

OPERATING AGREEMENT

Dated 1 April 2021

Dorset Council
(the Council)

AND

Wimborne BID Ltd
(the BID Company)



	Contents	Page
	Recitals	3
1	Definitions	4
2	Statutory Authorities	10
3	Commencement	10
4	Setting the BID Levy	10
5	The BID Revenue Account	10
6	Debits from the BID Revenue Account	11
7	Collecting the BID Levy	11
8	Value Added Tax and Distribution of the BID Levy	12
9	Council procedure for enforcing payment of the BID Levy	13
10	Enforcement Mechanisms for non-collection of the BID Levy by the Council	15
11	Accounting Procedures and Monitoring	16
12	Termination	17
13	Confidentiality	19
14	Notices	19
15	Miscellaneous	20
16	Exercise of the Council's powers	21
17	Contracts (Rights of Third Parties)	21
18	Dispute Resolution	21
19	Entire Agreement	21
20	Governing Law and Jurisdiction	22

Schedule 1 - The BID Levy Rules

Schedule 2 - The BID Business Plan

Schedule 3 - The BID Area

Operating Agreement

Dated **1 April 2021**

Between

- (1) **DORSET COUNCIL** of South Walks House, South Walks Road, Dorchester, Dorset, DT11UZ (the "Council"); and
- (2) **WIMBORNE BID LTD** (the BID Company) registered as a company limited by guarantee in England and Wales with number **06955886** whose registered office is at **6 Poole Road Wimborne Dorset BH21 1QE**

1 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 Council 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 objectives and aspirations set out in the BID Arrangements.
- C. 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.

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 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 enforcement costs incurred in collecting the BID Levy shall be paid.

IT IS AGREED:

2 Definitions

“Annual Report” means a report to be prepared by the Council which details the following:-

- (i) the total amount of BID Levy collected during the relevant Chargeable Period;
- (ii) the total amount whilst held in the BID Revenue Account;
- (iii) details of the success rate for the collection of the BID Levy;
- (iv) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and
- (v) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy.
- (vi) the Council's proposals for Bad or Doubtful Debts;
- (vii) any other information as requested by the BID; such request to be received by the Council no less than 28 (twenty eight) days prior to the date on which the Annual Report is to be published.
- (viii) Details of any administration charges (Collection Charges) made by the Billing Authority to the BID Revenue Account

“Appeal Notice” means a notice to be served by the BID Company in accordance with Clause 10.2

“Bad or Doubtful Debts” shall have the same meaning as further described in 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 operates for the Wimborne BID area. The Wimborne BID area is shown in Schedule 3. And is managed and operated by the BID Company.

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

“BID Commencement Date” means the **1 April 2021**

“BID Company's Report” means a report for each Chargeable Period to be prepared by the BID Company which details the following:-

- (a) the total income and expenditure of the BID Levy;
- (b) other income and expenditure of the BID Company not being the BID Levy;
- (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
- (e) an action plan detailing the BID Company's proposed expenditure for the year ahead:
and
- (f) any other information as requested by the Council such a request to be received by the BID no less than 28 (twenty eight) days prior to the date on which the BID Company's Report is to be published (see Clause 11.5).

“BID Company's Termination Notice” means a notice to be served by the BID Company on the Council pursuant to Clause 12.

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

“BID Levy Payer” means the non-domestic rate payer responsible for paying the BID Levy as determined by the BID Levy Rules.

“BID Levy Rules” means the rules set out in the annexed Schedule 1 which sets out how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements relating to the BID Levy (as may be amended by a successful alteration ballot).

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

“BID Term” means the period of 5 years from 1 April 2021 to 31 March 2026.

“Chargeable Period” is defined as the BID’s annual operating period and is more particularly described in Clause 11.5 of this Agreement.

“Collection Charges” means the reasonable administrative expenses of the Council in carrying out its obligations under this Agreement and the Regulations. Subject to variation in accordance with Clause 6.3 the mechanism for calculating the Collection Charges payable by the BID Company to the Council shall be the lower of 3% of the BID Levy recovered for a given Chargeable Period or £35.00 per hereditament.

