

HGCRA LDED and Construction Act 2009 Amendments STPC2005 (issued 2010)

The Housing Grants Construction and Regeneration Act 1996 (**HGCRA**) is being changed by the Local Democracy Economic Development and Construction Act 2009 with effect from 1 October 2011 in England and Wales. Contracts for 'construction operations', including STPC2005, should be amended to comply with the updated HGCRA and take into account the revised payment and adjudication provisions and the expanded right of suspension.

This loose leaf updater contains a set of amendments to the published form which Trowers & Hamblins LLP and the Association of Consultant Architects recommend are incorporated into STPC2005 for contracts entered into on or after 1 October 2011 relating to sub contract work for term programmes. These amendments will be incorporated into the published form when it is next updated and republished.

A marked up version of the payment clause is included at the end of this loose leaf updater so that users can easily see the changes made to the payment clause. This is for information only and should not be incorporated into the published form.

Amendments to the published form of STPC2005 (issued 2010)

1 **Clause 7**

Delete clause 7 in its entirety and insert the following:

7 **Prices and Payments**

Specialist Price Framework	7.1	Specialist Task Prices shall be calculated in accordance with the Specialist Price Framework subject in each case to adjustment in accordance with the Specialist Documents and addition of VAT (if applicable).
Open-book	7.2	If stated in the Specialist Term Agreement that this clause 7.2 applies, the Specialist's agreed Profit, Central Office Overheads and Site Overheads shall be identified in the Specialist Price Framework and Specialist Task Prices shall be calculated on an Open Book basis in accordance with the Specialist Price Framework.
Payment applications	7.3	Subject to any agreed payment arrangements set out in the Specialist Price Framework, applications for payment of amounts due shall be submitted by the Specialist to the Service Provider at the end of each calendar month accompanied by the details stated in the Specialist Price Framework. Such applications shall state the sum the Specialist considers to be due to it on the due date and the basis on which that sum is calculated. The due date for each application for payment shall be the date of receipt by the Service Provider of the relevant application, submitted in accordance with this clause 7.3.
Notices of payments to Specialist	7.4	Within five (5) days from receipt of each application for payment made by the Specialist in accordance with clause 7.3, the Service Provider shall issue to the Specialist a notice specifying the sum the Service Provider considers to have been due on the due date, calculated in accordance with the Specialist Price Framework to establish the value of the works and/or services provided

by the Specialist less the total of all amounts previously paid under the Specialist Contract and adjusted to reflect any Incentives and any sums due pursuant to clauses 8.3, 8.4 or 8.5 and taking into account sums due pursuant to clause 7.13 and/or clause 7.15. Such notice shall also specify the basis on which that sum is calculated.

Payments to Specialists	7.5	Subject to any revised periods stated in the Specialist Price Framework and the issue of a notice pursuant to clause 7.7, the Service Provider shall pay to the Specialist the sum stated in a notice issued pursuant to clause 7.4 within twenty five (25) Working Days from the due date for payment or within twenty (20) Working Days from the date of receipt by the Service Provider of any required VAT invoice in the same sum as such notice, whichever shall be the later, and the later of such dates shall be the final date for payment.
Default notice	7.6	If the Service Provider does not issue a notice in accordance with clause 7.4: (i) the Specialist's application for payment under clause 7.3 shall be treated as the payment notice; (ii) subject to any notice issued in accordance with clause 7.7, the Service Provider shall pay the sum stated as due in the application for payment by the final date for payment.
Pay less notice	7.7	Not later than two (2) Working Days before the final date for payment of any amount due, the payer may give notice to the payee pursuant to Section 111(3) of the HGCR, specifying the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 7.7: (i) the payer shall pay the amount stated in such notice by the final date for payment; (ii) the payee shall reissue any required VAT invoice to reflect the sum stated in the notice.
Adjustment of notices	7.8	No notice, VAT invoice or payment shall: (i) prevent its later reconsideration and adjustment; or _____ (ii) constitute or imply or be evidence of approval or acceptance of any part of any Specialist Task.
Fluctuations	7.9	Amounts payable under the Specialist Contract shall be subject only to such fluctuation provisions, if any, as are set out in the Specialist Price Framework.
Payment of Sub-Specialists	7.10	The Specialist shall pay all Sub-Specialists the amounts to which they are entitled in accordance with their respective Sub-Specialist payment terms (with provision for interest equivalent to clause 7.17) and shall maintain full records of all amounts payable and paid to each Sub-Specialist.

