

Notice of Nomination of an Adjudicator  
(setting out the terms and conditions of appointment of the adjudicator)

To: The Claimant [*Name of the person or company that entered into the contract with the Respondent and the contact details*]

Your “Notice of Adjudication” (Form 1) and “Request to the ANB to appoint an Adjudicator” (Form 2) registered as HKIE Case Reference : [*xxx (Contract Number)*] and received at the HKIE on [*dd-mm-yyyy*] refers.

Having ascertained that the nominee is willing and able to act impartially or independently and having no financial or personal interest in relation to the dispute for the “parties”, we hereby nominate [*Ir Adjudicator*], an adjudicator from the HKIE Panel of Adjudicators, to act as Adjudicator for the dispute as detailed in the Request for your consideration.

[*Ir Adjudicator*] has submitted a written statement declaring that:

- (a) there is no conflict of interest in respect of the Adjudicator’s appointment;
- (b) the Adjudicator will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
- (c) the Adjudicator will comply with the principles of natural justice and decide the payment dispute in accordance with the terms and conditions of the contract and the applicable law; and
- (d) there are no circumstances likely to give rise to justifiable doubts as to the Adjudicator’s impartiality or independence; and
- (e) the Adjudicator must, from the time of accepting the appointment and throughout the adjudication proceedings, disclose to the parties to the adjudication any circumstances likely to give rise to justifiable doubts as to the Adjudicator’s impartiality or independence.

In accordance with the “HKIE Adjudications Rules 2022” and the following “Standard Terms and Conditions of Appointment of the Adjudicator”, the HKIE will appoint the nominee as adjudicator for the dispute to proceed with the adjudication as detailed in the Request unless the parties raise any substantial issues relating to the nominee’s conflict of interest within 2 days of having receipt of the nominee to act as adjudicator, i.e. by 4:00pm on [*dd-mm-yyyy*].

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(Signed)

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(Date)

Name :

Position :

Date :

cc: The Respondent [*Name of the person or company that entered into the contract with the Claimant and the contact details*]

## **Standard Terms and Conditions of Appointment of the Adjudicator**

### **SECTION I – OBLIGATIONS OF THE ADJUDICATOR**

#### **General**

1. The Adjudicator:
  - (a) is not a party (or employee or agent of a party) to the contract under which the payment dispute arose and there is no conflict of interest in respect of the appointment;
  - (b) is competent to act as Adjudicator to the payment dispute;
  - (c) will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
  - (d) will comply with the principles of natural justice and decide the payment dispute in accordance with the terms and conditions of the contract and the applicable law;
  - (f) will, from the time of accepting the appointment and throughout the adjudication proceedings, disclose to the parties to the adjudication any circumstances likely to give rise to justifiable doubts as to his/her impartiality or independence;
  - (g) is able to undertake the task within the time limits set out in DEVB Technical Circular (Works) No. 6/2021 “Security of Payment Provisions in Public Works Contracts”; and
  - (h) will not disclose or give to another person any information relating to (a) the adjudication; or (b) the decision rendered in the adjudication.

#### **Overriding duties of the adjudicator**

- 2 The adjudicator shall act impartially and fairly, and in accordance with the HKIE Adjudication Rules, the terms and conditions of the contract and its applicable law.
- 3 The adjudicator shall avoid incurring unreasonable expense or delay in adjudicating the dispute.
- 4 The adjudicator shall decide the dispute and deliver the adjudication decision to the parties and the HKIE within 55 working days from the date of his or her appointment or any longer period agreed by the parties.

### **SECTION II – CONDUCT OF THE ADJUDICATION**

#### **Jurisdiction of the Adjudicator**

- 5 The Adjudicator’s jurisdiction is limited to determining:
  - (a) the payment dispute that is referred to adjudication by the Claimant; and
  - (b) any other matters that are of a consequential or ancillary nature necessary to exercise or complete the exercise of the jurisdiction conferred by the Appointment.
- 6 The Adjudicator has the power to rule on his/her own jurisdiction.

#### **Adjudication procedure**

- 7 The Adjudicator must conduct the adjudication in the manner he/she considers appropriate within the powers provided under the Appointment.

- 8 When conducting an adjudication, The Adjudicator is not bound by the rules of evidence and may receive and take into account any relevant evidence or information, whether or not it would be otherwise admissible in a court of law.
- 9 The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute.

