

DATED

2017

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY

AND

PENGE BID LIMITED

OPERATING AGREEMENT FOR A BUSINESS IMPROVEMENT DISTRICT IN
PENGE

Contents

1	Definitions
2	Statutory Authorities
3	Commencement
4	Setting the BID Levy
5	BID Revenue Account
6	Payment of the Council's Administrative Expenses
7	Collecting the BID Levy
8	Procedures available to the Council for the enforcing payment of the BID Levy
9	Enforcement mechanisms for the non-collection of the BID Levy by the Council
10	Payment of the BID Levy to the BID Company
11	Accounting Procedures and Monitoring
12	Termination
13	Confidentiality
14	Notices
15	Miscellaneous
16	Exercise of the Council's powers
17	Contracts (Rights of Third Parties)
18	Law and Dispute Resolution
19	Freedom of Information

SCHEDULE 1: BASELINE AGREEMENT

SCHEDULE 2: BID LEVY RULES

THIS DEED is made the _____ day of _____ 2017

BETWEEN

- (1) THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF BROMLEY of Civic Centre, Stockwell Close, Bromley BR1 3UH (the "Council"); and
- (2) **PENGE BID LIMITED** (the "BID Company") registered as company limited by guarantee in England with number [NUMBER] whose registered office is at [ADDRESS]

RECITALS

- A. The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for the imposition, collection, recovery and application of the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area in 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 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 or its agents 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 the transfer 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 HEREBY AGREED:

1. Definitions

Administrative Expenses means costs incurred by the Council and/or its agents in the imposition, administration, collection and recovery of the BID Levy and all reasonable costs incurred by the Council arising out of compliance with its obligations under this agreement and the Regulations during each year of the duration of this agreement.

the Annual Report means a report to be prepared by the Council or its agent which details the following:

- (i) the total amount of the BID Levy collected during the relevant Financial Year;
- (ii) details of the success rates 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
- (v) the Council's proposals for bad or doubtful debts

Bad or Doubtful Debts for the purposes of this agreement means any unpaid BID Levy in respect of which the Council has sought recovery in accordance with clause 8.3 of this agreement and that BID Levy remains unpaid.

the BID has the meaning given in the Regulations that is the Business Improvement District and is that area within which the BID operates as edged red on the plan attached to this Agreement in Schedule 1.

BID Area means the area within which the BID operates as edged red on the plan attached to this Agreement in Appendix 2B

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

BID Business Plan means the Penge BID Business Plan 2018-2023

the BID Company's Report means a report for each Financial Year to be prepared by the BID Company which detail 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 scheme upon which the BID Levy has been expended by the BID Company

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 12.7

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

BID Levy Rules means the rules set out in the BID Proposals, which defines how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy. For the sake of clarity these have been set out in Schedule 3 of this Agreement.

BID Proposals has the same meaning as in the Regulations

BID Revenue Account means the account to be set up in accordance with Regulation 14 of the Regulations

BID Term means 1st April 2018 – 31st March 2023

BID Financial Year means the period from 1 April to 31 March

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

Chargeable Day means any one of the following days

- 1 April 2018
- 1 April 2019
- 1 April 2020
- 1 April 2021
- 1 April 2022

Commencement Date is the date of signing of this Agreement.

Contributors means the BID Levy Payers or other Contributors making voluntary contributions or funds available to the BID Company.

Demand Notice shall have the same meaning given in paragraph 3 of Schedule 4 of the Regulations

District Auditors Costs means the sum charged by an auditor appointed by the Audit Commission or any successor in carrying out an audit of the BID Revenue Account

Enforcement Expenses means the costs which are incurred by the Council in obtaining Liability Orders and Summons and all associated administrative expenses which may be incurred in recovering unpaid BID, including Bailiff charges.

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 visa 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 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.

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

Heredity shall have the same meaning as defined in the Regulations

Heredity Start Date means the date when the amendment to the Valuation List takes effect

Liability Order has the meaning given in the Regulations

Maximum Amount For any particular Financial Year means the amount of BID Levy for which Demand Notices are issued (excluding replacement or amended Demand Notices)

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); the group is to consist of representatives of the Council and the BID Company

NNDR means National Non-Domestic Rates under the Local Government Finance Act 1988

NNDR Payer means the person or organisation who has a liability to pay the non-domestic rate

Proposal means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised by the BID Levy and/or Contributions to achieve those objectives and 'Renewal Proposals' has the same meaning save that 'ballot' shall be replaced with 'renewal ballot' and "Alteration Proposals" has the same meaning save that 'ballot' shall be replaced with 'alteration ballot'

the Levy Payers Meeting means the meeting to be held of all BID Levy Payers pursuant to a Notice issued under clause 12

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).

Revaluation The revaluation of the rateable values of all business and non-domestic property in England and Wales which takes place from time to time.

Single Instalment Due Date means the date by which the BID Levy as set out in the Demand Notice must be paid

Sum(s) Unpaid means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.

