

Dated

2015

## **OPERATING AGREEMENT**

**LORD MAYOR AND CITIZENS OF  
THE CITY OF WESTMINSTER (the "Council")**

**- and -**

**THE NEW WEST END COMPANY (the "BRS-BID Company")**

**DRAFT**

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## Operating Agreement

**THIS DEED is made the                      day of                      2015**

### **BETWEEN**

(1) THE LORD MAYOR AND CITIZENS OF THE CITY OF WESTMINSTER, 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 Morley House 320 Regent Street London W1B 3BE

### **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

- “2004 Regulations”** means the Business Improvement Districts (England) Regulations 2004 and such amendments to those regulations which may be made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time).
- “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.
- “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 to 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.
- “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 first superior lessee above the rateable occupier, which superior lease was granted for a term of more than 35 years (regardless of the number of years remaining);<sup>1</sup>
  - 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.<sup>2</sup>
- “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.

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<sup>1</sup> NB this need not be the lease immediately superior to the rateable occupier: if there are intermediate leases above the rateable occupier which were granted for terms of less than 35 years, the relevant lease will be the first superior lease to these intermediate leases, which superior lease was granted for a term of more than 35 years.

<sup>2</sup> The occupier can be liable if the occupier is either the freeholder or a lessee whose lease was granted for a term of more than 35 years (regardless of the number of years remaining).

**“BRS-BID Term”**

- means 1<sup>st</sup> January 2016 to 31<sup>st</sup> December 2020, Provided that:

- on the expiry of the New West End Company BID Arrangements on 31<sup>st</sup> March 2018 unless a renewal ballot for successor BID Arrangements for the BID has not been successful the BRS-BID Term shall expire on 31<sup>st</sup> March 2018;
- or the New West End Company BID Arrangements or any successor BID Arrangements have been terminated under Regulation 18 of the 2004 Regulations the BRS-BID Term shall expire on the date of termination of the 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 12 of the 2004 Regulations and any appeal against such veto has not been upheld the BRS-BID Term shall expire on 31<sup>st</sup> March 2018.

**“Chargeable Period(s)”**

- means any one of the following periods:

- 01/1/16 - 31/03/16
- 01/04/16 – 31/03/17
- 01/04/17 – 31/03/18
- 01/04/18– 31/03/19
- 01/04/19 – 31/03/20
- 01/04/20 – 31/12/20

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.

<b>“Demand Notice”</b>	- has the meaning given in the Regulations.
<b>“Enforcement Agent”</b>	- has the meaning given in the Taking of Control of Goods Regulations 2013.
<b>“Enforcement Notice”</b>	- means a notice served on the Council in accordance with Clause 9.
<b>“External Auditor’s Costs”</b>	- means the sum charged by the Council’s external auditor in carrying out an audit of the BRS-BID Revenue Account
<b>“Financial Year”</b>	- means the financial year for the BRS-BID Company which runs from 1 <sup>st</sup> April to 31 <sup>st</sup> March.
<b>“Liability Order”</b>	- has the meaning given in the Regulations.
<b>“Monitoring Group”</b>	- means the group whose members are representatives from the Council and the BRS-BID Company.
<b>“NDR”</b>	- means Non-Domestic Rates under the Local Government Finance Act 1988.
<b>“NDR Mandatory Charitable Relief”</b>	- means relief which a local authority must grant under s43 of the Local Government Finance Act 1988.
<b>“Owner-Occupier”</b>	- means, for any given rateable hereditament: in the case of a company, an occupier that is part of the same group of companies (as defined in s474 of the Companies Act 2006) as the BRS-BID Levy Payer; and, in the case of an individual, an occupier who is also the BRS-BID Levy Payer.
<b>“Proposals”</b>	- 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.
<b>“Rating List”</b>	- has the meaning ascribed to it by s41 of the Local Government Finance Act 1988.

<b>“Regulations”</b>	- 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 (from time to time).
<b>“Reminder Notice”</b>	- means the notice served pursuant to Clause 9.1.
<b>“Single Instalment Due Date”</b>	- means the date by which the BRS-BID Levy as set out in the Demand Notice must be paid.
<b>“Software Charges”</b>	- means charges levied by Capita Business Services Ltd trading as Capita Software Services. (or their successors in title)
<b>“Sum(s) Unpaid”</b>	- means the amount of the BRS-BID Levy which is unpaid after the Single Instalment Due Date.
<b>“Support and Maintenance Charges “</b>	means annual charges levied by Capita Business Services Ltd trading as Capita Software Services. (or their successors in title) in relation to the Academy BID software module or its successor or replacement and enhancements relating to BRS-BID Levy.
<b>“Valuation Officer”</b>	- means the person appointed by the Commissioners of the Inland Revenue to compile and maintain the Valuation List.
<b>“Voluntary Contributions”</b>	- means any contribution or funds paid or made available to the BRS-BID Company which do not form part of the BRS-BID Levy.
<b>“Winding-Up”</b>	- means an order pursuant to s125 of the Insolvency Act 1986.