“Contributors” means other businesses/individuals making voluntary contributions or opting into the BID where they are deemed exempt within the BID area. Contributions will be payable upon agreement with the BID Company.

“Council's Termination Notice” means the notice to be served by the Council on the BID Company pursuant to Clause 12.1

“Data Protection Legislation” means unless and until the GDPR is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then any successor legislation to the GDPR or the Data Protection Act 2018.

“Demand Notice” shall have the same meaning as prescribed in Schedule 4 of The Business Improvement Districts (England) Regulations 2004.

“Electronic Communication” means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa):

- (a) by means of a telecommunication system (within the meaning of the Communications Act 2003);or
- (b) by other means but while in electronic form.

“Enforcement Expenses” are defined as the costs incurred by the Council in making application (complaint) to the Magistrates Court for the issue of a Liability Order and enforcement fees which may be incurred in recovering the unpaid BID Levy after a Liability Order has been granted.

“Enforcement Notice” means a notice to be served on the Council as specified in Clause 10.

“Exempt or Discounted Properties” means those class or classes of properties as identified in the BID Levy Rules which shall be exempt either from any requirement to pay the BID Levy or are permitted a discount on the BID Levy.

“Final Notice” means the notice to be served by the Council for payment of an outstanding BID levy and must only be issued following non-payment of the demand notice. The Final Notice carries the same meaning as that prescribed in the Regulations.

“GDPR” means the General Data Protection Regulation ((EU) 2016/679)

“Hereditament” shall have the same meaning as defined in Section 64 of the Local Government Finance Act 1988.

“Liability Order” is an Order obtained from the Magistrates Court and carrying the same powers stated within the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 as amended.

“Management Liaison Group” means a group made up of a Finance officer, an Economic Development team officer, an officer from the Stour Valley and Poole Partnership Revenues team (all Council officers) and a Wimborne BID board representative. The group will be chaired by an officer of Dorset Council and will meet quarterly. This group is to carry out the following functions:

1. To monitor the collection and enforcement of the BID Levy (see Clause 10 and 11).
2. To facilitate a good working liaison between the BID management board and the Council.
Including requests for the transfer of funds from the BID Revenues account.
3. To deal with disputes arising under this agreement (as detailed in Clause 19).

“Public Meeting” is the meeting to be held for all BID Levy Payers/ Council representatives/ BID Board members, pursuant to the Public Meeting Notice.

“Public Meeting Notice” is a notice to be served pursuant to Clause 12.1 or 12.8 by either the Council or the BID Company which provides the following;

- (a) confirmation that either party is considering terminating the BID;
- (b) details of the venue where the public meeting will be held;
- (c) confirmation that all BID Levy Payers who attend will be permitted to make representations.

“Rateable Value” means the rateable value as determined by the Valuation Office Agency and stated in the current, live local Valuation List.

“Regulations” means the Business Improvement Districts (England) Regulations [2004] and such amendments made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003.

“Termination Date” is the date that the BID and the BID arrangements are brought to an end after a resolution has been sought and only after a public meeting has been held (see Clause 12.5).

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

3.1 This Agreement is effective immediately from the BID Commencement Date.

3.2 If, at the end of the BID Term a renewal ballot is held and is successful then the terms of this Agreement shall continue to be of effect and the BID Term shall thereafter be construed as the new term.

4 Setting the BID Levy

4.1 The Council shall:-

- (i) calculate the BID Levy due from each BID Levy Payer as soon as practicable following commencement of the Chargeable Period, in accordance with the BID Levy Rules; and
- (ii) 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 will notify the BID Company of any changes to the details of the existing BID Revenue Account within 7 (seven) days from the BID Commencement Date.

5.2 The BID Company will notify the Council of any changes to the details of the BID Company bank account within 30 (thirty) days from the BID Commencement Date.

