

# **OPERATING AGREEMENT**

between

**Eastbourne Borough COUNCIL**

and

**Your Eastbourne BID Limited  
A wholly owned subsidiary of  
Eastbourne & District Enterprise Agency Limited**

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- provide for the monitoring and review of the collection of the BID Levy.
- confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be accounted for.
- provide for the monitoring and review of the spending of the BID Levy by the BID Company and its internal control arrangements.

It is agreed as follows:

## 1 **Definitions**

“**Bad or Doubtful Debts**” shall have the same meaning as further described in **Part 2 of Schedule 3** of the Regulations;

the “**Balancing Payment**” means the difference between the sum of the First and Second Advance Payments and the actual total sum of the BID Levy collected by the Council for the relevant Financial Year as ascertained by Council and notified to the BID Company within three (3) calendar months after the end of the financial year in question. If the aggregate of the two former payments exceed the latter, it is negative, if the aggregate of the former payments is less than the latter, it is positive;

“**BID**” means Business Improvement District as defined by the Local Government Act 2003 Part 4 and The Business Improvement Districts (England) Regulations 2004

the “**BID Area**” is identified on the map in **Schedule 2**;

the “**BID Arrangements**” means those arrangements to be put in place pursuant to the Regulations for the operation of the BID;

the “**BID Company's Report**” means a report for each Financial Year to be prepared by the BID Company which details the following:

- (i) the total income and expenditure of the BID Levy;
- (ii) other income and expenditure of the BID Company not being the BID Levy;
- (iii) a statement of actual and pending deficits; and
- (iv) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company analysed in line with the agreed BID Proposals;

the “**BID Internal Control Arrangements**” means the arrangements put into place by the BID Company under **Clause 3.2** as revised from time to time under **Clause 3.2** following an independent review;

the “**BID Levy**” means the charge to be levied and collected within the BID area pursuant to the Regulations;

“**BID Levy Payer(s)**” means the non-domestic rate payers responsible for paying the BID Levy;

the “**BID Levy Rules**” means the rules set out in **Schedule 1** of this Agreement which sets out how the BID Levy will be calculated, details of Exempt Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot pursuant to the Regulations);

the “**BID Proposals**” means the BID Company’s BID Proposals set out in **Schedule 3** to this Agreement.

the “**BID Revenue Account**” means the account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations;

the “**BID Term**” means the period commencing on the Operational Date and expiring on [30<sup>TH</sup> JUNE 2022];

“**CLA**” means the Commission for Local Administration;

“**Confidential Information**” means:

- All information relating to this Agreement which includes, but is not limited to, commercial, financial, technical, operational or other information in whatsoever form (including information disclosed orally) which concerns the business and affairs of a party including information disclosed prior to the date of this Agreement, where one party can demonstrate to the other party that disclosure would cause considerable harm;
- All information reasonably designated as such by either party in writing together with all other information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of either party being information where one party can demonstrate to the other party that disclosure would cause considerable harm;
- Any information which is agreed by the parties at the Execution Date or any time prior to publication of this Agreement or any part of it under

the Freedom of Information Act 2000 or any other legislation as being commercially sensitive;

**“Confidentiality Expiry Date”** means the date one (1) year following the expiry of the BID Term;

the **“Contributors”** means the BID Levy Payers or other contributors making voluntary contributions to the BID Company;

**“Demand Notice”** shall have the same meaning ascribed to it as further set out in paragraph 3 of Schedule 4 of the Regulations;

**“Dispute Resolution Procedures”** means the procedures set out in **Clause 16**;

**“DPA”** means the Data Protection Act 1998;

**“EEA State”** means a state which is a contracting party to an agreement on the European Economic Area pursuant to Section 70 DPA;

