

# Part 2 Specification

## Contract Reference

**TELS5222**

## Contract Title

**Two to Five (2-5) Years Childcare  
Nursery Provision 2023**

# Contents

A	Overall Scope and Nature of the Requirement .....	4
A1	Scope .....	4
B	Mandatory Pass / Fail Requirements .....	5
B1	TUPE.....	5
B2	Safer Recruitment.....	6
B3	Data Protection, Information Sharing and Information Security.....	6
B4	Climate Emergency .....	8
B5	Not Used .....	9
B6	Health and Safety .....	9
B7	Invoicing .....	10
B8	Not Used .....	11
B9	Disaster Recovery and/or Business Continuity Plans .....	11
B10	Exit Management.....	11
B11	Not Used .....	12
B12	Contract Specific Mandatory Pass/Fail Requirements.....	12
C	Core Requirements .....	15
C1	Service Requirements of the Contract .....	15
C2	Quality Requirements of the Contract.....	17
C3	Child Requirements of the Contract.....	17
C4	Parent/Carer Requirements of the Contract.....	18
C5	Fees and Financial Requirements of the Contract.....	19
C6	Partnership Working Arrangements.....	20
C7	Legal Requirements.....	22
C8	Support from the Authority.....	23

C9	Non-Compliance of Contract Requirements.....	24
C10	Appeals Procedure.....	25
C11	Hand Back Conditions of the Facilities.....	26
C12	Hand Back Conditions of the Assets.....	27
C13	Expiry of the Contract.....	27
D	Additional Requirements.....	28
D1	Further Services Offered .....	28
E	Social Value .....	29
E1	Our Commitment .....	29
E2	Our Priorities .....	29
E3	Torbay TOMs Framework.....	29
E4	Additional Information .....	30
F	Scope and Nature of Possible Modifications or Options.....	31
F1	Permitted Changes.....	31
F2	Potential Changes or Modifications.....	31

# A Overall Scope and Nature of the Requirement

## A1 Scope

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- A1.1 This Specification and its appendices set out the Authority's requirements for the provision of nursery services on the site of 32 Market Street, top floor and garden. Please see Appendices K and L for the maps of the location to see where these are situated and Appendix M Nursery Floor Plan.
- A1.2 This Specification is concerned with the provision of Services for children aged two to five (2 to 5) years and their families. It should, however, be noted that the Authority encourages the successful Applicant to extend this age limit and to provide other services from the nursery over the life of the Contract. The Authority also encourages the successful Applicant to use the buildings available in a way that enables them to become centres for the whole community.

## **B Mandatory Pass / Fail Requirements**

This section sets out the Authority's mandatory requirements for the successful Applicant to perform the Contract.

Evidence requirements are as set out in Part 5 Mandatory Criteria.

Applicants are required to establish within any variant bid how they will meet these requirements, in order for the Authority to be able to appropriately assess their offer.

### **B1 TUPE**

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- B1.1 The Council highlights that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) may apply in relation to the current external provider's staff. Applicants should refer to the guidance in Part 1 Information in relation to TUPE.
- B1.2 It is the responsibility of the Applicant to consider or not whether TUPE is likely to apply in the particular circumstances of this tender process and to act accordingly. Applicants should therefore seek their own advice regarding the likelihood of TUPE applying. However, it is the view of the Council and the incumbent provider that TUPE is likely to apply to this tender.
- B1.3 More information can be found on the following websites:
- [www.gov.uk/transfers-takeovers](http://www.gov.uk/transfers-takeovers)
  - <http://www.opsi.gov.uk>
- B1.4 Should TUPE apply to this Contract the Provider is required to comply with all of their obligations under the Regulations.
- B1.5 The Authority reserves the right to disqualify the Provider from participating in future Tender opportunities, if necessary, if it fails to meet its obligations.
- B1.6 In order to obtain the base data of staff who will or may transfer under TUPE (Appendix C Base Data of Staff) Applicants are required to complete and return a Confidentiality Agreement (Appendix B) through the e-tendering portal's messaging facility, at Stage Two of the tender process.
- B1.7 The Council does not guarantee the accuracy of the information provided by the outgoing provider(s) and advises Applicants to seek their own advice in relation to TUPE matters.
- B1.8 Any queries relating to the TUPE information provided must be submitted through the portal message facility and under no circumstances should Applicants make direct contact with any current providers regarding this matter.
- B1.9 The Provider will be required to work with the outgoing provider(s) to prepare and agree a communication plan for consultation with affected staff. This Communication Plan will form part of the overall Service Implementation Plan and will be monitored by the Service Commissioners.

- B1.10 The Provider shall indemnify the Council against all expenses arising out of any claim made by any employee or former employee of the existing provider (who, as a result of the operation of TUPE, or subsequent amendments, transferred to the employment of the Provider or by the existing provider itself, which results from any act or omission of the successful Applicant.
- B1.11 The Provider shall not bring any claim against the Council in connection with TUPE or any subsequent amendments to such regulations.
- B1.12 The Provider should be mindful of the uncertainty of the situation for the staff who may transfer and that any anxiety from staff can be transferred to the people who are in the Service.
- B1.13 Depending on the details of the transfer, all or only part of a team may be transferring. To alleviate anxiety the Provider is required to clarify as soon as possible who is transferring. Consideration should also be given to any volunteers within the Service and separate discussions held about their position.

## **B2 Safer Recruitment**

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- B2.1 To ensure the Service creates a safer recruitment culture for clients and staff, the following are mandatory requirements:
- a) At least one member of each interview panel must have undertaken safer recruitment training;
  - b) The Provider must have effective procedures in place, that are regularly updated and communicated to staff;
  - c) The Provider must set a code for acceptable standards of behaviour for all staff and ensure this is effectively communicated to staff;
  - d) The Provider must take seriously all concerns that are raised;
  - e) The Provider must, on an ongoing basis, increase awareness and commitment to safeguarding across its organisation.

