

2021

**OPERATING AGREEMENT RELATING TO THE CHELTENHAM
BUSINESS IMPROVEMENT DISTRICT**

Cheltenham Borough Council

And

Cheltenham BID Ltd

Agreement

THIS Agreement is made on the

BETWEEN

- (1) **CHELTENHAM BOROUGH COUNCIL** of The Promenade, Cheltenham, Gloucestershire, GL50 1PJ (“the Council”)
- (2) **CHELTENHAM BID LIMITED (Company No: 10247399)** whose registered office is situated at Pillar House, 113-115 Bath Road, Cheltenham GL53 7LS (“the BID Company”)

Recitals

- A 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 Local Authority and the funding of the BID Arrangements.
- B 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.
- C The two 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 for the duration of the BID.
- D 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 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 expenses incurred in collecting the BID Levy shall be paid;
- E. A Monitoring Group shall comprise representatives of each of the parties to this Agreement, namely the BID and the Council.

1. Definitions

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

Ballot Result Date means the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements

BID means the Business Improvement District which is proposed to be managed and operated by the BID Company

BID Area means that area within which the BID operates as defined within the BID Proposal

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

BID Financial Year means the financial year for the BID which runs from 1st August to 31st March 2022, then 1st April to 31st March for the subsequent four years of the BID (total period of 4 years 8 months)

BID Levy means the charge to be levied and collected within the BID Area pursuant to the Regulations and Appendix A to this Agreement

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

BID Levy Rules means the rules contained in Appendix A to this Agreement

BID Proposal means the plan voted for by the BID Levy Payers which sets out the objectives and projects of the BID

BID Revenue Account means the account which the Council will set up in order to hold BID Levy payments before payment to the BID Company in accordance with regulations and accounting codes of practice

BID Term means the period of five years from the Commencement Date

Commencement Date means 1st August 2021

Commercially Sensitive Information: means information of a commercially sensitive nature relating to the BID Company, its intellectual property rights or its business or which the BID Company has indicated to the Council that, if disclosed by the Council would cause the BID Company significant commercial disadvantage or material financial loss.

Contributors means the BID Levy Payers or other contributors making voluntary contributions to the BID.

Controller, Processor, Data Subject, Personal Data, Processing and Personal Data Breach: has the meaning set out in the Data Protection Legislation.

Council Financial Year means the financial year for the Council which runs from 1st April to 31st March

Data Protection Legislation means (i) The General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679), the LED (Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time, (ii) The Data Protection Act 2018 to the extent that it relates to Processing of Personal Data and privacy, (iii) all applicable Laws relating to Personal Data and privacy

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

EIR means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Information has the meaning given under section 84 of FOIA.

Monitoring Group means the group to be set up consisting of 1 representative from the Council who shall be a Council officer and 1 representative from the BID Company.

NNDR means National Non-Domestic Rates.

Operating Agreement means this Agreement entered into between the Council and the BID Company which sets out various procedures for the collection monitoring and enforcement of the BID Levy

Public Meeting means a public meeting held pursuant to regulation 18(1)(a)(ii) of the Regulations.

Request for Information means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR

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) and terms defined in the Regulations shall have the same meaning when used in this Agreement

Single Instalment Due Date means the date the BID Levy will be payable, in one Lump sum, 14 days after the date of issue of the demand notice, instalment arrangements may be agreed on application.

2 Statutory Authorities

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

3 Commencement and Determination

- 3.1 This Agreement shall take effect on the Commencement Date
- 3.2 This Agreement shall determine and cease to be of any further effect in the event that:
- (i) The Secretary of State declares void a BID ballot, renewal ballot, alteration ballot, or re-ballot;
 - (ii) The Council exercises its veto and there is no successful appeal against the veto;
 - (iii) The BID Term expires save where a renewal or alteration ballot is held and is successful in which event this Agreement shall continue for the duration of the new BID term;
 - (iv) 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 reasonably practicable following the Ballot Result Date the Council shall:
- (i) Calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
 - (ii) Confirm in writing to the BID Company the BID Levy payable by each BID Levy payer

5 The BID Revenue Account

- 5.1 As soon as is reasonably practicable following the Ballot Result Date the Council shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the BID Company.
- 5.2 As soon as reasonably practicable following the Ballot Result Date the BID Company shall provide the Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the Council may reasonably require.
- 5.3 Within 5 working days of the end of each calendar month the Council will provide to the BID Company a list of all the BID levy payments received in the calendar month and all refunds made in the calendar month and a summary report of the monies due, the monies received and the collection percentage rate.
- 5.4 The BID Company will invoice the Council for the levy received net of refunds made plus VAT each month and the Council will pay the BID Company a sum equal to the monies collected in the month **net** of refunds plus VAT and properly credited to the BID Revenue Account. The payment to be made within 20 working days of the month end.

