

DATED

2009

ESSEX COUNTYWIDE CONCESSIONARY TRAVEL SCHEME

NEW PARTICIPATION AGREEMENT

BETWEEN

(1) ESSEX COUNTY COUNCIL (as the Co-ordinating Authority)

and the following Travel Concession Authorities or TCAs namely:

(2) BASILDON DISTRICT COUNCIL

(3) BRAINTREE DISTRICT COUNCIL

(4) BRENTWOOD BOROUGH COUNCIL

(5) CASTLE POINT BOROUGH COUNCIL

(6) CHELMSFORD BOROUGH COUNCIL

(7) COLCHESTER BOROUGH COUNCIL

(8) EPPING FOREST DISTRICT COUNCIL

(9) HARLOW DISTRICT COUNCIL

(10) MALDON DISTRICT COUNCIL

(11) ROCHFORD DISTRICT COUNCIL

(12) TENDRING DISTRICT COUNCIL

(13) UTTLESFORD DISTRICT COUNCIL

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B E T W E E N:

- (1) **ESSEX COUNTY COUNCIL** (“ECC”) of PO Box 11, County Hall, Chelmsford, Essex CM1 1 LX
- (2) **BASILDON DISTRICT COUNCIL** of The Basildon Centre, St Martin’s Square, Basildon, Essex SS14 1DL (“Basildon”)
- (3) **BRAINTREE DISTRICT COUNCIL** of Causeway House, Bocking End, Braintree, Essex CM7 9HB (“Braintree”)
- (4) **BRENTWOOD BOROUGH COUNCIL** of Town Hall, Ingrave Road, Brentwood, Essex CM15 8AY (“Brentwood”)
- (5) **CASTLE POINT BOROUGH COUNCIL** of Kiln Road, Thundersley, Benfleet, Essex SS7 1TF (Castle Point”)
- (6) **CHELMSFORD BOROUGH COUNCIL** of Civic Centre, Duke Street, Chelmsford, Essex CM1 1JE (“Chelmsford”)
- (7) **COLCHESTER BOROUGH COUNCIL** of PO Box 884, Town Hall, Colchester, Essex CO1 1 FR (“Colchester”)
- (8) **EPPING FOREST DISTRICT COUNCIL** of Civic Offices, High Street, Epping, Essex CM16 4BZ (“Epping Forest”)
- (9) **HARLOW DISTRICT COUNCIL** of Civic Centre, The Water Gardens, Harlow, Essex CM20 1WG (“Harlow”)
- (10) **MALDON DISTRICT COUNCIL** of Princes Road, Maldon, Essex CM9 5DL (“Maldon”)
- (11) **ROCHFORD DISTRICT COUNCIL** of Council Offices, South Street ,Rochford, Essex SS4 1BW (“Rochford”)
- (12) **TENDRING DISTRICT COUNCIL** of Westleigh House, Carnarvon Road, Clacton-on-Sea, Essex CO15 6QF (“Tendring”)
- (13) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, Essex CB11 4ER (“Uttlesford”)

WHEREAS:

- A. The provisions of the Transport Act 1985 and the Transport Act 2000 and the Concessionary Bus Travel Act 2007 place a duty on the Travel Concession Authorities (“TCAs”) to reimburse participating transport operators (“Participating Operators”) for costs they have incurred in providing transport to passengers that are eligible for concessionary travel under the terms of the Scheme
- B. The provisions of Part IV of the Local Government Act 1972 allow for a local authority to arrange for the discharge of any of their functions by a committee, sub-committee, an officer of the authority or any other authority and this agreement is made pursuant to those powers

- C. The Parties have agreed that ECC shall carry out certain functions of each TCA and that the Parties shall implement the Scheme in accordance with the provisions of this Agreement
- D. This Agreement is entered into to satisfy the following principal aims:
- D.1 to fulfil the obligations of the TCAs under the Acts
 - D.2 to encourage use of the local public transport network within the overall objectives of sustainable transport policies of the Parties
 - D.3 to provide reimburse Participating Operators in accordance with the Acts and the Regulations
 - D.4 to minimise the cost of administering the Scheme and to provide more efficient dealings with the Participating Operators
 - D.5 to allow ECC to fulfil some or all of these functions on behalf of the 12 Essex Travel Concession Authorities as indicated in C above.

NOW IT IS AGREED as follows:

1. In this Agreement, unless the context clearly requires otherwise:

“1985 Act” means the Transport Act 1985

“2000 Act” means the Transport Act 2000

“2007 Act” means the Concessionary Bus Travel Act 2007

“Acts” means the 1985 Act, the 2000 Act and the 2007 Act

“Annual General Meeting” means meeting of the Parties referred to in clauses 43 to 46 which shall be held on the Monday closest to 15th November in each Year

“Appeal Award” means any decision with relation to reimbursement as determined by the Secretary of State on Appeal

“Appeal Costs” means the costs incurred by ECC in the management of any Appeals

“Appeal” means any application submitted to the DfT by any Participating Operator pursuant to any of the provisions of the Acts and the word Appellants shall be construed accordingly

“Arrangements for Reimbursement” means the latest applicable version of the Arrangements for Reimbursement for the time being applicable to the Scheme [ECC1]

“Authorities” means the Parties and the word “Authority” and “Party” shall be construed accordingly

“Central Administration Costs” means the costs reasonably incurred by the Co-ordinating Authority in connection with the central administration of the Scheme which shall include but not be limited to:

- establishing and/or reviewing arrangements for managing and operating the Scheme

- the appointment and reimbursement of contractors, consultants, agents, legal representatives or others to advise and act in relation to any issues concerning the Scheme Appeals, Appeal Awards, Judicial Challenges or other matters related thereto
- the processes for obtaining funding from the TCAs and distributing it to the Participating Operators
- negotiating with Participating Operators
- negotiating and working with Southend on Sea Unitary Authority
- such other tasks as may be agreed between the Co-ordinating Authority and Travel Concession Authorities from time to time

“The Co-ordinating Authority” shall mean Essex County Council

“DfT” means the Department for Transport (See clause 5C below)

