

BID Operating Agreement with Wakefield Council

Page 1 of 24 Pages

Date:

OPERATING AGREEMENT

between

THE COUNCIL OF THE CITY OF WAKEFIELD (The Council)

and

THE WAKEFIELD BID LIMITED (WBL)

BID Operating Agreement with Wakefield Council

Page 2 of 24 Pages

Contents

- 1 Background
 - 2 The Purpose of this Operating Agreement
 - 3 Definitions & Interpretation
 - 4 Commencement
 - 5 Setting the BID Levy
 - 6 The BID Revenue Account
 - 7 Charges to WBL for Council Services
 - 8 Collecting the BID Levy
 - 9 Procedures available to the Council for enforcing payment of the BID Levy
 - 10 Payment to WBL
 - 11 Performance Monitoring and Reporting
 - 12 Termination of BID Arrangements
 - 13 Confidentiality and Access to Data
 - 14 Notices
 - 15 Miscellaneous
 - 16 Exercise of the Council's powers
 - 17 Contracts (Rights Of Third Parties)
 - 18 Dispute Resolution
- Schedule 1 - BID Levy Rules
- Schedule 2 - BID Area – list of streets
- Schedule 3 - The list of Individual Baseline Statements
- Schedule 4 – The Council's Operational Support for Wakefield BID
- Schedule 5 – The Council's costs and charges (including Enforcement Expenses) plus 'in kind' support details.

BID Operating Agreement with Wakefield Council

OPERATING AGREEMENT

Page 3 of 24 Pages

Dated the 1st April day of 2022

Between

THE COUNCIL OF THE CITY OF WAKEFIELD of Town Hall, Wood Street, Wakefield WF1 2HQ (Council);

And

WAKEFIELD BID LIMITED a Company Limited by Guarantee with company registration number 10669159 whose registered office is situated at 19 King St, Wakefield WF1 2SQ (WBL).

1. Background

- 1.1 Part 4 of the Local Government Act 2003, s.111 of the Local Government Act 1972 and the Business Improvement Districts (England) Regulations 2004 (Regulations) provide a legislative framework for the establishment and operation of a Business Improvement District (BID). This Agreement is made pursuant to these enabling powers.
- 1.2 The Board of WBL proposed the formation of a BID for Wakefield City Centre. The detailed proposals are set out in the BID Business Plan 2022 to 2027. The establishment of the BID was subject to approval by eligible persons in the ballot held in accordance with the Regulations.
- 1.3 The BID ballot was concluded on 5th November 2021 and approved the formation of the BID for Wakefield City Centre.
- 1.4 WBL is the BID body for the purposes of the Regulations and is a company limited by guarantee and will start trading from 1st April 2022. The BID Term will last 5 years commencing 1st April 2022 up to and including 31 March 2027.
- 1.5 The Wakefield BID will enable the businesses in the Wakefield City Centre BID area (BID Area) to identify, invest in and implement specific services and facilities to improve their common trading environment. A fundamental principle of BID legislation (referred to at 1.1 above) is that such services and facilities should be additional to (not in substitution for) those already provided by the Council.
- 1.6 WBL is legally and operationally responsible to the businesses in the BID Area for all BID activities. An elected BID Board will represent the views of the businesses that have voted for the BID and acts on their behalf. The Board is responsible for the appointment of direct employees or management agency or similar to project manage, identify, implement and monitor the proposed services, reporting to it on progress.

BID Operating Agreement with Wakefield Council

Page 4 of 24 Pages

- 1.7 The Council's commitment to the Wakefield BID and the working relationships between the Council and WBL are set out in a memorandum (Memorandum of Understanding).
- 1.8 The Memorandum of Understanding is supported by this operating agreement (Agreement) and a series of Baseline Statements, each benchmarking a specific service provided by the Council in respect of the BID Area. The Council agrees to provide the services set out in this Agreement from the 1st April 2022 up to and including the 31st March 2027 subject to any earlier termination in accordance with this Agreement, although both parties recognize that it is not the intention to restrict or impede the natural development of the services that the Council provide generally. The Council specifically agrees that it does not intend to reduce or otherwise negatively adjust its services or additional resources in response to new services provided by the BID.
- 1.9 The services currently provided by the Council include all those listed in the Individual Baseline Statements at Schedule 3. This Operating Agreement sets out the parameters for the working relationship between WBL and the Council, given that the Council is the billing authority for the purposes of Local Government Act 2003 and is responsible for collecting the BID levy.
- 1.10 The Council also pledges to collaborate and work with WBL in the design, development and delivery of services which may have an impact upon businesses in the BID Area.
- 1.11 The Council will provide additional operational support to the BID in the ways detailed at Schedule 4.

2. The purpose of this Operating Agreement

- 2.1 The Council is the billing authority for the purposes of the Local Government Finance Act 1988 and the Regulations and has agreed to be responsible for collecting the BID levy (BID Levy) and administering a revenue account in respect of the BID.
- 2.2 WBL 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 this Agreement.
- 2.3 Both parties wish to confirm the arrangements by which the BID Levy shall be collected and paid, how the Council will recover the costs of administering the BID Levy and enforcing payment of the BID Levy together with general arrangements as to the relationship to be established between the Council.
- 2.4 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; and
 - Confirm the level of Council service provision and support for the BID and role in supporting the realisation of the BID proposal and business plan.

BID Operating Agreement with Wakefield Council

Page 5 of 24 Pages

NOW IT IS AGREED between the Council and WBL as follows:-

3. Definitions and Interpretation

3.1 In this Agreement the following terms and expressions shall have the following meanings:

Agreement means these terms and conditions inclusive of the attached Schedules setting out the operational arrangements between the parties.

Annual Budget Report means a report (in writing) to be prepared by the Council which details the estimated BID Revenue Account and supporting budget assumptions for the following BID Financial Year.

