



# Terms and Conditions

Last updated	January 2021	by	Joel Logue
Reviewed by	Nick Newton – Company Director		
Approved by	Joel Logue – Company Director		

## 1 DEFINITIONS

In these Conditions, the following expressions shall have the following meanings:

“**Best Industry Practice**” means the exercise of that degree of skill, diligence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in the provision of services similar to the Services under the same or similar circumstances;

“**Best Value Duty**” means the duty imposed by Part 1 of the Local Government Act 1999 requiring Oldham Council to secure continuous improvement in the exercise of all functions, undertaken by Oldham Council, having regard to a combination of economy, efficiency and effectiveness;

“**CEDR**” means the Centre for Effective Dispute Resolution;

“**Charges**” means the charge, charges or rate(s) of charge that T&RS shall pay the Contractor for the Services as specified in the Contract;

“**Completion Notice**” means a notice served by the Contractor to T&RS, upon completion of Works, in accordance with Clause 21, to notify T&RS of the date of completion of Works;

“**Conditions**” means these general contractual provisions;

“**Confidential Information**” means any non-public T&RS Information or Contractor Information which is commercially sensitive, a trade secret or confidential and is subject to a legally enforceable duty of confidence and which is exempt from disclosure by virtue of Section 41 of FOIA;

“**Contract**” means, in descending order of precedence, these Conditions, the Purchase Order or alternative execution document (if the Parties agree to use an alternative execution document to form a legally binding contract) and, where applicable, any other document referenced as forming part of the contract on the Purchase Order (or alternative execution document) and any other document that T&RS and the Contractor agree in writing shall form part of the contract;

“**Contractor**” means the company, corporation, person, partnership or organisation, identified as such in the Contract, that is to supply the Services;

“**Contractor Equipment**” means an item(s) of equipment, materials, Software, Developed Software, consumables or plant or other similar object to be supplied or delivered by the Contractor and placed on a Site

for the provision of the Services;

**“Contractor Information”** means all proprietary records, documentation, software, technical information, business information or other information disclosed by the Contractor to T&RS in relation to or created pursuant to the Contract;

**“Contractor Sub-processor”** means any Sub-processor other than the Contractor appointed by the Contractor to process Personal Data on behalf of T&RS;

**“Data Compromise Event”** means any event that results, or may result, in unauthorised access to Personal Data held by the Contractor, and/or actual or potential loss and/or destruction and or alteration of Personal Data in breach of this Contract, including any Personal Data Breach;

**“Data Controller”** shall have the meaning given in the GDPR;

**“Data Processor”** shall have the meaning given in the GDPR;

**“Data Protection Act” (“DPA”)** means legislation in force in the United Kingdom entitled Data Protection Act;

**“Data Protection Impact Assessment”** means an assessment of the impact of the envisaged processing on the protection of Personal Data;

**“Data Protection Legislation”** means legislation relating to data protection comprising (i) the GDPR, the LED and any applicable national implementing laws as amended from time to time (ii) the DPA to the extent that it relates to processing of personal data and privacy; (iii) all applicable laws about the processing of personal data and privacy;

**“Data Protection Officer”** shall have the meaning detailed in Article 37 of the GDPR;

**“Data Subject”** shall have the meaning given in the GDPR;

**“Data Subject Access Request”** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;

**“Defect(s)”** means any failure(s) of the Services to conform to the Specification and/or operate and function in accordance with the Specification or Service Level(s) or failure of the Contractor to provide the Services;

**“Developed Software”** means Software which the Contractor is to develop for T&RS which shall be the property of T&RS and the Intellectual Property Rights shall be owned by T&RS;

**“Developed Software Documentation”** means operating manuals, user instructions, technical literature and all other related materials in eye-readable form to be supplied by the Contractor to T&RS, that are required in order to enable the use, operation and application of the Developed Software by T&RS;

**“Documentation”** means operating manuals, user instructions, technical literature, drawings and all other related materials in eye-readable form to be supplied by the Contractor to T&RS, that are required in order to enable the use, operation and application of the Services by T&RS;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under such Act together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

**“Force Majeure”** means fire, flood, lightning, severe weather, explosion, sabotage, accident, embargo, riot, civil commotion, war, industrial dispute (except where the dispute involves Contractor’s personnel), government regulation or any disaster that affects either Party’s, or any of its sub-contractors’ or suppliers’, ability to fulfil its

responsibilities under the Contract;

“**GDPR**” means the General Data Protection Regulation (*Regulation (EU) 2016/679*);

“**Individual Rights**” means rights of a Data Subject granted pursuant to the Data Protection Legislation in relation to rights of access, objection, erasure, portability, restriction of processing, to be informed, request rectification and where profiling and automated decisions are used;

“**Information**” means Contractor Information and T&RS Information;

“**Intellectual Property Rights**” means copyrights (including rights in computer software), trademarks, trade names, business names (including internet domain names), service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, database rights and all other intellectual property or similar proprietary rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created;

“**LED**” means Law Enforcement Directive (*Directive (EU) 2016/680*);

“**Licence**” means a licence granted by the Contractor to T&RS pursuant to Clause 6.2 to Use The Software;

“**Living Wage Commission**” means the organisation comprising representatives from employers, trade unions, civil society and independent experts, that support and promote the paying of wage rates that meet the real cost of essential goods and services, and calculates such wage rates, which they refer to as ‘Living Wage rates’ (currently one rate for London and another for the rest of the UK for people of aged 18 and over);

“**Living Wage Foundation**” means the charity that supports and promotes the paying of wage rates that meet the real cost of essential goods and services (the “Living Wage rates” as calculated by the Living Wage Commission) including publishing such Living Wage rates;

“**Media**” means the media on which Software or Developed Software is recorded or printed;

“**Mediator**” means an independent third party appointed in accordance with Clause 17.3 to facilitate negotiations between the Parties in relation to a dispute and assist the Parties to endeavour to settle such dispute;

