

Comparison between the Red Book 1999 and the MDB Harmonised Edition 2010

Written by Edward Corbett

MDB 2010 Clause	Nature of change
1.1.1.2	"(if any)" phrase taken out
1.1.1.4	Letter of Tender definition now includes "or letter of bid"
1.1.1.8-1.1.1.10	"Appendix to Tender" sub-clause taken out
1.1.1.9	"Schedule of Payment Currencies" title added to "Bill of Quantities" and "Day work Schedule" sub-clause
1.1.1.10	"Contract Data" sub-clause added "Appendix to Tender" changed to "Contract Data"
1.1.2.2	"Appendix to Tender" changed to "Contract Data"
1.1.2.4	"Appendix to Tender" changed to "Contract Data"
1.1.2.9	"DAB" changed to "DB" "so named in the Contract, or other persons(s) appointed..." changed to "appointed under sub-clause 20.2"
1.1.2.11	"Bank" sub-clause added
1.1.2.12	"Borrower" sub-clause added
1.1.3.3	"Appendix to Tender" changed to "Contract Data"
1.1.3.6	"provisions of the Particular Conditions" replaced with "Specification"
1.1.3.7	"as stated in the Appendix of Tender" replaced with "which extends over 365 days except if otherwise stated in the Contract Data"



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MDB 2010 Clause	Nature of change
1.1.5.5	"including vehicles purchased for the Employer and relating to the construction or operation of the works"
1.1.5.6	"Appendix to Tender" changed to "Contract Data"
1.1.6.7	"and to which Plant and Materials are to be delivered" added
1.1.6.10	"Notice of Dissatisfaction" sub-clause added
1.2	"(e) the word "tender" is synonymous..." added to 'Interpretation' sub-clause Extra sentence is added at end: "In these Conditions, provisions including..."
1.3	"discharges" added



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MDB 2010 Clause	Nature of change
	"Appendix to Tender" changed to "Contract Data" in both (a) and (b)
1.4	<p>"or other jurisdiction" taken out of brackets</p> <p>"Appendix to Tender" changed to "Contract Data" x2</p> <p>Sentence re: multiple languages replaced with "the ruling language of the Contract shall be stated in the Contract Data"</p> <p>"language in which the Contract (or most of it) is written" replaced with "language for communications shall be the ruling language of the Contract"</p>
1.5	Particular conditions subdivided into two bullet points: part A (d) and part B (e)
1.6	"unless they agree otherwise" changed to "unless the Particular Conditions establish otherwise"
1.8	"of a technical nature" taken out of final sentence
1.9	"reasonable profit" changed to "profit" in point (b)
1.12	<p>Contractor becomes Contractor's and "Employer's Personnel" included in sub-clause</p> <p>"as the Engineer may reasonably require in order to verify the Contractor's compliance with the Contract" changed to "as may be reasonably required in order to verify compliance with the Contract and allow its proper implementation"</p> <p>Extra paragraph added re: privacy and disclosure</p>
1.13	"building permit" included in point (a)

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	<p>"(or being)" changed to "(or to be)" in point (a)</p> <p>Final sentence added re: unless Contractor is impeded</p>
1.15	Addition of 'Inspections and Audit by the Bank' sub-clause
2.1	<p>"Appendix to Tender" changed to "Contract Data" in para 1 and 2</p> <p>"without disruption" added to para 2</p> <p>"reasonable profit" changed to "profit"</p>
2.2	<p>"(where he is in a position to do so)" changed to "at the request of the Contractor"</p> <p>"Assistance to the Contractor at the request of the Contractor" changed to: "assistance as to allow the Contractor to obtain properly..."</p>
2.4	<p>"before Commencement Date and thereafter" added in para 1</p> <p>"punctually" added to "pay Contract price" in para 1 "if the Employer intends to make any material changes to his financial arrangements" changed to:</p> <p>"before the Employer makes any material change to his financial arrangements"</p> <p>Addition of new para re: giving notice to Contractor re bank loans/suspensions</p>
2.5	<p>"and no longer than 28 days" added to para 2</p> <p>"or should have become aware" added to para 2</p>
3.1	"the Employer undertakes not to impose further constraints on the Engineer's authority, except as agreed with the Contractor" changed to: "the Employer shall promptly inform the Contractor of any change"



