

Dated

May 2022

YORK BID COMPANY LIMITED (1)

AND

THE COUNCIL OF THE CITY OF YORK (2)

**MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF SERVICES WITHIN THE
YORK BUSINESS IMPROVEMENT DISTRICT**

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THIS AGREEMENT is made the day of 2022

BETWEEN:

- (1) **THE YORK BID COMPANY LIMITED** (No.09937609) whose registered office is situated at The Red House, 1, Duncombe Place, York, YO1 7DT ("**the BID Company**") and,
- (2) **THE COUNCIL OF THE CITY OF YORK** of West Offices, Station Rise, York YO1 6GA ("**the Council**")

BACKGROUND

- (A) The BID Company has been established as a joint undertaking of the business sector and Council representatives to act together as a company limited by guarantee to deliver the objectives of the BID Proposals (Schedule 2) and to improve the economic, social and environmental well-being of the BID Area (as set out in Schedule 3).
- (B) The Council currently provides or procures Baseline Services (as set out in Schedule 1), and Statutory Services within the BID Area
- (C) It is the intention of the Parties that, the Council will use all reasonable endeavours to continue to provide these Services, subject to the provisions relating to the terms of this Agreement.
- (D) The Council currently funds the provision of these Services from within its normal budget and will use all reasonable endeavours to continue doing so for the whole of the Term. The Council may consider contributing further additional funds to the BID Company for the purpose of achieving the objectives of the BID Arrangements on an ad hoc basis to be agreed by the parties.
- (E) A BID ballot was held on 18th March 2021, where non-domestic ratepayers in the BID Area voted to approve the BID proposal for the period 2021-2026.
- (F) The parties to this Agreement have been operating and conducting themselves in accordance with this Agreement from the Effective Date

MEMORANDUM OF UNDERSTANDING

The Parties share the following common beliefs about the BID Area. The Parties believe that;

- A Business Improvement District is a partnership between the Council and the local business community that will develop projects and services that will benefit the trading environment within the boundary of a clearly defined commercial area as outlined in the BID prospectus.

This Agreement sets out the framework within which these shared beliefs will be achieved

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement the following words and expressions shall, except where the context otherwise requires, be given the following meanings:

Agreement means this agreement and any Schedules or Appendices thereto which are to be read and construed and given the same force as if contained in the body of the agreement.

Baseline Services means the services currently provided or procured by the Council and detailed in Schedule 1.

BID means Business Improvement District.

BID Area means the geographical area identified by the BID Champions Group in the BID prospectus and Business Plan.

BID Arrangements means the detailed proposals for the BID as set out in the BID Proposals prepared by the BID Champions Group submitted to, and approved by a ballot of non-domestic ratepayers in the BID Area.

BID Company Means the Company Limited by guarantee that will be formed after a successful BID ballot in order to facilitate the BID arrangements.

BID Levy means the levy paid by non-domestic ratepayers under the BID Arrangements

BID Performance Indicators means the performance indicators detailing the performance of the BID Company as agreed in writing between the BID Company and the Council from time to time.

BID Proposals means the detailed proposals for the BID in the BID Area as submitted and approved in a ballot of non-domestic ratepayers in the BID Area as set out in Schedule 2.

BID Regulations means the Business Improvement Districts (England) Regulations 2004 (as may be amended from time to time).

Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, goods, services, developments, trade secrets, intellectual property rights, know-how, personnel, customers and suppliers of either Party, all personal data and sensitive personal data within the meaning of the Data Protection Legislation.

Consent sites means highways, public realm and public open spaces in the BID area.

Controller shall have the same meaning set out within the Data Protection Legislation.

Council means the Council of the City of Council.

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (**DPA 2018**) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended, and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

Effective Date means 1st April 2021 or the agreed “live” date whichever is the later of the two but no later than the Operating Date in the Operating Agreement.

Environmental Information Regulations (EIR) means the Environmental Information Regulations 2004 and any related provisions.

Exit Strategy means the strategy agreed by the Parties for securing transition from the BID Arrangements to alternative service delivery arrangements.

Information has the meaning given under section 84 of the FOIA.

Freedom of Information Act (FOIA) means the Freedom of Information Act 2000 and any subordinate legislation made under the act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

Funding means the provision of funding by the Council to the BID Company under the Funding Document or such other financial contributions as shall be made at the Council's absolute discretion, with no obligation to provide any such additional funding.

Law means the Laws of England and Wales and the European Union and any other Laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services or with which the Parties must comply.

Parties means the Council and the BID Company and "**Party**" shall mean either the Council or the BID Company depending on the context.

Personal Data shall have the same meaning set out within the Data Protection Legislation.

Process and Processing for the purposes of Clause 21 of this Agreement shall have the same meaning set out within the Data Protection Legislation.

Processor shall have the same meaning set out within the Data Protection Legislation.

New Services means any new or additional services not included in this Agreement.

Operating Agreement means the Operating Agreement contained in Schedule 5.

Request for Information means any request for information as defined and required by the EIR and / or FOIA.

Services means, collectively or individually as the case may be, the Baseline Services, and Statutory Services.

Statutory Services means the services the Council undertakes within the BID Area pursuant to its statutory obligations.

Support Services means the services set out in Schedule 5 whereby the Council agrees to provide the specified services to the BID Company for the purposes of enabling the BID Arrangements to be carried out.

Term means the period of five (5) years commencing on the Operational Date in the Operating Agreement, unless terminated sooner or extended in accordance with the provisions of this Agreement.

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

Variation Procedure means the variation procedure set out in Clause 10.

Working Day means any day on which the Council's principal offices at West Offices, Station Rise, York YO1 6GA are open to the public for business.

2. AGREEMENT

2.1 This Agreement sets out the framework by which the Parties propose to deliver the BID Arrangements.

3. TERM

3.1 This Agreement shall be deemed to have commenced on the Effective Date and unless otherwise terminated or extended in accordance with the provisions of this Agreement shall continue for the Term.

