

SOP MAIN CONTRACTOR ANNEX (APRIL 2022)

Terms and conditions in this Annex shall form an integral part of the Purchase Order and shall prevail over terms and conditions stipulated in the Conditions of Purchase. Furthermore, the Conditions of Purchase shall be amended as follows:

- (A) Clause 7.1 and 7.2 shall be subject to Clause 2 of the SOP Provisions for Relevant Subcontracts included in this Annex.
- (B) Clause 23 shall not apply to any payment dispute which is intended to be resolved in accordance with Part 3 to 5 of the SOP Provisions for Relevant Subcontracts included in this Annex.

MANDATORY SUBCONTRACT CONDITIONS FOR SECURITY OF PAYMENT

Clause SP-1

- (1) In this Sub-contract the following words and expressions shall have the meanings hereby assigned to them except when the context otherwise requires:-

"Employer" means the Government of the Hong Kong Special Administrative Region;

"main Contract" means the main contract as defined in the Purchase Order made between the Employer and the main Contractor;

"main Contract Works" means the works and service to be executed by the Main Contractor under the Main Contract;

"main Contractor" means the contractor who has entered into the Main Contract with the Employer and entered into the Sub-contract with the Sub-contractor;

"main contract Representative" means Engineer / Surveyor / Supervising Officer / Maintenance Surveyor / Project Manager / Service Manager as defined in the main Contract, where applicable;

"Sub-contract" means the Purchase Order (incorporating the Conditions of Purchase) under which this Annex attaches;

"Sub-contractor" means the Supplier under the Conditions of Purchase.

Clause SP-2

- (1) This Sub-contract incorporates the Security of Payment Provisions for Relevant Subcontracts set out in this Annex ("**SOP Provisions for Relevant Subcontracts**").
- (2) In this Sub-contract, "**SOP Clause**" means a clause in the SOP Provisions for Relevant Subcontracts.
- (3) The SOP Provisions for Relevant Subcontracts have effect despite any other provision in this Sub-contract.
- (4) A provision of this Sub-contract is void to the extent that—
 - (a) it is inconsistent with the SOP Provisions for Relevant Subcontracts;
 - (b) it has the effect of excluding, modifying or restricting the operation of the SOP Provisions for Relevant Subcontracts;
 - (c) it may be construed as an attempt to deter a person from taking action under the SOP Provisions for Relevant Subcontracts.

SECURITY OF PAYMENT (SOP) PROVISIONS FOR RELEVANT SUBCONTRACTS

Part 1 – Interpretation

- 1. In these SOP Provisions:

"employee" has the meaning given by section 2(1) of the Employment Ordinance (Cap. 57).

"Mandatory Subcontract Conditions for SOP" means Clauses SP-1 to SP-2 of the Subcontract.

"progress payment" means any payment to be made under the Sub-contract for construction work carried out or undertaken to be carried out or for related goods and services supplied or undertaken to be supplied under the Sub-contract whether such payment is a single or one-off payment, interim or final payment or is based on an event or date.

"reference date" means—

- (a) a date determined by, or in accordance with, the Sub-contract as the date on which a claim for a progress payment may be made for construction work carried out or undertaken to be carried out, or related goods and services supplied or undertaken to be supplied, under the Sub-contract; or
- (b) if the Sub-contract does not expressly provide for such a date, the last day of each month in which construction work is carried out or related goods and services are supplied under the Sub-contract.

"working day" means a day that is not—

- (a) a General Holiday; or
- (b) a Saturday.

Part 2 – Payment

- 2. Rights to progress payments

- (1) The Sub-contractor is entitled to a progress payment if the Sub-contractor—
 - (a) has carried out or undertaken to carry out construction work under the Sub-contract; or
 - (b) has supplied or undertaken to supply related goods and services under the Sub-contract.
- (2) The reference dates for progress payments are as stated in the Purchase Order.

- 2A. Conditional payment provisions ineffective

- (1) The parties to the Sub-contract agree that notwithstanding any other provision in this Sub-contract any Conditional Payment Provision in the Sub-contract is unenforceable and has no effect in relation to any payment for construction work carried out or for related goods and services supplied under the Sub-contract.
- (2) Conditional Payment Provision means a provision in this Sub-contract by whatever name called—
 - (a) that makes the liability of the main Contractor to pay money owing to the Sub-contractor contingent or conditional on payment to the main Contractor by a further party (Party C) of the whole or any part of the money;
 - (b) that makes the due date for payment of money owing by the main Contractor to the Sub-contractor contingent or conditional on the date on which payment of the whole or any part of that money is made to the main Contractor by Party C; or
 - (c) that otherwise makes the liability to pay money owing, or the due date for payment of money owing, contingent or conditional on the operation of any other contract or agreement.

- 3. Amount of progress payment

- (1) The amount of a progress payment to which the Sub-contractor is entitled under the Subcontract is—
 - (a) the amount calculated in accordance with the Sub-contract; or

