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DATED

2019

OPERATING AGREEMENT

Between

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

And

KINGSTON FIRST

Relating To Operation and Management of the Kingston First Business Improvement
District

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KINGSTON FIRST BUSINESS IMPROVEMENT DISTRICT

SCHEDULE 3 GDPR Data Protection

THIS AGREEMENT is dated **xxx** **2019**

PARTIES

- (1) **The Royal Borough of Kingston Upon Thames** ("the Council") of the one part; and
- (2) **Kingston First Limited** registered in England and Wales with company No. whose registered office is at ("the Company") of the other part.

BACKGROUND

- (A) The Company has established a Business Improvement District (BID) for the Kingston Town Centre Area for a period of five (5) years commencing and concluding on .
- (B) The Council is the local authority for the purposes of the Local Government Act 2003 and is responsible for providing the Standard Services, (defined in the Baseline Agreement) within the BID Area.
- (C) The Council 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 local authority and the funding of the BID Arrangements.
- (D) The Company is responsible for the operation of the BID and for using the BID Levy for the purposes of achieving the BID Arrangements, objectives and aspirations as set out in the five-year Kingston First BID Proposal available to view at <http://www>
- (E) 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 Company for the duration of the BID.
- (F) 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.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 The following definitions and rules of interpretation apply in this agreement.

Ballot Result Date:

Baseline Agreement: means the agreement entitled as such made between the parties hereto

BID: the Business Improvement District which is operated and managed by the Company.

BID Area: the area within which the BID operates as more particularly identified in Schedule 2.

BID Arrangements: the arrangements for collecting and applying the BID Levy.

BID Levy: the additional monies (over and above business rates) to be collected from the BID Levy Payers as calculated by the Council.

BID Levy Administrator: the person appointed by the Council in accordance with clause 5.1.

BID Levy Payers: Businesses within the BID Area from which the BID Levy will be collected.

BID Revenue Account: the account to be established and operated by the Council into which the BID Levy will be paid by the BID Levy Payers.

BID Term: .

BID Proposal: the plan voted for by the BID Levy Payers which sets out the objectives of the BID.

Bribery Act: the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation.

Company's Representative: the Company's manager appointed under clause 6.1.

EIR: the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Financial Year: [dates] each year during the BID Term.

Force Majeure Event: any cause affecting the performance by a party of its obligations under this agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to a party's personnel or any other failure in that party's supply chain.

NNDR: National Non-Domestic Rates (business rates).

Personal Data has the meaning attributed to it by the Data Protection Act 2018

Prohibited Act: the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act;
 - (ii) under legislation or common law concerning fraudulent acts;
 - (iii) defrauding, attempting to defraud or conspiring to defraud the Council.

- (d) any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

Request for Information: a request for information or an apparent request for information under the Code of Practice on Access to Government Information, FOIA or the EIR.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Clause, **Schedule** and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to **writing** or **written** includes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.13 If there is an inconsistency between any of the provisions in the main body of this agreement and the Schedules, the provisions in the main body of this agreement shall prevail.

2. COMMENCEMENT AND DURATION

This agreement shall be deemed to have commenced on **[date]** and shall continue until [date] unless terminated earlier in accordance with the terms of this agreement.

3. SCOPE OF THE AGREEMENT

3.1 The purpose of this agreement is to:

- 3.1.1 establish the procedure for setting the BID Levy;
- 3.1.2 confirm the basis upon which the Council will be responsible for collecting the BID Levy;
- 3.1.3 set out the enforcement mechanisms for collecting the BID Levy;
- 3.1.4 set out the procedures for accounting and transference of the BID Levy;
- 3.1.5 provide for the monitoring and review of the collection of the BID Levy;
- 3.1.6 confirm the manner in which the Council's expenses incurred in collecting the BID Levy shall be paid.

4. GOVERNANCE

4.1 The parties will establish a BID Monitoring Group which shall comprise representatives from the parties as follows or alternatives as nominated by the relevant organisation from time to time.

Title	Organisation

4.2 The BID Monitoring Group shall meet twice annually. Additional meetings of the BID Monitoring Group shall be arranged by the service of written notice by either party on the other.

4.3 Within one month of the start of each Financial Year, the Council and the Company shall agree the dates when there will be meetings of the BID Monitoring Group in that Financial Year.

