

**CHESHIRE WEST AND CHESTER BOROUGH COUNCIL**  
**And**  
**HALTON BOROUGH COUNCIL**  
**And**  
**WARRINGTON BOROUGH COUNCIL**

**Agreement for the**  
**Cheshire Boroughs Concessionary Bus Travel Scheme**  
**For the period 1 April 2018 to 31 March 2020**

**Director of Governance**  
**Cheshire West and Chester Borough Council**  
**HQ Building 58 Nicholas Street**  
**Chester**  
**CH1 2NP**

This agreement made the day of 2018 between

1 PARTIES CHESHIRE WEST AND CHESTER BOROUGH COUNCIL (“CWaC”) of HQ Building 58 Nicholas Street  
Chester CH1 2NP and HALTON BOROUGH COUNCIL (“HBC”) of Municipal Buildings  
Kingsway Widnes and WARRINGTON BOROUGH COUNCIL (“WBC”) of The Town Hall  
Warrington (together known as the “Parties” or the “Party” as the context provides)

## 2 RECITALS

- (A) The Parties have agreed a concessionary scheme for bus travel which provides concessionary travel in accordance with the relevant Acts and Regulations, and in addition, offers some local discretionary concessionary travel. CWaC administers the scheme on behalf of the Parties.
- (B) To put into effect the arrangements recited in (A) above the Cheshire Scheme for Concessionary Bus Travel (the “Scheme”) applies in the Boroughs of Cheshire West and Chester, Halton and Warrington.
- (C) The Parties have agreed that CWaC shall administer the Scheme on the terms herein. The Scheme is operated in accordance with the particulars agreed between the Parties (the “Scheme Particulars”).
- (D) This Agreement is entered into by the Parties pursuant to their statutory duty under the Transport Acts 1985, 2000 and 2010 and Regulations there-under to provide statutory concessionary fare travel for eligible persons, and pursuant to Sections 101, 102, 111, 112 and 113 of the Local Government Act 1972, Sections 19 and 20 of the Local Government Act 2000 Section 1 Localism Act 2011 and the Local Authorities (Goods and Services) Act 1970 and any other relevant statutory power including the Regulations made under these Acts.

## 3 DEFINITIONS

The following terms shall have the following meanings:-

- 3.1 “Authorised Persons” means the persons authorised to give and receive notices under this Agreement as set out in Schedule 2
- 3.2 “Payment” means the sums of money described in Schedule 3

- 3.3 “the Service” means the services described in Schedule 1
- 3.4 “Employees” mean the employees described in Clause 8
- 3.5 “TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006
- 3.6 “Personal Data” means data defined as personal data in accordance with the Data Protection Act 1998
- 3.7 “Information Request” means a request under the Freedom of Information Act 2000 (“FOI Legislation”)
- 3.8 “Exempt Information” means any information relating to this Agreement which may fall within an exemption to disclosure under FOI Legislation
- 3.9 “Start Date” means the date in clause 4
- 3.10 “Term” means 1 April 2018 to 31 March 2020
- 3.11 “Force majeure Event” means any cause affecting the performance by a party of its obligations arising from acts, events, omissions, happenings or non-happenings beyond its reasonable control including (but without limiting the generality thereof):
- (a) Acts of God, flood, earthquake, windstorm or other natural disaster;
  - (b) epidemic or pandemic;
  - (c) war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, breaking off of diplomatic relations or similar actions;
  - (d) terrorist attack, civil war, civil commotion or riots;
  - (e) nuclear, chemical or biological contamination or sonic boom;
  - (f) any law or government order, rule, regulation or direction, or any action taken by a government or public authority, including but not limited to imposing an

embargo, export or import restriction, quota or other restriction or prohibition, or failing to grant a necessary licence or consent;

- (g) fire, explosion (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party) or accidental damage;
- (h) loss at sea;
- (i) extreme adverse weather conditions;
- (j) interruption or failure of utility service, including but not limited to electric power, gas or water;
- (k) any industrial dispute relating to the Scheme and
- (l) any other failure by bus operators, their sub-contractors and their supply chain

provided that any act, event, omission, happening or non-happening shall only be considered Force Majeure if it is not attributable to the wilful act, neglect or failure to take reasonable precautions by the affected party, its agents or employees.

3.12 "Data Controller" has the meaning given under Data Protection Law.

3.13 "Data Processor" has the meaning given under Data Protection Law.

3.14 "Data Protection Law" means all Law relating to privacy and the processing of personal data, including all applicable guidance and codes of practice issued by the Information Commissioner's Office or any replacement EU or UK data protection or related privacy Law in force in England and Wales;

3.15 "Data Subject" has the meaning given under the Data Protection Law.

3.16 "Data Subject Access Request" a request by a Data Subject under Data Protection Law to access their Personal Data;

3.17 "Personal Data" means personal data, within the meaning given by Data

Protection Law, concerning either Residents or employees or workers of the Contractor or any Sub-Contractor and which is obtained or Processed in connection with the Services or this Contract;

3.18 "Personal Data Breach" means any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law).

3.19 "Sensitive Personal Data" has the meaning given under Data Protection Law.

3.20 "FOI Legislation" means Freedom of Information Act 2000 and Environmental Information Regulations 2004".

4 START DATE

The Start Date for the Service shall be 1<sup>st</sup> April 2018.

5 TERM

The Service shall be provided from the Start Date until 31 March 2020 unless terminated or extended by the written agreement of the Parties in accordance with the terms of this Agreement.

6 THE SERVICE

CWaC shall provide the Service to HBC and WBC in accordance with the Scheme Particulars and as set out in Schedule 1, the payment obligations in Schedule 3 and the monitoring and performance obligations in Schedule 4. The Parties shall have the obligations in Schedule 1.

7 WARRANTIES

7.1 Each Party warrants that:

7.1.1 it has full capacity and authority and all necessary consents to enter into and

perform this Agreement and that the Agreement is executed by its duly authorised representatives; and

7.1.2 it shall discharge its obligations hereunder with all due skill, care and diligence.

## 8 EMPLOYEES

8.1 The Employees who at the date of this Agreement shall provide the Service shall be employed by CWaC. The Employees who administer the Scheme from the Start Date shall be two full time Employees at 10% of their time, one full time Employee at 12% of their time and one full time Employee (0.5 full time equivalent) at 35% of their time.

8.2 Where on the termination of this Agreement or on the termination of the Scheme, the Service is to be provided by one or more of the Parties or by a third party, then the Parties shall use their best endeavours to ensure that Employees shall transfer to the then providing Party or to the third party under "TUPE" provisions either by the operation of law or by specific agreement.

8.3 If the circumstances in paragraph 8.2 arise or if it shall be necessary to make Employees redundant either on a compulsory basis or by voluntary agreement between CWaC and the Employee(s), the costs arising from the compulsory or voluntary redundancy of the Employee(s) or of a transfer pursuant to TUPE, shall be calculated pro rata the time spent by those Employees on administering the Scheme (as set out in clause 8.1) and then shared equally between the Parties.

8.4 The Parties shall be informed and consulted prior to any reduction in the number of Employees referred to in clause 8.1.

8.5 The contribution paid by CWaC, WBC, and HBC to the costs of the Employees referred to in clause 8.1 shall be £30,610 in 2018-19 and £31,222 in 2019-20 unless agreed otherwise by the Parties. For the avoidance of doubt, no Party shall be liable for non-payment by

another Party.

9 PAYMENT

HBC and WBC shall make payment for the provision of the Service in accordance with the Scheme Particulars as set out in Schedule 1 and reimbursement charges paid to bus operators in accordance with Schedule 3.