## **B3 Data Protection, Information Sharing and Information Security**

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- B3.1 The data collection/processing requirements in respect of this Contract are set out in the table below: -

<b>Role of Supplier</b>	<b>Data Controller</b> responsible for determining the purposes for which and the means by which Contract Personal Data is processed.
<b>Subject matter of the processing</b>	Processing of the Contract Personal Data in connection with the provision of the Services.
<b>Duration of the processing</b>	The term of the contract; up to 8 years (4+2+2)

<b>Nature and purpose of the processing</b>	Nursery Provision hosting personal data of staff, families and children (service users) including:  Full name, DOB, home address, bank details, NI numbers, attendance.
<b>Type of personal data processed</b>	Personal data of staff, families and children (service users) including: Full name, DOB, home address, bank details, NI numbers, attendance.
<b>Categories of data subjects</b>	Staff, parents, children (service users).
<b>The means of processing the data</b>	Applicants are to provide details within their Part 5 Mandatory Criteria response.
<b>Rights and obligations of the controller</b>	As described in the Contract dated 01 <sup>st</sup> June 2023.
<b>Approved sub-processors and in each case:</b> <ul style="list-style-type: none"> <li>• Nature and purpose of processing</li> <li>• Location of processing</li> </ul>	N/A
<b>Details of approved international transfers of Contract Personal Data together with details of approved transfer mechanisms</b>	N/A
<b>Details of the technical and organisational measures in place to protect contract personal data</b>	Applicants are to provide details within their Part 5 Mandatory Criteria response.

B3.2 To ensure protection for the rights and freedoms of data subjects:

- a) The Council's data must not be transferred to a country or territory outside the European Economic Area unless that country or territory ensures an adequate level of protection for the rights and freedoms of data subjects in relation to their personal data;
- b) The successful applicant will be required to comply with any changes in

data protection legislation.

B3.3 The proposed system must comply with the following mandatory security requirements:

- a) It must contain parameters which can be set to enforce timeouts;
- b) It must have a password policy incorporating encryption, use of mixed case, number and special characters, minimum length, expiry, limit on login attempts, logging of unsuccessful login attempts and “forgotten password” functionality;
- c) Access to the Council’s dataset must be limited to the Council and approved personnel from the successful Applicant’s organisation;
- d) Applicants must have technical and procedural security measures in place to prevent:
  - Unauthorised or unlawful processing of personal data;
  - Accidental loss or destruction of or damage to personal data.]

B3.4 Where the Applicant is proposing a Cloud-based service, the Applicant is required to complete and submit Appendix 1 – CESG Cloud Information Security Questionnaire.

## **B4 Climate Emergency**

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On 24 June 2019, Torbay Council declared a ‘Climate Emergency’ and are committed to helping to tackle climate change and to become carbon neutral by 2030. We want to ensure the environmental impact of the Council’s procurement of goods, services and works is minimised in line with our response to the climate emergency.

B4.1 The Council’s expectation is that it’s Providers:

- a) know the impact their organisation has on the environment;
- b) have an environmental policy which embeds a culture of reducing negative environmental impacts within their organisation;
- c) ensure their environmental impact is measured, regularly reported and overseen at the highest level;
- d) specifically in relation to this Contract are able to outline how carbon emissions will be minimised, with a clear action plan outlining the work to be undertaken focussing on the biggest impacts, with key targets and timelines to the actions to be undertaken, for example:
  - if travel is used, mileage is reduced. For the miles that are unable to be reduced more environmentally friendly ways to travel are used;
  - if buildings are used, environmental building survey(s) have been undertaken and any negative environmental impacts are mitigated / reduced;



- if purchasing new vehicles low emission alternatives are considered/
- e) work with their supply chain to know the environmental impact of the goods / services they purchase and mitigate / reduce negative impact, where the negative impact is not able to be reduced offset the impact;
- f) work towards their organisation being Carbon Net Zero by 2030.

## **B5 Not Used**

## **B6 Health and Safety**

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- B6.1 All Provider staff who undertake work on behalf of the Council are required to fully comply with their legal duties under health, safety and welfare legislation while at work to ensure the health and safety of themselves and others that may be affected by their acts or omissions.
- B6.2 In recognition of the legal duties imposed upon them all Providers and those Provider staff undertaking work on behalf of the Council under this Contract will:
- a) co-operate with the Council's Director Responsible for Health and Safety, Managers, Supervisors, Corporate Health and Safety Department and their own Employer to enable them to comply with their legal duties;
  - b) comply with ALL requirements of the Council's Health and Safety Policies and other rules and procedures in place;
  - c) not intentionally or recklessly interfere with or misuse anything provided in the interests of health and safety;
  - d) actively promote a positive health and safety culture;
  - e) only undertake work for which they have been trained and are qualified and competent to undertake;
  - f) where applicable, ensure that risk assessments and method statements relating to their work are presented to the Council's authorised officer, prior to commencement of work, if they are not following the Safe System of Work provided by Torbay Council.

- B6.3 The Council's Health & Safety Policy Statement can be found at Appendix F.
- B6.4 The successful Applicant must ensure that they are compliant with all relevant statutory provisions including current health and Safety and Food Hygiene Legislation.
- B6.5 The successful Applicant must comply with all relevant legislation related to Health and Safety as outlined in the EYFS and by Ofsted.
- B6.6 The successful Applicant must have adequate insurance as per the contract requirements.
- B6.7 In the event of an incident related to Health and Safety, the successful Applicant must ensure that they follow their procedures, and any reportable incidents must be reported to the relevant agencies.

