

DATED

2012

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

**AND**

**THE NEW WEST END COMPANY LIMITED (the “BID Company”)**

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**OPERATING AGREEMENT**

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**THIS DEED** is made the

day of

2012

**BETWEEN**

1. **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 "BID Company") registered as a company limited by guarantee in England with number 4039488 whose registered office is at Morley House, 320 regent Street, London W1B 3BE.

**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 Council 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 available 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's expenses incurred in collecting the BID Levy shall be paid.

**IT IS AGREED** as follows

**1. DEFINITIONS**

- "Administrative Expenses" - means costs incurred by the Council in the administration, collection and recovery of the BID Levy.
- "Annual Report" - means a report prepared by the Council which details:
  - (i) the amount of the BID Levy collected during the relevant Financial Year;
  - (ii) the success rate for the collection of the BID Levy;the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy;

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those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy;

the Council's proposals for Bad or Doubtful debts.

- “Appeal Notice” - means a notice served by the BID Company in accordance with Clause 9.2.
- “Bad or Doubtful Debts” - has the meaning given in the Regulations.
- “Bailiff” - means a bailiff or enforcement agent employed by the Council or on behalf of the Council through a contractor.
- “Ballot Result Date” - means the date upon which a successful ballot result has been declared in favour of putting in place the BID Arrangements.
- “BID” - has the meaning given in the Regulations that is the Business Improvement District and is that area within which the BID operates as shown on the plan attached to this Agreement in Schedule 1.
- “BID Arrangements” - has the meaning given by s41 of the Local Government Act 2003.
- “BID Company Report” - means a report prepared by the BID Company for each Financial Year which details:
- (a) total income and expenditure arising from the BID Levy;
  - (b) other income and expenditure of the BID Company;
  - (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.
- “BID Levy” - means the charge levied and collected within the BID pursuant to the Regulations.
- “BID Levy Payer(s)” - means the non-domestic rate payers liable for paying the BID Levy.
- “BID Levy Rules” - means the rules set out in Schedule 2.
- “BID Revenue Account” - means the account kept in accordance with Regulation 14 of the Regulations.

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“BID Term”	- means 1 <sup>st</sup> April 2013 to 31 <sup>st</sup> March 2018 or the date of earlier termination of this Agreement under clause 3.1.
“Change in Law”	- means the coming into effect after the Ballot Date Result of any Legislation  any statutory guidance or binding code of practice; or  any applicable judgment of a relevant court of law which changes a binding precedent.
“Chargeable Period(s)”	- means any one of the following periods: 01/04/2013 – 31/03/2014; 01/04/2014 – 31/03/2015; 01/04/2015 – 31/03/2016; 01/04/2016 – 31/03/2017; 01/04/2017 – 31/03/2018
"Committal"	- means an order made by Magistrates’ Court for a BID Levy Payer to be committed to prison for failure to pay the BID Levy.
“Contributors”	- means the BID Levy Payers and payers of a contribution or funds paid or made available to the BID Company which do not form part of the BID Levy.
“Demand Notice”	- has the meaning given in the Regulations.
“District Auditor’s Costs”	- means the sum charged by the District Auditor in carrying out an audit of the BID Revenue Account.
“Effective Date”	- means within the meaning of regulation 17 of the Non-Domestic Rating (Alteration of Lists and Appeals Regulations) 1993
“Enforcement Notice”	- means a notice served on the Council in accordance with Clause 9.1.
“Financial Year”	- means the financial year for the BID Company which runs from 1 <sup>st</sup> April to 31 <sup>st</sup> March.
“Hereditament”	- has the meaning given in the Regulations.

