

Operating Agreement

Dated

- (1) **Bridgend County Borough Council** (the Council) Civic Offices, Bridgend
- (2) **CF31 BID** (the BID Company) a company limited by guarantee with registered office address of **XXX**.

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 expenses incurred in collecting the BID Levy shall be paid

IT IS AGREED:

1 Definitions

the Administrative Expenses means all costs incurred by the Council in the administration, collection and recovery of the BID Levy including but not limited to any staffing costs and any expenditure incurred by the Council in relation to software or other systems used in relation to the BID Levy and any costs associated with this Agreement or any proposed termination thereof

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;

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

the BID means the Business Improvement District which is managed and operated by the BID Company and which operates within and is covered by those streets set out below and shown on the map attached hereto.

The following streets are included in the BID area in whole or in part:

Adare Street
Angel Street
Boulevard de Villenave d'Ornon
Brackla Street
Brewery Lane
Caroline Street
Cheapside
Court Road
Cross Street
Derwen Road
Dunraven Place
Elder Street
Langenau Strasse
Market Street
Merthyr Mawr Road North
Nolton Street
Quarella Road
Queen Street
Station Hill
The Rhiw
The Rhiw Centre
Water Street
Wyndham Street

the BID Arrangements means those arrangements to be put in place pursuant to the

Regulations by the BID company for the purpose of enabling the projects specified to be carried out for the benefit of the BID or those who live, work or carry on any activity in the district

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 and this Agreement

the BID Company's Termination Notice means a notice to be served by the BID Company on the Council pursuant to clause 11.8 and Regulation 18 of the Regulations

the BID Levy Payer(s) means the non-domestic rate payers who are liable for paying the BID Levy as described in the Schedule

the BID Levy Rules means the rules set out in the Schedule 1 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 BID Term means the period from 1 October 2016 to 30 September 2019

the Council's Termination Notice means the notice to be served by the Council on the BID Company pursuant to Clause 11.1 and Regulation 18 of the Regulations

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 set out in paragraphs 2 and 3 of Schedule 4 of the Regulations

Heredity 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

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

Enforcement Regulations means the Non –Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989

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 shall be as agreed by the parties from time to time.

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 in the following year

the First Priority Expenses means the 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 during each year of the duration of this Agreement

Liability Order means an order obtained from the Magistrates Court pursuant to Regulation 12 of the Enforcement Regulations (as amended)

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 one Council officer from Bridgend County Borough Council and one representative from the BID Company

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

the Public Meeting means the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice and Regulation 18 of the Regulations

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 (Wales) Regulations 2005 and such amendments made by the National Assembly for Wales pursuant to Section 48 and Section 58 of the Local Government Act 2003 (from time to time)

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

the Summons Notice means the notice to be served following a Reminder Notice and pursuant to Clause 8.2

a Working Day means any day of the week other than a Saturday, a Sunday or a bank holiday

2 Statutory Authorities

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

3 Commencement

3.1 This Agreement shall be effective from 1st October 2016

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 be reviewed prior to the start of the new BID term.

4 Setting the BID Levy

4.1 By 11th October the Council shall calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules

4.2 As soon as practicable after the 12th October 2016 confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer

5 The BID Revenue Account

5.1 Interest payments on money in the BID Revenue Account will be subject to the Council's banking arrangements at the time of operating the account. Such interest, if any, will be paid to the BID Company as part of the BID Levy.

6 Debits from the BID Revenue Account

6.1 The Council may debit directly from the BID Revenue Account:-

- (i) the direct court costs incurred at taking court action against the businesses who haven't paid the BID Levy provided that they have been detailed in a valid VAT invoice delivered to the BID Company giving a detailed breakdown of the costs incurred

6.2 Notwithstanding the above provision the BID Company shall be responsible for ensuring that all VAT invoices delivered to the BID Company shall, if not debited from the BID Revenue Account, be paid within 28 days of delivery.

7 Collecting the BID Levy

7.1 The Council shall at the beginning of each Financial Year 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 first 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 which identifies payment and/or non-payment of the BID Levy and shall make available to the BID Company at intervals of not less than once a month

7.4 The Council shall liaise with the BID Company in carrying out 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 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 On the 10th of every month hereafter the Council shall notify the BID Company of the amounts credited to the BID revenue account and of the amount of the authorised debits in accordance with clause 6 and upon receipt of an appropriate invoice from the BID Company shall transfer to the BID company's own bank account the amount due and provide written confirmation of the sum transferred.
- 7.8 In the event of an overpayment by the Council to the BID in excess of £5,000 for a period of more than three consecutive months, the BID will return the overpayment to Bridgend County Borough Council within 14 days upon receipt of a valid invoice.