“General Meeting” means an Annual General Meeting or an Extraordinary General Meeting

“ECC” means Essex County Council and, where the context so admits, without detracting from ECC’s liability to all or any Party under this Agreement shall be deemed to include any contractor consultant agent or other body duly appointed by ECC to undertake its obligations under this Agreement

“Extraordinary General Meeting” means such a meeting of the Parties as referred to in clauses 47 and 48

“Interest” means interest during the period from the date on which the payment is due to the date of actual payment at the Interest Rate then prevailing or should the base rate referred to cease to exist at such other rate of interest as is most closely comparable with the Interest Rate to be determined by the duly authorised officer of ECC

“Interest Rate” means 3% per year above the base lending rate of Lloyds Banking Group plc or such other bank as ECC may from time to time nominate

“Judicial Challenges” means any action commenced in a Court of Law

“Late Payment” means payment in respect of **Standard Recovery** received after the 15th day of the month in which it became due and in respect of all other payments due more than 30 days after the latest due date for payment under this Agreement

“Leading Counsel” means Queen’s Counsel with specialist knowledge in the field of public law

“Month” means a complete calendar month so that parts of a month shall be disregarded in computing any period expressed in months

“Participating Operators” means those operators participating in the Scheme

“Parties” means the parties to this agreement and the expression “Party” shall be construed accordingly

“Principal Area” has the meaning defined in the Acts and at the date of this Agreement comprises all Essex except for the administrative areas of Southend

Council and Thurrock Council

“Regulations” means the Travel Concession Schemes Regulations 1986

“Representative” means duly authorised officer of an Authority

“Scheme” means the latest applicable version of the Essex Countywide Concessionary Travel Scheme under the Acts (*Note: This document is not physically annexed to this Agreement because its production and revision is a statutory requirement*)not yet appended

“Secretary of State” or “SoS” means the Secretary of State for Transport

“Standard Recovery” means the total amounts payable by the Travel Concession Authorities in accordance with Schedules 3 and 4

“Term” means the two Years beginning on 1 April 2009 and ending on 31 March 2011

“Travel Concession Authorities” or “TCAs” has the meaning defined in the Transport Act 2000 and in this Agreement comprises any Party which is for the time being a Travel Concession Authority

“Year” means the period from 1 April in one year to 31 March in the next year

2. Terms defined in the Scheme have the same meaning in this Agreement except that in the event of conflict the definitions in this Agreement shall prevail
3. References to the singular shall include plural and vice versa and references to a clause, paragraph or schedule are to a clause, paragraph or Schedule of this Agreement
4. Headings used in this Agreement are for reference only and shall not be taken into account in the construction or interpretation of any provision to which they refer.
5. References to any gender shall include all genders and the neuter and vice versa
- 5A. “including” means “including, without limitation”;
- 5B. Where in this Agreement reference is made to a clause, paragraph, schedule, plan, drawing or recital, such reference (unless the context requires otherwise) is to a clause, paragraph, schedule, plan, drawing or recital of or (in the case of a plan or drawing) attached to this Agreement;
- 5C. Any reference to a statute or statutory instrument means the statute or statutory instrument as amended and/or any other legislation from time to time amending or replacing it for the time being in force and shall include all instruments orders plans regulations permissions and directions for the time being made issued or given thereunder or deriving validity therefrom
- 5D. References to any Party include the successors in title of that Party or any successor in function or (where the context so admits and without detracting from the liability of the Party or successor) any person duly appointed to act on his behalf
6. The TCAs shall each be jointly and severally liable for the Scheme and its administration in accordance with section 93 of the 1985 Act.
- 6A. If there is a fundamental change in legislation governing concessionary fares or to the grant methodology employed by central government, or in the case of force majeure, the agreement shall be considered void. It will then be the responsibility of all Parties to renegotiate the apportionment of contributions.

7. The TCAs acknowledge that the Scheme shall also be operated to fulfil the requirements placed upon them by the 2000 Act and the 2007 Act.
8. For the Term, ECC shall discharge functions of the TCAs under the Acts in management and operation of the Scheme in accordance with the provisions of this Agreement.
9. Not used

Responsibilities of ECC the Co-ordinating Authority

10. The Parties agree that:
 - 10.1 ECC shall be responsible for the management and operation of the Scheme and any Appeals including the matters identified in Schedule 1
 - 10.2 In exercising all responsibilities hereunder with regard to the Scheme and any Appeals the Co-ordinating Authority shall:
 - 10.2.1 have discretion as to the means by which it manages and operates the Scheme and any Appeals
 - 10.2.2 manage any Judicial Challenges in accordance with the terms of clause 15 of this Agreement
 - 10.2.3 if it considers it appropriate appoint consultants contractors legal advisers and/or agents to manage and operate the Scheme and Appeals on its behalf
 - 10.2.4 if it considers it appropriate appoint consultants contractors legal advisers and/or agents to assist with the legal factual and/or procedural issues or otherwise arising from the Scheme the Appeals any Judicial Challenges in relation to the Scheme

Responsibilities of the Travel Concession Authorities

11. The TCAs shall each comply with the Scheme. The Travel Concession Authorities shall ensure that their conduct hereunder is in accordance with the Scheme.
12. The responsibilities of the Travel Concession Authorities hereunder are set out in Schedule 2 to this Agreement.
13. Each Travel Concession Authority shall be responsible for the payment of the amount set out opposite its name in Schedule 3 and the Co-ordinating Authority shall be responsible for all other costs which it incurs in connection with the Scheme and this Agreement.

