



GENERAL CONDITIONS FOR SERVICE CONTRACTS

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1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In these Conditions, unless the context requires otherwise, the following words and phrases shall have the following meanings:

"EMC" means the East Midlands Councils based at PERA Business Park, Melton Mowbray, Leicestershire or such persons authorised to act on its behalf;

"the Contract" means the documents forming the Contractor's tender and the East Midlands Councils' acceptance thereof and the documents mentioned in either of them as contract documents, including these Conditions, and all these documents taken together shall be deemed to form on contract;

"the Specification" means the description of services to be performed under this Contract;

"the Contract Start Date" means the date specified in the letter of acceptance on which the Contractor is to commence the performance of the Services or such other date as may be agreed between the parties in writing;

"the Contractor" means the person appointed by the East Midlands Councils for the performance of the Services;

"the Contract Prices" means the prices payable to the Contractor by the East Midlands Councils under the Contract for the full and proper performance by the Contractor of his part of the Contract as determined under the provisions of the Contract;

"East Midlands Councils property" means anything issued or otherwise furnished in connection with the Contract by or on behalf of East Midlands Councils or its representative;

"month" means calendar month;

"the Premises" means the premises occupied, owned or leased by the East Midlands Councils or where the Services are to be executed under the Contract;

"the Services" include the services to be performed by the Contractor as specified in the Contract or in any direction given in accordance with Condition 5 below.

- 1.2 Unless the context requires otherwise, words importing the singular shall include the plural and vice versa and the masculine shall include the feminine.

- 1.3 Any reference to a "person" shall, as the context may require, be construed as a reference to any individual, firm, company, corporation, agency or any association or partnership (whether or not having a separate legal personality).

- 1.4 The headings are inserted for convenience only and shall not affect the interpretation of these Conditions.

- 1.5 Any notice to be given under the Contract shall be in writing, typescript or printed. It may be served by delivery to the Contractor or may be posted to the registered office or last known place of business of the Contractor. A postal notice shall be deemed to be served on the day when, in the ordinary course of the post, it would have been delivered.

2. CONTRACTOR'S DUTIES

- 2.1** The Services shall be carried out and completed by the Contractor in a workmanlike manner to the satisfaction of the East Midlands Councils at the time set out in the Contract, or at such other times as the East Midlands Councils may from time to time direct, and so as not to interfere with the normal carrying on of the business of the EMC in occupation of the Premises upon which the Services are being carried out.
- 2.2** The East Midlands Councils may from time to time, by notice, vary the Contract. In the event of any such variation, a fair and reasonable adjustment of the price payable for the Services shall be agreed.
- 2.3** In carrying out his obligations under this Contract, the Contractor agrees that he will be acting as principal and not as an agent of the East Midlands Councils. The Contractor shall not say or do anything which may lead any other person to believe that he is acting as an agent of the East Midlands Councils.

3. DEFAULT OF THE CONTRACTOR

- 3.1** In the event of the Contractor failing to carry out the Services during any period stated in the Contract or otherwise as the East Midlands Councils shall have directed or required, the East Midlands Councils may, having given the Contractor reasonable notice requiring him to remedy the default by a specific time and the default not being remedied by that time, terminate the Contract forthwith.
- 3.2** If the Contractor fails to perform the Services to the satisfaction of the East Midlands Councils and in accordance with the Contract, the East Midlands Councils shall (without prejudice to the power to terminate the Contract under 3.1 above or to any other remedy) be entitled to:
- (a)** deduct from any invoice rendered by the Contractor in respect of the Services such reasonable sum as the East Midlands Councils considers appropriate and necessary to remedy the default;
 - (b)** arrange for the performance of all or some of the Services for the whole or any part of the remaining Contract period by any other person;
 - (c)** recover from the Contractor the cost of any arrangements mentioned in 3.2(b) having taken into account any sum deducted under 3.2(a).

4. MEETINGS AND PROGRESS REPORTS

- 4.1** The Contractor shall attend all programmed meetings arranged between him and the East Midlands Councils for the discussion of matters connected with the performance of the Services.
- 4.2** Without prejudice to the submission of such formal progress reports as may be required under this Contract, the Contractor shall render such reports as to the progress of the Services at such time or times and in such form as the East Midlands Councils may reasonably require.
- 4.3** The submission and acceptance of these reports shall not prejudice the rights of the East Midlands Councils under any other Condition of the Contract.

