



# Thanet District Council General Conditions of Contract

(Revised September 2009)

## **CONTENTS**

1. Definitions
2. Interpretation
3. Legislation
4. Joint and Several
5. Rights Cumulative
6. Contract Term
7. Option to Extend the Contract Term
8. Standard of Service
9. Personnel
10. Human Rights
11. Equal Opportunity
12. Performance Standards and Remedies
13. Contractor's Superintendence
14. Patents, Rights and Royalties
15. Indemnity to Council
16. Insurance
17. Contract Price Rates
18. Payment of Invoices
19. Tax or Duty
20. Set Off
21. Best Value
22. Use of Council Premises

23. Variation of Contract
24. Council Step In
25. Assignment and Sub-Letting
26. Alternative Dispute Resolution
27. Liquidated Damages
28. Determination
29. Anti-Fraud & Corruption
30. Warranties
31. Notices
32. Waiver
33. Costs
34. Access to Information
35. Ombudsman
36. Contracts (Rights of Third Parties) Act 1999
37. Conflict of Interest
38. Confidentiality
39. Freedom of Information
40. Force Majeure
41. Data Protection
42. Employees and Employment Matters
43. Health and Safety
44. Sub-Contractors

- 45. Sustainable Procurement
- 46. Child Protection and Safeguarding Children
- 47. Data Quality
- 48. Special Conditions
- 49. Entire Agreement

## 1. DEFINITIONS

### 1.1 "Best Value Duty"

Means the duty imposed on the Council by Part 1 of the 1999 Act and under which the Council is under a statutory duty to continuously improve the way its functions are exercised, having regard to a combination of economy, efficiency and effectiveness and to the Guidance issued from time to time by the Secretary of State, Audit Commission and the Chartered Institute of Public Finance and Accountancy pursuant to, or in connection with, Part 1 of the 1999 Act.

### 1.2 "Best Value Performance Plans"

Means the best value performance plans which are required to be provided by the Council each financial year in accordance with section 6 of the 1999 Act.

### 1.3 "Best Value Review"

Means the review which is required to be conducted by the Council in accordance with section 5 of the 1999 Act.

### 1.4 "Best Value Review Benchmarking Exercise"

Means the benchmarking exercise to be undertaken in relation to the Services in accordance with Clause 21 (Best Value).

### 1.5 "Best Value Review Benchmarking Exercise Date"

Means the date [18 Months] after the Commencement Date and each anniversary thereof during the duration of the Contract or any other date the Council nominates to carry out the Best Value Review Benchmarking Exercise not being more often than once every year.

### 1.6 "Code"

Means the Code of Practice on Workforce Matters in Local Authority Service Contracts as currently contained in ODPM Circular 3/03 Annex D.  
<http://www.communities.gov.uk/corporate>

### 1.7 "Code Obligations"

Means the express obligations of the Contractor in Clause 42 (other than that in Clause 42.9) which derive from the Code.

1.8 "Confidential Information"

Means any information which is disclosed by one party to the other pursuant to or in connection with the Contract (whether orally or in writing and whether or not such information is expressly stated to be confidential or marked as such). For the purposes of this definition, confidential information also includes information provided to the Council in connection with the Contractor's tender for the Services.

1.9 "Contract Price Rates"

Means the sums exclusive of Value Added Tax, payable to the Contractor by the Council under the Contract for the full and proper performance by the Contractor of the Contract.

1.10 "Contract Term"

Means the period referred to in Clause 6 (Contract Term).

1.11 "Customer Satisfaction Survey Date"

Means the date 18 Months after the Commencement Date and each anniversary thereof during the duration of the Contract or other such date the Council nominates to carry out the Customer Satisfaction Survey not being more often than once every year.

1.12 "Customer Satisfaction Survey"

Means the survey more particularly described in Clause 21.

1.13 "Directive"

Means the EU Acquired Rights Directive 77/187 as amended or consolidated from time to time

1.14 "Extended Period(s)"

Means the period defined in Clause 7 (Option to Extend the Contract Term).

1.15 "Local Government Pension Scheme"

Means the Local Government Pension Scheme established pursuant to regulations made by the Secretary of State in exercise of powers under sections 7 and 12 of the Superannuation Act 1972 as amended from time to time.

1.16 "New Employees"

Means those new employees employed by the Contractor to provide the Services who will be working alongside the Transferring Employees.

1.17 "Parties"

Means the Council and the Contractor and "Party" shall mean either of them as the case may require.

1.18 "Regulations"

Means the Transfer of Undertakings (Protection of Employment) Regulations 1981 as amended or modified from time to time.

1.19 "Relevant Employees"

Means the employees who are the subject of a Relevant Transfer.

1.20 "Relevant Transfer"

Means a relevant transfer for the purposes of the Regulations.

1.21 "Sub-Contractor"

Means a person to whom the Contractor sub-contracts any of its obligations under the Contract.

1.22 "The 1999 Act"

Means the Local Government Act 1999.

1.23 "The Authorised Officer"

Means the officer designated by the Council or any other officer authorised by the Council for the purposes of the Contract.

1.24 "The Commencement Date"

Means the date on which the Contractor is to commence the provision of the Services.

1.25 "The Conditions"

Means the general terms and conditions of contract as set out in this document.

1.26 "The Contract"

Means the agreement concluded between the Council and the Contractor for the provision of the Services, including all specifications, plans, drawings and other documents which are relevant to the Contract.

1.27 "The Contractor"

Means the individual or firm or company whose Tender shall have been accepted by the Council, and where the Contractor is an individual or partnership the expression shall include the personal representatives of that individual or of the partners, as the case may be.

1.28 "The Contract Manager"

Means the person appointed by the Contractor to act as the Contractor's agent pursuant to Clause 13 (Contractor's Superintendence).

1.29 "The Council"

Means Thanet District Council.

1.30 "The Effective Date"

Means the date of the Contract.

1.31 "The Expiry Date"

Means the last day of the Contract Term referred to in Clause 6 (Contract Term) and for this purpose the Contract Term does not include any extended period(s).

1.32 "The Relevant Area"

Means the administrative area of Thanet District Council.

1.33 "The Services"

Means the whole of the services or any of them to be provided by the Contractor pursuant to the Contract or such of them as may from time to time remain the subject of the Contract.

1.34 "Transfer Date"

Means the date the Transferring Employees are transferred to the employment of the Contractor.

1.35 "Transferring Employee"

Means an employee, whose contract of employment becomes, by virtue of the application of the Regulations in relation to what is done for the purposes of carrying out a contract between the Council and the Contractor, a contract of employment with someone other than his existing employer.

**2. INTERPRETATION**

2.1 The Contract shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English Courts.

2.2 Clause headings are for ease of reference only and shall not be taken into account in the construction or interpretation of the Contract.

2.3 References in these Conditions to a clause, schedule, paragraph or part of a schedule are references where the context so admits to a clause, schedule, paragraph or part of a schedule to these Conditions.

2.4 References in the Contract to any statutes or statutory instruments shall include and refer to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and reference (whether general or specific) to any legislation shall include (unless the context otherwise requires) reference to all notices, directions, orders, regulations, bye-laws, rules or conditions already or hereafter to be made under or in pursuance of or deriving effect from any such legislation.

2.5 Words in the Contract of the masculine gender shall include the feminine and neuter genders and vice versa and words denoting natural persons shall include corporations and vice versa.

2.6 Words importing the singular meaning shall where the context so admits include the plural meaning and vice versa.

**3. LEGISLATION**

3.1 The Contractor and its employees shall comply and conform in all respects with the provisions from time to time of any Acts of Parliament and all Statutory Instruments and Regulations relevant to the subject matter of this Contract including (but without prejudice to the generality of the foregoing) all legislation and regulations from time to time in force pertaining to any Minimum Wage.

#### **4. JOINT AND SEVERAL**

4.1 Where the Contractor comprises more than one person or entity, all obligations on the part of the Contractor shall be joint and several.

#### **5. RIGHTS CUMULATIVE**

5.1 All rights granted to either of the Parties shall be cumulative and no exercise by either of the Parties of any right under the Contract shall restrict or prejudice the exercise of any other right granted by the Contract or otherwise available to it.

#### **6. CONTRACT TERM**

6.1 The Contract shall commence on the Commencement Date and shall continue in force (subject as hereinafter provided and to earlier termination in whole or in part in accordance with these General Conditions of Contract) for a period up to [Month, date, year] with an option to extend in accordance with Clause 7.

#### **7. OPTION TO EXTEND THE CONTRACT TERM**

7.1 There is a single option to extend this contract subject to funding. There is no determinate extension duration but this would not be expected to exceed 2 years.

#### **8. STANDARD OF SERVICE**

8.1 The Services shall be provided in accordance with the Contract. The Authorised Officer shall be entitled to give directions to the Contract Manager from time to time with regard to the provision of the Services or any other matter relating thereto. The Council or its Authorised Officer shall have the power to inspect and examine the Services being provided either at the Council's premises at any reasonable time or, where any part of the Services are being provided from premises other than the Council's premises, at those premises and reasonable notice shall be given to the Contractor.