5.3 Funds will be transferred quarterly, on request, at the BID liaison group meeting, or if funds are required in the interim (as agreed between the BID Company and the Council) the Council will require 14 days written/electronic notice to make the transfer.

5.4 The Council shall hold 1% of the Annual BID Levy collected. This will be held in the BID Revenue Account to cover refunds to BID Levy Payers.

6 Debits from the BID Revenue Account

6.1 The Council shall not debit directly from the BID Revenue Account:-

- (i) the Enforcement Expenses
- (ii) the Collection Charges

6.2 One month before the end of the relevant Chargeable Period or when the BID Levy for a Chargeable Period is fully recovered whichever is earlier the Council shall provide an invoice to the BID Company for the Collection Charges. The BID Company shall pay the said invoices within 28 days from the date of receipt. In the event that the BID Company fails to pay the said invoices within the prescribed time period then notwithstanding Clause 6.1 the Council shall be permitted to recover the invoiced costs directly from the BID Revenue Account.

6.3 The Collection Charges shall be reviewed on an annual basis by the Council and the BID Company will be notified at least 2 (two) months prior to the Collection Charges becoming payable if the mechanism for calculating the Collection Charges for the relevant BID Period is to be varied. Any dispute in relation to the Collection Charges shall be referred for resolution in accordance with the procedure detailed in Clause 18.

6.4 The Council shall insofar as it is able in accordance with legislation recover the reasonable Enforcement Expenses from the liable BID Levy Payer, in accordance with Clause 9.

7 Collecting the BID Levy

7.1 Within 14 (fourteen) days of the commencement of the relevant Chargeable Period the Council shall confirm in writing to the BID Company;

- (i) The means by which the BID Levy Payer shall be billed for the BID Levy; and
- (ii) the date when the BID Levy shall be collected.

7.2 Pursuant to Clause 7.1(ii) the Council shall serve the Demand Notices on each BID Levy payer and thereafter shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term

7.3 The Council shall maintain a list and shall make this available to the BID Company upon its request. The details contained in the list shall be as follows:

- (i) The amount of the BID Levy for each individual BID Levy Payer;
- (ii) The BID Levy collected in relation to each BID Levy Payer;
- (iii) Details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy;
- (iv) Details of Liability Orders obtained or applied for by the Council.

7.4 The Council shall liaise with the BID Company in carrying out annual reviews of each Hereditament within the BID area. In the event of any merger, division, reorganisation, removal, addition or rateable value change of a BID area Hereditament or where there is a change of liability for the BID Levy Payer, the Council shall:

- (a) serve an updated list of BID Levy payers upon the BID Company;
- (b) serve a Demand Notice (or alter any existing Demand Notice if appropriate) on the relevant BID Levy Payer

7.5 The Council shall use all reasonable means to collect the BID Levy on the date specified (pursuant to clause 7.2 above) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations.

7.6 The Council shall use all reasonable means to take all reasonable steps for collecting the BID Levy being consistent with its usual procedures for the collection of non-domestic rates.

7.7 The Council shall inform the BID Company of the total BID levy collected on a quarterly or an ad-hoc basis, as requested by the BID.

7.8 The BID Company will agree in writing with Contributors the amount payable and term of the payment.

8 Value Added Tax and Distribution of the BID Levy

8.1 The BID Levy, as collected by the Council, is Council property and is ring-fenced for the specific purposes of the BID.

