

OPERATING AGREEMENT (2021)

(Renewal and Alteration)

**LORD MAYOR AND CITIZENS OF
THE CITY OF WESTMINSTER**

- and -

**THE NEW WEST END COMPANY
(Property Owner BID)**

DRAFT

Contents

1. Definitions.....	4
2. Statutory Authorities	10
3. Commencement.....	10
4. Setting the BRS-BID Levy.....	10
5. The BRS-BID Revenue Account	11
6. Administrative Expenses, External Auditor’s Costs, Software Charges and Support and Maintenance Charges	12
7. Collecting the BRS-BID Levy	14
8. Procedures available to the Council for enforcing payment of the BRS-BID Levy.....	14
9. Enforcement Mechanisms in the event that the Council Fails to Enforce Collection of the BRS-BID Levy.....	15
10. Accounting Procedures and Monitoring.....	15
11. Confidentiality.....	17
12. Notices	17
13. Miscellaneous	17
14. Exercise of the Council’s powers	18
15. Contracts (Rights of Third Parties).....	18
16. Arbitration.....	18
17. Variations	17
SCHEDULE 1- Bid Area Plan.....	22
SCHEDULE 2 – BRS BID Levy Rules	25
SCHEDULE 3 - Data Protection	

OPERATING AGREEMENT

THIS DEED is made the day of 2021

BETWEEN

- (1) **THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER**, City Hall, 64 Victoria Street, London SW1E 6QP (the "Council"); and
- (2) **THE NEW WEST END COMPANY** (the "BRS-BID Company") registered as a company limited by guarantee in England with number 04039488 whose registered office is at Heddon House, Regent Street, London, W1B 4JD.

Recitals

- A. The Council as the billing authority for the purposes of the Local Government Finance Act 1988 and the Business Rate Supplements Act 2009 is responsible for collecting the BRS-BID levy and administering the BRS-BID Revenue Account which shall be used towards the operation of the BRS-BID within the area of the Council and the funding of the BRS-BID Arrangements.
- B. The BRS-BID Company is the BRS-BID Body responsible for achieving the BRS-BID Arrangements using the BRS-BID Levy for the purposes of achieving the BRS-BID Arrangements.
- C. Both parties wish to confirm the arrangements by which the BRS-BID Levy shall be collected together with general arrangements as to the relationship to be established between the Council and the BRS-BID Company for the duration of the BID
- D. The purpose of this Agreement is to:
 - establish the procedure for setting the BRS-BID Levy;
 - confirm the basis upon which the Council will be responsible for collecting the BRS-BID Levy;
 - set out the enforcement mechanisms available for collection of the BRS-BID Levy;
 - set out the procedures for accounting and transference of the BRS-BID Levy;

- provide for the monitoring and review of the collection of the BRS-BID Levy;
- confirm the manner in which the Council's expenses incurred in collecting the BRS-BID Levy shall be paid.

It is agreed as follows:

1. DEFINITIONS

- “2014 Regulations”** means The Business Improvement Districts (Property Owners)(England) Regulations 2014 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).
- “Administrative Expenses”** - means costs incurred by the Council in the administration, collection and recovery of the BRS-BID Levy other than the Software Charges, Support and Maintenance Charges and External Auditor’s Costs.
- “Annual Report”** - means a report prepared by the Council which details
- (i) the amount of the BRS-BID Levy collected during the relevant Financial Year;
 - (ii) the success rate for the collection of the BRS-BID Levy;
 - (iii) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BRS-BID Levy;
 - (iv) those BRS-BID Levy Payers who have paid the BRS-BID Levy and those who have not paid the BRS-BID Levy;

- (v) the Council's proposals for Bad or Doubtful Debts.
 - (vi) The Council's proposal(s) for dealing with credit balances for a BRS-BID Levy
- “Appeal Notice”** - means a notice served by the BRS-BID Company in accordance with Clause 9.2.
- “Bad or Doubtful Debts”** - has the meaning given in Schedule 3, Part 2 of the Regulations.
- “Ballot Result Date”** - means the date upon which a successful ballot result has been declared in favour of putting in place the BRS-BID Arrangements for the BRS-BID Term.
- “Bankruptcy Order”** - has the meaning given in section 381 of the Insolvency Act 1986.
- “BID”** means the geographical area of the BID, as that expression is defined in the Regulations and is that area within which the BRS-BID Arrangements operate as shown on the plan attached to this Agreement in Schedule 1.
- “BID Arrangements”** has the meaning given to that expression in the Local Government Act 2003.
- “BRS-BID Arrangements”** - has the meaning given by s41 of the Local Government Act 2003.
- “BRS-BID Company Report”** - means a report prepared by the BRS-BID Company for each Financial Year which details:
- (a) total income and expenditure arising from the BRS-BID Levy;
 - (b) other income and expenditure of the BRS-BID Company;
 - (c) a statement of actual and pending deficits; and
 - (d) the various initiatives and schemes upon which the BRS-BID Levy has been expended by the BRS-BID Company.
- “BRS-BID Levy”** - means the charge levied and collected within the BID pursuant to the Regulations.

“BRS-BID Levy Payer(s)”

- means:

- the person with a legal estate immediately in reversion to a lease granted for a term of more than 35 years regardless of the number of years remaining;
- the rateable occupier, if the rateable occupier is the freeholder or the person with a legal estate immediately in reversion to a lease granted for a term of more than 35 years regardless of the number of years remaining;
- the freeholder, if no lease for a term of more than 35 years has been granted;

Provided always that joint freeholders or leaseholders shall be jointly and severally liable for the BRS-BID Levy.

“BRS-BID Levy Rules”

- means the rules set out in Schedule 2.