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 in whole within fourteen days from the payment due date then (subject to the Exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such defaulting BID Levy Payer which shall:-

- (i) identify the sum payable;
- (ii) provide a further 14 (fourteen) 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). The For the avoidance of any doubt it is agreed that the costs awarded and obtained by the Council arising from the making of any Liability Order shall be due to and retained by the Council and shall not be payable to the BID Company.

8.2 In the event that the BID Levy is not paid in whole within 14(fourteen) days of the service of the Reminder Notice in accordance with clause 8.1 then the Council shall immediately inform the BID Company of such further failure to pay (subject to the Exceptions). The Council will consider any comments made by the BID Company before deciding whether to make an application to the Magistrates Court for a Liability Order. The Council will normally then 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 Enforcement Regulations (as amended).

8.3 In the event that the Council's application to the Magistrates Court for a Liability Order is awarded it shall immediately inform the BID Company. The Council will consider any comments made by the BID Company prior to entering in to an enforcement payment arrangement or issuing recovery instructions to the Bailiff. The Council will endeavour to use external Bailiffs which it has arrangements with at the relevant time.

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

9.1 In the event that the Council is not taking appropriate steps to enforce 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) a Further Reminder Notice; or
- (iii) it applies to Court to obtain a Liability Order pursuant to Clause 8.3 above;
or
- (iv) Enter in to an enforcement payment arrangement or issuing the account to the Bailiff

and the Council shall thereafter provide written confirmation of the action taken to recover the unpaid BID Levy.

9.2 If after being served an Enforcement Notice the Council fails to take the requested action within 28 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 available to it as referred to in 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 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 In addition to the information outlined in 7.4, every month during the 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 The Monitoring Group shall meet no less than once 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

10.4 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 pursuant to Clauses 10.2 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)

10.5 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

10.6 The BID Company shall provide the BID Company Report to the Council two weeks prior to their Annual General Meeting.

11 Termination

11.1 The Council shall not be permitted to terminate the BID Arrangements 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 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

unless and until it first serves the Public Meeting Notice as detailed in clause 11.4 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 necessary for the BID to continue so that termination of the BID Arrangements 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 Council and the BID Company cannot reach agreement in relation to the above the Council shall cause a Public Meeting to be held 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 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 Arrangements 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 11.5
- 11.7 The BID Company shall not 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 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 Arrangements 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 11.5

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 Arrangements. For the avoidance of doubt nothing in this clause shall prevent the Council from using or divulging such information as is necessary for the purpose of complying with its obligations under this Agreement.

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 delivered by hand or sent to the address provided for above or such substitute address in England and Wales 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 Income Collection Manager, Bridgend County Borough Council
 - 13.2.2 delivery to the Company Secretary at the BID Company's address specified above
 - 13.2.3 registered or recorded delivery post
- 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 Local Government Act 2003 or Regulations or any other regulations which the Secretary of State or National Assembly for Wales may issue pursuant to Part IV of the Local Government Act 2003 in so far as they relate to Wales then such part shall be struck out and the balance of this Agreement shall remain valid
- 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 executed and 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 relevant billing 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 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

18 Freedom of Information

- 18.1 The BID company accepts that the Council is obliged to comply with the Freedom of Information Act 2000 and the Code of Practice on the Act, and will assist the Council to comply with these obligations. This includes helping the Council comply with its obligation to respond to a request for information within 20 days of receipt; and providing information to the Council where the Council requests.
- 18.2 The Council is entitled to disclose information unless it believes that the information is exempt under the Act. Exemption may apply where, for example, information is provided in confidence; where the information is a trade secret; or where release is likely to prejudice commercial interests. The Council will decide, acting reasonably, whether information requested under the Act is to be disclosed or not. The Council will where reasonably practicable consult the BID Company and will consider any representations made by it.
- The Council shall not be liable for any loss or other detriment caused by the disclosure of any information in response to a request for information under the Act

Signed by the parties or their duly authorised representatives

Signed by)
duly authorised for and)
on behalf of)
Bridgend County Borough Council) _____

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