4.4 At each meeting, the BID Monitoring Group shall:

4.4.1 Review the effectiveness of the collection and enforcement of the BID Levy.

4.4.2 If required by either party review and assess information provided by the parties.

5. COUNCIL'S OBLIGATIONS

5.1 The Council shall appoint the BID Levy Administrator who shall be responsible for collecting and administering the BID Levy as set out in clauses 7 and 8 and providing a point of contact for businesses within the BID for queries relating to the BID Levy. The Council shall use reasonable endeavours to ensure that the same person acts as the BID Levy Administrator throughout the term of this agreement but may replace him/her from time to time where reasonably necessary in the interests of the Council's business.

6. THE COMPANY'S OBLIGATIONS

6.1 The Company shall appoint the Company's Representative who shall be the first point of contact for all matters relating to this agreement. The Company shall use reasonable endeavours to ensure that the same person acts as the its representative throughout the term of this agreement but may replace him from time to time where reasonably necessary in the interests of the Company's business.

6.2 Within one month from the date of receipt of the its' annual report, in each Financial Year (for the duration of the BID Term) the Company shall provide a company report to the Council.

6.3 The Company shall at all times comply with the provisions of the Human Rights Act 1998 and all equality laws in force from time to time in the performance of this agreement. The Company shall also undertake, or refrain from undertaking, such acts as the Council requests so as to enable the Council to comply with its obligations under the Human Rights Act 1998 and all equality laws in force from time to time.

7. ~~NOT USED~~ THE BID LEVY

Setting the BID Levy

7.1 At least two (2) months before the Commencement Date, the Company shall confirm the following to the Council:

7.1.1 the BID boundary;

7.1.2 the BID Levy;

- 7.1.3 BID Levy discounts (if any);
- 7.2 Prior to the Commencement Date, the Council shall:
- 7.2.1 calculate the BID Levy payable by each BID Levy Payer;
 - 7.2.2 confirm to the Company the BID Levy payable by each BID Levy Payer.
- 7.3 The Council acknowledges and agrees that as at the date this Agreement was made, the Company has complied with its obligations pursuant to this clause.

Collecting the BID Levy

- 7.4 As soon as reasonably practicable after the Commencement Date, the Council shall confirm to the Company (in writing) the anticipated date of the despatch of demand notices for the initial chargeable period of the BID Levy and the anticipated single instalment due date. The date levy bills were dispatched in 2018-19 was December 2018. Thereafter the anticipated billing date is XX December annually.
- 7.5 The Council shall serve a demand notice on each BID Levy Payer throughout the BID Term, as appropriate.
- 7.6 The Company acknowledges and agrees that the rate of the BID Levy is fixed for the duration of the BID Term.
- 7.7 The Council shall maintain a list of those BID Levy Payers who have paid the BID Levy and those BID Levy Payers who have not paid the BID Levy and shall make the list of those who have paid available to the Company upon request, subject always to being permitted to do so by and in accordance with the DP Legislation. The Company acknowledges and agrees that it shall retain such information securely and use such information only for the purposes of managing the eligibility for discounts and other benefits available to those who have paid the BID levy and not otherwise and shall only disclose such information as necessary.
- 7.8 The Council shall serve a demand notice or amended demand notice on a BID Levy Payer as soon as reasonably practicable after the Council receives notice of a change that affects liability for the BID Levy Payer.
- 7.9 The Council shall use all reasonable endeavours to collect the BID Levy throughout the BID Term.
- 7.10 The Council is permitted to charge a reasonable fee for the collection and administration of the BID Levy and the parties acknowledge and agree that this has been set as £28,200 per annum (plus VAT).

Paying the BID Levy

- 7.11 The Council shall pay each valid and correct invoice submitted to it by the Company or its appointed accountants for the BID Levy, in full and in cleared funds, within ten (10) days of receipt (plus VAT where appropriate).
- 7.12 All amounts payable by the Council under this agreement are inclusive of amounts in respect of VAT chargeable from time to time and nett of cost of collection and refunds. The Company shall pay to the Council the charges as set out in Schedule 1.

The BID Revenue Account

- 7.13 As soon as is reasonably practicable following the Ballot Result Date, the Council shall establish and operate the BID Revenue Account in accordance with regulations and accounting codes of practice in force from time to time and provide written confirmation of compliance to the Company upon request.
- 7.14 As soon as reasonably practicable following the Ballot Result Date, the Company shall provide the Council with details of its bank account into which the BID Levy shall be transferred from the BID Revenue Account.