8.2 The BID Company is the sub-contractor engaged by the Council to deliver the BID objectives.

8.3 The BID Company is making taxable supplies to the Council, and in the normal way must charge VAT to the Council.

- 8.4 This VAT will be charged via an invoice that the BID Company will issue to the Council for payment of the BID Levy income. The BID Company may only invoice for a sum equal to or less than the funds held on the BID Revenue Account. It is not intended that the Council shall provide a credit facility.
- 8.5 The Council can recover that VAT, subject to the normal rules.
- 8.6 The BID Company can then recover any VAT it incurs in delivering the BID services, subject to the normal rules.
- 8.7 The majority, if not all of the income received by the BID Company from the Council will be taxable but there may be certain circumstances where exempt supplies are made. Where such supplies are made any VAT incurred by the BID will be irrecoverable.
- 8.8 Any reference to Value Added Tax in this Agreement shall include tax of a similar nature that may be substituted for it or levied in addition to it. All sums in this Agreement are exclusive of Value Added Tax which where chargeable is payable in addition and if any Value Added Tax is incorrectly charged any overpayment made may be recovered from H.M. Revenue & Customs.
- 8.9 Funds not used by the BID Company within the Chargeable Period, and remaining in the BID Revenue Account will be carried forward into the following Chargeable Period BID Revenue Account.
- 8.10 BID Levy Payers will be billed to pay the Council; where BID Levy Payers make a direct payment to the BID company, the BID company will notify the Council by email in order that the Council can record the payment as having been made and avoid taking enforcement proceedings.

9 Council Procedures for Enforcing Payment of the BID Levy

- 9.1 The Council shall issue a Demand Notice on the BID Levy Payer; the Demand Notice shall be issued no earlier than 15 days prior to commencement of the Chargeable Period. The Demand Notice will be issued in accordance with Schedule 4 of the Regulations and the due date for payment shall not be earlier than the date upon which the relevant Chargeable

Period commences. The Demand Notice shall allow 28 (twenty eight) days from its issue date for payment to be made.

9.2 Where the BID Levy is unpaid within 28 (twenty eight) days from the date that it falls due, then (subject to the exceptions or as may otherwise be agreed between the BID Company and the BID Levy Payer) the Council shall serve a Reminder Notice on the BID Levy Payer that shall:-

- (i) identify the sum payable; and
- (ii) provide a further period of 7 (seven) days, from the Reminder Notice date of issue, for payment to be made; and
- (iii) state that in the event of non-payment after this 7 (seven) day period; the Council can Summons the BID Levy Payer to the Magistrates Court with the intention of applying to the Court for the issue of a Liability Order; and
- (iv) Where allowed, confirm that the Council will apply for costs (chargeable to the BID Levy Payer) upon making complaint to the Magistrates Court and also upon seeking the making of the Liability Order at the Magistrates Court.

9.3 If, after a further period of seven days (or fourteen days in total from the date that the Reminder Notice was issued) the outstanding sum of the BID Levy has not been paid; the Council may make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).

9.4 Prior to applying to the Magistrates Court or 'making complaint' (as detailed in Clause 9.2 above) the Council will supply a list of BID Levy Payers, including their outstanding balances to the BID company. The BID company may then choose to suspend the complaint pending further action/enquiries.

9.5 Where a Magistrates Court application proves necessary, the BID Levy Payers will be charged the same level of costs as those incurred by Non Domestic Ratepayers. These costs may be subject to annual changes in relation to the Council's application costs. All Court fees will be charged to the BID Levy Payer and collected as a cost to the Council.

- 9.6 After the issue of a Liability Order, the Council will endeavour to make a payment arrangement with the BID Levy Payer. Should there be continued default, the Council will use the Enforcement Agents who recover non-payment of the Non Domestic Rates.
- 9.7 Where Enforcement Agent fees are incurred by the BID Levy Payer; these will be collected by the Enforcement Agent as a cost to the Enforcement Agent. Where the principal BID Levy sum is collected by the Enforcement Agent, this will be forwarded onto the Council and paid into the BID Revenue Account.

10 Enforcement Mechanisms for non-collection of the BID Levy by the Council

- 10.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 9 above the BID Company shall serve the Enforcement Notice on the Council requesting that:-
- (i) the Council issues a Reminder Notice; or
 - (ii) that the Council obtains a Liability Order pursuant to Clause 9.3 above within 14 (fourteen) days of receipt of such an Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to the recover the unpaid BID Levy.
- 10.2 If, having been served with an Enforcement Notice, the Council fails to take the requested action within the 14 (fourteen) days, then the BID Company shall serve an Appeal Notice to the Chief Executive of the Council. Such notice shall:-
- (i) detail the sum which remains unpaid;
 - (ii) confirm that the Council has failed to use the enforcement mechanisms under this Agreement to recover the sum; and
 - (iii) request a meeting between the Chief Executive, relevant officers of the Council and the BID Company to find a solution and/or agree a strategy to recover the outstanding sum. The Council will have a duty to engage in a meeting with the BID Company within 28 (twenty eight) days from the issue of the Appeal Notice.