Summons means the process issued in the Magistrates' Court upon Complaint by the Council or by the County Court upon application by the Council regarding unpaid BID Levy

Valuation List means a list of all NNDR properties in the local authority area

Valuation Officer means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List

Winding Up means an order pursuant to s125 of the Insolvency Act 1986

Write Off means a decision by the Council that an unpaid BID Levy will not be recovered.

Working Day means any day of the week other than a Saturday, a Sunday or a Bank Holiday

Data Processor shall have the same meaning as set out in the Data Protection Act 1998.

Data Protection Legislation the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Personal Data: shall have the same meaning as set out in the Data Protection Act 1998.

Staff means all (if any) persons employed by the BID to perform its obligations under the agreement together with the BID's servants, agents, suppliers and Sub-Contractors used in the performance of its obligations under the agreement.

2. Statutory Authorities

2.1. This Agreement is made pursuant to Section 2 and Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers.

3. Commencement

3.1. This Agreement shall be effective from the Commencement Date and in any event shall determine and cease to be of any further effect in the event that:

3.1.1. The BID Term expires.

3.1.2. Either party exercises its discretion to terminate the BID Arrangements in exercise of powers under Clause 12.

4. Setting the BID Levy

4.1. As soon as possible after the Commencement of this agreement the Council shall:

(i) calculate the BID Levy in accordance with the Regulations and the BID Levy Rules.

(ii) Confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.

5. The BID Revenue Account

5.1. Pursuant to Clause 47 of the Local Government Act 2003, the Council shall establish a BID Revenue Account by the start of the BID Term.

6. Payments of the Council's Administrative Expenses

6.1. The Council shall invoice the BID Company in advance for the administrative charges as set out below. This will be done on an annual basis at the start of each BID Year. The invoice shall provide the BID Company with a breakdown of the costs incurred including VAT.

6.2. The expected annual administrative charges will include the following:

(i) Cost of collection of BID levy based upon circa 237 bills raised will be up to £5,570.

(ii) Annual accountancy and management fee of up to £600

6.3. These charges will be adjusted on an annual basis at a rate equal to RPIX.

7. Collecting the BID Levy

7.1. The Council shall use all reasonable endeavours to collect the BID Levy on the Chargeable Day and thereafter on an annual basis throughout the BID Term in a manner consistent with its usual

procedures for the collection of non-domestic rates and in accordance with the procedure set out in Schedule 4 of the Regulations.

- 7.2. Pursuant to clause 7.1 the Council shall serve a Demand Notice or Amended Demand Notice 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. It is the responsibility of the Council to ensure that the BID Levy Rules are applied accurately.
- 7.4. The Council shall maintain a list that identifies payment and/or non-payment of the BID Levy that shall be made available to the BID Company at intervals of not less than once a quarter.
- 7.5. The Council shall liaise with the BID Company in carrying out an annual review 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 serve an updated list of BID Levy Payers upon the BID Company. Such changes will be reflected in the next annual calculation of the BID Levy and subsequent Demand Notices.
- 7.6. The BID Company shall be responsible for reviewing any appeals received against the payment of the BID Levy and the application of the BID Levy Rules.
- 7.7. Notwithstanding clauses 7.4 and 7.5 information provided to the BID Company pursuant to clauses 7.4 and 7.5 shall not include the provision of any Personal Data other than that which the Council may provide pursuant to the Regulations

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 full within fourteen days from the Chargeable Day, then (subject to the Exceptions or as may otherwise be agreed by the parties) the Council shall, at no cost to the BID Company, serve up to two reminder notices ('Reminder Notices') on the defaulting BID Levy Payer, each of which shall:
 - (i) identify the sum payable;
 - (ii) provide a further 14 (fourteen) days for payment to be made; and
 - (iii) confirm the Council may thereafter make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).
- 8.2. In the event that the BID Levy is not paid in full within 14 (fourteen) days of the service of the 2nd 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 by the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989, as amended. The Council will bear the cost of any application for summons and will recover these costs from the revenue generated through any such action.

8.3. In the event that the BID Company requests that the Council does not undertake the full range of recovery action against a defaulting BID Levy Payer (as outlined in 8.1 and 8.2) the Council may write off the outstanding Bad or Doubtful Debt. Should any outstanding Enforcement Expenses remain unrecovered due to a request for the cancellation of recovery action by the BID Company, the Council will recover these costs from the BID Company.

8.4. In the event that, after all recovery action has taken place, any portion of the BID Levy is still unrecovered, the remaining Bad or Doubtful Debt may be written off. Any related Enforcement Expenses which remain unrecovered will be chargeable to the BID Company.

8.5. Where payments become due to the Council pursuant to clause 8.3 and 8.4, the Council must provide an account of the proposed charges to the BID Company. The Council will provide a VAT invoice to the BID Company to request payment of these charges.

