

**“TRICS Limited”
MEMORANDUM OF TERMS**

SUBJECT TO CABINET APPROVAL

The Parties

- (1) Dorset County Council (DCC)
County Hall
Dorchester
Dorset
DT1 1XJ

- (2) East Sussex County Council (ESCC)
County Hall
St. Anne's Crescent
Lewes
East Sussex
BN7 1UE

- (3) Hampshire County Council (HCC)
The Castle
Winchester
Hampshire
SO23 8UJ

- (4) Kent County Council (KCC)
Maidstone
Kent
ME14 1XQ

- (5) Surrey County Council (SCC)
County Hall
Kingston Upon Thames
KT1 2DN

- (6) West Sussex County Council (WSCC)
County Hall
Chichester
PO19 1RQ

The Company

1. The parties have agreed to collaborate to operate, manage and progress the commercial potential of a transport trip rate database, known as TRICS. The database is currently managed by a consortium of the parties who own the Intellectual Property Rights (IPR) to the database, the registered trademark and associated website domain. The parties will arrange for the managed exit from the current supplier who is contracted by the consortium to provide operational management activities.
2. The parties will create a Local Authority Trading Company, to be owned equally by the parties.
3. The company will issue, subject to legal and financial due diligence, ordinary share capital of 2,250 shares at £100 nominal value, total share capital of £225,000. Each party will subscribe for 375 shares (£37,500 each).
4. The IPR and TRICS trademark will be transferred by the consortium to the company.
5. Each party will appoint a director to the Board of the company to represent their interest in the company.
6. The parties will enter into a shareholders' agreement which will set out the appropriate terms between the parties for running the company and will agree the Articles of Association for the company. The key provisions for these contractual documents are outlined in this Memorandum of Terms document.
7. The Company will be responsible for the cost of arrangements necessary for the creation of the company and the commencement of trade.
8. The Company will be responsible for the parties reasonable legal and financial due-diligence costs necessarily incurred in order to gain appropriate approvals in accordance with each parties governance arrangements. These costs will be limited to a maximum of £2,500 per party.

9. The registered office of the Company will be the address of Surrey County Council in order to align with the agreed management arrangements and workplace location of the employees of the Company.

Shareholders Agreement

10. The Shareholders Agreement will set out the way in which the parties interact with each other to provide the strategic direction and management for the company. The agreement will include (but will not be limited to) the following key provisions.

- 10.1 Each party will have the option to appoint a Director to the Board of the company to represent their interest in the company. The shareholder appointed Directors' remuneration will be limited to reasonable expenses necessarily incurred to partake in the Board meetings of the company. Each party will be entitled to dismiss or remove the person appointed by it to the Board and appoint any other person to take their place. The parties will work together, as far as is reasonably practical to do so, to ensure that the Directors appointed to the Board have an appropriate mix of skills.

The shareholder appointed Directors will be authorised to appoint and remove the Managing Director of the Company, who will be in receipt of a salary determined at the discretion of the shareholder appointed Directors.

The shareholder appointed Directors will be authorised to appoint and remove a Finance Director to the Board. In recognition of the additional responsibilities and time commitment required, the following financial arrangements will apply. If the appointed director is an officer employed by one of the shareholders, the officer will receive no additional personal remuneration; an appropriate charge will be made from the employing shareholder to the Company based upon agreed day / hourly rates to recognise the loss of officer time. If the appointed director is an independent party, the remuneration of the Finance Director will be determined at the discretion of the shareholder appointed Directors.

- 10.2 Each party will ensure that appropriate approvals have been made in accordance with their own governance arrangements to create the company on the agreed terms and ensure that delegated authority is in place to enable each Director to fulfil their agreed responsibilities.
- 10.3 Each party will ensure that appropriate arrangements are in place to take decisions that are not delegated to the Directors, but which are required to be made by the parties (the shareholders).
- 10.4 The parties shall give notice of their decision on the matter in question within 4 months of notification by the company. If the parties fail to give notice to the Company of such decision within the agreed timeframe, then the decision shall be deemed to be in the negative.
- 10.5 The parties shall agree to employ their best endeavours to respond to a commercially urgent request within 5 business days or within a longer timescale if noted to be otherwise at the point of request. If the parties fail to

give notice to the Company of such decision within the agreed timeframe, then the decision shall be deemed to be in the negative.