11 Accounting Procedures and Monitoring

- 11.1 Every quarter period, on the meeting of the Management Liaison Group (for the duration of the BID Term) the BID Company shall provide the Council with the following details:
- (a) the total amount of income received from the Contributors (excluding the BID Levy)
 - (b) the BID Company's total expenditure during that quarter.
- 11.2 The Management Liaison Group shall meet quarterly in any one Chargeable Period and if an extraordinary meeting is called this shall be arranged by the service of written notice by either party on the other; giving no less than 28 (twenty eight) days' notice prior to the date of the proposed meeting (or lesser if otherwise agreed or in case of emergency) and it is further provided that such meetings can be dispensed with altogether upon the written agreement of both the Council and the BID Company.
- 11.3 At each meeting the Management Group shall;
- (i) review the effectiveness of the collection and enforcement of the BID Levy; and
 - (ii) if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 7.3, 11.1, 11.4 and 11.5 above and make any recommendation for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement).
- 11.4 Within 28 (twenty eight) days after the date of the end of the Chargeable Period the Council shall provide the Annual Report to the BID Company.
- 11.5 BID Levy Demand Notices will be issued for the annually covering the period from 1 April to 31 March. Preceding the issue of annual Demand Notices the BID Company shall provide the Council with the BID Company Report/ Statutory Information concerning the previous chargeable period's income/expenditure together with the BID plans and projections for the next chargeable period. This information can then be included with the BID demand notice.

12 Termination

- 12.1 The Council shall only be permitted to terminate the BID Arrangements because:
- (i) in its opinion there are insufficient finances available for the BID Company to meet its liabilities for the chargeable period for the purposes of the BID Arrangements; or

- (ii) the Council is unable, due to any cause beyond its control to provide the works or services which are secured as part of the BID Arrangements

and only after the Council first serves the Public Meeting Notice on the BID Levy Payers and the Council's Termination Notice on the BID Company and within 14 (fourteen) days from the date of service of such notice both parties shall arrange to meet where the purpose of such meeting shall be to discuss and/or agree all or any of the following set out in Clause 12.2 or 12.3 (whichever is applicable)

12.2 Where the BID Termination Notice relates to Clause 12.1(i) both parties shall agree and/or discuss or review the following:

- (a) that the Council is concerned that the BID Company has insufficient finances to meet its liabilities for the Chargeable Period and details of such concerns should be evident and be made available to the BID Company.
- (b) Alternative means by which the insufficiency of the funds can be remedied; and
- (c) an appropriate time frame to resolve the issue.

12.3 Where the BID Termination Notice relates to clause 12.1(ii) both parties shall agree and/or discuss or review the following:

- (a) the inability to provide works or services together with confirmation and details as to why such works or services cannot be provided;
- (b) a review by both parties, exploring all options, as to whether such works or services are of material importance to the BID to force termination of the BID Arrangements;
- (c) alternative means of procuring the works or services by a third party or increased financial funding from the BID Company;
- (d) alternative, replacement works or services acceptable to the BID Company;
- (e) an appropriate time frame to resolve the issue.

12.4 Notwithstanding clauses 12.1, 12.2 and 12.3 above, the Council shall call a Public Meeting to be held prior to the termination of the BID arrangements.