“BRS-BID Revenue Account”

- means the account kept in accordance with regulation 16 of the Regulations.

“BRS-BID Term”

- means 1 April 2021 to 31 March 2026, Provided that:
 - on the expiry of The New West End Company BID Arrangements on 31 March 2026 unless a renewal ballot for successor BID Arrangements for the BID has not been successful the BRS-BID Term shall expire on 31 March 2026;
 - or The New West End Company BID Arrangements, or any successor BID Arrangements have been terminated under Regulation 20 of the Regulations the BRS-BID Term shall expire on the date of termination of The New West End Company BID Arrangements or successor BID Arrangements, as the case may be; or
 - Any successor BID Arrangements have been vetoed under Regulation 14 of the Regulations and any appeal against such veto has not been upheld the BRS-BID Term shall expire on 31 March 2026;

“Chargeable Period(s)”

- means any one of the following periods:
 - 01/04/21 – 31/03/21
 - 01/04/22 – 31/03/23
 - 01/04/23 – 31/03/24
 - 01/04/24 – 31/03/25
 - 01/04/25 – 31/03/26

Provided always that such period falls within the BRS-BID Term.

"Committal"

- means an order made by Magistrates' Court for a BRS-BID Levy Payer to be committed to prison for failure to pay the BRS-BID Levy.

“Contributors”	- means the BRS-BID Levy Payers and payers of a contribution or funds paid or made available to the BRS-BID Company which do not form part of the BRS-BID Levy.
“Demand Notice”	- has the meaning given in the Regulations.
“Enforcement Agent”	- has the meaning given in the Taking of Control of Goods Regulations 2013.
“Enforcement Notice”	- means a notice served on the Council in accordance with Clause 9.
“External Auditor’s Costs”	- means the sum charged by the Council’s external auditor in carrying out an audit of the BRS-BID Revenue Account
“Financial Year”	- means the financial year for the BRS-BID Company which runs from 1 April to 31 March.
“Hereditament”	- means anything which is or treated as being a Hereditament by virtue of the provision of section 64 of the Local Government Finance Act 1988.
“Liability Order”	- has the meaning given in the Regulations.
“Monitoring Group”	- means the group whose members are representatives from the Council and the BRS-BID Company.
“NNDR”	- means Non-Domestic Rates under the Local Government Finance Act 1988.
“Mandatory Charitable NNDR Relief”	- means relief which a local authority must grant under s43 of the Local Government Finance Act 1988.
“Occupier”	means an occupier granted permission by the freeholder or leaseholder with freehold or leasehold land title to use and or occupy the rateable Hereditament
“Owner”	means the freeholder with freehold land title or leaseholder with a lease of 35 years or more to the rateable hereditament.

“Proposals”	means the plan voted for by the BRS-BID levy Payers in a ballot which sets out the objectives of the BRS-BID Arrangements and identifies the various projects which will be undertaken using funds raised by the BRS-BID Levy and/or Voluntary Contributions to achieve those objectives
“Rating List”	- means within the meaning of s41 of the Local Government Finance Act 1988.
“Regulations”	- means the Business Improvement Districts (Property Owners) (England) Regulations 2014 and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 150 of the Local Government and Housing Act 1989 and section 29 of the Business Rate Supplements Act 2009 and or section 48 of the Local Government Act 2003 (from time to time).
“Reminder Notice”	- means the notice served pursuant to Clause 9.1.
“Same Group”	means those BID Levy Payers that the BID Company has formally considered and determined are part of the same group and notifies the Council in writing.
“Software Charges”	means charges levied by Capita Business Services Ltd. (or their successors in title).
“Sum Unpaid”	- means the amount of the BRS-BID Levy which is unpaid after the Single Instalment Due Date.
“Support and Maintenance Charges “	means annual charges levied by Capita Business Services Ltd. (or their successors in title) in relation to the Academy BID Software module or its successor or replacement who details must be notified to the Council in the event of any change relating to BRS-BID Levy software module or its successor or replacement and enhancements relating to BRS-BID Levy.
“Valuation Officer”	- means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List.

- “Voluntary Contributions”** - means any contribution or funds paid or made available to the BRS-BID Company which do not form part of the BRS-BID Levy.
- “Winding-Up”** - means an order pursuant to section 125 of the Insolvency Act 1986.
- “Write Backs”** means the removal of a credit balance from a BID Revenue Account by the Council in accordance with audit guidelines and internal procedures.
- “Write Off”** - means a decision by the BRS BID Company notified to the Council that an unpaid BRS BID Levy will not be recovered

2. STATUTORY AUTHORITIES

- 2.1 This Agreement is made pursuant to the Business Rate Supplements Act 2009 and Section 111 of the Local Government Act 1972 and all other enabling powers.

3. COMMENCEMENT

- 3.1 This Agreement shall not take effect until the Ballot Result Date and in any event shall determine and cease to be of any further effect in the event that:
- 3.1.1 the Secretary of State declares void a BRS-BID ballot under Regulation 11 of the Regulations;
- 3.1.2 the Council exercises its veto under Regulation 14 of the Regulations and there is no successful appeal against the veto under Regulation 15 of the Regulations;
- 3.1.3 the BRS-BID Term expires; or
- 3.1.4 the Council exercises its discretion to terminate the BRS-BID Arrangements in exercise of powers under Regulation 20 of the Regulations.
- 3.2 The expiry or termination of this Agreement shall be without prejudice to the Council’s powers and obligations under the Regulations in connection with the administration, collection and recovery of BRS-BID Levy payable in respect of a period prior to the expiry or termination of this Agreement, refunds to BRS-BID Levy Payers and the keeping and administration of the BRS-BID Revenue Account.