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	<p>to the authority attributed to the Engineer" in para 2</p> <p>Addition of point (d) re: Conditions regarding an Engineers response to a Contractor's request</p> <p>Paragraph added re: Engineer obtaining approval from the Employer regarding certain sub-clauses</p>
3.4	<p>Replacement of Engineer – changed from 42 days to 21 days</p> <p>Employer to give "full and fair consideration to this [replacing Engineer] objection" rather than "Employer shall not replace Engineer with a person against whom the Contractor..."</p>
3.5	28 day time-limit added to para 2
4.1	3rd para added re: origin of equipment, material and services
4.2	<p>"Appendix to Tender" changed to "Contract Data" in para 1 and includes added ref to currencies</p> <p>Para 2 change: "performance security" now issued by a reputable bank or financial institution selected by Contractor</p> <p>"Performance security" claim conditions (a)-(d) removed</p> <p>Extra final para added re: amendment of Contract Price in relation to performance security</p>
4.3	<p>Ref to sub-clause 6.9 added re: consent withheld or revoked</p> <p>6th para added re: delegation by Contractor's Representative</p> <p>New sentence added on final para: if Contractor's Representative is not fluent in "languages and communications defined in sub clause 1.4"</p>

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4.4	<p>"solely of" added to point (a)</p> <p>Encourages use of sub-contractors from country where project is being constructed</p>
4.6	"to suffer delay and/or" added to 2nd para
4.7	"reasonable profit" changed to "profit" in point (b)
4.12	<p>Para 6 changed to "upon receiving"</p> <p>Para 8: "shall not be bound by the Contractor's interpretation of any such evidence" added</p>
4.13	<p>First sentence changed from "The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site." To "Unless otherwise specified in the Contract the Employer shall provide effective access to and possession of the Site including special and/or temporary rights-of-way which are necessary for the Works."</p> <p>"rights of way" added in final sentence</p>
4.15	"at base date" added to 1st para
4.18	"and shall not exceed the values" replaced by "or" in 2nd para
4.19	"for his construction activities ... tests" added in para 1
5.1	"subject to sub clause 5.2" added to point (b)
5.2	<p>"in writing" added to end of para 1</p> <p>Start of point (b) changed from "the subcontract does not specify that the nominated Subcontractor shall..." to "the nominated Subcontractor does not accept to..."</p> <p>Start of point (c) changed from "the subcontract does not specify that..."</p>



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	to "the nominated Subcontractor does not accept to enter into a subcontract which specifies that..." Point (c) (iii) added - introduction of 'pay-when-paid' clause for nominated subcontractors
5.3	"amounts shown on the nominated subcontractor's invoice approved by the Contractor" added in
6.1	Additional para re: employing staff "from sources within the Country"
6.2	Additional para re: income tax
6.7	3 substantial paras added re: HIV-AIDS and STIs
6.12-6.24	13 new sub clauses added: Foreign personnel, supply of foodstuffs, Supply of water, measures against insect and pest nuisance, alcohol liquor or drugs, arms and ammunition, festivals and religious customs, funeral arrangements, forced labour, child labour, employment records of workers, workers' organisations, non-discrimination and equal opportunity
7.4	"except as otherwise specified in the Contract..." added to 2nd para "reasonable profit" changed to "profit" in point (b)
7.7	"Except as otherwise specified in the Contract..." added to 1st para Point (a) changed from "when it is delivered to the Site" to "when it is incorporated in the works" Point (b) changed from "when the contractor is entitled to payment of the value" to "when the contractor is paid the corresponding value"
8.1	Sub-clause re: commencement of works changed from: Engineering giving Contractor no less than 7 days'