## **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 to the list of BRS-BID Levy Payers as and when changes occur. The BRS-BID Company shall provide the Council with up to details of Owner-Occupiers for the calculation of Allowances against the BRS-BID Levy.
- 4.3 The Council will advise the BRS-BID Company of the required format and the date by which such information required under 4.2 must be provided to the Council and the BRS-BID Company will comply with such requirements.

## **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 less 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<sup>st</sup> January 2016 to 31<sup>st</sup> March 2020;
  - (b) 5% of the BRS-BID Levy collected from 1<sup>st</sup> April 2020 to 31<sup>st</sup> December 2020;
- 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 1st January 2016 to 31<sup>st</sup> December 2020 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 5.2 unless the Council decides to change it.
- 5.4 Unless otherwise agreed, the Council shall pay to the BRS-BID Company such contingency as the Council has retained as at 31st March of a financial year on 31st May of the following financial year. In the event that there are no successor BRS-BID arrangements after 31<sup>st</sup> December 2020, 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 June 2021;
- 5.5 In the event that a BRS-BID Levy Payer is entitled to repayment of a BRS-BID Levy ('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 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 2015/16 (3 months) shall be in the sum of £2,487.50 plus VAT. The Council shall provide to the BRS-BID Company an invoice for that amount on or after 1st January 2016.

6.3 The amount of the Administrative Expenses for the financial year 2016/17 shall be the sum of £9,950.00 plus VAT. The amount due for the financial year 2017/18 shall be the sum equal to the product of £9,950.00 and the change in the Retail Price Index (whole economy seasonally adjusted percentage change using the LNMU data series) produced by the Office for National Statistics (or any organisation upon which duties in relation to the compilation and maintenance of such index may have devolved) for the month of March 2017 in relation to the period of twelve (12) months ending in that month of March 2017 plus VAT. In the event of a negative figure, no adjustment will be made to the price of the service for that year.

6.4 The amount of the Administrative Expenses for the financial year 2018/19 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 Retail Price Index (whole economy seasonally adjusted percentage change using the LNMU data series) produced by the Office for National Statistics (or any organisation upon which duties in relation to the compilation and maintenance of such index may have devolved) for the month of March immediately preceding the 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.

6.5 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 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 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 so that pro-rata for the period after the change the Support and Maintenance Charges are equally divided amongst the business improvement districts in the City of Westminster to which the Regulations apply.

- 6.6 The Council shall provide the BRS-BID Company with an invoice for the sum of £10,000 being the BRS-BID Company's share of the charges to the Council by its software provider in respect of the system enhancements that have been required to enable the administration, collection and recovery of BRS-BID Levy.
- 6.7 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.
- 6.8 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.
- 6.9 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.
- 6.10 The BRS-BID Company shall pay the invoices referred to in Clauses 6.1, 6.2, 6.3, 6.4 6.45 6.6, 6.7, 6.8 and 6.9 within 28 (twenty eight days) from the date of receipt.
- 6.11 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 anticipated Single Instalment 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.
- 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 and shall make the list available to the BRS-BID Company upon its reasonable request.
- 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 Section F of Schedule 2 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

- 9.1.2 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 NDR 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 City Treasurer 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;

(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.

10.3 Upon the expiry of the sixth month 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 6 (six) month periods 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.
- 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 Treasurer at the address of the Council specified above;  
or
  - 12.2.2 delivery to the 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 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 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 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 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.

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

Head of Legal and Administrative Services

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

.....

Director

.....

Director/Company Secretary

DRAFT

**SCHEDULE 1**

DRAFT

**SCHEDULE 2**

DRAFT

# **BRS-BID LEVY RULES**

**(For BRS-BID Levy demanded on or after 1<sup>st</sup> January 2016)**

## **INTRODUCTION**

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

### **Section A**

#### **Hereditaments Subject to the BRS-BID Levy:**

1. A BRS-BID Levy Payer will be subject to the BRS-BID Levy in respect of a hereditament if on a particular day in a Chargeable Period the hereditament is in:

1.1 the BID; and

1.2 the hereditament has one of the following Valuation Office Analysis Codes with or without one or more of the secondary codes of O, C, S or W denoting office, carspace, store and workshop or any Valuation Office Analysis Code that may be introduced where the main business is retail, hotel or restaurant :

CH hotel and premises  
CR restaurant and premises  
CS shop and premises  
CS1 bank and premises  
CS7 showroom and premises  
CS8 hypermarket and premises  
CS9 superstore and premises  
CS10 retail warehouse and premises  
LT1 amusement arcade and premises; and

1.3 the rateable value of the hereditament is greater than £249,999.