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“Index Increase”	- means the figure shown in the data series identified by the series identifier CDKQ in the retail prices index compiled and issued by the Office for National Statistics (or any body upon which duties in connection with the compilation and maintenance of such index may have devolved) for the month of March immediately preceding the date of the invoice in relation to the period of twelve (12) months ending on the month of March immediately preceding the date of the invoice”. In the event of a negative figure, no adjustment will be made to the price of the service for that year.
“Legislation”	means in relation to the United Kingdom:  any Act of Parliament;  any subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978;  any exercise of the Royal Prerogative; and  any enforceable community right within the meaning of Section 2 of the European Communities Act 1972.
“Liability Order”	- has the meaning given in the Regulations.
“Monitoring Group”	- means the group whose members consist of representatives from the Council and the BID Company.
“NDR”	- means the local non-domestic rate within the meaning of Part III of the Local Government Finance Act 1988.
“NDR Discretionary Relief”	- means relief which a local authority has a discretion to grant under s47 of the Local Government Finance Act 1988.
“NDR Hardship Relief”	- means relief which a local authority has a discretion to grant under s49 of the Local Government Finance Act 1988.
“NDR Mandatory Relief”	- means relief which a local authority must grant under s43 of the Local Government Finance Act 1988.
“NDR Payer”	- means the person or organisation who has a liability to pay the NDR.
‘NDR Regulations’	- means the regulations made pursuant to Part III of the Local Government Finance Act 1988.
“NDR (Section 44A) (Partly Occupied) Relief”	- means a NDR allowance under s44A of the Local Government Finance Act 1988.

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- “NDR Small Business Rate Relief” - means a NDR allowance under S61 of the Local Government Act 2003 and the Non-Domestic Rating (Small Business Rate Relief) (England) Order 2004.
- “NDR Transitional Phasing” - means the transitional arrangements under s57 of the Local Government Finance Act 1988 and the Local Government Act 2003.
- “Proposal(s)” - means the plan voted for by the BID Levy Payers in a ballot which sets out the objectives of the BID and identifies the various projects which will be undertaken using funds raised by the 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 (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).
- “Reminder Notice” - means the notice served pursuant to Clause 9.1.1 and paragraph 6.2 of the BID Levy Rules.
- “Single Instalment Due Date” - means the date by which the BID Levy as set out in the Demand Notice must be paid.
- “Sum Unpaid” - means the amount of the BID Levy which is unpaid after the Single Instalment Due Date.
- “Valuation Office Analysis Code” - means the code used by the Valuation Officer in order to distinguish between Hereditament types on the Rating List
- “Valuation Officer” - means the person appointed by the Inland Revenue pursuant to s61 of the Local Government Finance Act 1988 to compile and maintain the Rating List pursuant to s41 of that Act.
- ‘Voluntary Contributions’ - means any contribution or funds paid or made available to the BID Company which do not form part of the BID Levy.
- “Winding-Up” - means an order pursuant to s125 of the Insolvency Act 1986.
- “Write Off” - means a decision by the BID Company that an unpaid BID Levy will not be recovered.
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## **2. STATUTORY AUTHORITIES**

- 2.1. This Agreement is made pursuant to Part IV of the Local Government Act 2003 and Section 111 of the Local Government Act 1972 and all other enabling powers
- 2.2. For the avoidance of doubt the Parties agree, declare and confirm that the agreement of XXth XXXXXXXX 20XX made between them in relation to the matters which are the subject of this Agreement was terminated on the commencement of this Agreement and shall have no force or effect whatever except in relation to the rights, duties or obligations of a Party accrued prior to the commencement of this Agreement.

## **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 BID Company fails to secure approval of the Proposals, in a ballot;
  - 3.1.2. the Secretary of State declares void a BID ballot;
  - 3.1.3. the Council exercises its veto and there is no successful appeal against the veto;
  - 3.1.4. the BID Term expires;
  - 3.1.5. the Council exercises its discretion to terminate the BID Arrangements in exercise of powers under regulation 18 of the Regulations;
  - 3.1.6. the contract between the Council and Capita Business Services Limited, which came into force on 1<sup>st</sup> April 1994, is terminated or expires.

