

# NOTICE OF INTENTION TO ADJUDICATE A DISPUTE ON A CONTRACT AT

**[INSERT PROJECT ADDRESS]**

BETWEEN

**[INSERT] (The Referring Party)**

and

**[INSERT] (The Responding Party)**

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## ADJUDICATION NOTICE

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### Introduction

- 1 **(Introduction if the contract has an adjudication clause which refers to the Scheme Pursuant to [INSERT CONTRACT FORM AND ADJUDICATION CLAUSE],** the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009 (**the HGCRA**), and pursuant to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the (Amendment) (England) Regulations 2011 (**the Scheme**), this is a Notice of Adjudication in respect of the dispute outlined below.
- 2 **(Introduction if there is no contract, or no adjudication clause in the contract, or if the adjudication clause does not comply with the HGCRA s.108)** Pursuant to the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009 (**the HGCRA**), and pursuant to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the (Amendment) (England) Regulations 2011 (**the Scheme**), this is a Notice of Adjudication in respect of the dispute outlined below.
- 3 **(Introduction if the contract has a valid adjudication clause and does not refer to the Scheme)** Pursuant to **[INSERT CONTRACT FORM AND ADJUDICATION CLAUSE]**, and the Housing Grants, Construction and Regeneration Act 1996, as amended by the Local Democracy, Economic Development and Construction Act 2009 (**the HGCRA**).

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### The Parties and Addresses for Service

- 5 The Referring Party is **[INSERT COMPANY NAME], [INSERT COMPANY REGISTRATION NUMBER]**, whose registered office is **[INSERT REGISTERED OFFICE ADDRESS]**.
  - 5.1.1 The Referring Party's correspondence address for service of notices is **[INSERT ADDRESS AGREED UNDER CONTRACT (or if no address agreed under contract) INSERT REGISTERED OFFICE ADDRESS]**

- 5.1.2 The Referring Party's representative is [INSERT NAME AND ADDRESS OF PARTY REPRESENTATIVE].
- 6 The Responding Party is [INSERT COMPANY NAME], [INSERT COMPANY REGISTRATION NUMBER], whose registered office is [INSERT REGISTERED OFFICE ADDRESS].
- 6.1.1 The Responding Party's correspondence address for service of notices is [INSERT ADDRESS AGREED UNDER CONTRACT (or if no address agreed under contract) INSERT REGISTERED OFFICE ADDRESS]
- 6.1.2 The Referring Party's representative is [INSERT NAME AND ADDRESS OF PARTY REPRESENTATIVE].

#### Tips on 'The Parties and Addresses for Service'

- 6.2 If there is no address in the contract or if that address is not current, and/or if you are unsure on which address to serve notices because companies house in not up to date etc, then refer to HGCRA s.115. By reference to the provisions of HGCRA s.115 it may be advisable to serve the notice to multiple addresses simultaneously.

#### **The Project**

- 7 The project is [INSERT NAME OF PROJECT]

#### **The Contract**

- 8 [INSERT THE BASIS OF THE CONTRACT COVERING OFFER, ACCEPTANCE, AND CONSIDERATION] (EXAMPLE: Pursuant to [an agreement on or around OR the contract agreement dated, OR commencement of the works in accordance with an agreement on or around], [Party A] agreed to carry out [INSERT CONTRACT WORKS] (the '**Contract Works**') in consideration for which [PARTY B] agreed to pay the agreed sum of [insert agreed sum], (the '**Contract Sum**') This is a 'construction contract' as defined by the HGCRA s.104, accordingly the parties are permitted to refer any dispute which arises to Adjudication in accordance with the foregoing provisions.

#### **Appointment of Adjudicator**

- 9 [INSERT DETAILS OF THE APPOINTMENT (i.e which nominating body, and relevant procedure used, and the date of the nomination and request for nomination)

#### Tips on 'Appointment of Adjudicator'

- 9.1 If the Scheme applies (or if required by the contract) the Adjudication Notice must be given before the nomination of the adjudicator<sup>1</sup>, therefore if there is uncertainty as to the Responding party's address and whether the notice has in fact been received by email then it may be

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<sup>1</sup> The Scheme Part I para.2. Also see *Herschel Engineering v Breen Property* (2000) 70 ConLR 1.

preferable to seek confirmation of recorded and signed for delivery before nominating the adjudicator.