## **B7 Invoicing**

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- B7.1 This contract does not require invoicing, however where payments are due the Council will make payments to the Provider as required in arrears, in line with the terms and conditions set out below.
- B7.2 The Provider must make the invoice payable by Torbay Council and must be marked with Torbay Council's name and address, the Provider's name and address and the Council's official purchase order number.
- B7.3 The invoice must be submitted by e-mail to: **invoices@torbay.gov.uk**.
- B7.4 The Provider must provide a consolidated invoicing approach as standard, including for third parties' services unless otherwise specified. Any information specific to the invoice and the provision of services, must be attached to the invoice, to enable prompt processing / payment;
- B7.5 The invoice must contain a full breakdown of costs and must match the agreed pricing stated on the final quotation and official purchase order.
- B7.6 The Council's settlement terms are 30 days from the date of an undisputed invoice, or receipt of goods or service, whichever is the later.
- B7.7 Disputed parts of invoices and invoices not bearing purchase order numbers will not be paid and a corrected invoice will be required.
- B7.8 Payment will be by BACS and remittance advices will be transmitted to the Provider by email (the Provider's appropriate email address must be supplied).

## **B8 Not Used**

## **B9 Disaster Recovery and/or Business Continuity Plans**

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- B9.1 The Provider is required to submit a Disaster Recovery or Business Continuity Plan (whichever they deem most appropriate) for the Council's approval within three months of the contract start date.
- B9.2 As a minimum the Disaster Recovery/Business Continuity Plan should address the following:
- a. The impact of COVID-19 or any other similar crisis;
  - b. The impact of severe adverse weather resulting in temporary or medium-term closure;
  - c. The impact of staffing issues affecting ratios and forcing partial closure, temporary full closure or medium-term closure;
  - d. Destruction or loss of computer data / hardware;
  - e. Loss of business premises, including accommodation provided to service users under the contract;
  - f. Major accidents or incidents;
  - g. Safeguarding issues;
  - h. Loss of professional registrations / accreditations without which the provider cannot legally deliver the contract;
  - i. Supply chain issues;
  - j. Impact of legislative changes – e.g. Brexit;
  - k. Any other reasonably foreseeable events that could prevent the delivery of the contract in full or in part.
- B9.3 The Provider is required to review the Exit Management Plan and submit an updated Plan to the Council for approval.

## **B10 Exit Management**

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- B10.1 The Provider is required to submit an Exit Management Plan for the Council's approval within three months of the contract start date.
- B10.2 As a minimum the Exit Management Plan should address the following:
- a. TUPE (if applicable)
  - b. Support for families to locate alternative childcare places
  - c. data processing
  - d. information sharing

e. the provision of an IT system

B10.3 The Provider is required to review the Exit Management Plan and submit an updated Plan to the Council for approval on an annual basis.

## **B11 Not Used**

## **B12 Contract Specific Mandatory Pass/Fail Requirements**

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B12.1 The successful Applicant must have a minimum of five (5) years' experience of running a nursery.

Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes' and provide evidence of said experience.

B12.2 The successful Applicant must be able to advise the name and relevant childcare qualification of the manager/owner or supervisor in your organisation who has a minimum of five (5) years' experience working in childcare, plus provide proof of their qualification.

Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare the relevant name and provide proof of their qualification.

B12.3 The successful Applicant must be able to advise who the Ofsted 'registered person' in your organisation is, which is the person with the ultimate responsibility. Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare the relevant name.

B12.4 The Applicant must ensure that they have the following policies and procedures in place and that they are adhered to, including:

- a) Safeguarding / Child Protection policies and procedures;
- b) Staff recruitment / induction policy / safer recruitment policies and procedures;
- c) Procedure for dealing with allegations against employees and/or volunteers;
- d) Enhanced DBS disclosure policy and process (and details of how often they are renewed and process for dealing with a positive disclosure, etc.);
- e) Employee handbook;
- f) Complaints and Whistleblowing;
- g) Risk Assessment.

*(the above list is not exhaustive)*

Minimum expectation: The Authority's minimum expectation in relation to these mandatory criteria are that the Applicant can evidence that they have these policies and procedures in place, that they are adhered to and that the policies themselves meet, as a minimum, the Authority's own policies and procedures on such issues (where they exist).

- B12.5 The Applicant must be committed to ensuring that all employees working within / on behalf of the Nursery provision have a new Enhanced Disclosure and Barring Service (DBS) check prior to commencement on the Contract / in post and that this is renewed as required.  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes' to their compliance to all of these requirements.
- B12.6 The provision must be operational from 01 June 2023, subject to Ofsted registration.  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes'.
- B12.7 The Applicant must be willing to submit to an inspection by Ofsted and demonstrate a commitment to achieving an Ofsted grade of good or better.  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes'.
- B12.8 The successful Applicant must demonstrate progress and commitment to continuous improvement at regular intervals, via a mutually agreed robust development and improvement plan. The Authority will monitor through bi-annual Quality Monitoring (QM) visits, contract monitoring meetings and engagement with the Early Years Childcare Advisory Service (EYCAS) e.g. visits and training including attendance at termly EYCAS forums. Where the successful Applicant does not meet this, we will follow the procedure laid out within section C9 Non-Compliance of Contract Requirements of this Part 2 Specification.  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes' to their compliance to all of these requirements.
- B12.9 The successful Applicant must be prepared to purchase and provide all additional equipment as necessary, to facilitate the Nursery delivery.  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes'.
- B12.10 The Authority will charge a rent of £10,000 per annum for a lease of the Nursery building. The successful applicant will be required to enter into the lease agreement without amendment or renegotiation. The successful Applicant will be required to provide a rent deposit deed or guarantor, for the on-going annual rental charge. This will need to be provided before the commencement of the Contract. This offer should take into account the draft Heads of Terms of the Lease and the outgoing and liabilities contained therein. However, the successful Applicant will be responsible for paying any charges that arise during the Contract as a result of their use of the building and facilities associated with it (for example, utility bills or repairs and maintenance costs).  
Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes' to their compliance to all of these requirements.

