

Dated

BID LEVY OPERATING AGREEMENT

Scarborough Borough Council

- and -

Yorkshire Coast BID Ltd

Agreement

THIS DEED is made the **day of** **2019**
BETWEEN

(1) Scarborough Borough Council of Town Hall St Nicholas Street Scarborough North Yorkshire YO11 2HG (“the Council”).

(2) Yorkshire Coast BID Ltd (Co. No: 11820859) of 317, Woodend Creative, The Crescent, Scarborough YO11 2PW (“the BID Company”)

Recitals

- A** Scarborough Borough Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Local Authority and the funding of the BID Arrangements.
- B** The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
- C** 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 Scarborough Borough Council and the *Yorkshire Coast BID Ltd* 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 Scarborough Borough Council will be responsible for collecting the BID Levy;
 - set out the enforcement mechanisms for collection of the BID Levy;
 - set out the procedures for accounting and transference of the BID Levy;
 - provide for the monitoring and review of the collection of the BID Levy;
 - confirm the manner in which Scarborough Borough Council expenses incurred in collecting the BID Levy shall be paid.

1. Statutory Authorities

This Agreement is made pursuant to Part IV Local Government Act 2003 and section 111 Local Government Act 1972 and all other enabling powers.

2 Commencement

This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:

- the *Yorkshire Coast BID Ltd* fails to secure approval of the Proposals, Renewal proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or rebalot;
- the Secretary of State declares void a BID ballot renewal ballot alteration ballot or re-ballot;
- Scarborough Borough Council exercises its veto and there is no successful appeal against the veto;
- the BID Term expires save where the *Yorkshire Coast BID Ltd* secures approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a rebalot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the rebalot provided, in relation to Renewal Proposals and Alteration Proposals the Council consents to such continuation;
- Scarborough Borough Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

3 Setting the BID Levy

As soon as possible upon the Ballot Result Date Scarborough Borough Council shall:

- calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
- confirm in writing to the *Yorkshire Coast BID Ltd* the BID Levy payable by each BID Levy payer

4 The BID Revenue Account

As soon as is reasonably practicable following the Ballot Result Date *Scarborough Borough Council* shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to *Yorkshire Coast BID Ltd* of the same.

As soon as reasonably practicable following the Ballot Result Date the *Yorkshire Coast BID Ltd* shall provide *Scarborough Borough Council* with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which *Scarborough Borough Council* may reasonably require.

Scarborough Borough Council will pay to the BID Company on account for services provided in administering the BID arrangements on behalf of the *Scarborough Borough Council*, each month a sum equal to the monies collected in the month and properly credited to the BID Revenue Account net of cost of collection and refunds. The payment to be made within 10 working days of the month end.

Annually Scarborough Borough Council will pay to the BID Company or receive from it the balance of monies having taken account of the monthly on account payments and balance on the BID Revenue Account at the year end. The final payment to be made by 30 June following the year end.

All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.

The Yorkshire Coast BID Ltd and Scarborough Borough Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within 7 working days of receipt of the monies.

Debits from the BID Revenue Account

The Council shall be entitled to debit directly from the BID Revenue Account:

- the collection charges;
- the enforcement expenses;
- any deductions which in the Council's opinion are Bad and Doubtful debts

5 Collecting the BID Levy

As soon as reasonably practicable following the Ballot Result Date Scarborough Borough Council shall confirm in writing to the Yorkshire Coast BID Ltd the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the anticipated Single Installment Due Date.

Scarborough Borough Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.

Scarborough Borough Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list available to the Yorkshire Coast BID Ltd upon its reasonable request.

Scarborough Borough Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after Scarborough Borough Council receives notice of a change that affects liability for the BID Levy.

Scarborough Borough Council shall use all reasonable endeavors to collect the BID Levy throughout the BID Term.

The Council shall collect the BID Levy in a manner which is consistent with its usual procedures for the collection of non-domestic rates (save that the BID Levy collection shall be on an annual rather than monthly basis).

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

Procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for NNDR and Scarborough Borough Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID

Levy against BID Levy Payers.

