



Oldham Council's Standard Terms and Conditions

Of Purchase Of Goods

23 April 2021

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1 DEFINITIONS

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

“Arbitrator” means an independent third party appointed in accordance with Clause 15.5 to determine a dispute;

“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 goods similar to the Goods 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 Oldham Council shall pay the Contractor for the Goods as specified in the Contract;

“Conditions” means these general contractual provisions;

“Confidential Information” means any non-public Oldham Council 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 Oldham Council 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 Goods;

“Contractor Information” means all proprietary records, documentation, software, technical information, business information or other information disclosed by the Contractor to Oldham Council 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 Oldham Council;

“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 of Personal Data in breach of this Contract, including any Personal Data Breach;

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

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

“Data Subject” shall have the meaning given in the UK 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 Goods to substantially conform to the Specification and/or operate and function in accordance with the Specification;

“Developed Software” means Software which the Contractor is to develop for Oldham Council which shall be the property of Oldham Council and the Intellectual Property Rights shall be owned by Oldham Council;

“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 Oldham Council, that are required in order to enable the use, operation and application of the Developed Software by Oldham Council;

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

“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 pandemic, epidemic, fire, flood, lightning, severe weather, explosion, sabotage, accident, embargo, riot, civil commotion, war, industrial dispute (except where the dispute involves Contractor’s personnel), government action or regulation, any disaster or acts of God, beyond the reasonable control of the Parties, that affects either Party’s, or any of its sub-contractors’ or suppliers’, ability to fulfil its responsibilities under the Contract;

“Goods” means equipment, plant, machinery, vehicle, tool, portable building, materials, Software or other similar object, whether inanimate or electronic, to be supplied or delivered by the Contractor and procured by Oldham Council and includes any Documentation and/or Developed Software Documentation;

“Individual Rights” means rights granted to a Data Subject 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 Oldham Council Information;

“Intellectual Property Rights” means copyrights (including rights in computer software), trade marks, 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 Oldham Council pursuant to Clause 4.2 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 is recorded or printed;

“Mediator” means an independent third party appointed in accordance with Clause 15.3 to facilitate negotiations between the Parties in relation to a dispute and assist the Parties to endeavour to settle such dispute;

“Modern Slavery” means the recruitment, movement, harbouring or receiving of children, women or men using force, coercion, abuse of vulnerability deception or other means for the purpose of exploitation for commercial gain.

“Modern Slavery Helpline” means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery available online at: <https://www.modernslaveryhelpline.org/report> or by telephone on 08000 121 700;

“Oldham Council” means Oldham Metropolitan Borough Council whose principal place of business is at The Civic Centre, West Street, Oldham, OL1 1UL;

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

“Party” means Oldham Council or the Contractor and **Parties** means both Oldham Council and the Contractor;

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

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

“Protective Measures” means appropriate technical and organisational measures which may include: pseudonymising 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 Oldham Council’s completed standard order form of that name specifying the Goods 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;

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

“Required By Date(s)” means any date(s) that Oldham Council requires the Goods to be supplied or delivered on or by, as applicable, as specified in the Contract;

“Social Value” means the obligations imposed on Oldham Council by the Public Services (Social Value) Act 2012 namely to consider how services, that Oldham Council procures, in excess of the thresholds provided for in the Public Contracts Regulations 2015, improve the economic, social and environmental well-being of the Borough of Oldham;

“Social Value Activity” means any activity or activities specified by the Contractor on the Social Value Portal, which the Contractor shall undertake to add Social Value in relation to the Contract ;

“Social Value Delivery Plan” means the plan produced by the Contractor detailing how and when any Social Value Activity is to be delivered;

“Social Value Portal” means the web-based portal utilised by the Contractor to submit proposals for undertaking a Social Value Activity;

“Social Value Proxy Value” means the financial value allocated to any Social Value Activity;

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

“Site(s)” means a location(s) or place(s) or part(s) thereof where the Goods are to be supplied or delivered;

“Software” means Goods which are computer systems, software applications or programs, or any software applications or programs incorporated in Goods to enable the use, operation or application of such Goods, which the Contractor has developed and owns or has licensed from third parties;

“Specification(s)” means the description and specification of the Goods (including drawings) 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 Oldham Council or the Contractor to process Personal Data in relation to this Contract;

“UK GDPR” means the UK General Data Protection Regulation;

“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 Goods and possessing the Media upon which such Software is provided; and

“VAT” means value added tax chargeable under the Value Added Tax Act 1994.

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 Oldham Council and accepted by the Contractor (including implied acceptance through conduct).