## **4. SETTING THE BID LEVY**

- 4.1. As soon as possible upon the Ballot Result Date the Council shall:
  - 4.1.1. calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules; and
  - 4.1.2. confirm in writing to the BID Company the BID Levy payable by each BID Levy Payer.

## **5. THE BID REVENUE ACCOUNT**

- 5.1. As soon as is reasonably practicable following the Ballot Result Date the Council shall keep a BID Revenue Account within the Council's general fund and provide written confirmation to the BID Company of the same.
- 5.2. As soon as reasonably practicable following the Ballot Result Date 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.
- 5.3. The Council shall pay to the BID Company, upon the expiry of the first month following the commencement of the BID Term and every month thereafter, the BID Levy collected in that month less a contingency and such contingency shall be determined as follows:
  - (a) 1% of the BID Levy collected from 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2017;
  - (b) 5% of the BID Levy collected from 1<sup>st</sup> April 2017 to 31<sup>st</sup> March 2018



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The Council and the BID Company shall review the percentages set out at Clause 5.3 of this Agreement in respect of BID Levy collected from 1<sup>st</sup> April 2013 to 31<sup>st</sup> March 2018 every three months (for the duration of the BID Term) and the Council shall take reasonable account of any representations made by the BID Company. At the conclusion of such review, the percentages shall be the percentages set out at paragraph 5.3 unless the Council decides to change the percentages.

- 5.4. Unless otherwise agreed, the Council shall pay to the 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 of the expiry of the BID Term without the BID Arrangements being renewed or prior to the date on which the BID Arrangements fall to be renewed, then the Council shall pay to the BID Company any contingency (including interest, which has accrued, if any) it has retained on 30th September 2018 less an amount relating to Repayment Sums (see 5.5) not yet claimed. In the event of the expiry of the BID Term and the BID Arrangements being renewed, then the Council shall pay to the BID company four fifths of the contingency, which will the Council has retained, as soon as practicable after the entry by the parties into a further Operating Agreement following whichever is the later of the expiry of the month following the date by which a complainant under Regulation 9(3) of the Regulations must request the Secretary of State to exercise his power to declare void the renewal ballot or the expiry of the month following the date by which under Regulation 12 of the Regulations the Council must exercise its power of veto of the renewal ballot and the remainder of such contingency shall be paid to the BID Company by the Council on 31st May 2018.
- 5.5. In the event that a BID Levy Payer is entitled to repayment of a 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 BID Company, the Council shall request all or part, as the case may be, of the Repayment Sum from the BID Company and the BID Company shall pay the sum so requested to the Council forthwith and the Council shall thereafter repay the Repayment Sum to the BID Levy Payer. This obligation of the BID Company under this clause 5.5 shall continue even if under clause 5.8, the Council has written off the Repayment Sum, in the event that the BID Levy Payer is able to compel (by legal proceedings or award of a tribunal or an ombudsperson) the Council to pay to the BID Levy Payer the Repayment Sum.
- 5.6. In the event of the termination of the BID Arrangements or the receipt of notice by the Council under clause 5.7 the BID Company shall forthwith pay to the Council the Council's estimate as notified to the BID Company of the total of possible Repayment Sums.
- 5.7. The BID Company shall provide the Council with a minimum of one month's prior written notice of any proposed resolution for winding up of the BID Company or proposed entry into any composition or arrangement for the benefit of the BID Company's creditors or proposed cessation of the BID Company's business or proposed administration order and shall forthwith notify the Council of the appointment of any administrator, administrative receiver or receiver over all or any of the assets of the BID Company
- 5.8. Subject always to clause 5.5, the Council and the BID Company agree that if a Repayment Sum has been unclaimed by the BID Levy Payer who is entitled to that Repayment Sum in excess of 6 years from the date on which such Repayment Sum became due and payable to the BID Levy Payer, despite the BID Levy Payer having been notified of his entitlement to the Repayment Sum, the Council shall write off the Repayment Sum.

