

Capped Fare Scheme

Greater Manchester Combined Authority

Dated 5 September 2022

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This **Scheme** is made on 5 September 2022

Background

- A Greater Manchester's Bus Service Improvement Plan (**BSIP**) was submitted to Government on 29th October 2021 and indicative funding has been awarded.
- B As part of the BSIP there is a proposal to use BSIP funds to reduce bus fare in response to the cost of living crisis, specifically the implementation of maximum £2 single bus fares (£1 for children), with a maximum £5 day bus ticket (£2.50 for children), from September 2022 for an initial 12 month period, subject to agreement with Government and bus operators.
- C This Scheme is intended to support implementation of this proposal, in conjunction with amendments to existing concessionary fares schemes.

Scheme

1 The Scheme

- 1.1 This Capped Fare Scheme (the **Scheme**) has been established by the Greater Manchester Combined Authority (**GMCA**), in pursuance of its powers under:
 - (a) Regulation (EC) 1370/2007 of the European Parliament and of the Council of 23 October 2007 on public passenger transport services by rail and by road as amended and incorporated into UK law, and as amended by The Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020 (SI 2020/504) (**Regulation 1370/2007**);
 - (b) Section 113A of the Local Democracy, Economic Development and Construction Act 2009; and
 - (c) all other relevant statutory regulations.
- 1.2 The Scheme covers the arrangements for the reimbursement of Operators (the **Arrangements**). The Scheme will be administered by Transport for Greater Manchester (**TfGM**).
- 1.3 Unless otherwise defined in this Scheme words or terms used in the Scheme shall have the same meaning as given to such words or terms in Regulation 1370/2007.

2 Operative Date

- 2.1 The Scheme shall come into operation on 4 September 2022.

3 Scheme Area

- 3.1 The area covered by the scheme is the Passenger Transport Area of Greater Manchester which consists of the administrative areas of the Metropolitan District Councils of Bolton, Bury, Manchester, Oldham, Rochdale, Salford, Stockport, Tameside, Trafford and Wigan (**Scheme Area**).

4 Scheme Applicability

- 4.1 The Scheme shall apply to Eligible Persons who tender to the Operator on a Scheme Service (both of which are defined below) the Applicable Capped Fare when travelling on Eligible Services on Journeys between places in the Scheme Area (**Scheme Services**).

5 Eligible Persons and Nature of Capped Fare

- 5.1 Operators participating in the Scheme will be required on all Scheme Services to cap their fares for Eligible Persons as follows:
- (a) in respect of single fares, £2, or such other figure as may be notified to the Operators pursuant to paragraph 5.2; and
 - (b) in respect of daily fares, £5, or such other figure as may be notified to the Operators pursuant to paragraph 5.2.
- 5.2 The GMCA or TfGM may from time to time by giving a minimum of 28 days' notice in writing vary the nature or value of the Fare Cap to be provided, the Specified Indexation Measure or the Arrangements by notice and where relevant such notice should comply with the provisions of section 97(6) of the 1985 Act.

6 Applicable Fare Caps

- 6.1 Subject to paragraphs 6.4 and 6.5 the applicable capped fare payable by an Eligible Person under this Scheme shall be a fare which is capped at the relevant Fare Cap where such fare is lower than the fare that a Non-Concessionary Passenger would have been required to pay in order to make such a Journey in the absence of this Scheme (**Applicable Capped Fare**).
- 6.2 Subject to paragraphs 6.4 and 6.5, references to fare shall include the amount paid for any ticket product which a Non-Concessionary Passenger could have purchased in the Scheme Area for such Journey or Journeys including multi-operator and/or multi-journey products and which the Operator would accept from a Non-Concessionary Passenger, whether these are the Operator's own products or not. The Operators shall therefore ensure that the relevant Fare Cap applies to all such ticket products available to Non-Concessionary Passengers.
- 6.3 The Operator shall not charge any Eligible Person more than the Applicable Capped Fare for any Journey.
- 6.4 References in paragraph 6.1 to ticket products shall not include ticket products which are:
- (a) multi-modal tickets (i.e. tickets which are valid for travel by two or all of rail, light rail and bus);
 - (b) family tickets.
- 6.5 Where any ticket product is valid on services outside the Scheme Area TfGM reserves the right to exclude such ticket product from the Fare Cap or require that the Operator offer an equivalent ticket product which can only be used within the Scheme Area for the purposes of passengers entitled to a ticket product to which a Fare Cap applies. It is acknowledged that the current GMTL AnyBus Day Adult ticket may be used in limited areas outside the Scheme Area, but

TfGM has agreed that such ticket product shall not be excluded from the Scheme, provided that the area covered by such ticket does not materially change.

7 Entry of Operators to the Scheme

- 7.1 Subject to paragraph 7.2, an Operator shall be admitted into the Scheme following at least 28 days prior notice in writing from the Operator to TfGM that it wishes to participate in the Scheme, provided that TfGM shall be entitled to agree that an Operator may participate on less than 28 days prior notice.
- 7.2 TfGM may make admission to, or continuation by, an Operator in the Scheme conditional on the Operator agreeing appropriate modifications to the Arrangements where it appears to TfGM that the Operators current or proposed fares for any Eligible Service include a "special amenity element" as defined in section 96(6) of the 1985 Act.

