



Membership Agreement

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THIS AGREEMENT is made on the _____ day of _____

BETWEEN:

1. **ITSO Limited** (registered number 04115311) whose registered office is at 4th floor, Quayside Tower, 252-260 Broad Street, Birmingham B1 2HF
2. **The Member:**
Whose offices are located at:

RECITALS:

- (A) ITSO is a company limited by guarantee incorporated on 22nd November 2000 and the Member has applied for ordinary membership of ITSO, and ITSO agrees to accept the Member as an ordinary member of ITSO on the terms and conditions set out in this Agreement.*
- [(B) The Member has applied for ordinary membership of ITSO for itself and as representative of its subsidiaries.]*
- [(B) ATOC has applied for ordinary membership of ITSO for itself and as representative of all train operating companies which are members of ATOC.]*

**Delete as applicable*

OPERATIVE PROVISIONS:

1. Definitions

- 1.1 In this Agreement (except where the context otherwise requires), the following words shall have the following meanings:-

"Articles"	the articles of association of ITSO as amended from time to time (and any reference to an Article shall be a reference to that article of the said articles of association);
"Business Day"	any day which is not a Saturday, a Sunday or a public holiday in England;
"Commencement Date"	<i>[the date of this Agreement OR specify a date];</i>
"Intellectual Property"	any patent, copyright, registered design, design right, or other industrial or intellectual property right subsisting anywhere in the world, and any applications for any such rights;

“ITSO Scheme”	a smart card scheme or system providing for the loading of products that have been registered with ITSO onto contactless smart cards issued to members of the public and the use of such products to make journeys on public transport or to obtain other services and any reference to an ITSO Scheme shall mean, as appropriate, the practical and commercial arrangements between the ITSO Members who perform between them all of the functions necessary for its operation and all equipment and systems (including all computer hardware and software) used in its operation;
“ITSO Security Manager”	the person nominated by ITSO to hold this position;
“ITSO Specification”	the prevailing version from time to time of the crown copyright document entitled “ITSO Technical Specification 1000 – interoperable public transport ticketing using contactless smart cards”;
“Membership Fees”	ITSO’s standard membership fees as are set out in Schedule 2, consisting of a joining fee and annual membership fees, as the same may be varied from time to time in accordance with the Articles;
“Membership Year”	the period of twelve months commencing on 1 st April following the Commencement Date, and each successive period of twelve months commencing on 1 st April in subsequent years and ending in each case on 31 March in the following calendar year, and, in the case of the first year of membership, the period of less than twelve months commencing on the Commencement Date and ending on 31st March;
“Operating Licence”	a licence agreement between (1) ITSO and (2) an ordinary member of ITSO, by which the member is granted a licence to operate one or more of various functions prescribed by ITSO; and
“Trade Marks”	the trade marks set out in Schedule 1 in respect of which applications for registration have been made to the UK Trade Marks Registry, as the same may be amended or substituted from time to time by ITSO, and any reference to the “Trade Marks” shall include a reference to any one of them.

- 1.2 In this Agreement (except where the context otherwise requires):-
- (a) any reference to a Clause or Schedule is to the relevant Clause or Schedule of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;
 - (b) the index and clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
 - (c) use of the singular includes the plural and vice versa;
 - (d) use of any gender includes the other genders;
 - (e) any reference to "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
 - (f) any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context otherwise requires) be construed as referring to:-
 - (i) such legislation as amended and in force from time to time and any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any legislation; and
 - (ii) any former legislation which it re-enacts in rewritten form.
- 1.3 The Schedules from part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules.

2. Commencement and Duration

- 2.1 This Agreement supersedes any previous membership agreement between ITSO and the Member. Any such agreement shall terminate automatically immediately prior to this Agreement coming into force.
- 2.2 The terms of this Agreement shall come into force on the Commencement Date and shall remain in full force and effect, subject to any suspension pursuant to Clause 9, until the Member's ordinary membership ceases in accordance with the Articles.

3. Grant of Membership

- 3.1 In consideration of the Member agreeing to pay the Membership Fees and comply with the undertakings set out in this Agreement, ITSO grants to the Member ordinary membership of ITSO in accordance with the Articles.

3.2 ITSO shall issue the Member with a password which will enable the Member to access the members' area of ITSO's website at such website address as ITSO shall use from time to time. The Member acknowledges that such access is subject to due and proper performance of the Member's obligations under this Agreement, and that access may be withdrawn by ITSO if the Member is in breach of its obligations.