4. SETTING THE BRS-BID LEVY

- 4.1 **As soon as possible upon the Ballot Result Date the Council shall:**

- 4.1.1 calculate the BRS-BID Levy for each BRS-BID Levy Payer in accordance with the BRS-BID Levy Rules; and
 - 4.1.2 confirm in writing to the BRS-BID Company the BRS-BID Levy payable by each BRS-BID Levy Payer.
- 4.2 In order to carry out its duties under 4.1 the Council is to be provided with the most up to date list of BRS-BID Levy Payers that is available as prepared by the BRS-BID Company. The BRS-BID Company is to provide the Council with updates and supporting documentary evidence to the list of BRS-BID Levy Payers as and when changes occur. For the avoidance of doubt , the final decision on liability for the BRS-BID Levy will at all times be the Council's decision.

5. THE BRS-BID REVENUE ACCOUNT

- 5.1 As soon as is reasonably practicable following the Ballot Result Date the Council shall keep a BRS-BID Revenue Account within the Council's General Fund and provide written confirmation to the BRS-BID Company of the same.
- 5.2 The Council shall pay to the BRS-BID Company the BRS-BID Levy collected up to the end of each month having first deducted a contingency and such contingency shall be determined as follows, provided that the BRS-BID Term has not expired:
- (a) 1% of the BRS-BID Levy collected from 1 April 2021 to 31 March 2025;
 - (b) 5% of the BRS-BID Levy collected in the final year of the BID Term.

unless or until at the final year of the BID Term in respect of the final Chargeable Period for the BID Arrangements there has been an approved Ballot Result Date for the future BID Arrangements and continuation of the BID.

Thereafter the contingency may be reduced to a rate of 1% and paid over the next monthly payment after the end of each month in which the relevant renewal ballot result has been announced as successful and after the veto period has elapsed, such period may be extended at the Council's discretion.

- 5.3 The Council and the BRS-BID Company shall review the percentages set out at clause 5.2 of this Agreement in respect of BRS-BID Levy collected from 1 April 2021 to 31 March 2026 every three months (for the duration of the BRS-BID Term) and the Council shall take reasonable account of any representations made by the BRS-BID Company. At the conclusion of such review, the contingency retained shall be as set out in clause 5.4 unless the Council decides to change it. Any such change in the contingency will be confirmed by the Council in writing stating the effective date for the change in the percentage in respect of the contingency to be retained and clause 5.2 will be revised and updated accordingly.

- 5.4 Unless otherwise agreed, the Council shall pay to the BRS-BID Company such contingency as the Council has retained as at 31 March of a financial year on 31 May of the following financial year. In the event that there are no successor BRS-BID arrangements after 31 March 2026, the Council shall pay the BRS-BID Company any contingency (including interest that has accrued, if any) it has retained less an amount equal to 100% of all BRS-BID Revenue Account Credit Balances on 30th September 2026;
- 5.5 In the event that a BRS-BID Levy Payer is entitled to repayment of a BRS-BID Levy payment already paid ('the Repayment Sum') pursuant to paragraph 8(4) of Schedule 4 of the Regulations and in the event that the Council has previously paid all or part of the Repayment Sum to the BRS-BID Company, the Council shall request all or part, as the case may be, of the Repayment Sum from the BRS-BID Company and the BRS-BID Company shall pay the sum so requested to the Council forthwith and the Council shall thereafter repay the Repayment Sum to the relevant BRS-BID Levy Payer. In the event of the termination of the BRS-BID Arrangements or the receipt of notice by the Council under clause 5.6 the BRS-BID Company shall forthwith pay to the Council the Council's estimate as notified to BRS-BID Company of the total of possible Repayment Sums.
- 5.6 The BRS-BID Company shall provide the Council with a minimum of one month's prior written notice of any proposed resolution for winding up the BRS-BID Company or proposed entry into any composition or arrangement for the benefit of the BRS-BID Company's creditors or proposed cessation of the BRS-BID Company's business or proposed administration order and shall forthwith notify the Council of the appointment of any administrator, administrative receiver or receiver of all or any of the BRS-BID Company's assets.
- 5.7 The BRS-BID Company shall issue to the Council a VAT invoice for the payment of the BRS-BID Levy income upon advice from the Council on the amount due.
- 6. ADMINISTRATIVE EXPENSES, EXTERNAL AUDITOR'S COSTS, SOFTWARE CHARGES AND SUPPORT AND MAINTENANCE CHARGES**
- 6.1 The Council shall provide the BRS-BID Company with one or more invoices for payment of Administrative Expenses for each financial year.
- 6.2 The Administrative Expenses for the financial year 2021-22 shall be in the sum of the Administrative Expenses for 2020-21 (£11,067.61) plus the product of this amount and the Consumer Price Index (CPI) for the month of March 2021, plus VAT. The Council shall provide to the BRS-BID Company an invoice for that amount on or after 1st April 2021.
- 6.3 The amount of the Administrative Expenses for the financial year 2022-23 and each subsequent year shall be the amount of the annual administrative charge for the preceding year (excluding VAT) plus a further amount equal to the product of the amount (excluding VAT) of the invoices provided by the Council in the immediately preceding year and the Consumer Price Index (CPI) for the month of March

immediately preceding the 1st April in the year for which invoices are being provided by the Council in relation to the period of twelve (12) months ending in that month of March. In the event of a negative figure, no adjustment will be made to the price of the service for that year.

