

Contents

Part 1 – Introduction	<i>Page 1</i>
Part 2 – Employer’s preliminary notice of Fair Payment requirements	<i>3</i>
Part 3 – Incorporation of modifications	<i>4</i>
Part 4 – Suggested modifications to SBCC Main Contracts	<i>5</i>
Standard Building Contract (all versions – Q/Scot, AQ/Scot, XQ/Scot) Design and Build Contract JCT/SBCC Constructing Excellence Minor Works Building Contract (both versions – MW/Scot and MWD/Scot) Measured Term Contract	
Part 5 – Suggested modifications to SBCC Sub-Contracts	<i>18</i>
Standard Building Sub-Contract (both versions – SBCCSub/Scot and SBCCSub/D/Scot) Design and Build Sub-Contract Minor Works Sub-Contract with sub-contractor’s design Short Form of Sub-Contract Sub-subcontract	

Part 1 – Introduction

Scope

1. This Supplement suggests steps to be taken by Public Sector clients (or their contract administrators) to ensure compliance with the Fair Payment Charter when using SBCC Contracts, together with relevant amendments. Contractors and sub-contractors should familiarise themselves with the requirements. The Fair Payment amendments may also be used by Private Sector clients who wish to ensure that those principles are applied at other levels in the supply chain.
2. At the same time, to deal with other aspects of Government contracting policy relevant to SBCC contracts, the Supplement also includes:
 - a model clause authorising disclosures by Public Sector clients in accordance with the Freedom of Information (Scotland) Act 2002 (FOISA) and the Government's Transparency Policy; and
 - suggested steps to be taken, or minor modifications to be made, for both Public Sector and Private Sector projects, where design work and information supply is to be governed by a Building Information Modelling ('BIM') protocol.
3. Part 2 of this Supplement sets out the preliminary steps that should be taken in relation to Fair Payment. That is followed in Part 3 by a note on incorporation of modifications into SBCC contracts.
4. Part 4 consists of individual schedules of modifications for each of the following SBCC Main Contracts, covering not only Fair Payment but also Transparency and BIM protocol:
 - Standard Building Contract (SBC/Scot) (all versions)
 - Design and Build Contract (DB/Scot));
 - JCT/SBCC Constructing Excellence (CE/Scot);
 - Minor Works Building Contract (MW/Scot)); and
 - Measured Term Contract (MTC/Scot)
5. Part 5 sets out schedules of modifications for each of the SBCC Sub-Contracts designed for use with the Main Contracts listed above and for the generic Short Form of Sub-Contract and Sub-subcontract. Transparency is relevant only to Main Contracts; BIM protocols can generally be incorporated in SBCC Sub-Contracts and (if relevant) the SBCC Sub-subcontract without amendments to the printed text of either the Articles or Conditions.

Fair Payment principles

6. The Fair Payment Charter provides that all contracts are to have payment periods not exceeding 30 days. In SBCC's view, its existing payment provisions – agreed by all sides of the industry – substantially conform to fair payment principles. However, the Office of Government Commerce (OGC) (now the Cabinet Office Efficiency and Reform Group) in its "Guide to Best Fair Payment Practices" has interpreted and applied that provision in the following way:
 - the final date for payment under a contract should not exceed 30 days from the date as at which the value of work done and/or materials supplied in a particular period is assessed,
 - 'contracts' for these purposes, in addition to the Main Contract (Tier 1), include all Sub-Contracts and Sub-subcontracts (respectively Tier 2 and Tier 3 contracts),
 - for the purpose of interim payments the value of work and materials supplied by all 3 tiers should be assessed as at the same date (a 'common valuation date'), and
 - on the assumption that the main contract valuation date (and hence the common valuation date) is (or may be) 7 days prior to the date on which a payment becomes due (the 'due' date), the final dates for payment to Main Contractor, his Sub-Contractors and their Sub-subcontractors respectively should be no more than 14, 19 and 23 days after the due date, i.e. within 21, 26 and 30 days from valuation date.

Transparency and FOISA

7. The model clause, which has been included in the schedule of suggested modifications for each Main Contract, is based on the original OGC draft, with minor adaptation and clarifications.

8. SBCC accepts that the appropriate stage for identifying commercially sensitive material in Public Sector contracts is at the tender stage and that, in view of the tight schedule for responses to any information requests under FOISA, further procedural provisions would not be appropriate. However, to give contractors an opportunity to review or add to any previous submissions, the clause has the added requirement that contractors should promptly be informed of any such request received by the client, which appears generally accepted practice.