“**Oldham Council**” means Oldham Metropolitan Borough Council whose principal place of business is at The Civic Centre, West Street, Oldham, OL1 1UL for whose benefit T&RS may be procuring Services;

“**Party**” means T&RS or the Contractor and **Parties** means both T&RS and the Contractor;

“**Personal Data**” shall have the meaning given in the GDPR;

“**Personal Data Breach**” shall have the meaning given in the GDPR;

“**Protective Measures**” means appropriate technical and organisational measures which may include: pseudonymisation and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident and regularly assessing and evaluating the effectiveness of the measures;

“**Purchase Order**” means T&RS’s completed standard order form of that name specifying the Services to be provided by the Contractor;

“**Real Living Wage**” means the “real Living Wage” hourly rates published by the Living Wage Foundation applicable to the UK in respect of people aged eighteen (18) years of age or over;

“**Rejection Notice**” means a notice served by T&RS, in accordance with Clause 21, to notify the Contractor of any defects that require rectification before Works can be treated as being complete;

“**Request For Information**” means a request for information as described in Section 8 of FOIA;

“**Required By Date(s)**” means any date(s) that T&RS requires the Services to be supplied on or by as specified in the Contract;

“**Services**” means services, including the provision of labour, advice, care and support services for people, installation, implementation, testing, management services (including project and programme management and consultancy services), maintenance, repair and support services and the undertaking of Works, to be supplied by the Contractor and procured by T&RS and includes the provision of any Contractor Equipment and/or Documentation and/or Developed Software Documentation;

“**Service Level(s)**” means any standard for or measure of the performance or supply of the Services, including the time of provision or maintenance and repair of the Services or provision of support services and qualitative measures of the Services (including reliability, speed or availability), including measures of time, amounts or in percentage terms, that the Services shall comply with as specified in the Contract;

“**Site(s)**” means land or building(s) or part(s) thereof where Services are to be supplied;

“**Software**” means item(s) which are computer systems, software applications or programs incorporated in the Services to enable the use, operation or application of the Services, which the Contractor has developed and owns or has licensed from third parties;

“**Specification(s)**” means the description and specification (including drawings) of the Services in the Contract including quantities, their facilities, functions, deliverables, Service Levels, quality standards, operational, regulatory and legal requirements, performance levels and the descriptions and specifications in Documentation and/or Developed Software Documentation;

“**Sub-processor**” means any third party appointed by T&RS or the Contractor to process Personal Data in relation to this Contract;

“**T&RS**” means The T&RS Consultancy Limited whose registered address is Henshaw House, Cheapside, Oldham, OL1 1NY and whose company number is 5916336;

“**T&RS Information**” means all proprietary records, documentation, software, technical information, business information or other information disclosed by T&RS to the Contractor in relation to or created pursuant to the Contract (including the Contract);

“**Use The Software**” means loading, executing, storing, transmitting, displaying, copying (for the purposes of loading, executing, storing, transmitting, or displaying) or otherwise using any Software and associated Documentation supplied as part of the Contractor Equipment and possessing the Media upon which such Software is provided;

“**VAT**” means value added tax chargeable under the Value Added Tax Act 1994; and

“**Works**” means those parts of the Services requiring the carrying out of construction or undertaking of engineering or other practical work, that normally require the provision of labour services and materials to build, construct or physically provide such parts of the Services during a project implementation period.

## **2 EFFECTIVE DATE**

The Contract shall be effective upon the date when the Purchase Order or, where applicable, an alternative execution document, has been signed by both Parties or issued by T&RS and accepted by the Contractor (including implied acceptance through conduct).

### 3 SUPPLY OF SERVICES

3.1 The Contractor shall supply the Services in accordance with the Specification and any manufacturer's specifications or requirements in such manner and at such times and, where applicable, subject to Clause 14, for such term as specified in the Contract.

3.2 The Contractor shall ensure that the Services are provided in accordance with Best Industry Practice.

3.3 Any Required By Date shall, unless specified otherwise in the Contract, be of the essence of the Contract.

3.4 Where the Contract specifies a term and provides for T&RS to extend such term, if T&RS wishes to extend the term, T&RS shall, unless specified otherwise in the Contract, give the Contractor not less than twenty eight (28) days' notice of such extension of the term.

3.5 Unless specified otherwise in the Contract, where the provision of the Services includes the carrying out of Works:

a) the Contractor shall, upon completion of the Works, in all respects and free from apparent Defects, issue a Completion Notice in respect of the Works;

b) within seven (7) days of receipt of such Completion Notice, T&RS may issue a Rejection Notice, notifying the Contractor of any Defects in the Works that require rectification before the Services can be treated as being complete, and the Contractor shall rectify such Defects without delay and issue another Completion Notice; and

c) if T&RS does not issue a Rejection Notice, completion of the Works shall be deemed to have occurred on the date of receipt of the Completion Notice.

This Clause 3.5 shall not relieve the Contractor of any of its obligations under Clause 8.

3.6 The Services shall, as applicable, be provided for the use and benefit of some or all of T&RS and its associated companies and joint venture companies (whether or not subsidiaries or holding companies as defined in Section 736A of the Companies Act 1985), including Oldham Council, and unassociated companies and organisations, including schools, academies, colleges and similar educational establishments and their employees, agents, contractors, servants, professional advisers and similar persons or organisations, and users of the Services such as vulnerable young and old persons, school staff and pupils.