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- 5.9. The BID Company shall issue to the Council a VAT invoice for the payment of the BID Levy income upon advice from the Council on the amount due.

**6. ADMINISTRATIVE EXPENSES AND DISTRICT AUDITOR'S COSTS**

- 6.1. The Council shall provide the BID Company with two invoices for payment of Administrative Expenses during each financial year.
- 6.2. In 2013/14, the first such invoice shall be for the sum of £13,437 plus VAT and shall be provided to the BID Company on or after 1<sup>st</sup> April 2013. The invoice shall be paid on the 1<sup>st</sup> April 2013, or thereafter if the invoice is provided after 1<sup>st</sup> April 2013. The second such invoice shall be for the sum of £13,437 plus VAT and shall be provided to the BID Company on or after 1<sup>st</sup> September 2013. The invoice shall be paid on the 1<sup>st</sup> September 2013, or thereafter if the invoice is provided after 1<sup>st</sup> September 2013.
- 6.3. The Council shall provide the BID Company with further such invoices on or after the 1<sup>st</sup> April and 1<sup>st</sup> September in each subsequent financial year and the amount of each such invoice shall be the Administrative Charge annual amount for the previous year plus a further amount equal to the annual Index Increase for the and plus VAT. In the event of a negative figure, no adjustment will be made to the price of the service for that year. For the avoidance of doubt, each increase shall be compounded.
- 6.4. The Council shall provide the BID Company with invoices from April 2013 for payment of the Support and Maintenance Charges for the first Chargeable Period and in each subsequent April for every subsequent Chargeable Period.
- 6.5. The City Council will manage the BID Levy at no cost to the BID Company save that the City Council reserves the right to serve a notice on the BID Company in the event that the Council reasonably believes that management of the BID Levy requires the City Council to provide more staff time than anticipated by the City Council at the commencement of this Agreement and if after 28 days from the date of the notice the amount of staff time has not reduced to the levels anticipated at the commencement of this Agreement the BID Company shall pay the City Council's costs of providing more staff time.
- 6.6. In the event that the District Auditor makes a charge to the Council for payment of his costs arising from the District Auditor carrying out an annual audit of the BID Revenue Account, the BID Company shall pay such costs save that the BID Company shall not pay such costs in relation to the first annual audit.
- 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 threshold covered by the current software licence and by reason thereof the Council is required to pay Software Charges, the BID Company shall pay such Software Charges to the Council or an appropriate proportion of them as the Council sees fit.
- 6.8. The BID Company shall pay the invoices referred to at Clauses 6.1 – 6.7 within 28 (twenty-eight) days from the date of receipt.
- 6.9. In the event that the BID Company fails to pay the said invoice within the said 28 (twenty-eight) days the Council shall be entitled to debit an amount equal to the said invoice from the BID Revenue Account and credit that amount in an account in the name of the Council.

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- 6.10. If at any time after the Ballot Result Date there is a Change in Law which increases the Administrative Expenses incurred by the Council, the Council shall be entitled to include such increase in its invoices for payment provided to the BID Company pursuant to this Clause 6.

**7. COLLECTING THE BID LEVY**

- 7.1. As soon as reasonably practicable following the Ballot Result Date the Council shall confirm in writing to the 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 BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve a Demand Notice throughout the BID Term.
- 7.3. The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and 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.
- 7.4. 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.
- 7.5. The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.