### **The Dispute**

- 10 [INSERT A SUMMARY OF WHAT THE DISPUTE IS (i.e Payment for notified sum, or valuation, or extension of time etc, include any and all matters for which a remedy is sought including interest).
- 11 [INSERT THE FACTUAL BACKGROUND THAT LED TO THE CRYSTALLISATION OF THE DISPUTE]
- 12 [INSERT THE RESPONDING PARTYS DEFENCE (if known).

### **Tips on 'Dispute'**

- 13 If the dispute concerns entitlement (or liability of the other party) and quantum, then both must be covered in the dispute<sup>2</sup>.
- 14 The dispute should provide sufficient detail so the Adjudicator can determine if it falls within his expertise<sup>3</sup>.
- 15 The dispute description cannot shut out potential defences allowed in law, and any attempt to construe the dispute too narrowly to do so is likely to cause confusion, and complications that may lead to a decision being unenforceable<sup>4</sup>.
- 16 Accordingly, a Dispute has arisen, and the Referring Party seeks to have that Dispute resolved by an adjudicator.

### **Remedy and Redress sought by [insert]**

- 17 [insert] seeks; [INSERT LIST OF ORDERS SOUGHT (example below)]

#### **[note: not exhaustive as to list or content]**

- (i) The Referring party seeks an order from the Adjudicator that it is entitled to extension of time up to [INSERT] or any other date the Adjudicator decides.
- (ii) The Referring party seeks an order from the Adjudicator that it is entitled to a Gross Valuation for contract works to the sum of [insert] or any other valuation the Adjudicator decides.

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<sup>2</sup> *Allied P&L v Paradigm Housing Group* [2009] EWHC 2890 (TCC).

<sup>3</sup> *Carillion Construction v Devonport Royal Dockyard* [2005] EWCS Civ 1358.

<sup>4</sup> *Pilon Ltd v Breyer Group* [2010 EWHC 837 (TCC).

- (iii) The Referring party seeks an order from the Adjudicator that it is entitled to a Gross Valuation for loss & expense to the sum of [insert] or any other valuation the Adjudicator decides.
- (iv) The Referring party seeks an order from the Adjudicator that the Responding party pays the Referring party [insert payment amount] or any other payment amount the Adjudicator decides as the amount due for payment, plus any applicable VAT within 7 days of the Adjudicator's Decision.
- (v) The Referring party seeks an order from the Adjudicator that the Responding party pays interest at a rate of [insert rate], from [insert date], to [insert date or reference when payment is made in full etc], or any other rate and period as the Adjudicator decides.
- (vi) The Referring party seeks an order that the Responding party pays the Adjudicator's fees in full.

#### Tips on 'Remedy and Redress sought'

- 17.2 **ALL** (emphasis added) orders sought must be listed, if for example only a valuation is requested with no payment then the adjudicator will not have jurisdiction to make a payment<sup>5</sup>.
- 17.3 Asking for a specific sum to be paid will preclude the Adjudicator from ordering an alternative payment in the event they decide the specific sum requested is not due<sup>6</sup>.
- 17.4 Generally, the Adjudicator can award damages arising from disputes under the contract which include a breach of contract but cannot award damages arising from disputes not under the contract<sup>7</sup>.

#### IMPORTANT NOTE ON ALL FOREGOING GUIDANCE

The foregoing guidance IS AS OF 25/5/24 and is not exhaustive, and each case should be considered specifically as to legal and practical requirements. If you are unsure visit our website below and get in touch and we can provide all quantification of claims, drafting of submissions, full adjudication representation, and procure any legal advice you may require.

Adjudication Notice Served this **[INSERT]** by **[INSERT]**.

#### Representatives of the Referring Party

**[INSERT ADDRESS AND CONTACT INFORMATION]**

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<sup>5</sup> *Cook v Shimizu* (2000) BLR 199

<sup>6</sup> *Volker Stevin v Holystone Contracts* [2010] EWHC 2344 (TCC).

<sup>7</sup> *ISG Retail v Castletech Construction* [2015] EWHC 1443 (TCC).

**IF YOU NEED HELP OR ADVICE ON AN ADJUDICATION DO NOT HESITATE TO GET IN TOUCH.**

Contact Information

VISIT [www.holden-smith.com](http://www.holden-smith.com)