- (b) if the Sub-contract does not provide for the calculation of the amount of the progress payment—the amount calculated on the basis of the value of—
 - (i) construction work carried out by the Sub-contractor under the Sub-contract; or
 - (ii) related goods and services supplied by the Sub-contractor under the Subcontract.
 - (2) For the purposes of sub-clause (1)(b), construction work carried out or related goods and services supplied under the Sub-contract are to be valued having regard to—
 - (a) the contract price or rate for the construction work or related goods and services;
 - (b) any other price or rate specified in the Sub-contract;
 - (c) any variation agreed to by the parties to the Sub-contract by which the contract price or rate, or any other price or rate specified in the Sub-contract, is to be adjusted by a specific amount; and
 - (d) if any part of the construction work or related goods and services are defective—
 - (i) the estimated cost of rectifying any defect or correcting any non-conformance, or
 - (ii) the diminution in the value of the construction work or related goods and services, whichever is more reasonable.
 - (3) In the absence of the matters referred to in sub-clauses (2)(a), (b), (c) and (d), construction work carried out or related goods and services supplied under the Sub-contract are to be valued based on fair and reasonable prices or rates at the time the construction work was carried out or related goods and services were supplied.
4. Payable date for progress payment
- (1) If the other provisions of this Sub-contract provide for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable on the earlier of the following dates (“payable date”)—
 - (a) the date determined by, or in accordance with, the Sub-contract as the payable date;
 - (b) the date falling 60 days after the payment claim for the progress payment is served (or is taken to have been served) under SOP Clause 5.
 - (2) However, if the payment claim for the progress payment is served under SOP Clause 5 on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clause (1)(a) above—
 - (a) the reference date for the progress payment shall be the date on which the payment claim for the progress payment is served; and
 - (b) the payable date is determined accordingly.
 - (3) If the Sub-contract does not provide for the payable date, the payment becomes payable on the date falling 60 days after the payment claim for the payment is served (or is taken to have been served) under SOP Clause 5.
5. Payment claims
- (1) The Sub-contractor may serve a payment claim for a progress payment on the main Contractor on or after the reference date for the payment.
 - (2) However, if the Sub-contractor serves a payment claim for a progress payment on the main Contractor before the reference date for the progress payment referred to in SOP Clause 2(2), the payment claim is taken to have been served on the reference date.
 - (3) A payment claim for a progress payment—
 - (a) must be in writing;
 - (b) must identify the construction work or related goods and services to which the payment relates; and
 - (c) must state the amount of the progress payment that the Sub-contractor claims to be payable (“claimed amount”).
 - (4) The Sub-contractor shall not serve more than 1 payment claim for each reference date under the Sub-contract.
 - (5) The Sub-contractor may include in the claimed amount of a payment claim any amount that has been the subject of a previous payment claim only if the amount was disputed as due by the main Contractor.
 - (6) The Sub-contractor is not to include in the claimed amount of a payment claim any amount that is the subject of an ongoing adjudication.
 - (7) A claim or application for payment made under the Sub-contract that meets the requirements of this SOP Clause is taken to be a payment claim served on the main Contractor.
6. Payment responses
- (1) The main Contractor served with a payment claim may respond to the payment claim by serving a payment response on the Sub-contractor.
 - (2) A payment response—
 - (a) must be in writing;
 - (b) must identify the payment claim to which it relates;
 - (c) must state the amount (if any) admitted as due under the Sub-contract before any set off or withholding, and the basis of the calculation of the amount;
 - (d) must state the amount (if any) not admitted as due under the Sub-contract before any set off or withholding, the grounds for, and the basis of the calculation of the amount;
 - (e) must state the amount, the grounds for, and the basis of the calculation of any amount to be set off or withheld; and
 - (f) must state the net amount to be paid (if any) and the calculation of the amount.
 - (3) A certificate or assessment issued under the Sub-contract in response to a payment claim or application for payment made under the Sub-contract that meets the requirements of this SOP Clause is taken to be a payment response served by the main Contractor.
 - (4) The main Contractor may amend or supplement a payment response (or part of the same) which the main Contractor has served on the Sub-contractor by serving on the Sub-contractor an amended response and / or a supplementary response on or before the date referred to in SOP Clause 7.
7. Time requirements for payment responses
- (1) This SOP Clause applies if the Sub-contractor serves on the main Contractor a payment claim for a progress payment under SOP Clause 5.
 - (2) If the main Contractor intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5, and the Sub-contract provides for the date by which the payment response must be served, such payment response must be served on the Sub-contractor no later than the earlier of the following dates—
 - (a) the date determined by, or in accordance with, the Sub-contract as the date by which a payment response is to be served; and
 - (b) the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
 - (3) If the main Contractor intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5, but the Sub-contract does not provide for the payable date and does not provide for the date by which the payment response must be served, such payment response must be served on the Sub-contractor no later than the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
 - (4) Sub-clauses (5) and (6) apply if the main Contractor intends to serve a payment response under SOP Clause 6 in reply to a payment claim under SOP Clause 5 and the Sub-contract—
 - (a) provides for the payable date; but
 - (b) does not provide for the date by which the payment response must be served.

- (5) If the payable date is not more than 7 days after the reference date for the progress payment referred to in SOP Clause 2(2), the payment response must be served no later than the payable date.
- (6) If the payable date is more than 7 days after the reference date for the progress payment referred to in SOP Clause 2(2), the payment response must be served no later than the earlier of the following dates—
 - (a) the date falling 7 days before the payable date;
 - (b) the date falling 30 days after the payment claim is served (or is taken to have been served) under SOP Clause 5.
- (7) If the Sub-contractor serves the payment claim for the progress payment under SOP Clause 5 on the main Contractor on a date later than the reference date for the progress payment referred to in SOP Clause 2(2), for the purposes of sub-clauses (2)(a), (5) and (6)(a)—
 - (a) the reference date for the progress payment shall be the date on which the payment claim is served; and
 - (b) the date by which a payment response is to be served is determined accordingly.

8. Consequences of not serving payment responses

- (1) If the main Contractor does not serve a payment response on or before the date referred to in SOP Clause 7, the main Contractor —
 - (a) is regarded as disputing in full the claimed amount; but
 - (b) will not be able to raise any set off in any adjudication in relation to the payment claim concerned.

