

**DATED**

**2011**

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- (1) CAMBRIDGESHIRE COUNTY COUNCIL**
  - (2) CAMBUS LIMITED**
  - (3) WHIPPET COACHES LIMITED**
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**ACCESS AGREEMENT**  
*relating to*

**THE CAMBRIDGESHIRE GUIDED BUSWAY**

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**Bircham Dyson Bell**

50 Broadway  
London  
SW1H 0BL

**Tel +44 (0)20 7227 7000**

Fax +44 (0)20 7222 3480  
DX 2317 Victoria  
[www.bdb-law.co.uk](http://www.bdb-law.co.uk)

**THIS AGREEMENT is made the**

**day of**

**2011**

**BETWEEN:**

**(1) CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge CB3 0AP (the “**Council**”);

**(2) THOSE PERSONS** whose names and registered offices are set out in SCHEDULE 1 and any other person executing and delivering a deed of adherence in accordance with clause 18 (the “**Bus Operators**”).

**WHEREAS:**

- (A)** The Council is empowered under the Cambridgeshire Guided Busway Order 2005 (“**the Order**”) to construct works and to acquire lands and rights in land for the purpose of a guided busway running from St. Ives to Cambridge (including a link to Chesterton Sidings) and from Cambridge Railway Station to the Trumpington Park & Ride site and to Addenbrooke’s Hospital.
- (B)** The Council has constructed works authorised under the Order and the guided busway or a section thereof is complete.
- (C)** The Council and the Bus Operators now enter into this Agreement to provide for the Bus Operators to have access to the guided busway subject to the payment of an access charge and to the provisions in this Agreement including that the Bus Operators participate in a joint ticketing scheme and provide buses that meet certain requirements as set out in a quality bus partnership scheme, both of which relate to the busway and have been, or will be, made by the Council as a local transport authority.

**IT IS AGREED AS FOLLOWS:**

**1 INTERPRETATION**

1.1 In this Agreement, unless the context otherwise requires:

“**Access Charges**” means the charges payable under clause 8.1 by each Bus Operator to the Council, as set out in SCHEDULE 2;

“**Act**” means the Transport Act 2000;

“**Affiliate**” means, in relation to any company:

- (a)** a company which is either a holding company or a subsidiary of such company; or

- (b) a company which is a subsidiary of a holding company of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1156 of the Companies Act 2006;

“**Agreement**” means this document including all schedules to it;

“**the Block Exemption**” means the Competition Act 1998 (Public Transport Ticketing Schemes Block Exemption) Order 2001 (S.I. 2001/319) (as amended);

“**Bus Operators**” means the bus operators who are parties to this Agreement as listed in Schedule 1 together with any bus operator executing and delivering a Deed of Adherence in accordance with clause 18;

“**Bus Operator Event of Default**” has the meaning given to it in clause 14.1;

“**the Busway Operator**” means the Council or any person appointed as the Busway Operator pursuant to clauses 5.8 and 6;

“**the Commencement Date**” means in respect of each signatory to this Agreement, the date of this Agreement and in respect of any Bus Operator executing a Deed of Adherence, the date of that Deed;

“**Completed Guided Busway**” means, at any particular time, all Completed Sections;

“**Completed Section**” means a Section in respect of which a Completion Notice has been given;

“**Completion**” means completion to such a stage that the Section in question can properly be said to be completed and capable of safe and practicable use for the provision of Services, notwithstanding that items which would ordinarily be considered snagging items but which do not affect safety or materially affect the quality of operation of Services remain outstanding, and the expressions “**Complete**” and “**Completed**” shall be construed accordingly;

“**Completion Notice**” means a notice given by the Council to the Bus Operators that a Section is Complete;

“**Confidential Information**” means:

- (a) information relating to the affairs of one party to this Agreement or any of its Affiliates which has been provided by any such person to another party under, or for the purposes of, this Agreement; and
- (b) any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure of which is likely materially to compromise or otherwise prejudice the commercial interests of any such person,

and includes this Agreement or part thereof;

**“Deed of Adherence”** means a deed entered into pursuant to clause 18 in the form set out in SCHEDULE 3;

**“the Default Interest Rate”** is three percent above the base lending rate of Barclays Bank PLC, as varied from time to time;

**“the Effective Date”** means 7 August 2011 for all Sections;

**“EIR”** means the Environmental Information Regulations 2004;

**“Environmental Condition”** means:

- (a) any Environmental Damage; or
- (b) any event, circumstance, condition, operation or activity which is reasonably likely to result in Environmental Damage, which (in either case) in the Council’s reasonable opinion could result in the Council incurring any material liability;

**“Environmental Damage”** means any injury or damage to persons (including offence to man’s senses) or any material injury or damage to living organisms or property or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

**“the Expiry Date”** in relation to any particular Section means the tenth anniversary of the Effective Date in respect of that Section;

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;

**“Force Majeure Event”** means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection;
- (b) natural disasters or phenomena, including extreme weather or environmental conditions (such as earthquake, hurricane, fire, flood, drought);
- (c) nuclear, chemical or biological contamination;
- (d) pressure waves caused by devices travelling at supersonic speeds; and
- (e) discovery of fossils, antiquities or unexploded bombs;

**“the Guided Busway”** means the Cambridgeshire Guided Busway, being a guided busway running between St. Ives to Milton Road, Cambridge and to Kings Hedges Road, Cambridge and from Cambridge Railway Station to the Trumpington Park & Ride site and to Addenbrooke’s Hospital, all as authorised to be constructed by the Order;

**“the Inception Agreements”** means agreements so named entered into between the Council and the Bus Operators listed in Schedule 1 providing that the Council would proceed with the procurement of the construction of the Guided Busway in return for appropriate commitments from those Bus Operators to run Services;

**“Information”** has the meaning ascribed to it in the FOIA;

**“the Initial Term”** in relation to any particular Section means a period of five years from the Effective Date for that Section;

**“Insolvency Event”** means:

- (a) any step which results in the making of an order or the appointment of an administrator in respect of the Bus Operator under Part II of the Insolvency Act 1986;
- (b) any act whereby the Bus Operator stops or suspends or threatens to stop or suspend payment of all or a material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986, except that in the interpretation of this paragraph:
  - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there were substituted “£10,000” or such higher figure as the parties may agree in writing from time to time; and
  - (ii) the Bus Operator shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is satisfied before the expiry of 21 days from such demand;
- (c) the Bus Operator’s directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied against the whole or a substantial part of the Bus Operator’s assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to the winding up of the Bus Operator or any person presents a winding-up petition in respect of the Bus Operator which is not dismissed within 14 days, or the Bus Operator ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Council before that step is taken (which approval shall not be unreasonably withheld or delayed); or

- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above, unless, in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the Council with timely recourse to all appropriate measures and procedures;

**“IP Rights”** means the rights granted pursuant to the licence agreement referred to in clause 11;

**“Licence to Use”** means the licence to use the Completed Guided Busway granted under clause 4.1;

**“New Services”** means Services proposed to be provided that would differ materially in effect from other Services at that time provided;

**“Nominated Location”** means, in relation to a Service, any appropriate location notified by the Council where bus vehicles operating a Service under the control of the Bus Operator may move onto and off the Completed Guided Busway;

**“Operating Licence”** means a public service vehicle operator’s licence issued by the Traffic Commissioner under Part II of the Public Passenger Vehicles Act 1981;

**“the Operations Handbook”** means the manual for correct and safe use of the Completed Guided Busway as approved, from time to time, by the Council;

**“Prospective Operator”** means, in relation to any Section, any bus operator wishing to operate Services along that particular Section which is not a party to this Agreement;

**“QBP”** means any quality bus partnership made by the Council under section 114 of the Act that applies to the operation of the Services and includes any variation or postponement of the same in accordance with the Act;

**“Relevant Dispute”** means any difference between the parties arising out of or in connection with this Agreement;

**“Relevant Losses”** means all costs, losses (including loss of Access Charges), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by any breach of this Agreement;

**“Removal”** means the termination of a Bus Operator’s rights and obligations under this Agreement pursuant to clause 14.2;

**“Removal Notice”** means a notice issued pursuant to clause 14.9;

**“Request for Information”** has the meaning ascribed to it in the FOIA;

**“Reserved Information”** has the meaning given to it in clause 22.3;

**“the Safety Obligations”** means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in England and includes the safety requirements of the Operations Handbook;

