

## ACE Agreements 2009 - Amendments Rachel Barnes, August 2009

The ACE has published some amendments by way of Corrigendum sheets to some of its Agreements 2009 Edition and one of the Services Schedules. These are available under "ACE Agreements" on the ACE's website and can be downloaded free.

The amendments will be incorporated in revised versions of the Agreements and Services Schedules which are due to be printed and made available in electronic form from this autumn. In the meanwhile, purchasers of the Agreements and Services Schedules will find that the Corrigendum sheets have been included in the relevant publication.

This note therefore will only be relevant to ACE members and others who purchased the first printed versions of these Agreements.

The Corrigendum sheets are for the following Agreements and Services Schedule:

- Agreement 1: Design
- Agreement 2: Advise and Report
- Agreement 4: Sub-Consultancy
- Agreement 6: Expert Witness (Sole Practitioner)
- Agreement 7: Expert Witness (Firm)
- Agreement 8: Adjudicator
- Schedule of Services Part G(a)

The amendments are not extensive and it may not always be necessary to attach the Corrigendum sheets to the relevant ACE Agreement or Services Schedule. Further, it is possible to deal with the majority of the amendments by writing them on to the relevant Agreement or Services Schedule rather than attaching a separate sheet if that is preferred.

We set out below details of the amendments made by the various Corrigendum sheets with guidance on how and when these should be used. This should be read in conjunction with the Corrigendum sheets themselves.

If you need any further information please contact Rachel Barnes on 020 7240 3474 or at [r.barnes@beale-law.com](mailto:r.barnes@beale-law.com).

August 2009

## **AGREEMENT 1: DESIGN**

The amendments are:

- 1 To the description of "Total Works Cost" in Part E and the definitions of "Total Project Cost" and "Total Works Cost" in Part F.

*Comment: these amendments will not need to be made if the fees are not to be calculated by reference to a percentage of "Total Project Cost" or "Total Works Cost".*

- 2 To F2.3 and F3.7 to take account of the fact that Consultants may not attach the ACE Services Schedule.

*Comment: if ACE Services Schedules are attached, these amendments will not need to be made.*

- 3 To the provision for interest in Part E to add "reference" to "rate".

*Comment: this is a desirable amendment but not essential. If it is the only amendment needed it could be added by hand or omitted.*

## **AGREEMENT 2: ADVISE AND REPORT**

The amendments are:

- 1 To the payment provision in E3.1 of the Terms to provide a due date for payment and for a final date for payment to be set out in D6 with a default of 28 days if no date is inserted.

*Comment: where these Agreements are not construction contracts these provisions will be needed in order to provide the mechanics for payment but it would be advisable to include them in any event to have greater certainty concerning payment.*

- 2 To the provision for interest in E3.1 to add "reference" to "rate".

- 3 To E5.4 and E5.6 to amend typographical errors.

*Comment: these amendments should be made to help with the construction of these two clauses and to make their wording consistent with the other ACE Agreements.*

- 4 To E6.1 to allow for what is to happen if there is more than one period of suspension.

- 5 To E9.1 to make it clear that this refers to the giving of Notices.

*Comment: although the amendments referred to in 2 to 5 could easily be made by hand, it is recommended that for this Agreement the Corrigendum sheet is attached so as to incorporate them all and particularly the amendment to the payment clause.*

#### **AGREEMENT 4: SUB-CONSULTANCY**

The amendments are:

- 1 To add a new E5.1 to give a description of "expenses" and to make the consequential amendments to paragraph numbers and notes.
- 2 To E6.1 to substitute twenty-eight days for payment instead of allowing for this to be completed by the parties.
- 3 To amend "the Consultant" to "the Sub-Consultant" in the limitation of liability clauses F4.2, F4.3 and F4.4.
- 4 To the provision for interest in Part E to add "reference" to "rate".
- 5 To F4.5 to make the net contribution clause consistent with the net contribution clauses in the other Agreements.
- 6 To F10.1 to make it clear that this refers to the giving of Notices.

*Comment: in view of the number of amendments to this Agreement, it would be safest to attach the Corrigendum sheet to the Sub-Consultancy Agreement when completing it.*

#### **AGREEMENT 6: EXPERT WITNESS (SOLE PRACTITIONER)**

The amendments are:

- 1 To the description of "the Schedule" in the Memorandum to refer to "Schedules 1 and 2" specifically.  
  
*Comment: this is to give clarity as to the number of Schedules attached.*
- 2 To the reference to total liability in the Memorandum so that it correctly refers to the Expert and not the Consultant.
- 3 To D2 to add "as permitted" to make this consistent with the equivalent clauses in the other Agreements.
- 4 To E1 in the Terms to amend a typographical error to make it consistent with the other Agreements.
- 5 To I1 to make it clear that this refers to the giving of Notices.

*Comment: all these amendments could be made by hand, but it might be simpler to attach the Corrigendum sheet.*

#### **AGREEMENT 7: EXPERT WITNESS (FIRM)**

The amendments are:

- 1 To the description of "the Schedule" in the Memorandum to refer to "Schedules 1 and 2".

*Comment: this is to give clarity as to the number of Schedules attached.*

- 2 To the duty of care provision in A1 of the Terms to express the duty in the same manner as in Agreement 6: Expert Witness (Sole Practitioner).
- 3 To A2 to clarify that it is the Expert who is referred to.
- 4 To D2 to add "as permitted" to make this consistent with the equivalent clauses in the other Agreements.
- 5 To F1 to make it clear the services are performed by the Expert.
- 6 To I1 to make it clear this refers to the giving of Notices.

*Comment: all these amendments could be made by hand, but it might be simpler to attach the Corrigendum sheet.*

#### **AGREEMENT 8: ADJUDICATOR**

The amendments are:

- 1 To paragraph (iii) to remove a superfluous "said".
- 2 To paragraph 7 to substitute "made" for "taken".
- 3 To the provisions concerning the payment of the Adjudicator's fee in paragraph 12 to provide for his payment in circumstances when he does not have power to make any direction as to the payment of his fee.
- 4 To paragraph 14 to add "or permitted" to make this consistent with the equivalent clauses in the other Agreements.

*Comment: these amendments could be made by hand.*

#### **SCHEDULE OF SERVICES – PART G(A)**

The amendments are:

- 1 To provide the missing words at the end of G2.4.3.
- 2 To make a typographical amendment in G2.7.1.

*Comment: both these amendments could be made by hand.*

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