BIM Protocols

9. Wider adoption and further development of building information modelling techniques should yield substantial benefits both for clients and for the industry generally.
10. In terms of improved collaborative working, most of the benefits will accrue in the design phase. This, in terms of SBCC Contracts, is covered principally by the Framework Agreement and SBCC - Constructing Excellence Contract. However, collaborative working is and has for some time also been covered by Supplemental Provision 1 in all relevant SBCC Main Contracts.
11. BIM is also directed to facilitating post-occupancy management and will therefore overlay both the construction phase supply of design information to contractors and supply by them of their designs and 'as built' information.
12. In that regard SBCC's existing conditions appear adequate; the primary requirement is simply integration of BIM protocols (through inclusion in the Preliminaries/Employer's Requirements or other contract documents) and their harmonisation with design submission procedures, information release schedules and communication protocols.
13. Consequential amendments to the Contractor's Design Submission procedure may be necessary but, in the contracts listed above, this can be effected simply through modifications included in the Contract Documents.
14. Nevertheless, to underline the importance of these protocols and their status within the Contract, (and to cover the position if a protocol is agreed too late for ready incorporation in another document), optional minor additions to the Contract Conditions are included for certain Main Contracts.

Part 2 – Employer’s preliminary notice of Fair Payment requirements

For all contracts, with a view to ensuring that payment is received by the Contractor, his Sub-Contractors and their Sub-subcontractors (i.e. by all Tiers 1 to 3 contractors) within 30 days of the date as at which periodic payments are assessed or otherwise become due for payment, a Public Sector client or its contract administrator should include in the tender documents – whether in the Preliminaries/Employer’s Requirements or other suitable document – a clear statement to the effect that:

- all valuations by Contractors and Sub-Contractors of work done and materials supplied to them are to be made as at the same valuation date as applies under the Main Contract (the common valuation date), with the Employer’s statement indicating what that date will be
- the due dates for payments under all Sub-Contracts and Sub-subcontracts should be the same as due dates under the Main Contract, with a final date for payment 19 days after the due date in Sub-Contracts and 23 days after due date in Sub-subcontracts^[1]
- Contractors are required to inform their Sub-Contractors and Sub-Contractors should inform their Sub-subcontractors of these Fair Payment requirements prior to entry into the relevant Sub-Contract or Sub-subcontract and should inform them promptly of any relevant ascertainment of additional sums due to them under their Sub-Contract or Sub-subcontract.

(It can be pointed out that use of the BACS system may assist in ensuring timely payment.)

[1] All SBCC Main Contracts set a final date for interim payments 14 days after the due date, subject as otherwise provided by law.

Part 3 – Incorporation of modifications

In the case of SBCC Main Contracts, the suggested modifications may be incorporated in one of two ways:

either by amending the contract document itself in accordance with the relevant modifications and then executing it in its amended form, with each amendment initialled by or on behalf of each party

or by downloading the relevant amendment sheet from Part 4 of this Supplement, attaching it to the Contract in the form of a numbered Annex or Part of a Schedule and, prior to execution, inserting in the Articles with the next available number a provision along the following lines:

'Article [____]: Fair Payment, Transparency and Building Information Modelling

This Agreement and the Conditions shall have effect as modified by the amendments set out in [Annex/Schedule Part] [_____] attached.'

(The additional provision and the Annex or Part of a Schedule should each in similar fashion be initialled on execution.)

The latter alternative will generally be the easier approach.

In the case of SBCC Sub-Contracts and Sub-subcontract, for which modification schedules are included in Part 5:

- in the Standard Building Sub-Contracts, Design and Build Sub-Contract, Item 1 of the Sub-Contract Particulars provides for a Schedule of Modifications to be included as a Numbered Document; the relevant modifications may conveniently be included in or as that Schedule. Any BIM protocol should where relevant be included in the Contractor's Requirements or as a Numbered Document.
- in the Minor Works Sub-Contract (MWSub/D/Scot) and the Short Form of Sub-Contract, the Second Recital and, in the case of the Sub-subcontract, the Third Recital similarly allow for inclusion of such a Schedule and any BIM protocol as further documents forming part of the contract.