Monthly Monitoring Report means a report (in writing) to be prepared by the Council after the end of each month which summarises the following, where appropriate:

- a BID Revenue Account monitoring statement;
- the amount of BID Levy billed for BID Levy Payers;
- the BID Levy collected in relation to BID Levy Payers;
- the outstanding unpaid sums of BID Levy Payers who have not paid the BID Levy;
- the amount of BID Levy outstanding covered by Reminder Notices issued throughout the preceding month;
- the amount of BID Levy outstanding covered by Liability Orders obtained or applied for by the Council;
- details of changes to the occupiers of Hereditaments in the BID Area and the BID Levy due (included in the Monthly Monitoring Report at WBL's request only);
- further details of any aspect of the above requested by WBL upon where there were particular queries or issues to discuss.

Annual Accounts Report means a report (in writing) to be prepared by the Council which shall detail the following:-

- the total amount of BID Levy collected during the relevant BID Financial Year;
- the percentage collection rate for the BID Levy;
- the Council's recommendations (if any) to help improve any efficiency measures in the collection and enforcement of the BID Levy;
- the BID Levy Payers who have paid the BID Levy and those who have not paid the BID Levy; and
- the Council's recommendations for Bad or Doubtful Debts and Uncollectable Debts.

BID Operating Agreement with Wakefield Council

Page 6 of 24 Pages

Bad or Doubtful Debts shall have the meaning given to it at Part 2 of Schedule 3 of the Regulations.

Monthly Levy Payment means the sum of the BID Levy collected in the previous calendar month payable by the Council to WBL in accordance with Clause 10.

Ballot Result means the announcement of the ballot was declared in accordance with paragraph 17 of Schedule 2 of the Regulations with a result in favour of putting in place the BID Arrangements (a “**Successful Ballot Result**”) announced on the 5th November 2021.

Individual Baseline Statements means the individual agreements related to each service outlined in Schedule 3.

BID means the Wakefield City Centre Business Improvement District which operates within the BID Area.

BID Area means the area of Wakefield specified in the BID Arrangements, the street addresses which are included in the BID Area are listed in Schedule 2.

BID Arrangements means the arrangements put in place pursuant to the Regulations for the operation of the BID set out in the following documents:-

- proposals set out in the BID Business Plan 2022 to 2027 forming the basis of the BID Arrangements;
- a Memorandum of Understanding entered into between the Council and WBL; and
- this Operating Agreement.

WBL means Wakefield BID Limited.

WBL Annual Accounts means WBL’s annual accounts filed at Companies House in accordance with statutory obligations under the Companies Act 2006 including the profit and loss report and balance sheet for the relevant BID Financial Year.

WBL’s Report means an annual report (to which the WBL Annual Accounts shall be appended) in respect of each BID Financial Year to be prepared by WBL which shall detail the following:-

- the total income and expenditure of the BID Levy;
- any other income and expenditure of WBL not being the BID Levy;
- the various initiatives and schemes upon which the BID Levy has been expended by WBL; and
- recommendations for the operation of the BID for the next financial year.

BID Operating Agreement with Wakefield Council

Page 7 of 24 Pages

BID Levy means the charge to be levied and collected from BID Levy Payers pursuant to the Regulations.

BID Levy Payer(s) means the non-domestic rate payers liable to pay the BID Levy in respect of the BID.

BID Levy Rules means the rules set out in Schedule 1 which sets out how the BID Levy will be calculated, details of Exempt Properties and other requirements related to the BID Levy.

BID Revenue Account means the account to be kept by the Council in accordance with Regulation 14 and operated in accordance with Schedule 3 of the Regulations.

BID Term means the period of five years commencing 1st April 2022 up to and including 31 March 2027 subject to earlier termination in accordance with the BID Regulations and these terms and conditions or as otherwise agreed between the parties in writing

Confidential Information means:

- any information relating to the business of a party including, but not limited to, any information specifically designated by a party as confidential; any information supplied to a party by any third party in relation to which a duty of confidentiality is owed or arises; and any other information which should otherwise be reasonably regarded as possessing a quality of confidence or as having commercial value in relation to the business of a party and Personal Data as defined by the Data Protection Act 1998 whether written, electronic or oral.

Contributors means the BID Levy Payers or other contributors making voluntary contributions to WBL.

Council means the Council of the City of Wakefield.

Demand Notice means the demand notice required to be served by paragraph 2 of Schedule 4 of the Regulations.

Enforcement Expenses means the costs incurred by the Council in issuing Reminder Notices, obtaining Liability Orders and associated administrative expenses in recovering unpaid BID Levy described in more detail at Schedule 5.

Heredity shall have the same meaning given to it in the Regulations.

Exempt Properties means those class or classes of properties as identified in the BID Levy Rules which shall be exempt from any requirement to pay the BID Levy.

BID Financial Year means the period of 1st April to 31st March.

Liability Order means an order obtained from a Court with jurisdiction.

Operational Date means the 1st April 2022.

BID Operating Agreement with Wakefield Council

Working Day means a day that is not a Saturday or Sunday, Christmas Day, Good Friday, or any day that is a bank holiday under the Banking and Financial Dealings Act 1971 in England.

Data Protection Law means those requirements set out in the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI2000/2699), the Electronic Communications (EC Directive) Regulations 2000 (SI2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relation to the Processing of Personal Data and processing of Confidential Data and privacy, including where applicable the guidance and Codes of Practice issued by the Information Commissioner from time-to-time.

Public Meeting means the meeting to be held of all BID Levy Payers pursuant to Regulation 18(1) (a) (ii).

the Regulations shall mean the Business Improvement Districts (England) Regulations 2004 including amendments to that legislation enacted by the Secretary of State pursuant to Section 48 of the Local Government Act 2003 or successor legislation (from time to time) and reference to a **Regulation** shall be a reference to one of the Regulations.

