

ENGLISH RIVIERA BUSINESS IMPROVEMENT DISTRICT

OPERATING AGREEMENT

The Council of the Borough of Torbay(the Council)

English Riviera BID Company Limited
(the BID Company)

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Operating Agreement

Between

The Council of the Borough of Torbay **of Town Hall, Castle Circus, Torquay, Devon TQ1 3DS**

and

English Riviera BID Company Limited **of 5 Vaughan Parade, Torquay Devon TQ2 5JG**

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 Proposal

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 Business Plan

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 expenses incurred in collecting the BID Levy shall be paid

It is agreed:

1 Definitions

the 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 Financial Year;
- (ii) details of the success rate for the collection of the BID Levy;
- (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- (iv) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- (vi) the Council's proposals for bad or doubtful debts.

the Appeal Notice means a notice to be served by the BID Company in accordance with clause 9.2

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

the Baseline Agreement means the agreement annexed at Schedule 1 page 15

the BID means the eligible businesses that operate within Torbay as set out in Business Plan .

the complimentary Services Agreement means the draft agreement annexed at Schedule 2 page 15

the BID Business Plan [Schedule 3 – page 15] means the plan voted for by the BID Levy Payers which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised via the BID Levy.

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

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

the BID Company's Termination Notice means a notice to be served by the BID Company on the Council pursuant to clause 11.8

the BID Levy means the charge to be levied and collected within the BID Area pursuant to the Regulations

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

the BID Levy Rules [Schedule 4 – page 15] means the rules set out in the Schedule which sets out how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot)

the BID Revenue Account means the account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations. The account is not subject to interest.

the BID Term means the period of 5 years from 1 January 2017 to 31 December 2021

the Council's Termination Notice means the notice to be served by the Council on the BID Company pursuant to Clause 11.1

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

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

Hereditament shall have the same meaning as defined in the Regulations

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):

- (i) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (ii) by other means but while in electronic form

the Enforcement Expenses means the costs which are incurred by the Council in issuing a Reminder Notice, obtaining Liability Orders and associated administrative expenses which may be incurred in recovering unpaid BID Levy. These costs are borne by the levy payer.

the Exceptions means the circumstances in which the Council shall not be required to seek to enforce payment of the BID Levy where a BID Levy payer has failed to make payment pursuant to a Demand Notice. Exceptions shall be agreed by the parties.

the 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

the Financial Year means the financial year for the BID Company which runs from January to December

the First Priority Payment means the agreed fee * to be paid quarterly in advance commencing at the start of the BID levy year.

Liability Order means an order obtained from the Magistrates Court

the Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 10) such group to consist of:

- (i) Two representatives from the BID Company
- (ii) Two officers from the Council associated with the operation and monitoring of the BID

the Operational Date means the date upon which the BID Proposal come into force. This shall be 1 January 2017 (five months following the ballot declaration date on 1 July 2016)

the Public Meeting means the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice

the Public Meeting Notice means a notice to be served pursuant to Clause 11.1 by either the Council or the BID Company which provides the following:-

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

the 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 (from time to time)

the Reminder Notice means the notice to be served pursuant to Clause 8.1

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, Section 1 of the Localism Act 2011 and all other enabling powers.

3 Commencement

3.1 This Agreement shall take effect on 1 December 2016 and shall continue until it either expires or is terminated in accordance with this agreement

4 Setting the BID Levy

4.1 Immediately upon the commencement of this agreement the Council shall:-

- (i) calculate the BID Levy in accordance with the BID Levy Rules (Schedule 4 page 15); and
- (ii) confirm in writing to the BID Company the BID Levy payable
- (iii) enter into the Baseline Agreement (Schedule 1 page 15) with the BID Company

5 The BID Revenue Account

5.1 On commencement of this agreement the Council shall set up the BID Revenue Account and provide written confirmation to the BID Company once this has been carried out together with details of the bank account number sort code and any other details which the BID Company may specify

5.2 On commencement of this agreement the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred from the BID Revenue Account

6 Debits from the BID Revenue Account

6.1 The Council shall not debit any reasonable administrative expenses directly from the BID Revenue Account

6.2 Upon the expiry of 3 months from the commencement of the BID Levy year (and throughout the BID Term) the Council shall provide quarterly invoices for its administration charges.