10 MONITORING AND PERFORMANCE

10.1 The monitoring of the performance of the provision of the Service shall be in accordance with Schedule 4.

10.2 The Parties shall review this Agreement at least three months prior to the anniversary of the Start Date and shall determine whether this Agreement shall be extended.

10.3 Where the Parties identify issues or concerns relating to the operation of this Agreement, the Parties shall meet to discuss these and find a solution to such issues or concerns. Any disputes shall be dealt with in accordance with clause 19.

10.4 The Scheme shall be audited annually by the Internal Audit Team of one of the Parties jointly commissioned by the Parties. The Parties shall agree the remit of the audit. At the conclusion of the audit, the Party undertaking the audit shall distribute the audit report to the Parties. The cost of this audit shall be agreed by the Parties and such costs shall be recharged between the Parties as agreed at the time.

11 INDEMNITY

11.1 Whilst the Parties shall make all reasonable attempts to mitigate loss, save as provided for in clause 11.7, each Party shall be liable for and shall indemnify the

other against any expense, liability, loss, claim or proceedings whatsoever howsoever arising under any statute or at common law in respect of personal injury to or death of any person whomsoever howsoever arising out of or in the course of or caused by any act or omission of that Party under or in connection with this Agreement.

- 11.2 Whilst the Parties shall make all reasonable attempts to mitigate loss, save as provided for in clause 11.7 each Party shall be liable for and shall indemnify the other against any reasonable expense, liability, loss, claim or proceeding in respect of any injury or damage whatsoever howsoever arising to any property real or personal in so far as such injury or damage arises out of or in the course of or is caused by any act or omission (except to the extent that such act or omission is the result of a Force Majeure Event in which case each party shall bear its own loss) of that Party arising out of or in connection with this Agreement.
- 11.3 Whilst the Parties shall make all reasonable attempts to mitigate loss, each Party shall, subject to clause 11.7, indemnify the other in respect of any reasonable loss caused to the other Party as a direct result of that Parties negligence, wilful default (except to the extent that such wilful default is the result of a Force Majeure Event in which case each party shall bear its own loss) or fraud or that of any of the Parties employees or sub-contractors or agents under or in connection with this Agreement.
- 11.4 Notwithstanding any other provision in this Agreement CWaC shall not be liable to WBC or HBC for any loss, liability or cost whatsoever incurred by them individually or collectively as a result of negligent performance, a defect, failure, error, interruption or deterioration in the Services caused by a bus operator or other third party making a claim under the Scheme Particulars.
- 11.5 Subject to clause 11.7 CWaC shall not be liable to WBC or HBC in contract, tort

(including negligence or breach of statutory duty) misrepresentation or otherwise under or in connection with this Agreement for any of the following losses or damages, whether direct or indirect, and even if such losses and/or damages were foreseen, foreseeable or known, or CWaC was advised of the possibility of them in advance:

11.5.1 loss or damage incurred by WBC or HBC as a result of third party claims;

11.5.2 loss of actual or anticipated profits;

11.5.3 loss of business opportunity;

11.5.4 loss of anticipated savings;

11.5.5 loss of goodwill; or

11.5.6 any indirect, special or consequential loss or damage whatsoever howsoever caused.

11.6 Except for liabilities howsoever arising from any negligent act or omission or any breach of this Agreement by an individual Party, the Parties shall assume joint liability in equal shares for all or any liabilities incurred by the Parties in connection with or in the course of the and thereafter during the Term in respect of:

11.6.1 properly performing or discharging their respective roles and/or responsibilities under this Agreement ; and/or

11.6.2 entering into any commitment on behalf of the Parties for the purposes of the Scheme and/or

11.6.3 providing any service or resource or assistance or in-kind support required on the part of CWaC or on the part of or from the other Parties in the course of their respective duties under this Agreement.

11.7 All conditions, warranties and representations, expressed or implied by statute, common law or

otherwise, in relation to the performance or non-performance of the Scheme are excluded to the extent permitted by law unless expressly set out in this Agreement.

11.8 No Party limits its liability for:

11.8.1 death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable); or

11.8.2 fraud or fraudulent misrepresentation by it or its employees; or

11.8.3 any liability to the extent it cannot be limited or excluded by Law.

11.9 HBC and WBC shall individually indemnify CWaC against payments over claimed by operators and paid to operators in accordance with the terms of this Agreement and the Scheme Particulars set out in Schedule 1 and in good faith by CWaC. HBC and WBC shall in their discretion be solely liable to take action to recover payments over claimed and CWaC shall have no liability or obligation to do so on behalf of HBC and WBC as relevant in the circumstances. CWaC shall give all reasonable assistance to , HBC and WBC in respect of any action taken pursuant to this clause.

11.10 In circumstances where CWaC is required to process any appeal pursuant to section 150(3) of the Transport Act 2000 in respect of the Scheme, where the appeal affects all the Parties the Parties shall be liable for the costs to CWaC arising from its responsibility in doing so and such costs shall be apportioned between the Parties according to the outcome of any such appeal and in accordance with their own liability as determined by the appeal. Where the appeal affects solely one Party that Party shall be liable for the costs to CWaC.

12 INSURANCE

Each Party shall maintain adequate insurance to cover its obligations under this Agreement.

13 ASSIGNMENT

No party may assign or sub-contract all or part of this Agreement without the consent of the other Parties (not to be unreasonably withheld) and shall give 28 days' written notice of such

intent to assign or sub-contract. This shall exclude use of a third party by CWaC to provide equipment, materials or services to enable CWAC to meet its commitments under this Agreement.

#### 14 VARIATION

The Service or this Agreement may be varied by agreement at any time. All variations shall be recorded in writing and signed by the Authorised Person on behalf of each Party and annexed to this Agreement.

#### 15 CONTRACT MANAGEMENT

The persons managing this Agreement and having day to day responsibility for the Scheme on behalf of each party, the Authorised Persons and the addresses to which notices shall be sent are set out in Schedule 2.

#### 16 COMMUNICATIONS WITH OPERATORS, PROVISION OF AND ACCESS TO INFORMATION

16.1 CWAC shall notify the other Parties as relevant of any communications with operators in relation to any issues or disputes regarding the Scheme and the outcome of any discussions with operators in relation to the same.

16.2 Each Party shall keep adequate and comprehensive records of the Service and any support services to enable each party to perform its obligations under this Agreement, meet its statutory obligations and comply with any reasonable request (which for the avoidance of doubt shall not include requests for confidential information) from third parties. Records shall be retained for a period of six years from the expiry or termination of this Agreement. For these purposes such records shall be freely available to the Parties. On the termination of the Agreement such records shall either be transferred from CWaC to HBC or WBC or vice versa as the case may be and the Party retaining the records shall provide, for a reasonable period, free access to another Party to such records insofar as they relate to the period of the Agreement.

#### 17 TERMINATION OF THE AGREEMENT

- 17.1 This Agreement may be terminated
- 17.1.1 by any of the Parties upon giving 6 months written notice; or
  - 17.1.2 by any Party if one or more of the Parties commits any material breach of this Agreement and which in the case of a breach capable of being remedied has not been remedied within 30 days of a request to remedy the same and the Dispute provisions of clause 19 have been exhausted; or
  - 17.1.3 by mutual consent of the Parties; or
  - 17.1.4 if the circumstances in Clause 33.1 arise.
- 17.2 Any termination of this Agreement pursuant to this Clause 17 shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liability of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination
- 17.3 In the event that this Agreement is terminated, liabilities shall be paid by the Parties in accordance with their percentage number of reimbursement payments made in accordance with the Scheme. Any deficit shall be apportioned in the same manner. Any property or other assets acquired jointly by the Parties for the purposes of this Agreement shall be used first to defray any expenses and liabilities properly incurred and shall thereafter be distributed amongst the Parties at the time of such termination in accordance with their percentage number of reimbursement payments. Any assets owned by a Party at the date of this Agreement or purchased by a Party for use during the Term shall be owned by that Party and shall be returned to that Party at the expiry of the Term.