Reminder Notice means the notice to be served in respect of an unpaid BID Levy.

Monitoring Group means a group formed from authorised representatives of both WBL and the Council (comprising of the BID Project Manager and the Revenues & Benefits Service Manager within the Council).

Uncollectable Debts means either debts deemed irrecoverable by the BID Board or debts that are agreed between the parties as being automatically irrecoverable being as follows:-

- the debt of a debtor that (being an individual) has committed an act of bankruptcy; or
- the debt of a debtor that (being a company) has winding up proceedings commenced against, has made any arrangements or composition with its creditors, or if an insolvency practitioner, receiver or administrative receiver or manager on behalf of a debtor is appointed, or if the debtor shall suffer any execution to be levied on its goods;
- the debtor is untraceable (the Council having made reasonable endeavours to locate them).

3.2 In this Agreement, unless the context or relevant clause otherwise requires:

3.2.1 the expressions “Council” and “WBL” shall include their respective successors, personal representatives, employees and permitted sub-contractors and assigns;

3.2.2 reference to any Order, Regulation or Statute whether detailed expressly or incorporated by general reference, shall be deemed to include a reference to any amendment, re-enactment or replacement of it;

BID Operating Agreement with Wakefield Council

- 3.2.3 words importing any gender shall include all genders and the singular includes the plural and vice versa;
- 3.2.4 reference to Schedules and Clauses shall be construed as reference to schedules and clauses of this Agreement;
- 3.2.5 Clause headings are included in this Agreement for ease of reference and shall not affect the interpretation or construction of this Agreement;
- 3.2.6 for the avoidance of doubt, in the event of any conflict between any provision in this Agreement and the Regulations the latter shall prevail; and
- 3.2.7 in the event and to the extent only of any conflict between the Clauses and the remainder of the Schedules, the Clauses shall prevail over the remainder of the Schedules.

4. Commencement

- 4.1 This Agreement takes effect upon the Operational Date and shall continue to have full force and effect throughout the BID Term.
- 4.2 If, towards the end of the BID Term a renewal ballot is held, and the vote is in favour of renewing the BID, the parties shall review the Agreement as the starting point for putting in place a new agreement in respect of the renewed BID.

5. Setting the BID Levy

- 5.1 As soon as is reasonably practical after the Operational Date in the first year of the BID Term and by the 1st March or as soon as reasonably practicable in subsequent financial years during the BID Term the Council shall:-
 - 5.1.1 calculate the amount of BID Levy due from each individual BID Levy Payer in accordance with the BID Levy Rules;
 - 5.1.2 confirm in writing to WBL (as soon as practical after billing) the amount of BID Levy payable annually by each individual BID Levy Payer; and
 - 5.1.3 provide WBL with the Annual Budget Report.

6. The BID Revenue Account

- 6.1 The Council shall keep a separate BID Revenue Account in respect of the BID in accordance with the applicable requirements of the Regulations and accounting codes of practice that are in force from time to time.
- 6.2 WBL shall provide the Council with details of its bank account and sort code within 5 Working Days of the Operational Date. WBL shall promptly notify the Council in writing of any changes to its bank account and sort code within the BID Term in order to allow the Council to fulfil its obligations under this Agreement.
- 6.3 The Council shall have set up in its Accounts Payable system by the 1st April of each BID Financial Year in accordance with the WBL bank account and sort code details for payment by BACS of the Monthly Levy Payments from the BID Revenue Account.

BID Operating Agreement with Wakefield Council

7. Charges to WBL for Council services

7.1 WBL shall pay the Council's reasonable costs and expenditure in performing its duties and obligations under this Agreement throughout the BID Term. The Council's costs for the first year of the BID Term are as set out in Schedule 5. Thereafter the costs and expenditure shall be reviewed annually by the Council during the BID Term and confirmed to WBL in writing.

7.2 The annual charges to be charged by the Council to WBL in accordance with Clause 7.1 will be invoiced to WBL annually on the 1 April, or as soon as reasonably practicable thereafter. The Council and WBL shall then enter into arrangements that allow WBL to pay instalments of the annual charges on a monthly basis.

8. Collecting the BID Levy

8.1 The Council shall serve Demand Notices on all BID Levy Payers in accordance with the requirements at Schedule 4 of the Regulations. The Council shall serve Demand Notices as soon as is reasonably practical after the Operational Date in the first year of the BID Term and on 1st March or as soon as reasonably practicable during subsequent years within the BID Term.

8.2 The BID Levy shall be due for payment by BID Levy Payers on the 1st April 2022 and on each anniversary of that date during the BID Term, however, BID Levy Payers may make arrangements with the Council to pay the BID Levy in instalments.

8.3 BID Levy Payers shall be able to pay the BID Levy by direct debit, BACS, credit/debit card, cash or via the Council's online payment facility. The methods of payment available to BID Levy Payers shall be reviewed by the Council annually and any changes will be made in advance of, and shall apply to, the next BID Financial Year.

8.4 The Council shall maintain a list which identifies payment and non-payment of the BID Levy and shall make this available to WBL upon its reasonable request in addition in providing these details in accordance with Clause 11.

8.5 The Council shall use reasonable endeavours to collect the BID Levy payments within the BID Financial Year. The BID payers can opt to pay the BID by instalments.

8.6 Payments of BID Levy monies received by the Council shall be allocated to the correct account where known. Where not known and the intended allocation cannot be determined, the Council reserve the right to allocate those sums in line with its standard procedures which initially shall be to allocate to the oldest undisputed debt first and then in the proportion of the original debit.