### **Section B**

#### **The BRS-BID Levy:**

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

RV x BRS-BID Multiplier x (D/Y) where:

2.1 the RV is:

- 2.1.1 in the case of hereditaments in the Rating List at the start of the BRS-BID Term, the rateable value of the hereditament in the 2010 Rating List in relation to 1 April 2015<sup>3</sup>; or
- 2.1.2 in all other cases, the RV will be the rateable value of the hereditament in effect on the first day that the property is occupied according to the Council's NDR records<sup>4</sup>.
- 2.2 the BRS-BID Multiplier for each financial year will be:

For BRS-BID Levy Payers of hereditaments with Valuation office code shown above:-

2015/16: 1%  
2016/17: 1.%  
2017/18: 1.03%  
2018/19: 1.06%  
2019/20: 1.09%  
2020/21: 1.12%

- 2.3 D is:
- 2.3.1 the number of days in a Chargeable Period for which the BRS-BID Levy Payer is liable for the daily BRS-BID Levy;
- 2.4 Y is the number of days in the Chargeable Period, e.g. 366 between 1<sup>st</sup> April 2015 and 31<sup>st</sup> March 2016 and between 1<sup>st</sup> April 2019 and March 2020 and 365 for the other years in the BRS-BID Term.
- 2.5 The BRS-BID Levy will be rounded to the nearest penny. (NB. £0.005 will be rounded up to £0.01).
- 2.6 How the amount of the BRS-BID Levy is to be calculated cannot be altered during the BRS-BID Term without an alteration ballot.

## **Section C**

### **Persons/Organisations Liable for the BRS-BID Levy:**

- 3.1 The BRS-BID Levy will be a daily charge.

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<sup>3</sup> Where the Valuation Officer has made an alteration to the rateable value of the hereditament effective on 1 April 2015 the rateable value will be such altered rateable value. Where the valuation officer has made more than one such alteration the rateable value will be the most recent of such alterations.

<sup>4</sup> Where the Valuation Officer has made an alteration to the rateable value of the hereditament effective on the date of occupation the rateable value will be such altered rateable value. Where the valuation officer has made more than one such alteration the rateable value will be the most recent of such alterations.

- 3.2 Liability for the daily BRS-BID Levy will fall on the BRS-BID Levy Payer of the hereditament on the particular day.
- 3.4. A BRS-BID Levy for a Chargeable Period will be payable in advance upon service of a Demand Notice.

## **Section D**

### **BRS-BID Levy Allowances:**

- 4.1 An Owner-Occupier shall receive an allowance of 50% of the BRS-BID levy. The allowance shall be applied to the relevant BID levy accounts in accordance with a list of Owner-Occupiers that the BRS-BID company provides.
- 4.2 The Council will advise the BRS-BID Company of the date by which Owner-Occupier information must be supplied in advance of the billing of the BRS-BID Levy and the required format of the information and the BRS-BID Company will comply with such requirements. The BRS-BID is to provide updates to the information as soon as possible in the required format as and when it becomes aware that a BRS-BID Levy Payer is, becomes or ceases to be, an Owner-Occupier (with relevant dates).
- 4.3 There are no other applicable allowances, exemptions or reliefs.

## **Section E**

### **Collection of the BRS-BID Levy:**

- 5.1 The BRS-BID Levy for a Chargeable Period must be paid by the Single Instalment Due Date. The Demand Notice will be served as soon as practicable after the Council becomes aware of a BRS-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.
- 5.2 The Council before exercising its powers under paragraph 8 (4) of Schedule 4 to the Regulations will allow the BRS-BID Company an opportunity 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 will have regard to any representations made to it by the BRS-BID Company.
- 5.3 The BRS-BID Company may authorise write-offs, as appropriate.

## **Section F**

### **Enforcement and Recovery of the BRS-BID Levy:**

#### **Stage 1**

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

#### **Stage 2**

- 6.2 In the event that a BRS-BID Levy Payer does not pay the BRS-BID Levy by the Single Instalment Due Date in full the Council will serve a Reminder Notice at least 10 days thereafter on the BRS-BID Levy Payer for an amount equal to the Sum Unpaid. Such Reminder Notice must be in terms demanding payment of the Sum Unpaid within 7 days.

#### **Stage 3**

- 6.3 In the event that, within 7 days following the date of the Reminder Notice, a BRS-BID Levy Payer does not pay the Sum Unpaid in full, the Council may, no sooner than 14 days following the date of the Reminder Notice, apply to a Magistrates' Court for a Liability Order.

#### **Stage 4**

- 6.4 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.
- 6.5 In addition to a Liability Order, the BRS-BID Company may request the Council to apply for a different order and such order may include an order for Committal and an order Winding Up a company. Where such a request includes a request for such different Order, the Council shall not be required to take the action requested unless the BRS-BID Company first agrees to pay all or part of the Council's costs in taking such action. The Council may further require the BRS-BID Company to pay such costs before the action is taken.

### **General Enforcement and Recovery Provisions**

- 6.6 The Council may enter into an agreement with a BRS-BID Levy Payer for payment of a Sum Unpaid at any time after service of a Demand Notice and such agreements do not require the consent of the BRS-BID Company.



- 6.7 Costs recovered by the Council from a BRS-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 this action.
- 6.8 The Council will not charge the BRS-BID Company for work carried out by the Enforcement Agents under this Agreement. The Taking Control of Goods Regulations 2013 will apply and the Enforcement Agents will levy fees on the BRS-BID Levy Payers concerned under the Taking Control of Goods (Fees) Regulations 2014.

## **Section G**

### **Billing/Recovery documents:**

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