



## **STANDARD FORMS FOR USE UNDER ADJUDICATION RULES**

- a. Notice of adjudication
- b. Standard terms of appointment of adjudicator
- c. Acceptance of appointment of adjudicator and declaration
- d. Service of adjudication submission / adjudication response

## Notice of Adjudication

<b>From the Claimant:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>To the Respondent:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>Contract Number:</b>	
<b>Project/Contract Name:</b>	
<b>Project Location:</b>	
<b>Date of Contract:</b>	
<b>Contract Sum:</b>	

### Dispute on Payment

<b>Payment Claim</b>	
Date of service of the Payment Claim	
Payment Interval	
Due Date for Payment	
Payment Claim Amount	
<b>Payment Response</b>	
Due Date for Payment Response to be served	
Date of Service of the Payment Response (if any)	
Payment Response Amount (if any)	
Payment Made by Respondent (if any)	
Due Date for Payment	
Date of Payment made by the Respondent	
Amount of Payment made by the Respondent	
Claim Amount under this Application	

**Dispute on time for performance or entitlement to extension of time**

<b>Date of issuance of application for extension of time</b>	
<b>Duration of extension of time applied for</b>	
<b>Date of issuance of assessment of extension of time</b>	
<b>Duration of extension of time granted (if any)</b>	
<b>For dispute on time for performance other than entitlement to extension of time, please specify</b>	

**NOTICE OF ADJUDICATION**

1. A dispute has arisen between us and you under the Contract arising from the above referenced Payment Claim [*and Payment Response (if any)*].
2. The Payment Claim was served on [*us or you, as the case may be*] by [*state the mode of service*] on [*date*]. [*We or You (as the case may be) thereafter served a Payment Response by (state the mode of service) on (date) [\*If applicable]*]
3. The dispute involves the following:  
  
[*Set out the nature and description of the dispute*]
4. In accordance with the contract, we hereby give you notice to refer the aforesaid dispute arising from the Payment Claim to adjudication.

Signed by/on behalf of the Claimant

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Name:

Position:

Date:

**STANDARD TERMS OF APPOINTMENT OF ADJUDICATOR  
(APPOINTMENT)**

<b>The Claimant:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>The Respondent:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>Contract Number:</b>	
<b>Contract Name:</b>	

I, [*Name of the Adjudicator*] (The Adjudicator), has been appointed as an adjudicator and to proceed the adjudication according to the terms of this Appointment and the Adjudication Rules of the Hong Kong Institute of Surveyors (The HKIS) the details of which are contained as below:

**SECTION I – OBLIGATIONS OF THE ADJUDICATOR**

**General**

1. The Adjudicator is to be:
  - (a) satisfied himself/herself that the subject matter of the dispute falls within the sphere of his/her normal professional practice;
  - (b) able to undertake the task within the time limits set out in the Technical Circular of “Implementation of the Spirit of Security of Payment Legislation in Public Works Contracts” (DEVB TC(W) No. 6/2021) issued by the Development Bureau;
  - (c) satisfied that he/she has no current involvements that would give rise to a real or perceived conflict of interests, or any such involvements in the past five years;
  - (d) act independently, impartially and in a timely manner and avoid incurring unnecessary expenses; and

- (e) comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law.
- 2. 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 his/her impartiality and independence.
- 3. If for any reason whatsoever the Adjudicator is unable to act or resigns, either party may require the appointment of a replacement adjudicator in accordance with the above procedure of appointment of adjudicator.
- 4. The Adjudicator must not disclose or give to another person any information relating to:
  - (a) an adjudication; or
  - (b) an adjudication decision made in the adjudication.

## **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 sub-paragraph 5(a) of the Agreement.
- 6. The Adjudicator has the power to rule on his/her own jurisdiction.

### **The Adjudicator to conduct adjudication**

- 7. The Adjudicator must conduct the adjudication in the manner he/she considers appropriate within the powers provided under paragraph 9 of 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.

