



SHEFFIELD CITY COUNCIL Licensing Sub Committee

Report of: Chief Licensing Officer

Date: 24th March 2016

Subject: Report – Specification for an Unmet Demand Survey

Author of Report: Steve Lonnia, Chief Licensing Officer

Summary: Review of the Specification of the quantitative analysis and qualitative analysis for the new unmet demand survey.

Category of Report: OPEN

Report of the Chief Licensing Officer and Head of Licensing to the Licensing Committee on 24th March 2016

Review of Hackney Carriage Vehicle licence Limitation Policy Intention to undertake unmet demand Survey

1.0 Purpose

- 1.1 To review the Councils Policy invitation to Quote/Tender in relation to Unmet Demand Survey as requested by the Licensing Committee at its meeting in February 2016.
- 1.2 To approve the process to invite quote/tenders for the completion of an unmet demand survey to run from Aug 2016 to Dec 2016

2.0 Background

- 2.1 The last review of this policy took place in 2010. The last survey conducted by Mouchel Ltd, for this was undertaken in 2009, and published in 2010.
- 2.2 Currently the Council Limitation is set at 857.
- 2.3 At the time of writing the report the current limit has been reached.

3.0 Legal Requirements

- 3.1 The Council are duty bound to accept applications for Hackney Carriage licences.
- 3.2 To refuse a licence on the grounds of a limitation policy is permitted and the Council have refused applications on these grounds.
- 3.3 The Department of transport; released a best practice guide in March 2010. Section 49 of the document stated;

“If a local authority does nonetheless take the view that a quantity restriction can be justified in principle, there remains the question of the level at which it should be set, bearing in mind the need to demonstrate that there is no significant unmet demand. This issue is usually addressed by means of a survey; it will be necessary for the local licensing authority to carry out a survey sufficiently frequently to be able to respond to any challenge to the satisfaction of a court. An interval of three years is commonly regarded as the maximum reasonable period between surveys.”

- 3.4 The Law Commission published a midterm report in 2014 when drawing up the Taxi Licensing Bill. The Commission, at the outset of information gathering for the report, were minded to recommend that Numbers Limitation should be abolished.

3.5 The Law Commission, after consultation, produced a report. Sections 11.69 & 11.70 detailed their recommendations stating:

“We have noted the strong view put forward during consultation that quantity restrictions can have a positive role to play within the taxi licensing framework and have found a lack of empirical evidence of the benefits of derestriction.

“Our initial view was that derestriction would be likely to provide the most efficient use of resources by enabling the market to determine supply and demand. However, having listened to the responses to our consultation, we recognise that some limitation on taxi licence numbers may, in some areas, be desirable.”

3.6 To enable this the Law Commission recommended the introduction of a Public Interest Test;

Section 11.82 “Our proposed public interest test could operate in a similar way to that in the Transport Act 2000, whereby local authorities are required to consider a public interest test before introducing a quality contracts scheme – essentially a bus franchise.”

Section 11.83 “In order to promote consistency, transparency and better quality decision-making, we recommend that the Secretary of State should have the power to make regulations prescribing how the public interest test should be applied.

This could include, but not be limited to, the current content of the Department for Transport’s best practice guidance.

We recommend, for example, that so-called “peaked demand” should continue to be taken into account. Regulations might further specify how evidence in respect of each of the statutory factors should be analysed and taken into account. This can be important in ensuring transparency and consistency. We recommend that the regulation-making power should cover the following topics: what might constitute appropriate evidence; methodology; weighting; and benchmarks.”

3.7 The Law Commissions report has not been implemented or considered by the Secretary of State for Transport. Thus the recommendations of the Commission are not in force and we have no indication if or when they will be fully considered by the Government.

3.8 To have a defence to any appeal the Council must have an up to date Survey to rely upon. To remain valid and up to date the Survey should be no more than 3 years old.

4.0 **Specifications**

4.1 The specification of the quote will determine what the scope and scale the survey will cover and will affect the overall costs of the project.

4.2 Appendix A has the original specification for the last Survey completed.

4.3 Appendix B is a draft of the Request for quote. Point 6.2 within that document is what has to be decided by the Committee at this hearing.

5.0 Recommendations

- 5.1 Decide on the nature of the specification to include in the invitation to quote/tender to undertake the unmet demand survey,

6.0 Options

- 6.1 Decide on scope and specification of the survey.

Steven Lonnia
Chief Licensing Officer
Head of Licensing Service
March 2016

Appendix A

Previous Specification details of the 2010 Survey.

A quantitative analysis of

- The current demand for Hackney Carriages in Sheffield, encompassing both latent and on street demand. This analysis should meet the standards set out in legislation (specifically section 16 of the Transport Act 1985), government guidelines and relevant case law as to what comprises unmet demand.
- This should also include analysis of illegal plying for hire (including vehicles licensed by other authorities) and illegal ranking from private hire vehicles.
- The provision of accessible Hackney Carriages in the city.
- The actual and optimum ratio of hackney carriages to private hire vehicles, analysis of what proportion of hackney carriage undertake private hire work.
- The model shift effect of increasing numbers of taxis in the city.
- The likely future demand for taxi services.
- The environmental effect of taxi services in Sheffield.