8 Removal or Withdrawal of Operators from the Scheme

- 8.1 An Operator who is participating in the Scheme must give TfGM at least 42 days' notice in writing of withdrawal from the Scheme in respect of all or any of such Scheme Services.
- 8.2 The GMCA may terminate the Scheme by giving the Operator not less than 42 days' notice in writing (or such longer notice period, if any, as may be prescribed by law).

9 Objective for Reimbursement of Operators

- 9.1 The objective of the Scheme in relation to reimbursement of Operators is to provide that such Operators are compensated for the net financial effect, positive or negative, on costs incurred and revenues generated in complying with the Fare Caps in a way that prevents overcompensation in accordance with the principles set out in Articles 4 and 6, and the Annex to Regulation 1370/2007.

10 Payment Periods and Dates

- 10.1 Subject to paragraphs 12.3 and 12.4, TfGM will make a payment to Operators (not later than the day which is half-way between the first and last days of each Payment Period), equal to not less than 85% of the sum TfGM estimates to be due to the Operator in that Payment Period in accordance with the Scheme.
- 10.2 Subject to paragraphs 12.3 and 12.4, TfGM will make a further payment to Operators (not later than 6 months after the end of the relevant Payment Period), equal to the difference (if any) between:
- (a) the sum already paid to the Operator for the relevant Payment Period as set out in paragraph 10.1; and
 - (b) the actual amount calculated as due to the Operator for that relevant Payment Period.
- 10.3 If the amount paid under paragraph 10.1 above exceeds the amount calculated under paragraph 10.2(b) such that TfGM has made an over payment for the relevant Payment Period, TfGM shall either:
- (a) deduct the level of such overpayment from the next or any subsequent payment; or
 - (b) if no such further payment is likely to become due or to be insufficient to recover such overpayment, demand such overpayment by notice in writing to the Operator who shall

repay the same within 28 days of demand being made, or as otherwise may be agreed between TfGM and the Operator.

- 10.4 Where agreed with GMTL and the Operator, TfGM may make any payment due to an Operator which is in respect of Revenue Forgone for a multi-operator ticket issued by GMTL directly to GMTL provided that TfGM shall, when making such payment, identify to GMTL the operator in respect of which such payment is made (or the amounts attributable to each Operator under this Scheme where a lump sum payment is made).
- 10.5 Each Operator shall procure that GMTL shall promptly provide TfGM with any information relating to the allocation of payments and other ticketing revenue in respect of multi-operator tickets to the extent that such information is relevant to any calculation or recalculation of reimbursement under this Scheme.

11 Standard Method of Determining Passenger Journeys and Fare/Revenue Values for Reimbursement Arrangements

- 11.1 Subject to paragraph 11.2, the standard method for assessing the total number of Journeys made by Eligible Persons under the Scheme is set out in Schedule 2. The standard method for assessing the fares and/or revenue value to be attributed to those Journeys is set out in Schedule 3. The standard method for calculating the reimbursement due to the Operator will be on the basis of the formula and parameters set out in Schedule 4. In calculating the reimbursement due to the Operator, TfGM will take into account any data supplied by the Operator if it can be shown that the data supplied is more accurate and is more likely to enable TfGM to meet its objective for reimbursement set out in paragraph 9.
- 11.2 TfGM reserves the right in calculating the reimbursement of an Operator to:
- (a) divide the area covered by the Scheme into a number of separate parts; and
 - (b) take into account the carrying capacity provided for passengers in different vehicles or classes of vehicles used by the Operator,

and, in each case, calculate reimbursement in accordance with the standard method, but by reference to each separate area and/or class of vehicle, where TfGM considers this appropriate to ensure that it meets the objective as set out in paragraph 9 above.

12 Data

- 12.1 When an Operator is first admitted or becomes obliged to participate in the Scheme, it shall supply to TfGM within 7 days:
- (a) a list of Scheme Services to be operated by that Operator;
 - (b) all relevant fares and fare tables and ticket prices and a list of the ticket types valid for travel on such services; and
 - (c) the running boards/drivers duties applicable to such Scheme Services,
- to enable assessment of an Operator's entitlement to reimbursement.
- 12.2 The Operator shall inform TfGM of:
- (a) the introduction or cessation of any Scheme Services;
 - (b) changes to the times at which and routes on which Scheme Services operate;

- (c) any circumstances leading to the temporary cessation or major disruptions to such services;
 - (d) any changes to the Operator's faretables or ticket products, any changes to multi-operator ticket products or the prices applicable thereto (including any proposed changes to Shadow Commercial Fares as specified in Schedule 3); and
 - (e) any changes to the running boards/drivers duties applicable to Scheme Services,
- within 7 days of such event occurring (or such earlier date as may be prescribed in legislation).

- 12.3 An Operator shall provide data to TfGM in accordance with the provisions of Schedule 6 for the purpose of calculating reimbursement under this Scheme.
- 12.4 If the Operator fails to provide such information or data as is referred to above, or to allow such access for surveys as is required pursuant to Schedule 5, then TfGM may in its discretion either defer all or part of any payment otherwise due to the Operator until such omission is fully rectified or reimburse the Operator on the basis of such estimated reimbursement as it considers appropriate in the absence of such data or survey information.
- 12.5 Where it becomes apparent to TfGM that any Scheme Service is or has been subject to material disruption, or has not been operated in accordance with the registered timetable, then TfGM may, after giving the Operator the opportunity to comment on the effects of the same on the Journeys being taken by Eligible Persons on such services, make such adjustments to the reimbursement due to such Operators as it considers necessary to reflect the effects of such disruption or non-operation.