Accounting for the BID Levy

- 7.15 Within twenty-one (21) working days of the end of each quarter of the BID Term, subject to the correct IT systems/software being set up and available/ready to use, the Council shall provide the Company with:
- 7.15.1 The rateable value for each BID Levy Payer;
 - 7.15.2 The annual amount of the BID levy for each BID Levy Payer;
 - 7.15.3 The amount of the BID levy collected for each BID Levy Payer;
 - 7.15.4 Details of BID levy payers who have not paid the BID Levy;
 - 7.15.5 Details of reminder notices issued;
 - 7.15.6 Details of liability orders made or applied for.
- 7.16 The BID Revenue Account will be subject to the normal internal & external audit arrangements of the Council. The Council will make available to the Company and its appointed auditors such information as requested by the Company and such appointed auditors in so far as they are able to do so under legislation and / or any regulation.

8. ENFORCING THE BID LEVY

- 8.1 The parties agree that procedures for the enforcement and recovery of the BID Levy will be in line with the enforcement procedure for NNDR and

the Council shall comply with these enforcement procedures (where appropriate) in enforcing payment of the BID Levy against BID Levy Payers.

8.2 The BID Company reserves the right to halt the Council's recovery procedures at any stage in the recovery process. The BID Company understands that where it halts recovery procedures, it will be liable for any enforcement expenses and legal costs incurred on the relevant Hereditament to date and the Bid Levy shall be forfeit. In the event that the Council fails to enforce payment of the BID Levy, the Company shall be entitled to serve an enforcement notice on the Council requesting that:

8.2.1 The Council serves a reminder notice; or

8.2.2 In the event that the Council has already served a reminder notice that the Council applies for a liability order against the defaulting BID Levy Payer and thereafter provide written confirmation of the action it shall take to comply with the enforcement notice.

8.3 If the Council fails to provide written confirmation of the action it is taking in relation to the enforcement notice in accordance with clause 8.2 within (21) twenty-one days of the issue of the enforcement notice, the Company shall be entitled to serve an appeal notice on the Director of Corporate Services and such notice shall:

8.3.1 detail the sum unpaid;

8.3.2 confirm that the Council has failed to use the enforcement mechanisms available to it under this agreement to recover the sum unpaid

8.3.3 include written notice requesting that a meeting of the BID Monitoring Group take place in order to achieve a solution and/or agree a strategy to recover the sum unpaid. Such a meeting to take place no later than 28 (twenty eight) days from the date of the appeal notice.

9. CONFIDENTIALITY AND FREEDOM OF INFORMATION

9.1 A party (**receiving party**) shall keep in strict confidence all technical or 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 9.1 shall survive termination of this agreement.

- 9.2 The Company acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (**FOIA**) and the Environmental Information Regulations 2004 and the Company shall assist and co-operate with the Council (at the Company's expense) to enable the Council to comply with these information disclosure requirements.
- 9.3 The Company shall and shall procure that its staff including its subcontractors:
 - 9.3.1 transfer the 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;
 - 9.3.2 provide the Council with a copy of all information in the Company's possession or power 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
 - 9.3.3 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 (EIR).
- 9.4 The Council shall be responsible for determining at its absolute discretion whether the information:
 - 9.4.1 is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations 2004;
 - 9.4.2 is to be disclosed in response to a request for information, and in no event shall the Company respond directly to a Request For Information unless expressly authorised to do so by the Council.
- 9.5 In no event shall the Company respond directly to a request for information unless expressly authorised to do so by the Council.
- 9.6 The 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:
 - 9.6.1 without consulting with the Company; or
 - 9.6.2 following consultation with the 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 Company advanced notice, or failing that, to draw the disclosure to the Company's attention after any such disclosure.

- 9.7 The 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.

10. DATA PROTECTION

- 10.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Council is the Controller and the Company is the Processor. The only processing that the Company is authorised to do is listed in Schedule 3 by the Council and may not be determined by the Company.
- 10.2 The Company shall notify the Council immediately if it considers that any of the Council's instructions infringe the Data Protection Legislation.
- 10.3 The 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 company include:
- 10.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 10.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the services;
 - 10.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 10.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 10.4 The Company shall, in relation to any Personal Data processed in connection with its obligations under the Agreement:
- 10.4.1 process that Personal Data only in accordance with Schedule 3, unless the Company is required to do otherwise by Law. If it is so required the Company shall promptly notify the Council before processing the Personal Data unless prohibited by Law;

10.4.2 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:

- 10.4.2.1 nature of the data to be protected;
- 10.4.2.2 harm that might result from a Data Loss Event;
- 10.4.2.3 state of technological development; and
- 10.4.2.4 cost of implementing any measures.

