**THIS CONTRACT** is made the xxxx day of xxxxx 2024 between **NOTTINGHAM CITY COUNCIL** whose address for the purposes of this Contract is at Loxley House, Station Street, Nottingham, NG2 3NG, England (the “Council”) of the one part and xxxxxxxxxxx, whose registered office is at xxxxxxxxxxxxx, whose United Kingdom registration number is xxxxxxxxxx, (“the Contractor”) of the other part.

**WHEREAS**

1 The Council wishes to have provided the Services set out in the Contract Specification and has appointed the Contractor to supply the Services.

2 The Contractor shall provide the Services in accordance with the provisions of the Contract.

**NOW IT IS AGREED** between the Council and the Contractor as follows:

1 The Contract constitutes the sole agreement between the Council and the Contractor for the provision of Services.

2 The Contractor shall provide the Services in accordance with the provisions of the Contract and to the satisfaction of the Council for the Contract Period.

**AS WITNESS** the hands of the parties

**SIGNED** for and on behalf

of the Council \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Post Details: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SIGNED** for and on behalf

of the Contractor

Post Details: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

In the presence of:

Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Clause Heading**

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H10 NON SOLICITATION AND OFFERS OF EMPLOYMENT

H11 INSPECTION OF CONTRACTOR’S PREMISES

H12 CONFLICT OF INTEREST

H13 GOVERNING LAW

H14 JURISDICTION

**SCHEDULES**

1. THE CONTRACT PARTICULARS

2. THE SPECIAL TERMS AND CONDITIONS

**part a - operative provisions**

1. **DEFINITIONS**
2. The terms and expressions used in these Standard Terms and Conditions shall have the meanings set out below:

“Authorised Officer” the person duly appointed by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract stated in the Contract Particulars or as amended from time to time and in default of such notification the Council’s head of procurement or similar responsible officer.

“Business Day” any day other than a Saturday or Sunday or a public or bank holiday in England.

“Change in Law” the coming into effect or repeal (without re-enactment or consolidation) in England of any Law, or any amendment or variation to any Law, or any judgement of a relevant court of law which changes binding precedent in England in each case after the date of this Contract.

“Commencement Date” the commencement date stated in the Contracts Particulars.

“Confidential Information” any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the Services, the business, affairs, properties, assets, trading practices, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, all personal data and sensitive personal data (within the meaning of the DPA) and commercial sensitive information.

“Contract” the agreement in respect of the provision of the Services consisting of the following listed documents which shall be read as one document. In the event of ambiguity, conflict or contradictions between these documents the conflict will be resolved according to the following order of priority:

1. the Contract Specification;
2. the Special Terms and Conditions;
3. the Standard Terms and Conditions;
4. the Tender except to the extent that any element of the Tender has been included in the Contract Particulars.

“Contractor” the contractor and where applicable this shall include the contractor’s employees, sub-contractors, agents, representative, and permitted assigns and, if the contractor is a consortium or consortium leader, the consortium members.

“Contract Manager” the person named in the Contract Particulars as the contract manager and any replacement from time to time in accordance with clause B3.2.

“Contract Specification” the specific core terms agreed between the parties with regard to the Services which shall include but not be limited to the Pricing Schedule, Delivery Instructions, Commencement Date, Authorised Officer, Contract Manager, Key Personnel, Contract Period, and the Specification and relevant contract specific details of the Tender included in the document. The Contract Specification are set out in Schedule 1 to these Standard Terms and Conditions.

“Contract Period” the period of the Contract as stated in the Contract Particulars (and any extension in accordance with clause B1.2)

“Control” control as defined by section 416 of the Income and Corporation Taxes Act 1988.

“Cost Neutral” means the Council shall not be liable to the provider for any shortfall between the Price and the payments made in accordance with the provision at Part C and the specification.

“Council” the Council named in the Contract Specification and where the context so admits includes any person which takes over or assumes the statutory functions or administrative responsibilities of the Council (whether in part or totally) or which is controlled by or is under common control with the Council (and the expression “control” shall mean the power to direct or cause the direction of the general management and policies of the person in question but only for so long as such control exists).

|  |  |
| --- | --- |
| “Data Processor” | has the meaning set out in the Data Protection Legislation |
| “Data Subject” | has the meaning set out in the Data Protection Legislation |
| “Data Protection Legislation” | means the Data Protection Act 2018 (DPA 2018), the UK General Data Protection Regulation (UK GDPR), the the Regulation of Investigatory Powers Act 2000, the Investigation Powers Act 2016, the Telecommunications (Lawful Business Practices) (Interception of Communications) Regulations 2000, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all applicable laws and regulations relating to processing of personal data and privacy including  all applicable guidance, codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time. |

“DPA 2018” . Means the Data Protection Act 2018 as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) EU Exit) Regulations 2019 and any subsequent amendments.

“Delivery Instructions” the instructions provided in the Contract Particulars and any other information that the Council considers appropriate to the provision of the Services.

“EIR” The Environmental Information Regulations 2004.

“FOIA” The Freedom of Information Act 2000.

“Force Majeure” any cause materially affecting the performance by a party of its obligations under this Contract arising from any act beyond its reasonable control and affecting either party, including without limitation: acts of God, war, (subject to clause H6.3) industrial disputes, protests, fire, flood, storm, tempest, epidemic, explosions, acts of terrorism and national emergencies.

|  |  |
| --- | --- |
| “GDPR” | means (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which came into force on 25 May 2018 and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679) |

“Good Industry Practice” the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the supply of services similar to the Service under the same or similar circumstances as those applicable to the Contract.