**“Section”** means any of the following proposed sections of the Guided Busway:

- (a) St. Ives to the junction of the Guided Busway with Station Road, Longstanton (including the site of the Park and Ride at St Ives) (**“the St. Ives Section”**);
- (b) From the junction of the Guided Busway with Station Road, Longstanton to Histon Road and Milton Road (including the site of the Park and Ride at Longstanton) (**“the Central Section”**);
- (c) Cambridge Railway Station to the site of the Park and Ride at Trumpington (including the site of the Park and Ride at Trumpington) (**“the Trumpington Section”**); and
- (d) From the junction of the Trumpington Section to Addenbrooke’s Hospital (**“the Addenbrooke’s Section”**);

**“the Services”** means services for hire or reward for the carriage of members of the public by the Specified Buses involving use of the whole or any part of the Completed Guided Busway but for the avoidance of doubt, does not include any services on public service vehicles adapted for use on the Completed Guided Busway and provided by or on behalf of bodies designated under the Section 19 Minibus (Designated Bodies) Order 1987 (S.I. 1987/1229) or such other bodies as the Council may from time to time designate;

**“Specified Buses”** means public service vehicles within the meaning of section 1 of the Public Passenger Vehicles Act 1981 meeting the requirements of the QBP which the Bus Operator is entitled to use for the provision of Services on the Completed Guided Busway;

**“Suspension Notice”** means a notice served by the Council on a Bus Operator under clause 14.3;

**“Tendered Services”** means any Services the provision of which the Council secures under section 63 of the Transport Act 1985;

**“the Ticketing Scheme”** means any multi-operator ticketing scheme from time to time made by the Council under the provisions of the Act or, in absence of such a scheme, as otherwise agreed between the Council and the Bus Operators in compliance with the Block Exemption which applies to the Services;

**“Value Added Tax”** means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and “VAT” shall be construed accordingly;

**“Withdrawal”** means the termination of a Bus Operator’s rights and obligations under this Agreement pursuant to clause 15;

**“Withdrawal Notice”** means a notice issued pursuant to clause 15.1; and

**“the Withdrawal Term”** means, in respect of any particular Bus Operator, the latest expiring Initial Term in respect of any Section on which that Bus Operator operates Services.

1.2 In this Agreement, unless the context otherwise requires:

1.2.1 the singular includes the plural and vice versa;

1.2.2 any one gender includes the other;

1.2.3 all headings are for convenience of reference only and shall not be used in the construction of this Agreement;

1.2.4 reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;

1.2.5 reference to an agreement, instrument or other document is to that agreement, instrument or other document as amended, novated, supplemented or replaced from time to time;

1.2.6 reference to a party is to a party to this Agreement, its successors and permitted assigns;

1.2.7 reference to a recital, clause or Schedule is to a recital, clause or schedule of or to this Agreement; reference in a schedule to a Part of or an Appendix to a schedule is to a part of or an appendix to the schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part; reference to a Part of an appendix is to a part of the appendix in which the reference appears; and reference in a schedule to a Table is a reference to the table included in or annexed to that schedule;

1.2.8 where a word or expression is defined, cognate words and expressions shall be construed accordingly; and

1.2.9 references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not.

## **2 COMMENCEMENT AND EXPIRY**

2.1 The provisions of this Agreement take effect in relation to each Bus Operator from the Commencement Date in respect of that Bus Operator and in relation to the Council as from the date of signature.



- 2.2 Except as otherwise provided in this Agreement, this Agreement and, for the avoidance of doubt its Schedules, shall continue in force in respect of each Section until 2359 hours on the Expiry Date in respect of that Section and at 2359 hours on the latest Expiry Date shall terminate altogether.
- 2.3 This Agreement may terminate in accordance with clause 7.3.

### **3 GENERAL DUTIES**

- 3.1 Without prejudice to all other obligations of the parties under this Agreement, each of the parties agree that in their dealings for the purpose of, and in the course of performance of their obligations under this Agreement (including when conducting any discussions or negotiations arising out of the application of any provisions of this Agreement or exercising any discretion under them), they will act in a timely manner and in good faith.
- 3.2 All parties agree to comply with the requirements of the Operations Handbook at all times.

### **4 LICENCE TO USE**

- 4.1 In relation to each Bus Operator, in consideration for the payment of the Access Charges by that Bus Operator in accordance with clause 8 and subject to compliance by that Bus Operator with the requirements of the Operations Handbook and this Agreement, the Council grants to that Bus Operator a non-transferable and non-assignable licence to enter on and use the Completed Guided Busway.
- 4.2 References in this Agreement to a Licence to Use the Completed Guided Busway shall, except where the context otherwise requires, be construed to mean only a licence:
- 4.2.1 to use the Completed Guided Busway for the provision of the Services using Specified Buses only;
  - 4.2.2 for the Bus Operators and their agents to enter upon the Completed Guided Busway or associated land with or without vehicles; and
  - 4.2.3 for the Bus Operators and their agents to bring things onto the Completed Guided Busway or associated land and keep them there,
- and such permission is subject, in each case and in all respects to the Operations Handbook.
- 4.3 In relation to the permissions specified in clauses 4.2.2 and 4.2.3:
- 4.3.1 each Bus Operator shall, and shall procure that its agents shall, first obtain the consent of the Council, the Council's agents or the Busway Operator (as relevant) which consent shall not be unreasonably withheld or delayed;

- 4.3.2 each Bus Operator shall, and shall procure that its agents shall, remove any vehicle or other thing so brought onto any part of the Guided Busway, Completed Guided Busway or associated land by that Bus Operator when directed to do so by the Council, the Council's agents or the Busway Operator (as relevant); and
- 4.3.3 each Bus Operator shall, and shall procure that its agents shall, comply with such restrictions or instructions as the Council, the Council's agents or the Busway Operator (as relevant) shall reasonably specify.
- 4.4 Any Licence to Use granted to any particular Bus Operator:
  - 4.4.1 may be immediately revoked by the Council upon the issue of a Suspension Notice against that Bus Operator, if the Suspension Notice should so specify; and
  - 4.4.2 will be automatically revoked as from the date specified in a Removal Notice or a Withdrawal Notice served in relation that Bus Operator.

## **5 OPERATION AND MAINTENANCE OF BUSES AND GUIDED BUSWAY**

- 5.1 Without prejudice to the other provisions of this Agreement:
  - 5.1.1 each Bus Operator shall maintain and operate its Specified Buses used on the Completed Guided Busway in accordance with:
    - 5.1.1.1 clause 3;
    - 5.1.1.2 the provisions of the QBP; and
    - 5.1.1.3 the Operations Handbook,in order to permit the provision of the Services on the Completed Guided Busway in accordance with the Licence to Use; and
  - 5.1.2 subject to clause 7.1, the Council shall assure the maintenance and the operation of the Completed Guided Busway in accordance with:
    - 5.1.2.1 clause 3; and
    - 5.1.2.2 the provisions of the QBP; and
    - 5.1.2.3 the Operations Handbook,in order to permit the provision of the Services on the Completed Guided Busway using the Specified Buses in accordance with the Licence to Use.
- 5.2 Without prejudice to any additional requirements that apply by virtue of this Agreement or the QBP, or the Operations Handbook, each Bus Operator shall ensure that all Specified Buses at any time being used on the Completed Guided Busway and

all drivers operating them comply in all respects with any legislative or regulatory requirement that would apply to the Specified Buses and to the drivers if the drivers were operating the Specified Buses on a road, in particular, each Bus Operator shall ensure that it has in place insurance under the Employers' Liability (Compulsory Insurance) Regulations 1998 (or any replacement thereof) and comprehensive motor vehicle insurance and shall ensure that those insurances cover any incident on the Completed Guided Busway in the same manner and to the same extent as they would cover any similar incident on a road.

5.3 In relation to the Safety Obligations, each Bus Operator shall comply with any request by the Council, the Council's agents or the Busway Operator (as relevant) in relation to any aspect of that Bus Operator's operations which affects or is likely to affect safety on the Guided Busway or Completed Guided Busway.

5.4 In order that the Specified Buses under the control of the Bus Operators be promptly:

5.4.1 accepted off the Completed Guided Busway; and/or

5.4.2 presented onto the Completed Guided Busway,

the parties shall ensure that in respect of each Nominated Location they will facilitate (to the extent they are able) the prompt presentation of such Specified Buses onto and off the Completed Guided Busway.

