

ECA/BESA Standard Amendments to the JCT ICSUB 2016

Sub-Contract Agreement

Recitals:

1. **Eight** – Delete in its entirety

Articles:

2. **Article 1** – Insert a new bullet at the top of the list of bullets as follows “*The BESA/ECA Standard Amendments to the JCT ICSUB 2016.*”
3. **Article 3B** – Remeasurement – Delete in its entirety
4. **Article 5 Arbitration** – Remove this article in its entirety.

Sub-Contract Particulars

5. **Preamble** – Re-draft the preamble to read “*References in these Particulars to Articles are to the Articles in this Agreement and those to clauses or Schedules are to the clauses or Schedules in Intermediate Sub-Contract Conditions ICSUB/D/C, as all such documents are modified by BESA/ECA Standard Amendments to the JCT ICSUB 2016*”
6. **2 – Arbitration** - Remove in its entirety.
7. **3 – Design submission procedure** - Remove “*Design Submission Procedure (if the provisions as set out in Schedule 4 to the Sub-Contract Conditions have under the Main Contract been replaced or amended)*”
 - *The provisions in Schedule 4 have been replaced by the procedure set out in Numbered Document*
 - *Amendments made to the Design Submission Procedure are set out in Numbered Document*”
8. **4 (Clause 1.7)** – Delete and replace with “*The following email addresses will be used by the parties for service of notices under the Contract; Contractor _____
_____ Sub-Contractor _____.*”
9. **7 Item 1 Attendances** – Remove from the first bullet “*except where such provision is necessary solely and exclusively for the purpose of carrying out the Sub-Contract Works;*”. Change the last bullet from “*provision of reasonable measures to prevent access by unauthorised persons*” to “*provision of security measures to prevent access by unauthorised persons, theft and vandalism by authorised or unauthorised persons*”

Add to the bullet list of attendance to be provided by the Contractor:

- *“Builder’s work including holes more than two inches/150mm in diameter”*

10. **9 Item 3 and 10 Retentions** – Remove this facility entirely.

11. **14** – Delete and replace the existing drafting and table with:

“Elements of Sub-Contract Works are to be regarded as fully, finally and properly incorporated into the Main Contract Works prior to practical completion of the Sub-Contract Works or Section as applicable on the date when the Sub-Contractor notifies the Contractor of the same in writing.”

12. **15 Dispute Resolution** – remove the section on Arbitration.

Attestation

13. **Execution as a Deed** – Remove this section and execute the sub-contract under hand.

Main Contract Information Schedule

14. **1 Items 5 to 9** – Remove

Sub-Contract Conditions

15. **1.1 – Arbitration** – remove this definition.

16. **1.7.1.1** – Remove *“but the Final Payment Notice shall not be conclusive evidence that they or any other materials or goods or workmanship comply with any other requirement or term of this Sub-Contract.”*

17. **1.7.2** – Remove *“Subject to clause 1.7.4,”*

18. **1.7.3** – Remove *“Subject to clauses 1.7.2 and 1.7.4,”* and replace *“by hand or sent by pre-paid post to: 1. the recipient’s address stated in the Sub-Contract Particulars (item 4), or to such other address as the recipient may from time to time notify to the sender; or 2. if no such address is then current, the recipient’s last known principal business address or (where a body corporate) its registered or principal office.”* with *“electronic means.”*

19. **1.7.4** – Remove in its entirety.

20. **1.7.5** – Remove *“with respect to health and safety, risk of damage to property or insurance matters,”*

21. **1.8.2.1** - Replace *“10 days”* with *“three months”*

22. **1.9** – Remove *“except in the case of the Contractor’s consent under clause 3.1 the giving of which shall be at his sole discretion.”*

23. **2.1.2** – Replace *“as a whole”* with *“to the extent that copies of the same are issued to the Sub-Contractor prior to the date of this Sub-Contract.”*