Neither party is responsible for breaches of this Agreement caused by or attributable to a Force Majeure Event

## 19 DISPUTES

19.1 The Parties shall use their best endeavours to resolve any dispute without recourse to litigation and in particular shall adhere to the following principles:

- any dispute shall not prejudice delivery of the Service;
- freedom of exchange of information;
- a shared desire to avoid unnecessary costs and litigation;
- a shared commitment to settle disputes by negotiation or conciliation involving a third party;
- compliance with the Data Protection Act 1998 and
- Confidentiality of commercially sensitive information.

19.2 In the event of any dispute or difference between the Parties relating to this Agreement such dispute or difference shall be referred to the Authorised Persons. In the event that the dispute or difference remains unresolved within 30 days of such referral the matter shall be referred to mediation in accordance with Clause 19.3

19.3 If at any time any dispute or difference shall arise between the two or more of the Parties which they are not able to resolve in accordance with Clause 19.1 and 19.2 the same shall be referred to and settled by a mediator to be appointed by agreement by the Parties in dispute or in default of agreement nominated on the application of any Party in dispute by the President of the Law Society of England and Wales.

19.4 The Parties shall bear their own costs arising from any dispute resolution or mediation save that the costs of the mediator shall be shared equally between the Parties in dispute.

19.5 Nothing in this Clause 19 shall prevent any Party at any time, in cases where injunctive, declaratory or other equitable relief is required, from commencing proceedings and pursuing claims for such relief before the courts of England and Wales.

20 WAIVER

No exercise of any right or any delay neglect or forbearance on the part of either Party shall prejudice the exercise of any other right or be deemed to be a waiver

21 NOTICES

21.1 Any demand, notice or other communication given in connection with or required by this Agreement shall be made in writing and shall be delivered to, or sent by pre-paid first class post to the Authorised Persons at the address stated in Schedule 2 (or such other address as may be notified in writing from time to time).

21.2 Service

Any such demand, notice or communication shall be deemed to have been duly served:

21.2.1 if delivered by hand, when left at the proper address for service and

21.2.2 if given or made by pre-paid first class post, two Business Days after being posted and if by non Royal Mail post three Business Days after being posted

provided in each case that if the time of such deemed service is either after 4.00pm on a Business Day or on a day other than a Business Day, service shall be deemed to occur instead at 10.00am on the next following Business Day. No service shall be deemed effective by fax or by e mail.

22 INFORMATION AND CONFIDENTIALITY

22.1 The Parties shall keep confidential all matters relating to this Agreement and shall use all reasonable endeavours to prevent their employees and agents from making any disclosure to any person of any matter relating to this Agreement. The Parties shall enter into a data sharing agreement if considered necessary and if so advised.

22.2 The Parties may disclose information in the circumstances arising in this clause:

22.2.1 Any disclosure of information that is reasonably required by persons engaged in the

performance of their obligations under this Agreement;

22.2.2 Any matter which a Party can demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;

22.2.3 Any disclosure to enable a determination to be made under clause 19 (Disputes);

22.2.4 Any disclosure which is required by any law (including any order of a court of competent jurisdiction), FOI Legislation, any Parliamentary obligation or the rules of any stock exchange or governmental or regulatory authority having the force of law;

22.2.5 Any disclosure of information which is already lawfully in the possession of the receiving Party prior to its disclosure by the disclosing Party;

22.2.6 Any disclosure by a Party to a department, office or agency of the Government;

22.2.7 Any disclosure for the purpose of the examination and certification of a Party's accounts;

22.2.8 Any disclosure required for an appeal pursuant to section 150(3) of the Transport Act 2000 and regulations made thereunder.

22.3 Where disclosure is permitted under clause 22.2, the recipient of the information shall be placed under the same obligation of confidentiality by the disclosing Party as that contained in this Agreement.

## 23 DATA PROTECTION

23.1 Each Party shall comply with Data Protection Law in connection with this Procurement Agreement. In particular each Party shall Process Personal Data of which the other is Data Controller only in accordance with Data Protection Law and this Procurement Agreement.

23.2 Each Party shall ensure they have all necessary and appropriate consents required for the lawful Processing of Personal Data under this Procurement Agreement (including any transfer of Personal Data to the other Party). Personal Data shall be treated as Confidential Information.

23.3 Where any Party Processes Personal Data of which another Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:

- a) for compliance with a legal obligation to which that Party is subject;
- b) for performing a contract to which the Data Subject is a party;
- c) in order to protect the vital interests of the Data Subject;
- d) for the performance of a task carried out in the public interest;
- e) for the purposes of legitimate interests pursued by the Parties, except where the Processing is unwarranted in any particular case because of prejudice to the rights and freedoms or legitimate interests of the Data Subject; or
- f) for any other purposes for which Personal Data may lawfully be Processed under Data Protection Law.

23.4 Where any Party Processes Sensitive Personal Data of which another Party is a Data Controller, the Processing Party shall do so on the basis of one or more of the following legal grounds, that Processing is necessary:

- a) to protect the vital interests of the Data Subject or of another person where:
- b) for the purposes of exercising or performing any right or obligation which is conferred or imposed by Law on the Data Controller in connection with employment;
  - i) the Data Controller cannot reasonably be expected to obtain the Data Subject's consent; or
  - ii) the Data Subject is physically or legally incapable of giving his or her consent; or
- c) for any other purposes for which Sensitive Personal Data may lawfully be Processed under Data Protection Law;

23.5 Depending on the factual situation and the Personal Data any Party may act as either Data Controller or Data Processor in relation to Personal Data under this Procurement Agreement.

23.6 The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Procurement Agreement are set out in the table below:

## Procurement Agreement table

|   | <b>Personal Data of which the CWaC is Data Controller</b>  | <b>Personal Data of which HBC is Data Controller</b>   | <b>Personal Data of which WBC is Data Controller</b>   |
|---|--|--|--|
| <b>Data Processor:</b>  | HBC and WBC  | CWaC and WBC   | CWaC and HBC   |
| <b>Categories of Data</b>   | Residents  | Residents.   | Residents  |
| <b>Subject:</b>   |  |  |  |
| <b>Subject matter of Processing (including types of Personal Data that may be Processed):</b> | Personal Data concerning Residents including names, addresses and contact details,   | Personal Data concerning Residents including names, addresses and contact details,   | Personal Data concerning Residents including names, addresses and contact details,   |
| <b>Nature and purpose of Processing:</b>  | Interrogation of the Personal Data for the purpose of carrying out the Services  | Interrogation of the Personal Data for the purpose of carrying out the Services  | Interrogation of the Personal Data for the purpose of carrying out the Services  |
| <b>Duration of Processing:</b>  | During the Procurement Agreement and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.) | During the Procurement Agreement and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.) | During the Procurement Agreement and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.) |

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23.7 Where any Party is the Data Processor of Personal Data of which another Party is the Data Controller the Processing Party shall:

- a) do so only on written instructions from the Data Controller (the first such instructions being those set out in this Contract) as revised by the Data Controller from time to time (where applicable) in accordance with clause 23.15;
- b) promptly comply with the Data Controller's written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;
- c) immediately inform the Data Controller if the Data Processor thinks that it has been given an instruction which does not comply with Data Protection Law;
- d) take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom that Party authorises to Process the Personal Data and ensure that those persons:
  - i) undergo adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Data Processor's obligations under this Procurement Agreement.
  - ii) do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with this Procurement Agreement or the written instructions of the Data Controller; and
  - iii) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