“HMRC” means Her Majesty’s Revenues and Customs and shall include any other government department that may become responsible for this role.

“HRA” The Human Rights Act 1998.

“Information” has the meaning given under section 84 Freedom of Information Act 2000

“Intellectual Property Rights” means all copyright, patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in the United Kingdom and any other country and the right to sue for passing off.

“Invitation to Tender” the Council’s invitation to tender for the Contract.

“Key Personnel” those persons named in the Contract Particulars as being key personnel and any replacement from time to time under clause B6.1.5.

“Law” any applicable Act of Parliament, sub-ordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, exercise of the Royal Prerogative, enforceable Community right within the meaning of section 2 of the European Communities Act 1972, bye-law, regulatory policy, guidance or industry code, judgement of a relevant court of law, or directives or requirements of any regulatory body of which the Contractor is bound to comply.

“Liabilities” all costs, actions, demands, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought.

“Order” an order for Services to be provided where the Contract is identified in the Contract Particulars to be delivered by call off.

“Price” the price of the Services as set out in the Contract Particulars. Unless otherwise stated, any reference to Price shall be regarded as being exclusive of properly chargeable VAT which shall be separately accounted for.

“Pricing Schedule” the schedule from the Tender detailing the pricing as detailed in the Contract Particulars.

“Request for Information” means a request for information or an apparent request under FOIA or the Environmental Information Regulations.

“Services” the services described in the specification to be supplied by the Contractor in accordance with the Contract together with all equipment required and any associated goods provided by the Contractor in relation to those services.

“Special Terms and Conditions” those additional terms and conditions (where applicable) which were set out in the Invitation to Tender and which are repeated in Schedule 2 to these Standard Terms and Conditions.

“Specification” the specification included in the Contract Particulars setting out the Council’s detailed requirements in relation to the Services at Schedule 1.

“Standard Terms and Conditions” the terms and conditions set out in this document, including the Schedule(s) to this document.

“Tender” the Contractor’s tender for the Services in response to the Council’s Invitation to Tender. The Tender is incorporated in the Contract as if fully set out in a further Schedule to these Standard Terms and Conditions. Which includes all parts of the Tender documentation forming the invitation to tender to which the Provider responded, including, for the avoidance of doubt, any appendices and schedules to such documentation.

“UK GDPR” Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018, as amended by The Data Protection, Privacy and Electronic Communications (Amendments etc) EU Exit) Regulations 2019 and any subsequent amendments

““Working Days” any day other than a Saturday, Sunday or public holiday in England and Wales

**Preamble**

* 1. Any reference to a person shall include any natural person, partnership, joint venture, body corporate, incorporated association, government, governmental agency, persons having a joint or common interest, or any other legal or commercial entity or undertakings.
  2. A reference to any statute, order, regulation or similar instrument shall be construed as a reference to the statute, order, regulation or instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

1. **HEADINGS**
   1. The index and headings to the clauses and appendices to and schedules of this Contract are for convenience only and will not affect its construction or interpretation.
2. **NOTICES**
   1. Any notice required by this Contract to be given by either party to the other shall be in writing and shall be served personally, or by sending it by special post or recorded delivery to the appropriate address or email, notified to each other as set out in the Contract Particulars.
   2. Any notice served personally will be deemed to have been served on the day of delivery, any notice sent by post will be deemed to have been served 48 hours after it was posted, save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.
3. **ENTIRE AGREEMENT**
   1. The Contract constitutes the entire agreement between the parties relating to the subject matter of the Contract. The Contract supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause A4 shall not exclude liability in respect of any fraudulent misrepresentation.

**Part b - Provision of services**

**b.1. Contract Period**

* 1. The Contract shall commence on the Commencement Date and subject to clause B1.2 shall continue for the Contract Period.
  2. If the Contract Period includes an option to extend and the Council intends to take up the option, the Contractor shall be notified in writing within the period stated in the Contract Particulars prior to the commencement of the extension. If no such notification is issued the Contract shall automatically expire after the initial Contract Period.