Appeals

- 14.1 ECC shall manage and deal with any Appeals made in relation to the Scheme in such manner as ECC in its absolute discretion shall see fit
- 14.2 The responsibilities of ECC under clause 14.1 include:-
 - 14.2.1 all correspondence and negotiations with the DfT
 - 14.2.2 all correspondence with Appellants and their legal advisers
 - 14.2.3 drafting and compiling evidence and statements for the Appeal

- 14.3 On receipt of notice of any Appeals ECC shall give written notice thereof to the respective TCAs together with a copy of the Appeal documents submitted by the Appellant.
- 14.4 ECC may submit to the SoS any written statement as it sees fit within the timescale specified in the Regulations relating to any aspect or matter pertaining to any Appeal
- 14.5 If ECC submits a written statement to the SoS pursuant to clause 14.4, it shall give written notice to the relevant TCA together with a copy of the statement for information.
- 14.6 The TCA may then make written representations to ECC regarding the said statement, which ECC shall duly take into account in when managing and dealing with the Appeal.
- 14.7 If ECC decides not to make written representations to the SoS regarding any Appeal within the timescale in the Regulations, ECC shall give written notice to the relevant TCA of its decision together with an outline of the reasons
- 14.8 If an Appellant reaches a negotiated settlement and withdraws its appeal, ECC shall give the relevant TCA written notice and details of the terms of the settlement.
- 14.9 Before the SoS determines any appeal ECC shall send the relevant TCA a copy of any correspondence, submissions or decisions of material significance relating to the Appeal.
- 14.10 ECC shall send a copy of the SoS's written decision on any Appeal to the respective TCA.
- 14.11 In discharging its obligations and responsibilities relating to any Appeal, ECC may in its discretion appoint contractors consultants legal representatives and/or agents to manage the Appeals on its behalf and/or advise regarding any relevant issues

15. Judicial Challenges

- 15.1 In the event that either the Co-ordinating Authority considers[ECC2] any Judicial Challenge of an any Appeal Award or decision made by the DfT should be pursued then the Co-ordinating Authority shall have the discretion to instruct Leading Counsel to provide an opinion on the strength and merits of any such case
- 15.2 All costs related to seeking Leading Counsel's advice with regard to the likelihood of success of any Judicial Challenge will be borne by the Co-ordinating Authority
- 15.3 In the event that pursuant to clause 15.1 Leading Counsel considers that there is a better than even chance of success in pursuing a Judicial Challenge in the said case on which he has been asked to advise, then the Co-ordinating Authority, in consultation with the respective Travel Concession Authority will decide whether or not to proceed with the Judicial Challenge.
- 15.4 All costs incurred in relation to pursuing any Judicial Challenge will be paid for in their entirety together with any costs awarded by the Court should the action be unsuccessful by the Co-ordinating Authority pursuing the Judicial Challenge and for the avoidance of doubt[ECC3] these costs will be met by the Co-ordinating Authority.
- 15.5 In the event that any Participating Operator or third party challenges any Appeal Award or decision made by the DfT then the provisions of clauses 15.1 15.2 15.3 and 15.4 shall apply mutatis mutandis to this clause 15.5.

Costs, Payments and Financial Management

16. The Co-ordinating Authority shall calculate the Standard Recovery to be paid by each Travel Concession Authority in accordance with the formula set out in Schedule 4 of this Agreement and shall notify the Travel Concession Authorities of the level of payment due at least 21 days in advance of that payment becoming due.
- [ECC4]17. Each Administering Authority shall pay to the Co-ordinating Authority its share of the Standard Recovery on or by the 15th day of each Month and with regard to all other payments by the date specified for payment when the payment is requested.
18. In the event of Late Payment any Travel Concession Authority so in arrears shall pay to the Co-ordinating Authority Interest at the Interest Rate on the sum outstanding together with any other costs reasonably and unavoidably incurred by the Co-ordinating Authority arising from such Late Payment.
19. Any dispute over the amount of payments requested shall be raised with the Co-ordinating Authority by the Travel Concession Authority so concerned and the respective Authorities shall use reasonable endeavours to settle any such dispute within 21 days failing which the matter shall be referred to arbitration in accordance with the provisions of this Agreement.
20. For the avoidance of doubt any action taken by the Co-ordinating Authority in a Court of Law as referred to in clause 20 of this Agreement shall not be regarded as a Judicial Challenge for the purposes of this Agreement.
21. The resolution of a dispute shall not be unreasonably delayed by any party and any such dispute shall not be held as reason to delay payment.
22. Any adjustment found to be due shall be made once the dispute is resolved and within 28 days of such resolution.
23. The responsibility for any costs of arbitration shall be determined as set out in clause 66.1 of this Agreement and shall be paid accordingly and without unreasonable delay by the relevant Party liable
24. The Co-ordinating Authority shall reconcile the Scheme's financial accounts following the end of each Year and shall present them as part of the annual report on the Scheme at the Annual General Meeting.
- 25.1 At the end of each Year (and also on the winding up of the Scheme) any surplus shown by the agreed accounts for the Scheme shall be divided between the Travel Concession Authorities pro rata to the amount paid into the Scheme by each Travel Concession Authority in the last three complete financial years (or since the Travel Concession Authority joined the Scheme, if a shorter period).
- 25.2 Such surplus shall be calculated after reasonable provision for all liabilities (including contingent liabilities).
- 25.3 The Co-ordinating Authority shall make payment within 4 weeks of agreement by the parties of the amount to be divided and the amount each Travel Concession Authority is to receive.
26. If any Travel Concession Authority withdraws from the Scheme in accordance with the terms of this Agreement that Authority shall remain liable for its proper share of all Scheme expenditure which was incurred whilst it was a Travel Concession Authority and shall forthwith make payment accordingly and if the said withdrawal causes the Scheme a financial loss this financial loss shall be paid to the Co-ordinating Authority by the said Travel Concession Authority within 14 days of receiving notification of the amount due.

