SBCC
®

JCT

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

Named Specialist Update

Issued May 2012

This Update contains optional provisions for incorporation into the Standard Building Contract 2011 (all versions) for use in Scotland to enable the Employer, by means of an appropriate entry in the Contract Particulars, to name individual specialists as domestic sub-contractors for identified part or parts of the Works.

Dependent on the entry selected, the right may be limited solely to specialists pre-named in the Contract Documents (or their replacement) or, for provisional sum work, may also extend to post-naming.

In the latter case and that of the naming of any replacement specialist, the Contractor has a right of reasonable objection. If he duly notifies such an objection, and also if a named specialist becomes insolvent, there are rights both to an extension of time for resultant delay and to any loss or expense arising, but not where a solvent named specialist is terminated for default, unless the instructions name a replacement.

It will be noted that there are 7 day time limits for objections and for further instructions, subject to a 14 day standstill prior to termination of a solvent named specialist's employment for default.

Clause number	Modification

Contract Particulars, Eighth Recital and Schedule Part 8	In the middle column **insert** after 'Supplemental Provisions' '1 to 6'
	
	Below the Parties' respective nominees entry under Notification and negotiation of disputes (paragraph 6), **insert** the following new entry:
	
	'Supplemental Provision 7 – Named Specialists Paragraph 7:
	(If one of the first two options is not selected by deletion of the other two entries, paragraph 7 shall not apply.) * applies in respect of both Pre-Named Specialist Work and Post-Named Specialist Work/
	  * applies in respect of Pre-Named Specialist Work only/
	  * does not apply

Clause 1·1	**Insert** the following: 'Named Specialist: see paragraph 7·1 of **Schedule Part 8**. Named Specialist Work: Pre-Named Specialist Work or Post-Named Specialist Work. Post-Named Specialist Work: see paragraph 7·1·2 of **Schedule Part 8**. Pre-Named Specialist Work: see paragraph 7·1·1 of **Schedule Part 8**.'
Clause 2·29·2·3	**Insert** as clause 2·29·2·3 the following: '·3 in respect of any notification of reasonable objections under paragraph 7·4 of Schedule Part 8;'
Clause 2·29·5 (XQ/Scot version only)	**Insert** as clause 2·29·5 the following: '·5 a Named Specialist being or becoming Insolvent;' **Renumber** existing paragraphs ·5 to ·13 as ·6 to ·14

Clause number	Modification
Clause 2·29·6 (Q/Scot and AQ/Scot versions)	**Insert** as clause 2·29·6 the following: '·6 a Named Specialist being or becoming Insolvent;' **Renumber** existing paragraphs ·6 to ·14 as ·7 to ·15
Clause 4·24·2	**Insert** as clauses 4·24·2·4 and 4·24·2·5 the following: '·4 in respect of any notification of reasonable objections under paragraph 7·4 of Schedule Part 8; ·5 given under paragraph 7·6 of Schedule Part 8 where a Named Specialist is Insolvent;'
Schedule Part 8, introductory paragraph	**Delete** the existing text and **insert** the following: 'The Supplemental Provisions in paragraphs 1 to 6 apply unless otherwise stated in the Contract Particulars; the Supplemental Provision in paragraph 7 applies only if so stated there.'

Schedule Part 8, paragraph 7	**Insert** 'Named Specialists' as the heading for paragraph 7
	
	Insert as paragraph 7 the following:
	
	'·1 Where paragraph 7 applies and work forming part of the Works (excluding CDP Works) is to be carried out by a named person (other than a person listed under clause 3·8·1) as the Contractor's sub-contractor (a 'Named Specialist') and either:
	
	     ·1 that person is named in and the work ('Pre-Named Specialist Work') is identified in the Contract Documents; or
	
	     ·2 that person is named in and the work ('Post-Named Specialist Work') is identified in an instruction for expenditure of a Provisional Sum and paragraph 7 is stated also to apply in respect of Post-Named Specialist Work,
	
	     the following paragraphs of this provision shall as relevant apply.
	
	·2 Subject to paragraphs 7·3 and 7·4, the Contractor shall as soon as reasonably practicable enter into a sub-contract with the Named Specialist for the work referred to in paragraph 7·1 (in either case, 'Named Specialist Work') and in a form that complies with clause 3·9.
	
	·3 If for any reason the Contractor is unable to enter into a sub-contract with the Named Specialist, he shall immediately notify the Architect/Contract Administrator of the grounds and provided that the Contractor has acted reasonably the Architect/Contract Administrator shall within 7 days of receipt of that notification give instructions that:
	
	     ·1 remove the grounds; or
	
	     ·2 select another Named Specialist able and willing to carry out the Named Specialist Work; or
	
	     ·3 direct the Contractor to carry out that work using either his own resources or, at the Contractor's option, a sub-contractor selected by the Contractor and approved by the Architect/Contract Administrator (such approval not to be unreasonably withheld or delayed); or
	
	     ·4 omit the Named Specialist Work from this Contract as a Variation.
	
	·4 If in the case of instructions
	
	     ·1 for Post-Named Specialist Work which require use of a Named Specialist who is not named in respect of that work in the Contract Documents; or

Clause number	Modification

·2   for any Named Specialist Work, where the instructions name a replacement for a Named Specialist

the Contractor has reasonable grounds of objection and notifies the Architect/Contract Administrator within 7 days of receipt of the instruction, the Architect/Contract Administrator shall within 7 days of receipt of the Contractor's notification give further instructions in the terms set out in paragraph 7·3·2, 7·3·3 or 7·3·4.

·5   If the Contractor becomes entitled to terminate a Named Specialist's employment under his sub-contract or to give notice of a specified default which, if continued, would be grounds for such termination or is entitled to treat the sub-contract as repudiated, the Contractor:

    ·1   shall promptly, and prior to giving any notice to that effect to the Named Specialist, notify the Architect/Contract Administrator and consult with him and/or, if requested, with the Employer;

    ·2   save where the Named Specialist is or becomes Insolvent, shall not give notice of termination, or notice that he is treating the sub-contract as repudiated, less than 14 days after that notification to the Architect/Contract Administrator; and

    ·3   shall at the time of issue send the Architect/Contract Administrator a copy of each notice that he gives to the Named Specialist.

·6   Where the Contractor terminates a Named Specialist's employment in accordance with the terms of the relevant sub-contract or treats it as repudiated by the Named Specialist, the Architect/Contract Administrator may within 7 days of receipt of his copy of the Contractor's notice to that effect issue instructions in the terms of paragraph 7·3·2, 7·3·3 or 7·3·4, failing which he shall be deemed to have given an instruction in the terms of paragraph 7·3·3.

·7   The Contractor's responsibility for carrying out and completing the Works in all respects in accordance with clause 2·1 shall not be affected in any manner by the naming of any person for any work in the manner referred to in paragraph 7·1 or the exercise by the Architect/Contract Administrator of any of his powers under this paragraph 7.'

Incorporation of the modifications

It is suggested that the modifications are incorporated in one of two ways, the second of which will generally be the easier:

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

or   by attaching this Update to the Contract; and, prior to execution, inserting in the Articles with the next available number (i.e. normally as Article 10) a provision along the following lines:

"**Article [___]: Named Specialist Update – incorporation**
This Agreement and the Conditions shall have effect as modified by the amendments set out in the attached Named Specialist Update."

(The additional Article and the Named Specialist Update should each in similar fashion be initialled on execution.)