- 5.5 The Council shall pay the levy to the BID Company in full. The Council shall invoice the BID Company for the agreed annual cost of collection of the BID levy to a maximum of 3% of the annual BID Levy income property per annum and any further agreed adjustments from payments properly credited to the BID Revenue Account.
- 5.6 After the end of the BID Financial Year, in addition to the monthly report the Council will send to the BID Company a detailed report summarising the total monies due for the BID Financial Year, the monies collected, any refunds made, monies still owed to the BID Company and the final balance for the current year. The Council will make payment of any sums owing to the BID Company or the BID Company will refund any sums owing to the Council within 30 days of the receipt of the report. Any monies received after the end of the BID Financial Year will be accounted for during the month in which they are received and paid over as set out in paragraph 5.4. In any reports the amounts relating to a previous BID Financial Year will be shown separately from the current BID Financial Year.
- 5.7 All sums will be subject to the addition of Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.
- 5.8 The BID Company and the Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time.
- 5.9 The Council will estimate a sum by which the BID Levy income will be reduced each year by any provision for Bad or Doubtful debts but decision for final write-off of any bad debt is the responsibility of the BID Board.

6 Collecting the BID Levy

- 6.1 As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the BID Company the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Instalment Due Date.
- 6.2 The Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.
- 6.3 The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the BID Company at the end of each calendar month.
- 6.4 The Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.
- 6.5 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.
- 6.6 The Council is not liable to pay the BID Company any sums not collected and/or which are written off. The Council will use its sole discretion to determine whether a debt is collectable and notify the BID accordingly. The BID Company will decide whether or not the debt is to be written off.

7 Procedures available to the Council for enforcing payment of the BID Levy

7.1 Procedures for the enforcement and recovery of the BID Levy will be in line with the Council's enforcement procedure for NNDR and the Regulations, subject to agreed exceptions, and the Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

8 Enforcement Mechanisms in the event that the Council fails to enforce collection of the BID Levy

8.1 In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 7 the BID Company shall be entitled to:

(i) Require the Council to provide written confirmation of the action it is taking in relation to the sum which remains unpaid;

(ii) Question whether the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum which remains unpaid; and

(iii) Provide written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the sum which remains unpaid such meeting to take place no later than 28 (twenty-eight) days from the date of the request.

9 Accounting Procedures and Monitoring

9.1 Within 21 working days of the end of the first quarter after the Commencement Date and every month thereafter, for the duration of BID Term the Council shall provide the BID Company with:

- (i) The rateable value for each BID levy Payer
- (ii) The amount of the BID Levy for each BID Levy Payer; the amount of the BID Levy collected for each BID Levy Payer;
- (iii) Details of BID Levy Payers who have not paid the BID Levy;
- (iv) Details of reminder notices issued;
- (v) Details of any further action taken to recover any sum unpaid;

9.2 Within one month of the start of each BID Financial Year the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least four such meetings in every BID Financial Year throughout the term of the BID. Further meetings of the Monitoring Group may be arranged by written notice being given by either party.

9.3 At each meeting the Monitoring Group shall:

(i) Review the effectiveness of the collection and enforcement of the BID Levy;

and

(ii)- If required by either party review and assess information provided by the parties.

9.4 Within 3 (three) months after the end of each BID Financial Year (for the duration of the BID Term) The BID Company shall provide an annual report to the Council which will include information on the progress of projects undertaken and project spend by area.

9.5 The BID Revenue Account will be subject to the normal internal & external audit arrangements of the Council and the Council will make available to the BID Company and its appointed auditors such information as requested by the Company and its appointed auditors and that they are able to request under legislation and regulation

9.6 The BID Revenue Account will be subject to the normal internal & external audit arrangements of the Council and the Council will make available to the BID Company and its appointed auditors such information as requested by the Company and its appointed auditors and that they are able to request under legislation and regulation

10 Termination

10.1 Where the Council is contemplating terminating the BID Arrangements under regulation 18(1)(a) of the Regulations it shall serve written notice on the BID Company and in addition to its obligations to hold a Public Meeting, shall meet with the BID Company as soon as is reasonably practicable to discuss and review the following

(i) The basis of the Council's concerns that the BID Company has insufficient funds to meet its liabilities for that period