8.2 If any part of the Services provided is found to be inadequate or in any way differing from the Contract, other than as a result of default or negligence on the part of the Council or its Authorised Officer, the Contractor shall at his own expense re-schedule and provide the Services correctly within such reasonable time as may be specified.

- 8.3 If the performance of the Contract by the Contractor is delayed by industrial dispute or any other cause which the Contractor could not have prevented and for which he was not in any way directly or indirectly responsible then the Contractor shall be allowed a reasonable extension of time for completion (to be determined by the Council).
- 8.4 The time for commencement shall be of the essence and failure to commence the Services within the time promised or specified shall entitle the Council (at its option) to be released from any obligation to accept and pay for the Services or to cancel all or part of the Services, in either case without prejudice to the other rights and remedies of the Council.

## **9. PERSONNEL**

- 9.1 The Contractor is required to employ sufficient staff to ensure that the Services are provided in accordance with the Contract and where appropriate with any Special Conditions of Contract.
- 9.2 The Contractor shall ensure that, where appropriate, its employees, agents and approved Sub-Contractors are instructed in and comply with the Council's policies.
- 9.3 If, and when directed by the Council, the Contractor shall provide a list of the names and addresses of all persons who may at any time require admission in connection with the performance of the Contract to any premises occupied by or on behalf of the Council, giving such particulars as the Council may require.
- 9.4 If the Contractor shall fail to comply with Clause 9.3 and if the Council decides that such failure is prejudicial to its interests, then the Council may determine the Contract by notice in writing to the Contractor, always providing that such determination shall not prejudice or affect any right of action or remedy which shall have accrued, or shall accrue thereafter, to the Council.
- 9.5 The Contractor shall ensure that its staff, agents and Sub-Contractors whilst on any Council property, behave in an orderly and as quiet manner as may be reasonably practicable having regard to the nature of the duties being performed. Further, they shall cause no unreasonable or unnecessary disruption to the routines and procedures of the Council.
- 9.6 The Contractor shall ensure that its staff, agents and Sub-Contractors whilst on Council property, maintain a high standard of personal hygiene, demeanour and cleanliness, and are issued and wear identification badges as agreed by the Council and Contractor. The Contractor's staff, agents and Sub-Contractors will not be permitted to smoke in any Council property at any time.

- 9.7 The Contractor shall not be allowed to employ any member of the Council's staff while that person continues to be employed by the Council.
- 9.8 The Authorised Officer shall have the power to instruct the Contractor by notice in writing to remove from any Council property, either temporarily or permanently, any employee, agent or Sub-Contractor not complying with these General Conditions of Contract or who is otherwise considered undesirable. Such directions must be complied with by the Contractor and shall not affect the Contractor's obligations under this Contract or the Council's right to enforce them, and the Contractor shall fully and promptly indemnify the Council in respect of any claims brought by any such body or individual arising therefrom. Such direction will not prejudice the rights of the Council under the Contract in the event of a breach of Contract by the Contractor.
- 9.9 The decision of the Council as to whether any person is to be refused admission to its premises and as to whether the Contractor has failed to comply with Clause 9.3 shall be final and conclusive.

## **10. HUMAN RIGHTS**

10.1 The Contractor acknowledges that:

10.1.1 in providing the Services under this Contract it may be a public authority for the purposes of the Human Rights Act 1998; and

10.1.2 that it is unlawful to exercise functions deemed to be of a public nature in a way that is incompatible with those rights contained in the European Convention of Human Rights and incorporated into English Law by the Human Rights Act 1998.

10.2 In providing the Services the Contractor shall throughout the Contract Term and at its own cost be subject to the same duty in respect of the Human Rights Act 1998 in the same way as if it were the Council.

10.3 The Contractor shall undertake or refrain from undertaking such actions as the Council may request so as to enable the Council to discharge its duty under the Human Rights Act 1998.

## **11. EQUAL OPPORTUNITY**

11.1 The Contractor shall:

11.1.1 in performing the Contract comply with the provisions of S.71(1) of the Race Relations Act 1976 (as amended) (the "Act") as if the Contractor were a

body within the meaning of Schedule 1A of the Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups);

11.1.2 Comply with the provisions of Parts II, III and IV of the Act, where appropriate;

11.1.3 Comply with the provisions of S.7 of the Act in all dealings with the Sub-Contractors;

11.1.4 Not discriminate directly or indirectly against any person because of their colour, race, nationality or ethnic or national origin in decisions to recruit, train, promote, discipline or dismiss employees; and

11.1.5 For purposes of ensuring compliance with Sub-Clauses 11.1.2 to 11.1.4 above, observe as far as possible the provisions of the Commission for Racial Equality's Code of Practice in Employment.

11.2 Where in connection with this Contract the Contractor, its agents or Sub-Contractors or the Contractor staff are required to carry out work on the Council's premises or on any other premises where the Council's employees are required to carry out work, the Contractor shall, to the extent required to comply with Clause 11.1.1, comply also with the Council's Race Equality Scheme and Equal Opportunities Policy. Copies of these documents can be found at [www.thanet.gov.uk](http://www.thanet.gov.uk)

11.3 The Contractor shall:

11.3.1 Monitor the representation among Contractor staff of persons of different racial groups (which shall mean groups of persons classified as 'ethnic groups' in the most recent official census by the Office of National Statistics or successor body); and

11.3.2 Where it appears to the Contractor that any racial group is under-represented in the Contractor staff by comparison with the proportion of members of that racial group known or believed to be engaged in similar trade or trades in the Relevant Area, the Contractor shall, so far as it is not prohibited from doing so by the Act undertake the following actions as may be appropriate:

(a) the placing of job advertisements designed to reach members of such racial groups and to encourage their applications;

(b) the inclusion in job advertisements of the following statement (or of a

statement carrying the same or a similar meaning): 'We are an equal

opportunities employer and encourage applicants from racial groups which are currently under-represented';

(c) the use of employment agencies and careers offices in areas where members of such racial groups live and work;

(d) the promotion of recruitment schemes for school-leavers designed to reach members of such racial groups;

(e) the provision of appropriate training and encouragement to members of Contractor staff from such racial groups to apply for promotion or transfer to positions where such racial groups are under-represented.

- 11.4 The Contractor shall 12 months from the date of the Contract and annually thereafter throughout the duration of the Contract submit a report statement to the Council demonstrating its compliance with Clauses 11.1, 11.2 and 11.3.
- 11.5 In addition to the report statement referred to in Clause 11.4, the Contractor shall provide such additional information as the Council may reasonably require for the purpose of assessing the Contractor's compliance with Clauses 11.1, 11.2 and 11.3.
- 11.6 Where the Contractor commits a breach of Clauses 11.1, 11.2 or 11.3 which amounts to a failure to meet the Performance standards referred to in Clause 12 (Performance Standards and Remedies), the provisions of Clause 12 (Performance Standards and Remedies) shall apply.
- 11.7 The Contractor shall notify the Authorised Officer forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Act.
- 11.8 Where any investigation is undertaken by a person or body empowered to conduct such investigation and/or proceedings are instituted in connection with matters referred to in the Contract being in contravention of the Act, the Contractor shall free of charge:
- 11.8.1 provide any information requested in the timescale allotted;
- 11.8.2 attend any meetings as required and permit Contractor's staff to attend;
- 11.8.3 promptly allow access to and investigation of any documents or data deemed to be relevant;

- 11.8.4 allow itself and any Contractor staff to appear as witness in any ensuing proceedings; and
- 11.8.5 co-operate fully and promptly in every way required by the person or body conducting such investigation during the course of that investigation.
- 11.9 Where any investigation is conducted or proceedings are brought which arise directly or indirectly out of any act or omission of the Contractor, its agents or Sub-Contractors, or the Contractor's staff, and where there is a finding against the Contractor in such investigation or proceedings, the Contractor shall indemnify the Council with respect to all costs, charges and expenses (including legal and administrative expenses) arising out of or in connection with any such investigation or proceedings and such other financial redress to cover any payment the Council may have been ordered or required to pay to a third party.
- 11.10 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations on its Sub-Contractors in terms substantially similar to those imposed on it pursuant to this Clause 11.
- 11.11 The Contractor shall in providing the Services comply with the provisions of the Disability Discrimination Act 1995 and the Sex Discrimination Act 1975.

## **12. PERFORMANCE STANDARDS AND REMEDIES**

- 12.1 From the Commencement Date, the Contractor shall provide the Services in accordance with the Performance Standards in the specification to form part of the Contract.
- 12.2 If at any time the Contractor fails to provide the Services in accordance with the Performance Standards, the Council shall have the right to:
- 12.2.1 make such adjustment(s) to contract payments that would otherwise be due to the Contractor under Clause 18 (Payment of Invoices) as it shall in its absolute discretion think fit, any such adjustment being calculated by the Council by reference to tendered rates.
- 12.2.2 require the Contractor to put in place such additional resources as are necessary to perform the Services in accordance with the Performance Standards as early as practicable thereafter at no additional charge to the Council; and
- 12.2.3 require the Contractor to promptly remedy any failure to meet the Performance Standards or to re-perform any non-conforming Service at no additional charge to the Council.

- 12.3 Without prejudice to any other right or remedy, the Council shall have the right to recover liquidated damages under the Contract and/or to terminate the Contract on any material breach by the Contractor of this Clause 12.