1. **PERFORMANCE**
   1. The Services shall be provided in accordance with any Delivery Instructions. If no time for delivery is stated in the Delivery Instructions, the Services shall be delivered between 9 a.m. and 5 p.m. on a Business Day.
   2. The time of the delivery of the Services is of essence to the Contract.
   3. The Council will have the right to observe the Contractor’s performance of the Services if the Services are not being performed on the Council’s premises.
   4. If the Contractor at any time becomes aware of any act or omission, or proposed act or omission by the Council which prevents or hinders, or may prevent or hinder, the Contractor from performing the Services in accordance with the Contract, the Contractor shall inform the Council and the Council may, at its absolute discretion, extend the period of the Contract accordingly.
   5. If the Contractor at any time becomes aware of any material matter that could affect the performance of the Services in accordance with the Contract, the Contractor shall inform the Council immediately.
   6. If the Contractor has a change in Control, the Contractor shall inform the Council as soon as reasonably practicable.
   7. The Council retains the Contractor for the performance of the Services on a non-exclusive basis.
2. **CONTRACT MANAGER**
   1. The Contractor shall employ a competent and authorised Contract Manager empowered to act on behalf of the Contractor for all purposes connected with the Contract.
   2. The Contractor shall forthwith give notice in writing to the Council of any change in the identity, address and telephone numbers of the person appointed as Contract Manager. The Contractor shall give maximum possible notice to the Council before changing its Contract Manager.
3. **ORDERING PROCESS**
   1. Where this Contract is identified as requiring Orders in the Contract Particulars the Contractor shall accept Orders made in writing by the Council under the provisions of this clause.
   2. Except where specified Orders are required to call off the Services the Council gives no guarantees whatsoever as to when any Order will be placed during the Contract Period or under the Contract.
   3. The Orders shall state the type of or part of the Services required including the Council’s requirements with regard to timescale for delivery of those Services.
4. **RISK IN AND TITLE TO GOODS** 
   1. Risk in any goods provided as part of the Services shall pass to the Council upon delivery without prejudice to any rights of rejection which may accrue to the Council under the Contract or otherwise.
   2. Title in any goods provided as part of the Services shall pass to the Council upon delivery or earlier payment.
5. **WARRANTY**
   1. The Contractor warrants to the Council that the Services will be provided:
      1. in a proper, skilful and workmanlike manner;
      2. by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with Good Industry Practice;
      3. in accordance with the Contract and any descriptions provided by the Contractor;
      4. to the reasonable satisfaction of the Authorised Officer;
      5. by Key Personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Council, except by reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the Council, or the element of the Services in respect of which the individual was engaged has been completed to the Council’s satisfaction or other extenuating circumstances explained to the Council. Any replacements for the Key Personnel shall be subject to the agreement of the Council and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by the Contractor; and
      6. in a way that the Contractor takes every reasonable precaution to safeguard the Council’s property entrusted to the care of the Contractor.
   2. The Contractor warrants to the Council that to the extent that any goods, equipment or consumables are provided as part of the Services they will:
      1. be free from defects in design, material and workmanship; and
      2. be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
   3. Without prejudice to the Council’s rights to terminate under clause D1.1, if any of the Services supplied are not in accordance with the Contract, the Council shall be entitled to:
      1. require the Contractor to provide replacement Services in accordance with the Contract as soon as reasonably practicable and in any event within fourteen (14) days of a request to do so; or
      2. subject to clause E2 require repayment of the proportion of the Price which has been paid in respect of such Services together with payment of any additional expenditure over and above the Price reasonably incurred by the Council in obtaining replacement Services.
6. **CONTRACTOR’S STAFF**
   1. The Council reserves the right under the Contract to refuse to admit to, or to withdraw permission to remain on, any premises occupied by or on behalf of the Council:
      1. any member of the Contractor’s staff; or
      2. any person employed or engaged by a sub-contractor, agent or servant of the Contractor

whose admission or continued presence would be, in the reasonable opinion of the Council, undesirable.

* 1. When directed by the Council, the Contractor shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to any premises occupied by or on behalf of the Council, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Council may reasonably desire.
  2. The Contractor’s staff, engaged within the boundaries of any of the Council’s premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment and when outside that establishment.
  3. The decision of the Council as to whether any person is to be refused access to any premises occupied by or on behalf of the Council shall be final and conclusive.
  4. The Contractor shall replace any of the Contractor’s staff who the Council reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Contractor’s staff for any reason, the Contractor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
  5. The Contractor shall bear the cost of or costs arising from any notice, instruction or decision of the Council under this clause.

**PART C - PRICE AND PAYMENT**

1. **PRICE AND PAYMENT**
   1. The Council shall pay the Price for the Services to the Contractor.
   2. The Contractor shall submit a single VAT invoice to the Council no later than seven (7) days after the end of each calendar month detailing the Services provided during the calendar month and the amount payable.
   3. The final date for payment of any undisputed invoice will be thirty (30) days following the date of receipt of the invoice by the Council.
   4. The Council reserves the right to withhold payment of the relevant part of the Price without payment of interest where the Contractor has either failed to provide the Services at all or has provided the Services inadequately and any invoice relating to such Services will not be paid unless or until the Services have been performed to the Council’s satisfaction.
   5. Any overdue sums will bear interest from the final date for payment until payment is made at 2% per annum over the Co-operative Bank plc base rate prevailing on the final date for payment. The Contractor is not entitled to suspend provision of the Services as a result of any overdue sums.
   6. The Council will be entitled but not obliged at any time or times without notice to the Contractor to set off any liability of the Council to the Contractor against any liability of the Contractor to the Council (in either case howsoever arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency) and may for such purpose convert or exchange any sums owing to the Contractor into any other currency or currencies in which the obligations of the Council are payable under this Contract. The Council’s rights under this clause will be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise.
   7. Further details of payment, if any, are set out in the Pricing Schedule.

**part d - termination AND CONSEQUENCES OF TERMINATION**

1. **TERMINATION**
   1. Subject to the provisions of clause H6 (Force Majeure) the Council may terminate the Contract with immediate effect by notice in writing to the Contractor on or at any time if:

D1.1.1 the Contractor is convicted of a criminal offence; or

D1.1.2 the Contractor becomes bankrupt, or makes a composition or arrangement with its creditors, or has a proposal for voluntary arrangement for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986; or

D1.1.3 the Contractor has an application made or notice of intention is given under the Insolvency Act 1986 to appoint an administrative receiver or administrator or an administrative receiver or administrator is appointed; or

D1.1.4 the Contractor has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed; or

D1.1.5 the Contractor has a provisional liquidator, receiver or manager appointed; or

D1.1.6 the Contractor has a receiver appointed under the Mental Health Act 1983, or dies;