## **Powers of the Adjudicator**

9. The Adjudicator may:
- (a) establish the procedures for conducting the adjudication proceedings;
  - (b) determine the language or languages to be used in the adjudication proceedings;
  - (c) extend the deadline for service of an adjudication response;
  - (d) request or allow the Claimant or the Respondent to submit further written submissions;
  - (e) request or allow a party to the adjudication to produce any document or provide any information that he/she reasonably requires;
  - (f) set deadlines for the submission, production of documents and provision of information;
  - (g) appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
  - (h) call a conference of the parties to the adjudication;
  - (i) carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates including opening up of any construction work done and conducting tests or experiments;
  - (j) decide on the proportion of the fees and expenses of himself/herself and any independent expert appointed under sub-paragraph 9(g) of the Appointment to be paid by the parties to the adjudication; and
  - (k) issue any direction as may be necessary or expedient for the conduct of the adjudication.

## **Circumstances where the Adjudicator must disregard submission etc.**

10. The Adjudicator must not consider any submission or response made by a party to the adjudication unless it was given to him/her within the time that the party may give it to him/her.
11. The Adjudicator must disregard any submission, evidence or document submitted by a party to the adjudication or any part of it to the extent that it comprises submission or evidence that:

- (a) the other party was unaware of on the date on which the notice of adjudication was served;
- (b) should reasonably have been served before the date on which the notice of adjudication was served; and
- (c) cannot be fairly considered and responded to by the other party.

### **When the Adjudicator's powers not affected**

12. 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;
    - (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 the Adjudicator**

13. The Adjudicator may resign by giving notice in writing to the parties to the adjudication if he/she considers that it is not possible to decide the dispute fairly within the period specified in paragraph 21 of the Appointment.
14. A resignation takes effect on:
- (a) the date specified in the notice; or
  - (b) if no date is so specified, it will be the date on which the notice is served on the parties to the adjudication.

### **Withdrawal of adjudication proceedings**

15. The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the Adjudicator and the Respondent and the HKIS.
16. When the adjudication is withdrawn by the Claimant, the Claimant shall be liable to pay the fees and expenses incurred in relation to the adjudication up to

and including the date on which the adjudication is withdrawn unless the Adjudicator orders otherwise.

17. The Claimant who withdraws an adjudication must bear the fees and expenses of the Adjudicator and of any independent expert appointed under subparagraph 9(g) of the Appointment unless the Adjudicator orders otherwise.

### **Termination of adjudication proceedings**

18. An adjudication is terminated if:
- (a) the Claimant serves a notice of withdrawal under paragraph 15 of the Appointment;
  - (b) the Respondent pays the claimed amount stated in the notice of adjudication in full to the Claimant;
  - (c) the Adjudicator resigns under paragraph 13 of the Appointment or becomes unable or unsuitable to act as the Adjudicator;
  - (d) the payment dispute is settled by agreement in writing between the parties to the adjudication;
  - (e) the payment dispute is determined by arbitration;
  - (f) the Adjudicator fails to deliver an adjudication decision in accordance with paragraph 21 of the Appointment; or
  - (g) the Adjudicator decides under paragraph 5 of the Appointment that he/she has no jurisdiction on the payment dispute.
19. The Adjudicator shall be entitled to collect reasonable fees and expenses incurred up to the date of the service of notice of termination of the adjudication proceedings or the date of settlement if:
- (a) the parties settle the dispute before the making of the Adjudicator's decision; or
  - (b) the Adjudicator's appointment is terminated pursuant to paragraph 18 of the Appointment.



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

#### **Adjudication decisions**

20. The Adjudicator must determine:
- (a) the payment dispute referred to him/her;
  - (b) the adjudicated amount, if any, to be paid by the Respondent to the Claimant, or, as the case may be, any amount to be paid by the Claimant to the Respondent;
  - (c) the interest payable on the adjudicated amount;
  - (d) the date on which the adjudicated amount is payable; and
  - (e) the proportion of the fees and expenses of himself/herself and of any independent expert appointed under sub-paragraph 9(g) of the Appointment payable by each party to the adjudication.
21. The Adjudicator must by hand or if otherwise agree between himself/herself and the HKIS, through the HKIS, deliver an adjudication decision to the parties to the adjudication within:
- (a) 55 (fifty-five) working days after the date on which he/she is appointed;  
or
  - (b) any longer period agreed by the parties to the adjudication.
22. The Adjudicator shall serve a copy of the adjudication decision, including any corrected adjudication decision made under paragraph 24 of the Appointment, on the parties and the HKIS.
23. Notwithstanding paragraph 22 of the Appointment, before releasing the adjudication decision to the parties, the Adjudicator may require full payment of his/her fees and expenses to be deposited with the HKIS.