13 Recalculation of Reimbursement

- 13.1 TfGM shall review the reimbursement calculations made in accordance with the Arrangements not less than once every financial year. Such review shall be concluded within 6 months of its commencement.
- 13.2 If, following a review carried out in accordance with paragraph 13.1, it is determined by TfGM that the amount of reimbursement paid since the previous review should have been higher TfGM shall pay the difference to the Operator within 28 days of the date of recalculation, or as otherwise may be agreed between TfGM and the Operator.
- 13.3 If, following the review carried out in accordance with paragraph 13.1, it is determined by TfGM that the amount of reimbursement paid since the previous review should have been less, TfGM shall either:
- (a) deduct by equal instalments the amount of over reimbursement from the next three payments to be made under paragraph 10.1 above; and/or
 - (b) if such next three payments are not or will not be sufficient to re-pay such over-reimbursement, demand such over-reimbursement from the Operator by notice in writing, and the Operator shall be obliged to make such repayment within 28 days of receiving such demand, or as otherwise may be agreed between TfGM and the Operator.
- 13.4 If, following the review of the reimbursement calculations in accordance with the provisions of paragraph 13.1 above, there is a dispute between an Operator and TfGM in respect of the level of reimbursement paid to that Operator then, if such dispute relates to either:
- (a) the fares value to be attributed to Journeys by Eligible Persons;

- (b) the total number of Journeys made Eligible Persons; or
- (c) the number of additional Journeys generated in consequence of the availability on such services of the Applicable Capped Fares,

then such dispute shall be the subject of the dispute resolution procedure set out in Schedule 7.

- 13.5 Any changes proposed by TfGM to the underlying methodology which impact directly on the reimbursement calculations will be subject to 28 days' notice.

14 Surveys

- 14.1 The provisions of Schedule 5 shall apply in respect of use of data from surveys.

15 Additional Costs and Abstracted Revenue

- 15.1 An Operator shall be entitled to the payment of additional costs where:

- (a) the Operator has necessarily incurred costs additional to basic operating costs which are attributable to an increase in the number or the capacity of the vehicles used in providing services on which Applicable Capped Fares are available in order to meet the extra demand created by the implementation of the Fare Caps; and
- (b) those costs are such that they will not be met by reimbursement payments made in accordance with the standard method during the year in which the costs are incurred or during the 3 months immediately following the end of that year,

(Additional Costs).

- 15.2 Reimbursement of Additional Costs will be calculated in accordance with Schedule 4.

- 15.3 An Operator shall be entitled to the payment in respect of abstracted revenue where:

- (a) the Operator can demonstrate that they have lost revenue as a result of Eligible Passengers purchasing different products as a result of the implementation of the Fare Caps; and
- (b) that lost revenue has not been met by reimbursement payments made in accordance with the standard method during the year in which such revenue has been abstracted or during the 3 months immediately following the end of that year,

(Abstracted Revenue).

- 15.4 Reimbursement of Abstracted Revenue will be calculated in accordance with Schedule 4.

16 Other Requirements of the Scheme

- 16.1 All Operators participating in the Scheme shall:

- (a) Where reasonably requested by TfGM, display on their vehicles any sign, supplied by TfGM, for the purpose of showing that the Fare Caps apply on those vehicles.
- (b) Ensure that their drivers and other staff who may retail Applicable Capped Fares are aware of the relevant products, the Fare Caps and their application to Eligible Persons travelling on Eligible Services.

- 16.2 Operators shall not discriminate against Eligible Persons or any class of Eligible Persons in the provision of Scheme Services or associated services and facilities.
- 16.3 Operators agree that where they have agreed to be remunerated under the terms of this Scheme, they also agree to the use of the Shadow Commercial Fares to represent the relevant adult fares payable in the absence of a scheme for the purposes of reimbursement under any concessionary travel scheme promoted by TfGM or GMCA, including, but not limited to the current Greater Manchester concessionary travel scheme as promoted pursuant to section 145A of the Transport Act 2000 or pursuant to section 93 Transport Act 1985 or otherwise

17 Contact for Communications

- 17.1 All notices, data and other information required to be given to TfGM under the Scheme shall be provided to the following contact point (or such other contact point as may be nominated by TfGM to Operators in writing from time to time):

Position: Concessionary Travel and Operator Payments Manager

Address: Transport for Greater Manchester, 2 Piccadilly Place, Manchester, M1 3BG

Email: operator.payments@tfgm.com

Tel: 0161 244 1115

- 17.2 On first giving notice to be admitted to the Scheme or, if earlier, becoming obliged to participate in the Scheme, the Operator shall provide to TfGM details of the name, address, telephone number and email address of its official contact for communications in relation to these arrangements, and shall by notice in writing inform TfGM of any changes to the same.
- 17.3 Any notice or communication sent to the last such address or e-mail address as is referred to above shall be deemed to be duly served on the recipient. If an Operator has failed to give notice in writing to TfGM of such an official contact, then TfGM may send any notice or other communication to any address set out in the most recent correspondence from the Operator concerned, which shall be deemed to be its address for service.

