

BRANT eRIDE PUBLIC TRANSPORTATION PROGRAM SERVICE AGREEMENT

THIS AGREEMENT, made in duplicate, for the delivery of a Public Transportation service known as the **Brant eRide Program**.
Effective as of the 24th day of September 2019

BETWEEN:

The Corporation of the County of Brant
(the “County”)

- *and* -

BTS Network Inc.
 (“BTS”)

WHEREAS, the County of Brant provides an on-demand, technology-based public transportation system hereinafter referred to as “Brant eRide” or “the Brant eRide Program”;

AND WHEREAS the County wishes to contract with BTS Network Inc. hereinafter referred to as “BTS” to provide the Brant eRide Program;

NOW THEREFORE in consideration of their respective agreements set out below, the parties covenant and agree as follows:

ARTICLE 1 – DEFINITIONS

In this Agreement, the following words and phrases have the following meanings:

“**Term**” means the period of time from the effective date noted above to and including September 30, 2022 with an option available to and exercisable by the County at its sole discretion to extend for up to three (3) additional one (1) year terms, provided that BTS has performed to the sole satisfaction of the County during the initial base term of the Contract

ARTICLE 2 - THE AGREEMENT

The attached Schedules form part of this Agreement. They are as follows:

Schedule A: General Conditions
Schedule B: Terms of Reference, Specifications, Deliverables:
Request for Proposals COM-RFP-19-04
Schedule C: BTS Proposal dated June 19, 2019
Schedule D: Brant eRide Price Form

ARTICLE 3 – REPRESENTATIVES FOR AGREEMENT

3.1 BTS includes any and all of its directors, officers, employees, agents, partners, affiliates, volunteers or subcontractors.

This Agreement is for a particular and non-exclusive service. BTS shall have no power or authority to bind the County or to assume or create any obligation or responsibility, express or implied, on the County's behalf, or to hold itself out as an agent, employee or partner of the County. Nothing in the Agreement shall have the effect of creating an employment, partnership or institution relationship between the County and BTS for the purposes of this paragraph.

The BTS representative for purposes of this Agreement shall be:

Edmund Burt
President
9024 Keele Street
Suite 200, Vaughn ON LK4 2N2
Tel. 416-663-7433
eburt@thebtsnetwork.com

3.2 The County representative for purposes of this Agreement shall be:

Lesley Head
Director, Recreation & Community Development
15 Curtis Ave.,
Paris, Ontario
N3L 3W1
Tel. 519-442-1818
lesley.head@brant.ca

ARTICLE 4 - TERM OF AGREEMENT

4.1 This Agreement shall expire at the end of the Term unless otherwise extended as defined under Article 1 of this Agreement.

ARTICLE 5 – SERVICES

5.1 BTS agrees to provide the services to the County as described and in accordance with the terms of this Agreement including the Request for Proposal document and BTS/RideCo Proposal dated June 19, 2019 which are appended as Schedules to this Agreement and form part of this Agreement.

ARTICLE 6 - RATES AND PAYMENT

6.1 The County shall pay BTS for each Trip provided in accordance with the terms of this agreement, at the rate calculated as follows:

Brant eRide	Cost Per Trip Fee	Cost Per Trip - County	Cost Per Trip – User
Community eRide	\$12.00	\$9.00	\$3.00
Commuter eRide	\$12.00	\$11.00	\$1.00

Annual costs are outlined on Schedule D- Brant eRide Price Form.

6.2 BTS shall invoice the County monthly at the end of each month. The invoice shall be accompanied by a list of all trips provided to County of Brant residents pursuant to this agreement in the form provided by the County of Brant.

6.3 The payment terms are net thirty (30) days.

ARTICLE 7 - INSURANCE

7.1 BTS shall comply with the insurance requirements as set out in Schedule A of this Agreement.

ARTICLE 8 - NOTICES

8.1 Notices shall be in writing and shall be delivered by email, postage-prepaid envelope, personal delivery or facsimile and shall be addressed to, respectively, the County addressed to the attention of the County Representative and to BTS addressed to the attention of the BTS Representative. The parties may change such addresses by notice in writing delivered to the other in accordance with this paragraph.

8.2 Notices shall be deemed to have been given in the case of postage-prepaid envelope, facsimile, or email, five (5) Business Days after such notice is mailed or sent.

8.3 In the event of a postal disruption, notices must be given by personal delivery or by facsimile or email, unless the parties expressly agree in writing to additional methods of notice, notices may only be provided by the methods contemplated in this Article.

