



**DATED**

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**STANDARD TERMS AND CONDITIONS FOR MINOR WORKS**

**PROPERTY:**

HEAD OF LAW  
CASTLE POINT BOROUGH COUNCIL  
COUNCIL OFFICES  
KILN ROAD  
THUNDERSLEY  
BENFLEET  
ESSEX SS7 1TF

**THIS AGREEMENT** is dated the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

**PARTIES**

- (1) **CASTLE POINT BOROUGH COUNCIL** of Council Offices, Kiln Road, Thundersley, Benfleet, Essex SS7 1TF ("the Council") and
- (2) ..... (Company Registration No. ....) whose Registered Office is at ..... ("the Contractor")

**BACKGROUND**

- (A) The Council sought quotations for the provision of .....
- (B) The Council has through a competitive process selected the Contractor to undertake the Works and the Contractor is willing and able to undertake the Works in accordance with the attached Specification and terms and conditions of this Contract
- (C) The Council has accepted the Contractor's Quotation of ..... (£.....) dated the .....

**AGREED TERMS :-**

- 1. **FOR** the consideration hereinafter mentioned the Contractor shall carry out the Works according to and in all respects in conformity with the attached Specification and terms and conditions of this Contract
- 2. **THE** Council will pay to the Contractor the Price of ..... (£.....) exclusive of VAT by the Stage Payments as agreed between the parties but with the Retention Percentage for the Retention Period to allow for any defaults or defects in relation to the Works carried out by the Contractor to be identified by the Contract Manager and corrected by the Contractor

## CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions. In these Conditions, the following definitions apply:

**Anti-slavery Policy:** the Contractor's anti-slavery policy [attached at the **Error! Reference source not found.**], as amended by notification to the Council from time to time].

**Business Day:** a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.

**CDM Regulations:** means the CDM Regulations 2015

**Commencement Date:** shall be the .....

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 16.8.

**Contract:** the contract between the Council and the Contractor for the supply of Works in accordance with these Conditions.

**Contract Manager:** means .....

**Contractor:** the person, company or firm from whom the Council purchases the Works.

**Council:** Castle Point Borough Council at Council Offices, Kiln Road, Thundersley, Benfleet, Essex, SS7 1TF.

**Council Materials:** has the meaning set out in clause 3.3(i).

**Date of Possession of the site:** means the .....

**Defects:** has the meaning set out in clause 3.3(k)

**DPA:** means the Data Protection Act 1998

**Force Majeure Period:** means the period of ..... days/weeks/months

**Practical Completion date:** means the date when in the opinion of the Contract Manager practical completion of the Works is achieved

**Principal Contractor:** for the purposes of the CDM Regulations means the Contractor

**Principal Designer:** for the purposes of the CDM Regulations means .....

**Price:** ..... (£.....) in accordance with the Contractors Quotation

**Quotation:** means the Contractors quotation to carry out the Works dated the .....

**Rectification Period:** shall mean the period of ..... months/weeks from the date of practical completion of the Works

**Relevant Period:** means valuations undertaken every 28 days

**Retention Percentage:** shall mean 2.5% of the Price

**Slavery Act** means the Modern Slavery Act 2015

**Specification:** the description or specification for the Works agreed in writing by the Council and the Contractor.

**Stage Payments:** means the periodic payments based on the value of the Works performed in any Relevant Period

**Works:** .....

**Works Completion Date:** .....

1.2 Construction. In these Conditions, the following rules apply:

- (a) a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- (b) a reference to a party includes its personal representatives, successors or permitted assigns;
- (c) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- (d) any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- (e) a reference to **writing** or **written** includes faxes.

## 2. BASIS OF CONTRACT

2.1 The Works will be completed by the Contractor for the Price and the Council agrees to pay the Contractor the Price in accordance with 6 below.

