

Vale of White Horse District Council

and

South Oxfordshire District Council

AGREEMENT FOR THE PROVISION OF:

TESTING SERVICES FOR TAXIS AND PRIVATE HIRE VEHICLES

Ref: 9000

TESTING SERVICE AGREEMENT 2023

THIS AGREEMENT is made on the date stated in the master contract form

BETWEEN

- (1) Vale of White Horse District Council and South Oxfordshire District Council of Abbey House, Abbey Close, Abingdon, OX14 3JE (“the Council”); and
- (2) “The Contractor” named in the master contract form.

BACKGROUND

- A. In order to discharge its statutory responsibilities for the licensing of hackney carriages and private hire vehicles under the provisions of the Town Police Clauses Act 1847 (as amended) and the Local Government (Miscellaneous Provisions) Act 1976 the Council wishes to secure testing services for such vehicles.
- B. The Contractor wishes to provide such services in accordance with this agreement in respect of the category of vehicles stated in the master contract form.

1. DEFINITIONS AND INTERPRETATIONS

1.1. The following terms shall have the following meanings for the purposes of this agreement:

PHRASE

MEANING

Applicants

means proprietors of hackney and private hire vehicles;

Commencement Date

As stated in the master contract form;

Data Protection Legislation

means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 and regulations made thereunder and the Privacy and Electronic Communications Regulations 2003 as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including without limitation the privacy of electronic communications) including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory body;

Expiry Date

means three years from the Commencement Date unless this Agreement is extended in accordance with clause 14.2;

Licensing Officer

means the head of service to whom responsibility for licensing has been delegated to by the Council or other such person as the Council may notify to the Contractor;

Maximum Test Fees	as set out in schedule 2;
M.O.T.	means Ministry of Transport;
Personal Data, Data Subject, Processing, Controller and Processor	have the meaning given in the Data Protection Legislation;
Performance Default	a breach by the Contractor of its obligations under this agreement including, for the avoidance of doubt, a defect or omission in the provision of the Services;
Services	means the services described in schedule 1;
Test/Testing	Has the meaning set out in paragraph 2 of the TPH Vehicle Testing Specification in schedule 1;
TPH Vehicle	Any hackney carriage or private hire vehicle with eight or fewer seats.
Term	means the period from the Commencement Date until the Expiry Date;
Test Fees	the amount charged by the Contractor for testing TPH Vehicles
UK GDPR	has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;
Working Day	means any day from the core hours of 9:00am until 5:00pm Monday to Friday inclusive other than a bank holiday in England.

1.2. In this agreement, except where the context otherwise requires:

- 1.2.1. clause headings contained in this agreement are for reference purposes only;
- 1.2.2. each gender includes all genders;
- 1.2.3. the singular includes the plural and vice versa;
- 1.2.4. any words following the term including or any similar expression shall be interpreted as illustrative and shall not limit the sense of the words preceding those terms.

1.3. This agreement consists of the master contract form, signing section and schedules.

1.4. In the event of any inconsistency between the provisions of this agreement the following order of precedence shall apply:-

- 1.4.1. the master contract form and signing section;

- 1.4.2. the main body of this agreement;
- 1.4.3. the Specification.

2. APPOINTMENT

- 2.1. The Council appoints the Contractor to provide the Services for the Term.
- 2.2. The Council shall pay the Contractor a peppercorn, if demanded.

3. THE CONTRACTOR'S OBLIGATIONS

- 3.1. Services to be provided and general standards to be met by the Contractor

The Contractor shall provide the Services in accordance with: -

- 3.1.1. In accordance with Schedule 1;
- 3.1.2. all applicable legal requirements including the provisions of the Town Police Clauses Act 1847 (as amended), the Local Government (Miscellaneous Provisions) Act 1976, the Health and Safety at Work etc Act 1974 and codes of practice and council policies;
- 3.1.3. the directions and instructions of the Licensing Officer;
- 3.1.4. provide the Services to a standard comparable to that required by the Driver and Vehicle Standards Agency for M.O.Ts of TPH Vehicles;
- 3.1.5. report to the Licensing Officer at such times and in such manner as the Licensing Officer shall direct.

