

# Measured Term Contract

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### Amendment 1 Issued April 2007

#### CDM Regulations

Clause number and heading	Action				
Fourth Recital	<b>Delete</b> 'Planning Supervisor' and <b>insert</b> 'CDM Co-ordinator'; <b>Delete</b> '6(1)' and <b>insert</b> '14(1)'; <b>Delete</b> 'Health and Safety' and <b>insert</b> 'Construction Phase'				
Article 4 heading	<b>Delete</b> 'Planning Supervisor' and <b>insert</b> 'CDM Co-ordinator'				
Article 4	<b>Delete</b> 'Planning Supervisor' and <b>insert</b> 'CDM Co-ordinator' (twice); <b>Delete</b> '6(5)' and <b>insert</b> '14(1)'				
Article 5	<b>Delete</b> '6(5)' and <b>insert</b> '14(2)'				
Footnote [2]	<b>Delete</b> 'name of Planning Supervisor' and <b>insert</b> 'the name of the CDM Co-ordinator'				
Clause 1-1	'CDM Regulations': <b>Delete</b> '1994' and <b>insert</b> '2007'; <b>Delete</b> the definitions of 'Health and Safety Plan' and 'Planning Supervisor'; <b>Insert</b> the following new definitions:  <table border="0"> <tr> <td style="padding-right: 20px;">'CDM Co-ordinator:</td> <td>the Contract Administrator or other person named in <b>Article 4</b> or any successor appointed by the Employer.</td> </tr> <tr> <td>Construction Phase Plan:</td> <td>the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.'</td> </tr> </table>	'CDM Co-ordinator:	the Contract Administrator or other person named in <b>Article 4</b> or any successor appointed by the Employer.	Construction Phase Plan:	the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.'
'CDM Co-ordinator:	the Contract Administrator or other person named in <b>Article 4</b> or any successor appointed by the Employer.				
Construction Phase Plan:	the plan prepared by the Principal Contractor, where the project is notifiable under the CDM Regulations and in order to comply with regulation 23, including any updates and revisions.'				
Clause 2-1	<b>Delete</b> 'Health and Safety' and <b>insert</b> 'Construction Phase'; After '(where applicable) and' <b>delete</b> 'the' and <b>insert</b> 'other'				
Clause 2-6	After 'a commencement date' <b>insert</b> <sup>[1]</sup> 1; <b>Insert</b> new footnote text for <sup>[1]</sup> 1: 'Under the CDM Regulations 2007 every client is expressly required to allocate sufficient time prior to the commencement of construction to enable contractors and others to carry out necessary CDM planning and preparation.'				
Clause 3-9	<b>Delete</b> existing text and <b>insert</b> :  'Each Party acknowledges that he is aware of and undertakes to the other that in relation to each Order and Site he will duly comply with the CDM Regulations. Without limitation, where the project <sup>[16]</sup> that comprises or includes work under an Order is notifiable:  <ul style="list-style-type: none"> <li>·1 the Employer shall ensure both that the CDM Co-ordinator carries out all his duties and, where the Contractor is not the Principal Contractor, that the Principal Contractor carries out all his duties under those regulations;</li> <li>·2 where the Contractor is and while he remains the Principal Contractor, he shall ensure that: <ul style="list-style-type: none"> <li>·1 the Construction Phase Plan is prepared and received by the Employer before construction work on that project is commenced, and that any subsequent amendment to it by the Contractor is notified to the Employer, the CDM Co-ordinator and (where not the CDM Co-ordinator) the Contract Administrator; and</li> </ul> </li> </ul>				

**Clause number and heading**

**Action**

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- .2 welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase<sup>1</sup>;
  - .3 where the Contractor is not the Principal Contractor, he shall promptly inform the Principal Contractor of the identity of each sub-contractor that he appoints and each sub-subcontractor appointment notified to him;
  - .4 promptly upon the written request of the CDM Co-ordinator, the Contractor shall provide, and shall ensure that any sub-contractor, through the Contractor, provides, to the CDM Co-ordinator (or, if the Contractor is not the Principal Contractor, to the Principal Contractor) such information as the CDM Co-ordinator reasonably requires for the preparation of the health and safety file.'

