

**Dated**

**BID LEVY OPERATING AGREEMENT**

**THE METROPOLITAN BOROUGH OF SOLIHULL**

**- and -**

**SHIRLEY BID COMPANY LIMITED**

## Agreement

**THIS DEED is made the** \_\_\_\_\_ **day of** \_\_\_\_\_ **20**  
**BETWEEN**

- (1) **THE METROPOLITAN BOROUGH OF SOLIHULL** of Council House Manor Square Solihull West Midlands B91 9QS (“the Council”)
- (2) **SHIRLEY BID COMPANY LIMITED** whose registered office is at [ \_\_\_\_\_ ] (Company No. \_\_\_\_\_) (“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 area of the Local Authority and the funding of the BID Arrangements.
- B** The BID Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements.
- C** Both parties wish to confirm the arrangements by which the BID Levy shall be collected together with general arrangements as to the relationship to be established between 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 for collection of the BID Levy;
- set out the procedures for accounting and transference of the BID Levy;
- provide for the monitoring and review of the collection of the BID Levy;
- confirm the manner in which the Council expenses incurred in collecting the BID Levy shall be paid.

Definitions:

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

- (i) the total amount of BID Levy collected during the relevant Financial Year;
- (ii) details of the success rate for the collection of the BID Levy;
- (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; and
- (iv) details of those BID Levy Payers who have not paid the BID Levy.
- (v) the Council's proposals for the collection of bad or doubtful debts

**the Appeal Notice:** means a notice to be served by the BID Company in accordance with clause 8

**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 defined in Schedule 1 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
- (d) 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 defined in Schedule 1 pursuant to the Regulations

**BID Levy Payer(s)** means the non-domestic rate payers responsible for paying the BID Levy but shall not include the Exempt or Discounted Properties

**the BID Levy Rules** means the rules identified in Schedule 3 setting 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 Recovery Process** means the flow chart process identified in Schedule 4 identifying the stages of recovery action. For the avoidance of doubt the Council shall consult with the BID Company prior to issuing proceedings as set out in Schedule 4 when the Council and the BID Company shall jointly decide on the most appropriate course of action.

**the BID Revenue Account** means the 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 [31<sup>st</sup> July 2018 to 30<sup>th</sup> July 2023]

**the Council's Termination Notice** means the notice to be served by the Council on the BID Company pursuant to Clause 11

**the Council Advance Payment** means the sum paid by the Council to assist the cash flow of the BID Company as detailed in Schedule 3

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

**the Council Loan** means the sum of £40,000 Forty Thousand Pounds (pounds and pence) better defined in Schedule 2

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

**the Enforcement Expenses** means the costs which are reasonably incurred by the Council in issuing a Reminder Notice, obtaining Liability Orders together with all professional and administrative expenses and costs which may be reasonably incurred by the Council in recovering

unpaid BID Levy all such costs and expenses to be notified to the BID Company periodically

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

**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

**Expert** Means an independent person appointed in accordance with Clause 10 to determine a dispute

**the Financial Year** means the financial year for the BID Company which runs from the [31st July to 30<sup>th</sup> July ]

**Liability Order** means an order obtained from the Magistrates Court

**the Monitoring Group** means the group to be set up and to meet at least once a year to monitor the collection and enforcement of the BID Levy (as referred to in Clause 9) such group to consist of at least 1 Council officer and at least 2 representatives from the BID Company

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

**the Reminder Notice** means the notice to be served pursuant to Clause 7

**the Retention Amount** means an amount equal to 2% of the BID Levy, or such

other amount as may be determined from time to time by the Council and BID Company jointly

**IT Support and Maintenance Costs** means the annual cost incurred in maintaining the computer software supporting the BID Levy collection processes.

## **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 Section 2 of the Local Government Act 2000 and Statutory Instrument 2004 No 2443 and all other enabling powers.

## **2 Commencement**

2.1 This agreement shall take effect from the date hereof

2.2 This Agreement shall continue in full force for the BID Term unless and until determined in accordance with the provisions of clause 11

2.3 In order to facilitate the development of the BID and in advance of the start of the BID Term the Council has provided financial assistance which the BID Company herein agrees to repay. In providing this assistance the Council has not agreed to make any further financial contributions throughout the BID Term.