3 SUPPLY AND DELIVERY

3.1 The Contractor shall supply or deliver the Goods to the Site(s) in accordance with the Specification and in such quantities and in such manner and at such times as specified in the Contract.

3.2 Where the Goods are to be delivered:

- a) all Goods supplied shall be delivered at the Contractor’s risk;
- b) the Goods shall be marked in accordance with any requirements in the Specification and any relevant legislation and shall be properly packed and secured for delivery to Oldham Council in an undamaged condition. Where the Goods supplied are of a hazardous, dangerous or noxious nature, such Goods or the receptacle or container in which the Goods are stored or transported shall be clearly marked so as to identify the nature of the Goods (if not apparent on inspection), any particular hazards associated with the Goods, any particular precautions required to be taken in handling the Goods and any measures to be taken in case of an accident (peculiar to the nature of the Goods);

- c) the Contractor shall, or shall procure that the Contractor's agent shall, at the time of delivery of the Goods, provide Oldham Council with a delivery note detailing the quantities and descriptions of the Goods delivered;
- d) the Contractor shall, or shall procure that its sub-contractors or agent shall, at the specified delivery point, ascertain, upon delivery of the Goods, that the person to whom the Goods are being delivered is duly authorised to accept receipt of the Goods;
- e) unless specified otherwise in the Contract, title in the Goods (excluding any Software) and risk in the Goods shall pass when the Goods have been supplied or delivered to Oldham Council at the delivery point specified in the Contract and Oldham Council has accepted delivery, however Oldham Council shall not be liable for any loss of or damage to or, in the case of Software or Developed Software, corruption, destruction or introduction of a computer virus, in respect of the delivered Goods, due to the Contractor's negligence or non-performance of the Contract;
- f) acceptance of delivery by Oldham Council shall only constitute confirmation by Oldham Council of receipt of a delivery of Goods and shall not constitute confirmation that the Contractor has provided the Goods in accordance with the Contract; and
- g) the Contractor shall not deliver any Goods outside normal working hours without prior written approval by Oldham Council.

3.3 Where the Goods are to be supplied by means other than delivery (e.g. transmitted electronically):

- a) the Contractor shall notify Oldham Council in writing when the Goods have been supplied detailing the quantities and descriptions of the Goods supplied; and
- b) unless specified otherwise in the Contract, title in the Goods (excluding any Software) and risk in the Goods shall pass when the Goods have been supplied to Oldham Council at the point of supply specified in the Contract and Oldham Council has accepted delivery, however Oldham Council shall not be liable for any loss of or damage to or, in the case of Software or Developed Software, corruption, destruction or introduction of a computer virus, in respect of the delivered Goods due to the Contractor's negligence or non-performance of the Contract; and
- c) acceptance of delivery by Oldham Council shall only constitute confirmation by Oldham Council of receipt of a delivery of Goods and shall not constitute confirmation that the Contractor has provided the Goods in accordance with the Contract.

3.4 If Oldham Council becomes aware that any Goods, which have been delivered or supplied, are not in accordance with the Contract, including where Goods are missing, incomplete or damaged, or, in the case of Software or Developed Software, corrupted, destroyed or affected by a computer virus, Oldham Council may reject such Goods, notwithstanding that Oldham Council may have accepted receipt of the Goods, by notifying the Contractor as soon as is reasonably practicable. Upon receiving such notice, the Contractor shall supply any missing Goods or replace, repair or rectify any incorrect or faulty Goods, as

applicable, at no additional Charges, and without undue delay, and due delivery and acceptance of receipt of such Goods shall not be deemed to have taken place until the Contractor has supplied any missing Goods and/or replaced, repaired or rectified any incorrect or faulty Goods, as applicable, in accordance with the Contract.

- 3.5 Oldham Council reserves the right to hold rejected, damaged, incorrect or incomplete Goods at the Contractor's risk. Except where the Contractor collects such rejected Goods within a reasonable time of receipt of notice of rejection, Oldham Council may cause such Goods to be removed and charge the Contractor with the expenses incurred in such removal.
- 3.6 The Contractor shall ensure that supply and delivery, including supply and delivery as described in this Clause 3, of the Goods is undertaken in accordance with Best Industry Practice.
- 3.7 Any Required By Date shall, unless specified otherwise in the Contract, be of the essence of the Contract.
- 3.8 The Goods shall, as applicable, be provided for the use and/or benefit of some or all of Oldham Council and its associated companies and joint venture companies (whether or not subsidiaries as defined in Section 1159 of the Companies Act 2006), including The Unity Partnership Limited, 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 other relevant parties such as vulnerable young and old persons, school staff and pupils.
- 3.9 The Contractor shall provide all reasonable co-operation and assistance to Oldham Council and any of Oldham Council's other contractors in connection with the Goods or interoperability or interfacing of the Goods with other goods, including in respect of exit management activities and any activities associated with the Transfer of Undertakings (Protection of Employment) Regulations, including with previous and successor contractors of goods similar to the Goods, without additional Charges applying.