A qualitative analysis of

- The views of the service users on taxi provision in the city.
- Views of the service users of the quality, cleanliness and reliability of licensed vehicles and drivers.
- The views of the taxi & private hire drivers of the service provision in the city.
- The views of stakeholders and interested groups on taxi provision in the city.
- The anti-social behaviour associated with taxi ranks in Sheffield and the likely effect on levels of anti-social behaviour at ranks of taxi numbers.
- Conclusions on the above analysis.
- The report should set out clear assessment and advice based on these conclusions as to how the provision of taxis in Sheffield should be managed in the future.
- The report should give a clear indication as to the relevance, lawfulness of a limitation policy of Sheffield City Council in respect of the number of Hackney Carriage Licenses.

Appendix B



Request for Quote

Taxi Services Study

V01.02

Issue Date: TBC

Closing Date for Submissions: TBC

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SECTION 1.0: INTRODUCTION AND CONTACT DETAILS

- 1.1 Your organisation, along with others, is invited to submit a quote for **Taxi Services Study**.
- 1.2 The deadline for submission of tenders is **XXX at 12:00 Noon**
- 1.3 The information and instructions provided in this Request for Quote (RFQ) are designed to ensure that all quotes are given equal and fair consideration. If you have any doubts as to what is required, or you have difficulty in providing the information, please contact the person named below
- 1.4 Please check that you have received all of the information listed in the 'Contents'. If any of the information is missing, you should notify the named contact, below, immediately
- 1.5 If you have any queries relating to the RFQ documentation, or would like to request further information, please contact the person named below. You may be asked to submit your query in writing. You must ensure that any queries are made **no later than 7 days** before the deadline for tender submission
- 1.6 Shortlisted bidders will also have the opportunity to attend an interview with the Council. At this meeting you will be able to discuss your approach to the requirements and to clarify any queries on the RFQ documentation or process. The intended date for the meeting is **week commencing XXX**. **Please keep this period free in your diary. We will formalise these details closer to the date.**
- 1.7 Contact for this Tender:

Chris Goodacre
Category Manager – Business & Professional Services
Commercial Services
Sheffield City Council
Level 2, North Wing
Moorfoot Building
Sheffield, S1 4PL

Tel: 0114 2736321
Mob: 07817464769
Email: chris.goodacre@sheffield.gov.uk

SECTION 2.0: PROCUREMENT TIMETABLE

The intended timetable for this procurement is:

| Stage in Procurement Process | Date |
|---------------------------------|------|
| Issue of RFQ | XXX |
| Deadline for submission | XXX |
| Award decision | XXX |
| Anticipated contract start date | XXX |

Please note: The Council reserves the right to cancel the RFQ process at any point. The Council is not liable for any costs resulting from any cancellation of this RFQ process, nor for any other costs incurred by those quoting for this Contract

SECTION 3.0: GENERAL INFORMATION

How you prepare and present your proposal can be a crucial factor in securing a contract. The following points may help you to understand what can turn a tender into a winning tender:

- 3.1. Read **ALL** the Instructions and Information included within the RFQ; preparation is the key, so understand fully what is being asked of you.
- 3.2. Respond in the required format. You must not alter the format of any of the documents. Please adjust as necessary the size of the 'response' box in order to accommodate your response.
- 3.3. Please provide as full a response to the requirements as possible. It is your only chance to give solutions rather than create more questions. Answer the questions but be concise and don't make us search too hard to find answers.
- 3.4. Don't use your proposal as a vehicle to issue glossy but meaningless brochures about your organisation – only include them if they are relevant.
- 3.5. Be upfront – we will be as honest about our requirements as possible. In return we look for honest quotes with no hidden costs or exclusions.
- 3.6. Be aware of the deadline for submission and plan ahead to ensure that you meet it.
- 3.7. Make sure that your quote is completed legibly, in ink or typed, in English, with all prices in Sterling (exclusive of VAT), and is signed and dated.
- 3.8. Please ensure that where information is to be sought from third parties – for example, references, guarantees etc. – such requests can be dealt with speedily and at **no cost** to the Council. You may wish to contact referees for their agreement to provide a reference prior to putting their details in your tender.
- 3.9. You must notify the Council, in writing, of any change in the information submitted in the response

at any time during the tender process.

- 3.10 Late quotes **will be rejected**; it is your responsibility to ensure that your quote is received on time.
- 3.11 Make sure that the information you put into your quote is correct and check that all the information you need to submit is included before you send it in. Information submitted once the deadline has passed, including any amendments to your quote, will not be considered.
- 3.12 The Council will keep all quotes received securely, and open them once the submission deadline has expired. All quotes submitted will be opened at the same time by two authorised officers.
- 3.13 The Council shall not be responsible for any expenses that you may incur in any aspect of the RFQ process

SECTION 4.0: EVALUATION

4.1 The Council will evaluate the RFQs it receives on the basis of **Most Economically Advantageous Tender** (a balance of quality and price). We are not bound to accept the cheapest, or any RFQ, and will award contracts on the basis of the most economically advantageous terms to the Council.

A panel made up of Council officers will carry out the evaluation of RFQ in accordance with the following weighted criteria:

| Criteria | Weighting |
|---|-----------|
| Quality | 60% |
| Broken down into following sub-criteria | |
| <i>Your proposal to deliver the service required</i> | 30% |
| <i>Your skills, experience and capability to deliver the service required</i> | 30% |
| Price | 40% |
| Total (Quality + Price) | 100% |

To be reviewed

Comment [002]: All the sub-criteria have been reviewed after the specification has been agreed at LC.

