

OPERATING AGREEMENT

Dated

Blackpool Council
(the Council)

Blackpool Town Centre BID Ltd
(the BID Company)

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Operating Agreement

Dated

Between

- (1) **BLACKPOOL COUNCIL** (the Council) of Number One Bickerstaffe Square, Talbot Road, Blackpool FY1 3AH and
- (2) **BLACKPOOL TOWN CENTRE BID LTD** (the BID Company) [registered as a company limited by guarantee in England with number 3219849] whose registered office is at 97 Church Street Blackpool FY1 1HU

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 Proposal
- 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) [the total amount of interest earned on any part of the BID Levy whilst held in the BID Revenue Account¹];
- (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

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 draft Agreement annexed at Schedule 2

the BID means the Business Improvement District which operates within *(annex a plan illustrating the extent of BID area)* and which is managed and operated by the BID Company

the BID Company's Report means a report for each Financial Year 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

- (c) the various initiatives and schemes upon which the BID Levy has been expended by the BID Company

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

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

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

the BID Levy Rules means the rules set out in 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 Proposal 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 Revenue Account means the [interest] bearing account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations

the BID Term means the period of 5 years from 1st April 2021 until 31st March 2026

[the Complementary Services Agreement means the draft Agreement annexed at Schedule 3]

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):

- (a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or
- (b) 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 provided that such costs shall not exceed [x]% of the total BID Levy collected against any one BID Levy Payer

the Enforcement Notice means a notice to be served on the Council as specified in Clause 9

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. The exceptions are as further set out in Schedule **

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 1st April to 31st March

the First Priority Payment means the first 6 monthly administrative expenses incurred by the Council in respect of all reasonable costs arising out of compliance with its obligations under this Agreement and the Regulations [provided that such costs shall not exceed [x]% of the total value of the BID Levy collected in any one Financial 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 11) such group to consist of ** Council officers and representatives from the BID Company [and ** Contributors]

the Operational Date means the date upon which the BID Proposal come into force

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 or 11.8 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

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 is conditional upon and shall not take effect until the Operational Date.
- 3.2 If the BID Proposal is not approved by the BID Levy Payers on the Ballot Result Date then this Agreement shall determine and cease to be of any further effect between the parties
- 3.3 This Agreement shall terminate on the expiry of the BID Term

4 Setting the BID Levy

- 4.1 Immediately upon the Ballot Result Date the Council shall:-
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- (i) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
- (ii) confirm in writing to the BID Company the BID Levy payable [annually] [quarterly] [monthly] by each BID Levy Payer
- (iv) [enter into the Baseline Agreement with the BID Company]

5 The BID Revenue Account

- 5.1 Within ** days from the Ballot Result Date 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 account number sort code and any other details which the BID Company may specify
- 5.2 Within ** days from the Ballot Result Date the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred from the BID Revenue Account

6 Debits from the BID Revenue Account

- 6.1 The Council shall not debit directly from the BID Revenue Account:-
 - (i) the First Priority Expenses;
 - (ii) the Enforcement Expenses; or
- 6.2 Upon the expiry of the second month within the Financial Year (throughout the BID Term) the Council shall provide an invoice to the BID Company for payment of the First Priority Expenses
- 6.3 Upon the expiry of 6 months in the Financial Year (throughout the BID Term) the Council shall provide [monthly] [quarterly] [one further] invoice(s) for its reasonable administrative expenses incurred in carrying out its obligations under this Agreement and the Regulations
- 6.4 The BID Company shall pay the said invoices within 28 (twenty eight days) from the date of receipt
- 6.5 [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]

6.7 The Council shall be entitled to recover the Enforcement Expenses from the BID Company as and when they are incurred and shall provide an invoice to the BID Company which provides a detailed breakdown of the costs incurred.

6.7 The BID Company shall arrange for any invoiced Enforcement Expenses to be paid within 28 days from the date of such invoice. In the event 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 Enforcement Expenses directly from the BID Revenue Account.

7 Collecting the BID Levy

7.1 Within 14 (fourteen) days of the Ballot Result Date the Council shall confirm in writing to the BID Company:-

- (i) the means by which the BID Levy Payer shall be billed⁸ for the BID Levy; and
- (ii) the date when the BID Levy shall first be collected (such date to be on or after the Operational Date)

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 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 liaise with the BID Company in carrying out [3] monthly reviews of each Hereditament within the BID Area and in the event of any change in the occupier of each Hereditament or the merger or division of a Hereditament (or provision of an additional Hereditament) 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 endeavours to collect the BID Levy on the date specified (pursuant to clause 7.1(ii) above) and thereafter on an [annual] [quarterly] [monthly] basis and in accordance with the procedure set out in Schedule 4 of the Regulations

- 7.6 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
- 7.7 Every [7 (seven)] days thereafter the Council shall transfer all sums then credited to the BID Revenue Account [(together with any accrued interest)] to the BID Company's own bank account as specified in Clause 5.2 above and provide written confirmation of the sum transferred¹⁰

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

- 8.1 In the event that the BID Levy is not paid within [28 (twenty eight) 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 [7 (seven)] days for payment to be made;
 - (iii) [state that in the event of non-payment after this 7 (seven) day period then interest ¹¹ shall accrue on the outstanding identified sum at the rate of ** per day]
 - (iv) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with interest [and costs])
- 8.2 If after a further 7 (seven) days from the payment date stated in the Reminder 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)

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

- 9.1 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:-
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- (i) it serve a Reminder Notice; or
- (ii) it obtains a Liability Order pursuant to Clause 8.2 above

