

**DISCLAIMER:**

**This proforma expert determination rules and procedures (these “Proforma Rules and Procedures”) are provided by the BAEDC as a reference only and should be amended to suit the specific circumstances of the parties and the expert in each case after careful discussion among themselves. Nothing herein should be regarded as constituting a professional or other advice for any matters. The BAEDC and HKIS (or the employees, consultants, officers, members or representatives whatsoever of the BAEDC and HKIS) shall not be liable for any loss or damage, howsoever incurred, which may result from usage and / or reliance of this Proforma Rules and Procedures.**

## **Expert Determination Rules and Procedures**

### **1. Definition and Interpretation**

- 1.1. Unless the context otherwise requires, the terms defined in the Expert Determination Agreement shall have the same meaning in this Expert Determination Rules and Procedures (the “**Rules and Procedures**”).
- 1.2. Unless the context otherwise requires:-
  - (a) References to “**persons**” include without limitation individuals, unincorporated bodies, government entities, companies, corporations and any other entities whatsoever;
  - (b) Words importing the masculine gender include the feminine and neuter genders and vice versa; and
  - (c) Words importing the singular number include the plural and vice versa.

### **2. General**

- 2.1. These Rules and Procedures shall govern the expert determination procedure between the Parties in respect of the Disputes.
- 2.2. Expert Determination hereunder is purely contractual, as such, the Parties and the Expert shall ensure that they settle, understand and agree with the terms of the Agreement in respect of the engagement of the Expert and these Rules and Procedures governing the expert determination process, before commencing expert determination. The Parties shall also use their best endeavours to do or procure to be done anything which the Expert may reasonably require for the determination of the Disputes.
- 2.3. In the Expert Determination, the Expert determines the building related technical issues or disputes in accordance with his own expertise. Accordingly, the Expert shall be entitled to consider any materials submitted by the Parties which he considers to be relevant and may (but shall not be obliged to) conduct his own investigations in respect of the Disputes. The Expert may also form a view based on his expertise and/ or investigations solely, with or without relying on the materials submitted by the Parties, subject to the relevance of such materials so submitted.

- 2.4. The Expert Determination shall be conducted mainly in Chinese or English as specified in the Application Form submitted to the BAEDC.
- 2.5. The procedures directed by the Expert should aim to ensure the conduct of the Expert Determination as expeditiously as is reasonably practicable and as cost-effectively as possible.

### **3. Timetable for Submission by the Parties**

- 3.1. Subject to paragraph 3.2 below and paragraph 5 below, the timetable for the conduct of the Expert Determination shall be as follows:-
- (a) Within 14 Business Days upon entering into the Expert Determination Agreement, or such other time as the Expert may reasonably direct should the Expert consider necessary to hold a preliminary conference with the Parties to clarify the issues in dispute, each party shall provide the Expert and the other party(ies) with:-
- (i) a written document which sets out the background of the Disputes;
  - (ii) copies of all supporting documents and/ or other evidentiary material on which he relies; and
  - (iii) its written submission and/ or opinion on the Disputes;
- (b) Within 14 Business Days after receipt of the documents in paragraph 3.1 (a) above, each party shall provide the Expert and the other party(ies) with:-
- (i) its reply and/or comments to the submissions and/ or opinion on the Disputes, including but not limited to, the issues and/ or facts that it agrees and those which it disagrees;
  - (ii) any further information in respect of the Disputes which he wishes the Expert to consider.
- 3.2. Notwithstanding the aforesaid, the Expert may, after consulting the Parties and taking into account the nature and complexity of the Disputes, amend, abridge, vary and/ or prepare a different timetable as he deems appropriate.
- 3.3. Unless otherwise agreed or directed, the Parties shall ensure that copies of all documents provided to the Expert are provided to other party(ies) at the same time.

#### **4. Default**

- 4.1. If within the period as set out in the timetable in paragraph 3.1(a) above or such other timetable directed by the Expert pursuant to paragraph 3.2 above, any of the Parties fails to communicate its submissions without satisfactory justifications for such failure, the Expert may terminate the Expert Determination.
- 4.2. If within the period as set out in the timetable in paragraphs 3.1(b) and (c) above or such other timetable directed by the Expert pursuant to paragraph 3.2 above, any of the Parties fails to communicate its reply and/ or other submissions without satisfactory justifications for such failure, the Expert may proceed with the Expert Determination based on the materials already submitted by the Parties, his own expertise and/ or his own investigations (if the Expert considers carrying out its own investigations necessary).

#### **5. Conference**

- 5.1. If the Expert considers it to be necessary, he may at any stage hold a conference with the Parties to clarify the issues in dispute and/or to facilitate further conduct of the proceedings and make such orders as he considers necessary for the Expert Determination.
- 5.2. Such conferences may be held by means of telephone conference, video conference or similar communication equipment.
- 5.3. Save where the Parties have agreed otherwise, the Expert shall, generally, give the Parties 14 Business Days prior notice of its intent to hold a conference with the Parties and the matters to be addressed at the conference and the Parties shall, within 7 Business Days upon receipt of such notice, let the Expert have their comments in reply.

#### **6. Evidence**

- 6.1. The Expert is not bound by the rules of evidence and is free to apply any rule to approach evidence.
- 6.2. The Expert may at his discretion receive and consider any materials submitted by the Parties which he considers to be relevant and may give such weight to such material as he considers appropriate.