### 4 CONTRACTOR EQUIPMENT

4.1 Where Contractor Equipment is to be installed by the Contractor at a Site(s), the Contractor shall:

a) ensure that the Contractor Equipment is installed in accordance with the Specification and any manufacturer's specifications or requirements and verify that the Contractor Equipment operates or functions in accordance with such specifications or requirements;

b) where it is specified in the Specification or manufacturer's specifications or requirements that tests are required to be undertaken, undertake such tests, in accordance with such testing specifications or requirements, to ensure the Contractor Equipment has been installed with and operates in accordance with the Specification and any manufacturer's specifications or requirements, and notify T&RS when the Contractor Equipment has successfully passed such tests and provide T&RS with a copy of the test certificate(s); and

c) ensure that any Contractor Equipment that is to be delivered to a Site or brought on to the Site by the Contractor is marked in accordance with any requirements in the Specification and any relevant legislation and shall be properly packed and secured for transportation to the Site in an undamaged condition. Where Contractor Equipment is of a hazardous, dangerous or noxious nature, such Contractor Equipment or the receptacle or container in which the Contractor Equipment is stored or transported shall be clearly marked so as to identify the

nature of the Contractor Equipment (if not apparent on inspection), any particular hazards associated with the Contractor Equipment, any particular precautions required to be taken in handling the Contractor Equipment and any measures to be taken in case of an accident (peculiar to the nature of the Contractor Equipment).

4.2 The Contractor shall maintain all Contractor Equipment at a Site(s), and the area and environment where such Contractor Equipment is placed or stored at such Site(s), in a safe, serviceable and clean condition.

4.3 All Contractor Equipment at a Site(s) shall be at the risk of the Contractor and T&RS shall, subject to Clause 11, only be liable for any loss of or damage to any such Contractor Equipment where the Contractor is able to demonstrate that such loss or damage was caused by the negligence or default of T&RS.

4. On expiry or termination of the Contract, whichever is the earlier, the Contractor shall, unless agreed otherwise, remove all Contractor Equipment from a Site(s) and shall clear away from the Site(s) all waste arising from the performance of the Services and shall leave the Site(s) in a clean and tidy condition.

## **5 ACCESS AND SITE REGULATIONS**

5.1 Unless specified otherwise in the Contract, the Contractor shall not, and shall procure that its sub-contractors and agents shall not, supply the Services, including Contractor Equipment, outside normal working hours without the prior written approval of T&RS.

5.2 The Contractor shall, and shall procure that its sub-contractors and agents shall, at all times take all reasonable steps, in supplying the Services, to minimise any disruption to or interference with the operations of T&RS or any third parties and minimise any inconvenience to any party.

3. T&RS shall normally provide the employees of the Contractor, and its sub-contractors and agents, with access to any Site(s), at all reasonable times, in order to supply the Services, provided the Contractor, its sub-contractors or agents, produce a valid identity card, when requiring access, and comply with the relevant site regulations, except where the Council gives the Contractor notice that a specified person shall not be admitted to a Site(s) in which case the Contractor shall ensure that such person shall not seek admission and shall not be admitted to the Site(s) by or with the knowledge of the Contractor.
4. Where the Services are to be supplied at a Site(s), the Contractor shall have use of the Site(s), at all reasonable times as required to provide the Services, without charge as a licensee and shall vacate the Site(s) on expiry or termination of the Contract, whichever is earlier.
5. T&RS may, acting reasonably, give the Contractor notice that it requires the exclusion of a specified person(s) from involvement in providing the Services. On receipt of such notice, the Contractor shall immediately remove or procure the removal of such person(s).

## **6 SOFTWARE AND DEVELOPED SOFTWARE**

6.1 The Contractor shall take all reasonable precautions to ensure that no known viruses for which detection and antidote software is generally available are coded or introduced into Software or Developed Software.

### **Software**

6.2 Unless specified otherwise in the Contract, the Contractor grants T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, a non-exclusive, royalty free and perpetual Licence to Use The Software (including using the Documentation) including making copies of the Software and Documentation for operational security purposes and to incidentally decompile the Software if it is necessary to do so in order to achieve interoperability of the Software with another software program or hardware.

### **Developed Software**

3. Unless specified otherwise in the Contract, any Developed Software and the Media (of the Developed Software), including the Intellectual Property Rights in such Developed Software and Media, shall be the property of T&RS.

## **7 WARRANTIES**

7.1 The Contractor warrants that the Services shall:

- a. conform with their Specifications;
- b. be provided in accordance with and comply with the Service Levels;
- c. be the best of their kind and free from all Defects; and
- d. comply with all relevant requirements of any applicable Statute, Regulation, Order or Directive in force when the Services are supplied.

7.2 The Contractor warrants that it shall exercise all reasonable skill and care in performing its obligations under the Contract and that all Contractor's, its sub-contractors' and agents' personnel shall have the required qualifications and experience to undertake such obligations including any requirements detailed in the Specification.

7.3 The Contractor warrants that:

- a. the Contractor has full capacity and authority and all necessary consents (including, if required, the consent of its parent company) to enter into and to perform this Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- b. the Contractor owns or has licensed the Software and Documentation and has full power and authority to grant the Licence to T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, under the terms of the Contract;
- c. the use of Software, Developed Software, Documentation or Developed Software Documentation, in accordance with the Contract, shall not infringe the Intellectual Property Rights of any third party; and
- d. the Documentation or Developed Software Documentation, as applicable, shall provide adequate instructions to enable T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, to make proper use of the Services.

7.4 The Contractor warrants that if the United Kingdom becomes a participating country in the process commonly known as European Monetary Union, the Contractor shall make any necessary modifications and provide the required updates to the Software or Developed Software, as applicable, free of any Charges, so that the Software or Developed Software, as applicable, remains capable of performing all functions set out in the Specification in respect of the Euro and complies with all legal requirements now and hereafter applicable to the Euro in any jurisdiction including but not limited to the rules on conversion, triangulation and rounding set out in EU Regulation 1103/97 and any subsequent or similar regulation or law.

## **8 DEFECTS**

Without prejudice to Clauses 3, 4, 6 and 7 and the Specification, unless specified otherwise in the Contract, in the event of a Defect, the Contractor shall, without delay, specifically perform, provide or resupply, repair or replace the Services, as appropriate, so as to rectify or remedy any Defects, as soon as is reasonably practicable, and without any additional Charges applying.

## 9 STANDARDS

9.1 Without prejudice to the Specification, Service Levels or other standards specified in the Contract, where an appropriate standard, code of practice or similar instrument has been issued by the British Standards Institution or the International Standards Organisation, and is current at the date of execution of the Contract, all Services shall be supplied in compliance with such standard, code of practice or similar instrument.