**“Execution Date”** means the date of the execution of this Agreement by the parties;

the **“Exempt Properties”** means those class or classes of properties as identified in the BID Levy Rules which shall be exempt from any requirement to pay the BID Levy;

the **“Financial Year”** means the period of twelve (12) consecutive months from 1<sup>st</sup> April to the following 31<sup>st</sup> March;

the **“First Advance Payment”** means the amount collected from BID Levy payers. **“FOIA Scheme”** means the Council’s current published scheme under Section 19 Freedom of Information Act 2000;

**“Hereditament”** shall have the same meaning as defined in Regulation 1 (2);

**“Legislation”** means any Act of Parliament or subordinate legislation within the meaning of Section 21 (1) of the Interpretation Act 1978, any exercise of the Royal Prerogative, and any enforceable community right within the meaning of Section 2 of the European Communities Act 1972, in each case in the United Kingdom;

**“Liability Order”** has the meaning given in Regulation 10 of the 1989 Regulations;

the “**Operational Date**” means [1 July 2017] being the date upon which the BID Arrangements come into force;

“**Personal Data**” is defined by DPA;

“**Public Meeting**” means the meeting to be held of all BID Levy Payers pursuant to Regulation 18(1)(a)(ii);

the “**Regulations**” means the Business Improvement Districts (England) Regulations 2004 SI 2004 No. 2443 and such amendments made from time to time by the Secretary of State pursuant to Section 48 Local Government Act 2003;

“**Relevant Authority**” means any court with the relevant jurisdiction and any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory person of the government of the United Kingdom or of the European Union;

“**Reminder Notice**” means the notice to be served by the Council pursuant to **Clause 7.2**;

“**Second Advance Payment**” means the amount collected from the BID Levy payers less the amount of the First Advance Payment for such Financial Year;

“**Working Day**” means a day (other than a Saturday or a Sunday) on which banks are open for domestic business in the city of London;

the “**1989 Regulations**” means the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 SI 1989 No 1058.

## 2 **Statutory Authority and Interpretation**

2.1 This Agreement is made pursuant to Part 4 of the Local Government Act 2003 and the Regulations.

2.2 This Agreement shall be interpreted according to the following provisions, unless the context requires a different meaning:

2.2.1 words importing persons shall, where the context so requires or admits, include individuals, firms, partnerships, trusts, corporations, governments, governmental bodies, authorities, agencies, unincorporated bodies of persons or associations and any organizations having legal capacity;

2.2.2 references to any statutes and statutory instruments are to be construed as references to those statutes and statutory instruments as from time to time amended or to any statutes



and statutory from time to time replacing, extending, consolidating or amending the same.

Insert the term and commencement of the agreement here as an introduction to what follows (1<sup>st</sup> April 2017 and five years).

### **3 Calculating the BID Levy and BID Internal Control Arrangements**

3.1 No later than fourteen (14) days prior to 1<sup>st</sup> April in each Financial Year, the Council shall:-

3.1.1 Calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and

3.1.2 Confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.

3.2 The BID Company shall, within twenty (20) Working Days of the 1<sup>st</sup> April in each Financial Year, supply the Council with a copy of its BID Internal Control Arrangements which are designed to ensure that the BID Levy as passed by the Council to the BID Company under **Clause 8** is spent effectively, efficiently and economically in accordance with the BID Proposals PROVIDED THAT:-

3.2.1 The BID Company shall arrange for an independent review of the BID Internal Control Arrangements every twelve (12) months, the first review to be undertaken no later than 1<sup>st</sup> April 2018 and thereafter on or before the 1<sup>st</sup> April of each subsequent year.

3.2.2 The BID Company shall provide the Council with a copy of the related report and findings of the independent review and its proposals and timescales to consider the recommendations. Any agreed recommendations will be actioned as detailed in the report and findings no later than 8 weeks of the publication of the report and the findings.

3.2.3 The BID Company shall within one (1) month of supply to the Council of the information under **Clause 3.2.2**, confirm in writing to the Council any revision to the BID Internal Control Arrangements and any other action taken in accordance with its proposals as disclosed under **Clause 3.2.2**.