10.5 ensure that:

The Company Personnel do not process Personal Data except in accordance with the Agreement (and in particular Schedule 3 and clause 7.7)

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

- 10.6.1 are aware of and comply with the Company's duties under this clause
- 10.6.2 are subject to appropriate confidentiality undertakings with the Company or any Sub-processor
- 10.6.3 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
- 10.6.4 have undergone adequate training in the use, care, protection and handling of Personal Data; and

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

- 10.7.1 the Council or the Company has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Council;
- 10.7.2 the data subject has enforceable rights and effective legal remedies;
- 10.7.3 the 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
- 10.7.4 the Company complies with any reasonable instructions notified to it in advance by the Council with respect to the processing of the Personal Data;
- 10.7.5 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 Company is required by Law to retain the Personal Data.

- 10.8 Subject to clause 9.6 the Company shall notify the Council immediately if it:
- 10.8.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 10.8.2 receives a request to rectify, block or erase and Personal Data;
 - 10.8.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - 10.8.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - 10.8.5 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
 - 10.8.6 becomes aware of a Data Loss Event
- 10.9 The Company's obligation to notify under clause 10.8 shall include the provision of further information to the Council in phases, as details become available.
- 10.10 Taking into account the nature of the processing, the 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 10.8 (and insofar as possible within the timescales reasonably required by the Council) including by promptly providing:
- 10.10.1 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;
 - 10.10.2 the Council, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 10.10.3 assistance as requested by a Council following any Data Loss Event; and
 - 10.10.4 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.
- 10.11 The Company shall maintain complete and accurate records and information to demonstrate its compliance with the clause. This requirement does not apply where the Company employs fewer than 250 staff, unless:

- 10.11.1 the Council determines that the processing is not occasional;
 - 10.11.2 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
 - 10.11.3 the Council determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 10.12 The Company shall allow for audits of its Data Processing activity by the Council or the Council's designated auditor.
- 10.13 The Company shall designate a data protection officer if required by the Data Protection Legislation.
- 10.14 Before allowing any Sub-processor to process Personal Data related to this Agreement, the Company must:
- 10.14.1 notify the Council in writing of the intended Sub-processor and processing;
 - 10.14.2 obtain the written consent of the Council;
 - 10.14.3 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
 - 10.14.4 provide the Council with such information regarding the Sub-processor as the Council may reasonably require.
- 10.15 The Company shall remain fully liable for all acts or omissions of any Sub-processor.
- 10.16 The 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).
- 10.17 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 Company amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 10.18 Upon termination of the Contract the Company shall:
- 10.18.1 cease processing Personal Data on behalf of the Council; and
 - 10.18.2 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.

10.19 The 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.

11. INSURANCE AND LIABILITY

11.1 Each party shall maintain in force during the period of the BID Term as a minimum the following insurance cover with reputable insurers:

11.1.1 Employer's Liability Insurance Policy of not less than £ 5,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences; and

11.1.2 Public Liability Insurance Policy of not less than £10,000,000 for each and every claim, act or occurrence or series of claims, acts or occurrences.

11.2 The Company shall give the Council, on request, copies of all insurance policies referred to in this clause 13 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

12. LIMITATION OF LIABILITY

12.1 Nothing in this agreement limits or excludes either party's liability for:

12.1.1 death or personal injury caused by its negligence; or

12.1.2 fraud or fraudulent misrepresentation; or

12.1.3 destruction of the other's property; or

12.1.4 clause 9 (Confidentiality and Freedom of Information), clause 10 (Data Protection) and clause 21 (Prevention of Bribery); or

12.1.5 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) or any other liability which cannot be limited or excluded by applicable law.

12.2 Subject to clause 12.1, neither party shall be liable to the other, whether in contract, tort (including negligence), for breach of statutory duty, or otherwise, arising under or in connection with this agreement for:

12.2.1 loss of profits;

12.2.2 loss of sales or business;

12.2.3 loss of agreements or contracts;

12.2.4 loss of anticipated savings;

12.2.5 any indirect or consequential loss.