9.2 The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, upon request, provide T&RS with reasonably sufficient evidence of compliance with the Specification, Service Levels or other standards specified in the Contract or relevant standard, code of practice or similar instrument issued by the British Standards Institution or the International Standards Organisation.

## 10 CHARGES AND PAYMENT

10.1 Unless specified otherwise in the Contract:

- a. the Charges shall be fixed;
- b. no additional Charges shall apply for any other activity associated with the supply of the Services (including those detailed in Clauses 4.4, 9.2, 10.3, 14.6, 19 and 31);
- c. the Charges shall not include VAT;
- d. where Services or part thereof have been supplied in accordance with their Specification, including, in the case of Works, having been completed in accordance with the requirements of Clause 3.5 and, where applicable, have been successfully tested in accordance with the provisions of Clause 4.1 b), the Contractor may submit an invoice for the Charges relating to the Services or part thereof, as applicable, in accordance with the relevant provisions of the Charges and payment terms specified in the Contract;
- e. the Contractor shall, where applicable, add VAT to the Charges and include on all invoices; and
- f) subject to 10.1 d) above, T&RS shall pay all accurate and proper invoices (which shall include the Order Number or reference of T&RS's Purchase Order or alternative execution document) within thirty (30) days of the date on which T&RS determines (acting reasonably) that the invoice is valid and undisputed. The Contractor may charge daily interest on late payments at a rate equal to 2% per annum above the base lending rate of the Bank of England which shall be in full and final settlement for the failure of T&RS to make such payments on the due dates.

10.2 The Contractor shall keep secure and maintain until two (2) years after the final payment of all Charges due under the Contract, or such longer period as may be agreed between the Parties, full and accurate records of the performance of the Contract, including all payments made by T&RS and all expenditure reimbursed by T&RS, and grant to T&RS, or its authorised agents and any auditors (including any auditor carrying out functions under the Audit Commission Act 1998 or Local Government Act 1999), such access to those records as they may reasonably require.

10.3 The Contractor shall use all reasonable endeavours to ensure measurable and continuous improvement in the performance of the Services and ensure that the Services provide best value for money. The Contractor acknowledges that Oldham Council is subject to a Best Value Duty and that T&RS, in support of Oldham's Council's Best Value Duty, is required to similarly secure continuous improvement having regard to economy, efficiency and effectiveness and the Contractor agrees to support and co-operate with T&RS in this respect and agrees to comply with all reasonable requests of T&RS in this respect. The Contractor shall provide any information reasonably requested by T&RS, relating to the performance of the Contract, to ensure that Oldham Council meets its obligations in respect of Best Value Duty and T&RS, in support of Oldham's Council's Best Value Duty, meets its obligations in this respect.

10.4 Whenever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to T&RS in respect of any breach of the Contract), T&RS may deduct that sum from any sum then due or which at any later time becomes due to the Contractor under the Contract or under any other contract with T&RS.

## **11 LIMITATION OF LIABILITY**

11.1 The Contractor's and T&RS's liability for personal injury to or death of any persons, arising out of or in connection with the Contract, due to its negligence, shall be unlimited. Clauses 11.2 and 11.3 shall not apply to such liability.

11.2 Subject to Clauses 11.1 and 11.4 and to the extent permitted by law, neither the Contractor nor T&RS shall be liable to the other Party, either in contract, tort, under statute or otherwise, for any indirect, consequential or punitive losses or damages including indirect losses or damages for loss of business, revenues or profits arising out of or in connection with the Contract.

11.3 Subject to Clauses 11.1 and 11.4 and to the extent permitted by law, the Contractor's and T&RS's liability to the other Party, either in contract, tort, under statute or otherwise, arising out of or in connection with the Contract shall be limited to an aggregated amount of £5,000,000. The Contractor's liability for losses or damages sustained by other relevant parties, as detailed in clause 3.6, shall not be considered indirect losses or damages solely because such users may be third parties.

11.4 This Clause 11 shall not exclude or limit the liabilities of either Party for fraud or misrepresentation.  
Page Break

## **12 INSURANCE**

12.1 The Contractor shall maintain insurance cover, at all times that this Contract is in force, in respect of its liabilities arising out of or in connection with the Contract including insurance for employer's liability and public liability and, where appropriate, professional indemnity, with a reputable insurance company. The Contractor shall maintain professional indemnity, where applicable, in aggregate, to a minimum of £2,000,000, and shall, in respect of any one occurrence or series of occurrences arising out of one event, maintain employer's liability insurance at an amount equal to the greater of £10,000,000 or in accordance with statutory requirements and all other insurances to a minimum of £5,000,000.

12.2 The Contractor shall, on request from T&RS, supply copies of certificates of insurance to T&RS as evidence that the Contractor has in force the relevant insurance policies, as required under Clause 12.1.

## **13 INTELLECTUAL PROPERTY RIGHTS**

13.1 The Contractor shall indemnify and hold T&RS harmless against all claims and proceedings arising from infringement or alleged infringement of any Intellectual Property Rights of any third party by reason of use, operation or application of the Services.

2. The Contractor shall defend, at its own expense, any claim brought against T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, alleging an infringement of the Intellectual Property Rights of a third party, by reason of use, operation or application of the Services, and the Contractor shall pay all costs and damages awarded or agreed to in settlement of any such claim provided that, where the claim is made against T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, T&RS shall:

13.2.1 furnish the Contractor with prompt written notice of any such claim;

13.2.2 provide the Contractor with reasonable assistance in respect of any such claim; and

13.2.3 allow the Contractor to defend or settle any such claim.

13.3 If, in the Contractor's reasonable opinion, the use of the Services becomes or may become the subject of an allegation of an infringement of the Intellectual Property Rights of a third party, then the Contractor shall either:

13.3.1 obtain the right to continue using the Services; or

13.3.2 replace or, with the written consent of T&RS, modify the Services so they become non-infringing provided such replacement or modification does not result in the Services failing to comply with the Specification, unless agreed otherwise.