3.2.4 If the BID Company shall fail to comply with its obligations under **Clause 3.2.1** the Council may employ an independent person to carry out the review under **Clause 3.2.1** and deduct all costs

reasonably incurred in so doing from any payment due to the BID Company under **Clause 8**.

#### **4 The BID Revenue Account**

- 4.1 The Council shall set up the BID Revenue Account and confirm in writing to the BID Company that the BID Revenue Account has been set up.
- 4.2 The BID Company shall provide the Council with details of its own bank account into which payments are to be made by the Council under **Clause 8**.

#### **5 Debits from the BID Revenue Account**

- 5.1 The Council shall seek a service charge of **no more than 3%** of the income collected to cover its costs of collecting the BID Levy. In addition the Council agrees that it shall only debit:
  - 5.1.1 Sums equal to the First Advance Payment, the Second Advance Payment and the Balancing Payment under **Clause 8**; and
  - 5.1.2 Bad or Doubtful Debts;

from the BID Revenue Account and if to the extent the Council is required by the Regulations to debit any further sums from the BID Revenue Account it shall immediately credit an equal sum to the BID Revenue Account.

#### **6 Collecting the BID Levy**

- 6.1 The Council shall serve a Demand Notice on each BID Levy Payer at the start of each Financial Year and thereafter as necessary, and shall continue to calculate the BID Levy and serve Demand Notices in each Financial Year of the BID Term.
- 6.2 The Council shall maintain an accurate and up to date list which identifies payment and/or non payment of the BID Levy and shall make this available to the BID Company on a quarterly basis on a date to be agreed at the beginning of each Financial Year.
- 6.3 BID Levy Payer queries regarding the BID or levy will be dealt with by the BID Company. Queries that are received directly by the Council will be referred to a named contact provided by the BID Company for resolution. Queries regarding payments and payment arrangements will be dealt with by the Council.

6.4 If the BID Company determines that there has been a change which may affect the amount of the BID Levy for the current or a future financial year or is aware of any change in the occupier of a hereditament or the merger or division of a hereditament (or provision of an additional hereditament) the BID Company shall inform the Council in writing accordingly In accordance with Council procedures any appropriate changes will then be made to the BID Company's account by the Council.

6.5 The Council shall use all reasonable endeavours, which are consistent with its usual procedures for the collection of non-domestic rates, to collect the BID Levy on the date specified (pursuant to Clause 6.1.) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations.

## **7 Enforcement of payment of the BID Levy**

7.1 In the event that the BID Levy is not paid by a BID Levy Payer within 30 days of issue of the Demand Notice, the BID Company will contact the Levy Payer in the first instance by telephone or email to arrange payment.

7.2 In the event that the BID Levy remains unpaid after the initial contact from the BID Company the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-

7.1.1 identify the sum payable;

7.1.2 provide a further seven (7) days for payment to be made;

7.1.3 confirm that the Council will apply to the Magistrates' Court for a Liability Order to recover the unpaid Bid Levy (together with costs).

7.3 If after a further seven (7) days from the payment date stated in the Reminder Notice the outstanding amount of the BID Levy has not been paid by the Bid Levy Payer, the Council shall make arrangements for an application to be made to the Magistrates' Court summoning the BID Levy Payer for non-payment of the BID Levy. The BID Levy Payer will be responsible for paying the court costs.

7.4 If the outstanding amount of the BID Levy (together with costs) is not paid in full by the court date, the Council shall make an application to the Magistrates Court to be granted a Liability Order to recover the outstanding sum of the BID Levy (and costs) as is permitted by the Regulations and the 1989 Regulations.

7.5 If payment is not made within seven (7) days following the granting of a Liability Order the case will be passed to the Council's appointed debt recovery agents for recovery of the debt.