5.5 Unless otherwise agreed, in order that the Specified Buses proceed along the Completed Guided Busway as expeditiously as possible, and in accordance with the particulars of the Services as registered with the Traffic Commissioner, the Bus Operators will not offer for sale any tickets (either tickets provided pursuant to the Ticketing Scheme or the Bus Operators' own tickets) from the Specified Buses in so far as the transaction of any such sale involves drivers of the Specified Buses.

5.6 Unless otherwise agreed, in consideration of the matters set out in clause 5.5, the Council will procure:

5.6.1 the provision of ticket vending machines at stops along the Completed Guided Busway and those machines shall offer:

(a) unless the Council and Bus Operators agree otherwise, multi-operator tickets provided for by the Ticketing Scheme, once it is reasonably practicable to do so without incurring excessive expenditure in accordance with the Ticketing Scheme; and

(b) a minimum selection of the Bus Operators' own tickets, such selection to be agreed between each Bus Operator and the Council and to take into account the need (1) not to incur excessive expenditure on the ticket vending machines and (2) not to confuse passengers; and

5.6.2 the collection of funds actually received by those ticket vending machines and distribution of those funds twice a week or as otherwise agreed

directly to each Bus Operator in so far as those funds relate to the sale at the machines of that Bus Operator's own tickets.

- 5.7 The Bus Operators shall use only Specified Buses to provide the entirety of the Services as registered with the Traffic Commissioner, including those parts of the Services not on the Completed Guided Busway.
- 5.8 The Council may procure the provision of services for the operation and maintenance of the Completed Guided Busway and the compliance with its obligations under clause 5.1.2 from a third party, to be known as the Busway Operator.

## **6 BUSWAY OPERATOR**

- 6.1 This clause 6 applies at any time when the Council wishes to procure the provision of services for the operation and maintenance of the Completed Guided Busway pursuant to clause 5.8.
- 6.2 The Council may appoint such person as, acting reasonably, it thinks appropriate in accordance with any applicable public procurement requirements, to be the Busway Operator.
- 6.3 Subject to clause 6.4, prior to the appointment of a Busway Operator, the Council shall provide the Bus Operators with a copy of the terms of reference upon which basis it proposes to let a tender for the role of Busway Operator and shall take into account any comments that the Bus Operators may have on those terms of reference.
- 6.4 Nothing in this clause 6 shall in any way prejudice or otherwise affect the ability of the Council to enter into a contract for the role of the Busway Operator in accordance with any applicable legal requirements in relation to public procurement or the Council's own internal procurement procedures.
- 6.5 At any time when the Council is not the Busway Operator:
  - 6.5.1 if a Bus Operator reasonably believes that the Busway Operator is not performing to an adequate standard so as to meet the Council's obligations under clause 5.1.2, then that Bus Operator may serve a notice on the Council to that effect;
  - 6.5.2 any notice under clause 6.5.1 shall be copied by the Bus Operator to all other Bus Operators;
  - 6.5.3 upon receipt of a notice under clause 6.5.1, the Council will take all such action as it (acting reasonably) deems necessary to improve the standard of performance of the Busway Operator, including taking any appropriate enforcement action under any contract between the Council and the Busway Operator and, if necessary, procuring the provision of services for the operation and maintenance of the Completed Guided Busway from a different third party or assuring the provision of such services by alternative means; and

- 6.5.4 the Council will report back to all the Bus Operators within 28 days of receipt of the notice in clause 6.5.1 and at such periods thereafter as it deems appropriate as to what action it has taken under clause 6.5.3.

## **7 AVAILABILITY OF THE GUIDED BUSWAY AND FORCE MAJEURE EVENTS**

- 7.1 There is no obligation on the Council to assure the availability of the Completed Guided Busway for the operation of the Services at any particular time.
- 7.2 If the whole or a part of the Completed Guided Busway is unavailable to a Bus Operator so as materially to prevent the provision of a Service on the Completed Guided Busway, there will be no obligation on the Bus Operators to pay any Access Charges in relation to that Service.
- 7.3 If the actions of any third party render the Completed Guided Busway unavailable for the purposes of clause 7.2, the Council will take reasonable measures to recover from that third party compensation or damages, provided it is economic to do so and subject to the requirements under any insurance applicable to the Completed Guided Busway. The Council shall apply any compensation or damages recovered in the following order:
- (a) to meet the actual costs of recovering such compensation or damages;
  - (b) to cover the costs of remedying any damage caused to the Completed Guided Busway or to any other Sections; and
  - (c) to pay to the Busway Operator to contribute to the amount of the Access Charges forgone by reason of the unavailability of the Completed Guided Busway.
- 7.4 If any Force Majeure Event should mean that the Completed Guided Busway is unavailable for the operation of Services for the period of 2 years or more, this Agreement shall terminate.

## **8 ACCESS CHARGES**

- 8.1 Subject to clause 8.2, SCHEDULE 2 shall have effect.
- 8.2 The Council will consider whether it is appropriate for the operator of any Tendered Service to pay all or any Access Charges in relation to any particular Tendered Services having regard to any increased costs to the operation of the Guided Busway that may be generated by that Tendered Service, but, for the avoidance of doubt and notwithstanding anything to the contrary in this Agreement, the Council will have an absolute discretion as to whether the operator of any Tendered Services adhering to this Agreement pursuant to clause 18 shall be under an obligation to pay all or any Access Charges in respect of those Tendered Services.

## **9 QBP**

- 9.1 Each of the Bus Operators agrees that for any period after the Effective Date during which there is no valid QBP in place, it will conduct itself and carry out the terms of this Agreement in accordance with the terms of the last valid QBP or any other similar document as is agreed between the Council and the Bus Operators.
- 9.2 To the extent that it may be necessary, every party hereby gives its consent for the purposes of section 120(2) of the Act to allow for any alterations to the QBP which is the result of any provision of this Agreement or of any act of the Council pursuant to the provisions of this Agreement.
- 9.3 Each of the Bus Operators confirms that prior to commencing the operation of the Services it will give a written undertaking in respect of the Services it is to operate to the Traffic Commissioner in accordance with section 118(4) of the Act.

## **10 TICKETING SCHEME**

- 10.1 Each of the Bus Operators agrees that for any period after the Effective Date during which there is no valid Ticketing Scheme in place, or for any period in relation to which the Ticketing Scheme is not effective, it will conduct itself and carry out the terms of this Agreement in accordance with the terms of the last valid Ticketing Scheme or any other similar document as is agreed between the Council and the Bus Operators.

## **11 IP RIGHTS**

On entering into this Agreement the Council and each Bus Operator individually shall enter into a licence agreement substantially in the form set out at Schedule 4 of this Agreement.

## **12 VANDALISM ETC.**

Without prejudice to the other provisions of this Agreement, the Bus Operators shall use all reasonable endeavours (including participating in such consultation and joint action as is reasonable in all the circumstances) to assist the Council and its agents or the Busway Operator (if any) to reduce:

- (a) trespass;
- (b) vandalism;
- (c) any other similar act of a third party; and
- (d) intrusions on to the Completed Guided Busway by animals,

in each case as may affect either the provision of the Services or the Completed Guided Busway.

### **13 CONSENT TO THE USE OF INFORMATION**

Each of the Bus Operators consents to the use by the Council, its agents or the Busway Operator of any data or information supplied by the Bus Operator to any of the Council, its agents or the Busway Operator in the course of complying with its Safety Obligations, for the purpose of monitoring the Bus Operator's performance of its obligations under this Agreement.