Part 3 – Adjudication

9. Emergence of a payment dispute

- (1) A payment dispute arises if the Sub-contractor has served a payment claim compliant with SOP Clause 5 on the main Contractor and—
 - (a) the main Contractor has served a payment response on the Sub-contractor under SOP Clause 6 in which—
 - (i) none of the payment claim is admitted as due;
 - (ii) the amount admitted as due is less than the claimed amount; or
 - (iii) set off or withholding of all or any part of the claimed amount is raised;
 - (b) the main Contractor has—
 - (i) served a payment response on the Sub-contractor under SOP Clause 6 in which a net amount is admitted as due and is to be paid ("net admitted amount"); but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) the main Contractor does not serve a payment response under SOP Clause 6 in reply to the payment claim on or before the date referred to in SOP Clause 7 and fails to pay the claimed amount in full by the payable date.
- (2) For the purposes of SOP Clause 10, a payment dispute arises on the expiry of—
 - (a) for sub-clause (1)(a)—the date referred to in SOP Clause 7;
 - (b) for sub-clause (1)(b)—the date on which the net admitted amount becomes payable under SOP Clause 4; or
 - (c) for sub-clause (1)(c)—the date referred to in SOP Clause 7.
- (3) Notwithstanding sub-clause (1), a payment dispute, in respect of a claim of the Subcontractor for additional payment pertaining to the happening of a compensable event as specified in the Sub-contract, does not arise unless and until the main Contractor has notified the Sub-contractor of his rejection and/or assessment of such claim or has failed to notify the Sub-contractor of his acceptance, rejection and/or assessment of such claim within any timescales for the same specified in the claim handling procedure or, where no timescales are specified, within a reasonable time in accordance with the claim handling procedure.
- (4) The claim handling procedure is any procedure provided in the Sub-contract in relation to a claim for additional payment pertaining to the happening of a compensable event as specified in the Sub-contract for the purposes of—
 - (a) analysing and determining the liability for such payment; and
 - (b) assessing the amount of such payment or assessing adjustments to rates and prices which may result in additional payment.

10. Right to refer payment dispute to adjudication

- (1) The Sub-contractor may, within 28 days after the date on which a payment dispute arises, initiate an adjudication of the payment dispute under SOP Clause 11.

11. How to initiate adjudication

- (1) The Sub-contractor (as the Claimant) may initiate an adjudication of a payment dispute against the main Contractor (as the Respondent) by serving a notice of adjudication on the Respondent.
- (2) A notice of adjudication must be in writing and identify / describe—
 - (a) the Claimant and the Respondent;
 - (b) the relevant payment claim and any payment response;
 - (c) the nature and description of the payment dispute; and
 - (d) the claimed amount and remedy sought.
- (3) Subject to sub-clauses (4) and (5), the Sub-contractor shall not serve more than 1 notice of adjudication in respect of a payment dispute.
- (4) If the Sub-contractor withdraws an adjudication in respect of a payment dispute under SOP Clause 24, the Sub-contractor may serve on the main Contractor another notice of adjudication in respect of the same payment dispute within the period specified in SOP Clause 10.
- (5) If an adjudication in respect of a payment dispute is terminated on the ground set out in SOP Clause 25(1)(d), 25(1)(e) or 25(1)(h), the Sub-contractor may serve on the main Contractor another notice of adjudication in respect of the same payment dispute within 28 days after the date on which such adjudication is terminated.

12. Commencement of adjudication

- (1) An adjudication commences on the first working day after the date on which a notice of adjudication is served on the Respondent under SOP Clause 11.

13. Appointment of adjudicator by adjudicator nominating body

- (1) The Claimant must serve a notice of adjudication on the adjudicator nominating body specified in sub-clause (2) below on the same day on which the notice is served on the Respondent under SOP Clause 11.
- (2) The adjudicator nominating body shall be Hong Kong International Arbitration Centre and they must appoint a single adjudicator as the Adjudicator in accordance with the adjudication rules of the adjudicator nominating body and inform the Claimant and the Respondent in writing of the appointment, within 5 working days beginning on the commencement date of the adjudication.
- (3) The adjudication rules published by the adjudicator nominating body as specified in subclause (2) above shall apply to an adjudication initiated under SOP Clause 11. Notwithstanding, Part 3 of these SOP Provisions shall prevail over the adjudication rules in case of inconsistencies or ambiguities.

- (4) The Sub-contractor (as the Claimant) and the main Contractor (as the Respondent) agree and undertake that the Adjudicator shall be appointed on terms that give effect to SOP Clauses 14 to 36, 38 and 39.

13A. Selection of adjudicator nominating body

- (1) This SOP Clause applies if—
- no adjudicator nominating body is specified in the Sub-contract as the adjudicator nominating body for the payment dispute; and
 - the Claimant and the Respondent fail to agree on an adjudicator nominating body before the notice of adjudication is served under SOP Clause 11.
- (2) The Claimant must nominate 2 adjudicator nominating bodies from the DEVB's Register of Adjudicator Nominating Bodies (published on the website: <https://www.devb.gov.hk>) in the notice of adjudication.
- (3) The Respondent must, within 5 working days beginning on the commencement date of the adjudication—
- select one of the adjudicator nominating bodies from the Claimant's nomination; and
 - inform the Claimant in writing of the adjudicator nominating body selected by the Respondent. The Claimant must serve a notice of adjudication on the adjudicator nominating body selected by the Respondent not later than 6 working days beginning on the commencement date of the adjudication.
- (4) If the Respondent fails to inform the Claimant under sub-clause (3), the Claimant must, not later than 6 working days beginning on the commencement date of the adjudication—
- select one of the adjudicator nominating bodies from the Claimant's nomination;
 - inform the Respondent of the adjudicator nominating body selected by the Claimant; and
 - serve the notice of adjudication on the adjudicator nomination body.
- (5) The adjudicator nominating body selected under sub-clause (3) or (4) must appoint a single adjudicator as the Adjudicator in accordance with the adjudication rules of the adjudicator nominating body and inform the Claimant and the Respondent in writing of the appointment, within 5 working days after the date on which the notice of adjudication is served on the body.
- (6) The adjudication rules published by the adjudicator nominating body as selected under sub-clause (3) or (4) above shall apply. Notwithstanding, Part 3 of these SOP Provisions shall prevail over the adjudication rules in case of inconsistencies or ambiguities.
- (7) The Sub-contractor (as the Claimant) and the main Contractor (as the Respondent) agree and undertake that the Adjudicator shall be appointed on terms that give effect to SOP Clauses 14 to 36, 38 and 39.