- 12.5 In the event that the parties cannot reach agreement in relation to the above and subject to consideration of representations made by any BID Levy Payer at the Public Meeting the Council shall be permitted to terminate the BID Arrangements. This is providing that the notice served by the Council to terminate the BID shall be issued to the BID Company no less than 28 (twenty eight) days prior to the Termination Date.
- 12.6 Upon termination of the BID Arrangements the Council shall review whether there is a credit balance in the BID Revenue Account. Where 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) the Council shall:
- (a) calculate the amount to be refunded to each BID Levy payer;
 - (b) ensure that the amount to be refunded is calculated with reference to the amount payable by each BID Levy Payer for the last Chargeable Period; and
 - (c) 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 directly.
- 12.7 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. The Council will also confirm whether any part of the BID Levy is to be refunded to the BID Levy payer in accordance with clause 12.6 above.
- 12.8 The BID Company can only be permitted to terminate the BID Arrangements where:
- (a) the works or services under the BID Arrangements are no longer required; or
 - (b) the BID Company is unable, due to any circumstance beyond its control to provide works and services which are necessary for the BID to continue;
- and only until it has served the BID Company's Termination Notice on the Council and thereafter carried out a proper consultation following the service of a Public Meeting Notice; arranging meeting with all relevant representatives of the BID Area as considered appropriate by the Council.

12.9 Upon termination of the BID Arrangements the BID Company shall notify the Council within 28 (twenty eight) days of such termination in accordance with Regulation 18(5) of the Regulations and the Council shall notify the BID Levy payers pursuant to Regulation 18(6) as soon as practicable, together with confirmation as to whether any part of the BID Levy is to be refunded to the BID Levy payer in accordance with clause 12.6 above.

13 Confidentiality

13.1 Both the Council and the BID Company agree to keep confidential and not to 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 nor the content of preliminary discussions regarding Council projects in development. This obligation shall survive the termination or lapse of the BID Arrangements.

13.2 Both parties will comply with all applicable requirements of and all their obligations under the Data Protection Legislation which arise in connection with this Agreement.

14 Notices

14.1 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.

14.2 A Notice may be served by;

- (i) issuing the notice to the Council's address specified above; or
- (ii) issuing the notice to the Company Secretary at the BID Company's address specified above; or
- (iii) issuing the notice by registered or recorded delivery post; or

(iv) Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference).

14.3 Any notice served shall be deemed to have been validly served at the time when in the ordinary course of business it would have been received in accordance with Section 7 of the Interpretation Act 1978.

14.4 Service of the Demand Notice and other statutory notices upon a BID Levy Payer to affect payment of the BID Levy will be in accordance with the regulations and Section 233 of the Local Government Act 1972.

15 Miscellaneous

15.1 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

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

15.3 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 and signed by both parties.

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

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

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

15.7 The Council and the BID Company will endeavour to at all times act in good faith towards each other.

16 Exercise of the Council's powers

16.1 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 bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

17 Contracts (Rights of Third Parties)

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

18 Dispute Resolution

18.1 Should any dispute arise between the Council and the BID with regards the provisions of this Agreement either party has the right to raise the dispute with the Management Liaison Group.

18.2 A Sub-Committee of the Management Liaison Group consisting of an equal number of Council Officers and BID representatives shall consider the dispute and adjudicate accordingly.

18.3 The Sub-Committee shall meet to agree the level of information required from the parties and the formal timescale for the adjudication process within 14 (fourteen) days of the dispute having been formally raised.

18.4 The adjudication shall be a majority decision and shall be issued in writing to both the Council and the BID Company.

18.5 If the Sub-Committee fail to reach a majority, it shall, by majority, agree on the next steps in the resolution of the dispute.

19 Entire Agreement

19.1 This Agreement together with any documents scheduled hereto form the entire agreement between the parties relating to the subject matter. This Agreement supersedes any previous agreements, arrangements, undertakings or proposals, oral or written.

19.2 The Operating Agreement between the Council and the BID Company entered into on the 1 April 2021 is expressly hereby terminated and with effect from the date of this Agreement is superceded by this Agreement.

20 Governing Law and Jurisdiction

20.1 This Agreement shall be governed by and construed in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English and Welsh Courts.