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	notice of Commencement Date/Commencement Date being within 42 days after the Contractor receives the Letter of Acceptance, to fulfilment of specific "precedent conditions" (see below) and Contractor receiving "Engineer's notification recording the agreement" Points (a) to (d) added re: precedent conditions that need to be fulfilled before Commencement of Works: Signature of the Contract Agreement Evidence of Employer's Financial arrangements Access to a possession of the Site Receipt by the Contractor of the Advance Payment Penultimate para added re: termination if Engineer's instructions are not received within 180 days from receipt of the Letter of Acceptance
8.6	Final para added re: additional costs
8.7	"Appendix to Tender" changed to "Contract Data" in para 1
8.12	"...after receiving from the Engineer an instruction to this effect under clause 13" added at end of para
10.2	"reasonable profit" changed to "profit"
10.3	"reasonable profit" changed to "profit" in point (b)
11.3	"defect or damage" changed to "defect or by reason of damage attributable to the Contractor"
11.8	"reasonable profit" changed to "profit"
11.11	"after the Employer receives a copy of ..." changed to "after receipt by



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MDB 2010 Clause	Nature of change
	the Contractor of the Performance Certificate..."
12.1	Addition to first para: "The Contractor shall show in each application...entitled under the Contract" "and certify the payment of the undisputed part" added in final para
12.3	New para added: "Any item of work included in the bill of quantities..." Point (i) 10% changed to 25% Point (ii) 0.01% changed to 0.25% "reasonable profit" changed to "profit" "as soon as the concerned work commences" added to end of final para
13.1	(i) and (ii) added substantial changes in the sequence or progress of the Works
13.5	"Appendix to Tender" changed to "Contract Data" in (ii)
13.7	Extra para added: "Notwithstanding the foregoing..." – re: extension of time
14.1	Extra para added at end re: Contractor's equipment
14.2	"and cash flow support" added into first para "Appendix to Tender" changed to "Contract Data" end of paras 1 and 2 3rd para: "The Engineer shall issue an Interim Payment Certificate" changed to "The Engineer shall deliver to the Employer and to the Contractor an Interim Payment Certificate..." "entity and from within a country (or other jurisdiction) approved by the

MDB 2010 Clause	Nature of change
	Employer" replaced by "reputable bank or financial institution selected by the Contractor" 5th para changed to advance payment repaid through "percentage deductions from the interim payments determined by the Engineer" Point (a) changed from "deductions shall commence in the Payment Certificate" to "deductions shall commencement in the next interim Payment" Certificate following that in which..." and "exceeds ten percent" changed to "exceeds thirty percent" Point (b) "of one quarter (25%)" changed to "stated in the Contract Data" and "and repayments of retention" changed to "for its repayments as well as deductions for retention money" and additional final sentence added re: repayment of advance payment End of final para adapted to include ref to clause 15 and exception to sub-clause 15.5
14.3	"Appendix to Tender" changed to "Contract Data" in point (c) x2 Wording changed in point (d) re: repayments
14.4	"less or more " added to (c)
14.5	"Appendix to tender" changed to "Schedules" in (b)(i) and (c)(i)
14.6	Para 1 "issue to the Employer" changed to "deliver to the Employer and Contractor" Addition to end of para 1 re: supporting particulars "Appendix to Tender" changed to "Contract Data" in para 2