B12.11 The Applicant must be fully compliant with all of the Safer Recruitment requirements, for the duration of the Contract including any extension periods. Minimum expectation: The Authority's minimum requirement in relation to this mandatory criterion is for the Applicant to declare 'Yes'.

## C Core Requirements

This section sets out the Authority's core requirements for this Contract, which Applicants are required to demonstrate within their response that they are capable of meeting

Applicants are required to establish within any variant bid how they will meet these requirements, in order for the Authority to be able to appropriately assess their offer.

### C1 Service Requirements of the Contract

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- C1.1 This Part 2 Specification focuses on the outcomes the Authority would like the Contract to achieve. The detailed information given, examples of performance indicators and risks highlighted in this document should not be seen as comprehensive lists, but as minimum requirements necessary to achieve the desired outcomes. The details should also help to clarify and avoid misunderstandings in what is expected of the successful Applicant.
- C1.2 The successful Applicant must deliver safe, high-quality childcare for babies and children until they are five (5) years old and reach statutory school age, suitable for working families, for a minimum of ten (10) hours per day, five (5) days per week, forty-eight (48) weeks per year helping the children achieve their full potential and giving them the best start in life.
- C1.3 This childcare must be registered under the Children Act 1989 or Childcare Act 2006 with the Office for Standards in Education (Ofsted).
- C1.4 The successful Applicant must notify the Authority of any changes to the registered body and any changes in management or the registered person.
- C1.5 Childcare places must be open to all, with places prioritised and allocated in line with the applicable Admissions Policy.
- C1.6 Any changes to the Admissions Policy must be agreed with the Authority.
- C1.7 The successful Applicant will be required to be registered for full day care but provide flexibility of delivery to meet parents' demand (for example by offering a mix of full-time and part-time places).
- C1.8 The successful Applicant must demonstrate, with examples, how they have developed creative solutions, worked with partner agencies and communities, embedded innovative practice and shared good practice with neighbours/partners and can meet the requirements of this Specification. Whilst Applicants are encouraged to be creative and innovative it is also important that interventions and solutions are focused on evidence of practice and research that has been shown to be effective.
- C1.9 The successful Applicant must plan for the needs of individual children and ensure all children are treated fairly, as individuals and that no child or family is discriminated against.
- C1.10 The successful Applicant will be expected to deliver all of the current free childcare entitlement for eligible two, three and four (2, 3 and 4) year olds as part of their

childcare service; as well as any additional or new entitlements introduced by government. The successful Applicant will register to receive Early Years Entitlement Funding (EYEF) by agreeing to and adhering to all conditions set out within the EYEF Local Provider Agreement (see Appendix N for full details of the Provider Agreement) as well as the national conditions set for this by the Department for Education (DfE) in the Statutory Guidance and Operational Guidance documents (available from the gov.uk website).

- C1.11 The successful Applicant will be required to agree to the conditions contained within the EYEF Local Provider Agreement (or its' replacement) as and when they change according to future local and national priorities.
- C1.12 The successful Applicant/s, through this service, will contribute to the Authority's overall work towards the following aims and outcomes:
- C1.13 Improve the life chances for children and young people;
- C1.14 Promote and improve the health and wellbeing of people in Torbay;
- C1.15 Empower local people to have a greater voice and influence over decision making and the delivery of services in Torbay;
- C1.16 Work with local families and partner agencies to develop mutually beneficial services;
- C1.17 Increase families' access to services they may benefit from;
- C1.18 Improve school readiness of attending children;
- C1.19 Narrow the gap between those most disadvantaged children and the rest;
- C1.20 Contribute to the Authority's Children and Young People Plan.
- C1.21 The Authority promotes environmental sustainability and signed up to the Aalborg Commitments in June 2004. The successful Applicant is expected to ensure that that their organisation is environmentally friendly and include this when working with children and their families. The successful Applicant must ensure and be able to demonstrate that they can meet the needs of the Service for the duration of the Contract.
- C1.22 The successful Applicant should aim to deliver Services over and above those that will meet the requirements of this Volume Two (2) Specification and be pro-active and embrace the changes for the Service to evolve and improve.
- C1.23 The successful Applicant must implement relevant duties under equalities legislation including the Disability Discrimination Act 1995 (DDA), Sex Discrimination Act 1975, and Race Relations Act 1976, Race Relations



Amendment Act 2000, the Equality Act 2010 and the Special Educational Needs and Disability Act 2001.

C1.24 The successful Applicant must actively promote equal opportunities and anti-discriminatory practice within the Nursery.

C1.25 The successful Applicant must have a clear commitment to equality of access and opportunity to learn and pay regard to the national Code of Practice for Special Educational Needs.

## **C2 Quality Requirements of the Contract**

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C2.1 The Authority will monitor the quality improvements made by the successful Applicant linked to environments, practice, and leadership and management, on an on-going basis via a range of tools. We will monitor through bi-annual Quality Monitoring (QM) visits, contract monitoring meetings and engagement with the Early Years Childcare Advisory Service (EYCAS) e.g. visits and training including attendance at termly EYCAS forums

C2.2 The successful Applicant must comply with the Statutory Framework for the Early Years Foundation Stage, including the Learning and Development, Assessment and Welfare requirements, while also having regard for the non-statutory guidance at all times or its equivalent.