- 6.4 The Council shall provide the BRS-BID Company with an invoice for payment of an appropriate share of the annual Support and Maintenance Charges. That appropriate share shall be calculated by dividing the Support and Maintenance Charges for the year concerned equally amongst all Business Improvement Districts in the City of Westminster to which regulation 17 of the Regulations apply. In the event that after the date of this Agreement there is a change (whether an increase or decrease) in the number of Business Improvement Districts established under the Regulations in the City of Westminster to which the Regulations apply then the share of the Support and Maintenance Charges for this BID will be adjusted pro-rata for the period after the change the Support and Maintenance Charges are equally divided amongst the Business Improvement Districts.
- 6.5 The Council will manage the BRS-BID Levy at no cost to the BRS-BID Company other than the Administrative Expenses, the Support and Maintenance Charges, the Software Charges and the External Auditor's Costs. In the event, however, that the Council reasonably believes that management of the BRS-BID Levy requires the Council to provide more staff time than anticipated by the Council at the commencement of this Agreement, the Council may serve on the BRS-BID Company a notice, which sets out the amount of staff time anticipated by the Council at the commencement of this Agreement broken down by grade and type of staff, the amount of additional staff time required broken down by grade and type of staff, the cost of that additional staff time also broken down by grade and type of staff and the reasons for the additional staff time being required, again broken down by grade and type of staff. If the BRS-BID Company disputes the need for or the amount of the additional staff time or considers that the cost of the additional staff time could be reduced by use of different members of the Council's staff, it shall give notice including full details of the matters in dispute to the Council forthwith then the matter shall be determined in accordance with Clause 16 below. If after 28 days from the date of the notice or determination of the dispute, whichever is the later, the amount of staff time has not reduced to the levels anticipated by the Council at the commencement of this Agreement the BRS-BID Company shall pay the Council's costs of providing more staff time as set out in the notice from the Council or as determined under Clause 16 below.
- 6.6 In the event that the Council's external auditor charges the Council the External Auditor's Costs, the BRS-BID Company shall pay to the Council the External Auditor's Costs.
- 6.7 In the event that the number of hereditaments within BIDs operating in the area for which the Council is the billing authority exceeds the number covered by the current licence and by reason thereof the Council is required to pay Software Charges, the BRS-BID Company shall pay such Software Charges to the Council or an appropriate proportion of them as the Council sees fit.

- 6.8 The BRS-BID Company shall pay the invoices referred to in this clause 6 within 28 (twenty-eight days) from the date of receipt.
- 6.9 In the event that the BRS-BID Company fails to pay any or all of the said invoices within the said 28 (twenty-eight days) the Council shall be entitled to debit an amount equal to the said invoices from the BRS-BID Revenue Account and credit that amount in an account in the name of the Council.

7. COLLECTING THE BRS-BID LEVY

- 7.1 As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the BRS-BID Company the anticipated date of the despatch of Demand Notices for the initial Chargeable Period and the expected payment due date .
- 7.2 Pursuant to clause 7.1 the Council shall serve a Demand Notice on each BRS-BID Levy Payer and thereafter shall continue to calculate the BRS-BID Levy and serve a Demand Notice throughout the BRS-BID Term. In order to enable the Council to serve demands upon the correct person or persons, the BRS-BID Company shall provide up to date details of property ownership as defined by the BRS-BID Levy rules and arrangements. For clarification, the final decision on liability for the BRS-BID Levy will at all times rest with the Council.
- 7.3 The Council shall maintain a list of those BRS-BID Levy Payers who have paid the BRS-BID Levy and those BRS-BID Levy Payers who have not paid the BRS-BID Levy. It shall also make a list available to the BRS-BID Company ten (10) working days after the last date of each month.
- 7.4 The Council shall serve a Demand Notice or amended Demand Notice on a BRS-BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BRS-BID Levy.
- 7.5 The Council shall use all reasonable endeavours to collect the BRS-BID Levy throughout the BRS-BID Term.

8. PROCEDURES AVAILABLE TO THE COUNCIL FOR ENFORCING PAYMENT OF THE BRS-BID LEVY

- 8.1 Procedures for the enforcement and recovery of the BRS-BID Levy are set out in the Regulations under regulation 17 and Schedule 4 and the Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BRS-BID Levy against BRS-BID Levy Payers.

9. ENFORCEMENT MECHANISMS IN THE EVENT THAT THE COUNCIL FAILS TO ENFORCE COLLECTION OF THE BRS-BID LEVY

9.1 In the event that the Council fails to enforce payment of the BRS-BID Levy pursuant to Clause 8 the BRS-BID Company shall be entitled to serve an Enforcement Notice on the Council requesting that:

9.1.1 the Council serve a Reminder Notice or in the event that the Council has already served a Reminder Notice that the Council applies for a Liability Order at the next available court date from the schedule of hearings agreed with the Court for NNDR and the Council shall thereafter provide written confirmation of the action it shall take to comply with the Enforcement Notice.

9.2 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 BRS-BID Company shall be entitled to serve an Appeal Notice on the Executive Director of Finance and resources of the Council and such notice shall:

9.2.1 detail the Sum Unpaid;

9.2.2 confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the Sum Unpaid; and

9.2.3 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.

10. ACCOUNTING PROCEDURES AND MONITORING

10.1 Within 1 (one) month from the Ballot Result Date the parties shall set up the Monitoring Group meeting.

10.2 Each month (for the duration of BRS-BID Term) the Council shall provide the BRS-BID Company with:

(i) the amount of the BRS-BID Levy for each BRS-BID Levy Payer with PDF copies of BID Levy Demand Notices .

