

# THE KENT COUNTY CONCESSIONARY TRAVEL SCHEME ARRANGEMENTS FOR REIMBURSEMENT

With effect from 1 April 2020

## Preamble

These Arrangements for Reimbursement must be read in conjunction with the separate Scheme Definition and set out the terms for reimbursement which apply for the 12 months commencing on 1 April 2020 and relate to the above Concessionary Travel Scheme for which the responsible Travel Concession Authority is Kent County Council.

These Arrangements for Reimbursement are designed to meet the requirements set down in the Transport Act 1985, the Transport Act 2000, the Concessionary Bus Travel Act 2007 and the associated Regulations in accordance with Guidance issued by the Department for Transport, together with the requirements of EC Regulation 1370/2007.

## Definitions

- 1 In these Arrangements for Reimbursement all definitions set out in the Scheme Definition shall apply herein:
  - i. "Additional Capacity Costs" mean those costs claimed by a Participating Operator, including a reasonable return on any additional capital deployed, of providing additional service capacity over and above the capacity that the Participating Operator would be reasonably expected to provide if there was no Scheme which are assessed by or on behalf of the Travel Concession Authority as being reasonable and which are not met by any payment in respect of Marginal Additional Costs;
  - ii. "Amenity Element" when used in connection with fares, means those fares that are rendered significantly high as a result of that element in relation to the general level of fares for comparable journeys in the Principal Area in accordance with section 96(6) of the 1985 Act;
  - iii. "Average Cash Fare" shall mean the average fare per journey paid by adult passengers buying single and return tickets where single tickets count for one journey and return tickets count for two journeys;
  - iv. "DfT Guidance" means the latest edition of any document and/or method statement (e.g. spreadsheet) which has been or is to be issued by the Department for Transport providing guidance on the calculation of Reimbursement.
  - v. "Discretionary Elements" of the Scheme means any provision(s) of the Scheme enabled by the 1985 Act but not required by the 2000 Act or the 2007 Act which allows individually or in combination Passenger Journeys:

- a) To be made outside the statutory core time of 0930 hrs and 2300 hrs on weekdays other than public holidays;
  - b) To be made by companions;
  - c) On other than Eligible Services.
- vi. "ENCTS Pass" shall mean a pass issued in accordance with the Concessionary Bus Travel Act 2007.
- vii. "Eligible Person" shall mean any person who has a statutory entitlement to concessionary travel in accordance with relevant legislation and any guidance issued by the Secretary of State for Transport;
- viii. "Entitled Person" shall mean any person for whom a Travel Concession Authority has discretionary powers under the 1985 Act or other relevant legislation to provide concessionary travel;
- ix. "Financial Year" shall mean a twelve month period starting on 1 April in one year and ending on 31 March in the following year;
- vi "Generated Travel" is defined as those additional journeys made over and above the number that would have been made had there been no travel concessions and arising as a direct result of the entitlement to the travel concession provided by the Scheme;
- vii "Gross Revenue Foregone" shall be the gross value of travel made under the terms of the Scheme calculated according to the number of Passenger Journeys made and Normal Fare that would have been paid in respect of those journeys before any adjustments in respect of Generated Travel;
- viii "Marginal Additional Costs" mean the sum of those additional costs necessarily borne by the Participating Operator as a result of participation in the scheme and which arise directly from the travel that is generated by the Scheme, as defined in the DfT Guidance:
  - a. Administration costs – the operation of systems to provide data and information in the form required by the Travel Concession Authority;
  - b. Marginal Operating Costs – the costs to an operator of carrying an additional passenger assuming a fixed level of service, for example additional fuel costs, engineering costs, driver hours, insurance premiums, information costs;
  - c. Marginal Capacity Costs – the cost to an operator of carrying additional passengers and allowing the capacity of bus services to increase, by using the existing bus fleet more intensively to provide that additional capacity through increased frequency.
- ix "Net Financial Effect" shall be as defined in the Annex of EC Regulation 1370/2007 and shall equate to Total Reimbursement as defined below;
- x "Net Revenue Foregone" shall be the value of Gross Revenue Foregone adjusted to take account of Generated Travel by application of a Reimbursement Factor;

