



DATED

2018

OPERATING AGREEMENT

Between

THE LONDON BOROUGH OF SUTTON

And

KIMPTON INDUSTRIAL PARK PROPRIETORS ASSOCIATION LIMITED

Relating To The Operation and Management of The Kimpton Business Improvement District

© London Borough of Sutton

Civic Centre

St Nicholas Way

Sutton

Surrey

SM1 1EA

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THIS AGREEMENT is dated

2018

PARTIES

The London Borough Of Sutton of Civic Offices, St Nicholas Way, Sutton Surrey, SM1 1EA (the "Council") of the one part; and

KIMPTON INDUSTRIAL PARK PROPRIETORS ASSOCIATION LTD registered as a company limited by guarantee in England with company number 6867537 whose registered office is at ABC Hire, 2 Wealdstone Road, Sutton, Surrey SM3 9QN (the "BID Company") of the other part.

BACKGROUND

The BID Company is proposing to renew the established Business Improvement District (BID) for the Kimpton Industrial Estate for a period of five years commencing 1 April 2019 and concluding on 31 March 2024.

The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the Council and the funding of the BID Arrangements

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 as set out in the BID Arrangements.

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 Term.

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 for collecting the BID Levy;

set out the procedures for accounting and transference of the BID Levy;

provide for the monitoring and review of the collection of the BID Levy;

confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

Annual Report: 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. details of the success rate for the collection of the BID Levy;
- c. the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;
- d. details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- e. the Council's proposals for Bad or Doubtful Debts

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

Ballot Result Date: the date upon which a successful ballot result is declared in favour of putting in place the BID Arrangements.

Baseline Services Agreement: the Agreement annexed at Schedule 2.

BID: the Business Improvement District which operates within the Kimpton Industrial Estate as shown in the plan at Schedule 1 and which is managed and operated by the BID Company.

BID Area: the area within which the BID operates as more particularly identified in Schedule 1.

BID Arrangements: those arrangements to be put in place pursuant to the Regulations for the operation of the BID.

BID Company's Report: 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 part of the BID Levy; and
- c. the various initiatives and schemes upon which the BID Levy has been expended by the BID Company.

BID Levy: the additional monies (over and above business rates) to be collected from the BID Levy Payers pursuant to the Regulations as calculated by the Council.

BID Levy Payers: the non-domestic rate payers responsible for paying the BID Levy.

BID Levy Rules: the rules set out in Schedule 3 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).

BID Revenue Account: the account to be established and operated by the Council into which the BID Levy will be paid by the BID Levy Payers.

BID Term: 1 April 2019 to 31 March 2024.

Council's Termination Notice: the notice to be served by the Council on the BID Company pursuant to clause 14.1.

Contributors: 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.

EIRs: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Enforcement Expenses: 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

Enforcement Notice: a notice to be served on the Council as specified in clause 11.1.

Exceptions: 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 are as further set out in Schedule 3.

Exempt or Discounted Properties: 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

FOIA: 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 or relevant government department in relation to such legislation.

Financial Year: 1st April – 31st March each year during the BID Term.

Liability Order: an order obtained from the Magistrates' Court.

Monitoring Group: the group to be set up to monitor the collection and enforcement of the BID Levy (as referred to in clause 12) such group to consist

of a representative of the Council's Finance Department, the Chair or Nominee of the BID Company, and the Kimpton Industrial Park Co-ordinator.

Operational Date: the date upon which the BID Arrangements come into force.

Public Meeting: the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice.

Public Meeting Notice: a notice to be served pursuant to clause 14.1 by either the Council or the BID Company which provides the following:-

- confirmation that either party is considering terminating the BID;
- details of the venue where the Public Meeting will be held; and
- confirmation that all BID Levy Payers who attend will be permitted to make representations.

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).

Reminder Notice means the notice to be served pursuant to clause 10.3.

Request for Information: a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

A reference to **writing** or **written** includes fax and e-mail.

Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

STATUTORY AUTHORITY

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.

COMMENCEMENT AND DURATION

- 3.1 This Agreement is conditional upon and shall not take effect until the Ballot Result Date.
- 3.2 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.