4 SOFTWARE AND DEVELOPED SOFTWARE

- 4.1 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

- 4.2 Unless specified otherwise in the Contract, the Contractor grants Oldham Council and/or, where applicable, other relevant parties, as detailed in clause 3.8, 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

- 4.3 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 Oldham Council.

5 WARRANTIES

- 5.1 The Contractor warrants that the Goods 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) be of a design, construction and quality which comply with all relevant requirements of any applicable Statute, Regulation, Order or Directive in force when the Goods are supplied.
- 5.2 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.
- 5.3 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 Oldham Council and/or, where applicable, other users of the Software and Documentation, as detailed in clause 3.8, 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 Oldham Council and/or, where applicable, other relevant parties, as detailed in clause 3.8, to make proper use of the Goods.
- 5.4 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.

6 DEFECTS

Without prejudice to Clauses 3, 4 and 5 and the Specification and unless specified otherwise in the Contract, in the event of a Defect due to faulty design, manufacture or materials, the Contractor shall replace or repair the Goods without delay and without any additional Charges applying.

7 STANDARDS

7.1 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 Goods shall be supplied in compliance with such standard, code of practice or similar instrument.

7.2 The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, upon request, provide Oldham Council 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.

8 CHARGES AND PAYMENT

8.1 Unless specified otherwise in the Contract:

- a) the Charges shall be fixed;
- b) no additional Charges shall apply for delivery or for any other activity associated with the supply of the Goods (including those detailed in Clauses 7.1, 8.3, 17 and 28);
- c) the Charges shall not include VAT;
- d) where the Goods have been supplied in accordance with their Specification, the Contractor may submit an invoice for the Charges;
- e) the Contractor shall, where applicable, add VAT to the Charges and include on all invoices; and
- f) subject to 8.1 d) above, Oldham Council shall pay all accurate and proper invoices (including the Order Number or reference of Oldham Council's Purchase Order or alternative execution document) within thirty (30) days of the date on which Oldham Council determines (acting reasonably) that the invoice is valid and undisputed, and, in the case of electronic invoices, the electronic invoice complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870. 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 Oldham Council to make such payments on the due dates.

- 8.2 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 Oldham Council and all expenditure reimbursed by Oldham Council, and grant to Oldham Council, 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.
- 8.3 The Contractor shall use all reasonable endeavours to ensure measurable and continuous improvement in the provision of the Goods and ensure that the Goods provide best value for money. The Contractor acknowledges that Oldham Council is subject to a Best Value Duty and the Contractor agrees to support and co-operate with Oldham Council in fulfilling its Best Value Duty and agrees to comply with all reasonable requests of Oldham Council in respect of fulfilling its Best Value Duty. The Contractor shall provide any information reasonably requested by Oldham Council, relating to the performance of the Contract, to ensure that Oldham Council meets its obligations in respect of Best Value Duty.
- 8.4 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 Oldham Council in respect of any breach of the Contract), Oldham Council 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 Oldham Council.

9 LIMITATION OF LIABILITY

- 9.1 The Contractor's and Oldham Council'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 9.3 and 9.4 shall not apply to such liability.
- 9.2 The Contractor's liability for any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982 shall be unlimited. Clauses 9.3 and 9.4 shall not apply to such liability.
- 9.3 Subject to Clauses 9.1, 9.2 and 9.5 and to the extent permitted by law, neither the Contractor nor Oldham Council 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. The Contractor's liability for losses or damages sustained by other relevant parties, as detailed in clause 3.8, shall not be considered indirect losses or damages solely because such parties may be third parties.
- 9.4 Subject to Clauses 9.1, 9.2 and 9.5 and to the extent permitted by law, the Contractor's and Oldham Council'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.

- 9.5 This Clause 9 shall not exclude or limit the liabilities of either Party for fraud or misrepresentation.

10 INSURANCE

- 10.1 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 £10,000,000.
- 10.2 The Contractor shall, on request from Oldham Council, supply copies of certificates of insurance to Oldham Council as evidence that the Contractor has in force the relevant insurance policies, as required under Clause 10.1.