4. Payment of Membership Fees

4.1 The Member shall pay the Membership Fees.

4.2 The Membership Fees are stated exclusive of value added tax, for which the Member shall be additionally liable at the applicable rate from time to time, subject to receipt of a valid VAT invoice.

4.3 The joining fee shall be paid by the Member upon or before execution of this Agreement, together with the annual membership fee for the first Membership Year, which shall be calculated pro rata to the full annual membership fee applicable at the Commencement Date. The annual membership fees in respect of each subsequent Membership Year shall be paid by the Member within 30 days of receipt of an invoice from ITSO, which will be issued annually in advance.

4.4 The Membership Fees shall be paid in full without any deduction or withholding other than as required by law and the Member shall not be entitled to assert any credit, set off or counterclaim against ITSO in order to justify withholding payment of any amount in whole or in part.

4.5 If any sum due from the Member to ITSO under this Agreement is not paid on or before the due date for payment, then ITSO shall be entitled to charge the Member interest calculated on a daily basis on all overdue amounts at the rate of 5% per annum above the base lending rate of HSBC Bank plc from time to time until payment is made in full.

5. Member's Obligations

5.1 The Member undertakes to comply with the obligations set out in this Clause 5.1 as the same may be varied from time to time in accordance with the provisions of Clause 15.

(a) Promotion of ITSO

The Member shall act in a manner commensurate with the professional development of the ITSO Specification and use reasonable endeavours to promote the objects of ITSO in the course of its normal business activities.

(b) Operating Licences

(i) The Member shall be entitled to apply for one or more Operating Licences.

- (ii) ITSO reserves the right to refuse to grant the Member an Operating Licence. Any such refusal must be for objective reasons and ITSO shall, within 30 days of receipt of a written request for such a statement, supply the Member with a written statement of such reasons.

(c) Reporting of security breaches

The Member shall, as soon as practicable after becoming aware of such breach, report to the ITSO Security Manager any breach, attempted breach, suspected or threatened breach of security of an ITSO Scheme and give all such assistance as is reasonably requested by the Security Manager in investigating and addressing that breach.

(d) Use of ITSO's website

The Member shall :-

- (i) observe ITSO's privacy policy as stated on ITSO's website from time to time;
- (ii) change any relevant password created by the Member if any employee who had access to the password leaves the Member's employment;
- (iii) comply with all other reasonable procedures which are published by ITSO from time to time in relation to the use of passwords in connection with the website; and
- (iv) comply with any other reasonable conditions imposed by ITSO from time to time in respect of use of ITSO's website.

6. Voting

- 6.1 The Member shall, on any resolution by the members of the Company, and subject to the Articles, be entitled to exercise that number of votes which, according to Schedule 2, corresponds with the scale of Membership Fees in accordance with which the Member was last invoiced by ITSO.
- 6.2 ITSO shall maintain a register of each member's voting rights from time to time.

7. ITSO Specification

- 7.1 Any changes to the ITSO Specification from time to time shall be subject to the prior approval of the ordinary members of ITSO by a two thirds majority of the votes cast in general meeting, provided that ITSO may make such changes to the ITSO Specification as it reasonably considers to be insignificant without such approval.

8. Intellectual Property

- 8.1 It is acknowledged by the Member that all rights in the ITSO name, logo and trade marks (including the Trade Marks), and any type-approval badging, consumer reassurance symbols and any other existing or future items of Intellectual Property developed, used or promulgated by or on behalf of ITSO are and will remain the property of ITSO or its licensors and may be used only with ITSO's express permission and on such terms as ITSO may determine from time to time.
- 8.2 The Member shall promptly and fully notify ITSO of any actual, threatened or suspected infringement of the Trade Marks which comes to the Member's notice.
- 8.3 In the event that any employee of the Member is seconded to ITSO, the Member acknowledges that such employee will for the duration of the secondment act solely in the interests of ITSO, and the Member shall ensure that any inventions or developments made or created by such employee during or as a direct result of such secondment, and all Intellectual Property in such inventions and developments, shall be vested in and remain the property of ITSO, and the Member undertakes to execute or (as appropriate) ensure that the employee executes any documents necessary or reasonably requested by ITSO in order to formally assign any such inventions, developments and Intellectual Property to ITSO.

