

**Dated**

**OPERATING AGREEMENT**

**THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF  
KINGSTON UPON THAMES**

**and**

**KINGSTON FIRST LIMITED**

---

Relating to the Operation and Management of the Kingston Town  
Centre Business Improvement District

---

## Contents

<b>1</b>	<b>Definitions</b>	<b>3</b>
<b>2</b>	<b>Statutory Authorities</b>	<b>6</b>
<b>3</b>	<b>Commencement</b>	<b>6</b>
<b>4</b>	<b>Setting the BID Levy</b>	<b>6</b>
<b>5</b>	<b>The BID Revenue Account</b>	<b>6</b>
<b>6</b>	<b>Debits from the BID Revenue Account</b>	<b>6</b>
<b>7</b>	<b>Collection and Payment of the BID Levy</b>	<b>7</b>
<b>8</b>	<b>Procedures available to the Council for enforcing payment of the BID Levy</b>	<b>8</b>
<b>9</b>	<b>Enforcement Mechanisms for non-collection of the BID Levy by the Council</b>	<b>8</b>
<b>10</b>	<b>Accounting Procedures and Monitoring</b>	<b>9</b>
<b>11</b>	<b>Termination</b>	<b>10</b>
<b>12</b>	<b>Data Protection</b>	<b>12</b>
<b>13</b>	<b>Confidentiality</b>	<b>12</b>
<b>13</b>	<b>Notices</b>	<b>12</b>
<b>14</b>	<b>Miscellaneous</b>	<b>13</b>
<b>15</b>	<b>Exercise of the Council's powers</b>	<b>13</b>
<b>16</b>	<b>Contracts (Rights Of Third Parties)</b>	<b>13</b>
<b>17</b>	<b>Arbitration</b>	<b>13</b>

**Schedule 1 – The BID Levy Rules**

**Schedule 2 - BID Area Plan**

**Schedule 3 - Data Protection Schedule**

# Operating Agreement

## Dated

## Between

- (1) **THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KINGSTON UPON THAMES** of Guildhall, Kingston **(Council); and**
- (2) **KINGSTON FIRST LIMITED** registered with company number 03838618 and whose registered office is at 3rd. Floor, Neville House, 55, Eden Street, Kingston upon Thames, KT1 1BW **(BID Company).**

## Recitals

- A The Council is the billing authority for the purposes of the Local Government Act 2003 and is responsible for collecting the BID Levy and administering the BID Revenue Account which shall be used towards the operation of the BID within the area of the 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 objectives and aspirations set out in 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:

### 1 Definitions

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

- (i) the total amount of BID Levy collected during the relevant Financial Year;
- (ii) the Annual Service Charges and Expenditure deducted during the relevant Financial Year;

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

**Appeal Notice** means a notice to be served by the BID Company in accordance with clause 9.2

**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

**BID** means the Business Improvement District which operates within the area more particularly identified in the plan at Schedule 2 and which is managed and operated by the BID Company

**BID Arrangements** means those arrangements to be put in place pursuant to the Regulations for the operation of the BID

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

- (a) the total income generated by the BID Company, broken down by reference to BID Levy income and other income not being the BID Levy;
- (b) the total expenditure of the BID Company, broken down by reference to BID Levy income and other income not being the BID Levy;
- (c) a statement of any actual or pending surplus and/or deficits; and
- (d) details of the various initiatives and schemes upon which the BID Levy and other income not being the BID Levy has been expended by the BID Company.

**BID Levy** means the charge to be levied and collected within the BID area pursuant to the Regulations

**BID Company's Termination Notice** means a notice to be served by the BID Company on the Council pursuant to clause 11.8

**BID Levy Payer(s)** means the non-domestic rate payers responsible for paying the BID Levy

**BID Levy Rules** means the rules set out in Schedule 1 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 the period of five (5) years from 1 January 2025 to 31 December 2029

**Council's Termination Notice** means the notice to be served by the Council on the BID Company pursuant to Clause 11.1

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

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

**Hereditament** shall have the same meaning as defined in the Regulations

**Enforcement Expenses** means the costs which are incurred by the Council in issuing a Reminder Notice, obtaining Liability Orders and associated administrative and legal expenses including any VAT which may be incurred in recovering unpaid BID Levy

**Enforcement Notice** means a notice to be served on the Council as specified in Clause 9

**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

**Financial Year** means the financial year for the BID which runs from 1 January to 31 December each year

**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 10). Such group to consist of Council officers and relevant BID Officers.