13 TERMINATION

- 13.1 Either party may terminate this agreement with immediate effect by giving written notice to the other if the other party:
- 13.1.1 commits a material breach of any term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of twenty-eight days after being notified in writing to do so;
 - 13.1.2 repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement.
- 13.2 Without affecting any other right or remedy available to it, the Council may terminate this agreement with immediate effect by giving written notice to the Company if:
- 13.2.1 the Company suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 13.2.2 the Company commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of the Company;
 - 13.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Company (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Company with one or more other companies or the solvent reconstruction of the Company;
 - 13.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Company (being a company);
 - 13.2.5 the holder of a qualifying floating charge over the assets of the Company (being a company) has become entitled to appoint or has appointed an administrative receiver;
 - 13.2.6 a person becomes entitled to appoint a receiver over the assets of the Company or a receiver is appointed over the assets of the Company;

13.2.7 a creditor or encumbrancer of the Company attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Company's assets and such attachment or process is not discharged within fourteen (14) days;

13.2.7.1 any event occurs, or proceeding is taken, with respect to the Company in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 13.2.1 to 13.2.7 (inclusive);

13.2.7.2 the Company suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

13.3 This agreement will terminate automatically at the end of the BID Term.

13.4 Either party to this agreement may terminate it for convenience by serving a notice of not less than three months to the other.

14 CONSEQUENCES OF TERMINATION

14.1 On termination or expiry of this agreement:

14.1.1 the Council shall pay to the Company all of the Company's outstanding valid and unpaid invoices and interest (where this has accrued);

14.1.2 each party shall, within a reasonable time, return all of the other party's property in its possession or under its control. If a party fails to do so, then the other party may enter that party's premises and take possession of them. Until they have been returned or repossessed, the party with custody or control of such property shall be solely responsible for their safe keeping;

14.1.3 the following clauses shall continue in force: clause 7.11 and 7.12 (Paying the Bid Levy) clause 9 (Confidentiality and Freedom of Information), clause 10 (Data Protection) clause 12 (Limitation of Liability), clause 255 (Notices), clause 266 (Dispute Resolution) , clause 277 (Governing Law) and Clause 28 (Jurisdiction).

14.2 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

15 FORCE MAJEURE

15.1 Provided it has complied with clause 15.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event (**Affected Party**), the Affected

Party shall not be in breach of this agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

15.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

15.3 The Affected Party shall:

15.3.1 as soon as reasonably practicable after the start of the Force Majeure Event but no later than [three (3) days from its start, notify the other party of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

15.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

15.4 If the Force Majeure Event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than six (6) weeks, the party not affected by the Force Majeure Event may terminate this agreement by giving two (2) weeks' written notice to the Affected Party.

15.5 If the Force Majeure Event prevails for a continuous period of more than two (2) months, either party may terminate this agreement by giving seven (7) days' written notice to all the other party. On the expiry of this notice period, this agreement will terminate. Such termination shall be without prejudice to the rights of the parties in respect of any breach of this agreement occurring prior to such termination.

16 VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

17 WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

18 RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

19 SEVERANCE

- 19.1 If any provision or part-provision of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this agreement.
- 19.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20 ENTIRE AGREEMENT

- 20.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 20.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 20.3 Nothing in this clause shall limit or exclude any liability for fraud.

21 PREVENTION OF BRIBERY

- 21.1 The Company represents and warrants that neither it, nor to the best of its knowledge any of its employees, agents or sub-contractors, have at any time prior to the commencement date:
- 21.1.1 committed a Prohibited Act or been formally notified that they are subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
 - 21.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 21.2 The Company shall not during the term of this agreement:
- 21.2.1 commit a Prohibited Act; and/or

- 21.2.2 do or suffer anything to be done which would cause the Council or any of the Council's employees, consultants, contractors, sub-contractors or agents to contravene any of the provisions of the Bribery Act or otherwise incur any liability in relation to the Bribery Act.
- 21.3 The Company shall during the term of this agreement:
- 21.3.1 establish, maintain and enforce, and require that its Sub-contractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act and prevent the occurrence of a Prohibited Act; and
- 21.3.2 keep appropriate records of its compliance with its obligations under clause 21.3 and make such records available to the Council on request.
- 21.4 The Company shall immediately notify the Council in writing if it becomes aware of any breach of this clause 21 or has reason to believe that it has or any of the Company's personnel (including its advisors, agents and sub-contractors) have:
- 21.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- 21.4.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- 21.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this agreement or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.
- 21.5 If the Company makes a notification to the Council pursuant to clause 21.4, the Company shall respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit any books, records and/or any other relevant documentation in accordance with this agreement.
- 21.6 If the Company is in breach of this clause, the Council may by notice:
- 21.6.1 require the Company to remove from performance of this agreement any Company's personnel whose acts or omissions have caused the breach; or
- 21.6.2 immediately terminate this agreement.
- 21.7 Any notice served by the Council under clause 21.6 shall specify the nature of the Prohibited Act, the identity of the party who the Council believes has committed the Prohibited Act and the action that the Council

has elected to take (including, where relevant, the date on which this agreement shall terminate).