## **8 Payment to the BID Company and Reconciliation**

- 8.1 No later than 30 (thirty) Working Days following the **Execution Date or Operational Start Date** (whichever is the later), the Council shall pay the BID Company the First Advance Payment. In the following Financial Years the Council shall pay the BID Company the First Advance Payment [30 working days following the 1<sup>st</sup> **Oct**] in each of those Financial Years.
- 8.2 No later than 30 (thirty) Working Days after the sixth month following the Execution Date or Operational Start Date (whichever is the later) the Council shall pay the BID Company the Second Advance Payment. In the following Financial Years the Council shall pay the BID Company the Second Advance Payment on [30 working days and six months following the execution date or operational start date] in such Financial Years.
- 8.3 Except in the first year, no later than [25 July] after the end of each Financial Year, the Balancing Payment shall be payable. If it is negative, it shall be payable to the Council by the BID Company, and, if it is positive, it is payable by the Council to the BID Company.

## **9 Performance Monitoring**

- 9.1 On [30<sup>th</sup> June] in each Financial Year, the Council shall provide the BID Company with an accurate and up to date report setting out in respect of the previous Financial Year the following information:-
- 9.1.1 the amount of BID Levy for each individual BID Levy Payer;
  - 9.1.2 the BID Levy collected in relation to each BID Levy Payer;
  - 9.1.3 details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy in full;

### Additional Information

- 9.2 On [31<sup>st</sup> July] in each Financial Year, the BID Company shall provide the Council with an accurate and up to date report containing the following details for the previous Financial Year:
- 9.2.1 the total amount of income received from the Contributors (excluding the BID Levy);
  - 9.2.2 the total expenditure incurred and committed;
  - 9.2.3 The total expenditure by the BID Company on each head of expenditure and services in the BID Proposals;

- 9.3 The Parties shall review the operation of this Agreement and shall meet within six (6) weeks of the issue of the Council's report under **Clause 9.1** and the Bid Company's report under **Clause 9.2** in order to:
- 9.3.1 review the effectiveness of the collection and enforcement of the BID Levy;
  - 9.3.2 if required, review and assess the information provided by the Council and the BID Company pursuant to **Clauses 9.1** and **9.2**;
  - 9.3.3 make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and this Agreement);

## 10 **Termination**

- 10.1 The Council may not terminate the BID Arrangements under Regulation 18(1)(a) of the Regulations unless it shall have first served written notice on the BID Company and, in addition to holding a Public Meeting, shall have met with the BID Company as soon as is reasonably practicable to discuss and review the following:
- 10.1.1 the basis of the Council's view that the BID Company has insufficient finances to meet its liabilities for the relevant period;
  - 10.1.2 the amount of its funds; and
  - 10.1.3 alternative means by which the deficit can be remedied, and shall have allowed the BID Company a reasonable timescale within which to specify a financial solution that is acceptable to the Council.
- 10.2 The Council may not terminate the BID Arrangements under Regulation 18(1)(b) of the Regulations unless it shall have first served written notice on the BID Company setting out its intention to do so and shall have met with the BID Company as soon as is reasonably practicable to discuss and review the following:
- 10.2.1 the services or works which the Council is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;
  - 10.2.2 whether such works or services are of material importance to the BID so that termination of the BID Arrangements is the only option;

10.2.3 alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company; and

10.2.4 alternative replacement services or works which will be acceptable to the BID Company;

and shall have afforded the BID Company a reasonable timescale within which to specify a practical solution that is acceptable to the Council.

10.3 If the BID Company shall fail to attend a meeting at a time specified by the Council on a Working Day following the giving of five (5) Working Days' notice then the Council shall have discharged its obligations under **Clause 10.1** or **10.2** as appropriate to meet with the BID Company.

10.4 In the event that the Council is not satisfied with the solutions offered by the BID Company under **Clauses 10.1** or **10.2** as appropriate or if no solution is offered, and subject to consideration of representations made by any BID Levy Payer at the Public Meeting then the Council shall be permitted to terminate the BID Arrangements provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than twenty eight (28) days prior to termination taking place.