9. Refunds on the BID Levy

9.1 Refunds will be payable by the Council on the BID Levy in the event of the over payment of the Levy by a BID Levy payer. Examples of reasons for over payment include:

9.1.1 Payment of same Levy bill more than once in error

9.1.2 Where, subsequent to payment, the Valuation Office Agency (VOA) reviews a hereditament and reduces the Rateable Value (RV), and backdates this change to before the billing date. This may result in a reduced BID levy liability or (where new RV is below the BID Levy threshold) a removal of the affected hereditament from BID Levy billing altogether.

9.1.3 Were hereditaments within the BID are split or merged prior to the chargeable day, and one or more of the properties are removed from the ratings list, but the Levy bill related to these removed properties has already been paid.

9.2. In the event that refunds become due to a Levy Payer on the basis of the reason set out in 9.1 these shall be payable only upon receipt of a written request from the Levy Payer, or their agents.

9.3. The amounts paid out during financial years 1 to 4 will be deducted from the BID Levy Account – and the payments made to the BID Company will be net of these refunds.

9.4. In final year of the BID Term, the Council will retain up to £5,000 from the BID Revenue Account to be held against the possible need to pay levy refunds after the end of the BID term. This will be paid to the BID Company upon completion of a successful renewal ballot.

10. Payment of the BID Levy to the BID Company

10.1. The Council shall pay to the BID Company in accordance with the Regulations:

- i. For the first three quarters in each BID Year (starting 1 April, 1 July and 1 Oct) 25% of the invoiced debt less any repayments to BID Levy Payers under clause 9 of this agreement.
- ii. On 1st January, an interim final payment of further balance collected less any repayments to BID Levy Payers under clause 9 of this agreement.
- iii. By 31st March a final payment of balance collected less any repayments to BID Levy Payers under clause 9 of this agreement.
- iv. At the end of the 2nd year of the BID Term, the Council will make known to the BID Company the number of accounts and amount of Levy still in arrears from the 1st year of the BID Term, and will request agreement of the BID Company for write off of all of these aged debts (except where ongoing discretionary payment arrangements are in place). Where the BID Company request further reconciliation for any of the debts incurred during this year, the Council reserves the right to levy an administration charge to cover staffing which may be required to administer these aged debts during the 3rd and subsequent years. The same procedure will be in place at the end of the 3rd year (in respect of the 2nd year accounts), at the end of the 4th year (in respect of the 3rd year accounts) and so on until the final year of the BID term. In each case, where the BID requests continued chasing and administration of aged debts, the Council will estimate the likely additional staff time required and levy a separate administration charge on the BID Company (the amount to be agreed between the parties).

The following worked example seeks to clarify this clause:

- Assuming the start date of the BID term is 1 April 2018, at the end of the financial year 2019/20 (year 2) the Council will reconcile all the BID monies from bills related to the financial

years 2019/20 and 2020/21 (net of refunds). However, unless requested to by the BID Company, arrears outstanding on bills raised for the 2018/19 financial year will no longer be pursued or reconciled during 2020/21 (year 3) or subsequent years.

- 10.2. The BID Company shall issue to the Council a VAT invoice for the payment of the BID Levy income upon advice from the Council of the amount due.
- 10.3. The BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically
- 10.4. In the event that a BID Levy Payer is entitled to a repayment of a BID Levy pursuant to paragraph 8(4) of Schedule 4 of the Regulations and in the event that the Council has paid such BID Levy to the BID Company including all of the contingency relating to that BID Levy the Council shall request such repayment sum from the BID Company and the BID Company shall pay the repayment sum to the Council by way of reduction in the quarterly payments, as scheduled in 10.1, and the Council shall thereafter repay the repayment sum to the BID Levy Payer.
- 10.5. The BID Company may only spend the BID Levy in accordance with the BID Proposals; except that if the BID is varied then from the date of the variation takes effect the BID Company may only spend the BID Levy in accordance with the varied BID Proposals.
- 10.6. In the event of an overpayment by the Council to the BID Company, the Council will subtract the owed amount from the next scheduled payment of the BID Levy. In the event that the overpayment falls due after the Council has paid the last quarterly payment within the BID Term, the BID Company shall reimburse the Council forthwith unless the amount is less than £1,000.

11. Accounting Procedures and Monitoring

- 11.1. In addition to the information outlined in clauses 7.4 and 7.5, every quarter during the BID Term, the Council shall provide the BID Company with a breakdown of:
 - (i) the amount of the BID Levy for each individual BID Levy Payer
 - (ii) the BID Levy collected in relation to each BID Levy Payer
 - (iii) details, together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during the course of that month,

PROVIDED THAT this clause shall not apply to the provision of any Personal Data other than that which the Council may provide pursuant to the Regulations