General meetings

27. The Authorities shall in each year hold a general meeting as an annual general meeting in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the Authorities and that of the next. The annual general meeting shall be held at such time and place as the Co-ordinating Authority shall appoint. All general meetings other than annual general meetings shall be called extraordinary general meetings.
28. The Co-ordinating Authority may, whenever it thinks fit, convene an extraordinary general meeting or call for a vote on any issue regarding the operation or administration of the scheme, to be carried out by Email or other electronic or written means. The Co-ordinating Authority shall, on a requisition made in writing by any 5 Travel Concession Authorities, immediately proceed to convene an extraordinary general meeting. If it does not proceed to convene a meeting within 21 days from the date of the requisition, the requisitionists or a majority of them may themselves convene a meeting.
29. Any requisition shall state the object of the meeting and the terms of any resolution to be proposed, and shall be left at the principal office of the Co-ordinating Authority.
30. At least 21 clear days before every meeting, notice specifying the place, the day and the hour of meeting, and the general nature of such business, shall be given to the Travel Concession Authorities; but the accidental omission to give such notice to, or the non-receipt of such notice by, any Party shall not invalidate the proceedings at any general meeting. The Co-ordinating Authority may add any item to the business to be discussed at the meeting if the views of the Parties on the items must be obtained before the following meeting. In such cases, the Co-ordinating Authority shall give notice of all additions to the Travel Concession Authorities as soon as reasonably practicable.
31. No business shall be transacted at any meeting unless a quorum of not less than 5 Parties is present at the commencement of such business. If such a quorum is not present within half an hour from the time appointed for the meeting the meeting shall stand adjourned to a time determined by ECC, acting by its Representative present at the meeting.
32. The Representative of the Co-ordinating Authority shall preside as chairman at every general meeting.
33. If the Representative of the Co-ordinating Authority is not present within fifteen minutes of the time stated for the holding of a meeting those present shall choose some one of their number to be chairman of the meeting.
34. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
35. At any general meeting a declaration by the chairman that a resolution has been carried or lost and an entry to that effect in the minutes shall be conclusive evidence of the fact.
36. Every Party shall have one vote and no more. All votes shall be given personally.
- 36.1 In the case of an equality of votes then the motion will be considered to have failed[ECC5].
- 36.2 The co-ordinating Authority shall compile and maintain a list of duly authorised persons who shall be able to cast a vote on behalf of their Travel Concession Authority.
- 36.3 In any case where a vote is called for by the Administering Authority by E mail or other non personal means in relation to any change or question relating to the operation of the scheme as outlined in 28 above any default in response by any TCA will be considered to be an abstention provided it is established that the vote request was received. The

result of the e-mail vote on any particular matter shall be sent by e-mail to each Party as soon as the result is known.

37. No Party shall be entitled to vote at any general meeting if any money owing from it hereunder is overdue.
38. The outcome of every vote shall bind each Party unless it can be shown that it would involve that Party in expenditure (a) beyond that agreed hereunder or (b) expenditure or action that would be deemed unlawful by a Court of Law.

Annual General Meeting

39. At least 21 clear days before every Annual General Meeting, notice specifying the place, the day and the hour of meeting, and the general nature of such business, shall be given to the Travel Concession Authorities; but the accidental omission to give such notice to, or the non-receipt of such notice by, any Party shall not invalidate the proceedings at that meeting.
40. Any matter that a Travel Concession Authority wishes to be discussed at the meeting shall be notified in writing to the Co-ordinating Authority or its nominated representatives at least 42 days prior to the said meeting.
41. A final agenda shall be circulated by the Co-ordinating Authority to all Travel Concession Authorities at least 35 days before the date of the Annual General Meeting.

Participation

42. Any Travel Concession Authority wishing to terminate its participation in the Scheme must give at least six[ECC6] months notice in writing to the Co-ordinating Authority of the date on which it intends to cease the issue of concessions in accordance with the Scheme and any such authority will remain a Travel Concession Authority under the Scheme until the day after the last day of expiry of any pass issued and remaining in circulation.
43. If it is agreed by the Travel Concession Authorities at an Annual Meeting or Extraordinary Meeting that the Scheme shall be wound up prior[ECC7] to the 31st March 2011, then minimum of six months notice to this effect shall be given in writing to the Co-ordinating Authority.
44. After the expiry of the period of notice set out in clause 43 no further concessions shall be issued under the Scheme.
45. Each Travel Concession Authorities shall remain a Travel Concession Authority under the Scheme unless:-
 - 45.1 it has terminated its participation in the Scheme; or
 - 45.2 its participation has been terminated by the Co-ordinating Authority; or
 - 45.3 legislation has determined that it is no longer a Travel Concession Authority for the purposes of the Scheme.
46. Unless the provisions of 45.1 45.2 or 45.3 apply all Travel Concession Authorities shall remain as such until the winding up of the Scheme has been completed and final accounts have been agreed and they will until then be bound by the terms of this Agreement.
47. The Co-ordinating Authority agrees to serve as Co-ordinating Authority unless:

- 48.1 the number of Travel Concession Authorities actively participating in the Scheme according to the terms of this Agreement falls below [six]
- 49.2 at the end of the specified two year period of the scheme it withdraws as Co-ordinating Authority from the Scheme in which case it shall give notice to all the Travel[ECC8] Concession Authorities of its intention to do so. The required period of notice shall be six months . unless Government legislation pre-empts this.
50. If the number of other active Travel Concession Authorities falls below [six] or upon receipt of notice is due to fall below [six] the Co-ordinating Authority may require the Scheme to be wound up.
51. If the provisions of clauses 48.1 or 49.2 apply and no successor authority takes over the management and operation of the Scheme in place of the Co-ordinating Authority then the Scheme shall be wound up in accordance with the provisions of this Agreement.
52. The Co-ordinating Authority may in the following circumstances at its discretion terminate the participation of any Travel Concession Authority in the Scheme by notice of not less than 20 working days:-
- 53.1 If a Travel Concession Authority through its activities causes the Scheme to incur significant costs that it would otherwise not have incurred;
- 53.2 If a Travel Concession Authority has through its own actions substantially or repeatedly breached the terms of this Agreement.
54. The costs of or stemming from such termination shall be borne by the Travel Concession Authority concerned.

Arbitration

55. Any dispute between any of the parties hereto arising in connection with this Agreement which cannot be resolved between those parties within a period of 3 months of notification by one such party that it considers a dispute to have arisen shall be referred to a single arbitrator agreed between the Authorities or in default of such agreement to a single arbitrator appointed by the President for the time being of the Institute of Arbitrators in accordance with and subject to the provisions of the Arbitration Acts 1950, 1979 and 1996 and any amending legislation.
56. The decision of the arbitrator shall be final and binding upon the relevant parties to the dispute and the following provisions shall apply:
- 56.1 the charges and expenses of the arbitrator shall be borne by the Travel Concession Authority unless the arbitrator shall otherwise direct
- 56.2 the arbitrator shall give the relevant parties an opportunity to make representations to him and respond to representations made by the other party to the dispute before making his decision
- 56.3 the arbitrator shall be entitled to obtain opinions from others if he so wishes
- 56.4 the arbitrator shall comply with any time limit or other directions agreed by the relevant parties on or before his appointment

Duration of the Agreement

57. This Agreement shall come into effect on 1st April 2009 and shall continue until 31st March 2011 in accordance with the provisions hereof.