ARTICLE 9 –TERMINATION

9.1 Termination by Either Party

Upon giving BTS not less than thirty (30) days' prior written notice, the County may, at any time and without cause, cancel this agreement, in whole or in part. In the event of such cancellation, the County shall not incur any liability to BTS, apart from the payment for the services that have

been satisfactorily delivered or performed by BTS Network Inc. up to the time of cancellation.

Should the County at its sole discretion, determine that BTS has failed to perform its obligations, in whole or in part, the County shall provide BTS ten (10) days' written notice of the failure and permit BTS to rectify its failure.

Should BTS not remedy its failure within that ten (10) day notice period to the satisfaction of the County, the County may provide written notice that the Agreement is terminated immediately.

In the event of such termination, the County shall not incur any liability to BTS apart from the payment for the services that have been satisfactorily delivered or performed by BTS up to the time of termination.

All rights and remedies of the County for any breach of BTS' obligations under the Agreement shall be cumulative and not exclusive or mutually exclusive alternatives and shall not be deemed to be in exclusion of any other rights or remedies available to the County under the contract or otherwise at law.

No delay or omission by the County in exercising any right or remedy shall operate as a waiver of them or of any other right or remedy, and no single or partial exercise of a right or remedy shall preclude any other or further exercise of them or any other right or remedy.

ARTICLE 10 - LEGAL RELATIONSHIP BETWEEN COUNTY AND BTS NETWORK INC.

10.1 BTS Network Inc. Power to Contract

BTS represents and warrants that it has the full right and power and all necessary licences, authorizations and qualifications to enter into and perform its obligations under this Agreement and that it is not a party to any agreement with another person which would in any way interfere with the rights of the County under this Contract.

10.2 Subcontracting or Assignment

BTS shall not subcontract or assign the whole or any part of this agreement without the prior written consent of the County. Such consent shall be at the sole discretion of the County and subject to the terms and conditions that may be imposed by the County.

ARTICLE 11 – GENERAL

11.1 Severability

If any term or condition of the Agreement, or the application thereof to the parties or to any persons or circumstances, is to any extent invalid or unenforceable, the remainder of the agreement, and the application of such term or condition to the parties, persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby.

11.2 Changes By Written Amendment Only

Any changes, additions or deletions to this Agreement shall be by written amendment executed by both parties. No changes shall be effective in the absence of such an amendment.

Including Wherever the words “include”, “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation” and the words following “include”, “includes” or “including” are not considered to set forth an exhaustive list.

Hereof The words “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions are construed as referring to this Agreement in its entirety and not to any particular section or portion of it.

Headings The division of this Agreement into articles and sections, schedules, and other subdivisions are for convenience of reference only and do not affect the construction or interpretation of this Agreement. The headings in the Agreement are not intended to be full or precise descriptions of the text to which they refer. Furthermore, unless something in the subject matter or context is inconsistent therewith, references herein to an article, section, subsection, paragraph, clause or schedule are to the applicable article, section, subsection, paragraph, clause or schedule of this Agreement.

Singular, Gender Words importing the singular number include the plural and *vice versa*. Words importing the masculine gender include the feminine and neuter genders, and words importing persons include firms and corporations and *vice versa*.

Currency Unless otherwise expressly specified, all dollar amounts in this Agreement, including the symbol “\$”, refer to Canadian currency.

Recitals The recitals in this Agreement are true and correct, and form part of this Agreement.

Jurisdiction This Agreement and the rights of the Parties are governed by the laws of the Province of Ontario and the laws of Canada (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each Party irrevocably submits to the non-exclusive jurisdiction of the courts of Ontario with respect to any matter arising hereunder or relating hereto.

No Contra Proferentem The provisions of this Agreement have been mutually prepared by the Parties and each Party has had the opportunity to consider each and every term in this Agreement (which the Parties consider reasonable and valid) and to obtain Independent Legal Advice. Should any aspect of this Agreement be brought before a judicial or quasi-judicial hearing, this Agreement will be read, reviewed, and interpreted without regard to *contra proferentem*, and that the rule *contra proferentem* does not apply with respect to the interpretation of this Agreement.

Sole Agreement This Agreement and all attached Schedules constitute the entire agreement between the Parties with respect to the transactions contemplated and cancels and supersedes any prior understandings, agreements, negotiations and discussions, written or oral, between the Parties. Other than as expressly contained in this Agreement, the Parties are not bound by any representations, collateral agreements, warranties, terms, undertakings, understandings or conditions (whether express or implied).

By Reference All references to any document (including this Agreement) mean such document, as amended, supplemented, modified, varied, restated or replaced from time to time in accordance with the terms thereof and, unless otherwise specified, includes all schedules and exhibits attached thereto.