- 6.3. The Expert shall be entitled to, at any time, on his own motion or at the request of any of the Parties, allow or require further evidence (including but not limited to the submission of evidence, statements of witnesses, documents or other information in a Party's possession or control).
- 6.4. The Expert shall be entitled to, at any time, on his own motion or at the request of a Party, investigate, inspect or require the investigation or inspection of any site, property or object as he considers appropriate.
- 6.5. The Expert may, at any time, on his own motion or at the request of a Party, carry out or procure the conduct of such reasonable tests as he considers appropriate. Without prejudice to the aforesaid, the Expert shall obtain the prior consent of the Parties for the conduct of such tests.
- 6.6. If any of the Parties considers any of the above evidence or other information which are required to be submitted to be confidential or under the protection of any of privilege (including but not limited to legal privilege), that Party shall reply to the Expert in writing stating the reasons for which it considers the information to be confidential or under the protection of privilege. If the Expert determines that the information is to be classified as confidential or under the protection of privilege, he shall decide whether the information should be disclosed, and if his decision is positive, under what conditions and to whom the confidential information should be disclosed.
- 6.7. The Expert may refer to any practice note(s) or code(s) of practice or recognised guideline(s) as the Expert deems relevant to the Disputes.

## **7. Power to impose sanctions**

- 7.1. Where any of the Parties has failed to use its best endeavours to do or procure to be done anything which the Expert may reasonably require for the determination of the Disputes, the Expert may serve on the party a notice stating that unless the Party uses its best endeavours to do or procure to be done anything which the Expert reasonably required within 7 Business Days or that Party attends a meeting on a specific date he will proceed to determine the matter in the absence of the information or the conference.
- 7.2. The Expert shall generally, determine the Disputes in accordance with any relevant materials submitted by the Parties, his own inspection/ investigation result and/ or his own expertise.

- 7.3. Notwithstanding the aforesaid, the Expert shall be entitled to draw adverse inferences, where appropriate, from a Party's failure to use its best endeavours to do anything which the Expert may reasonably require for the determination of the Disputes.

## **8. Settlement**

- 8.1. If, prior to the delivery of the Expert's Decision, the Parties reach a settlement on the Disputes, the Parties must as soon as practicable inform the Expert of the settlement ("**Notice of Settlement**") and the Expert will conclude the expert determination process without making a determination.
- 8.2. The Parties will still be liable for the Expert's fees up to the date of the Expert's receipt of the Notice of Settlement.

## **9. Expert's Decision**

- 9.1. As soon as reasonably practicable and in normal circumstances within 180 days after receiving the all necessary submissions and the evidentiary materials provided pursuant to paragraph 3.1 of these Rules and Procedures, the Expert shall determine the Disputes and notify the Expert's Decision in writing to the Parties.
- 9.2. If the Expert considers that he needs to deliver the Expert's Decision at a later date due to the complexity of the Disputes or any other reason whatsoever, the Expert shall inform the Parties the estimated date for delivery of the Expert's Decision before the expiry of the period set out in paragraph 9.1 above.
- 9.3. The Expert would give reasons for the Expert's Decision, unless otherwise agreed by the Parties.
- 9.4. The Expert's Decision of the Disputes shall be final and binding and enforceable by the Parties.
- 9.5. [If so agreed by the Expert and the Parties, the Expert may award interest at such rates and for such periods as the Expert deems reasonable on any monetary sum determined or any part of it and the Expert may also award interest for any late payment of any amount, which is the subject of his determination. Further, the Expert may determine the Parties' respective proportion for the Expert's

fees and expenses if so agreed by the Expert and the Parties.]<sup>1</sup>

- 9.6. The Expert's Decision shall be delivered to the Parties upon payment in full of the Expert's outstanding fees and expenses.
- 9.7. The Expert shall be entitled to, at any time, on his own motion or at the request of any of the Parties, correct and give notice to the Parties of such correction:
- (a) a clerical mistake;
  - (b) an error arising from an accidental slip or omission;
  - (c) a miscalculation of figures or a mistake in the description of any person, thing or matter; or
  - (d) a defect of form.

## **10. Objection**

- 10.1. Any of the Parties who becomes aware of any non-compliance of these Rules and Procedures of the other Party must make an objection to the Expert in writing within 14 Business Days of the time at which that Party became aware or should have been aware of the non-compliance, or that Party will be deemed to have waived the right to object.
- 10.2. The Expert shall have sole and complete discretion in determining the objection made by any of the Parties and in making any further order or decision with respect to the objection(s).

## **11. Confidentiality**

- 11.1. The Expert and the Parties will keep the Expert Determination private and confidential except:-
- (a) to whom information is required or requested to be disclosed by any court of competent jurisdiction or any governmental, taxation or other regulatory authority or similar body, or pursuant to any applicable laws or regulation;
  - (b) to whom information is required to be disclosed in connection with, and for the purposes of, any litigation, arbitration, administrative or other investigations, proceedings or disputes;

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<sup>1</sup> Delete if not applicable  
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- (c) with the written consent of both Parties and the Expert;
- (d) For research, experience sharing and/or statistical purposes, BAEDCthe BAEDC and the HKIS shall be entitled to collect anonymous information/ data in respect of a summary of the expert determination proceedings and the fees charged by the nominated experts upon completion of the expert determination in compliance with Personal Data (Privacy) Ordinance (Cap. 486).

11.2. In particular, the Expert shall not at any time, without the consent of the Parties, disclose to any other person:-

- (a) any details or information concerning the subject matter to which any dispute or difference referred under this Agreement;
- (b) any of the contents of this Agreement, or any information disclosed by the Parties in any proceedings and/ or submissions relating to the Expert Determination;
- (c) any documents prepared for the purpose of the determination (including but not limited to the Expert Determination); or
- (d) any communication or conversation exchanged between the Parties and/or between Parties and the Expert.



## Illustration of Expert Determination Procedures