**Insert** new footnote text for <sup>1</sup> 1:

'There is a duty on contractors to ensure compliance with Schedule 2 of the CDM Regulations so far as is reasonably practicable, whether or not the project is notifiable and whether or not the contractor is the Principal Contractor.'

**Clause 3-10-2**

**Delete** 'Planning Supervisor' and **insert** 'CDM Co-ordinator'

# Guidance Notes to Amendment 1

## CDM Regulations

### *General*

The Construction (Design and Management) Regulations 2007 replace the 1994 Regulations with effect from 6 April 2007. They also incorporate the provisions of the Construction (Health, Safety and Welfare) Regulations 1996 not incorporated in the Work at Height Regulations 2005, i.e. health and safety duties on site, welfare facilities and inspection report particulars. The latter provisions are contained in Part 4 and Schedules 2 and 3 respectively.

As a result, the 2007 Regulations impose on clients, designers, contractors (including sub-contractors at all levels), and on others controlling the way in which any construction work is carried out (e.g. construction or project managers and contract administrators), a wider and more coherent set of health, safety and welfare duties.

As part of the greater emphasis placed on the need to plan and on communication and co-ordination, the functions of the Planning Supervisor are replaced by those of a CDM co-ordinator, and a 'construction phase plan' replaces the Health and Safety Plan; the Health and Safety file provisions remain. Amendment 1 incorporates the changed terms. The 2007 Regulations also eliminate the distinction in the 1994 Regulations between the notification requirements and applicability provisions for particular regulations. While the Regulations maintain the basic 1994 criteria as to notifiability, i.e. 30 days or 500 person days of construction work, there are now only two types of project – notifiable and non-notifiable. The 'five or more workers' requirements of the 1994 Regulations have been omitted.

Domestic clients, i.e. those not acting in the course or furtherance of a business, are exempt from duties under the 2007 Regulations in relation to purely domestic projects, which in turn are treated as non-notifiable.

### *Part 2 – General duties*

Part 2 of the 2007 Regulations (regulations 4 to 13) sets out the duties that apply to all projects, whether or not notifiable, commencing with duties that apply to clients, designers and contractors alike. These include the requirement of competence and the duty to check appointees, a general duty to co-operate and seek co-operation with others concerned (now expressly extended to adjoining construction sites) and duties for all, so far as reasonably practicable, both to co-ordinate their activities with others and to ensure the application of general principles of prevention (specified in the Management of Health and Safety at Work Regulations 1998).

Part 2 then sets out specific duties for clients, designers and contractors respectively. In the case of clients, these include a duty to ensure that suitable arrangements are in place for the management of health, safety and welfare aspects of the project, including the allocation of sufficient time for construction phase planning and preparation for health and safety purposes. This is coupled with obligations to supply information on the site and its proposed use and to specify the minimum period to be allowed to contractors for planning and preparation before construction starts.

Main contractors are under similar obligations with respect to their sub-contractors and so on down the chain. Part 2 also sets out in detail contractors' information and training obligations with respect to their workers and an obligation, so far as is practicable, to make Schedule 2 welfare provision. The commencement of work by any contractor is conditional (inter alia) upon reasonable steps having been taken to prevent unauthorised site access.

### *Part 3 – Notifiable Project duties*

Part 3 (regulations 14 to 24) relates to notifiable projects. The client is required to appoint the CDM co-ordinator as soon as is practicable after initial design work or other preparation has begun – further design work is conditional on that appointment, as is construction, which (in addition to access restrictions) is also conditional on the appointment of the principal contractor, production of the construction phase plan and notification to the Health and Safety Executive.

The duties of the CDM co-ordinator and principal contractor are slightly more widely drawn than in the 1994 Regulations and the principal contractor's responsibilities now include ensuring the provision of Schedule 2 welfare facilities. Part 3 imposes certain additional duties on each participant both with respect to these appointees and generally. These in general follow naturally from the Part 2 obligations and the functions and duties of the two appointees but there is now a duty on all contractors promptly to supply to the principal contractor any information relevant to health and safety, as well as that identified for inclusion in the Health and Safety file.