### **13. CONTRACTOR'S SUPERINTENDENCE**

- 13.1 The Contractor shall ensure that a Contract Manager is appointed and empowered to act on behalf of the Contractor and is available to the Council in person, throughout the period the Contractor's staff are on duty.
- 13.2 The Contractor shall forthwith upon appointment of its Contract Manager inform the Council in writing of details appertaining to this appointment. The Contractor may remove and replace the Contract Manager from time to time and must give written notice to the Authorised Officer at the time of so doing. The Contractor shall also inform the Council in writing of details of any person authorised from time to time to act as deputy for the Contract Manager.
- 13.3 The Contract Manager shall inform the Authorised Officer promptly and in writing of any instances of activity or omission on the part of the Council which preclude the Contractor from meeting its obligations under the Contract.
- 13.4 The Contractor will be required to make available the Contract Manager or authorised deputy with full powers to act on the Contract during core opening hours as described in the Specification for the services. The Contractor will also be required to make available the Contract Manager or deputy for call out in the case of emergencies.

### **14. PATENTS, RIGHTS AND ROYALTIES**

- 14.1 The Contractor shall not in connection with the Contract use, manufacture, supply or deliver any process, article, matter or thing, the use, manufacture, supply or delivery of which would be an infringement of any patent, or patent rights and the Contractor shall indemnify the Council from all proceedings, damages, costs, charges, professional expenses, loss and liability which the Council may sustain, incur or be put to by reason or in consequence directly or indirectly of any breach of this provision (whether willful or inadvertent) and against the payment of any royalties or other monies which the Council may have to make to any person or body entitled to patent rights in respect of any process, article, matter or thing used, manufactured, supplied or delivered by the Contractor in connection with this Contract.
- 14.2 Subject to any prior rights and to the rights of third parties, copyright and every other property right in all reports, documents and things produced under the Contract shall be vested as to copyright in the Council, and the Contractor warrants to the Council that all staff are and will be engaged in relation to the

Contract on terms which do not entitle any of them to copyright or any other such right in any such report, document or thing. The Contractor hereby assigns copyright in every such report, document and thing to the Council for the full period of copyright therein and all renewals and extensions and agrees that each shall carry a copyright legend in the following form: "(C) Copyright 20 .." "Applications for reproduction should be made to Thanet District Council". All moral rights relating to the work under the Contract are hereby waived by the Contractor.

- 14.3 Any information collected pursuant to the Contract (excluding any information which in the opinion of the Council is confidential to the Contractor or which has been communicated to the Contractor under a condition that it shall be confidential to the Contractor) shall be the property of the Council, and all original documents in whatever form which contain that information, including any computer tape or disk, any voice recording and any special computer program written to give access to the information, shall on request be deposited with the Council.
- 14.4 Nothing in the Contract or done under the Contract shall be taken to diminish any Council copyright, patent rights or rights to any other intellectual or industrial property which would apart from this Contract vest in the Council.
- 14.5 Without prejudice to the generality of the foregoing, there shall be vested in the Council all copyright, patent rights and rights to other intellectual or industrial property in or over any information, specification, plan, drawing, pattern, sample or other thing supplied by the Council, to the Contractor in relation to the Contract or in or over anything made or derived from or arising out of any such information, specification, plan, drawing, sample or other thing.
- 14.6 Any right of use in or over property (including any copyright or licence to use copyright material and also including intellectual property rights of all kinds) which is acquired by the Contractor or by his staff pursuant to, or for the purposes of the Contract, and whether acquired by transfer, assignment, licence, sublicense, grant or by any other means whatsoever, and the costs of acquisition which are to be reimbursed to the Contractor by the Council, shall be acquired by the Contractor upon terms which shall enable the Contractor upon request by the Council to perform at the Contractor's expense all acts and to execute all documents necessary to vest such rights of use in the Council to the full extent enjoyed by the Contractor without need for any or other permission, authorisation or consent.

## **15. INDEMNITY TO COUNCIL**

- 15.1 The Contractor shall not be liable for any loss, damage or delay suffered by the Council to the extent that such loss, damage or delay is attributable to

instructions given by or on behalf of the Council.

15.2 Subject to Clause 15.1, the Contractor shall indemnify the Council and any of its staff or agents against:

15.2.1 any loss or damage caused either to any property of the Council or its staff or agents or any injury (including injury resulting in death) sustained by the staff or agents of the Council by reason of any negligent act or omission of the Contractor, his employees or agents during the performance of the Contract;

15.2.2 any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss of, or damage to, any property of the Contractor's personnel or injury (including injury resulting in death) sustained by the Contractor unless and insofar as such loss, damage or injury is caused by the negligent act or omission of the Council or any of its staff or agents;

15.2.3 any claim, demand or liability made against or incurred by the Council or any agent of the Council in respect of any loss, damage or injury (including injury resulting in death) sustained by any third party during the currency of the Contract in consequence of any negligent act or omission of the Contractor, his employees or agents.

15.3 The Council shall have the right to deduct the amount of such liability, loss, costs, charges, claims, expenses (including professional expenses) or damages from any monies due to the Contractor or to recover same by action.

## **16. INSURANCE**

16.1 Without prejudice to its liability to indemnify the Council under Clause 15 (Indemnity to Council) the Contractor shall effect and maintain such insurances as are necessary to cover its liability under Clause 15 (Indemnity to Council).

16.2 The insurance in respect of risks of liability to third parties arising out of the action or default of the Contractor, its agents, servants or others acting under its control shall be to a minimum value of £5,000,000 (five million pounds) or such increased sum as the Council shall from time to time stipulate in respect of one claim and the number of incidents shall be unlimited. The Contractor's insurance in respect of claims for personal injury or the death of any person under a contract of service with the Contractor and arising out of hand and in the course of each person's employment shall comply with the Employers Liability (Compulsory Insurance) Act 1969.

16.3 Without prejudice to the provisions of Clause 16.1, the Contractor shall reimburse the Council all payments or additional payments made by the Council to third parties which have become necessary as a direct consequence of delay in the

performance of the Contract which the Contractor had failed to remedy after being given reasonable notice thereof by the Council, provided always that the Council shall take all reasonable steps to minimise the need to make such payments and shall not claim for any payments arising as a result of the Council's neglect to take such reasonable steps.

- 16.4 In addition to any other liability which the Contractor shall incur, and without prejudice to the foregoing provisions, the Contractor shall be liable to the Council for any loss, damage, injury or expense (whether direct, consequential or otherwise) arising out of or in connection with the performance of the Contract, including the operation of any computer software contained in or contributing to the performance of the Contract, where such loss, damage, injury or expense arises from the breach of contract or the breach of duty or fault or negligence of the Contractor, his employees or his agents.
- 16.5 Nothing in these General Conditions of Contract nor in any other part of the Contract shall impose any liability on any member of the staff of the Council or its representatives in their personal capacity.
- 16.6 The Council shall indemnify the Contractor against legal liability for all actions, claims, demands, costs, charges and expenses arising from or incurred by reason or any infringement or alleged infringement of copyright, patent, registered design or other property right used at the request of the Council by the Contractor in the course of undertaking the Contract
- 16.7 The Contractor shall prior to the commencement of the Services produce to the Authorised Officer without charge documentary evidence that the insurances required are properly maintained.
- 16.8 The Council shall be entitled, without prejudice to its existing rights and remedies, upon the failure of the Contractor to maintain the insurance referred to in this Clause 16, to terminate this Contract.
- 16.9 The Contractor shall without charge, provide to the Council on request evidence that the premiums payable in respect of the insurances required under this Clause 16 have been paid and that the said insurances are in full force and effect.

## **17. CONTRACT PRICE RATES**

- 17.1 The Contract Price Rates shall be subject to annual review on each anniversary of the Commencement Date but a framework agreement does not regulate price increases other than by the decision to place individual purchase orders against rates agreed within the contract and escalated by mutual agreement. Any price increases must be pre-notified with reasons justifying and accepted before the

placement of orders.

## **18. PAYMENT OF INVOICES**

- 18.1 Subject to any contractual or equitable right of set-off the Council will pay the Contractor following receipt of an invoice which is accurate and contains full details of the work carried out.
- 18.2 Invoices for work undertaken under the Contract shall be rendered at the time and in the manner specified in the Contract.
- 18.3 If, for the purpose of providing the Services, the Contractor enters into a contract for the supply of goods or services with a third party, the Contractor shall include in that contract a provision which requires the Contractor to pay for those goods or services within 30 days of the Contractor receiving a correct invoice from the third party.
- 18.4 If the Contractor believes that payment for a correctly submitted invoice is overdue, he should, in the first instance, speak to the Authorised Officer. In the event that the problem is not resolved to his satisfaction, he should write to the relevant Strategic Director of the Council setting out his case. The Strategic Director shall ensure that the complaint is dealt with and that the Contractor is not treated adversely in future for having made a complaint.
- 18.5 For the purpose of calculating any statutory interest under the Late Payment of Commercial Debts (Interest) Act 1998, the relevant date for the payment of the debt shall be deemed to be the last day of a period of 30 days commencing on the day when the invoice was received by the Council. The relevant date shall apply unless the invoice was presented before the Contractor performed his obligations under the Contract and, in these circumstances, the relevant date shall be deemed to be the last day of a period of 30 days commencing on the day when the Contractor performed his obligations under the Contract.
- 18.6 The Council will make payments within thirty days of receipt of invoices which are not disputed. Notification of a disputed invoice will be advised in writing by the Council to the Contractor as soon as is reasonably practicable after receipt of the invoice by the Council. Payment will only be withheld in respect of the disputed amount.
- 18.7 The Council will accept liability to pay only for the work undertaken in accordance with the Contract.
- 18.8 The Council will make payments due under the Contract to the Contractor through the Bank Automated Clearing System (BACS).