10.5 Upon termination of the BID Arrangements the Council shall ascertain whether there is a credit in the BID Revenue Account and in the event that there are sufficient funds in the BID Revenue Account amounting to a refund of at least £5 for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund) then the Council shall:

10.5.1 calculate the amount to be refunded to each BID Levy Payer;

10.5.2 ensure that the amount to be refunded is calculated by reference to the amount payable by each BID Levy Payer for the last chargeable period; and

10.5.3 make arrangements for the amount calculated to be credited against any outstanding liabilities of each BID Levy Payer or, where there are no such liabilities, refunded to the BID Levy Payer.

10.6 Upon termination of the BID the Council shall notify the BID Levy Payers of such termination in accordance with Regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with **Clause 10.5**.

10.7 The BID Company shall not terminate the BID Arrangements if:

- 10.7.1 the works or services under the BID Arrangements are no longer required; or
- 10.7.2 the BID Company is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue;

unless and until it shall have first served a written notice on the Council setting out its intention to do so and setting out full particulars as to how such decision has been reached and allowed the Council at least twenty eight (28) days to submit written representations for consideration by the BID Company and thereafter carried out a proper consultation with all relevant representatives, including representatives of the business community of the BID Area as considered appropriate by the Council.

- 10.8 Upon termination of the BID Arrangements the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy Payers pursuant to Regulation 18(6) together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy Payers in accordance with **Clause 10.5**.

## 11. **Confidentiality**

- 11.1 The parties shall not disclose any Confidential Information and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any Confidential Information.

### 11.2 **Clause 11** shall not apply to:

- 11.2.1 any disclosure of Confidential Information that is reasonably required by persons engaged in the performance of its obligations under the Agreement;
- 11.2.2 any Confidential Information which a party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this **Clause 11**;
- 11.2.3 any disclosure to enable a determination to be made under the Dispute Resolution Procedures;
- 11.2.4 any disclosure which is required by any Legislation (including any order of a court of competent jurisdiction), any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

- 11.2.5 any disclosure of Confidential Information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;
  - 11.2.6 any disclosure of Confidential Information by the Council to any other Relevant Authority;
  - 11.2.7 any disclosure for the purpose of the examination and certification of a party's accounts;
  - 11.2.8 any examination pursuant to the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which the Council has used its resources;
  - 11.2.9 disclosure to a party's professional advisers;
  - 11.2.10 disclosure to the Council's members;
  - 11.2.11 any disclosure required or permitted by the Freedom of Information Act 2000 or in compliance with the FOIA Scheme;
  - 11.2.12 any disclosure made by a party following the prior written consent of the party owning the Confidential Information;
  - 11.2.13 any disclosure made by a party where it has requested the owning party to consent to such disclosure and the owning party has either: -
    - 11.2.13.1 failed to respond within 10 Working Days of the issue of such request;
    - 11.2.13.2 refused such request and has failed to set out its reasons for such refusal; or
    - 11.2.13.3 unreasonably refused to grant such consent or has granted it on terms or subject to conditions which are unreasonable;
  - 11.2.14 any disclosure made following the Confidentiality Expiry Date.
- 11.3 Where disclosure is permitted under **Clause 11.2**, other than **Clauses 11.2.4, 11.2.7, 11.2.8 and 11.2.12**, the recipient of the information shall be made subject to the same obligation of confidentiality as that contained in this Agreement.
- 11.4 For the purposes of the Audit Commission Act 1998 the District Auditor may examine such documents as he may reasonably require which are



owned, held or otherwise within the control of the BID Company and may require the BID Company to produce such oral or written explanation as he considers necessary.

