

These Terms and Conditions are deemed to be accepted upon payment of the fees and/or registration on this Website

BACKGROUND

The Council has implemented the statutory duties imposed by the Construction (Design and Management) Regulations 2007 ("CDM2007") and has established a centralised CDM website and a unified electronic training (E-Learning) programme.

Participating UK Local Authorities will benefit from the centralised website and training programme which provides an efficient and economical solution to the requirements of CDM2007.

In consideration of the payment by the User Organisation of the fees for the E-Learning programme, the Council hereby agrees to manage, maintain and provide to Users an E-Learning programme in accordance with the terms set out below. Such installation and management functions shall be carried out in accordance with all relevant statutory legislation.

NOW IT IS AGREED

1. Definitions

"Contract Period" shall mean a period of one year commencing on or after 1st April of any one year and expiring on the March 31st of the following year.

"E-Learning" shall mean an interactive online training programme used to train Users and achieve competence in their field of CDM2007.

"Intellectual Property Rights" shall mean any patents, trade marks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not, in any country (including, but not limited to, the United Kingdom); "Services" shall mean the provision of E-Learning and maintenance of all training transcripts associated with the learning achieved on this website

"Software" shall mean the product on which the E-Learning system runs and which is made available to the User Organisation.

"Term" shall mean the period of one year.

"Termination Date" shall mean the date on which this Agreement comes to an end.

"Users/User Organisations" shall mean individuals/and or staff of Organisations who have entered into this Agreement to use the Services provided by E-Learning.

2. Contract Period

2.1 This Agreement will commence on the date the payment is received and will run until 31st March of the following year. The User Organisation may extend the Service for further terms should it wish to do so.

3. Fees for E-Learning Service

3.1 The fees will include all costs of providing the Service, including the cost of a dedicated support service and all aids and adaptations required to perform an adequate E-Learning service. 4. Payment of Fees

4.1 The User Organisation will make payment for the Service in advance for the full Term at the commencement of this Agreement.

4.2 Should the Contract be extended for a further period, the User Organisation will make payment to the Council in advance, for the full Term.

5. Council Obligations

5.1 The Council will provide Users with any relevant E-manuals (electronic manuals supplied on the website) and any updates to the E-Learning Service.

5.2 Users are invited to register on this website. Providing fees for the Service have been paid, the Council will authenticate Users log-in ID so that they can access the E-Learning Service. For the sake of clarity, registration does not qualify for provision of the E-Learning Service until the fees for the Service have been paid.

5.3 A User support service for paying organisations will be available throughout the normal working week from Monday to Friday (except public holidays). Support service details are provided on the website.

6. User/User Organisation Obligations

6.1 Upon payment of the fees, the Council grants to the User Organisation the non-exclusive and non-transferable permission to use the E-Learning Software in accordance with and for the period specified in this Agreement only, and to possess and refer to its user documentation, provided, the User Organisation **shall not:**

6.1.1 modify or remove any copyright or proprietary notices on the Software or its user documentation;

6.1.2 decompile, reverse engineer, disassemble or otherwise reduce any part of the Software to human-readable form (other than as permitted by law) nor permit any third party to do so;

6.1.3 copy, make corrections to or otherwise modify or adapt the Software or create derivative works based upon the Software nor permit any third party to do so;

6.1.4 re-licence, sub-licence, rent, lease, timeshare, or act as a service bureau or provide subscription services for the Software, nor assign or give any interest in the Software or its user documentation to another individual or entity; or

6.1.5 exceed the User numbers authorised to use the Software.

7. Services Offered to User Organisation

7.1 Annual MultiUser Accreditation (~20% during 2007): Provides the registration for the organisation on www.CDM2007.org enabling the ability to manage all users when registered on the site along with a number of tools to manage their training. Being an Accreditation registered organisation testing at the end of each module to ensure learning and Proof of Competency. The annual Price runs from April 1st to March 31st the following Year. User Organisations may qualify for a discount on the annual fees where they start mid term. This discount will never exceed 50% of the advertised fees.

7.2 2 Year Multiuser Accreditation: Provides the registration for the organisation on www.CDM2007.org enabling the ability to manage all users when registered on the site along with a number of tools to manage their training. Being an Accreditation registered organisation testing at the end of each module to ensure learning and Proof of Competency. The Price runs from April 1st of Year one to March 31st of Year 2 (circa 730 Days).

7.3 30 Hour CDM2007 Accreditation class (Valid 2yrs): Each registered accreditation organisation can purchase these 30 hour classes and enrol 10 students from their own organisation. You are purchasing 10 student places for year 1 and 10 student places for year 2.

7.4 Each Additional 30 Hour CDM2007 Accreditation class: Each registered accreditation organisation can purchase these Additional 30 hour classes and enrol 10 students from their own organisation. You are purchasing 10 student places for year 1 and will already have purchased a 30 hour CDM 2007 accreditation.

7.5 6 Hours Annual Accreditation Refresher training (MultiPrice-20%): Each registered accreditation organisation can purchase these 6 hour refresher classes and enrol 10 students from their own organisation. You are purchasing 10 student places for year 1 at a discount of 20% for all subsequent units purchased.