4.2 An example of an evaluation scoring matrix is included below for **information only**. Note that failure to achieve 50 marks for any one quality criterion may bar a RFQ from further consideration. Additionally, RFQs must achieve an aggregate quality score of 68 marks to be considered

| Score | Description of Response |
|-------|--|
| 0-25 | Unacceptable Response <ul style="list-style-type: none"> No response, or Not compliant with the service specification within the ITT Response not relevant or question not answered Very high risk that the tenderer would have serious difficulties delivering the required contract standards |
| 26-50 | Poor Response <ul style="list-style-type: none"> The response is partially compliant with the service specification within the ITT |

| | |
|--------|--|
| | <ul style="list-style-type: none"> • The response has deficiencies, e.g. supporting evidence is minimal • The response indicates that the tenderer would meet only some of the requirements of the contract some of the time • Considerable work would be needed with the tenderer to minimise risk of service delivery failure. <p>High risk that contractual standards are unlikely to be met</p> |
| 51-67 | <p>Acceptable Response</p> <ul style="list-style-type: none"> • The response is compliant with the service specification within the ITT • Some shortfalls in meeting service requirements in key areas but any concerns are of a minor nature • Further evidence may be required to supports compliance elements <p>Some risk that contractual standards are unlikely to be met</p> |
| 68-84 | <p>Good Response</p> <ul style="list-style-type: none"> • The response is compliant with the service specification within the ITT • Good supporting evidence which is relevant, credible and supports claims • A small amount of work may be required in non-key areas with the tenderer to minimise any risk of service delivery failure <p>Indicates that the tendered has understood the specification and can apply and deliver the contractual standards</p> |
| 85-100 | <p>Excellent Response</p> <ul style="list-style-type: none"> • The response is compliant with the service specification within the ITT • Offers relevant detailed evidence to support their claims • Demonstrates a wholly comprehensive understanding of the service requirements. <p>The proposed approach will result in the contract standard being exceeded.</p> |

- 4.3 The Price element of the award criteria will be evaluated using the following methodology:
- The Lowest Price (excluding 'abnormally low bids') will attract full marks; the other bids will then be ranked comparatively to that lowest bid.
 - The Tenderer that submits the Lowest Price will be awarded 100% of the available marks. all other Tender submissions will receive 100% of the available marks less the percentage by which their Tender is more expensive than the lowest – for example, if the lowest bid is £100,000 and the next lowest bid is £108,000 that bid would score 92% of the available marks.
- 4.4 The Council reserves the right to reject any RFQ that fails to comply fully with the requirement of the selection process outlined above, or that is guilty of a serious misrepresentation in supplying any information requested in this document
- 4.5 The Council reserves the right to require some or all applicants to clarify the answers contained in their submissions, in writing, if required to adequately evaluate the submission. It is important that you submit your best and final offer and do not rely on post-tender clarification to revise your RFQ
- 4.6 We may enter into post-tender negotiation, but not on price alone, nor will we allow any post-tender negotiation to distort competition.

SECTION 5.0: BACKGROUND INFORMATION

5.1 City Overview

Sheffield is one of England's largest cities with a population of approx. 563,700. Sheffield has grown from largely industrial roots to encompass a wide economic base. The city has two universities, with over 50,000 students; is considered to be the greenest city in England; and is the only city to include part of a national park, The Peak District, within its city borders

The Council employs 18,000 people across five portfolios: Resources, Children Young People & Families (CYPF), Communities, Policy Performance & Communications (PPC) and Place.

For further information about the Council, please visit www.sheffield.gov.uk

5.2 Sheffield City Council Vision, Ambitions and Corporate Plan

We are ambitious for Sheffield, for the Council and for all our citizens. Our vision is:

- To be a modern, vibrant, green city where people choose to live, invest and work
- To be a Council that gets things right first time for our customers
- To be a city where everyone can achieve their full potential

As an organization, we will focus on four priorities:

- Standing up for Sheffield
- Supporting and Protecting Communities
- Focusing on Jobs
- Business Friendly

'Standing up for Sheffield: Corporate Plan 2011-14' is structured around the following 8 outcomes:

- A Strong and Competitive Economy
 - Better Health and Wellbeing
 - Successful Children and Young People
 - Tackling Poverty and Increasing Social Justice
 - A Great Place to Live
 - Safe and Secure Communities
 - An Environmentally Responsible City
 - Vibrant City
- Further details on the Corporate Plan are available on <https://www.sheffield.gov.uk/your-city-council/policy--performance/what-we-want-to-achieve/corporate-plan.html>

5.3 Employment and Skills Planning

Sheffield City Council expects all successful providers to work with us to provide information on employment and skills planning. This is a priority for the Council.

You are not required to submit this information as part of your tender response but we will from time to time ask for answers to the points below as part of the on-going contract management.

