

**Dated**

**Decorum Borough Council**

**- and -**

**Hemel Hempstead BID Ltd**

**BID OPERATING AGREEMENT**

*Draft*

**THIS DEED is made the                      day of                      2015**

**BETWEEN**

- (1) Decorum Borough Council
  
- (2) **Hemel Hempstead BID LTD** (the "BID Company") registered as a not for profit company limited by guarantee in England with number

**Recitals**

The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Council and the funding of the BID Arrangements.

The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.

Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the BID Company for the duration of the BID.

The purpose of this Agreement is to:

- establish the procedure for setting the BID levy
  
- confirm the basis upon which the Council will be responsible for collecting the BID Levy;
  
- set out the enforcement mechanisms available for collection of the BID Levy;
  
- set out the procedures for accounting and transference of the BID Levy;
  
- 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 paid.

**1. It is agreed as follows:**

**Definitions**

- “Act”** - Means the Local Government Act 2003
  
- “Audit”** - for the purposes of this agreement means an assessment of the internal control in respect of the BID Company

- “Bad or Doubtful Debts”** - for the purposes of this agreement means any unpaid BID Levy in respect of which the Council has sought recovery in accordance with clause 6.3 of this agreement and that BID Levy remains unpaid.
- “BID”** - has the meaning given in the Regulations that is the Business Improvement District and is that area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1.
- “BID Area”** means the area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1
- “BID Arrangements”** - has the meaning given by section 41 of the Local Government Act 2003.
- “BID Company Report”** - means the financial statements prepared by the BID Company for each Financial Year which details:
- (a) total income and expenditure analysed into main categories arising from the BID Levy
  - (b) other income and expenditure of the BID Company;
  - (c) a statement of actual and pending deficits; and
  - (d) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company.
- “BID Levy”** - means the charge levied and collected within the BID pursuant to the Regulations.
- “BID Levy Payer(s)”** - means the non-domestic ratepayers liable for paying the BID Levy.
- “BID Levy Rules”** - means the rules set out in the BID Proposals
- “BID Proposals”** - has the same meaning as in the Regulations
- “BID Revenue Account”** - means the account kept in accordance with Regulation 14 of the Regulations.
- “BID Term”** - means 1 February 2018 to 31st January 2023
- “BID Year”** - means the period 1 February to 31st January
- “Business Plan”** - means the BID company Business Plan 2018 - 2023
- “Chargeable Period(s)”** - means any one of the following days:
- 1 February 2018
  - 1 February 2019
  - 1 February 2020
  - 1 February 2021
  - 1 February 2022
- “Contributors”** - means the BID Levy Payers and payers of a contribution or funds paid or made available to the BID Company which do not form part of the BID Levy.

<b>“Demand Notice”</b>	- has the meaning given in the Regulations.
<b>“District Auditors’ Costs”</b>	- means the sum charged by an auditor appointed by the Audit Commission or any successor in carrying out an audit of the BID Revenue Account
<b>Enforcement Expenses</b>	- means the costs which are incurred by the Council in obtaining Liability Orders and Summons and all associated administrative expenses which may be incurred in recovering unpaid BID Levy as provided for in the Appendix.
<b>“Enforcement Notice”</b>	- means a notice served on the Council in accordance with Clause 9.1.
<b>“Financial Year”</b>	- means the financial year for the BID Company which runs from 1 <sup>st</sup> February to 31 <sup>st</sup> January.
<b>“Head of Finance and Resources”</b>	- is the Council’s Chief Finance Officer appointed under section 151 of the Local Government Act 1972.
<b>“Hereditament Start Date”</b>	- means the date when the amendment to the Valuation List takes effect.
<b>“Hereditament”</b>	- has the meaning given in the Regulations
<b>“Liability Order”</b>	- has the meaning given in the Regulations.
<b>“Maximum Amount”</b>	- For any particular Financial Year means the amount of BID Levy for which Demand Notices are issued (excluding replacement or amended Demand Notices)
<b>“Monitoring Group”</b>	- means the group whose members consists of representatives from the Council and the BID Company.
<b>“NNDR”</b>	- means National Non-Domestic Rates under the Local Government Finance Act 1988.
<b>“NNDR Payer”</b>	- means the person or organisation who has a liability to pay the non-domestic rate
<b>“Proposal”</b>	- means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised by the BID Levy and/or Contributions to achieve those objectives and ‘Renewal Proposals’ has the same meaning save that ‘ballot’ shall be replaced with ‘renewal ballot’ and “Alteration Proposals” has the same meaning save that “ballot” shall be replaced with “alteration ballot”
<b>“Re-evaluation”</b>	- The re-evaluation of the rateable values of all business and non-domestic property in England and Wales is scheduled to take place in 2015 and come into effect in 2017.