7.6 Parish/Town Council Business Competency: Provides the registration for the organisation on www.CDM2007.org enabling the ability to manage all users when registered on the site along with a number of tools to manage their training. Being a competence registered organisation testing is not part of this purchase. The annual Price runs from April 1st to March 31st the following Year.

7.7 4 Hour Client Awareness (Initially valid 2 Years): Each registered Competence organisation can purchase these 4 hour classes and enrol 2 students from their own organisation. You are purchasing 2 student places for year 1 and 2 student places for year 2. Subsequent purchases at year 3 will be charged at the same price as for a single years use

7.8 30 Hour CDM2007 Competence Class: Each registered Competence organisation can purchase these 30 hour classes and enrol 2 students from their own organisation. You are purchasing 2 student places for year 1.

7.9 6 hours Annual Competence Refresher Training: Each registered Competence organisation can purchase these 6 hour refresher classes and enrol 2 students from their own organisation. You are purchasing 2 student places for year 1.

8. Confidentiality

8.1 Both parties shall keep confidential any information obtained under or in connection with the Contract and shall not divulge the same to any third party without the consent in writing of the other party.

8.2 The provisions of this Clause shall not apply to:

i. Any information in the public domain otherwise than by breach of the Contract.

ii. Information in the possession of the receiving party before divulgence as aforesaid.

iii. Information obtained from a third party who is free to divulge the same.

iv. Any information which is required to be disclosed by law or regulation, including without limitation disclosures pursuant to the Freedom of Information Act 2000, disclosures to auditors and disclosures pursuant to a court order or warrant.

8.3 The User Organisation shall ensure that its staff and any other Users are bound by the requirements of this Clause

8.9. Force Majeure

Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from circumstances beyond the party's reasonable control.

10. Intellectual Property Rights

10.1 Unless expressly provided to the contrary, the Council and/or any third party provider shall retain all Intellectual Property in any material (including without limitation Software, written materials, audio or audio visual material, designs other work products (if any) of the Council and any third party provider) supplied to or used by the User Organisation in relation to the supply of the Service.

11. Warranty

11.1 The Council makes no warranty whatsoever, including but not limited to the implied warranties of merchantability and fitness for purpose with regard to the Service and the information material provided by E-Learning.

12. Limitation of Liability

12.1 Nothing in this Agreement shall exclude or limit the liability of the User Organisation for:

12.1.1 any loss or damage suffered by the Council due to any infringement by the User Organisation of the Intellectual Property Rights of the Council or its licensors;

12.2 The Council will not in any circumstances be liable to the User Organisation for errors contained within the Service or for loss of profits, goodwill, revenue or anticipated savings or any type of incidental, indirect or consequential loss. Content of the Service is deemed to be accurate at the time of issue. No liability will be accepted for misinterpretation of the Service or modification by any unauthorised persons.

12.3 The inclusion of any supplier or product on this website does not imply any endorsement by the Council.

13. Copyright

13.1 Copyright in these conditions comprising this Contract shall vest in the Council.

14. Cancellation

14.1 The Council reserves its right to cancel the Service at any time. In the event of cancellation by the Council, the Council will refund a proportion of the payment pro rata for the remainder of the year.

15. Variation in Service

15.1 The Council reserves its right to vary any part of the Service and will provide suitable notification of any proposed variation on the website.

16. Termination

16.1 The Council may give notice in writing to the User Organisation terminating this Agreement with immediate effect if the User Organisation commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of the User Organisation being notified of the breach.

16.2 The Council may terminate this Agreement immediately by notice in writing if the User Organisation purports to assign its rights or obligations under this Agreement.

17. Effects of Termination

17.1 Termination of this Agreement shall be without prejudice to any rights or liabilities accrued at the date of termination.

17.2 Termination will result in access to the Service being withheld. Transcripts associated with all Users who have registered and paid for the Service will be maintained by the Council.

17.3 All rights of the User Organisation under this Agreement (including the right to use the software) shall cease and terminate upon termination of this Agreement.

18. Waiver

18.1 The failure of either party to enforce or to exercise any term of this Agreement does not constitute a waiver of such term and shall in no way affect that party's right later to enforce or to exercise it.

19. Severability

19.1 The invalidity or unenforceability of any term of, or any right arising pursuant to this Agreement shall not affect the validity or enforceability of the remaining terms or rights.

20. Entire Agreement

20.1 This Agreement contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between them whether oral or in writing.

21. Data Protection

21.1 The User Organisation shall comply with the provisions and obligations imposed on it by the Data Protection Act 1998 and shall fully indemnify the Council against all costs (including reasonable legal costs) arising from or incurred by any loss, damage or distress suffered by any person as a result of the loss, destruction or unauthorised disclosure of, or unauthorised access to personal data caused by the User Organisation's failure to comply with those provisions and obligations.

22. Governing Law

22.1 The construction, validity and performance of this Agreement shall be governed by English law and the parties irrevocably submit to the exclusive jurisdiction of the English courts.

23. Third Party Rights

23.1 Notwithstanding any other provisions of this Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

24. Freedom of Information Act 2000

24.1 The Contractor will comply with all provisions of the Freedom of Information Act 2000 and where necessary, will assist the Council in meeting its obligations under the said Act.