Schedule 1 Definitions and Fare Cap

The following definitions shall apply to the Scheme and schedules set out within:

Abstracted Revenue shall have the meaning set out in paragraph 15.3 of the Scheme;

Additional Costs shall have the meaning set out in paragraph 15.1 of the Scheme;

ADR Notice has the meaning given to such term in paragraph 6 of Schedule 7;

Applicable Capped Fare shall have the meaning set out in paragraph 6.1 of the Scheme;

Arrangements has the meaning given to such term in paragraph 1.2 of the Scheme;

Average Commercial Fare shall have the meaning set out in paragraph 1 of Schedule 3;

Concessionary Passenger means a passenger who qualifies for any concessions either by virtue of section 145A of the Transport Act 2000 or under any concessionary fares scheme established by GMCA pursuant to section 93 Transport Act 1985 or otherwise.

Eligible Person means all persons eligible to purchase an Applicable Capped Fare in accordance with this Scheme, which shall be any Non-Concessionary Passenger;

Eligible Services shall have the meaning given in section 94(4) of the 1985 Act;

Fare Cap means the cap for a fare as most recently notified to the Operators pursuant to paragraph 5.2 of the Scheme;

GMCA has the meaning given to such term in paragraph 1.1 of the Scheme;

GMTL means Greater Manchester Travelcards Limited, a limited company with registered number 01848309;

Independent Expert has the meaning given to such term in paragraph 6 of Schedule 7;

Journey means a trip between two points without change of vehicle or service;

Non-Concessionary Passenger means any passenger who is not a Concessionary Passenger;

Operator means an operator providing transport services in the Scheme Area;

Payment Period means such periods for payment under the Scheme which are as set out in Schedule 8;

Reasonable Profit has the meaning given to it in paragraph 6 of the Annex to Regulation 1370/2007;

Regulation 1370/2007 has the meaning given to such term in paragraph 1.1 of the Scheme;

RPI means the RPI All Items Index as published by the Office for National Statistics on a monthly basis, or where the Office for National Statistics ceases to publish this index, such other index as TfGM may reasonably determines is the nearest equivalent price index to the RPI All Items Index;

Revenue Foregone shall have the meaning set out in paragraph 2.1 of Schedule 4;

Scheme Area shall have the meaning set out in paragraph 3.1 of the Scheme;

Scheme Services shall have the meaning set out in paragraph 4.1 of the Scheme;

Shadow Commercial Fares means in respect of an Operator the Initial Commercial Fares identified or determined in accordance with paragraph 1 of Schedule 3 as may be adjusted in accordance with paragraphs 2 to 4 of Schedule 3;

Shadow Fare Increase shall have the meaning set out in paragraph 2 of Schedule 3;

Specified Indexation Measure means RPI or such other indexations measure as may be notified in accordance with paragraph 5.2 of the Scheme;

TCSR means the Travel Concession Schemes Regulations 1986;

Vicinity of Greater Manchester means outside the Scheme Area but within a distance of 10 miles from the nearest point on the boundary of that Area.

Schedule 2 Standard Method of Determining Passenger Journeys

1 Operation of the Standard Method

- 1.1 TfGM will determine its reimbursement payments to the Operator on the basis of the total number of Applicable Capped Fares sold and the total number of passenger Journeys made by Eligible Persons using Applicable Capped Fares on the Operator's Eligible Services.
- 1.2 For all Operators except those for which alternative arrangements are made by agreement with TfGM, the total number of passenger Journeys made by Eligible Persons using Applicable Capped Fares and the total number of Applicable Capped Fares sold by the Operator shall be based upon reporting by the Operator in accordance with the terms of this Scheme.
- 1.3 Each Operator shall, following a request by TfGM, provide TfGM with the number of Applicable Capped Fares and the relevant passenger Journeys referenced in paragraph 1.2 above as requested by TfGM. TfGM shall have the right to audit any such information provided by the Operator under the terms of this Scheme and the Operator shall provide TfGM and/or its professional advisers with access to its premises, personnel, systems and relevant records to verify such information provided is accurate.

2 Output from the Standard Method

- 2.1 TfGM will calculate for each Payment Period:
 - (a) the total number of passenger Journeys made by Eligible Persons using the Applicable Capped Fares on the Operator's Eligible Services. The quantity of Journeys so calculated may be analysed into such separate categories as are deemed appropriate by TfGM for the purposes of determining the reimbursement payments to Operators; and
 - (b) the total number of each Applicable Capped Fare sold by the Operator for use on Eligible Services. The quantity of Applicable Capped Fares so calculated may be analysed into such separate categories as are deemed appropriate by TfGM for the purposes of determining the reimbursement payments to Operators.

3 Estimates to be made in the absence of information from the Operator

- 3.1 In the event that the Operator fails to provide sufficient information to enable TfGM to operate its survey procedures in accordance with Schedule 5, TfGM may at its discretion make such estimates as it thinks fit of the Journeys made by Eligible Persons using the Applicable Capped Fares on the Operator's Eligible Services, subject to correction if and when better information becomes available.