#### **The Adjudicator may correct typographical errors etc.**

24. The Adjudicator may, on his/her own initiative or at the request of a party to the adjudication, correct in the adjudication decision any computational or typographical errors or any errors of a similar nature.

25. Any correction must be done within 5 (five) working days after the date on which the decision is delivered to the parties to the adjudication under paragraph 21 of the Appointment.

### **The Adjudicator's fees and expenses**

26. The Adjudicator is entitled to be paid for adjudicating a payment dispute:
- (a) the amount, by way of fees and expenses, agreed between himself/herself and the parties to the adjudication; or
  - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and the expenses incurred by him/her.
27. The Claimant and Respondent are jointly and severally liable to pay the Adjudicator's fees and expenses.
28. The Claimant and Respondent are each liable to contribute to the payment of the Adjudicator's fees and expenses:
- (a) in the proportions the Adjudicator decides; or
  - (b) in equal proportions if the Adjudicator has not decided.
29. The Adjudicator is not entitled to be paid any fees or expenses for the adjudication if:
- (a) he/she fails to make an adjudication decision either within the time required under paragraph 21 of the Appointment or at all; or
  - (b) he/she resigns during the course of the adjudication.
30. However, paragraph 29 of the Appointment does not apply if:
- (a) the adjudication is withdrawn by the Claimant under paragraph 15 of the Appointment; or
  - (b) the Adjudicator decided that he/she did not have jurisdiction to adjudicate the payment dispute.
31. For the purposes of paragraph 29 of the Appointment, the Adjudicator does not fail to make an adjudication decision solely on the ground that he/she refuses to deliver the adjudication decision until his/her fees and expenses are paid.

32. For the avoidance of doubt, the Adjudicator remains empowered to decide his/her fees and expenses after termination of an adjudication under paragraph 18 of the Appointment (except resignation of himself/herself under paragraph 13 of the Appointment and his/her failure to deliver an adjudication decision in accordance with paragraph 26 of the Appointment).

### **Fees and expenses of the Adjudicator**

33. Within 5 (five) working days upon the notification of the appointment of adjudicator by the HKIS, the Claimant shall deposit a sum with the HKIS in accordance with the following schedule:

<b>Disputed amount</b>	<b>Deposit</b>
Less than or equal to HK\$200,000	HK\$7,500
Above HK\$200,000	HK\$15,000

Any failure to deposit the entire sum required shall entitle the Adjudicator to resign by given notice in writing to the parties..

34. The Adjudicator's fees and expenses is determined in accordance with the latest fee structure published by the HKIS plus any expenses reasonably incurred by the Adjudicator during the adjudication:
35. The Adjudicator shall submit to the HKIS a copy of his/her direction to the parties to require full payment of fees and expenses including the date of payment to be made by the parties.
36. 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 HKIS.
37. The Adjudicator may submit to the HKIS a copy of his/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.
38. 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 HKIS by the parties.
39. The HKIS 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 paragraph 21 of 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 paragraph 29 of the Appointment.

**Section IV – Miscellaneous**

40. The Adjudicator is not civilly liable for an act done or omitted to be done by him/her in good faith in:

- (a) performing or purportedly performing a function; or
- (b) exercising or purportedly

under the Technical Circular of “Implementation of the Spirit of Security of Payment Legislation in Public Works Contracts” issued by the Development Bureau.

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>

## Notice of acceptance of the appointment to act as adjudicator

To: The Hong Kong Institute of Surveyors (The HKIS)

<b>The HKIS Case Registration Number:</b>	
<b>Contract Number:</b>	
<b>Project/Contract Name:</b>	
<b>Date of Notice of Adjudication:</b>	