## **19. TAX OR DUTY**

- 19.1 In all cases where the Services provided under this Contract or the materials used in performance thereof shall be or become liable to any tax or duty and such tax or duty shall be increased, decreased or imposed during the currency of the Contract, the price (exclusive of any such tax or duty) to be paid for such Services or materials shall remain fixed.
- 19.2 VAT will be paid by the Council to the Contractor at the rate(s) prevailing for taxable supplies supported by VAT approved invoices.

## **20. SET OFF**

- 20.1 Whenever under this Contract any sum of money shall be recoverable from or payable by the Contractor to the Council the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this or any other contract with the Council. Exercise by the Council of its rights under this clause shall be without prejudice to any other rights or remedies available to the Council under this Contract or otherwise, however, at law and in equity.

## **21. BEST VALUE**

Duty of Best Value -

- 21.1 The Contractor acknowledges that the Council is subject to the Best Value Duty and that the provisions of this Clause 21 are intended to assist the Council in discharging its Best Value Duty in relation to the Services.
- 21.2 The Contractor shall, throughout the Contract Term assist the Council to discharge its Best Value Duty in relation to the Services.
- 21.3 In discharging its obligations under Clause 21.2 the Contractor shall comply with the provisions of this Clause 21 and shall undertake or refrain from undertaking such actions as the Council shall request to enable the Council to comply with the Best Value Duty in Part 1 of the 1999 Act insofar as it relates to the Services including:
- 21.3.1 actively promoting, supporting and assisting the Council in meeting its Best Value Duty in respect of the Services including (where considered appropriate by the Council) conducting Best Value Reviews and preparing Best Value Performance Plans;
- 21.3.2 complying with all requests by the Council for assistance in preparing Best

## Value Performance Plans;

- 21.3.3 complying with requests for information, data or other assistance made by the Council in pursuance of the Best Value Duty including:
- a) to facilitate the inspection of the Council's compliance with its Best Value Duty
  - b) pursuant to Part 1 of the 1999 Act; and to assist the Council in relation to any action taken by the Secretary of State
  - c) under sections 10, 11 and 15 of the 1999 Act; and to enable the Council to comply with the Publication of Information Direction 1998.
- 21.3.4 complying with all requests from the Council to procure the attendance of specific employees at any meetings of the Council at which the Contract is to be discussed (but not more than four meetings per year);
- 21.3.5 permitting any Best Value Inspector, in connection with the exercise of his statutory powers and duties and at all reasonable times and upon reasonable notice, reasonable access to all Thanet District Council buildings, Contractor buildings and to any employee, agent or Sub-Contractor of the Contractor and to any document or data relating to the Services;
- 21.3.6 facilitating the audit of the Council's Best Value Performance Plan by the Council's Auditors pursuant to section 7 of the 1999 Act; and
- 21.3.7 facilitating the Council preparing any statement in response to an Auditor's report pursuant to section 9 of the 1999 Act.
- 21.4 The Council shall at all times act reasonably in making or refraining from making requests of the Contractor in connection with the performance, satisfaction and discharge of the Council's Best Value Duty in accordance with Clause 21.1.

## Customer Satisfaction Survey

- 21.5 On or before each Customer Satisfaction Survey Date the Council may at its discretion instigate a Customer Satisfaction Survey. The Contractor shall at its own cost, co-operate throughout with the Council and any person engaged by the Council to conduct, assist or participate in the Customer Satisfaction Survey. The contents of the Customer Satisfaction Survey shall reflect the principles of the Council's Best Value Duty insofar as it relates to the Services and the purposes of which survey shall include:
- 21.5.1 assessing the level of satisfaction among users of the Services (including the way in which the Services are provided, performed and delivered) and, in

particular, the quality, efficiency and effectiveness of the Services;

21.5.2 assisting the preparation of the Contractor's Annual Services Improvement Plan;

21.5.3 monitoring the compliance by the Contractor with the Services Delivery Plan/its performance of the Services; and

21.5.4 assisting in the Council's preparation of its Best Value Performance Plans.

21.6 The Council shall provide the Contractor with a copy of the results of the Customer Satisfaction Survey four weeks prior to the Annual Services Improvement Meeting.

21.7 If in the Council's reasonable opinion, the results of the Customer Satisfaction Survey disclose that the Services (including provision, performance or delivery of the Services), or any part may be improved then the Council may require that the Contractor include the Council's proposals to implement the necessary improvements as part of the Annual Services Improvement Plan.

21.8 The Customer Satisfaction Survey shall be carried out at the cost of the Council.

#### Best Value Reviews

21.9 On or before each Best Value Review Benchmarking Exercise Date the Council at its discretion may instigate a Best Value Review Benchmarking Exercise and thereafter the following provisions of this Clause 21.9 shall apply.

21.9.1 The parties agree that any Best Value Review Benchmarking Exercise shall be carried out in good faith and each party shall act reasonably in relation to any such Best Value Review Benchmarking Exercise.

21.9.2 The Best Value Review Benchmarking Exercise shall be carried out at the cost of the Council.

21.9.3 The purpose of the Best Value Review Benchmarking Exercise shall be to undertake an objective comparison as at the Best Value Review Benchmarking Exercise Date of the quality and standard of the provision, performance and delivery of the Services with the provision of the same or similar services by a comparator group. The standards and comparator group to be used by Council in carrying out the Best Value Review Benchmarking Exercise shall be agreed with the Contractor and if the matter cannot be agreed it shall be subject to Clause 26 (Alternative Dispute Resolution).

21.9.4 The Council shall provide the Contractor with a copy of the results of the Best Value Benchmarking Exercise and Best Value Review four weeks prior to the Annual Services Improvement meeting.

21.9.5 If, in the Council's reasonable opinion, the results of the Best Value Review Benchmarking Exercise disclose that the Services including the provision, performance or delivery of the Services or any part may be improved having regard to the Best Value Duty then the Council may require that the Contractor include the proposals to implement Best Value Review Improvement Plan as part of the Annual Services Improvement Plan.

#### Annual Services Improvement Plan

21.10 Without prejudice to any other provision in this Contract the Contractor shall, no earlier than [x] weeks nor later than two weeks before the Annual Services Improvement Plan Meeting at its own cost, provide the Council with a written plan ("the Annual Services Improvement Plan") which shall contain:

21.10.1 a review of the provision, performance and delivery of the Services during the period of 12 Months prior to the imminent Annual Services Improvement Plan Meeting;

21.10.2 proposals to improve the provision, performance or delivery of the Services (or any part) during the 12 Month period commencing on 1st April having regard to:

(a) the Best Value Duty;

(b) the requirements upon the Council in relation to the contents of the Best Value Performance Plan in relation to the Services for that year;

(c) the results of any Customer Satisfaction Survey;

(d) the results of any Best Value Review Benchmarking Exercise.

21.11 The Contractor shall upon written request from the Council promptly provide such written evidence or other supporting information as the Council may reasonably require to verify and audit the information and other material contained in the Annual Services Improvement Plan.

21.12 The Parties shall meet at the Annual Services Improvement Plan Meeting details as advised by the Council's Authorised Officer to seek to agree the contents and method of implementation of the Annual Services Improvement Plan insofar as the Annual Services Improvement Plan discloses that the provision, performance or delivery of the Services (or any part) may be improved having regard to the

### Best Value Duty.

- 21.13 If the parties agree in accordance with Clause 21.12 the Contractor shall, as soon as practicable and in any event not more than 14 business days after the Annual Services Improvement Plan Meeting begin implementation and shall thereafter continue to carry out the proposals of the Annual Services Improvement Plan.
- 21.14 The Council shall have the absolute discretion to reject the contents and/or method of implementation of the Annual Services Improvement Plan.
- 21.15 Subject to Clause 21.16 the implementation of and compliance with the Annual Services Improvement Plan or any part or parts thereof shall not be construed as a variation of contract and there shall be no consequential adjustment to the payments to the Contractor under Clause 18 (Payment of Invoices).
- 21.16 The cost of complying and implementing the Annual Services Improvement Plan shall be met by the Contractor save in circumstances where the requirement for such compliance and implementation represents a variation of contract and the Annual Services Improvement Plan shall then constitute a variation of contract and the provisions of Clause 23 (Variation of Contract) shall apply accordingly.