11 INTELLECTUAL PROPERTY RIGHTS

- 11.1 The Contractor shall indemnify and hold Oldham Council 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 Goods.
- 11.2 The Contractor shall defend, at its own expense, any claim brought against Oldham Council and/or, where applicable, other entities that have the use and/or benefit of the Goods, as detailed in clause 3.8, alleging an infringement of the Intellectual Property Rights of a third party, by reason of use, operation or application of the Goods, 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 Oldham Council and/or, where applicable, other entities that have the use and/or benefit of the of the Goods, as detailed in clause 3.8, Oldham Council shall:
- 11.2.1 furnish the Contractor with prompt written notice of any such claim;
 - 11.2.2 provide the Contractor with reasonable assistance in respect of any such claim; and
 - 11.2.3 allow the Contractor to defend or settle any such claim.
- 11.3 If, in the Contractor's reasonable opinion, the use of the Goods 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:
- 11.3.1 obtain the right to continue using the Goods; or
 - 11.3.2 replace or, with the written consent of Oldham Council, modify the Goods so they become non-infringing provided such replacement or modification does not result in the Goods failing to comply with the Specification, unless agreed otherwise.

- 11.4 If the remedies set out in Clause 11.3 above are not, in the Contractor's reasonable opinion, available, then Oldham Council may, without prejudice to any of Oldham Council's other rights or remedies under the Contract, immediately terminate the Contract in whole or part, and shall, to the extent that it is reasonably practicable to do so, return the Goods, which are the subject of the claim, or may become the subject of a claim, and the Contractor shall, if instructed to do so by Oldham Council, refund the Charges for such Goods to Oldham Council.
- 11.5 Where any specifications or designs have been provided by Oldham Council and/or, where applicable, other relevant parties, as detailed in clause 3.8, the Intellectual Property Rights in such specifications or designs shall remain the property of Oldham Council and/or, where applicable, other relevant parties, as detailed in clause 3.8.

12 DEFAULTS, REMEDIATION AND TERMINATION

- 12.1 Without prejudice to the Council's other rights or remedies, if at any time the Contractor fails to supply any of the Goods in accordance with the provisions of the Contract and the Council deems the failure to be capable of remedy, the Council shall not terminate the Contract without first operating the remediation process set out in this Clause 12.
- 12.2 Oldham Council shall not be obliged to issue a Remediation Notice if Oldham Council deems the failure to be substantially the same as a previous failure which has been addressed in a Remediation Notice within the previous six (6) months. In such event, Oldham Council, acting reasonably, may serve a notice of termination of the Contract in whole or part.

Remediation Notices and Plans

- 12.3 If Oldham Council deems a failure to supply any of the Goods is capable of remedy, then Oldham Council shall, acting reasonably, issue a notice to the Contractor which shall set out the nature of the failure and the actions which the Council requires the Contractor to take to remedy the default ("**Remediation Notice**") and the Contractor shall, at its own cost and expense, remedy such failure within the time specified in the Remediation Notice, or if no such time is specified within a reasonable time, or where this is not reasonably practicable, submit a draft plan specifying the actions that the Contractor proposes to take to remedy the failure and the timescales for doing so ("**Remediation Plan**").
- 12.4 If the Contractor submits a draft Remediation Plan pursuant to this Clause 12, Oldham Council shall, within ten (10) days of its receipt, either approve the draft Remediation Plan or shall, acting reasonably, inform the Contractor that Oldham Council rejects the draft Remediation Plan with an explanation as to why Oldham Council cannot accept the draft Remediation Plan.
- 12.5 Where Oldham Council rejects the draft Remediation Plan, the Contractor shall address all such concerns in a revised Remediation Plan, which it shall submit to the Council in accordance with the timescales specified in the Remediation Notice, or, if no timescales are specified, within ten (10) days of being informed that Oldham Council has rejected the draft Remediation Plan. Oldham Council

shall either approve the revised Remediation Plan within ten (10) days of receipt, or Oldham Council shall, acting reasonably, inform the Contractor why Oldham Council cannot accept the revised Remediation Plan. If a Remediation Plan cannot be agreed in accordance with Clauses 12.3 to 12.5, the Council may serve a notice of termination of the Contract in whole or part.

- 12.6 Once the Remediation Plan has been agreed by the Council, the Contractor shall immediately start work on the actions set out in the Remediation Plan.
- 12.7 Where a Remediation Plan is to be implemented, Oldham Council shall verify that the Remediation Plan has been properly implemented by the Contractor and Oldham Council shall notify the Contractor whether or not the Remediation Plan has been implemented to Oldham Council's satisfaction.

