**TAMWORTH BOROUGH COUNCIL GENERAL CONDITIONS OF CONTRACT FOR PROVISION OF SERVICES**

These Conditions may only be varied with the written consent of the Council. No Terms or Conditions put forward at any time by the Contractor shall form any part of the Contract.

**In these Conditions of Contract and in all other documents that form part of the Contract, the following definitions shall apply.**

**1 DEFINITIONS AND INTERPRETATION**

1.1 “Award Notification” shall mean the communication through ‘in-tend’ (the procurement portal used by the Council) issued by the Council notifying the Contractor that it has been awarded a Contract for the provision of Services subject to these Conditions of Contract. The Award Notification shall form part of the Contract;

1.2 “Contract” shall mean the agreement between the Council and the Contractor for the execution of the Services, including therein all documents to which reference may properly be made in order to ascertain the rights and obligations of the Parties. The Contract is made between the Council and the Contractor when acceptance of the Award Notification is initiated by commencing work for the Council or the Contract has been signed by authorised representatives of each of the Parties whichever is the sooner. In either case these Conditions of Contract shall apply;

* 1. “Contract Documents” shall mean the documents comprising the Contract;

1.4 “Contract’s Manager” shall mean the person who is appointed by the Contractor, pursuant to Condition 6 (Designated Representative) of these Conditions of Contract, and notified in writing to the Council to act as the Contractor’s Representative for the purpose of this Contract;

1.5 “Contract Price” shall mean the sum or sums, exclusive of VAT payable by the Council to the Contractor under the Contract, for the proper provision of the Services by the Contractor in accordance with the Contract;

1.6 “Contractor” shall mean the person, firm or company named as such in the Contract as responsible for carrying out the Services and shall include the Contractor’s legal personal representatives, successors and permitted assignees;

1.7 “Contractor Personnel” shall mean all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any Sub-Contractor engaged in the performance of its obligations under this Contract;

1.8 “Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer” take the meaning given in GDPR.

1.9 “Council” shall mean Tamworth Borough Council whose head office is situated at Marmion House, Lichfield Street, Tamworth, Staffordshire, B79 7BZ;

1.10 “Council Representative” shall mean the person appointed from time to time by the Council and notified in writing to the Contractor to act as the representative of the Council for the purpose of the Contract, or in default of such notification, the Council;

1.11 “Data Loss Event” shall mean any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.

1.12 “Data Protection Legislation”: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

1.13 “Data Protection Impact Assessment” shall mean an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

1.14 “Data Subject Request” shall mean 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.

* 1. “DPA 2018” means the Data Protection Act 2018.
	2. “GDPR” means the General Data Protection Regulation *(Regulation (EU) 2016/679).*
	3. “Joint Controllers” means where two or more Controllers jointly determine the purposes and means of processing.

1.18 “Law” shall mean any law, subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1987, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Contractor is bound to comply.

1.19 “LED” means the Law Enforcement Directive *(Directive (EU) 2016/680)*.

1.20 “Parties” shall mean the Council and the Contractor and ‘Party’ shall mean the Council or the Contractor as the context demands.

1.21 “Premises” shall mean the location where the Services are to be performed, as specified in the Contract.

1.22 “Protective Measures” shall mean 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 such measures adopted by it.

1.23 “Purchase Order” and/or “Order” shall mean the Council’s Purchase Order form bearing an official number which may be issued against and under the provisions of the Contract, which sets out the details of the Services to be provided by the Contractor and/or otherwise sets out and/or confirms the instructions to the Contractor. For the purposes of clarification, the Contractor is obliged by the signature of the Contract by the parties in the manner prescribed to proceed with the provision of the Services set out in the Specification Schedule and/or as described in the Purchase Order.

1.24 “Services” shall mean all work or any part thereof (when appropriate) to be performed by the Contractor in the terms of or incidental to the Contract and as described in the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied thereunder.

1.25 “Sub-processor” shall mean any third Party appointed to process Personal Data on behalf of that Processor related to this Contract.

**2 STATEMENT OF SERVICES**

2.1The Contractor shall perform for the Council the Services subject to the Terms and Conditions hereinafter specified in the Contract and to the satisfaction of the Council Representative.

2.2 The Contractor shall be deemed to have read all documentation relating to the Contract in order to determine, the quantity and quality of appropriately skilled resources that will be required, and the Contractor shall obtain an understanding of Conditions under which the Services will be carried out. Any information that the Council may give to the Contractor shall be the best information available to the Council but the Council shall not warrant the sufficiency of such information unless stated in the Contract. The Council will not be liable for claims from the Contractor for additional payments, in excess of that agreed in the Contract, on account of matters which, the Contractor may reasonably have determined in advance. The Services shall progress through to completion according to any programme stated in the Contract, or as subsequently agreed with the Council.

1. **DOCUMENTS MUTUALLY EXPLANATORY**

3.1 Except as otherwise expressly provided, the Contract Documents are mutually explanatory of one another. Should the Contractor become aware of any ambiguities or discrepancies in or between the Contract Documents, the Contractor shall immediately inform the Council's Representative giving full details. Any such notified ambiguities or discrepancies or any ambiguities or discrepancies otherwise coming to the notice of the Council's Representative shall be resolved by the Council's Representative who shall issue to the Contractor any appropriate instructions. If any such instruction changes the basis upon which the Contractor quoted so as to render any price or rate inappropriate, the said instruction shall be treated as a variation and valued in accordance with clause 4.2.

3.2 In the event of any conflict in the Conditions of Contract and any other Contract Documents, the Conditions of Contract shall prevail.

**4 VARIATIONS**

4.1 Without prejudice to the Contract or where applicable, any bond, guarantee or ancillary document, the Council may at any time, from time to time, direct the Contractor to make a change in the Specification by specifying in writing, additions, deductions or other variations.