### **14 SUSPENSION AND REMOVAL OF A BUS OPERATOR**

#### **14.1 The following are Bus Operator Events of Default:**

- 14.1.1 a Bus Operator ceases to be the beneficiary of an Operating Licence;
- 14.1.2 an Insolvency Event occurs in relation to a Bus Operator;
- 14.1.3 to the extent that a Bus Operator is a party to an Inception Agreement, any material breach by that Bus Operator of any term of that Inception Agreement;
- 14.1.4 there occurs or is likely to occur:
  - 14.1.4.1 any breach by a Bus Operator of this Agreement, the Safety Obligations or any material requirement of the Operations Handbook; or
  - 14.1.4.2 any event or circumstance which is reasonably likely to result in any such breach,which, by itself or taken together with any other such breach, event or circumstance, the Council reasonably considers constitutes or will constitute a threat to the safe operation of any part of the Completed Guided Busway;
- 14.1.5 any Access Charges or other amount due by a Bus Operator to the Council under this Agreement remain unpaid for more than 21 days after their due date;
- 14.1.6 any act or omission on the part of a Bus Operator which, by itself or taken together with any other such act or omission, results, or is likely to result, in material disruption to the provision of Services by any other Bus Operator;
- 14.1.7 a failure by a Bus Operator to comply with any provision of the QBP or with the provisions of clause 9.1; or

- 14.1.8 a failure by a Bus Operator to participate in the Ticketing Scheme or with the provisions of clause 10.
- 14.2 A Bus Operator shall notify the Council promptly on becoming aware of the occurrence of a Bus Operator Event of Default in relation to itself.
- 14.3 The Council may serve a Suspension Notice on the defaulting Bus Operator (the “**Suspended Bus Operator**”) where a Bus Operator Event of Default has occurred and is continuing.
- 14.4 A Suspension Notice shall specify:
  - 14.4.1 the nature of the relevant Bus Operator Event of Default;
  - 14.4.2 the date and time at which suspension is to take effect;
  - 14.4.3 reasonable restrictions on the Licence to Use imposed while the Suspension Notice is in force;
  - 14.4.4 where the Council considers that the Bus Operator Event of Default is capable of remedy, a reasonable period for the defaulting Bus Operator to remedy it (where the Bus Operator Event of Default which has occurred is a failure to pay Access Charges or other amounts due, 7 days shall be a reasonable period).
- 14.5 Where the Council has served a Suspension Notice:
  - 14.5.1 the Suspended Bus Operator shall comply with any restrictions imposed on it by the Suspension Notice;
  - 14.5.2 the Suspension Notice shall remain in full force and effect in accordance with its terms until it has been revoked either in whole or in part by notice from the Council to the Suspended Bus Operator under paragraph 14.8; and
  - 14.5.3 service of the Suspension Notice shall not affect the Suspended Bus Operator’s continuing obligation to pay the Access Charges.
- 14.6 A Suspension Notice served under paragraph 14.3 in respect of any of the Bus Operator Events of Default specified in paragraphs 14.1.4 to 14.1.7 (inclusive) shall, so far as reasonably practicable, apply only to the:
  - 14.6.1 Specified Buses;
  - 14.6.2 Services; and
  - 14.6.3 categories of Specified Buses or Services,
 or parts or part of them, to which the relevant Bus Operator Event of Default relates.
- 14.7 A Suspended Bus Operator served with a Suspension Notice which specifies a Bus Operator Event of Default which is capable of remedy shall:



- 14.7.1 with all reasonable diligence and within the period specified in clause 14.4.4 remedy the Bus Operator Event of Default; and
  - 14.7.2 keep the Council fully informed of the progress which is being made in remedying the Bus Operator Event of Default.
- 14.8 Where a Suspended Bus Operator has complied with its obligations under clause 14.7, whether in whole or in part, and it is reasonable for the suspension effected by the Suspension Notice to be revoked, whether in whole or in part, the Council shall revoke the suspension to that extent. Such revocation shall be effected as soon as practicable after the remedy in question by a notice from the Council to the Bus Operator specifying the extent of the revocation and the date on which it is to have effect.
- 14.9 The Council may serve a Removal Notice on a Bus Operator:
- 14.9.1 where a Suspended Bus Operator fails to comply with any material restriction in the Suspension Notice;
  - 14.9.2 where a Suspended Bus Operator fails to comply with its obligations under clause 14.7; or
  - 14.9.3 where a Bus Operator Event of Default specified in a Suspension Notice served by the Council is not capable of being remedied and 56 days have elapsed from the service of that Suspension Notice.
- 14.10 A Removal Notice shall specify:
- 14.10.1 the nature of the relevant Bus Operator Event of Default; and
  - 14.10.2 a date and time, which shall be reasonable in the circumstances, at which Removal is to take effect.
- 14.11 Where the Council has served a Removal Notice on a Bus Operator (the “**Removed Bus Operator**”):
- 14.11.1 the service of the Removal Notice shall not affect the Removed Bus Operator’s continuing obligations under this Agreement up to the date of Removal as specified in the Removal Notice;
  - 14.11.2 the Council may withdraw the Removal Notice by notice to the Removed Bus Operator, upon being reasonably satisfied that the relevant Bus Operator Event of Default has been remedied.
- 14.12 On the date and time specified in the Removal Notice, the Removed Bus Operator will immediately:
- 14.12.1 subject to this clause 14.12 and clauses 16 and 20 to 32, cease to have any rights or obligations under this Agreement;

- 14.12.2 pay any Access Charges due in respect of the availability of the Guided Busway up until the date specified in the Removal Notice;
  - 14.12.3 cease to have a Licence to Use and accordingly will:
    - (a) cease to operate or attempt to operate any Services; and
    - (b) upon such terms as may be instructed by the Council, remove any thing brought by it onto the Guided Busway pursuant to clause 4.2.3;
  - 14.12.4 cease to hold itself out as an operator of Services, as a participant in the Ticketing Scheme or otherwise as being in any way connected with the Guided Busway or Completed Guided Busway;
  - 14.12.5 withdraw from participation in the Ticketing Scheme and make any final or rectifying payments due in accordance with the terms of the Ticketing Scheme; and
  - 14.12.6 cease to have any IP Rights and will cease to use or permit to remain on display any article whatsoever which is or contains any matter which is the subject of any of the IP Rights and will return any such articles to the Council or otherwise comply with any equivalent provision of the Ticketing Scheme.
- 14.13 The service of a Removal Notice under this clause 14 shall not affect any obligation of the Removed Bus Operator under any Inception Agreement entered into by that Bus Operator.
- 14.14 On the date specified in the Removal Notice, the Council will notify all other Bus Operators of the Removal of the Removed Bus Operator.

## 15 WITHDRAWAL BY THE BUS OPERATOR

- 15.1 If:
- 15.1.1 prior to the end of the Withdrawal Term there is a persistent and/or continuing failure by the Council to meet its obligations under clause 5.1.2 of this Agreement; or
  - 15.1.2 at any time after the end of the Withdrawal Term a Bus Operator so wishes,

a Bus Operator may serve a notice on the Council and the Busway Operator to the effect that that Bus Operator is to withdraw from this Agreement (a “**Withdrawal Notice**”) specifying a date and time on which such withdrawal is to take effect (which shall not be earlier than 6 months from the date on which the Withdrawal Notice is served on the Council).

- 15.2 Upon receipt of a Withdrawal Notice, the Busway Operator shall send a copy of that Withdrawal Notice to all other Bus Operators.
- 15.3 Where a Bus Operator (a “**Withdrawing Bus Operator**”) has served a Withdrawal Notice on the Council and Busway Operator, the service of the Withdrawal Notice shall not affect the parties’ continuing obligations under this Agreement up to the date of Withdrawal specified in the Withdrawal Notice.
- 15.4 On the date and time specified in the Withdrawal Notice, the Withdrawing Bus Operator will immediately:
- 15.4.1 subject to this clause 15.4 and clauses 16 and 20 to 32, cease to have any rights or obligations under this Agreement;
  - 15.4.2 pay to the Busway Operator any Access Charges due in respect of the availability of the Guided Busway up until the date specified in the Withdrawal Notice;
  - 15.4.3 cease to have a Licence to Use and accordingly will:
    - (a) cease to operate or attempt to operate any Services; and
    - (b) upon such terms as may be instructed by the Council, remove any thing brought by it onto the Guided Busway pursuant to clause 4.2.3;
  - 15.4.4 cease to hold itself out as an operator of Services, as a participant in the Ticketing Scheme or otherwise as being in any way connected with the Guided Busway or Completed Guided Busway; and
  - 15.4.5 withdraw from participation in the Ticketing Scheme and make any final or rectifying payments due in accordance with the terms of the Ticketing Scheme; and
  - 15.4.6 cease to have any IP Rights and will cease to use or permit to remain on display any article whatsoever which is or contains any matter which is the subject of any of the IP Rights and will return any such articles to the Council or otherwise comply with any equivalent provision of the Ticketing Scheme.
- 15.5 Where a Bus Operator validly withdraws from this Agreement in accordance with clause 15.1.1, that Bus Operator shall not be in breach of any Inception Agreement to which it is a party by virtue of any inability to perform its obligations under that Inception Agreement that arises out of the Bus Operator’s Withdrawal.