- The Purchaser can provide advice about access to Government grants, local training provision and Sheffield support services which could service any employment and skills demand generated by this Contract. The Purchaser is keen to promote and assist in the generation and delivery of innovative ideas to assist the employability of its residents.
- The Purchaser encourages Tenderers to give consideration to such innovation wherever appropriate in respect of this development.
- Please state if you will be in a position to recruit Apprentices and Trainees in respect of the delivery of this Contract. If so, please answer the following questions in relation to this

provision:

1. How many Apprentices/Trainees will you look to recruit over the Contract Period?
2. What arrangements will you make to recruit apprentices and other trainees from agencies and training providers?
3. What arrangements will you make to accommodate opportunities for progression into employment?
4. What are the titles of jobs you will make available and what are the key requirements?
5. What will the application process be and how will you make it accessible to previously unemployed people?
6. Are there any particular groups under-represented in the labour market that you could market vacancies to and how? e.g. lone parents.
7. What arrangements will you make to provide mentoring and support for trainees and work placements to ensure maximum retention and achievement of industry accreditation?

In respect of your Tender and where appropriate please provide any additional information on how you would approach the implementation of the jobs and skills requirements identified below and or including any alternative innovative ideas.

- Work Experience
- School Workshops
- Internship/Graduate Placements
- Recruitment/Progression into employment opportunities
- Apprenticeships
- Other Trainees/New Entrants

Service Providers able to accommodate any of these employment and skills initiative under Contract will be required to complete quarterly monitoring information in respect of numbers and outcomes. The Purchaser shall make available a standard monitoring form for this purpose.

SECTION 6.0: SPECIFICATION

6.1 Background

Sheffield City Council resolved to impose a limit on the number of hackney carriages it licenses within the City, at its meeting on 7th January 2008. This limit was set at 830 licenses.

The city has a population of circa 563,700, this equates to one Hackney Carriage to 679 people. The Sheffield City Council area encompasses the whole metropolitan area of Sheffield, the town of Stocksbridge and a large rural area to the west of the city including a number of small villages.

The study must not concentrate exclusively on the city centre but should look at taxi provision across the city as a whole. A list of the ranks currently operating is provided in Appendix XX

It is anticipated that the contract will be awarded for a period of six months

6.2 Requirements

Further information needed here on the specific requirements of the survey

6.3 Outputs from the study

Outputs from the study are expected to be (but not limited to):

- Attendance at inception meeting and mid-term and final presentations
- Draft Report
- Final report
- Presentation of the report if considered necessary by either Council.

Your submission should include a project implementation plan and a timetable for completion of the study. The Project timetable should build in at least 3 interim meetings with the project steering group to discuss emerging findings. These meetings would inform the future direction of the study.

We would expect the fieldwork to take place throughout the term of the contract to allow the assessment of taxi provision at all times during the period

The following dates are indicative deadlines. Please provide in your response how you propose to meet these deadlines.

- Inception meeting to be w/c 25th July 2016
- Contract to start 1st August 2016
- Draft Report XXXX
- Final report by January 2017

The contract will be managed by XXX in Licensing Service, Business Strategy & Regulation, who will be responsible for overseeing the work of the supplier and managing performance.

SECTION 7.0: DOCUMENTS TO BE COMPLETED AND RETURNED TO SHEFFIELD CITY COUNCIL

You must submit all the documentation listed below, duly completed, as your RFQ submission; use the checklist, below, to make sure you have included all the required information

Pricing Schedule (Section 7.1)

Method Statement Section 7.2)

Supporting Information (Section 7.3)

References (Section 7.4)

Payment Details (Section 7.5)

Declaration (Section 7.6)

SECTION 7.1: PRICING SCHEDULE

Please complete the table below with your prices for the items outlined above. The price should be inclusive of all travel, subsistence and other expenses used in connection with the contract

| Expenditure Heading | No. of Days | Day Rate (excluding VAT) | |
|--|-------------|-----------------------------|---|
| To be decided after the specification (Section 6) is completed | | | [REDACTED] : We normal ask for the Day rate value but we could equally request a total price value |

Your day rates for any additional work agreed between us and your company

| Staff Member (grade) | Day Rate (excluding VAT) | |
|----------------------|-----------------------------|---|
| | | [REDACTED] : We ask for this information to get a better understanding of the cost structure of an organisation. |

SECTION 7.2: METHOD STATEMENT

Responses to the questions in this section will be used to evaluate the quality element of the tender which will account for 50% of the overall evaluation.

Responses to the questions will be scored in accordance with the methodology and criteria described above. We welcome the use of case studies to illustrate your responses to the questions below.

Please ensure that a response is provided to all questions.

7.2.1 *Your proposal to deliver the service required*

7.2.2 *Your skills, experience and capability to deliver the service required in the agreed timescale*

SECTION 7.3: SUPPORTING INFORMATION

Company details:

Company Name:

Address

Registered Office

Reg No.

Website:

Details of main contact for this contract

Name:

Position:

Telephone No.

Email address:

Legal Status of your organisation

Details of any of the directors, partners or associates of your organisation that have been subject to bankruptcy, insolvency or receivership proceedings

Details of any of the directors, partners or associates of your organisation who are or have been employed by Sheffield City Council at a senior level or have been Sheffield City Councillors, any time in the last five years

Please provide copies of your insurance certificates(s) currently in force in respect of the following:

| | |
|-------------------------|------------------------|
| Public Liability: | (min requirement £5m) |
| Employer's Liability: | (min requirement £10m) |
| Professional Indemnity: | (min requirement £2m) |

SECTION 7.4: REFERENCES

Please provide details of relevant contracts awarded to, or work undertaken by, your organisation during the last three years, highlighting any relevant experience in relation to this contract. We may want to take up references using the information you provide. Please indicate if references can be sought, and if so, from whom.

| Name & address of organisation & dept. | Contract Name | Contract Value | Contract date(s) | Type of work | Name & contact details of referee |
|---|----------------------|-----------------------|-------------------------|---------------------|--|
|---|----------------------|-----------------------|-------------------------|---------------------|--|

SECTION 7.5: PAYMENT DETAILS

The Council's standard payment terms are 30 days from receipt of invoice.