4.2 All such changes shall be valued at the rates and prices set out in this Contract if the same shall be applicable. If this Contract shall not set out rates and prices applicable to such changes, then reasonable rates and prices shall be agreed, subject to the Contractor providing the Council with evidence that may be reasonably be required, to enable rates and prices to be determined.

4.3 The Council shall have the right to instruct the Contractor in writing to carry out a change prior to agreement being reached on any adjustment to the Contract Price, which may subsequently be agreed by the Council and the Contractor on a written amendment to the Contract.

4.4 The issue by the Council of such amendment shall be a condition precedent to any adjustment or fluctuation of the rates and prices in the Pricing Schedule.

**5 INTELLECTUAL PROPERTY**

5.1 All intellectual property in all documents including patents, design rights, drawings, transparencies, prints, photographs, negatives, working notes and books, created or supplied by the Council and appertaining to the Services shall remain the property of the Council, and the originals and all copies of them shall be delivered to the Council on completion of the Services, and the Contractor and its personnel shall, upon request, certify that none have been retained.

5.2 Should the Contractor or its personnel infringe or allegedly infringe a patent registered design copyright trademark or trade name, which delays or prevents the Contractor from carrying out its obligations under the Contract arising therefrom as default by the Contractor, the Contractor shall be liable for all additional costs incurred by the Council pursuant to its mitigation of the effects of such cessation or delay.

5.3 All intellectual property rights vested in the Contractor in data which are not prepared or developed by the Contractor in connection with the Contract, but which are used by the Contractor in connection with the Contract, shall remain vested in the Contractor but the Contractor hereby grants a non-exclusive, irrevocable, royalty-free licence to the Council and to any third party whom the Council may authorise to use, copy or modify such data in connection with the Contract.

5.4 All intellectual property rights developed by the Contractor solely as a specific result of performing the Services, exemplified but not limited to copyright designs, drawings, calculations, test data and experiencewhether patented or not, shall be notified to the Council and shall vest in the Council.

5.5 The Contractor shall ensure that all intellectual property rights in all documents and/or data prepared or developed in connection with the Contract by any third party, including permitted sub-contractors, shall be vested in the Council.

5.6 In respect of all intellectual property rights acquired during the performance of the Services, the Council may at its discretion, grant to the Contractor a non-exclusive irrevocable licence upon reasonable terms.

5.7 The Contractor shall indemnify, and hold the Council harmless from and against, any and all claims and losses, judgements, costs, damages and expenses including, without limitation, legal expenses incurred by the Council, as a result of or in connection with any actual or alleged patent design or copyright infringement, asserted against the Council and/or the Contractor as a result of the Contractor’s use of any patented tools, implements, designs or methods employed by the Contractor, and the Contractor shall defend, at the Contractor’s sole expense, any suit involving the Council alleging any such infringements by reason of any or all of the foregoing causes. The Council shall have the right to be represented at the Contractor’s own expense by its own Counsel and to participate in the defence of any action in which the Council is a co-defendant.

**6 DESIGNATED REPRESENTATIVE**

6.1 The Council shall designate by notice in writing to the Contractor, a Council Representative who shall have the authority to act on behalf of the Council, on such matters in connection with the Contract, such notice by the Council to the Contractor shall specify the authority and powers of the said Representative. Any such Representative shall have the right to check the Services as they are performed and shall inform the Contractor as soon as practicable if any particulars of the Services inspected do not comply with the Contract. Failure of the Council’s Representative to inspect or call to the attention of the Contractor any particulars in which the Services do not comply with the Contract, shall in no way relieve the Contractor of its obligations under the Contract. The Council may by further written notice or notices to the Contractor, revoke or amend the delegated authority of any Council Representative or appoint a new Council Representative.

6.2 Subject to any limitations specified by the Council in these Terms and Conditions, the Council Representative may from time to time by written notice to the Contractor, delegate all or any part of his/her authority to an assistant or assistants who shall be known as Council Assistant Representative(s). The Council Representative may by further written notice to the Contractor, revoke or amend the delegated authority of any Council Assistant Representative or appoint a new Council Assistant Representative.

6.3 Unless otherwise nominated by the Contractor in writing, it shall be deemed that the Contractor shall have designated a competent Contract’s Manager who shall be in full time overall charge of the Contractor’s performance of the Contract and familiar with all its aspects. Any order or instruction, which the Council may give to the Contract’s Manager, shall be deemed to have been given to the Contractor. The Contract’s Manager shall be deemed to be authorised to deal with the Council or the Councils Representative on all matters relating to the performance of the Contract or the carrying out of the Services. The name, address and telephone number of the Contract’s Manager shall be communicated in writing to the Council without delay but in any event shall be a condition prior to the commencement of the Services. Any change in the name of the designated Contract’s Manager shall be notified in writing to the Council within 7 days of appointment.

* 1. The Council's Representative shall have the power to issue instructions to the Contractor on any matter relating to the provision of the Service and the Contractor shall comply therewith. If any such instruction is a modification within Condition 4 of these Conditions it shall be valued pursuant thereto.

6.5 From time to time the Council's Representative may appoint one or more representatives, to act for the Council's Representative generally, or for specified purposes or periods. Immediately any such appointment is made, the Council's Representative shall give written notice thereof to the Contractor.

**7 STANDARD OF WORKMANSHIP**

7.1 The Contractor shall carry out the Services with diligence and in accordance with the highest standards of skill and care generally followed by recognised Contractor’s performing Services of a similar nature.