Schedule 3 Standard Method of Determining Fares Values

- 1 TfGM will determine its reimbursement payments to each Operator so as to satisfy the objectives set out in paragraph 9.1 of the Scheme on the basis of:
 - 1.1 the actual fares that would have been payable by an Eligible Person using the relevant Operator's relevant Services as notified in accordance with paragraph 12.1(b) of the Scheme; or
 - 1.2 where the information referenced in paragraph 1.1(a) above is not available, TfGM shall determine the fares based on the estimate it makes of the commercial adult fares that would be payable based on the Operator charging a fare that would allow it to make no more than a Reasonable Profit, and the Operator shall make such information available to TfGM as may be reasonably necessary to allow TfGM to determine such fares;

in each case as at the date of this Scheme (**Initial Commercial Fares**). The Initial Commercial Fares shall be the deemed to be the Shadow Commercial Fares for the relevant Operator on the date of this Scheme, and any changes to the Shadow Commercial Fares shall be made in accordance with paragraphs 2 to 4 below.
- 2 Subject to paragraph 3 below, an Operator may notify TfGM of proposed changes to the Shadow Commercial Fares, provided that, such fares shall not increase in any 12 month period such that the average Shadow Commercial Fare (in respect of each fare type that is subject to a Fare Cap) for that Operator increases by more than the increase in the Specified Indexation Measure during that period (**Shadow Fare Increase**).
- 3 Where an Operator will incur an increase in underlying costs in the provision of the Eligible Services such that the Shadow Fare Increases would not offset such increase and wishes to increase one or more Shadow Commercial Fare by an amount higher than the Shadow Fare Increase to reflect such increased costs, the Operator shall notify TfGM of the same at least 30 days prior to the date of the proposed fare increase including details of the amount by which it wishes such Shadow Commercial Fares to increase by.
- 4 Following receipt of a notice under paragraph 3 above, TfGM and the relevant Operator shall, each acting reasonably, negotiate in good faith any such increase, provided that TfGM shall not be considered to be acting unreasonably where, in its reasonable opinion, the relevant Operator has failed to demonstrate that the requested additional increase in the Shadow Commercial Fares either:
 - 4.1 is limited to reflecting such change in underlying costs;
 - 4.2 is consistent with the Operator's approach to changes in other commercial fares, or where this is not the case is justified by reference to objective commercial factors that justify an approach which is not consistent with such other changes; and
 - 4.3 would not lead to the Operator receiving more than a Reasonable Profit in respect of the provision of Eligible Services, taking into account any underlying cost impacts the Operator has incurred in relation to providing the Eligible Services.
- 5 Where a Shadow Commercial Fare is representative of the fare charged in respect of a multi-operator ticket, it is acknowledged that no single Operator shall be responsible for the setting of that Fare, and it is acknowledged that:
 - 5.1 the Operators participating in the relevant multi-operator ticketing arrangements shall be responsible for determining any proposed Shadow Fare Increase in respect of such multi-operator fares on the basis of the arrangements for establishing such multi-operator fares that such operators may have agreed or determined (including

any arrangements that they may have with a ticketing company or other joint venture arrangement established for the purpose of such multi-operator fares);

- 5.2 where such Shadow Fare Increase exceeds the Specified Indexation Measure in any twelve month period then the relevant operators (or any ticketing company or other joint venture arrangement acting on their behalf) shall demonstrate that increases in the underlying costs of the Eligible Services which are subject to such a multi-operator fare are such that a Shadow Fare Increase of RPI would not offset such increase and the Operators shall (or shall procure that any ticketing company or other joint venture arrangement acting on their behalf, including where relevant, GMTL) notify TfGM of the same at least 30 days prior to the date of the proposed fare increase including details of the amount by which they wish such Shadow Commercial Fares to increase by; and
- 5.3 paragraph 4 shall apply in respect of such increase, save that reference to the relevant Operator shall be deemed to be a reference to all Operators participating in the relevant fare arrangements (or any ticketing company or other joint venture arrangement acting on their behalf, including GMTL).

Schedule 4 Standard Method of Determining Reimbursement

1 Calculation of Reimbursement Payments

- 1.1 TfGM will calculate reimbursement payments so as to satisfy the objectives set out in paragraph 9.1 of the Scheme.
- 1.2 Calculation of the reimbursement due to Operators will be made in accordance with the Payment Periods.
- 1.3 For each Payment Period and for each Operator, the calculation of reimbursement for Revenue Foregone will be as set out in paragraph 2 of this Schedule, the calculation of reimbursement for Additional Costs will be as set out in paragraph 3 of this Schedule, and the calculation of reimbursement for Abstracted Revenue will be as set out in paragraph 4 of this Schedule.

2 Reimbursement for Revenue Foregone

- 2.1 Reimbursement for revenue forgone is taken to mean TfGM's estimate of the revenue by way of fares that the Operator would have earned if the appropriate Fare Caps did not exist, less any revenue which the Operator has earned due to the appropriate Fare Caps existing (**Revenue Foregone**). Note that Revenue Foregone may be a negative figure where the revenue generated by the appropriate Fare Caps existing is greater than the revenue that the Operator would have earned if the appropriate Fare Caps did not exist, and TfGM shall be entitled to set-off such amounts against other amounts owed to the Operator under this Scheme.
- 2.2 For the first six (6) Payment Periods (or until a period where TfGM has identified any material increase in the sale or usage of relevant Applicable Capped Fares as a result of the Fare Cap) during the term of the Scheme (**Initial Period**), Revenue Foregone shall be calculated as follows in respect of each Applicable Capped Fare:

$$\text{Revenue Foregone} = V_{\text{shadow}} - V_{\text{cap}}$$

Where:

V_{shadow} has the meaning given to it in paragraph 2.3(c) below; and V_{cap} has the meaning given to it in paragraph 2.3(b) below.