3.2 The Parties may at any time throughout the duration of this Agreement agree to extend this Agreement once only, for a period not exceeding five (5) years subject only to approval by a valid ballot in accordance with the BID Regulations or any other such legislative regulation prevailing at the time.

4. SERVICES

4.1 Baseline Services

4.1.1 Throughout the Term the Council will use all reasonable endeavours to continue to provide and/or procure the existing Baseline Services in the BID Area so as to facilitate the BID Arrangements.

4.1.2 The Baseline Services shall be reviewed annually by the Council as part of its budget process. In the event of any change to the services provided the Council will give the BID Company three (3) months prior written notice.

4.2 The Statutory Services

4.2.1 The Council is subject to a variety of statutory obligations and duties imposed by various legislative provisions.

4.2.2 The BID Company recognises that the Council is required to discharge its statutory obligations in respect of the Statutory Services in accordance with the appropriate legislative provisions and guidance and the Law in general

and that this may give rise to situations that are not always compatible with the objectives of the Parties under this Agreement.

4.2.3 Without prejudice to its statutory obligations the Council will to the extent permitted by Law work proactively with the BID Company and use all reasonable endeavours to enable the achievement of the objectives of the BID Arrangements.

4.3 **New Services**

4.3.1 The Parties may agree in writing at any time that New Services may be provided by the Council to the BID Company for the purpose of achieving the BID Arrangements.

4.3.2 New Services shall be agreed using the Variation Procedure and upon commencement shall be subject to all terms of this Agreement.

5. **CONSENT SITES**

5.1 The use of the Consent Sites for any BID activity must be approved by the Council.

5.2 The BID Company will be subject to the normal application process for the usage of public realm.

5.3 The Council retains the right to utilise the Consent Sites as they see fit for commercial promotions and events.

6. **PERSONNEL**

6.1 Each Party is responsible for its own personnel, employees, agents, servants, and subcontractors when on the other Party's premises.

6.2 Each Party shall ensure that its personnel, employees, agents, servants, and subcontractors comply with the provisions of the Health and Safety at Work etc. Act 1974 (as amended), and any subsequent legislation and any security procedures whilst on the other Party's premises.

7. **FINANCIAL REGULATIONS AND PROCUREMENT**

7.1 The BID Company undertakes to adopt and apply financial regulations and procurement procedures that are compatible with the Council's Financial Regulations and Contracts Procedure Rules (as may be amended from time to

time), so as to clearly demonstrate best value and accountability compliance in relation to contracts applicable at any appropriate time, in any relevant dealings in respect of the delivery of the BID Arrangements

- 7.2 The Council confirms that in respect of any relevant matters it will apply and comply with its Financial Regulations and Standing Orders Relating to Contracts applicable from time to time.
- 7.3 The Council will where permitted by Law inform the BID Company of any proposed changes to its Financial Regulations and Contracts Standing Orders prior to their implementation and may at the Council's absolute discretion have regard to any views expressed by the BID Company in respect of such changes.

8. INSURANCE

- 8.1 Each Party shall be responsible for taking out and maintaining for the duration of this Agreement all insurances reasonably required as a consequence of their activities under this Agreement or otherwise as directed and required by the Council's insurance manager.
- 8.2 Specifically, but without limitation, the BID Company shall take out and maintain for the duration of this Agreement, with generally recognized reputable insurance companies:
 - (a) Employer's Liability insurance to a minimum value of ten million Pounds Sterling (£10,000,000.00) for any one claim;
 - (b) Public Liability cover to a minimum value of five million Pounds Sterling (£5,000,000) for any one claim; and
 - (c) Professional Indemnity cover to a minimum value of one million Pounds Sterling (£1,000,000_ for any one claim.

In addition, adequate office cover for contents such as computers etc. will also be required.

- 8.3 Both Parties shall provide proof of adequate insurance cover to the other Party upon request.

9. ASSIGNMENT AND SUB-CONTRACTING

- 9.1 Except as permitted by Clause 9.2, neither party shall assign, sub-contract or transfer any of their respective rights duties or obligations under this Agreement

without the express prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.

- 9.2 The Council may assign this Agreement to any of its strategic partners working for the time being on behalf of the Council

10. LIMITATION OF LIABILITY

- 10.1 Nothing in this Agreement shall exclude or restrict a Party's liability for death or personal injury caused by its negligence.
- 10.2 Neither Party shall be liable to the other Party by reason of termination or expiry of this Agreement however caused for the payment of any compensation, reimbursement or damages of any nature including, without limitation any expenditures, investments, leases or other commitments relating to the business or goodwill of either Party.
- 10.3 The BID Company will indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council arising out of any act neglect or default of the BID Company its employees, agents, servants or subcontractors or licensees and including any successful claims by any third party resulting from breach of this Agreement in respect of any matter arising out of the performance of its obligations under the Agreement Provided that notwithstanding this indemnity the Council shall use its reasonable endeavours to mitigate any such loss and damage or liability.

11. VARIATIONS

- 11.1 Either Party wishing to make a change to the Services, the Funding or any term of this Agreement, must send a written "**change request**" to the other party.