* 1. Should the Council serve written notice advising the Contractor of any defect or deficiency in the Services, which is attributable to the Contractor, the Contractor shall remedy such defect or deficiency in the Services as required by the Council. All costs of such remedy shall be borne by the Contractor. Should the Contractor fail promptly to remedy the said defect or deficiency in accordance with the Councils written notice, the Council may perform or cause to be performed such defect or deficiency and re-charge the Contractor with any costs directly incurred as a result of remedying any defect or deficiency.
	2. The Services shall be performed within the time period stated on a Purchase Order, provided that the Council shall not be obliged to accept the Services before the specified date. Time shall be of the essence and if the Services are not so performed the Council may cancel a Purchase Order and claim damages for any loss incurred in obtaining the Services from another Contractor.
	3. The foregoing shall not limit, but shall supplement any other express warranty and guarantee, set forth in the Contract and such other warranties as are implied by Law, Custom and Usage of trade.
	4. The Contractor shall assign to the Services for the duration of the Contract only such person(s) as are qualified, skilled and experienced in the necessary professions. The Council may reasonably require the Contractor to re-deploy personnel who, in the Councils opinion, are incompetent or negligent in the performance of his/her duties, or is guilty of misconduct, or is otherwise undesirable. Any costs associated with such removal and any replacement personnel will be to the Contractor’s account.

7.6 With the object of promoting efficiency, the Contractor shall use its best endeavours to ensure that the personnel initially assigned to the Services, continue in the functions and responsibilities for as long as is necessary to achieve proper completion of the Services.

**8 TEMPORARY SUSPENSION**

8.1 The Council shall have the right to suspend the whole or any part of the Services temporarily for any reason and at any time and from time to time, compensating the Contractor for any expenses necessarily incurred by the Contractor as a result of such suspension.

* 1. The Council shall also have the right to suspend the whole or any part of the Services in the event of the fault or failure of the Contractor in carrying out its obligations under the Contract. In such event, no compensation shall be payable by the Council in respect of any extra cost incurred by the Contractor as a result of such suspension.

**9 DATA PROTECTION AND CONFIDENTIALITY**

9.1 The Contractor undertakes to abide and procure that its employees abide by the provisions of the Data Protection Act 1998 or any Act amending, replacing or renewing the same. The Contractor shall, by the display of notices or by other appropriate means, ensure that all persons engaged in connection with the Services (including any maintenance agreement) have notice that these statutory provisions apply.

9.2 Without prejudice to any confidentiality agreement attached hereto, all specifications, drawings and other technical information, which is the property of the Council, or which it is entitled to disclose to the Contractor under confidentiality agreements with others, together with any such specifications, drawings and other technical information specifically developed by the Contractor in connection with the Services, shall not be used by the Contractor for any other purpose than for the performance of the Services under the Contract, nor be disclosed by the Contractor to third parties, except where the prior express written approval of the Council has been obtained or the disclosure is required by Law.

9.3 The Contractor shall not and shall ensure that its employees or agents do not divulge to any third party, any information which comes into his or their possession in the course of providing the Services, without prior express written consent of the Council.

9.4 The Contractor shall indemnify the Council against any legal proceedings, claims, loses, costs, damages, judgements and expenses, including without limitation legal expenses, incurred by the Council as a result of or in connection with, the Contractor’s or the Contractor’s employees or agents’, actual or alleged, breach of or failure to comply with the provisions of the Data Protection Act 1998, or any Act amending, replacing or renewing the same. The Contractor shall defend, at the Contractor’s sole expense, any suit involving the Council, alleging any such infringements by reason of any of the foregoing causes. The Council shall have the right to be represented at the Contractor’s sole expense by its own Counsel and to participate in the defence of any action in which the Council is a co-defendant.

9.5 The Contractor undertakes to abide and comply and procure that its employees abide and comply with British Standard 7799 and ISO/IEU Standard 17799 or any British Standard or ISO/IEU Standard amending, replacing or renewing the same. The Contractor shall, by the display of notices or by other appropriate means, ensure that all persons engaged in connection with the Services (including any maintenance agreement) have notice that these Standards apply. The Contractor shall provide to the Council written proof of compliance with the above stated standards either by provision of relevant certification or by a statement of compliance.

9.6 Information in any submission to the Council may be disclosed to third parties who make a request in writing under the Freedom of Information Act (FOIA) 2000. The FOIA requires the Council to confirm whether it holds the information requested by a third party and to provide copies of the information unless the information is wholly or partially exempt from disclosure. The statutory exemptions include information supplied in confidence or which is commercially sensitive. Whether the information is exempt is for the Council to decide. The Council shall not however unreasonably divulge information. The Information Commissioner shall, where appropriate, be the ultimate decision-maker on whether or not information is exempt. Any subsequent Contractor should make themselves aware of the implications of the FOIA. The Information Commissioner’s website ([www.ico.gov.uk](http://www.ico.gov.uk)) provides further guidance on the FOIA.

9.7 The provision of this clause 9 shall apply during the continuance of this Contract and after termination thereof howsoever arising.

**10 HEALTH AND SAFETY**

* 1. The Contractor shall be fully familiar with, and fully comply with, all Statutory Acts, Regulations or Bye-laws, Industry Standards and Codes of Practice, issued or made by the Council, the Government or by professional or trade organisations, as applicable to the Health and Safety of all parts of the Services, and shall indemnify the Council against any legal proceedings, claims or loses arising from breach of, or failure to comply with the same by the Contractor, it’s sub-contractors or representatives.

In particular, but without limitation, the Contractor shall observe and comply with, at all times, the requirements of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999.

* 1. The Council shall be entitled, without prejudice to clause 20 (Termination) of these Conditions, to suspend the provision of the Service or of any part of the Service, in the event of non-compliance by the Contractor with this condition in the provision of the Service, or any part of the Service, until such time as the Council is satisfied that the non-compliance has been rectified.

10.3 Without prejudice to the foregoing and so far as is reasonably practicable, the Contractor shall take all precautions necessary to protect its own employees and any employees of the Council and other persons who are at any time directly or indirectly affected by operations of the Contractor.

10.4 The Contractor shall familiarise themselves with hazards, which might be encountered in providing the Services.

**11 CONTRACTORS PERSONNEL**

11.1 The Contractor’s staff assigned to work on behalf of the Council shall at all times when on duty, be presentably and appropriately dressed with a clearly displayed and legible ID badge in a form approved by the Council Representative. It shall as a minimum, detail the following information: photograph of employee, name of employee, Organisation name.