**Operational Date** means the date this agreement is signed

**Public Meeting** means the meeting to be held of all BID Levy Payers pursuant to the Public Meeting Notice

**Public Meeting Notice** means a notice to be served pursuant to Clause 11.1 or 11.8 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;
- (c) confirmation that all BID Levy Payers who attend will be permitted to make representations

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

**Reminder Notice** means the notice to be served pursuant to Clause 8.1

## **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

## **3 Commencement**

3.1 This Agreement shall commence on 1 January 2025 and, unless terminated in accordance with the terms of this Agreement or the Baseline Agreement, automatically expire on the 31 December 2029.

## **4.0 Setting the BID Levy**

4.1 The Council shall:-

- (i) calculate the BID Levy due from each BID Levy Payer in accordance with the BID Levy Rules; and
- (ii) confirm in writing to the BID Company the BID Levy payable annually by each BID Levy Payer

## **5.0 The BID Revenue Account**

5.1 The Council shall set up the BID Revenue Account and provide written confirmation to the BID Company once this has been carried out together with details of the account number sort code and any other details which the BID Company may reasonably request.

5.2 Within 20 days from the date of this Agreement 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 on production of an invoice by the BID Company in accordance with clause 7.8.

5.3 Interest earned on money in the BID Revenue Account shall form part of the BID Levy and be payable to the BID Company

## **6.0 Debits from the BID Revenue Account**

6.1 The Council shall not debit directly from the BID Revenue Account any deductions which in the Council's opinion are Bad or Doubtful Debts

6.2 The Council's charge for the provision of the collection and management of the BID Levy (**Services**) will be £28,200 per annum (excluding VAT) representing its reasonable administrative costs in providing Services (**Annual Service Charges**) and having effect on the first day of each year, or part year, for which a BID is in place. On the 1 April each year, the Council shall issue to the BID Company a valid VAT invoice in respect of the Annual Service Charges and 10 days after the invoice date the Council shall automatically deduct payment from the BID Revenue Account together with VAT thereon.

6.4 If the Council's costs for the provision of the Services as outlined in Clause 6.2 increases, the Council shall be entitled to increase the Annual Service Charges providing the Council serves

written notice on the Company, not less than three (3) months' prior to the increase taking effect, providing an updated breakdown of the Council's annual charge.

- 6.6 The Council shall be entitled to recover Enforcement Expenses from the BID Company. At the end of each month, the Council shall issue to the BID Company a valid VAT invoice in respect of the Enforcement Expenses and 10 days after the invoice date the Council shall automatically deduct payment from the BID Revenue Account together with VAT thereon.

## **7 Collection and Payment the BID Levy**

- 7.1 The Council shall confirm in writing to the BID Company the date when the BID Levy shall first be collected.
- 7.2 The Demand Notices shall be a separate bill and shall not be combined with the Business Rate bill.
- 7.3 Pursuant to clause 7.1 the Council shall serve the Demand Notices on each BID Levy Payer and thereafter shall continue to calculate the BID Levy and serve the Demand Notices throughout the BID Term
- 7.4 The Council shall maintain a list which identifies payment and/or non-payment of the BID Levy and shall make this available to the BID Company upon its reasonable request.
- 7.5 The Council shall liaise with the BID Company in carrying out reviews of each Hereditament within the BID Area and in the event of any change in the occupier of each Hereditament or the merger or division of a Hereditament (or provision of an additional Hereditament) shall:
- (a) provide updated lists to the BID company showing who the current ratepayer is and include in this list details of any new or amended property; and
  - (b) serve a Demand Notice (or alter any existing Demand Notice if appropriate) on the relevant BID Levy Payer. Any changes that lead to changes in bills (or new bills), are only effective where that change dates back to 1 January, or any date before this.
- 7.6 The Council shall use all reasonable endeavours to collect the BID Levy on the date specified and thereafter on a monthly basis and in accordance with the procedure set out in Schedule 4 of the Regulations
- 7.7 The Council shall use all reasonable endeavours to take all reasonable steps for collecting the BID Levy which are consistent with its usual procedures for the collection of non-domestic rates
- 7.8 On the last day of each month from the date of this Agreement, the Council shall inform the BID Company of the amount of BID Levy monies collected in that month and the balance of monies the BID Revenue Account.
- 7.9 The BID Company shall issue an invoice, including VAT, to the Council once every month throughout the BID Term, or less frequently should the BID Company so decide, for the payment of BID Levy monies from the BID Revenue Account. This invoice shall be based on