(ii) the amount of the BRS-BID Levy collected for each BRS-BID Levy Payer;

(iii) details of BRS-BID Levy Payers who have not paid the BRS-BID Levy;

(iv) Details of Reminder Notices issued;

(v) details of Liability Orders made or applied for;

- (vi) details of an agreement made, if any, between the Council and a BRS-BID Levy Payer where it has been agreed that payment of a Demand Notice can be made over a period of 6 (six) months or more from the date of such Demand Notice.
 - (vii) Council will undertake a due diligence process to reduce credit balances on the BID Revenue Account at least once per Chargeable Period. The process may involve reminders to generate refund claims and transferring BID Levy overpayments from BID Revenue Account to offset against NNDR debt or other BID or rate liabilities within audit guidelines and potentially credit Write Backs.
- 10.3 After six (6) months from the commencement date of the BRS-BID Term and every 6 (six) months thereafter (for the duration of the BRS-BID Term) the BRS-BID Company shall provide the Council in respect of the relevant 6 (six) months period with:
- 10.3.1 the amount of BRS-BID Levy received from the Council by the BRS-BID Company;
 - 10.3.2 the amount received by the BRS-BID Company from Contributors excluding BRS-BID Levy Payers;
 - 10.3.3 the total expenditure of the BRS-BID Company.
- 10.4 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 four such meetings in the first Financial Year of the BRS-BID Term) and two for the remainder of the BRS-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 on the other such notice to be provided no less than 28 (twenty eight) 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 BRS-BID Company.
- 10.5 At each meeting the Monitoring Group shall:
- 10.5.1 review the effectiveness of the collection and enforcement of the BRS-BID Levy; and
 - 10.5.2 if required by either party review and assess information provided by the parties pursuant to Clauses 10.2 and 10.3 above and make recommendations, provided they are permitted by the Regulations and the terms of this Agreement.
- 10.6 Within 2 (two) months after the end of each Financial Year (for the duration of the BRS-BID Term) the Council shall provide an Annual Report to the BRS-BID Company to be issued on or around 31 March.
- 10.7 Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the BRS-BID Term) the BRS-BID Company shall provide a BRS-BID Company Report to the Council.

11. CONFIDENTIALITY

11.1 Both the Council and the BRS-BID Company shall keep confidential and not disclose 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 BRS-BID Levy Payers or Contributors or about other third parties which it shall have obtained or received as a result of operating the BRS-BID Arrangements and this obligation shall survive the termination or lapse of the BRS-BID Arrangements.

12. NOTICES

12.1 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 upon 7 days written notice.

12.2 A notice may be served by:

12.2.1 delivery to the City of Westminster Chief Executive at the address of the Council specified above; or

12.2.2 delivery to the Director, Company Secretary or Chief Executive at the address of the BRS-BID Company specified above;

12.2.3 registered or recorded delivery post to such addresses;

12.2.4 electronic communication, provided that it is in legible form and is capable of being used for subsequent reference to such addresses.

12.3 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 section 29 of the Business Rate Supplements Act 2009 or section 48 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, Plan or Recital such reference (unless the context requires otherwise) is a reference to a clause, part, plan, or recital in or 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 or delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

14. EXERCISE OF THE COUNCIL'S POWERS

- 14.1 The Council may terminate this Agreement in accordance with the Regulations.
- 14.2 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)

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

16. ARBITRATION

- 16.1 The following provisions shall apply in the event of a dispute:
- 16.1.1 any dispute or difference of any kind whatsoever arising between the parties hereto out of or in connection with this Deed shall be referred to arbitration before a single arbitrator;
- 16.1.2 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 and each party shall bear its own costs;
- 16.1.3 if the parties are unable to agree within 28 (twenty eight) days 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.
- 16.2 In the event of a reference to arbitration the parties agree:
- 16.2.1 to prosecute any such reference expeditiously; and

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

16.2.3 that the award shall be in writing signed by the relevant tribunal and shall be finalised within 21 (twenty one) days from the date of such award;

16.2.4 the award shall be final and binding both on the parties and on any persons claiming through or under them.

17 VARIATIONS

17.1 No Variation to this Agreement shall be effective unless:

- (i) it is recorded in writing and signed by both the Council and the BID Company and
- (ii) the substance of such Variation has first been approved in accordance with any applicable internal processes or policies of each Party.

17.2 Accordingly neither the Council nor the BID Company shall implement a variation other than one which is in accordance with this Clause 17.

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

THE COMMON SEAL of THE LORD)
MAYOR AND CITIZENS OF THE CITY)
OF WESTMINSTER was hereunto)
Affixed by Order)

Executed as a deed)
THE NEW WEST END COMPANY)
acting by two directors or a director and)
its secretary)