13.4 If the remedies set out in Clause 13.3 above are not, in the Contractor's reasonable opinion, available, then T&RS may, without prejudice to any of T&RS's other rights or remedies under the Contract, immediately terminate the Contract in whole or part, and the Contractor shall, if instructed to do so by T&RS, refund the Charges for such Services to T&RS.

5. Where any specifications or designs have been provided by T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, the Intellectual Property Rights in such specifications or designs shall remain the property of T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6..
6. Unless specified otherwise, where any specifications or designs are to be developed by the Contractor for or on behalf of T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, as part of the Services, the Intellectual Property Rights in such specifications or designs shall be the property of T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6.

## 14 TERMINATION

14.1 T&RS may, without prejudice to any other rights or remedies that T&RS might have, terminate the Contract in whole or part, immediately on notice, if the Contractor:

- a. commits a material breach of the Contract that cannot be remedied; or
- b. commits a material breach of the Contract that can be remedied but fails to remedy such breach within the time specified on a written notice to do so or, where no such time is specified, within a reasonable time; or
- c. is persistently in breach of the Contract; or
- d) makes a composition or arrangement with or for the benefit of its creditors; or
- e) becomes bankrupt or, being a company, makes a proposal for a voluntary arrangement for a composition of debts or scheme of arrangement to be approved in accordance with the Companies Act 2006 or the Insolvency Act 1986 as the case may be or any amendment or re-enactment thereof, or
- f) has a provisional liquidator appointed, or has a winding-up order made, or passes a resolution for voluntary winding-up (except for the purposes of amalgamation or reconstruction), or, under the Insolvency Act 1986 or any amendment or re-enactment thereof, has an administrator or an administrative receiver appointed.

14.2 T&RS may, without prejudice to any other rights or remedies that T&RS might have, terminate the Contract immediately if the Contractor or any person on its behalf whether employed by the Contractor or not and whether acting with or without the knowledge of the Contractor shall:

- a) have made any arrangement or agreement with any third party which required either the Contractor to fix or

adjust the Charges or any other charges or terms submitted to T&RS; any third party to fix or adjust any charges or terms submitted to T&RS, or the Contractor or a third party to refrain from submitting quotations to T&RS; or

b) have communicated to any person, except T&RS, the amount or approximate amount of the Charges or any other charges or terms submitted to T&RS, otherwise than in confidence to obtain premium quotations for insurances; or

c) have given, agreed to give, offered to give or promised any person (directly or indirectly for the benefit of that person or any other) any gift, loan, fee, reward or other consideration or conferred any advantage as an inducement to, reward for, or otherwise on account of such person having done, agreed or forborne to do, anything in relation to any quotation, tender, invitation to tender or request for quotation, relating to T&RS; or

d) have directly or indirectly canvassed any Member or Officer of T&RS in order to obtain or attempt to obtain entry to any lists of persons approved by T&RS to provide goods or services to or undertake works for T&RS; information concerning any other supplier or potential supplier or any other quotation, or any advantage or benefit to the disadvantage of other suppliers or potential suppliers to T&RS; or

e) show favour or disfavour to any person in relation to any contract with T&RS, or

f. otherwise have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) and (3) of the Local Government Act 1972.

3. If the Contractor fails to supply some or all of the Services in accordance with the Contract, T&RS shall, without prejudice to any other rights or remedies which T&RS might have, have the right to:

a. terminate the Contract, either in whole or in part, at T&RS's discretion, and purchase services of the same or similar description to make good the breach; and

b. recover from the Contractor the amount (including the amount of any expenses properly incurred by T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, and of any direct losses or damages incurred by T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, as a result of the determination) by which the cost of purchasing other services exceeds the amount which would have been payable to the Contractor in respect of the Services if they had been delivered in accordance with the Contract.

T&RS may exercise these rights upon seven (7) days written notice to the Contractor.

4. Where the Contract is terminated in whole or part in accordance with Clause 14.3, the Contractor shall, unless agreed otherwise, promptly remove any part of the Services from a Site(s) or other location or environment, as applicable, which are the subject of such termination.

14.5 Where the Contract specifies a term and provides for T&RS to terminate the Services, in whole or part, prior to the expiry of such term, if T&RS wishes to terminate the Services, T&RS shall, unless specified otherwise, give the Contractor not less than fourteen (14) days written notice of such termination. In any event, where the Council terminates Services prior to the expiry of the relevant term, the Contractor shall calculate any applicable early termination Charges by reference to such in the Contract, or, in the absence of prescribed Charges for such early termination, by acting reasonably and taking all reasonable steps to mitigate such early termination Charges including limiting such Charges to direct losses.

14.6 In the event of termination under Clauses 14.1, 14.2, 14.3 or 14.5, the Contractor shall provide T&RS with two (2) copies of all specifications of the Services and, where applicable, associated drawings and provide T&RS with all reasonable assistance, co-operation and information to enable T&RS to manage the exit from the Contract and, where applicable, to obtain similar services to the Services from an alternative contractor.

7. T&RS shall be entitled to instruct the Contractor to cease to provide the Services temporarily in whole or part if T&RS reasonably believes that it is necessary, including where a risk exists to the health or safety of person(s) or property or to the environment or to discharge a statutory duty.

14.8 T&RS shall be entitled to terminate the Contract with immediate effect where any of the provision set out in Regulations 73(1)(a), or 73(1)(b) or 73(1)(c) of the Public Contracts Regulations 2015 (“PCR 2015”) are shown to have occurred, namely:

14.8.1 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with regulation 72(9) of the PCR 2015; or

14.8.2 the Contractor has, at the time of Contract award, been in one of the situations referred to in regulation 57(1) of the PCR 2015, including as a result of the application of regulation 57(2) of the PCR 2015, and should therefore have been excluded from the procurement procedure; or

14.8.3 the Contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the TFEU (Treaty for the Functioning of the European Union).