the information outlined in clause 7.8 and set out the BID levy monies the BID Company intends to draw upon during that month.

- 7.10 For the avoidance of doubt, the monetary value of the invoice raised by the BID Company in Clause 7.9 shall not under any circumstances exceed the BID Levy monies in the BID Revenue Account and the Council is not obliged to make payment of any sums in excess of the BID Levy money in the BID Levy Account from time to time.

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

- 8.1 In the event that the BID Levy is not paid from the date that it becomes payable then (subject to the Exceptions or as may otherwise be agreed between the parties) the Council shall serve a Reminder Notice on such relevant BID Levy Payer which shall:

- (i) identify the sum payable;
- (ii) provide a further 14 (fourteen) days for payment to be made by the BID Levy Payer; and
- (iii) confirm that the Council will make an application to the Magistrates Court for a Liability Order to recover the unpaid sum (together with costs).

- 8.2 If after a further 14 (fourteen) days from the payment date stated in the Reminder Notice the outstanding sum of the BID Levy has not been paid the Council shall 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 and the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (as amended).

## **9 Enforcement Mechanisms for non-collection of the BID Levy by the Council**

- 9.1 In the event that the Council is not enforcing payment of the BID Levy pursuant to Clause 8 above the BID Company shall serve the Enforcement Notice on the Council requesting that:

- (i) it serve a Reminder Notice; or
- (ii) it obtains a Liability Order pursuant to Clause 8.2 above,

within 14 (fourteen) days of receipt of such Enforcement Notice and the Council shall thereafter provide written confirmation of the action taken to recover the unpaid BID Levy.

- 9.2 If after being served an Enforcement Notice the Council fails to take the requested action within the specified time frame then the BID Company shall serve an Appeal Notice to the Chief Executive of the Council. Such notice shall:

- (i) detail the sum which remains unpaid;
- (ii) confirm that the Council has failed to use the enforcement mechanisms available to it under this Agreement to recover the sum; and
- (iii) request a meeting take place between relevant officers of the Council and BID Company to achieve a solution and/or agree a strategy to recover the outstanding sum such

meeting to take place in any event no later than 28 (twenty eight) days from service of the Appeal Notice.

## **10 Accounting Procedures and Monitoring**

10.1 Within 1 (one) month from the Operational Date the Council and BID Company shall form the Monitoring Group which shall consist of:

- (i) the Company's Chief Executive and Director of Finance or officer with delegated authority to make decisions for and on behalf of the Company; and
- (ii) the Council's Assistant Director for Regeneration, Corporate Contracts Manager and BID Levy Administrator or such officer with delegated authority to make decisions for and on behalf of the Council.

10.2 Upon request from the BID Company every 1 (one) month (for the duration of BID Term) the Council can provide the BID company with a breakdown of:

- (i) the amount of BID Levy for each individual BID Levy Payer;
- (ii) the BID Levy collected in relation to each BID Levy Payer;
- (iii) details (together with the outstanding unpaid sum) of those BID Levy Payers who have not paid the BID Levy during that month;
- (iv) details of the Reminder Notices issued throughout that period; and
- (v) details of any Liability Orders obtained or applied for by the Council;

10.3 Every six months (for the duration of the BID Term) the BID Company shall provide the Council with the following details:

- (i) the total amount of income received from the Contributors (excluding the BID Levy); and
- (ii) the total expenditure during that 6 month period.