- e) Process the Personal Data in such a manner that ensures that at all times the Data Controller complies with Data Protection Law;
- f) fully cooperate with and assist the Data Controller, by having appropriate technical and organisational measures in place, to give effect to the rights of Data Subjects and respond to requests for exercising the Data Subject's rights including Data Subject Access Requests;
- g) promptly forward any complaint, request (including a Data Subject Access Request), notice or other communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Law (including any request from the Information Commissioner), to the Data Controller and not respond to or otherwise deal with such communication except as instructed by the Data Controller or as required by Data Protection Law;
- h) keep records of any Processing of Personal Data it carries out on behalf of the Data Controller which are sufficient to demonstrate compliance by the Data Controller and the Data Processor with Data Protection Law;
- i) on request, provide the Data Controller promptly with all information that the Data Controller needs to show that both the Data Controller and Data Processor have complied with their data protection obligations under this Contract; and
- j) at the option of the Data Controller, either irretrievably delete or return all Personal Data of which the other Party is Data Controller by the date set out in the table in

clause 23.6 above (unless the Data Processor is required by Law to retain that Personal Data).

23.8 A Party that Processes Personal Data shall maintain appropriate technical and organisational measures to protect that Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction or damage having regard to:

- a) the harm that might result from any Personal Data Breach including the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons.
- b) the nature, scope, context and purpose of the Processing of the Personal Data; and
- c) the cost of implementing any measures;
- d) the state of technological development;

23.9 Security measures maintained under clause 23.8 shall:

- a) to the greatest extent possible involve pseudonymisation and encryption of Personal Data;
- b) ensure the ongoing confidentiality, integrity, availability and resilience of the Data Processor's technical and IT Systems;
- c) ensure that the availability of and access to Personal Data can be restored promptly following a physical or technical incident; and
- d) include regular testing, assessing and evaluating of the effectiveness of the technical and organisational measures to ensure
- e) the security of Processing.

23.10 No Party shall transfer any Personal Data of which another is Data Controller outside of the European Economic Area without the prior written consent of the Data Controller. Where the Data Controller consents to such a transfer, the Data Processor shall ensure there is

adequate protection, as approved by the Data Controller, for such Personal Data in accordance with Data Protection Law.

23.11 A Party acting as Data Processor shall notify the Data Controller immediately if it becomes aware of any Personal Data Breach (however caused). Such notification must:

- a) describe the nature of the breach including the categories and number of Data Subjects and records concerned;
- b) communicate the name and contact details of all persons from whom more information can be obtained about the breach;
- c) describe the likely consequences of the breach; and
- d) describe the measures taken by Data Processor and the measures which the Data Processor wishes the Data Controller (at the expense of the Data Processor) to take to address the breach and mitigate its possible adverse effects.

23.12 The Data Processor shall give the Data Controller immediate and full co-operation and assistance in relation to any such Personal Data Breach including:

- a) taking all reasonable steps the Data Controller requires to assist in the containment, mitigation, remediation and investigation of such breach;
- b) providing assistance with notifying the Information Commissioner's Office or affected Data Subjects of any breach of Data Protection Law; and
- c) providing the Data Controller promptly with all relevant information in the Data Processor's possession.

23.13 A Party that Processes Personal Data as Data Processor shall provide reasonable assistance to the Data Controller where the Data Controller is required by Data Protection Law to carry out

any privacy impact assessment or data protection impact assessment in relation to Processing Personal Data.

23.14 A Party that is a Data Controller may inspect and audit the other Party's facilities for Processing the Personal Data of which it is Data Controller to ensure they comply with this Contract and Data Protection Law.

23.15 A Party that is a Data Controller may revise their instructions to the Data Processor on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle either Party to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract. The Data Controller shall use reasonable endeavours to give the Data Processor as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Personal Data Breach.

23.16 Nothing in this Procurement Agreement requires any Party to disclose any information to the other Party or any third party if to do so would breach Data Protection Law. If any part of this clause 23.16 does not comply with Data Protection Law, CWaC may amend that part (to the minimum necessary to ensure such compliance) by giving the other Parties at least 20 (twenty) Working Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract.

23.17 CWaC may replace this clause with any applicable Data Controller to Data Processor standard clauses forming part of an applicable certification scheme (as defined under Data Protection Law) at any time by giving the other Parties at least 20 (twenty) Working Days' notice. The Parties agree that such amendment shall not be regarded as a variation to this Contract

## 24 FREEDOM OF INFORMATION

24.1 The Parties are public authorities as defined by FOI Legislation and therefore information

relating to this Agreement may be the subject of an information request (hereinafter the "Information Request").

24.2 The Parties shall assist each other in complying with their obligations under FOI Legislation, including but not limited to assistance without charge in gathering information to respond to an Information Request.

24.3 Any Party shall be entitled to disclose any information relating to this Agreement in response to an Information Request, save that in respect of any Information Request which is in whole or part a request for information which is exempt information under FOI Legislation (hereinafter the "Exempt Information"):

24.3.1 the Party which receives the Information Request shall circulate the Information Request and shall discuss it with the other Parties;

24.3.2 the Party which receives the Information Request shall in good faith consider any representations raised by the other Parties when deciding whether to disclose Exempt Information; and

24.3.3 the Party which receives the Information Request shall not disclose any Exempt Information beyond the disclosure required by FOI Legislation without the consent of the Party or Parties to which it relates

24.4 The Parties acknowledge and agree that any decision made by a Party which receives an Information Request as to whether to disclose information relating to this Agreement pursuant to FOI legislation is solely the decision of that Party. A Party shall not be liable to any party to this Agreement for any loss, damage, harm or detrimental effect arising from or in connection with the disclosure of information in response to an Information Request.

25 SEVERABILITY

25.1 If at any time any clause or part of a clause or schedule or appendix or part of a schedule or

appendix to this Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid or unenforceable in any respect:

25.1.1 that finding shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement and

25.1.2 the Parties shall in good faith amend this Agreement to reflect as nearly as possible the spirit and intention behind that illegal, invalid or unenforceable provision to the extent that such spirit and intention is consistent with the laws of the jurisdiction .

## 26 RELATIONSHIP OF PARTIES

26.1 Nothing contained in this Agreement shall be construed to imply that there is any relationship between the Parties of partnership or principal/agent or of employer/employee. No Party shall have any right or authority to act on behalf of another Party nor to bind another Party by contract or otherwise except to the extent expressly permitted by the terms of this Agreement.

26.2 CWaC shall be the lead Party for the purposes of this Agreement and all matters arising under or in relation to it shall be referred to CWaC within 7 days of becoming known to the respective Party.

## 27 THIRD PARTY RIGHTS

27.1 The Councils agree that they do not intend that any third party which may benefit from this Agreement shall have any rights of enforcement under the terms of the Contracts (Rights of Third Parties) Act 1999

## 28 ENTIRE AGREEMENT

28.1 This Agreement and all documents referred to in this Agreement set out the entire agreement between the Parties and supersede and replace all prior communications, representations (other than fraudulent representations), warranties, stipulations,

undertakings and agreements whether oral or written between the parties.

## 29. CONTINUING RESPONSIBILITY

29.1 Nothing in this Agreement shall render any Party liable for actions claims and losses howsoever arising for the failure or other omission of any other Party to maintain and publish an individual travel concession scheme.