- xi "Normal Fare" shall mean the average adult fare that would be paid in respect of the journeys that would be made if there were no travel concessions, taking account of those journeys that would be made using discounted tickets (returns, day tickets, weekly tickets, etc) if these are available;
- xii "Passenger Journey" shall mean the act of a person moving from one location to another;
- xiii "Payment Periods" shall be:
  - 1 April to 30 June
  - 1 July to 30 September
  - 1 October to 31 December
  - 1 January to 31 March
- xiv "Participating Operator" shall mean a transport operator providing Included Services in accordance with the terms set out in the Scheme Definition
- xv "Reimbursement Calculator" shall mean the tool of that name provided by the DfT on their website for the purpose of aiding TCAs in their estimation of the total reimbursement required by operators.
- xvi "Reimbursement Factor" is defined as the proportion of total journeys that are not deemed to be generated by the travel concessions and would continue to be made if there were no travel concessions;
- xvii "Reimbursement Payment" means the payment made to a Participating Operator for the Total Reimbursement due in respect of all Included Services he provides;
- xviii "Revenue Reimbursement" shall be the payment due to the Participating Operator in respect of the Net Revenue Foregone as a result of participation in the Scheme (for the avoidance of doubt this excludes any payment in respect of Additional Costs);
- xix "Standard Method" is the method of calculating Total Reimbursement that will be applied unless any Participating Operator can provide comprehensive evidence to demonstrate to the satisfaction of the Travel Concession Authority that the Standard Method will not lead to the Participating Operator being reimbursed in accordance with the Regulations;
- xx "Statutory Elements" of the Scheme mean any provision(s) of the Scheme which allow holders of the ENCTS Pass to benefit from statutory minimum travel concession;
- xxi "Total Reimbursement" shall be the sum of Revenue Reimbursement, Marginal Additional Costs and Additional Capacity Costs;
- xxii "Travel Concession Authority" shall mean the authority responsible for this Scheme as named in the Preamble to this document and the term "Travel Concession Authority" shall also mean "Administering Authority" in the context of matters deriving from the Transport Act 1985;

## **Requirements of Participating Operators**

2. Until notice to the contrary all dealings with the Travel Concession Authority should be carried out through the offices of the Travel Concession Authority or any other body (agent, consultant or contractor) they nominate, such nomination to be made in writing.
3. Participating Operators shall enable holders of valid ENCTS Passes to make Passenger Journeys free of charge in accordance with the Scheme Definition in respect of both the Statutory Elements and the Discretionary Elements of the Scheme.
4. Pursuant to the proper administration of the Scheme and to facilitate the process of reimbursement Participating Operators shall:
  - i. permit (including the right to travel free of charge) officers, servants, agents and/or contractors of the Travel Concession Authority or others rightfully acting on its behalf access at any time to the vehicles of the Participating Operator on which concessions are given for the purposes of:
    - a) surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares paid by those passengers and/or;
    - b) obtaining information on other matters relating to the Passenger Journeys made by Eligible Persons and Entitled Persons which, in the opinion of the Travel Concession Authority is necessary for the calculation and/or verification of reimbursement payments and/or;
  - ii. provide at such times as the Travel Concession Authority may reasonably request information relevant to the calculation of reimbursement as may be specified and in the form specified in these Arrangements for Reimbursement or as otherwise requested at the time;
  - iii. cooperate with the Travel Concession Authority to establish and maintain an inventory of boarding stages that are within the principal area of the Scheme and/or its close vicinity and, if required, to assist in the process of allocating boarding stages to sub divisions of the principal area;
  - iv. As soon as possible and at least 7 days in advance of it taking effect, notify the Travel Concession Authority of any change or changes to fares on any Included service;
  - v. As soon as possible and in advance of it taking effect notify the Travel Concession Authority of any material change (additions, deletions and/or variations) to Included Services including details of any new or revised boarding stages;
  - vi. Provide reasonable assistance to the Travel Concession Authority in the operation and administration of the Scheme;
  - vii. Provide reasonable assistance and information to the Travel Concession Authority to enable the forward planning of budget requirements to properly fund the Scheme.

Should an operator be upgrading to new technology such as new ETMs or smartcard readers and find that they are having difficulty with programming or

sending complete data within the required timescale, then they should contact the Scheme Administrator without delay.

5. The Travel Concession Authority shall ensure that any information obtained in accordance with paragraph 4 shall be used only for the purpose of administering the Scheme and shall be confidential to the Travel Concession Authority and/or its contractors and/or consultants employed to assist in the administration of the Scheme and/or any auditors acting on behalf of the Travel Concession Authority.