## **3 Setting the BID Levy**

The Council shall:

- 3.1 calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
- 3.2 forthwith confirm in writing to the BID Company the BID Levy payable by each BID Levy payer
- 3.3 provide to the Bid Company a list of the Bid Levy Payers as at the date hereof and at each anniversary of this Agreement

#### **4 The BID Revenue Account**

- 4.1 The Council shall keep a BID Revenue Account in accordance with regulations and accounting codes of practice in force at the time and provide written confirmation to the BID Company of the same within 14 days of request.
- 4.2 The BID Company shall provide the Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account and any other details which the Council may reasonably require.
- 4.3 The Council will pay to the BID Company, each month a sum equal to the BID Levy collected in the preceding month and properly credited to the BID Revenue Account net of the deductions referred to in paragraph 5 below. Such payment to be made on or before the 1<sup>st</sup> of each month during the Bid Term.
- 4.4 All sums will be subject to Value Added Tax (VAT) where applicable under VAT legislation and regulations in force at the time.
- 4.6 The BID Company and the Council as appropriate will issue VAT receipts, where applicable under VAT legislation and regulations in force at the time, for monies received within 7 working days of receipt of the monies.

#### **5. Debits from the BID Revenue Account**

- 5.1 In accordance with the Regulations and subject to the provisions of this agreement the Council shall deduct from the BID Revenue Account:
  - a. payments of the BID levy to the Bid Company



b. any deductions which in the Councils opinion have been incorrectly credited to the BID Revenue Account

c. annually the agreed reasonable costs in relation to billing, collection, and enforcement. For the avoidance of doubt-these have been agreed at

- 31 July 2018 – 30 July 2019 - £1250

- 31 July 2019 – 30 July 2020 - £2750

- 31 July 2020 – 30 July 2021 - £3750

- 31 Jul 21 – 30 Jul 22 - £4250

- 31 Jul 22 – 30 Jul 23 - £5500

d. Annually an amount to cover the IT Support and Maintenance Costs which the Council will pay on behalf of the BID Company limited to £2500 for each year of the Bid Term.

5.2 The Council shall ensure that the Retention Amount is maintained in the BID Revenue Account. Such amount shall be used to make refunds and cover the Enforcement Expenses where the BID Levy collected in the month is insufficient to cover these costs. The retention sum will not earn interest.

5.3 Before making the first payment to the BID Company of the BID Levy as provided in 4.3 above the Council shall deduct an amount equal to the 20% of Council Loan. In the event that insufficient BID Levy has been collected in the month, the Council shall deduct such sums as are necessary from the following months collected BID Levy until 20% of the Council Loan has been repaid. On each anniversary of the start of the Bid Term the Council shall deduct an amount equal to the 20% of Council Loan from the Bid Levy then due.. In the event that insufficient BID Levy has been collected in the relevant month, the Council shall deduct such sums as are necessary from the following months collected BID Levy until 20% of the Council Loan has been repaid

## **6 Collecting the BID Levy**

- 6.1 The Council shall serve a Demand Notice on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.
- 6.2 The Council shall maintain a list of those BID Levy Payers who have not paid the BID Levy and shall make the list available to the BID Company upon its reasonable request.
- 6.3 The Council shall serve a Demand Notice or amended Demand Notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy.
- 6.4 The Council shall use its best endeavours to collect the BID Levy throughout the BID Term.

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

- 7.1 Procedures for the enforcement and recovery of the BID Levy will be in line with the BID Recovery Process and the Council shall comply with these enforcement procedures (where appropriate and agreed in consultation with the Bid Company where set out at Schedule 4) in enforcing payment of the BID Levy against BID Levy Payers.
- 7.2 In the event the Council takes any enforcement action in accordance with this provision or the Regulations the Council shall be entitled to recover the Enforcement Expenses incurred insofar as they are not recoverable from the BID Levy Payers from the Bid Company direct from the Bid Revenue Account.