The change request shall include the following minimum information

- (a) a description of the change;
- (b) the reason for the change;
- (c) as far as can be identified, any anticipated impact of the change, for example on Service improvements or cost;
- (d) as far as can be identified, any saving on current costs, additional or redundant resources which will arise as a consequence of the change, and how it is proposed to deal with them; and

- (e) the timescale within which the change is intended to be implemented
- 11.2 Neither Party shall without good reason unreasonably withhold consent or delay approval of the proposed change except that the Council shall be entitled, at its absolute discretion, to refuse any suggested increase in the level of the Funding it makes to the BID Company
- 11.3 Within thirty (30) days of receiving a written request for change (or such later date as may be agreed between the parties), the Party who receives the request shall respond in writing to the other setting out whether the request is approved or not, and in particular will state:
- (a) the reason(s) why the request is approved or rejected;
 - (b) any proposals and reasons for amending the description of the change;
 - (c) any comments on the proposed impact of the change;
 - (d) any comments on the change as it may result in additional or redundant resources arising as a consequence; and
 - (e) any comments upon the proposed timetable for implementation of the change
- 11.4 The Parties will record in writing any agreed change to the Services and/or the Funding, any terms of this Agreement or any New Services including the commencement, duration, cost and funding of such change and for any New Service, the terms of payment, if appropriate. The Parties will exchange such a written record within ten (10) Working Days of agreeing to the change. The change shall not be implemented until this written record is exchanged by the Parties. The written record will then be held with, and be incorporated and subject to all terms of this Agreement.
- 11.5 Where the Parties are unable to agree any proposed change, whether in total or as to any element of it, the disagreement may be submitted to the disagreement procedure set out in Clause 12.

12. DISAGREEMENTS

- 12.1 Where the Parties are in disagreement as to the terms or provisions of this Agreement, including implementation, or the delivery of Services or objectives, they shall use their best efforts to resolve the disagreement informally through amicable discussions within seven (7) days of being notified of the disagreement (or such later date as may be agreed between the parties).

- 12.2 In the event that, following attempts at resolving the issue by amicable discussion and consultation, either Party believes that a disagreement is not capable of being resolved informally both Parties will submit written details of their grievance and / or position by not later than twenty-one (21) days of being notified of the disagreement to the Chairman of the Board of the BID Company and a Group Director or Director of the Council nominated by the Council in an attempt to resolve the disagreement at Board / Director level.
- 12.3 In the event that Board members of the BID Company and Director of the Council are unable to resolve any such disagreement either Party may request that the dispute be referred to Arbitration in accordance with Clause 13.

13. ARBITRATION

- 13.1 In the event that any dispute has not been resolved at an informal or Board / Director level either Party may notify the other that they wish it to be referred to arbitration under the terms of and subject to the Arbitration Act 1996 by a single arbitrator to be agreed by the Parties or alternatively one nominated by the Chartered Institute of Arbitrators.
- 13.2 Both Parties agree that the decision of any arbitrator shall not be final or legally binding as to either the substance of the dispute or the costs of the arbitration process and for the avoidance of doubt any reference or appeal to a court of Law are hereby expressly permitted.

14. TERMINATION

- 14.1 Either Party may terminate this Agreement upon giving three (3) months' notice in writing if the other Party:
- (a) commits a material breach of its obligations or if such breach being capable of remedy has not been remedied for a period of thirty (30) days after being notified of such breach;
 - (b) in the case that the Council has persistently failed to meet the service level targets set out in the baseline agreement and operating agreement (and for the purposes of this Clause "**persistently**" means failing to meet or exceed the service level targets in not less than any three (3) out of five (5) consecutive service level reviews); and/or
 - (c) in the case that the BID Company persistently fails to meet the BID Performance Indicators (and for the purposes of this Clause "**persistently**" means failing to achieve the BID Performance Indicators in not less than three (3) out of five (5) consecutive areas.)

14.2 The Council may terminate this Agreement and recover all its losses by giving notice to the BID Company having immediate effect if:

- (a) the BID Company goes into liquidation, either compulsorily or voluntarily (apart from a solvent liquidation for the purposes of reconstruction or amalgamation) or if a receiver, administrator or administrative receiver is appointed in respect of the business or all or any part of its creditors generally or shall commit any similar act or suffer any similar event as a consequence of debt
- (b) the BID Company by its employees or anyone acting on their behalf does any of the following things:
 - i. offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the BID Company does not know what has been done); or
 - ii. commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972 or the Bribery Act 2010; or
 - iii. commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council Members, contractors or employees.

Any clause limiting the BID Company's liability shall not apply to this clause.

14.3 Without prejudice to the Council's rights in this Agreement, if the BID Company suffers any of the events in Clauses 14.1(a), 14.1(c) or 14.2(a), the Council may, upon written notice to the BID Company suspend any New Services that have been agreed. If any New Services for which the BID Company has agreed to make payment to the Council are suspended, the BID Company's obligation to make such payments shall also be suspended.

14.4 Termination of this Agreement shall not affect any existing rights and liabilities of the Parties, which have accrued as at the date of termination.

15. WAIVER

15.1 The failure of any Party to require the performance of any of the terms of this Agreement or the waiver by any Party of any default under this Agreement shall not prevent a subsequent enforcement of such term nor be deemed a waiver of any subsequent breach.

16. EXIT STRATEGY

- 16.1 The Parties recognise that in the event of the BID Arrangements coming to an end and not being renewed in accordance with statutory provisions and/or in the event of this Agreement expiring by any means the Parties will need to agree an Exit Strategy how Services within the BID Area will continue to be provided.
- 16.2 Either Party may give notice to the other either, (a) when serving notice under Clause 12, or (b) at any time not before the fourth anniversary of the Effective Date, requiring the other party to attend a meeting or meetings to prepare an agreed Exit Strategy.
- 16.3 Failure on the part of either Party to respond to such a request or to agree an Exit Strategy will entitle the other Party to invoke the disagreements procedure set out in Clause 12.

17. ENTIRE AGREEMENT

- 17.1 This Agreement including all schedules constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all proposals, negotiations, understandings, conversations, discussions or agreements between or amongst the Parties relating to the subject matter of this Agreement (except in the case of any fraudulent misrepresentations).
- 17.2 For the avoidance of doubt in the event of conflict between the provisions of this Agreement and the provisions of the Operating Agreement in Schedule 5, the provisions of the Operating Agreement will prevail.