11.2 The Contractor shall ensure that all of their staff, when on duty, behaves in a manner appropriate to their surroundings and with consideration to all persons.

11.3 Where specified in the Contract Documents the Contractor shall ensure that all servants, employees or agents of the Contractor and Sub-contractors employed in the execution of the contract observe and comply with the Contractor’s Safeguarding Policy and Procedure, or where deemed appropriate observe and comply with the Council’s Safeguarding Children and Adults at Risk of Abuse and Neglect Policy and Procedure available at:

<http://www.tamworth.gov.uk/sites/default/files/community_docs/Safeguarding-children-and-adults-at-risk-of-abuse-and-neglect.pdf>

**12 DIVERSITY AND EQUALITY**

12.1 The Contractor shall not unlawfully discriminate within the meanings and provisions of the Equality Act 2010 and Human Rights Act 1998 or any Act of Parliament or Statutory modification or re-enactment thereof relating to discrimination in employment.

12.2 The Contractor shall take all reasonable steps to secure the observance of the provision of clause 12.1 of these Conditions of Contract, by all servants, employees or agents of the Contractor and all Sub-Contractor’s employed in the execution of the Contract.

**13 RELATIONSHIP OF PARTIES**

13.1 The Contractor’s status shall be that of an independent Contractor, and the relationship of the parties shall in no event be construed to be that of principal and agent or master and servant. The presence of the Councils Representative(s) shall not relieve the Contractor from its obligations under the Contract.

13.2 The personnel provided or to be provided by the Contractor to manage the execution of the Services shall each be full time, direct employees of the Contractor.

**14 COMMISSION, BRIBERY AND CORRUPTION**

14.1 The Contractor shall not accept commissions or any other compensation from Tenderers, Contractor’s, Organisations, vendors or any other party concerned with the Services.

14.2 Notwithstanding the provisions of clause 20 (Termination) of these Conditions of Contract, the Council shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor shall have offered, given or agreed to give to any person, any gift or consideration of any kind as an inducement or reward, for doing or forbearing to do, or for having done or forborne to do, any action in relation to obtaining or the execution of the Contract or any other Contract with the Council, or for showing or forbearing to show, favour or disfavour to any person in relation to the Contract or any other Contract with the Council, or if the like acts shall have been done by any person employed by it or on its behalf (whether with or without the knowledge of the Contractor), or if in relation to any Contract with the Council the Contractor or any person employed by it or acting on his behalf shall have committed an offence under the Prevention of Corruption Acts 1889 and 1916 or any amendment of them, or shall have given any fee or reward, the receipt of which is an offence under the sub section (2) of section 177 of the Local Government Act 1972.

**15. Indemnities and Insurance**

* 1. The Contractor shall indemnify and keep indemnified the Council, its servants and agents against all actions, claims, demands, costs and expenses incurred by or made against the Council, its servants or agents in respect of any loss or damage or personal injury (including death) which arises from any advice given or anything done or omitted to be done under this Contract to the extent that such loss, damage or injury is caused by the negligence or other wrongful act of the Contractor, its servants or agents in terms of the following sub clauses.

15.2 The Contractor shall effect and maintain, and shall require its sub-contractors of any tier to effect and maintain throughout the continuance of this Contract, insurance policies with insurers and under forms of policies satisfactory to the Council, which shall include but not be limited to the types and amounts set out in sub clause 15.3 hereof. All such policies shall be suitably endorsed as to include the Services contemplated and undertaken by this Contract. The Contractor shall bear any and all excesses, deductibles or franchises incorporated therein.

15.3 The Contractor shall upon request, furnish the Council with a certificate of insurance endorsed by the Contractor’s insurers or brokers in the form set forth herein in respect of the insurances set out in sub clauses 15.6 and 15.7 hereof. Failure to provide such a certificate may be taken by the Council to indicate that the Contractor has failed to meet its obligations to provide the required insurance cover under this Contract. The Contractor shall also furnish the Council with updated certificates on the renewal anniversary of any policies examined by the Council.

15.4 The Contractor shall give immediate written notice to the Council and all insured parties in the event of a cancellation or material change affecting the Councils or any insured party’s interest in respect of the insurances set out in sub clauses 15.6 and 15.7 hereof.

15.5 In the event that any policy is cancelled, or there is a material change affecting the Councils interest, or if the Contractor shall fail to effect or maintain any policy, which it is required by this Contract to effect or maintain, the Council may at its sole discretion effect and maintain any such insurance or such additional insurance as the Council shall consider necessary, and deduct the cost of any premium plus 10% applicable thereto, from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

* 1. Contractor’s and sub-contractor’s Policies

Insurance Policies referred to above are:

15.6.1 Employers Liability Insurance for an amount not less than £10,000,000 (Ten Million Pounds) per occurrence or series of occurrences arising from one event, which shall comply with all applicable Laws. Such insurance shall cover all personnel engaged in the performance of the Services under this Contract, and shall contain an Indemnity to Principals Clause.

* + 1. General Third Party or Public Liability Insurance with a combined bodily injury and property damage limit of not less than £5,000,000 (Five Million Pounds) per occurrence or series of occurrences arising from the one event. Such insurance shall contain an Indemnity to Principals Clause.
		2. Professional Indemnity Insurance for an amount not less than £x,000,000 (x Million Pounds) per occurrence or series of occurrences arising from the one event. Such insurance shall cover any breach of professional duty of all professional personnel engaged in or arising from the performance of the Services under this Contract and shall contain an Indemnity to Principles Clause.

And where applicable and as specified elsewhere in the Contract

15.6.4 Motor Vehicle Liability Insurance, which shall comply with all applicable Laws on vehicles used in connection with this Contract.

15.7 Where not specified in sub-clause 15.6 above, the Contractor and sub-contractors shall effect and maintain insurance policies as described in sub clauses 15.1, 15.2, 15.3, 15.4 and 15.5 and in accordance with the amounts and descriptions agreed between the Parties and specified elsewhere in the Contract.