Part 4 – Suggested modifications to SBCC Main Contracts

Standard Building Contract (all versions – Q/Scot, AQ/Scot, XQ/Scot)

Design and Build Contract (DB/Scot)

Minor Works Building Contract (both versions – MW/Scot and MWD/Scot)

SBCC-Constructing Excellence Contract

Measured Term Contract

Standard Building Contract 2011
Standard Building Contract 2011 for use in Scotland
 (all versions – Q/Scot, AQ/Scot, XQ/Scot)

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-9-1	In the right-hand column (and in the related footnote), delete 'or the nearest Business Day in that month'
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-9-1).'
[BIM]		In the definition of 'Contract Documents' insert after 'Contractor's Proposals' ', any agreed Building Information Modelling protocol' ^[a]
[T]	Clause 2-8-5	Insert as clause 2-8-5 the following ^[b] : '5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 ('FOISA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOISA. Notwithstanding clause 2-8-4 or any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form SBCC contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOISA redacted; ·2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
[FP]	Clause 3-9-2-7	Insert as clause 3-9-2-7 the following: '7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'
[FP]	Clause 4-9-1	Delete the existing text and insert the following: 'During the period up to the due date for the final payment under clause 4-15-3, the due dates for interim payments shall be the monthly dates specified in the Contract Particulars.'
[FP]	Clause 4-11-1	Delete 'less than 7 days before the due date' and insert 'later than the Common Valuation

Date'

[FP] **Clause 4-15-3** **Delete** '28 days' and **insert** '14 days'

**Clause
number**

Modification

[FP] **Clause 4-16
(introductory
paragraph)** **Delete** 'a date not more than 7 days before the due date of an interim payment' and **insert** 'the Common Valuation Date'

[a] It is suggested that any agreed BIM protocol should be included in the Employer's Requirements (see the Contract Particulars entry for the Tenth Recital) or other suitable Contract Document: if so included, this modification may be deleted.

(Where included in or as a Contract Document, the BIM protocol may make appropriate amendments to the Contractor's Design Submission Procedure (Schedule Part 1) without further modifications to the Contract form (see clause 2.9.5.)

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Design and Build Contract 2011
Design and Build Contract 2011 for use in Scotland
(DB/Scot)

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Contract Particulars, clause 4-7-1	Above the clause 4-7 entry insert the following new entry by reference to clause 4-7-1: 'Interim Payments – due dates <i>(The dates apply for each Alternative; if no date is stated, the first due date is one month after the Date of Possession.)</i> The first due date is: _____ and thereafter the same date in each month'
[FP]	Contract Particulars, clause 4-7 (Alternative A: Stage Payment)	Delete 'referred to in clause 4-8-2'
[FP]	Contract Particulars, clause 4-7 (Alternative B: Period Payments – Dates of Interim Applications)	Delete the entire text of the existing entry
	Clause 1-1	Insert the following (before the definition of Completion Date):
[FP]		'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (against the reference to clause 4-7).'
[BIM]		In the definition of 'Contract Documents' insert after 'Contractor's Proposals' ', any agreed Building Information Modelling protocol' ^[a]
[T]	Clause 2-7-5	Insert as clause 2-7-5 the following ^[b] : '5 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 ('FOISA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOISA. Notwithstanding clause 2-7-4 or any other term of this Contract: ·1 the Contractor hereby consents to the Employer publishing any amendments to the standard form SBCC contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information

which is exempt from disclosure in accordance with the provisions of FOISA redacted;

- 2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'

Clause number	Modification
[FP] Clause 3-4-2-7	Insert as clause 3-4-2-7 the following: '7 that under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date.'
[FP] Clause 4-7-1	Delete the existing text and insert the following: 'During the period up to the due date for the final payment under clause 4-12-5, the due dates for Interim Payments shall be the monthly dates specified in the Contract Particulars.'
[FP] Clause 4-7-2	After 'under clause 4-13 where' insert 'the Contract Particulars state that'
[FP] Clause 4-8 heading	Delete 'and due dates'
[FP] Clause 4-8	Delete the existing text of the entire clause and insert as clauses 4-8-1 and 4-8-2 the following: '1 In relation to each Interim Payment, the Contractor shall make an application to the Employer (an 'Interim Application'), stating the sum that the Contractor considers to be due to him and the basis on which that sum has been calculated. ·2 Each Interim Application shall be accompanied by such further information as may be specified in the Employer's Requirements and should be submitted on or before the Common Valuation Date. In the event of an Interim Application being received by the Employer more than 3 days after the Common Valuation Date, the final date for payment shall be postponed by the same number of days as the number of days after the Common Valuation Date that the Interim Application is received.'
[FP] Clause 4-9-1	After 'from its due date' insert ', subject to clause 4-8-2'
[FP] Clause 4-12-7	Delete '28 days' and insert '14 days'
[FP] Clause 4-13 (introductory paragraph)	Delete 'completion of the relevant stage' and insert 'the Common Valuation Date'
[FP] Clause 4-13-1-1	Delete 'at the relevant stage' and insert 'of stages completed'
[FP] Clause 4-14 (introductory paragraph)	Delete 'date for making an Interim Application under clause 4-8-3' and insert 'Common Valuation Date'

- [a] It is suggested that any agreed BIM protocol should be included in the Employer's Requirements (see the Contract Particulars entry for Article 4): if so included, this modification may be deleted.