### **Powers of the Adjudicator**

- 10 The Adjudicator may:
  - (a) make use of his or her own specialist knowledge;
  - (b) establish the procedures for conducting the adjudication proceedings;
  - (c) determine the language or languages to be used in the adjudication proceedings;
  - (d) extend the deadline for service of an adjudication Response;
  - (e) request or allow a party to the adjudication to produce any document or provide any information that the adjudicator reasonably requires;
  - (f) set deadlines for the submission, production of documents and provision of information;
  - (g) meet and question any party or representative or witness;
  - (h) make any inspection or site visit, and to carry out or require to be carried out any test or experiment or opening up;
  - (i) direct the inspection, preservation, storage or interim custody of any property or sample or thing under the control of any party;
  - (j) request any further submissions or representations or statements, and at any time to permit any party to amend the aforesaid;
  - (k) direct any party to produce to every other party and to the adjudicator for inspection, and to supply copies of any documents in that party's possession, custody or control;
  - (l) give directions as to the timetable for the adjudication, or as to any deadlines, or limits as to the length of written documents or oral representations;
  - (m) appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
  - (n) decide on the proportion of the fees and expenses of the [adjudicator](#) and any independent expert to be paid by the parties to the adjudication; and
  - (o) issue directions relating to the conduct of the adjudication.

### **Limitation of the Adjudicator's duties and powers**

- 11 The Adjudicator's power to determine a payment dispute is not affected by the failure of:
  - (a) the Respondent to serve an adjudication response on the Claimant; or
  - (b) any of the parties to the adjudication to:
    - (i) make a submission within the time allowed by the Adjudicator; or
    - (ii) comply with the Adjudicator's call for a conference of the parties; or do any other thing that the Adjudicator requests or directs; or
    - (iii) do any other thing the Adjudicator requests or directs.

### **Resignation of adjudicator**

- 12 The adjudicator may resign by giving notice in writing to the parties to the adjudication if the adjudicator considers that it is not possible to decide the dispute fairly within the specified period and where it appears to the adjudicator that the dispute is the same or substantially the

same as one which has previously been referred to adjudication with a decision given in that adjudication. A resignation takes effect on the later of (a) the date specified in the notice; and (b) the date on which the notice is served on the parties to the adjudication and the HKIE.

### **Termination of adjudication**

- 13 By agreement between the parties, the adjudication may be terminated at any time on giving written notice to the adjudicator and to the HKIE.
- 14 The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the adjudicator, the Respondent(s) and the HKIE. .
- 15 The Claimant who withdraws an adjudication must bear the fees and expenses of the adjudicator and of any independent expert appointed unless the adjudicator orders otherwise.
- 16 An adjudication is terminated if—
  - (a) the Claimant fails to serve an adjudication submission on the adjudicator and the Respondent(s) within the specified time;
  - (b) the Claimant serves a notice of withdrawal;
  - (c) the Respondent pays the claimed amount stated in the Request in full to the Claimant;
  - (d) the adjudicator resigns;
  - (e) the adjudicator becomes unable or unsuitable to act as the adjudicator under the Rules, or the adjudicator becomes ineligible to act as the adjudicator under the Rules;
  - (f) the payment dispute is settled by agreement in writing between the parties to the adjudication;
  - (g) the payment dispute is determined by arbitration or court proceedings;
  - (h) the adjudicator fails to deliver an adjudication decision in accordance with the Rules; or
  - (i) the adjudicator decides that he/she has no jurisdiction to determine the payment dispute.

## **SECTION III – ADJUDICATION DECISIONS AND COSTS**

### **Adjudication decision**

- 17 The adjudicator shall decide the matters in dispute set out in the the Notice of Adjudication, the Request, Claimant’s submissions and the Respondent(s) Response together with any other matters which the parties and the adjudicator agree should be within the scope of the adjudication.
- 18 The adjudicator shall reach a decision within 55 working days from the adjudicator’s appointment or any longer period agreed by the parties.
- 19 The adjudicator may withhold delivery of his or her decision once reached until the HKIE and adjudicator's fees and expenses have been fully paid.
- 20 In rendering the decision, the adjudicator shall have the power and jurisdiction to decide the time-related costs forming part of the payments disputes.

**The Adjudicator may correct clerical and typographical errors etc.**

- 21 The adjudicator may on his or her own initiative, or at the request of any party, correct a decision so as to remove any clerical or computational or typographical errors or any errors of a similar nature, provided that the initiative is taken or the request made within 3 days of the date of the adjudicator's decision. The adjudicator shall make any corrections within 5 working days after the date on which the decision is delivered to the parties.
- 22 The adjudicator may, at the request of any party, clarify any ambiguity in his or her decision, or make an additional decision on any matter referred to adjudication but not dealt with in the decision, provided that the request is made within 3 days of the date of the decision. The adjudicator shall make any clarification or additional decision within 5 working days after the date on which the decision is delivered to the parties.
- 23 Any correction done to an adjudication decision under this heading does not affect the validity of the decision.