- 3.2. Intellectual Property

- 3.2.1 Not to cause or permit anything that may damage or endanger the Intellectual Property rights of the Council or assist or allow others to do so.
- 3.2.2 Intellectual Property rights in any data reports or other information which are processed by the Contractor as part of or in connection with the provision of the Services as well as the data and information produced by such Processing shall belong to and remain in the Council.

- 3.3. **INDEMNITY**

The Contractor shall indemnify the Council, and keep it indemnified, from and against any and all loss, damage, cost, expense or liability (whether criminal or civil) suffered, and legal fees and costs incurred, by the Council, including third party claims, to the extent arising from any tortious act or omission including negligence, breach of statute or statutory duty or any breach of this agreement by the Contractor, or any person employed or engaged by it.

- 3.4. **INSURANCE**

The Contractor shall have in place for the Term as a minimum:

- 3.4.1. public liability insurance of £10 million.
- 3.4.2. professional liability insurance of £5 million.
- 3.4.3. employer's liability insurance of £5 million where any employer's liability insurance cover is required by law.

4. TEST FEES

- 4.1. The Contractor may charge Applicants a Test Fee for each test. The Contractor will not charge more than the Maximum Test Fee for a test or circumvent the limit set by the Maximum Test Fee.
- 4.2. The Council shall not pay or compensate the Contractor for any unpaid Test Fees.

5. DEFECTS IN THE PERFORMANCE OF THE SERVICES

- 5.1. The Contractor shall correct any Performance Default whether such defaults are drawn to its attention by the Council or not. All such corrections of Performance Defaults shall be at no additional cost to the Council. Such Performance Defaults must be corrected as soon as possible, within any timescale stipulated in any notice given by the Council and in a way that minimises the adverse effect on the Council. The Council is not required to serve notice of any breach before taking any action.
- 5.2. If the Contractor fails to correct a Performance Default within the time stated in any notice issued by the Council, the Council shall be entitled to arrange for the Services or defective part thereof to be performed by a third party. In the event that it does so the Council shall be entitled to recover the additional cost from the Contractor.
- 5.3. The provisions of this Clause 5 are without prejudice to any other right or remedy available to the Council whether under this agreement or at law.

6. TERMINATION/SUSPENSION

- 6.1. The Council may terminate this agreement without liability to the Contractor by giving written notice with immediate effect to the Contractor at any time if:
 - 6.1.1. the Contractor is in material breach of its obligations under this agreement;
 - 6.1.2. the Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
 - 6.1.3. an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Contractor;
 - 6.1.4. the Contractor or any of its employees shall have offered, or given, or agreed to give to any person or have solicited or accepted from any person any gift, consideration, inducement or reward of any kind, for doing or not doing any action in relation to this agreement (including any Test as defined in the Specification) or to any other contract with the Council; or
 - 6.1.5. the Contractor or any of its employees shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

- 6.2. Either party may terminate this agreement by giving at least three months' written notice to the other party.
- 6.3. If the Council has reasonable ground to believe that any of the termination requirements in clause 6.1 may be invoked the Council may immediately suspend this agreement without liability by giving written notice to the Contractor.

7. TERMINATION/SUSPENSION CONSEQUENCES

- 7.1. When this agreement ends neither party shall be entitled to compensation.
- 7.2. When this agreement ends the Contractor shall within 14 days deliver to the Council all data, records (in such format or media as the Council may specify) and other property belonging to the Council.
- 7.3. If the Contractor fails to comply with its obligations under Clause 7.2 the Council shall be entitled to recover possession of the items referred to in that clause. For that purpose the Contractor hereby grants to the Council and its appointed agents a licence to enter onto any land or premises belonging to or under the control of the Contractor.
- 7.4. The rights of the Council under this clause 7 are in addition to and without prejudice to any other rights and remedies the Council may have arising from the termination.
- 7.5. In the event of termination or suspension of this Agreement the Contractor will immediately send to the Council all outstanding notices of TPH Vehicle failures and provide any outstanding copies of certificates of compliance and inspection of hackney carriage/private hire vehicles forms.
- 7.6. Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after this agreement ends including clauses 3.2 (Intellectual Property), 3.3 (Indemnity), 8 (Inspection), 7 (Termination/Suspension Consequences), 11 (Data Protection), 14.7 (Waiver), 14.9 [Contracts (Rights of Third Parties) Act 1999] and 22 (Freedom of Information) shall remain in full force and effect.

