

**DATA SHARING AGREEMENT
BETWEEN MIAMI-DADE COUNTY DEPARTMENT OF TRANSPORTATION AND PUBLIC
WORKS
AND VELOCIA INC.**

THIS AGREEMENT made and entered into as of this December 17, 2019 by and between Velocia Inc., a corporation organized and existing under the federal laws of Canada, having its principal office at 67 Yonge St., Suite 1501, Toronto, Ontario M5E 1J8 (hereinafter referred to as "Velocia"), and Miami-Dade County, a political subdivision of the State of Florida, (hereinafter referred to as "County") through the Department of Transportation and Public Works having its principal office at 701 NW 1st Court, Suite 1700, Miami, Florida 33136 (hereinafter referred to as "DTPW"). In this Agreement DTPW and Velocia may individually be referred to as a "Party" or collectively as "Parties".

WITNESSETH:

WHEREAS, Velocia is in the business of developing technologies, strategies, and systems to improve the efficiency of transportation and mobility for users by rewarding user behaviors for smart mobility decisions; and

WHEREAS, DTPW collects real-time Transit Data; and

WHEREAS, Velocia has a significant business interest to access Transit Data as the input into its proprietary processes; and

WHEREAS, Velocia User Behavior Data shall be made available to DTPW; and

WHEREAS, DTPW Data being requested in this agreement is not confidential, nor does it identify any transportation end-user specifically in any manner; and

WHEREAS, Velocia desires permission to obtain access to the available Transit Data for use in conjunction with its business; and

WHEREAS, DTPW agrees to provide Velocia with available Transit Data, subject to the terms and conditions in this Agreement;

WHEREAS, Velocia agrees to provide DTPW with available User Behavior Data, subject to the terms and conditions in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

SECTION 1 TERMS AND CONDITIONS

1.1 DEFINITIONS

The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:

- a) The words "Contract" or "Agreement" to mean these terms and conditions.
- b) The words "the County" to mean Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 N.W. 1st Street, Miami, Florida 33128.
- c) The words "Effective Date" to mean the date on which this Agreement is effective.
- d) The word "Velocia" to mean Velocia Inc. and its permitted successors.
- e) "DTPW" to mean Miami-Dade County's Department of Transportation and Public Works, having its principal office at 701 NW 1st Court, Suite 1700, Miami, Florida 33136.
- f) "DTPW Data" means collectively, Data provided by DTPW, if applicable, to this agreement.
- g) "Transit Data" means available information related to Rider Activity on DTPW transit systems, which includes Metrobus and Metrorail more precisely defined in Appendix 1.
- h) "Velocia Data" means data provided to DTPW derived from Transit Data, to the extent not proprietary, all transit related analysis or reports prepared in whole or in part based on Transit Data.
- i) "Product" means the reward given to the customers based on the data derived from the Transit Data.
- j) Mayor or Mayor's Designee is designated by DTPW, on behalf of the County, as an authorized representative (DTPW Agent).
- k) The Velocia President/CEO is designated by Velocia as an authorized representative (Velocia Agent).

1.2 ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the Parties. This Agreement supersedes all proposals and oral and written agreements between the Parties on this subject. No modifications, alterations, changes, or waiver to this Agreement or any of its terms shall be valid or binding unless accomplished by a written amendment signed by both Parties.

1.3 INTERPRETATION OF THE AGREEMENT

The Parties acknowledge that each of the Parties has participated in the drafting of this Agreement. No Party shall be considered to be the drafter of this Agreement for the purposes of interpretation.

1.4 AGREEMENT TERM

Unless terminated earlier as stated in Section 1.5, this Agreement will begin on the latest date of the authorized agent signature (the "Effective Date") and continue for one (1) year (the "Initial Term"). This Agreement may be renewed on the anniversary of the Effective Date for successive one (1) year periods. **30 days** prior to the expiration of the term period, the County will advise Velocia of any changes to the terms of the Agreement, constituting a condition of renewal (collectively, "Renewal Terms"). The "Term" will consist of the Initial Term and all Renewal Terms, if any.

1.5 TERMINATION

Each Party shall have the right to terminate this Agreement by providing written notice to the other Party with thirty (30) days' notice, unless identified otherwise in this Agreement.

1.6 ASSIGNMENT

Neither Party shall assign, transfer, subcontract, or delegate all or any part of this Agreement, or any interest therein, without the other Party's prior written consent, which shall not be unreasonably withheld.

1.7 AGREEMENT BINDING

This Agreement shall be binding upon the successors and assignees of the Parties hereto.