COUNCIL SERVICES

The BID shall be established to provide in the BID Area services which are additional to those already provided by the Council (called the Baseline Services).

Immediately after the Ballot Result Date (**PROVIDED THAT CLAUSE 3.2 DOES NOT APPLY**) the Council and BID Company shall enter into the Baseline Services Agreement in the form set out in Schedule 2.

The Council and the BID Company agree that the BID Company is not seeking to procure from the Council any services which are new and/or complementary to the Baseline Services. However, the Agreement shall not preclude the BID Company and the Council subsequently entering into any agreement for the provision of services by the Council or its contractors.

SETTING THE BID LEVY

The BID Company shall agree with the Council as at 1 March 2019 and as at 1 March in each subsequent year of this Agreement a schedule of BID Levy charges.

THE BID REVENUE ACCOUNT

Within one month of the Ballot Result Date, the Council shall confirm to the BID Company details of the BID Revenue Account.

Within one month of the Ballot Result Date the BID Company shall confirm to the Council 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 8.8.

The Council shall not debit directly from the BID Revenue Account:-
the Enforcement Expenses; or

any deductions which in the Council's opinion are Bad or Doubtful Debts.

COUNCIL COLLECTION AND ENFORCEMENT CHARGES

The Council is permitted to charge a reasonable fee for the collection and administration of the BID Levy. The fee charged will be consistent with that charged to other BID companies in the London Borough of Sutton. The agreed collection costs will be set out in Schedule 2 and form part of this agreement.

The Council shall recover the Enforcement Expenses from the liable BID Levy Payer, in accordance with clause 10.

The Council shall not be entitled to recover Enforcement Expenses from the BID Company.

COLLECTING THE BID LEVY

Within 30 (thirty) days of the Ballot Result Date the Council shall confirm in writing to the BID Company the date when the BID Levy shall first be collected.

The Demand Notice shall be a separate bill and shall not be combined with the Business Rates bill.

The Council shall serve a Demand Notice on each BID Levy Payer no later than the 15th April 2019 and thereafter shall continue to serve the Demand Notices throughout the BID Term by the 15th of April each year.

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.

The Council shall use all reasonable endeavours to collect the BID Levy on the date specified and thereafter on an annual basis and in accordance with the procedure set out in Schedule of the Regulations. This will include seeking to collect back BID Levy from BID Levy Payers who were liable to pay the BID Levy but whose occupation of a relevant premises had not initially been identified.

The Council shall use all reasonable endeavours and take all reasonable steps for collecting the BID Levy which are consistent with its usual procedures for the collection of non-domestic rates.

Every month during the BID Term, the Council shall inform the BID Company of the amount of BID Levy monies collected during the previous month. This shall be done on the seventh working day following the relevant month.

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 shall be based on the information outlined in clause 8.4 and be for the total amount of BID Levy monies collected minus the total amount of BID Levy monies previously invoiced for the relevant financial year.

Upon presentation of the BID Company's invoice the Council will pay the invoiced amount into the BID Company's bank account by electronic transfer (BACS).

The BID Company reserves the right to halt the Council's recovery procedures at any stage in the recovery process.

VALUE ADDED TAX (VAT)

The invoice referred to in Clause 8.8 above shall include VAT at the standard rate.

COUNCIL PROCEDURE FOR ENFORCING THE BID LEVY

The BID Levy shall be payable within twenty-eight (28) days from the date of the Demand Notice.

The Council will inform the BID Company if it feels that a BID Levy Payer's circumstances warrant the provision of payment instalments.

In the event that the BID Levy is not paid within twenty-eight (28) days from the date that it becomes payable then (subject to the Exceptions or as may otherwise be agreed between the parties), and if no arrangement to pay by instalments has been agreed, the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:

- (i) identify the sum payable;
- (ii) provide a further 7 (seven) days for payment to be made;
- (iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with interest and costs).

If after a further fourteen (14) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid, the Council shall:

- (i) inform the BID Company that it intends to take the action set out in clause 10.4(ii) and against which BID Levy Payers it intends to take this action;
- (ii) at least five (5) days after informing the BID Company as set out in clause 10.4(i), 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) including where necessary the use of bailiffs.