Payment is by BACS.

It is the policy of the Council to make payments to all suppliers direct into their bank account using the Bankers Automated Clearing Systems (BACS). Please complete your bank account details below.

Bank Name:

Bank Address:

Postcode:

Account Name:

Sort Code:

Account No:

No invoices will be accepted from any Contractor without an official written order from the Council and the order number in full being quoted on all invoices.

IMPORTANT

All invoices for Sheffield City Council should be addressed to:
Sheffield City Council (Creditors)
PO Box 1310
Sheffield S1 1UY

SECTION 7.6: DECLARATION

I declare that to the best of my knowledge the answers submitted in this RFQ are correct. I understand that the information will be used in the process to assess my organisation's suitability to be awarded a contract.

I understand that the Contracting Authority may reject this RFQ if there is a failure to answer all relevant questions fully or if I provide false/misleading information.

I warrant that I have all the requisite corporate authority to sign this document.

| Form Completed By | |
|--|--|
| Name | |
| Position (Job Title) | |
| Organisation | |
| Date | |
| Telephone number | |
| Signature: (for electronic submissions, please type name or provide an e-signature) | |

SECTION 8.0: CONDITIONS OF CONTRACT

1 DEFINITIONS

1.1 In these Terms and Conditions the following words shall mean:

| | |
|--|---|
| “Additional Service Day” | means a Service Day spent on additional Services ordered under Clause 3.2 |
| “Agreement” | means the contract and any and all Schedules to the Agreement as they may be amended, modified or supplemented from time to time in accordance with these provisions |
| “Commencement Date” | means the agreed date the contract will start |
| “Confidential Information” | means all unpatented designs, drawings, data, specifications, processes, procedures and all other technical business and similar information relating to the Services. This includes all readable or computer or other machine readable data, logic, logic diagrams, flow charts, orthographic representations, coding sheets, coding, source or object codes, listings, test data, test routines, diagnostic programs or other material relating to or comprising software |
| “Contract Manager” | means Council officer responsible for managing the contract or his/her successor |
| “Copyright Works” | means any items of Confidential Information in which copyright or design right subsists |
| “DPA” | means the Data Protection Act 1998 (as the same may be amended from time to time) |
| “Documents” | means all records, reports, documents, paper and other materials whatsoever originated by or upon behalf of the Consultant pursuant to the Agreement |
| “Environmental Information Regulations” | means the Environmental Information Regulations 2004 (as the same may be amended from time to time) |
| “FOIA” | means the Freedom of Information Act 2000 (as the same may be amended from time to time) |
| “Force Majeure Event” | means the occurrence after the Commencement Date of: (a) war, civil war, armed conflict, civil commotion, or terrorism; or (b) nuclear, chemical or biological contamination unless the source or cause of the contamination is as a result of any act by the |

[Contractor] or its sub-contractors or any breach by the [Contractor] of the terms of the Agreement; or

(c) pressure waves caused by devices travelling at supersonic speeds, which directly causes either party (the Affected Party) to be unable to comply with all or a material part of its obligations under the Agreement;

| | |
|------------------------------|--|
| “Personal Data” | means personal data within the meaning given to the phrase personal data by DPA which is acquired by or communicated to the Consultant in connection with the Services |
| “Responsible Officer” | means the appropriate Council officer or any duly authorised person to act on their behalf. |
| “Services” | means the Services provided by the Contractor as set out in Schedule 1 of an agreed contract. |
| “Service Day” | means the provision of the Services by any one of the Consultant’s personnel (which shall include travelling to and from the Site) to the Client from 7.30 am to 7.30 pm on any weekday |
| “Site” | means the various premises of the Client within the District of Sheffield. |
| “Valid Invoice” | means an invoice from the Contractor delivered to Sheffield C.C. (Creditors), PO Box 1310, Sheffield, S1 1UY. The delivered invoice becomes a Valid Invoice upon satisfactory completion of the Services and then SCC registering the invoice. |

- 1.2 The headings in the Agreement are inserted only for convenience. They shall not affect its construction.
- 1.3 Where appropriate, words denoting a singular number only shall include the plural (and vice versa).
- 1.4 Reference to any statute or statutory provision includes a reference to the statute of statutory provisions as from time to time amended, extended or re-enacted.

2 DURATION

- 2.1 The Consultant shall begin to provide the Services on the Commencement Date, and shall continue to provide the Services until the termination of the Agreement in accordance with the provisions of clause 6. This Contract will last in the first stage for a maximum of the period defined in the Contract over the stated period from the Commencement Date.

3 POSITIVE OBLIGATIONS OF THE CONSULTANT

- 3.1 The Consultant shall give reasonable priority to the provision of the Services over other business activities which they may undertake.