24. **2.2** – Remove “*and reasonably in accordance with the progress of the Main Contract Works or each relevant Section of them*”
25. **2.4** – Delete and replace this clause with “*Insofar as the Contractor's obligations under the Main Contract, are identified in the Sub-Contract Particulars and relate and apply to the Sub-Contract Works, and subject to the Sub-Contractor having been provided with a copy of the Main Contract and any other document reasonably necessary for interpreting the same the Sub-Contractor shall use reasonable endeavours to complete the Sub-Contract Works so not to cause the Main Contractor to be in breach of its obligations under the Main Contract.*”
26. **2.5.1** – Remove “*Subject to clauses 2.10 and 2.11 of the Main Contract Conditions*”. Replace “*from time to time*” with “*as soon as reasonably practicable*”. Insert “*reasonable*” before “*directions*”
27. **2.6.** - Remove “*and Main Contract Works*”. Replace “*as and when necessary from time to time to enable the Contractor in respect of the Sub-Contractor's Designed Portion to observe and perform his obligations in respect of the Design Submission Procedure, and the Sub-Contractor shall not commence any work to which such a document relates before that procedure has been complied with*” with “*on the dates notified reasonably and sufficiently in advance to the Sub-Contractor by the Contractor.*”.
28. **2.8.2** – Remove and renumber remaining clauses.
29. **2.9.** – Remove “*having regard to the progress of the Main Contract Work*”
30. **2.11.1** – Replace “*except for use on the Main Contract Works unless the Contractor with the Architect/Contract Administrator's agreement consents to such removal*” with “*without the Sub-Contractor's prior written consent*”.
31. **2.11.2** – Redraft to read “*no Site Materials belonging to the Sub-Contractor will become the property of any other party until such time as the Sub-Contractor has been paid for the same as identified in a payment notice issued under clause 4.9.*”.
32. **2.11.3** – After “*Site Materials*” insert “*as identified within a payment notice issued under clause 4.9*”.
33. **2.11.4** – Remove.
34. **2.12.1** – Redraft to read “*If and whenever it becomes reasonably apparent that the commencement, progress or completion of the Sub-Contract Works or such works in a Section is being or is likely to be delayed, the Sub-Contractor shall as soon as he is reasonably able to do so give the Contractor notice of the cause of the delay. If the Contractor reasonably properly considers that completion of such works has been, is being or is likely to be delayed beyond the relevant period or periods for completion stated in the Sub-Contract Particulars (item 5) (or any previously revised period or periods) by any of the Relevant Sub-Contract Events, the Contractor, within 14 days of the Sub-Contractor's notice hereunder, shall by written notice to the Sub-Contractor give a fair and reasonable extension of such period or periods including the reasons for so doing.*”.
35. **2.12.2** – Change “*as soon as he is able to estimate the length of the delay beyond the period or periods*” to read “*within 14 days of the occurrence of the Relevant Event*”.

36. **2.12.4.1** – Change “*best*” to “*reasonable*” and insert “*reasonable*” before “*satisfaction*”.
37. **2.12.4.2** – Insert “*reasonable*” before “*information*”.
38. **2.13.2** – Remove .1 .2 and .3.
39. **2.13.3** – Remove “*under clause 2.5 of the Main Contract Conditions*”.
40. **2.13.5** – Remove “*under clause 4.10*”.
41. **2.13.6** – Remove “*under clause 4.14 of the Main Contract Conditions*”.
42. **2.13.7** – Insert “*hindrance*” after “*impediment*”. Remove “*the Employer, the Architect/Contract Administrator, the Quantity Surveyor or any Employer's Person*”.
43. **2.13.14** – Remove “*after the Main Contract Base Date*”.
44. **2.14.2** – After “*If the Contractor so dissents,*” insert “*the Sub-Contractor shall be entitled, upon the Contractor's reasonable reasons given under clause 2.14.1 for not agreeing with the Sub-Contractor that the Sub-Contract Works are practically complete, being resolved, to the Sub-Contractors Works being deemed practically complete for the purposes of this Sub-Contract*”.
- Remove the remainder of this clause.
45. **2.15** – After “*periods for completion*” insert “*including any extensions to such period as the Sub-Contractor is reasonably entitled to regardless of whether such extensions have been given by the Contractor*”. After “*incurred*” insert “*and substantiated*”.
46. **2.16.1** – Remove “*at his own cost and in accordance with any direction of the Contractor*”.
47. **2.17** – Remove.
48. **2.18** – Insert before .1 “*Subject to the Sub-Contractor having received payment of any and all monies owed to it under this Sub-Contract.*”.
49. **2.19** – Insert after “*shall*” the words “*subject to the Sub-Contractor having received payment of any and all monies owed to it under this Sub-Contract,*”.
50. **2.21** – Insert before .1 “*Subject to the Sub-Contractor having no liability under this clause to the Contractor beyond that for which the Sub-Contractor is insured,*”.
51. **3.2.1** – Remove .1 and .2
52. **3.5** – Insert “*reasonable*” before “*directions*”
53. **3.5.1** – Remove “*where such a direction requires a Variation of the type referred to in clause 5.1.2*”
54. **3.6** – After “*additional*” insert “*reasonably and directly incurred and fully substantiated*”
55. **3.7** – Before “*directions*” insert “*written*”