## **16 INDEMNITY AND LIMITS OF LIABILITY**

- 16.1 Each Bus Operator shall indemnify the Council and each other Bus Operator against all Relevant Losses resulting from:
- 16.1.1 its own Bus Operator Event of Default;
  - 16.1.2 any Environmental Damage arising directly from the acts or omissions of that Bus Operator or from the proper taking by the Council of any steps to prevent, mitigate or remedy an Environmental Condition which exists as a direct result of the acts or omissions of that Bus Operator;
  - 16.1.3 any damage to the Guided Busway and/or Completed Guided Busway arising directly from that Bus Operator's negligence;
  - 16.1.4 any unavailability of the Completed Guided Busway caused by any defect of that Bus Operator's Specified Buses or any other thing brought onto the Completed Guided Busway by that Bus Operator or its agents pursuant to the Licence to Use; and
  - 16.1.5 any unlawful act or omission of that Bus Operator.
- 16.2 The Council shall indemnify each Bus Operator against all Relevant Losses caused to that Bus Operator resulting from a failure by the Council to comply with its Safety Obligations.
- 16.3 Except as required by law, the Council shall have no liability for any Relevant Losses or for any damage to the Specified Buses or other vehicles or things brought onto the Guided Busway or Completed Guided Busway whether in accordance with the terms of this Agreement or otherwise.
- 16.4 A party wishing to claim under any indemnity provided for in this Agreement:
- 16.4.1 shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
  - 16.4.2 subject to clause 16.4.3, shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
  - 16.4.3 shall not be required to exercise any specific remedy available to it under this Agreement.

## **17 COMPETITION**

- 17.1 In relation to any bus services provided by any Bus Operator which do not include any operation on the Completed Guided Busway, nothing in this Agreement shall:

- 17.1.1 have the object or effect of directly or indirectly:
  - 17.1.1.1 limiting the variety or number of routes on which any Bus Operator provides or may provide those bus services;
  - 17.1.1.2 limiting the freedom of the Bus Operators to set the price or availability of, the fare structure relating to, or the zones or geographical validity applicable for, any ticket entitling the holder to make a journey solely on its own bus services;
  - 17.1.1.3 limiting the frequency or timing of those bus services operated by any Bus Operator; or
  - 17.1.1.4 facilitating an exchange of information between the Bus Operators other than information which is directly related and indispensable to the effective operation of this Agreement; or
- 17.1.2 prevent the Bus Operators from participating in any other ticketing scheme.

## **18 USE OF THE GUIDED BUSWAY AND ADHERENCE**

- 18.1 The Council undertakes not to permit the operation of any Services on the Completed Guided Busway unless the operator of those Services is a party to, or adheres to, this Agreement.
- 18.2 Any Prospective Operator that satisfies the Council that it meets or can meet within a reasonable period of time the requirements of the QBP may become a party to this Agreement by executing a Deed of Adherence and providing a copy of the executed Deed of Adherence to all parties to this Agreement and such Prospective Operator may then operate Services on any Section in respect of which the Initial Term has ended.
- 18.3 At any time, a Prospective Operator that is to provide Tendered Services or New Services that satisfies the Council that it meets or can meet within a reasonable period of time the requirements of the QBP may become a party to this Agreement by executing a Deed of Adherence and providing a copy of the executed Deed of Adherence to all parties to this Agreement.
- 18.4 In respect of the operation of any Tendered Services:
  - 18.4.1 clauses 9 and 10 shall apply only in so far as the respective QBP or Ticketing Scheme applies, or (in the case of clause 9.1) would apply, to those Tendered Services according to their respective terms; and
  - 18.4.2 clause 8 shall apply only in so far as may be agreed between the Council and the Bus Operator providing those Tendered Services,and any applicable Deed of Adherence shall be modified accordingly.

## **19 GOVERNING LAW**

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

## **20 DISPUTE RESOLUTION**

- 20.1 Without prejudice to the Council's absolute right to serve a Suspension Notice, any dispute as to whether or not a Bus Operator has met the requirements of the QBP shall be determined by the Traffic Commissioner in accordance with section 118(4) of the Act.
- 20.2 Subject to clause 26, any dispute as to the payment of any Access Charges or as to the payment or receipt of any moneys under the Ticketing Scheme shall be determined by a chartered accountant who has been qualified at least 5 years appointed by Agreement between the Council and the majority of the Bus Operators within 56 days of the Effective Date or, failing such Agreement by such date, to be appointed by the President for the time being of the Institute of Chartered Accountants.
- 20.3 Subject to clauses 20.1 and 20.2, any dispute arising out of or in connection with this Agreement shall be referred to the London Chamber of Commerce.
- 20.4 Nothing in this Agreement purports to oust the powers of the High Court of England and Wales as set out in section 44 of the Arbitration Act 1996 (which provides amongst other things for the grant by the High Court of England and Wales of urgent interim relief in support of arbitration proceedings).

## **21 CONFIDENTIALITY**

- 21.1 Subject to clause 21.2, all Confidential Information shall:
  - 21.1.1 be held confidential during and after the continuance of this Agreement;
  - 21.1.2 be used only for the purposes contemplated in this Agreement; and
  - 21.1.3 not be divulged in any way to any third party without the prior written approval of the party to whom the Confidential Information belongs.
- 21.2 Each party, and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:
  - 21.2.1 pursuant to the provisions of the FOIA or EIR in accordance with clause 22;
  - 21.2.2 to the Police or Fire Services;
  - 21.2.3 to the Health and Safety Executive or any other relevant government body or agency;

- 21.2.4 to any Affiliate;
- 21.2.5 to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- 21.2.6 to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- 21.2.7 to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- 21.2.8 with the prior written consent of the party providing the Confidential Information only, to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;
- 21.2.9 to the extent that it has become available to the public other than as a result of a breach of confidence; and
- 21.2.10 under the order of any court or tribunal of competent jurisdiction.
- 21.3 Each party shall promptly return to the providing party any Confidential Information requested by the providing party if such request:
  - 21.3.1 is made within two months after the date on which this Agreement lapses or is terminated; and
  - 21.3.2 contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.
- 21.4 If a party has not received a request to return any Confidential Information to the providing party under and within the time limits specified in clause 21.3, it may destroy or retain such Confidential Information.
- 21.5 All Confidential Information shall be and shall remain the property of the party which provided it to the other party.
- 21.6 The provisions of this clause shall continue following termination of this Agreement howsoever caused and without limit in time.

## 22 FREEDOM OF INFORMATION

- 22.1 Each Bus Operator acknowledges that the Council is subject to the requirements of the FOIA and the EIR and shall provide all reasonable assistance to enable the Council to comply with any request received under the FOIA and/or the EIR.
- 22.2 Each Bus Operator shall:
- (a) transfer any Request for Information to the Council as soon as practicable after receipt and in any event within two business days of receiving such Request for Information;
  - (b) provide the Council with a copy of all Information to which the Council is entitled to pursuant to this Agreement in its possession or power within 5 business days (or such other period as the Council may reasonably specify) of the Council requesting that Information in order to assist the Council to respond to a valid Request for Information; and
  - (c) provide all necessary assistance as reasonably requested by the Council (including but not limited to procuring, to the extent that the Bus Operator is able, that any relevant third parties assist the Council in responding to any Request for Information) to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA and/or regulation 5 of the EIR, as the case may be.
- 22.3 The guiding principle of the Council will be that all Information should be disclosed except where the Council can demonstrate good reason not to disclose. If the Bus Operator wishes to reserve any Information from disclosure under the FOIA it must:
- (a) put forward any Information or classes of Information which it wishes to have reserved (the “**Reserved Information**”) and the grounds for reserving such Information from disclosure; and
  - (b) mark each piece of Information provided to the Council which it wishes to be Reserved Information as “Confidential” and/or “Commercial Interest”, as the case may be.
- 22.4 The Council will inform the Bus Operator of any intended disclosures of Reserved Information at least 5 days prior to the intended date of disclosure. The Council will take into consideration any verbal and/or written representations made by the Bus Operator to the Council in relation to such disclosures.
- 22.5 Notwithstanding clause 22.4, the Council shall be responsible for determining at its absolute discretion whether the Reserved Information and/or any other Information:
- (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
  - (b) is to be disclosed in response to a Request for Information.