Indemnity

58. In the event that any liability arises relating to the subject matter of the Scheme and/or the operation of this Agreement by virtue of any action omission breach of contract or breach of legal duty by any party the party in breach shall fully and effectively indemnify the other party or parties for all costs (including legal and administrative expenses) damages awards claims and demands suffered by the other party or parties as a result of such action omission breach of contract or breach of legal duty PROVIDED ALWAYS that the party in breach shall have the right having given written notice to that effect to the other party to take over the administration conduct and negotiation of any formal claim or legal proceedings which arises from such liability.

Relationship of Parties

59. Each party is independent of the other and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Authorities of partnership nor of employer and employee.
60. The parties are not engaging in a joint venture and accordingly no party shall have any right or authority to act on behalf of the other nor to bind the other by contract or otherwise unless expressly permitted by the terms of this Agreement.

Severability

61. The illegality invalidity or unenforceability of any clause or part of this Agreement will not affect the legality validity or enforceability of the remainder.
62. If any such clause or part is found by any competent court or authority to be illegal invalid or unenforceable the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without thereby rendering them illegal invalid or unenforceable.

Assignment and Novation

63. This Agreement shall be binding upon and shall endure for the benefit of each party to this Agreement and its successors and permitted assigns.

Third Parties

64. The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Right of Third Parties) Act 1999 by any person not a party to it.

Entire Agreement

65. This Agreement (together with the documents annexed hereto or any other document incorporated by reference as part this Agreement comprises the whole agreement between the parties in respect of the subject matter of agreement and supersedes any prior written or oral agreement between them relating to that subject matter and the parties confirm that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement.

English Law

66. This Agreement shall be governed by and construed in accordance with the law of England and Wales and each party agrees to submit to the exclusive jurisdiction of the courts of England and Wales.

Non-Waiver

67. No failure or delay by any party to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right power or remedy.

Variations

68. No variation of this Agreement or its Schedules will be valid or effective unless in writing and signed by the director of transport (or equivalent) of each of the Authorities.

Notices

69. Notices may be delivered personally, by first class pre-paid letter or by email.
- 69.1 All notices to be given under this Agreement shall be in writing and will be sent to the director of transport (or equivalent) of the relevant Authority or Authorities to the address of the recipient set out in Clause 78, or any other address the recipient may designate by notice given in accordance with this Clause.
70. Notices will be deemed to have been received:
- (a) by hand delivery - at the time of delivery;
 - (b) by first class post - 48 hours after the date of mailing; or
 - (c) by email (confirmed by post), - immediately on transmission when sent between the hours of 9am and 5pm on any Working Day and by 10am on the next Working Day when sent outside of such hours, PROVIDED a confirmatory copy is sent by first class pre-paid post or by hand by the end of the next working day.

IN WITNESS WHEREOF the parties have executed this Agreement as a Deed the day and year first before written

**THE COMMON SEAL of
ESSEX COUNTY COUNCIL**

was hereunto affixed
in the presence of:-

Solicitor

THE COMMON SEAL of

[]

was hereunto affixed
in the presence of:-

Schedule 1 Duties of Essex County Council

1. In exercising the contractual responsibilities on behalf of the TCAs with regard to the Scheme and any Appeals the Co-ordinating Authority shall:
2. Act as the Co-ordinating Authority.
3. Act with the agreed delegated authority of the other Parties &:
4. Fund any increase in costs (beyond the agreed contributions from TCAs) due for example to:
 - a. Growth in volume of travel for the mandatory element of the scheme and for the discretionary extensions of the scheme to 09:00 & the issue of companion passes.
 - b. Inflation for the mandatory element of the scheme and for the discretionary extensions of the scheme to 09:00 & the issue of companion passes.
 - c. Additional Capacity Costs in excess of those included in the funding given by TCAs as asset in Schedule 3 below.
5. Fund the Central Administration Costs of the scheme, informing the TCAs of the costs through the annual report. **These costs will include:**
 - a. **The costs of employing any consultants, legal advisors or other bodies to undertake any work in regard of the administration of the scheme.**
 - b. **The costs of the financial administration of those aspects of the scheme for which the County Council accepts responsibility (but not those relating to the distribution of or application for, passes)**
 - c. Extraordinary payments required as a result of Appeals or Judicial Reviews that are incurred in relation to reimbursement and other payments due for those years for which the agreement is in force, but not those incurred for years before the scheme comes into effect or after it ends.
6. Have discretion, within the terms of the agreement, as to the means by which it manages and operates the Scheme and any Appeals, without the need to refer to the TCAs.
7. Liaise with the participating Travel Concession Authorities.
8. Manage and undertake all dealings and negotiations with the participating bus operators their representatives.
9. Liaise with any agent instructed to assist with the management and operation of the Scheme and/or any Appeals.
10. Provide of a banking facility to the Scheme.
11. Supply of all the general information regarding the Scheme prior to scheme commencement and supply scheme operational statistics for the Annual General Meeting.
12. Collect and collate of ETM and other data from participating operators.
13. Create and administer a reimbursement claim system.
14. Maintain a register of eligible transport operators and services.
15. Measure and check gross revenue forgone.