### Performance Monitoring

- 21.17 The Contractor acknowledges and agrees that, notwithstanding any provision of the Contract which contemplates that the Council will or may from time to time:
- 21.17.1 inspect any part of the sites appertaining to the Contract;
- 21.17.2 check compliance by the Contractor with its obligations;
- 21.17.3 confirm or indicate approval of or non-objection to proposals made by the Contractor;
- 21.17.4 request the Contractor to vary the Contract/make a change to the Services; or
- 21.17.5 otherwise seek to influence the manner in which the Contract is conducted by the Contractor, it will always be fully the responsibility of the Contractor, and not the responsibility of the Council to ensure that the Services are provided in all respects in accordance with the Contractor's obligations under this Contract and no such action by or on behalf of the Council will in any way limit or affect such obligations.

## Council Monitoring

21.18 The Council shall undertake its own performance monitoring during the Contract Term for any purpose including ensuring that the Services are being provided in accordance with the Contract, that all information provided by the Contractor is accurate and that the Contractor's own monitoring processes are adequate. The Contractor shall co-operate with and assist the Council with such performance monitoring.

## Increased Monitoring

21.19 If the Council reasonably believes that either the Contractor has failed to observe or perform any of its obligations under the Contract or the Contractor is likely to fail to observe or perform any of its obligations under the Contract the Council may (without prejudice to any other right or remedy available to it) give notice to the Contractor:

21.19.1 requiring the Contractor to carry out additional monitoring in such manner and to such extent as the Council shall reasonably specify;

21.19.2 requiring the Contractor to supply such additional reports, plans and other information in such manner and to such extent as the Council shall specify;

21.19.3 specifying any inspections to be carried out by the Council, its agents or employees in monitoring the performance and observance of the Contractor's obligations under the Contract as are considered necessary by the Council (causing as little disruption and inconvenience to the Contractor as is reasonably practicable).

21.20 The Contractor shall co-operate and assist the Council with the monitoring by the Council, its agents or employees and shall make available all the Contractor's records relating to the provision of the Services forthwith on request by the Council and the Council, its agents and employees shall be permitted reasonable access on request by the Council to any of the sites or premises where such records are kept or where the Services are provided or to be provided.

21.21 The Contractor shall pay to the Council on demand all reasonable costs (including any associated administrative costs and overheads) incurred by the Council in respect of the inspections referred to in Clause 21.19.3 in the event that the inspection demonstrated that the Contractor failed to comply with this Contract in the provision of the Services.

21.22 The formal monitoring process shall take place once every Month by a meeting of the Authorised Officer and the Contracts Manager.

- 21.23 Contract Board Meetings shall be held monthly initially and then at agreed periods not more than 6 monthly. The Council shall give the Contractor no less than two weeks' prior notice of each Contract Board Meeting save in respect of Clause 21.28. The Council will prepare an agenda for each Contract Board Meeting to be held and shall circulate the agenda no less than five business days before each Contract Board Meeting.
- 21.24 The Council shall appoint persons to the Contract Board which shall consist of at least the Authorised Officer and at the Council's discretion may also consist of other representatives of the Council. The Contractor shall also appoint persons to the Contract Board which shall consist of at least the Contract Manager. The remaining Contractor representatives shall be made up of persons who are connected to the provision of the Services or management of the Contract generally (Board membership should be limited to key personnel only – maximum six persons unless deemed necessary by the Council).
- 21.25 Each meeting of the Contract Board shall be attended by at least the Authorised Officer and the Contracts Manager.
- 21.26 The agenda of the Contract Board Meeting shall include:
- 21.26.1 The performance of the Contractor since the last meeting of the Contract Board at which the Contractor's performance was considered or, in the case of the first meeting, since the Commencement Date;
- 21.26.2 any material variations;
- 21.26.3 any disputed invoices; and
- 21.26.4 such other business as either party shall notify to the other no less than 14 calendar days before the dates of the meetings.-
- 21.27 Each meeting of the Contract Board may be preceded by a series of informal meetings as deemed necessary by either party.
- 21.28 The parties acknowledge that from time to time there may be a requirement for an urgent Contract Board Meeting. Such meetings will only be called where the matter or matters to be discussed cannot be deferred until the next regular meeting of the Contract Board. Either party may call such urgent meeting of the Contract Board but the Council shall have the absolute discretion to reject the holding of such meeting. The Authorised Officer and the Contract Manager as a minimum shall attend such urgent meeting as long as they are notified of the meeting no less than two business days before the meeting, or such shorter period as may be reasonable in the circumstances.

21.29 The formal arrangements set out in this Clause 21 do not limit the Contractor's obligations to meet and liaise with the Authorised Officer to secure the smooth performance of the Services and are without prejudice to any other of the obligations under the Contract.

## **22. USE OF COUNCIL PREMISES**

- 22.1 In cases where the Contractor's staff are providing the Services on Council premises and subject to the requirements of the Specification and other documents which are relevant to the Contract, the Council during the period of the Contract shall permit the Contractor to use free-of-charge in connection with the provision of the Services the staff washrooms and lavatory facilities where available.
- 22.2 The Contractor shall use the above facilities only in connection with the provision of the Services and shall ensure that the Contractor's staff use the facilities only for that purpose.
- 22.3 The permission given in Clause 22.1 to use the facilities is personal to the Contractor and the Contractor's staff and shall cease immediately this Contract terminates.
- 22.4 Only the Contractor's own staff and persons making deliveries to the Contractor in connection with the provision of the Services may enter or use any part of any Council property without the prior written permission of the Authorised Officer.
- 22.5 For the avoidance of doubt, it is hereby declared that the permission to enter and use any Council property hereby given is not the grant of a tenancy of any part of such property.
- 22.6 The Contractor's staff shall use only the pay telephones where available.
- 22.7 Copies of policies and procedures of the Council, which the Council considers are necessary for the provision of the Services, will be provided to the Contractor. The Council will use its best endeavours to ensure that changes made to such policies and procedures from time to time are notified to the Contractor.
- 22.8 The Contractor shall comply with all reasonable requests of the Authorised Officer with regard to the security of any Council property.
- 22.9 The Council will not accept any liability for any equipment or materials left or stored by or on behalf of the Contractor at any Council property.

## **23. VARIATION OF CONTRACT**

23.1 The Authorised Officer shall be entitled to issue to the Contractor instructions in writing requiring the Contractor to do all or any of the following:

23.1.1 To omit any part of the Services or to cease to provide any part of the Services in such locations during such times or for such periods as the Authorised Officer may determine;

23.1.2 To provide the Services or any part thereof in such a manner as the Authorised Officer may reasonably require providing that a requirement to provide the Services to the contract specification shall not be a variation;

23.1.3 To provide such services additional to the Services including at additional or substituted locations as the Authorised Officer may reasonably require, provided that any such additional services shall be the same as or similar to the Services;

23.1.4 To vary permanently the Services or any part thereof to be provided at any location.

23.2 Where any part of the Services is omitted or ceases to be provided under the Contract, the rates and prices contained in the Schedule of Prices and Rates shall determine the valuation of the part of the Services omitted.

23.3 Without prejudice to any other of the General Conditions of Contract hereof no omission from, addition to or variation of the Contract shall be valid unless it is agreed in writing signed by the Authorised Officer.

## **24. COUNCIL STEP IN**

24.1 If the Council reasonably believes that it needs to take action in connection with any or all parts of the Services to discharge a statutory duty, then the Council shall be entitled to take action in accordance with Clause 24.2 to 24.5 below.

24.2 If Clause 24.1 applies and the Council wishes to take action, the Council shall notify the Contractor in writing of the following:

24.2.1 the action it wishes to take;

24.2.2 the reason for such action;

24.2.3 the date it wishes to commence such action;

24.2.4 the time period which it believes will be necessary for such action; and

24.2.5 To the extent practicable, the effect on the Contractor and its obligation to provide the Services during the period such action is being taken, but in the event of an Emergency or Civic Emergency (judgement as to which shall be at the sole discretion of the Council) the Council shall notify the Contractor as soon as reasonably possible.

24.3 Following service of such notice, the Council shall take such action as notified under Clause 24.2 above and any consequential additional action as they reasonably believe is necessary (together, "the Required Action) and the Contractor shall give all reasonable assistance to the Council while it is taking the Required Action.

#### Step in without Contractor Breach

24.4 If the Contractor is not in breach of its obligations under the Contract, then for so long as and to the extent that the Required Action is taken, and this prevents the Contractor from providing any part of the Services:

24.4.1 the Contractor shall be relieved from its obligations to provide such part of the Services;

24.4.2 in respect of the period in which the Council is taking the Required Action, and provided that the Contractor provides the Council with reasonable assistance (such assistance to be at the expense of the Council to the extent incremental costs are incurred) the monies due from the Council to the Contractor shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action over that period that it provided such Services during the previous 12 Months or shorter period if 12 Months have not elapsed since the Commencement Date.

#### Step-in on Contractor Breach

24.5 If the Required Action is taken as a result of a breach of the obligations of the Contractor under the Contract, then for so long as and to the extent that the required Action is taken, and this prevents the Contractor from providing any part of the Services the Contractor shall be relieved of its obligations to provide such part of Services in respect of the period in which the Council is taking the Required Action.

24.6 The monies due from the Contractor to the Council shall equal the amount the Contractor would receive if it were satisfying all its obligations and providing the Services affected by the Required Action over that period plus an amount equal to all the Council's costs of operation in taking the Required Action. Any such costs incurred by the Council may be recoverable from the Contractor by the Council as a civil debt.