BID Operating Agreement with Wakefield Council

Page 10 of 24 Pages

- 8.7 The Council shall maintain the BID Revenue Account in such a way as to ensure that any potential refunds due within the criteria agreed in the BID Arrangements can be repaid upon request of the Levy Payer, without compromising the obligation to pay the BID Levy monies collected as per the requirements of 10.3.

9 Procedures available to the Council for enforcing payment of the BID Levy

- 9.1 In the event of BID Levy not being paid by a BID Levy Payer it will be recovered in accordance with established Business Rates recovery practices, timescales and procedures governed by the Non Domestic Rating (Collection & Enforcement) (Local Lists) Regulations 1989 (subject to the modifications at Schedule 4 of the Regulations). The Council shall make recommendations to the BID Board regarding debts that should be deemed Uncollectable Debts (which have not been agreed as being irrecoverable by the parties) and Bad or Doubtful Debts.
- 9.2 If requested to do so by the Council, WBL shall provide reasonable assistance to the Council in the conduct of any court proceedings which the Council may become involved in arising out of or in connection with the BID Arrangements and/or the Agreement.
- 9.3 The Council shall only write off Uncollectable Debts (which have not been agreed as being irrecoverable by the parties) and Bad or Doubtful Debts on receipt of written approval from the designated BID Project Manager who will have had it approved by 2 designated BID Board Business Directors neither of which should be the Council representative on the BID Board.

10 Payment to WBL

- 10.1 The Council shall inform WBL upon expiry of each calendar month during the BID Term of the amount of BID Levy monies collected in the preceding calendar month;
- 10.2 Having received the information from the Council in accordance with Clause 10.1 WBL shall raise a monthly invoice (inclusive of VAT), or more frequently should the parties agree, and send it to the Council requesting payment of the total amount of BID Levy monies received by the Council for the previous calendar month.
- 10.3 The Council shall make the Monthly Levy Payment to WBL of the total amount of BID Levy received for the previous calendar month within 28 days of receipt of an invoice submitted in accordance with Clause 10.2.

11 Performance Monitoring and Reporting

- 11.1 As soon as is reasonably practical after the Operational Date in the first year of the BID Term and by 1 March or the next Working Day in each year thereafter the Council shall provide WBL with an Annual Budget Report.

BID Operating Agreement with Wakefield Council

- 11.2 Within 10 Working Days of the end of each calendar month within the BID Term the Council shall provide WBL with a Monthly Monitoring Report.
- 11.3 The Council will supply a final Wakefield BID Annual Accounts Report within 30 working days of external audit certification of its accounts for the financial year in question, which accounts include the BID Revenue Account which shall thereby be deemed to have been audited. If any external audit is required in relation to the Annual Accounts Report, the cost of this shall be borne by WBL. If, following audit, there is any change in the amount of BID Levy collected this shall be added to or deducted from the next Monthly Levy Payment.
- 11.4 Within 60 Working Days from the date of receipt of the Annual Accounts Report WBL shall provide WBL's Report to the Council.
- 11.5 Within one month from the Operational Date the parties shall agree the dates when the Monitoring Group will meet during the first BID Financial Year. There will be at least two meetings of the Monitoring Group within each BID Financial Year. Additional meetings of the Monitoring Group may be convened by service of written notice by either party upon the other (in accordance with Clause 14) no less than 28 days prior to the date of the proposed meeting.
- 11.6 The parties shall annually review the operation of this Agreement at a date and time agreed between the parties and shall meet from time to time to:
- 11.7.1 review the effectiveness of the collection and enforcement of the BID Levy; and
 - 11.7.2 review and assess the information provided by the Council and WBL and make any recommendations for implementation of changes as may be agreed (and which are permissible under the Regulations and otherwise under the terms of this Agreement).

12. Termination

- 12.1 The Council may terminate the BID arrangements in accordance with Regulation 18. So far as it considers it reasonably practicable to do so, where the Council is contemplating terminating the BID Arrangements under regulation 18(1) of the Regulations it shall endeavour to first meet with WBL to discuss and review any issues, and put in an appropriate timescale to resolve them.
- 12.2 The Council may terminate the BID Arrangements and the Agreement if, in its opinion, there are insufficient finances available to WBL to meet WBL's liabilities for the chargeable period and the Council has:-
- 12.2.1 offered WBL a reasonable opportunity (three months) to arrange for financing the shortfall or for a reduction in the works or services under the BID Arrangements which is sufficient to meet the shortfall; and
 - 12.2.2 given BID Levy Payers an opportunity, at a public meeting of BID Levy Payers, to make representations in relation to the termination of the BID Arrangements.
- 12.3 The Council may terminate the BID Arrangements if it is unable, due to any cause beyond

BID Operating Agreement with Wakefield Council

its control, to provide works or services which are necessary for the BID to continue and the Council has:-

12.3.1 consulted with WBL formally in writing; and

12.3.2 conducted a consultation with such representatives of the business community for the geographical area of the BID as it considers appropriate.

12.4 The Council shall notify WBL in writing of its intention to terminate the BID Arrangements and Agreement at least 28 days before the date of termination.

12.5 WBL may terminate the BID Arrangements and the Agreement where:-

12.5.1 the works or services to be provided under the BID Arrangements are no longer required; or

12.5.2 WBL is unable, due to any cause beyond its reasonable control, to provide works or services which are necessary for the BID Arrangements to continue.

12.6 WBL shall take no steps to terminate the BID Arrangements and the Agreement until:-

12.6.1 it has consulted with the Council as the Billing Authority, formally in writing; and

12.6.2 It has conducted a consultation with such representatives of the business community within the BID Area as the Council considers appropriate.

12.7 WBL shall notify the Council in writing of its intention to terminate the BID Arrangements and the Agreement at least 28 days before the date of termination.