9. Suspension of Member's Rights

- 9.1 Without prejudice to any provision of the Articles relating to cessation of the Member's membership, ITSO shall be entitled forthwith, by written notice to the Member, to suspend all or any of the Member's rights granted under or pursuant to this Agreement if:-
- (a) the Member commits any persistent or continuing or material breach of any of the provisions of this Agreement or any Operating Licence held by the Member and, in the case of such a breach which is capable of remedy, fails to remedy the breach to ITSO's satisfaction within 30 days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied;
 - (b) the Member (being an individual) has a bankruptcy order made against him;
 - (c) an encumbrancer takes possession or a receiver is appointed of the whole or any part of the Member's property or assets;
 - (d) the Member makes any voluntary arrangement with its creditors or becomes subject to an administration order;
 - (e) the Member goes into liquidation, either compulsory or voluntary (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such manner that the company resulting from the reorganisation effectively agrees to be bound by or to

assume the obligations imposed on the Member under this Agreement); or

(f) the Member ceases to carry on business.

9.2 For the purposes of Clause 9.1, a breach shall be considered capable of remedy if the Member can comply with the provision in question in all respects other than as to the time of performance (provided that time of performance is not of the essence).

9.3 Suspension of all or any of the Member's rights in accordance with Clause 9.1 shall not entitle the Member to recover any part of the Membership Fees.

10. Consequences of Cessation of Membership

10.1 Immediately upon cessation of membership for any reason, the Member shall:-

(a) cease forthwith to use the Trade Marks (to the extent that the Member is permitted to do so);

(b) not hold itself out as a member of ITSO; and

(c) pay to ITSO any part of the Membership Fees or other monies owing under this Agreement.

10.2 Cessation of membership for any reason shall be without prejudice to any rights accrued by either party under this Agreement prior to the effective date of cessation and in particular without prejudice to any claim for any antecedent breach of this Agreement.

10.3 Upon cessation of membership for any reason this Clause 10 and those provisions of this Agreement which are expressed or the context of which requires them to have effect on or at any time after cessation of membership shall survive and the parties shall discharge their respective liabilities under all such provisions of this Agreement.

10.4 Subject to Clauses 10.1 to 10.3 above, neither party shall have any further obligations to the other under this Agreement upon cessation of membership.

10.5 Cessation of membership shall not entitle the Member to recover any part of the Membership Fees.

11. Assignment

11.1 Membership of ITSO is personal to the Member and is not transferable. The Member shall not without the prior written consent of ITSO assign, transfer, or deal in any other manner with this Agreement or any of its rights under it or purport to do so.

12. Confidentiality

- 12.1 For the purposes of this Clause 12, "Confidential Information" means all information of a confidential nature which is held by the Member pursuant to or in contemplation of this Agreement (including, without limitation, information concerning the business of ITSO or of any other members of ITSO) and which, if disclosed, would or might prejudice ITSO or any other members of ITSO.
- 12.2 The Member shall keep all Confidential Information confidential and not disclose the Confidential Information to any person other than its employees, consultants or legal and financial advisers without the prior written consent of ITSO and then only upon terms which prohibit further disclosure, and the Member shall ensure that no such further disclosure is made.
- 12.3 The Member shall indemnify ITSO against the consequences of any breach of Clause 12.2.
- 12.4 The obligations contained in Clauses 12.2 and 12.3 shall not apply to any Confidential Information which is or comes into the public domain other than by breach of the terms of this Agreement by the Member or breach of any terms of disclosure agreed by ITSO pursuant to Clause 12.2 by the receiving party.
- 12.5 The provisions of this Clause 12 shall survive any cessation of membership.
- 12.6 Each party shall comply with its obligations under the Data Protection Act 1998.

13. The Articles

- 13.1 If, during the continuance of this Agreement, there shall be any conflict between the provisions of this Agreement and the provisions of the Articles, the provisions of the Articles shall prevail.
- 13.2 Each of ITSO and the Member undertakes to fully and promptly observe and comply with the provisions of the Articles.

14. Good Faith

- 14.1 Each of ITSO and the Member undertakes to do all things reasonably within its power which are necessary or desirable to give effect to the spirit and intent of this Agreement and the Articles.

15. Variation

- 15.1 No variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of both parties.