## **25. ASSIGNMENT AND SUB-LETTING**

25.1 The Contractor shall be prohibited from transferring, assigning sub-contracting or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of the contract without the written permission of the Council. No sub-contracting shall relieve the Contractor from the obligations of the Contract or from the obligation to actively supervise the Services during its progress. All actions taken by an approved Sub-Contractor in connection with the carrying out of any work under the Contract will be deemed to be the actions of the Contractor as defined in this Contract.

## **26. ALTERNATIVE DISPUTE RESOLUTION**

26.1 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.

26.2 If the dispute cannot be resolved by the parties pursuant to Clause 26.1, the dispute may, by agreement between the parties, be referred to mediation pursuant to Clause 26.4 hereof.

26.3 The provision of the Services shall not cease or be delayed by the reference of a dispute to mediation pursuant to Clause 26.2 hereof.

26.4 The procedure for mediation and consequential provisions relating to mediation are as follows:

26.4.1 a neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon the identity of the Mediator within 14 days after a request by one Party to the other (provided that there remains agreement for mediation), or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Dispute Resolution ("CEDR") to appoint a Mediator;

26.4.2 the parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from the CEDR to provide guidance on a suitable procedure;

26.4.3 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;

26.4.4 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 the Council and the Contractor;

26.4.5 failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an 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;

26.4.6 if the parties fail to reach agreement in the structured negotiations within 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 be referred to the courts.

## **27. LIQUIDATED DAMAGES**

27.1 Without prejudice to any other remedies available to the Council whether under Contract or otherwise and subject to the provisions of the Specification(s), if there is a breach of the Contract by the Contractor (whether as to time, performance, service levels or otherwise) that in the reasonable view of the Council is capable of remedy, the Council shall be entitled to serve a Default Notice upon the Contractor in accordance with the provisions of the Specification. Payment of the liquidated damages due in respect of any such Notice served on the Contractor shall be in settlement of the Contractor's liability for any loss or damage incurred by the Council arising as a direct result of said breach up to the end of the period in which liquidated damages are payable under this Clause.

27.2 If the Contractor fails to rectify the default within the period specified in the Default Notice, the Council shall be entitled to claim any remedy available to it for loss or damage incurred by it after the end of that period.

27.3 No payment or concession to the Contractor by the Council or other act or omission of the Council shall in any way affect the rights of the Council to recover the said liquidated damages or be deemed to be a waiver of the right of the Council to recover any such damages unless such waiver has been expressly made in writing by the Council.

## **28. DETERMINATION**

28.1 The Council shall be entitled forthwith to terminate this Contract upon the

Contractor suffering an execution to be levied on its goods (or, if the Contractor consists of one or more individuals, any such individual dying), entering into a composition or arrangement for the benefit of its creditors or having a receiving order in bankruptcy made against him or, if the Contractor consists of a body corporate, the Contractor having an administrator a receiver (including an administrative receiver) or a receiver and manager appointed or being the subject of a resolution or order for winding up (otherwise than for the purpose of amalgamation or reconstruction).

28.2 If a party commits a material breach of the Contract and, in the case of a breach which is capable of remedy, fails to remedy such breach within 28 days of being required by the other party in writing to do so, the injured party shall be entitled to terminate the Contract with immediate effect by notice in writing to the other party and without prejudice to any rights or remedies of the parties accrued to the date of the determination of the Contract.

28.3 In the event of termination under either Clause 28.1 or Clause 28.2 and without prejudice to any other rights and remedies:

28.3.1 The Contractor shall unless requested otherwise by the Authorised Officer forthwith cease to provide any of the Services;

28.3.2 The Contractor shall fully and promptly indemnify the Council against all loss and damage suffered by the Council by reason of such termination and without prejudice to the generality of this clause shall fully and promptly indemnify the Council in respect of the cost of causing to be performed such work as would have been performed by the Contractor during the remainder of the Contract Term to the extent that such costs exceed such sums as would have been lawfully payable to the Contractor for performing such work. The Council shall be at liberty to have the Services provided by any persons (whether or not servants of the Council) as the Council shall in its absolute discretion think fit and be under no obligation to employ the least expensive method of having such Services provided.

28.3.3 The Council shall be under no obligation to make any further payment to the Contractor and shall be entitled to retain in its hands any payment which may have fallen due to the Contractor before termination until the Contractor has paid in full to the Council all sums due from the Contractor to the Council under this Contract.

## **29. ANTI-FRAUD & CORRUPTION**

29.1 The Council may cancel the Contract and recover from the Contractor the

amount of any loss resulting from such cancellation if the Contractor shall have offered or given or agreed to give 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 the obtaining or 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 him/her or acting on his/her 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 him/her or acting on his/her behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward the receipt of which is an offence under Section 117(2) Local Government Act 1972.

29.2 Any clause limiting the Contractor's liability does not apply to this anti-corruption clause.

### **30. WARRANTIES**

30.1 The Contractor warrants, represents, and undertakes to the Council that:

30.1.1 it has full authority to enter into the Contract;

30.1.2 it is of sound financial standing and has sufficient working capital available to it to carry out the Services in accordance with the Contract for the entire duration of the Term

30.1.3 it will make available to the Council copies of its audited accounts throughout the currency of the Contract within 30 days of the formal adoption of such accounts by the Contractor.

### **31. NOTICES**

31.1 Any notice to be served on either of the parties by the other shall either be sent by pre-paid recorded delivery or registered post (in which case it shall be deemed to have been received by the addressee two working days after posting) or sent by facsimile transmission (in which case if it is sent before 4.00 p.m. on a working day it shall have been deemed to have been received on the day of transmission otherwise the next working day). For the purposes of this Clause, working days are Monday to Friday inclusive but excluding bank and public holidays.

### **32. WAIVER**

32.1 The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them

or of the right at any time subsequently to enforce all or any terms and conditions of the Contract.

### **33. COSTS**

33.1 Each of the parties shall pay any costs and expenses incurred by it in connection with the formalisation of the Contract.

### **34. ACCESS TO INFORMATION**

34.1 The Contractor shall provide full access to the Council to such Information as it may reasonably require from time to time and at any time, including that for audit and Transfer of Undertakings (Protection of Employment) Regulations 1981 ("TUPE") purposes.

### **35. OMBUDSMAN**

35.1 In the event of an investigation by the Ombudsman into the acts or omissions of the Contractor or its employees or agents when undertaking the Services for the Council, the Contractor shall make documents available and co-operate with the investigation at no cost to the Council.

35.2 Where maladministration is found to have occurred due to the acts or omissions of the Contractor, its employees or agents, the Contractor shall pay any compensation awarded or recommended by the Ombudsman.

### **36. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

36.1 Notwithstanding any other provision in these Conditions or elsewhere, nothing in the Contract confers or purports to confer any right to enforce any of its terms on any person who is not a party to it.

### **37. CONFLICT OF INTEREST**

37.1 The Contractor shall ensure that there is no conflict of interest as to be likely to prejudice his independence and objectivity in performing the Contract and undertakes that upon becoming aware of any such conflict of interest during the performance of the Contract (whether the conflict existed before the award of the Contract or arises during its performance) he shall immediately notify the Council in writing of the same, giving particulars of its nature and the circumstances in which it exists or arises and shall furnish such further information as the Council may reasonably require.

37.2 Where the Council is of the opinion that the conflict of interest notified to it under Clause 37.1 above is capable of being avoided or removed, the Council may

require the Contractor to take such steps as will, in its opinion, avoid, or as the case may be, remove the conflict and:

- 37.2.1 if the Contractor fails to comply with the Council's requirements in this respect; or
- 37.2.2 if, in the opinion of the Council, compliance does not avoid or remove the conflict, the Council may determine the Contract and recover from the Contractor the amount of any loss resulting from such determination.
- 37.3 Where the Council is of the opinion that the conflict of interest which existed at the time of the award of the Contract could have been discovered with the application by the Contractor of due diligence and ought to have been disclosed as required by the tender documents pertaining to it, the Council may determine the Contract immediately for breach of a fundamental condition and, without prejudice to any other rights, recover from the Contractor the amount of any loss resulting from such determination.

## **38. CONFIDENTIALITY**

- 38.1 Except as provided in this Clause 38 (and subject to Clause 39), both the Council and the Contractor shall at all times during the currency of this Contract and thereafter,
  - 38.1.1 use their respective best endeavours to keep all Confidential Information confidential and accordingly not to disclose any Confidential Information to any other person, and
  - 38.1.2 not use any Confidential Information for any purpose other than the performance of its obligations under this Contract.
- 38.2 Confidential Information may be disclosed to such extent only as is necessary for the purposes contemplated by this Contract or as is required by law or other regulatory body or court of competent jurisdiction.
- 38.3 Before deciding on requests to the Council under the Freedom of Information Act 2000 for the disclosure of Confidential Information the Council shall (unless obliged by said Act to make such disclosure without consultation or otherwise) consult the Contractor with a view to obtaining its agreement to the action to be taken in respect of any such requests.
- 38.4 The consultation shall take the form of a letter to the Contractor setting out full details of the request for Confidential Information and the Contractor shall submit any comments it wishes to make to the Council as to whether the disclosure would prejudice its commercial interests if it were to be released, within five

working days of the date of the said letter.