12.8 Any balances remaining in the BID Revenue Account following termination of the Agreement shall be dealt with in accordance with Regulations 14 (3), 14 (4) and 14 (5). Any balances held by WBL at the time of termination and / or upon expiry of the Agreement (in so far as there has not been a successful ballot to continue the BID for a further term) less any sums due to discharge legal obligations and pay creditors shall be passed to the Council in order that the Council are able to repay to the BID Levy Payers a manner pursuant to Regulation 14.

12.9 Where the BID Arrangements are terminated the Council shall, as soon as is reasonably practicable give notice of the termination in writing to the BID Levy Payers pursuant to Regulation 18(6) of the Regulations and the notice shall include an explanation as to whether any part of the BID Levy is to be repaid to BID Levy payers under Regulation 14(4).

12.10 Any termination of the BID Arrangements in accordance with this Clause 12 shall have the effect of terminating this Agreement.

12.11 Termination of this Agreement shall be without prejudice to the rights or liabilities of the parties accrued hereunder.

13. Confidentiality and Access to Data.

BID Operating Agreement with Wakefield Council

- 13.1 Except in any of the circumstances specified in Clause 13.2 all Confidential Data which may come into the possession of a party (the "Receiving Party") shall be treated in strict confidence and shall not be disclosed or made use of by the Receiving Party during the BID Term or after the expiry or termination of the Agreement, without the prior written agreement between the parties and each party shall ensure that its employees, subcontractors and agents are under an equivalent duty of confidentiality in respect of any Confidential Data which they are in possession of.
- 13.2 The obligations of confidentiality set out in Clause 13.1 shall not apply to:-
- 13.2.1 Any use or disclosure of Confidential Data necessary for the performance of a party's obligations under the Agreement;
 - 13.2.2 any use, disclosure or publication of Confidential Data which is required to be published and/or disclosed by law (including but not limited to any publication or disclosure required to comply with statutory obligations under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004) or by any governmental or other regulatory authority acting within the scope of its powers;
 - 13.2.3 any use or disclosure of Confidential Data which is required to be disclosed to comply with a court order;
 - 13.2.4 any use or disclosure of Confidential Data which is in, or becomes part of, the public domain other than as a result of a breach of a party's obligations under the Agreement;
 - 13.2.5 any use or disclosure of Confidential Data which was lawfully in the possession of a party prior to the Operational Date;;
 - 13.2.6 any use or disclosure of Confidential Data which is agreed between the party's in writing;; or
 - 13.2.7 any use or disclosure of Confidential Data which is independently disclosed to a party by a third party entitled to be disclosed by the same.
- 13.3 Each party shall procure that any third parties receiving Confidential Data shall comply with substantially similar obligations of confidentiality as set out in this Agreement.
- 13.4 Each party shall use a high standard of care in dealing with the Confidential Information so as to maintain confidentiality and security of the Confidential Information.
- 13.5 Each party agrees that, in the performance of its respective obligations under this Operating Agreement, it shall comply with the provisions of Data Protection Law.
- 13.6 The obligations contained in clause 13 shall survive the termination or expiry of the Agreement.
- 13.7 The text of any press release or other communication to be published by or in the media by or on behalf of either party concerning the BID Arrangements or this Agreement shall require the prior written consent of both parties.

14 Notices

BID Operating Agreement with Wakefield Council

- 14.1 Any notice or other written communication to be served upon the Council shall be valid or effective if it is sent by prepaid post or delivered by hand to the Council's Chief Executive at Town Hall, Wood Street, Wakefield, WF1 2HQ or such other Council offices or an address as the Council may have notified to the WBL in writing.
- 14.2 Any notice to be served on WBL shall be valid and effective if sent by prepaid recorded post or delivered by hand to the registered office of WBL or delivered by hand to the Chairman or a Director (other than a Council nominee) of WBL.
- 14.3 Any notice sent by recorded post shall be deemed to have been validly served on the second Working Day after posting.

15. Miscellaneous

- 15.1 If any provision of this Agreement shall become or shall be declared by any court or tribunal of competent jurisdiction to be invalid or unenforceable in any way whatsoever, such invalidity or unenforceability shall in no way impair or affect any other provision of the Agreement, which shall remain in full force and effect.
- 15.2 For the avoidance of doubt where any part of this Agreement is incompatible with the Regulations then such part shall be struck out and the balance of the Agreement shall remain in full force and effect.
- 15.3 The failure by either party to enforce at any time any of the provisions of this Agreement or to require at any time performance by either party of any provision hereof, shall in no way be construed as a waiver of such rights nor in any way affect the validity of this Agreement or any part thereof or the right of either party thereafter to enforce each and every provision.
- 15.4 Neither party shall sub-let its obligations under this Agreement or any part thereof, without the prior written consent of the other party and no sub-letting on the part of a party shall exempt that party from its obligations under this Agreement.
- 15.5 Neither party shall transfer, charge or assign directly or indirectly to any person or persons whatsoever this Agreement or any part thereof, without the prior written consent of the other party.
- 15.6 Except to the extent otherwise expressly stated in this Agreement neither party is, or shall hold itself out to be, a servant or agent of the other party.
- 15.7 WBL acknowledges that the Council may be required to disclose and publish information relating to this Agreement to third parties to comply with its statutory obligations including, without limitation, those obligations contained within the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 (FOI Legislation). The Council shall be entitled to disclose such information as it considers necessary to discharge its obligations under FOI Legislation. WBL agrees to provide the Council with reasonable assistance to facilitate compliance with their statutory obligations under FOI Legislation and shall not do anything to cause any infringement by the Council of its obligations under FOI Legislation.
- 15.8 No variation or modification of this Agreement shall take effect unless it is in writing and signed by the authorised representatives of the parties.