16. Calculate net revenue foregone, additional costs and total reimbursement and the apportionment of reimbursement to operators.
17. Undertake general liaison and support to participating operators.
18. Maintain management accounts for the Scheme.
19. Manage and supervise monitoring and surveys.
20. Provide each TCA with an annual report and set of accounts for each year of the Term.
21. Give general advice and guidance in the running and development of the Scheme.
22. Undertake the computation of annual payments due from (TCAs) in relation to the Scheme.
23. Pay those reimbursements due to participating operators in accordance with the Scheme.
24. Fulfil all duties and obligations in accordance with the provisions set out in the Scheme and in particular to carry out the surveys and obtain information to the proper administration of the Scheme.
25. Liaise with the DFT participating operators and their representatives during the course of any Appeals.
26. Manage any Judicial Challenges in accordance with the terms of clause 15 of this Agreement.
27. If it considers it appropriate appoint consultants, contractors, legal advisers and/or agents, to manage and operate the Scheme and Appeals on its behalf.
28. If it considers it appropriate appoint consultants, contractors, legal advisers and/or agents, to assist with the legal factual and/or procedural issues or otherwise arising from the Scheme, the Appeals, any Judicial Challenges in relation to the Scheme.

Schedule 2 – Duties of the Travel Concession Authorities

1. The Travel Concession Authorities shall each comply with the terms of and meet their responsibilities under the Scheme. In particular they will be responsible for transferring the agreed sums due to the scheme (as shown in Schedule 3 of this agreement) in a timely fashion.
2. The establishment and review of and payment for, any local entitlement discretions offered in addition to the 09:00 start time and the issue of companion passes.
3. The establishment and review of any local charging policy relating to discretionary offers over the 09:00 start and companion pass issue.
4. The dissemination of information about the Scheme and local arrangements (including charges and entitlement criteria) for application and issue of passes.
5. The administration of the pass issue process and issue of passes to those who meet the appropriate local entitlement criteria.
6. The return of data to ECC in a form as specified from time to time by ECC.
7. Making the necessary arrangements for the local operation of the Scheme in accordance with the requirements set out in any Scheme Handbook or other procedural notices issued by or on behalf of ECC.
8. Making the necessary financial provision to cover the cost associated with participation in the Scheme.
9. To make timely payment (as indicated above) to ECC to cover agreed funding requirements of the scheme.
10. The Travel Concession Authorities shall be wholly responsible for the costs and administration of that aspect of the scheme relating to the production, administration and distribution of concessionary passes

SCHEDULE 3 – APPORTIONMENT TABLE**Essex Travel Concession Authority payments to ECC for mandatory and agreed discretionary costs of 2009/10 and 2010/11 concessionary fare schemes**

	Basildon	Braintree	Brentwood	Castle Point	Chelmsford	Colchester	Epping	Harlow	Maldon	Rochford	Tendring	Uttlesford	Total
Contribution from TCA 2009/10	£2,063,866	£1,208,207	£612,506	£1,123,157	£2,269,433	£2,205,003	£713,249	£1,672,817	£550,089	£812,202	£1,861,606	£295,438	£15,398,988
% contribution	13	8	4	7	15	14	5	11	4	5	12	2	£100
Of which special grant constitutes	£463,000	£279,000	£159,000	£209,000	£413,000	£538,000	£23,500	£352,000	£122,000	£141,000	£477,000	£147,000	£3,323,500
Allow 2.5% on special grant for 2009/10	£11,575	£6,975	£3,975	£5,225	£10,325	£13,450	£588	£8,800	£3,050	£3,525	£11,925	£3,675	£83,088
Revised Special grant total	£474,575	£285,975	£162,975	£214,225	£423,325	£551,450	£24,088	£360,800	£125,050	£144,525	£488,925	£150,675	£3,406,588
Total TCA payment for 2009/10	£2,075,441	£1,215,182	£616,481	£1,128,382	£2,279,758	£2,218,453	£713,837	£1,681,617	£553,139	£815,727	£1,873,531	£299,113	£15,470,661
Allow further 2.5% on special grant for 2010/11	£11,864.38	£7,149.38	£4,074.38	£5,355.63	£10,583.13	£13,786.25	£602.19	£9,020.00	£3,126.25	£3,613.13	£12,223.13	£3,766.88	£85,165
Revised special grant for 2010/11	£486,439	£293,124	£167,049	£219,581	£433,908	£565,236	£24,690	£369,820	£128,176	£148,138	£501,148	£154,442	£3,491,752
Total TCA payment for 2010/11	£2,087,305	£1,222,331	£620,555	£1,133,738	£2,290,341	£2,232,239	£714,439	£1,690,637	£556,265	£819,340	£1,885,754	£302,880	£15,555,825

Notes:- The above table includes funds for (a) and (b) below but **EXCLUDES** funding for (c).

(a) Mandatory Provision/Requirements

(b) Common Discretionary Extras (e.g. 0900 start and companion passes)

(c) Individual Local Discretionary Extras (e.g. Harwich ferry, Colchester taxi services etc) **NOT PART OF THE SCHEME AND each of which must be individually funded by the relevant TCA.**

Schedule 4 – Arrangements for the Reimbursement of Operators**THE ESSEX COUNTYWIDE CONCESSIONARY TRAVEL SCHEME****ARRANGEMENTS FOR REIMBURSEMENT****With effect from 1 April 2009**

These Arrangements for Reimbursement must be read in conjunction with the separate Scheme Definition and set out the terms for reimbursement with effect from 1 April 2009 and until and including 31 March 2011.

Definitions

1. In these Arrangements for Reimbursement:

i) all definitions set out in the Scheme Definition shall apply herein;

ii) "Payment Periods" shall be:

1 April to 30 June

1 July to 30 September

1 October to 31 December

1 January to 31 March

v) "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) "Statutory Elements" of the Scheme mean any provision(s) of the Scheme which allow holders of the National Pass to benefit from Statutory Minimum Travel Concession;

vii) "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.

viii) "Reimbursement Fund" shall be the funds available for distribution to Participating Operators pooled from the contributions made by the Administering Authorities from time to time;

ix) "Normal Fare" means the average adult fare calculated in accordance with the principles set out in the Department for Transport's Reimbursement Analysis Tool (RAT);

x) "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;

xi) "Gross Revenue Foregone" shall be the gross value of travel made under the terms of the Scheme calculated according to the best estimate of the number of Passenger Journeys made

and the best estimate of the Normal Fare that would have been paid in respect of those journeys before any adjustments in respect of Generated Travel;

xii) "Generated Travel" is defined as the proportion of 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;

xiii) "Net Revenue Foregone" shall be the cost to the Participating Operator in terms of the net value of lost income as a result of participating in the Scheme.