- “Regulations”** - means the Business Improvement Districts (England) Regulations 2004 and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time).
- “Reminder Notice”** - Means a notice to a BID levy payer which shall identify the outstanding sums and provide a further 7 days for payment to be made or a summons for non-payment
- “Service Level Agreement”** - means the agreement entered into between the Council and the BID company
- Single Instalment Due Date”** - means the date by which the Bid Levy as set out in the Demand Notice must be paid.
- “Sum(s) Unpaid”** - means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.
- “Summons”** - means the document issued by the Magistrates’ Court upon Complaint by the Council or by the County Court upon application by the Council regarding unpaid BID Levy.
- “Valuation List”** - means a list of all NNDR properties in the local authority area.
- “Valuation Officer”** - means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List
- “Winding-Up”** - means an order pursuant to s125 of the Insolvency Act 1986
- “Write Off”** means a decision by the Council that an unpaid BID Levy will not be recovered.

## **2 Statutory Authorities**

1. This Agreement is made pursuant to Section 2 and Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers

## **3 Commencement**

- 3.1 This Agreement shall take effect on the Commencement Date and in any event shall determine and cease to be of any further effect in the event that:

- 3.1.1 The BID Term expires;

- 3.1.2 The Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations

## **4. Setting the BID Levy**

4.1 As soon as possible after the commencement of this agreement the Council shall calculate the BID Levy in accordance with the Regulations.

4.2 Confirm in writing to the BID company the BID Levy payable annually by each BID Levy Payer

## **5 The BID Revenue Account**

5.1 The Council shall pay to the BID Company in accordance with the Regulations:

- (i) 1<sup>st</sup> October - 25% of invoiced debt less any Enforcement Expenses incurred by the Council and any repayments to Bid Levy Payers under clause 5.2 of this agreement.
- (ii) 1<sup>st</sup> October– 25% of invoiced debt less any Enforcement Expenses incurred by the Council and any repayments to Bid Levy Payers under clause 5.2 of this agreement.
- (iii) 1<sup>st</sup> October 25% of invoiced debt less any Enforcement Expenses incurred by the Council and any repayments to Bid Levy Payers under clause 5.2 of this agreement.
- (iv) 1<sup>st</sup> October – Any further balance collected less any Enforcement Expenses incurred by the Council and any repayments to Bid Levy Payers under clause 5.2 of this agreement.

(v) 31<sup>st</sup> December – Any further balance collected less any recovery cost incurred. and any repayments to Bid Levy Payers

5.2 Within ninety days from the Ballot Result Date the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically from the BID Revenue Account on production of an invoice by the BID Company in accordance with clause 5.1

5.3 Interest earned on money in the BID Revenue Account shall form part of the BID Levy and be payable to the BID Company

5.4 In the event that a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of Schedule 4 of the Regulations and in the event that the Council has paid such BID Levy to the BID Company including all of the contingency relating to that BID Levy the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council by way of reduction in the quarterly payments, as scheduled in 5.1, and the Council shall thereafter repay the repayment sum to the BID Levy Payer. For the avoidance of doubt the BID Company shall reimburse the Council forthwith for any repayment of bid levy in circumstances where the repayment falls due after payment by the Council of the last quarterly payment within the bid term referred to in 5.1.