15.8 In any event or notwithstanding anything contained in this Contract, the Contractor's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to:-

15.8.1 where under the terms of Clause 15 the Contractor is obliged to hold insurance in respect of the matter from which the liability arises, the insurance levels set out in Clause 15.6;

* + 1. in respect of matters for which the Contractor is not obliged to hold insurance under the provisions of Clause 15 to £2 million.
	1. In any event or notwithstanding anything contained in this Contract, the Council's liability in contract, tort (including negligence or statutory duty) or otherwise arising by reason of or in connection with this contract (except in relation to death or personal injury caused by negligence) shall be limited in aggregate per year to £1 million.
	2. For the purposes of Clauses 15.8 and 15.9 "in aggregate per year" shall mean that the limitation of liability referred to in those Clauses shall be the monetary limit of liability in respect of breaches, failures or negligence committed in any continuous period of twelve months during the term of the Contract beginning on the Contract commencement date or any subsequent anniversary of the commencement date. Where the term of Contract is less than twelve months the limitation of liability referred to in Clauses 15.8 and 15.9 shall be the monetary limit of liability in respect of breaches, failures or negligence committed during the term of Contract.

15.11 All policies required under clause 15 hereof shall contain an agreement from the insurers, to waive their rights of subrogation against the Council and any subsidiary, affiliated and associated organisations and/or co licensees and/or co-venturers and Contractor’s and sub-contractors of any tier and their agents, servants, officers, directors and employees.

**16 SECURITY, RECORDS AND MANAGEMENT INFORMATION**

16.1 The Contractor shall maintain and shall ensure that its personnel and all its visitors maintain the security of such of the Council’s Premises and land, which it is permitted to access for the purpose of providing the Service.

16.2 The Contractor shall use its best endeavours to ensure that access to the Council’s Premises and land which it is permitted to access, is restricted to its personnel and essential visits engaged upon or in connection with the provision of the Service.

16.3 Prior to the commencement date and at any time during the Contract the Council’s Representative shall be entitled to inspect the Contractor’s proposed storage facilities and systems for the keeping of the Council’s documents. In the event that the Council’s Representative is not satisfied that adequate provision has been made, the Contractor shall take all reasonable steps at its own expense to provide satisfactory facilities and systems.

16.4 The Contractor shall provide the Council’s Representative, the Council’s internal and/or external auditors and the local Government Ombudsman with full access, on demand during normal business hours, to all correspondence, documentation and files, created in performance of the Service whether stored on paper, microfiche, computer software, or other medium, which shall be delivered to the Council on the expiry or earlier termination of the Contract.

**17 PAYMENT AND AUDIT**

17.1 In consideration of the execution of the Services, to the satisfaction of the Council, the Council shall pay or cause to be paid to the Contractor, at the times and in the manner specified herein below, the amounts as provided for in the Pricing Schedule and/or such other sums specified in the Contract or Purchase Order.

17.2 No Purchase Order will be binding on the Council unless signed by an authorised representative of the Council.

17.3 Unless otherwise provided for in the Pricing Schedule, the Contractor’s application for payment will be on a monthly basis against invoices submitted by the Contractor. The Contractor’s invoice shall detail the Services executed, the Contract Reference Number and the Purchase Order number issued against the Contract and shall be accompanied by such supporting documentary evidence as the Council may require.

17.4 Except where the Council disputes details or value of the Services claimed to have been carried out, the Council shall pay or cause to be paid, by BACS payment method, the due amount within thirty (30) days after the Council’s receipt of the invoice. Such payment by the Council shall not prejudice its rights in the future to dispute any part of any invoice, the Contractor shall, before the Council is required to make any payment, furnish the Council with a credit note for the amount of any such invoice, which the Council disputes, and such a credit note shall include Value Added Tax (if applicable) on any such disputed amount. The issuing of such a credit by the Contractor shall not indicate that the Contractor accepts that the Council is correct in disputing that part of the invoice to which the credit note relates.

17.5 As soon as may be convenient, following completion of the Services under the Contract or upon termination of the Contract, the Contractor shall render a final invoice which summarises all charges and credits applicable under the Contract, and show the balance of payment due to the Council or the Contractor, including if any, such amount withheld by the Council pursuant to Sub-clause 17.4 herein above. All disputes between parties, if any, as are then existing, shall be resolved in connection with such final invoice, and any balance due to the Contractor or the Council shall be paid within thirty (30) days following the date of receipt of such an invoice, or in the event of dispute, forthwith upon resolution of such dispute by Arbitration or otherwise.

17.6 In consideration of the execution of any Services or provision of any Goods by a Sub-contractor or agent of the Contractor conducted in performance of this Contract, payment shall be due to the Sub-contractor or agent thirty (30) days from the date of receipt of correct invoice documentation by the Contractor.

17.7 Except as may otherwise be provided for herein below, the Contractor assumes full and exclusive liability for payment (which shall not be passed on to the Council) of all taxes and contributions for unemployment insurance, old age pension and national insurance or social security benefits, and like statutory payments as now or hereafter imposed by the Government of the United Kingdom or any political sub division hereof, whether or not they are measured by the wages, salaries and other remuneration paid to persons engaged or employed by the Contractor, in the performance of Services under the Contract.

17.8 The Contractor shall pay all taxes assessed against it in respect of the Services and agrees to indemnify the Council and hold the Council harmless from any and all claims of liability for income and other taxes assessed or levied against the Contractor.

17.9 Any amounts otherwise payable hereunder may be withheld in whole or in part by the Council on account of any actual or reasonably anticipated claims, damages or expenses arising out of the Contractor’s failure to perform the Services in accordance with the provisions of the Contract.

17.10 The Contractor shall keep books and records in a manner to be approved by the Council so as to enable the Council to carry out effective financial control and audit with respect to all payments to be made to the Contractor under this clause 17. The Council reserves the right to audit the aforesaid books and records and to audit the application of the Contractor’s charges.