16. Notices

16.1 Any notice given under this Agreement shall be in writing and shall be served by delivering it personally or sending it by pre-paid recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom) or fax to the address and for the attention of the relevant party at the address set out at the beginning of this Agreement or at such other address as may be notified by that party in accordance with the terms of this Clause 16. Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery or registered post, 48 hours from the date of posting;
- (c) in the case of registered airmail, 5 days from the date of posting; and
- (d) in the case of fax, at the time of transmission

provided that if deemed receipt occurs before 9am on a Business Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Business Day, or on a day which is not a Business Day, the notice shall be deemed to have been received at 9am on the next Business Day.

16.2 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party (as determined pursuant to Clause 16.1) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the relevant party notified by that party in accordance with the terms of Clause 16.1.

16.3 Notice given under this Agreement shall not be validly served if sent by e-mail.

17. Severability

17.1 If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

17.2 If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

18. Waiver

18.1 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a party from subsequently requiring compliance with the waived obligation.

19. Rights of Third Parties

19.1 No term of this Agreement shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by a third party.

20. Entire Agreement

20.1 This Agreement, and the documents referred to in it, constitute the entire agreement and understanding of the parties and supersede any previous agreement between the parties relating to the subject matter of this Agreement.

20.2 Each of the parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this Clause 20 shall, however, operate to limit or exclude any liability for fraud.

21. Dispute Resolution and Governing Law

21.1 In the event that the Member has any dispute or matter of grievance arising under or in connection with this Agreement which has not been resolved amicably between the parties:

- (a) the Member shall notify the Company Secretary of ITSO of the details of any dispute or grievance, requesting the matter to be registered as a dispute ("the **Dispute**");
- (b) ITSO shall acknowledge receipt of such notice and shall, within two weeks of receipt of such notice, and with the co-operation of the Member, investigate whether the ITSO procedures prevailing at the time as set out in the ITSO Members' Guide ("the ITSO Procedures") have been sufficiently utilised to resolve the Dispute;
- (c) if, as a result of ITSO's investigation, ITSO decides that the ITSO Procedures have not been followed to try to resolve the Dispute, ITSO will arrange for the Dispute to be urgently dealt with in accordance with the ITSO Procedures;
- (d) if, as a result of ITSO's investigation, ITSO decides that the ITSO Procedures have been followed, or if action has been taken in

accordance with paragraph (c) above, and (in either case) the matter is still in dispute, the Dispute will be referred by ITSO to an executive director of each of the disputing parties. In the case of ITSO, this will be the General Manager;

- (e) the nominated executive directors of the parties will meet within 30 days to consider and resolve the Dispute. Each party undertakes to use its reasonable endeavours to ensure all potential routes to resolve the Dispute are exhausted before the remaining provisions of this Clause 21 are invoked;
- (f) in the event that the executive directors of the parties are unable to resolve the Dispute, the Dispute will be referred to a dispute panel comprising one representative from each of five separate ITSO members acceptable to both parties to the Dispute (“the **Adjudication Panel**”);
- (g) within 7 days of appointment in relation to the Dispute, the Adjudication Panel shall acknowledge the appointment and require the parties to submit in writing their respective arguments (and any responses within a further 7 days after submission of their respective arguments), and shall as soon as reasonably practicable, in the Adjudication Panel’s absolute discretion, notify the parties whether a hearing is necessary in order to resolve the Dispute;
- (h) whether or not a hearing is held, the Adjudication Panel shall submit to both parties, its written decision (including the action to be taken by each party and the timescales in which such action shall be taken) on the Dispute within 28 days of appointment or alternatively within such other period as the parties may agree after the appointment of the Adjudication Panel and:-
 - (i) the Adjudication Panel shall state in writing its reasons for its decision;
 - (ii) unless and until revised, cancelled or varied by a court of competent jurisdiction or otherwise settled between the parties, the Adjudication Panel’s decision shall be binding on both parties, who shall forthwith give effect to the decision; and
 - (iii) (subject to paragraph (j) below) either party shall be entitled to seek to enforce the decision of the Adjudication Panel in a court of competent jurisdiction and such an application shall not be considered a Dispute for the purposes of this Clause 21;
- (i) the Adjudication Panel shall act as experts and not as arbitrators and the provisions of the Arbitration Act 1996 and the law relating to arbitration shall not apply to the Adjudication Panel or to the procedure by which the Adjudication Panel reached its decision;
- (j) if:-

- (i) both parties agree that the Dispute should not be referred to adjudication under paragraph (f); or
- (ii) either party is dissatisfied with or otherwise wishes to challenge a decision of the Adjudication Panel;

then either party may apply to the courts for resolution of the Dispute, which shall, for the avoidance of doubt have power to open up, review and revise any opinion, certificate, instruction, determination or decision of whatever nature given or made under this Clause 21 and to revise, vary or cancel the decision of the Adjudication Panel, and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of England and Wales.