This will be the value of Gross Revenue Foregone adjusted to take account of Generated Travel calculated by application of a Reimbursement Factor (see paragraph 20);

xiv) "Standard Additional Costs" mean those additional operational, management and overhead costs necessarily borne by the Participating Operator as a result of participation in the scheme (for example: additional fuel costs, engineering costs, driver hours, insurance premiums; information costs; the operation of systems to provide data and information in the form required by the Coordinating Authority on behalf of the Scheme);

xv) "Cost Allocation" shall be the sum of Net Revenue Foregone and Standard Additional Costs;

xvi) "Total Reimbursement" shall be the amount due to a Participating Operator from the Reimbursement Fund calculated in accordance with paragraph 19;

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) "DfT Guidance" means 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 and which remains appropriate for this purpose;

Requirements of Participating Operators

2. The Coordinating Authority acts on behalf of the Administering Authorities and Travel Concession Authorities party to the Scheme. Until notice to the contrary all dealings with the Administering Authorities and/or Travel Concession Authorities should be carried out through the offices of the Coordinating Authority or any other body (agent, consultant or contractor) they nominate such nomination to be notified in writing.

3. Participating Operators shall enable holders of valid National Passes to make Passenger Journeys free of charge in accordance with the Scheme Definition in respect of both the Statutory Minimum Travel Concession and Discretionary and Companion Entitlements.

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 Coordinating 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 Coordinating Authority is necessary for the calculation and/or verification of reimbursement payments and/or;
- ii) Provide at such times as the Coordinating 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 Coordinating Authority and Administering Authorities to establish and maintain an inventory of Boarding Stages that are deemed to be within the Principal Area of the Scheme and to assist in the process of allocating Boarding Stages to individual Authorities in accordance with any guidance issued by the Department for Transport;
- iv) As soon as practical and if possible in advance of it taking effect, notify the Coordinating Authority of any change or changes to fares on any Included Service;
- v) As soon as practical and if possible in advance of it taking effect notify the Coordinating Authority of any material change (additions, deletions and/or variations) to Included Services;
- vi) Provide reasonable assistance to the Coordinating Authority and the Administering Authorities in the operation and administration of the Scheme;
- vii) Provide reasonable assistance and information to the Coordinating Authority to enable the forward planning of budget requirements to properly fund the Scheme.

5. The Coordinating 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 Administering Authorities and/or their contractors and/or consultants employed to assist in the administration of the Scheme and/or any Auditors acting on behalf of the Coordinating Authority or Administering Authorities.

Reimbursement

6. Participating Operators shall be reimbursed on the terms set out herein in respect of all Passenger Journeys made under the terms of the Statutory Minimum Travel Concession by holders of National Passes which commence from a Boarding Stage defined as being within the Principal Area of the Scheme. Participating Operators shall also be reimbursed on the terms set out herein in respect of all Passenger Journeys made under the terms of local Discretionary and/or Companion Entitlements by holders of National Passes and which commence from a Boarding Stage defined as being within the Principal Area of the Scheme.

7. Reimbursement payments will be made from a common Reimbursement Fund maintained for the Scheme as a whole and which will include provision for both Statutory and Discretionary Elements of the Scheme. It is not however intended to differentiate between these two elements. The value of the Reimbursement Fund for the 2008/09 Financial Year shall be £17,931,000 as determined in consultation with Participating Operators and thus agreed.

8. The value of the Reimbursement Fund will be reviewed in consultation with Participating Operators for each subsequent Financial Year. A Review Notice will be issued to all

Participating Operators on or by 1 December in the preceding Financial Year and this will constitute publication in accordance with Section 150(1) of the Transport Act 2000. Review consultations will commence on 2 January each year, after the Review Notice has been issued and would be expected to conclude within six weeks or by 15 February.

9. If agreement cannot be reached in respect of the value of the Reimbursement Fund to apply for the forthcoming Financial Year, the Administering Authorities reserve the right to determine a value and will publish this in accordance with Section 149(2)(b) of the Transport Act 2000 and Section 95(2) of the Transport Act 1985.

Payment and Calculation of Reimbursement

10. Payments will be made to operators of existing services on the following basis:

a) An amount equivalent to 95% of one twelfth of the estimated Total Reimbursement due shall be paid so that it is in the hands of the operator by the 1st 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 and shall be paid so that it is in the hands of the operator by the last day of the following Payment Period or the next working day if that day falls on a weekend or public holiday.

11. 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.

12. Payments will be made to new operators on the following basis:

a) An initial payment equal to 95% of the Total Reimbursement 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;

b) After the initial payment 95% of one twelfth of the estimated Total Reimbursement due shall be paid so that it is in the hands of the operator by the 1st day of each subsequent month or the next 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 so that it is in the hands of the 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.

13. The scheme reserves the right to reclaim any overpayments either by invoice or by deducting the overpaid amounts from future Reimbursement Payments. Such deduction will be made no later than 3 months after the end of the Financial Year to which the overpayment relates.

14. Participating Operators incurring a very low level of Revenue Foregone over a Financial Year may opt to be paid on the basis of a fixed Cost Allocation which may be agreed between the Participating Operator and the Coordinating Authority and kept under review.

15. Payments to 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

16. 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 in respect of the period commencing at the beginning of the respective Financial Year and calculated as set out below.

17. 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.

18. Payments will only be released to Participating operators upon receipt of a properly completed claim and the necessary data and information returns in respect of the previous Payment Period. These claims and data returns must be submitted within 2 weeks of the end of each Payment Period.

Total Reimbursement

19. Total Reimbursement for any period will be apportioned from the Reimbursement Fund to each Participating Operator on the basis of each operator's Cost Allocation for that period as a proportion of the total Cost Allocation for all Participating Operators for the same period. The Costs Allocation will be sum of the Net Revenue Foregone and Standard Additional Costs calculated as set out in the following paragraphs.

