

DATA SHARING AGREEMENT

This agreement made as of the _____ day of _____ 20____

between:

- (A) _____ (“the Operator”) and
- (B) THE KENT COUNTY COUNCIL of Sessions House, County Hall, Maidstone, Kent, ME14 1XQ (“The Council”)

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement, except where the context otherwise requires:

“Bus” means a bus or coach belonging to the Operator and used by it in the course of its business for the carriage of passengers, and “Buses” shall be construed accordingly.

“Confidential information” means all data and information supplied by either party to the other or the supply of which is procured by either party to the other, whether in the form of written and /or printed documents (including facsimile transmissions), oral communication, data stored on magnetic or electronic media or data communicated over communication lines, but does not include:

- information which subsequently comes within the public domain other than by reason of a breach of this agreement by the receiving party;
- information which the receiving party can reasonably demonstrate was known by it, under no obligation of confidence, prior to its receipt of such information;
- information which comes otherwise lawfully available to the receiving party other than as a result of a breach of any duty of confidence owed to the disclosing party;
- information used for purposes set out in 0

- “Effective Date”** means the date referred to in paragraph 0;
- “Operator”** means _____ and any of its subsidiary companies within the UK.
- “Review Meeting”** has the meaning given in paragraph 0.

1.2 As used in this agreement:

- a) the masculine includes the feminine and the neuter; and
- b) the singular includes the plural and vice versa

1.3 Headings are included in this agreement for ease of reference only and shall not affect the interpretation or construction of this agreement.

1.4 References to paragraphs and appendices are, unless otherwise provided, references to paragraphs and appendices to this agreement. The appendices form part of the terms and conditions of this agreement.

2. BACKGROUND

The purpose of this agreement is to set out the rights and obligations of the parties as against each other in respect of the sharing of data.

3. AGREEMENT PERIOD

3.1 Effective Date

This Agreement takes effect from the

3.2 Termination

- a) This Agreement shall terminate on the earlier of:
 - (i) the expiry of a period of 3 years from the Effective Date;
 - (ii) the expiry of 3 months written notice given to either party to the other
 - (iii) the service by either party on the other of an appropriate notice on the happening of any events referred to in sub-paragraph 0 below; or
 - (iv) at any time by mutual consent.

3.3 Termination for Cause

- a) This Agreement may be terminated immediately by either party by notice in writing served to the other party where the other party:
 - (i) is in material breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of

remedy) for a period of 30 days after written notice to do so is served on the party in default by the other;

- (ii) or if either party becomes insolvent or any proceedings shall be commenced by or against the party under bankruptcy, insolvency or similar laws.

3.4 Variation

No addition to, or modification of, any provision of this Agreement shall be binding on any party unless made in writing and signed by duly authorised representatives of the parties.

3.5 Continuation of Rights

Termination or variation of this Agreement shall not prejudice the rights of either party which may have arisen on or before the date of such termination or variation.

4. EFFECTS OF TERMINATION

Upon termination of this Agreement for any reason whatsoever each party shall, within 60 working days of the effective date of termination, return all documentation, statements and other materials (and all copies thereof) provided to the other party under or in performance of this Agreement and which contains Confidential Information of the other party. If requested each Party shall certify in writing that it has fully complied in all respects with this provision after the return of such documentation.

5. INTELLECTUAL PROPERTY

5.1 In consideration of the rights granted to it pursuant to this Agreement, the Council acknowledges that all intellectual and industrial property rights in any images, data or other items or information received from the Operator shall belong to the Operator subject to the Council being provided with a licence as set out in paragraph 0.

5.2 The Operator hereby grant the Council a licence, free of charge to use, or permit the use, of any images, data or other items or information produced or received from the Operator for the purposes set out in 0, PROVIDED THAT the Council shall not use or permit the use of such images, data or other items of information, other than for the purposes of using such information to improve the bus services along the network, without the prior written agreement of the Operator whereas such use may:

- a) reasonably be considered to be detrimental to the business interests of the Operator, or
- b) is a person who may reasonably be considered to be a business competitor of the Operator,
- c) or where use is for financial gain

5.3 The Council will use reasonable endeavours to notify the Operator promptly of any data supplied to them voluntarily by the Operator that does not fall within that agreed within 0 and/or as referred to within paragraph 0 and agree that all such data falls outside of the licence agreement specified in paragraph 0 and therefore is only permitted to use it subject to the Operator's prior written consent, such not to be unreasonably withheld or delayed.

5.4 The obligations in this paragraph 0 will continue for a minimum of 6 months beyond the duration of this Agreement.

6. REVIEW

6.1 Provision of Review

The terms of this agreement shall be reviewed in accordance with the following paragraphs:

6.2 Review Meetings

Reviews shall be carried out by way of a meeting between the parties who shall be obliged to attend such a meeting.

6.3 Timing of Reviews

Reviews will be carried out any time if requested by either party by giving 30 days written notice to the other.

6.4 Subjects for Review

Each party must submit to the other details of those matters that it requires to be discussed at the appropriate review meeting in writing at least two weeks prior to the date of such meeting.

6.5 Outstanding Matters

If any outstanding matters referred to in a review meeting cannot be settled to the satisfaction of both parties, either party may refer such outstanding matter for dispute resolution in accordance with the terms of paragraph 0 below.