- 11.2. The BID Company shall request information from the Council that it considers relevant to their business and the Council shall consider disclosure and shall not unreasonably withhold such information.
- 11.3. Upon the expiry of the sixth month of the BID Term and every 6 (six) months thereafter (for the duration of the BID Term) the BID Company shall provide the Council in respect of those 6 (six) month periods with:
 - (i) the amount received by the BID Company from Contributors and BID Levy Payers;
 - (ii) the total expenditure of the BID Company.
- 11.4. Within 1 (one) month from the start of the BID Term, the parties shall set up the Monitoring Group.
- 11.5. The Monitoring Group shall meet no less than quarterly in any one BID Year.
- 11.6. At each meeting, the Monitoring Group shall:
 - (i) Review the effectiveness of the collection and enforcement of the BID Levy; and
 - (ii) review and assess the information provided by the parties regarding the progress being made in achieving the aims set out in the BID Business Plan.
- 11.7. 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
- 11.8. The BID Company shall provide the BID Company Report to the Council two weeks prior to the Annual General Meeting of the BID Directors and Members.
- 11.9. The Council will provide at least one, and no more than two, representatives to the Board of the BID Company. The Council representatives will be non-voting advisory members of the Board.
- 11.10. Within 60 days of a successful ballot to establish the BID, the BID Company and the Council will enter into a Service Level Agreement which will define in more detail matters related to collection and enforcement of the levy and any other details related to the operation of the BID including staffing and accommodation arrangements, as required.

12. Termination

12.1. In the event that either Party is of the opinion:

- (i) they are unable to due to a cause beyond their control to provide the works or services secured as part of the BID arrangements: or
- (ii) they believe that there are insufficient finances available to the BID Company to meet its liabilities for the purposes of any BID Arrangements; or
- (iii) the works or services under the BID Arrangements are no longer required;

then they shall serve a Levy Payers Meeting Notice on the other Party and the BID Levy Payers and the meeting shall take place no later than 14 days after service of that Notice.

12.2. The Levy Payers Meeting Notice shall contain the agenda for the meeting which shall be limited to the following items:

- (i) a review by all present of the inadequacy of works or services that can be done, why they cannot be done and whether those works and services are so fundamental that the BID cannot continue; and
- (ii) whether other works or services will be an acceptable alternative to the BID Company; and
- (iii) the financial position and whether there are sufficient funds to continue as well as whether additional funds can be raised; and
- (iv) a time scale (if appropriate) within which these issues can be resolved.

12.3. In the event that those present at the meeting cannot resolve the issue, then the Party calling the meeting shall table a motion that the BID be wound up no sooner than 28 days after such a resolution is passed by a simple majority of those present and entitled to vote.

12.4 In the event of termination of the BID Arrangements the Council shall forthwith review whether there is any credit standing to the account of the BID Revenue Account. If there is sufficient credit to pay to each of the BID Levy Payers not less than £5 (after deduction of any outstanding administrative costs to include the costs of winding up), the Council shall:

- (i) calculate the amount to be refunded to each BID Levy Payer, and
- (ii) ensure that the amount to be refunded is calculated by reference to the contribution of that Levy Payer for the last full chargeable period, and
- (iii) arrange for the amount to be set against outstanding liabilities of that BID Levy Payer (if any), and

- (iv) refund the net amount to the BID Levy Payer.

12.5 Upon termination of the BID Arrangements for any reason, the BID Company shall forthwith notify the Council of such termination in accordance with Regulation 18(5) and the Council will notify the BID Levy Payers in accordance with Regulation 18(6). The Council will simultaneously advise the BID Levy Payers as to the repayment of any part of the BID Levy in accordance with clause 12.4

13. Confidentiality

13.1 Subject to Clause 19 below the parties shall 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 any 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.

14. Notices

14.1 Any Notice or other written communication to be served or given to or upon any party to this Agreement or 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 Director of Environment & Community Services, London Borough of Bromley at the address specified above
- (ii) delivery to the Directors at the BID Company's address specified above
- (iii) first class post
- (iv) Electronic Communication (provided that it is in legible form and is capable of being used for subsequent reference) to such addresses which shall require a confirmed read receipt, save that no court proceedings arising from this contract may be served electronically.

14.3 Any notice served shall be deemed to have been validly served or given at the time any ordinary business would have received such post.

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 heading 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 signed and delivered.
- 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 a 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

- 16.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights, discretions, powers, duties and obligations of the Council under all statutes, bye-laws, statutory instruments, orders and regulations in the exercise of its functions as a local authority.

17. Contracts (Rights of Third Parties)

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

18. Law and Dispute Resolution

- 18.1. The Agreement is made under and shall be construed by reference to English Law.
- 18.2. Should any dispute arise between the Parties, it shall first be referred to a Director of the Council and to the Directors of the BID and they shall use their best endeavours to resolve the issue by negotiation.
- 18.3. If they are unable to resolve the dispute within 28 days of the referral, then the Parties shall appoint a Mediator. If the Parties cannot agree on the identity of as Mediator, then they shall apply to the Centre for Effective Dispute Resolution ("CEDR") to make such an appointment.
- 18.4. Within 14 days of the appointment of a Mediator, the Parties representatives shall meet together with the Mediator to agree a programme for the conduct of the mediation, including (but not limited

to) a timetable, exchange of documents and the structure for meetings as well as the costs of the mediation.