Net Revenue Foregone

20. Net Revenue Foregone will be calculated for each service /route or group of services/routes operated by each Participating Operator as follows:

$$R = J \times F \times fr$$

Where:

R is Net Revenue Foregone

J is the validated 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

F is the average Normal Fare

fr Is the Reimbursement Factor which takes account of Generated Travel. This factor will be applied according to the category of each service in accordance with the values in column (B) of Table 1 below. Column (A) shows the level of generated travel on which the factor is based.

Table 1 - Reimbursement Factors

Table 1 - Reimbursement Factors

Category of Service*	Amount of Generated Travel (A)	Reimbursement Factor (B)
Urban	100%	0.5000
Inter-urban	105%	0.4878
Rural	95%	0.5128
Rural Infrequent	60%	0.6250
Special	20%	0.8333

* Category Definitions are set out in Appendix A

* Category Definitions are set out in Appendix A

The values in Table 1 are calculated using the Elasticity Analysis and Reimbursement Analysis modules of the Department for Transport's Reimbursement Analysis Tool. A technical note is available on request which sets out this calculation.

Standard Additional Costs

21. A supplement in respect of Standard Additional Costs will be included in the Cost Allocation. This supplement will be calculated on the basis of a payment of £0.12 per generated journey. A Technical Note is available which sets out the basis upon which this rate has been determined. A minimum annual payment of £500 or 50% of The Cost Allocation, whichever is the lower, will apply in all cases.

22. The number of generated journeys to be used in the calculation of the supplement referred to in paragraph 21 will be calculated as follows:

$$Jg = J \times g / (1 + g)$$

Where:

Jg is the number of generated journeys

J is the validated number of passenger Journeys

g is the amount of generated travel (from Column A of Table 1)

Values used in calculating Cost Allocation

23. The values used in the formula set out in paragraph 20 will be derived and applied as set out in paragraphs 24 to 27 below.

24. The validated number of passenger journeys will be based on the number of journeys recorded by the Participating Operator, where necessary adjusted by a count adjustment factor 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 Coordinating Authority. In the absence of agreement the Coordinating Authority may determine the value and apply it in which case the Participating Operator may take any ongoing dispute over the value of the factor to arbitration in accordance with Clauses 34 and 35. Any such factor will be determined by surveys undertaken over a sample of all 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 that he has successfully taken action to alter the factor or obviate the need for it he can apply to the Coordinating Authority accordingly setting out his case for the factor to be reviewed. The same Journey Count Adjustment factor will normally apply in respect of all services provided by the Participating Operator concerned.

25. The Normal Fare will be based on the average adult fare per journey paid by fare paying passengers (single fares counting as one journey and returns as two journeys). This will be adjusted by means of a "fares discount factor" to take account of other discounts that are normally available in accordance with the principles and methods set out in the Average Fare Analysis module of the Department for Transport's Reimbursement Analysis Tool. Participating Operators are required to submit information within 2 weeks of the end of each Payment Period to enable this calculation to be undertaken.

26. The Administering Authorities reserve the right to adjust the Normal Fare to take account of any significant variation in journey lengths between people making free 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 with the Participating Operator concerned.

27. The value of the "fares discount 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 Coordinating Authority. In the absence of agreement the Coordinating Authority may determine the value and apply it in which case the Participating Operator may take any ongoing dispute over the value of the factor to arbitration in accordance with Clauses 34 and 35. The same fares discount factor will normally apply in respect of all services provided by the Participating Operator concerned.

Claims and Data Returns

28. Data enabling the calculation of Revenue Foregone to be made 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.

29. 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.

30. The precise specification of the required data shall normally be a matter of agreement between each Participating Operator and the Coordinating Authority but the Coordinating 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)

31. 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 Coordinating Authority, have their Gross and Net 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 commercial revenues.

32. The frequency of data returns shall be a matter to be determined between each Participating Operator and the Coordinating Authority but such returns shall be no less frequent than quarterly and shall be provided within 14 Days of the end of each period to which they relate. The Administering Authorities reserve 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

33. 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 Coordinating Authority.

Arbitration

34. In the event of a dispute between a Participating Operator and the Administering Authorities in connection with the application of these Arrangements for Reimbursement which cannot be resolved after a reasonable period of time by discussions between the parties the matter may be referred to arbitration by either party. Matters that may be referred to arbitration may include the following but in all cases must be fully supported with detailed evidence endorsed by appropriate professional advisors:

- a) Disputes over the calculation of reimbursement payments
- b) The determination by the Coordinating Authority of a Count Adjustment Factor and/or Fares Discount Factor the value of which a Participating Operator has reason to dispute;
- c) A dispute over the value of the Normal Fare used in the calculation of Reimbursement payments;

35. The arbitrator may be an individual or body agreed between the Administering Authorities and the Participating Operator concerned and in default of agreement an independent arbitrator appointed by the President of the Institute of Arbitration. The matter of costs shall be dealt with as part of the process of arbitration. Any such arbitration 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.

Miscellaneous

36. Within 26 weeks of the end of the Financial Year, a summary report and accounts will be published in respect of that Financial Year. The accounts will be subject to all proper audit procedures in accordance with Local Authority practice. The summary report and accounts will be made available on request to any Participating Operator.

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APPENDIX A DEFINITION OF SERVICE CATEGORIES

Categories:

1. Urban
2. Inter Urban
3. Rural
4. Rural Infrequent
5. Special

Urban:

Those services serving towns of more than 15,000 inhabitants. Those services which serve both large urban, urban and rural areas and having 60% or more of passenger journeys within the urban area.

Inter Urban

Those services serving two or more urban areas.

Rural

Those services running daily on weekdays with a regular frequency which either do not serve any of the above urban areas or where they do serve an urban area, 40% or less of their passengers make journeys entirely within the urban area.

Rural Infrequent

Those services running less than daily on weekdays which either do not serve any of the above urban areas or where they do serve an urban area, 40% or less of their passengers make journeys entirely within the urban area.

Special

Those services which provide irregular, infrequent or restricted availability, such as community buses, dial-a-rides, etc.