D1.1.7 the Contractor has possession taken by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in or subject to the floating charge; or

D1.1.8 the Contractor is in circumstances which entitle the Court or a creditor to appoint, or have appointed, a receiver, a manager, an administrator, or administrative receiver, or which entitle the Court to make a winding-up order; or

D1.1.9 the Contractor ceases to carry on the whole of its business or threatens to cease the same or becomes unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or if the Council reasonably believes that any such events may occur; or

D1.1.10 the Contractor has a change in Control which the Council believes will have a substantial impact on the performance of the Contract; or

D1.1.11 there is a risk or a genuine belief that there is a risk that reputational damage to the Council will occur as a result of the Contract continuing; or

D1.1.12 the Contractor is in breach of any of its obligations under this Contract that is capable of remedy and which has not been remedied to the satisfaction of the Council within 14 days, or such other reasonable period as may be specified by the Council after issue of a written notice specifying the breach and requesting it to be remedied; or

D1.1.13 there is a material or substantial breach by the Contractor of any of its obligations under this Contract which is incapable of remedy; or

D1.1.14 the Contractor commits persistent minor breaches of this Contract whether remedied or not.

* 1. The Council reserves the right to terminate the Contract in part on the occurrence of the events the subject of clauses D1.1.12, D1.1.13 and D1.1.14.
  2. Where this Contract is subject to Orders as specified in the Contract Particulars the Council has the right to terminate any individual Order or Orders or the whole Contract under the provisions of this clause D1.
  3. The Council reserves the right to terminate the Contract at will, in whole or in part, at any time with or without notice except that it will give as much notice as possible in the circumstances.

1. **CONSEQUENCES OF TERMINATION**
   1. If this Contract is terminated in whole or in part the Council shall:
      1. only be liable to pay to the Contractor such elements of the Price, if any, that are properly due in accordance with the Contract or the affected part of the Contract up to the time of the termination; and/or
      2. except for termination under clause D1.4, be entitled to deduct from any sum or sums which would have been due from the Council to the Contractor under this Contract or any other contract and to recover the same from the Contractor as a debt any sum in respect of any loss or damage to the Council resulting from or arising out of the termination of this Contract. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contract and in making alternative arrangements for the supply of the Services or any parts of them; and/or
      3. where termination arises under clause D1.4, pay to the Contractor any reasonable, direct and quantifiable costs reasonably incurred by the Contractor due to early termination subject to the maximum liability provision in clause E2.4; and/or
      4. in the event that any sum of money owed by the Contractor to the Council (the Contractor’s debt) exceeds any sum of money owed by the Council to the Contractor (the Council’s debt) under this Contract then the Council shall, at its sole discretion, be entitled to deduct the Contractor’s debt from any future Council’s debt or to recover the Contractor’s debt as a civil debt.
   2. Upon the termination of the Contract for any reason, subject as otherwise provided in this Contract and to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under the Contract.
2. **DISPUTE RESOLUTION PROCEDURE**
   1. If a dispute arises between the Council and the Contractor in connection with the Contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
   2. If a dispute is not resolved within ten (10) working days of referral under clause D3.1 then either party may refer it to the Chief Executive or appropriate nominated officer of each party for resolution who shall meet for discussion within ten (10) working days or longer period as the parties may agree.
   3. Where following ten (10) working days after a meeting has taken place under clause D 3.2 a dispute has not resolved to the satisfaction of both parties in accordance with clauses D3.1 and D3.2, the dispute shall next be referred at the request of either party for mediation.
   4. The mediation shall be in accordance with the Centre for Effective Dispute Resolution ("the CEDR") Model Mediation Procedure ("the Model Procedure") current at the time of referral to the CEDR. Unless otherwise agreed between the parties, the mediator will be nominated by the CEDR
   5. To initiate mediation, either the Authorised officer or the Contract Manager (as the case maybe) must give notice ("ADR Notice") to the other requesting mediation. A copy of the ADR Notice shall be sent to the CEDR.
   6. The procedure in the Model Procedure will be amended to take account of

D3.6.1 any relevant provisions within this Contract;

D3.6.2 any other agreement which the Council and the Provider may enter into in relation to the conduct of the mediation (“the Mediation Agreement”)

* 1. If there is any point on the conduct of the mediation upon which the Council and the Provider cannot agree within 14 days from the date of the ADR Notice, the CEDR will, at the request of either party, decide that point, having consulted with them.
  2. The mediation will start not later than 28 days after the date of the **ADR Notice**.
  3. Neither the Council nor the Provider may commence any court proceedings in relation to any dispute or difference arising out of this Contract until they have attempted to settle it by mediation and that mediation has terminated.
  4. Neither party may terminate the mediation until each of them has made its opening presentation and the mediator has met each party separately for at least one hour. Thereafter, the Model Procedure will apply.
  5. The mediation will take place in Nottingham and the language of the mediation will be English. The Mediation Agreement referred to in the Model Procedure shall be governed by and construed and take effect in accordance with English law. Where court proceedings are relevant, the courts of England shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may ariseout of, or in connection with, the mediation.
  6. In accordance with the terms of the Model Procedure, the settlement agreement arising from the conclusion of mediation will be enforceable by legal action where court proceedings have not been commenced.
  7. If the parties have not settled the dispute or difference by mediation within 42 days from the date of the ADR Notice, the dispute or difference shall be determined by court proceedings.