5. DIRECTIONS AND INSTRUCTIONS

- 5.1** The East Midlands Councils may give directions or instructions in writing (or confirmed in writing) to the Contractor or the Contractor's Representative with respect to modifications to the Services and this may include a direction not to carry out the

Services at all or some of the areas of the Premises or to carry out work in additional areas in the Premises. The Contractor shall comply with any directions or instructions given under this Condition.

- 5.2 In the event of such modifications, the value thereof shall be ascertained on the basis of a fair and reasonable adjustment of the Contract Prices as may be agreed between the EMC and the Contractor.

6. OBLIGATIONS OF THE EAST MIDLANDS COUNCILS

- 6.1 The East Midlands Councils shall make available free of charge such information in its possession as the Contractor may reasonably require for the proper performance of the Services.
- 6.2 The Contractor shall not be responsible for any delay in the performance of the Services which results from any failure or delay by the East Midlands Councils to supply information in compliance with 6.1 above.

7. PAYMENT AND INVOICES

- 7.1 The East Midlands Councils shall pay the Contractor in respect of the complete and satisfactory performance of the Services in accordance with the Contract Prices specified in the Contract.
- 7.2 For the avoidance of doubt, except where otherwise provided in the Contract, the amount payable to the Contractor for the performance of the Services shall be inclusive of all costs of staff and materials and all other expenses whatsoever incurred by the Contractor in discharging his obligations under the Contract.
- 7.3 Unless otherwise agreed in the Contract, the Contractor shall submit to the East Midlands Councils, within 28 days of the end of each Calendar month during the Contract, an invoice in respect of services provided during the said month, quoting the Contract number and, where appropriate, any purchase order number.
- 7.4 The Contractor shall submit with the invoice such records as the East Midlands Councils may reasonably require including time sheets, expenses incurred, invoices paid or any other documents which would enable the East Midlands Councils to verify the information and the amounts referred to in that invoice.
- 7.5 The Contractor shall also provide, together with the first invoice, the name and address of his bank, the account name and number and the bank sort code.
- 7.6 The East Midlands Councils shall pay the Contractor within 30 days of the receipt of a satisfactory invoice, provided that the East Midlands Councils is satisfied that the Services to which the invoice relates have been performed fully in accordance with the Contract.

8. SUB-CONTRACTORS AND SUPPLIERS

- 8.1 Subject to Conditions 10 (Variation of the Contract) and 11 (Assignment) of this Contract, if the parties to the Contract agree to the use of a sub-contractor, the Contractor must ensure that all the terms and conditions of this Contract, so far as they are applicable to and capable of performance by sub-contractors, are applied to the authorised sub-contractor. Any approval by the East Midlands Councils for the Contractor to enter into a sub-contract agreement shall not relieve the Contractor of any obligations or duty under this Contract.

- 8.2** Where the Contractor enters into a contract with a supplier or sub-contractor for the purpose of performing this Contract or any part of it, he shall cause a term to be included in such contract which requires payment to be made by the Contractor to the supplier or sub- contractor within a specified period not exceeding 30 days from receipt of a valid invoice as defined by such contract.

9. RECOVERY OF SUMS DUE FROM THE CONTRACTOR

Wherever under the Contract any sum of money is recoverable from, or payable by, the Contractor, that sum may be deducted from any sum then due, or which at any later time may become due, to the Contractor under the Contract or under any other contract with the East Midlands Councils.

10. VARIATION OF THE CONTRACT

The Contract may only be varied by the written agreement of both parties.

11. ASSIGNMENT

The Contractor shall not sub-contract the performance of the whole or any part of the Services or transfer, assign or change the Contract or any part of it without the prior written consent of the East Midlands Councils.

12. VALUE ADDED TAX (VAT)

The East Midlands Councils shall pay to the Contractor the amount of any VAT chargeable in respect of the performance of the Services and any expenses for which the Contractor is entitled to be reimbursed.

13. USE OF PREMISES

Any land or premises (including temporary buildings) made available to the Contractor by the East Midlands Councils in connection with the provision of the Services shall be made available to the Contractor free of charge and without exclusive possession and shall be used by the Contractor solely for the purpose of providing the Services. The Contractor shall have the use of such land or premises as licensee and shall vacate the same forthwith on the expiry or other termination of the Contract.

14. NOTICE OF MERGER OR TAKE-OVER

14.1 Where the Contractor is a company, it shall inform the East Midlands Councils immediately in writing of any changes to its Board of directors.