C2.3 Through delivering the framework effectively, the successful Applicant should deliver individualised early education and childcare that enhances the development of the children in their care and gives those children the best possible start in life.

## **C3 Child Requirements of the Contract**

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C3.1 The successful Applicant must be able to demonstrate that education and childcare are seamlessly delivered so that it is not possible to distinguish when during the day the child is being 'cared for' and when he/she is 'learning'. Children's learning and development experiences should be carefully planned to ensure all children receive a broad and rich curriculum offer, underpinned by the experiences children have 'beyond the setting'.

C3.2 Provision should be made for children to experience a calm, nurturing environment providing for those who wish to relax, play quietly or sleep, equipped with appropriate furniture.

C3.3 Providers must plan and organise their systems to ensure that every child receives an enjoyable and challenging learning and development experience that is tailored to meet their individual needs. Children's progress should be closely monitored to ensure all children thrive and achieve the best possible outcomes by the time they leave the setting.

C3.4 Planned activities must be designed from the basis of a thorough knowledge of child development and build upon the experiences that they have beyond the

setting. Activities should build on what children already understand, know and can do and must reflect the children's own interests and fascinations. They should also include both indoor and outdoor opportunities and encourage sustained shared thinking. Staff deployment must be based on the children's needs at all times.

- C3.5 The successful Applicant must prepare children, parents and staff at all transitional points (both inside and outside of the setting) by creating strong links with relevant Primary Schools, other childcare providers and other educational providers. There should be particularly strong links and transition processes with the co located Children's centre.
- C3.6 Effective monitoring of every child's holistic learning and development progress is essential, and the successful Applicant will be required to demonstrate this process is in place. Any particular needs of individual children must be identified and addressed as early as possible, particularly those with SEND or disadvantaged children who need to catch up quickly.
- C3.7 The successful Applicant must ensure that each child is assigned a key person to enable them to feel confident and safe within the setting. The key person system must be implemented to ensure that parents and other professionals have a particular person to communicate with if any issues arise.
- C3.8 The successful Applicant must work to / adhere to the requirements of the statutory Early Years Foundation Stage (EYFS) framework and have working practices and procedures that follow and can evidence these. The setting must ensure they keep up to date with any changes to the EYFS and implement changes as required.
- C3.9 The successful Applicant must demonstrate that they recognise the importance of early communication and language and ensure this is prioritised within the setting as part of early identification of need. Physical activity and healthy lifestyles and the impact they have on later development and achievement should be promoted. The successful applicant should encourage and support families to consider the home learning environment and link into other professionals who can support families in these areas when required.

## **C4 Parent/Carer Requirements of the Contract**

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- C4.1 The successful Applicant and their staff must respect the parents/carers' views and take into account the fact that parents have a unique knowledge of their child. The successful Applicant must provide a welcoming, inclusive and non-judgemental ethos which will enable parents/carers to understand that staff are approachable and knowledgeable.
- C4.2 The successful Applicant must have a suitable complaint system in place that is widely available and understood by parents. This system should cover but not be limited to how long it will take to respond to a complaint, how you, as a Contractor,

learn from the process, and how any complaints link into Ofsted and their inspection process.

- C4.3 The successful Applicant must help both parents/carers through:
- a) an effective induction policy and flexible procedures;
  - b) sharing with them the values and aims (both educational and otherwise) of the Nursery;
  - c) the provision of regular reports on their child's progress;
  - d) discussions with them about what their child enjoys doing at home and encouraging them to support the development of the home learning environment;
  - e) sharing knowledge of a child's learning through joint planning and record keeping;
  - f) meeting with parents on an informal basis as and when required to establish good relationships and open lines of communication;
  - g) meeting more formally at least twice a year to discuss their child's learning and development, listening to their particular interests and concerns and helping them to contribute to the child's records of achievements and learning;
  - h) how they link with and promote workshops for parents/carers on areas of interest (for example 'learning through play' 'using the outdoors' or 'music with babies and toddler');
  - i) promoting other services available to families and children such as toy and book libraries, local Bookstart schemes, Children's Centre services etc.

## **C5 Fees and Financial Requirements of the Contract**

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- C5.1 The successful applicant must adhere to the Local Provider Agreement, Statutory Guidance and Operational Guidance when designating a fee structure for children in receipt of the free entitlement.
- C5.2 The successful Applicant must have a policy regarding the recovery of unpaid fees.
- C5.3 Where the successful Applicant charges a deposit, administration or registration fee, a policy for what this covers is required. This policy should cover areas such as in what instance the fees will be refundable and adhere to the rules set out in the Local Provider Agreement. The successful Applicant must also demonstrate that these policies do not prevent or hinder a child who wants to access their free entitlement only from doing so.
- C5.4 The successful Applicant must promote means that enable parents/carers to pay for childcare such as Early Years Entitlement Funding, Tax Credits, Universal Credit, Tax Free Childcare, employer childcare vouchers etc. The successful

Applicant must keep their staff up to date on what support is available to families using childcare.

- C5.5 To prevent the risk of the successful Applicant being financially unable to deliver the Service, the successful Applicant should access business support training and advice as required by the Early Years Advisory Service.
- C5.6 The successful Applicant must have a robust system for financial monitoring and submit specific monitoring information, including financial and educational reports as requested. The applicant is expected to demonstrate their plans for operating at a minimum break-even throughout the term of the contract within the Financial Model template.
- C5.7 Information on help with childcare costs and other subjects can be obtained from a variety of sources. Please visit <https://www.torbay.gov.uk/children-and-families/childcare/> for more information.