### **Reimbursement**

6. Participating Operators shall be compensated for the Net Financial Effect of carrying all Passenger Journeys made under the terms of the Statutory Elements and Discretionary Elements by holders of ENCTS Passes which commence from a boarding stage defined as being within the principal area of the Scheme. Participating Operators shall also be compensated for the Net Financial Effect of all Passenger Journeys made under the terms of local Discretionary Elements by holders of ENCTS Passes and which commence from a boarding stage defined as being within the principal area of the Scheme. The Net Financial Effect shall be calculated with regard to the Annex of EC Regulation 1370/2007 and with the objective of achieving the “no better/no worse” position for Participating Operators as set out in the Travel Concession Schemes Regulations 1986 and/or any successor or additional Regulations.
7. Reimbursement payments will include provision for both Statutory and Discretionary Elements of the Scheme. It is not however intended to differentiate between these two elements. The Travel Concession Authority will provide sufficient funds to enable payment of the Total Reimbursement due to each Participating Operator.
8. The initial budget for Reimbursement in respect of a Financial Year will be determined in advance by estimating the Total Reimbursement requirement for the Financial Year. The method of estimation will take into account, where such information is available a range of factors in accordance with DfT Guidance using the actual or projected Total Reimbursement for the preceding year adjusted to take account of quantifiable changes in:
  - a) The inflationary impact of fares increases;
  - b) Demographic changes;
  - c) Trends in the take-up of ENCTS Passes
  - d) The impact of service improvement projects, significant new registrations and service reductions;
  - e) The impact of parking and/or traffic reduction schemes;
  - f) Land-use changes (new developments, changed uses, new attractors, etc);
  - g) Growth trends in travel activity (relating to the general economy);
  - h) Other relevant factors including long-term elasticity changes.
9. Where no information is available in respect of any of the factors above, reasonable estimates will be used.

### **Payment and Calculation of Reimbursement**

10. Payments will be made to Participating Operators of existing services on the following basis:
  - a) An amount equivalent to 95% of the latest estimate of Total Reimbursement due in respect of each month shall be paid to each Participating Operator by the 1<sup>st</sup> day of each month or the next working day if that day falls on a weekend or public holiday.
  - b) The cumulative balance of the Total Reimbursement due at the end of each Payment Period shall be calculated as set out below, using out-turn data for the period, and shall be paid to the Participating Operator by the last day of the following Payment Period or the previous working day if that day falls on a weekend or public holiday.
12. Participating Operators will be notified in advance of the amount of each payment made in accordance with 10(a) above and any subsequent variation to that amount.
13. Payments will be made to new operators and to existing operators in respect of new services on the following basis:
  - a) An initial payment equal to 95% of the Total Reimbursement estimated to be due for the period from the commencement of operation up to and including the end of the month in which the payment is made shall be paid within 28 days of the receipt of operational data for at least 3 months from which the payment will be calculated; where this is likely to cause cash flow problems for an operator the Travel Concession Authority may make an earlier payment at their discretion provided data received for 2 months shows consistency in Passenger Journeys.
  - b) After the initial payment 95% of the estimated Total Reimbursement due in respect of each month shall be paid to the Participating Operator by the 1<sup>st</sup> day of each subsequent month or the previous working day if that day falls on a weekend or public holiday.
  - c) The cumulative balance of the Total Reimbursement due at the end of each Payment Period shall be calculated as set out below and will be paid to the Participating Operator by the last day of the following Payment Period or the previous working day if that day falls on a weekend or public holiday.
14. The Scheme reserves the right to reclaim any overpayments either by invoice or by deducting the overpaid amounts from future Reimbursement Payments. Such overpayments will be advised no later than 3 months after the end of the Financial Year to which the overpayment relates and deductions from future payments will normally be made no later than 6 months after the end of the Financial Year to which the overpayment relates.
15. Participating Operators incurring a very low level of Net Revenue Foregone over a Financial Year may request to be paid on the basis of a fixed level of Total Reimbursement which may be agreed between the Participating Operator and the Travel Concession Authority and kept under review.
16. Payments to any Participating Operators falling outside the statutory provisions will be based on an agreed formula with the objective of being no more and no less generous than the terms of reimbursement in respect of local services.