18. SEVERABILITY

- 18.1 Each of the provisions contained in this Agreement shall be construed as independent of every other such provision, so that if any provision of this Agreement shall be determined by any court or competent authority to be illegal, invalid and/or unenforceable then such determination shall not affect any other provision of this Agreement, all of which other provisions shall remain in full force and effect.
- 18.2 If any provision of this Agreement shall be determined to be illegal, invalid and/or unenforceable, but would be legal, valid and enforceable if amended, the Parties shall consult together in good faith and agree the scope and extent of any modification or amendment necessary to render provision legal, valid and enforceable and so as to give effect as far as possible to the intention of the Parties as recorded in this Agreement. If this cannot be achieved, either through failure to

reach agreement or because (in the reasonable opinion of either Party) the effect of such a declaration is to defeat the original intention of the Parties in a material respect, then either Party may terminate this Agreement by giving thirty (30) days' notice of termination to the other Party.

19. THIRD PARTY RIGHTS

19.1 Nothing in this Agreement is intended to confer a benefit on, or to be enforceable by, any person who is not a Party to this Agreement and the provisions and effect of the Contracts (Rights of Third Parties) Act 1999 is hereby excluded from this Agreement.

20. CONFIDENTIAL INFORMATION

20.1 Both Parties shall treat as and keep confidential and not disclose any Confidential Information. No Confidential Information shall be subject to the restrictions against disclosure under this Agreement to the extent that it:

- (a) is or becomes public knowledge otherwise than through the default on the part of either Party or their directors, officers, agents or employees;
- (b) is compelled by Law or by the rules or requirements of any relevant regulatory authority or court of competent jurisdiction and/or required by the professional advisors of either Party
- (c) is already lawfully in the possession of either Party prior to its disclosure;
- (d) is made with the express prior written consent of the other Party; or
- (e) is made pursuant to a statutory duty or requirement of the Information Commissioner pursuant to the FOIA or the EIR.

20.2 Each Party agrees that this Clause 20 shall survive the termination of this Agreement, however arising.

21. DATA PROTECTION

21.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 21 is in addition to, and does not relieve, remove or replace, a Party's obligations or rights under the Data Protection Legislation.

21.2 Both Parties acknowledge and accept that each one acts as an independent Data Controller regarding the Personal Data.

- 21.3 Each Party shall refuse to accept any Personal Data which is not strictly required for it to perform this Agreement.
- 21.4 Both Parties agree that neither Party shall Process any Personal Data on the other Party's behalf, and that any Personal Data which is passed by one Party to the other is given only because it is strictly necessary for the performance of the Agreement, and will only be transferred after both Parties agree and enter into a Data sharing agreement or protocol in respect of the transfer.
- 21.5 In performing this Agreement, both Parties agree that they each shall act in accordance with the Data Protection Legislation and shall not do anything which might place the other Party in breach of its obligations under the Data Protection Legislation.
- 21.8 The provisions of this clause shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

22. FREEDOM OF INFORMATION

- 22.1 The BID Company acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall assist and cooperate with the Council (at the BID Company's expense) to enable the Council to comply with these Information disclosure requirements.
- 22.2 The BID Company shall and shall procure that its sub-contractors shall:
- (a) transfer the Request for Information to the Council as soon as practicable after receipt and in any event within two (2) Working Days of receiving a Request for Information;
 - (b) provide the Council with a copy of all Information in its possession or power in the form that the Council requires within five (5) Working Days (or such other period as the Council may specify) of the Council requesting that Information; and
 - (c) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 22.3 The Council shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR;

- (b) is to be disclosed in response to a Request for Information, and
 - (c) in no event shall the BID Company respond directly to a Request for Information unless expressly authorised to do so by the Council.
- 22.4 The BID Company acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA, be obliged under the FOIA, or the EIR to disclose Information:
- (a) without consulting with the BID Company; or
 - (b) following consultation with the BID Company and having taken its views into account.
- 22.5 The BID Company shall ensure that all information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

23. WHISTLE BLOWING

- 23.1 The Council has a whistle blowing policy to encourage staff and the public to bring into the open issues concerning dishonesty involving the Council. The BID Company shall ensure that relevant members of staff and all persons involved with this Agreement are made aware of the policy.

24. COUNTERPARTS

- 24.1 This Agreement may be entered into in any number of counterparts, all of which taken together shall constitute one and the same instrument. Any Party may enter into this Agreement by signing any such counterpart.

25. AUTHORITY TO SIGN

- 25.1 Each Party warrants that it has the full authority to perform its obligations under this Agreement and that the person executing this Agreement has the authority to bind it.

26. NOTICES

- 26.1 All notices to be given by either Party to the other under this Agreement will be in writing and will be sent to the addresses below:

The Council:

Title: The Chief Operating Officer

Address: The City of York Council
West Offices
Station Rise
York

The Company:

Title: The Executive Director

Address: The Red House
1 Duncombe Place
York
YO1 7ED

26.2 Notices may be delivered personally or by pre-paid letter. Notices will be deemed to have been received:

- (a) by hand delivery - at the time of delivery; or
- (b) by post – two (2) Working Days after the date of mailing

27. GOVERNING LAW & JURISDICTION

27.1 This Agreement shall be governed by and construed in accordance with English Law.

27.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by **THE CITY OF YORK**)
COUNCIL acting by:



.....
) Authorised signatory
)
) Neil Ferris, Corporate Director of
Place
)

Signed by **YORK BID COMPANY**)
LIMITED acting by a director in the)
presence of:)

.....
) Director
)
)
) Name

SCHEDULE 1

Baseline Agreements: 2022-2027*

Baselines are subject to annual review and agreement by the BID and CYC following approval of the Council's annual budget.

The purpose of this baseline agreement is to set out, for the avoidance of doubt, the **STANDARD SERVICES** provided by the Council within the BID area and to set the benchmark criteria against which the provisions of additional services will be assessed.

Services provided by the BID levy are complementary to these baseline services.