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

9.2 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

9.3 [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]

10 Accounting Procedures and Monitoring

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

10.2 Every [6 (six)] months (for the duration of BID Term) the Council shall provide the BID Company with a breakdown of:-

- (i) the amount of 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 during those 6 months;

- (iv) details of the Reminder Notices issued throughout that period; and
 - (v) details of any Liability Orders obtained or applied for by the Council;
- 10.3 Every [6 (six)] months (for the BID Term) the BID Company shall provide the Council with the following details:
- (a) the total amount of BID Levy received
 - (b) the total amount of income received from the Contributors (excluding the BID Levy)
 - (c) the total expenditure during that 6 month period.
- 10.4 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
- 10.5 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 (and which are permitted by the Regulations and the terms of this Agreement)
- 10.6 Within 1 (one) month after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company
- 10.7 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

11 Termination

- 11.1 The Council shall not be permitted to terminate the BID Proposal because:
- (i) in its opinion there are insufficient finances available to the BID Company to meet its liabilities for the chargeable period for the purposes of the BID Proposal; 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 Proposal

unless and until it 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 11.2 or 11.3 (whichever is applicable)

11.2 Where the BID Termination Notice relates to Clause 11.1(i) both parties shall agree and/or discuss or review the following:

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

11.3 Where the BID Termination Notice relates to clause 11.1(ii) both parties shall agree and/or discuss or review the following:

- (a) the services or works which it is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;
- (b) a review by both parties as to whether such works or services are of material importance to the BID so that termination of the BID Proposal is the only option;
- (c) alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;
- (d) alternative replacement services or works which will be acceptable to the BID Company ;
- (e) an appropriate time frame to resolve this issue

11.4 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 Proposal provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than 28 days prior to termination taking place

- 11.5 Upon termination of the BID Proposal the Council shall 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:
- (a) calculate the amount to be refunded to each BID Levy payer;
 - (b) 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
 - (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.
- 11.6 Upon termination of the BID the Council shall notify the BID Levy Payers of such termination in accordance with regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with clause 11.6
- 11.7 The BID Company shall not be permitted to terminate the BID Proposal where:
- (a) the works or services under the BID Proposal are no longer required; or
 - (b) the BID Company is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue
- unless and until it has served the BID Company's Termination Notice on the Council and thereafter carried out a proper consultation with all relevant representatives of the BID Area as considered appropriate by the Council.
- 11.8 Upon termination of the BID Proposal the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy payers pursuant to Regulation 18(6) together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with clause 11.6
- 11.10 [21] days prior to the expiry of the BID Term (notwithstanding any rebalot and new BID term commencing) the Council shall provide the BID Company with a reconciliation of the BID Revenue Account (for its written Agreement) identifying (if any) all outstanding costs payable to the Council as a consequence of collecting the BID Levy, any outstanding Enforcement Expenses and any BID Levy monies not passed to the Bid Company's account (pursuant to clause 7.7 above.)
- 11.11 Subject to the costs (pursuant to clause 11.10 above) being agreed and prior to the start of a new BID Term the Council shall deduct the Final Costs from any BID Levy and transfer any remaining BID Levy to the BID Company pursuant to clause 7.7

12 Confidentiality

- 12.1 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

13 Notices

- 13.1 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
- 13.2 A Notice may be served by
- 13.2.1 delivery to the ** at the Council's address specified above; or
 - 13.2.2 delivery to the Company Secretary at the BID Company's address specified above
 - 13.2.3 registered or recorded delivery post
- 14.2.4 Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference)
- 13.3 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.

14 Miscellaneous

- 14.1 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
- 14.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement
- 14.3 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
- 14.4 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
- 14.5 References to the Council include any successors to its functions as local authority
- 14.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

15 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 the County Council and Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

16 Contracts (Rights Of Third Parties)

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

17 [Arbitration]

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

- 17.1 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
- 17.2 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

17.3 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

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

- prosecute any such reference expeditiously and
- 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

17.5 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

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

Signed by the parties [or their duly authorised representatives]

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Schedule 1 – The BID Levy Rules

This will set out the manner in which the BID Levy will be calculated – i.e. what was approved as the BID Proposal

- The BID term will be a period of five years from 1st April 2021 until 31st March 2026
- The BID Levy will be applied to rated properties in the BID District with a rateable value of £10,000 or more
- The levy will be a fixed rate of 1% rateable value as at 1 April 2021 using the 2017 list for all eligible rate payers
- Properties that come into the rating list during the BID term will be subject to the BID levy from the effective date that the property is brought into the rating list and the rateable value effective at that time
- Where the rateable value for an individual hereditament changes and results in a lower BID levy, then this comes into effect only from the start of the financial year in which the change is made and no refunds will be made for previous years. This is known as the closed year rule
- The levy will assume an annual growth rate for inflation of 3% to be applied 1 April each year [ie 1.25% in year 3 and 1.5% in year 5]
- There will be no VAT charged on the BID levy
- There is no distinction to be made between occupied or unoccupied hereditaments.
- The BID levy will not be affected by the small business rate relief scheme
- The BID levy will not be increased other than as specified in the levy rules
- The BID levy rules, and BID area cannot be altered without an alteration ballot

Schedule 2 – The Baseline Agreement

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Schedule 3 - The Complementary Services Agreement

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Signed by)
duly authorised for and)
on behalf of)
NAME OF COUNCIL)

Signed by)
duly authorised for and)
on behalf of)
NAME OF BID COMPANY)

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