17.11 Interest shall be payable on any late payment under this agreement in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

17.12 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

**18 ASSIGNMENT AND SUB-CONTRACTING**

18.1 The Council shall be entitled to assign the benefit of the Contract or any part thereof and shall give written notice of any assignment to the Contractor.

18.2 The Contractor may not assign the Contract or sub Contract or any part of the Services without the Council’s prior written consent of the assignment or sub Contract, which shall not be unreasonably withheld. No such assignment or sub Contract shall:

i) relieve the Contractor or its surety (where applicable) from any obligation or liability under the Contract, and the Contractor shall be responsible for the acts and omissions of any assignee or sub-Contractor and its employees and agents as though they were the acts and omissions of the Contractor or the Contractor’s employees or agents, nor

ii) obligate the Council to pay any monies whatsoever other than the Contract Price.

18.3 Copies of all proposed assignments and sub-Contracts including purchase orders or other documents evidencing such assignments or sub-Contracts shall be delivered by the Contractor to the Council if so requested, for review before they are finalised.

**19 LEGAL PROCEEDINGS**

19.1 The Contractor, immediately upon becoming aware of the same, shall notify the Council’s Representative of any accident, damage or breach of any statutory provision relating in any way to the provision of or connected with the Service.

19.2 If requested to do so by the Council’s Representative, the Contractor shall provide the Council’s Representative with any relevant information in connection with any legal inquiry, Arbitration or Court proceedings in which the Council may become involved, or any relevant disciplinary hearing internal to the Council, and shall give evidence in such inquiries or proceedings or hearings, arising out of the provision of the Service.

19.3 Should any part of the Service involve the Contractor in performing duties or exercising powers under some other contract, it shall, upon becoming aware of anything which is likely to give rise to Arbitration or Litigation under that other contract, forthwith notify the Council’s Representative of the existence of any such matter, together with such particulars as are available.

19.4 No payment shall be made for this part of the Service, except insofar as set out in the Pricing Schedule of the Contract.

**20 TERMINATION**

20.1 Without prejudice to the Councils other rights under the Contract, the Council shall have the right to terminate the Contract for any reason, at any time on giving not less than thirty (30) days’ notice in writing to the Contractor. In the event of such notice the Contractor shall cease all work in connection with the Services and, subject to the other provisions of this clause, the Contractor shall be entitled to recover from the Council, by way of full and final satisfaction of all claims, all monies accrued due prior to such termination, plus all reasonable costs actually and necessarily incurred by the Contractor directly and exclusively as the result of such early termination.

20.2 In the case of serious failure, without good cause, on the part of the Contractor to make reasonable progress in carrying out the Services, or in case of a substantial failure or persistent failure by the Contractor to properly perform its obligations under the Contract, the Council shall give the Contractor 10 working days’ notice to remedy such failure. If by the expiry of the said period of notice the Contractor has not remedied the failure, the Council shall have the right to terminate the Contract forthwith. Any extra expenses incurred by the Council in having the Services completed by another contractor will be to the Contractor’s account. The Councils rights and remedies provided herein are in addition and without prejudice to its other rights and remedies, including without limitation, any right to allow the Contractor to continue work and to recover from the Contractor, loss or damages in respect of the Contractor’s faulty or delayed performance.

20.3 Without prejudice to any other rights and remedies under the Contract it may possess, the Council shall be entitled upon the happening of any of the following events to forthwith terminate the Contract by written notice upon the Contractor, which shall take effect immediately or not later than three months after the Service of the notice. In the event of such termination the Council shall have the same rights against the Contractor as if this Contract had been terminated for failure to perform pursuant to sub clause 20.2 hereof.

20.3.1 Where the Contractor is an individual, and if a petition is presented for the Contractor’s bankruptcy or a criminal bankruptcy order is made against the Contractor, or he makes any composition or arrangement with, or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage its affairs, or

20.3.2 Where the Contractor is not an individual, but is a firm or a number of persons acting together in any capacity, if any event in 20.3.1, 20.3.3 or 20.3.4 of this clause occurs in respect of any partner in the firm or any of those persons, or a petition is presented for the Contractor to be wound up as an unregistered company, or

20.3.3 Where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction), or the Court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the Court, or possession is taken of any of its property under the terms of a floating charge.

20.3.4 Where the Contractor is an individual, if he/she shall die or be adjudged of incapable of managing his/her affairs within the meaning of part VII of the Mental Health Act 1983

**21 WAIVER**

21.1 None of the provisions of the Contract shall be considered waived by the Council unless the Council gives such waiver in writing with specific reference to this clause. No such waiver shall be a waiver of any past or future default, or breach of modification of any other Terms, provisions, Conditions, or covenants of the Contract unless expressly set forth in such waiver.

**22 STATUTORY AND OTHER REGULATIONS**

22.1 The Contractor shall in all matters arising in the performance of the Contract conform with all Acts of Parliament and with all Orders, Regulations and Bye-laws made with statutory authority by Government departments or by Local or other Authorities that shall be applicable to the Contract. The Contractor shall not in the performance of the Contract, in any manner endanger the safety or unlawfully interfere with the convenience of the public.

22.2 In the event that the Council incurs costs to which they would not otherwise be liable, due to the Contractor’s failure to comply with any Law or any Order, Regulation or Bye-law having the force of Law, the amount of such costs shall be reimbursed to the Council by the Contractor.

**23 DEFECTIVE SERVICE**

23.1 The Contractor shall indemnify the Council from and against all costs and expenses resulting directly from the Services being defective or unfit for any purpose.

23.2 In the event that the Services prove defective or unfit for any purpose, the Contractor shall perform as is necessary to correct the aforesaid Services in accordance with the provision of clause 7 (Standard of Workmanship) without prejudice to the Council’s rights under Sub-clause 23.1.