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MDB 2010 Clause	Nature of change
14.7	<p>Addition to point (b) re: suspension of bank loan/credit and interim payment certificate</p> <p>Addition to point (c) re: suspension of bank loan/credit and final payment certificate</p>
14.8	"if not available, the interbank offered rate" added to para 2
14.9	<p>Proportion percentage in para 1 and 2 changed from 40% to 50%</p> <p>Final two paras added re retention money guarantee</p>
14.11	"28 days from receipt of said draft" added to para 3
14.13	<p>"and to the Contractor" added to para 1</p> <p>"issue" changed to "deliver" in first para</p> <p>"amount which he fairly determines..." added to (a)</p>
14.15	<p>"Appendix to tender" changed to "Schedule of Payment Currencies" in para 1 and "unless otherwise stated in the Particular Conditions" removed</p> <p>"Appendix to Tender" changed to "Schedule of Payment Currencies" in (a)(i)</p> <p>"Appendix to Tender" changed to "Contract Data" and "Appendix to tender" changed to "Schedule of Payment Currencies" in (b)</p> <p>"Appendix to Tender" changed to "Schedule of Payment Currencies" in (e)</p>
15.5	<p>"or to avoid a termination of the Contract by the Contractor under clause 16.2" added to para 1</p> <p>Paid in accordance with ... changed from sub-clause 19.6 to sub-clause 16.4 – para 2</p>

MDB 2010 Clause	Nature of change
<i>African Development Bank</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. country-specific definitions of practices
16.1	<p>New 2nd para added re: if bank has suspended disbursements under the loan or credit</p> <p>"reasonable profit" changed to "profit" in point (b)</p>
16.2	<p>Addition to (d) re: adverse effects to economic balance</p> <p>(h) added re: Contractor doesn't receive Engineers instruction recording agreement.</p> <p>Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made</p>
<i>Asian Development Bank</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. country-specific definitions of practices
16.1	<p>New 2nd para added re: if bank has suspended disbursements under the loan or credit</p> <p>"reasonable profit" changed to "profit" in point (b)</p>
16.2	<p>Addition to (d) re: adverse effects to economic balance</p> <p>(h) added re: Contractor doesn't receive Engineers instruction recording agreement.</p> <p>Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made</p>



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MDB 2010 Clause	Nature of change
<i>Black Sea Trade and Development Bank or by the European Bank for Reconstruction and Development</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. country-specific definitions of practices
16.1	New 2nd para added re: if bank has suspended disbursements under the loan or credit "reasonable profit" changed to "profit" in point (b)
16.2	Addition to (d) re: adverse effects to economic balance (h) added re: Contractor doesn't receive Engineers instruction recording agreement. Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made
<i>Caribbean Development Bank</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. country-specific definitions of practices
16.1	New 2nd para added re: if bank has suspended disbursements under the loan or credit "reasonable profit" changed to "profit" in point (b)
16.2	Addition to (d) re: adverse effects to economic balance

MDB 2010 Clause	Nature of change
	(h) added re: Contractor doesn't receive Engineers instruction recording agreement Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made
<i>Inter-American Development Bank</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. country-specific definitions of practices, adherence to Bank's Policies for the Procurement of Works and Goods and the Bank's rights
16.1	New 2nd para added re: if bank has suspended disbursements under the loan or credit "reasonable profit" changed to "profit" in point (b)
16.2	Addition to (d) re: adverse effects to economic balance (h) added re: Contractor doesn't receive Engineers instruction recording agreement. Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made
<i>The World Bank</i>	
15.6	New sub-clause added re: corruption or fraudulent practices incl. specific definitions of practices
16.1	New 2nd para added re: if bank has suspended disbursements under the loan or credit "reasonable profit" changed to "profit" in point (b)



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MDB 2010 Clause	Nature of change
16.2	<p>Addition to (d) re: adverse effects to economic balance</p> <p>(h) added re: Contractor doesn't receive Engineers instruction recording agreement.</p> <p>Extra para added re: bank suspends loan/credit from which part or whole of the payments to the Contractor are being made</p>
<i>All Banks</i>	
17.1	Point (b) no longer divided into (i) and (ii)
17.3	<p>"[Consequences of Employer's Risks]" and "insofar as they directly affect the execution of the works in the Country" added to para 1</p> <p>"and other employees of the Contractor and Subcontractors" taken out of point (c)</p>
17.4	Point (b) "reasonable profit on the Cost shall also be included" changed to "Cost plus profit shall be payable"
17.6	<p>Para 1: "other than under Sub-Clause 16.4 [Payment on Termination] and Sub-Clause 17.1 [Indemnities]." Changed to "other than as specifically provided in Sub-clause 8.7 [Delay Damages]..." continues to list clauses that include: 11.2, 15.4, 16.4, 17.1, 17.4, 17.5</p> <p>Para 2: "stated in the Particular Conditions or (if a sum is not so stated) the Accepted Contract Amount." Changed to "resulting from the application of a multiplier (less or greater than one) to the Accepted Contract Amount, as stated in the Contract Data, or (if such multiplier or other sum is not stated), the Accepted Contract Amount"</p>