2.2 The Contract will commence on the Commencement Date

- 2.3 The Works will be completed by the Works Completion Date.
- 2.4 These Conditions apply to this Contract to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**3. PROVISION AND MANNER OF CARRYING OUT THE WORKS**

- 3.1 The Contractor shall from the Commencement Date and for the duration of this Contract undertake the Works in accordance with these Conditions and the Specification.
- 3.2 The Contractor shall meet any performance dates for the Works specified in the Conditions, Specification or notified to the Contractor by the Council.
- 3.3 In providing the Works, the Contractor shall:
- (a) co-operate with the Council in all matters relating to the Works, and comply with all instructions of the Council;
  - (b) perform the Works with the best care, skill and diligence in accordance with best practice in the Contractor's industry, profession or trade;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Contractor's obligations are fulfilled in accordance with this Contract;
  - (d) ensure that the Works will conform with all descriptions and specifications set out in the Specification and that the Works shall be fit for any purpose expressly or impliedly made known to the Contractor by the Council;
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Works;
  - (f) use the best quality goods, materials, standards and techniques, and ensure that all goods and materials supplied and used in the Works or transferred to the Council, will be free from defects in workmanship, installation and design;
  - (g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
  - (h) observe all health and safety rules, policies and regulations and any other security requirements that apply at any of the

Council's premises (copies of which are available on the Council's website; <http://www.castlepoint.gov.uk>);

- (i) hold all materials, equipment and tools, drawings, specifications and data supplied by the Council to the Contractor in safe custody at its own risk, maintain the Council Materials in good condition until returned to the Council, and not dispose or use the Council Materials other than in accordance with the Council's written instructions or authorisation;
- (j) not do or omit to do anything which may cause the Council to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Contractor acknowledges that the Council may rely or act on the Works; and
- (k) if any defects, shrinkages or other faults in the Works appears within the Rectification Period due to materials, goods or workmanship not in accordance with this Contract or any failure of the Contractor to comply with their obligations under this Contract, the Contractor shall within a reasonable time after receipt of a schedule or instructions of such defects, shrinkages or other faults shall at no cost to the Council make good. Should the Contractor fail to make good such defects, shrinkages or other faults an appropriate deduction shall be made from the Price in respect of the defects, shrinkages or other faults not made good.

#### **4. COUNCIL REMEDIES**

4.1 If the Contractor fails to undertake the Works by the Works Completion Date, the Council shall, without limiting its other rights or remedies, have one or more of the following rights:

- (a) to terminate the Contract with immediate effect by giving written notice to the Contractor;
- (b) to refuse to accept any subsequent performance of the Works which the Contractor attempts to make;
- (c) to recover from the Contractor any costs incurred by the Council in obtaining substitute services from a third party;
- (d) where the Council has paid in advance for Works that have not been provided by the Contractor, to have such sums refunded by the Contractor; or
- (e) to claim damages for any additional costs, loss or expenses incurred by the Council which are in any way attributable to the

Contractor's failure to carry out the Works by the Works Completion Date.

- 4.2 These Conditions shall extend to any substituted or remedial services provided by the Contractor.
- 4.3 The Council's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

## **5. COUNCIL'S OBLIGATIONS**

The Council shall:

- (a) provide the Contractor with reasonable access at reasonable times to the Council's premises for the purpose of completing the Works; and
- (b) provide such information to the Contractor as the Contractor may reasonably request and the Council considers reasonably necessary for the purpose of completing the Works.

## **6. PRICE AND PAYMENT**

- 6.1 For the avoidance of doubt, the Price payable for the Works to be provided shall include without limitation the costs of all labour, equipment, fuel and materials to be supplied by the Contractor, all costs of purchasing, issuing, operating and maintaining vehicles, all travelling expenses involved, and all royalties, licence fees or other similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performance of the Works and any additional items or expenses of whatever nature as may from time to time become necessary for the proper performance of the Works.
- 6.2 The Contractor shall address and send all invoices to Castle Point Borough Council, Kiln Road, Thundersley, Benfleet, Essex SS7 1TF.
- 6.3 Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice.
- 6.4 The parties shall agree a payment mechanism in relation to reaching agreed milestones or stages of completeness of the Works with relevant periods for valuation of the Works at each stage as set in this Contract