- 38.5 The Council will take into account any comments made by the Contractor before any decision is made as to whether or not the Confidential Information requested is to be released. In any cases where the Council decides that the public interest in disclosing the Confidential Information outweighs the public interest in not doing so, it shall notify the Contractor accordingly.
- 38.6 Any requests that are made directly to the Contractor for the disclosure of Confidential Information shall be immediately referred to the Council (and in any event not later than two working days from the Contractor's receipt of the request) for it to decide whether the Information should be disclosed. Clauses 38.4 and 38.5 will also apply to such requests that are referred from the Contractor to the Council.
- 38.7 Any Confidential Information may be used for any purpose or disclosed to any other person to the extent that:
- 38.7.1 it is at the Effective Date, or becomes thereafter public knowledge through no fault of the disclosing party provided that in doing so the disclosing party shall not disclose any Confidential Information which is not public knowledge; or
- 38.7.2 the disclosing party can show to the reasonable satisfaction of the other that the Confidential Information was already known to the person to whom it was disclosed before it was divulged by the disclosing party.
- 38.8 Nothing contained in this Clause 38 shall prevent either the Council or the Contractor from distributing and/or issuing or permitting to be distributed or issued any material in connection with the Council's Best Value Duty.
- 38.9 The obligations under this Clause 38 shall survive the expiry or termination of this Contract for a period of three years.
- 38.10 The Contractor may retain copies of the information produced or collected in the course of providing the Services, but shall not disclose such information and shall not exploit such information commercially without the prior written consent of the Council, which may be withheld, or may be granted upon such terms and conditions as the Council in its absolute discretion shall see fit, and save as shall be permitted by such consent, the Contractor shall use such information only for the purposes of the Contract.
- 38.11 Either party ("the Receiving Party) may disclose Confidential Information to its officers, professional advisers, members, contractors or employees where such disclosure is reasonably necessary provided always that the Receiving Party shall use reasonable endeavours to ensure that such officers, professional

advisers, members, contractor and employees comply with the same obligations that the Receiving Party is obliged to comply with pursuant to this Clause 38.

### **39. FREEDOM OF INFORMATION**

39.1 For the purposes of this Clause 39:

39.1.1 "FOI Legislation" means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance issued by the Information Commissioner, the Ministry of Justice or the department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;

39.1.2 "Information" has the meaning given under Section 84 of the Freedom of Information Act 2000.

39.1.3 "Information Request" means a request for any Information under the FOI Legislation.

39.2 The Contractor acknowledges that the Council:

39.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Council (at the Contractor's expense) to enable the Council to comply with its obligations under the FOI Legislation; and

39.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.

39.3 Without prejudice to the generality of clause 39.2, the Contractor shall and shall procure that its sub-contractors (if any) shall:

39.3.1 transfer to the Authorised Officer (or such other person as may be notified by the Council to the Contractor) each Information Request relevant to the Contract or the Services that it or they (as the case may be) receive as soon as practicable and in any event within two working days of receiving such Information Request; and

39.3.2 in relation to Information held by the Contractor or in its possession or power, provide the Council with details about and/or copies of all such Information that the Council requests and such details and/or copies shall be provided within five working days of a request from the Council (or such other period as the Council may reasonably specify), and in such forms as the Council may reasonably specify.

- 39.4 The Council shall be responsible for determining at its absolute discretion whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation. In no event shall the Contractor respond directly to an Information Request unless expressly authorized to do so by the Council.
- 39.5 The Contractor shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

#### **40. FORCE MAJEURE**

40.1 Force Majeure means an event beyond the reasonable control of the affected party which does not relate to its fault or negligence. Force Majeure includes (without limitation) acts of God, expropriation or confiscation of facilities, any form of Government intervention, war, hostilities, rebellion, terrorist, activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes, power shortages and computer viruses. Force Majeure does not include:

40.1.1 failure by the affected party to adequately test equipment supplied by a third party or other service component before installation, or any consequence of the failure;

40.1.2 strikes or other industrial action by employees of the affected party or its sub-contractors.

40.2 Neither party shall be responsible for failure to carry out any of its duties (save as to payment) under the Contract to the extent to which this is caused by Force Majeure (as defined in this Clause 40) provided that the affected party:

40.2.1 has taken all reasonable steps to prevent and avoid the Force Majeure;

40.2.2 carries out its duties to the best level reasonably achievable in the circumstances of the Force Majeure;

40.2.3 takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;

40.2.4 on becoming aware of the Force Majeure promptly informs the other party in writing that something has happened which is a Force Majeure, giving details of the Force Majeure, which obligations have been affected, together with a reasonable estimate of the period during which the Force Majeure will continue;

40.2.5 within seven calendar days of becoming aware of the Force Majeure provides written confirmation and reasonable evidence of the Force Majeure; and

40.2.6 tells the other party when the Force Majeure has stopped.

40.3 The charges for work affected by a Force Majeure shall be reduced or waived by a reasonable amount to be agreed between the parties to reflect the extent and standard to which the affected work is being provided. If a Force Majeure results in suspension of all of the Services or in the Services being provided to a level of negligible value to the Council, the Council shall not be liable to pay for the Services.

40.4 If the Force Majeure results in suspension of all work or in work being provided to a level of negligible value to the Council and this continues for more than five calendar days, the Council may terminate this Contract by giving thirty calendar days' written notice to the Contractor.

## **41. DATA PROTECTION**

41.1 The Contractor shall not disclose or allow access to any personal data provided by the Council or acquired by the Contractor during the course of tendering for or executing the Contract, other than to a person employed or engaged by the Contractor or any Sub-Contractor, agent or other person concerned with the same.

41.2 Any disclosure of or access to personal data allowed under Clause 41.1 shall be made in confidence and shall extend only so far as that which is specifically necessary for the purpose of the Contract.

41.3 The Contractor shall store or process such personal data only at sites specifically agreed in writing, in advance, with the Council.

41.4 If the Contractor fails to comply with the provisions of this Clause 41 the Council may determine the Contract by notice in writing to the Contractor provided always that such determination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Council.

41.5 The decision of the Council upon matters arising under this clause shall be final and conclusive.

## **42. EMPLOYEES AND EMPLOYMENT MATTERS**

42.1 The Council and the Contractor agree that where the identity of a provider (including the Council) of the Services is changed pursuant to the Contract

(including upon termination of the Contract) then the change may constitute a Relevant Transfer. On the occasion of each Relevant Transfer (including a Relevant Transfer upon termination of this Contract), the Contractor shall comply with all of its obligations under the Regulations and the Directive in respect of the Relevant Employees.

- 42.2 The Contractor shall be responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the date of a Relevant Transfer.
- 42.3 The Contractor shall ensure that all Transferring Employees are offered membership of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date or are afforded pension rights which are certified by the Government Actuaries Department [or by a professional qualified actuary] as being broadly comparable to or better than the terms of the pension scheme of which they were, or were eligible to be, members prior to the Transfer Date.
- 42.4 The Contractor shall within 10 working days of receiving a request from the Council, furnish to the Council any information deemed by the Council necessary concerning any measures (within the meaning of the Regulations and the Directive) that the Contractor intends to take in relation to any Relevant Employee and shall indemnify the Council against all losses, costs, claims, demands, actions, fines, penalties, liabilities and expenses (including legal expenses) in relation to any breach of this obligation.
- 42.5 The Contractor shall indemnify the Council from and against all losses, costs, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses), which the Council (so far as it is able) shall take all reasonable steps to mitigate, in connection with or as a result of any claim or demand by any Relevant Employee arising out of the employment of or termination of the employment of any Relevant Employee provided that this arises from any act, fault or omission of the Contractor in relation to any Relevant Employee, on or after the date of the Relevant Transfer.
- 42.6 The Contractor shall indemnify and hold harmless the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council (so far as it is able) shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any trade union or staff association or employee representative (whether or not recognised by the Contractor in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor to comply with any legal obligation to such trade union, staff association or other

employee representative whether under Regulation 10 of the Regulations, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the date of the Relevant Transfer.