## **15 ASSIGNMENT AND SUB-CONTRACTING**

15.1 The Contractor shall not transfer, sub-contract, delegate or assign, directly or indirectly, any of its rights or obligations under the Contract, except with the written consent of T&RS and subject to any terms and conditions that T&RS may specify.

15.2 Where T&RS agrees to the Contractor sub-contracting the performance of any of its obligations, this shall not relieve the Contractor from any of its obligations to T&RS.

15.3 Where the Contractor enters into a sub-contract with the written consent of the Council, the Contractor shall include in that sub-contract a provision that the Contractor shall pay its sub-contractors within thirty (30) days of receipt of a valid undisputed invoice, and that its sub-contractors shall also include such a provision in any sub-contract with its sub-contractors or suppliers, (irrespective of the degree of remoteness from the Council in a subcontracting chain) made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

## **16 FORCE MAJEURE**

16.1 In the event of Force Majeure, the Party affected by Force Majeure shall have no liability to the other Party for any failure to perform, arising from Force Majeure, subject to that Party:

- a. giving the other Party written notice that Force Majeure has occurred, the nature of Force Majeure, the anticipated duration of Force Majeure and the steps it proposes to take to minimise the effects of Force Majeure; and
- b. taking all reasonable steps to minimise the effects of Force Majeure.

16.2 If Force Majeure continues for a period in excess of thirty (30) days, the other Party may terminate that part of the Contract affected by Force Majeure, or the whole of the Contract if the whole of the Contract is affected by Force Majeure, by giving written notice to the Party affected by Force Majeure, without liability in respect of that part of the Contract terminated or, where applicable, the whole of the Contract.

## **17 GOOD FAITH AND DISPUTE RESOLUTION**

17.1 The Contractor and T&RS shall act in good faith with one another in relation to the application of the provisions of this Contract and, while this Contract remains in force, conduct all dealings, between the Contractor and T&RS, in good faith. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract.

17.2 If a dispute cannot be resolved by the Parties pursuant to Clause 17.1, the dispute may, by agreement between the Parties, be referred to mediation in accordance with Clause 17.3.

17.3 The procedure for mediation is as follows:

- a) a Mediator shall be chosen by agreement between the Parties or, if the Parties are unable to agree upon the identity of a Mediator within fourteen (14) days, the Parties shall apply to the CEDR to appoint a Mediator;
- b) the Parties shall, within fourteen (14) days of the appointment of the Mediator, meet with the Mediator in order to agree a programme for the exchange of all relevant information and to agree the negotiation process;
- c) unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings and the Mediator shall not be called as a witness by the Parties, or anyone claiming through one of the Parties, in any future proceedings arising out of or connected with any matter so referred to the Mediator;
- d) if the Parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the Parties once it is signed by both T&RS and the Contractor;
- e) failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative opinion in writing which opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;
- f) either Party may give notice to the other Party at any time that it is withdrawing from the mediation process; and
- g) each Party shall bear its own expenses and the Parties shall share equally the charges for the mediation services of CEDR and associated costs of the mediation procedure.

17.4 If the Parties fail to agree to a dispute being referred to a Mediator or where the Parties have agreed to refer a dispute to a Mediator but fail to reach an agreement in accordance with Clause 17.3 d), within sixty (60) days of the Mediator being appointed, either Party may exercise any remedy that it has under the Contract.

## **18 CONFIDENTIALITY AND FREEDOM OF INFORMATION**

18.1 The Contractor agrees to assist and co-operate with T&RS in order to enable T&RS to comply with its and Oldham Council's obligations to disclose information under FOIA.

18.2 The Contractor acknowledges that T&RS and Oldham Council may be obliged under FOIA to disclose Contractor Information without consulting or obtaining consent from the Contractor.

18.3 The Contractor may identify, in writing, Contractor Information which it considers to be Confidential Information, in which case T&RS may consult with the Contractor before the Contractor Information is disclosed and give due consideration to the Contractor's comments or any objections to its disclosure.

18.4 Notwithstanding Clause 18.3 above, T&RS shall determine whether Contractor Information is exempt from disclosure under FOIA and for determining, in its absolute discretion, the Contractor Information to be disclosed in response to a Request For Information.

18.5 T&RS may, pursuant to a Request For Information, disclose any Contractor Information except Confidential Information, in whatever form, as necessary to respond to such Request For Information.

18.6 T&RS and the Contractor shall bear their own respective costs in relation to any disclosure under FOIA.

18.7 Subject to Clauses 18.1 to 18.6 inclusive, the Contractor shall keep secret and not disclose, and shall procure that its employees, servants and agents keep secret and do not disclose, any T&RS Information and T&RS shall keep secret and not disclose, and shall procure that its employees, servants and agents keep secret and do not disclose, any Contractor Information without the prior written consent of the Contractor, except to such persons and to such extent as may be necessary for the performance of the Contract. This duty of confidentiality shall not apply to any information that:

a) is in the possession of the Party concerned, without restriction as to its disclosure, before receiving it from the disclosing Party; or

b) is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure; or

c) which is or becomes public knowledge (otherwise than by breach of this Clause 18.7); or

d) is liable to disclosure by statute or an order of a court of law; or

e) relates to the outcome of the procurement process for the Contract and is required to be published in the Supplement to the Official Journal of the European Communities in accordance with EU directives or elsewhere in accordance with requirements of United Kingdom government policy on the disclosure of information relating to government contracts; or

f) is disclosed by T&RS to any other department, office or agency of the Crown or to any person engaged in providing any goods or services to T&RS for any purpose relating to or ancillary to the Contract, provided that T&RS discloses only Confidential Information which is necessary for the purpose concerned and T&RS requires that the Confidential Information is treated in confidence and that a confidentiality undertaking is given where appropriate, or

g) is disclosed by T&RS to any other department, office or agency of the Crown or voluntary organisation for the purposes of ensuring that people receive the best and most appropriate services possible, from T&RS or any other department, office or agency of the Crown or voluntary organisation, including services to keep children or vulnerable persons safe and to protect them from harm and to prevent crime, provided that such disclosure is reasonably necessary and such Information is disclosed lawfully and provided T&RS requires that the Confidential Information is treated in confidence and is only used for the purpose(s) specified at the time of disclosure and that a confidentiality undertaking is given.