8. AUDIT, INFORMATION AND INSPECTION

- 8.1. The Contractor shall keep full and proper records in relation to this agreement.
- 8.2. The Contractor shall on written request from the Council provide in a timely manner to the Council, its auditors and agents:
 - 8.2.1 reasonable access to inspect the equipment, documents, records approvals/accreditations and other things relating to the carrying out of the Services;
 - 8.2.2 copies of such documents, records approvals/accreditations and other things in such format as the Council may reasonably request.and to allow the Council, its auditors and agents to interview relevant members of staff/the Contractor.
- 8.3. The Council may wish to use employment and relevant personal information relating to the Contractor/Contractor's personnel engaged upon or in connection

with the provision of the Services for the purposes of anti-fraud measures such as data matching.

- 8.4. The Contractor shall ensure that it takes any measures necessary pursuant to the Data Protection Act 2018 and any other relevant legislation to facilitate such disclosure and processing by the Council.
- 8.5 The Contractor shall provide the Council at no additional charge information or assistance reasonably needed to enable the Council to meet its sustainability obligations.

9. CONFIDENTIALITY

- 9.1 The Contractor will not divulge or allow to be divulged to any person at any time during or after the Term any confidential information relating to the business or affairs of the Council or Applicants unless required to do so by law or in order to provide the Services.
- 9.2 The Contractor shall ensure that where disclosure is made in order to provide the Services, the recipients of confidential information are bound by robust confidentiality obligations no less onerous than that contained in clause 9.1.

10. EVIDENCE IN CONNECTION WITH LEGAL PROCEEDINGS

- 10.1. The Contractor shall in connection with the provision of the Services on request (i) provide information to the Council in connection with any legal proceedings or any of the Council's internal disciplinary hearings or any Council committee meetings (ii) give evidence in such proceedings hearings or meetings.
- 10.2 The Contractor shall immediately notify the Licensing Officer of any accident, damage or breach of any statutory provision relating to or connected in any way with the provision of the Services.
- 10.3 Any information or assistance provided by the Contractor in accordance with this clause 10 shall be provided free of charge to the Council.

11 DATA PROTECTION

- 11.1 The Council and the Contractor shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the performance of this agreement.
- 11.2 The Supplier shall perform its obligations under this Contract in such a way as to ensure that it does not cause the Council to breach any of its applicable obligations under the Data Protection Legislation.
- 11.3 The Council will collect and process information relating to the Contractor in accordance with the privacy notice which is on the Council's website. Please see <https://www.southoxon.gov.uk/south-oxfordshire-district-council/taxis-and-private-hire/useful-documents/>
- 11.4 The Contractor and the Council acknowledge that for the purposes of the Data Protection Legislation, the Council is the data Controller and the Contractor is the data Processor.

- 11.5 Schedule 3 to this agreement sets out the scope, nature and purpose of the Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
 - 11.6 The Contractor shall, in relation to any Personal Data processed:
 - 11.6.1 Process that Personal Data only on written instructions of the Council;
 - 11.6.2 Keep the Personal Data confidential;
 - 11.6.3 Comply with the Council's reasonable instructions with respect to Processing Personal Data and with the Council's Data protection policy and any other policies;
 - 11.6.4 Not transfer any Personal Data outside of the United Kingdom without the Council's prior written consent;
 - 11.6.5 Assist the Council in a timely way:
 - 11.6.5.1 By notifying the Council of any subject access request, or third party request for disclosure of Personal Data or any complaint or any requirement of the Information Commissioner received by the Contractor;
 - 11.6.5.2 In responding to any Data Subject access request, or third party request for disclosure of Personal Data or any complaint or any requirement of the Information Commissioner;

to ensure compliance with the Council's obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators.