- 6.5 The Contractor will raise an invoice representing the Price to be paid by the Council following the Practical Completion Date
- 6.6 The Retention Percentage shall be paid to the Contractor following the expiration of the Retention Period and subject to the Contract Manager being satisfied as to the making good of any Defects
- 6.7 In consideration of the Contractor undertaking the Works, the Council shall pay all invoiced amounts within 30 days of the date of a correctly rendered invoice to a bank account nominated in writing by the Contractor.
- 6.8 If the Council fails to pay any amount properly due and payable by it under the Contract, the Contractor shall have the right to charge interest on the overdue amount at the rate of 1% per cent per annum above the base rate for the time being of the Bank of England accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This clause shall not apply to payments that the Council disputes in good faith.
- 6.9 The Contractor shall maintain complete and accurate records of the time spent and materials used by the Contractor in providing the Works, and shall allow the Council to inspect such records at all reasonable times on request.
- 6.10 The Council may, without limiting its other rights or remedies, set off any amount owed to it by the Contractor against any amount payable by the Council to the Contractor under the Contract.

## **7. INDEMNITY**

- 7.1 The Contractor shall keep the Council indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Council as a result of or in connection with:
- (a) any claim made against the Council by a third party arising out of, or in connection with, the supply of the Works, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or subcontractors; and



7.2 For the duration of the Contract and for a period of 12 months thereafter, the Contractor shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Council's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

7.3 This clause 7 shall survive termination of the Contract.

## **8. TERMINATION**

8.1 Without limiting its other rights or remedies, the Council may terminate the Contract with immediate effect by giving written notice to the Contractor if:

- (a) the Contractor commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Contractor suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- (c) the Contractor commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Contractor (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Contractor with one or more other companies or the solvent reconstruction of the Contractor;
- (e) the Contractor (being an individual) is the subject of a bankruptcy petition order;

- (f) a creditor or encumbrancer of the Contractor attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Contractor (being a company);
- (h) a floating charge holder over the assets of the Contractor (being a company) has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the assets of the Contractor or a receiver is appointed over the assets of the Contractor;
- (j) any event occurs, or proceeding is taken, with respect to the Contractor in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 8.1(b) to clause 8.1.(i) (inclusive);
- (k) the Contractor suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- (l) the Contractor (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

8.2 Without limiting its other rights or remedies, the Council may terminate the Contract by giving the Contractor 1 months' written notice.

## **9. CONSEQUENCES OF TERMINATION**

On termination of the Contract for any reason:

- (a) the Contractor shall immediately return all Council Materials. If the Contractor fails to do so, then the Council may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- (b) the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the

right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **10. DATA PROTECTION AND DATA SHARING**

10.1 Reference to Personal Data and Data Processor shall have the same meaning as set out in the Data Protection Act 1998

- (a) The Contractor shall (and shall procure that any of its personnel involved in undertaking the Works shall) comply with any notification requirements under the DPA and the parties shall duly observe all their obligations under the DPA which arise in connection with this Contract
- (b) Notwithstanding the general obligation in condition 10.1(a) above where the Contractor is processing Personal Data as a Data Processor for the Council, the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data, as requested under the Seventh Data Protection Principle in Schedule 1 to the DPA and
- (c) Provide the Council with such information as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA;
- (d) Promptly notify the Council of any breach of the security measures required to be put in place pursuant to condition 10.1(b) above and;
- (e) Ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the DPA
- (f) The provisions of this clause shall apply during the continuance of this contract and indefinitely after its expiry or termination

## **11. SAFEGUARDING CHILDREN AND VULNERABLE ADULTS**

11.1 The parties acknowledge that the Contractor is not a Regulated Activity Provider with ultimate responsibility for the management and control of the Regulated Activity provided under this Contract and for the purposes of the Safeguarding Vulnerable Groups Act 2006 however the Contractor shall:

- (a) ensure that all individuals engaged in the provision of the Works are subject to a valid enhanced disclosure check undertaken through the Disclosure and Barring Service including a check against the adults' barred list or the children's barred list, as appropriate; and
- (b) monitor the level and validity of the checks under this clause 11.1 (a) for each member of staff.
- (c) The Contractor warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Contractor in undertaking the Works is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time.
- (d) The Contractor shall immediately notify the Council of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 11.1 have been met.
- (e) The Contractor shall refer information about any person carrying out the Works to the DBS where it removes permission for such person to carry out the Works (or would have, if such person had not otherwise ceased to carry out the Works) because, in its opinion, such person has harmed or poses a risk of harm to the Council's service users.
- (f) The Contractor shall not employ or use the services of any person who is barred from, or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to the Council's service users.