## **8 Enforcement Mechanisms In The Event That The Council Fails to Enforce Collection of the BID Levy**

In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 7 the BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

- a) the Council serve a Reminder Notice or
- b) In the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.
- c) If the Council fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within 21 days of the issue of the Enforcement Notice the BID Company shall be entitled to serve an Appeal Notice on the Director of Resources of the Council and such notice shall:
  - i. detail the sum unpaid;
  - ii. confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum unpaid; and
  - iii. include written notice requesting that a meeting of the Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the sum unpaid such meeting to take place no later than 28 (twenty eight) days from the date of the Appeal Notice.

## **9 Accounting Procedures and Monitoring**

- 9.1 The Council shall provide quarterly to the BID Company sufficient information to enable the BID Company to assess and monitor the collection of the BID Levy. As soon as is reasonably practicable after these arrangements have commenced the parties shall agree the scope and content of the information to be provided and shall keep the requirements under review throughout the Bid Term .
- 9.2 Within one month from the Ballot Result Date the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least one such meeting in each Financial Year (throughout the duration of the BID Term) and on all other occasions further meetings of the Monitoring Group shall be arranged by the service of written notice by either party.

- 9.3 At each meeting the Monitoring Group shall only:
- a). review the effectiveness of the collection and enforcement of the BID Levy;
  - b) agree write-offs; and
  - b) if required by either party review and assess information provided by the parties.
- 9.4 By 30<sup>th</sup> June in each year the Council shall provide an Annual Report to the BID Company
- 9.5 Within 1 (one) month from the date of receipt of the Annual Report in each financial year the BID Company shall provide a BID Company Report to the Council
- 9.6 If the BID Revenue Account is subject to the internal & external audit arrangements of the Council then the BID Company agree to make available to the Council all such information as the appointed auditors may request.
- 9.7 The Council will make available to the BID Company and its appointed auditors such information as requested by the BID Company and its appointed auditors and that it is able to do so under legislation and regulation.

## **10 Confidentiality**

- 10.1 Subject to clause 10.2 below, both the Council and the BID Company shall keep confidential and not divulge to any person without the prior written consent of the other party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BID and this obligation shall survive the termination or lapse of the BID Arrangements

- 10.2 The restriction on disclosing information mentioned in 10.1 above shall not apply to such disclosures the Council is required to make as a matter of law including but not limited to its obligations under the Freedom of Information Act and the Environmental Information Regulations.
- 10.3 The BID Company acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable the Council to comply with its Information disclosure obligations.
- 10.4 The Council shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.

## **11. Termination**

The Council may terminate this Agreement if:

- a) the BID Company fails to secure approval of the Proposals, Renewal proposals or Alteration Proposals in a ballot, renewal ballot, alteration ballot or rebalot;
- b) the Secretary of State declares void a BID ballot renewal ballot alteration ballot or re-ballot;
- c) the Council exercises its veto and there is no successful appeal against the veto;
- d) the BID Term expires save where the BID Company secures

approval of Renewal Proposals in a renewal ballot or Alteration Proposals in an alteration ballot or Proposals in a rebalot in which event this Agreement shall continue until the expiry of the BID Term set out in the Renewal Proposals, Alteration Proposals or the Proposals set out in the rebalot provided, in relation to Renewal Proposals and Alteration Proposals the Council consents to such continuation

- e) the Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations.

## **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 by registered or recorded delivery post, and shall be served upon the Director of Business Support in the case of the Council and the Company Secretary in the case of the BID company at the addresses provided for above or such substitute or persons or address in England as may from time to time have been notified by that party upon 7 days written notice

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

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

## **14. Independent Expert**

- 14.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference may be referred to

an Expert being an independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications

- 14.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the Expert to be appointed pursuant to Clause 14.1 or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the Expert to be appointed pursuant to Clause 14.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares
- 14.3 The Expert shall act as an expert and not as an arbitrator and his reasonable costs shall be at his discretion and the Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty six working days from the date of his appointment to act
- 14.5 The Expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten working days of his appointment written submissions and supporting material and shall afford to each of the said parties an opportunity to make counter submissions within a further fifteen working days in respect of any such submission and material and the Expert's decision shall be given in writing within twenty-one days of receipt of

the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties

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## **Schedule 1**

The Business Improvement District for Shirley covers the main retail, leisure and business areas. The following streets are included in the BID area, either in whole or part.

