



**COMPLEMENTARY SERVICES AGREEMENT**

**Dated**

**Name of Company providing Complementary Services  
(the Provider )**

**Name of BID Company  
(the BID Company)**

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## Complementary Services Agreement For Provision of Services

### Dated

### Between

- (1) **Name of Provider of Complementary Services** (the Provider) [of \*\* ] [; and]
- (2) **Name of BID Company** (the BID Company) [of \*\* ]

### Recitals

1. The Provider is the provider of Complementary Services within the BID Area
2. The BID Company is responsible for the management and operation of the BID and for achieving the objectives and aspirations set out in the BID Proposal
3. The BID Company has entered into the Baseline Agreement with \*\* (*name of Council*) in order to secure and set out the Standard Services for the BID Area
4. The Provider and the BID Company are desirous of securing the Complementary Services for the benefit of the BID Area
5. Such Complementary Services shall be funded by the BID Levy and/or other Voluntary Contributions at the Agreed Cost and shall be consistent with the BID Proposal
6. The parties are desirous of securing and providing the Complementary Services in accordance with the terms set out in this Agreement.
7. The purpose of this Agreement is to set out for the avoidance of doubt the Complementary Services to be provided by the Provider and the Benchmark Standards against which the provision of the Complementary Services will be assessed.

**It is agreed:**

## **1 Definitions**

**Agreed Cost**<sup>1</sup> this means the cost for the provision of the Complementary Services by the Provider. Such services to be provided at [£\*\* per month] [£\*\* per year] [in accordance with the attached fee schedule]

**Baseline Agreement** means the agreement entered into on between the Council and the BID Company for the purpose of setting out the Standard Services provided by the Council within the BID Area

**Benchmark Standards** means the minimum standards which the Complementary Services must comply with including all relevant industry standards the principles of which are further set out in Schedule 2

**BID Area** means that area within which the BID operates (*describe area or refer to a plan*)

**BID** means the Business Improvement District which is managed and operated by the BID Company

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

**BID Levy Payers** means the payers of the BID Levy

**BID Proposal** means the plan voted for by the BID Levy Payers which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised via the BID Levy and/or Voluntary Contributions to achieve these objectives

**BID Term** means the "lifetime" for the operation of the BID as determined by the BID Proposal [namely [5 (five)] years from the (*date*)

**Complementary Services** means those services as set out in Schedule 1 which are to be provided by the Provider solely for the improvement or benefit of the BID Area such services to be funded using the BID Levy [and/or] [Voluntary Contributions]

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<sup>1</sup> It may be that a "fixed" cost is not agreed for the provision of services but rather worked out on the frequency of the level of service to be provided if the intention is to build in some flexibility regarding the provision of the service. In such an instance consider attaching a schedule to the Agreement which at least fixes the manner in which the costs will be calculated.

**Complementary Services Review Panel** means the panel to be set up consisting of \*\* representatives from the Provider and \*\* representatives from the BID Company [and \*\* representatives from the Council]

**Compliance Notice** means a notice served by the BID Company which contains the following:-

- (a) the details of the deficiencies in the carrying out of the Complementary Service identifying the Benchmark Standards which are not being complied with;
- (b) the details of the timescale during which such deficiencies have been on-going<sup>2</sup>; and
- (c) the time frame by which such deficiencies in the Complementary Service are to be rectified

**Council** means \*\*

**New Service Costs** means the administrative costs incurred by the BID Company in securing an alternative provider of the Complementary Services

**Penalty Charge** means the sum payable by the Provider if requested to do so by the BID Company such charge to consist of [X]% of the Agreed Costs for the period to which the Compliance Notice relates

**Regulations** means the Business Improvement Districts (England) Regulations [2004] and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time)

**Start Date** means\*\* *(insert date from which the services are to be provided)*

**Standard Services** means those services set out in Schedule 1 in the Baseline Agreement

**Voluntary Contributions** means any contributions or funds paid or made available to the BID Company which do not form part of the BID Levy

## 2 Statutory Authorities<sup>3</sup>

- 2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003, Section 1 of the Localism Act 2011 and all other enabling powers