.....
Director

.....
Director/Company Secretary

DRAFT

DRAFT

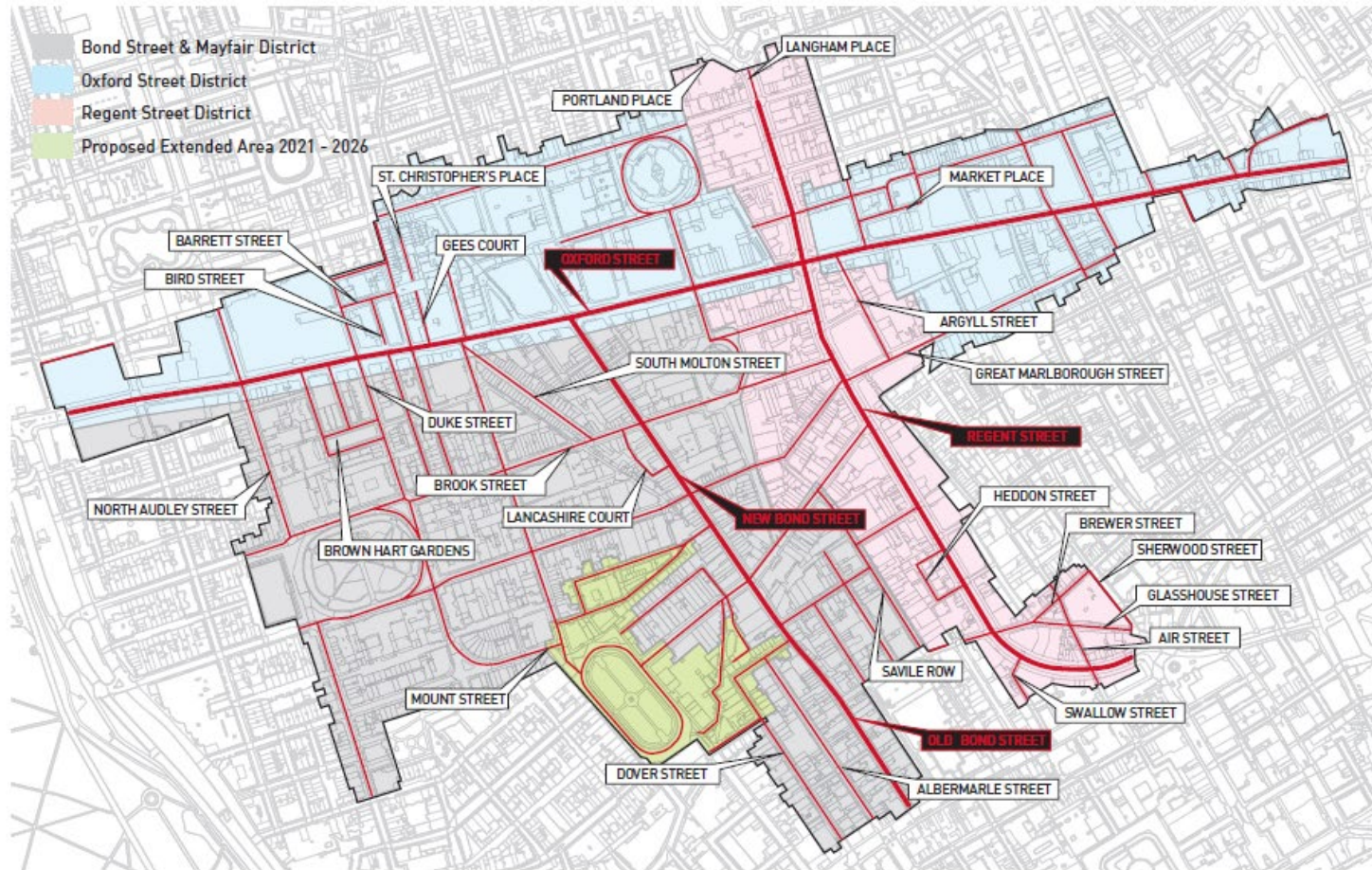
SCHEDULE 1

BID AREA PLAN

DRAFT



BID Area Map & Proposed Extended Area



Air Street (in part)
Albermarle Street – All
Argyll Street – All
Balderton Street – All
Barlow Place – All
Barrett Street – All
Berners Street (in part)
Berkeley Square – All
Berwick Street (in part)
Binney Street – All
Bird Street – All
Bloomfield Place – All
New Bond Street – All
Old Bond Street – All
Bourdon Street – All
Brewer Street (in part)
Brook Street – All
Brown Hart Gardens – All
Bruton Lane – All
Bruton Place – All
Bruton Street (in part)
Bryanstan Street (in part), south side only
Burlington Gardens (in part), north side of street
Carlos Place – All
Cavendish Square – All
Clifford Street – All
Conduit Street – All
Cork Street – All

Davies Street – All
Dean Street (in part)
Dover Street – All
Duke Street (in part)
Eastcastle Street – All
Gees Court – All
Gilbert Street – All
Glasshouse Street – All
Grafton Street – All
Great Castle Street – All
Great Marlborough Street – All
Great Portland Street (in part)
Great Titchfield Street (in part)
Grosvenor Hill – All
Grosvenor Square – All
Grosvenor Street – All
Hanover Square – All
Hanover Street – All
Hanway Street – All
Hay Hill – All
Harewood Place – All
Heddon Street – All
Henrietta Place – All
Holles Street – All
James Street (in part), 1-29a west side and all of east side
Lancashire Court – All
Langham Place – All

Lumley Street – All
Maddox Street – All
Market Place – All
Mount Street – All
New Burlington Street – All
Newman Street (in part)
Noel Street – All
North Audley Street – All
Old Burlington Street – All
Orchard Street – All
Oxford Street – All
Picton Place – All
Princes Street – All
Rathbone Place (in part)
Regent Street
Savile Row – All
Sherwood Street (in part)
South Audley Street (in part)
South Molton Street – All
St. Christopher's Place – All
Stratford Place – All
Swallow Street (in part)
Upper Brook Street (in part)
Vigo Street
Wardour Street (in part)
Wells Street (in part)
Wigmore Street (in part)

SCHEDULE 2

BRS-BID LEVY RULES

(For BRS-BID Levy demanded on or after 1 April 2021)

1. INTRODUCTION

1.1 The following rules must be read in conjunction with the Regulations. Where the rules conflict with the Regulations the Regulations shall prevail.

2. HEREDITAMENTS SUBJECT TO THE BID LEVY

2.1 A BID Levy Payer will be subject to the BID Levy in respect of a Hereditament if on a particular day in a Chargeable Period the Hereditament:

- (a) is in the BID;
- (b) is on the Rating List; and
- (c) is a Hereditament with a VOA codes in respect of retail hospitality and leisure

2.1.1 The VOA codes applicable are:-

**CH CR CS CS1 CS10 LT1 CS7 CS8 CS9 AND CL1, CL2, CL, CX LX and LT3
Theatres**

2.2 Definition of Eligible Owner- The eligible owner shall be: The first lessee above the rateable Occupier where the current lease is granted for a term of more than 35 years, or in the absence of a relevant first lessee, the freeholder.