- 18.5. All proceedings of the mediation shall be held in strict confidence and shall be Without Prejudice to any future proceedings that may become necessary.
- 18.6. Nothing in this mediation procedure shall prevent either Party from seeking from a Court of competent jurisdiction an interim order to the other Party either preventing or compelling the commission of some act.
- 18.7. If the Parties reach an agreed resolution of the dispute in the mediation, that agreement shall be reduced to writing, signed by representatives of both Parties and shall be binding on both Parties.
- 18.8. If the mediation fails to achieve an agreed resolution, then the Parties hereby irrevocably agree that the dispute shall be referred to the English Courts.
- 18.9. The performance of all services shall continue during the mediation process

19. Freedom of Information

- 19.1 The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with its disclosure requirements and the Council shall notify the BID Company of any such requests.
- 19.2 The Council may determine in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of FOIA or is to be disclosed in response to a request for information, and for the avoidance of doubt where the Council has received a request under the FOIA and it has notified the BID Company of the request, in no event shall the BID Company respond directly to a request for information connected with such a request to the Council unless expressly authorised to do so by the Council.
- 19.3 The BID Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA, be obliged under FOIA to disclose information following consultation with the BID Company and having taken its views into account.
- 19.4 The BID Company shall ensure that all information produced in the course of or relating to this Agreement is retained for disclosure and

shall permit the Council to inspect such records as requested from time to time.

- 19.5 The BID Company acknowledges that any lists of confidential information provided by it are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with this clause.
- 19.6 The obligations set out in clause 19 of this Agreement shall survive the termination or lapse of the BID Arrangements

20. Data Protection

- 20.1 The BID shall (and shall procure that any of its Staff involved in the provision of the agreement) comply with any notification requirements under the Data Protection Legislation and both parties will duly observe all their obligations under the Data Protection Legislation, which arise in connection with this Agreement.
- 20.2 Notwithstanding the general obligation in clause 20.1, where the BID is processing Personal Data as a Data Processor for the Council, the BID shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and
- (a) provide the Council with such information as the Council may reasonably require to satisfy itself that the BID is complying with its obligations under the Data Protection Legislation;
 - (b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to clause 20.2; and
 - (c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Data Protection Legislation.
- 20.3 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

21 BID Baseline Agreement

- 21.1 The Council agrees to carry out the services contained in the BID Baseline Agreement, set out in Schedule 2.

In witness whereof this Agreement has been executed by the parties hereto as a Deed and delivered on the day and year first before written

Executed as a Deed by affixing the Common Seal of The Mayor and Burgesses of the London Borough of Bromley in the presence of:

Mayor/Councillor

Director of Corporate Services/Senior Solicitor

Executed as a Deed by **Penge BID Limited**
In the presence of

Director

Director/Company Secretary

SCHEDULE 1: BASELINE AGREEMENT

The London Borough of Bromley delivers the following services within the BID area where the BID intends to provide additional services.

The London Borough of Bromley will endeavour to continue to deliver the following services within the BID area. Where any of the listed services are planned to be reduced or discontinued, the Council agrees not to reduce provision of its services disproportionately, compared to any changes made elsewhere within the Borough for the duration of the BID term.

Baseline activity: Highways Management (High Street Area)
Responsible authority: London Borough of Bromley
Head of Service: Garry Warner

<p>Current level of service provided including aim of service, and frequency of service provision</p>	<ul style="list-style-type: none"> • Maintain public highway areas to remain fit for purpose. This includes statutory highway safety inspections, condition surveys, recording of defects and complete repairs to maintain public safety, including emergency repairs within and outside normal working hours. • Street lighting maintenance. • Highways and street lighting term contracts are available as required both for reactive and planned maintenance. • Technical surveys of all lamp columns to assess structural integrity and electrical function. Night surveys to assess defective lighting. • Routine maintenance of signs, lines and highway drainage assets. • Enabling and managing parking provision and control including taxi ranks, disabled parking. • Winter maintenance operations include treatment to prevent ice from forming and clearance of snow from pre-defined priority routes
<p>Specification</p>	<ul style="list-style-type: none"> • Defect repairs undertaken within investigatory levels of the Highways Code of Practice. • Frequency of highway safety inspections align with Highways Code of Practice. • Management of Public Utility Street Works within the framework of the Traffic Management Act 2004 and the New Roads and Street Works Act.
<p>Performance Measure</p>	<p>Service measured by:</p> <ul style="list-style-type: none"> • Regular inspections, compliance with completion times of works, quality of repairs • Response to customer enquiries • Contractors' key performance indicators.
<p>Non-compliance procedure</p>	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
<p>Future level of service provision</p>	<ul style="list-style-type: none"> • Maintenance of the highways structure and fabric as well as street furniture to existing standards. • Current service provision for reactive repairs provided through a contract valid until March 2019.
<p>Other relevant information</p>	<p>There are no plans to reduce or increase current level of service.</p>

Baseline Activity: Street Cleansing (High Street Area)
Responsible Authority: London Borough of Bromley
Responsible Officer: John Bosley