## **C6 Partnership Working Arrangements**

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- C6.1 Underlying this Part 2 Specification is a general understanding that the successful Applicant will work with other organisations to deliver the best outcomes possible for young children and their families within Torbay. We expect the successful Applicant to engage with whoever they need to ensure these outcomes are met. However, as a minimum we would expect the successful Applicant to work with the following partners to ensure it meets the outcomes identified in this Part 2 Specification:
  - C6.2 Parents, carers and communities:
    - (a) To ensure they receive information about the nursery, local services and other support services available to them;
    - (b) To arrange consultation / information sharing with parents/carers on what services are needed or wanted, and devise systems to obtain user feedback on the services offered and their effectiveness (particularly for those identified as priority groups or disadvantaged).
    - (c) The successful Applicant will help parents and families access services made available by Children's Centres in Torbay.
  - C6.3 Health services:
    - (a) To ensure easy access to health services for people using the Nursery;
    - (b) To ensure that pathways into these Services are understood by the successful Applicant and that they are promoted to parents or referrals are made into these services by the successful Applicant where required.
  - C6.4 Links to appropriate services within the Authority:
    - (a) 0-19 Partnership Care Teams – to ensure families can access/be referred into specialist services where required. This link should include the effective

sharing of knowledge across these areas in line with normal data protection / confidentiality protocols;

- (b) The successful Applicant will need to engage with the Authority with regard to the sufficiency of childcare reports, any information required from settings and to allow support workers to visit the setting on a regular basis.
- (c) Family Information Service (FIS) – to ensure families are kept informed of what services/advice they might be able to access through other sources and to ensure that the FIS have up to date information about the provider to pass on to families in Torbay.
- (d) Children’s Integrated Services (Inclusion, Emotional Health and Disability) - to ensure families of children with additional needs are identified early and information shared across services to support the families as appropriate.

- C6.5 Local schools, nurseries and other education providers – to ensure a smooth transition when children move between these services and to ensure the effective sharing of knowledge between these organisations.
- C6.6 Voluntary and Community Groups in the area – to ensure the nursery is fully aware of what is happening and what services are provided in the local community as well as what groups or individuals may be able to help them improve outcomes for children in this community.
- C6.7 The successful Applicant and other organisations involved may wish to set up separate partnership agreements to share services and resources. The Authority must be notified of such arrangements.
- C6.8 The successful Applicant must engage directly with the local community, not treating one or more groups less favourably than others because of their sex, gender, colour, race, religion, nationality, ethnic origin or disability.
- C6.9 The successful Applicant must devise specific strategies and activities to increase the involvement of groups identified as a priority in the communities that the childcare serves. For example:
  - (a) Children in workless households;
  - (b) Lone parents/carers;
  - (c) Fathers and family men;
  - (d) Teenage mothers and pregnant teenagers;
  - (e) Children in Black and Minority Ethnic families;
  - (f) Disabled children and children of disabled parents/carers
- C6.10 Create strong links with parents, carers and those carers who do not live with their children by treating them with respect, as equals, consulting and sharing information with parents/carers to ensure that they receive the service they need and are satisfied with the provision.
- C6.11 Work in partnership with local schools and in particular, the co-located Primary School, the Authority and other organisations to achieve the outcomes and targets

identified in these documents and contribute to the overall performance of the Authority.

- C6.12 Create links with the local community, be a hub for work with families in the local community and to foster involvement in the education and development of local children.

## **C7 Legal Requirements**

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- C7.1 The successful Applicant must be able to advise who the Ofsted 'registered person' in their organisation is, which is the person with ultimate responsibility for the provision.
- C7.2 The successful Applicant must notify the Authority of any changes to the registered body and any changes in management.
- C7.3 The successful applicant will ensure a robust improvement and development plan is in place, which clearly sets out their aims and aspirations to support the delivery of outstanding practice. This will have been developed with staff, families and key partners (including the onsite Primary school). This document will be used to

influence their future planning and the delivery of services and thereby form the basis of all quality monitoring visits and contract management.

- C7.4 The successful Applicant must ensure that it meets all legal requirements associated with the delivery of the services it provides.
- C7.5 (Mandatory Requirement) The provision must be operational from 01<sup>st</sup> June 2023, subject to Ofsted registration. The successful Applicant must work with the Authority to ensure the opening date is met.

## **C8 Support from the Authority**

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The Authority is committed to providing the highest standards of customer service. In respect of this, the Authority endeavours to:

- C8.1 Work hard to make prompt, accurate payments to the successful Applicant in order that funding is received at the scheduled times.
- C8.2 Be on hand to offer friendly advice and support.
- C8.3 Provide the successful Applicant with access to a range of training opportunities tailored to meet the needs of the settings and staff.
- C8.4 Failing to achieve an inspection rating of good or better in any outcome / area will result in a support package being provided to help the successful Applicant develop a post Ofsted action plan.
- C8.5 Ensure that all records and information that the Authority holds about your organisation and the service delivered are dealt with in an appropriate confidential and manner.
- C8.6 Provide the management information data and statistics required by the Contract in a timely manner.
- C8.7 Provide the input of an Early Years Advisory Teacher to assist in ensuring that the childcare and education provided at the nursery is of a high standard.
- C8.8 Provide the successful Applicant with access to support and advice from specialist staff to enable the delivery of high-quality care and education for young children and their families. Staff are able to help in a variety of areas including:
- (a) Support and advice throughout the Ofsted registration process;
  - (b) Support with the Ofsted inspection process including subsequent inspection visits;
  - (c) Support to implement the Statutory Framework for the Early Years Foundation Stage;
  - (d) Business management and financial planning;
  - (e) Assistance in supporting children identified as having additional needs;
  - (f) Providing advice regarding the structure and delivery of the successful Applicant's sessions to best support the individual needs of the children.

- C8.9 Other support services could be made available by negotiation / on request if a specific need is identified by the successful Applicant.

