

AGREEMENT

for the provision of

Public Art Installation

between

BRISTOL CITY COUNCIL

and

Upfest Ltd

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This agreement is dated 07/08/2025

Parties

- (1) **BRISTOL CITY COUNCIL** of City Hall, College Green, Bristol, BS1 5TR (the “**Council**”)
- (2) **Upfest Ltd, 198 North Street, Bristol, BS3 1JF** (the “**Public Art Installer**”)

Agreed terms

1. Interpretation

The following definitions and rules of interpretation apply in this agreement (unless the context requires otherwise).

1.1 Definitions:

Artist: Ossin ‘Oshii’ Davis-Lyons

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

Capacity: as agent, Public Art Installer, director, employee, owner, partner, shareholder or in any other capacity.

Commencement Date: the date of signature of this agreement.

Council Property: all documents, books, manuals, materials, records, correspondence, papers and information (on whatever media and wherever located) relating to the Business or affairs of the Council, and any equipment, keys, hardware or software provided for the Public Art Installer's use by the Council during the Engagement, and any data or documents (including copies) produced, maintained or stored by the Public Art Installer on the Council or the Public Art Installer's computer systems or other electronic equipment during the Engagement.

Confidential Information: information in whatever form (including without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, customers, suppliers, products, affairs and finances of the Council for the time being confidential to the Council and trade secrets including, without limitation, technical data and know-how relating to the Business of the Council or any of its suppliers, customers, Councils, agents, distributors, shareholders, management or business contacts, including in particular (by way of illustration only and without limitation) and including (but not limited to) information that the Public Art Installer

creates, develops, receives or obtains in connection with their Engagement, whether or not such information (if in anything other than oral form) is marked confidential.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR), the Data Protection Act 2018 (and regulations made thereunder) or any successor legislation, and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications).

Design: the image of the artwork prepared by the Artist and included at Schedule 3 of this agreement.

Engagement: the engagement of the Public Art Installer by the Council on the terms of this agreement.

Intellectual Property Rights: patents, rights to Inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Location: Centre Promenade Bristol

Services: those services as more particularly described at **Schedule 1** to install the Artist's work at the Location in accordance with the Design provided by the Artist and using the materials described in Schedule 1.

Council Representative: the Council's employee nominated as representative in connection with this Agreement or any replacement notified in writing to the Public Art Installer.

Termination Date: the date of completion of the Services as notified to the Public Art Installer by the Council.

Works: all records, reports, documents, papers, drawings, designs, transparencies, photos, graphics, logos, typographical arrangements, software, and all other materials in whatever form, including but not limited to hard copy and electronic form, prepared by the Public Art Installer in the provision of the Services.

- 1.2 The headings in this agreement are inserted for convenience only and shall not affect its construction.

- 1.3 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

2. Term of engagement

- 2.1 The Council shall engage the Public Art Installer and the Public Art Installer shall provide the Services on the terms of this agreement.
- 2.2 The Engagement shall be deemed to have commenced on the Commencement Date and shall continue unless and until terminated:
- (a) as provided by the terms of this agreement; or
 - (b) by either party giving to the other not less than 4 weeks' prior written notice.

3. Duties and obligations

- 3.1 During the Engagement the Public Art Installer shall:
- (a) provide the Services with all due care, skill and ability and use their best endeavours to promote the interests of the Council;
 - (b) ensure that the Services conform in all respects with, and are achieved by any deadlines specified in, **Schedule 1** and that they shall be fit for any purpose expressly or implicitly made known to the Public Art Installer by the Council; and
 - (c) promptly give to the Council Representative all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services.
- 3.2 The Public Art Installer shall use reasonable endeavours to ensure that they are available at all times (within standard business working hours) and on reasonable notice to provide such assistance or information as the Council may require.
- 3.3 Unless they have been specifically authorised to do so by the Council in writing, the Public Art Installer shall not:
- (a) have any Supplier to incur any expenditure in the name of or for the account of the Council; or
 - (b) hold themselves out as having authority to bind the Council.