- 2.3 Following the Initial Period, Revenue Foregone for an Applicable Capped Fare shall be calculated as follows:
 - (a) for each category of Applicable Capped Fare, the total number of passenger Journeys made on the Operator's Eligible Services analysed between such categories of ticket type as may be appropriate for the circumstances of the Operator, as estimated by TfGM using the procedures described in Schedule 2. The quantity of Journeys made using an Applicable Capped Fare represented in the formulae below by J_{cap} ;
 - (b) for each category of Applicable Capped Fare, the value of Applicable Capped Fares that have been paid on the Operator's Eligible Services, analysed between such categories of ticket type as may be appropriate for the circumstances of the Operator. This quantity is represented as V_{cap} ;
 - (c) for each category of Applicable Capped Fare, the estimated value of fares that would have been paid on the Operator's Eligible Services if the relevant Shadow

Commercial Fare had been paid rather than the Applicable Capped Fare. This quantity is represented as V_{shadow} ;

- (d) the reimbursement factor (RF) is the ratio of the estimated Journeys that would be made using the Applicable Capped Fare and of the value of the average Shadow Commercial Fare that would have been paid by Eligible Persons on the Operator's Eligible Services for the Journeys made at the Applicable Capped Fare in the absence of the Scheme if the average Shadow Commercial Fare had been paid.

2.4 For a given Payment Period, the reimbursement due to the Operator for Revenue Forgone in respect of an Applicable Capped Fare will be calculated using the formula:

$$\text{Revenue Forgone} = (V_{\text{shadow}} * \text{RF}) - V_{\text{cap}}$$

2.5 Following the Initial Period, the reimbursement factor (RF) for an Operator will be determined by TfGM by reference to the observed impact of the Scheme on Journeys making use of the relevant Applicable Capped Fares and taking into account other factors which may impact changes in travel patterns by Eligible Persons on the Operator's Eligible Services at Applicable Capped Fares. In particular, TfGM shall consider evidence provided by any Operator that demonstrates other sources of generation of any additional Journeys utilising Applicable Capped Fares following introduction of the scheme, and the extent to which these will have affected the total number of Journeys. The following principles shall apply to TfGM determining such reimbursement factor:

- (a) The reimbursement factor should be set at a level which seeks to achieve the objective set out in section 9.1 of this Scheme, taking into account both reimbursement for Revenue Foregone, and the ability for the Operator to claim reimbursement for Additional Costs and Abstracted Revenue.
- (b) Due to the other factors which may affect growth in Journeys during the term of the Scheme, the reimbursement factor may be different for different operators, where the evidence supports a differing reimbursement factor being required in order to ensure that the objective set out in section 9.1 of this Scheme is achieved for each Operator.
- (c) TfGM may require provision of such evidence as it may reasonably require in respect of past and current travel patterns on the Operator's Eligible Services, and in particular evidence supporting any other factors which the Operator believes may affect generation of Journeys on those services following introduction of the Applicable Capped Fares. Where an Operator is unable to provide such evidence or information requested by TfGM, TfGM shall be entitled to reach its own conclusions based on the evidence available. TfGM acknowledges that such information may be confidential and/or commercially sensitive, and where this is identified to TfGM by the Operator then TfGM shall take account of such confidentiality and/or commercial sensitivity in the use of such information, including any requests for disclosure pursuant to the Freedom of Information Act or otherwise.
- (d) It is acknowledged that where a new Operator joins the Scheme during its term, such information and data may not be available. In this case, TfGM shall act reasonably in setting the initial reimbursement factor for that Operator by reference to the information available, which may include the reimbursement factor set for one or more Operators providing services of a similar nature or by reference to the average reimbursement factor applicable across Operators or a class of Operators.
- (e) TfGM may, and any Operator may request that TfGM does, review and revise the Reimbursement Factor for any Operator where the evidence of levels of generation changes during the term of this Scheme. Where it is determined that the Reimbursement Factor for an Operator should change during the term of the

Scheme, then this may be taken into account in any recalculation of reimbursement in accordance with section 13 of the Scheme.

- (f) Where the Operator does not agree with TfGM's assessment of the Reimbursement Factor, then such disagreement may be referred to the dispute resolution procedure under Schedule 7.

3 Reimbursement for Additional Costs

- 3.1 Reimbursement for Additional Costs is taken to mean TfGM's estimate of the additional costs that the Operator has incurred as a result of the Fare Caps existing.
- 3.2 For the Initial Period, Additional Costs shall be zero (0).
- 3.3 Following the Initial Period, Additional Cost shall be calculated as follows for each Payment Period t:

$$\text{Reimbursement for Additional Costs} = J_{\text{cap}} * (1 - \text{RF}) * C_t$$

Where:

- (a) C_t is the standard rate for additional costs per generated passenger calculated by TfGM for period t. It is based on a standard value of 9.0 pence determined by the decision maker to appeals submitted to the Secretary of State for Transport during 2006/07, and which has subsequently been uplifted annually by the percentage increase from the CPT cost index for Northern England to reflect Operator cost increases. It will be uplifted annually by an appropriate cost index. For 2019/20, the equivalent value is 14.2 pence);
 - (b) RF has the meaning given to it in paragraph 2.3(d) above;
 - (c) J_{cap} has the meaning given to it in paragraph 2.3(a) above.
- 3.4 The Operator shall also be entitled to claim any further Additional Costs where they can demonstrate that the Additional Costs for a Payment Period t are not reflective of all additional costs incurred