29.2 Nothing contained or implied herein shall prejudice or affect the relevant Parties' rights powers discretions duties and obligations in the exercise of their functions as public bodies or on behalf of public bodies and/or in any other capacity and all rights powers discretions duties and obligations of the Party under all public and private statutes bylaws orders and regulations and statutory regulations and statutory instruments may at all times be fully and effectually exercised as if the Party were not party to this Agreement and as if this Agreement had not been made and the exercise of such rights powers discretions duties and obligations shall not lead to any liability under this Agreement (howsoever arising) on the part of the Party to the other Party.

## 30. LAW OF AGREEMENT AND JURISDICTION

30.1 This Agreement shall be governed by the laws of England and the Parties submit to the exclusive jurisdiction of the courts of England and Wales.

## 31. COUNTERPARTS

31.1 This Agreement may be executed in any number of counterparts, each of which shall be an original and all of which shall together constitute a single agreement.

## 32. PROCUREMENT OF GOODS AND SERVICES

32.1 Any goods or services procured by CWaC for use in providing the Services shall be procured in accordance with the Financial Procedure Rules (as applicable from time to time) of CWaC.

### 33. CORRUPT GIFTS AND PAYMENT OF COMMISSION

33.1 The Parties reserve the right to terminate this Agreement by notice in writing with immediate effect if the defaulting Party or any person on its behalf shall have:

- 33.1.1 offered or given or agreed to give any person any gift or consideration of any kind as an inducement or reward for doing or failing to do any act in relation to the obtaining or execution of this Agreement or any other contract with the aggrieved parties;
- 33.1.2 shown favour or disfavour to any person in relation to this Agreement or any other agreement with the aggrieved parties; or
- 33.1.3 if like acts shall have been done by any person employed by the defaulting Party or acting on its behalf (whether with or without the knowledge of the defaulting party);  
or
- 33.1.4 if in relation to any Agreement with the aggrieved parties the defaulting Party or any person employed by the defaulting Party or acting on its behalf shall have committed any offence under the Bribery Act 2010 or shall have given any fee or reward the receipt of which is an offence under Section 117 (2) and (3) of the Local Government Act 1972.
- 33.1.5 The defaulting Party whose act caused the termination of this Agreement pursuant to this clause shall fully indemnify the other Parties for all expense, liability, loss, claim or proceeding whatsoever howsoever arising out of or in connection with breach of this Clause 33.

### 34. RIGHT OF SET OFF and RIGHT TO WITHHOLD PAYMENT

34.1 Subject to Schedule 3:

34.1.1 No party shall have the right of set off against any other party and

34.1.2 No party shall have the right to withhold from making any payments due and demanded pursuant to Schedule 3.

This Agreement is signed as a Deed and the Parties have executed this Agreement this day of  
2018

THE COMMON SEAL OF CHESHIRE WEST

AND CHESTER BOROUGH COUNCIL

was hereunto affixed in the presence of

Authorised Signatory

THE COMMON SEAL OF

HALTON BOROUGH COUNCIL )

Was hereunto affixed in the presence of

AUTHORISED SIGNATORY

THE COMMON SEAL OF

WARRINGTON BOROUGH COUNCIL )

Was hereunto affixed in the presence of

AUTHORISED SIGNATORY

## SCHEDULE 1

### The Scheme

The Scheme Particulars is annexed hereto. CWaC shall, in relation to the Scheme Particulars, undertake the following:

- draft the Scheme Particulars and reimbursements arrangements in accordance with the requirements of the Transport Acts 1985 and 2000 and the Bus Travel Act 2007.
- administer the Scheme on behalf of the Parties;
- make payments to operators to reimburse them for accepting concessionary travel passes on eligible services;
- carry out audits of operator concessionary travel data, at the site of bus operators in accordance with clause 12. of the Scheme Particulars;
- produce relevant guidance for the Scheme as required;
- manage and provide financial records and reports as specified in paragraphs 1 and 2 of Schedule 4;
- advise the Parties on changes to the legislation and regulations and guidance (issued by the Department for Transport or other relevant agency) relating to concessionary travel ;
- together with the other Parties, liaise and meet with bus operators as necessary;
- recharge the Parties the relevant costs for concessionary bus travel paid to bus operators on behalf of the Parties;
- recharge the Parties for the administration costs of managing the Scheme and providing the Service or any additional service(s) required to be performed or provided
- carry out for the purpose of audit, an on-site reconciliation on selected claims for each bus

operator at least once in each financial year to establish that a bus operator's claims are a true and fair claim in respect of concessionary journeys and to verify the level of demand for the Scheme and the amount of reimbursement due. The outcomes of such onsite audits shall be shared with the relevant Party within 30 days of the completion of an audit. CWaC shall inform the Parties of pre-arranged audit dates. The relevant Parties shall inform CWaC of any issues to be raised with the operator during the audit. ;

- co-ordinate any appeal pursuant to section 150(3) of the Transport Act 2000 in respect of the Scheme unless agreed otherwise by the Parties;
- undertake regular meetings with operational staff from each Party as agreed between CWaC and each Party and such meetings shall be at least quarterly;
- organise a meeting at least annually between the Councils to review the operation of the Scheme and this Agreement such meeting to take place at least 3 months' prior to the end of the Term;
- undertake the duties of the administrator of the Scheme as set out in the Scheme Particulars;
- provide regular monthly trend analysis based on the prior 12 month period which shall be shared with the relevant Party in the last week of the month following the claim period and
- Provide outturn projections to each Party on a quarterly basis.

The responsibilities of the other Parties to CWaC in respect of the Scheme and the Scheme

Particulars are as set out below:

- Notify changes to registrations including new services and services which have been withdrawn;

- Notify any change of operator on tendered services;
- Notify any cross boundary changes which may relate to the Parties or any one of them or other local authorities;
- Notify any changes to Minimum cost contracts;
- Notify any other matter whatsoever that Parties feel could affect concessions eg operators changing their use of ticketing;
- Agree the content of the draft Scheme Particulars and ensure these reflect the details for operators prior to sharing the draft Scheme Particulars in a timely manner with the operators prior to the commencement of a new Scheme and
- Publish a new Scheme in their area and
- Agree the process for on bus surveys.

## **SCHEDULE 2**

### Authorised Persons

The persons with day to day responsibility for the Scheme for the Parties are:

CWaC: Lynne Mckie, Team Leader Information, Concessions and Smartcard, Planning and Strategic Transport, Nicholas House, 1 Blackfriars, Chester, CH1 2NU.

HBC: Jeff Briggs, Lead Officer Transport Co-ordination, 4th Floor Municipal Building Kingsway Widnes WA8 7QF

WBC: Alyn Jones, Specialist Transport Services Manager, The Town Hall, Sankey Street, Warrington WA1 1UH

The persons who shall be the Authorised Persons are:

CWaC: Head of Governance of HQ Building 58 Nicholas Street Chester CH1 2NP

HBC: Operational Director/Head of Legal Services, 4th Floor Municipal Building, Kingsway, Widnes WA8 7QF

WBC: Tim Date, Solicitor to the Council & Assistant Director Corporate Governance, Warrington

Borough Council, Quattro, Buttermarket Street, Warrington, WA1 2NH

### **SCHEDULE 3**

#### **PAYMENT**

A. CWaC shall be reimbursed for the payments it makes to bus operators on behalf of HBC and WBC and for administration costs as follows:

A1. Monthly in arrears:

1.1 travel concession reimbursement costs paid to each bus operator apportioned according to the number of journeys made by qualifying persons in the area of each Party and apportioned according to the travel concession costs paid on behalf of each Party.

and costs pursuant to this clause A1.1 of Schedule 3 shall be paid within 30 days of demand.