23.3 Notwithstanding the provisions of clauses 23.1 and 23.2 the Council shall have the right to cancel any Purchase Order issued against the Contract by written notice, and without any liability of any kind whatsoever accruing to the Council in the event that the Contractor fails to deliver materials and/or goods; and/or deliver and/or provide Services in accordance with the terms of the Purchase Order and/or the Contract.

**24 PERMITS AND LICENCES**

24.1 The Contractor shall obtain at its own risk and expense from the appropriate authorities all necessary permits and licences for the performance of the Services.

**25 RATE OF PROGRESS**

25.1 If the Contractor fails to perform Services according to an agreed schedule the Contractor shall take immediate measures to expedite the Services, either by overtime work or by bringing in additional personnel or by other measures acceptable to the Council. Such measures shall be at no cost to the Council if such failure is attributable to default or inefficiency of the Contractor.

25.2 The Contractor shall ensure that other work they are concurrently carrying out does not interfere with the performance of the Services and that notwithstanding such other work they can bring in additional personnel and furnish additional facilities as prescribed by this clause.

**26 FORCE MAJEURE**

26.1 Except for payment of money due, any delay or failure in performance of the Contract by either party shall, subject to the provisions of sub-clause 26.2 herein, be excused and shall not give rise to any claim for compensation or damage, by the other party if, and to the extent caused by an occurrence beyond the reasonable estimation or control of the party affected, including, but not limited to, acts of God, Decree of Government, fire, flood, labour disputes (other than labour disputes, strikes or lock outs involving the Contractor’s own work force and/or Personnel employed by the Contractor which shall not be deemed to be a force majeure), explosion, riot, war or rebellion and sabotage.

26.2 If either party is affected by an occurrence referred to in the above sub clause it shall give notice thereof without delay, in writing, to the other party of the nature and extent of the circumstances and the date and anticipated duration of the suspension.

26.3 The party serving notice pursuant to Clause 26.2 shall notify the other in writing as soon as the performance of its obligations is no longer affected by force majeure and the parties shall resume the performance of their respective obligations each to the other with effect from the date so notified.

**27 DRAWINGS AND DOCUMENTS TO BE DELIVERED TO THE COUNCIL**

27.1 All drawings, tracings, calculations, reports, documents, data, computer software and the like, provided by the Council are and shall remain, the Council’s property.

27.2 All drawings, tracings, calculations, reports, documents, data, computer software and the like, produced by the Contractor specifically for the Contract Services shall become the Councils property as and when produced.

27.3 All drawings, tracings, calculations, reports, documents, data, computer software and the like, whether produced by the Contractor or provided by the Council in relation to the Contract Services shall be handed over to the Council on completion of the Services, if so requested, unless otherwise specified in the Contract. If required by the Council’s Representative the Contractor shall certify to the Council that such have not been retained by the Contractor.

**28 LIAISON AND CO-OPERATION**

28.1 It is understood that the performance of the Services may be affected or interrupted as a result of the activities of the Council or another Contractor. The Contractor shall co-operate with and afford all reasonable facilities to such parties.

28.2 The Council reserves the right to require the Contractor to re-schedule the sequence of performance of the Services in such a manner as will minimise interference with the activities of such other parties where necessary.

**29 ENGLISH LANGUAGE**

29.1 The English Language shall be used throughout the Contractor’s communications, reports, correspondence, drawings, calculations and invoices submitted to the Council.

**30 GOVERNING LAW**

30.1 The construction, validity and performance of the Contract and any Purchase Orders issued against the Contract will be governed, in all respects, by English Law. The English Courts will have jurisdiction to entertain any action brought in connection with, or arising out of the Contract, and the Contractor will accept Services by pre-paid registered letter, of any proceedings in any such action, at his principal place of business.

**31 HEADINGS**

31.1 The titles of the respective clauses hereto are inserted for convenient reference only and are not to be construed as limiting or extending the meaning of any of the provisions of the Contract.

**32 PUBLICITY AND PRESS ANNOUNCEMENTS**

32.1 The Contractor shall obtain the written approval of the Council prior to making publicity releases or announcements regarding either the Contract or the activities of the Contractor related to its participation in the Contract, and shall ensure that any Sub-Contractor complies with this requirement. The approval of the Council shall not be unreasonably withheld.

**33 NOTICES**

* 1. Any notification under this agreement shall be well and sufficiently served on the party concerned if transmitted by e-mail, facsimile or sent by registered post or by recorded delivery post to the address stated in the Contract or Purchase Order. For the avoidance of doubt, a notice sent by e-mail or facsimile shall be deemed served at the time of transmission. A notice sent by post shall be deemed served one (1) day after posting.
	2. In the event of a change of address prompt notice shall be given to the party concerned.

**34 ARBITRATION**

34.1 Any dispute or difference which may arise between the Council and the Contractor in connection with or arising out of the Contract may, by agreement of both parties, be resolved by Arbitration in which event, such dispute or difference shall be referred to a single Arbitrator to be agreed between the Council and the Contractor, or failing such agreement within fourteen days, to be nominated by the president for the time being of the Institute of Arbitrators.

**35 SURVIVAL OF THE TERMS AND CONDITIONS**

35.1 Notwithstanding the provision in the Contract for termination not less than the following clauses shall survive termination of this Contract and shall continue with full force and effect.

4 Variations

5 Intellectual Property

7 Standard of Workmanship

9 Data Protection and Confidentiality

17 Payment and Audit

27 Drawings and Documents to be delivered to the Council

30 Governing Law

32 Publicity and Press Announcements

36 Exclusive Operations of Conditions

40 Data Protection

**36 EXCLUSIVE OPERATION OF CONDITIONS**

36.1 Acceptance of the Contract by the Contractor shall be deemed to constitute an acceptance of and agreement to comply with these Conditions and conflicting Conditions, whether expressed or implied, are excluded.