10.4 The Monitoring Group shall meet no less than twice in any one Financial Year 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

- (i) review the effectiveness of the collection and enforcement of the BID Levy; and
- (ii) if required, review and assess the information provided by the Council and the BID Company pursuant to Clauses 10.2 and 10.3 above and make any recommendations for implementation as may be agreed (and which are permitted by the Regulations and the terms of this Agreement)

10.6 Within 1 (one) month after the date of the end of the Financial Year the Council shall provide the Annual Report to the BID Company

10.7 Within 1 (one) month from the date of receipt of the Annual Report the BID Company shall provide the BID Company Report to the Council

## **11 Termination**

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

- (i) 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
- (ii) 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 11.2 or 11.3 (whichever is applicable)

11.2 Where the BID Termination Notice relates to Clause 11.1(i) both parties shall agree and/or discuss or review the following:

- (a) 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;
- (b) insufficient funds;
- (c) alternative means by which the insufficiency of the funds can be remedied; and
- (d) an appropriate time frame to resolve this issue;

11.3 Where the BID Termination Notice relates to clause 11.1(ii) both parties shall agree and/or discuss or review the following:

- (a) 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;
- (b) 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;
- (c) alternative means of procuring the said services or works by third parties or increased financial funding from the BID Company;

- (d) alternative replacement services or works which will be acceptable to the BID Company;  
and
  - (e) an appropriate time frame to resolve this issue.
- 11.4 Notwithstanding clauses 11.1, 11.2 and 11.3 above, the Council shall cause a Public Meeting to be held prior to the termination of the BID arrangements.
- 11.5 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 28 days prior to termination taking place.
- 11.6 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 £5 for each BID Levy Payer (having already deducted a reasonable sum for the administration of such refund) to:
- (a) calculate the amount to be refunded to each BID Levy payer;
  - (b) 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
  - (c) 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.
- 11.7 Upon termination of the BID 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 11.6
- 11.8 The BID Company shall not be permitted to terminate the BID Arrangements where:
- (a) the works or services under the BID Arrangements are no longer required; or
  - (b) 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.

11.9 Upon termination of the BID Arrangements the BID Company shall notify the Council of such termination in accordance with Regulation 18(5) and the Council shall notify the BID Levy payers pursuant to Regulation 18(6) together with confirmation as to whether any part of the BID Levy is to be repaid to BID Levy payers in accordance with clause 11.6

## **12 Data Protection**

12.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the BID Company is the Processor. The only processing that the BID Company is authorised to do is listed in Schedule 3 and may not be determined by the BID Company.

12.2. The BID Company shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.

12.3. The BID Company shall provide all reasonable assistance to the Council in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the BID Company include:

- (i) a systematic description of the envisaged processing operations and the purpose of the processing;
- (ii) an assessment of the necessity and proportionality of the processing operations in relation to the services;
- (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

12.4. The BID Company shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:

12.4.1. process that Personal Data only in accordance with Schedule 3, unless the BID Company is required to do otherwise by Law. If it is so required the BID Company shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

12.4.2. ensure that it has in place Protective Measures, which have been reviewed and approved by the Council as appropriate to protect against a Data Loss Event having taken account of the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures.

12.4.3. ensure that BID Company Personnel do not process Personal Data except in accordance with the Agreement (and in particular Schedule 3 and clause 7.1)

12.5. In relation to BID Company Personnel, the BID Company shall take all reasonable steps to ensure the reliability and integrity of any BID Company Personnel who have access to the Personal Data and ensure that they:

- (i) are aware of and comply with the BID Company's duties under this clause 8;
- (ii) are subject to appropriate confidentiality undertakings with the BID Company or any Sub-processor;
- (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Council or as otherwise permitted by this Agreement; and
- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data.