Section 2 PURPOSE AND SCOPE

2.1 ACCESS OF TRANSIT DATA

- a) Velocia desires access to the Transit Data, which will include information related to available Rider Activity. (See Appendix 1) In order to request the Transit Data from DTPW, Velocia must include a unique identifier such as the customer's EASY Card/EASY ticket number so that DTPW can associate a specific data record to the unique identifier. Velocia will use this data in patented or proprietary processes to produce Product for use by Velocia customers.
- b) The Transit Data will be made available to Velocia daily with a frequency of five (5) feeds per days. DTPW reserves the right to limit or decrease frequency at any time based on the loading status of the system. In case of scheduled DTPW system maintenance, DTPW will notify Velocia in advance.
- c) DTPW desires access to Velocia data and analysis to the extent not proprietary, all transit related analysis or reports prepared in whole or in part based on Transit Data. Velocia must include a unique identifier such as the customer's EASY Card/EASY ticket number so that DTPW can associate a specific data record to the unique identifier.
- d) The Velocia Data and analysis will be made available to DTPW daily beginning at 2 AM. Transfer of data must be completed by 4 AM. In case of scheduled Velocia system maintenance, Velocia will notify DTPW in advance.

- e) DTPW acknowledges that to ensure proper functionality of Velocia's application, including to produce Product for use by Velocia customers, Velocia requires access to at least those sets of data, or subsets of data, as the case may be, that allow Velocia to verify and confirm which user actions and behaviors have taken place in the transit system in the County.
- f) Velocia's primary intended use of the Transit Data and Product is for the purpose of verifying users' mobility behaviors so that users can be rewarded for such behaviors. Through the use of rewards and incentives, Velocia believes it will successfully motivate users to make increased use of smart mobility alternatives, including public transportation, in order to improve issues such as congestion and emissions in the Miami-Dade County area.
- g) Velocia's mobile application will include terms and conditions that will require the user acknowledges he/she is the holder of the transit card identified. The terms and conditions will also indicate to the user, he/she agrees to release their Transit Data for the use of Velocia upon registering their Easy Card details, or other account information that can be used to furnish the necessary Transit Data, to Velocia. The terms and conditions shall also include Velocia's program is not owned or operated by Miami-Dade County. Velocia shall provide to DTPW written verification indicating the user has agreed to release Transit Data to Velocia about the user's ridership, behavior prior to DTPW releasing the Transit Data.
- h) If a customer cancels the Velocia application membership, Velocia shall provide written notification to DTPW within 24 hours of cancellation and immediately cease the request for transfer of data related to said customer. In addition, Velocia shall submit a monthly report to DTPW on the first day of every month displaying customers' membership statuses. See Appendix 1 for customer data requirements.
- i) Velocia shall limit its customers' applications of the derived Product for applications that do not violate local, state, or federal laws, or uses that will not be used in a manner to encourage undesirable driver behavior for the County.

ACCESS OF TRANSIT DATA

2.2 OWNERSHIP OF RIGHTS TO DATA

DTPW retains all rights to the raw data, or Transit Data, being provided to Velocia.

2.3 REPORTING AND DATA REQUIREMENTS

DTPW will provide an open Application Programming Interface (API) using standard formats such as JSON or XML, through which Velocia can access the Transit Data (as referenced in Appendix 1). Velocia will be responsible for any costs not referenced in Appendix 1, acting reasonably, which must be disclosed to Velocia and approved by Velocia prior to recovering such costs.

Velocia will provide an open Application Programming Interface (API) using standard formats such as JSON or XML, through which DTPW can access the Transit Data.

2.4 DATA DESTRUCTION

Upon termination of this Agreement, Velocia shall destroy all raw data whatever form or medium, including all copies thereof. Velocia shall destroy the data no later than thirty (30) days following termination of this Agreement.

SECTION 3 INDEMNIFICATION

Velocia shall indemnify and hold harmless DTPW and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which DTPW or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising out of, relating to or resulting from a breach of this Agreement or negligence by Velocia or its employees, agents, servants, partners principals or subcontractors.

Velocia shall pay all claims and losses in connection with a material breach or gross negligence and shall investigate and defend all claims, suits or actions of this kind in the name of DTPW, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon.