22 ASSIGNMENT AND OTHER DEALINGS

This agreement is personal to the parties and the neither party shall assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any of its rights and obligations under this agreement.

23 No PARTNERSHIP OR AGENCY

23.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute one party the agent of the other party, or authorise one party to make or enter into any commitments for or on behalf of the other party.

23.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

24 THIRD PARTY RIGHTS

No one other than a party to this agreement shall have any right to enforce any of its terms.

25 NOTICES

25.1 Any notice or other communication required to be given under this agreement, shall be in writing and shall be delivered personally, or sent by pre-paid first class post or recorded delivery or by commercial courier, to the party required to receive the notice or communication at its address as set out herein or as otherwise specified by the relevant party by notice in writing to each other party.

For the Council

Name:

Address:

Email:

Telephone Number:

For the Company

Name:

Address:

Email:

Telephone Number:

- 25.2 Any notice or other communication shall be deemed to have been duly received:
- 25.2.1 if delivered personally, when left at the address and for the contact referred to in this clause; or
 - 25.2.2 if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second working day after posting; or
 - 25.2.3 if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 25.3 The provisions of this clause 25 shall not apply to the service of any proceedings or other documents in any legal action.

26 DISPUTE RESOLUTION PROCEDURE

- 26.1 If a dispute arises out of or in connection with this agreement or the performance, validity or enforceability of it (**Dispute**) then the parties shall follow the procedure set out in this clause 26
- 26.2 The disputing party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Director of Environment and Regeneration of the Council and Estate Coordinator of the Company shall attempt in good faith to resolve the Dispute.
- 26.3 If the Director of Environment and Regeneration of the Council and Estate Coordinator of the Company are for any reason unable to resolve the Dispute within [thirty (30)] days of service of the Dispute Notice, the Dispute shall be referred to the Chief Executive of the Council and the Chairman of the Company who shall attempt in good faith to resolve it.
- 26.4 If the Chief Executive of the Council and the Chairman of the Company are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a

mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than [twenty-eight (28)] days after the date of the ADR notice.

26.5 If the Dispute is not resolved within sixty (60) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of sixty (60) days, or the mediation terminates before the expiration of the said period of sixty (60) days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 27 (Governing Law) and clause 28 (Jurisdiction).

27 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

28 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed by the parties as a deed and takes effect on the date stated at the beginning of it.

**EXECUTED by the Council
by affixing the Common Seal of The
Mayor and Burgesses of The Royal
Borough Of Kingston upon Thames
to this Deed in the presence of**

.....
Authorised Signatory

Name:

Position:

**EXECUTED
by Kingston First Limited
acting by and under the signatures
of:**

Name:

.....

Signature

Director:

Name:

.....

Signature

Director / Secretary:

SCHEDULE 1 PRICING AND PAYMENT

Part 1. Pricing

A charge of 3% (plus VAT) of the total amount of BID levy collected in each year of the BID term will be levied on the Company by the Council. . Such charge will be for all work related to collection and such enforcement procedures as may be necessary to secure payment of the BID Levy. The Council shall invoice the Company on an annual basis for such charges and the Company shall pay the Council within 10 days of receipt thereof.

If the Council collects BID levy otherwise than anticipated, (e.g. by taking enforcement action), then having remitted such sums to the Company, the Council may invoice the Company for the 3% charge referred to above, (plus VAT) and the Company shall pay such sums within 10 days of receipt..

Collection costs are based on cost recovery and will be reviewed each year by the BID Monitoring Group and in default of agreement between the parties will be referred to the dispute resolution procedure set out in clause 27.

**SCHEDULE 2 – KINGSTON FIRST
BUSINESS IMPROVEMENT DISTRICT**

SCHEDULE 3

GDPR

Processing, Personal Data and Data Subjects

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

Description	Details
Subject matter of the processing	Information relating to Bid Levy payers and / or business and including Business Rate payers
Duration of the processing	The period of the contract as documented within the contract, and within the destruction and retention periods as outlined in guidance provided by the Council.
Nature and purposes of the processing	To administer and facilitate the payment of the Bid Levy.
Type of Personal Data	All personal data such as: name, address, date of birth, NI number, telephone number
Categories of Data Subject	Proprietors of businesses within the Bid Area.

<p>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</p>	<p>As per guidelines specified by the Council.</p>
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