11.5 CLA may investigate complaints of injustice in consequence of maladministration against the Council under the Local Government Act 1974 which can include complaints relating to the BID Arrangements. If such a complaint is made the BID Company shall:

11.5.1 fully and promptly answer whether oral or written communications from the CLA and shall send the Council a copy of any communication to the CLA at the same time as it is sent to the CLA;

11.5.2 co-operate fully and courteously in any investigation by the CLA;

11.5.3 fully and promptly respond to any communication from the Council concerning the complaint so that the Council may answer any issue raised by the CLA directly with the Council;

11.5.4 Pay to the Council any compensation paid as a result of a finding of maladministration if and to the extent that maladministration was caused to by any act or omission of the BID Company subject to a maximum of two thousand pounds.

11.6 In relation to all Personal Data, the BID Company shall at all times comply with the DPA as a data controller if necessary, including maintaining a valid and up to date registration or notification under the DPA covering the data processing to be performed in connection with the BID Arrangements.

11.6.1 The BID Company shall only undertake processing of Personal Data reasonably required in connection with the BID Arrangements and shall not transfer any Personal Data to any country or territory which is not an EEA state.

11.6.2 The BID Company shall not disclose Personal Data to any third parties other than:

11.6.2.1 to employees to whom such disclosure is reasonably necessary in order for the BID Company to carry out the BID Arrangements

11.6.2.2 to the extent required under a court order,

provided that disclosure under **Clause 11.6.2.1** is made subject to written terms substantially the same as, and no less stringent than, the terms contained in this **Clause 11.6** and that the BID

Company shall give notice in writing to the Council of any disclosure of Personal Data it is required to make under **Clause 11.6.2.2** immediately it is aware of such a requirement.

11.6.3 The BID Company shall bring into effect and maintain all technical and organizational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data including but not limited to take reasonable steps to ensure the reliability of staff having access to the Personal Data and the Council may be entitled to obtain from the BID Company , at reasonable intervals (but not more than once in any Financial Year), a written description of such technical and organisational methods.

**12. Notices**

12.1 Any notice shall be sufficiently served if served personally on the addressee, or if sent by prepaid first or second class or recorded delivery post, to the correct address set out in **Clause 12.1**.

12.2 The Council’s and the BID Company’s addresses are as set out in the Address Table:

<b>ADDRESS TABLE</b>			
	<b>POSTAL ADDRESS</b>	<b>FACSIMILE TRANSMISSION No.</b>	<b>E-MAIL ADDRESS</b>
<b>Council</b>	1 Grove Road, Eastbourne, BN21 4PN	n/a	n/a
<b>BID Company</b>	7 Hyde Gardens Eastbourne BN21 4PN	n/a	n/a

12.3. The Council and the BID Company may by notice to the other party change its address for service as indicated in **Clause 12.2** or in any previous notice issued under **Clause 12.3** take effect no earlier than seven (7) days from the service of such notice.

12.3 Any notice served in accordance with **Clause 12** shall be presumed to have been received at the time stated in the Service Table: -

<b>SERVICE TABLE</b>			
	<b>METHOD OF SERVICE</b>	<b>TIME OF RECEIPT</b>	<b>ADDITIONAL FORMALITIES REQUIRED</b>
1.	Personal Service	Time of service	None
3.	Second Class Post	On the second Working Day after the date of posting	None

### 13 **Miscellaneous**

- 13.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the Secretary of State may issue pursuant to Part IV of the Local Government Act 2003 then the parties shall endeavour to agree an amendment to the Agreement and if they fail to reach agreement, either party may institute the Dispute Regulations Procedures.
- 13.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 13.3 References to the Council include its successors to its functions as a billing authority.
- 13.4 A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, or the like shall include a reference to any amendment or re-enactment of the same.
- 13.5 This Agreement constitutes the entire agreement and understanding of the parties as to the subject of this Agreement and, save as may be expressly referred to or referenced in this Agreement supersedes all prior representations, writings, negotiations or understandings with respect to this Agreement except in respect of any fraudulent misrepresentation made either by the Council or the BID Company.