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

SIGNED BY

.....
) Lindsay Robertson
) Director of Member Services

Date.....

For and on behalf of
ITSO Ltd

SIGNED BY

.....
)
)

Date.....

For and on behalf of [Member]

Schedule 1 - Trade Marks

Applications

The Mark	Number	Date of Application	Classes	Goods and Services
ITSO (Word only)	2308454	Registered with effect from 20 th August 2002	09	Cards with encoded strips; smartcards; electronic travel cards and apparatus for use therewith; electronic payment cards; smartcard readers, but none for telecommunications purposes.
			35	Business administration and management; business in the operation of a smartcard scheme.
			39	Passenger transport services and provision of information relating thereto; transport consultancy services.
			42	Research and development services (for others) relating to passenger transport, smartcards and smartcard systems; preparation of technical studies and reports.

The Mark	Number	Date of Application	Classes	Goods and Services
ITSO (word and logo)	2310249	10/09/2002	09	Cards with encoded strips; electronic travel cards, payment cards and other electronic payment means; all goods in the class.
			35	Business administration and management; promotional and marketing services; all services in the class.
			39	Passenger transport services and provision of information relating thereto; transport consultancy services; all services in the class.
			42	Research and investigations relating to passenger transport; preparation of studies and reports; consultancy services relating to transport; all services in the class.

TRADE MARKS REGISTRY



REGISTRATION CERTIFICATE

Trade Marks Act 1994 of Great

Britain and Northern Ireland

The mark shown below has been registered under No. 2308454 as of the date 20 August 2002.

ITSO

The mark has been registered in respect of:

Class 09:

Cards with encoded strips; smartcards; electronic travel cards and apparatus for use therewith; electronic payment cards; smartcard readers, but none for telecommunications purposes.

Class 35:

Business administration and management; business assistance in the operation of a smartcard scheme.

Class 39:

Passenger transport services and provision of information relating thereto; transport consultancy services.

Class 42:

Research and development services (for others) relating to passenger transport, smartcards and smartcard systems; preparation of technical studies and reports.

In the name of Integrated Transport Smartcard Organisation Limited

Signed this day at my direction

ALISON BRIMELOW, REGISTRAR
DATE 24 October 2003

**Schedule of Membership Fees and Votes 2011/12
(effective from 1st April 2011)**

SECTOR	Fee scale	Joining Fee	Membership Fee	Number of Votes
		£	£	
		Note 1	Note 2	
1) Transport Operating Sector				
- Bus and Light Rail Members				
turnover p.a.				
- less than £1m	1A	365	548	1
- £1m - £4.99m	1B	731	1096	1
- £5m - £9.99m	1C	1457	2186	2
- £10m - £99.99m	1D	4007	6011	3
- over £100m	1E	7281	10921	6
- ATOC				
	1F		65500	30
2) Public Sector				
Local Authorities				
population				
- less than 250,000	2A	365	548	1
- 250,001 - 499,999	2B	731	1096	1
- 500,000 - 999,999	2C	1457	2186	2
- over 1 million	2D	2953	4429	2
PTEs - Each PTE				
	2E	4007	6011	3
TFL/Scottish Executive/Welsh Assembly				
	2F		10921	6
DfT				
	2G		29117	0
3) Suppliers Sector				
turnover p.a.				
- less than £1m	3A	365	548	1
- £1m - £9.99m	3B	1457	2186	2
- £10m - £99.99m	3C	4007	6011	3
- over £100 million	3D	7281	10921	6

NOTES

- All amounts are exclusive of VAT. Fees are payable for membership applications between 1st April 2011 and 31st March 2012. Applications are processed according to the information provided by the applicant member, which ITSO trust is correct. Upon receipt of a membership invoice the member is responsible for checking that fees relate the annual turn over unless ITSO requests verification of the figures provided.
- The amount payable by new members will be calculated on a pro rata basis related to the date of membership application
- Affiliated membership and the associated fees are at the discretion of the Board.
- For the purposes of membership fees, in the case of an organisation which is part of a larger company or group, it is the total worldwide turnover of the group which will determine its membership category.