14.2 The Contractor (being a company as defined by the Companies Act 1985) shall forthwith inform the East Midlands Councils in writing of any proposal or negotiations which may, or will, result in a change of control as defined in section 416 of the Income and Corporation Taxes Act 1988.

14.3 Nothing in this Condition shall prejudice the right of the East Midlands Councils to give to the Contractor a notice of termination in accordance with the provisions of Condition 16.3(d) of this Contract.

15. INSOLVENCY OF THE CONTRACTOR

15.1 The Contractor shall inform the East Midlands Councils:

- (a)** if, being an individual (or, where the Contractor is a firm, any partner of that firm), he shall become bankrupt, or shall have a receiving order or administration order made against him, or shall make any composition or arrangement with or for the benefit of his creditors, or shall make any conveyance or assignment for the benefit of his creditors, or shall purport to do so, or where any applications shall have been made under the Insolvency Act 1986 for sequestration of his estate or a trust deed granted by him on behalf of his creditors; or
- (b)** if, being a company, it passes a resolution, or the Court makes an order, that the Company be wound up otherwise than for the purpose of reconstruction or amalgamation, or if a receiver or manager on behalf of a creditor shall be appointed, or if circumstances shall arise which entitle the Court otherwise than for the purposes of amalgamation or reconstruction to make a winding-up order.

15.2 If any of the events in 15.1(a) or 15.1(b) above occur, the East Midlands Councils may at any time by notice in writing summarily terminate the Contract without compensation to the Contractor, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued before that date or shall accrue thereafter to the EMC.

16. UNSATISFACTORY PERFORMANCE AND TERMINATION OF THE CONTRACT

16.1 Where in the opinion of the East Midlands Councils the Contractor has persistently failed to perform the whole or any part of the Services with the standard of skill care and diligence which a competent and suitably qualified person performing the same services could reasonably be expected to exercise, or in accordance with these Terms and Conditions, the Specification and/or the Programme, but the circumstances have not in the opinion of the East Midlands Councils given rise to a material breach of contract, the East Midlands Councils may give the Contractor a notice specifying the way in which his performance falls short of the expected standard or is otherwise unsatisfactory.

16.2 Where the Contractor has been notified of a failure in accordance with paragraph 16.1 above, the East Midlands Councils may:

- (a)** request from the Contractor that, at his own expense and as specified by the East Midlands Councils, he reschedules and performs the Services correctly within such period as may be specified by the East Midlands Councils in the notice, including where necessary the correction or re-execution of any Services already carried out; or
- (b)** withhold payment pending satisfactory resolution of the failure or reduce payments to the Contractor, as deemed appropriate in each case.

16.3 Without prejudice to any other power of termination, the East Midlands Councils may terminate the Contract by giving the Contractor 7 days written notice for any of the following reasons:

- (a)** the breach by the Contractor of any of Conditions 19 (Duty of Confidence), 20 (Official Secrets) or 21 (Corruption) of the Contract or some other material breach of contract;
- (b)** the failure by the Contractor to comply with a notice given under 16.1 above;

- (c) the Contractor ceases or threatens to cease to carry on his business; or
- (d) there is a change of control of the type referred to in Condition 14 (Notice of Merger) of this Contract, unless the East Midlands Councils has agreed in advance in writing to the particular change of control and the change of control takes place as proposed, save that in this event the East Midlands Councils must give 1 month's notice in writing to the Contractor.

16.4 Either party may, without specifying any reason, terminate the contract at any time by giving the other party 3 months' notice in writing.

17. CONSEQUENCES OF TERMINATION

17.1 Where the Contract is terminated by the East Midlands Councils under paragraph 16.3(d) or 16.4 above, the Contractor may claim from the East Midlands Councils reimbursement of all reasonable costs necessarily and properly incurred by him in relation to the orderly cessation of the Services.

17.2 Where the Contract is terminated under the provisions of Condition 15 or paragraph 16.3(a), (b) or (c) above or by the Contractor under paragraph 16.3(d) above, the following provisions shall apply:

- (a) any sum due or accruing from the East Midlands Councils to the Contractor may be withheld or reduced by such amount as the East Midlands Councils considers reasonable and appropriate in the circumstances;
- (b) the East Midlands Councils may make all arrangements which are in its view necessary to procure the orderly completion of the Services including the letting of another contract or contracts;
- (c) where the total costs reasonably and properly incurred by the East Midlands Councils by reason of such arrangements exceed the amount that would have been payable to the Contractor for the completion of the Services, the excess shall be recoverable from the Contractor by set-off against any amount withheld by the East Midlands Councils under sub-paragraph 17.2(a) or otherwise.