Payment should be made in accordance with the council's standard terms and conditions with payment being made by the BID company within 30 days.

6.3 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.

6.4 A review of the administration charge incurred by the council will be undertaken at the end of the first year of operation.

7 Collecting the BID Levy

7.1 The BID Levy invoice shall be sent under separate cover from the Business Rate Demand Notice at the beginning of the BID Levy year.

7.2 Pursuant to clause 7.1 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 [Schedule 4 page 15]

7.3 The Council shall maintain a list which identifies payment and/or non payment of the BID Levy and shall make this available to the BID Company upon its reasonable request.

7.4 The Council shall use all reasonable endeavours to collect the BID Levy on the date specified (pursuant to clause 7.1 above) and thereafter on a monthly basis and in accordance with the procedure set out in Schedule 4 of the Regulations

7.5 The Council shall use all reasonable endeavours to take all reasonable steps for collecting the BID Levy which are consistent with its usual procedures for the collection of non-domestic rates as set out in 8.1 and 8.2 [Schedule 5 page 15]

7.6 Refunds will be payable by the council to the BID Levy payer only in the event of the overpayment of the Levy by a BID Levy payer.

7.7 The amount paid out in respect of refunds by the council will be deducted from the BID Levy payers account and the next payment made to the BID company will be net of these refunds.

7.8 Within 10 working days from the end of the Council's monthly accounting period the Council shall advise the BID Company of the amount held in the BID Revenue Account.

On receipt of an invoice from the BID Company showing the said figure the Council shall pay the BID Company this figure plus VAT calculated at the standard rate within 10 working days.

The total amount will be transferred to the BID Company's own bank account as specified in Clause 5.2 above and provide written confirmation of the sum transferred

8 Communication with BID Levy Payers regarding levy collection

8.1 The BID company and the council shall agree a template design for all levy collection material including enforcement materials before the first demand notices are sent. The materials shall meet with the BID regulation requirements.

8.2 The BID company shall refer all enquiries from BID Levy Payers regarding Demand and Enforcement Notices, and payment terms to the Council.

8.3 The Council shall refer all enquiries from the BID Levy Payers regarding the services provided by the BID Company for the BID Levy payment to the BID Company

8.4 The Council shall ensure that the information set out in Schedule 4 paragraph of the Regulations, or such other information requirements under the Regulations is included with each Demand Notice. This shall include

- (i) The revenue received by the BID in the previous year
- (ii) The amount spent on BID arrangements in the previous year
- (iii) A description of the matters on which it was spent, and
- (iv) A description of the matters which it is intended to spend the revenue from the BID Levy in the financial year

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

9.1 In the event that the BID Levy is not paid within 14 (fourteen) days from the date that it becomes payable then (subject to the Exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-

- (i) identify the sum payable;
- (ii) provide a further 14 (fourteen) days for payment to be made;

If full payment has not been made after 14 (fourteen) days the Council shall serve a Final Notice on such relevant BID Levy Payers which shall:-

- (i) identify the sum payable;
- (ii) provide a further 7 (seven) days for payment to be made;
- (iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum together with costs

9.2 If after a further 14 (fourteen) days from the payment date stated in the Final Notice the outstanding sum of the BID Levy has not been paid, the Council shall 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)

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 8 above the BID Company shall serve the Enforcement Notice on the Council requesting that:

- (i) it serve a Reminder Notice; or
- (ii) take steps to obtain a Liability Order through the magistrates court pursuant to Clause 8.2 above

10.2 Within 14 (fourteen) days of receipt of such Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to the recover the unpaid BID Levy

10.3 If after being served an Enforcement Notice the Council fails to take the requested action within the specified time frame 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 available to it under this Agreement to recover the sum; and
- (iii) request a meeting take place between the Chief Executive, relevant officers of the Council and BID Company to achieve a solution and/or agree a strategy to recover the outstanding sum such meeting to take place in any event no later than 28 (twenty eight) days from service of the Appeal Notice

10.4 In the event that the Council fails to take any of the steps requested by the BID Company pursuant to clauses 9.1 and 9.2 (above) the Council shall (within 28 days of receipt of written notice from the BID Company which specifies the amount of BID Levy outstanding) pay the specified sum into the BID Revenue Account and provide written confirmation to the BID Company that this has been done