5.5 The BID Company shall issue to the Council a VAT invoice for the payment of the BID Levy income upon advice from the Council of the amount due.

5.6 The BID Company may only spend the BID Levy in accordance with the BID Proposals; except that if the BID is varied then from the date of the variation takes effect the BID Company may only spend the BID Levy in accordance with the varied BID Proposals.**6 Collecting the BID Levy**

6.1 The Council shall use reasonable endeavours to collect the BID Levy throughout the BID Term.

6.3 The Council shall seek to recover unpaid Bid Levy by sending, at no additional cost to the Bid Company, up to two reminder letters and a summons to the Bid Levy Payer.

- 6.4 Thereafter, the Council shall notify the BID Company of any bad debts and the BID Company may choose within thirty-one days of such notification to request the Council to undertake further recovery action in accordance with the Appendix to this agreement and the Enforcement Expenses of the Council shall be payable by the BID Company and deducted by the Council from the BID Company Quarterly Account.
- 6.5 In the event that the BID Company does not choose to request the Council to undertake any further recovery action in accordance with clause 6.4 the Council shall apply to the BID Company for the debt to be written off and the BID Company shall act reasonably in its consideration of such a request.

## **7. Accounting Procedures and Monitoring**

- 7.1 Within 1 (one) calendar month from the start of the BID Term the parties shall set up the Monitoring Group.
- 7.2 Upon the expiry of the first calendar month from the BID Term and for the first six months (first week of February to July inclusive) and thereafter quarterly in the first year (first week January and April 2014) and then in the subsequent four years for the first three months (first week of May, June and July) and thereafter quarterly (first week of October, January and April) the Council shall provide the BID Company with a monthly statement detailing the amount of bid levy collected, collection percentage, list of unpaid accounts and written off amounts for the first quarter only (April to June). Thereafter the Council shall provide the above information on a quarterly basis, in the first week of each September, December and March in each year of this agreement.
- 7.3 Upon the expiry of the sixth month of the BID Term and every 6 (six) months thereafter (for the duration of the BID Term) the BID Company shall provide the Council in respect of those 6 (six) month periods with:
- 7.3.1 the amount received by the BID Company from Contributors and BID Levy Payers;
  - 7.3.2 the total expenditure of the BID Company.
- 7.4 Within one calendar month from the Commencement Date the parties shall agree the dates for quarterly monitoring meetings (throughout the duration of the BID Term).
- 7.5 At each quarterly meeting the Monitoring Group shall:
- 7.5.1 review the effectiveness of the collection and enforcement of the BID Levy; and
  - 7.5.2 review and assess information provided by the parties regarding the progress being made in achieving the aims set out in the Business Plan and the BID Company's aspirations.
- 7.6 The BID Company shall provide the BID Company accounts which will be filed at Companies House.
- 7.7 The Council and the BID Company shall hold regular liaison meetings to be attended by appropriate representatives of the Council and the BID Company.
- 7.8 The Council shall, from time to time throughout the duration of this agreement undertake an Audit of the BID Company's financial and Governance arrangements and the BID Company

shall comply with reasonable requests for information and assist the Council in respect of any Audit and for this purpose the BID Company shall provide the Council within 14 days of the completion of this agreement with the name and address of its Accountant.

## **8. Confidentiality**

- 8.1 Subject to clause 9 below both the Council and the BID Company shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements.

## **9. Freedom of Information**

- 9.1 The Bid Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and cooperate with the Council (at the Bid Company's expense) to enable the Council to comply with its disclosure requirements and the Council shall notify the BID Company of any such requests.
- 9.2 The Council may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA or is to be disclosed in response to a request for information, and for the avoidance of doubt where the Council has received a request under the FOIA and it has notified the BID Company of the request, in no event shall the Bid Company respond directly to a request for information connected with such a request to the Council unless expressly authorised to do so by the Council.
- 9.3 The Bid Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA, be obliged under FOIA to disclose information following consultation with the Bid Company and having taken its views into account.
- 9.4 The Bid Company shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 9.5 The Bid Company acknowledges that any lists of confidential information provided by it are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this clause.
- 9.6 The obligations set out in clause 11 of this Agreement shall survive the termination or lapse of the BID Arrangements.