<p>Current level of service provided including aim of service, and frequency of service provision</p>	<ul style="list-style-type: none"> • Routine schedules of daily-street cleaning provided between normal working hours 06:00 and 22:00 hours, utilising both mechanical and manual cleaning operations. • Litterbin emptying once or more per day, and washed (internal and external) three times per year. • Graffiti removal service including proactive and reactive removal from street furniture and private buildings that are on, or are within 50metres of, a street boundary regardless of whether it is on property that is in public or private ownership. • Provision of an urgent or emergency response service for cleaning related matters, during the normally permitted working hours as stated. • Tasks which constitute provision of additional plant and labour, during the normally permitted working hours, in support of voluntary groups and other organisations engaged in “one-off clean-ups” for environmental or charitable purposes. • Street works co-ordination and approval for maintenance activities, and licencing of temporary structures on highways including, scaffolding, skips, banners and other structures. • Manage rising bollards for controlling access to and from the High Street. • Signage preventing cycling in the pedestrianised area.
<p>Specification</p>	<ul style="list-style-type: none"> • The minimum quality standard of cleanliness which the Contractor shall deliver through each routine scheduled activity shall be commensurate with Grade A as defined in the Code of Practice on Litter & Refuse 2006 (EPA 1990). Any fly-tipping, fly-posting and materials on the highway shall be removed as part of the scheduled activity for cleansing of the street. The contractor shall maintain the standard of cleanliness from immediately after completion of the first scheduled daily cleanse until 22:00 hours, on each day of the week including Public Holidays (excl. Christmas Day). Completion of the first scheduled cleanse shall be 8:00 hours. • The standard of cleanliness shall not be allowed to fall to Grade B (as defined in the CoP on Litter & Refuse) for more than two hours thereafter before restoring to Grade A. If the cleanliness falls to Grade C or below, at any time during normal working hours, the area shall be restored to Grade A within one hour. • Removal of unwanted vegetation. • Standard of graffiti removal set as 95% completion of all reactive works within two working days. Racist or offensive graffiti shall be removed within two hours or any period instructed between two hours and 24 hours. • Removing debris following road accidents including the provision of sand and or oil dispersants as required to ensure the cleanliness and safety of the affected area; • Removing all fly-posting including commercial advertising signs and fixing materials from any street furniture.
<p>Performance Measures</p>	<p>Service measured by:</p> <ul style="list-style-type: none"> • Regular inspections, compliance with completion times of works, quality of cleaning. • Response to customer enquiries • Contractors’ key performance indicators.

Non-Compliance procedures	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
Future level of service provision	<ul style="list-style-type: none"> • Cleansing standards of the highways as well as street furniture to existing standards. • Street washing would be an enhanced additional service requirement. • Current service provision provided through a contract valid until March 2019.
Other relevant information	There are no plans to reduce or increase current level of service.

Baseline Activity: Regulatory Services
Responsible Authority: London Borough of Bromley
Responsible Officer: Paul Lehane Head of Food, Safety & Licensing
 Robert Vale Head of Trading Standards

Service provided, number of staff & equipment	<p>Regulatory Services</p> <p>The Council's Public Protection Division offer a statutory minimum service focusing on enforcement and significant complaint investigation with limited provision of support and advice to the local business community. These services are offered across the borough and include the following:</p> <ul style="list-style-type: none"> • Licensing • Food Safety , Food Standards & Infectious disease • Health & Safety • Trading Standards • Environmental Protection <p>Officers undertake work in accordance with risk based inspection programmes as well as using complaint and other information to prioritise service delivery in an increasingly intelligence-led approach, which targets resources to the highest risk activities. Advice services for consumers in respect of Trading Standards matters is provided via a national call centre operated by the Citizens Advice Bureau.</p> <p>Officers work extensively with partners including the Police, Community Safety Teams and other internal and external partners to collectively tackle issues affecting crime and disorder, anti-social behaviour and other matters relating to the overall aims of the Council</p> <p>The Council has published policies relating to the licensing of alcohol/regulated entertainment and late night refreshment (Licensing Act 2003) and Gambling premises (Gambling Act 2005).</p>
Specification	<ul style="list-style-type: none"> • Statutory and other nationally agreed frameworks for risk based inspection programmes • Regulatory Services service delivery in accordance within statutory framework • Relevant involvement in Local / Regional / National intelligence led project work • Investigations undertaken in accordance with the published Enforcement Policy

Future level of service provision	<ul style="list-style-type: none"> • Service provision will continue to be undertaken within the statutory framework and other nationally agreed frameworks • Local and national regulatory priorities will dictate priority service delivery
Performance Measures	<ul style="list-style-type: none"> • Compliance with risk based inspection programmes • Response to customer complaints / requests for service • Complaint investigations compliance with Enforcement Policy
Non Compliance procedures	<ul style="list-style-type: none"> • Regular performance monitoring • Flexible approach to targeting resources to priority work areas
Boundary area	<ul style="list-style-type: none"> • London Borough of Bromley