### **Balancing Payments**

17. The balance of Total Reimbursement due at the end of a Payment Period shall be the difference between:
- a) The payments already made at that time in respect of the period commencing at the beginning of the respective Financial Year less any overpayments invoiced and/or deducted and;
  - b) The Total Reimbursement due at that time on the basis of out-turn data in respect of the period commencing at the beginning of the respective Financial Year and calculated as set out below.
18. Participating Operators will be sent a reimbursement statement detailing each balancing payment reconciliation. This statement will show the following for the period from the start of the Financial Year to the end of the relevant Payment Period:
- a) The sum of the payments due to the Participating Operator;
  - b) The sum of the payments so far made to the Participating Operator;
  - c) The amount of any balancing payment or reclaim.
19. Payments will only be released to Participating Operators upon receipt of a properly completed claim together with the necessary out-turn data and information required in respect of the previous Payment Period. These claims and data returns must be submitted within 8 working days of the end of each Payment Period.

### **Total Reimbursement**

20. Total Reimbursement for any period is the aggregate of the sum of Revenue Reimbursement, Marginal Additional Costs and Additional Capacity Costs for the same period in respect of each service/route operated by each Participating Operator during that period.

### **Revenue Reimbursement**

21. The Standard Method will calculate, using out-turn data for the Financial Year to date, the cumulative value of Revenue Reimbursement due at the end of each payment period for each service /route or group of services/routes operated by each Participating Operator as follows:

$$R = (J \times RF) \times (F \times FDF)$$

Where:

R is Revenue Reimbursement

J is the validated out-turn number of Passenger Journeys made in accordance with the Statutory and Discretionary Elements of the Scheme and starting in the principal area of the Scheme from the beginning of the respective Financial Year to the end of the period in question

RF is the Reimbursement Factor which represents the proportion of actual travel that would take place if there was no travel concession scheme. Subject to the exceptions set out in paragraph 23, the value of the Reimbursement Factor will

- be calculated for each Participating Operator using the Reimbursement Calculator provided by the Department for Transport.
- F is the Average Cash Fare paid per adult journey on bus, calculated for each route or group of routes.
- FDF is the fares discount factor calculated using the Reimbursement Calculator provided by the Department for Transport.
22. The detailed method by which the Reimbursement Calculator will be used is set out in the Annex to this document. Operators will be expected to provide to the Travel Concession Authority the necessary inputs required by the Reimbursement Calculator. If this information is not provided the Travel Concession Authority will use reasonable estimates.
23. The value of the Reimbursement Factor derived from the Reimbursement Calculator may be adjusted:
- i. At the entire discretion of the Travel Concession Authority for certain types of service where the growth in concessionary journeys per vehicle kilometer following the introduction of free concessionary travel is significantly lower than that assumed by the Reimbursement Calculator. Such exceptions are likely to be limited to:
    1. Eligible Services registered under Sections 12, 13, and 22 of the 1985 Transport Act (e.g. taxi buses, dial-a-ride and community buses)
    2. Discretionary services registered under Section 19 of the 1985 Transport Act if allowed by the Travel Concession Authority (e.g. dial-a-ride)
    3. Infrequent services (one journey per day or less)
    4. Services operated under contracts which specify lower than normal fares
  - ii. If an operator submits an evidenced case to the Travel Concession Authority which demonstrates to the Travel Concession Authority's satisfaction that the Reimbursement Factor value derived from the Reimbursement Calculator does not fulfil the "no better/no worse" objective. A Participating Operator may take any ongoing dispute over the application of the Reimbursement Calculator to Alternate Dispute Resolution (ADR) in accordance with Clauses 45 to 48.

Participating Operators will be advised of any adjusted Reimbursement Factor that will apply in respect of any of their Eligible Services

### **Values used in calculating Revenue Reimbursement**

24. The values used in the formula set out in paragraph 21 will be derived from data supplied by each Participating Operator as set out in paragraphs 25 to 30 below.
25. The validated number of Passenger Journeys will be based on the number of journeys recorded by the Participating Operator. Passenger Journeys outside of the valid times for travel and/or boarding at a stage outside of the principal area of the Scheme will be discounted. Where necessary the recorded number of journeys may be adjusted by a "Count Adjustment Factor" (CAF) applicable to the Participating Operator. The value of this factor if it is to be other than 1.000 will be the subject of consultation and agreement between the Participating Operator concerned and the Travel Concession Authority.

26. Any Count Adjustment Factor will be determined by surveys undertaken over a sample of services provided by the Participating Operator. Where the surveys show a sustained and significant variation between the surveyed number of journeys and the number recorded by the Participating Operator over a period of not less than 2 months, he will be advised accordingly and the value of the factor will be set to adjust the recorded number of trips. If the Participating Operator can demonstrate to the satisfaction of the Travel Concession Authority that he has successfully taken action to alter the factor or obviate the need for it he can apply to the Travel Concession Authority accordingly setting out his case for the factor to be reviewed. The same Count Adjustment Factor value will normally apply in respect of all services provided by the Participating Operator concerned.
27. The actual values of Count Adjustment Factors are specific to an individual Participating Operator and are based on operational data which may cause the values to vary from time to time. As such these values are not deemed to be part of these Arrangements for Reimbursement and any change to the value of a factor cannot be interpreted as a variation to the Arrangements for Reimbursement. However, the value of any Count Adjustment Factors and/or any changes thereto will be subject to a period of consultation of at least 28 days.
28. Should no agreement be reached as to the value of the factor by the end of the period of consultation, the Travel Concession Authority may determine the value but will give at least 14 days' written notice of the intended date of implementation of any factor and/or change to the value of any factor to the Participating Operator concerned, in which case the Participating Operator may take any unresolved, ongoing dispute over the value of the factor to Alternate Dispute Resolution (ADR) in accordance with Clauses 45 to 48
29. The Average Cash Fare will be calculated from the average adult fare per journey paid by fare paying passengers (single fares counting as one journey and returns as two journeys) on each route
30. The Travel Concession Authority also reserves the right to adjust the Average Cash Fare to take account of any significant variation in journey lengths between people making free concessionary journeys and those paying a fare (to remove as far as is possible any bias reflected in the average adult fare per journey) and any overall reduction in the lengths of journeys that would arise if a commercial fare was to be paid in a case where there was no travel concession scheme. The case for any such adjustment will have to be demonstrable and no such adjustment will be made without consultation and agreement with the Participating Operator concerned.

### **Marginal Additional Costs**

31. A payment in respect of Marginal Additional Costs will be made in addition to Revenue Reimbursement. The Standard Method will calculate this payment on the basis of a payment per generated journey, based on the DfT Guidance as follows:
- Marginal Operating Costs           £0.075
  - Scheme Administration Costs   £0.002
  - Marginal Capacity Costs           £0.100

The above values will be reviewed annually in accordance with DfT Guidance issued from time to time. A minimum annual payment of £500 or 50% of Revenue Reimbursement, whichever is the lower, will apply in all cases.

32. If a Participating Operator can produce evidence that he is incurring Marginal Operating Costs and/or Marginal Capacity Costs at a rate that is significantly different from the rate shown in paragraph 31, as a direct result of the Scheme, then such evidence will be taken into account to ensure that the Participating Operators overall reimbursement is fair and reasonable. A claim for such costs must be submitted to the Travel Concession Authority within six (6) months of the start of the respective Financial Year. Should the Travel Concession Authority not receive such a claim from the Participating Operator within the said period, time being of the essence, then any claim in this regard will be deemed to have been waived by the Participating Operator and the Revenue Reimbursement paid by the Travel Concession Authority will be deemed to fully satisfy all claims due to the Participating Operator. The calculation of any revised rate must be consistent with the number of generated journeys implicit in the Reimbursement Factor that applies. A Participating Operator may take any ongoing dispute over Marginal Additional Costs to Alternate Dispute Resolution (ADR) in accordance with Clauses 45 to 48 provided that such claim is submitted within the said six month period, time being of the essence.
33. The number of generated journeys to be used in the calculation of the supplement referred to in Clause 31 will be calculated as follows:

$$J_g = J \times (1 - RF)$$

Where:

$J_g$  is the number of generated journeys

$J$  is the validated number of passenger Journeys

$RF$  Is the Reimbursement Factor (see paragraph 20)

### **Additional Capacity Costs**

34. The Travel Concession Authority recognises that circumstances may exist where the volume of concessionary travel on certain services requires additional capacity to be provided, relative to that which would have been provided if there was no Scheme. Any reimbursement in respect of Additional Capacity Costs will therefore need to be based on data submissions or claims which will be dealt with in accordance with paragraphs 35 to 38 below. Participating Operators are encouraged to avoid the need to make retrospective claims and where possible should submit their claims in advance of the period to which they will apply so that the Travel Concession Authority is able to make any necessary financial provision. Notice of the intention to submit a claim for such costs must be submitted to the Travel Concession Authority within six (6) months of the start of the respective Financial Year. All completed claims for Additional Capacity Costs must be submitted by the Participating Operator to the Travel Concession Authority within six (6) months of the end of the respective financial year to which the claim relates, time being of the essence. Should such a claim for Additional Capacity Costs not be submitted within the said period, time being of the essence, then any claim for Additional Capacity Costs will be deemed to have been waived by the Participating Operator and the Total

Reimbursement otherwise paid by the Travel Concession Authority shall be deemed to fully satisfy all claims due to the Participating Operator.

35. Participating Operators who wish to claim reimbursement in respect of Additional Capacity Costs will be required to supply evidence to the Travel Concession Authority that the need for the additional capacity arises as a direct result of the Scheme. The Participating Operator will also be required to demonstrate the efficiency of the solution adopted to provide the additional capacity required and, if appropriate, the commercial viability of any lower level of service that he would operate if there was no scheme and the reasonableness of the cost differences, taking into account any impact on commercial revenues.
36. Depending on the basis of the claim, the claim will need to be supported with adequate information for it to be assessed and the valuation checked, which will include:
  - a clear statement of the need for additional capacity;
  - before and after capacity;
  - before and after load factors;
  - numbers of fare-paying and concessionary passengers in sufficient detail to identify peak loading periods across the day;
  - consideration of possible options for resolving the issue taking into account the peak and off peak capacity requirements;
  - the impact on commercial revenue;
  - method of determining costs including rates per mile and rates per hour with details of the various elements making up these rates;
  - the value of any additional capital deployed;
  - the rate for the return on capital employed..
37. If the claim for Additional Capacity Costs together with the Revenue Reimbursement payments and Marginal Additional Costs payments would in practice over-reimburse a Participating Operator, then this will be taken into account in the assessment of the amount of Additional Capacity Costs payable.
38. Participating Operators will be provided with guidance on the detailed information required by the Travel Concession Authority as soon as possible after they notify their intention to submit a claim. Unless an exception is made, the Participating Operator must utilise the claim template provided by the Travel Concession Authority or its agent. The Travel Concession Authority will ensure that each claim is assessed by a person or firm suitably qualified to do so and subject to being satisfied that the claim is properly and fully evidenced will make payment of any sum identified by the person or firm undertaking the assessment as being due. A Participating Operator may take any ongoing dispute over the payment of an additional capacity cost claim to Alternate Dispute Resolution (ADR) in accordance with Clauses 45 to 48.

### **Reimbursement Claims and Data Returns**

39. Data enabling the calculation of Revenue Foregone shall normally be provided by Participating Operators in electronic form extracted directly from electronic ticketing machines and those machines must be configured such that journeys made by Scheme passholders can be separately identified. Participating Operators expected to receive

Total Reimbursement totalling £50,000 or more in respect of a Financial Year must provide data in this form.

40. Participating Operators expected to receive Total Reimbursement totalling less than £50,000 in respect of a Financial Year may provide an acceptable equivalent to electronic data, but only if electronic data is not available.
41. The precise specification of the required data shall normally be a matter of agreement between each Participating Operator and the Travel Concession Authority but the Travel Concession Authority reserves the right to reasonably specify the content, manner, form and method by which such information has to be extracted and provided in cases where they consider it necessary to do so. The information normally required will be as follows:
  - a. Details of each journey made by a scheme passholder (route/service identifier, journey number, driver identifier, boarding stage, time, etc)
  - b. The average fare paid by fare paying passengers purchasing tickets on bus for each route/service and for each data return period (or information to enable this to be calculated)
42. In special cases (for example small commercial operators or community transport operators), Participating Operators who are unable to provide data from electronic ticket machines or its equivalent may, subject to the prior agreement of the Travel Concession Authority, have their Revenue Foregone estimated by means of data from sample surveys (or other sources) on their services or services of a similar type in the same area. To facilitate the process of estimation they may be required to provide details of gross revenue.
43. The frequency of data returns shall be a matter to be determined between each Participating Operator and the Travel Concession Authority but such returns shall normally be monthly but shall be no less frequent than quarterly and shall be provided within 8 working days of the end of each period to which they relate. The Travel Concession Authority reserves the right to withhold payments of reimbursement in whole or in part in cases where Participating Operators do not submit data returns on time and/or in the required form.

#### **Notice of Withdrawal from Scheme**

44. In the event that a Participating Operator wishes to withdraw his participation in respect of the Discretionary Elements of the Scheme he must give at least 42 days notice in writing to the Travel Concession Authority.

#### **Alternate Dispute Resolution (ADR)**

45. The Participating Operator and the Travel Concession Authority shall attempt to resolve any dispute in connection with the application of these Arrangements for Reimbursement through negotiations between the parties. If the dispute is not so resolved, either party may request that the dispute is resolved through an agreed Alternative Dispute Resolution (ADR) procedure within 12 months of the year end to which these Arrangements for Reimbursement relate. The Travel Concession Authority's

preferred procedure would be Mediation. For the avoidance of doubt for these Arrangements for Reimbursement the year end is defined as being 31 March 2021.

46. Unresolved disputes over which Alternative Dispute Resolution (ADR) may be sought shall be:
- a) Disputes over the application of the DfT Reimbursement Calculator in the calculation of the Reimbursement factor in accordance with Clause 23(ii);
  - b) The determination by the Travel Concession Authority of a Count Adjustment Factor, the value of which a Participating Operator has reason to dispute;
  - c) Disputes over the amount of any payment awarded in response to a claim made by a Participating Operator for the reimbursement of Marginal Additional Costs in accordance with Clause 32.
  - d) Disputes over the amount of any payment awarded in response to a claim made by a Participating Operator for the reimbursement of Additional Capacity Costs in accordance with Clauses 34 to 38.

For the avoidance of doubt any matter referred to ADR must be supported by detailed evidence endorsed by appropriate technical advisors.

47. The matter of costs relating to the ADR procedure shall be dealt with as part of the process of ADR.
48. ADR shall be without prejudice to the rights of Participating Operators under Part V of the Travel Concession Schemes Regulations 1986 and/or Section 150(3) of the Transport Act 2000 (as amended) and/or any other relevant legislation and/or regulations and does not affect any other legal rights that the parties might have of resolving any dispute arising from these Arrangements for Reimbursement.

#### ANNEX - APPLICATION OF THE DfT REIMBURSEMENT CALCULATOR (“the Calculator”)

***Note: This Annex is not part of the published Scheme Arrangements, but merely expands on the methodology of how the DfT Calculator will be used.***

The Reimbursement Calculator will be applied at Participating Operator level to calculate a Fares Discount Factor (FDF), Reimbursement Factor (RF) and the components making up Marginal Additional Costs. Where a Participating Operator provides any services in one or more of the special categories identified in paragraph 23(i) of the main document, these will be grouped and treated separately from the other services run by that operator.

The Average Fare and, hence, FDF value will be calculated using the “Discount Factor Method” within the Reimbursement Calculator.

Participating Operators will be required to submit monthly returns to enable the average annual value of day and week tickets to be established and input to the “Discount Factor Method”. The Travel Concession Authority will circulate a pro-forma for this purpose to each Participating Operator. The Cash Fare value used will be obtained from the routine data submitted by each Participating Operator and calculated as an average weighted by the volume of concessionary travel on each route or group of routes.

A Participating Operator who can show conclusively that the “Discount Factor Method” is inappropriate as defined in Table 5.1 of DfT Guidance may submit an evidenced case to the Travel Concession Authority to use the “Basket of Fares” method to calculate the FDF value. Submissions must be made by Participating Operators during the first 6 months of a Scheme Year in accordance with the requirements of the main document but until the Travel Concession Authority has assessed the evidence and given approval for the “Basket of Fares” method to be used, the value derived from the “Discount Factor Method” shall prevail. It shall be for the Travel Concession Authority to determine whether or not any adjusted FDF value shall be applied retrospectively.

In determining whether the “Basket of Fares” method should be used the Travel Concession Authority will need to see evidence from the Participating Operator that will include conclusive evidence of the average number of trips made using each ticket type included in the basket and the proportion of sales of each ticket type to eligible concessionaires in the absence of a free scheme. This may not be the actual sales to non concessionary travellers.

In cases where a Participating Operator does not offer any discounted ticket products other than return tickets, the FDF value will be 1.0000.