## **10. Notices**

- 10.1 Any notice or other written communication in relation to this Agreement to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party upon 7 days written notice
- 10.2 A notice may be served by;
- 10.2.1 delivery to the Head of Finance and Resources at the address of the Council specified above; or
- 10.2.2 delivery to the Company Directors at the address of the BID Company specified above;

10.2.3 registered or recorded delivery post to such addresses;

10.2.4 electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses which shall require a confirmed read receipt.

10.2.5 any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

## **11. Indemnity**

11.1 The BID Company shall indemnify the Council in full and keep it indemnified against all demands and claims made against the Council and all losses, costs, expenses or liabilities incurred by the Council in respect of personal injury to or the death of any person or loss of or damage to any tangible property (including property belonging to the Council) caused by or arising from any negligence in connection with this agreement or breach of this agreement by the BID Company, its employee, agent or sub-contractor.

## **12. Advertising and Branding**

12.1 The BID Company and the Council shall seek to reach agreement on when the logo of each party shall be shown on advertising and branding material in respect of the joint projects of the parties and for this purpose the Council and the BID Company shall provide details regarding the size of their logo and guidelines for its use. For the avoidance of doubt the Council shall not be permitted to use the logo of the BID Company on any material published by it without the prior written consent of the BID Company and the BID Company shall not be permitted to use the logo of the Council on any material published by it without the prior written consent of the Council.

## **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 such part shall be struck out and the balance of this Agreement shall remain.

13.1 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

13.2 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause) shall not have any effect until this document has been dated.

13.3 Where reference is made to a Clause, Part, Plan or Recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital in or attached to this Agreement.

13.4 References to the Council include any successors to its functions as local authority.

13.5 References to statutes, byelaws regulations orders or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

## **14. Exercise of the Council's powers**

14.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes byelaws statutory instruments orders and regulations in the exercise of its functions as a local authority.

## **15. Contracts (Rights Of Third Parties)**

15.1 The provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## **16 Dispute Resolution**

16.1 The Parties shall attempt in good faith to negotiate a settlement of any dispute between them arising out of or in connection with this Agreement within 14 days of either party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the chief executive (or equivalent) of each party.

16.2 Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of competent jurisdiction an interim order restraining the other party from doing any act or compelling the other party to do any act.

16.3 If the dispute cannot be resolved by the parties pursuant to sub clause 1 above the dispute shall be referred to mediation pursuant to the procedure set out in sub clause 5 below unless the Council considers that the dispute is not suitable for resolution by mediation or the BID Company does not agree to mediation.

16.4 The performance of any services shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the BID Company and its employees, agents, suppliers and sub-contractors shall comply fully with the requirements of this agreement at all times.

16.5 The procedure for mediation and consequential provisions relating to mediation are as follows:

16.5.1 A neutral adviser or mediator ("the Mediator") shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 14 days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 14 days from the date of the proposal to appoint a Mediator or within 14 days of notice to either party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution ("CEDR") to appoint a Mediator.

16.5.2 The parties shall within 14 days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

16.5.3 Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

16.5.4 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it has been signed by their duly authorised representatives.

16.5.5 Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both parties.

- 16.6 If the parties fail to reach agreement within 60 days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.
- 16.7 Subject to sub clause 2 above, the parties shall not institute court proceedings until the procedures for mediation have been completed.

**IN WITNESS** whereof this agreement has been executed by the parties hereto as a Deed and delivered on the day and year hereinbefore written

The Common Seal of the London Borough of Hillingdon

was hereunto affixed in the

presence of:

Authorised Officer

Signed on behalf of **Hemel Hempstead BID**

by

Director

Director

Draft

Draft