4 Reimbursement for Abstracted Revenue

- 4.1 Reimbursement for Abstracted Revenue is taken to mean TfGM's estimate of any revenue by way of fares which the Operator would have earned in the absence of the Scheme, but which has not been taken into account in the calculation of Revenue Forgone, and which has not been replaced by revenue generated for that Operator by the Scheme.
- 4.2 For the Initial Period, Abstracted Revenue shall be zero (0).
- 4.3 Following the Initial Period, Abstracted Revenue shall be determined by TfGM acting reasonably to reflect any Abstracted Revenue which the Operator is able to fully evidence has occurred as a result of the Scheme and which the Operator can demonstrate has not been taken into account in the calculation of Revenue Forgone, and which has not been replaced by revenue generated for that Operator by the Scheme. Where the Operator and TfGM cannot agree the value of the Abstracted Revenue for a Payment Period t, then either party shall be able to refer the dispute as to the value or existence of Abstracted Revenue for determination in accordance with Schedule 7.

5 Reconciliation after Initial Period

5.1 Following the Initial Period, TfGM shall calculate for each Operator:

- (a) The calculation (**Initial Revenue Forgone Difference**) of:
 - (i) The value of Revenue Forgone for the Initial Period if it had been calculated in accordance with paragraph 2.3;
 - (ii) The value of Revenue Forgone for the Initial Period as calculated in accordance with paragraph 2.2;
- (b) The value, if any, of Additional Costs for the Initial Period if they had been calculated in accordance with paragraph 3.3 (**Initial Additional Costs**); and
- (c) The value, if any, of Abstracted Revenue for the Initial Period if they had been calculated in accordance with paragraph 4.3 (**Initial Abstracted Revenue**); and

5.2 Where the sum of the Initial Revenue Forgone Difference, the Initial Additional Costs and the Initial Abstracted Revenue for an Operator is greater than zero (0), then TfGM shall pay that amount (**Additional Initial Period Payment**) to that Operator in equal instalments over the following 12 Payment Periods; and

5.3 Where the sum of the Initial Revenue Forgone Difference, the Initial Additional Costs and the Initial Abstracted Revenue for an Operator is less than zero (0), then TfGM shall be entitled to recover that amount (**Initial Period Over Payment**) from that Operator in equal instalments as a reduction in payments under this Scheme for the following 12 Payment Periods, or where the reduction of such payments under the Scheme (taking into account the benefit received by the Operator through the Initial Period Over Payment) would have a material adverse financial effect on the Operator, such period longer than 12 Payment Periods as TfGM may reasonably determine.

Schedule 5 Surveys

- 1 An Operator shall allow TfGM's officers, servants or agents to have access to (including the right to travel free of charge) the vehicles of the Operator on which Applicable Capped Fares are available for the purpose of:
 - 1.1 surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares paid by those passengers; and
 - 1.2 obtaining information on other matters relating to the Journeys made by Eligible Passengers and necessary to the calculation by TfGM of reimbursement payments.
- 2 The survey data may be utilised by TfGM in calculating the reimbursement payable to the Operator.
- 3 Without prejudice to the generality of paragraph 1 above, the information to be obtained from passengers may include the following:
 - 3.1 whether or not the passenger is an Eligible Passenger;
 - 3.2 if the passenger has paid on-bus or is using a pre-paid ticket;
 - 3.3 if the passenger has paid on-bus, the fare paid and the type of ticket bought;
 - 3.4 if the passenger is using a pre-paid ticket, the type of ticket;
 - 3.5 the stage or stop at which the passenger boarded the bus and the stage or stop at which the passenger is to alight from the bus;
 - 3.6 permit or ticket fraud or mis-use on the relevant services; and
 - 3.7 such other information as TfGM may from time to time reasonably consider it necessary or desirable to obtain in order to enable TfGM to reimburse each Operator in accordance with the Scheme.
- 4 Each Operator is requested to procure that each driver of its vehicles will make available to any survey staff who requests the same, the total value of cash fares shown, on the relevant vehicle's electronic ticketing machine, to have been collected on any Journey surveyed by such surveyor.

Schedule 6 Data Provision

- 1 Each Operator shall provide the following data in a format agreed with TfGM (acting reasonably) for the purposes of supporting the Arrangements, including any payment made under the Scheme. TfGM shall be entitled to withhold payments under this Scheme where and to the extent any such information is not provided or is provided late, until such information has been provided in the relevant agreed format:
 - 1.1 Transactional level data to include:
 - (a) Transaction date and time;
 - (b) Ticket code and name;
 - (c) Ticket price paid (being the Applicable Capped Fare where applicable);
 - (d) The ticket media;
 - (e) The equivalent Shadow Commercial Fare (if applicable);
 - (f) Retail channel;
 - (g) Fare stage boarded (for on bus sales);
 - (h) Fare stage alighted (for single tickets);
 - (i) The service number; and
 - (j) The number of tickets sold in the transaction.
 - 1.2 Reference data to include:
 - (a) Ticket Code;
 - (b) Ticket Name; and
 - (c) Ticket description.
- 2 Data should be provided within 7 days of the end of each Payment Period.
- 3 Data should include all of the Operator's retail sales channels, save where TfGM have expressly agreed to the exclusion of a retail sales channel on the basis that the data not be significant to the scheme.
- 4 The Operator shall also provide TfGM with a 6 month baseline of the data specified in paragraph 1 for a 6 month period prior to the Scheme applying to the Operator. For Operators participating in the Scheme from its commencement this should cover the period from January 2022 to June 2022, and should be provided on or about the commencement of the Scheme.
- 5 Each Operator shall deliver to TfGM in accordance with the requirements set out in paragraph 6 below, certificates of accuracy and completeness in respect of the information contained in the revenue information contained in the transactional data signed by a person who is a "responsible person" for the purposes of regulation 16(4) of the TCSR which at the date hereof means a person who is a member of one or more of:
 - 5.1 the Institute of Chartered Accountants of England and Wales;