11 Accounting Procedures and Monitoring

11.1 Within 1 (one) month from the Operational Date the Council and BID Company shall form the Monitoring Group

11.2 Upon the expiry of the third month of the BID term and every 3 (three) months thereafter (for the duration of BID Term) the Council shall provide the BID Company with a breakdown of:-

- (i) the BID Levy collected in relation to each BID Levy Payer;

- (ii) details of BID Levy Payers who have not paid the BID Levy, including the amount outstanding;
- (iii) details of the Reminder Notices issued throughout that period; and
- (iv) details of any Liability Orders obtained or applied for by the Council;

11.3 Upon the expiry of the third month of the BID term and every 3 (three) months thereafter (for the duration of BID Term) the BID Company shall provide the council with a breakdown of:

- (i) the total amount of income received from the Contributors (excluding the BID Levy)
- (ii) the total expenditure of the BID company during that 3 (three) month period.

11.4 The Monitoring Group shall meet no less than twice in any one Financial Year and on all other occasions further meetings of the Monitoring Group shall be arranged by the service of written notice by either party on the other, such notice to be provided no less than 28 (twenty eight) days prior to the date of the proposed meeting (or lesser if otherwise agreed or in cases of emergency) and provided further that such meetings can be dispensed with altogether upon the written agreement of both the Council and the BID Company

11.5 At each meeting the Monitoring 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 10.2 and 10.3 above and make any recommendations for implementation as may be agreed

11.6 Within 1 (one) month after the date of the end of the BID Financial Year [31 December] the Council shall provide the Annual Report to the BID Company

11.7 Within 1 (one) month from the date of receipt of the Annual Report the BID Company shall provide the BID Company Report to the Council.

12 Termination of the BID

12.1 Either party shall be permitted to terminate the BID arrangements in accordance with Section 18 (1) of the Business Improvement District (England) Regulations 2004 if there has been proper consultation with all relevant representatives of the BID area and it has served a Public Meeting Notice on the BID levy payers and the public meeting has taken place.

12.2 Upon termination of the BID Arrangements and this Agreement for any reason, the BID company shall forthwith notify the council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy payers in accordance

with regulation 18(6) together with confirmation as to whether any part of the BID Levy is to be repaid to the BID Levy payers.

12.3 In the event of termination of the BID Arrangements and this Agreement, the council shall forthwith review whether there is a credit in the BID Revenue Account and in the event that there are sufficient funds in the BID Revenue Account amounting to a refund of at least £5 for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund) to:

- (i) calculate the amount to be refunded to each BID Levy payer;
- (ii) ensure that the amount to be refunded is calculated by reference to the amount payable by each BID Levy Payer for the last chargeable period; and
- (iii) 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.
- (iv) Where there are insufficient funds in the BID revenue account to allow for payment of a refund as described above, the council shall credit the credit balance in the BID Revenue Account to the credit of its general fund.

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. This obligation shall survive the termination or lapse of the BID Proposal

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) delivery to the Chief Executive at the Council's address specified on page 1 (one); or
- (ii) delivery to the Company Secretary at the BID Company's address specified above
- (iii) registered or recorded delivery post
- (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 or given at the time when in the ordinary course of business it would have been received.

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

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

16 Exercise of the Council's powers

Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of Torbay 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)

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

18 Arbitration

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

18.1 Any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator

18.2 The parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either party to do so and each party shall bear its own costs

18.3 If the parties are unable to agree within 28 (twenty eight) days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as “the Tribunal”) shall be appointed on the application of either party to the President for the time being of the Law Society

18.4 In the event of a reference to arbitration the parties agree to:

- (i) prosecute any such reference expeditiously and
- (ii) do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable

18.5 The award shall be in writing signed by the Tribunal and shall be finalised within 21 (twenty one) days from the date of such award

18.6 The award shall be final and binding both on the parties and on any persons claiming through or under them

Schedule 1 – The Baseline Agreement [to be supplied]

Schedule 2 - The Complementary Services Agreement [to be supplied]

Schedule 3 – BID Business Plan

Schedule 4 – The BID Levy Rules

1 A business will be subject to the Levy if:

- (a) it falls within the classified Non- Domestic Rating List description as outlined in the Business Plan and,
- (b) that it is subject to Business Rates on the first day of the BID Levy year

2 For the purpose of calculating the BID Levy, the rateable value will be that shown in 2010 Valuation List as at 1 April 2016.