(Where included in or as a Contract Document, the BIM protocol may make appropriate amendments to the Contractor's Design Submission Procedure (Schedule Part 1) without further modifications to the Contract form

(see clause 2.8.)

[b] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Note:

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

SBC - Constructing Excellence Contract 2014
SBC - Constructing Excellence Contract 2014 for use in Scotland

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued March 2016

	Clause number	Modification
[FP]	Contract Particulars, Part 1 – clause 1-1	<p>Insert in the first entry, after the lines for the name and address of the Client, the following further entry:</p> <p>‘Where the Purchaser is not the Client, he is:</p> <p>* a Tier 1 Supplier/ * a Tier 2 Supplier</p> <p>(A Tier 1 Supplier for these purposes means a Supplier directly contracted to the Client and a Tier 2 Supplier means one sub-contracted to a Tier 1 Supplier.)^[a]</p>
[FP]	Contract Particulars, Part 1 – clauses 7-6 and 7-19	<p>Insert the following:</p> <p>‘Common Valuation Date The Common Valuation Date is the _____ day of each month, commencing with the date next following the commencement of the Services under this Contract.^[b]’</p>
[T]	Contract Particulars, Part 9^[c]	<p>Insert the following as a supplementary condition, with the first available number:</p> <p>‘Where the Purchaser is the Client and is a public sector body, the Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 (‘FOISA’), the content of this Contract is not confidential. The Purchaser shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOISA. Notwithstanding clause 2-8-4 or any other term of this Contract:</p> <p>·1 the Supplier hereby consents to the Purchaser publishing any amendments to the standard form SBC contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOISA redacted;</p> <p>·2 the Purchaser shall promptly inform the Supplier of any request for disclosure that he receives in relation to this Contract.’</p>
[FP]	Clause 1-1	<p>Insert the following (before the definition of Completion Date):</p> <p>‘Common Valuation Date: the monthly date specified in Part 1 of the Contract Particulars (against the reference to clauses 7-6 and 7-19).’</p>
[FP]	Clause 4-17	<p>After ‘The Supplier acknowledges that terms imposing more onerous obligations on members of the Supply Chain are to be avoided’ insert ‘except as provided by clauses 7-6 and 7-7 or 7-19 and 7-20, whichever apply’</p>

Clause number	Modification
[FP] Clause 7-6 ^[d]	<p>Delete the existing text and insert the following:</p> <p>‘If the Supplier’s statement under clause 7-4-1 is received by the Purchaser:</p> <ul style="list-style-type: none"> ·1 on or before the Common Valuation Date, where the Purchaser is the Client; ·2 not later than 7 days prior to the Common Valuation Date, where the Purchaser is a Tier 1 Supplier; or ·3 not later than 11 days prior to the Common Valuation Date where the Purchaser is a Tier 2 Supplier <p>the due date for the relevant payment shall be 7 days after the Common Valuation Date. If the Supplier’s statement is not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the statement is received.’</p>
[FP] Clause 7-7 ^[d]	<p>Delete the existing text and insert the following:</p> <p>‘The final date for payment shall be:</p> <ul style="list-style-type: none"> ·1 where the Purchaser is the Client, 14 days after the due date; ·2 where the Purchaser is a Tier 1 Supplier, 19 days after the due date; ·3 where the Purchaser is a Tier 2 Supplier, 23 days after the due date.’
[FP] Clause 7-16 ^[e]	<p>Delete the introductory paragraph and insert the following:</p> <p>‘At monthly intervals or, where the Payment Schedule provides for payment on completion of activities or milestones shown in the Payment Schedule, upon completion of an activity or milestone, the Supplier shall provide the Purchaser with:’</p>
[FP] Clause 7-19 ^[e]	<p>Delete the existing text and insert the following:</p> <p>‘If the Supplier’s application and statement under clause 7-16 is received by the Purchaser:</p> <ul style="list-style-type: none"> ·1 on or before the Common Valuation Date, where the Purchaser is the Client; ·2 not later than 7 days prior to the Common Valuation Date, where the Purchaser is a Tier 1 Supplier; or ·3 not later than 11 days prior to the Common Valuation Date where the Purchaser is a Tier 2 Supplier <p>the due date for the relevant payment shall be 7 days after the Common Valuation Date. If the Supplier’s application and statement are not received at the required time, the due date shall be regarded as postponed by the same number of days as the number of days after the last such date for receipt that the application and statement are received.’</p>
[FP] Clause 7-20 ^[e]	<p>Delete the existing text and insert the following:</p> <p>‘The final date for payment shall be:</p> <ul style="list-style-type: none"> ·1 where the Purchaser is the Client, 14 days after the due date; ·2 where the Purchaser is a Tier 1 Supplier, 19 days after the due date; ·3 where the Purchaser is a Tier 2 Supplier, 23 days after the due date.’