ENFORCEMENT MECHANISMS AVAILABLE TO THE BID COMPANY

In the event that the Council does not enforce payment of the BID Levy pursuant to clause 8 above, the BID Company may serve an Enforcement Notice requesting that the Council:

serves a Reminder Notice; or

obtains a Liability Order pursuant to clause 10 above.

11.2 Within fourteen (14) days of receipt of such Enforcement Notice the Council shall provide to the BID Company written confirmation of the action taken to recover the unpaid BID Levy.

11.3 Within fourteen (14) days of receipt of such Enforcement Notice, the Council shall provide to the BID Company written confirmation of the action taken to recover the unpaid BID Levy. If after being served an Enforcement Notice the Council fails to take the requested action within the specified time frame then

the BID Company shall serve an Appeal Notice to the Director of Corporate Services of the Council. Such notice shall:

- (i) detail the sum which remains unpaid;
- (ii) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- (iii) request that a meeting takes place between the Director of Corporate Services, relevant officers of the Council and BID Company to achieve a solution and/or agree a strategy to recover the outstanding sum such meeting to take place in any event no later than twenty-eight (28) days from service of the Appeal Notice.

11.3 In the event that the Council fails to take any of the steps requested by the BID Company pursuant to clause 11.2 and clause 11.2 (above) the Council shall (within twenty-eight (28) days of receipt of written notice from the BID Company which specifies the amount of BID Levy outstanding) pay the specified sum into the BID Revenue Account and provide written confirmation to the BID Company that this has been done.

ACCOUNTING PROCEDURES AND MONITORING

Within one month of the Operational Date the Council and the BID Company shall form the Monitoring Group.

Every month for the duration of the BID Term the Council shall provide the **BID** Company with a breakdown of:-

the amount of BID Levy for each individual BID Levy Payer;

the BID Levy collected in relation to each BID Levy Payer;

details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that month;

details of the Reminder Notices issued during the period; and

details of any Liability Orders obtained or applied for by the Council.

Every twelve (12) months (during the BID Term) the BID Company shall provide the Council with the following details:

the total amount of income received from the Contributors (excluding the BID Levy);

the total expenditure during that twelve (12) month period.

The Monitoring Group shall meet no less than twice in any one Financial Year. All meetings of the Monitoring Group shall be called by the BID Company and 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.

At each meeting the Monitoring Group shall:

review the effectiveness of the collection and enforcement of the BID Levy; and

if required, review and assess the information provided by the Council and the BID Company pursuant to clause 12.2 and clause 12.3 and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)

By 31 January in each Financial Year, the Council shall prepare for the BID Company a list of accounts that it considers suitable for write off.

The BID Company shall confirm whether it wishes these accounts to be written off

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

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

CONFIDENTIALITY AND FREEDOM OF INFORMATION

A party (**receiving party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (**disclosing party**), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 13.1 shall survive termination of this agreement.

The Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the EIRs and the Company shall assist and co-operate with the Council (at the Company's expense) to enable the Council to comply with these information disclosure requirements.

The Company shall and shall procure that its staff including its subcontractors:

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;

provide the Council with a copy of all information in the Company's 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

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 Environmental Information Regulations 2004.

The Council shall be responsible for determining at its absolute discretion whether the information:

is exempt from disclosure in accordance with the provisions of the FOIA or the EIRs;

is to be disclosed in response to a request for information, and in no event shall the Company respond directly to a Request For Information unless expressly authorised to do so by the Council.

In no event shall the Company respond directly to a request for information unless expressly authorised to do so by the Council.

The 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 (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the EIRs to disclose information:

without consulting with the Company; or

following consultation with the Company and having taken its views into account,

provided always that where clause 13.6 (b) applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Company advanced notice, or failing that, to draw the disclosure to the Company's attention after any such disclosure.

The Company shall ensure that all information produced in the course of the agreement or relating to the agreement is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Council to inspect such records as requested from time to time.