- 3.2 The Consultant shall provide the Services Days as set out in Schedule 1 of the Agreement for the proper performance of the Services if so required in writing by the Client; the Consultant shall provide additional Services to be paid for by the Client on the basis of Additional Service Days but otherwise to be treated for all purposes under the Agreement as forming part of the Services.
- 3.3 The Consultant shall provide the Services at an agreed centrally located Sheffield site and will visit other centrally located sites within Sheffield.
- 3.4 The Consultant shall keep detailed records of all acts and things done by it in relation to the provision of the Services and at the Client's request shall make them available for inspection and/or provide copies to the Client.
- 3.5 The Consultant shall at all times during the period of the Agreement:
- 3.5.1 faithfully and diligently perform those duties and exercise such powers consistent with them which are from time to time necessary in connection with the provision of the Services;
 - 3.5.2 obey all lawful and reasonable directions of the Client; and
 - 3.5.3 use its reasonable endeavours to promote the interests of the Client.
- 3.6 In the event of any uncertainty on the part of the Consultant as to the instructions of the Client, the Consultant shall apply to the Contract Manager in writing for clarification of the Client's instructions.
- 3.7 The Consultant shall hold all documents and information (in whatever medium) provided to the Consultant by the Client or by any third party or created by the Consultant in connection with the Services to the order of the Client and shall (upon the request in writing of the Client) deliver the same to the Client, notwithstanding any lien or other right of retention which might (but for this clause) be asserted by the Consultant.
- 3.8 The Consultant shall be responsible for making appropriate PAYE deductions for tax and National Insurance contributions from the remuneration which it pays to its personnel. The Consultant agrees to indemnify the Client in respect of any claims or demands which may be made by the relevant authorities against the Client in respect of income tax relating to the provision of the Services by the Consultant.
- 3.9 Intellectual property rights/confidentiality
- 3.9.1 The Consultant agrees to assign to the Client all right, title and interest in and to any Confidential Information made, originated or developed during the course of or otherwise related to the Services, together with any other intellectual property rights arising out of the provision of the Services.
 - 3.9.2 The Consultant warrants and represents that any Confidential Information, Copyright Works or Documents conceived, originated, made or developed by its personnel will not infringe any intellectual property rights of which a third party is the proprietor including (in particular but without limitation) any patents, copyrights, registered designs or rights of confidence.

- 3.9.3 The Consultant agrees to keep and to ensure that its personnel shall keep the Confidential Information, the Documents and all other matters arising or coming to its or their attention in connection with the provision of the Services secret and confidential and not at any time for any reason whatsoever to disclose them or permit them to be disclosed to any third party (except as permitted hereunder to enable the Consultant to carry out its duties and obligations). The Consultant shall procure that its personnel and all others of its employees having access to any of the Confidential Information, the Documents or such matters shall be subject to the same obligations as the Consultant and shall take all reasonable steps to ensure that its employees are made aware of and perform such obligations.
- 3.9.4 The Consultant agrees to treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or persons or otherwise make use of or permit to be made use of any information relating to the Client's technology, technical processes, business affairs, finances, suppliers or customers of the Client, or members of the public where knowledge or details of the information was received during the period of this Agreement. Unless agreed in advance by the Client.
- 3.9.5 The obligations of confidence referred to in this clause 3.9 shall not apply to any Confidential Information, Documents or other information which:
- is in the possession of and is at the free disposal of the Consultant or is published or is otherwise in the public domain prior to the receipt of such Confidential Information or other information by the Consultant;
 - is or becomes publicly available on a non-confidential basis through no fault of the Consultant;
 - is received in good faith by the Consultant from a third party who (on reasonable enquiry by the Consultant) claims to have no obligations of confidence to the Client in respect of it and who imposes no obligations of confidence upon the Consultant.
- 3.9.6 The obligations of the parties under this clause 3.9 shall survive the expiry or the termination of the Agreement for whatever reason.

3.10 Liability

- 3.10.1 The Client will be relying upon the Consultant's skill, expertise and experience and also upon the accuracy of all representations or statements made and the advice given by the Consultant in connection with the provision of the Services and the accuracy of any Confidential Information, Copyright Works or Documents conceived, originated made or developed by the Consultant in connection with the provision of the Services. The Consultant hereby agrees to indemnify the Client against all loss, damage, costs, legal costs and professional and other expenses of any nature whatsoever incurred or suffered by the Client, whether direct or consequential (including but without limitation any economic loss), as a result of such reliance.
- 3.10.2 The Consultant accepts:
- liability for death or personal injury howsoever resulting from the Consultant's negligence; and