12.6. The BID Company shall not transfer Personal Data outside of the EEA unless the prior written consent of the Council has been obtained and the following conditions are fulfilled:

- (i) the Council or the BID Company has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of GDPR or Article 37 of the Law Enforcement Directive (Directive (EU) 2016/680)) as determined by the Council;
- (ii) the data subject has enforceable rights and effective legal remedies;
- (iii) the BID Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Council in meeting its obligations); and

- (iv) the BID Company complies with any reasonable instructions notified to it in advance by the Council with respect to the processing or the Personal Data;
- (v) at the written direction of the Council, delete or return Personal Data (and any copies of it) to the Council on termination of the Agreement unless the BID Company is required by Law to retain the Personal Data.

12.7. Subject to clause 8.8 the BID Company shall notify the Council immediately if it:

- (i) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (ii) receives a request to rectify, block or erase and Personal Data;
- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (v) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (vi) becomes aware of a Data Loss Event.

12.8. The BID Company's obligation to notify under clause 8.7 shall include the provision of further information to the Council immediately and as and when further details become available.

12.9. Taking into account the nature of the processing, the BID Company shall provide the Council with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 8.7 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:

- (i) such assistance as is reasonably requested by the Council to enable the Council to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (ii) the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
- (iii) assistance as requested by a Council following any Data Loss Event; and

(iv) assistance as requested by the Council with respect to any request from the Information Commissioner's Office, or any consultation by the Council with the Information Commissioner's Office.

12.10. The BID Company shall maintain complete and accurate records and information to demonstrate its compliance with the clause. This requirement does not apply where the BID Company employs fewer than 250 staff, unless:

(i) the Council determines that the processing is not occasional;

(ii) the Council determines the processing includes special categories or data as referred to Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and

(iii) the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

12.11. The BID Company shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.

12.12. The BID Company shall designate a data protection officer if required by the Data Protection Legislation.

12.13. Before allowing any Sub-processor to process Personal Data related to this Agreement, the BID Company must:

(i) notify the Council in writing of the intended Sub-processor and processing;

(ii) obtain the written consent of the Council;

(iii) enter into a written agreement with the Sub-processor which gives effect to the terms set out in this clause such that they apply to the Sub-processor; and

(iv) provide the Council with such information regarding the Sub-processor as the Council may reasonably require.

12.14. The BID Company shall remain fully liable for all acts or omissions of any Sub-processor.

12.15. The BID Company may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar



terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).

12.16. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Council may on not less than 30 Working Days' notice to the BID Company amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

12.17. Upon termination of the Contract the BID Company shall:

- (i) cease processing Personal Data on behalf of the Council; and
- (ii) at the Council's request, either forthwith return to the Council all copies of the Personal Data which it is processed on behalf of the Council, or destroy the same within 14 days of being requested to do so by the Council.

12.18. The BID Company shall ensure that all personnel do not publish, disclose or divulge any of the Personal Data to any third party, unless directed in writing by the Council to do so.

### **13 Confidentiality And Freedom Of Information**

13.1. A party (receiving party) shall keep in strict confidence all technical and commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the receiving party by the other party (disclosing party), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under this agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to this agreement. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction. This clause 9 shall survive termination of this agreement.

13.2. The BID Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR) and the BID Company shall assist and co-operate with the Council (at the Council's

expense) to enable the Council to comply with these information disclosure requirements. The BID Company agrees that it shall not charge costs incurred by the BID Company where any resource utilised or action taken does not result in costs, or results in only a minor cost, to the BID Company.