Service	Street Cleansing
Head of Service	Head of Environmental Services
Telephone	07749 710152
Email	

Baseline activity	Street cleansing of the City Centre
Service specification	<p>Tasks undertaken include manual and mechanical cleansing, emptying of litter bins, litter picking and collection, cleaning of the Market areas.</p> <p>City Centre cleansing begins at 05.00, targeting hotspots then covering other areas. This continues throughout the day, focussing on high traffic vicinities, such as entertainments areas.</p> <p>Maps of the areas to be cleaned are appended here. As these have been taken directly from the City of York Council Open Data Platform, these are set out by Ward area, rather than following the exact geography of the BID area. The wards covered are Guildhall, Fishergate and Micklegate, and the two sets of maps cover mechanical and manual cleaning.</p>

Statutory or discretionary?	Statutory
Timing of activity	<p>City Centre street cleansing is carried out within the foot streets, seven days a week throughout the year.</p> <p>April to September <i>Monday to Friday – 05.00 to 17.00:</i> The number of operatives on duty fluctuates throughout the day with a minimum number of three operatives and a maximum number of eight.</p>

	<p><i>Saturday and Sunday – 05.00 to 17.00:</i> The number of operatives on duty fluctuates throughout the day with a minimum number of four operatives and a maximum number of five. Please note that time of service (evenings do vary from time to time based on need) October to March These will change slightly between October and March due to weather and daylight hours. The mechanical sweeper/scrubber does not operate during this period.</p> <p>Additional duties include co-ordinating/ overseeing the Spring Clean initiatives across the City</p>			
Staffing and equipment	2 X Mechanical sweeper 1 x Pedestrian controlled sweeper Various hand held manual equipment 1 x Supervisor 12 x City Centre Cleansing Operatives			
Key performance measures	Measure	2018/19	2019/20	2021/22
	<ul style="list-style-type: none"> CSPEC6– Graffiti: Number of issues reported (all land types) YTD 	183	385	No data
	<ul style="list-style-type: none"> SLA01 - 2 Hour Cleansing cases completed within SLA 	45%	61.7%	62.9%
	<ul style="list-style-type: none"> SLA04 - Standard Cleansing cases completed within SLA (YTD) 	71%	72.4%	72.7%
Non-compliance procedure	No contract, but cost of service provision is approximately £250,000, subject to change with each annual budget allocation.			
Existing value of contract/ service	As per agreed BID boundary			

Boundary area	As the council looks to implement neighbourhood working for waste and public realm services there is an opportunity to review how the services are delivered with the BID.
Proposed additional BID activity	Not yet known
Cost of additional BID activity	Unknown.

Service	Street lighting
Head of Service	Derek Grant, Street Lighting/Blacksmiths Delivery manager (Drainage Front Line Graffiti removal teams)
Telephone	(01904) 553090
Email	derek.grant@york.gov.uk

Baseline activity	Provision/ maintenance of street lighting within the City of York council boundary, including all street lights, illuminated signs, bollards, and floodlighting
Service specification	<p>The street lighting service is unique within York, as both installation and maintenance of all street lighting assets are undertaken by City of York Council's internal Street Lighting Team.</p> <ul style="list-style-type: none"> • Citywide maintenance of street lighting and illuminated signs, floodlighting and bollards. • Cyclical maintenance on routine lamp changes/maintenance. • Any alterations to existing installations are undertaken including column relocations and conversion of lights to newer more energy efficient technologies. • New lighting installations for Council highway schemes. • A design and install service for developers is offered by city of York councils street lighting team as regards any new developments/works including section 38/278 schemes. • A Street lighting design service is available through City of York council if developers require design only. • All electrical testing is undertaken by the internal street lighting team. • Structural testing on steel/concrete lighting columns is undertaken on a rolling annual program by a CYC preferred specialist contractor. • 24 hour Emergency call out facility is in place to cover any out of hours dangerous situations arising. • Festive light installations for local Traders' Associations or Parishes.
Statutory or discretionary?	Under Section 97 of the Highways Act 1980, it is not mandatory for authorities to install street lighting, but once installed on adopted highways there is a responsibility for maintenance.

Timing of activity	The maintenance service operates 7 days a week, 24 hours a day, and includes a CRM web based system for public reporting of street lighting issues/faults for fault reporting and an email reporting capability linked to the City of York Council website
Staffing and equipment	Staff 7 X FTE 1 X PT : including Delivery Manager, Technical Officer, Street Lighting Technician (PT), 2 x Electricians, 2 x Street Lighting Operatives 1 x Electrician Apprentice Equipment: 2 x 14.5 metre MEWPS (cherry pickers) 1 x SL rig 18 Tonne
Non-compliance procedure	COYC strive to adhere to their SLA requirements as regards fault repairs 4 days and emergency call outs 2 hours. Electrical testing is undertaken to 18 th Edition BS7671 and completed on all street lights within a minimum six year period as per requirements. Structural testing on concrete/steel lighting columns is undertaken by a City of York Council preferred specialist contractor on an ongoing annual program.
Existing value of contract/ service	Budget annually circa £1.2 million.
Boundary area	As per agreed BID boundary in the Business Plan
Proposed additional BID activity	Various proposals set out in Business Plan including Christmas displays, plus additional new projects over the course of the BID term.
Cost of additional BID activity	Not known – varies

Service	Highways Asset Management
Head of Service	Andrew Davies
Telephone	07340 200514
Email	andrew.davies@york.gov.uk