3. THE BID LEVY

3.1 For the avoidance of doubt, the BID Levy is a daily charge due annually in advance.

3.2 The BID Levy will be calculated for a Chargeable Period as follows:

BID Rateable Value x BID Multiplier x (D/Y)

where:

3.2.1 D is the number of days in such Chargeable Period for which the BID Levy Payer is liable for the BID Levy; and

3.2.2 Y is the number of days in that Chargeable Period, i.e. 366 for 1 April 2019 to 31 March 2020 and 365 for the other Chargeable Periods.

3.2.3 **BID Rateable Value** – is the Rateable Value of the Hereditament as at 1 April 2021 or, if none, the earliest effective date in the 2017 or subsequent Rating List

- 3.2.4 **BID Multiplier** - will be 0.650% for 2021/22, increasing annually by 3% pa. for all Levy Payers except for Owner-Occupiers where the BID Multiplier is 0.325% for 2021/22, increasing by 3% per annum.
- 3.2.4 The BID Levy will be rounded to the nearest penny (and note that £0.005 will be rounded up to £0.01).
- 3.3 The BID term will be five years from 1 April 2021 to 31 March 2026. In the event of the Occupier BID ceasing to exist, the Property Owner BID cannot seek renewal at the end of its present 5-year mandate;
- 3.4 The BID Levy will be applied to rated properties in the BID with a rateable value of £400,000 or more as at 1.4.2021 ;
- 3.5 Owner/Occupiers: If the relevant long lease or freehold property Owner is part of the Same Group as the Occupier BID Levy payer for any rateable Hereditament over £400,000 then the Occupier / Property Owner BID Levy shall be fixed at 0.325% of RV using the 2017 rating list as at 1 April 2021 for that relevant interest;
- 3.6 The BID Company's Board and Finance & Governance Group shall have the absolute discretion to agree whether an eligible Owner and an Occupier are deemed part of the 'Same Group' for the purposes of Owner-Occupier BID Levy charges.
- 3.7 The BID Company shall provide a list of properties for Owner-Occupier BID Levy Payers in respect of their BID Levy charges to the Council prior to the Ballot Results Date in the year 2021 for the Chargeable Period which commence on 1 April 2021 and no later than 31 January in each subsequent year the following Chargeable Period, such list shall incorporate the names the Owner and the Occupier which are deemed to be part of the "Same Group".
- 3.8 The BID Levy will assume an annual growth rate for inflation of 3% to be applied 1 April Financial Year;
- 3.9 The BID Levy will only apply to retail, food and beverage and leisure hereditaments (including hotels) (See above re VOA codes)
- 3.10 The liability for the daily BID Levy will fall on the eligible property Owner;
- 3.11 New Hereditaments will be charged based on the rateable value at the point of occupation;
- 3.12 There will be no VAT charged on the BID Levy;
- 3.14 The BID Levy rules cannot be altered without an alteration ballot;
- 3.15 No refunds will be granted on the BID Levy paid;

3.16 The BID Levy is to be paid in full within 14 days of receipt of invoice.

4. CHANGES IN RATEABLE VALUE

4.1 Where the Council is notified of a change in the Rateable Value of a Hereditament by the VOA by way of a schedule update (an **RV Change**) then the Council will calculate the adjustment to the BID Levy pursuant to the later of the following dates:

- 4.1.1 the Effective Date of such change; or
- 4.1.2 1 April of the Chargeable Period in which the relevant schedule update is issued.

4.2 When the Council is notified of a change in the Rateable Value of a Hereditament by the Valuation Officer by way of a schedule update and such change relates to:

- (i) a new entry in a Rating List (whether as the result of a new Hereditament or the split or merger of previously existing Hereditament(s)); or
- (ii) a reduction in the Rateable Value to £0 or £1; or
- (iii) a deletion of the Hereditament from the Rating List,

Then the Council will calculate the adjustment to the BID Levy pursuant to the effective date of such change.

4.3 The Council will only issue refunds of the BID Levy in respect of an RV Change for the Chargeable Period in which the RV Change occurs.

5. PERSONS / ORGANISATIONS LIABLE FOR THE BID LEVY

5.1 Liability for the BID Levy will fall on the Owner of the Hereditament on the relevant day.

6. COLLECTION OF THE BID LEVY

6.1 The Council shall serve a Demand Notice on a BID Levy Payer as soon as practicable after the Council becomes aware of a BID Levy liability. The Council may serve a Demand Notice before the beginning of a Chargeable Period in accordance with paragraph 5(2) of schedule 4 of the Regulations. The Demand Notice must make it

clear to the BID Levy Payer that the BID Levy for a Chargeable Period must be paid by the single instalment due date.

- 6.2 The BID Levy for a Chargeable Period will be payable in advance upon the service of a Demand Notice.
- 6.3 Before exercising its powers under paragraph 8(4) of schedule 4 of the Regulations the Council shall allow the BID Company to make representations as to the manner in which the Council should exercise its discretion under that paragraph and in deciding how to exercise its discretion the Council shall have regard to any such representations.
- 6.4 The BID Company may authorise Write-Offs, as appropriate.

7 ENFORCEMENT AND RECOVERY OF THE BID LEVY

7.1 Stage 1

- 7.1.1 The Council will serve a Demand Notice at least 14 days before the Single Instalment Due Date.

7.2 Stage 2

- 7.2.1 In the event that a BID Levy Payer does not pay the BID Levy by the single instalment due date in full the Council will serve a notice at least 10 days thereafter on the BID Levy Payer for an amount equal to the Sum Unpaid (a "Reminder Notice"). Such Reminder Notice must be in terms demanding payment of the Sum Unpaid within seven days.