BID Operating Agreement with Wakefield Council

- 15.9 This Agreement (including the Schedules) constitutes the entire understanding between the Parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentations made by either party.
- 15.10 This Agreement is governed by English law and is subject to the exclusive jurisdiction of the Courts of England.

16. Exercise of the Council's powers

- 16.1 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.

17. Contracts (Rights Of Third Parties)

- 17.1 No term of this Agreement is intended for the benefit of an third party, and the parties do not intend any third party to have the right to enforce any provision of this Agreement under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

18. Dispute resolution

- 18.1 In the event of any dispute arising out of or relating to the BID Arrangements and/or the Agreement, 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.
- 18.2 Any dispute or difference of any kind whatsoever arising between the parties out of or in connection with this Agreement which cannot be resolved within 5 Working Days shall in the first instance be referred to the Chairman of the WBL and the Chief Executive of the Council (or their respective nominated within the senior management team).
- 18.3 Any dispute which cannot be resolved under Clause 18.2 within 10 Working Days shall be referred to arbitration before a single arbitrator.
- 18.4 The parties shall jointly appoint the arbitrator not later than 28 days after service of a request in writing by either party upon the other to do so and each party shall bear its own costs in the arbitration.
- 18.5 If the parties are unable to agree within 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.
- 18.6 In the event of a reference to arbitration the parties agree to do all things or take all steps reasonably necessary in order to enable the Tribunal to deliver any award (interim, final or otherwise) as soon as reasonably practicable.:-
- 18.7 The award shall be in writing signed by the Tribunal and shall be finalised within 21 days from the date of such award.

BID Operating Agreement with Wakefield Council

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

BID Operating Agreement with Wakefield Council

IN WITNESS of which the parties have executed this Agreement by their duly authorised representatives the day and year before written

SIGNED for and on behalf of
THE COUNCIL OF THE CITY OF WAKEFIELD

.....
(Authorised Signatory)

.....
(Authorised Signatory)

.....
(print name)

.....
(print name)

.....
(Capacity)

.....
(Capacity)

SIGNED for and on behalf of
WAKEFIELD BID LIMITED

.....
(Director)

.....
(Director)

.....
(print name)

.....
(print name)

.....
(Capacity)

.....
(Capacity)

BID Operating Agreement with Wakefield Council

Schedule 1 – The BID Levy Rules

Every BID has to establish its own levy rules. Reference has been made to the 'Industry Criteria and Guidance Notes' prepared for the British Retail Consortium (BRC) and the Inter-Bank Rating Forum (IBRF) in developing the rules which will apply to the Wakefield BID.

The Wakefield BID Steering Group has tried to balance the ambitions of businesses in the BID plan against the affordability of the levy and the requirement to ensure that the BID is able to deliver best value.

1. Assuming a positive BID vote by a majority of businesses by number and rateable value (R.V) of those who vote, the BID levy will be charged on all hereditaments listed in the local Non-Domestic Rating List located within the BID area. This applies irrespective of whether or how a business has voted in the formal BID ballot. Legislation within the Local Government Finance Act (2003) enables the local authority to issue a bill for the levy. The levy is collected by the Billing Authority, The Council. The Wakefield BID Company will invoice the Billing Authority, The Council, for the levy collected for exclusive use of the BID.
2. All businesses which will be subject to the BID will be entitled to vote for the BID proposal in a 28 day postal ballot which will commence on 8th October 2021, with the close of ballot at 5pm on 4th November 2021. The result will be announced the following day or as soon as possible thereafter.
3. If successful at the ballot, the BID will commence operation on 1st April 2022, and will be for a fixed term of 5 years
4. The levy amounts for ratepayers who have business premises which do not fall under the management of a shopping mall or a market and who do not pay service charges to the shopping mall operator or market operator will be applied as follows:
 - a. The BID levy will be 1.25% of the 2017 rateable value shown on The Council's (the billing authority's) NNDR billing system as at 28th January 2022 for each defined business within the scope of the BID, with the exception of those premises with a rateable value of less than £12,000 or properties which are unoccupied as showing on the billing authority's NNDR billing system as at 6th January 2022 or which have a rateable value which falls below £12,000 or become unoccupied at any time during the life of the BID.
 - b. Ratepayers with a rateable value of less than £12,000 or of unoccupied properties will pay nothing for these properties and will not have a vote for these properties although they will enjoy the benefits that come with trading in the BID area.
5. The levy amount for ratepayers who have business premises which do fall under the management of a shopping mall operator or market operator and who do pay a service charge to the shopping mall or market operator will be applied as follows:
 - a. The BID levy will be 0.75% of the 2017 rateable value shown on The Council's (the billing authority's) NNDR billing system as at 28th January 2022 for each defined business (including any premises used and owned by the shopping mall or market operator for purposes relating to the management of the shopping mall or market operator and associated car parks) within the scope of the BID, with the exception of those premises with a rateable value of less than £12,000 or properties which are unoccupied as showing on the billing authority's NNDR billing system as at 6th January 2022 or which have a rateable value which falls below £12,000 or become unoccupied at any time during the life of the BID.
 - b. Ratepayers with a rateable value of less than £12,000 or of unoccupied properties will pay nothing for these properties and will not have a vote for these properties although they will enjoy the benefits that come with trading in the BID area.