**The streets included are:**

**To be Completed**

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## **Schedule 2**

### **the Council Loan**

The Council has made available to the BID Company the sum of £40,000 to fund the set up of the BID. The advances made are specifically for:

£40,000 Initial set up loan including IT set-up costs of £4,250. The Council will recover the loan as set out in clause 5.3 of this Agreement

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## Schedule 3

### the Council Advance Payment

The Council will pay to the BID Company the sum of up to £20,000 annually on the 1st August during the Bid Term in the form of an advance payment representing the Bid Levy to be collected during the Bid Term. The Advance Payment is specifically to cover the period between the end of the Financial Year (i.e 30<sup>th</sup> July) and the anticipated receipt of the First Bid Levy collection paid at the end of August within each year of the Bid Term. Such payment will be subject to the BID Company demonstrating to the Council ahead of the 1<sup>st</sup> August the need for such payment to be made.

The Council will recover the full amount of the Council Advance Payment (up to £20,000 annually) from the BID Levy before making any deductions from the BID Revenue Account.

## **Schedule 4**

### **BID Levy Rules**

1. The BID levy will be 1.5% of rateable value. There is a concession of 25% for tenants in managed centres who already pay a service charge. These businesses will be subject to a levy of 1.125%. The charge will be calculated as at the selected "chargeable day" which will be 1<sup>st</sup> July which immediately precedes the BID levy year commencing on 31<sup>st</sup> July.
2. Any premises with a rateable value (RV) below £7,500 will not be liable to pay the BID levy, although they will be able to join as voluntary members. There are no other exemptions from payment of the BID levy.
3. Inflation - to account for inflation, the BID levy may be increased each year from year two, by a maximum rate of 3% on the levy paid in the preceding year. It is proposed that the BID Board would decide any such increase each year, giving consideration to economic circumstances and feedback from levy payers.
4. The BID levy will be charged annually in advance for each chargeable period which will be the 31<sup>st</sup> July to 30<sup>th</sup> July each year starting on 31<sup>st</sup> July 2018.
5. Subject to rule 2, if a BID levy payers' hereditament is unoccupied they will still be liable to pay the BID levy.
6. The owners of untenanted properties or hereditaments will be liable for payment of the BID levy.
7. Any mandatory or discretionary reliefs under Non-Domestic Rates legislation will not have effect for the BID levy. If a BID levy payer is a charity they will pay the full BID levy, subject, if applicable, to the concession in rule 1 and the exemption in rule 2.
8. There will be no maximum levy caps.
9. The BID levy will be payable in one instalment by BACS, cheque or cash only.
10. There will be no VAT charged on the BID levy.
11. Under the chargeable day principle, businesses that will be liable to pay the BID levy on 1<sup>st</sup> July will be issued with a BID levy bill for the following financial year commencing on 31 July. The rateable value that has effect on the 1<sup>st</sup> July for Non-Domestic Rates purposes will be used to calculate the BID levy for

the following financial year commencing on 31 July. Businesses that are no longer liable to pay Non-Domestic Rates between the chargeable day, 1<sup>st</sup> July and the start of the following BID financial year, 31<sup>st</sup> July, will still be held liable for payment of the BID levy for the whole of the following BID financial year.