18.8 The Contractor shall notify any sub-contractor of the provisions of this Clause 18 and any sub-contract, between the Contractor and its sub-contractors relating to this Contract, shall contain materially similar terms to this Clause 18.

9. Where applicable, the Contractor agrees to assist and co-operate with other users of the Services, as detailed in clause 3.6, in order to enable such users to comply with their obligations to disclose information under FOIA, to the same extent as the assistance and co-operation to be provided to T&RS as described in clauses 18.1 to 18.8 above.

10. The obligations imposed by this Clause 18 shall continue to apply after the expiry or termination of the Contract.

## **19 LEGISLATION AND CONSENTS**

19.1 The Contractor shall, and, where applicable, shall procure that its sub-contractors and agents shall, obtain any licences, consents, permits or registrations, required for or in connection with the supply of the Services, and shall comply with all current and future legislation and regulations (including legislation relating to charges, invoicing, payment, HMRC requirements and employees), which is relevant to the design, manufacture and/or construction, quality, supply or operation of the Services, and shall:

- a) not unlawfully discriminate on the basis of age, race, religion, gender, sexual orientation or disability;
- b) abide by good health and safety practice based on its responsibilities under any applicable health and safety at work legislation;
- c) comply with all relevant employment legislation; and
- d) process all personal data in accordance with the Data Protection Legislation.

The Contractor shall indemnify and hold T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, harmless against all claims and proceedings that any third party threatens or makes against T&RS and/or, where applicable, other users of the Services, as detailed in clause 3.6, arising from any act or omission by the Contractor, its sub-contractors or agents, to comply with this Clause 19.1.

19.2 The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, abide by any of T&RS's and/or, where applicable, other users of the Services, as detailed in clause 3.6, codes of practice, site regulations, rules and procedures that are incorporated in the Contract or notified to the Contractor during the term of the Contract.

- 3. The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, upon request, provide T&RS with reasonably sufficient evidence of compliance with Clauses 19.1 and 19.2.

## **20 CHANGES**

20.1 The Council reserves the right to vary the terms and conditions of the Contract and/or the Services to be provided under the Contract as outlined in the Service Specification, (by nature, scope or extent) or the Charges, during the term of the Contract by agreement in writing with the Contractor, in accordance with Regulation 72 of the Public Contracts Regulations 2015.

20.2 The Contract may not be released, discharged, supplemented, interpreted, amended, varied, changed or modified in any manner by the Contractor unless agreed in writing by the Council.

## **21 NOTICES**

Any notice required to be given under the Contract may be given by sending the same by actual delivery, special delivery or recorded delivery at the address of the Party concerned given in the Contract. If sent by special delivery or recorded delivery, the notice shall, subject to proof to the contrary, be deemed to have been received forty-eight (48) hours after the date of posting (excluding Saturday and Sunday and Public Holidays in England and Wales).

## **22 WAIVER**

No failure or delay on the part of T&RS to enforce any provision of the Contract shall result in T&RS being taken to have waived or being precluded permanently or temporarily from enforcing or relying on any provision of the Contract. No right, power or remedy in this Contract conferred upon or reserved for T&RS is exclusive of any other right, power or remedy available to T&RS.

## **23 CONFLICT OF INTEREST**

The Contractor shall, and, where applicable, shall procure that its employees, subcontractors and agents, shall, take appropriate steps to ensure that there is no conflict of interest between its interests and its responsibilities under the Contract.

## **24 RELATIONSHIP BETWEEN THE PARTIES**

This Contract shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship, a contract of employment, a relationship of principal and agent or other relationship between the Parties other than the contractual relationship expressly provided for in this Contract. Nothing in this Contract shall be construed as an appointment of the Contractor as the exclusive provider of goods or services to T&RS.

Page Break

## **25 ENTIRE AGREEMENT**

This Contract supersedes all prior agreements, arrangements, negotiations, representations and undertakings, whether written or oral, between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Contract and, unless agreed otherwise in writing, any terms and conditions specified, stipulated or referred to by the Contractor shall not be incorporated in the Contract, except that this Clause 25 shall not exclude liability in respect of any fraudulent misrepresentation.

## **26 GOVERNING LAW**

The Contract shall be governed by the laws of England and Wales and the Parties submit to the exclusive jurisdiction of the courts of England.

## **27 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No third party has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

## **28 SEVERABILITY**

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of its provisions shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision omitted.

## **29 REMEDIES CUMULATIVE**

Except where expressly specified otherwise in this Contract, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **30 INDEMNITY**

30.1 The Contractor shall indemnify and hold T&RS harmless against all claims and proceedings from any third parties arising out of or in connection with the provision of the Services except where the same is caused by or arises from the negligence of T&RS.

2. In relation to any claim, the Contractor shall notify and keep T&RS fully informed and consult with it about the conduct of the claim and shall have due regard to T&RS's interests.

## **31 PUBLIC SERVICES (SOCIAL VALUE) ACT 2012**

The Contractor shall use reasonable endeavours to ensure that, in providing the Services, the Contractor improves the economic, social and environmental well-being of the Borough of Oldham. The Contractor acknowledges that, under the Public Services (Social Value) Act 2012, Oldham Council is required to consider how services, that Oldham Council procures, improve the economic, social and environmental well-being of the Borough of Oldham and that T&RS, in support of such requirements, is also required to consider how services,

that T&RS procures, improve the economic, social and environmental well-being of the Borough of and furthermore, that as a matter of procurement policy and practice, T&RS requires contractors providing goods (including the provision of goods as part of a contract for the provision of services) to T&RS to use reasonable endeavours to improve the economic, social and environmental well-being of the Borough of Oldham.