-
- [a] See the modifications below to clauses 7·6 and 7·7 or to clauses 7·19 and 7·20, as applicable.
 - [b] Where the Purchaser is not the Client but is a Tier 1 or Tier 2 Supplier, the monthly date to be inserted is the date that applies under the contract between the Client and his Tier 1 Supplier (see the additional entry for clause 1·1 in Part 1 of the Contract Particulars set out above).
 - [c] Delete this modification if the Purchaser is not the Client or, if he is the Client, where he is not a public sector body.
 - [d] Applicable only to the Target Cost Option; delete the modifications if the Contract Sum Option applies, or if payments to Tiers 1 to 3 are covered by Project Bank Account arrangements.
 - [e] Applicable only to the Contract Sum Option; delete the modifications if the Target Cost Option applies, or if payments to Tiers 1 to 3 are covered by Project Bank Account arrangements.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Contract, it may be incorporated in the Contract either through inclusion in the Preliminaries to a document listed in Part 2 or Part 3 of the Contract Particulars or directly through its inclusion in one of those lists.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Minor Works Building Contract 2011

Minor Works Building Contract 2011 for use in Scotland
(both versions – MW/Scot and MWD/Scot)

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Clause 4-3-3-3	<p>Insert as clause 4-3-3-3 the following:</p> <p>‘3 under the sub-contract and any sub-subcontract under it, the due dates for interim payments shall each be the same date as under this Contract and each valuation for an interim payment shall be made as at the same date as the valuation under this Contract; the final date for each payment under the sub-contract shall be not later than 19 days after due date and, under any sub-subcontract, not later than 23 days after due date;’</p> <p>Renumber existing paragraph .3 as .4</p>
[FP]	Clause 5-4	<p>Delete ‘at intervals of 2 months (unless otherwise agreed) up to the expiry of the Rectification Period’ and insert ‘, in the period up to the due date for the final payment under clause 4-8-1, at intervals of not more than one month’</p>
[T]	Schedule Part 3, paragraph 7	<p>Insert as paragraph 7 the following^[a]:</p> <p>‘The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 (‘FOISA’), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOISA. Notwithstanding any other term of this Contract:</p> <p>.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form SBCC contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOISA redacted;</p> <p>.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.’</p>

[a] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

Notes:

BIM protocols

In those cases where there is a relevant BIM protocol, it is assumed that, in the case of MWD, it will be included in the Employer’s Requirements and, in other cases, within one of the Contract Documents identified in the Recitals.

Incorporation of modifications

As regards incorporation of this Schedule of modifications in the Contract, see Part 3 of this Supplement.

Measured Term Contract 2011

Measured Term Contract 2011 for use in Scotland

Public Sector Supplement

Fair Payment [FP], Transparency [T] and Building Information Modelling [BIM]

Issued March 2016

	Clause number	Modification
[FP]	Contract Particulars, item 9	<p>Delete the existing heading and insert in its place:</p> <p>'Payments (Clauses 4.3, 4.4 and 4.5)</p> <p>Under the existing entry (progress payment threshold) insert the following further entry:</p> <p>'Due dates (If no date is stated, the due date is the last day of each month.)</p> <p>The due date in each month is the _____ day of the month'</p>
	Clause 1-1	<p>Insert the following (before the definition of Conditions):</p>
[FP]		<p>'Common Valuation Date: the date 7 days before each due date, as specified in the Contract Particulars (item 9).'</p>
[T]	Clause 1-8	<p>Insert as clause 1-8 the following^[a]:</p> <p>'Transparency</p> <p>The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information (Scotland) Act 2002 ('FOISA'), the content of this Contract is not confidential. The Employer shall be responsible for determining in his absolute discretion whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of FOISA. Notwithstanding any other term of this Contract:</p> <ol style="list-style-type: none">.1 the Contractor hereby consents to the Employer publishing any amendments to the standard form SBCC contract in their entirety, including changes to the standard form agreed from time to time, but in each case with any information which is exempt from disclosure in accordance with the provisions of FOISA redacted;.2 the Employer shall promptly inform the Contractor of any request for disclosure that he receives in relation to this Contract.'
	Clause 2-7	<p>Alter the clause heading to 'Programme and further information'</p> <p>Re-number the existing clause 2.7 as clause 2.7.1</p> <p>Insert as clause 2.7.2 the following</p> <ol style="list-style-type: none">'2 In addition the Contractor shall on request and without charge provide such further information regarding the carrying out of each Order as may be required by the Contract Documents or the Order.'