BID Operating Agreement with Wakefield Council

6. The levy will be due from businesses who are liable to pay business rates, other than those that are exempt within the criteria laid out in Section 12 of this BID Proposal and Business Plan (this section).
7. Any hereditament, where the primary use is for non-fee paying further education of young people from the age of 16 years, will be included and pay 0.125% of the 2010 rateable value shown on The Council's (the billing authority's) NNDR billing system as at 6th January 2022 and will be index linked as per the inflation criteria stated in paragraph 9 of this section 12.
8. The liable person is the ratepayer for occupied premises. In accordance with the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 1989 (S.I. 1989/1058) and the Non-Domestic Rating (Collection and Enforcement) (Miscellaneous Provisions) Regulations 1989 (S.I. 1989/1060), Wakefield Metropolitan District Council will be responsible for the imposition, administration, collection, recovery and application of the BID levy. The Council will also be responsible for any enforcement action that may be appropriate in case of non-payment of the levy.
9. There will be an annual inflationary increase of all levy charges year on year for the duration of the Business Improvement District. This will be a minimum of 2% increase year on year or the inflation percentage as determined by the Consumer Price Index as at the 1st December of the year before the next billing process, whichever is the greater, rounded to the nearest tenth of a penny. (e.g if a levy bill is £200 the inflation applied to this at a level of 2% would be £4.00 per annum). Negative inflation will not apply. Inflation will not apply for the first full billing cycle in 2022-2023.
10. The levy will be charged annually in advance, although businesses which cease to have liability for business rates during the year will be entitled to a refund for the remainder of the period and the new occupier will be charge on a pro-rata basis, provided that; the relevant business applies for the refund in writing to The Council as the Billing Authority and the amount due on the charge or refund is £50 or more. Refunds will only be honoured for applications made within three months of the last date of occupation and will not be honoured if made beyond the date of any termination date of the BID.
11. Any changes during the life of the BID will be handled as follows:
 - a. Where a property was recorded as vacant as at the 6th January 2022 and becomes occupied during the life of the BID it will be expected to pay a BID levy from the date of occupation based on the % criteria for that year, in relation to its rateable value as at 6th January 2022.
 - b. New premises, or properties which were not on the rate valuation list but become subject to rates in the BID area or new streets raised in the BID area after the BID is in force will be expected to pay a BID Levy based on the % criteria for that year, in relation to its new/current rateable value as and when it becomes occupied.
 - c. Where property is split, two or more BID levies should be made on the revised premises from the date of split on the basis of the revised new/current rateable values
 - d. Where premises are merged the BID Levy should be charged at the appropriate % of the revised properties new/current valuation.
 - e. Any change of use or ownership (or the creation of a new business within the BID (boundary) will be liable to the levy rate current at the time of the change.
 - f. Adjustments will be made for changes in occupation and if a property is deleted from the rating list and revised bills issued provided that the amount due on charge or refund is £50 or more. The charge or refund amount will be calculated pro rata between the date of the change in occupation and the date of the financial year end.
 - g. Where any hereditament which meets the criteria for payment of a levy becomes unoccupied, the hereditament will not be liable for a levy from the last date the last occupant was the ratepayer.

Refunds must be made by the relevant business and will only be honoured if it applies for the refund in writing to the Council as the Billing Authority and the amount due on the charge or refund is £50 or more. Refunds will only be honoured for applications made within three months of the last date of occupation and will not be honoured if made beyond the date of any termination date of the BID.

BID Operating Agreement with Wakefield Council

12. No other relief will be given to any class of non-domestic ratepayer, unless it is a hereditament: -
 - a. whose owner is prohibited by law from occupying it or allowing it to be occupied.
 - b. which is included in the Schedule of monuments compiled under section 1 of the Ancient Monuments and Archaeological Areas Act 1979(b).
 - c. where, in respect of the owner's estate, there subsists a bankruptcy order within the meaning of section 381(2) of the Insolvency Act 1986(c).
 - d. whose owner is entitled to possession of the hereditament in his capacity as trustee under a deed of arrangement to which the Deeds of Arrangement Act 1914(d) applies;
 - e. whose owner is a company which is subject to a winding-up order made under the Insolvency Act 1986 or which is being wound up voluntarily under that Act.
 - f. whose owner is a company in administration within the meaning of paragraph 1 of Schedule B1 to the Insolvency Act 1986 or is subject to an administration order made under the former administration provisions within the meaning of article 3 of the Enterprise Act 2002 (Commencement No. 4 and Transitional Provisions and Savings) Order 2003(e).
 - g. whose owner is entitled to possession of the hereditament in his capacity as liquidator by virtue of an order made under section 112 or section 145 of the Insolvency Act 1986.
 - h. where it is a place of religious worship, a hostel, a place of refuge or a place of rehabilitation.
 - i. where it is occupied by an organisation which receives 'Top Up' business rates relief in addition to business rates mandatory relief.

in which case the hereditament will be exempt.
13. For clarity a hereditament which is the subject of a building preservation notice within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990(a) or is included in a list compiled under section 1 of that Act will be subject to levy unless it is vacant or its use is covered by any of the other exemptions listed in Section 12 of this BID Proposal and Business Plan (this section).
14. The BID levy contribution will not be reassessed if the rateable value is amended after the end of the BID. New or altered properties entered into the valuation list will become liable for the levy from the date they appear in the list.
15. Businesses with a rateable value of less than £12,000 will be exempt from the levy and will not be permitted to vote in the ballot. Any business with a rateable value which falls below this will be encouraged to enter into a voluntary arrangement direct with the BID Company so that they can benefit from the full range of services provided by the BID.
16. Any hereditament where the occupier is an organisation which receives business rates mandatory relief but does not receive business rates 'top-up' relief, it will pay a levy as per the criteria outlined in this Section 12 of the BID Proposal and Business Plan.
17. Any hereditament where the occupier is an organisation which receives 'discretionary relief' will pay a levy as per the criteria outlined in this Section 12 of the BID Proposal and Business Plan.
18. The BID financial year will start on 1st April and last for 365 days (366 in a leap year). The BID charge is a daily charge based on rateable value. It is to be paid in full in advance, the payment date being the 1st April of that year. The daily BID levy charge for each individual ratepayer is to be calculated by multiplying its rateable value by the BID percentage levy and dividing the result by the number of days in the financial year.
19. Subject to this criteria stated above and within the BID boundary as defined in this document, the BID levy is a statutorily compulsory payment regardless of whether the business exercised its vote or voted against the BID.