**The Adjudicator's fees and expenses**

- 24 The adjudicator is entitled to his or her fees and expenses, in reasonable amount and reasonably incurred.
- 25 The parties remain jointly and severally liable to pay the adjudicator's fees and expenses in the proportions the adjudicator decides as part of the adjudication decision, including whether any party shall pay for a specific expense.
- 26 Upon the adjudicator's resignation, or the adjudicator's failure to reach a decision within the time specified, the adjudicator is not entitled to his or her fees and expenses.
- 27 Where the appointment of an adjudicator is revoked, the adjudicator shall be entitled to his or her fees and expenses unless the revocation was due to the adjudicator's own fault or misconduct.
- 28 Any dispute as to the adjudicator's entitlement to the adjudicator's fees and expenses, or the reasonable amount of his or her fees and expenses, shall be determined by the HKIE in its absolute discretion, on the written request of any party or the adjudicator, with copies to the other parties and the adjudicator.

**Fees and expenses of the Adjudication**

- 29 The fees and expenses of the adjudication is determined in accordance with the latest HKIE Standard Fees and Expenses of Adjudication published by the HKIE plus any expenses reasonably incurred by the Adjudicator during the adjudication:
- 30 Within 5 (five) working days upon the notification of the appointment of adjudicator by the HKIE, the Claimant shall deposit a sum with the HKIE in accordance with the following schedule:

<b>1. Respondent's Details</b>	
Company :	

Contact Person :	
Address :	
Phone :	
Fax :	
Email Address :	

Claimed Amount (in HKD)	Deposit(in HKD)
Less than 1,000,000	5,000
Over 1,000,000	10,000

- 31 The adjudicator may from time to time direct the parties to make deposits with the HKIE as payment on account of the anticipated costs of the adjudication. Upon receipt of the deposits, the HKIE will acknowledge receipt of payment.
- 32 Should a party fail to provide its share of the deposits as required, its share may be paid by the other party. Any failure to deposit the entire sum required by the specified period shall entitle the adjudicator to terminate the proceedings.
- 33 Following the conclusion of the adjudication, the adjudicator shall collect the adjudicator's fees and expenses out of the funds deposited with the HKIE. Any surplus funds remaining after the adjudicator's fees and expenses have been paid in full shall be returned to the party that deposited it, unless otherwise directed by the adjudicator.

#### **Costs of adjudication**

- 34 The Adjudicator shall submit to the HKIE a copy of his or her direction to the parties to require full payment of fees and expenses including the date of payment to be made by the parties.
- 35 Before releasing the adjudication decision to the parties, the parties are required to deposit the full payment of the Adjudicator's fees and expenses to the HKIE.
- 36 The Adjudicator may submit to the HKIE a copy of his or her direction to the parties to pay the fees and expenses if the parties in dispute fail to make such payment within the period as directed by him/her.
- 37 The Adjudicator shall release the adjudication decision to the parties in dispute upon full payment of his/her fees and expenses to be deposited with the HKIE by the parties.
- 38 The HKIE shall pay to the Adjudicator any fees and expenses deposited by the parties upon receiving a copy of the adjudication decision within the period specified under the Appointment and refund to the parties any fees and expenses relating to the adjudication if he/she fails to decide the dispute within the period specified under the Appointment.

#### **SECTION IV – MISCELLANEOUS**

**Exclusion of liability**

- 39 None of the HKIE, HKIE Council and its various Committees, HKIE Secretariat or their staff, or adjudicators shall be liable for any act or omission in connection with an adjudication conducted under the HKIE Adjudication Rules, save where the act was done or omitted to be done dishonestly.
  
- 40 The adjudicator is appointed to determine the payment disputes between the parties, and the adjudicator shall owe no duty of care to any third party whatsoever.
  
- 41 This Appointment is governed by the law of the Hong Kong Special Administrative Region, and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Appointment.

**SIGNING OF THE APPOINTMENT OF THE ADJUDICATOR**

Date: \_\_\_\_\_

<i>[Name of Claimant]</i>	<i>[Name of Respondent]</i>

<i>[Name of the Adjudicator]</i>	