- 13.3. The BID Company shall and shall procure that its staff including its subcontractors ,shall:
- (i) transfer any Request For Information to the Council as soon as practicable after receipt and in any event within two (2) working days of receiving a Request For Information;
  - (ii) provide the Council with a copy of all information in the BID Company's possession or power as reasonably requested by the Council in the form that the Council requires within five (5) working days (or such other period as the Council may specify) of the Council requesting that information; and
  - (iii) provide all necessary assistance as reasonably requested by the Council to enable the Council to respond to a Request For Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations 2004.
- 13.4. The Council shall be responsible for determining at its absolute discretion whether the information:
- (i) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
  - (ii) is to be disclosed in response to a request for information, and in no event shall the BID Company respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 13.5. In no event shall the BID Company respond directly to a request for information unless expressly authorised to do so by the Council.
- 13.6. The BID Company acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations 2004 to disclose information:

- (i) without consulting with the BID Company; or
- (ii) following consultation with the BID Company and having taken its views into account,

provided always that where clause 9.6.1 applies the Council shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the BID Company advanced notice, or failing that, to draw the disclosure to the BID Company's attention after any such disclosure.

- 13.7. The BID Company shall ensure that all information produced in the course of the agreement or relating to the agreement is retained for disclosure for six (6) years after expiry or earlier termination and shall permit the Council to inspect such records as requested from time to time.

### **13 Notices**

- 13.1 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

- 13.2 A Notice may be served by

- (i) delivery to the Assistant Director for Regeneration at the Council's address specified above; or
- (ii) delivery to the Directors at the BID Company's address specified above

registered or recorded delivery post.

- 13.3 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.

### **14 Miscellaneous**

- 14.1 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.

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

- 14.3 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.

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

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

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

## **15 Exercise of the Council's powers**

Nothing contained in this Agreement or implied in it shall prejudice or affect the rights discretions powers duties and obligations of the County Council and Council under all statutes bye-laws statutory instruments orders and regulations in the exercise of its functions as a local authority

## **16 Contracts (Rights of Third Parties)**

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

## **17 Arbitration**

17.1 Any dispute or difference of any kind whatsoever arising between the parties arising out of or in connection with this Agreement shall be referred to arbitration before a single arbitrator

17.2 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

17.3 If the parties are unable to agree within 28 (twenty eight) 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

17.4 In the event of a reference to arbitration the parties agree to:

(i) prosecute any such reference expeditiously and

(ii) 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.

17.5 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.

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

## **18 Law and Jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and without prejudice to the dispute resolution procedure set out in clause 17 each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been executed as a Deed and is delivered and takes effect on the date stated at the beginning of it:

**THE COMMON SEAL of THE MAYOR AND            )**  
**BURGESSES OF THE ROYAL BOROUGH            )**  
**OF KINGSTON UPON THAMES was hereunto        )**

**affixed as a deed in the presence of :-**

)