Statutory deduction	7.11	Not later than fifteen (15) Working Days prior to the Specialist's first application for payment, and at any other time upon request, the Specialist shall either provide the Service Provider with evidence that the Specialist is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Service Provider that it is not entitled to be paid without such statutory deduction (and in the latter case the Specialist shall immediately inform the Service Provider if it subsequently becomes entitled to be paid without such statutory deduction) and the Service Provider shall be entitled to receive from the Specialist evidence supporting the Specialist's stated entitlement to be paid without such statutory deduction.
Final Account	7.12	<p>The following provisions shall apply in relation to the Final Account:</p> <ul style="list-style-type: none"> (i) Within forty (40) Working Days following the end of the Specialist Order Term, the Service Provider shall prepare and issue to the Specialist a Final Account, calculated in accordance with clause 7.4, for agreement between the Service Provider and the Specialist. (ii) On or after eighty (80) Working Days from the end of the Specialist Order Term the Service Provider or the Specialist (as the case may be) shall make an application for payment which shall state the sum the Service Provider or the Specialist considers to be due to it, calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. The due date for the Final Account shall be the date of receipt by the payer of the application pursuant to this clause 7.12(ii). (iii) Within five (5) days of the due date the payer shall issue to the payee a notice stating the sum the payer considers to have been due on the due date, either calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 7.7, the payer shall pay the amount stated as due in the notice issued pursuant to this clause 7.12(iii) by the final date for payment. (iv) If the payer does not issue a notice in accordance with clause 7.12(iii) the payee's application under clause 7.12(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 7.7, the payer shall pay the amount stated as due in the application for payment by the final date for payment. (v) The final date for payment for the Final Account shall be the later of twenty (20) Working Days from the due date for the Final Account or fifteen (15) Working Days from the date of receipt by the payer of any required VAT invoice (in the same sum as the payment notice or the application for payment). (vi) On agreement of the Final Account clause 7.8(i) shall not apply.

Suspension of performance	7.13	If the Service Provider fails to make any payment due in accordance with this clause 7 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Specialist has given written notice of its intention to suspend performance of all or any of its obligations and the grounds for such intended suspension, then the Specialist may suspend performance of all or any of its obligations under the Specialist Contract until payment is received in full. Where the Specialist exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.
Sums due to Service Provider	7.14	Any sum due to the Service Provider (other than pursuant to clause 7.12) which the Service Provider does not deduct and/or withhold from sums due or to become due to the Specialist shall be due for payment on receipt of an application from the Service Provider by the Specialist. In such application the Service Provider shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the Specialist shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the Specialist fails to serve such notice the Service Provider's application shall be treated as the payment notice. The final date for payment for any such sum applied for shall be the later of twenty five (25) Working Days from the payment due date and twenty (20) Working Days from the date of receipt by the Specialist of any required VAT invoice from the Service Provider in the same amount as the payment notice.
Interest on late payment	7.15	Any delay in a due payment beyond its final date for payment shall entitle the payee to be paid interest at the rate stated in the Specialist Term Agreement and the Specialist and the Service Provider confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.

2 Clause 13.10

Delete clause 13.10 and insert:

"In the event of termination of the Specialist's appointment by reason of its bankruptcy or insolvency under clause 13.5 or by the Service Provider in accordance with clauses 13.6 or 13.8, no further sum shall become due to the Specialist and the Service Provider may complete all Specialist Tasks using others in place of the Specialist."

3 Clause 13.12

Insert new clause 13.12:

"In the event of the Service Provider or the Specialist suffering an event of insolvency as described in Section 113(2) to Section 113(5) of the HGCRA:

- (i) the payer need not pay any sum that has already become due to the payee insofar as the payer has given or gives a notice in accordance with clause 7.7;

- (ii) the payer need not pay any sum that has already become due to the payee if the event occurs after the date on which the notice in relation to that sum is due in accordance with clause 7.7."

4 **Appendix 1**

In line 1 of the definition of Final Account delete "7.11" and insert "7.12"

5 **Appendix 6 Part 2**

Renumber existing paragraphs 4 and 5 as paragraphs 9 and 10 respectively.

Insert new paragraph 4:

"The Adjudicator shall be appointed and the dispute or difference referred to him/her within seven (7) days following the giving of a notice by either the Service Provider or the Specialist requiring a dispute or difference to be so referred."

Insert new paragraph 5:

"The Adjudicator shall reach his/her decision within twenty eight (28) days of the date of referral, or such longer period as is agreed by the Service Provider and the Specialist after the dispute has been referred. The Adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of the party who referred the dispute or difference."

Insert new paragraph 6:

"The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law."