(ii) The level of insufficient funds

(iii) Alternative means by which the insufficiency of the funds can be remedied in accordance with regulation 18(1) (a) (i) of the Regulations and

(iv) An appropriate time frame to resolve the issue

10.2 Where the Council is contemplating terminating the BID Arrangements under regulation 18(1)(b) of the Regulations it shall, in addition to the consultation requirements contained in the aforesaid regulation 18(1)(b), serve written notice on the BID Company and shall meet with the BID Company as soon as is reasonable practicable to discuss and review the following;

(i) The service it is no longer able to provide and the reasons why the service cannot be provided

(ii) The options available to the BID Company including alternative means of providing the services

(iii) Alternative services

(iv) The time frame in which the issue is to be resolved.

11 Freedom of Information

- 11.1 The BID Company acknowledges that the Council is subject to the requirements of the FOIA and the EIRs but this only applies to the BID in the context of funds provided by the Council. BID levy expenditure is not subject to these requirements. The BID Company shall, if necessary:
- (a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - (b) transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - (c) provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and
 - (d) not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 11.2 The BID Company acknowledges that the Council may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the BID Company. The Council shall take reasonable steps to notify the BID Company of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the Council shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

12 Data Protection

- 12.1 Both parties will comply with the applicable requirements of the Data Protection Legislation.
- 12.2 Each party shall only process Personal Data for the purposes of complying with and for the duration of this agreement, unless a party is permitted or required to keep the Personal Data for a longer period by law.
- 12.3 Where a party is processing Personal Data on behalf of the other, the parties acknowledge that the party processing Personal Data is the Processor and the other party is the Controller. Both parties shall ensure that they each hold a record of processing as required by the Data Protection legislation.
- 12.4 Where a party is acting as Controller it will ensure that it has the necessary consents or can comply with another processing condition contained within the Data Protection Legislation and that it has the appropriate notices and privacy policies in place to enable the lawful transfer of Personal Data to the Processor for the duration of the Agreement and for the purposes of the processing as detailed in this Agreement
- 12.5 Where a party is acting as Processor it shall:
- a) act only on the Controller's written instructions;

- b) have in place appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data. Such measures shall be appropriate to the harm that might result from the unauthorised or unlawful processing;
- c) ensure any staff who have access to the Personal Data are obliged to keep it confidential;
- d) assist the Controller (at the Processor's own cost) to respond to an individual's request to enforce their rights of subject access, rectification, erasure and any other rights conferred by the Data Protection Legislation;
- e) assist the Controller (if requested and at the Processor's own cost) with respect to security, breach notifications, impact assessments and any investigations by a supervisory authority;
- f) notify the Controller without undue delay in the event of a data security breach and where acting as a Processor shall assist with any investigation
- g) maintain and keep up to date the data processing record referred to above;
- h) delete or return all personal data to the Controller as requested at the end of the agreement (unless already deleted in line with the Controller's retention policy); and
- i) submit to audits and inspections and provide the Controller with whatever information it needs to ensure that both parties are complying with their obligations under the Data Protection Legislation and inform the Controller immediately if asked to do something that is likely to infringe the Data Protection Legislation or other law of the UK, EU or a member state
- j) only process Personal Data relevant to this agreement from the relevant categories of individuals listed below:
 1. Controller's staff (and, in the case of the Council, its members)
 2. Members of the public
 3. Controller's customers
 4. Controller's contractors or other suppliers
- k) not appoint a third-party sub-processor without the prior written consent of the Controller. The Processor shall ensure that any third-party processor will enter into an agreement incorporating the same or substantially similar terms contained herein in relation to the Data Protection Legislation
- j) enter into a data transfer agreement, where this agreement will involve or require a transfer of any Personal Data from one country to a country outside the country of origin and if required by applicable law, that is consistent with the requirements of applicable law and ensures that:
 1. the individuals have enforceable rights and effective legal remedies in relation to any transferred Personal Data; and
 2. adequate levels of protection in relation to any Personal Data that is transferred

13 Force Majeure

13.1 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations. If the period of delay or non-performance continues for twelve weeks, the party not affected may terminate this Agreement by giving fourteen days' written notice to the affected party.

14 Equalities

14.1 The BID Company shall perform its obligations under this Agreement (including those in relation to the Services) in accordance with:

(i) the Equality Act 2010 or other relevant legislation, or any statutory modification or re-enactment thereof (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(ii) the Council's equality and diversity policy as provided to the BID Company from time to time; and

(iii) any other requirements and instructions which the Council reasonably imposes in connection with any equality obligations imposed on the Council at any time under applicable equality law.