1. I refer to the letter of notice of appointment dated [Date] for me to act as adjudicator in the dispute as identified in the above referenced Notice of Adjudication which was sent to me by the HKIS.
2. I, [Name of the adjudicator] hereby accept the appointment to act as adjudicator with my fees and expenses as set out under the HKIS's Standard Fees for Services and Expenses of Adjudicator.
3. I confirm that:
  - (a) I am not a party (or employee or agent of a party) to the contract under which the payment dispute arose;
  - (b) the subject matter of the dispute falls within the sphere of my normal professional practice;
  - (c) I am able to undertake the task within the time limits set out in the Technical Circular of "Implementation of the Spirit of Security of Payment Legislation in Public Works Contracts" (DEVB TC(W) No. 6/2021) issued by the Development Bureau;
  - (d) I have no current involvements that would give rise to a real or perceived conflict of interests, or any such involvements in the past five years;
  - (e) I shall act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
  - (f) I shall comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
  - (g) there are no circumstances likely to give rise to justifiable doubts as to his/her impartiality and independence.
4. I further warrant that, from the time of accepting the appointment and throughout the adjudication proceedings, to disclose to the HKIS any circumstances likely to give rise to justifiable doubts as to my impartiality and independence or likely to create an impression of bias or prevent me from acting promptly. The HKIS, upon

receipt of such disclosure, may exercise its discretion on whether to appoint another person as an adjudicator.

5. I hereby agree to abide by the prevailing Code of Ethical Conduct for Adjudicators under the Panel of Adjudicators of the HKIS and the Rules of Conduct of the HKIS.
6. The appointment does not constitute any contract between me and the HKIS.

**Signature :** \_\_\_\_\_

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

**Name (in print) :** \_\_\_\_\_

## Adjudication Submission

Note: The Adjudication Submission must be submitted by the Claimant within **one (1) working day** after the date of issuance on which the adjudicator is appointed.

<b>From the Claimant:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>To the Respondent:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>Contract Number:</b>	
<b>Project/Contract Name:</b>	
<b>Project Location:</b>	
<b>Date of Contract:</b>	
<b>Contract Sum:</b>	

### Dispute on Payment

<b>Payment Claim</b>	
Date of service of the Payment Claim	
Payment Interval	
Due Date for Payment	
Payment Claim Amount	
<b>Payment Response</b>	
Due Date for Payment Response to be served	
Date of Service of the Payment Response (if any)	
Payment Response Amount (if any)	
Payment Made by Respondent (if any)	
Due Date for Payment	
Date of Payment made by the Respondent	
Amount of Payment made by the Respondent	
Claim Amount under this Application	

**Dispute on time for performance or entitlement to extension of time**

<b>Date of issuance of application for extension of time</b>	
<b>Duration of extension of time applied for</b>	
<b>Date of issuance of assessment of extension of time</b>	
<b>Duration of extension of time granted (if any)</b>	
<b>For dispute on time for performance other than entitlement to extension of time, please specify</b>	

**ADJUDICATION SUBMISSION**

1. A dispute has arisen between us and you under the Contract arising from the above referenced Payment Claim [*and Payment Response (if any)*].
2. The Payment Claim was served on [*us or you, as the case may be*] by [*state the mode of service*] on [*date*]. [*We or You (as the case may be) thereafter served a Payment Response by (state the mode of service) on (date)*] [*\*If applicable*]
3. The dispute involves the following:  
  
[*Set out the nature and description of the dispute*]
4. In accordance with the contract, we have served you a Notice of Adjudication to refer the aforesaid dispute arising from the Payment Claim to adjudication.
5. We seek the following reliefs or remedies:  
  
[*Set out the nature and description of the relief(s)/remedy(ies)*]
6. The documents in support of the relief(s) or remedy(ies) sought are as follows:  
  
[*Identify the documents and attach all relevant documents in support hereof*]

Signed by/on behalf of the Claimant

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Name:

Position:



Date:

## Adjudication Response

Note: The Adjudication Response must be submitted by the Respondent within **twenty (20) working days** after the adjudication submission is served on the Respondent or any longer period the adjudicator specifies.

<b>From the Respondent:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>To the Claimant:</b>	
<b>Name:</b>	
<b>Address:</b>	

<b>Contract Number:</b>	
<b>Project/Contract Name:</b>	
<b>Project Location:</b>	
<b>Date of Contract:</b>	
<b>Contract Sum:</b>	

### ADJUDICATION RESPONSE

1. We refer to your adjudication submission served to us on [*date*].
2. In accordance with SOP Clause 16, we hereby set out our reply to your adjudication submission as follows:

*[Set out the reply to the Claimant's adjudication submission]*

3. The documents in support of our adjudication response are as follows:

*[Identify the documents and attach all relevant documents in support hereof]*

Signed by/on behalf of the Respondent

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Name:

Position:

Date: