

Dated

2022

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF WANDSWORTH

AND

WANDSWORTH BIDCO LTD

HEALTH WARNING: Although material changes are not anticipated, this Operating Agreement remains in DRAFT form until finalised and signed between the Council and the BID operating company

OPERATING AGREEMENT

WANDSWORTH TOWN BUSINESS IMPROVEMENT DISTRICT

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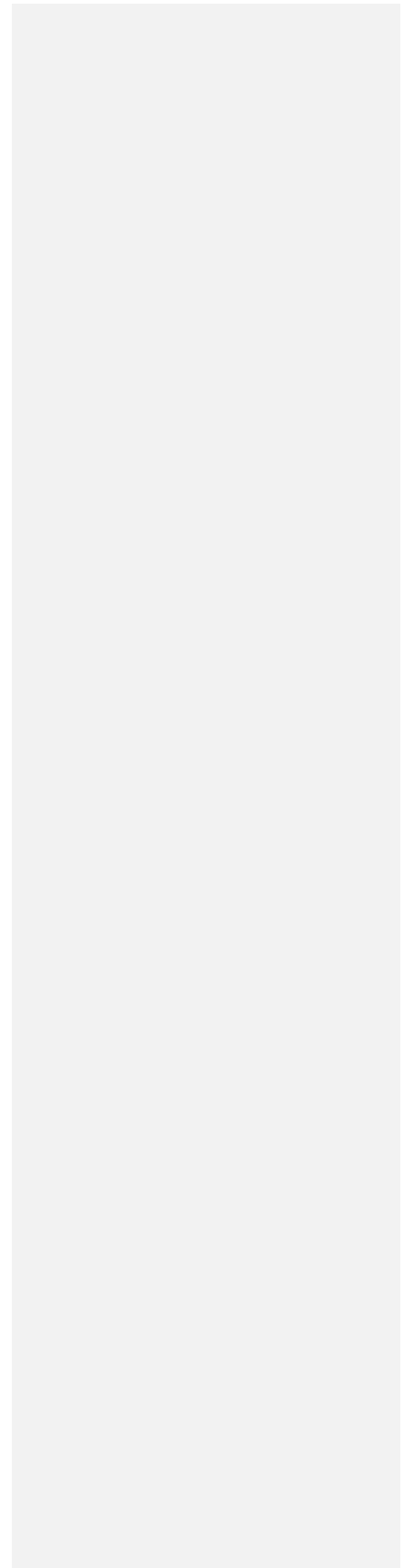
SCHEDULE 1 - THE BID AREA

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SCHEDULE 5 - BASELINE AGREEMENT



DATED

2022

BETWEEN

- (1) **The Mayor and Burgesses of the London Borough of Wandsworth** of the Town Hall High Street, Wandsworth, London SW18 2PU (hereinafter called the "**Council**");
and
- (2) **Wandsworth BIDCO Ltd** registered as a company limited by guarantee in England with number 10231718 whose registered office is at The Management Suite, Southside Shopping Centre (hereinafter called the "**BID Company**")

each a "**Party**" and together the "**Parties**".

WHEREAS

- (A) Part IV of the Local Government Act 2003 and the Regulations provide a legislative framework for the establishment and operation of a BID.
- (B) The BID Company has proposed the establishment of a BID for a period of five (5) years commencing on 1 April 2022 and concluding on 31 March 2027.
- (C) 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.
- (D) The BID Company is responsible for the operation and management of the BID and for using the BID Levy to achieve the objectives and aspirations set out in the BID Arrangements.
- (E) The purpose of this Agreement is to:
- (i) establish the procedure for setting the BID Levy;
 - (ii) confirm the procedure and basis upon which the Council will be responsible for collecting the BID Levy;
 - (iii) set out the enforcement mechanisms available for collection of the BID Levy;

- (iv) set out the procedures for accounting and transference of the BID Levy;
- (v) provide for the monitoring and review of the collection of the BID Levy;
- (vi) confirm the services to be provided by the BID Company;
- (vii) confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid; and
- (viii) set out, for the avoidance of doubt, the Services to be provided by the Council within the BID Area.

IT IS HEREBY AGREED:

1. DEFINITIONS

1.1 The following definitions in this Clause shall have the following meanings in this Agreement:

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| "Agreement" | means this operating agreement; |
| "Appeal Notice" | means a notice served by the BID Company in accordance with Clause 10.3 of this Agreement; |
| "Authorised Officer" | means the Council's Assistant Director (Revenue Services) or such other officer as the Council may appoint hereafter and such representatives as he/she may nominate in writing for general or specific purposes from time to time; |
| "Bad or Doubtful Debts" | shall have the same meaning as further described in part 2 of schedule 3 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 BID Arrangements;

"Baseline Agreement" means the draft agreement set out at Schedule 5 (Baseline Agreement) to this Agreement;

"BID" means the business improvement district which is to operate in the BID Area and will be managed and operated by the BID Company in accordance with this Agreement;

"BID Area" means the area detailed at Schedule 1 (BID Area) to this Agreement within which the BID operates;

"BID Arrangements" means those arrangements between the Council and the BID Company to be put in place pursuant to the Regulations for the operation of the BID and as set out in Schedule 3 (BID Arrangements) to this Agreement;

"BID Company's Annual Report" means a report for each Financial Year to be prepared by the BID Company which details the following:

- (i) the total income and expenditure arising from the BID Levy;
- (ii) other income and expenditure of the BID Company not being part of the BID Levy;
- (iii) a statement of actual and pending surpluses and deficits; and
- (iv) the various initiatives and schemes

upon which the BID Levy has been expended by the BID Company;

"BID Company Co-ordinator" means the person appointed by the BID Company as the main point of contact in relation to the BID.

"BID Levy" means the mandatory charge to be levied and collected from the BID Levy Payer within the BID Area pursuant to the Regulations as set out in Schedule 2 (The BID Levy Rules) of this Agreement;

"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 (The BID Levy Rules) to this Agreement which sets out how the BID Levy will be calculated, details of Exempt or Discounted Properties and other requirements related to the BID Levy (as may be amended by a successful alteration ballot);

"BID Revenue Account" means the account to be set up in accordance with Regulation 14 and operated in accordance with schedule 3 of the Regulations;

"BID Term" means a period of five (5) years from 1 April 2022 to 31 March 2027;

"Chair of the BID Company" means any person as may be appointed to be chair of the BID Company and notified to the Council in writing from time to time;

"Clauses"	means these clauses and any modification thereof duly made in accordance with their provisions;
"Collection Charge"	means the sum to be collected by the Council in respect of each Demand Notice served on a BID Levy Payer as set out in Clause 7 of this Agreement and any costs incurred by the Council in the administration, collection and recovery of the BID Levy;
"Contributors"	means: the BID Levy Payers
"Council's Annual Report"	means a report to be prepared by the Council which details the following: (i) the Financial Accounts; (ii) the total amount of BID Levy collected during the relevant Financial Year; (iii) details of the success rate for the collection of the BID Levy; (iv) the total amount of the Deductions; (v) the Council's proposals (if any) to help improve its efficiency in the collection and enforcement of the BID Levy; (vi) details of those BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and (vii) the Council's proposals for Bad or

Doubtful Debts;

"Council's Termination Notice" means the notice to be served by the Council on the BID Company pursuant to Clause 12.1;

"Data Protection Laws" means as applicable and binding on the Council and the BID Company:

- (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 195/46/EC (Data Protection Directive); and/or
- (ii) the GDPR and/or any corresponding or equivalent national laws or regulation; and
- (iii) any applicable laws replacing, amending, extending re-enacting or consolidating any of the above data protection laws from time to time;

"Deductions" means the Council's Collection Charge, reliefs, write offs, losses, refunds, Enforcement Expenses and Bad and Doubtful Debts that the Council may debit from the BID Revenue Account in accordance with paragraph 2 of schedule 3 of the Regulations – all of which should be signed-off by the BID Company Board prior to instruction;

"Demand Notice" shall have the same meaning ascribed to it in paragraph 3 of schedule 4 of the Regulations;

"Effective Date"	has the meaning given to it in Regulation 17 of the Non-Domestic Rating (Alteration of Lists and Appeals Regulations) 1993;
"Electronic Communication"	means a communication transmitted (whether from one person to another, from one device to another or from a person to a device or vice versa): (i) by means of a telecommunication system (within the meaning of the Telecommunications Act 1984); or (ii) by other means but while in electronic form;
"Enforcement Expenses"	means the costs which are incurred by the Council in issuing a Reminder Notice, obtaining Liability Orders and associated administrative expenses which may be incurred in recovering any unpaid BID Levy;
"Enforcement Notice"	means a notice to be served on the Council as specified in Clause 10.1 of this Agreement;
"Enforcement Officer"	means a Council officer who is responsible for enforcing non-payment of the BID Levy by way of court proceedings if necessary;
"Exempt or Discounted Properties"	means those class or classes of properties as identified in the BID Levy Rules which shall be exempt either from any requirement to pay the BID Levy or are permitted a discount on the BID Levy and as set out in Schedule 2 (The BID Levy Rules) to this

Agreement;

"Financial Accounts"	means a statement of all debits and credits made to the BID Revenue Account by the Council for the relevant Financial Year in accordance with schedule 3 of the Regulations;
"Financial Year"	means the financial year of the BID Company which runs from 1 April to 31 March in each year during the BID Term;
"GDPR"	means the General Data Protection Regulation (EU) 2016/679;
"Hereditament"	shall have the same meaning as defined in the Regulations;
"Liability Order"	means an order obtained from the Magistrates Court;
"Monitoring Group"	means the group to be set up to monitor the collection and enforcement of the BID Levy, (as referred to in Clause 11) such group to consist of a representative of the Council's Financial Department, the Chair of the BID Company (or his/her nominee) and other contributors to be agreed between the Council and Chair of the BID Company;
"Ombudsman"	has the meaning given to it in Clause 17.3;
"Operational Date"	means 1 April 2022;

"Public Meeting"	means the meeting to be held by all BID Levy Payers pursuant to the Public Meeting Notice;
"Public Meeting Notice"	means a notice to be served pursuant to Clause 12.1 or 12.8 by either the Council or the BID Company which provides the following: a) confirmation that either Party is considering terminating the BID; b) details of the venue where the Public Meeting will be held; and c) confirmation that all BID Levy Payers who attend will be permitted to make representations;
"Rating List"	has the meaning given to it in Section 41 of the Local Government Finance Act 1988;
"Regulations"	means The Business Improvement Districts (England) Regulations 2004, no 2443, that came into force on 17 September 2004 (as amended by The Business Improvement Districts (England) (Amendment) Regulations 2013), and all such other amendments made by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 (from time to time);
"Reminder Notice"	means the notice to be served pursuant to Clause 9.2 of this Agreement;

"Schedules"	means the schedules to this Agreement and "Schedule" means any one or other of the schedules;
"Services"	means those services as set out at Clause 4 and Schedule 4 of this Agreement;
"Single Instalment Due Date"	means the 1 April in each year of the BID Term or such other date as set out in the Demand Notice which shall be the date by which the BID Levy is due from BID Levy Payers;
"Tribunal"	has the meaning given to it in Clause 21.1.5;
"Valuation Officer"	means the person appointed by the Inland Revenue pursuant to Section 61 of the Local Government Finance Act 1988 to compile and maintain the Rating List pursuant to Section 41 of that Act;
"VAT"	means Value Added Tax; and
"Working Day"	means a day (other than a Saturday or Sunday on which the banks are ordinarily open for business in the City of London).

1.2 A reference to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment or re-enactment.

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

1.4 When interpreting this Agreement, precedence will be given to the respective parts in the following descending order:

1.4.1 the Clauses of this Agreement;

1.4.2 the Schedules of this Agreement;

1.4.3 any other documents incorporated by reference herein.

2. STATUTORY AUTHORITIES

2.1 This Agreement is made pursuant to Part IV of the Local Government Act 2003, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.

3. COMMENCEMENT AND DURATION

3.1 This Agreement is conditional upon and shall not have effect until the Operational Date and will terminate on the expiry of the BID Term unless the BID Arrangements are terminated by either the Council or the BID Company in accordance with Regulation 18 of the Regulations.

4. THE SERVICES

4.1 The BID Company has been established to use the BID Levy to provide the Services in the BID for the benefit of those companies which have their place of business in the BID Area, as set out in this Clause 4 (The Services) and Schedule 4 (Services) to this Agreement.

4.2 The BID Company will be responsible for contracting with third parties in order to provide the Services or shall undertake to deliver the Services itself.

4.3 Save for the Services provided for in this Agreement and/or the Baseline Agreement, the Council will not be obligated to provide further discretionary services in the BID Area but will notify the BID Company if it intends to do so.

4.4 Nothing in this Agreement shall preclude the BID Company and the Council from subsequently entering into any agreement for the provision of services similar to the Services or otherwise by the Council or its contractors.

5. THE BID LEVY

- 5.1 Immediately upon the Ballot Result Date, the Council shall:
- 5.1.1 calculate the BID Levy for each BID Levy Payer in accordance with the BID Levy Rules as set out in Schedule 2 (The BID Levy Rules) to this Agreement;
 - 5.1.2 confirm in writing to the BID Company the BID Levy payable annually by 1st March in each year by each BID Levy Payer; and
 - 5.1.3 enter into the Baseline Agreement with the BID Company.

6. THE BID REVENUE ACCOUNT

- 6.1 By 1 April 2022, the Council shall set up the BID Revenue Account and provide written confirmation to the BID Company that this has been carried out together with details of the account number, sort code and any other details which the BID Company shall reasonably request from the Council.
- 6.2 By 1 April 2022, the BID Company shall provide the Council with details of its own bank account into which the BID Levy shall be transferred electronically from the BID Revenue Account in accordance with Clause 8.8 (below) of this Agreement and any other details which the Council shall reasonably require from the BID Company.
- 6.3 The Council shall credit the BID Revenue Account and debit the BID Revenue Account in accordance with schedule 3 of the Regulations.
- 6.4 In the event that the Council determines that a BID Levy Payer has made an overpayment in relation to its 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 (unless in the Council's discretion it agrees with the relevant BID Levy Payer to credit the amount of such Repayment Sum against a subsequent BID Levy or non-domestic rate liability of the BID Levy Payer to the Council). This obligation of the BID Company under this Clause 6.4 shall continue even if under

Clause 6.5, 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.

6.5 If the BID Levy Payer has been notified of their entitlement to the Repayment Sum but has not claimed the Repayment Sum by the end of the Financial Year within which they were notified of their entitlement, the Council shall write off the Repayment Sum at the end of the relevant Financial Year. Where it is possible the BID Levy Payer shall be given a reminder by the Council's business rate team of their entitlement to the Repayment Sum before it is written off by the Council.

6.6 In the event of the termination of the BID Arrangements, 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.

7. COLLECTION CHARGES AND ENFORCEMENT CHARGES BY THE COUNCIL

7.1 The Council's Collection Charge for the BID Levy and accounting for monies received shall be £6,000. This fee will include the annual bills and reminders. Any request for copy bills and reminders will incur an extra charge of £10 per document, which must be agreed upon between the Council and the BID before they are issued.

7.2 The Council shall debit the Deductions from the BID Revenue Account in accordance with schedule 3 of the Regulations.

7.3 The Council may recover such part of the Enforcement Expenses that has not been paid by a BID Levy Payer from the liable BID Levy Payer in accordance with Clause 9 (below).

8. COLLECTING THE BID LEVY

8.1 The Council shall calculate the BID Levy and create a draft billing list for approval by the BID prior to serving Demand Notices on each BID Levy Payer at least fourteen (14) days before the Single Instalment Due Date in each year throughout the BID Term. At the time of billing, duplicate pdf invoices for the entire billing list should be sent to the BID.

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- 8.2 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.
- 8.3 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.
- 8.4 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 and make this available in full in an appropriate format for all BID Levy Payers. The BID Company will provide a leaflet providing this information or informing the BID Levy Payer of how to access this information, which will be served on the BID Levy Payer at the same time as the Demand Notice. The BID Company shall deliver leaflets equal to the number of Hereditaments the BID Area covers to the NNDR Contract Manager at London Borough of Wandsworth, Town Hall, Wandsworth High Street, London SW18 2PU no later than fourteen (14) days before the Single Instalment Due Date in each year of the BID Term.
- 8.5 The Council shall maintain a list which identifies payment and/or non-payment of the BID Levy by the BID Levy Payers and shall make this list available to the BID Company upon its reasonable request.
- 8.6 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term on an annual basis and in accordance with the procedure set out in schedule 4 of the Regulations.
- 8.7 The Council shall use reasonable endeavours and take reasonable steps which are consistent with its usual procedures for the collection of non-domestic rates to collect the BID Levy.
- 8.8 During the BID Term, the Council shall inform the BID Company monthly of the total amount of BID Levy monies collected by the Council during the previous quarter and clearly name the BID Levy Payers from which such BID Levy monies have been received.

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- 8.9 The Council will pay the BID Levy in instalments equal to 25% of the billed levy (or a higher amount if agreed between the Council and the BID Company) (to cover months 1, 2 and 3), 25% of billed levy advanced at the start of month 4 (to cover months 4, 5 and 6) and 25% of billed levy advanced at the start of month 7 (to cover months 7, 8 and 9) or an amount taking into account all of the collected levies. A balancing amount of what has been collected at the start of month 10 will be paid to account for any additional levy and any outstanding balance paid once all levy accounts have been finalised (normally in month 11).
- 8.10 Upon presentation of the BID Company's invoice the Council will pay the invoiced amount into the BID Company's bank account by electronic bank transfer (BACS) within twenty-eight (28) days.
- 8.11 The invoice referred to in Clause 8.9 (above) shall clearly set out the BID Levy monies and any VAT at the relevant rate.
- 8.12 The BID Company shall inform the Council immediately if its VAT status changes and shall ensure that VAT is correctly treated on subsequent invoices.

9. COUNCIL PROCEDURE FOR ENFORCING PAYMENT OF THE BID LEVY

- 9.1 The BID Levy shall be payable on the Single Instalment Due Date as set out in the Demand Notice in each year throughout the BID Term by BID Levy Payers. The BID Levy shall be collected in one instalment from each BID Levy Payer in each Financial Year by the Council, however, with agreement from the BID Company, the Council may recommend the setting up of further instalments if it considers that this is warranted by the BID Levy Payer's circumstances.
- 9.2 If the BID Levy is not paid on the Single Instalment Due Date, the Council shall send a Reminder Notice to the relevant BID Levy Payer which shall:
 - 9.2.1 identify the sum payable;
 - 9.2.2 provide a further seven (7) days for such BID Levy Payer to make payment of the BID Levy; and
 - 9.2.3 confirm that the Council may make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with interest and costs).

- 9.3 If after a further seven (7) days from the date of the Reminder Notice the outstanding sum of the BID Levy has not been paid by the relevant BID Levy Payer, the Council shall at its discretion decide whether to make an application to the Magistrates Court for a Liability Order to recover the outstanding sum of the BID Levy as is permitted by the Regulations.
- 9.4 The Council will charge the BID Levy Payer for any costs associated with having to make an application to the Magistrates Court.
- 9.5 If this outstanding amount is still not paid by the BID Levy Payer, then the Council reserves the right to pass the matter to its Enforcement Officers and a bailiff will be permitted to recover the costs.
- 9.6 The Council shall recover its costs, reasonably incurred, in making such an application, from the BID Levy Payer in accordance with the Non Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (as amended).

10. ENFORCEMENT MECHANISMS AVAILABLE TO THE BID COMPANY

- 10.1 In the event that the Council shall not enforce payment of the BID Levy pursuant to Clause 9 (above) the BID Company may serve an "**Enforcement Notice**" requesting that the Council:
 - 10.1.1 serves a Reminder Notice; or
 - 10.1.2 obtains a Liability Order pursuant to Clause 9 (above).
- 10.2 Within twenty-one (21) days of receipt of such Enforcement Notice the Council shall provide to the BID Company written confirmation of the action taken to the recover the unpaid BID Levy.
- 10.3 If the Council fails to provide written confirmation of the action it is taking in relation to the Enforcement Notice within twenty-one (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:
 - 10.3.1 detail the amount of the unpaid BID Levy;

- 10.3.2 confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the unpaid BID Levy; and
- 10.3.3 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 unpaid BID Levy, such meeting to take place no later than twenty-eight (28) days from the date of the Appeal Notice.

11. ACCOUNTING PROCEDURES AND MONITORING

- 11.1 Within one (1) month of the Operational Date, the Council and the BID Company shall form the Monitoring Group.
- 11.2 The Council shall use its reasonable endeavours to provide the BID Company with a breakdown of:
 - 11.2.1 the amount of the BID Levy for each individual BID Levy Payer;
 - 11.2.2 the amount of the BID Levy collected in relation to each BID Levy Payer;
 - 11.2.3 details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid any amount of its BID Levy;
 - 11.2.4 details of the Reminder Notices issued during that period; and
 - 11.2.5 details of any Liability Orders obtained or applied for by the Council,

on a monthly basis during the first three (3) months of a Financial Year and thereafter on a quarterly basis throughout the remaining duration of a Financial Year for the duration of the BID Term.
- 11.3 The BID Company shall provide the Council upon request (subject to the Council giving reasonable notice) the BID Company's Annual Report for each Financial Year.
- 11.4 The Monitoring Group shall meet four times annually in each Financial Year throughout the BID Term. All meetings of the Monitoring Group shall be arranged by the service of a written notice by either Party on the other, such notice to be provided no less than twenty-eight (28) days prior to the date of the proposed meeting (or less if otherwise agreed or in cases of emergency) and provided further

that single occurrence of such meetings can be dispensed with altogether upon the written agreement of both the Council and the BID Company.

11.5 At each meeting the Monitoring Group shall:

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

11.5.2 if required by either Party, review and assess the information provided by the Council and the BID Company pursuant to Clauses 11.2 and 11.3 (above) and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement).

11.6 No later than 31 January in each Financial Year of the BID Term, the Council shall prepare a list of unpaid BID Levies for that Financial Year that it proposes should be written off from the BID Revenue Account which it shall agree with the BID Company. The Council may also write off unpaid BID Levies from the BID Revenue Account from time to time when the Council considers it prudent to do so, for example, on the insolvency of a BID Levy Payer provided that the BID Company agrees to the write off of unpaid BID Levies. All write-offs are ultimately the responsibility of the BID Company Board and then subsequently should be instructed to the Council.

11.7 Within one (1) month after the date of the end of the Financial Year (for the duration of the BID Term) the Council shall provide the Council's Annual Report to the BID Company.

11.8 The BID Company shall provide the BID Company's Annual Report to the Council by the end of June of each Financial year.

12. TERMINATION

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

12.1.1 in its opinion there are insufficient finances available to the BID Company to meet its liabilities for the chargeable period for the purposes of the BID Arrangements; or

12.1.2 the Council is unable, due to any cause beyond its control to provide the works or services which are secured as part of the BID Arrangements,

unless and until it first serves the Public Meeting Notice on the BID Levy Payers and the Council's Termination Notice on the BID Company and within 14 (fourteen) days from the date of service of such notice both parties shall arrange to meet where the purpose of such meeting shall be to discuss and/or agree all or any of the following set out in Clause 12.2 or 12.3 (whichever is applicable).

12.2 Where the Council's Termination Notice relates to Clause 12.1.1 both Parties shall agree and/or discuss or review the following:

12.2.1 the Council is concerned that the BID Company has insufficient finances to meet its liabilities for that period and details of such concerns should be made available to the BID Company;

12.2.2 insufficient funds;

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

12.2.4 an appropriate time frame to resolve this issue.

12.3 Where the Council's Termination Notice relates to Clause 12.1.2 both Parties shall agree and/or discuss or review the following:

12.3.1 the services or works which it is no longer able to provide together with confirmation and details as to why such works or services cannot be provided;

12.3.2 a review by both Parties as to whether such works or services are of material importance to the BID so that termination of the BID Arrangements is the only option;

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

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

- 12.3.5 an appropriate time frame to resolve this issue.
- 12.4 In the event that the Parties cannot reach agreement in relation to the above and subject to consideration of representations made by any BID Levy Payer at the Public Meeting, the Council shall be permitted to terminate the BID Arrangements provided that notice by the Council to terminate the BID shall be provided to the BID Company no less than twenty-eight (28) days prior to termination taking place.
- 12.5 Upon termination of the BID Arrangements the Council shall review whether there is a credit in the BID Revenue Account and in the event that there are sufficient funds in the BID Revenue Account amounting to a refund of at least five pounds (£5.00) for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund) to:
 - 12.5.1 calculate the amount to be refunded to each BID Levy payer;
 - 12.5.2 ensure that the amount to be refunded is calculated by reference to the amount payable by each BID Levy Payer for the last chargeable period; and
 - 12.5.3 make arrangements for the amount calculated to be credited against any outstanding liabilities of each BID Levy Payer or, where there are no such liabilities, refunded to the BID Levy Payer.
- 12.6 Upon termination of the BID Arrangements the Council shall notify the BID Levy Payers of such termination in accordance with Regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with Clause 12.5.
- 12.7 The BID Company shall not be permitted to terminate the BID Arrangements where:
 - 12.7.1 the works or services under the BID Arrangements are no longer required; or
 - 12.7.2 the BID Company is unable, due to any cause beyond its control to provide works and services which are necessary for the BID to continue,

unless and until it has served the BID Company's Termination Notice on the Council and thereafter carried out a proper consultation with all relevant representatives of the BID Area as considered appropriate by the Council.

- 12.8 Upon termination of the BID Arrangements, the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) of the Regulations and the Council shall notify the BID Levy Payers pursuant to Regulation 18(6) of the Regulations together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy Payers in accordance with Clause 12.5.
- 12.9 Twenty-one (21) days prior to the expiry of the BID Term (notwithstanding any re-ballot and new BID term commencing) the Council shall provide the BID Company with a reconciliation of the BID Revenue Account (for its written agreement) identifying (if any) all outstanding costs payable to the Council as a consequence of collecting the BID Levy, any outstanding Enforcement Expenses and any BID Levy monies not passed to the BID Company's account (pursuant to Clause 8.8).
- 12.10 Subject to the costs (pursuant to Clause 12.9 above) being agreed and prior to the start of a new BID Term the Council shall deduct the final costs from any BID Levy and transfer any remaining BID Levy to the BID Company pursuant to Clause 8.8.

13. CONFIDENTIALITY

- 13.1 Both the Council and the BID Company agree to keep confidential and not to divulge to any person without the prior written consent of the other Party all information (written or oral) concerning the business affairs of the other nor any information which has been exchanged about the BID Levy Payers or Contributors or about other third parties or Personal Data (as defined under the Data Protection Act 1998) which it shall have obtained or received as a result of operating the BID. This obligation shall survive the termination or lapse of the BID Arrangements.

14. DATA PROTECTION AND FREEDOM OF INFORMATION ACTS

- 14.1 The BID Company shall at all times comply with all obligations under the Data Protection Laws and any subsequent statute, orders or regulations insofar as performance of the Services gives rise to obligations thereunder.

- 14.2 The BID Company shall provide the Council with such information as the Council may need to satisfy itself that the BID Company is complying with its obligations under the Data Protection Laws including (but not limited to) a copy of the BID Company's registration under the Data Protection Laws, should this be applicable.
- 14.3 The BID Company acknowledges that the Council is subject to obligations under the Freedom of Information Act 2000 ("FOIA"), the Environmental Information Regulations 2004 ("EIR") and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation and shall assist and co-operate with the Council (at the BID Company's expense) to enable the Council to comply with its obligations under such legislation.
- 14.4 The BID Company shall provide the Council with a copy of any requested information under Clause 14.3 (above) within five (5) Working Days from the Council's request and to provide all necessary assistance as reasonably requested by the Council to enable it to comply with its obligations under the FOIA or the EIR.
- 14.5 The BID Company acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the "Discharge of Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000", the FOIA, or the EIR disclose information:
- 14.5.1 without consulting with the BID Company; or
- 14.5.2 following consultation with the BID Company and having taken its views into account.
- 14.6 The BID Company shall ensure that all information produced in the course of this BID or relating to the BID is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.
- 14.7 The BID Company acknowledges that any lists or schedules provided by it outlining confidential information are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Clause 14.5 (above).

15. NOTICES

15.1 Any notice or other written communication to be served or given to or upon any Party to this Agreement to the other Party 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.

15.2 Any such notice may be served by:

15.2.1 prepaid registered or recorded delivery post or delivered by hand to the Council's Chief Executive at the Council's address specified above or such other officer or address as the Council may have notified to the BID Company in writing;

15.2.2 prepaid registered or recorded delivery post or delivered by hand to the Directors at the BID Company's address specified above or such other officer or address as the BID Company may have notified to the Council in writing; or

15.2.3 electronic communication (provided that it is in legible form and is capable of being used for subsequent reference).

15.3 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.

16. LIABILITY OF THE COUNCIL

16.1 Nothing in this Agreement excludes or limits the liability of the Council for death or personal injury caused by the Council's negligence or fraudulent misrepresentation.

16.2 The Council shall not be liable to the BID Company for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses, or other claims for consequential compensation whatsoever (howsoever caused) which arises out of or in connection with this Agreement.

16.3 The Parties agree and acknowledge that despite the Council being responsible for the collection of the BID Levy, this will not fetter the ability of the Council to make

any objective decisions in relation to any applications, now or in the future, for consents for planning or environmental issues or any other statutory function.

17. ASSISTANCE WITH LEGAL AND/OR OMBUDSMAN PROCEEDINGS

- 17.1 If requested to do so by Council, the BID Company shall provide all relevant information in connection with any legal inquiry, arbitration or court proceedings in which the Council may become involved or any relevant disciplinary hearing internal to the Council arising out of the provision of the Services or the BID Company's presence on any Council premises and the BID Company shall give evidence or assistance as required in any such inquiries, arbitrations, proceedings, hearings or tribunals.
- 17.2 Where the BID Company or any of its employees become aware of any incident, accident or other matter which may give rise to a claim or legal proceedings in respect of the provision or failure to provide the Services or in any way connected with the Services, then the BID Company shall notify the Council thereof immediately in writing. Such notification shall include all relevant information to enable the Council to fully investigate the matter.
- 17.3 The BID Company shall fully co-operate with and provide assistance and all relevant information to the Council and the Commission for Local Administration in England (the "**Ombudsman**") in any inquiries or investigations carried out by or on behalf of the Ombudsman in matters of alleged maladministration or injustice or any other matter arising in connection with the provision of the Services under this Agreement.
- 17.4 If, as a result of such inquiry or investigation, the Ombudsman makes a finding against the Council of maladministration or injustice or other finding and if the finding is found to be attributable wholly or in part to the actions or omissions of the BID Company then (without prejudice to any other rights or remedies available to the Council under this Agreement or any other contract with the BID Company) the Council shall be entitled to recover from the BID Company (whether be deduction from any monies due to the BID Company or otherwise) such proportion of any award made against the Council to a complainant and related costs as are attributable to those actions or omissions of the BID Company.

17.5 Any information provided or assistance rendered by the BID Company pursuant to the obligations in this Clause 17, in whatever form, shall be provided at no cost to the Council.

18. MISCELLANEOUS

18.1 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.

18.2 The headings appearing in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.

18.3 For the avoidance of doubt the provisions of this Agreement (other than those contained in this Clause 18) shall not have any effect until this Agreement has been dated.

18.4 Where reference is made to a Clause, Part, Schedule or Recital such reference (unless the context required otherwise) is a reference to a clause, part, plan or recital attached to this Agreement.

18.5 References to the Council include any successors to its functions as local authority.

18.6 References to statutes, bye laws, regulations, orders, delegated legislation shall include any such instrument re-enacting or made pursuant to the same power.

19. EXERCISE OF THE COUNCIL'S POWERS

19.1 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.

20. CONTRACTS (RIGHTS OF THIRD PARTIES)

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

21. DISPUTE RESOLUTION

21.1 The following provisions shall apply in the event of a dispute:

21.1.1 each Party agrees not to commence legal proceedings without first attempting in good faith to resolve the dispute amicably and speedily having regard to the aims and objectives of the BID Arrangements;

21.1.2 any dispute or difference of any kind whatsoever arising between the Parties hereto out of or in connection with this Agreement shall first be referred to a meeting between the Council's Authorised Officer and the Chairman of the BID Company (or their respective nominated senior representatives) who shall enter into good faith negotiations to resolve the dispute or difference;

21.1.3 if such meeting fails to resolve the dispute or difference then the dispute or difference shall be referred to arbitration before a single arbitrator;

21.1.4 the Parties shall jointly appoint the arbitrator not later than twenty-eight (28) days after service of a request in writing by either Party to do so and each Party shall bear its own costs;

21.1.5 if the Parties are unable to agree within twenty-eight (28) days as to 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;

21.1.6 in the event of a reference to arbitration the Parties agree to:

21.1.6.1 prosecute any such reference expeditiously; and

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

21.1.7 the award shall be in writing signed by the Tribunal and shall be finalised within twenty-eight (28) days from the date of such award; and

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

IN WITNESS whereof the Parties have executed this Agreement as a **DEED** the day and year first before written.

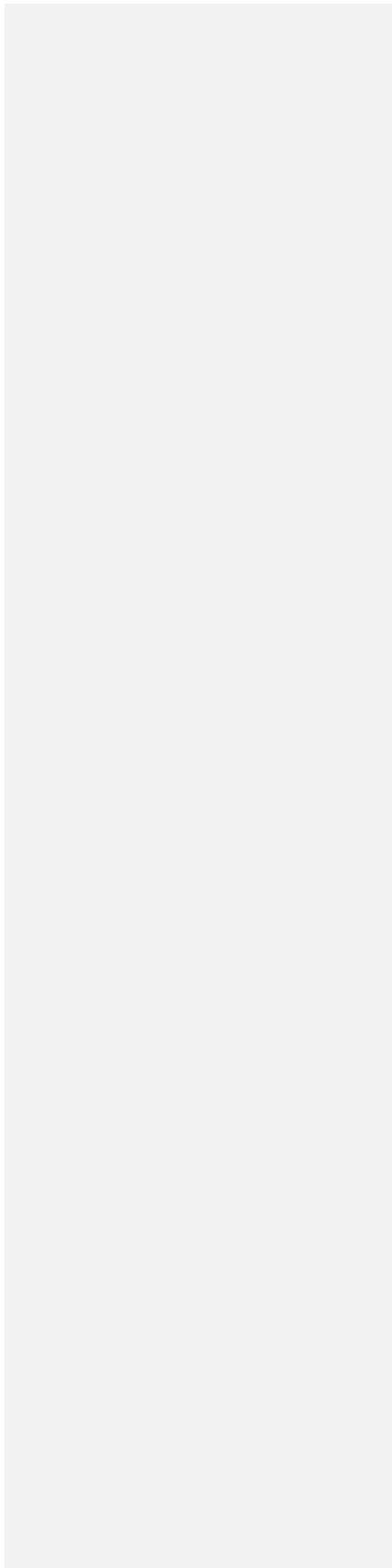
THE COMMON SEAL of THE MAYOR AND)
BURGESSES OF THE LONDON BOROUGH OF)
WANDSWORTH was affixed to this)
DEED BY ORDER)

.....
Authorised Signatory

.....
Seal Register No

EXECUTED AS A DEED and DELIVERED)
by **WANDSWORTH BIDCO LIMITED**) Director
acting by two Directors)

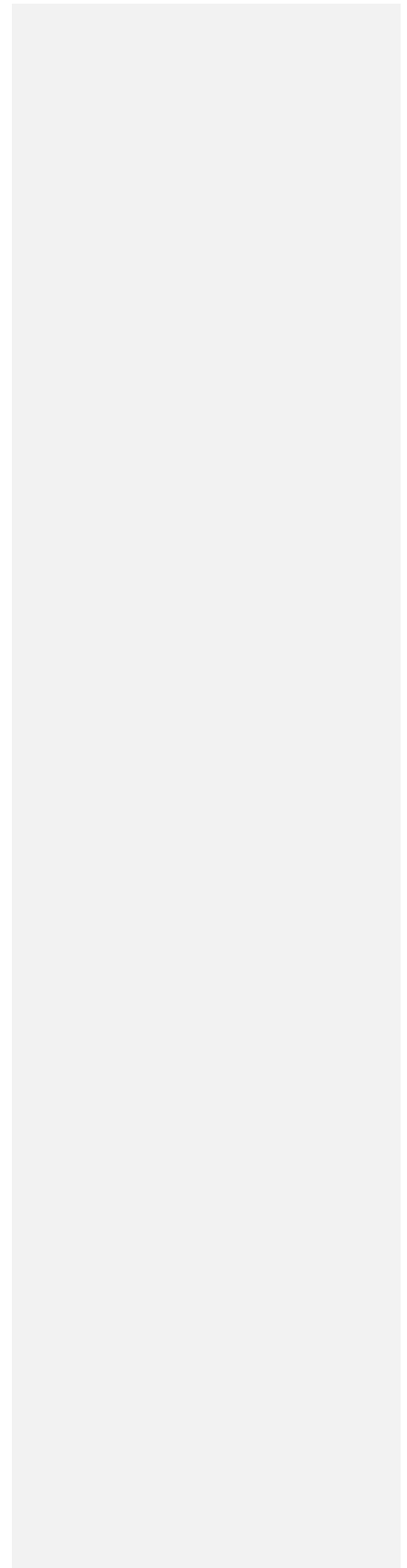
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Director



Schedule 1

THE BID AREA

Wandsworth Town



Schedule 2

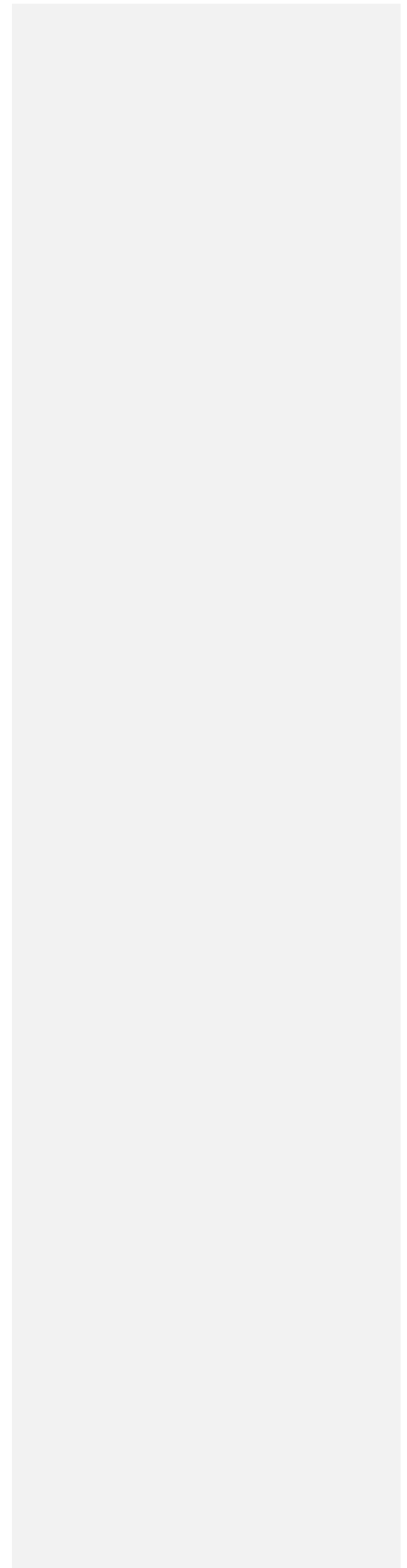
THE BID LEVY RULES - CALCULATION AND APPLICATION OF THE BID LEVY

(As taken from the Business Plan. The full Business Plan is available on request.)

1. The BID term will be a period of five years from April 1st, 2022, until March 31st, 2027
2. The levy will be a fixed rate of 1.5% rateable value as at April 1, 2022, using the 2017 list for all eligible ratepayers
3. Only properties or hereditaments with a rateable value of £15,000 or more will be liable for the levy
4. The maximum levy to be charged to on any single hereditament will not exceed £15,000
5. The levy will assume an annual growth rate for inflation of 3% to be applied on April 1 each year;
6. The levy will be charged annually in full for each chargeable period to be April to March each year, first payable in April 2022, and then annually each April. No refunds will be available on the levy charged.
7. The owners of untenanted properties or hereditaments will be liable for payment of the levy.
8. Properties that come into the rating list during the BID term will be subject to the levy from the effective date that the property is brought into the rating list and the rateable value effective at that time;
9. Occupiers within managed shopping centres that are subject to a service charge for management and marketing services will pay 60% of the levy that would otherwise apply.
10. Charitable organisations (excluding educational institutions) that are subject to relief on their business rates liability will be exempt.
11. Where the rateable value for an individual hereditament changes and results in a lower levy, then this comes into effect only from the start of the financial year in

which the change is made and no refunds will be made for previous years. This is known as the closed year rule;

12. There will be no VAT charged on the BID levy;
13. The BID levy will not be increased other than as specified in the levy rules;
14. The BID levy rules and BID area cannot be altered without an alteration ballot



Schedule 3

BID ARRANGEMENTS**Wandsworth BID Co Governance Rules**

The Wandsworth Town BID provides an effective organisational model, which brings together the business community, both occupiers and owners, together with the statutory authorities and wider community, to work together for the benefit of the Wandsworth Town.

The Wandsworth Town BID is a company limited by guarantee and the legal entity that will run the activities of the business improvement district following its renewal. The BID will have two categories of membership:

- BID Levy payers – commercial occupiers liable to pay the BID levy
- Voluntary members – businesses / organisations that are not BID levy payers approved by the BID Board

The nomination of voluntary members will be supported by either an annual financial contribution (cash or in-kind) or their strategic importance to the delivery of the BID's business objectives. Key groups will include property owners, smaller businesses that fall below the threshold of rateable value and businesses outside of the BID's geographic boundary.

Organisational Structure

A Board of Directors will lead and guide the work of the BID. The Board will have the appropriate balance of skills, experience, independence and knowledge to enable them to discharge their respective duties and responsibilities effectively. It will seek diversity and ensure a representative mix of its membership, the property sector and wider community.

The Board will meet quarterly and drive the set aims and objectives of the BID, as well as maintaining good governance, overseeing the budget and monitoring performance.

The Board will consist of between 12 -16 non-Executive Directors including the Chair. Directors will be appointed by the Board subject to ratification by the BID members at annual meetings of the company.

Observers can be appointed to the Board subject to ratification by BID members at annual meetings of the company. Key groups may include the public authorities, the Police and the residential community.

The BID will seek to embrace its members and the wider community within a programme of work which meet its stated aims and objectives. To help guide the BID in this pursuit Board sub-groups may be set up to encourage participation and help to add value to the decision making of the BID. These areas of focus will include Finance & Governance.

BID Team

The delivery of the BID's business plan will be led by a BID Manager and their team, accountable to the Chairman and Board. The role will work with the Board and sub-group members, partners and specialist service providers to ensure the effective implementation of the agreed annual action plan.

Wandsworth Council

A key relationship will exist between the BID and the local Council. Wandsworth Council is the main determining authority in respect of the streets and properties in the area of the BID. Two important legal agreements will exist between the BID and the Council:

- An Operating Agreement which outlines how the BID levy monies are collected, administered and passed over to the BID.
- A Baseline Agreement which specifies the level of Council led service provision in the area, ensuring that any services the BID provides are additional.

*To view the Operating Agreement and Baseline Agreement go to <https://wandsworth.town>

Beyond that, a positive, ongoing working relationship between the BID and the local Council is vital for success in delivering the Business Plan.

The BID will involve formal participation of the local authority within its governance structure but, just as important, the BID will develop a strong and constructive working partnership at all levels.

Together, and with other elements of the local community, we will work to make the Wandsworth Town a better place for everyone to work, live and visit.

Voluntary Members

Businesses of all sizes are important to the BID. The BID will maintain a voluntary membership scheme for businesses falling beneath the BID levy threshold or outside of the BID's geographical area. In particular, this will provide smaller businesses the opportunity to engage with, and benefit from, the BID, while not being compelled to contribute a mandatory levy. By enabling businesses with a rateable value of less than £15,000 to provide a voluntary levy the BID will be able to enhance the level of the annual budget.

Property Owners

Property owners in the area will be encouraged to join the BID on a voluntary basis and help inform the more longer-term objectives of the organisation. As set out in the membership criteria, membership will be on the basis of a financial contribution towards the overall management of the BID or towards specific projects the BID seeks to advance.

Schedule 4

SERVICES

1. The Services to be provided by the BID Company are to improve and maintain the business environment in the BID. Such Services are set out in the Business Plan.

Nicola Tracey 17/6/2021 08:58

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