15 Dispute Resolution

15.1 If a dispute arises between the Council and the BID Company in relation to any matter which cannot be resolved either party may refer such dispute to the dispute resolution procedure set out in Clause 15.2 below.

15.2 In the first instance each of the Council and the BID Company shall arrange for a senior representative to meet solely in order to resolve the matter in dispute. Such meetings shall be minuted and conducted in such manner and at such venue (including a meeting conducted over the telephone) as to promote a consensual resolution of the dispute in question.

15.3 If the meeting(s) referred to in Clause 15.2 does not resolve the matter in question then the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution ("CEDR") Model Mediation Procedure or any other model mediation procedure as agreed by the parties. In such circumstances the following shall apply:

15.3.1 to initiate a mediation the parties may give notice in writing (a "Mediation Notice") to the other requesting mediation of the dispute and shall send a copy thereof to CEDR or an equivalent mediation organization as agreed by the parties asking them to nominate a mediator;

15.3.2 the mediation shall commence within 28 days of the Mediation Notice being served;

15.3.3 neither party will terminate such mediation until each of them has made its opening presentation and the mediator has met each of them separately for at least one hour. Thereafter paragraph 14 of the Model Mediation Procedure will apply (or the equivalent paragraph of any other model mediation procedure agreed by the parties);

15.3.4 neither party to the mediation will commence legal proceedings against the other until 30 days after such mediation of the dispute in question has failed to resolve the dispute provided that a party shall not be prevented from taking action to protect any limitation periods;

15.3.5 the parties will co-operate with any person appointed as mediator providing him with such information and other assistance as he shall require and will pay his costs, as he shall determine or in the absence of such determination such costs will be shared equally.

15.4 This Clause 15 is without prejudice to the rights of the parties to apply for injunctive relief or to the rights of the parties in any future proceedings.

16 Confidentiality

16.1 Subject to Clause 11 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.

17 Notices

17.1 Any notice or other written communication 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

17.2 A notice may be served by;

- (a) Delivery to the Managing Director for Place and Economic Development at the address of the Council specified above; or
- (b) Delivery to the BID Chairman at the address of the BID Company specified above;
- (c) Registered or recorded delivery post to such addresses;
- (d) Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

17.3 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.

18 Contracts (Rights of Third Parties)

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

19 Severance

19.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or

part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

- 19.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20 Governing Law and Jurisdiction

- 20.1 This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

Signed by the parties or their duly authorised representatives

Signed by

Name:

duly authorised for and
on behalf of
CHELTENHAM BOROUGH COUNCIL

Signed by

Name:

duly authorised for and
on behalf of
CHELTENHAM BID LTD

Appendix A

BID Levy Rules

1. The BID levy rate will be charged at 1.25% (or 1% for tenants within service-charged centres and non-retail charities with no trading income) of the rateable value as at 1st August 2021 based on the 2017 rating list.
2. All new hereditaments entering the rating list after this date will be charged on the prevailing values.
3. The levy will be charged annually in advance starting on 1st August 2021. In the event of a change of occupation, refunds will be given based on the residual for that chargeable year and the new occupier will be charged from the point of occupation for the remainder of that chargeable year. No other refunds will be provided.
4. For each subsequent chargeable year, the levy will be charged as at 1st August based on the 2017 rating list values at that time.
5. The BID levy may increase by an annual inflationary factor of up to 0.02% (i.e. the levy may increase to 1.27% from year 2, 1.29% from year 3 and so on). It will be at the Board's discretion whether to apply the inflation factor each year.
6. The BID levy will be applied to all businesses within the defined area with a rateable value £7,500 and above, provided they are listed on the National Non-Domestic rates list as provided by Cheltenham Borough Council.
7. Businesses who meet the criteria outlined above and who are located on the streets listed in the business plan will be included in the BID, and therefore will be legally required to pay the BID levy.
8. Vacant and partly occupied properties will be subject to the BID levy. The registered business ratepayer will be liable to pay the levy and will be entitled to vote in the BID ballot.
9. Collection and enforcement regulations will be in line with the Operating Agreement and the BID Company Board will be responsible for any necessary debt write-off.
10. Cheltenham Borough Council, or their appointed agent, are the only authorised bodies able to collect the BID levy on behalf of the BID company.
11. VAT will not be charged on the BID levy.
12. Voluntary BID levy payers will not be entitled to vote in the BID ballot.
13. The term of the BID will be 4 years and 8 months. The first year will run from 1st August 2021 – 31st March 2022, then 1st April to 31st March for the subsequent four years.