Baseline activity	Maintenance and repair of the highways network whilst minimising disruption on the transport network and protecting infrastructure			
Service specification	<p>The Highways Act 1980 places a duty on the Highway Authority to maintain the public highway network in a condition that is safe for users.</p> <p>The public highway network includes all roads, footpaths and verges which the highways authority has responsibility for.</p> <p>We regularly inspect our network in accordance with the current Code of Practice for Highway Maintenance. The frequency of inspections depends upon the importance of the road and footpath in question. A busy main road and footpath may be inspected monthly while a minor estate road or rural lane may only be inspected annually.</p> <p>The New Roads and Streetworks Act 1991 also places a duty on us to coordinate and regulate work carried out in the public highway by any organisation. An organisation includes contractors working for gas, waste, electricity and telecom companies as well as private works on behalf of individuals.</p>			
Statutory or discretionary?	Statutory			
Timing of activity	This is an 07:30 - 17:30 activity with an out of normal working hours emergency response service			
Staffing and equipment	<ul style="list-style-type: none"> • 75 FTE • 2 Supervisors • (7) 18 ton hook lift vehicles • (1) 32 ton hook lift vehicle • (1) 7.5 ton hook lift vehicle • (1) 7.5 TM Vehicle 			
Key performance measures	Measure	2018/19	2019/20	2020/21
	• CES03 - % of road and pathway network that are grade 3 (poor condition) – roadways	23%	20%	22%
	• CES04 - % of road and pathway network that are	3%	3%	3%

	grade 3 (poor condition) – pathways			
	<ul style="list-style-type: none"> • CES05 - % of Principal roads where maintenance should be considered (NI 168) 	10%	10%	11%
	<ul style="list-style-type: none"> • CES06 - % of Non-principal classified roads where maintenance should be considered (NI 169) 	24%	22%	20%
	<ul style="list-style-type: none"> • CES07 - % of Unclassified roads where maintenance should be considered (old BV224b) 	27%	22%	No longer collected
Non-compliance procedure	Basic maintenance is supported with two 180 excavators with planer attachments and other plant as required			
Boundary area	As per agreed BID boundary			
Proposed additional BID activity	Not yet known			
Cost of additional BID activity	Not yet known			

SCHEDULE 2
BID PROPOSALS

See BID Prospectus @ www.theyorkbid.com/legal/the-bid-renewal

SCHEDULE 3

BID AREA

See the full list of streets @ www.theyorkbid.com/about/the-bid-area



**SCHEDULE 4
OPERATING AGREEMENT**

Dated

Between

- (1) **THE COUNCIL OF THE CITY OF YORK** of West Offices, Station Rise, York, YO1 6GA (the **Council**); and
- (2) **THE YORK BID COMPANY LIMITED** (No.09937609) whose registered office is situated at The Red House, 1 Duncombe Place, York, YO1 7ED (the **BID Company**)

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 BID Area 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 prospectus.
- 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; and
 - confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid.

IT IS AGREED:

Definitions

the Annual Report means a report to be prepared by the Council which details the following:-

- (a) the total amount of BID Levy collected during the relevant Financial Year;
- (b) the total amount of interest earned on any part of the BID Levy whilst held in the BID Revenue Account;
- (c) details of the success rate for the collection of the BID Levy;
- (d) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- (e) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- (f) the Council's proposals for bad or doubtful debts;

the Appeal Notice means a notice to be served by the BID Company in accordance with clause 8.2;

Bad or Doubtful Debts shall have the same meaning as further described in Part 2 of Schedule 3 of the Regulations;

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

the BID means the Business Improvement District which operates within the area set out in Schedule 3 of the Memorandum of Understanding between the Council and the BID Company) and which is managed and operated by the BID Company;

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

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

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

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

the BID Company's Termination Notice means a notice to be served by the BID Company on the Council pursuant to Clause 10;

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

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

the BID Revenue Account means the interest bearing account to be set up in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations;

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

the Council's Termination Notice means the notice to be served by the Council on the BID Company pursuant to Clause 10;

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

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

Hereditament shall have the same meaning as defined in the Regulations;

Electronic Communication means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa):

(a) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or

(b) by other means but while in electronic form;

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

the Enforcement Notice means a notice to be served on the Council as specified in Clause 8;

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, such circumstances to be determined at the discretion of the BID Company following notice by the Council to the BID Company that the BID Levy is outstanding;

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 April to March;

Liability Order means an order obtained from the Magistrates Court;

the Monitoring Group means the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in Clause 9), such group to consist of both Council officers (Head of Customer & Exchequer Services, Business Rates Manager, Income services and Corporate Income Manager) and representatives from the BID Company (Executive Director and representative from BID Finance Sub-Committee);

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;

the Public Meeting Notice means a notice to be served pursuant to Clause 10 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; and
- (c) confirmation that all BID Levy Payers who attend will be permitted to make representations;

the Regulations means the Business Improvement Districts (England) Regulations 2004,, as (as amended by the Business Improvement Districts (England) (Amendment) Regulations 2013 and such other amendments made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time);

the Reminder Notice means the notice to be served pursuant to Clause 7.1;

Working Day means any day on which the Council's principal offices at West Offices, Station Rise, York YO1 6GA are open to the public for business.

1. Statutory Authorities

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

2. Commencement

This Agreement is conditional upon and shall not take effect until the Ballot Result Date.

In the event that the BID Arrangements are not voted in by the BID Levy Payers on the Ballot Result Date, then this Agreement shall determine and cease to be of any further effect between the parties

If, at the end of the BID Term a renewal ballot is held and is successful then the terms of this Agreement shall continue to be of effect and the BID Term shall thereafter be construed as the new term.

3. Setting the BID Levy

Immediately upon the Ballot Result Date the Council shall:-

- 3.1 calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
- 3.2 confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer.

4. The BID Revenue Account

- 4.1 The Council shall set up the BID Revenue Account and the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically from the BID Revenue Account on production of an invoice by the BID Company in accordance with Clause 7.8.
- 4.2 Interest earned on money in the BID Revenue Account shall form part of the BID Levy and be payable to the BID Company.