## **12. FREEDOM OF INFORMATION**

12.1 The Contractor acknowledges that the Council is subject to the requirements of the Freedom of Information Act (FOIA) and the Environmental Information Regulations 2004 (EIR). The Contractor shall:

- (a) Provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIR;
- (b) Transfer to the Council all request for information relating to this agreement that it receives as soon as practicable and in any event within two working days of receipt;

- (c) Provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
- (d) Not respond directly to a request for information unless authorised in writing to do so by the Council
- (e) The Contractor acknowledge that the Council may be required under the FOIA and EIR to disclose information (including Commercially Sensitive Information) without consulting or obtaining consent from the Contractor. The Council shall take reasonable steps to notify the Contractor of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIR.

### **13. FRAUD AND CORRUPTION**

- 13.1 The Council is committed to an effective anti-fraud and corruption strategy which is designed to:
- (a) encourage prevention
  - (b) facilitate detection
  - (c) provide prompt investigation
- 13.2 The Council's anti-fraud and corruption procedures are designed to frustrate any attempted fraudulent or corrupt act and cover:
- (a) values and commitment
  - (b) prevention
  - (c) detection and investigation
  - (d) training
- 13.3 As the Council's affairs are open to scrutiny by a variety of external bodies and people including:

- (a) An external Auditor appointed by the Audit Commission
- (b) The Public via the Council's Complaints procedure
- (c) Local electors via the Annual Inspection of Accounts
- (d) The Business Community via the Annual business Consultation
- (e) Her Majesty's Revenues & Customs
- (f) Dept for Works and Pensions

13.4 The Council through its Internal or External Auditors may request information relating to the Contract pursuant to the provisions of this condition 13 and the Contractor shall supply the Council's Internal or External Auditors with the information forthwith upon request.

#### **14. BRIBERY**

14.1 The Council shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation if the Contractor or any person employed by the Contractor shall:

14.2 Directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:

- (a) induce that person to perform improperly a relevant function or activity; or
- (b) reward that person for improper performance of a relevant function or activity;

14.3 Directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;

14.4 Commit any offence:

- (a) Under the Bribery Act 2010
- (b) Under legislation creating offences concerning fraudulent acts;
- (c) At common law concerning fraudulent acts relating to this Contract or any other contract with the Council; or
- (d) Defrauding, attempting to defraud or conspiring to defraud the Council

## **15. CDM REGULATIONS**

15.1 Each party undertakes to the other that in relation to the Works they will duly comply with applicable CDM Regulations. In particular but without limitation:

- (a) the Council shall ensure that the Principal Designer carries out their duties and, where the Contractor is not the Principal Contractor, shall ensure that the Principal Contractor carries out their duties under those regulations;
- (b) whether or not the Contractor is the Principal Contractor, compliance by the Contractor with their duties under the regulations, including any such directions as are referred to in regulation 15(3) shall be at no cost to the Council and shall not entitle the Contractor to an extension of time

## **16. GENERAL**

16.1 Force majeure: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. The Contractor shall promptly notify the Council in writing when such circumstances cause a delay or failure in performance and when it ceases to do so. If such event or circumstances prevent the Contractor from providing any of the Works for more than Force Majeure Period, the Council shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Contractor.

16.2 Assignment and subcontracting:

- (a) The Contractor shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Council.
- (b) The Council may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

16.3 Notices:

- (a) Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business.
- (b) Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- (c) This condition 16.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

16.4 Waiver and cumulative remedies:

- (a) A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- (b) Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

16.5 Severance:

- (a) If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.



- 16.6 No partnership: Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
- 16.7 Third parties: A person who is not a party to the Contract shall not have any rights under or in connection with it.
- 16.8 Variation: Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Council.
- 16.9 Entire Agreement: This Contract constitutes the entire agreement between the parties
- 16.10 Governing law and jurisdiction: The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

## **Quotation**

## **Specification**

## **Payment mechanism**

IN WITNESS WHEREOF this document has been executed and delivered as an agreement on the date first stated above.

Signed by \_\_\_\_\_

acting on behalf of

**Castle Point Borough Council**

Signed by a, ).....

Director acting on behalf of