- 22.6 In no event shall any Bus Operator respond directly to a Request for Information relating to this Agreement or the Completed Guided Busway unless expressly authorised to do so by the Council in writing.
- 22.7 Each Bus Operator acknowledges that the Council may, acting in accordance with the Ministry of Justice's Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA or the EIR to disclose Information, irrespective of any consultation with the Bus Operator and/or receipt of representations from the Bus Operator pursuant to clause 22.4, and having taken the Bus Operator's views into account, or not, as the case may be.
- 22.8 Each Bus Operator shall ensure that all Information to which the Council is entitled pursuant to this Agreement is retained for disclosure and shall provide the Council with such Information as requested from time to time.
- 22.9 Each Bus Operator acknowledges that any lists or schedules provided by it outlining Reserved Information are of indicative value only and that the Reserved Information may nevertheless be disclosed in accordance with clause 22.7.
- 22.10 The Council will not enter into contractual terms which purport to restrict the disclosure of Information held by the Council and relating to this Agreement and will seek to reject confidentiality clauses relating to the terms, value and performance wherever in the reasonable opinion of the Council they would be likely to conflict with the provisions of this clause 22.

## **23 PUBLICITY**

Other than as required by law no public announcement or press release concerning this Agreement or any Bus Operator's involvement with the Guided Busway or Completed Guided Busway shall be made by any Bus Operator without the prior written approval of the Council, such approval not to be unreasonably withheld.

## **24 ASSIGNMENT**

- 24.1 No Bus Operator may sub-contract, assign, transfer, novate or create any encumbrance or other security interest over the whole or any part of its rights and obligations under this Agreement except to the extent agreed by the Council.
- 24.2 The Council may exercise its powers under article 47 of the Order.
- 24.3 The Council may assign to the Busway Operator any of the Council's functions under this Agreement other than under clauses 5.1.2, 5.8, 8.2, 16 and 18.1

## **25 PAYMENTS**

- 25.1 All amounts due or payable by any party under this Agreement shall be paid free and clear of any deduction, withholding or set off, except:
- 25.1.1 as may be required by law; or
- 25.1.2 as expressly provided in this Agreement.
- 25.2 All invoices or statements of amounts payable issued under any provision of this Agreement shall be delivered by hand at, or sent by prepaid first class post or by facsimile transmission (with confirmation copy by prepaid first class post) to, the address for service for the recipient specified in clause 31 or as otherwise specified in writing to the Busway Operator by the Bus Operator, and shall be deemed to have been received by the addressee within the time periods set out in clause 31.2.
- 25.3 Each invoice and statement of amounts payable shall be due within 14 days of the date of its receipt.
- 25.4 All payments shall be made by direct debit mandate or standing order mandate, CHAPS transfer, BACS transfer or other electronic or telegraphic transfer to a London clearing bank or such other financial institution as may be approved by the party entitled to the payment, such approval not to be unreasonably withheld or delayed.
- 25.5 Where a credit note has been issued in accordance with any provision of this Agreement, the party in receipt of the credit note shall be entitled to apply the amount specified in it against any amount payable by it under this Agreement or any future invoice or statement of amounts payable it may receive under this Agreement.

## **26 DISPUTED AMOUNTS**

Within 14 days of receipt of an invoice or statement of amounts payable issued under any provision of this Agreement, the recipient shall notify the issuer of any aspects of the invoice or statement which it disputes, giving reasons for any dispute. Except to the extent that disputes are so notified, the recipient shall be deemed to have agreed the contents of the invoice or statement.

## **27 INTEREST**

Without prejudice to any other rights or remedies which one party may have in respect of the failure of any other party to pay any amount on the due date, amounts payable under this Agreement and not paid by the due date shall carry interest (to accrue daily and to be compounded monthly) at the Default Interest Rate from the due date until the date of actual payment (after judgment as well as before), except to the extent that late payment arises from any failure by the invoicing party to comply with clause 25.2.

## **28 VAT**

- 28.1 Where any taxable supply for VAT purposes is made under or in connection with this Agreement by one party to any other the payer shall, in addition to any payment required for that supply, pay such VAT as is chargeable in respect of it.
- 28.2 Where under this Agreement one party is to reimburse or indemnify any other in respect of any payment made or cost incurred by the other, the first party shall also reimburse any VAT paid by the other which forms part of its payment made or cost incurred to the extent such VAT is not available for credit for the other party (or for any person with whom the indemnified party is treated as a member of a group for VAT purposes) under sections 25 and 26 of the Value Added Tax Act 1994.
- 28.3 Where under this Agreement any rebate or repayment of any amount is payable by one party to the other, and the first party is entitled as a matter of law or of Customs & Excise practice to issue a valid VAT credit note, such rebate or repayment shall be paid together with an amount representing the VAT paid on that part of the consideration in respect of which the rebate or repayment is made, and the first party shall issue an appropriate VAT credit note to the other party.

## **29 NON WAIVER**

- 29.1 No waiver by any party of any failure by any other party to perform any obligation under this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character.
- 29.2 The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

## **30 VARIATIONS**

- 30.1 No amendment of any provision of this Agreement shall be effective unless such amendment is in writing and signed by, or on behalf of, the parties.
- 30.2 The Council shall produce and send to the Bus Operators a conformed copy of this Agreement within 28 days of the making of any amendment or modification to it.

## **31 NOTICES**

- 31.1 Any notice to be given under this Agreement:
- 31.1.1 shall be in writing; and

- 31.1.2 shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice and delivered by hand at, or by sending it by prepaid first class post to the relevant address set out in Schedule 1 in respect of the Bus Operators or as set out in below in the case of the Council:

Cambridgeshire Guided Busway  
RES 1504  
Shire Hall  
Castle Street  
CB3 0AP.

- 31.2 A notice shall be deemed to have been given and received:

- 31.2.1 if sent by hand or recorded delivery, at the time of delivery; and
- 31.2.2 if sent by prepaid first class post from and to any place within the United Kingdom, three business days after posting unless otherwise proven.

## **32 SURVIVAL**

Those provisions of this Agreement which by their nature or implication are required to survive expiry or termination of this Agreement (including the provisions of clauses 13, 16, 19 to 23, 25 to 29, 31 and this clause 32), shall so survive and continue in full force and effect, together with any other provisions of this Agreement necessary to give effect to such provisions.

## **33 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

No person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

## **34 GENERAL**

- 34.1 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.
- 34.2 The rights and obligations of any Bus Operator under this Agreement are several and no Bus Operator shall bear any liability under this Agreement in respect of any act or omission of another Bus Operator.
- 34.3 Each Bus Operator shall from time to time upon the request of the Council, execute any additional documents and do any other acts or things which may reasonably be required to implement the provisions of this Agreement.

- 34.4 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction or other competent regulatory authority, such provision shall be severed and the remainder of the provisions this Agreement shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity, illegality or unenforceability so fundamental as to prevent or prejudice the accomplishment of the purpose of this Agreement or there arising a reasonable likelihood of such a holding, the Council and the Bus Operator shall immediately commence good faith negotiations to remedy such invalidity.
- 34.5 Nothing in this Agreement shall constitute or be deemed to constitute a partnership, agency or joint venture between the parties hereto or constitute or be deemed to constitute either party the agent of the other for any purpose whatsoever and neither party shall have any authority or power to bind the other or to contract in the name of or create a liability against the other.
- 34.6 Each party acknowledges that in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation of warranty or other provision except as expressly provided herein.
- 34.7 The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights or remedies provided by the general law, or by any other contract or document.
- 34.8 This Agreement, any relevant Inception Agreements and any documents referred to in this Agreement constitute the whole and only Agreement between the parties with respect to their subject matter and supersede and extinguish any prior drafts, Agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating to their subject matter, provided that nothing in this clause shall limit a party's liability for fraudulent misrepresentation.

**IN WITNESS** whereof the duly authorised representatives of the Council and each Bus Operator have executed this Agreement on the day first above written.

Signed by .....

Print name.....

Duly authorised for and on behalf of

**CAMBRIDGESHIRE COUNTY COUNCIL**

Signed by .....

Print name.....

Duly authorised for and on behalf of

**CAMBUS LIMITED**

Signed by .....