5. Debits from the BID Revenue Account

- 5.1 The Council shall not debit directly from the BID Revenue Account: -
 - (a) the collection charges;
 - (b) the Enforcement Expenses; or
 - (c) any deductions which in the Council's opinion are Bad or Doubtful Debts.
- 5.2 The Council's charge for the provision of the Services will be an annual set fee

capped at twenty-five thousand Pounds Sterling (£25,000) (excluding VAT) representing its reasonable and actual administrative costs in providing services and having effect on the 1st April of each year for which a BID is in place (**PROVIDED THAT** the last such payment shall be due on 1st April 2026 in respect of the 2025-26 levy period). Following receipt by the BID Company of a valid VAT invoice showing a breakdown of the costs incurred, the first payment will be due together with VAT thereon on the 1 April 2021, or later by agreement.

- 5.3 A breakdown of the Council's Annual charge as outlined in Clause 5.2 is annexed at Schedule 2.
- 5.4 The Council shall recover the Enforcement Expenses from the liable BID levy payer, in accordance with Clause 8.
- 5.5 The Council shall not be entitled to recover Enforcement Expenses from the BID Company.

6. Collecting the BID Levy

- 6.1 The Council shall confirm in writing to the BID Company the date when the BID Levy shall first be collected.
- 6.2 The Demand Notices shall be a separate bill and shall not be combined with the Business Rate bill.
- 6.3 Pursuant to Clause 7.1, the Council shall serve the Demand Notices on each BID Levy payer and thereafter shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term.
- 6.4 The Council shall maintain a list which identifies payment and/or non-payment of the BID Levy and shall make this available to the BID Company upon its reasonable request.
- 6.5 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 or Rateable value 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.
- 6.6 The Council shall collect the BID Levy on the date specified (pursuant to Clause 6.1 above) and thereafter on an annual basis and in accordance with the procedure set out in Schedule 4 of the Regulations.
- 6.7 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).

- 6.8 Every twenty-eight (28) days thereafter, the Council shall inform the BID company of the amount of BID Levy monies collected.
- 6.9 The BID Company shall raise an invoice, including VAT to the Council every month or less frequently should the BID Company so decide. This invoice to be based on the information outlined in Clause 9.2 of this Agreement, for the total amount of BID Levy monies collected, minus the total of BID Levy monies previously invoiced for in the relevant financial year.

7. Procedures available to the Council for enforcing payment of the BID Levy

- 7.1 In the event that the BID Levy is not paid within twenty eight (28) Working Days from the date that it becomes payable then (subject to the Exceptions or as may otherwise be indicated at the BID Company's discretion), the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:-
- (a) identify the sum payable;
 - (b) provide a further fourteen (14) Working Days for payment to be made;
 - (c) confirm that the Council may make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).
- 7.2 If after a further fourteen (14) Working Days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall, after receiving the BID Company's written confirmation, make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).
- 7.3 Following the issue of a Liability Order, the Council and the BID Company shall agree on the method of enforcement.

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

- 8.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 7 above the BID Company shall serve the Enforcement Notice on the Council requesting that:-
- (a) it serve a Reminder Notice; or
 - (b) it obtains a Liability Order pursuant to Clause 7.2 above;
 - (c) within fourteen (14) days of receipt of such Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to the recover the unpaid BID Levy.
- 8.2 If after being served an Enforcement Notice the Council fails to take the requested

action within the specified timeframe, then the BID Company shall serve an Appeal Notice to the Chief Operating Officer of the Council. Such notice shall:-

- (a) detail the sum which remains unpaid;
- (b) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- (c) request a meeting take place between the Chief Operating Officer and the relevant officers of the Council and the Executive Director and the relevant officers of the 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 twenty-eight (28) days from service of the Appeal Notice.

9. Accounting Procedures and Monitoring

- 9.1 Within one (1) month from the Operational Date (or as soon as reasonably practicable thereafter), the Council and BID Company shall form the Monitoring Group.
- 9.2 On a quarterly basis (for the duration of BID Term) the Council shall provide the BID Company with a breakdown of:-
 - (a) the amount of BID Levy for each individual BID Levy Payer;
 - (b) the BID Levy collected in relation to each BID Levy Payer;
 - (c) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that month;
 - (d) details of the Reminder Notices issued throughout that period; and
 - (e) details of any Liability Orders obtained or applied for by the Council.
- 9.3 Every six (6) months (for the BID Term) the BID Company shall provide the Council with the following details:
 - (a) the total amount of income received from the Contributors (excluding the BID Levy); and
 - (b) the total expenditure during that six (6) month period.
- 9.4 The Monitoring Group shall meet at least once a 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 twenty-eight (28) 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.

9.5 At each meeting the Monitoring Group shall

- (a) review the effectiveness of the collection and enforcement of the BID Levy; and
- (b) if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 9.2 and 9.3 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement).

9.6 Within one (1) month after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company.

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

10. Termination

10.1 The Council shall not be permitted to terminate the BID Arrangements because:

- (a) 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
- (b) 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 on the BID Levy Payers and the Council's Termination Notice on the BID Company and within fourteen (14) days from the date of service of such notice both parties shall arrange to meet where the purpose of such meeting shall be to agree all or any of the following set out in Clause 10.1 (a) or 10. 1 (b) (whichever is applicable)

10.2 Where the BID Termination Notice relates to Clause 10.1(a) both parties shall agree 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) alternative means by which the insufficiency of the funds can be remedied; and
- (c) an appropriate time frame to resolve this issue.

- 10.3 Where the BID Termination Notice relates to Clause 10.1(b) both parties shall agree the following:
- (a) the services or works which it is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;
 - (b) a review by both parties as to whether such works or services are of material importance to the BID so that termination of the BID 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; and
 - (e) an appropriate time frame to resolve this issue.
- 10.4 Notwithstanding Clauses 10.1, 10.2 and 10.3 above, the Council shall cause a Public Meeting to be held prior to the termination of the BID arrangements.
- 10.5 In the event that the parties cannot reach agreement in relation to the above, and subject to consideration of representations made by any BID Levy Payer at the Public Meeting, the Council shall be permitted to terminate the BID Arrangements provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than twenty-eight (28) days prior to termination taking place
- 10.6 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 five Pounds Sterling (£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.
- 10.7 Upon termination of the BID the Council shall notify the BID Levy Payers of such termination in accordance with Regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with Clause 11.6.