18. LOSS OR DAMAGE

18.1 This Condition applies to any loss or damage which arises out of or is in any way connected with the performance of the Services.

18.2 The Contractor shall without delay and at his own cost reinstate, replace or make good to the satisfaction of the East Midlands Councils or, if the East Midlands Councils agrees, compensate them for any loss or damage.

18.3 Where a claim is made or proceedings are brought against the East Midlands Councils in respect of any loss or damage, the Contractor shall reimburse the East Midlands Councils with any costs or expenses which they may reasonably incur in dealing with, or in settling, that claim or those proceedings.

18.4 The East Midlands Councils shall notify the Contractor as soon as possible of any claim made or proceedings brought against them in respect of any loss or damage.

18.5 The East Midlands Councils shall reimburse the Contractor for any costs or expenses which the Contractor may incur in accordance with paragraphs 18.2 and 18.3 above to the extent that the loss or damage is caused by:

- (a) the neglect or default of the East Midlands Councils or of any Contractor (other than the Contractor) or agent of the East Midlands Councils;
- (b) any other circumstances which are outside the control of the Contractor or of any of his sub-contractors or suppliers and which could not have been

reasonably contemplated under the Contract, provided that this subparagraph shall not apply where the loss or damage is a loss or damage falling within 18.6(c) below.

18.6 In this Condition, loss or damage includes:

- (a) loss or damage to property;
- (b) personal injury or the sickness or death of any person;
- (c) loss of profits or loss of use suffered because of any loss or damage.

19. DUTY OF CONFIDENCE

19.1 The Contractor undertakes to treat as confidential all information which may be derived from, or obtained in the course of the Contract, or which may come into the possession of the Contractor or any employee, servant or agent of the Contractor as a result of, or in connection with, the Contract.

19.2 The Contractor shall take all necessary precautions to ensure that all such information is treated as confidential by the Contractor, his employees, servants or agents and the East Midlands Councils shall treat in confidence any information given by the Contractor under this Condition.

19.3 The Contractor undertakes not to publish any information relating to the Contract nor to make any communication with the press or any journalist or broadcaster about the Contract without the previous written consent of the East Midlands Councils.

19.4 The Contractor shall exercise due care and propriety when dealing with third parties in connection with the Contract and shall ensure that no commitments are entered into without the East Midlands Councils' written consent.

20. OFFICIAL SECRETS

Not used.

21. CORRUPT GIFTS AND PAYMENT OF COMMISSION

21.1 The Contractor shall not:

- (a) offer or give or agree to give to any person employed by the East Midlands Councils any gift or consideration of any kind as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the obtaining or execution of this or any other contract for the East Midlands Councils, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other contract for Her Majesty's service; or
- (b) enter into this or any other contract with the East Midlands Councils in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge unless, before the Contract is made, particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the East Midlands Councils.

21.2 Any breach of this Condition by the Contractor or by anyone employed by him or acting on his behalf (whether with or without the knowledge of the Contractor) or the commission of any offence by the Contractor or by anyone employed by him or acting on his behalf under the Prevention of Corruption Acts 1889 to 1916 in relation to this or any other contract for the East Midlands Councils shall entitle the EMC to determine the Contract and/or recover from the Contractor the amount of value of any such gift, consideration or commission.

- 21.3** Any dispute or difference of opinion arising in respect of either the interpretation or effect of this Condition or of the amount recoverable hereunder by the EMC from the Contractor shall be decided by the East Midlands Councils, whose decision on that matter shall be final and conclusive.

22. RACE AND SEX DISCRIMINATION

- 22.1** The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of the Race Relations Act 1976 or the Sex Discrimination acts 1975 and 1986 or any statutory modifications or re-enactments of them.
- 22.2** The Contractor shall take all reasonable steps to ensure that his agents and sub-contractors do not unlawfully discriminate within the meaning and scope of the above-mentioned enactments.

23. CONTRACTOR'S AGENT AND REPRESENTATIVE

- 23.1** The Contractor must:
- (a)** employ a competent agent who will supervise all work, to whom instructions and directions may be given by the East Midlands Councils and who will attend as directed by the East Midlands Councils at the Premises for that purpose; and
 - (b)** appoint a Contractor's representative who is a person competent to carry out the duties of him under this Contract.
- 23.2** The Contractor must inform the East Midlands Councils of the names of the agent and the Contractor's representative appointed in accordance with this Condition and notify the East Midlands Councils of any changes.