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<sup>2</sup> This is relevant to calculating the Penalty Charge

<sup>3</sup> Where the complementary service is being provided by the Council

### **3 Commencement [and Duration]**

- 3.1 The terms of this Agreement shall take effect upon the date of this Agreement
- 3.2 [Subject to clause 8 this Agreement shall endure for the duration of the BID Term (or what remains of it as at the date of this Agreement)]

### **4 The Provider's Obligations**

- 4.1 The Provider agrees to the following:
  - 4.1.1 subject to clause 8 to provide facilitate or procure the Complementary Services from the Start Date for the duration of the BID Term in accordance with the Benchmark Standards and the Agreed Cost
  - 4.1.2 the Provider shall provide an invoice detailing the Agreed Cost for providing the Complementary Services to the BID Company every [3 (three) months] (such period to commence from the Start Date)
  - 4.1.3 in the event that the Provider is served with a Compliance Notice from the BID Company to use all reasonable endeavours to comply with the terms of such notice as soon as is reasonably practicable or in accordance with such date as may be specified in the notice
  - 4.1.4 [The Provider shall use all reasonable endeavours to:
    - (a) liaise with (and where practicable) put in place appropriate partnering arrangements with the Council for the provision of the Complementary Services where such services are complementary to or are of a similar nature to those already provided for by the Council as are further set out in the Baseline Agreement;
    - (b) share information with the Council relating to the carrying out and performance of the Complementary Services;
    - (c) assist and support the Council in preparing for and conducting its Best Value Review (as is appropriate)
    - (d) implementing such recommendations as may be made by Complementary Services Review Panel in carrying out and/or providing the Complementary Services]
  - 4.1.5 Not to assign or transfer any of its obligations in this Agreement to a Third Party without the prior written approval of the BID Company

- 4.1.6 [In the event that the Provider fails to comply with the Compliance Notice within the specified time then the BID Company shall be able to secure such substantially similar Complementary Services from a third party provider and the Provider shall be liable to<sup>4</sup>
- (a) pay the Penalty Charge to the BID Company within 28 days from receipt of notice from the BID Company requesting payment of the Penalty Charge; and
  - (b) pay the New Service Costs to the BID Company within 28 days from receipt of notice from the BID Company requesting payment of the New Service Costs.]
- 4.1.7 To obtain all necessary consents licences and approvals from the Council or other third parties as might be necessary to carry out or facilitate the carrying out of the Complementary Services.

## **5 BID Company Obligations**

- 5.1 The BID Company shall pay the invoice received pursuant to clause 4.1.2 (above) for the provision of the Complementary Services within 28 (twenty eight) days from the date of receipt of the invoice
- 5.2 In the event that the BID Company is of the reasonable view that the Provider is failing to properly carry out the Complementary Service then it shall serve a Compliance Notice on the Provider.
- 5.3 To use all reasonable endeavours to assist the Provider in procuring such licences approvals or other consents as might be necessary to enable the Provider to carry out its obligations under this Agreement.

## **6 Monitoring and Review**

- 6.1 The Provider and the BID Company [and the Council] shall set up the Complementary Services Review Panel within 28 days from the date of this Agreement the purpose of which shall be to:
- 6.1.1 monitor the carrying out of the Complementary Services in accordance with the Benchmark Standards;
  - 6.1.2 [(where partnering arrangements are in place between the Council and Provider) to review the provision of the Complementary Services against such Best Value Indicators which the

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<sup>4</sup> Consider whether a "compensatory" mechanism should also be built in. i.e. it is not necessarily sufficient that the BID company can simply recoup its costs it should be entitled to some form of compensation for the inconvenience etc suffered as a result of services being carried out inappropriately.