56. **3.8** – After “reasonable times” insert “on reasonable written request”
57. **3.12** – Remove.
58. **3.14.2** – Remove “Such use shall be on the express condition that no warranty or other liability on the part of the Contractor or any Contractor’s Persons or of the Sub-Contractor or any Sub-Contractor’s Persons, as the case may be, shall be created or implied under this Sub-Contract in regard to the fitness, condition or suitability of such scaffolding.”.
59. **3.19** – Replace “under clause 4.14 of the Main Contract Conditions gives the Employer a written notice of his intention to suspend the performance of any of his obligations under the Main Contract, he shall thereupon copy that notice to the Sub-Contractor and” with “suspends performance of any obligation under the Main Contract”. Add to the end of the clause “If such suspension continues for a period of 4 weeks or more, the Sub-Contractor may by notice in writing elect to terminate this Sub-Contract without further notice.”
60. **3.21.1** – Replace “neither Party shall have any claim on the other for any” with “the Sub-Contractor will be entitled to claim reasonable”.
61. **4.2** – Remove.
62. **4.4.1** – Replace “shall in addition pay the amount of any VAT properly chargeable in” with “shall in where required by applicable and relevant legislation and regulation pay in addition the amount of any VAT properly chargeable in”.
63. **4.6.1** - Replace “12 days after the relevant Interim Valuation Date, commencing (unless an earlier date is specified by the Sub-Contract Particulars (item 9.2)) with the Interim Valuation Date” with “the last Business Day of the month”.
64. **4.6.2.1** – Replace “Interim Valuation Date” with “Due Date”.
65. **4,6,4** – Remove this clause.
66. **4,7,1** – Remove “subject to clause 4.6.4, the applicable percentage, as stated in the Sub-Contract Particulars (item 10), of”
67. **4.7.3** – Remove “clause 2.17 (Deductions under Main Contract Conditions),” and “3.12 (Indemnity by Sub-Contractor)”
68. **4.9.2** – After “calculated” insert “in reasonably sufficient detail and with reasonably sufficient substantiation for the Sub-Contractor to understand why/the grounds upon which the valuation assessment contained in his application for payment differs from the valuation assessment contained in this notice.”.
69. **4.9.6** – After “calculated” insert “in reasonably sufficient detail and with reasonably sufficient substantiation for the Sub-Contractor to understand why/the grounds, upon which the valuation assessment contained in his application for payment differs from the valuation assessment contained in this notice.”.
70. **4.9.7** – Before “simple interest” insert “reasonable costs of recovery and”.

71. **4.10.1** – Replace “*fails to pay a sum payable to the Sub-Contractor in accordance with clause 4.9 (together with any VAT properly chargeable in respect of that payment) by the final date for payment and the failure*” with “*breaches the terms of this Sub-Contract and the breach*”.
72. **4.12** – Insert “*reasonably*” and “*reasonable*” before “*ascertain*” and “*ascertainment*”.
73. **4.12.4** – Replace “42” and “28” with “14”.
74. **4.13** – Remove and replace with “*The Relevant Sub-Contract Matters will be the same as the Relevant Sub-Contract Events identified under clause 2.13.*”.
75. **4.14** – After “*details*” insert “*and full substantiation*”.
76. **4.17** – Remove.
77. **4.18.2** – Redraft to read “*Not later than 1 month after receipt of the documents referred to in clause 4.18.1 the Contractor shall prepare and send to the Sub-Contractor a statement of the calculation of the Final Sub Contract Sum.*”.
78. **4.19.1** – Remove “*whichever of the following occurs last*” .1 and .2.
79. **5.1** – After “*means*” insert “*and includes any oral or written direction or instruction from the Contractor on*”.
80. **5.2.2, 5.4 and 5.5.4** – Remove.
81. **5.8.1 and 5.9.2** – Insert “*and reasonable*” after “*fair*”.
82. **6.1** – At the beginning of the definition of “*Specified Perils*” insert the words “*theft, vandalism*”.
83. **6.2 & 6.3** – After “*against, any*” insert “*reasonably and directly incurred and fully substantiated*”.
84. **6.5.4** – Before “*amount*” insert “*reasonable*”.
85. **6.7.8** – Replace “to the extent indicated or referred to in the Sub-Contract Particulars (item 14)” with “*to the extent that there is no significant works on those elements of the Sub-Contract Works not complete save for testing and commissioning*”.
86. **5.8.2** – Remove “(except clause 7.11.3.3)”
87. **7.5.3.2** – Before “*adequately protected*” insert “*which have been paid for by the Contractor*”.
88. **7.7.1** – Remove “*and (subject to obtaining any necessary third party consents) may use all the Sub-Contractor's temporary buildings, plant, tools, equipment and Sub-Contract Site Materials for those purposes*”.
89. **7.7.2.1** – Remove “*when required in writing by the Contractor to do so (but not before),*”.

90. **7.7.4** – Before “*direct*” insert “*reasonable, incurred, substantiated and*”.
91. **7.8.1 & 7.8.2** – Remove “*without reasonable cause*”.
92. **7.8.4** – Redraft to read “*fails to comply with any of its obligations hereunder*”.
93. **7.11.2.2** – Remove.
94. **7.11.3.3** – Insert at the end “*including an amount for loss of profit for the remaining Sub-Contract Works which remain to be completed at the date of termination*”.
95. **7.11.4** – Remove.
96. **8.3 to 8.8** – Remove.

Additional Clauses

97. *All directions, instructions and opinions of the Contractor must be reasonable.*
98. *All consents, opinions, directions or instructions of the Contractor shall not be unreasonably withheld or delayed.*
99. *All notices required to be given by either party under this Sub-Contract containing sums, calculations and programmes shall be accompanied by reasonable explanations, substantiation and rationale in support thereof.*
100. *The Sub-Contractor’s liability to the Contractor or any third party with rights under this Sub-Contract in contract, tort and at common law shall be limited to the Sub-Contract Sum and in any event shall not exceed amount for which the Sub-Contractor is insured in respect of such liability.*