Print name.....

Duly authorised for and on behalf of

**WHIPPET COACHES LIMITED**

## **SCHEDULE 1 – BUS OPERATORS**

- 1     **CAMBUS LIMITED** a company limited by shares and registered in England under company number 01822941, whose registered office is at Daw Bank, Stockport, Cheshire, SK3 0DU.
  
- 2     **WHIPPET COACHES LIMITED** a company limited by shares and registered in England under company number 00520428, whose registered office is at 2 Rowles Way, Buckingway Business Park, Swavesey, Cambridge, CB24 4UG.



REDACTED





REDACTED



REDACTED



REDACTED



REDACTED

### SCHEDULE 3- DEED OF ADHERENCE

**THIS DEED OF ADHERENCE** is made the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_

by

of

(hereinafter called the “**Covenantor**”).

**SUPPLEMENTAL** to an agreement dated the            day of            20    made between (1) Cambridgeshire County Council and (2) the persons named as Bus Operators in that agreement and others (the “**Agreement**”)

**WITNESSES** as follows:

- 1 In this Deed words and expressions defined in the Agreement shall have the same  
meaning herein.
- 2 The Covenantor becomes a Bus Operator for the purposes of the Agreement from the  
date of execution of this Deed.
- 3 The Covenantor hereby confirms that it has been supplied with a copy of the  
Agreement and hereby covenants with the parties to the Agreement to observe,  
perform and be bound by all the terms of the Agreement which are capable of  
applying to the Covenantor to the intent and effect that the Covenantor shall be  
deemed with effect from the date of this Deed to be a party to the Agreement.
- 4 For the purpose of section 1(2) of the Contracts (Rights of the Third Parties) Act 1999  
(the “1999 Act”) the parties to the Agreement state that they do not intend any term of  
this Deed to be enforced by any third parties and the parties agree that any third party  
right which exists or is available independently of the 1999 Act is preserved.
- 5 This Deed shall be governed by and construed in accordance with the laws of  
England.

**EXECUTED** as a deed this day and year first before written.

**EXECUTED** as a deed and )

**DELIVERED** by two )

Officers of the Covenantor )

Director: .....

Director/Secretary: .....

## **SCHEDULE 4 – IP LICENCE AGREEMENT**

**DATED**

**2011**

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**(1) CAMBRIDGESHIRE COUNTY COUNCIL**

**and**

**(2) •**

---

**SUB-LICENCE OF COPYRIGHT FOR BUS LIVERY**

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**Bircham Dyson Bell**

Bircham Dyson Bell LLP  
50 Broadway  
London  
SW1H 0BL

**Tel +44 (0)20 7227 7000**

Fax +44 (0)20 7222 3480  
DX 2317 Victoria  
[www.bdb-law.co.uk](http://www.bdb-law.co.uk)



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## SUB-LICENCE OF COPYRIGHT IN BUS LIVERY

### Parties:

- 6      **CAMBRIDGESHIRE COUNTY COUNCIL** of Shire Hall, Castle Hill, Cambridge, CB2 0AP (the **Council**); and
- 7      • (the **Bus Operator**).

### Recitals:

- (A)    The Council commissioned a design agency to develop the logo under which the Guided Busway (as hereinafter defined) would operate, to design the Livery for the buses operating on the Guided Busway and to develop the design for the infrastructure used in respect of the Guided Busway.
- (B)    The Council has provided facilities, including the Guided Busway, pursuant to a Quality Bus Partnership Scheme (“**the Scheme**”) made by the Council under Section 114 of the Transport Act 2000 and it is a requirement of that scheme that Bus Operators wishing to use those facilities for the provision of local service, including the Guided Busway, must conform to certain livery specifications.
- (C)    The Bus Operator has entered into an agreement under even date allowing it to access the Guided Busway and to operate local services on the Guided Busway. That Agreement requires compliance with the Scheme. Accordingly, each bus operating on the Guided Busway will be decorated with the Livery (as hereinafter defined) or a similar livery, save that buses not using the Livery will be permitted to use the Guided Busway in accordance with the Scheme.
- (D)    All operators of the buses on the Guided Busway will use the Livery, save that the operator of other buses shall not use the Excluded Marks (as hereinafter defined) and the right to use the Livery shall terminate if an operator ceases to operate buses on the Guided Busway.
- (E)    The copyright in the Livery is owned by the design agency which developed the Livery and they are made available to the Council under a licence agreement dated 24 November 2010.

### Operative provisions:

## 8      **Definitions and Interpretation**

- 8.1    In this Agreement the following words and phrases shall have the following meanings unless the context otherwise requires:

<b>Agreement</b>	means this agreement and the Schedules attached hereto;
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<b>Bio Fuel Mark</b>	means the mark used on the rear of the buses operated by Stagecoach containing the text "this bus runs on 100% bio fuel a renewable energy source" and which includes a pictorial representation of eight leaves;
<b>Bio Fuel Stripe</b>	means the design used on the buses operated by Stagecoach consisting of a green diagonal banner including the text "this bus runs on 100% bio fuel a renewable energy source" which includes a pictorial representation of eight leaves;
<b>Blue Stagecoach Mark</b>	means the blue, orange and red mark including the adjacent text in blue which reads "Stagecoach";
<b>Bus Operator Logo</b>	means the stylised depiction of the Bus Operator's name included in the design of the Livery;
<b>Designer</b>	means The Very Best Impressions Company Limited;
<b>Excluded Marks</b>	means the Bio Fuel Mark, Bio Fuel Stripe, Blue Stagecoach Mark, Flower Power Mark, Flower Power Stripe, and White Stagecoach Mark;
<b>Facilities</b>	means the facilities, including the Guided Busway, provided by the Council pursuant to the Scheme;
<b>Flower Power Mark</b>	means the mark used on the rear of the buses operated by Stagecoach containing the text "flower power this bus runs on 100% bio fuel a renewable energy source" which includes a pictorial representation of thirteen flowers;
<b>Flower Power Stripe</b>	means the design used on the buses operated by Stagecoach green diagonal banner including the text "flower power 100% bio fuel renewable energy" and which includes a pictorial representation of a large number of flowers;
<b>Guided Busway</b>	means a guided busway running between St. Ives to Milton Road, Cambridge and to Kings Hedges Road, Cambridge serving the villages of Swavesey, Longstanton, Oakington and Histon & Impington, including any link to Chesterton Sidings and from Cambridge Railway Station to the Trumpington Park & Ride site and to Addenbrooke's Hospital as authorised to be constructed by the Cambridgeshire Guided Busway Order 2005, S.I. 2005/3523;

<b>Livery</b>	means the Livery design for the buses operated by on the Facilities set out in Schedule 1;
<b>Logo</b>	means the design for the logo for the Guided Busway as set out in Schedule 3;
<b>Route Designation</b>	means the design for the route designation mark for the Guided Busway set out in Schedule 4 and all similar designs;
<b>Services</b>	means local services provided by the Bus Operator in accordance with the Scheme;
<b>Stagecoach</b>	means Cambus Limited, a separate operator of buses using the Facilities;
<b>White Stagecoach Mark</b>	means the blue, orange and red mark including the adjacent text in white which reads "Stagecoach";
<b>Works</b>	means the Livery, the Logo and the Route Designation.

- 8.2 All references to a statutory provision shall be construed as including references to:
- 8.2.1 any statutory modification, consolidation or re-enactment;
  - 8.2.2 all statutory instruments or orders made pursuant to it; and
  - 8.2.3 any statutory provision of which it is a modification, consolidation or re-enactment.
- 8.3 Except where the context otherwise requires:
- 8.3.1 words denoting the singular include the plural and vice versa;
  - 8.3.2 words denoting any gender include all genders; and
  - 8.3.3 words denoting persons include firms and corporations and vice versa.
- 8.4 The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. A reference to this Agreement includes the schedules.
- 8.5 Unless otherwise stated, a reference to a clause, sub-clause or Schedule is a reference to a clause or a sub-clause of, or a Schedule to, this Agreement.
- 8.6 Clause headings are for ease of reference only and do not affect the construction of this Agreement.