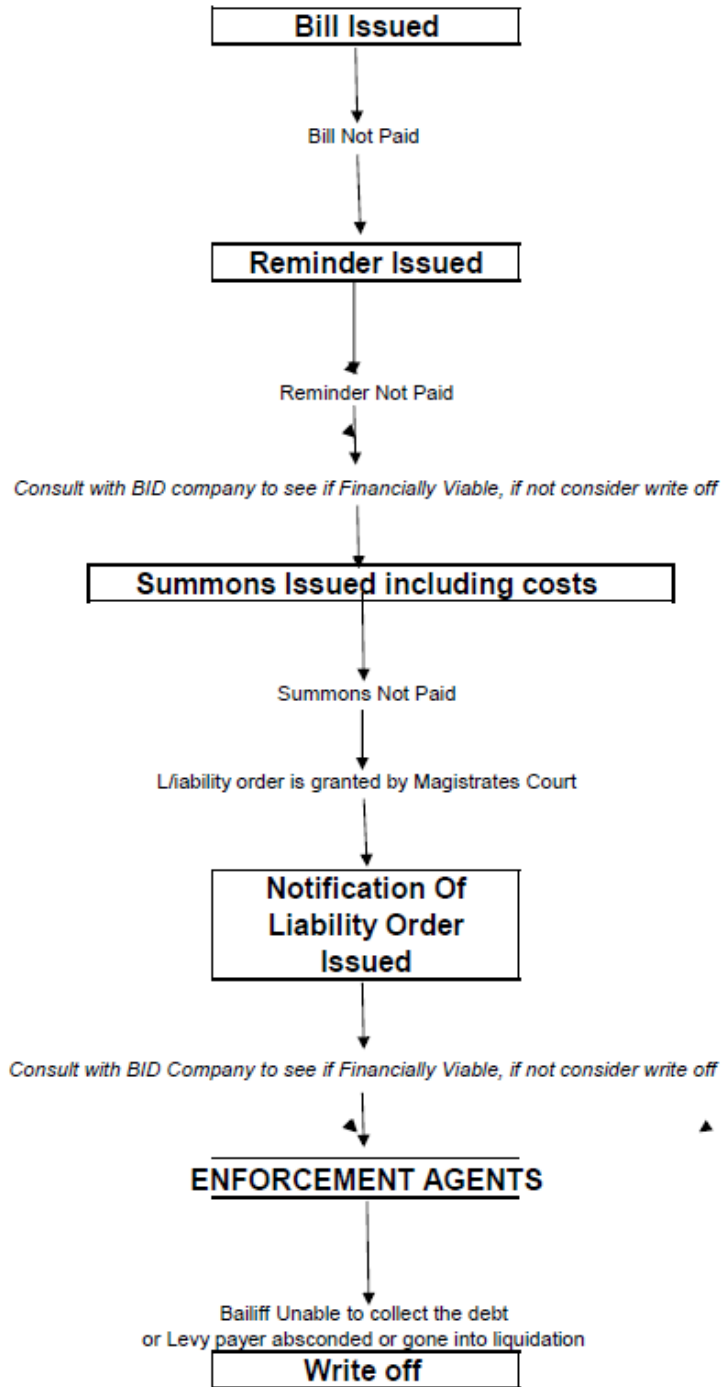
12. If a BID levy payer is no longer the liable party for Non-Domestic Rates purposes after the chargeable day they will still be held liable for payment of the BID levy for the whole of the BID financial year immediately following the last chargeable day on which they were liable to pay the BID levy.
13. If the RV changes after the chargeable day no recalculation will be made and no amended bill will be issued during the BID financial year in which the amended RV is entered into the Rating List. The new RV will take effect from the next chargeable day.
14. If a new property is entered into the Rating List during the BID financial year, the party liable for payment of the BID levy for the property will be liable to pay the BID levy from the first day of the BID financial year or the effective date of the RV entry in the Rating List whichever is the later date.
15. If the property is part of a split, merger or re-organisation after the chargeable day an amended bill will not be issued for the BID financial year in which the split, merged or re-organised properties are first entered into the Rating List. The new RV's on the split, merged or re-organised properties will take effect from the next chargeable day.
16. If the RV changes to zero or the property is removed from the Rating List after the chargeable day, an amended BID levy bill will not be issued during the BID financial year in which the Rating List is amended. No BID levy charge will be calculated on the next chargeable day if the RV remains at zero or the property has not been brought back into the Rating List before that date.
17. Any dispute from a BID levy payer over the application of the chargeable day principles will be passed to the BID company, or its representative, for a final resolution.
18. If the levy payer has overpaid (for example two payments were made instead of one), and requires a refund, the refund payment will be issued by Solihull MBC and the monies deducted from any future BID Levy payment from Solihull MBC to the BID company.
19. Solihull MBC will be responsible for the collection of the BID levy. Collection and enforcement arrangements will be similar to those for the collection and

enforcement of Non-Domestic Rates with the Monitoring Group responsible for any debt write off.

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**Schedule 5**  
**BID Recovery Process**

**BID Recovery From Bill To Bailiff Stage**



**Signed by**

Authorised Signatory on behalf of the Council

**Date:**

Authorised Signatory on behalf of the BID Company

**Date:**

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