SECTION 4 PATENT AND COPYRIGHT INDEMNIFICATION

- a) Velocia shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights by Velocia's use of Transit Data provided under this Agreement.
- b) Velocia warrants that all equipment, programs, documentation, software, analyses, applications, methods, ways, processes, and the like, used in the utilization of Transit Data do not infringe upon or violate any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third party proprietary rights.
- c) Velocia shall be liable and responsible for any and all claims made against Miami-Dade County for infringement of patents, copyrights, service marks, trade secrets or any other third party proprietary rights, by the use or supplying of any programs, documentation, software, analyses, applications, methods, ways, processes, and the like, in the course of utilizing Transit Data. Accordingly, Velocia at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless Miami-Dade County and defend any action brought against Miami-Dade County with respect to any claim, demand, cause of action, debt, or liability.
- d) Velocia shall be solely responsible for determining and informing DTPW whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit the utilization of Transit Data.

SECTION 5 REPRESENTATIONS AND WARRANTIES

DTPW makes no warranties concerning the quality or accuracy of the data provided under this Agreement. DTPW does not warrant it will be able to continuously provide the data without interruption and expressly reserves the right to discontinue the data stream at any time. Notwithstanding anything to the contrary herein, DTPW reserves the right to immediately discontinue the DTPW data stream without notice and at DTPW discretion upon evidence of tampering or other unauthorized interference with the DTPW Data. The County and DTPW reserves the right to decline to provide Transit Data that is confidential or exempt pursuant to Florida's Public Records Laws, Chapter 119, Florida Statutes, as may be amended from time to time. Except as expressly provided for herein, DTPW makes no other representations or warranties.

SECTION 6 LIMITATION OF LIABILITY

Nothing in this Agreement excludes or limits either Party's liability for: (a) fraud or fraudulent misrepresentation; (b) breach of confidentiality; (c) indemnification obligations under Section 3 above; (d) claims for personal injury, including death, or damage to real property or tangible personal property arising from the negligence, reckless conduct or intentional acts of a Party, its officers, employees or agents; or (e) matters that cannot be excluded or limited under applicable law.

SECTION 7 NOTICES

Absent notice to the contrary in writing, all communications to Velocia shall be sent to:

Velocia Inc.
67 Yonge St., Suite 1501
Toronto, Ontario, Canada M5E 1J8

Absent notice to the contrary in writing, all communications to DTPW shall be sent to:

Miami-Dade County Department of Transportation and Public Works
Transportation Strategic Planning Division
701 NW 1st Court, Suite 1700
Miami, Florida 33136

or at any other address as any Party may, from time to time, designate by notice given in compliance with this Section.

SECTION 8 PERSONAL LIABILITY

Nothing in this Agreement may be construed to create any personal liability on the part of any officer or agent of either Party to this Agreement.

SECTION 9 WAIVER

Any waiver of any breach of any condition or covenant herein contained to be kept and performed by either Party shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent the non-breaching Party from declaring a default for any succeeding breach, either of the same condition or covenant or otherwise.

SECTION 10 SEVERABILITY

If any term (or part of a term) of this Agreement is invalid, illegal, or unenforceable, the rest of the Agreement will remain in effect.

SECTION 11 PARTIES IN INTEREST

Nothing herein shall be construed to be to the benefit of any third party, nor is it intended that any provision shall be for the benefit of any third party.

SECTION 12 FORCE MAJEURE

Unavoidable Delays are unforeseen delays beyond the control of a party required to perform, such as (but not limited to) delays due to strikes; acts of God; floods; fires; enemy action; civil disturbance; sabotage; restraint by court or public authority; litigation or administrative challenges by third parties to the execution or performance of this Agreement or the procedures leading to its execution; or moratoriums. The obligated party shall be entitled to an extension of time because of its inability to meet a time frame or deadline specified in this Agreement where such inability is caused by an Unavoidable Delay, provided that such party shall, within fifteen (15) days after it has become aware of such Unavoidable Delay, give notice to the other party in writing of the causes thereof and the anticipated time extension necessary to perform. Neither party shall be liable for loss or damage or deemed to be in default hereof due to any such Unavoidable Delay(s), provided that party has notified the other as specified in the preceding sentence and further provided that such Unavoidable Delay did not result from the fault, negligence or failure to act of the party claiming the delay. Time is of the essence and failure to notify a party of the existence of Unavoidable Delays within the fifteen (15) days of its discovery by a party shall void and be deemed a waiver the party's ability to claim and extend time via Unavoidable Delays.