TERMINATION

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

- (i) in its opinion there are insufficient finances available to the BID Company to meet its liabilities for the BID Term; or
- (ii) the Council is unable, due to any cause beyond its control to provide the works or services which are secured as part of the BID Arrangements.

unless and until it first serves the Public Meeting Notice on the BID Levy Payers and the Council's Termination Notice on the BID Company and within 14 (fourteen) days from the date of service of such notice, both parties shall arrange to meet where the purpose of such meeting shall be to discuss and/or agree all or any of the matters set out in clause 14.1 (i) or clause 14.1 (ii) (whichever is applicable) in accordance with clause 14.3 and clause 14.4 as appropriate.

Where the BID Termination Notice relates to clause 14.1 (i) both parties shall agree and/or discuss or review the following:

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;

insufficient funds;

alternative means by which any insufficiency of the funds can be remedied; and

an appropriate time frame to resolve this issue.

Where the BID Termination Notice relates to clause 14.1 (ii) both parties shall agree and/or discuss or review the following:

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;

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;

alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;

alternative replacement services or works which will be acceptable to the BID Company; and

an appropriate time frame to resolve this issue

Notwithstanding clauses 14.1, 14.2 and 14.3 above, the Council shall cause a Public Meeting to be held prior to the termination of the BID Arrangements

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 Arrangements shall be provided to the BID Company no less than 28 (twenty-eight) days prior to termination taking place.

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 £10 for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund) to:

calculate the amount to be refunded to each BID Levy payer;

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

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.

Upon termination of the BID Arrangements 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 14.6.

The BID Company shall not be permitted to terminate the BID Arrangements where:
the works or services under the BID Arrangements are no longer required; or

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 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.

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.

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.

VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

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.

RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

SEVERANCE

If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.

If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

ENTIRE AGREEMENT

This agreement 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.

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.

Nothing in this clause shall limit or exclude any liability for fraud.

ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and the neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.

Each party confirms it is acting on its own behalf and not for the benefit of any other person.

THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

NOTICES

Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address as set out herein or as otherwise specified by the relevant party by notice in writing to each other party.

For the Council

Name:

Address:

For the Company

Name:

Address:

Any notice or other communication shall be deemed to have been duly received:

- (a) if delivered personally, when left at the address and for the contact referred to in this clause; or

- (b) if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or
- (c) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

A notice required to be given under this Agreement shall not be validly given if sent by e-mail.

The provisions of this clause 26 shall not apply to the service of any proceedings or other documents in any legal action.

DISPUTE RESOLUTION PROCEDURE

If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause:

either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Council and KIPPA BID Manager of the Company shall attempt in good faith to resolve the Dispute;

if the Council and Beddington BID Manager of the Company are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Head of Regeneration of the Council and Chair of the Company who shall attempt in good faith to resolve it; and

if the Head of Regeneration of the Council and the Chair of the Company are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than twenty-eight (28) days after the date of the ADR notice.

If the Dispute is not resolved within sixty (60) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of sixty (60) days, or the mediation terminates before the expiration of the said period of sixty (60) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 26 (Governing Law) and clause 27 (Jurisdiction).

GOVERNING LAW

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.

JURISDICTION

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).

Schedule 1 - BID Area

Schedule 2 - Baseline Agreement

Schedule 3 - Pricing and Payment

The annual costs of collecting the BID Levy are determined each financial year. Such costs include all work related to collection including such enforcement procedures as may be necessary to secure payment of the BID Levy.

Costs for each year of term

In consideration for collecting the BID Levy and for accounting for the monies received, the BID Company shall pay the Council a cost recovery fee equivalent to 3% fee of the BID Levy collected each year within thirty (30) days of the Council issuing an invoice or such other demand for payment on the BID Company.

Collection costs are based on cost recovery and in default of agreement between the parties will be referred to the dispute resolution procedure.

This document has been executed by the parties as a deed and takes effect on the date stated at the beginning of it.

EXECUTED

by affixing the common seal of **The London Borough Of Sutton** in the presence of

Signature

.....

.....

Authorised Signatory

Name:

SIGNATURE

Position:

EXECUTED

by **Kimpton Industrial Park Proprietors Association Limited**

acting by and under the signatures of:

Name:

.....
.....

Signature

Position:

Name:

.....
.....

Signature

Position:

Schedule 2 Baseline Agreement

Schedule 3 Pricing And Payment