24. CONTRACTOR'S PERSONNEL

- 24.1** The Contractor shall give the East Midlands Councils, if so requested, full particulars of all persons who are or may be at any time employed upon the Contract and the Contractor shall not, without the approval of the East Midlands Councils, appoint any additional person(s) to perform the Services.
- 24.2** The Contractor's staff must, whilst on the premises, carry appropriate identification from the Contractor and such building passes for access to the Premises as the East Midlands Councils may require and must return all passes to the East Midlands Councils:
- (a)** on completion of the Services;
 - (b)** upon termination of a person's employment on the Contract; or
 - (c)** at any time at the East Midlands Councils' request.
- 24.3** The decision of the East Midlands Councils as to whether or not any person is to be employed for the Services and/or admitted to the Premises shall be final and conclusive.
- 24.4** The Contractor's staff must, whilst on the Premises, comply with any safety and security advice and instructions issued by the East Midlands Councils or its representative.
- 24.5** The Contractor shall bear the cost of any notice, instruction or decision of the East Midlands Councils under this Condition.

25. INSURANCE

25.1 The Contractor shall, by such existing or new policies as he sees fit, effect and maintain for the duration of the Contract:

- (a)** employer's liability insurance in respect of persons in his employment;
- (b)** insurance in the sum of at least £2,000,000 against loss or damage (including damage by fire) to the Services and things for which the Contractor is responsible under the terms of the Contract;
- (c)** insurance in the sum of at least £2,000,000 against personal injury (including death) to any persons and loss or damage to property arising from or in connection with the Services which is not covered by (a) or (b) above.

Such insurance as aforesaid shall be made in addition to and without limiting the Contractor's obligations and responsibilities under the Contract and the Contractor shall produce to and/or deposit with the East Midlands Councils all such policies of insurance together with the receipts for the premiums in respect thereof as the EMC may require.

25.2 Any insurance policy effected under sub-paragraph 25.1(b) above shall be for the full reinstatement value (including the cost of transit and off-site risks).

26. ACCOUNTS, DOCUMENTS, ETC

The Contractor shall retain and produce such accounts, documents (including working documents), records or explanations as the East Midlands Councils may request in connection with the Contract during the period of the Contract and for two years from the date of expiry or termination.

27. DATA PROTECTION

27.1 The Contractor shall indemnify the East Midlands Councils against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against it by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Contractor, the Contractor's servants or agents of any personal data.

27.2 In this Condition, "personal data" has the same meaning as in section 1(3) of the Data Protection Act 1984.

28. ENVIRONMENTALLY DAMAGING SUBSTANCES

28.1 The Contractor must ensure that any materials used in connection with the provision of the Services do not contain any chlorofluorocarbons (CFCs), halons or any other environmentally damaging substances.

28.2 The East Midlands Councils will not accept or permit the use of any such items.

28.3 The Contractor shall replace all such items at his own expense.

29. CONTROL OF ASBESTOS AT WORK REGULATIONS

The Contractor must comply with the Control of Asbestos at Work Regulations 1987 and with any amendment to those Regulations or other statutory requirements relating to the Services being performed.

30. CONTROL OF SUBSTANCES HAZARDOUS TO HEALTH

- 30.1** The Contractor shall ensure that all materials used in the provision of the Services comply with the Control of Substances Hazardous to Health (COSHH) Regulations 1994.
- 30.2** The Contractor shall provide the East Midlands Councils with a list of all substances he intends bringing on to the Premises at any time together with the appropriate COSHH data sheets. The Contractor shall notify the East Midlands Councils in writing of any changes in the list.
- 30.3** The Contractor shall be responsible for ensuring the safe storage of all materials on the Premises.

31. CONTROLLED WASTE

Waste products and materials arising out of the performance of the Contract shall be dealt with and disposed of by the Contractor, his sub-contractor or agents in compliance with Section 34 of the Environment Act 1990.

32 WAIVER

No delay by or omission of the East Midlands Councils in exercising any right, power, privilege or remedy under this Contract shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

33 APPLICABLE LAW

This Contract shall be governed by and interpreted in accordance with English law and the parties to the Contract submit to the jurisdiction of the English Courts.