

Primary Authority co-ordinated partnership between The British Hospitality Association (“BHA”) and Cornwall Council.

By submitting this application you confirm your consent to BHA including your name and relevant details on the Primary Authority Membership List of members of the Regulated Group that is published on the Primary Authority Register.

You confirm that you wish to participate as a member of the Regulated Group of businesses under the umbrella of our Primary Authority co-ordinated partnership with Cornwall Council in the regulatory functions of Food Standards, Food Safety and Hygiene, and Fire Safety, which are in scope in England and Wales (**Partnership Functions**).

BHA have already entered a Summary of Co-ordinated Partnership Arrangements document with Cornwall Council which sets out how we will undertake our Co-ordination activities in relation to them (**Summary**). In addition the Secretary of State has published overriding Primary Authority terms and conditions which set out the legal basis under which our partnership works (**PA Terms**). If you would like a copy of the Summary or the PA Terms please contact us and we will provide these by return.

This is the Co-ordinator Letter referred to in the Summary which sets out the basis on which BHA acts as co-ordinator in relation to you and the other members of the Regulated Group. Please note that this letter supersedes any existing agreement you have with BHA or Cornwall Council in relation to Primary Authority partnerships.

A) The BHA’S CO-ORDINATION ACTIVITIES

Our Co-ordination activities will consist of the following:

1. Consultation

When Cornwall Council wishes to consult with BHA and you together with other participating members in relation to an inspection plan or any other matter affecting the Regulated Group generally BHA will endeavour to seek your views and fairly represent them in summary form to Cornwall Council. We will do this via email, telephone, written surveys, face to face meetings as we deem most appropriate. BHA will then summarise the individual or collective views of the Regulated Group and pass them on to Cornwall Council.

2. Sharing Information

You consent to provide the following information for initial inclusion within the Primary Authority Membership List:

- a) The name of the business (the full name of the legal entity, for example: the registered name of a limited company; the full name of a sole trader; or in the case of a partnership, the full name of at least one of the partners);
- b) The address for the business to which communications shall be addressed;
- c) Contact details for the business, including a contact name, business telephone number and, where possible, a business email address;
- d) Any trading names or trading styles used by the business; and
- e) The registered office address of a limited company, where this is not the same as the address for communications noted above.

Inclusion of a business on the Primary Authority Membership List is conclusive as to whether that business is a member of the Regulated Group at a particular time. Therefore for you to be able to rely

on the Primary Authority advice to be issued it is extremely important that you notify us of changes to your information for inclusion on the list, including changes to addresses, premises details, trading names, company number (where applicable), contact information and changes to the nature of the legal entity.

You acknowledge that the information on the Primary Authority Membership List will be available not only to Cornwall Council but also Regulatory Delivery and a range of other public sector organisations, such as local authorities, enforcing authorities and regulators solely for the purpose of operating the co-ordinated partnership.

You also acknowledge that Cornwall Council and Regulatory Delivery are subject to the requirements of the Freedom of Information Act 2000 (**FOI**). You will assist and cooperate with Cornwall Council and Regulatory Delivery (via BHA) to enable them to comply with Requests for Information pursuant to FOI.

If you regard any information you provide as commercially sensitive please mark it as “Confidential” when submitting it to us.

For the avoidance of doubt you remain free to send in confidential queries to BHA concerning matters outside of the scope of the Co-ordinated Partnership. Nothing in this Co-ordinator Letter will affect our pre-existing confidentiality obligations in such a situation. Where such a query may lead to a request for Primary Authority advice BHA will seek your specific consent prior to making such a request.

3. Requesting Primary Authority Advice

When you alone or together with other members of the Regulated Group tell us you wish to request Primary Authority advice or other services BHA will endeavour to contact Cornwall Council to agree the appropriateness of the enquiry for their response and thereafter, subject to resource constraints and Cornwall Council views, submit a formal request for Primary Authority advice and recommend the level of priority for the response.

If you require Primary Authority advice that would also be in scope in Wales (except as included above), Scotland or Northern Ireland (in addition to England) then this may be accommodated at a cost to be agreed as an exception by specific arrangements with the Primary Authority and at its entire discretion.

4. Collecting Primary Authority Charges

Where BHA in its absolute discretion believes that requested Primary Authority advice or other proposed services from Cornwall Council are of general interest to the Regulated Group and BHA's resource constraints permit, BHA will pay Cornwall Council's charges out of its own funds, ultimately paid for out of member subscriptions or our other fund raising activities. Where this is not the case BHA will seek your specific prior authorisation to accept charges before asking Cornwall Council to proceed to answer your request on your behalf or provide services.

Where you have accepted charges in this way the following provisions shall apply:

- a) You shall pay BHA for the charges it incurs with Cornwall Council in consideration of the provision of Cornwall Council services.
- b) BHA will invoice you for the charges as agreed upon completion (or with stage payments if so agreed).
- c) You shall pay the amounts owing within 30 days from the date of BHA's invoice.
- d) The charges shall be exclusive of VAT (if applicable).
- e) You shall pay all sums to BHA without set-off, deduction or any withholding whatsoever. Notwithstanding this, in the event of a bona fide dispute in relation to any invoice (of which you

have notified BHA in writing prior to the due date for payment) you shall be entitled to withhold only the amount relating to the specific element of the invoice which is in dispute until such time as the dispute is resolved.