Insert new paragraph 7:

"The Adjudicator may correct his/her decision so as to remove a clerical or typographical error arising by accident or omission within five (5) days of communicating his/her decision to the Service Provider and the Specialist."

Insert new paragraph 8:

"The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Partnering Contract provides for arbitration or the Service Provider and the Specialist otherwise agree to arbitration) or by agreement."

¹[Insert new paragraph 11:

"If the Model Adjudication Procedure fourth edition is the edition current at the date of the relevant notice:

- (i) delete paragraph 29 and insert "Not used."

¹ The CIC have advised that they are reviewing the Model Adjudication Procedure in light of the revised Construction Act and that a fifth edition should be available during early October 2011. If this is the case these amendments will not be required although users should check that the new edition satisfies the requirements of the revised Construction Act and amend if required.

- (ii) delete paragraph 30 and insert "Not used."
- (iii) insert "as amended" at the end of the definition of 'Act']

Mark up of clause 7 in STPC2005 (issued 2010) showing changes made

	7	Prices and Payments
Specialist Price Framework	7.1	Specialist Task Prices shall be calculated in accordance with the Specialist Price Framework subject in each case to adjustment in accordance with the Specialist Documents and addition of VAT (if applicable).
Open-book	7.2	If stated in the Specialist Term Agreement that this clause 7.2 applies, the Specialist's agreed Profit, Central Office Overheads and Site Overheads shall be identified in the Specialist Price Framework and Specialist Task Prices shall be calculated on an Open Book basis in accordance with the Specialist Price Framework.
Payment applications	7.3	Subject to any agreed payment arrangements set out in the Specialist Price Framework, applications for payment of amounts due shall be submitted by the Specialist to the Service Provider at the end of each calendar month accompanied by the details stated in the Specialist Price Framework. <u>Such applications shall state the sum the Specialist considers to be due to it on the due date and the basis on which that sum is calculated. The due date for each application for payment shall be the date of receipt by the Service Provider of the relevant application, submitted in accordance with this clause 7.3.</u>
<u>Notices of Valuations and payments to Specialist</u>	7.4	<u>Subject to any revised periods stated in the Specialist Price Framework, Within fiveten (510) Working Days from receipt of each application for payment made by the Specialist in accordance with clause 7.3, the Service Provider shall issue to the Specialist a <u>notice valuation</u> specifying the <u>sum the Service Provider considers to have been due on the due date</u>proposed payment, calculated in accordance with the Specialist Price Framework to establish the value of the works and/or services provided by the Specialist less the total of all amounts previously paid under the Specialist Contract and adjusted to reflect any Incentives <u>and any sums due pursuant to clauses 8.3, 8.4 or 8.5 and taking into account sums due pursuant to clause 7.13 and/or clause 7.15.</u> Such notice shall also specify the basis on which that sum is calculated. , and each such calculation shall be notice pursuant to Section 110(2) of the HGCRA and its date shall be the due date for payment.</u>
Payments to Specialists	7.5	Subject to any revised periods stated in the Specialist Price Framework <u>and the issue of a notice pursuant to clause 7.7</u> , the Service Provider shall pay to the Specialist the <u>sum</u> amount stated <u>in a notice issued as due</u> pursuant to clause 7.4 within <u>twenty five</u> fifteen (2515) Working Days from the due date for payment or within <u>twenty ten</u> (2010) Working Days from the date of receipt by the Service Provider of any required VAT invoice in the same <u>sum as such notice</u> amount , whichever shall be the later, and the later of such dates shall be the final date for payment. <u>Any delay in a due payment beyond such final date for payment shall entitle the Specialist to be paid interest at the rate stated in the Specialist Term Agreement and the Specialist confirms that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.</u>