Council may publish from time to time and to make such recommendations for the improvements and/or alteration of the Complementary Services as is appropriate to comply with or meet Best Value Indicators]

- 6.1.3 to liaise with and provide such necessary information to the Council regarding the carrying out and performance of the Complementary Services as will assist the Council in carrying out its Best Value Review
- 6.1.4 monitor payments received from the BID Company;
- 6.1.5 review any necessary contracts and agreements which are entered into for the provision of the Complementary Services;
- 6.1.6 identify the need for any improvement of or alteration to the Complementary Services;
- 6.1.7 review any Compliance Notices served by the BID Company; and
- 6.1.8 make recommendations pursuant to paragraphs 6.1.1 to 6.1.7 (above) to the Provider and the BID Company;
- 6.1.9 In the event that the Provider is also the Council the Standard Services Review Panel shall carry out all the duties and requirements set out in paragraphs 6.1.1 to 6.1.8 hereof and the parties agree not to set up the Complementary Services Review Panel.

## **7 Joint Obligations**

- 7.1 Both the Provider and the BID Company agree:
  - 7.1.1 To review and take account of any representations or recommendations made to them by the Complementary Services Review Panel [or the Standard Services Review Panel where the Standard Services Review Panel is exercising all the powers in paragraphs 6.1.1 to 6.1.8 hereof] and to take such action as may be appropriate

## **8 Termination**

- 8.1 The BID company shall be permitted to terminate this contract upon any of the following:
  - 8.1.1 the BID Company has served 3 Compliance Notices and the Provider has failed to take such steps as are required to secure compliance with the Compliance Notices; or
  - 8.1.2 the BID Company serves no less than [1] month's notice on the Provider that the BID is being terminated prior to the expiry of the BID Term



- 8.1.3 [The Provider is unable to provide the Complementary Services and serves no less than [3] month's written notice on the BID Company setting out in detail the reasons as to why it can no longer provide the Complementary Services]

## **9 Confidentiality**

- 9.1 Both the Provider 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 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 provision of the BID

## **10 Notices**

- 10.1 Any notice or other written communication to be served or given to or upon any party to this Deed 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.

- 10.2 Notice may be served by

10.2.1 delivery to the \*\* at the Provider's address or specified above;

10.2.2 delivery to the Company Secretary at the BID Company's address specified above

10.2.3 registered or recorded delivery post.

10.2.4 Any notice served shall be deemed to have been validly served or given at the time when in the ordinary course of business it would have been received.

## **11 Miscellaneous**

11.1 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations or any other regulations which the First 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

11.2 The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed

11.3 For the avoidance of doubt the provisions of this Deed (other than those contained in this Clause) shall not have any effect until this document has been dated

11.4 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 Deed

11.5 References to the Provider include any successors to its functions<sup>5</sup>

11.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power

## **12 Exercise of the Provider's Powers**

12.1 Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the Provider under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a [local authority]<sup>6</sup>

## **13 Contracts (Rights of Third Parties)**

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

## **14 Arbitration**

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

14.1 Any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Agreement shall be referred to arbitration before a single arbitrator

14.2 The parties shall jointly appoint the arbitrator not later than 28 (twenty eight) days after service of a request in writing by either party to do so

14.3 If the parties are unable to agree within 28 (twenty eight) days as to the appointment of such arbitrator then such arbitrator (hereinafter referred to as "the Tribunal") shall be appointed on the application of either party to the President for the time being of the Law Society

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

(a) prosecute any such reference expeditiously; and

(b) do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable

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<sup>5</sup> Leave in if Provider is local authority

<sup>6</sup> This clause probably should only be inserted if the Provider is the local authority

- 14.4 The award shall be in writing signed by the arbitrator and shall be finalised within 21 (twenty one) days
- 14.5 The award shall be final and binding both on the parties and on any persons claiming through or under them]

## **Schedule 1 - The Complementary Services**

This Schedule should set out those services which the Provider is to provide specifically within and for the benefit of the BID Area. The BID Levy is to be used to fund these services.

Consider also including how issues such as branding will be dealt with.

## **Schedule 2 – the Benchmark Standards**

Set out in this schedule the minimum standards which the Complementary Services must comply with having regards to:

- (a) minimum requirements of the BID Company in the standard of services to be provided; and
- (b) Relevant industry standards; and

The Common Seal of )  
 )  
was hereunto affixed in the presence of: )

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 )  
was hereunto affixed in the presence of: )