- 5.2 the Institute of Chartered Accountants of Scotland; or
 - 5.3 the Chartered Association of Certified Accountants.
- 6 Each Operator shall deliver a certificate in a form from time to time specified by TfGM within 28 days of being requested in writing by TfGM to deliver the same and such certificate shall relate to the revenue information contained in the transactional data provided in respect of such period as TfGM shall reasonably require.
- 7 In the event of any delay or failure on the part of any Operator to provide to TfGM any information to which TfGM is entitled pursuant to the Scheme TfGM shall be entitled to delay or withhold payment of reimbursement to the Operator concerned:
- 7.1 in the case of payments to be made pursuant to paragraph 10.1, for such period of time as the Authority requires in order to form a reasonable estimate of the amount of such payment, and
 - 7.2 in the case of payments to be made pursuant to paragraph 10.2, for such period of time as the Authority reasonably requires in order to calculate the amount of such payment.

In the event that an Operator fails to provide a certificate in respect of information which has been used to calculate a reimbursement payment that has been made to the Operator or the certificate indicates that the Operator was entitled to less than the reimbursement payment that has been made to the Operator then the Operator shall forthwith repay the amount of the reimbursement payment (in the case of a failure to provide a certificate) or the amount of the overpayment (in the case of a certificate indicating that the Operator is entitled to less than had been paid to it).

Schedule 7 Dispute Resolution Procedure

- 1 In the event of any dispute arising in connection with any matter arising from paragraph 13 of the Scheme which cannot be resolved by agreement between the parties' representatives within 28 days of the dispute arising, the parties shall follow the procedure set out in this paragraph:
 - 1.1 either party shall give to the other written notice of the dispute, setting out its nature together with any relevant supporting documents (**Dispute Notice**). On service of the Dispute Notice, senior representatives of the parties (being heads of functions for each party) shall, within 14 days of the date of the Dispute Notice, meet in good faith to attempt to resolve the dispute; and
 - 1.2 in the event that the dispute cannot be resolved within 14 days of any meeting of the parties in accordance with paragraph 1.1 above, the dispute shall be referred to the directors of the parties who shall, within 14 days of a written request from either party to the other, meet in good faith in an attempt to resolve the dispute.
- 2 If the dispute is not resolved in accordance with paragraph 1 above, either TfGM or the Operator may (at such meeting or within 14 days of its conclusion) propose to the other in writing that the dispute be referred to an independent expert (**Independent Expert**).
- 3 If the parties are unable to agree on an Independent Expert or if the Independent Expert agreed upon is unable or unwilling to act then any party may within 14 days from the date of the proposal to appoint an Independent Expert or within a further 14 days of notice to either party that he or she is unable or unwilling to act, apply to the President of the Law Society to appoint an Independent Expert.
- 4 If any matter is referred to the Independent Expert for determination in accordance with paragraph 2 above, then:
 - 4.1 the Independent Expert shall determine the matter, subject to the remaining provisions of this paragraph 4, on a basis that is fair and reasonable in all respects as between the Operator and TfGM and that takes into account all relevant factors and circumstances;
 - 4.2 the Independent Expert shall act as an expert and not as an arbitrator and its determination of the dispute shall be final and binding on the parties (save in the case of manifest error);
 - 4.3 TfGM and the Operator shall ensure that the Independent Expert has full access to all books, information and records in their possession or in the possession of their auditors and accountants that are relevant to the dispute and to his determination thereon; and
 - 4.4 the Independent Expert's fees shall be borne equally by the parties unless he shall decide that one party has acted unreasonably (in which case his fees shall be borne as he shall direct).
- 5 In the event that the parties are unable to agree to the arrangements for or appointment of the Independent Expert, the parties shall in good faith enter into a mediation in an attempt to settle the dispute and shall do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 6 Either party may give written notice to the other (**ADR Notice**), which shall refer the dispute to mediation in accordance with paragraph 5 above. Unless otherwise agreed between the parties, the mediator will be nominated through the CEDR within 14 days of the date of the ADR Notice.

- 7 If there is any point on the logistical or practical arrangements of the mediation, other than the identity of the mediator, on which the parties cannot agree then within 14 days from the date of the ADR notice, the mediator will be asked to determine the point in dispute in accordance with the CEDR and in consultation with the parties.
- 8 Unless otherwise agreed in writing, the parties agree that any mediation will not start later than 28 days from the date of the ADR Notice.
- 9 The parties agree that mediation is a condition precedent and that the parties will be required to use all reasonable endeavours to resolve any Dispute by mediation, or other means as may be agreed, before court proceedings can be commenced.

Schedule 8 Payment Periods

- 1 The Payment Periods under the Scheme shall be the calendar months or as otherwise may be notified to the Operators from time to time by TfGM in writing.
- 2 TfGM reserves the right, however, to change the Payment Periods with regard to individual Operators in appropriate circumstances, such revised periods will not be longer than a calendar month.