AS WITNESS the hands of the duly authorised representatives of the parties to this Agreement on the day and year first before written



SIGNED by)
duly authorised for and on behalf of)
DORSET COUNCIL)



SIGNED by)
duly authorised for and on behalf of)
WIMBORNE BID LIMITED)

Schedule 1 – The BID Levy Rules

The following rules should be read in conjunction with the Business Improvement Districts (England) Regulations 2004 and Part 4 of the Local Government Act 2003. Where the rules conflict with the Regulations, the Regulations shall prevail.

The definitions stated in clause 1 of this Agreement apply to this Schedule.

1) Hereditaments Subject to the BID Levy:

A BID Levy Payer will be subject to the BID Levy in respect of a Non Domestic Rates (NDR) hereditament if the NDR hereditament during the BID term is;

- a. In the defined Wimborne BID area; and
- b. in the current local rating list for the Council; and
- c. the Rateable Value ("RV") is equal to or greater than £3,500 and
- d. the NDR hereditament is not an Exempt Property.

Exempt Property

For the purposes of Clause 1(d) to this Schedule an Exempt Property is a NDR hereditament, located within the Wimborne BID area; where the Non Domestic Rate payer is a charity and not a charity shop; receiving Mandatory NDR relief; and has been classed as an Exempt Property by the BID Company.

The BID Company may also exempt some property occupied for public service, such as for Emergency Services, Educational, Philanthropic and Law Enforcement purposes. The BID Company shall determine Exempt Property qualification.

2) Calculation of the BID Levy

The Annual BID Levy shall be calculated as $RV \times BID \text{ Multiplier}$ where:

- a. The RV is the RV of the NDR hereditament appearing in the current, live, Local rating List.
- b. The BID Multiplier is 1.5% of the RV on all NDR hereditaments, stated in clause 1 above, in this Schedule.
- c. The BID Levy will remain at 1.5% for the full BID term.

3) Persons/Organisations/Partnerships/Companies Liable for the BID Levy

Liability for the BID Levy will be the responsibility of the Non Domestic Rate payer of the NDR hereditament, stated in clause 1 in this Schedule, and in accordance with the Local Government Finance Act 1988 and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989, as amended.

In addition to the qualifying NDR hereditaments stated in Clause 1 in this schedule;

Contributors may also be included within the BID scheme, upon written agreement with the BID Company as to the amount to be contributed and the agreed financial year falling within the chargeable period.

Any agreement in place with a Contributor will not be binding on subsequent NDR ratepayers for the same NDR hereditament, should the Contributor cease to be liable for NDR during the BID Term.

4) Collection of the BID Levy

- a. The BID Levy is payable in one instalment for each financial year. This instalment date will be specified on the Demand Notice. The BID Levy Payer shall be given 28 (twenty eight) days to pay the BID Levy from the date of the Demand Notice being issued.
- b. The BID Levy is charged at a daily rate, therefore should a Levy Payer cease to be liable during the Chargeable Period, the BID levy will be apportioned to the day that their

liability ends. The Council may then issue a refund for any overpayment and issue a Demand Notice to the new BID levy payer for the remaining chargeable period.

- c. If a new NDR hereditament within the BID area is included in the local rating list the BID Levy will commence from the day that the hereditament is in the local rating list.

- d. If a NDR hereditament within the BID area undergoes a split, merger, reorganisation or has a change of rateable value in the local rating list the BID Levy will be charged on a daily basis in accordance with the Rateable Value shown in the local rating list.

- e. If a NDR hereditament within the BID area is taken out of the local rating list the BID Levy will be apportioned to the day that the hereditament is taken out of the local rating list.

In exceptional circumstances, the BID Company reserves the right to agree with a BID Levy Payer alternative payment arrangements. Where this is agreed, the BID Company shall notify the Council of the alternative payment arrangement.

**Schedule 2 – Wimborne BID Business Plan for the BID Term
1 April 2021 – 31 March 2026**

Schedule 3 – Wimborne BID Area Plan