## **9 Licence**

- 9.1 In consideration of the fee of £1 (receipt of which the Council hereby acknowledges) the Council hereby grants to the Bus Operator:
- 9.1.1 a non-exclusive sub-licence to reproduce the Livery and any amendments, revisions or new version thereof (supplied by the Council) on the buses it operates on the Facilities in respect of the provision of the Services; and
  - 9.1.2 a non-exclusive licence on the terms set out in this Agreement to use the Logo and the Route Designation in England in respect of the provision of the Services.
- 9.2 The Bus Operator acknowledges that under the terms of the Scheme, the Bus Operator is obliged to use the Works as the livery on the buses using the Facilities. The Parties acknowledge that in certain circumstances specified in the Scheme, but not otherwise, the Bus Operator may use buses on the Facilities the livery of which does not comprise the Works.
- 9.3 The Bus Operator shall not vary the Works in any way without the prior written consent of the Council. For the avoidance of doubt any variation to the Works will need to be approved by the Designer and there may be a delay in any such consent which may be withheld at the discretion of the Council or the Designer.
- 9.4 The Livery has been designed for the styles of bus specified in Schedule 2 which cover the buses which will be operating on the Facilities at the date of this Agreement. Should the Bus Operator wish to operate any buses other than those falling within the specification in Schedule 5 requiring amendments to the design of the Livery then the Council shall arrange for the Livery to be amended to be used on the new style of bus and shall recharge the cost to the Bus Operator.
- 9.5 All use of the Livery, the Logo and the Route Designation by the Bus Operator shall be for the benefit of the Council and the goodwill accrued to the Bus Operator arising from its use of the Logo and the Route Designation and the Livery (but no greater or other goodwill) shall accrue to and is hereby assigned to the Council.
- 9.6 The Bus Operator shall use the Logo and the Route Designation in the form stipulated by the Council from time to time and shall observe any reasonable directions given by the Council in respect of the use of the Logo and the Route Designation by the Bus Operator.
- 9.7 The Bus Operator shall submit all designs of all proposed uses of the Logo and the Route Designation and any use of the Livery other than on the buses to the Council for approval as to the manner and context of the intended use of the Logo and the Route Designation and/or the Livery and shall not make any use of any such designs until they have been approved in writing by the Council, such approval may be withheld at the absolute discretion of the Council.

- 9.8 The use of the Logo and the Route Designation by the Bus Operator shall at all times be in keeping with and seek to maintain their distinctiveness and reputation as determined by the Council and the Bus Operator shall forthwith cease any use not consistent therewith as the Council may reasonable require.
- 9.9 The Bus Operator shall not use:
- 9.9.1 any mark or name confusingly similar to the Logo and the Route Designation in respect of any services which it supplies other than the Services;
  - 9.9.2 any design which is confusingly similar to the Livery;
  - 9.9.3 the Logo and the Route Designation as part of any corporate business or trading name or style of the Bus Operator;
  - 9.9.4 the Excluded Marks.
- 9.10 For the avoidance of doubt the Council has no rights to licence the Bus Operator Logo to the Bus Operator and the Bus Operator Logo does not form part of the rights granted by the Council under this Agreement.

## **10 Moral Rights**

- 10.1 The Designer has asserted its right to be identified as the author of the Works and does not waive its right to prevent any derogatory treatment of the Works.
- 10.2 The Bus Operator is not required to credit the Designer on each bus to which the Livery is applied, but is required to credit the Designer in respect of any publications about the design of the Livery or if questioned in respect of the designer of the Livery.

## **11 Infringements**

- 11.1 The Bus Operator shall as soon as it becomes aware thereof give the Council in writing full particulars of any use or proposed use by any other person, firm, or company of:
- 11.1.1 the copyright in the Works;
  - 11.1.2 the Logo and the Route Designation;
  - 11.1.3 any materials which may infringe the copyright in the Works; or
  - 11.1.4 any design which may infringe the rights held in the Logo and the Route Designation.

- 11.2 The Bus Operator shall not have conduct of any proceedings relating to the copyright in the Works or the infringement of rights in the Logo and the Route Designation. However, the Bus Operator shall provide all assistance to the Council or the Designer in respect of any actions which the Council or the Designer may take in respect of the copyright in the Works or any infringement of the rights in the Logo and the Route Designation. The Bus Operator shall not be required to incur any costs in the provision of assistance under the terms of this Clause 4.2 which the Council has not agreed in writing in advance to refund.

## **12 Warranties and Indemnity**

- 12.1 The Council warrants to the Bus Operator that:

- 12.1.1 the Council is licensed to use the Works;
- 12.1.2 the Council is permitted to grant this sub-licence and has full power to enter into this Agreement and to give the warranties and indemnities contained in this Agreement;
- 12.1.3 it has obtained all necessary rights and waivers in respect of the material contained in the Works to permit the Bus Operator to use the Works for the purposes set out in this Agreement;
- 12.1.4 the Works contain nothing which is obscene blasphemous libellous or otherwise unlawful and the exploitation of all rights in the Works by the Bus Operator will not infringe the copyright of any third party; and
- 12.1.5 the Council will keep the Bus Operator fully indemnified against all losses and all actions claims proceedings costs and damages (including any damages or compensation paid by the Bus Operator on the advice of its legal advisors to compromise or settle such a claim) and all legal costs or other expenses arising out of any breach of any of the above warranties.

- 12.2 The Bus Operator warrants to the Council that it is the owner of the Bus Operator Logo and that it permitted the use of the Bus Operator Logo in the Livery.

## **13 Termination**

- 13.1 This Agreement shall endure for the term of the Access Agreement and shall terminate at the same time as the Access Agreement terminates, however such termination shall occur.
- 13.2 Subject to Clause 13.1, the Council may terminate this Agreement on three months written notice to the Bus Operator, such notice to be served by post or delivery by hand to the registered office of the Bus Operator. Such notice shall be deemed to have been delivered at 9 am the day following posting by first class mail or hand delivery to the Bus Operators registered office.

- 13.3 The circumstances in which the Council may exercise the rights granted by Clause 13.2 above include but are not limited to the termination of the Council's rights to use the Works by the Designer or the rebranding of the Guided Busway.
- 13.4 On termination of this Agreement the Bus Operator shall:
- 13.4.1 have three months to remove the Livery from any buses under its control or ownership;
  - 13.4.2 cease to use the Logo and the Route Designation on the date of termination of the Access Agreement and shall ensure that all route, marketing and other documents including the Logo and the Route Designation shall be returned to the Council or at the written direction of the Council destroyed.

## **14 Severability**

- 14.1 If any provision or term of this Agreement shall become or be declared illegal, invalid or unenforceable for any reason whatsoever such term or provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement provided always that if such deletion substantially affects or alters the commercial basis of this Agreement the parties shall negotiate in good faith to amend and modify the provisions and terms of this Agreement so as to achieve so far as possible the same economic effect without rendering the agreement so amended or modified illegal, invalid or unenforceable.

## **15 Whole Agreement**

- 15.1 Each party acknowledges that this Agreement contains the whole agreement between the parties and that it has not relied upon any oral or written representation made to it by the other.

## **16 Assignment**

- 16.1 The Council may assign this Agreement or any of the rights granted to it under this Agreement at its sole discretion.
- 16.2 The Bus Operator may assign this Agreement with the prior written consent of the Council, such consent may be withheld at the Council's sole discretion.

## **17 Waiver**

- 17.1 If either party fails to exercise or delays in exercising its rights or any one of them accidentally or intentionally this does not constitute waiver of their rights and it will not prevent that party from exercising any right or remedy whether contained in this Agreement or any other document which confers rights upon it.



## **18 Amendment**

- 18.1 No amendment or addition shall be made to this Agreement unless made in writing and signed on behalf of both parties.

## **19 Governing Law and Jurisdiction**

- 19.1 This Agreement shall be governed by the laws of England and Wales, and the parties shall submit to the exclusive jurisdiction of the English courts.

## **20 Third Parties**

- 20.1 The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

## **21 Counterparts**

- 21.1 This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which is an original but all of which together constitute one and the same instrument.

This Agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF SIGNATORY] for	)	.....
and on behalf of Cambridgeshire	)	Authorised Signatory
County Council	)	

Signed by [NAME OF DIRECTOR] for	)	.....
and on behalf of [•]	)	

## **SCHEDULE 1**

### **The Livery**

## **SCHEDULE 2**

### **Bus Types**

Single Deck Bus of the style depicted in Schedule 1.

## **SCHEDULE 3**

**Logo**

## **SCHEDULE 4**

**Route designation**