Increased Monitoring

- 12.8 If the Contractor receives a Remediation Notice, Oldham Council may increase Oldham Council's monitoring of the Contractor and the supply of the Goods until such time as the Contractor has demonstrated, to the reasonable satisfaction of Oldham Council, that the Contractor shall perform, and is capable of performing, the Contractor's obligations fully under this Contract.
- 12.9 The Contractor may not increase its Charges to take account of any additional monitoring under this Clause 12 and the Contractor shall be liable for any additional direct costs reasonably and necessarily incurred by Oldham Council in respect of carrying out any such additional monitoring under this Clause and the Contractor shall promptly reimburse Oldham Council for such costs, otherwise Oldham Council may deduct such sum from any payment due to the Contractor.

Failure to remedy defaults

- 12.10 If a Remediation Plan is agreed between the Parties, but the Contractor fails to implement or successfully complete the Remediation Plan by the required Remediation Plan completion date, Oldham Council may, at its option, either:
- 12.10.1 grant the Contractor a further opportunity to fully implement the Remediation Plan; or
- 12.10.2 escalate any issues arising out of the failure to implement the Remediation Plan under Clause 15; or
- 12.10.3 terminate the Contract by serving a notice of termination of the Contract in whole or part.

Remediation Costs and Charges

- 12.11 Oldham Council shall be entitled to charge twenty pounds (£20) for each Remediation Notice that Oldham Council issues and Oldham Council shall be entitled to deduct such sum from the payment of any Charges due or charge the Contractor.

12.12 Oldham Council shall be entitled to charge up to one hundred and fifty pounds (£150) for the administrative costs, the cost of travel and inspection incurred by Oldham Council to verify a Remediation Plan has been implemented satisfactorily or deduct such sum from the payment of any Charges due under this or any other contract between the Contractor and Oldham Council.

Termination without Remediation Process

12.13 Oldham Council may, without prejudice to any other rights or remedies that Oldham Council might have, terminate the Contract in whole or part, immediately on notice, if the Contractor:

- a) commits a material breach of the Contract that the Council deems cannot be remedied; or
- b) 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.

12.14 Oldham Council may, without prejudice to any other rights or remedies that Oldham Council 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 Oldham Council; any third party to fix or adjust any charges or terms submitted to Oldham Council, or the Contractor or a third party to refrain from submitting quotations to Oldham Council; or
- b) have communicated to any person, except Oldham Council, the amount or approximate amount of the Charges or any other charges or terms submitted to Oldham Council, 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 Oldham Council; or

- d) have directly or indirectly canvassed any Member or Officer of Oldham Council in order to obtain or attempt to obtain entry to any lists of persons approved by Oldham Council to provide goods or services to or undertake works for Oldham Council; 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 Oldham Council; or
- e) show favour or disfavour to any person in relation to any contract with Oldham Council, 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.

Alternative Arrangements

12.15 If the Contractor fails to supply or deliver some or all of the Goods in accordance with the Contract, Oldham Council shall, without prejudice to any other rights or remedies which Oldham Council might have, have the right to:

- a) terminate the Contract, either in whole or in part, at Oldham Council's discretion, and purchase goods of the same or similar description to make good the default; and
- b) recover from the Contractor the amount of any expenses properly incurred by Oldham Council and/or, where applicable, other entities that have the use and benefit of the Goods, as detailed in clause 3.8, and of any direct losses or damages incurred by Oldham Council and/or, where applicable, other entities that have the use and benefit of the Goods, as detailed in clause 3.8, as a result of the determination) by which the cost of purchasing other goods exceeds the amount which would have been payable to the Contractor in respect of the Goods if they had been delivered in accordance with the Contract.

Oldham Council may exercise these rights upon seven (7) days written notice to the Contractor.

Early Termination

12.16 Oldham Council may terminate the Contract, in whole or part, by giving the Contractor not less than fourteen (14) days written notice of such termination, unless a different notice period is specified in the Contract, without affecting any other right or remedy available to Oldham Council. Where the Council terminates the Contract, 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.

Exit Management

- 12.17 Where the Contract is terminated in whole or part in accordance with this Clause 12, the Contractor shall, if requested to do so by Oldham Council, promptly remove any part of the Goods from a Site(s) or other location or environment, as applicable, which are the subject of such termination, without charge.
- 12.18 In the event of termination under this Clause 12, the Contractor shall provide Oldham Council with two (2) copies of all specifications of the Goods and, where applicable, associated drawings and provide Oldham Council with all reasonable assistance, co-operation and information to enable Oldham Council to manage the exit from the Contract and, where applicable, to obtain similar goods to the Goods from an alternative contractor, without charge.