BID Operating Agreement with Wakefield Council

Schedule 2 - BID Area - list of streets

Albion Court	Cathedral Walk	Market Way	Thompsons Yard
All Saints Walk	Chancery Lane	Marsh Way (part of)	Thornes Lane
Almsgate	Chantry Bridge	Marygate	Trinity Walk
Almshouse Lane	Cheapside	Mulberry Way	Union Street
Back Garden Street (part of)	Cliff Parade	Newstead Road (part of)	Upper York Street
Back Lane (part of)	Cross Square	Northgate (part of)	Vicarage St
Balne Lane (part of)	Cross Street	Parliament Street	Vicarage Street
Bank Street	Crown Court	Pincheon Street	Westgate (part of)
Barstow Square	Drury Lane	Providence Street	Westgate Railway Station
Bishopgate Walk	Garden Street	Queen Street	Westmorland Street
Bond Street	George Street (North Side)	Radcliffe Place	White Horse Yard
Bond Terrace	Gills Yard	Rishworth Street	Wood Street
Borough Road	Hambleton Street	Silver Street	Woolpacks Yard
Bread Street	Jacobs Well Lane (part of)	Smyth Street	Zetland Street
Brook Street	King Street	Southgate	
Bull Ring	Kirkgate (part of)	Sun Lane	
Bullring House	Laburnum Road	Tammy Hall Street	
Burgage Square	Lower Warrengate	Tavora Street	
Burton Street	Margaret Street	Teall Street	
Carter Street	Market Street	The Springs	

The BID area includes any and all of the smaller business areas, courtyards and parks located off these roads that are located within the boundary of the defined BID area as per the shaded area on the map shown in section 5 in this Business Plan, even if they are not listed in the tables shown above. It will also include any roads yet to be constructed and named and any new development sites created within the shaded area of the map shown in section 5 in this Business Plan.

BID Operating Agreement with Wakefield Council

Page 22 of 24 Pages

Schedule 3 – Individual Baseline Statements

Individual Baseline Statements

In full support of the above commitments, THE COUNCIL will draw up Baseline Statements relating to the specific services they are responsible for. These documents define the benchmarks for the provision of these services and the fact that any change will not disproportionately impact upon the BID area more than any other area outside the BID within the Metropolitan District's administrative boundary. They also cover how the services will be measured.

The Baseline Services are defined below:

- CCTV
- Cleansing and Grounds Maintenance
- Environmental Health
- Highways Network and Maintenance
- Licensing – this potentially includes licenses for food businesses etc
- Public Protection - inc Pollution Control and Environment Protection

The process of having creating the baseline agreements proves valuable to both the service providers and WBL. The development of these partnerships and the additional focus on the services provided in the area, will give tangible benefits over and above those derived from the projects outlined below.

BID Operating Agreement with Wakefield Council

Page 23 of 24 Pages

Schedule 4 – The Council’s Operational Support for Wakefield BID

The Council’s support for the BID will take practical shape in the following specific ways:

- Conducting, through the Council’s Democratic Services, the formal BID vote in accordance with current BID legislation and procedures
- Assuming a positive outcome to the BID vote, collecting the BID levy defined in the BID Business Plan from Wakefield businesses and transferring the levy sums direct to the Wakefield BID Company. The Council proposes to make a charge for the BID levy collection and will pay the gross levy sums to the Wakefield BID Company within 30 days of collecting it.
- Provide a Councillor to sit as a Director on the BID Company Board
- Provide a senior Council officer to provide a business-focused dynamic link on all BID matters with senior Council staff
- Paying the appropriate BID levy set out in the Business Plan in respect of all its own hereditaments within the Wakefield city BID area.

BID Operating Agreement with Wakefield Council

Page 24 of 24 Pages

Schedule 5 - THE COUNCIL Costs and charges plus 'in kind' support details.

'In kind' support details

Other initial one off 'in kind' support from the Council includes legal input in setting up the Operating Agreement and other Heads of Service contributions in drawing up the Baseline Service Statements. The Council has also borne the costs of the initial BID ballot.

The Billing Authority's Administration Charges

The cost of raising demand notices for the bid levy and the maintenance of the billing system equates to a charge of £8,500 billed in each year. WBL will reimburse the Council with the amount of the total charges when invoiced.

Summons and Liability Order Costs

If the Billing Authority has to issue a summons for the non-payment of the BID levy and obtain a liability order from the Magistrates Court a cost of £43.00, (this is subject to change on an annual basis), will be added to the levy payers account. This cost will be retained by the Council.

Enforcement Expenses

The Council may pass levy payer accounts to an enforcement agent for collection. The enforcement agent has the power to take control of goods, and levy payers will incur further costs as follows: Levy payers will have to pay a £75.00 Compliance fee as soon as the Council pass an unpaid account to the enforcement agent for collection. This fee is payable per individual Order. This fee will be amended in line with any legislative changes.

A further Enforcement fee of £235.00 will be due if the levy payer does not make arrangements to pay or defaults on payments and a visit becomes necessary. This is a one off fee regardless of the number of Liability Orders. This fee will be amended in line with any legislative changes.

The levy payer will have to pay a further £110.00 at the sale or disposal stage. This fee will be amended in line with any legislative changes.

A further 75% on enforcement and sale if the debt is over £1,500.00 excluding fees. This is only chargeable at the enforcement or sale/disposal stages. This fee will be amended in line with any legislative changes.

All costs will be reviewed annually and confirmed with WBL. All of these costs will be retained by the Council or the enforcement agent, as determined by the Council.