14. Adjudicators to declare and disclose interests

- (1) The Adjudicator must, at the time of accepting the appointment as an adjudicator, make a declaration in writing that—
- there is no conflict of interest in respect of the adjudicator's appointment;
 - the Adjudicator will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
 - the Adjudicator will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
 - there are no circumstances likely to give rise to justifiable doubts as to the Adjudicator's impartiality and independence.
- (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 the Adjudicator's impartiality and independence.

15. Claimant to serve adjudication submission

- (1) The Claimant must serve an adjudication submission on the Adjudicator and the Respondent within 1 working day after the date on which the Adjudicator is appointed.
- (2) An adjudication submission—
- must be in writing;
 - must identify the notice of adjudication to which it relates; and
 - must contain any supporting documents and evidence that the Claimant considers relevant to the adjudication.

16. Respondent to serve adjudication response

- (1) The Respondent may serve an adjudication response on the Adjudicator and the Claimant within—
- 20 working days after the date on which the adjudication submission is served on the Respondent; or
 - any longer period the Adjudicator specifies.
- (2) An adjudication response—
- must be in writing;
 - must set out the Respondent's reply to the adjudication submission; and
 - must include any supporting documents and evidence that the Respondent considers relevant to the adjudication.

17. Jurisdiction of adjudicators

- (1) The Adjudicator's jurisdiction is limited to determining—
- the payment dispute that is referred to adjudication by the Claimant; and
 - any other matters that are of a consequential or ancillary nature (including the time or extended time for completion of the Sub-contract) necessary to exercise or complete the exercise of the jurisdiction conferred by paragraph (a).
- (2) The Adjudicator has the power to rule on his or her own jurisdiction.

18. Adjudicator to conduct adjudication

- (1) The Adjudicator must conduct the adjudication in the manner the Adjudicator considers appropriate within the powers provided under SOP Clause 19.
- (2) 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.

19. Powers of the Adjudicator

- (1) The Adjudicator may—
- establish the procedures for conducting the adjudication proceedings;
 - determine the language or languages to be used in the adjudication proceedings;
 - extend the deadline for service of an adjudication response under SOP Clause 16;
 - request or allow the Claimant or the Respondent ("party to the adjudication") to submit further written submission;
 - request or allow a party to the adjudication to produce any document or provide any information that the Adjudicator reasonably requires;
 - set deadlines for the submission, production of documents and provision of information;
 - appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
 - 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 the Adjudicator and any independent expert appointed under sub-clause (1)(g) 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.
- (2) The parties to the adjudication must comply with any request or direction of the Adjudicator made or given in accordance with this SOP Clause. All communications between a party to the adjudication and the Adjudicator must be simultaneously copied to the other party.
20. Parties may be represented in adjudication proceedings
- (1) A party to the adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.
21. Circumstances where the Adjudicator must disregard submission etc.
- (1) The Adjudicator must not consider any submission or response made by a party to the adjudication unless it was given to the Adjudicator within the time that the party may give it to the Adjudicator pursuant to these SOP Provisions or, if no time limit can be determined under the SOP Provisions, in accordance with the adjudication rules of the adjudicator nominating body.
- (2) 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.
22. When the Adjudicator's powers not affected
- (1) 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 under SOP Clause 16; or
 - (b) any of the parties to the adjudication to—
 - (i) make a submission (other than an adjudication submission under SOP Clause 15) within the time allowed by the Adjudicator;
 - (ii) comply with the Adjudicator's call for a conference of the parties; or
 - (iii) do any other thing that the Adjudicator requests or directs.
23. Resignation of the Adjudicator
- (1) 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 period specified in SOP Clause 26.
- (2) 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.
24. Withdrawal of adjudication proceedings
- (1) 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 adjudicator nominating body on which the notice of adjudication has been served.
- (2) The Claimant who withdraws an adjudication must bear the fees and expenses of the Adjudicator and of any independent expert appointed under SOP Clause 19(1)(g) unless the Adjudicator orders otherwise.
25. Termination of adjudication proceedings
- (1) An adjudication is terminated if—
- (a) the Claimant fails to serve an adjudication submission on the Adjudicator and the Respondent within the time specified in SOP Clause 15;
 - (b) the Claimant serves a notice of withdrawal under SOP Clause 24(1);
 - (c) the Respondent pays the claimed amount stated in the notice of adjudication in full to the Claimant;
 - (d) the Adjudicator resigns under SOP Clause 23(1);
 - (e) the Adjudicator becomes unable or unsuitable to act as the Adjudicator under the adjudication rules of the adjudicator nominating body, or the Adjudicator becomes ineligible to act as the Adjudicator pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body;
 - (f) the payment dispute is settled by agreement in writing between the parties to the adjudication;
 - (g) the payment dispute is determined by a court or by arbitration or by any other dispute resolution proceeding;
 - (h) the Adjudicator fails to deliver an adjudication decision in accordance with SOP Clause 26(2); or
 - (i) the Adjudicator decides under SOP Clause 17 that he/she has no jurisdiction on the payment dispute.
26. Adjudication decisions
- (1) The Adjudicator must determine—
- (a) the payment dispute referred to the Adjudicator;
 - (b) the adjudicated amount, which means the amount of the progress payment, 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 the Adjudicator and of any independent expert appointed under SOP Clause 19(1)(g) payable by each party to the adjudication in accordance with SOP Clauses 35 and 36.
- (2) The Adjudicator must, through the adjudicator nominating body that appointed the Adjudicator, deliver an adjudication decision to the parties to the adjudication within—
- (a) 55 working days after the date on which the Adjudicator is appointed; or
 - (b) any longer period agreed by the parties to the adjudication.
- (3) An adjudication decision—
- (a) must be in writing; and
 - (b) must contain reasons for the decision unless otherwise agreed by the parties to the adjudication.
- (4) An adjudication decision must be delivered to the adjudicator nominating body and the parties to the adjudication under sub-clause (2) in a manner specified in the adjudication rules of the body.
27. Effect of adjudication decision