**Signature**

**Name**

**Authorised Signatory in accordance with Meeting Procedure Rule 34.**

**Seal Register No.:**

**Duly authorised for and on behalf of Kingston First Limited**

**By:**

**Signature: \_\_\_\_\_**

**Name: \_\_\_\_\_ (Director/Secretary)**

**and:**

**Signature: \_\_\_\_\_**

**Name: \_\_\_\_\_ (Director/Secretary)**

## **SCHEDULE 1 – THE BID LEVY RULES**

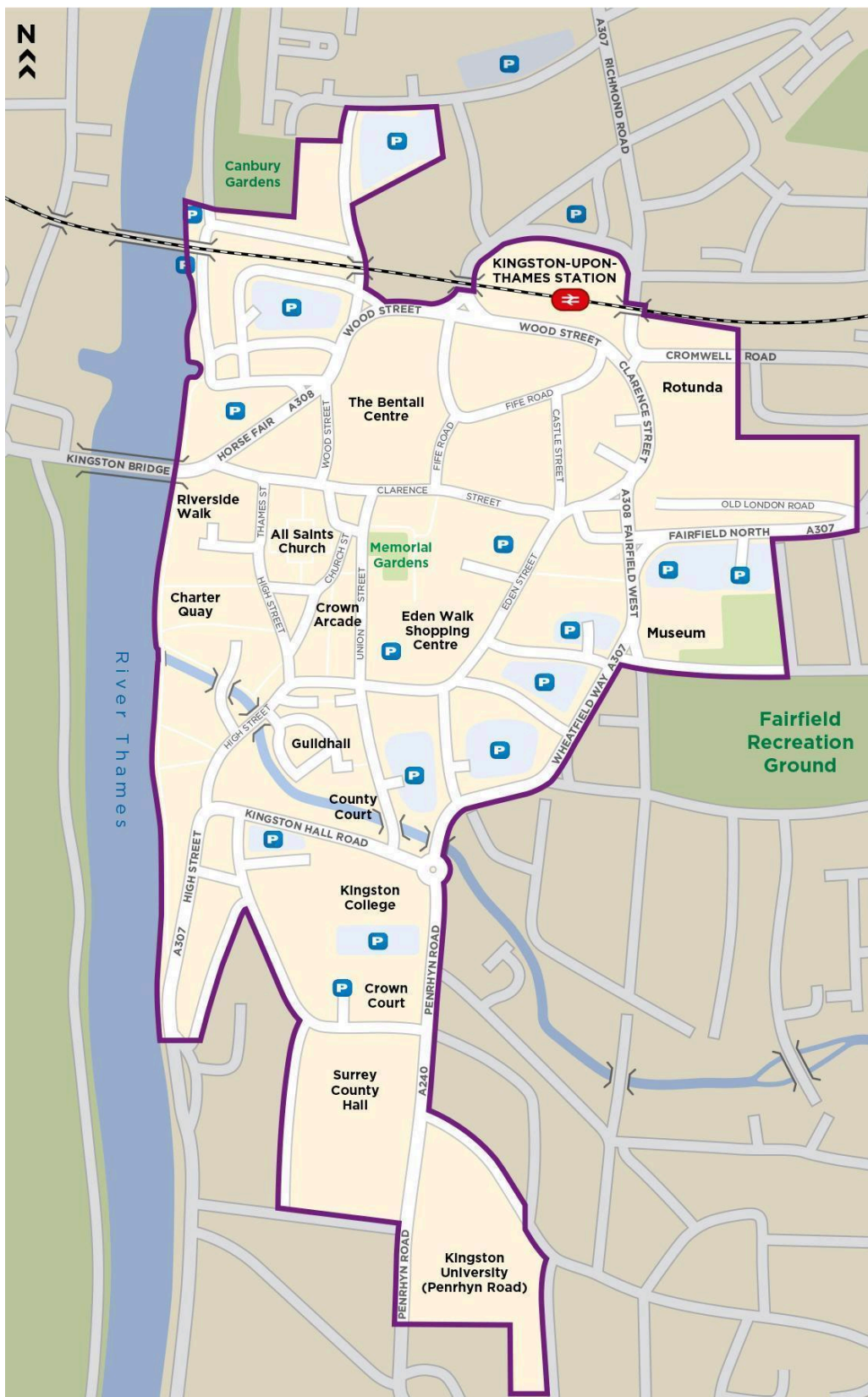
Part 4 of the Local Government Act 2003 and the Regulations state that the payment of the BID Levy is mandatory by all BID Levy Payers in accordance with these BID Levy Rules once the BID proposal put forward by the BID Company was accepted by a ballot of those BID Levy Payers.

The Council is the billing authority under the legislation, and is the body with the power to impose, administer, collect, enforce and recover the BID Levy. The BID Levy collected is the property of the Council.

**[INSERT BID LEVY RULES]**

## SCHEDULE 2 – KINGSTON BID AREA

Plan illustrating extent of the BID area as identified by reference to the bold purple line and the lighter shading.





### SCHEDULE 3: DATA PROTECTION SCHEDULE

1. The BID Company shall comply with any further written instructions of the Council with respect to the processing of personal data.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	Information relating to residents, users and businesses (including their employees) and required for the carrying out each parties obligations under or in connection with this Agreement.
Duration of the processing	The duration of this Agreement and for a reasonable thereafter in line with the Council's data retention policy.
Nature and purposes of the processing	To administer and manage the provisions of the services in respect of the BID, as set out in the BID Proposal within the BID Area.
Type of Personal Data	All personal data including as: name, address, employer (where appropriate), date of birth, NI number, telephone number, images etc.
Categories of Data Subject	TBC
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	As per guidelines TBC