7. CONFIDENTIALITY AND DATA PROTECTION

7.1 Confidentiality

a) Each party warrants, subject to the limitations set out in paragraph 0 below, :

- (i) to keep all Confidential Information (including all portions and copies) secret and confidential in the same manner as its own proprietary information;

- (ii) not, without the written consent of the other party, to disclose or reveal Confidential Information (or any portion or copy) to any person other than to such officers, employees or sub-contractors to whom it is necessary to reveal such information for the furtherance of this Agreement or any other agreement between the parties (whether written or oral);
 - (iii) not to use Confidential Information (or any portion or copy) other than in furtherance of this agreement or any other agreement between the parties (whether written or oral);
 - (iv) not to make any copies of any document, drawing, facsimile transmission or any magnetic or electronic medium upon which Confidential Information is stored or comprising or containing (in whole or in part) any Confidential Information without the prior written consent of any disclosing party;
 - (v) to ensure that any Confidential Information received by it will be at all times within its possession or under its control;
- b) The Operator shall, on termination of this agreement, return to the Council all documents and any data stored on magnetic or electronic media (including copies) which contain Confidential Information
- c) Paragraph 0 above, shall not be applicable to any Confidential Information which the Operator may need to disclose to comply with its obligations under law or court order.

7.2 Data Protection

- a) The Operator shall (and shall procure that any of its staff involved in the provision of the agreement) comply with any notification requirements under the Data Protection Act 1998, and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (“the Legislation”), and both parties will duly observe all their obligations under the Legislation, which arise in connection with the agreement.
- b) Notwithstanding the general obligation in clause (a), where the Operator is processing personal data as a data processor for the Authorities, the Operator shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorized or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal

data), as required under the Seventh Data Protection Principle in Schedule 1 to the Data Protection Act 1998; and

- (i) to provide the Authorities with such information as the Authorities may reasonably require to satisfy themselves that the Operator is complying with its obligations under the Legislation;
- (ii) promptly notify the Authorities of any breach of the security means required to be put in place under this clause; and
- (iii) ensure it does not knowingly or negligently do or omit to do any thing which places the Authorities in breach of the Authorities' obligation under the Legislation.

8. GENERAL

8.1 Limitation of Liability

- a) The entire liability and responsibility for any and all claims, damages or losses arising from this agreement for the Operator shall be limited to that covered by their own sufficient and suitable insurance, evidence of the premiums of which shall be made available to the Council upon reasonable notice. Notwithstanding any provision contained herein, neither party shall be liable for any indirect, consequential, special, incidental or contingent damages or expenses, whether in contract, tort (including negligence) or otherwise, arising in any way out of this agreement.
- b) The Council shall not be liable for any losses which arise from the negligence of the Operator or any third parties.

8.2 Force Majeure

Neither party will be liable for any delays or failures to perform its respective obligations under this agreement which are due to circumstances beyond its reasonable control (including for the avoidance of doubt but without limitation, fire, flood, explosions, electrical failures, acts of God, civil disorder or industrial action, acts or omissions of either party). Each party will inform the other party immediately if its performance becomes impossible due to a reason falling within this paragraph.

8.3 Waiver

No delay, neglect or forbearance on the part of either party in enforcing against the other any provision of this agreement shall be or be deemed to be a waiver or in any way prejudice the rights of that party under this agreement.

8.4 Entire Agreement

This Agreement is made in good faith and contains all statements and representations upon which the parties have relied in entering into it.

8.5 Dispute Resolution

In the event of a dispute between the parties with respect to the Agreement and is such dispute cannot be settled following good faith efforts by the parties, the parties agree to attempt to resolve said dispute by way of high level negotiations. If such negotiations are unsuccessful, the parties agree to consider mediation using the services provided by the Centre for Dispute Resolution. In the event that either or both of the parties do not agree upon mediation, the English Courts will have exclusive jurisdiction with the resolution of the dispute.

8.6 Notices

- a) All notices which are required to be given under this Agreement shall be in writing and shall be sent to the address of the recipient set out below or such other address as the recipient may designate by notice given in accordance with the provisions of this paragraph. Notice may be delivered personally or by first class pre-paid letter or facsimile transmission using the numbers notified to the other party from time to time and shall be deemed to have been served if by hand when delivered, if by first class post 48 hours after posting and, if by facsimile transmission, when dispatched.
- b) Addresses for the services of notices are set out at the head of this Agreement.

8.7 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

IN WITNESS WHEREOF, this Agreement has been read, understood and duly signed by duly authorised officials of the Operator and the Council.

The Operator

The Kent County Council

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix 1

Operator's Data	Permitted Use
<p>Punctuality and reliability data including but not limited to:</p> <p>Journey start time</p> <p>Journey finish time</p> <p>En route timings (timing points)</p> <p>Number of 'lost miles'</p> <p>Number of 'lost miles' as a percentage of all scheduled miles</p> <p>Complete service timetable information</p> <p>Vehicle position data</p> <p>And any other data as agreed between the parties. This information may take the form of electronic communication such as email or bus real time information or any other format as agreed between the parties.</p>	<p>Data analysis in order to identify issues / locations where action by one or both parties may improve punctuality and reliability.</p> <p>Internal benchmarking in order to inform policy. So that it can be demonstrated within the Council that the punctuality improvement partnership and other public transport measures are having the desired effects.</p> <p>Collation with other material, including but not limited to competitor bus operators data, in order to create bus punctuality figures for the whole of Kent. All parties to agree that the Kent wide punctuality data can be published publically e.g. on kent.gov.uk so long as it is impossible to attribute performance to any one company. The Operator to receive this data from the Council at least two weeks before the date of publishing.</p>