- 3.4 The Public Art Installer shall comply with all applicable health and safety laws and comply with the Council's health and safety policy whilst working at the Location.
- 3.5 The Public Art Installer shall comply with the Equality Act in providing the Services and such other policies as the Council may notify to the Public Art Installer from time to time.
- 3.6 The Public Art Installer shall ensure that its use of the Design and provision of the Services does not infringe the Intellectual Property Rights of the Artist, and/or the terms of the agreement included at Schedule 2 to this agreement.
- 3.7 Any publicity regarding the Services, the Artist, the artwork itself and/or the Design shall be agreed between the Public Art Installer and the Council and all publication and promotion of the Design, the artwork and the Services shall be subject to agreement with the Council and in accordance with the agreement at Schedule 2 of this agreement. The Public Art Installer shall only make such copies of the Design as may be needed to provide the Services and shall not copy, distribute or publish the Design or the artwork without the prior written approval of the Council.
- 3.8 The Public Art Installer may use a third party to perform any artistic, administrative, clerical or secretarial functions which are reasonably incidental to the provision of the Services provided that:
- (a) the Council will not be liable to bear the cost of such functions; and
 - (b) at the Council's request the third party shall be required to enter into direct undertakings with the Council, including with regard to confidentiality.
- 3.9 The Public Art Installer shall:
- (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 **(Relevant Requirements)**;
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) comply with the Council's ethics and anti-bribery and anti-corruption policies communicate to the Public Art Installer from time to time and with any relevant Industry code on anti-bribery, in each case as the Council (or the relevant industry body) may update them from time to time **(Relevant Policies)**;
 - (d) promptly report to the Council any request or demand for any undue financial or other advantage of any kind received by the Public Art Installer in connection with the performance of this agreement;

- (e) ensure that all persons associated with the Public Art Installer or other persons who are performing services in connection with this agreement comply with this clause 3.9.

3.10 Failure to comply with clause 3.9 may result in the immediate termination of this agreement.

3.11 The Public Art Installer shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
- (b) comply with the Council's Relevant Policies and relevant industry code in each case as the Council or the relevant body may update them from time to time;
- (c) promptly report to the Council any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of tax evasion offences, whether under UK law or under the law of any foreign country, in connection with the performance of this agreement;
- (d) ensure that all persons associated with the Public Art Installer or other persons who are performing services in connection with this agreement comply with this clause 3.11.

3.12 Failure to comply with clause 3.11 may result in the immediate termination of this agreement.

4. Fees

4.1 The Council shall pay the Public Art Installer £30,000.00 in the amounts and at the intervals set out below in this clause for the provision of the Services. The amount payable is exclusive of VAT. The Council shall pay VAT subject to receipt of a valid VAT invoice. Payment of the amounts included at Stage 2 and Stage 3 is subject to the Council agreeing that the installation plan and safety management are adequate and to confirming acceptance of the completed installation of the artwork.

- (a) Stage 1 £15,000.00 on signing the contract (July 2025)
- (b) Stage 2 £12,000.00 following planning meeting with BCC and approval of installation & health & safety management plans (August 2025)
- (c) Stage 3 £3000.00 on approved completion of artwork (September 2025)

4.2 Valid invoices shall be payable within 30 days of the date of receipt.

- 4.3 Payment in full or in part of the fees claimed under clause 4 shall be without prejudice to any claims or rights of the Council against the Public Art Installer in respect of the provision of the Services.

5. Other activities

Nothing in this agreement shall prevent the Public Art Installer from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Engagement provided that:

- (a) such activity does not cause a breach of any of the Public Art Installer's obligations under this agreement;
- (b) the Public Art Installer shall not engage in any such activity if it relates to a business which is similar to or in any way competitive with the Business of the Council without the prior written consent of the Council, such consent not to be unreasonably withheld; and
- (c) the Public Art Installer shall give priority to the provision of the Services to the Council over any other business activities undertaken by the Public Art Installer during the course of the Engagement.

6. Confidential information

- 6.1 The Public Art Installer acknowledges that in the course of the Engagement they will have access to Confidential Information. The Public Art Installer has therefore agreed to accept the restrictions in this clause 6.
- 6.2 The Public Art Installer shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:
- (a) any use or disclosure authorised by the Council or required by law; or
 - (b) any information which is already in, or comes into, the public domain otherwise than through the Public Art Installer unauthorised disclosure.
- 6.3 At any stage during the Engagement, the Public Art Installer will promptly on request return all and any Council Property in their possession to the Council.
- 6.4 Nothing in this clause 6 shall prevent the Public Art Installer or the Council (or any of its officers, employees, workers or agents) from:
- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or

- (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
- (c) whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
- (d) complying with an order from a court or tribunal to disclose or give evidence; or
- (e) making any other disclosure as required by law.