CWaC shall invoice each Party in the last week of each month for claims received. Any claims received after CWaC has sent an invoice shall be invoiced in the following month. Further, save for paragraph D of this Schedule 3, in accordance with clause 34 of this Agreement, there shall be no right of set off and no right to withhold any payment demanded pursuant to this Schedule 3. Disputes concerning payment shall be managed pursuant to clause 19 Dispute Resolution. No payment shall be refused or delayed by the absence of a purchase order number.

A2. Quarterly in arrears:

CWaC shall quarterly undertake a reconciliation for actual administration costs incurred pursuant to clause A1.1 of this Schedule 3, and shall produce a breakdown of actual costs incurred for each Party based on the percentage ratio of costs to passengers. This figure shall be submitted to each Party in the last week of the month following the quarter. Sums due to be paid to CWaC shall be paid within 30 days of demand. Further, save for paragraph D of this Schedule 3, in accordance with clause 34 of this Agreement, there shall be no right of set off and no right to

withhold any payment demanded pursuant to this Schedule 3. Disputes concerning payment shall be managed pursuant to clause 19 Dispute Resolution.

- B. CWaC shall never make a payment for a reimbursement claim in advance and shall always pay a reimbursement claim in arrears unless instructed by another Party to do so.
- C. If CWaC shall make an overpayment in respect of a reimbursement claim(s), and provided that the overpayment is not disputed by CWaC, CWaC shall make a re- payment to the relevant Party within 30 days of demand. Alternatively, CWaC shall have the right of set off against any payment due to be made to the relevant Party.
- D. If CWaC shall make an underpayment in respect of a claim(s) the relevant Party shall make a payment to CWaC within 30 days of demand. Alternatively, CWaC shall have the right of set off against any payment due to be made to the relevant Party.
- E. If there is a change in an individual scheme leading to an over payment or under payment, the sum under paid or over paid as the case may be shall be adjusted in the next due payment.
- F. In accordance with the Scheme, CWaC shall not process any claim after 6 months has elapsed from the date the claim arose.
- G. In respect of payments made pursuant to this Schedule 3, payments may be made pro rata or proportionally if relevant.
- H. If a Party shall require a payment to a bus operator in circumstances where the payment does not fall within the Scheme or is not in accordance with this Agreement, such payment shall be invoiced by CWaC immediately and shall be paid by the relevant Party within 30 days.

I. No reimbursement claim shall be processed by CWaC unless it is evidenced by supporting documentation and where there is no or only partial supporting information, no payment or only part payment may be made if agreed by the relevant Parties until such time as a claim is verified. Where claims are not made using “Smart” ticket technology, CWaC shall share the documentation with the relevant Party who shall instruct CWaC whether to make a reimbursement payment and what if any other action to take. In these circumstances, the Parties shall work together with the operator to investigate and resolve any such issues.

**SCHEDULE 4**  
**MONITORING AND PERFORMANCE**

1. CWaC shall provide annual accounts by 31 May in the relevant year to each of HBC and WBC relating to payments made and received in accordance with the Scheme.
2. CWaC shall provide a monthly reconciliation by the last week of the month following the relevant month of :
  - claims made to date;
  - claims paid to date;
  - claims pending to date;
  - claims to date disputed and
  - a forecast of claims for the year on a quarterly basisand no retrospective claims made later than 6 months prior to the date of the relevant claim shall be paid or processed in accordance with clause 9.4 of the Scheme Particulars.
3. The following target shall be used to monitor performance of the Scheme and this Agreement:
  - A Definition:** Time taken by CWaC from receiving a satisfactory bus operator reimbursement claim from an operator to payment being authorised and provided that no issues are raised as to the validity of the claim.  
**Target:** To achieve payment of 100% of reimbursement claims within 10 working days of receipt of a reimbursement claim once claims approved by partners where necessary
4. Pursuant to clause 12.4 of the Scheme Particulars, CWaC shall carry out for the purpose of audit an onsite reconciliation for each bus operator at least once in each financial year to establish that a bus operator's claims are a true and fair claim in respect of concessionary journeys and to verify the level of demand for the Scheme and the amount of

reimbursement due. The outcomes of such audits shall be shared with the relevant Party within 30 days of the completion of an audit.

5. Regular trend analysis being monthly based on the prior 12 month period and previous month which shall be shared monthly by the last week of the month following the relevant month.
6. CWaC shall undertake regular meetings with operational staff from each Party as agreed between CWaC and each Party and such meetings shall be at least quarterly; and
7. CWaC shall organise a meeting at least annually at least three months' prior to the end of the Term between the Parties to review the operation of the Scheme and this Agreement.

## **Cheshire Boroughs Concessionary Travel Scheme**

### **Valid for period 1 April 2018 to 31 March 2020**

Transport acts 1985 and 2000, concessionary bus travel act 2007 – Concessionary scheme for bus travel

- 1.1 A concessionary travel scheme (“the scheme”) will be established to operate throughout Cheshire West & Chester, Halton and Warrington from 1 April 2018 until 31 March 2020. The scheme is being operated by the Borough Councils in Cheshire West & Chester, Halton and Warrington or their successor Councils, working in partnership (“the Authorities”). It replaces the scheme which came into effect on 1 April 2016.
- 1.2 Under Section 95 of the Transport Act 1985, amended by the Transport Act 2000 and the Concessionary Bus Travel Act 2007 (“the Acts”) Councils are under a duty to publish particulars of the scheme and of the reimbursement arrangements.
2. **Description of eligible persons**
  - 2.1 Any person holding an older or disabled persons “smartcard” pass issued by an English Local Authority (“National Passholders”).
  - 2.2 Persons holding a pass issued by one of the member authorities of the Cheshire Boroughs Concessionary Fares Scheme will be entitled to additional benefits (“Cheshire Passholders”).
  - 2.3 Passholders who are eligible for a pass conforming to the layout determined by the Department of Transport meet the following criteria:
    - (a) Persons of eligible age  
For women the eligible age is pensionable age, for men the eligible age is the pensionable age of a woman born on the same day.
    - (b) Eligible disabled persons
      - are blind or partially sighted;
      - are profoundly or severely deaf;
      - are without speech;
      - have a disability, or have suffered an injury, which has a substantial and long-term effect on their ability to walk;
      - do not have arms or have the long term loss of the use of both arms;
      - have a learning disability, that is, a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;
      - would, if they applied for the grant of a licence to drive a motor vehicle under Part III of the Road Traffic Act 1988, have their application refused pursuant to section 92 of the Act (physical fitness) otherwise than on the grounds of persistent misuse of drugs or alcohol
3. **Definition of participating operators**
  - 3.1 All operators of local bus services in Cheshire West and Chester, Halton and Warrington registered with the Traffic Commissioners are required to participate in this scheme. Where new operators enter the market by registering bus services in the Cheshire consortium area they will be required to participate in the scheme and will be contacted by Cheshire West & Chester Council’s Planning and Strategic Transport Service or its successors (the “Scheme Administrator”) to achieve this.
4. **Description of the scheme**
  - 4.1 **The National Scheme**

The concession to be offered by operators participating in the scheme shall be free travel for National Passholders as defined in Section 2.1 above on all journeys where the concessionaire boards at or after 9.30am until 11pm on weekdays (but note 4.3 below); and on all journeys where the concessionaire boards at any time on a Saturday and Sunday or on

any day which is a Bank Holiday in England under the Banking and Financial Dealings Act 1971 or any public holiday introduced since the 1971 Act proclaimed by the Queen.

The concession is set to be made available on all eligible services beginning in Cheshire West & Chester, Halton or Warrington, and ending in England to all eligible persons having a valid "smartcard" pass issued by an English Local Authority.