 - 11.6.6 notify the Council without undue delay on becoming aware of a Personal Data breach or communication which relates to the Contractor's or the Council's compliance with the Data Protection Legislation.
- 11.7 At the written request of the Council:
 - 11.7.1 Delete or return Personal Data and any copies thereof to the Council on termination of this Agreement unless required by the Data Protection Legislation to store the Personal Data;
 - 11.7.2 Supply the Council with any Personal Data or other information that the Council reasonably needs and in the event of data loss provide such reasonable help as the Council needs;
- 11.8 maintain complete and accurate records and information to demonstrate compliance with this clause 11 and allow for audits by the Council.
- 11.9 ensure that the Contractor's staff are suitable, properly trained and aware of their duties in relation to data protection and confidentiality.
- 11.10 The Contractor shall ensure that the Contractor has in place appropriate technical or organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and

the cost of implementing any measures. Such measures may include, where appropriate:

- 11.10.1 pseudonymising and encrypting Personal Data;
 - 11.10.2 ensuring confidentiality, integrity, availability and resilience of its systems and services;
 - 11.10.3 ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident;
 - 11.10.4 regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.
- 11.11 The Council does not agree to the Contractor appointing any third-party processor of Personal Data under this agreement.
- 11.12 The Contractor shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Contractor or a sub-contractor engaged by the Contractor of the Data Protection Legislation and shall maintain in force full and comprehensive insurance policies to cover such liability.

12 FREEDOM OF INFORMATION

- 12.1 The Contractor shall at no additional charge assist the Council in a timely manner in meeting any reasonable requests for information which are made to the Council under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 in relation to this agreement.
- 12.2 The Contractor shall not respond directly to a request from any third party for such information. Such requests should be forwarded immediately to the Council.
- 12.3 When responding to requests for such information the Council shall be entitled to provide information relating to this agreement.

13. EQUAL OPPORTUNITIES

- 13.1 The Contractor shall not unlawfully harass or victimise a person or discriminate either directly or indirectly because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, colour, nationality, ethnic or national origin, religion, or belief, sex, or sexual orientation. Without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant legislation, or any statutory modification or re-enactment thereof.
- 13.2 When acting in relation to this agreement the Contractor shall have due regard to the need to eliminate discrimination, advance equality and foster good relations within the meaning and scope of the Public Sector Equality Duty in Section 149 of the Equality Act 2010.
- 13.3 The Contractor shall take all reasonable steps to secure the observance of Clauses 26.1 and 26.2 by its servants, employees or agents and sub-contractors employed in relation to this agreement.

- 13.4 The Contractor shall demonstrate to the Council that it has a policy to comply with its statutory obligations under the legislation referred to above in Clauses 13.1 and 13.2.
- 13.5 If there should be any findings of unlawful discrimination made against the Contractor by any court or employment tribunal, or an adverse finding in a formal investigation by a Commission, the Contractor shall take appropriate steps to prevent repetition of the unlawful discrimination.
- 13.6 The Council reserve the right to test the Contractor's equality performance through the life of the Agreement. The Contractor shall cooperate with the Council regarding the provision of a date and/or access for site visits as reasonably required by the Council.

14. GENERAL

- 14.1 A notice given by either party to the other under this agreement:
 - 14.1.1 shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified under this provision to the party giving the notice.
 - 14.1.2 may be delivered personally or by first class pre-paid letter and shall be deemed to have been served as follows:
 - 14.1.2.1 by hand when delivered;
 - 14.1.2.2 if by first class post 48 hours after posting.

This clause 14.1 applies only to formal contractual notice and not to day to day communications such as those required under Schedule 1 (Services).
- 14.2 The Council may extend the Term of this agreement by up to two years by giving written notice to the Contractor.
- 14.3 This agreement is not exclusive. The Council gives no assurance as to the nature or volume of the Services.
- 14.4 This agreement contains the whole agreement between the parties. Neither party has relied on any oral or written representation made to it by the other party or its employees or agents.
- 14.5 No deletion, addition or modification or variation to this agreement shall be valid unless agreed in writing and signed by both parties.
- 14.6 If any provision of this agreement is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this agreement and the remainder of the provision in question shall not be affected.
- 14.7 The failure by either party to enforce at any time or for any period any one or more of the provisions of this agreement shall not be a waiver of them or of the right at any time subsequently to enforce all provisions of this agreement.
- 14.8 For the purposes of this agreement the Contractor is an independent contractor. It shall not hold itself out as being the agent of the Council.
- 14.9 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce provisions of this agreement.

- 14.10 Subject to the Business Contract Terms (Assignment of Receivables) Regulations 2018 the Contractor shall not assign or sub-contract the whole or any part of this agreement.
- 14.11 This agreement, its formation and any dispute or claim of whatever nature relating to it shall be governed by the laws of England. The courts of England shall have exclusive jurisdiction.