Suspension

- 12.19 Oldham Council shall be entitled to instruct the Contractor to cease to provide the Goods in whole or part if Oldham Council 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.

Public Contracts Regulations 2015

- 12.20 Oldham Council 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:
- 12.20.1 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
- 12.20.2 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
- 12.20.3 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).

13 ASSIGNMENT AND SUB-CONTRACTING

- 13.1 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 Oldham Council and subject to any terms and conditions that Oldham Council may specify.
- 13.2 Where Oldham Council 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 Oldham Council.

13.3 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.

14 FORCE MAJEURE

14.1 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.

14.2 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.

15 GOOD FAITH AND DISPUTE RESOLUTION

15.1 The Contractor and Oldham Council 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 Oldham Council, 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.

15.2 If a dispute cannot be resolved by the Parties pursuant to Clause 15.1, the dispute may, by agreement between the Parties, be referred to mediation in accordance with Clause 15.3.

15.3 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 Oldham Council 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.

15.4 If the Parties fail to reach agreement as provided for in Clause 15.3 above, within sixty (60) days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may, by agreement between the Parties, be finally determined by reference to arbitration in accordance with Clause 15.5.

15.5 The procedure for arbitration is as follows:

- a) an Arbitrator shall be chosen by agreement between the Parties or, if the Parties are unable to agree upon the identity of an Arbitrator within fourteen (14) days, the Parties shall apply to the President for the time being of the Law Society of England and Wales to appoint an Arbitrator;
- b) if an Arbitrator declines the appointment or after appointment is removed by order of a competent court or is incapable of acting or dies and the Parties do not within one (1) month of the vacancy arising fill the vacancy, the Parties shall apply to the President for the time being of the Law Society of England and Wales to appoint another Arbitrator to fill the vacancy;
- c) in any case where the President for the time being of the Law Society of England and Wales is not able to exercise the functions detailed in this Clause 15.5, the said functions shall be exercised on his behalf by a Vice-President of said Law Society;
- d) any reference to arbitration under this Clause 15.5 shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory re-enactment or amendment thereof for the time being in force;
- e) neither Party shall be limited in the arbitration to the evidence or arguments put to the Mediator pursuant to Clause 15.3;
- f) the award of the Arbitrator shall be binding on the Parties;

- g) the Arbitrator shall not be empowered to award any damages that exceed the limits of or disregard any exclusions of liability in the Contract; and
 - h) each Party shall bear its own expenses and the Parties shall share equally the charges for the arbitration services provided by the Arbitrator and associated costs of the arbitration procedure.
- 15.6 If the Parties fail to agree to a dispute being referred to a Mediator and/or an Arbitrator or where the Parties have agreed to refer a dispute to a Mediator but fail to reach an agreement in accordance with Clause 15.3 d), within sixty (60) days of the Mediator being appointed (and fail to agree thereafter to refer the dispute to an Arbitrator), either Party may exercise any remedy that it has under the Contract.

16 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 16.1 The Contractor agrees to assist and co-operate with Oldham Council in order to enable Oldham Council to comply with its obligations to disclose information under FOIA.
- 16.2 The Contractor acknowledges that Oldham Council may be obliged under FOIA to disclose Contractor Information without consulting or obtaining consent from the Contractor.
- 16.3 The Contractor may identify, in writing, Contractor Information which it considers to be Confidential Information, in which case Oldham Council may consult with the Contractor before releasing the Contractor Information and give due consideration to the Contractor's comments or any objections to its disclosure.
- 16.4 Notwithstanding Clause 16.3 above, Oldham Council 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.
- 16.5 Oldham Council 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.
- 16.6 Oldham Council and the Contractor shall bear their own respective costs in relation to any disclosure under FOIA.
- 16.7 Subject to Clauses 16.1 to 16.6 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 Oldham Council Information and Oldham Council 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 16.7); 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 Oldham Council to any person engaged in providing any goods or services to Oldham Council for any purpose relating to or ancillary to the Contract, provided that Oldham Council discloses only Confidential Information which is necessary for the purpose concerned and Oldham Council requires that the Confidential Information is treated in confidence and that a confidentiality undertaking is given where appropriate; or
- g) is disclosed by Oldham Council 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 goods or services possible, from Oldham Council 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 Oldham Council 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.

16.8 The Contractor shall notify any sub-contractor of the provisions of this Clause 16 and any sub-contract, between the Contractor and its sub-contractors relating to this Contract, shall contain materially similar terms to this Clause 16.

16.9 Where applicable, the Contractor agrees to assist and co-operate with other relevant parties, as detailed in clause 3.8, 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 Oldham Council as described in clauses 16.1 to 16.8 above.