## 14 **Rights and Duties Reserved**

For the avoidance of doubt it is hereby agreed and declared that nothing in this Agreement, express or implied, shall prejudice or affect the Council's rights, powers, duties and obligations in the exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, bye-laws, orders, regulations and statutory instruments may be fully and effectively exercised in relation to the subject matter of this Agreement and any consent, approval, licence or permissions required under this Agreement unless stated otherwise shall be in addition to, and not in substitution for, any consent, approval, licence or permissions required to be obtained under any statute, bye-laws or other Legislation.

## 15 **Contracts (Rights Of Third Parties) Act 1999**

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. Therefore a person who is not a party to this Agreement shall not be able to enforce any of its terms against either the Council or the BID Company.

## 16 **Dispute Resolution**

The following provisions shall apply in the event of a dispute:

### 16.1 **Resolution by Senior Officers**

Any dispute or difference of any kind whatsoever arising between the parties out of or in connection with this Agreement shall first be discussed by the Chairman of the BID Company and the Council's Director of **Service Delivery** (or their respective nominated representatives).

### 16.2 **Mediation**

If the parties are unable to resolve the dispute under **Clause 16.1** they may decide to refer the dispute to mediation on the terms of the latest model mediation procedure produced by the Centre for Effective Dispute Resolution, subject to the proviso that any such mediation shall be completed within four (4) weeks of referral (or such longer period as the parties may agree).

### 16.3 **Arbitration**

Save where the parties have agreed in writing that a decision under **Clause 16.1** or an agreement reached at or during mediation under **Clause 16.2** as appropriate, is to be final and binding, either party may refer the dispute to arbitration before a single arbitrator as follows:

- 16.3.1 If the parties shall fail to agree upon an arbitrator within twenty eight (28) days of one party serving upon the other a written notice to concur in the appointment of an arbitrator, then the arbitrator shall be appointed by the President or the Vice President of the Chartered Institute of Arbitrators.
- 16.3.2 The Arbitration Act 1996 shall apply to such arbitration.
- 16.3.3 The arbitrator shall have power to open up, review and revise any certificate, opinion or decision of the Council.
- 16.3.4 The parties hereby agree and consent pursuant to Sections 45(2)(a) and 69(2)(a) of the Arbitration Act 1996 that either party;
  - 16.3.4.1 may appeal to the High Court on any question of law arising out of an award made in an arbitration under this Agreement;
  - 16.3.4.2 may apply to the High Court to determine any question of law arising in the course of the reference;and the parties agree that the High Court should have jurisdiction to determine any such question of law.
- 16.3.5 **Subject to Clause 16.3.4**, the award of the arbitrator shall be final and binding on the parties.
- 16.3.6 The parties agree that the maximum recoverable costs which may be awarded to the successful party in the arbitration shall not exceed one half of the sum claimed by the Claimant in the arbitration ("**the Claim Sum**"). The Claim Sum is the aggregate of the total damages specified in the Claimant's Points of Claim or Statement of Case, and the total interest so specified (excluding in both cases any sums which are not quantified) notwithstanding any subsequent amendment of the same.
- 16.3.7 The parties agree pursuant to Sections 61 and 62 of the Arbitration Act 1996 that, if the total sum (including interest) awarded to the Claimant in the arbitration (less any sum (including interest) awarded to the Respondent in a counterclaim in the arbitration) does not exceed 20% of the Claim Sum as defined by **Clause 16** then the arbitrator in

determining how costs are to be allocated shall not (if he is minded to make an award in the Claimant's favour) award the Claimant more than the lesser of: -

16.3.7.1 50% of the maximum recoverable costs as defined and limited by reference to **Clause 16.3.6**.

16.3.7.2 50% of the Claimant's recoverable costs.