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

- 8.1. Procedures for the enforcement and recovery of the BID Levy are set out in the Section F of Schedule 2 and the Council shall comply with those enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

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

- 9.1. In the event that the Council fails to enforce payment of the BID Levy pursuant to Clause 8 the 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 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 BID Company shall be entitled to serve an Appeal Notice on the Director of Finance 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

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- 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 1<sup>st</sup> April 2013 the parties shall set up the Monitoring Group.
- 10.2. Upon the expiry of April 2013 and every month thereafter (for the duration of BID Term) the Council shall provide the BID Company with:
  - 10.2.1. the amount of the BID Levy for each BID Levy Payer;
  - 10.2.2. the amount of the BID Levy collected for each BID Levy Payer;
  - 10.2.3. details of BID Levy Payers who have not paid the BID Levy;
  - 10.2.4. details of Reminder Notices issued;
  - 10.2.5. details of Liability Orders made or applied for;
  - 10.2.6. details of agreements made, if any, between the Council and BID Levy Payers where it has been agreed that payment of a Demand Notice can be made over a period of 3 (three) months or more from the date of such Demand Notice.
- 10.3. Upon the expiry of the sixth month of the BID Term and every 6 (six) months thereafter (for the duration of the BID Term) the BID Company shall provide the Council in respect of those 6 (six) month periods with:
  - 10.3.1. the amount of BID Levy received from the Council by the BID Company;
  - 10.3.2. the amount received by the BID Company from Contributors excluding BID Levy Payers;
  - 10.3.3. the total expenditure of the BID Company.
- 10.4. Within one month from 1<sup>st</sup> April 2013 the parties shall agree the dates when there will be meetings of the Monitoring Group and there will be at least two such meetings 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 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 BID Company.
- 10.5. At each meeting the Monitoring Group shall:
  - 10.5.1. review the effectiveness of the collection and enforcement of the 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 BID Term) the Council shall provide an Annual Report to the BID Company.

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- 10.7. Within 1 (one) month from the date of receipt of the Annual Report in each financial year (for the duration of the BID Term) the BID Company shall provide a BID Company Report to the Council.

## **11. CONFIDENTIALITY**

- 11.1. Both the Council and the BID Company agree to 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 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.

## **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 Council's Director of Finance at the address of the Council specified above;
  - 12.2.2. delivery to the Company Secretary at the address of the 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 Part IV 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.

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**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 )

Director of Legal and Democratic Services

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EXECUTED as a DEED by THE NEW WEST )  
END COMPANY LIMITED by two Directors or )  
a Director and Company Secretary )

.....  
Director

.....  
Director/Company Secretary

DRAFT

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**SCHEDULE 1: THE BID AREA MAP**

DRAFT



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**SCHEDULE 2: THE BID LEVY RULES**

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## BID LEVY RULES

### 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 BID Levy:

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 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 BID RV is greater than £249,999.

### Section B

#### The BID Levy:

2. The BID Levy will be calculated for a Chargeable Period as follows:-  
BID RV x BID Multiplier x (D/Y) where:
  - 2.1. the BID RV is:
    - 2.1.1. the rateable value of the Hereditament in the 2010 Rating List effective on 1 April 2010<sup>1</sup>;
    - 2.1.2. in the event that there is no such rateable value, the BID RV will be the rateable value of the Hereditament in the 2010 Rating List <sup>2</sup>;
    - 2.1.3. in the event that there is no such rateable value, the BID RV will be the rateable value of the Hereditament in the 2015 Rating List<sup>3</sup>.

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<sup>1</sup> Where the Valuation Officer has made an alteration to the rateable value of the Hereditament effective on 1<sup>st</sup> April 2010, 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>2</sup> Where the Valuation Officer has made an alteration or alterations to the rateable value of the Hereditament, the rateable value will be the rateable value on the earliest Effective Date.

2.2. the BID Multiplier is:

For all businesses except those with a hereditament with Valuation office analysis shown above except code CH

1% in 2013/14.

1.03% in 2014/15.

1.06% in 2015/16.

1.09% in 2016/17.

1.12% in 2017/18.

For all businesses with a hereditament with Valuation office analysis code CH

0.6% in 2013/14.

0.618% in 2014/15.

0.637% in 2015/16.

0.656% in 2016/17.

0.676% in 2017/18.