## **C9 Non-Compliance of Contract Requirements**

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- C9.1 In the event that the Authority considers that a serious breach has taken place, or if the Contractor does not comply with any of the criteria and conditions of this Contract, the Authority may decide to withhold funding from the Contractor and may seek to recover funding already paid to them, either in whole or in part or in certain serious circumstances terminate the Contract.
- C9.2 The Contractor will be informed of such decisions in writing and will be asked to take steps to rectify the non-compliance within a specified timescale.
- C9.3 In the event that the Contractor fails to rectify the non-compliance within the timescale, the Authority may terminate the Contract, subject to the Contractor being given an opportunity to make written representations prior to the final decision being made and subject to the Contractor's right of appeal, as set out below.
- C9.4 The Provider must inform the Authority of any matters that impact upon the Contractor's registration with Ofsted as they arise. The Contractor must keep the team informed about developments relating to the Contractor's registration as necessary.
- C9.5 Should a Contractor not have a valid certificate of registration with Ofsted at any time and for whatever reason, the Authority will withhold further funds from the Contractor and may seek to recover funds already paid to the Contractor either in whole, or in part, or the Authority will terminate the Contract subject to the Contractor being given an opportunity to make written representations about the decision. The Contractor will be informed of such decisions in writing.
- C9.6 If a Contractor has a problem of any kind with their Ofsted registration, the Authority may decide to withhold further funding until such time as it receives formal notification from Ofsted that the matter has been resolved. The Authority will require the Contractor to supply a copy of its Ofsted registration certificate in such instances
- C9.7 If following assessment by the Authority, or at any time subsequently, the Authority concludes that the Contractor is not able to deliver a satisfactory level of provision, the Authority may decide to withhold funding or terminate the Contract subject to the Contractor being given an opportunity to make written representations prior to the final decision being made and subject to the Contractor's right of appeal with regards to the withholding of funding, as set out below. The Contractor will be notified of such a decision in writing



C9.8 In cases where the overall provision is judged by Ofsted to be Inadequate, the following will apply:

(a) **Inadequate 1**

Any Contractor given an Inadequate 1 outcome by Ofsted must inform the Authority immediately. The Authority will visit the Contractor as necessary to assess the provision and make recommendations for improvement. The Contractor must implement these recommendations to ensure improvement within three (3) months. Contractors must co-operate fully with the Authority.

(b) **Inadequate 2**

Any Contractor given an Inadequate 2 outcome by Ofsted must inform the Authority immediately. Any Contractor receiving an Inadequate 2 will be removed from the Directory and the funding will cease immediately. The Authority may also seek recovery of funding already paid to the Contractor either in whole, or in part or even terminate the Contract. If the Contractor decides to appeal against their Ofsted inspection outcome and the appeal is successful, the Contractor will be re-admitted to the Directory.

C9.9 If a Contractor is removed from the Directory because the Service is inadequate, they will not be permitted to apply to be registered again for a period of twelve (12) months from the date on which they were removed from the Directory. The Contractor will be expected to follow the procedure for applying for inclusion on the Directory.

C9.10 The Authority has a duty to improve the outcomes of all children under 5 and reduce inequalities and the support they can provide is set out at section 3.10 Support from the Authority within this Part Two (2) Specification.

C9.11 These procedures are separate to and not reliant upon Ofsted processes and they may take place at any point during the Ofsted processes.

## **C10 Appeals Procedure**

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C10.1 The Authority has established a clear Appeals Procedure for Contractors.

(a) If a provider decides that it wishes to make representations about a decision to suspend or remove them from the Directory, they must write to The Authority within two weeks of the notice being given, providing the grounds for objecting with relevant evidence in support.

(b) The Authority will acknowledge receipt within one week of receiving this. In the acknowledgement letter, The Authority will give the provider a date, time and location for an appeal hearing. The appeal panel will meet within a month of the evidence having been received by The Authority.

- (c) The Authority will prepare a written report for the appeal panel. This report, along with the Provider's evidence will be sent to the panel and the Provider at least one week before the date of the hearing.
- (d) The Authority will prepare a written report for the appeal panel. This report, along with the provider's evidence will be sent to the panel and the provider at least one week before the date of the hearing. The appeal will be heard by a panel of three (3) senior staff drawn from The Authority. The panel members will have had no prior involvement in the matter under appeal. One of the panel members will act as chair. There will also be a clerk present to record the proceedings. A member of staff from the provider may attend the hearing in order to put the provider's case to the panel. He/she may also bring another person with them e.g. a friend, relative, business colleague or a Councillor to help or to put the provider's case on its behalf. In addition, there will be a maximum of two representatives from The Authority to put their case to the panel.

C10.2 The hearing procedure will be as follows:

- (a) Introductions
- (b) Torbay Council will be invited to explain the reasons behind its proposal
- (c) The provider may question Torbay Council's representatives after they have spoken
- (d) The provider will be invited to explain its grounds of appeal against Torbay Council's proposal
- (e) Torbay Council may question the provider after its representatives have spoken
- (f) The panel may ask questions at any point
- (g) Torbay Council will then be invited to sum up the reasons behind its proposal
- (h) The provider will then be invited to sum up its grounds of appeal
- (i) Both the provider and Torbay Council representatives will then leave together while the panel makes its decision
- (j) The chair will explain to both the provider and Torbay Council representatives that they will hear from the panel in writing within one week.
- (k) The panel's decision will be final.
- (l) If, at any stage the provider, is unhappy with the way in which the Council has dealt with its appeal they can ask the Local Government Ombudsman to examine the proceedings. The Local Government Ombudsman is an independent person who investigates allegations of maladministration causing injustice to the person who has complained.