7 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy

In the event that Scarborough Borough Council fails to enforce payment of the BID Levy pursuant to Clause 8 the Yorkshire Coast BID Ltd shall be entitled to serve an Enforcement Notice on Scarborough Borough Council requesting that:

- Scarborough Borough Council serve a Reminder Notice or
- In the event that the Scarborough Borough Council has already served a Reminder Notice that the Scarborough Borough Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

If *Scarborough Borough Council* fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of the Enforcement Notice the Yorkshire Coast BID Ltd shall be entitled to serve an Appeal Notice on the Director of Finance of Scarborough Borough Council and such notice shall:

- detail the Sum Unpaid;
- confirm that Scarborough Borough Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the Sum Unpaid; and
- include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the Sum Unpaid such meeting to take place no later than 28 (twenty eight) days from the date of the Appeal Notice.
- The monitoring group to be set up to monitor the collection and enforcement of the BID Levy to consist of both Scarborough Borough Council Business Rates Manager and senior representative from the BID Company.

8 Accounting Procedures and Monitoring

Within 21 working days of the end of the month and every month thereafter (for the duration of BID Term) Scarborough Borough Council shall provide the BID Company with:

- (i) the amount of the BID Levy for each BID Levy Payer;
- (ii) the amount of the BID Levy collected for each BID Levy Payer;
- (iii) details of BID Levy Payers who have not paid the BID Levy;
- (iv) details of Reminder Notices issued;
- (v) details of Liability Orders made or applied for;
- (vi) details of agreement made, if any, between Scarborough Borough Council and BID Levy Payers where it has been agreed that payment of a Demand Notice can be made over a period of 3 (three) months or more from the date of such Demand Notice.

Within one month from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least two such meetings in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the Monitoring Group shall be arranged by the service of written notice by either party.

At each meeting the Monitoring Group shall only:

- review the effectiveness of the collection and enforcement of the BID Levy; and
- if required by either party review and assess information provided by the parties.

Within 3 (three) months after the end of each Financial Year (for the duration of the Bid Term) Scarborough Borough Council shall provide an Annual Report to the Yorkshire Coast BID Ltd

Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the Bid Term) the Yorkshire Coast BID Ltd shall provide a BID Company Report to Scarborough Borough Council

The BID Revenue Account will be subject to the normal internal & external audit arrangements of Scarborough Borough Council. Scarborough Borough Council will make available to the Yorkshire Coast BID Ltd and its appointed auditors such information as requested by the Yorkshire Coast BID Ltd and its appointed auditors and that it is able to do so under legislation and regulation

9 Confidentiality

Both Scarborough Borough Council and the Yorkshire Coast BID Ltd shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements.

10 Notices

Any notice or other written communication to be served or given to or upon any party to this Agreement to the other shall be in writing and shall be sent to the address provided for above or such substitute address in England as may from time to time have been notified by that party upon 7 days written notice

A notice may be served by;

- delivery to the Director of Finance at the address of the Scarborough Borough Council specified above; or
- delivery to the Company Secretary at the address of the Yorkshire Coast BID Ltd specified above;
- registered or recorded delivery post to such addresses;
- electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses.

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.

11 Contracts (Rights Of Third Parties)

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

12 Arbitration

(a) In the event of any dispute arising between the Parties the Authorised Representatives, the Council's appointed BID Company Director and the BID Company's Executive Director shall attempt in good faith to resolve that dispute;

(b) If the Authorised Representatives are for any reason unable to resolve the dispute within 30 days, the dispute will be referred to the Council's Chief Executive and the BID Company's Independent Chair who shall attempt in good faith to resolve it;

(c) if the dispute still remains unresolved after a further period of 30 days then the dispute shall be referred to arbitration

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

- 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;
- 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;
- If the parties are unable to agree within 28 (twenty eight) days 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;

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

- to prosecute any such reference expeditiously; and
- to 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;
- that 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;
- the award shall be final and binding both on the parties and on any persons claiming through or under them.

Signed by

(Scarborough Borough Council)

Date:

(Yorkshire Coast BID Ltd)

Date:

Appendix (to be attached)

A: BID Levy Rules

B: Schedule of Billing & Enforcement

C: Fee Breakdown