2.3. D is:

2.3.1. the number of days in a Chargeable Period for which the BID Levy Payer is liable for the daily BID Levy;

2.4. Y is:

2.4.1. the number of days in the Chargeable Period, e.g. 366 1<sup>st</sup> April 2015 to 31<sup>st</sup> March 2016 and 365 for the other years in the BID term

2.5. The BID Levy will be rounded to the nearest penny. (NB £0.005 will be rounded up to £0.01).

2.5.1. How the amount of the BID Levy is to be calculated cannot be altered during the BID Term without an alteration ballot.

## Section C

### Persons / Organisations Liable for the BID Levy:

3.

3.1. The BID Levy will be a daily charge.

3.2. Liability for the daily BID Levy will fall on the Occupier of the Hereditament on the particular day. For this purpose 'Occupier' shall have the same meaning as under s65 of the Local Government Finance Act 1988 ('the 1988 Act').

3.3. If a Hereditament is Unoccupied, the liability for the daily BID Levy will fall on the organisation / person entitled to possession on the particular day. For this purpose 'Unoccupied' will have the same meaning as in Part III of the 1988 Act and 'entitled to possession' will have the same meaning as in Part III of that Act.

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<sup>3</sup> Where the Valuation Officer has made an alteration or alterations to the rateable value of the Hereditament, the rateable value will be the rateable value on the earliest Effective Date.

- 3.4. A BID Levy for a Chargeable Period will be payable in advance upon the service of a Demand Notice.

## **Section D**

### BID Levy Allowances:

- 4.
- 4.1. BID Levy Payers will not receive an allowance towards their daily BID Levy in relation to Unoccupied Hereditaments.
- 4.2. BID Levy Payers will not receive a three month void exemption or any other Unoccupied rate exemption in relation to Unoccupied Hereditaments or Hereditaments that become Unoccupied during the BID Term.
- 4.3. If there is no NDR Payer in existence on a particular day no BID Levy is payable.
- 4.4. If on a particular day a NDR Payer in respect of a Hereditament is in receipt of NDR Mandatory Relief the BID Levy for that day will be reduced by 90% and such 90% allowance will be applied after first applying any other applicable allowances. There will be no allowances applicable to the BID Levy corresponding to NDR Discretionary Relief, NDR Hardship Relief, NDR (Section 44A) (Partly Occupied) Relief, NDR Small Business Rate Relief or NDR Transitional Phasing.

## **Section E**

### Collection of the BID Levy:

- 5.
- 5.1. The 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 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 BID Company may authorise refunds to BID Levy Payers, as appropriate.
- 5.3. The BID Company may authorise write-offs, as appropriate.

## **Section F**

### Enforcement and Recovery of the BID Levy:

#### Stage 1

- 6.
- 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 BID Levy Payer does not pay the BID Levy by the Single Instalment Due Date in full the Council will serve a Reminder Notice at least 10 days thereafter on the 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 a BID Levy Payer does not pay the Sum Unpaid in full within 7 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.

#### Stage 4

- 6.4. In the event that a Magistrates' Court makes a Liability Order the Council will instruct the Bailiff within a reasonable period thereafter to execute the Liability Order.
- 6.5. 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 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 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.

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

- 7.
- 7.1. 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.
- 7.2. 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 this action.
- 7.3. In the event that the Council instructs a Bailiff to carry out work pursuant to this Agreement the Council shall be entitled to recharge the BID Company an amount equal to the upfront fee incurred by the Council in instructing the Bailiff. The Bailiff will retain Statutory Levy Fees and charges within the meaning of Schedule 3 of the Non-Domestic Rating (Collection and Enforcement Regulations)(Local Lists) Regulations 1989.

#### **Section G**

##### Billing/Recovery Documents:

- 8.
- 8.1. The Council will use its best endeavours to agree with the BID Company the design of all Demand Notices and letters from the Council to BID Levy Payers.
- 8.2. 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, the required volume and any specific delivery instructions and the BID Company will comply with such requirements.