## **C11 Hand Back Conditions of the Facilities**

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The Facilities shall be in a condition which is consistent with the due performance by the Contractor of its obligations, free from material or significant defects and in no worse than

the condition of the Facilities at the date of the commencement of the Contract.

## **C12 Hand Back Conditions of the Assets**

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- C12.1 Each element of the Assets shall be in a condition which is consistent with the due performance by the Contractor of this agreement and shall have a residual life of not less than the average residual life to the equivalent type of Asset class.
- C12.2 If no residual life is specified for an element of the Assets, then such element shall have a residual life equal to the greater of one quarter (1/4) of the serviceable life of that element or five (5) years, or, if the element has a serviceable life of less than five (5) years, it must have been renewed during the last twelve (12) months of the term.
- C12.3 All elements of the assets shall be free from material or significant defects.

## **C13 Expiry of Contract**

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This Contract shall terminate automatically on the expiry of the term unless it shall have been terminated earlier. If the Contractor wishes to terminate the Contract at the end of initial four (4) year period, then it must inform the Authority at least six (6) months before that date. This will allow the Authority and or a new Contractor to be appointed to ensure the smooth handover and continued running of the Nurseries.

## **D Additional Requirements**

### **D1 Further Services Offered**

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The Applicant will be expected to suggest as part of its response to the Evaluation Questions any additional products or services that they may be able to offer as part of this Contract or any other added value that their offer might be able to bring to the Authority. Applicants are expected to build any such offers into their submissions regardless of whether specific questions are asked along these lines or not.

## **E Social Value**

### **E1 Our Commitment**

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- E1.1 The Council is committed to its responsibilities under The Public Services (Social Value) Act 2012. Therefore the Council is seeking Participants who will add value to the Agreement by providing additional community benefits (above the services described within this specification).
- E1.2 The Council is committed to a performance and evidence-based approach to Social Value.

### **E2 Our Priorities**

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- E2.1 We are seeking submissions that support our local priorities.
- E2.2 The Council's mission is to be a Council that supports, enables and empowers its residents, communities and partnerships.
- E2.3 The Council's ambition and priorities for Torbay and its residents to thrive are outlined in the Community and Corporate Plan 2019 -2023:  
<https://www.torbay.gov.uk/council/policies/corporate/corporate-plan/>
- E2.4 We are looking for Applicants to make submissions in relation to Social Value that support the collective delivery of this plan in Torbay.
- E2.5 In evaluating Social Value offers we are looking for bidders who wish to contribute and join us as partners in delivering the ambitions for Torbay and its residents. All responses are expected to demonstrate what and how they will contribute to the delivery of this plan in Torbay.

### **E3 Torbay TOMs Framework**

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- E3.1 As part of our commitment to a performance and evidence-based approach to Social Value we have utilised the National TOMs (Themes, Outcomes & Measures) Framework developed by the Social Value Portal and endorsed by the Local Government Association (LGA).
- E3.2 The TOM's Framework for Social Value provides a measurement standard to support better and wider implementation of the Social Value Act. It provides a way to assess additional contributions that a project will make to society. It also enables us to embed local priorities and signpost Applicants to the areas of greatest need in our community where their actions will be of most value.
- E3.3 To support Applicants in their responses we have aligned the National Theme and Outcome measures (TOM's) with the priorities set out in our Community and Corporate plan – The Torbay TOMs Framework (See Appendix H).

- E3.4 Applicants are free to choose those measures that are proportional and relevant to their business and this specific Contract. **Please Note:** a key success factor for Applicants will be to demonstrate the ability to deliver against the commitments made.
- E3.5 By submitting a Social Value indicator the Applicant is committing to the delivery of this throughout the term of the Agreement and will be monitored against achievement of outcomes as part of the routine outcomes/contract monitoring process.
- E3.6 The Council recognises that measuring and delivering Social Value requires flexibility and a collaborative approach. Agreed Social Value commitments may require a certain amount of refinement as a result. A key requirement is the willingness of the successful Applicant to work openly and transparently with the Council, whilst bearing in mind that the overall value of Social Value commitments made must be delivered by the successful Applicant.

## **E4 Additional Information**

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- E4.1 Further information on the Council's approach to Social Value and resources to support you in your submission are available to bidders in Part 7 Social Value Requirement, Appendix G Do's and Don'ts for Social Value Bids, Appendix H The Torbay TOMs Framework and at: <https://socialvalueportal.com/>

# F Scope and Nature of Possible Modifications or Options

## F1 Permitted Changes

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- F1.1 Changes to the Contract shall be made only where such a Change is
- (a) permitted by the Public Contracts Regulations 2015, Regulation 72(1)(b) to (f); or
  - (b) is in accordance with the permitted changes set out in the Change Control Schedule of the Contract; or
  - (c) is explicitly referred to in section 0 below.

## F2 Potential Changes or Modifications

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- F2.1 The successful Applicant must ensure that they keep up to date with all changes that affect the nursery. This could include changes to:
- (a) The Early Years Foundation Stage Statutory Guidance (EYFS)
  - (b) Ofsted Inspection Guidance
  - (c) Working Together to Keep Children Safe in Education
  - (d) Health and Safety Legislation
  - (e) Funding Guidance (Statutory Guidance and Operational Guidance)
  - (f) Funding entitlements
  - (g) Funding rates
  - (h) Provider agreements relating to the funding entitlements
  - (i) Updates or amendments to any of the law related to the Children Act
  - (j) Updates or amendments to any of the law related to equality, disability, discrimination etc. (as outlined throughout this document)
- F2.2 The above list is not exhaustive, and the Authority expects the successful Applicant to take responsibility for keeping up to date with all relevant changes and implement them as necessary within the nursery policies, procedures and working practises.