7.3 Stage 3

- 7.3.1 In the event that a BID Levy Payer does not pay the Sum Unpaid in full within seven days from the date of the Reminder Notice, the Council may apply to a Magistrates' Court for a Liability Order after 14 days of the date of the Reminder Notice.

7.4 Stage 4

- 7.4.1 In the event that a Magistrates' Court makes a Liability Order the Council will instruct the Enforcement Agent within a reasonable period thereafter to execute the Liability Order.
- 7.5.1 In addition to a Liability Order, the BID Company may request the Council to apply for a different order and such order may include an order for Committal and an order for Winding Up a company. Where such a request is made, the Council shall not be required to take the action requested unless the BID Company first agrees to pay all or part of the Council's costs in taking such action. The Council may further require the BID Company to pay such costs before the action is taken.

8.4 General Enforcement and Recovery Provisions

- 8.4.1 The Council may enter into an agreement with a BID Levy Payer for payment of a Sum Unpaid at any time after service of a Demand Notice and such agreements do not require consent of the BID Company.
- 8.4.2 Costs recovered by the Council from a BID Levy Payer as a consequence of applying for and / or obtaining orders from a Magistrates' Court will be retained by the Council to meet the costs of taking such action.
- 8.4.3 The Council will not charge the BID Company for work carried out by an Enforcement Agent pursuant to this Agreement and the Enforcement Agent will retain the fees prescribed for that work by the Taking Control of Goods (Fees) Regulations 2014.

9 BILLING/RECOVERY DOCUMENTS

- 9.1 The Council will use reasonable endeavours to agree with the BID Company the design of all Demand Notices and letters from the Council to BID Levy Payers.
- 9.2 The BID Company will produce the information required by paragraph 3(2) of schedule 4 of the Regulations in respect of each BID Levy Payer in the form of an information leaflet which explains the BID Levy and such information leaflet will be served on the BID Levy Payer at the same time as the Demand Notice. The Council will advise the BID Company of the date by which such information leaflets must be delivered to the Council or its contractor, the required volume and any specific delivery instructions and the BID Company will comply with such requirements.

SCHEDULE 3 DATA PROTECTION

1 DEFINITIONS

1.1 The following expressions have the meanings given:

Controller, Processor, Data Subject, Personal Data, and **Personal Data Breach** take the meaning given in the GDPR.

Data Protection Legislation:

- (a) the GDPR;
- (b) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and
- (c) all applicable Legislation about the processing of personal data and privacy.

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held pursuant to this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

GDPR: the General Data Protection Regulation (EU) 2016/679.

Personal Data: all personal data collected, generated or otherwise processed by either party as a result of or in connection with the Services or this Agreement.

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.

- 1.2 For the purposes of this Schedule, where terms and expressions used are not defined in this Agreement, they shall have the meaning assigned to them in the Data Protection Legislation.

2 JOINT CONTROLLERS

- 2.1 The BID Company acknowledges that the Council is under no obligation to transfer any Personal Data to the BID Company. Any such transfers will be made by the Council as a good will gesture and in accordance Data Protection Legislation.
- 2.2 Each Party shall be responsible for its own obligations as a Controller under the Data Protection Legislation.

- 2.3 Where each Party perform or receive services under the Agreement each party shall be responsible and comply with the Data Protection Legislation
- 2.4 Each Party shall:
- 2.4.1 maintain its own records of processing under Article 30 of the GDPR;
 - 2.4.2 be responsible for determining its data security obligations, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of Personal Data, as well as the risks of varying likelihood and severity to the rights and freedoms of the Data Subjects;
 - 2.4.3 implement appropriate Protective Measures to protect the Personal Data against unauthorised or unlawful Processing and accidental destruction or loss; and
 - 2.4.4 ensure the protection of the rights of the Data Subject, in such a manner that the Processing will meet the requirements of the Data Protection Legislation where Personal Data have been transmitted by it, or while the Personal Data are in its possession or control.
- 2.5 When transferring Personal Data:
- 2.5.1 the Party transferring the Personal Data (the **Data Transferor**) warrants and undertakes to the Party receiving the Personal Data (the **Data Recipient**) that such Personal Data have been collected, processed and transferred in accordance with the Data Protection Legislation, this paragraph 2, and any other laws applicable to the Data Transferor and to the Personal Data;
 - 2.5.2 the Data Recipient warrants and undertakes to the Data Transferor that:
 - (a) it will process the Personal Data in

accordance with the Data Protection Legislation;

- (b) it has and will continue to have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected; and
- (c) it has the legal authority to give the warranties and fulfil the undertakings set out in this Agreement; and

2.5.3 if the Data Recipient is in breach of any of its obligations under this Agreement then the Data Transferor may temporarily suspend the transfer of the Personal Data to the Data Recipient until the breach is repaired.

2.6 Where appropriate, each Party shall promptly refer to the other Party any requests, from:

2.6.1 Data Subjects in regard to

- (a) providing information under Articles 13 and 14 of the GDPR; and
- (b) Data Subject Access Requests under Articles 15 to 22 inclusive of the GDPR;

2.6.2 the Information Commissioner; and

2.6.3 any other law enforcement authority,

and to the extent it is reasonable and practical to so do, consult with the other party (at no additional cost) before responding to such request.

2.7 Each Party shall provide any assistance reasonably requested by the other Party in relation to enquiries from Data Subjects concerning Processing of their Personal Data.

- 2.8 The Parties shall discuss any proposal by any Party to notify the Information Commissioner and/or Data Subjects where necessary about Data Loss Events and Personal Data Breaches.
- 2.9 The Parties shall work together to complete any required Data Protection Impact Assessments.
- 2.10 The Council will be the primary point of contact for Data Subjects.
- 2.11 The Parties shall publish the essence of their relationship as set out in this Schedule 3.

DRAFT