- f) If you fail to pay on the due date any amount which is payable to the BHA under this Co-ordination Letter then (subject to sub-paragraph e) above) that amount shall bear interest from the due date until payment is made in full, both before and after judgement, at 4 per cent per annum over the base rate of Barclays Bank PLC (or any successor to its business) from time to time.
- g) If after having accepted an instruction to proceed, Cornwall Council informs us that the estimated cost for its services are likely to be exceeded Cornwall Council shall advise us and we shall advise you as soon as possible and obtain your authority to continue based on the new estimate. The original cost estimate is not to be exceeded without your consent.

5. Communicating Primary Authority advice and inspection plans

Where Cornwall Council issues Primary Authority advice or guidance or updates to Primary Authority advice or guidance BHA will endeavour to disseminate this to you along with other members of the Regulated Group as soon as reasonably practicable in accordance with timing as agreed with Cornwall Council.

Where Cornwall Council notifies BHA of an inspection plan or updates to an inspection plan which BHA considers to be relevant to you BHA will endeavour to notify you of the inspection plan or updates along with other relevant members of the Regulated Group as soon as reasonably practicable in accordance with timing as agreed with Cornwall Council.

Primary Authority advice, guidance and inspection plans will be communicated to you via the means BHA considers to be most appropriate which could include e mail notifications, the BHA newsletter, and posting on the BHA website.

Please note that BHA may disseminate Primary Authority advice (including where you have paid the relevant charges) to other members and others who are not members of the Regulated Group, however only members of the Regulated Group (whose details appear on the Primary Authority Membership List at the relevant time) have any rights to rely on such Primary Authority advice under Part 2 of the Regulatory Enforcement and Sanctions Act 2008 (**RESA**).

B) BHA LIABILITY LIMITATIONS

You recognise that the Co-ordinated partnership scheme is designed to facilitate the consistent interpretation of regulations insofar as they affect you (and other members of the regulated Group) and BHA's role is restricted to the co-ordination activities as set out in this Co-ordinator Letter and the Summary. In particular BHA does not provide advice either to members of the Regulated Group or to Cornwall Council in its own right under the Co-ordinated partnership scheme.

As a member trade association with limited resources BHA is unable to accept substantial liability for its Co-ordination activities and you should ensure you carry insurance to protect you in the event things go wrong. As such the following terms apply:

- a) Except as expressly stated in this Co-ordinator Letter, all terms, conditions, warranties and representations that would otherwise be applied or implied (by statute or otherwise) in, or in relation to, this Co-ordinator Letter are excluded to the fullest extent permissible in law.
- b) Neither party excludes or limits liability to the other party for fraud, nor for death or personal injury caused by its negligence (as defined in the Unfair Contract Terms Act 1977), nor for any other liability for which it is not possible to exclude or limit liability by operation of law.

- c) Each party's liability to the other arising out of or in connection with this Co-ordinator Letter or RESA (whether in contract, tort, negligence or otherwise) shall be limited in any year to the amount paid by BHA on your behalf to Cornwall Council under this Co-ordinator Letter and the Summary.
- d) Without prejudice to sub-paragraph b) in no event shall either party be liable to the other under or in connection with this Co-ordinator Letter or RESA (whether in contract, tort, negligence or otherwise) for any indirect or consequential loss or damage, or for any of the following losses (whether direct or indirect): any loss of profits; loss of business; loss of opportunity; loss of revenue; loss of goodwill; loss of anticipated contracts; and/or loss of anticipated savings.
- e) Subject to sub-paragraph b), you agree that no individual member of the BHA's staff shall have any liability to you (whether in contract or in tort, including negligence) arising out of the provision of the Co-ordination activities where that individual honestly believed that the act complained of was within their powers or that their duties required or entitled them to do that act and they have acted reasonably (and you shall not bring any claim against such individual member of the BHA's staff in such circumstances).

C) OTHER

This Co-ordinator Letter will commence with immediate effect.

This Co-ordinator Letter will terminate immediately on the earlier of:

- a) The termination of the BHA Co-ordinated Partnership with Cornwall Council for any reason;
- b) The termination of your membership of the British Hospitality Association in accordance with the Articles of the Association;
- c) On 60 days written notice from either party to the other with or without cause;

The conditions of this agreement are subject to change by notice. We will be entitled to amend or vary the terms of this agreement from time to time upon reasonable notice to you unless such amendment or variation is required sooner as a result of a change of an applicable regulation in which case we shall notify you as soon as is reasonably practicable that the agreement has been amended or varied..

This Co-ordinator letter will be governed by English law and each party agrees to submit to the exclusive jurisdiction of the English courts in the event of any dispute.

Any questions, notices, or other information required or authorised by this Co-ordinator Letter to the British Hospitality Association, must be given by hand or sent (by first class recorded delivery post, email or comparable means of communication) to 'Gabiella Bittante (BHA Policy Manager)' either via email to guidance@bha.org.uk or by post to 'The British Hospitality Association, Augustine House, Austin Friars, London EC2N 2HA, United Kingdom of Great Britain and Northern Ireland'. Any questions, notices, or other information given which is not returned to the sender as undelivered shall be deemed to have been given on the second Business Day after the envelope containing the same was so posted or if provided by email, delivery is deemed to have occurred one business day after sending.