7. Data protection

- 7.1 The parties acknowledge that for the purposes of this agreement, neither expects to Process Personal Data from the other.
- 7.2 Notwithstanding clause 7.1, the parties shall comply with their obligations under Data Protection Legislation and shall reasonably cooperate with each other to comply with their respective obligations under the Data Protection Legislation.
- 7.3 If the parties begin to process Personal Data in relation to this agreement, they shall in good faith agree to document the processing and agree a variation to this agreement in to implement appropriate data processing clauses.

8. Intellectual property

- 8.1 The Public Art Installer hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this agreement, the Public Art Installer holds legal title in these rights on trust for the Council.
- 8.2 The Public Art Installer warrants to the Council that:
 - (a) they have not given and will not give permission to any third party to use any of the Works, nor any of the Intellectual Property Rights in the Works;
 - (b) they are unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
 - (c) the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.
- 8.3 The Public Art Installer agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which

the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works supplied by the Public Art Installer to the Council during the course of providing the Services.

- 8.4 The Public Art Installer acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this agreement are due or may become due to the Public Art Installer in respect of the performance of their obligations under this clause 8.

9. Insurance and liability

- 9.1 The Public Art Installer shall indemnify the Council for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from any breach by the Public Art Installer of the terms of this agreement including any negligent or reckless act, omission or default in the provision of the Services.
- 9.2 The Council's liability to the Public Art Installer shall be limited to the amount payable under this agreement.
- 9.3 The Public Art Installer shall at its own cost effect and maintain with reputable insurance companies insurance policies to cover its liabilities under this agreement providing as a minimum the following levels of cover:
- 9.4 (a) public liability insurance with a limit of indemnity of at least £5 million in relation to any one claim or series of claims;
- 9.5 (b) employer's liability insurance with a limit of at least £5 million per claim OR in accordance with any legal requirement for the time being in force in relation to any one claim or series of claims;
- 9.6 (c) professional indemnity insurance with a limit of indemnity of not less than £2 million in relation to any one claim or series of claims and shall ensure that all professional consultants or Sub-Contractors involved in the provision of the Services hold and maintain appropriate cover;
- 9.7 (the Required Insurances). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the agreement, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.
- 9.8 The Public Art Installer shall give the Authority, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the

Required Insurances are in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

- 9.9 If, for whatever reason, the Public Art Installer fails to give effect to and maintain the Required Insurances, the Council may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.
- 9.10 The terms of any insurance or the amount of cover shall not relieve the Public Art Installer of any liabilities under the agreement.

10. Termination

- 10.1 Notwithstanding the provisions of clause 2.2, the Council may terminate the Engagement with immediate effect with no liability to make any further payment to the Public Art Installer (other than in respect of amounts accrued before the Termination Date) if at any time the Public Art Installer:
- (a) commits any gross misconduct affecting the Business of the Council;
 - (b) commits any serious or repeated breach or non-observance of any of the provisions of this agreement or refuses or neglects to comply with any reasonable and lawful directions of the Council;
 - (c) is convicted of any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed);
 - (d) is in the reasonable opinion Council negligent or incompetent in the performance of the Services;
 - (e) is declared bankrupt or makes any arrangement with or for the benefit of their creditors or has a county court administration order made against them under the County Court Act 1984;
 - (f) commits any fraud or dishonesty or acts in any manner which in the opinion of the Council brings or is likely to bring the Public Art Installer or the into disrepute or is materially adverse to the interests of the Council;
 - (g) commits any breach of the Council's policies and procedures;
 - (h) commits any offence under the Bribery Act 2010; or
 - (i) commits a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017 or a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017.
- 10.2 The rights of the Council under clause 10.1 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this agreement on

the part of the Public Art Installer as having brought the agreement to an end. Any delay by the Council in exercising its rights to terminate shall not constitute a waiver of these rights.