- (1) An adjudication decision made under these SOP Provisions is binding on the parties to the adjudication and enforceable as a matter of contractual obligation unless and until—
- (a) the payment dispute to which the decision relates is settled by agreement in writing between the parties to the adjudication; or
 - (b) the payment dispute is determined by a court or by arbitration or by any other dispute resolution proceeding.
28. Adjudicators may correct typographical errors etc.
- (1) The Adjudicator may, on his or 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.
 - (2) Any correction must be done within 5 working days after the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).
 - (3) To avoid doubt—
 - (a) any correction done to an adjudication decision under this SOP Clause does not affect the validity of the decision; and
 - (b) the time limit set out in SOP Clause 30 runs from the date on which the decision is delivered to the parties to the adjudication under SOP Clause 26(2).
29. Valuation of work etc. in later adjudication
- (1) Sub-clause (2) applies if, in an adjudication, an Adjudicator has, under SOP Clause 26(1), determined—
 - (a) the value of any construction work carried out under the Sub-contract; or
 - (b) the value of any related goods and services supplied under the Sub-contract; or
 - (c) the value of any other entitlements specified in the Sub-contract.
 - (2) The Adjudicator or another adjudicator must, in any later adjudication that involves the working out of the value of that work or of those goods and services or any entitlements specified in the Sub-contract, give the work, or the goods and services or such entitlements, the same value as that previously decided.
 - (3) However, sub-clause (2) does not apply to the extent the Claimant or Respondent in the later adjudication satisfies the Adjudicator that due to circumstances affecting the carrying out of the construction works and / or supply of related goods and services arising after the decision in the earlier adjudication the value of the work, or the goods or services, or any entitlements specified in the Sub-contract, in relation to the same has changed.
30. Settlement of adjudicated amount
- (1) If the Adjudicator determines in an adjudication decision that a party to the adjudication is required to pay an adjudicated amount to the other party, the party must pay the amount to that other party on or before the following date—
 - (a) the date specified by the Adjudicator in the adjudication decision; or
 - (b) if no date is specified by the Adjudicator in the adjudication decision—a date that is within 30 days after the date on which the adjudication decision is delivered to the parties to the adjudication under SOP Clause 26(2).
31. Effect of adjudication on other proceedings
- (1) Part 3 of these SOP Provisions does not affect any right that the parties to the Sub-contract may have to submit a payment dispute relating to or arising from the Sub-contract to a court, to arbitration, or to any other dispute resolution proceeding.
 - (2) The submission of a payment dispute being adjudicated to a court, to arbitration, or to any other dispute resolution proceeding, does not terminate or otherwise affect the adjudication.
32. Confidentiality of adjudication
- (1) The parties to the adjudication and 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.
 - (2) Despite sub-clause (1), the parties to the adjudication may disclose or give to another person information referred to in sub-clause (1) if—
 - (a) the information is in the public domain;
 - (b) the disclosure is made with the consent of—
 - (i) each of the parties to the adjudication; and
 - (ii) the adjudicator for the adjudication;
 - (c) the disclosure is made to an adjudicator nominating body because of the operation of Part 3 of these SOP Provisions;
 - (d) the disclosure is necessary for the purpose of settlement of the adjudicated amount;
 - (e) the disclosure is made in another adjudication, a court proceeding, arbitration or any other dispute resolution proceeding in connection with the Sub-contract in respect of which the payment dispute under the adjudication arises;
 - (f) the disclosure is made in accordance with the Sub-contract or a requirement imposed by law; or
 - (g) the disclosure is made to—
 - (i) a professional or any other adviser of the party for the purpose of seeking legal or other professional advice;
 - (ii) insurers or bankers for reasonable commercial purposes;
 - (iii) enable proper applications for or assessments of payments; or
 - (iv) any other person who is responsible for administering the Sub-contract in respect of which the payment dispute under the adjudication arises; or
 - (v) the main Contract Representative.
33. Eligibility of adjudicators
- (1) An individual is eligible to be appointed and act as the Adjudicator if the individual is on the panel of adjudicators of the adjudicator nominating body specified in SOP Clause 13(2) or, where SOP Clause 13A applies, selected under SOP Clause 13A.
 - (2) An individual is not eligible to be appointed and act as the Adjudicator for an adjudication of a payment dispute if—
 - (a) the individual is a party (or employee or agent of a party) to the Sub-contract under which the payment dispute arose; or
 - (b) circumstances exist that give rise to justifiable doubts as to the individual's impartiality or independence.
34. Costs and expenses of adjudication incurred by parties
- (1) A party to an adjudication is not liable to pay any costs or expenses incurred by the other party to the adjudication as a result of or in relation to the adjudication.
 - (2) Sub-clause (1) applies even if a party has caused the costs or expenses to be incurred by the other party unnecessarily or for any other reason.
35. Adjudicator's fees
- (1) The Adjudicator is entitled to be paid for adjudicating a payment dispute—