- liability for damage to property however resulting from the Consultant's negligence where such negligence has arisen or arises in connection with the provision of the Services or in connection with any other activities undertaken by the Consultant pursuant to or for any purpose related to the Agreement. The Consultant hereby agrees to indemnify the Client against all and any liability, loss, damage, costs and expense of whatsoever nature incurred or suffered by the Client or by any third party whether arising from any disputes, contractual, tortious or other claims or proceedings which seek to recover loss and damage incurred by reason of any such death, personal injury or damage to property.
- 3.10.3 Any condition or warranty which might otherwise be implied or incorporated within the Agreement by reason of statute or common law or otherwise is hereby expressly excluded.
- 3.10.4 The Consultant expressly acknowledges that the provisions of this clause 3.10 satisfy the requirements of reasonableness specified in the Unfair Contract Terms Act 1977 and it shall be stopped from claiming the contrary at any future date in the event of any dispute with the Client concerning the Consultancy's liability hereunder.
- 3.10.5 The Consultant undertakes and agrees to take out adequate insurance cover with an insurance office of repute to cover the liability accepted by it in this clause 3.10 and agrees to produce at the Client's request a copy of the insurance policy or policies and relevant renewal receipts for inspection by the Client.
- 3.10.6 The provisions of this clause 3.10 shall survive the termination of the Agreement for any reason.
- 3.11 If the Consultant shall consider it necessary to use the services of a third party whether for information or for the supply of goods or services the Consultant shall (except in matters of a minor and obvious nature) obtain the prior consent of the Client before using such services.
- 3.13 The Consultant shall indemnify the Client against all liability loss damage and expense of whatsoever nature incurred or suffered by the Client or any third party as a result of the breach of any obligation in clause 3.
- 3.14 Data Protection and Freedom of Information
- Notwithstanding any other provision of the Agreement:
- 3.14.1 in relation to all Personal Data, the Consultant shall at all times comply with the Data Protection Act 1998 (DPA) as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the Services;
- 3.14.2 the Consultant and any sub-contractor shall only undertake processing of Personal Data reasonably required in connection with the Services and shall not transfer any Personal Data to any country or territory outside the European Economic Area;
- 3.14.3 the Consultant shall bring into effect and maintain all technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to taking reasonable steps to ensure the reliability of staff having access to the Personal Data;

- 3.14.4 the Client may, at reasonable intervals, request a written description of the technical and organisational methods employed by the Consultant and the sub-contractor referred to in Clause 3.14.3 and within 30 days (or such other period as Sheffield City Council may specify) of such a request, the Consultant shall supply written particulars of all such measures detailed to a reasonable level such that the Client can determine whether or not, in connection with the Personal Data, it is compliant with the DPA;
- 3.14.5 the Consultant acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and that any schedules provided by the Consultant outlining Confidential Information, commercially sensitive information or trade secrets are indicative only and that the Client may be obliged under the FOIA or the Environmental Information Regulations to disclose the information outlined in the those schedules:
- without consulting with the Consultant, or
 - following consultation with the Consultant and having taken their views into account;
- 3.14.6 the Consultant shall use all reasonable efforts to assist the Client in its compliance with the obligations imposed on the Client by the FOIA and the Environmental Information Regulations, to the extent that the obligations relate to the information held by the Consultant on behalf of the Client or otherwise in connection with the Agreement or the Services provided hereunder;
- 3.14.7 the Consultant shall provide the Client with a copy of all information, including Confidential Information, held by the Consultant on behalf of the Client, or otherwise in connection with the Agreement or the Services provided hereunder, in the form that the Client requires within 5 days (or such other period as Sheffield City Council may specify) of the Client's request, to enable the Client to respond to a request for information within the time for compliance set out in the FOIA or the Environmental Information Regulations;
- 3.14.8 the Consultant shall ensure that information held on behalf of the Client or otherwise in connection with the Agreement or the Services provided hereunder is retained for disclosure and shall permit the Client to inspect such information from time to time;
- 3.14.9 in complying with the obligations of clause 3.14, the parties agree that:
- they shall at all times act in good faith and the Consultant shall do nothing to prevent the Client from complying with its obligations under the DPA, FOIA and the Environmental Information Regulations; and
 - they will not disclose to any third party information that is exempt under the DPA, FOIA and the Environmental Information Regulations; and
- 3.14.10 the Consultant shall indemnify and keep indemnified the Client against all losses, claims, damages, liabilities, costs and expense (including reasonable legal costs) incurred by it in respect of any breach of the Clause 3.15 by the Consultant.

4 PAYMENT

- 4.1 In consideration of the provision of the Services, the Client shall pay to the Consultant a daily rate as agreed in the Contract. This daily rate is exclusive of VAT but is inclusive of all travel, subsistence and other expenses and of all materials and equipment used by the Consultant in connection with the Services. Travel is defined as the journey to and from the Consultant's home base to the Client site in Sheffield. Should the Consultant be asked to travel outside of the above defined journey and/or make overnight stays then additional travel and subsistence payments will be agreed between the Client and the Consultant.
- 4.2 All payments to the Consultant shall be made against the Consultant's invoices which shall be presented monthly in arrears. The Client agrees to pay the invoices within 30 days of the presentation of a Valid Invoice.
- 4.3 In the event that the Consultant provides additional Services under clause 3.2, the Client shall pay the Consultant for such additional Services at the same rates as set out in the Consultant's Proposal contained in Schedule 1 to the Agreement for the provision of the Services. Such rates exclude and include the matters referred to in clause 4.1.
- 4.4 Payment by the Client shall be without prejudice to any claims or rights which the Client may have against the Consultant and shall not constitute any admission by the Client as to the performance by the Consultant of its obligations hereunder. Prior to making any such payments, the Client shall be entitled to make deductions or deferments in respect of any disputes or claims whatsoever with or against the Consultant.
- 4.5 The Consultant shall submit the invoice to the Contract Manager and shall submit with the invoices a report:
- 4.5.1 detailing the time spent on the services comprised in the Services included in the invoice;
 - 4.5.2 where the invoice relates to or includes additional Services under clause 4.3, a full breakdown of the time spent and the nature of the work done.
 - 4.5.3 including any such other information as the Contract Manager may in writing so reasonably require.