Baseline Activity: CCTV
Responsible Authority: London Borough of Bromley
Responsible Officer: William Ogg, CCTV Manager

Service provided, number of staff & equipment	<ul style="list-style-type: none"> • 12 fully functioning digital CCTV cameras covering Penge Town Centre BID area (9 cameras in High Street, 3 at Penge East Station), operational 24 hours a day 7 days a week. The Council may add, remove or reposition cameras within the BID area at its own discretion. • 2 full time staff monitoring all the CCTV cameras in the borough 24 hours a day, seven days a week. Plus one CCTV Supervisor, who is also a trained operator, working 8am – 5pm 5 days a week. • CCTV staff also monitor the Town Centre Shop Safe Radios and the Police Radio.
Specification	<ul style="list-style-type: none"> • The cameras are used for monitoring and recording incidents of crime and disorder as well as for moving traffic and parking offences. • Governed and protected by the Data Protection Act 1998 and the Operating Guidelines issued by the Information Commissioner. Recorded images can only be released to those legally entitled to them. All recordings are kept for a period of 31 days. Documentation detailing CCTV recorded incidents is archived for a period of 3 years.
Future level of service provision	<ul style="list-style-type: none"> • Current service provision provided through a contract valid until 31 March 2019.
Performance Measures	<p>Service measured by:</p> <ul style="list-style-type: none"> • Contractors' key performance indicators.

Non Compliance procedures	<ul style="list-style-type: none"> • Regular performance monitoring • Managed through Contract meetings
Boundary area	<ul style="list-style-type: none"> • London Borough of Bromley

Baseline Activity: **Grounds Maintenance**
Responsible Authority: **London Borough of Bromley**
Responsible Officer: **Robert Schembri**

Current level of service provided including aim of service, and frequency of service provision	<ul style="list-style-type: none"> • Grounds Maintenance Routine schedules of grass cutting and floral display maintenance working hours 07:00 and 4pm.. • <u>Hanging baskets</u> Penge High Street Summer provision - 36 hanging baskets Winter provision – 36 hanging baskets Maple Road Summer provision – 16 hanging baskets Winter provision – 16 hanging baskets
Specification	<ul style="list-style-type: none"> • Hanging basket to be watered to ensure that the plants are in good conditions • Maintain parks & greenspace areas within the contract specification including grass cutting, floral bedding areas, shrub areas, bin emptying, litter picking and collection and path cleaning
Performance Measures	Service measured by: <ul style="list-style-type: none"> • Regular inspections to monitor quality. • Response to customer enquiries • Contractors' key performance indicators.
Non-Compliance procedures	<ul style="list-style-type: none"> • Contractor may be required to re-do work. • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
Future level of service provision	<ul style="list-style-type: none"> • Current service provision provided through a contract valid until 31 March 2019.

Baseline activity: **Parking Enforcement and Car Park Management**
Responsible authority: **London Borough of Bromley**
Head of Service: **Ben Stephens**

Current level of service provided including aim of service, and frequency of service provision	<ul style="list-style-type: none"> • To achieve compliance of parking restrictions by the enforcement of on street parking restrictions and off street council car parks. • Managing bay suspensions and parking dispensations, including processing applications and erecting signs. • Car park maintenance, including cleaning, repairing pot holes, height barriers, safety barriers. • Salting, gritting and snow clearance in council car parks. • Management and repair of pay and display machines.
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	<ul style="list-style-type: none"> • Processing parking permits and visitors voucher applications. • Cashless parking provision. • Enforcement of Blue Badge misuse.
Specification	<ul style="list-style-type: none"> • Enforcement carried out within the framework of the Traffic Management Act 2004 and associated legislation. • Cleaning of car parks as defined in the Code of Practice on Litter and Refuse issued under section 89(7) of the Environmental Protection Act 1990.
Performance Measure	<ul style="list-style-type: none"> • Various key performance indicators on contracted levels of performance.
Non-compliance procedure	<ul style="list-style-type: none"> • Corrective actions/training with contractors/staff. • Financial penalties issued to the contractor. • Managed through Contract Meetings.
Future level of service provision	<ul style="list-style-type: none"> • There are no plans to reduce or increase current level of service. • Current service provision for contract is valid until April 2027.
Other relevant information	New parking contract was awarded to APCOA Ltd and started on the 3 rd April 2017

Baseline Activity: Planning
Responsible Authority: London Borough of Bromley
Responsible Officer: Jim Kehoe

Current level of service provided including aim of service, and frequency of service provision	<ul style="list-style-type: none"> • Planning applications • Planning Enforcement • Building Control Applications • Long term development plans and policies
Specification	<ul style="list-style-type: none"> • Statutory and other nationally agreed frameworks for service provision • Regulatory Services delivery in accordance within statutory framework • Investigations undertaken in accordance with the published Enforcement Policy • Enforcement carried out within the framework of the Planning Acts and associated legislation.
Performance Measures	Service measured by: <ul style="list-style-type: none"> • National targets • Response to customer complaints / requests for service • Complaint investigations consistent with Planning Enforcement Policy
Non-Compliance procedures	<ul style="list-style-type: none"> • Regular performance monitoring. • Corrective actions as necessary
Future level of service provision	<ul style="list-style-type: none"> • Service provision will continue to be undertaken within the statutory framework and other nationally agreed frameworks

SCHEDULE 2: BID LEVY RULES

In developing the rules that will apply to the BID, consideration has been given to 'The Industry Criteria and Guidance Notes for BIDs' published by British BIDs jointly for the British Retail Consortium, the Inter Banking Rating Forum, the British Council of Shopping Centres and the Federation of Small Businesses.