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## **Schedule 1 – The BID Levy Rules**

### **1. General**

The Local Government Act 2003 enables the local authority to issue a demand for a BID Levy. The BID Levy is collected by the Council and held in a separate account for the exclusive use of the BID. The liable person to pay the BID Levy is the ratepayer liable for non-domestic rates in respect of the Hereditament.

### **2. Non-Domestic Rate Payers**

The BID Levy will be applied to all eligible non-domestic ratepayers with Hereditaments in the BID Area who are identified in the 2017 valuation list issued by the Valuation Office Agency.

### **3. Chargeable Period**

The chargeable period will be the BID Term namely a period of five (5) years from 1 July 2017 to 30 June 2022.

### **4. Percentage Levy**

4.1 A 1.5% BID Levy will be applied to rateable values of £6,000 or more as listed in the 2017 Local Non-domestic Rating List as at 1st April 2017. No subsequent adjustments will be made to levy charges for outstanding proposals not reflected in the rating list as at 1st April 2017.

4.2 No relief will be granted for void or partially empty properties, the liability falling to the owner or leaseholder (if an occupational lease exists).

4.3 There will be no VAT charged on the BID Levy.

4.4 Registered charities with no retail unit will be exempt from paying the BID levy.

4.5 Medical practices which only carry out NHS work will be exempt. Those operating private practices will pay the full levy.

### **5. Administration and Collection**

The Council will be responsible for the billing, administration, collection and recovery of the BID Levy.

## 6. Removal of Hereditaments

- 6.1 If a Hereditament is removed from the Valuation Office listing or the Rateable Value drops below the levy threshold, no credit or refund will be made for the year in which the levy was collected.

## 7. New Hereditaments

- 7.1 If there are any new Hereditaments in the BID Area raised following the Operational Date the occupiers will be liable to pay a BID Levy based on the new rateable value applying to such Hereditaments (provided that the exemptions under Paragraphs 2 and 4 will apply).

Do they pay a full year's levy if they become liable to pay a levy towards the end of the year and will be paying again at the correct anniversary?

## 8. Merging or Splitting of a Hereditament

Where a Hereditament is split or merged, the BID Levy shall be made on the revised entries under the 2017 rating list and the BID Levy will be based on that list until the list is replaced.

## 9. Payment Date

The BID Levy is a charge based on rateable value. It is to be paid for the year in full in advance, the payment date being 1 April in all Financial Years or within fourteen (14) days of a demand notice being served whichever is the later. For the purposes of the BID Arrangements, a financial year is a period 365 days (366 in a leap year) from 1 April to 31 March inclusive. The levy is an annual sum and will not be apportioned during the year when a ratepayer vacates or occupies a property.

If a new property comes into the rating list part way through the year the levy will not be amended to reflect the change until the following year.

If a property undergoes a split or merger in the rating list during the year the levy will not be amended to reflect the change until the following year. If a property's rateable value is either increased or decreased the change will not take effect until the following year and no part of the levy will be credited.

## 10. Recovery

The non-payment of the BID Levy will be effectively pursued by the Council using all practical available enforcement options. This will include:



the preparation, issuing and serving of summonses; the use of enforcement agents; committal action and insolvency proceedings. All of these actions may incur additional costs for which the BID Levy Payer will be liable.

11. The BID company will supply all bill design, leaflets, and layout for recovery documents following the non domestic ratings legislation. This will be supplied by the end of March 2017.

### Schedule 2 - BID Area



### Schedule 3 - Your Eastbourne BID Proposals

**Attached**

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IN WITNESS of which this Agreement has been executed by the parties as a DEED

THE COMMON SEAL OF  
**EASTBOURNE BOROUGH COUNCIL**  
was affixed to this contract  
in the presence of:-

)  
)  
)  
)

Authorised signatory

.....

**EXECUTED** as a deed by  
**YOUR EASTBOURNE BID LIMITED**  
a wholly owned subsidiary of Eastbourne & District Enterprise Agency Limited by:

.....  
Director

.....  
Director/Company Secretary