SECTION 13 PUBLIC RECORDS

Notwithstanding anything to the contrary, Miami-Dade County is subject to Florida public records law, including Chapter 119 of the State of Florida Statutes. Florida has a very broad public records law and certain records provided by Velocia may be considered public records. Accordingly, by entering into an agreement with DTPW, Velocia must:

- a) Keep and maintain public records regarding Velocia's use of the Transit Data that DTPW notifies Velocia in advance is required to be maintained.

- b) Upon request from DTPW's custodian of public records or the requester of a public record, provide DTPW or the requester of a public record with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirement are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if Velocia does not transfer the records to DTPW.
- d) Upon termination or completion of the agreement, transfer, at no cost, to DTPW all public records in possession of Velocia. Once Velocia transfers all public records to DTPW upon termination or completion of the contract, Velocia shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. Velocia shall transfer all public records to DTPW and destroy any duplicate public records that are exempt or confidential within thirty (30) days of the termination or completion of the agreement. All records stored electronically must be provided to DTPW, upon request from DTPW's custodian of public records, in a format that is compatible with the information technology systems of DTPW.

SECTION 14 INDEPENDENT VELOCIA RELATIONSHIP

Velocia is, and shall be, in the performance of its services utilizing Transit Data in its commercial practice, an independent entity, and not an employee, agent or servant of DTPW. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to Velocia's sole direction, supervision and control. Velocia shall exercise control over the means and manner in which it and its employees perform the work, and in all respects Velocia's relationship and the relationship of its employees to DTPW shall be that of an independent entity and not as employees and agents of DTPW.

Velocia does not have the power or authority to bind DTPW in any promise, agreement or representation other than specifically provided for in this Agreement.

SECTION 15 MUTUAL OBLIGATIONS

- a) This Agreement, including attachments and appendices to the Agreement, shall constitute the entire Agreement between the parties with respect hereto and supersedes all previous communications and representations or agreements, whether written or oral, with respect to the subject matter hereto unless acknowledged in writing by the duly authorized representatives of both parties.
- b) Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party that is not a parent or subsidiary of a party or otherwise related (by virtue of ownership control or statutory control) to a party.
- c) In those situations where this Agreement imposes an indemnity obligation on Velocia, DTPW may, at its expense, elect to participate in the defense if DTPW should so choose. Furthermore, DTPW may at its own expense defend or settle any such claims if Velocia fails to diligently defend such claims, and thereafter seek indemnity for costs from Velocia.

SECTION 16 PROPRIETARY RIGHTS

Velocia hereby acknowledges and agrees that DTPW retains all rights, title and interests in and to all materials, data, documentation and copies thereof furnished by DTPW to Velocia hereunder, including all copyright and other proprietary rights therein, which Velocia as well as its employees, agents, subcontractors and suppliers may use as defined by this Agreement.

Velocia shall not, without the prior written consent of DTPW, use such documentation on any other project in which Velocia or its employees, agents, subcontractors or suppliers are or may become engaged. Submission or distribution by Velocia to meet official regulatory requirements or for other purposes in connection with the performance of Services under this Agreement shall not be construed as publication in derogation of DTPW's copyrights or other proprietary rights.

SECTION 17 PRESS RELEASE OR OTHER PUBLIC COMMUNICATION

Under no circumstances shall Velocia without the express written consent of DTPW;

- a) Issue or permit to be issued any press release, advertisement or literature of any kind which refers to DTPW, or Velocia's utilization of Transit Data, unless Velocia first obtains the written approval of DTPW acting reasonably. Such approval may be withheld if for any reason DTPW believes that the publication of such information would be harmful to the public interest or is in any way undesirable; and
- b) Communicate in any way with any partner, department, board, agency, commission or other organization or any person whether governmental or private in connection with the Services to be performed hereunder except upon prior written approval and instruction of DTPW; and
- c) Except as may be required by law, Velocia and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by Velocia or such parties has been approved or endorsed by DTPW.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the contract date herein above set forth.

Velocia

Miami-Dade County

By:



Name: David Winterstein

Title: ~~President &~~ CEO

Date: _____

By:



Name: Jennifer Moon

Title: Deputy Mayor

Date: 12/23/19

Attest: _____

Approved as to form
and legal sufficiency



Assistant County Attorney

APPENDIX 1

DTPW Rider Activity data includes:

- **Metrobus Route Description**
- **Metrorail Tap-on and Tap-off Activity**
- **Location**
- **Timestamp**

Velocia Customer Data includes:

- **EASY Card Number**
- **Email Address**
- **Velocia Account Status – Active/Inactive**
- **Date Customer Registered for Velocia Account**
- **Date Customer Opted out of Velocia Account**