16.10 The obligations imposed by this Clause 16 shall continue to apply after the expiry or termination of the Contract.

17 LEGISLATION AND CONSENTS

17.1 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 Goods, and shall comply with all current and future legislation and regulations (including

legislation relating to charges, invoicing, payment, HMRC requirements, employees and modern slavery) which is relevant to the design, manufacture and/or construction, quality, supply or operation of the Goods, and:

- 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 Oldham Council and, where applicable, other entities that have the use and benefit of the Goods, as detailed in clause 3.8, harmless against all claims and proceedings that any third party threatens or makes against Oldham Council and, where applicable, other entities that have the use and benefit of the Goods, as detailed in clause 3.8, arising from any act or omission by the Contractor, its sub-contractors or agents, to comply with this Clause 17.1.

17.2 The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, abide by any of Oldham Council's and, where applicable, other relevant parties, as detailed in clause 3.8, 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.

17.3 The Contractor shall and, where applicable, shall procure that its sub-contractors and agents shall, upon request, provide Oldham Council with reasonably sufficient evidence of compliance with Clauses 17.1 and 17.2.

18 CHANGES

18.1 The Council reserves the right to vary the terms and conditions of the Contract and/or the Goods to be provided under the Contract as outlined in the 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.

18.2 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.

19 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).

20 WAIVER

No failure or delay on the part of Oldham Council to enforce any provision of the Contract shall result in Oldham Council 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 Oldham Council is exclusive of any other right, power or remedy available to Oldham Council.

21 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.

22 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 Oldham Council.

23 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 23 shall not exclude liability in respect of any fraudulent misrepresentation.

24 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.

25 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.

26 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.

27 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.

28 SOCIAL VALUE

28.1 The Contractor shall use reasonable endeavours to ensure that, in providing the Goods, the Contractor improves the economic, social and environmental well-being of the Borough of Oldham.

28.2 Where a Contractor has agreed to carry out a Social Value Activity, the Contractor shall deliver such activities as specified and in a timely manner. For the avoidance of doubt the Contractor shall deliver any Social Value Activity in accordance with any Social Delivery Plan.

28.3 Without prejudice to any other remedies available to Oldham Council, if the Contractor fails to achieve any Social Value Activity in accordance with the provisions of the Contract, and the Council deems the failure to be capable of remedy, the Council shall not terminate the Contract without first operating the remediation process set out in Clause 12

28.4 Without prejudice to any other remedies available to Oldham Council, if the Contractor fails to achieve any Social Value Activity in accordance with the provisions of the Contract and either the Council deems that such failure cannot be remedied or the Council deems the failure to be capable of remedy but the Contractor fails to remedy such failure in accordance with the remediation process in Clause 12, the Contractor shall be liable to pay Oldham Council an amount equal to the relevant Social Value Proxy Value (or pro-rata amount).

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

29 DUTY OF CONTRACTOR TO PAY MANDATORY NATIONAL MINIMUM WAGE AND NATIONAL LIVING WAGE

29.1 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.

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

30 REAL LIVING WAGE

30.1 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, involved in the provision of the Goods under this Contract.

30.2 Where Clause 30.1 applies, the Contractor shall procure that contracts that the Contractor enters into with any sub-contractors, relating to the provision of the Goods, 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, involved in the provision of the Goods under this Contract.

30.3 Failure by the Contractor to comply with its obligations under this Clause may be regarded as a Material Breach of this Contract.

31 INFORMATION GOVERNANCE

31.1 Unless specified otherwise in the Contract, the Parties acknowledge that if, in providing the Goods, the Contractor is required to process Personal Data, for the purposes of the Data Protection Legislation, Oldham Council 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:

31.1.1 the only processing that the Contractor, or a Contractor Sub-processor, shall be authorised to do shall be specified by Oldham Council and may not be determined by the Contractor;

31.1.2 the Contractor shall notify Oldham Council immediately if it considers that any of Oldham Council's instructions infringe the Data Protection Legislation;

31.1.3 the Contractor shall provide all reasonable assistance to Oldham Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of Oldham Council, 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 Goods;
- 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;

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

- a) process that Personal Data only as specified by Oldham Council, in accordance with Clause 31.1.1, unless the Contractor is required to do otherwise by law. If it is so required, the Contractor