- 42.7 The Contractor shall indemnify the Council from and against all losses, costs, claims, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses) which the Council (so far as it is able) shall take all reasonable steps to mitigate, in connection with or as a result of any claim by any Relevant Employee that the identity of the Contractor or Sub-Contractor is to that Relevant Employee's detriment or that the terms and conditions to be provided by the Contractor or any Sub-Contractor or any proposed measures of the Contractor or any Sub-Contractor are to that employee's detriment whether such claim arises before or after the Transfer Date.
- 42.8 The Contractor shall indemnify the Council and any new contractor appointed by the Council and keep the Council and any new contractor appointed by the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) which the Council (so far as it is able) and any new contractor appointed by the Council shall take all reasonable steps to mitigate, awarded against or incurred or paid by the Council or any new contractor appointed by the Council as a result of or in connection with the employment or termination of employment of any employee of the Contractor during any period prior to the date of expiry or sooner termination of the Contract.
- 42.9 The Council and the Contractor shall have regard to the Code in interpreting and applying the Code Obligations.
- 42.10 Subject to Clause 42.12, the Contractor shall employ New Employees on terms and conditions of employment which are, overall no less favourable than those of the Transferring Employees engaged in the provision of the Services and holding the same or a similar position to that of the New Employees.
- 42.11 The Contractor shall consult with the recognised trade unions and where there is no recognised trade union any other employee representative body on the terms to be offered to the New Employees pursuant to Clause 42.10.
- 42.12 In addition to its obligations under Clause 42.10 above, the Contractor shall procure that the New Employees are offered either:
- 42.12.1 membership of the Local Government Pension Scheme where the employer has admitted body status within the scheme and makes the requisite contribution; or
- 42.12.2 membership of a good quality employer pension scheme, being a

contracted-out final salary based defined benefit scheme, or a defined contribution scheme under which the employer must match employee contributions up to 6 per cent; or

- 42.12.3 a stakeholder pension scheme, under which the employer matches employee contributions up to 6 per cent.
- 42.13 During the term of the Contract, the Contractor shall on request by the Council provide the Council with accurate and complete information as soon as reasonably practicable, including the terms and conditions of employment of the Transferring Employees and the New Employees, where this is required to monitor the Contractor's compliance with its Code Obligations.
- 42.14 The Contractor shall support any central Government sponsored review and monitoring programme on the impact of the Code and on request by the Council provide the Council with accurate and complete information as soon as reasonably practicable in order to assist the Council in doing this.
- 42.15 The Council and the Contractor shall in the first instance seek to resolve by discussions between them any complaints from any employee or any recognised trade union in relation to compliance by the Contractor with its Code Obligations.
- 42.16 Where it appears to the Council or the Contractor that it is not possible to resolve the matter by continuing discussions between them pursuant to Clause 42.15 or where an employee of the Contractor or any recognised trade union writes to the Council to confirm that it has been unable to resolve its complaint directly with the Contractor in relation to the Contractor's Code Obligations, the Council shall first write to the Contractor to seek an explanation for the alleged failure by the Contractor to comply with its Code Obligations. The Contractor shall provide such an explanation in writing within 5 working days of receipt of the request from the Council.
- 42.17 If the response provided by the Contractor satisfies the Council that the Code Obligations have been met, then the Council will inform the complainant of this and the matter will be deemed to have been concluded.
- 42.18 In the event that the Council is not satisfied with the response provided by the Contractor the Council shall write to the Contractor within 5 working days to require the Contractor to take immediate action to resolve this dispute.
- 42.19 If, following such a request by the Council the Contractor still appears to the Council not to be complying with its Code Obligations, the matter shall be dealt with in accordance with Clause 26 (Alternative Dispute Resolution).
- 42.20 During the 12 months preceding the expiry of the Contract or after the Council

has given notice to terminate the Contract or at any other time as directed by the Council, and within 15 working days of being so requested by the Council, the Contractor shall fully and accurately disclose to the Council any and all information in relation to all personnel engaged in providing the Services including all Relevant Employees who are to transfer as a consequence of a Relevant Transfer as the Council may request, in particular but not necessarily restricted to any of the following:

- 42.20.1 a list of employees employed by the Contractor;
  - 42.20.2 a list of agency workers, agents and independent contractors engaged by the Contractor;
  - 42.20.3 the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) of those personnel; and
  - 42.20.4 the terms and conditions of employment of the Relevant Employees, their age, salary, date continuous employment commenced and (if different) the commencement date, enhancement rates, any other factors affecting their redundancy entitlement and any outstanding claims arising from employment.
- 42.21 The Contractor shall warrant the accuracy of all the information provided to the Council pursuant to Clause 42.20 and authorises the Council to use any and all the information as it may consider necessary for the purposes of its business or for informing any tenderer or prospective tenderer for any services which are substantially the same as the Services (or any part thereof).
- 42.22 During the 12 months preceding the expiry of this Contract or where notice to terminate the Contract for whatever reason has been given, the Contractor shall allow the Council or such other persons as may be authorised by the Council to communicate with and meet the Relevant Employees and their trade union or employee representatives as the Council may reasonably request.
- 42.23 During the 12 months preceding the expiry of this Contract or where notice to terminate the Contract for whatever reason has been given, the Contractor shall not without the prior written consent of the Council unless bona fide in the ordinary course of business:
- 42.23.1 vary or purport or promise to vary the terms and conditions of employment of any employee employed in connection with the Services;
  - 42.23.2 materially increase or decrease the number of employees employed in connection with the Services; or
  - 42.23.3 assign or redeploy any employee employed in connection with the

Services to other duties unconnected with the Services.

42.24 In the event that the Contractor enters into any sub-contract in connection with this Contract, it shall impose obligations as contained within the contract upon its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause 42 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Council and keep the Council indemnified in full from and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any failure on the part of the Sub-Contractor to comply with such terms.

### **43. HEALTH AND SAFETY**

43.1 Without prejudice to any other term or condition of this contract the Contractor shall comply in all respects with the provisions of any statute, statutory instrument, rule of regulation in force from time to time relating to:

43.1.1 health and safety issues relevant or applicable to the goods, works and/or services to be provided to the Council hereunder and shall bear the penalty for any contravention of the standard provisions relating to health and safety; and

43.1.2 Equal opportunities. In particular, the Council requires the Contractor to be committed to a policy of treating all its employees and job applicants equally. No employee or potential employee shall receive less favourable treatment or consideration on the grounds of race colour religion or belief nationality ethnic or national origins sexual orientation gender re-assignment age disability marital status or part-time status or be disadvantaged by any conditions of employment that cannot be justified as reasonably necessary on operational grounds.

### **44. SUB-CONTRACTORS**

44.1 Without prejudice to Clause 25 above or any other indemnity on the part of the Contractor contained or implied within the Contract

44.1.1 It shall be a condition of any approved sub-contracting that the employment of the Sub-Contractor under the sub-contract shall terminate immediately upon the termination (for any reason) of the Contractor's employment under the Contract.

44.1.2 The Contractor shall ensure that the terms and conditions of any sub-contract shall take due and proper account of the terms and conditions of the Contract and that nothing contained or implied within any sub-contract shall prevent, prohibit, hinder or restrict the Contractor in any way from observing and

performing his rights, duties and obligations (or any of them) under the terms of the Contract with the Council.

- 44.1.3 The Contractor shall indemnify and keep indemnified the Council in full from and against all direct, indirect or consequential loss, damages, injury claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Council as a result of or in connection with any breach, non-observance or non-performance on the part of the Contractor of this Clause 44.

## **45. SUSTAINABLE PROCUREMENT**

- 45.1 The Contractor acknowledges the Council's Sustainable Procurement Statement included within its procurement Strategy published from time to time and available for viewing at [www.thanet.gov.uk](http://www.thanet.gov.uk) and the Contractor shall perform its obligations under the Contract with due regard to the said Statement. Without prejudice to the generality of the foregoing the Contractor and its employees shall act in accordance with said Statement as regards:

45.1.1 reduction of unnecessary waste and the re-use and re-cycling of materials;

45.1.2 reduction of waste energy and water consumption;

45.1.3 use of raw materials where possible from renewable resources;

45.1.4 Working with the Council throughout the Contract Term (and any extension thereof) to support economic sustainability as regards provision of Services hereunder.

- 45.2 The Contractor shall upon request from the Council provide such information as the Council may reasonably require as evidence of Contractor compliance with this clause

## **46. CHILD PROTECTION AND SAFEGUARDING CHILDREN**

- 46.1 Where the Contractor is engaged by the Council under a contract in the performance of which the Contractor its employees or sub-contractors are likely to come into contact with children or young people then, unless bound to comply with its own Child Protection Policy (which shall be no less onerous than the Council's), the Contractor shall comply with the terms of the Council's Child Protection Policy current at the time and shall cause its employees and sub-contractors to do likewise, throughout the duration of the contract.

A copy of the Council's current Child Protection Policy may be viewed at [www.thanet.gov.uk](http://www.thanet.gov.uk) and includes (without limitation) a requirement for contractors to undertake CRB checks of all employees that work with children and vulnerable

adults as part of their normal duties

#### **47. DATA QUALITY**

- 47.1 The Contractor is aware of the Council's Data Quality Framework and acknowledges the expectations placed upon all contractors that provide data to the Council. A copy of the Council's current Data Quality Framework may be viewed at [www.thanet.gov.uk](http://www.thanet.gov.uk)
- 47.2 Throughout the Contract Term (including any extended period(s)) the Contractor shall have and maintain procedures in place to ensure that any data it provides to the Council is accurate and reliable and shall ensure that said procedures include validation checks where appropriate.
- 47.3 The Contractor hereby agrees to provide data to the Council within timescales as required by the Council and acknowledges that the Council may from time to time require it to assist auditors and/or performance officers in the review of the systems and processes used by the Contractor in the production of data to the Council.

#### **48. SPECIAL CONDITIONS**

- 48.1 In the case of any conflict or inconsistency between these General Conditions and any special conditions within the Contract, the latter shall prevail.

#### **49. ENTIRE AGREEMENT**

- 49.1 The Contractor irrevocably and unconditionally waives, in the absence of fraud, any rights which it might otherwise have had to seek to rescind or terminate this Contract or to claim damages against the Council or any of its officers, employees, advisers or agents for, or arising out of, any representation or breach of any warranty not contained in the Contract.
-