1. **SURVIVAL**
   1. The following clauses will survive termination or expiry of the Contract: Clause B5 (Risk in and Title to the Goods), Clause D2 (Consequences of Termination), Clause F1 (Intellectual Property), Clause F2 (Confidentiality and Publicity), Clause F3 (Data Protection), Clause F4 (Freedom of Information), Clause F5 (Record Keeping and Monitoring), Clause H4 (Severance), Clause H10 (Non Solicitation and Offers of Employment), clause H12 Conflict of Interest and Clause H13 & H14 (Governing Law and Jurisdiction).

**PART E – INSURANCE AND LIABILITIES**

1. **INSURANCE**
   1. The Contractor shall maintain insurances necessary to cover any liability arising under the Contract as set out in the Contract Particulars.
   2. The Contractor shall prior to the Commencement Date and on each anniversary of the Commencement Date and/or upon request, provide details of such insurances to the reasonable satisfaction of the Authorised Officer and evidence that all premiums relating to such insurances have been paid.
   3. If the Contractor does not maintain the necessary insurances under the Contract the Council may insure against any risk in respect of the default and may charge the Contractor the cost of such insurance together with a reasonable administration charge.
2. **INDEMNITY AND LIABILITY**
   1. The following matters shall not be the subject of any exclusion or limitation of liability:
      1. death or personal injury caused by a party’s negligence (but neither party will be liable for death or personal injury caused by the other party’s negligence);
      2. fraudulent misrepresentation;

E2.1.3 the Contractor’s liability to the Council for any direct loss of or damage to the real or personal property of the Council or any third party, including Intellectual Property Rights and against all Liabilities awarded against or incurred by the Council (including legal expenses on an indemnity basis) arising from any defect or fault in the Services or any act or omission of the Contractor in delivering the Services; and

E2.1.4 any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

E2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit and pure economic loss) however caused.

E2.3 Subject to clauses E2.1 and E2.2, the Contractor’s liability to the Council under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to the sum which equates to 125% of the total Price.

E2.4 Subject to clauses E2.1 and E2.2, the Council’s liability to the Contractor under the Contract whether in contract, tort (including negligence) or otherwise shall be limited to the sum which equates to 125% of the total Price.

**PART F - PROTECTION OF INFORMATION**

1. **INTELLECTUAL PROPERTY**
   1. All Intellectual Property Rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:
      1. provided to the Contractor by the Council shall remain the property of the Council;
      2. prepared by or for the Contractor specifically for the use, or intended use, in relation to the performance of the Contract shall belong to the Council subject to any exceptions set out in the Contract Particulars.
   2. The Contractor shall obtain necessary approval before using any material, in relation to the performance of the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall procure that the owner of the Intellectual Property Rights grant to the Council a non-exclusive licence, or if the Contractor is itself a licensee of those rights, the Contractor shall grant to the Council an authorised sub-licence, to use, reproduce, and maintain the Intellectual Property Rights. Such licence or sub-licence shall be non-exclusive, perpetual and irrevocable, shall include the right to sub-licence, transfer, novate or assign to other Councils, the replacement Contractor or to any other third party providing services to the Council, and shall be granted at no cost to the Council.
   3. It is a condition of the Contract that the Services will not infringe any Intellectual Property Rights of any third party and the Contractor shall during and after the Contract Period on written demand indemnify and keep indemnified without limitation the Council against all Liabilities which the Council may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim relates to the act or omission of the Council.
   4. At the termination of the Contract the Contractor shall at the request of the Council immediately return to the Council all materials, work or records held in relation to the Services, including any back-up media.
2. **CONFIDENTIALITY AND PUBLICITY**
   1. Any documents provided by the Council and information which the Contractor may acquire as a result of the Contract shall to the extent that they are not in the public domain or required to be disclosed by operation of Law remain confidential to the Council and shall not be disclosed disposed of or used for any purpose without prior written consent from the Council.
   2. All Confidential Information provided by the Council to the Contractor shall be returned to the Council at the end of the Contract.
   3. Without prejudice to the Council’s obligations under the FOIA or EIR, neither party shall make any press announcements or publicise the Contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).
   4. Both parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, employees, sub-contractors, agents, professional advisors and consultants.
3. **DATA PROTECTION**
   1. Each Party agrees to comply with its obligations under the Data Protection Legislation at all times.
   2. The Contractor shall (and shall procure that any of its staff involved in the provision of the services), comply with the requirements of the Data Protection Act.
4. **FREEDOM OF INFORMATION**
   1. The Council is subject to the FOIA and the EIR (“the Legislation”). As part of the Council's duties under the Acts, it may be required to disclose information forming part of the Contract to anyone who makes a reasonable request. The Council has absolute discretion to apply or not to apply any exemptions under the Legislation.
   2. The Contractor shall assist and cooperate with the Council (at the Contractor’s expense) to enable the Council to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Council.
5. **RECORD KEEPING AND MONITORING**
   1. In order to assist the Council in its record keeping and monitoring requirements including auditing and National Audit Office requirements, the Contractor shall keep and maintain for six (6) years (or such longer time period required in accordance with any specific legislation) after the Contract has been completed, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Council, and all payments made by the Council. The Contractor shall on request allow the Council or the Council’s representatives such access to (and copies of) those records as may be required by the Council in connection with the Contract.
   2. The Contractor will at its own cost, provide any information that may be required by the Council to comply with the Council’s procedures for monitoring of the Contract.

