite qualification, training and experience to carry out work on a construction site. The Authorised Users are the "partner card schemes" referred to in Section 4.0 of the *CSCS Scheme Requirements*, and they currently number thirty-six, as listed on [www.cscs.uk.com/partners](http://www.cscs.uk.com/partners). CSCS supervises their use of the Mark by holding regular meetings with them and auditing their relevant activities.
4. In order to resolve disputes between certification mark proprietors on the one hand and actual or putative authorised users of their marks on the other, the UK Intellectual Property Office ("**UKIPO**") requires the establishment of an appeals mechanism allowing "an ultimate view on the matter to be taken by an independent person or body such as a specialist arbitrator or tribunal".
5. The objective of these terms of reference ('**Terms**') is therefore to establish the Terms whereby such a mechanism will allow appeals ('**Appeals**') from decisions by CSCS ('**Decisions**') that
  - 5.1 withdraw from an Authorised User all or any of its authority to use the Mark; or
  - 5.2 reject an application by a third party to be granted an Authorised Usership.
6. The Terms shall apply on and with effect from 30 September 2020 ('**the Effective Date**').

### Administration

7. By the Effective Date:
  - 7.1 Build UK Group Limited (a company limited by guarantee registered in England under number 09598491 and the address of whose registered office is The Building Centre, 26 Store Street, London WC1E 7BT, United Kingdom) and Unite The Union (a trade union the address of whose head office is Unite House, 128 Theobald's Road, London WC1X 8TN, United Kingdom) shall jointly have (a) appointed a person (who (and whose staff) are referred to herein as '**the Secretariat**') to administer the Terms and (b) authorised the Secretariat to perform the duties assigned to it herein; and
  - 7.2 the Secretariat shall have appointed a pool of no fewer than four appropriate persons who are willing and able to resolve Appeals, and from whose number the Panel (as defined in Section 18.3) for any given Appeal may be selected ('**the Pool**').

### Filing of Appeals

8. Any Authorised User as referred to in Section 5.1, and any Authorised Usership applicant as referred to in Section 5.2, shall be entitled to file an Appeal against a Decision that has been made against it. Within seven days after the said Decision has been communicated to the

Authorised User or applicant (as the case may be), CSCS shall have notified it of its said entitlement, and shall have forwarded to it a copy of the Terms.

9. Each Appeal shall be made to the Secretariat in writing, shall be accompanied by the full name, address and contact details of the body on whose behalf the Appeal is filed ('**the Appellant**') and of the natural person that files it, shall be dated, and shall be signed on behalf of the Appellant.
10. No Appeal shall purport to impose restrictions on its circulation within the Secretariat.
11. No Appeal may be filed more than three months after the date on which the Decision was notified to the Appellant.
12. Each Appeal shall contain a summary of the alleged facts on which it is based and an exposition of the reasons why the Decision is disputed, and shall be accompanied by copies of all (if any) documentary evidence adduced in its support, including the notification of the Decision.
13. Once an Appeal has been made, additional evidence from the Appellant will not be accepted unless specifically requested by the Secretariat.
14. Following notification of an Appeal to it, the Secretariat shall write to the Appellant acknowledging its receipt, and allocating to it a unique reference number.
15. At all material times the Secretariat shall for the purposes of the Appeal be the exclusive point of contact between the Appellant and CSCS (together '**the Parties**').

#### **Determination of requirement for resolution**

16. Following the said acknowledgment the Secretariat shall decide whether the Appeal requires resolution. An Appeal shall not require resolution to the extent that:
  - 16.1 it falls outside the scope of the entitlement specified in Section 8;
  - 16.2 it fails to comply with any applicable requirement in the Terms;
  - 16.3 it relates to a matter that the Secretariat reasonably considers to be frivolous, repetitious or manifestly unreasonable;
  - 16.4 its subject matter has been the subject of a ruling by a judicial, arbitral, regulatory, professional or other authority of competent jurisdiction (together "**Authority**"); and/or
  - 16.5 its subject matter is the subject of litigation or arbitration or investigation by an Authority. The Secretariat shall stay any Appeal in the event that litigation or arbitration relating to its subject matter is commenced after its date, and may stay any Appeal if an investigation by an Authority relating to its subject matter is commenced after its date.
17. In the event of a decision that the Appeal does not require resolution, the Secretariat shall notify the Appellant thereof.

#### **Procedures preparatory to the resolution of an Appeal**

18. In the event of a decision that the Appeal requires resolution, the Secretariat shall:
  - 18.1 write to CSCS stating: that an Appeal has been made; the identity of the Appellant; the nature of the Appeal; the said decision; and providing to CSCS copies of the Appeal and of all evidence submitted by the Appellant to the Secretariat in support thereof;
  - 18.2 notify the Appellant thereof, and inform it that the costs to be incurred by the Secretariat and by the Panel in resolving it (of which the Secretariat shall endeavour to provide its best estimate to the Appellant in advance) shall be reimbursable by the Appellant in the event that the Appeal is dismissed; and
  - 18.3 appoint to the panel responsible for determining the Appeal ('**the Panel**') three persons each of whom (a) has been randomly selected by it from the Pool and (b) has declared to it in

writing in advance that s/he has no conflict of interest with either of the Parties *in re* the Appeal.

19. It shall be the duty of each Party fully to comply with all obligations placed on it by the Terms. Without prejudice to the generality of the foregoing, the full compliance with the obligations placed on the Appellant by the Terms shall be a condition precedent to the implementation of the Terms in respect of its Appeal.
20. The Secretariat shall require CSCS to submit to it by a specified date a fully-particularised written response to the Appeal ('**Response**') together with such other information as may reasonably be required for a decision to be reached by the Panel on the Appeal.
21. The Secretariat shall send to the Appellant a copy of the Response (if any) and of such documentation (if any) that accompanied it, and notify to it a specified date by which it may submit to the Secretariat a rejoinder thereto ('**Rejoinder**').

### **Resolution of the Appeal**

22. The Secretariat shall notify to the Parties a date or dates on which they may make oral submissions (which, for the avoidance of doubt, shall exclude professional legal advocacy) to the Panel in support of their respective cases.
23. In order to assist it in resolving the Appeal the Panel shall be at liberty to seek evidence (including expert evidence) from third parties.
24. The Panel shall act with promptness and discretion in order to resolve the Appeal.
25. The resolution of the Panel on the Appeal (which shall be final) shall be reached unanimously or by majority vote, shall be supported by written reasons, and shall be one of the following:-
  - 25.1 to dismiss the Appeal;
  - 25.2 to vary the Decision;
  - 25.3 to quash the Decision and substitute another one in its place.
26. The Secretariat shall notify the Parties of the said resolution and the said reasons.

### **General**

27. Each Party ("**the Recipient**") shall accord strict confidentiality to all information that it receives from the other Party and/or from the Secretariat and/or from the Panel relating to the Appeal and to its investigation and resolution pursuant to the Terms unless (if at all) it has been required to be disclosed by an Authority or it has fallen into the public domain through no fault of the Recipient.
28. If an Appeal is upheld in whole or in part the Secretariat may impose upon CSCS such costs penalty as it considers reasonably appropriate in the circumstances.
29. If an Appeal is dismissed the Appellant shall reimburse to the Secretariat its costs of investigating the same promptly on demand.
30. All references herein to Sections are to the sections of the Terms; '**notify**' means to notify in writing; and '**writing**' does not include electronic format.
31. Neither Party's statutory rights are affected by the implementation of the Terms.

**September 2020**