	Clause number	Modification
[FP]	Clause 3-2	<p>Renumber the existing clause 3-2 as clause 3-2-1</p> <p>Insert as clause 3-2-2 the following</p> <p>‘2 It shall be a term of any such consent that under the sub-contract and any sub-subcontract under it, the due dates for payments shall each be the same date as under this Contract and each valuation for a payment shall be made as at the Common Valuation Date; the final date for each payment under the sub-contract shall be not later than 19 days after the due date and, under any sub-subcontract, not later than 23 days after the due date.’</p>
[FP]	Clause 4-3-1 hanging paragraph	<p>Delete the existing text of the hanging paragraph and insert the following:</p> <p>‘the Contractor may on or before each subsequent Common Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order up to the Common Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents.’</p>
[FP]	Clauses 4-3-2 and 4-3-3	<p>Delete the existing text and insert as clauses 4-3-2 and 4-3-3 the following:</p> <p>‘2 The due date for a progress payment shall in each case be the next monthly date specified in the Contract Particulars (item 9).</p> <p>·3 Where an application is made in accordance with clause 4-3-1, the Contract Administrator shall not later than 5 days after the due date issue a certificate, stating the sum that he considers to be due to the Contractor in respect of the progress payment, after taking into account any amounts previously certified and (where relevant) any sums paid under clause 4-6-3 in respect of any application made after the issue of the latest certificate. The certificate shall state the basis on which that sum has been calculated.’</p>
[FP]	Clause 4-4-1	<p>Delete the existing text and insert the following^[b]:</p> <p>‘the due date shall be the next monthly date following the Order Completion Date and (where applicable) expiry of the 14 day period referred to in clause 2-11-1 or, for Orders where progress payments are to be made, a date not later than 65 days after the Order Completion Date.’</p>
[FP]	Clause 4-5-1	<p>Insert the following after ‘the basis on which that sum has been calculated’:</p> <p>‘, accompanied by such further information as may be specified in the Contract Documents’</p>
[FP]	Clause 4-5-2	<p>Delete the first sentence and insert the following:</p> <p>‘the due date for payment in respect of the completed Order shall be the next monthly due date following receipt of the Contractor’s application and (where applicable) expiry of the 14 day period referred to in clause 2-11-1.’</p>
[FP]	Clause 4-6-3	<p>Delete the existing text and insert the following:</p> <p>‘If a certificate is not issued in accordance with clause 4-3-3, 4-4-2, 4-5-2 or 4-5-4, the sum to be paid by the Employer shall, subject to any notice given under clause 4-6-5, be the sum stated as due in the Contractor’s application.’</p>

[a] Applicable only for Employers in the Public Sector: in other cases the modification should be deleted.

[b] In the case of Orders for which there are no progress payments, it is considered that a shorter period is appropriate for the sole/final certificate and payment and may be necessary in order to comply with Fair Payment principles (though this is not directly covered by OGC Guidance). Such Orders will generally be smaller and valuation should not be as onerous as for those of greater duration or value. Consultation with practitioners has, however, served to underline the logistical challenges of valuations that often cover a multiplicity of small jobs spread over a wide area. Where there are progress payments, they should continue up to Order completion, thus substantially satisfying Fair Payment requirements. The existing 65 day period has therefore been retained for final valuations in those cases.

Note:

Technical and financial information

It appears that Building Information Modelling is unlikely to be directly relevant to normal Measured Term work and no express provision for it is made here. However, if feedback of technical information additional to that specified in the Contract is required for that or similar purposes, it may under clause 2.7.2 be requested as a term of the Order.

In terms of accounting information requirements, consultation with practitioners indicated that to avoid subsequent and wider requests for information, sometimes with a view to delaying payment rather than verification, express reference (and impliedly a limitation) should be made (and is here made in clauses 4.3, 4.4 and 4.5) to information specified up-front in the Contract Documents.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Contract, see Part 3 of this Supplement.