**PART G – STATUTORY OBLIGATIONS**

1. **HEALTH AND SAFETY**
   1. The Contractor shall comply with all health and safety legislation in force and all health and safety policies of the Council as they may relate to the Contract.
2. **CORPORATE REQUIREMENTS**
   1. The Contractor shall comply with all obligations under the HRA.
   2. The Contractor shall comply with all Council policies and rules, such as, but not limited to:
      1. equality and diversity policies;
      2. sustainability;
      3. information security rules;
      4. whistleblowing and/or confidential reporting policies; and
      5. all site rules relevant to the fulfilment of the Contractor’s obligations in the performance of the Services.
   3. The Contractor shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
   4. The Contractor shall comply with all relevant legislation relating to its staff however employed including (but not limited to) the compliance in law of the ability of the staff to work in the United Kingdom.
   5. If the Contractor has a finding against it relating to its obligations under clause G2.4 it will provide the Council with:
      1. details of the finding; and
      2. the steps the Contractor has taken to remedy the situation.
3. **LAW AND CHANGE IN LAW**
   1. The Contractor shall comply at all times with the Law in its performance of the Contract.
   2. On the occurrence of a Change in Law which has a direct effect upon the Price the parties shall meet within fourteen (14) days of the Contractor notifying the Council of the Change in Law to consult and seek to agree the effect of the Change in Law and any change in the Price as a result following the principle that this clause is not intended to create an artificial cushion from market forces for the Contractor. If the parties, within fourteen (14) days of this meeting, have not agreed the occurrence or the impact of the Change in Law, either party may refer the matter to dispute resolution in accordance with clause D3.
   3. Any agreed additional sums payable as a result of the operation of clause G3.2 shall be included in the Price. For the avoidance of doubt nothing in this Contract is intended to allow the Contractor double recovery of any increase in costs.

**PART H – GENERAL PROVISIONS**

1. **CONTRACT VARIATION**
   1. Subject to clause H1.2, no variation or modification to the Contract is valid unless it is in writing and signed by the Council and the Contractor.
   2. The Council shall be entitled to issue to the Contractor in writing or, in case of urgency orally (provided the Council confirms oral instructions in writing as soon as it is practicable), variation orders requiring the addition, suspension, reduction or cessation of provision of any Services and/or the provision of emergency Services in accordance with revised Delivery Instructions. The Contractor shall charge for the impact of the variation order in accordance with the rates and prices used to calculate the Price in the Tender.
2. **THIRD PARTY RIGHTS**
   1. This Contract is enforceable by the original parties to it, by their successors in title and permitted assignees. Any person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
3. **NO WAIVER**
   1. Failure by either party at any time to enforce any one or more of the provisions of this Contract or to require performance by the other party of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Contract nor affect the validity of the Contract or any part of it or the right of the parties to enforce any provision in accordance with its terms.
   2. No waiver of any of the provisions of this Contract shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause A3.
4. **SEVERANCE**
   1. If any provision of the Contract shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity shall not impair or affect any other provision all of which shall remain in full force and effect.
5. **ASSIGNMENT, SUB-CONTRACTING AND RESPONSIBILITY**
   1. Subject to any express provision of this Contract, the Contractor shall not without the prior written consent of the Council, assign all or any benefit, right or interest under this Contract or sub-contract the supply of the Services.
   2. The Council shall be entitled to:
      1. assign, novate or dispose of its rights and obligations under this Contract either in whole or part to any contracting authority (as defined in The Public Contracts Regulations 2015); or
      2. transfer, assign or novate its rights and obligations where required by Law.
   3. The Contractor shall remain responsible and liable for the acts and omissions of any other members of a consortium arrangement, sub-contractors, servant, agent and employee as though they were its own.
6. **FORCE MAJEURE**
   1. Neither party shall be liable for failure to perform its obligations under the Contract if such failure results from Force Majeure.
   2. If the Council or the delivery location is affected by circumstance of Force Majeure, the Council shall be entitled to, totally or partially, suspend the date or dates for delivery of the Services until the circumstances of the Force Majeure have ceased. The suspension shall not give rise to any claim by the Contractor against the Council nor entitle the Contractor to terminate the Contract.
   3. Industrial action by, or illness or shortage of the Contractor’s staff, agents or subcontractors, failure or delay by any of the Contractor’s suppliers to supply goods, components, services or materials and breach of the Contractor’s warranties under clause B6 shall not be regarded as an event of Force Majeure.
   4. If the event of Force Majeure continues for more than two (2) months either party may give written notice to the other to terminate the Contract immediately or on a set termination date.
   5. If the Contract is terminated in accordance with clause H6.4 neither party will have any liability to the other except that any rights and liabilities which accrued prior to termination will continue to exist.
7. **INDUCEMENTS****, BRIBERY AND CORRUPTION**
   1. The Contractor shall and shall procure that persons associated with it or other persons who are performing services in connection with this Contract shall:

H7.1.1 comply with all applicable laws, statutes, regulations, and where appropriate codes relating to anti-bribery and anti-corruption (“Relevant Requirements”), including the Bribery Act 2010; and

H7.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1,2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;

H7.1.3 not do, or omit to do, any act that will cause or lead the Council to be in breach of any of the Relevant Requirements;

H7.1.4 promptly report to the Council any request or demand for any undue financial or other inducement of any kind received by the Contractor in connection with the performance of this Contract;

H7.1.5 have an shall maintain in place throughout the Contract Period its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

H7.1.6 if requested, provide the Council with any reasonable assistance to enable the Council to perform any activity required for the purpose of compliance with any of the Relevant Requirements.