- 10.6 The requirement that decisions made by the parties are unanimous.
- 10.7 The requirement that decisions made by the Directors of the Board are made by a majority decision. The Chair of each Board Meeting will rotate between the Shareholder appointed Directors, the Chair of the meeting will have the casting vote.
- 10.8 At least five business days' prior notice will be provided in writing of any meeting of the Board. Each Director will receive a proposed agenda of matters to be discussed at each board meeting together with all relevant papers for discussion and will promptly receive minutes after each meeting.
- 10.9 The Company will be required to hold no less than 12 Board meetings in each financial year of the company, and allow no more than 6 weeks to elapse between successive meetings.
- 10.10 The Directors shall each be entitled to appoint an alternate to attend any meetings of the Board in their place. The use of an alternate should not however become a regular occurrence, which will be deemed to be more than twice in each financial year.
- 10.11 The Shareholder Agreement will include deadlock resolution procedures within defined timescales, escalating any dispute between the Directors of the Board to the Chief Executive (Head of Paid Service) of each shareholder who will have authority to agree a mechanism to reach resolution and if not then agreed unanimously the provision for escalation to an independent mediation expert, acting as such. Deadlock provisions will apply only after the matter has been considered at two separate meetings of the Board.
- 10.12 Deadlock resolution procedures within defined timescales, escalating any dispute between the parties to an independent mediation expert, acting as such, provided that the parties have tried on at least two occasions to resolve the matter.
- 10.13 Provision for any party to resolve deadlock by selling their shares to the other parties at face value.
- 10.14 No party will be permitted to transfer their shares to another party (including the shareholding parties or other third-parties) without the prior written consent of the other parties, except to an entity that is directly and wholly owned by the party concerned.
- 10.15 No party will be permitted to sell their shares to another party (including the shareholding parties or other third-parties) without the written consent of the parties and without providing the parties (the shareholders) with the opportunity to purchase the shares in equal proportion in the first instance.
- 10.16 Should the parties agree to the sale of shares, the value of those shares will be determined by an independent expert to be engaged by the consent of the parties and employed at the expense of the selling party.
- 10.17 Each party will be required to ensure the resignation or removal of its

Director should the party sell their shareholding in full.

- 10.18 The Company will provide each party with the audited accounts for the company at the end of each financial year as soon as they are available, and no later than 3 months from the end of the financial year.
- 10.19 The Company will provide each party with an annual business plan not later than 30 days before the commencement of each financial year.
- 10.20 The parties will have a reasonable expectation that a dividend will be declared each year, assuming that the company is in a financial position to do so, and that only those funds required for the growth of the company and identified as required in the annual business plan of the company will be retained.
- 10.21 The parties and their respective financial advisors shall be entitled to examine the accounts and other records kept by the company as they may reasonably require to keep them properly informed about the business and to protect their respective interests.
- 10.22 All dealings between the parties and the company will be conducted on arms-length commercial terms.
- 10.23 The Company will take out and maintain at all times insurance to cover the actions of the Directors in performing their duties.
- 10.24 The parties will co-operate and aid one another in order to enable each party to comply with its obligations under the Freedom of Information Act or any successor legislation.

Articles of Association

11. The Articles of Association will set out the way in which the Directors will manage the Company. The Directors will be authorised to take all necessary decisions and actions in pursuit of the success of the company, with the exception of the following provisions which will be reserved for decision by the parties (reserved matters for the shareholders of the company).
 - 11.1 Any change to the Articles of Association.
 - 11.2 A material change in the scope or nature of the business of the company.
 - 11.3 The appointment or removal of any director to the board of the company, with the exception of the appointment of a Managing Director and a Finance Director who would otherwise be deemed to be “de-facto” directors of the company.
 - 11.4 The purchase of shares or interest in another company.
 - 11.5 The Borrowing or raising of Finance in excess of £100,000.
 - 11.6 The creation of any security interest in the assets of the company.

- 11.7 The formation of any subsidiary company.
 - 11.8 The issue, withdrawal or buy-back of any shares.
 - 11.9 Entering into any contract, liability, obligation, guarantee or commitment that is outside the ordinary course of business or is particularly onerous or unusual in nature.
 - 11.10 Changing the name or the registered office of the company.
 - 11.11 Entering into an administration order or steps to voluntarily wind up the company.
12. The above matters will require the consent of all parties (shareholders), with provisions for decision-making and deadlock procedures as described in the Shareholders Agreement outlined above.