5 OBLIGATIONS OF THE CLIENT

- 5.1 Throughout the period of the Agreement, the Client shall afford the Consultant such access to sites and the Client's information records and other materials relevant to the Services as the Consultant may require to provide the Services (provided always that the Client shall be obliged to afford such access only during its normal business hours). Further the Client shall:
- 5.1.1 advise the Consultant of the rules and regulations which are then in force;
 - 5.1.2 make available such working space and facilities at the Site as the Consultant may reasonably require as defined in Schedule 1 of the Agreement;
 - 5.1.3 make available appropriate personnel to liaise with the Consultant as set out in Schedule 1 of the Agreement;
 - 5.1.4 secure and otherwise keep safe all and any property of the Consultant.

6 REJECTION AND TERMINATION

- 6.1 The Contract may be terminated by either party giving to the other party the notice period stipulated in the Contract, notice in writing.
- 6.2 In the event of any breach of the Contract by either party, the other party may serve a notice on the party in breach requiring the breach to be remedied within a period specified in the notice which shall be reasonable in all the circumstances. If the breach has not been remedied by the expiry of the specified period, the party not in breach may terminate the Contract with immediate effect by notice in writing.
- 6.3 In the event of a material breach of the Contract by either party, the other party may terminate the Contract with immediate effect by notice in writing.
- 6.4 If you become insolvent or bankrupt or (being a company) make an arrangement with your creditors or have an administrative receiver or administrator appointed or commence to be wound up (other than for the purpose of amalgamation or reconstruction) we may without replacing or reducing any other of our rights terminate the Contract with immediate effect by written notice.
- 6.5 Nothing in this Clause 6 shall affect the coming into, or continuance in force of any provision of the Contract which is expressly or by implication intended to come into force or continue in force upon termination of the Contract.

7 ASSIGNMENT

- 7.1 Neither party shall assign, transfer, sub-contract or in any other manner make over to any third party the benefit and/or burden of the Agreement without the prior written consent of the other.

8 GOVERNING LAW AND JURISDICTION

- 8.1 The validity construction and performance of the Agreement shall be governed by English law.
- 8.2 All disputes, claims or proceedings between the parties relating to the validity construction or performance of the Agreement shall be subject to the jurisdiction of the English Courts to which the parties hereto irrevocably submit.

9 ILLEGALITY

- 9.1 If any provision or term of the Agreement or any part thereof shall become or be declared illegal, invalid or unenforceable for any reason whatsoever (including but without limitation by reason of the provisions of any legislation or other provisions having the force of law or by reason of any decision of any Court or other body or authority having jurisdiction over the parties to the Agreement including the EC Commission and the European Court of Justice) such provision or term shall be divisible from the Agreement and shall be deemed to be deleted from the Agreement. If the words omitted substantially affect or alter the commercial basis of the Agreement, the parties shall negotiate in good faith to amend and modify the provisions and terms of the Agreement as may be necessary or desirable in the circumstances.

10 ENTIRE AGREEMENT / AMENDMENT / WAIVER / MEDIA / COSTS

- 10.1 The Agreement embodies and sets forth the entire agreement and understanding of the parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of the Agreement. Neither party shall be entitled to rely on any agreement, understanding or arrangement which is not expressly set forth in the Agreement.

- 10.2 The Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the parties.
- 10.3 No failure or delay on the part of either party hereto to exercise any right or remedy under the Agreement shall be construed or operated as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. The rights and remedies provided in the Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 10.4 The text of any press release or other communication to be published by or in the media concerning the subject matter of the Agreement shall require the approval of both parties.
- 10.5 Each of the parties hereto shall be responsible for its respective legal and other costs incurred in relation to the preparation of the Agreement.

11 NOTICE

- 11.1 Any notice or other document to be given under the Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by:
- 11.1.1 first class post or express or air mail or other fast postal services; or
 - 11.1.2 registered post; or
 - 11.1.3 telex, facsimile or other electronic media to a party at the address or relevant telecommunications number for such party or such other address as the party may from time to time designate by written notice to the other.
- 11.2 All such notices and documents shall be in the English language. Any notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch of the notice or other document by post or, where the notice or other document is sent by hand or is given by telex, facsimile or other electronic media, simultaneously with the delivery or transmission. To prove the giving of a notice or other document it shall be sufficient to show that it was despatched.

12 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 12.1 A person who is not a party to this Agreement shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

13 FORCE MAJEURE

- 13.1 Relief from Obligations
Neither party shall be entitled to bring a claim for a breach of obligations under the Agreement by the other party or incur any liability to the other party for any losses or damages incurred by that other party to the extent that a Force Majeure Event occurs and it is prevented from carrying out obligations by that Force Majeure Event.
- 13.2 Notification
On the occurrence of a Force Majeure Event, the Affected Party shall notify the other party as soon as practicable. The notification shall include details of the Force Majeure Event, including evidence of its effect on the obligations of the Affected Party and any action proposed to mitigate its effect.

13.3 Consultation

As soon as practicable following such notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and facilitate the continued performance of the Agreement.

13.4 Failure to agree

If no such terms are agreed on or before the date falling 20 days after the date of the commencement of the Force Majeure Event and such Force Majeure Event is continuing or its consequence remains such that the Affected Party is unable to comply with its obligations under the Agreement for a period of more than 30 days, then either party may terminate the Agreement by giving 10 days' written notice to the other party.

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