Idem Any reference in this Agreement to all or any part of any manual, statute, regulation, by-law or Council resolution, unless otherwise stated, is a reference to that manual, statute, regulation, by-law or Council resolution or the relevant part thereof, as amended, substituted, replaced or re-enacted from time to time.

Counterparts This Agreement can be executed in counterparts.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date first above written.

THE CORPORATION OF THE COUNTY OF BRANT

David Baily, Mayor

Heather Boyd, Clerk

I/We have authority to bind the Corporation

BTS NETWORK INC.

(Name and Title)

(Name and Title)

I/We have the authority to bind the Corporation

SCHEDULE A – GENERAL CONDITIONS

1. PERSONNEL AND PERFORMANCE

BTS Network Inc. shall be responsible for its own staff resources and for the staff resources of any subcontractors and/or consultants engaged by them and shall ensure that all personnel acting on behalf of the County comply with all applicable laws.

2. LAWS AND REGULATIONS

BTS Network Inc. shall be governed by the laws and regulations of Ontario.

3. CONFIDENTIALITY

BTS shall treat all information provided in performance of this contract as confidential information and shall not disseminate for any reason without the express written permission of the County.

4. INDEMNIFICATION

BTS shall indemnify and save harmless the County, its elected officials, officers, employees and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries, expenses and judgments (including legal fees and costs) arising from or related to performance or non-performance of its obligations, including payment obligations to others and including breach of any confidentiality obligations under this Agreement.

5. INTELLECTUAL PROPERTY RIGHTS AND INDEMNIFICATION

BTS shall indemnify and save harmless the County, its elected officials, officers, employees and agents from and against any losses, liens, charges, claims, demands, suits, proceedings, recoveries, and judgments (including legal fees and costs) arising from infringement, actual or alleged, its use or misuse, or by any of the deliverables developed or provided or supplied under or used in connection with the Services (including the provision of the Services themselves), of any Canadian, American or other copyright, moral right, trade-mark, patent, trade secret or other thing with respect to which a right in the nature of intellectual/industrial property exists.

BTS shall pay all royalties and patent license fees required for the Services.

If the Services or any part thereof is in any action or proceedings held to constitute an infringement, BTS shall forthwith either secure for the County the right to continue using the Services or shall at BTS's sole expense, replace the infringing items with non-infringing Services or modify them so that the Services no longer infringe.

6. INSURANCE

Upon Execution of this agreement until the end of the term, BTS shall be required to purchase and maintain in force, at its own expense (including the payment of all deductibles) and for the duration of this Agreement, the following policies of insurance:

- (a) Commercial General Liability Insurance in the amount of at least \$5,000,000.00, Canadian Dollars per occurrence, issued by an insurer licensed to do business in Ontario, that protects BTS from all claims, demands actions, causes of action that may be taken or made against BTS its employees or agents, for any loss of or damage to property, and personal injury, including bodily injury or death, that may arise with respect to BTS performance of services, which names the County as an additional insured and which is endorsed to provide 30 days' notice of amendment, cancellation, non-renewal or revocation. The Policy must also include contractual liability, non-owned automobile liability, products and completed operations coverage, employees as additional insured's, as well as a cross liability and severability of interests' clause
- (b) Automobile insurance, issued by an insurer licensed in Ontario, evidencing a motor vehicle liability policy as defined in the *Insurance Act*, in respect of each *vehicle* used to provide the service, with a minimum limit of liability in the amount of \$2,000,000.00 per occurrence, and indicating that such policy provides coverage while the *motor vehicle* is used to carry *persons* with disabilities for compensation or hire and is endorsed to provide that the County will be given at least ten (10) days' notice in writing prior to any cancellation, expiration

or change in the amount of the policy and including the following:

- i. for all vehicles registered as public vehicles produce proof of insurance, confirmation of Permission to Carry Passengers for Hire;
 - ii. Liability Coverage for Attached Machinery;
 - iii. OPCF 22 Damage to Property of Passengers.
- (c) Any other insurance policy or confirmation of insurance coverage which may be required by the County, its Lenders or any other Interested Party identified by the County to be entitled to receive this information.
- (d) Workplace and Safety Insurance Clearance Certificate if applicable to any of the services performed by BTS.

Upon Execution of the Contract and thereafter upon or prior to the expiry date of any policy, BTS shall provide a certificate of automobile insurance and an original signed certificate of liability insurance naming the County as an additional insured evidencing renewal or replacement to the County prior to the expiration date of the original policies, without notice or request by the County.

7. NON-EXCLUSIVITY

The entry into a contract by the County shall not be a guarantee of exclusivity to BTS.