Part 5 – Suggested modifications to SBCC Sub-Contracts

Standard Building Sub-Contract (both versions – SBCCSub/Scot and SBCCSub/D/Scot)

Design and Build Sub-Contract

Minor Works Sub-Contract with sub-contractor's design

Short Form of Sub-Contract

Sub-subcontract

Standard Building Contract 2011
Standard Building Sub-Contract 2011 for use in Scotland
 (both versions – SBSub/Scot and SBSub/D/Scot)

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued November 2011

Clause number	Modification
<u>Agreement</u>	
[FP] Sub-Contract Particulars, item 7 – clause 4-9-1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1-1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (item 7) .'
[FP] Clause 3-3-2-2	Insert as clause 3-3-2-2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4-9-1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph .2 as .3
[FP] Clause 4-9-1	Delete the existing text of the entire clause and insert the following: 'Unless the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the due dates for interim payments shall in each case be the monthly date specified in the Sub-Contract Particulars, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site and ending with the monthly date immediately preceding the due date for the final payment under clause 4-12.'
[FP] Clause 4-9-2	Delete the existing text of the entire clause and insert the following: 'Where the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the Sub-Contractor shall submit an application to the Contractor each month stating the sum the Sub-Contractor considers will become due to him in accordance with clause 4-9-4 and the basis on which that sum has been calculated (a 'Payment Application'). Where the Payment Application is received not later than 7 days prior to the Common Valuation Date, the due date shall be the date that would apply under clause 4-9-1; if the Payment Application is received later, the due date shall be 14 days after the date of receipt.'
[FP] Clause 4-9-3-1	Delete the existing text and insert the following: 'so as to be received not later than 4 days prior to the Common Valuation Date for the

relevant payment; or'

	Clause number	Modification
[FP]	Clause 4-10-1	Delete '21 days' and insert '19 days'
[FP]	Clause 4-12-3	Delete '28 days' and insert '19 days'
[FP]	Clause 4-13 (introductory paragraph)	Delete 'applied up to and including a date not more than 7 days ... becomes or would become due' and insert 'as at the Common Valuation Date'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Contractor's Requirements (SBCSub/D) or in a Numbered Document.

The protocol may involve consequential changes in the (Main Contract) Contractor's Design Submission Procedure which, for the convenience of Sub-Contractors, is shown in Schedule Part 6 of the Sub-Contract Conditions. Changes should be indicated.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.

Design and Build Contract 2011
**Design and Build Sub-Contract 2011 for use in Scotland
 (DBSub/Scot)**

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued November 2011

Clause number	Modification
<u>Agreement</u>	
[FP] Sub-Contract Particulars, item 7 – clause 4-9-1 entry	Delete 'The first due date is _____ 20 _____' and insert 'The due date in each month is the _____ day of the month' ^[a]
<u>Conditions</u>	
[FP] Clause 1-1	Insert the following (before the definition of Completion Date): 'Common Valuation Date: the date 7 days before each due date, as specified in the Sub-Contract Particulars (item 7) .'
[FP] Clause 3-3-2-2	Insert as clause 3-3-2-2 the following: '2 the due dates for interim payments under the sub-subcontract shall each be the monthly date specified in the Sub-Contract Particulars for clause 4-9-1 of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the Common Valuation Date and the final date for each payment shall be not later than 23 days after due date;' Renumber existing paragraph .2 as .3
[FP] Clause 4-9-1	Delete the existing text of the entire clause and insert the following: 'Unless the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the due dates for interim payments shall in each case be the monthly date specified in the Sub-Contract Particulars, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on site and ending with the monthly date immediately preceding the due date for the final payment under clause 4-12.'
[FP] Clause 4-9-2	Delete the existing text of the entire clause and insert the following: 'Where the Sub-Contract Particulars (item 7) state that clause 4-9-2 applies, the Sub-Contractor shall submit an application to the Contractor each month stating the sum the Sub-Contractor considers will become due to him in accordance with clause 4-9-4 and the basis on which that sum has been calculated (a 'Payment Application'). Where the Payment Application is received not later than 7 days prior to the Common Valuation Date, the due date shall be the date that would apply under clause 4-9-1; if the Payment Application is



received later, the due date shall be 14 days after the date of receipt.'

[FP]	Clause 4-9-3-1	Delete the existing text and insert the following: 'so as to be received not later than 4 days prior to the Common Valuation Date for the relevant payment; or'
[FP]	Clause 4-10-1	Delete '21 days' and insert '19 days'
	Clause number	Modification
[FP]	Clause 4-12-3	Delete '28 days' and insert '19 days'
[FP]	Clause 4-13 (introductory paragraph)	Delete 'applied up to and including a date not more than 7 days ... becomes or would become due' and insert 'as at the Common Valuation Date'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol, it (or relevant parts of it) should be included in the Contractor's Requirements or in a Numbered Document.