The Levy rate to be paid by each property or hereditament is to be calculated at 1.95 % of it's rateable value (using the published 2010 or subsequent 2017 Non-Domestic Rating List) as at the chargeable day (1 April each year)

- (i) All properties or hereditaments identified in the Business Plan with a rateable value of £3000 and above will be eligible for payment of the levy.
- (ii) The levy will be charged annually in advance for each BID Levy year commencing on 1 January 2017
- (iii) The minimum payment will be £150

- (iv) The BID Levy is payable in one instalment. The instalment date will be specified on the Demand Notice. The Council may serve a Demand Notice before the commencement of the BID in accordance with paragraph 5(2) of Schedule 4 of the Business Improvement Districts (England) Regulations 2004
- (v) Owners of untenanted properties or hereditaments, included listed buildings, will be liable for payment of the levy.
- (vi) Charitable organisations that are subject to relief on the business rates will pay 100% of the BID Levy.
- (vii) Refunds will only be made in accordance with clause 7.6
- (viii) The levy is an annual sum and will not be apportioned during the year when a ratepayer vacates or occupies a property.
- (ix) If a new property is entered into the rating list by the Valuation Office Agency mid-year no charge will apply until the following year's levy becomes due
- (x) If a property undergoes a split or merger in the rating list mid year the levy will not be amended to reflect the change until the following year
- (xi) If a property's rateable value of increased or decreased mid-year the levy will not be amended to reflect the change until the following year.
- (xii) There will be no allowances applicable to the BID levy regardless of those allowances awarded against a ratepayer's non-domestic rates. The include the following:
 - a. Mandatory (Charitable, CASC)
 - b. Discretionary (Section 44A, Rural, Hardship)
 - c. Small Business Rate Relief
 - d. Transitional Relief
- (xiii) The council or it's agents will be responsible for collection of the levy. The cost of collection charge made by the council will be £6000 in the first year, and reviewed from year 2 (two) and based on a cost per hereditament. The Unit cost to be agreed by the Council and BID company

Schedule 5 - Recovery

Recovery process after a liability order is obtained

- (i) Enforcement Agencies can be instructed to collect the outstanding BID Levy if the following arises
 - a. the full amount including magistrates summons costs remains payable; or
 - b. if a mutually acceptable payment arrangement previously made with the Council has fallen into arrears due to failure to make the agreed payments.

- (ii) Where an Enforcement Agencies is instructed, a seven day notice will be sent which will incur an administration fee of £75. This will be added to the outstanding BID levy.
- (iii) If you ignore the contact from an Enforcement Agency they will instruct one of their enforcement agents to visit you. As soon as they make the first visit an enforcement fee of £235 will be added to your debt. If your debt is more than £1,500, the enforcement agents will charge an additional fee of 7.5% of the amount over £1,500. They will not add further costs for additional visits.
- (iv) When the enforcement agent makes a visit, they will ask for payment in full including all their costs.
- (v) If the levy cannot be paid in full immediately, the enforcement agent may agree a payment arrangement over a maximum period of three months. This is covered by a controlled goods order. A controlled goods order is where the enforcement agent records an inventory of goods that can be sold at a later date to repay the debt if you do not keep to your arrangement. You will be asked to sign the controlled goods order.
- (vi) Once goods are subject to a controlled goods order they cannot be moved or disposed of without the enforcement agent's permission.
If a payment arrangement falls into default and you have signed a controlled goods order, the enforcement agent may re-enter the property, using force if necessary, to take the goods listed on the inventory. A sale fee will be charged if goods are removed and sold along with other disbursements such as auctioneer's fees. This could add a substantial amount to the amount owed.
If the enforcement agent considers it appropriate, for example due to lack of cooperation/transparency or a belief that goods may be intentionally relocated or disposed of, they may take control and remove goods immediately.
- (vii) If a debt has been passed to an enforcement agent and payment is made directly to the Council, without including the enforcements agents fees then the enforcement agent will continue the enforcement process for the outstanding balance.