8. CONFLICT OF INTEREST

- a) BTS must declare any situation that may be a conflict of interest either actual or perceived or that may appear as a potential conflict of interest either actual or perceived in performing the service. If such a conflict of interest does exist, the County may, at its discretion, terminate the Contract.
- b) Any trips provided pursuant to this contract for employees of BTS must be authorized in writing by the County of Brant representative.

9. ERRORS AND OMISSIONS

No oral interpretation or clarification provided to BTS will be effective to modify any provisions of these Contract Documents or subsequent contract. Any modification or clarification to the contract must be by written amendment to this agreement as described in Article 11.2 of the Agreement.

10. BTS AGREES TO TIMELY PAYMENT

BTS agrees to pay its subcontractors, creditors and assigns connected with the delivery of the Brant eRide Program in a timely manner and specifically, within fifteen (15) days of receiving payment from the County.

11. RIGHT TO AUDIT

The County or anyone designated in writing by it may audit and inspect all financial and related records associated with the terms of the Contract including timesheets, accounts, records, receipts, vouchers, and other documents relating to the Services and shall have the right to make copies thereof and take extracts therefrom. BTS shall make available all facilities, physical and otherwise, for such audits and inspections and shall furnish the County and its authorized representatives with all such information as it, or they, may from time to time require with reference to such timesheets,

accounts, records, receipts, vouchers, and other documents. BTS shall cause all such timesheets, accounts, records, receipts, vouchers, and other documents, as aforesaid, to be preserved and kept available for audits and inspection at any reasonable time, and from time to time, until the expiration of **five (5)** years from the later of:

- (a) the date of termination of or cancellation of the Contract;
- (b) the date of completion of the Services hereunder; or
- (c) the expiration of such lesser or greater period of time as shall be approved in writing by the County.

11. EVALUATION OF PERFORMANCE

At any time during the course of and completion of the Contract the County may complete an evaluation of BTS's performance, which may be made available to persons requesting County references for the Contract and also may be reviewed and may form part of the criteria when awarding future Contracts by the County.

BTS hereby authorizes the maintenance and release of this information.

12. QUALITY AND VALUE

BTS shall provide a preferred standard of service and value to the County. The County shall be the sole judge of the adequacy of such service and value, and may suggest changes as necessary.

13. DISPUTE RESOLUTION

In the event of a misunderstanding or dispute between BTS and the County concerning any aspect of the contract the parties agree that County does not waive its right to litigate the dispute within the period permitted under Ontario Law to bring such action, or to proceed in any other manner.

14. AGREEMENTS IN WRITING

In all cases of misunderstanding and disputes, verbal arrangements will not be considered. BTS must produce written authority in support of its contentions and shall advance no claim in the absence of such written

authority, or use, or attempt to use any conversation with any parties against the County or in prosecuting any claim against the County.

15. MEETINGS

BTS representative(s), as requested by the County, shall attend all meetings required during the contract. This shall include all regular meetings and emergency meetings.

BTS representative(s) attending meetings shall be thoroughly versed and knowledgeable with respect to the proposed topics of discussion and shall have the authority to make the necessary decisions and commitments with respect to matters agreed upon at the meetings.

A meeting may proceed by conference call, or may require personal attendance of BTS.

16. NON-WAIVER

No condoning, excusing or overlooking by the County of any default, breach or non-observance by BTS at any time or times in respect of any provision herein contained shall operate as a waiver of the County's right or rights hereunder in respect of any continuing or subsequent default, breach or non-observance or so as to defeat or affect in any way the rights of the County herein in respect of any such continuing or subsequent default or breach. No waiver shall be inferred from or implied by anything done or omitted by the County save only for an express waiver in writing. Any work completed by the County required by this agreement to be done by BTS after reasonable notice, shall not relieve BTS of its obligations to do that work or to reimburse the County for its actual cost to the County of having done it, including an allowance for normal overheads.

**SCHEDULE B - TERMS OF REFERENCE, SPECIFICATIONS,
DELIVERABLES**

COM-RFP-19-04

Please refer to PDF

SCHEDULE C – BTS TECHNICAL PROPOSAL

Please refer to PDF

**SCHEDULE D –
BRANT eRIDE- PRICE FORM**

Brant eRide	Year 1 Oct 1, 2019 to Sept 30, 2020	Year 2 Oct 1, 2020 to Sept 30, 2021	Year 3 Oct 1, 2021 to Sept 20, 2022
Community eRide Cost Per Trip	12.00	12.00	13.00
Commuter eRide Cost Per Trip	12.00	12.00	13.00