SCHEDULE ONE

Services: Testing in accordance with the following TPH Vehicle Testing Specification

TPH Vehicle Testing Specification

1. Words and expressions defined in the main body of this agreement shall have the same meaning in this Specification unless otherwise stated.
2. In this Specification the term "Tests" means: tests (including re-tests, tariff meter verification and sealing, and failure by an Applicant to report for any Test at a pre-arranged time) carried out in accordance with the Council's 'Hackney Carriage and Private Hire Vehicles Testing Manual' at Appendix A and any additional items not stated in that manual which would be included in an M.O.T. test for the vehicle, and the words "Testing" and "Test" shall be construed accordingly.
3. The Contractor shall ensure that throughout the duration of this agreement it maintains the necessary approvals from the Driver and Vehicle Standards Agency to run an M.O.T. Testing station so as to enable the Contractor to conduct M.O.T. tests for TPH Vehicles.
4. The Contractor shall provide testing services for TPH Vehicles.
5. The Contractor shall ensure that for the duration of the agreement it has on the premises at which it carries out the Services, suitable and available equipment, materials and facilities for the performance of the Services. The Contractor shall ensure that all such equipment and facilities are properly maintained and kept in a satisfactory condition throughout the duration of the agreement.
6. The Council will provide the Contractor with access to the online forms to record the result of the Test. A form must be completed for all Tests, irrespective of whether the vehicle passes or failed the Test.

All test failures must be reported within two hours of failure.
7. For the avoidance of doubt, all records relating to the Services shall be deemed Confidential and be treated accordingly under the terms of the agreement.
8. With the exception of disputes concerning payment of the Test Fees, any complaints or problems which arise in connection with the Services must be reported to the Council at the earliest opportunity (preferably on the same day, but in any event no later than 10 a.m. on the next Working Day).
9. The Contractor shall deal directly with all disputes concerning payment of Test Fees.

APPENDIX A

HACKNEY CARRIAGE AND PRIVATE HIRE VEHICLES

TESTING MANUAL

The hackney carriage and private hire vehicles testing manual v1, 1 October 2022 is hereby incorporated into this Agreement. The Council may at its discretion amend or replace the hackney carriage and private hire vehicles testing manual from time to time and any amendments to or replacements of the hackney carriage and private hire vehicles testing manual will be deemed to be incorporated into this Agreement once such amendments or replacements have been published on one or more of the Council's websites.

SCHEDULE TWO
Maximum Test Fees

Maximum Fees = the sum of M.O.T. fee for the PHV at time of Councils' Test plus
£15

SCHEDULE THREE

GDPR – Permitted Processing by the Contractor

Schedule of Processing, Personal Data and Data Subjects

1. The Contractor shall comply with any further written instructions with respect to Processing by the Council
2. Any such further instructions shall be incorporated into this schedule

DESCRIPTION	DETAILS
Subject matter of the processing	Vehicle testing
Duration of the processing	One day
Nature and purposes of the processing	The collection, recording and storage of data in relation to hackney carriages and private hire vehicles for the purposes of determining and issuing vehicle licences
Type of personal Data	Name of vehicle tester Vehicle registration number, make and model Vehicle licence plate number Vehicle owner Vehicle driver Vehicle driver's email address
Categories of Data Subject	Customers
Plan for return and destruction of data once the processing is complete UNLESS requirement under law to preserve that type of data	Six years following expiry of the licence Electronic records will be deleted

Master Contract Form: Testing Services for Taxis and Private Hire Vehicles

Description	Details
Name of Contractor	
Contractor's registered office address or in the case of unincorporated partnerships or sole traders their principal place of business	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
Contractor's registered company number (where applicable)	

Description	Details
The Council will enter these dates	
Date of this Agreement	
Commencement Date	
Expiry Date	

Signing Section

The Contractor should read this Agreement carefully to gain a full understanding of it and consult its advisors before entering into it.

The Contractor and the Council enter into this agreement on the date set out above.

Executed by **South Oxfordshire District Council** and **Vale of White Horse District Council** by:

Authorised Signatory

Executed by **the Contractor** by:

Director/ Partner/Sole Trader

Full name of signatory

Witness's signature

Witness's name

Witness's occupation

Witness's address