#### 4.2 **The Cheshire Consortium Scheme**

The concession to be offered by operators participating in the scheme to all Cheshire Passholders as defined in Section 2.2 above shall be:

- (a) Free travel on all journeys where the concessionaire boards at or after 9.30am until the last bus on weekdays, provided passengers are not charged a fare other than that which would otherwise be charged during the day; and on all journeys where the concessionaire boards at any time on a Saturday and Sunday or on any day which is a Bank Holiday in England under the Banking and Financial Dealings Act 1971 or any public holiday introduced since the 1971 Act proclaimed by the Queen.
- (b) Free travel as appropriate on journeys which commence in the scheme area and end in Wales and vice versa for Cheshire Consortium pass holders.
- (c) Free travel for blind people at all times. Blind concessionaires will be identifiable on-bus because their pass will be encased in a fluorescent wallet.
- (d) Appendix 1 shows eligible pass holders and the reimbursement rate.

4.3 National passholders as defined in Section 2.1 above shall be entitled to free travel within the Cheshire Consortium area on journeys after 11pm until the last bus, provided passengers are not charged a fare other than that which would otherwise be charged during the day.

#### 4.4 **Eligible services are defined as:**

- (a) All local bus services which operate wholly or partly within Cheshire West & Chester, Halton and / or Warrington.
- (b) Any other service which in the opinion of the Authorities should be included in the scheme and for which the Authorities agree to reimburse operators for allowing pass holders to travel upon without charge.

#### 4.5 **Ineligible bus services are defined as:**

- (a) Tour buses operating in the consortium area, for example the Tour bus in the City of Chester
- (b) Tours and excursions (note: it is recognised that these are not registered as local bus services)
- (c) Long distance coach services such as those operated by the National Express Company
- (d) Bus services operating to and from Park and Ride facilities.

4.6 The Authorities reserve the right to use the powers under Section 96 (4) to (6) of the 1985 Act to exclude from participation in the scheme any service where the fares include a special amenity element, unless the operator has agreed to an appropriate modification of the reimbursement arrangements.

### 5. **Admission of services to the scheme**

5.1 It is presumed that new services will automatically be included in the scheme from the date they start to operate. As a guarantee that changes will be taken into account, all operators should notify the concessionary travel officer at Cheshire West & Chester Council of any variations to registered local bus services in advance of the proposed change.

5.2 The appropriate alteration to reimbursement will be made to take effect not later than the week following that in which the change occurred, provided the requisite notice of registration was given and the above returns were supplied in time.

## **6. Reimbursement arrangements**

- 6.1 The objective of the reimbursement arrangements shall be to ensure that operators are no better or worse off financially as a result of participation in the scheme.
- 6.2 For each passenger trip carried free under the scheme operators will be reimbursed 53% in Cheshire West and Chester and Warrington and 51% in Halton of the average adult fare of the company (taking account of return fares, day tickets and other discounted fare products). This calculation is to take account of the reimbursement rate for revenue forgone, marginal operating costs and administration costs.
- 6.3 Operators can make application to the consortium members with supporting evidence for the consideration on an exceptional basis for the award of additional costs in relation to marginal capacity costs, peak vehicle running costs and any administration costs over and above those included in the reimbursement rates shown in 6.2 above. It will be for each local authority to determine if any such claim will impact on the reimbursement rate for the operator.
- 6.4 The average adult fare will be fixed for the financial year 2018-19 at the average adult fare of each company current in the months January to March 2018 as agreed with the scheme administrator, unless a local authority chooses to review the average adult fare based on the data from other months.
- 6.5 The average adult fare will be fixed for the financial year 2019-20 at the average adult fare of each company current in the months January to March 2019 as agreed with the scheme administrator, unless a local authority chooses to review the average adult fare based on the data from other months.
- 6.6 Payments for concessions to blind people will be on the basis of payments for other pass holders if they were entitled to a free trip. Operators should claim for these as a trip by a disabled concessionaire. Free trips by blind people made between 4.30am and 9.30am Monday to Friday should be claimed separately and will be reimbursed as if they were free trips at other times (i.e. at 53% in Cheshire West and Chester and Warrington and 51% in Halton).
- 6.7 Operators who are 'smart' (operate an Electronic Ticket Machine system capable of automatic recording of smartcard tickets issued to concessionaires) should over the life of the scheme aim for a target of no more than 10% of trips claimed being manually recorded. The consortium reserve the right not to pay more than 10% of manual concession trips claimed by operators who are deemed 'smart'. Operators whose claims include manual trips which represent more than 10% of the total can be subject to scrutiny and investigation.

## **7. Dispute resolution procedure**

- 7.1 In the event of any dispute arising in connection with any matter related to the Arrangements which cannot be resolved by agreement between the parties representatives within five working days of the dispute arising, senior representatives of the parties shall, within five working days of a written request from either party to the other, meet in good faith to attempt to resolve the dispute.
- 7.2 If the dispute is not resolved as a result of such meeting, either Cheshire West & Chester, Halton Borough or Warrington Borough Councils or the operator may (at such meeting or within five working days of its conclusion) propose to the other in writing that the dispute be referred to an independent expert ("Independent Expert")
- 7.3 If the parties are unable to agree on a Independent Expert or if the Independent Expert agreed upon is unable or unwilling to act then any party may within five working days from the date of the proposal to appoint a Independent Expert or within a further five working days of notice

to either party that he or she is unable or unwilling to act, apply to the Department for Transport to appoint an Independent Expert.

- 7.4 If any matter is referred to the Independent Expert for determination in accordance with paragraph three above, then:
- (a) the Independent Expert shall determine the matter, subject to the remaining provisions of this paragraph four, on a basis that is fair and reasonable in all respects as between the operator and either Cheshire West & Chester, Halton Borough or Warrington Borough Councils and that takes into account all relevant factors and circumstances;
  - (b) 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);
  - (c) Cheshire West & Chester, Halton Borough or Warrington Borough Councils 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
  - (d) 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).

## 8 Appeals

- 8.1 In the event of a disagreement between an operator and TCA (Travel Concession Authority) as to the reimbursement arrangements offered by the TCA, there is a mechanism provided under sections 98(2) and 99(2) of the 1985 Act and section 150(3) of the 2000 Act, by which the operator can apply to the Secretary of State for Transport for cancellation, variation or modification of the arrangements.
- 8.2 The right of an operator to apply to the Secretary of State for modification of the proposed reimbursement arrangements offered by a TCA is an important safeguard. This application process is often referred to as the 'appeal process'.
- 8.3 Applications should only be submitted after proper consideration and after attempts to reach a resolution at the local level have been exhausted. The time limit for making an appeal is 56 days from the commencement or variation of a scheme.
- 8.4 The Secretary of State appoints independent decision makers to determine the applications on his behalf, in line with the provisions of section 100(5) of the 1985 Act and section 150(6)(b) of the 2000 Act.

## 8.5 Guidance

The Department for Transport has produced guidance on the appeals process, which can be found at:

<http://www.dft.gov.uk/pgr/regional/buses/concessionary/informationlocalauthorities/reimbursementappeals/>

## 9. Payment arrangements

- 9.1 Payment periods will be monthly.
- 9.2 All payments will be made within 10 working days of the administrator receiving a

completed and substantiated claim.

9.3 In normal circumstances the scheme administrator will pay the full amounts due on payment dates. However, the consortium authorities reserve the right to pay only a proportion of a claim or to make no payment if there are serious concerns regarding a claim or its submission. This may arise, for example, where there is uncertainty or dispute due to the late receipt of claims from an operator or where time is needed to assess, by survey, the effects of a recent change in service or the level of claims. A delay in receipt from an operator of the information required to calculate/substantiate the actual payment due may lead to a corresponding delay in the appropriate payment.