* 1. The Contractor shall indemnify the Council against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against the Council as a result of any breach of this clause H7 by the Contractor.

H7.3 Breach of this clause H7 shall be deemed a material breach under clause D1.1.13.

H7.4 If the Council terminates this Contract for breach of this clause H7 the Contractor shall not be entitled to claim compensation or any further remuneration whatsoever.

1. **COSTS AND EXPENSES**
   1. Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Contract.
2. **NO AGENCY OR PARTNERSHIP**
   1. Nothing contained in this Contract, and no action taken by the parties pursuant to this Contract, will be deemed to constitute a relationship between the parties of partnership, joint venture, principal and agent or employer and employee. Neither party has, nor may it represent that it has, any authority to act or make any commitments on the other party’s behalf.
3. **NON SOLICITATION AND OFFERS OF EMPLOYMENT**
   1. The Contractor agrees that it will not, without the prior written consent of the Council, whether directly or indirectly, and whether alone or in conjunction with, or on behalf of, any other person and whether as a principal, shareholder, director, employee, agent, consultant, partner or otherwise during the Contract Period or for a period of 12 months following expiry or termination of this Contract:
      1. solicit or entice, or endeavour to solicit or entice, away from the Council, any person directly related to the Services employed in a senior capacity in a managerial, supervisory, technical, sales or administrative capacity by, or who is or was a consultant to, the Council at the date of the expiry or termination of this Contract or at any time during the period of one month immediately preceding the date of expiry or termination;

H10.1.2 attempt, or knowingly assist or procure any other person to do the above.

1. **INSPECTION OF CONTRACTOR’S PREMISES**
   1. The Contractor shall permit the Council to make any inspections or tests which may reasonably be required in respect of the Contractor’s premises in relation to the Contract.
2. **CONFLICT OF INTEREST**

H12.1 All parties are obliged to declare a conflict of interest if they stand to gain financially from any decision taken by the parties in respect of a Project.

H12.2 Should such a conflict of interest occur, the party concerned will not be able to participate in or vote on the decision in question and may, at the discretion of the Chair, be requested to leave the meeting while the issue is being discussed and decided. This clause shall not apply when the conflict of interest is shared with a majority of the other parties present.

1. **GOVERNING LAW**

H13.1 This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

1. **JURISDICTION**

H14.1 Each party irrevocably agrees that, subject to clause H13, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

**SCHEDULE 1**

Authorised Officer: Glen Simms

Eastcroft Depot,

London Road.

NG2 3 HA

Commencement Date: XXXXXX

Contract Period: 2 years from the commencement date with an option to extend for a further year subject to available funding & performance

Insurance Requirements: Employer's Liability: £5,000,000

Public Liability: £5,000,000

Professional Indemnity: £1,000,000

Motor Insurance – Fully Comprehensive

**CONTRACT SPECIFICATION**

**Preamble**

This specification has been prepared with reference to relevant legislation, including but not limited to the following documentation:

* + Code of Practice for Using Plant Protection Products (2006)
  + Control of Pesticides Regulations (COPR) 1986
  + **Control of Substances Hazardous to Health (COSH) Act 1988**
  + **Health and Safety at Work (HASAW) Act 1974**
  + **Pesticides and the Environment “A Strategy for the Sustainable use of Plant Protection Products and Strategy Action Plans”**

**Introduction and Context**

Nottingham City Council currently provides maintenance in the form of a none-residual herbicide treatment to approximately 809km of adopted highway. This work involves the spraying, by the way of mechanical or manual means, an approved glyphosate weed killer under the Code of Practice for Using Plant Protection Products (2012) weed killer to keep the hard surfaces free of weed growth.

The successful contractor will be responsible for providing this service, liaising closely with the Contract Manager Glen Simms.

**Scope**

**The contractor shall provide the following service**

* Treat all highways ( please refer to [**https://geoserver.nottinghamcity.gov.uk/streetregister/**](https://geoserver.nottinghamcity.gov.uk/streetregister/) that are for the purpose of the highways act 1980 highways maintainable at the public expense (this includes adopted highways built to the council’s specification)within the Nottingham City Council Administrative area in respect of weed control.
* Treatments are required to the whole footway from (and including) the back edge, across the footway and front edge to 300mm into the road.
* Treatments are required for all publicly maintained footway’s that run through and connect to main roads as detailed in [**https://geoserver.nottinghamcity.gov.uk/streetregister/**](https://geoserver.nottinghamcity.gov.uk/streetregister/)
* Any obstacles such as roundabouts, splitter islands, refuges, parking bays, must be treated where they are found along specified roads, and this must be included within the rate per km.
* Allowance must also be made within the rate per km to treat areas of highway where there is no footways, but weeds are growing, where the highway meets the base of buildings / walls.
* The network is not static and does grow annually whereby new highways will be added to be maintained through this agreement. Annual updated appendix will be supplied to support.
* We may request for areas to be exempt due to public consultation in this instance we would expect the contractor to cease treatment in certain areas however would expect either a reduction in price or additional areas to be covered outside the [**https://geoserver.nottinghamcity.gov.uk/streetregister/**](https://geoserver.nottinghamcity.gov.uk/streetregister/)

**Timetable**

* The work is expected to be completed between:
  + First Treatment – April - May each year
  + Second Treatment -July- August
  + Third treatment- October
* The times of the three treatments may be subject to change but any deviations will be agreed in consultation with the contractor as far as reasonably practicable.