- (a) the amount, by way of fees and expenses, agreed between the Adjudicator 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 the Adjudicator.
- (2) The Claimant and Respondent are jointly and severally liable to pay the Adjudicator's fees and expenses.
- (3) 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) if the Adjudicator has not so decided—in equal proportions.
- (4) The Adjudicator is not entitled to be paid any fees or expenses for the adjudication if—
- (a) the Adjudicator fails to deliver an adjudication decision either within the time required under SOP Clause 26(2) or at all;
 - (b) the Adjudicator resigns during the course of the adjudication; or
 - (c) the Adjudicator becomes ineligible to act as the Adjudicator pursuant to SOP Clause 33 or under the adjudication rules of the adjudicator nominating body.
- (5) However, sub-clause (4) does not apply if the adjudication is terminated pursuant to SOP Clauses 25(1)(b) or (i).
- (6) For the purposes of sub-clause (4), the Adjudicator does not fail to deliver an adjudication decision on the ground that:
- (a) the Adjudicator refuses to deliver the adjudication decision to the parties to the adjudication pursuant to SOP Clause 26(2) until his or her fees and expenses are paid; or
 - (b) the Adjudicator has delivered the adjudication decision to the adjudicator nominating body within the time required under SOP Clause 26(2), but the adjudicator nominating body fails to deliver the adjudication decision to the parties to the adjudication within the time required under SOP Clause 26(2) or at all.
- (7) For the avoidance of doubt, the Adjudicator has the power to decide their fees and expenses after termination of an adjudication under SOP Clause 25 save and except where the adjudication is terminated on any of the grounds set out in SOP Clause 35(4).
36. Matters to be considered in deciding fees
- (1) This SOP Clause applies if the Adjudicator is making a decision about the proportion of the Adjudicator's fees and expenses to be paid by the Claimant and Respondent under SOP Clause 19(1)(j).
- (2) In making the decision, the Adjudicator may consider the following matters—
- (a) the relative success of the Claimant or Respondent in the adjudication;
 - (b) whether the Claimant or Respondent commenced or participated in the adjudication for an improper purpose;
 - (c) whether the Claimant or Respondent commenced or participated in the adjudication without reasonable prospects of success;
 - (d) whether the Claimant or Respondent has acted unreasonably leading up to the adjudication;
 - (e) whether the Claimant or Respondent has acted unreasonably in the conduct of the adjudication;
 - (f) the reasons given by the Respondent for not making the progress payment the subject of the adjudication application;
 - (g) whether the Respondent included additional reasons for not making the progress payment in the adjudication response that were not included in the payment response served on the Claimant;
 - (h) whether an adjudication application is withdrawn;
 - (i) the services provided by the Adjudicator in adjudicating the payment dispute, including the amount of time taken to consider discrete aspects of the amount claimed; and
 - (j) any other matter the Adjudicator considers relevant in making the decision.

Part 4 – Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply

37. Sub-contractor's right to suspend work or supply or reduce rate of progress of work or supply
- (1) The Sub-contractor may suspend, or reduce the rate of progress of, the works under the Sub-contract if all the conditions set out in either sub-clause (2) or (3) are satisfied.
- (2) The conditions are—
- (a) the Sub-contractor has served on the main Contractor a payment claim under SOP Clause 5;
 - (b) the main Contractor has—
 - (i) served a payment response on the Sub-contractor under SOP Clause 6 in which a net admitted amount is stated to be paid; but
 - (ii) failed to pay the net admitted amount in full on or before the date on which the net admitted amount became payable under SOP Clause 4;
 - (c) after the date as referred to in paragraph (b)(ii) and at least 5 working days before the date ("intended starting date"), on which he intends to start suspending, or reducing the rate of progress of the works under the Sub-contract, the Subcontractor has served on the Main Contractor a notice of intention that meets the requirements set out in sub-clause (4);
 - (d) the Sub-contractor has taken reasonable steps at least 5 working days before the intended starting date to make the Employer and the main Contractor aware of the Sub-contractor's notice of intention referred to in paragraph (c); and
 - (e) the net admitted amount is not paid in full before the intended starting date.
- (3) The conditions are—
- (a) the main Contractor has not paid to the Sub-contractor the adjudicated amount in full on or before the date specified under SOP Clause 30 ("payment deadline");
 - (b) after the payment deadline and at least 5 working days before the date ("intended starting date"), on which he intends to start suspending, or reducing the rate of progress of the works under the Sub-contract, the Sub-contractor has served on the main Contractor a notice of intention that meets the requirements set out in sub-clause (4);
 - (c) the Sub-contractor has taken reasonable steps at least 5 working days before the intended starting date to make the Employer and the main Contractor aware of the Sub-contractor's notice of intention referred to in paragraph (b); and
 - (d) the adjudicated amount is not paid in full before the intended starting date.
- (4) The notice of intention—
- (a) must be in writing;
 - (b) must state that it is given under these SOP Provisions;
 - (c) must indicate the Sub-contractor's intention to suspend, or reduce the rate of progress of, the works under the Sub-contract; and
 - (d) may specify the intended starting date.
- (5) If no intended starting date is specified in the notice of intention, for the purposes of subclause (2) or (3), the date falling 5 working days after the date on which the notice of intention is served on the main Contractor is taken to be the intended starting date.
- (6) The Sub-contractor exercising the right under sub-clause (1)—
- (a) is not in breach of the Sub-contract;
 - (b) is not liable for any loss and damage suffered by the main Contractor, or by any person claiming through the main Contractor, as a result of suspending, or reducing the rate of progress of, the works under the Sub-contract;
 - (c) is entitled to a fair and reasonable extension of time to complete the Sub-contract;

- (d) is entitled to recover from the main Contractor any costs and expenses incurred as a result of suspending, or reducing the rate of progress of, the works under the Sub-contract; and
- (e) must resume the progress of the works within 7 working days after receiving the net admitted amount or the adjudicated amount in full.