Once set for the Scheme Year, the FDF will not be recalculated, except if challenged as above. Data provided during the year will be used to calculate the FDF to apply in the next Scheme Year.

The RF value will be derived from the RF model within the Calculator, normally using the Non-PTE Demand Curve and the change in Average Fare between 2005/06 and the year in question, the latter as derived above. Average Fare increases between 2005/6 and the year in question will be calculated by the Travel Concession Authority on the basis of data already held or requested from an operator.

The Travel Concession Authority will not use the facility to recalculate any factors using an updated inflation index during the financial year; however the latest available indices will be used to calculate the individual Participating Operator parameters for the Scheme year notified at least 28 days before the Scheme is due to take effect.

For Schemes where the 2005/06 average fare was established in 2011/12, this will not change. For schemes where the 2005/06 average fare is not known, the National Bus Fares Index between 2005/06 and 2010/11 will be used, together with the actual change in fares between 2010/11 and the year in question. The 2020/21 average fare will be estimated using data provided by the Participating Operator, including a forecast of fares increases. The percentage change between these two average fares will be used to calculate the Reimbursement Factor using the Reimbursement Calculator. That Reimbursement Factor will apply for the year and will not be recalculated at the year end.

Marginal Additional Costs will be calculated on the basis of a payment per generated journey for each Participating Operator, and will be formulated as defined in the DfT Guidance as set out below:

Marginal operating Costs will be paid at the value of £0.075 in 2020/21

Scheme Administration Costs will be paid at the value of £0.002 in 2020/21

Marginal Capacity Costs will be paid at the value of £0.100 in 2020/21.

The Factors to be used will be advised at least 28 days before the Scheme Year commences (ie by early March each year) and will be based on fares data for the 12 month period from 1 October to 30 September (the base period) to which will be applied an increase factor which each Participating Operator will be required to supply by 31 December each year. This factor will need to represent gross effect of actual and anticipated increases between the base period and the scheme year in question. The Travel Concession Authority will circulate a pro-forma to each Participating Operator at the beginning of December, requesting this information by 31 December each year and explaining more fully what is required. If this information is not provided, the Travel Concession Authority will determine and will use an assumed increase.

Operators who can provide evidence that the application of the DfT Calculator in the way described above does not leave them “no better and no worse off” are at liberty to submit their own fully completed Calculator for consideration by the Travel Concession Authority, within 6 months of the start of the year in question subject to the criteria of the main document.

This must be accompanied by clear evidence to support variations from defaults and any variations must be applied to all DfT Calculator entries to ensure that individual elements that will benefit a Participating Operator are not singled out with defaults remaining where they will be of benefit.

Specific examples of this are:

Average Fare increases between 2005/6 and the year in question.

Marginal Operating Costs – Journey length

If other than the default 3.9 miles is to be used, the figure must be an average of all of that Participating Operator’s services. Individual treatment by route will not be considered

Marginal Capacity Costs

A Participating Operator must submit their own replacement to default values on a network wide basis, having produced a separate spreadsheet detailing each route operated within the scheme, each parameter being a “local value”, not a mix of defaults and local (see the exception detailed below on cost rates). Each element in the sheet will then be aggregated in accordance with Annex J of the DfT Guidance and entered by the Participating Operator into the Calculator as a network total. Singling out certain routes for special treatment will not be considered. The supporting calculations must be provided with the completed DfT Calculator.

The DfT Guidance allows for local costs per mile and per hour to be used, but recommends strongly that normally the defaults will be used. The Travel Concession Authority will follow that advice. However if a Participating Operator can prove that he is significantly disadvantaged by using these default values, he may submit for consideration alternative values which must be auditable. Due reference to the Guidance must be made, especially paragraph 7.43 which indicates that true marginal costs must be used, not average costs, in the same way that the defaults have been calculated..

Previous Challenge

Where a Participating Operator has previously challenged the DfT Calculator values, the agreed basis of the challenge will continue, but factors will be updated in the light of the new DfT Guidance and DfT Calculator for the relevant year.

#### Appeals

It is expected that by allowing Participating Operators to challenge calculations and defaults, appeals will be avoided. However it is acknowledged that the appeal deadline makes this challenging. The Travel Concession Authority therefore requests that such challenges are submitted without delay to enable a full review to be undertaken before the appeal deadline.