11. Obligations on termination

On the Termination Date the Public Art Installer shall:

- (a) immediately deliver to the Council all Council Property and original Confidential Information in their possession or under their control;
- (b) subject to the Council's data retention guidelines, irretrievably delete any information relating to the Business of the Council stored on any magnetic or optical disk or memory (including but not limited to any Confidential Information) and all matter derived from such sources which is in their possession or under their control outside the premises of the Council. For the avoidance of doubt, the contact details of business contacts made during the Engagement are regarded as Confidential Information and, as such, must be deleted from personal social or professional networking accounts; and
- (c) provide a signed statement that they have complied fully with their obligations under this clause 11, together with such evidence of compliance as the Council may reasonably request.

12. Status

- 12.1 The relationship of the Public Art Installer to the Council will be that of independent contractor and nothing in this agreement shall render them an employee, worker, agent or partner of the Council and the Public Art Installer shall not hold themselves out as such.

13. Safeguarding

- 13.1 The Public Art Installer warrants that at all times he/she is not barred or has no reason to believe that any individual who is or will be engaged by the Public Art Installer for the purpose of this Agreement, is barred from the activity in accordance with the provision of the Safeguarding Vulnerable Groups Act 2006, and any regulations made thereunder, as amended from time to time.

14. Notices

- 14.1 Any notice (or other communication) given to a party under or in connection with this agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this agreement or as otherwise notified in writing to the other party; or
- (b) sent by email to its main email address.

14.2 Unless proven otherwise, any notice (or communication) shall be deemed to have been received:

- (a) if delivered by hand, at the time the notice is left at the address given in this agreement or given to the addressee; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- (c) if sent by email, at the time of transmission.

14.3 If deemed receipt under clause 14.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 14.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

14.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

15. Entire agreement

15.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

15.2 Each party acknowledges that in entering into this agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement.

15.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation (or negligent misstatement) based on any statement in this agreement.

16. Variation

No variation of this agreement (or of any of the documents referred to in it) shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17. Counterparts

- 17.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

18. Third party rights

- 18.1 Except as expressly provided elsewhere in this agreement, a person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 18.2 The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this agreement are not subject to the consent of any other person.

19. Governing law

This agreement 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 the law of England and Wales.

20. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation.

Schedule 1 Services

Service Provision

To undertake project management of mural production and installation of the commissioned artwork for the Centre Promenade. Coordination with the artist to install and achieve their design to the highest quality and their satisfaction. The artwork to be painted in line marking paint, applied on the newly laid black Tarmac surface.

- Procurement and coordination of all materials and equipment ordering and storage
- Procurement, coordination and management of a team of artists to paint and install the artwork according to the commissioned artist's design
- Coordination with Bristol Legacy Foundation, the commissioned artist and BCC to order CST1 Line marking paint to ensure correct colours and quantities are ordered
- Replication of the artist's design through a combination of grid marking and geometric plotting
- Coordination, timely sourcing, ordering and payment of all other equipment for installation (rollers, paint sleeves, buckets security fencing etc)
- Coordination and operation of a safe working site
- To adhere to all health and safety protocols and provide full Risk Assessment and Method Statement for approval prior to commencement of the installation.
- Install to coordinate with the markets, events etc that take place on the Centre Promenade as well as other remaining improvements in the area that may still be taking place and allow for pedestrian / cyclist movements.
- Liaison with the commissioned artists, Bristol Legacy Foundation, BCC Project Team, Bristol City Centre BID as required
- Provide all Services in compliance with the terms of the agreement between the commissioned artist and the Bristol Legacy Foundation

Schedule 2 Contract Between Artist and Bristol Legacy Foundation



BLF Artist
contract.docx.pdf

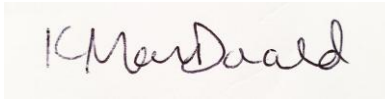
Schedule 3 Artists' Design



Centre Prom for art
commission (003)- M

This agreement has been entered into on the date stated at the beginning of it.

Signed by Karen MacDonald for and
on behalf of **BRISTOL CITY COUNCIL**

Handwritten signature of Karen MacDonald in purple ink.

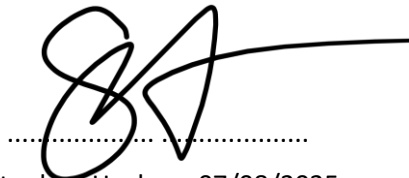
.....

Karen

MacDonald, Head of Public Engagement

07/08/2025

Signed by Stephen Hayles on
behalf of **UPFEST LTD**

Handwritten signature of Stephen Hayles in black ink.

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Stephen Hayles – 07/08/2025