<u>Default notice</u>	7.6	<p>If the Service Provider does not issue a notice in accordance with clause 7.4:</p> <p>(i) <u>the Specialist's application for payment under clause 7.3 shall be treated as the payment notice;</u></p> <p>(ii) <u>subject to any notice issued in accordance with clause 7.7, the Service Provider shall pay the sum stated as due in the application for payment by the final date for payment.</u></p>
<u>Withholding or deduction Pay less notice</u>	7.6 7.7	<p>Not later than two (2) Working Days before the final date for payment of any amount due, the <u>payer Service Provider</u> may give notice to the <u>payee Specialist</u> pursuant to Section 111(34) of the HGCR, specifying <u>any amount proposed to be withheld or deducted from the amount otherwise due together with the ground or grounds for such withholding or deduction and the amount attributable to each such ground, the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 7.7:</u></p> <p>(i) <u>the payer shall pay the amount stated in such notice by the final date for payment;</u></p> <p>(ii) <u>the payee shall reissue any required VAT invoice to reflect the sum stated in the notice.</u></p>
<u>Adjustment of noticesvaluations</u>	7.8	<p>No valuation or notice, or VAT invoice or payment shall:</p> <p>(i) prevent its later reconsideration and adjustment; or</p> <p>(ii) constitute or imply or be evidence of approval or acceptance of any part of any Specialist Task.</p>
Fluctuations	7.9	<p>Amounts payable under the Specialist Contract shall be subject only to such fluctuation provisions, if any, as are set out in the Specialist Price Framework.</p>
Payment of Sub-Specialists	7.10	<p>The Specialist shall pay all Sub-Specialists the amounts to which they are entitled in accordance with their respective Sub-Specialist payment terms (with provision for interest equivalent to clause 7.57.15) and shall maintain full records of all amounts payable and paid to each Sub-Specialist.</p>
Statutory deduction	7.11	<p>Not later than fifteen (15) Working Days prior to the Specialist's first application for payment, and at any other time upon request, the Specialist shall either provide the Service Provider with evidence that the Specialist is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Service Provider that it is not entitled to be paid without such statutory deduction (and in the latter case the Specialist shall immediately inform the Service Provider if it subsequently becomes entitled to be paid without such statutory deduction) and the Service Provider shall be entitled to receive from the Specialist evidence supporting the Specialist's stated entitlement to be paid without such statutory deduction.</p>

The following provisions shall apply in relation to the Final Account:

- (i) Within forty (40) Working Days following the end of the Specialist Order Term, the Service Provider shall prepare and issue to the Specialist a Final Account, calculated in accordance with clause 7.4 for agreement between the Service Provider and the Specialist. ~~which when agreed by them shall be conclusive evidence as to the balance due between them and, upon such agreement, the Service Provider shall issue a Final Account valuation. The Service Provider shall pay in accordance with clause 7.5 the amount stated in the Final Account valuation, and clause 7.7(i) shall not apply to such amount. If agreement is not reached within forty (40) Working Days from the date of issue of such Final Account, either the Service Provider or the Specialist may implement the procedures described in clause 14 if appropriate.~~
- (ii) On or after eighty (80) Working Days from the end of the Specialist Order Term the Service Provider or the Specialist (as the case may be) shall make an application for payment which shall state the sum the Service Provider or the Specialist considers to be due to it, calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. The due date for the Final Account shall be the date of receipt by the payer of the application pursuant to this clause 7.12(ii).
- (iii) Within five (5) days of the due date the payer shall issue to the payee a notice stating the sum the payer considers to have been due on the due date, either calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 7.7, the payer shall pay the amount stated as due in the notice issued pursuant to this clause 7.12(iii) by the final date for payment.
- (iv) If the payer does not issue a notice in accordance with clause 7.12(iii) the payee's application under clause 7.12(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 7.7, the payer shall pay the amount stated as due in the application for payment by the final date for payment.
- (v) The final date for payment for the Final Account shall be the later of twenty (20) Working Days from the due date for the Final Account or fifteen (15) Working Days from the date of receipt by the payer of any required VAT invoice (in the same sum as the payment notice or the application for payment).
- (vi) On agreement of the Final Account clause 7.8(i) shall not apply.

If the Service Provider fails to make any payment due in accordance with this clause 7 by the stated final date for payment, and if such failure shall

continue for seven (7) days after the Specialist has given written notice of its intention to suspend performance of all or any of its obligations and the grounds for such intended suspension, then the Specialist may suspend performance of all or any of its obligations under the Specialist Contract until payment is received in full. Where the Specialist exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.

Sums due to
Service Provider

7.14 Any sum due to the Service Provider (other than pursuant to clause 7.12) which the Service Provider does not deduct and/or withhold from sums due or to become due to the Specialist shall be due for payment on receipt of an application from the Service Provider by the Specialist. In such application the Service Provider shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the Specialist shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the Specialist fails to serve such notice the Service Provider's application shall be treated as the payment notice. The final date for payment for any such sum applied for shall be the later of twenty five (25) Working Days from the payment due date and twenty (20) Working Days from the date of receipt by the Specialist of any required VAT invoice from the Service Provider in the same amount as the payment notice.

Interest on late
payment

7.15 Any delay in a due payment beyond its final date for payment shall entitle the payee to be paid interest at the rate stated in the Specialist Term Agreement and the Specialist and the Service Provider confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.