Part 5 – Miscellaneous Matters

38. Exclusion of civil liability of adjudicators and adjudicator nominating bodies
- (1) The main Contractor and the Sub-contractor agree that, save to the extent prohibited by law or in relation to liability for fraud, an Adjudicator and an adjudicator nominating body shall not be liable to the main Contractor and the Sub-contractor in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature whatsoever incurred or suffered by the main Contractor and the Sub-contractor of an indirect or consequential nature including without limitation any economic loss or other loss of turnover, profits, business or goodwill for an act done or omitted to be done by the Adjudicator or the adjudicator nominating body in good faith pursuant to these SOP Provisions.
39. Adjudicators not required to act as witnesses
- (1) The main Contractor and the Sub-contractor agree that they shall not require the Adjudicator to give evidence or provide or produce any document or other material in an arbitration or other proceedings in connection with the payment dispute.
40. Service: adjudication documents
- (1) This SOP Clause applies to a document that is authorized or required to be served under Part 3 (Adjudication) of these SOP Provisions other than a notice of adjudication (if SOP Clause 13A applies) served by the Claimant on the Respondent under SOP Clause 11.
 - (2) Such documents must be served—
 - (a) in a manner specified in these SOP Provisions; or
 - (b) if no manner is so specified—in a manner specified by the Adjudicator or in the adjudication rules published by the adjudicator nominating body as specified in SOP Clause 13 or, as the case may be, as selected under SOP Clause 13A.
41. Service: other documents
- (1) This SOP Clause applies to—
 - (a) a document that is authorized or required to be served under—
 - (i) Part 2 (Payments) of these SOP Provisions; or
 - (ii) Part 4 (Right to Suspend Work or Supply or Reduce Rate of Progress of Work or Supply) of these SOP Provisions; or
 - (b) if SOP Clause 13A applies, a notice of adjudication served by the Claimant on the Respondent under SOP Clause 11.
 - (2) The document may be served by a party to the Sub-contract (“serving party”) on another party to the Sub-contract (“receiving party”) in the manner agreed between the parties.
 - (3) If no manner is so agreed, the document may be served by a serving party on a receiving party—
 - (a) if the receiving party is an individual—by delivering it to the receiving party by hand;
 - (b) by leaving it at, or sending it by post to, the receiving party’s last known residence or place of business;
 - (c) by sending it by fax transmission to the last known fax number of the receiving party; or
 - (d) by sending it by electronic mail transmission to the last known electronic mail address of the receiving party.
 - (4) Sub-clause (5) applies if—
 - (a) a document is served under sub-clause (2) but there is no agreement between the parties on how to determine the date of service of the document; or
 - (b) a document is served under sub-clause (3).
 - (5) The document is taken, in the absence of evidence to the contrary, to have been served on the receiving party—
 - (a) if it is delivered by hand—on the day on which it is so delivered;
 - (b) if it is left at the receiving party’s last known residence or place of business—on the day on which it is so left;
 - (c) if it is sent by post—on the day after the day on which it is so sent; or
 - (d) if it is sent by fax transmission or electronic mail transmission—on the day on which it is so transmitted.
42. Security of Payment for Relevant Subcontract
- (1) This Clause applies in relation to any subcontract of any tier for executing any part of the main Contract Works (“Relevant Subcontract”) (whether or not supplying a service, equipment, constructional plant, plant and materials for the main Contract Works is included as part of the Relevant Subcontract), but does not apply to—
 - (a) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes
 - (i) to lend money or to repay money lent;
 - (ii) to guarantee repayment of money owing or repayment of money lent; or
 - (iii) to act as an insurer with respect to the work carried out, or the service, equipment, constructional plant, plant and materials supplied, under the Relevant Subcontract;
 - (b) a Relevant Subcontract under which it is agreed that the consideration payable is to be calculated otherwise than by reference to the value of the work carried out, or the service, labour, equipment, plant or material supplied; or
 - (c) a Relevant Subcontract to the extent that it contains provisions under which a party undertakes to carry out the work or to supply the service, labour, equipment, plant or material as an employee of the other party.
 - (2) For Relevant Subcontracts at a lower tier of subcontracting, the Sub-contractor shall ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included mutatis mutandis and in effective manner in all such Relevant Subcontracts entered into by the Sub-contractor. The Sub-contractor shall, if necessary, within a reasonable time enter into supplemental agreements with his sub-contractors to ensure that the Relevant Subcontracts comply with the requirements in this sub-clause.
 - (3) For Relevant Subcontracts at any further lower tiers of subcontracting, the Sub-contractor shall take all reasonable steps to ensure that the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included mutatis mutandis and in effective manner in all such Relevant Subcontracts. The Sub-contractor shall take all reasonable steps to ensure that sub-contractors at any lower tier of subcontracting shall, if necessary, within a reasonable time enter into supplemental agreements to comply with the requirements in this sub-clause.
 - (4) The Sub-contractor shall provide copies of the contract documents of all Relevant Subcontracts to the main Contractor and the main contract Representative for the purpose of checking if the Mandatory Subcontract Conditions and the SOP Provisions for Relevant Subcontracts are included mutatis mutandis, and effectively incorporated to achieve their intent, in all Relevant Subcontracts as required under sub-clauses (2) and (3) of this Clause. Upon request by the main Contractor or the main contract Representative, the Subcontractor shall provide the original documents of the Relevant Subcontract for inspection.
43. Direct payment for settlement of unpaid Adjudicated Amount under Relevant Subcontract