9.4 Retrospective claims for reimbursement will not be pursued or considered after more than six months have elapsed.

## 10. **Supply of information**

10.1 Each operator will be required to provide information on all journeys undertaken by all concessionaires monthly for each preceding month. Operators are required to demonstrate to the Scheme Administrator that they have in place sufficient controls to ensure the accurate recording of concessionary journeys. The scheme administrator reserves the right to require additional information where appropriate and operators are obliged to provide all information being provided or any claim being submitted in the utmost good faith, the cost of providing any additional information is to be entirely borne by the operator. The scheme administrator will liaise with the local authority (ies) concerned to substantiate any claims, where deemed appropriate and necessary.

10.2 The value of recorded travel from which payment will be calculated is to be obtained as follows:

(a) All operators will complete a standard claim form separately detailing concessionaires carried at:

- a free fare as defined in 4.1 and 4.2 (a),

and

- a Blind free fare as defined in 6.7,

(b) Claim forms will be provided by the scheme administrator electronically to the email address supplied by the operator and should be returned completed to [cfclaims@cheshirewestandchester.gov.uk](mailto:cfclaims@cheshirewestandchester.gov.uk) as soon as possible after the calendar month end. For operators without email facilities paper copies will be provided, and returns will be accepted by fax or post.

(c) For operators with electronic ticket machines claims should be substantiated by providing a copy of the comprehensive record of all concessionary travel recorded by them.

(d) For all other operators, copies of local manual records should be kept and be available for inspection on demand, with associated costs to be entirely borne by the operator.

(e) The scheme administrator and all consortium local authorities reserve the right from time to time, at their absolute discretion to conduct on-bus surveys for the purpose of audit to establish that operators' returns and claims are a true and fair representation of concessionary journeys and to verify the level of demand for the scheme and reimbursement due.

10.3 If an operator supplies data, which it can prove to the scheme administrator's satisfaction, provides a more accurate basis for the calculation of recorded concessionary travel, then that data will be used.

## 11. **Passes**

11.1 Any current "smartcard" concessionary fares pass issued by a local authority in England and conforming to the layout determined by the Department for Transport will be valid for

journeys in the Cheshire Scheme area under the National Scheme.

- 11.2 Cards issued by the Cheshire Scheme Authorities for Cheshire Passholders will have the scheme logo displayed.
- 11.3 Sample images of the concessionary fare passes to be recognised in connection with the scheme shall be sent to operators on request. Any operators shall have the right to refuse to offer the travel concession to any person who fails to present a pass, or presents an invalid, defaced or altered pass. Any such passes should be withdrawn from the user and returned to the address on the back of the card.
- 11.4 Smartcard Passes presented to operators that do not electronically register should be visually checked for authenticity before travel is allowed. These journeys should be recorded using manual processes and the pass holder advised to contact their issuing authority and inform of the fact that there is a problem with their card.
- 11.5 Recurring issues of non-scanning passes should be reported to the scheme administrator, travel should continue to be permitted and manually recorded while the matter is resolved.
- 11.6 Any pass that has clearly been altered or tampered with or is presented or used by someone other than the person to whom it was issued should be withdrawn and returned to the senior administrator immediately.
- 11.7 Any lost or found passes bearing the Cheshire consortium logo should be returned to the address on the reverse of the pass immediately.

## 12. **Survey and audit of operators**

- 12.1 Operators are required to allow authorised officers of any of the Authorities in the scheme, or their agents, to travel free of charge on their services for the purpose of carrying out surveys of use by people using concessionary travel passes, and related duties. In appropriate circumstances, the operators may be required to supply the scheme administrator with the corresponding information obtained from electronic ticket machines for the surveyed journeys and their equivalent at other comparable times. This data to potentially take the form of:
  - Free passes accepted for a claim period
  - Free passes accepted for certain / all days
  - Free passes accepted for certain / all journeys
- 12.2 For operators supplying information by means of electronic ticket machines, the scheme administrator will require at the end of each financial year a certificate of accuracy and completeness given by a responsible person as defined by regulation 16 (5) of the Travel Concessions Schemes Regulations 1986 (SI 1986/77) (“the Regulations”); and from time to time a measure of proportion of on-bus or total revenue for the routes within the scheme (in aggregate) which is accounted for by concessionary travel; and to co-operate with the scheme administrator when conducting ad hoc on-bus checks for the purpose of audit, as described in 10.1 above. All such data supplied will be treated commercially in confidence.
- 12.3 In connection with the reimbursement arrangements, operators will be required to notify the scheme administrator in writing of details of any fare changes, not later than seven days after such change takes effect, on services where concessions are available. In making payments to operators whose reimbursement is based on survey information (either self completion or scheme administrator conducted), the assessment of payment will be based on the fare levels at the time of the survey, unless notification of a subsequent fare increase has been received.
- 12.4 Audits of each operator will be carried out at least twice a year. Should Cheshire West & Chester, Halton Borough or Warrington Borough Council have the wish/reason to undertake a related audit at any time, 24 hours notice will be given to the operator. This will take the form of checking reports at operator depots against claims submitted as part of reimbursement process, and other associated records. The scheme administrator will

calculate monthly trend analysis on services to assist in substantiating claims. (Also see 9.2).

- 12.5 Operators are required to retain all records relevant to the compilation and submission of claims for a period of six years after the relevant claim period. These records include – but are not limited to – ticket machine totals, ticket stubs, totals derived from software used to aggregate journey details, intermediate calculation sheets, duplicates of paper tickets issued etc

### 13 General arrangements

- 13.1 The Scheme Administrator will require 42 days notice by operators of their intention to withdraw from voluntary participation in respect of any service in the scheme, and the operators will be expected to provide travel concessions until the period of notice has expired.
- 13.2 Where it is considered that fares currently charged on a service include a special amenity element (i.e. are significantly high in relation to the general level of fares for comparable journeys in the area), the reimbursement for that service will be based on the general level of fares in the area for comparable journeys.
- 13.3 The content of any notice relating to compulsory participation in the scheme, or any other matter relating to the administration of the scheme, which may be issued under Section 96-99 of the 1985 Act by the Scheme Administrator or an operator, shall comply with the Regulations.
- 13.4 The scheme administrator shall give not less than 28 days' notice in writing to operators of its intention to vary the scheme or reimbursement arrangements for operators in the scheme.
- 13.5 A full copy of the scheme particulars will be sent to all operators who are currently providing services, and will subsequently be sent out to any operator who commences operation of a service operating in Cheshire West & Chester, Warrington and / or Halton. Operators receiving tender invitations for supported bus services in the scheme area will also be notified of the existence of this scheme, and the process to request further details.
- 13.6 A full copy of the scheme particulars is available for inspection at (i) Cheshire West & Chester Transport Commissioning Service, Nicholas House, Chester, Cheshire (ii) the Treasurers' Offices of the Councils of Cheshire West & Chester, Halton and Warrington. It can also be viewed on the Cheshire West & Chester Council web site at

[www.cheshirewestandchester.gov.uk](http://www.cheshirewestandchester.gov.uk), or can be obtained by writing to:

The Concessionary Travel Scheme Administrator

Cheshire West & Chester Council

Planning and Strategic Transport

Nicholas House

1 Blackfriars

Chester

Cheshire

CH1 2NU

Please quote "concessionary fares", or telephone Chester (01244) 977216 or Chester (01244) 976978 for any further clarification of the arrangements.