- shall promptly notify Oldham Council 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 Oldham Council 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;
 - (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 31;
 - (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 31;
 - (B) are subject to appropriate confidentiality undertakings with the Contractor or, in the case of Contractor Sub-processor personnel, the relevant 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 Oldham Council or as otherwise permitted by this Clause 31; 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 Oldham Council has been obtained and the following conditions are fulfilled:
 - (i) Oldham Council or the Contractor has provided appropriate safeguards in relation to the transfer (whether in accordance

with UK GDPR Article 46 or LED Article 37) as determined by Oldham Council;

- (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 Oldham Council in meeting its obligations); and
 - (iv) the Contractor complies with any reasonable instructions notified to it in advance by Oldham Council with respect to the processing of the Personal Data;
- e) at the written direction of Oldham Council, delete or return Personal Data (and any copies of it) to Oldham Council 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;

31.1.5 Subject to clause 31.1.6, the Contractor shall notify Oldham Council 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.

31.1.6 The Contractor's obligation to notify under Clause 31.1.5 shall include the provision of further information to Oldham Council in phases, as details become available.

- 31.1.7 Taking into account the nature of the processing, the Contractor shall provide Oldham Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under Clause 31.1.5 (and insofar as possible within the timescales reasonably required by Oldham Council) including by promptly providing:
- a) Oldham Council with full details and copies of the complaint, communication or request;
 - b) such assistance as is reasonably requested by Oldham Council to enable Oldham Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - c) Oldham Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - d) assistance as requested by Oldham Council following any Data Compromise Event, and
 - e) assistance as requested by Oldham Council with respect to any request from the Information Commissioner's Office, or any consultation by Oldham Council with the Information Commissioner's Office.
- 31.1.8 The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 31.
- 31.1.9 The Contractor shall allow for audits of its data processing activity by Oldham Council or Oldham Council's designated auditor.
- 31.1.10 The Contractor shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 31.1.11 Before allowing any of its Sub-processors to process any Personal Data related to this Contract, the Contractor must:
- a) notify Oldham Council in writing of the intended Sub-processor and processing;
 - b) obtain the written consent of Oldham Council;
 - c) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this Clause 31 such that they apply to the Contractor Sub-processor; and
 - d) provide Oldham Council with such information regarding the Contractor Sub-processor as Oldham Council may reasonably require.

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

31.2 The Contractor shall comply, and ensure that any of its sub-contractors comply, with the Council's "Handling Oldham Council Information Policy" or any replacement document, a copy of which is available on Oldham Council's internet homepage at <https://www.oldham.gov.uk> or upon request.

32 COVID-19

32.1 The Contractor shall comply with all government actions, guidance and regulations relating to the COVID-19 Pandemic and any instructions issued by Oldham Council from time to time relating to the safe supply and delivery of the Goods ("**Covid-19 Requirements**").

32.2 If the Contractor is unable to adhere to all or any of the Covid-19 Requirements, the Contractor shall notify Oldham Council in writing immediately upon becoming aware of such inability.

32.3 If Oldham Council becomes aware that the Contractor is not complying with all or any of the Covid-19 Requirements, Oldham Council shall have the right to:

32.3.1 suspend the Contract pending further investigations being carried out by Oldham Council with a view to ensuring continuity of delivery in future by serving a notice to such effect on the Contractor; or

32.3.2 vary the Contract to address the outcome of Oldham Council's investigations including any necessary amendments to the Specification arising from the COVID-19 Requirements or the Contractor's inability to perform the whole or any part of the Contract; or

32.3.3 terminate the Contract upon giving no less than fourteen (14) days' written notice to such effect on the Contractor.

32.4 If a notice to terminate the Contract is served by Oldham Council, the Contract shall terminate with effect from the date of termination as specified in the notice.

33 MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT

33.1 The Contractor:

a) shall not use, or allow its subcontractors or suppliers to use forced, bonded or involuntary prison labour;

b) shall not require any contractor, subcontractor or supplier staff to lodge or deposit identity papers with such contractor, subcontractor or supplier or deny such contractor, subcontractor or supplier staff freedom to leave their employer after reasonable notice;

c) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;

- d) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offenses anywhere around the world;
- e) shall make reasonable enquiries to ensure that its officers, employees and subcontractors and suppliers have not been convicted of slavery or human trafficking offences anywhere around the world;
- f) shall have and maintain throughout the term of the Contract, its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors and suppliers, anti-slavery and human trafficking provisions;
- g) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain performing obligations under the Contract;
- h) on request, prepare and deliver to Oldham Council, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- i) shall not use, or allow its employees or subcontractors or suppliers to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or the employees of its subcontractors or suppliers;
- j) shall not use, or allow its subcontractors or suppliers to use, child or slave labour, and
- k) shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors or suppliers to Oldham Council and Modern Slavery Helpline.