In the event of inclement weather affecting the processes defined in this document, the contractor at their own expense should suspend all services until the weather becomes conducive to the effectiveness of the process. If the Contract Manager has concerns about the inclement weather and any continuing actions of the Contractor, the Contract Manager will instruct the Contractor in writing to cease operations.

* The contract is expected to commence in May 2024 for a period of two years with an option (at the Council’s sole discretion) to extend for one further year in consultation with the Contractor as far as reasonably practicable. The contract Manager is Glen Simms based at Eastcroft Depot, London Road. NG2 3 HA

**Locations**

The areas to be treated will be defined on the plans provided on award of the tender. Prior to the production of plans, background information on the areas for which the Council is responsible for may be found in the online street register at[**https://geoserver.nottinghamcity.gov.uk/streetregister/**](https://geoserver.nottinghamcity.gov.uk/streetregister/)

**Sherwood Ward is exempt**

Please see appendix 1 for the map of the ward and appendix 2 a list of street names. some streets cross boundaries with other wards therefore the map would be more accurate to ensure sections are not miss treated/treated.

**Working methods and codes of practice**

* The contractor must comply with all current Health and Safety Legislation, especially with regard to the use of unqualified operatives, facilities for staff and the protection of motorists and pedestrians.
* The Contractor must supply copies of their method statement and safe systems of work.
* The contractor must be a member of the BASIS Amenity Assured scheme. The contractors spraying equipment must be fitted with a GPS tracker to provide the Contract Manager a weekly, detailed report showing the covering date, locations, speed distance travelled, quantity of chemical applied and time – it is essential that a copy of the weekly report is submitted with the tenderers submission.
* The Contractor must have available, professionally trained, and qualified spraying personnel, together with all the necessary plant, machinery, tools etc. to complete the works in the specified time.
* The contractor shall use trained and qualified operatives holding the appropriate National Proficiency Test Certificates (NPTC) of competency or equivalent. It is desirable for the contractor to be trained in Traffic Management for moving works.
* The contractor should arrange for their own water supply for the provision of this service
* No cleaning or repair of weed spraying equipment is to be carried out on the highway
* Under no circumstances should surplus spray or washings be disposed of into the public sewerage system or natural watercourse and river systems. where necessary provide proof of proper disposal
* The contractor shall take all reasonable precautions to prevent pollution of any rivers, waterways, watercourses, lakes and underground water resources (including percolating water) so as to adversely affect the quality and appearance of the water or cause injury or death to animal and plant life.
* There are parts of some wards where the residents have requested no weedspraying. These will be supplied to the supplier in advance. Under no circumstances should these areas be sprayed.
* There are also some parts of the city where we would insist is only sprayed with Acetic acid.
* Weedspraying must be on hard standing areas only. No grassed areas or parks should be sprayed.
* When working on the highway, the contractor’s vehicles must conform to current legislation with regards to signage and lighting to ensure public awareness and safety at all times.
* The contract Manager may require the provision of samples of the spray materials for testing purposes, and the contractor should provide facilities for taking samples when requested.

**Quality and Performance Standards**

* The contractor must submit with their tender, safety documents for how they plan to run their programme of works.
* The contractor must comply with all current Pesticides and Health and Safety Legislation.
* The contractor must provide all materials, plant and tools required for this type of work.

**Working hours**

* The contractor may choose to work weekends and they must factor this into the supplied rates
* On major parts of the highway Network, working hours are restricted to between 09:30 and 15:30 pm Monday to Friday. All traffic lanes shall be available for use between 07:30am until 09:30 am and 16:00 pm until 18:30 pm.

**Reporting**

* Before commencement of the Contract, the Contractor must
* Agree with the Contract Manager the proposed method of operation and organisation of the spraying teams
* Indicate on a plan, to the Contract Manager on the proposed weekly works programme.
* Make daily contact with the Contract Manager or other appointed person(s) during the contract period. A list of Adopted highways will be provided for the contractor, who shall be required, on a daily basis to indicate on the list, all streets treated.
* The Contractor shall guarantee 95% control in all specified areas and undertake any re-treatment necessary to achieve this standard. This shall be at the Contractors expense.
* The Contractor will treat all areas, which are found to need re-treating within 14 days of received instruction from the Contract Manager and the contractor must bear all costs of any such treatment.

**Invoices and Contract Pricing**

* Invoices submitted for payment to Nottingham City Council shall be sent as PDF images by email to the following address: [nccinvoices@emss.org.uk](mailto:nccinvoices@emss.org.uk)
* It is the policy of the Authority to make all payments to Contractors directly into their bank account using the Bankers Automated Clearing Systems (BACS).
* The Authority’s standard payment terms are 30 days from receipt of a correctly formatted undisputed invoice. The Authority expects its Contractors to apply the same payment terms to their own subcontractors & supply chain.
* The prices and rates submitted shall remain fixed for the first year of the contract
* The price review shall be calculated based on the monthly Consumer Price Index (CPI) value available for October of the review year compared with the CPI reading for October in previous year and capped at an increase of 3%, whichever is lower.
* Where there is no movement in the CPI, the price for the next 12 months of the Contract Period shall not be adjusted, unless otherwise permitted under the Contra

**SCHEDULE 2**

The Special Terms and Conditions

**SCHEDULE 2**

The Special Terms and Conditions