- (1) **“Adjudicated Amount under Relevant Subcontract”** means an amount as shown in the original or certified true copy of an adjudication decision issued under an adjudication conducted in accordance with the SOP Provisions for Relevant Subcontracts that a party to a Relevant Subcontract is required to pay to another party to the same Relevant Subcontract.
- (2) The Sub-contractor shall report at monthly intervals to the main Contractor all notices of adjudication served under any Relevant Subcontract at lower tiers of subcontracting and the status of payment or settlement of any Adjudicated Amount under Relevant Subcontract. The Sub-contractor is deemed to give consent to the main Contractor to disclose the information provided under this sub-clause to the Employer and the main contract Representative.
- (3) Where the main Contractor (as the Respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts, the Sub-contractor (as the Claimant) may apply to the Employer, supported by submission of: (i) a certified true copy of the adjudication decision; (ii) identification of the work done, in respect of the works under the main Contract, to which the Adjudicated Amount under Relevant Subcontract relates; and (iii) a written declaration that the whole or any part of the Adjudicated Amount under Relevant Subcontract is outstanding, to request a direct payment of the outstanding amount, or any part thereof, in which case sub-clauses (4)(a) to (4)(d) shall apply. For the purposes of the Sub-contractor’s right to suspend or to reduce the rate of progress as provided in SOP Clause 37, a direct payment by the Employer in response to Sub-contractor’s application in accordance with this sub-clause is deemed to be a payment made by the main Contractor.
- (4) Where—
- (i) a party to a Relevant Subcontract at the next lower tier of subcontracting (as the claimant) applies to the Employer for a direct payment because the Subcontractor (as the respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts, or
 - (ii) a party to a Relevant Subcontract at any further lower tiers of subcontracting (as the claimant) applies to the Employer for a direct payment because the other party to that Relevant Subcontract (as the respondent) has failed to pay the whole or any part of an Adjudicated Amount under Relevant Subcontract in accordance with the SOP Provisions for Relevant Subcontracts,
- supported by submission of: (i) a certified true copy of the adjudication decision; (ii) identification of the work done, in respect of the works under the main Contract, to which the Adjudicated Amount under Relevant Subcontract relates; and (iii) a written declaration that the whole or any part of the Adjudicated Amount under Relevant Subcontract is outstanding, the Employer may make direct payment of the outstanding amount, or any part thereof, to the claimant in accordance with the following—
- (a) the Employer serves a letter, which incorporates the contents set out in Annex G to DEVB Technical Circular No. 6/2021, on the main Contractor with a copy to the claimant;
 - (b) the main Contractor certifies and submits documentary proof to the Employer within 28 days after receipt of the letter referred to in paragraph (a) if:
 - (i) he or any subcontractors of any tier has paid the Adjudicated Amount under Relevant Subcontract to the claimant or the claimant has been satisfied with any payment as full settlement of the Adjudicated Amount under Relevant Subcontract;
 - (ii) the adjudication decision is no longer binding on the respondent by reason of clause 27(1)(a) or 27(1)(b) under the SOP Provisions for Relevant Subcontracts or otherwise;
 - (iii) a subcontractor at any higher tier to the claimant:-
 - (I) has become bankrupt; or
 - (II) has had a receiving order made against him; or
 - (III) has presented a petition in bankruptcy; or
 - (IV) has made an arrangement with or assignment in favour of his creditors; or
 - (V) has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors; or
 - (VI) being a corporation, has gone into liquidation (other than voluntary liquidation for the purposes or amalgamation or reconstruction), administration or receivership or otherwise became insolvent; or
 - (iv) any subcontractor at higher tiers to the respondent will be unable to recover the amount of direct payment (to be made by the Employer) by way of deduction from its payments due or which may become due to its subcontracting parties at next lower tier under the Relevant Subcontracts;
 - (c) if the main Contractor fails to certify or submit documentary proof to the Employer in accordance with paragraph (b), the Employer may directly pay the outstanding amount of the Adjudicated Amount under Relevant Subcontract, or any part thereof as advised by the main Contractor in his reply to the Employer’s letter under paragraph (a) above, or such amount as appears reasonable to the Employer, to the claimant but the amount of such direct payment shall not exceed the total payments due or which may become due to the Contractor under the main Contract; however, if the main Contractor submits proof that a subcontractor at any higher tier to the claimant has become bankrupt or has had a receiving order made against him or has presented a petition in bankruptcy or has made an arrangement with or assignment in favour of his creditors or has agreed to carry out his Relevant Subcontract under a committee of inspection of his creditors or (being a corporation) has gone into liquidation (other than voluntary liquidation for the purposes or amalgamation or reconstruction), administration or receivership or otherwise became insolvent, the Employer shall not make the direct payment as requested. For the avoidance of doubt, the Employer shall not be under any obligation to make direct payment of the Adjudicated Amount under Relevant Subcontract;
 - (d) under the main Contract, the Employer is entitled to deduct the amount of any direct payment made in accordance with paragraph (c) from any payments due or which may become due to the main Contractor under the main Contract or to otherwise recover the amount of direct payment made from the main Contractor;
 - (e) the Sub-contractor agrees that, in connection with any deduction made by the Employer as described in paragraph (d), the main Contractor is entitled to deduct only the same amount of direct payment made in accordance with paragraph (c) from any payment that the main Contractor owes to the Sub-contractor under the Sub-contract or to otherwise recover the amount of direct payment made from the Sub-contractor; for the avoidance of doubt, any provisions in the Sub-contract stating that the main Contractor may deduct any amount in excess of the amount of direct payment made in accordance with paragraph (c) shall have no effect and unenforceable;
 - (f) the entitlement of the main Contractor under paragraph (e) shall not be affected by any subsequent arbitration, court or other proceedings or settlement resulting in the amount due being different from the Adjudicated Amount under Relevant Subcontract or the adjudication decision is no longer binding on the parties to the adjudication.