The Ballot

1. The Electoral Reform Society (ERS), on behalf of The London Borough of Bromley, will send those responsible for properties or hereditaments to be subject to the BID a ballot paper prior to Thursday 1st February 2018
2. Each property or hereditament subject to the BID will be entitled to one vote in respect of this BID proposal in a 28 day postal ballot which will commence on Thursday 1st February 2018, and close at 5pm on Wednesday 28th February 2018. Ballot papers received after 5pm on Wednesday 28th February 2018 will not be counted. The result of the ballot is due to be announced on the following day.
3. In order for the proposal to be successful at ballot the result will need to meet, as a minimum, two independent criteria which are: (a) of those ballots returned by the close, those voting in favour of the proposal must exceed those voting against it, and (b) of those ballot papers returned by the close, the total rateable value of those properties or hereditaments which vote in favour, must exceed the total of those voting against.
4. If successful at ballot, the BID will aim for an operational start April/May 2018 and will continue for a period of 5 years to March/April 2023.

The Levy

1. The levy rate to be paid by each property or hereditament is to be calculated as 2% of its rateable value as at the 'chargeable day' (notionally 1st April each year).
2. Only properties or hereditaments with a rateable value of £5,000 or more will be eligible for payment of the levy.
3. The number of properties or hereditaments liable for the levy is approximately 236.
4. Each year the levy rate will be increased by the fixed rate of inflation of 2% per annum.
5. The levy will be charged annually in advance for each chargeable period to be April to March each year, starting in 2018. No refunds will be made.
6. The owners of untenanted properties or hereditaments will be liable for payment of the levy. This includes listed buildings.
7. Occupiers within covered shopping centres (in this case The Blenheim Shopping Centre) that are subject to a service charge will pay 80% of the levy that would otherwise apply.

8. Charities that are not retail or leisure trading organisations will pay 80% of the levy.
9. London Borough of Bromley will be responsible for collection of the levy. The collection charge will be up to £5,570 this equates to 4.5% of anticipated billed levy and £23.50 per hereditament.

Accountability and Transparency

1. The Company to operate the BID (**Penge BID Ltd**) has already been established as part of the development stages. This is a not-for-profit Company and its Directors (the Board) are from the private sector.
2. In addition, a working group, primarily made up of potential levy payers and council representatives, has been formed to assist on all aspects of the development of the BID. It is envisaged that this working group will become the BID Advisory Group to assist in the effective delivery of all proposed services.
3. The Board shall continue to appoint a Chair annually and the Chair will also act as Chair of the Advisory Group.
4. The Board will have responsibility for governance matters such as financial arrangements, contractual obligations, human resources, standards and compliance. The Board will report activities and decisions to the Advisory Group prior to each of its meetings.
5. The Advisory Group will advise on operational and service delivery issues, oversee performance measurement, and more generally act as the primary consultative and advisory body on BID services. It will meet quarterly. It will be made up of representatives of levy paying businesses and will be elected periodically. Additional members may be co-opted in a non-voting capacity, as required. The nominated representatives of The London Borough of Bromley will not be subject to re-election processes.
6. Provided that the BID is meeting its overall objectives and subject to full consultation with the Advisory Group, it shall have the ability to vary service delivery and expenditure allocation according to the changing demands of levy payers. However, any change to the BID boundary or to the headline levy rate would require a formal alteration ballot.
7. The BID will file annual accounts compiled by independent accountants with Companies House. The accounts will be available to all levy payers. An annual report on activities, including finances, will be published. An annual meeting for levy payers will be held.
8. An Operating Agreement, which includes the Council's baseline service commitments, has been agreed with Bromley Borough Council. A copy can be found at <http://www.pengebid.com>.
9. Notification of the intention to hold a ballot was sent to the Secretary of State on 23rd October 2017.

Finances

1. A cautious approach has been adopted to budgeting for the BID term, based upon national averages.
2. A levy collection rate of 97% has been assumed and this is in line with national trends.
3. The average annual levy available to be spent by the BID for the term is £122,704.
4. A contingency provision on expenditure, together with the availability of reserves, provides for an anticipated surplus of £75,672 by the end of the renewed term. This equates to 2.5% of expenditure.
5. Operating costs of the BID are estimated as 19% of total expenditure.

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