**37 COUNTER-TERRORISM AND SECURITY ACT 2015**

37.1 The Contractor acknowledges that the Council has a duty under the Counter-Terrorism and Security Act 2015 (“CTSA”) to have due regard to the requirement to prevent people from being drawn into terrorism. The Contractor shall facilitate the Council’s compliance with its duty pursuant to the CTSA and the Contractor shall have regard to the statutory guidance issued under section 29 of the CTSA and in particular the Contractor shall ensure that staff:-

37.1.1 understand what radicalisation means and why people may be vulnerable to being drawn into terrorism;

37.1.2 are aware of extremism and the relationship between extremism and terrorism;

37.1.3 know what measures are available to prevent people from becoming drawn into terrorism and how to challenge the extreme ideology that can be associated with it;

37.1.4 obtain support for people who may be exploited by radicalising influences.

37.2 Where the Contractor identifies or suspects that someone may be engaged in illegal terrorist related activity, the Contractor must refer such person or activity to the police.

**38. DISPUTE RESOLUTION**

38.1 If any dispute arises between the Parties in relation to this Contract which cannot be resolved by the Council Representative and the Contract Manager then:

38.1.1 Either Party may request the other to participate in a meeting between the Council Representative and the Contractor’s Manager in order to discuss the dispute and to agree a strategy to resolve it, in which case the Parties shall liaise in good faith to meet within ten (10) Working Days and also exchange statements at least three (3) clear Working Days prior to the date of the meeting (setting out their respective views of the issues, which are in dispute);

38.1.2 If despite following the procedures set at/in sub-clause 38.1.1 the dispute remains unresolved, the dispute shall be referred to an Executive Director of the Council and a Director of the Contractor (or a senior manager designated by them) without delay, in which case the Parties will seek to meet and resolve the dispute within a further period of fifteen (15) Working Days and shall each provide the other (if appropriate) with further statements setting out their views of the outstanding issues in order to assist resolution within that time period.

38.1.3 If, notwithstanding any steps taken by the Parties under clause 38.1.1 – 38.1.2, the dispute between them fails to be resolved within fifteen (15) Working Days, then at the request of either Party, the dispute shall be referred to an independent and professional mediator to be nominated without delay by agreement between the Parties. If, despite the intervention of a mediator or if unable to decide on a mediator the Parties fail to resolve their dispute within fifteen (15) Working Days, then either Party may serve Notice on the other to require the dispute to be referred to a single arbitrator in accordance with the Arbitration Act 1996.

**39. IR35**

39.1 The Council is responsible for determining the IR35 status of a contractor where they fall under the definition of a personal services company, and will be required to deduct tax at source, including Pay as You Earn (PAYE) and National Insurance (NI), through the Real Time Information (RTI) system where appropriate.

**40. DATA PROTECTION**

40.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Contractor is the Processor unless otherwise specified in Schedule 6. The only processing that the Processor is authorised to do is listed in Schedule 6 by the Controller and may not be determined by the Processor.

40.2 The Processor shall notify the Controller immediately if it considers that any of the Controller’s instructions infringe the Data Protection Legislation.

40.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:

1. a systematic description of the envisaged processing operations and the purpose of the processing;
2. an assessment of the necessity and proportionality of the processing operations in relation to the Services;
3. an assessment of the risks to the rights and freedoms of Data Subjects; and
4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

40.4 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:

1. process that Personal Data only in accordance with Schedule 6, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
2. ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the;
3. nature of the data to be protected;
4. harm that might result from a Data Loss Event;
5. state of technological development; and
6. cost of implementing any measures;
7. ensure that:
8. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 6);
9. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
10. are aware of and comply with the Processor’s duties under this clause;
11. are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
12. 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 the Controller or as otherwise permitted by this Contract; and
13. have undergone adequate training in the use, care, protection and handling of Personal Data; and
14. not transfer Personal Data outside the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
15. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
16. the Data Subject has enforceable rights and effective legal remedies;
17. the Processor 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 its best endeavours to assist the Controller in meeting its obligations); and
18. the Processor complies with any reasonable instruction notified to it in advance by the Controller with respect to the processing of the Personal Data;
19. at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

40.5 Subject to clause 40.6, the Processor shall notify the Controller immediately if it:

1. Receives a Data Subject Request (or purported Data Subject Request);
2. Receives a request to rectify, block or erase any Personal Data;
3. Receives any other request, complaint or communication relating to either Party’s obligations under the Data Protection Legislation;
4. Receives any communication from the information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
5. 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
6. Becomes aware of a Data Loss Event.

40.6 The Processor’s obligation to notify under clause 40.5 shall include the provision of further information to the Controller in phases, as details become available.

40.7 Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party’s obligations under Data Protection Legislation and any complaint, communication or request made under clause 40.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

1. the Controller with full details and copies of the complaint, communication or request;
2. such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
3. the Controller, at its request, with any Personal Data it holds in relation to a Data Subject.
4. assistance as requested by the Controller following any Data Loss Event;
5. assistance as requested by the Controller with respect to any request from the Information Commissioner’s Office, or any consultation by the Controller with the Information Commissioner’s Office.

40.8 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

1. the Controller determines that the processing is not occasional;
2. the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
3. the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

40.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller’s designated auditor.

40.10 Each Party shall designate its own data protection officer if required by the Data Protection Legislation.

40.11 Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

1. notify the Controller in writing of the intended Sub-processor and processing;
2. obtain the written consent of the Controller;
3. enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 40 such that they apply to the Sub-processor; and
4. provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
	1. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.
	2. The Controller may, at any time on not less than 30 Working Days’ notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
	3. The Parties agree to take account of any guidance issued by the Information Commissioner’s Office. The Controller may on not less than 30 Working Days’ notice to the Processor amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner‘s Office.
	4. Where the Parties include two or more Joint Controllers as identified in Schedule 6 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement based on the terms outlined in Schedule 7 in replacement of Clauses 40.1 – 40.14 for the Personal Data under Joint Control.