MDB 2010 Clause	Nature of change
17.7	New sub-clause re: Use of Employer's Accommodation/Facilities
18.1	<p>Para 3: "terms consistent with the details annexed to the Particular Conditions" changed to "terms acceptable to the Contractor" and addition of final sentence re: consistency of terms with Letter of Acceptance</p> <p>Final para added re: Contractors entitlement to place insurances relating to the Contract with insurers from any eligible source country.</p>
18.2	<p>Point (b) "between the Parties for the sole purpose of..." changed to "to the Party actually bearing the costs of..."</p> <p>Point (d) "to the extent specifically required in the bidding documents of the Contract" added and "Appendix to Tender" changed to "Contract Data"</p>
18.3	"Appendix to Tender" changed to "Contract Data" in para 2
8.4	Start of para 2 changed re: insurance cover for Employer and Engineer at event of claims/damages/losses/expenses/injury/sickness/death
19.1	<p>"sabotage by persons other than the Contractor's Personnel" added to (ii)</p> <p>Point (iii) "and other employees of the Contractor and Subcontractors" taken out</p>
19.4	Addition to (b) – including costs of rectifying or replacing the Works and/or Goods damaged or destroyed by Force Majeure
19.6	"and necessarily" added to (c)



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MDB 2010 Clause	Nature of change
20.1	Para 7 and 8 swapped ("Within the above defined period of 42 days" and "Each Payment Certificate") Extra para added re: If Engineer does not respond within the timeframe
20.2	DAB changed to DB "jointly" removed from para 1 "Appendix to Tender" changed to "Contract Data" in para 1 and 2 Additions to para 2 re: qualifications of "the members" Para 3 altered re: If the Parties have not jointly appointed the DB 21 days before the date stated in Contract Data" "agreed by the parties" included in para 4 Paras 8 and 9 replaced by single paragraph: "If at any time ..." and "If any of these circumstances ..." replaced by "If a member declines ...".
20.3	"...or fails to approve a member nominated by the other party" added to (b) "Appendix to Tender" changed to "Contract Data" in final para
20.4	Para 5: "give notice to the other Party of its dissatisfaction" changed to "give a Notice of Dissatisfaction to the other Party indicating its dissatisfaction and intention to commence arbitration"
20.5	In final para "should move to commence arbitration..." added
20.6	Arbitration procedure re-worded see points (a)(i) and (ii) and (b)
20.7	Points (a) – (c) condensed into one para

MDB 2010 Clause	Nature of change
APPENDIX	
1.	Dispute Adjudication Agreement changed to Dispute Board Agreement (continued in the rest of appendix)
2.	Paras 2 and 4 removed: (" When the Dispute Adjudication Agreement has taken affect ..." and "No assignment or subcontracting ...")
6.	Retainer fee reduction changed from 50% to "a third". "necessary travel expenses" added to (c) New para added re: "If parties fail to agree on the retainer fee or the daily fee"
8.	Final para added re: "If the member fails to comply with any of his obligations"
9.	"...settled under the rules of arbitration" changed to "settled by institutional arbitration" Addition of "if no other arbitration institute is agreed, the arbitration shall be conducted under the rules of arbitration..."
PROCEDURAL RULES	
2.	Addition of sentence re: preventing problems from becoming disputes

Please get in touch at edward.corbett@howardkennedy.com with your thoughts or to discuss any concern