## **32 DUTY OF CONTRACTOR TO PAY MANDATORY NATIONAL MINIMUM WAGE AND NATIONAL LIVING WAGE**

32.1 The Contractor shall comply with any National Minimum Wage Regulations introduced as a consequence of the National Minimum Wages Act 1998. It is a fundamental term of the Contract that the Contractor pays the National Minimum Wage and National Minimum Living Wage, where applicable, under the National Minimum Wage Act 1998 to all eligible employees and ensures that its sub-contractors pay the National Minimum Wage and National Minimum Living Wage, where applicable, under the National Minimum Wage Act 1998 to all their eligible employees.

32.2 Failure by the Contractor to comply with its obligations under this Clause may be regarded as a material breach of this Contract.

## **33 REAL LIVING WAGE**

33.1 Where the Contractor has indicated in its proposal, quotation, tender or other similar document that the Contractor shall voluntarily pay the Real Living Wage, the Contractor shall pay at least the Real Living Wage to every employee, who is aged eighteen (18) or over, delivering Services under this Contract.

33.2 Where Clause 33.1 applies, the Contractor shall procure that contracts that the Contractor enters into with any sub-contractors, relating to the provision of the Services, have a clause obligating the sub-contractors also to pay at least the Real Living Wage to every employee, who is aged eighteen (18) or over, delivering Services under this Contract.

33.3 Failure by the Contractor to comply with its obligations under this Clause may be regarded as a material breach of this Contract.

## **34 INFORMATION GOVERNANCE**

34.1 Unless specified otherwise in the Contract, the Parties acknowledge that if, in providing the Services, the Contractor is required to process Personal Data, for the purposes of the Data Protection Legislation, T&RS shall be the Data Controller and the Contractor shall be a Data Processor and, where the Contractor or a Contractor Sub-processor is required to process Personal Data, the following shall apply:

1. the only processing that the Contractor, or a Contractor Sub-processor, shall be authorised to do shall be specified by T&RS and may not be determined by the Contractor;

34.1.2 the Contractor shall notify T&RS immediately if it considers that any of T&RS's instructions infringe the Data Protection Legislation;

34.1.3 the Contractor shall provide all reasonable assistance to T&RS in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of T&RS, include:

- a) a systematic description of the envisaged processing operations and the purpose of the processing;
- b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
- c) an assessment of the risks to the rights and freedoms of Data Subjects; and

d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data;

34.1.4 the Contractor shall, in relation to any Personal Data processed in connection with its obligations:

- a. process that Personal Data only as specified by T&RS, in accordance with Clause 34.1.1, unless the Contractor is required to do otherwise by law. If it is so required, the Contractor shall promptly notify T&RS before processing the Personal Data unless prohibited by law;
- b. ensure that it has in place Protective Measures, which have been reviewed and approved by T&RS as appropriate to protect against a Data Compromise Event having taken account of the:
  - i. nature of the data to be protected;
  - ii. harm that might result from a Data Compromise Event;
  - iii. state of technological development; and
  - iv. cost of implementing any measures;
- c. ensure that:
  - i. its employees, its Sub-processors and agents do not process Personal Data except in accordance with this Clause 34;
  - ii. it takes all reasonable steps to ensure the reliability and integrity of any Contractor Sub-processor personnel who have access to the Personal Data and ensure that they:
    - A. are aware of and comply with the Contractor's duties under this Clause 34;
    - B. are subject to appropriate confidentiality undertakings with the Contractor or, in the case of Contractor Sub-processor personnel, the relevant Contractor Sub-processor;
    - C. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by T&RS or as otherwise permitted by this Clause 34; and
    - D. have undergone adequate training in the use, care, protection and handling of Personal Data;
- d. not transfer Personal Data outside of the EU unless the prior written consent of T&RS has been obtained and the following conditions are fulfilled:
  - i. T&RS or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by T&RS;
  - ii. the Data Subject has enforceable rights and effective legal remedies;
  - iii. the Contractor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist T&RS in meeting its obligations); and
  - iv. the Contractor complies with any reasonable instructions notified to it in advance by T&RS with respect to the processing of the Personal Data;
- e. at the written direction of T&RS, delete or return Personal Data (and any copies of it) to T&RS on

termination of the Contract unless the Contractor is required by law to retain the Personal Data, and

- f. ensure that records are created, managed, used, retained and/or destroyed in such a manner so as to maintain their confidentiality, integrity and availability in accordance with relevant laws.

34.1.5 Subject to clause 34.1.6, the Contractor shall notify T&RS immediately if it:

- a. receives a Data Subject Access Request (or purported Data Subject Access Request);
- b. receives a request to rectify, block or erase any Personal Data or any other Individual Rights;
- c. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- d. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
- e. receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law; or
- f. becomes aware of a Data Compromise Event.

34.1.6 The Contractor's obligation to notify under Clause 34.1.5 shall include the provision of further information to T&RS in phases, as details become available.

34.1.7 Taking into account the nature of the processing, the Contractor shall provide T&RS with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 34.1.5 (and insofar as possible within the timescales reasonably required by T&RS) including by promptly providing:

- a. T&RS with full details and copies of the complaint, communication or request;
- b. such assistance as is reasonably requested by T&RS to enable T&RS to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- c. T&RS, at its request, with any Personal Data it holds in relation to a Data Subject;
- d. assistance as requested by T&RS following any Data Compromise Event;
- e. assistance as requested by T&RS with respect to any request from the Information Commissioner's Office, or any consultation by T&RS with the Information Commissioner's Office;

34.1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 34.

34.1.9 The Contractor shall allow for audits of its data processing activity by T&RS or T&RS's designated auditor.

34.1.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.

34.1.11 Before allowing any of its Sub-processors to process any Personal Data related to this Contract, the Contractor must:

- a. notify T&RS in writing of the intended Sub-processor and processing;

- b. obtain the written consent of T&RS;
- c. enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 34 such that they apply to the Contractor Sub-processor; and
- d. provide T&RS with such information regarding the Contractor Sub-processor as T&RS may reasonably require.

34.1.12 The Contractor shall remain fully liable for all acts or omissions of any of its Sub-processors.

END OF POLICY