The protocol may involve consequential changes in the (Main Contract) Contractor's Design Submission Procedure which, for the convenience of Sub-Contractors, is shown in Schedule Part 6 of the Sub-Contract Conditions. Changes should be indicated.

Incorporation of modifications

As regards incorporation of this schedule of modifications in the Sub-Contract, see Part 3 of this Supplement.



Minor Works Building Contract 2011

Minor Works Sub-Contract with sub-contractor's design 2011 for use in Scotland (MWDSUB/Scot)

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Sixth Recital	After 'For the purposes of clause 12:' insert the following as a new paragraph: 'The due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date' ^[a]
[FP]	Clause 5-6	After 'Contractor's written consent.' insert : 'The due dates for interim payments under any sub-subcontract shall each be the monthly date specified in the Sixth Recital of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the common valuation date and the final date for each payment shall be not later than 23 days after due date.'
[FP]	Clause 12-1	Delete the existing text and insert the following: 'The due dates for interim payments to the Sub-Contractor shall each be the monthly dates specified in the Sixth Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on Site and ending with the monthly date immediately preceding the due date for the final payment under clause 12-6.'
[FP]	Clause 12-2	After 'value of work properly carried out by the Sub-Contractor' insert 'as at the common valuation date'
[FP]	Clause 13-1	Delete '21 days' and insert '19 days'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-Contract, it (or relevant parts of it) may be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.



© The Joint Contracts Tribunal Limited 2011

Scottish Building Contract Committee Limited 2016

Public Sector Supplement for use in Scotland, March 2016

Page 23

Generic Contracts 2011
Short Form of Sub-Contract 2011 for use in Scotland
(Short Sub/Scot)

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Fifth Recital	After 'For the purposes of clause 12:' insert the following as a new paragraph: 'The due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date' ^[a]
[FP]	Clause 5-5	After 'Contractor's written consent.' insert : 'The due dates for interim payments under any sub-subcontract shall each be the monthly date specified in the Fifth Recital of this Sub-Contract, each valuation for an interim payment under the sub-subcontract shall be made as at the common valuation date and the final date for each payment shall be not later than 23 days after due date.'
[FP]	Clause 12-1	Delete the existing text and insert the following: 'The due dates for interim payments to the Sub-Contractor shall each be the monthly dates specified in the Fifth Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-Contract Works on Site and ending with the monthly date immediately preceding the due date for the final payment under clause 12-6.'
[FP]	Clause 12-2	After 'value of work properly carried out by the Sub-Contractor' insert 'as at the common valuation date'
[FP]	Clause 13-1	Delete '21 days' and insert '19 days'

[a] Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-Contract, it (or relevant parts of it) may be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-Contract by including reference to it in the last entry in the Second Recital.



Generic Contracts 2011
**Sub-subcontract 2011 for use in Scotland
(Sub-Sub/Scot)**

Public Sector Supplement

Fair Payment [FP] and Building Information Modelling [BIM]

Issued November 2011

	Clause number	Modification
[FP]	Third Recital	Insert the following as a new final paragraph: 'the due date for payment in each month is the _____ day of the month and the common valuation date shall be the date 7 days before the due date' ^[a]
[FP]	Clause 12-1	Delete the existing text and insert the following: 'The due dates for payments to the Sub-subcontractor shall each be the monthly dates specified in the Third Recital, commencing (unless otherwise agreed) with the date next following the commencement of the Sub-subcontract Works on Site.'
[FP]	Clause 12-2	After 'value of work properly carried out by the Sub-subcontractor' insert 'as at the common valuation date'
[FP]	Clause 13-1	Delete '24 days' and insert '23 days'

[a] Sub-Contractors should ensure that the date inserted is the same monthly date as applies under the Main Contract and Sub-Contract.

Notes:

BIM protocols

Where there is an agreed BIM protocol that is relevant to this Sub-subcontract, it (or relevant parts of it) may be incorporated in the Sub-subcontract by including reference to it in the penultimate entry in the Third Recital.

Incorporation of modifications

As indicated in Part 3 of this Supplement, this schedule of modifications may also be incorporated in the Sub-subcontract by including reference to it in the last entry in the Third Recital.



© The Joint Contracts Tribunal Limited 2011

Scottish Building Contract Committee Limited 2016

Public Sector Supplement for use in Scotland, March 2016

Page 25