10.8 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.

10.9 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 11.6.

11. Confidentiality

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.

12. 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

A Notice may be served by

- (a) delivery to the Chief Operating Officer at the Council's address specified above; or
- (b) delivery to the Executive Director at the BID Company's address specified above
- (c) registered or recorded delivery post

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.

13. Miscellaneous

- 13.1 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.
- 13.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 13.3 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause) shall not have any effect until this document has been dated.
- 13.4 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.
- 13.5 References to the Council include any successors to its functions as local authority
- 13.6 References to statutes, bye Laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

14. 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.

15. Contracts (Rights of Third Parties)

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

16. Entire agreement

- 16.1 This Agreement and the documents referred to in it constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

17. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original of this agreement, but all the counterparts shall together constitute the one agreement. No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

18. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. Governing law & Jurisdiction

19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

19.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This Agreement has been entered into on the date stated at the beginning of it.

Signed by **THE CITY OF YORK**)
COUNCIL acting by:



.....

-) Authorised signatory
-)
-) Neil Ferris
-) Corporate Director of Place

Signed by **YORK BID COMPANY**)
LIMITED acting by:



.....
) Authorised signatory
)
) Andrew Lawson
) Executive Director

SCHEDULE 1 – THE BID LEVY RULES

This will set out the manner in which the BID Levy will be calculated – i.e. what has been approved as the BID Arrangements.

The BID Levy Rules

Part 4 of the Local Government Act 2003 and the Regulations state that the payment of the BID Levy is mandatory by all BID Levy Payers in accordance with these BID Levy Rules once the BID proposal put forward by the York BID Company Ltd was accepted by a ballot of those BID Levy Payers.

The City of York Council is the billing authority under the legislation, and is the body with the power to impose, administer, collect, enforce and recover the BID Levy. The BID Levy collected is the property of the Council.

The BID Levy

The BID Levy will be applied to all relevant non-domestic ratepayers whose property has a rateable value of over seventeen thousand five hundred Pounds Sterling (£17,500) and which falls within the BID Area. The threshold has changed from twelve thousand five hundred Pounds Sterling (£12,500) in the previous term.

The billing period will run from 1st April each year to 31st March of the following year and will run for five billing periods from 1st April 2021. The BID Levy for each billing period must be paid in a single instalment shown on the front of the BID Levy Notice.

Businesses in the BID area who are exempt from the BID Levy charge due to their rateable value can apply to become a voluntary BID Levy payer. Details of this scheme will be announced on the launch of the new BID Term.

BID Levy Calculation

The BID Levy for each BID Levy Payer is calculated by multiplying the BID Rateable Value of each relevant hereditament by the BID Levy Rate of one per cent (1% or 0.01).

The BID Rateable Value

For the purposes of calculating the BID Levy, the BID Rateable Value will be the rateable value shown in the 2017 rating list, used as the basis to calculate the BID levy from the period 1st April 2021 to 31st March 2026.

The Council shall not give or agree to give any refunds to any Levy payer either fully, or in part, for any billing period whether current or past, in respect of Levy amounts paid should there be a retrospective change in Valuation Office valuation of any hereditament or if the Council are informed by a Levy payer of any possible change. Any retrospective change will be recorded and applied for the next relevant billing cycle 1st April to 31st

March.

All new hereditaments entering the Rating List after 1st April 2021 will be levied at one per cent (1% or 0.01) of the most recent revaluation list from the Valuations Office. This may supersede the Rating List 2017.

The BID Levy Rate

The BID Levy Rate is set at one per cent (1% or 0.01) of the BID Rateable Value from 1st April 2021 and will remain at this level until 31st March 2026. The rate remains unchanged from the previous term.

If a change in the levy amount is required during the life of the current BID period, this will be put to a ballot of all businesses in the BID area, in accordance with the Business Improvement Districts (England) Regulations 2004.

In the event of a second BID term being sought, any revision to the Levy Percentage Rate will be reviewed by the Board and the new percentage rate set out clearly prior to a ballot of BID area businesses taking place.

Liability for the BID Levy

Liability for the BID Levy will fall upon the Non-Domestic Ratepayer for the property for the full and complete financial year i.e. from 1st April of that year to 31st March of the following year.

If the property is empty at the Demand Date (1st April), liability for the BID Levy will fall upon the person or organisation entitled to possession of the property in accordance with Non-Domestic Rating regulations.

There shall be no exemption period from the BID Levy for an empty hereditament.

Non-retail/leisure based businesses with charitable status will pay fifty per cent (50% or 0.50) of the BID Levy that would otherwise apply. Medical practices that are wholly owned by the NHS will be made exempt from any BID Levy charge.

Change of Non-Domestic Ratepayer

There is a single billing date for the BID Levy in all circumstances.

No refunds will be made either fully, or in part, in respect of BID Levy amounts paid should there be a change in Non-Domestic Ratepayer. Similarly, there will be no apportionment or daily calculation of amounts due or owed made by the Council as the collection authority.

Adjustments will not be made for the occupier where there is a change of Non-Domestic Ratepayer during the financial year. As above, the liability for payment will fall to the Non-Domestic Ratepayer or, if the property is empty, the person or organisation entitled to

possession of the property on 1st April of the billing year, for the whole year.

Neither the BID Company nor the Council will enter into negotiations between outgoing and incoming BID Levy Payers, and all said negotiations to recoup part-year payments must be resolved independently by the individual or company concerned.

Value Added Tax (VAT)

There will be no VAT charged to the BID Levy Payer and the cost of collection and enforcement of the BID Levy is outside the scope of the VAT.

**SCHEDULE 2 – BREAKDOWN OF COUNCIL’S ANNUAL BID LEVY COLLECTION
AND ADMINISTRATION CHARGE**

Annual fee capped at twenty-five thousand pounds Sterling (£25,000).