

**DURHAM, GATESHEAD, SOUTH  
TYNESIDE AND SUNDERLAND  
COMBINED AUTHORITY AND  
NEWCASTLE UPON TYNE, NORTH  
TYNESIDE AND  
NORTHUMBERLAND COMBINED  
AUTHORITY**

**Capped Fare Scheme**

**From [       ]**

**DUR\*-AM, GATESHEAD, SOUTH TYNESIDE AND SUNDERLAND COMBINED  
AUTHORITY AND NEWCASTLE UPON TYNE, NORTH TYNESIDE AND  
NORTHUMBERLAND COMBINED AUTHORITY**

**CAPPED FARE SCHEME**

**[ ]**

**Background**

- A. The North East Joint Transport Committee (“**NEJTC**”), through its officer group Transport North East (“**TNE**”) submitted a Bus Service Improvement Plan to the Department for Transport on [29] October 2021 on behalf of the NECA and the NTCA (each as defined in Schedule 1) (each a Combined Authority and “**Combined Authorities**” shall mean both or either of them as the case may be), and [indicative funding] has been awarded to the Combined Authorities by the Department for Transport.
- B. The Combined Authorities have made an Enhanced Partnership Plan (“**EP Plan**”) and initial Enhanced Partnership Scheme (“**EP Scheme**”) (each effective from 2 April 2023) to deliver the ambitions of the BSIP.
- C. These capped fare scheme arrangements (subsequently referred to as the “**Arrangements**”) are intended to support the reduction of bus fares in the Principal Area (as defined below) through the implementation of a cap in respect of certain (i) single journeys and (ii) day tickets, pursuant to the EP Scheme and as further detailed below.
- D. These Arrangements were updated on 3 September 2023 to include a cap on daily fares for Eligible Young Persons. (“**Fare Caps**”)
- E. These Arrangements were revised, with those revisions to be effective from 5 November 2023 to include caps on fares for Eligible Adults (“**Revised Arrangements**”). References in these Revised Arrangements to the Arrangements shall be deemed to be references to the Revised Arrangements from, and including, the Revision Date.

**The Arrangements**

- 1. These Arrangements are made by the Combined Authorities, and are established (so far as applicable) by the Combined Authorities, in pursuance of their 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.

2. These Arrangements are established in accordance with the requirements of Regulation 1370/2007. Pursuant to Article 3(2) of Regulation 1370/2007, the Combined Authorities may implement a general rule establishing a maximum tariff for all or certain categories of passenger and have chosen to do so by introducing the Fare Caps under these Arrangements. To comply with Article 3(2), the objective of these Arrangements in relation to reimbursement of Operators subject to the Arrangements 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 (the “**Objective**”).
3. The Arrangements cover reimbursement arrangements for Operators in relation to the Fare Caps as detailed in paragraph 8 below (“**Reimbursement Payments**”). The Arrangements will be administered by the Combined Authorities.

### **Definitions**

4. Words or terms used in these Arrangements shall have the meaning set out in Schedule 1:
  - (i) Unless otherwise defined in these Arrangements, words or terms used shall have the meaning given to them in Regulation 1370/2007; and
  - (ii) Any reference to legislation shall include references to that legislation as it may be amended or replaced from time to time during the term of these Arrangements; ;
  - (iii) It is acknowledged that Regulation 1370/2007 is expected to be replaced by The Public Service Obligations in Transport Regulations 2023 (**PSO Regulations**). Without prejudice to the generality of paragraph 4(ii), following the implementation of the PSO Regulations, all references to Regulation 1370/2007 shall be deemed to be references to the equivalent provision of the PSO Regulations, and the definition of "Reasonable Profit" shall be interpreted in accordance with that term as defined in the PSO Regulations.

### **Operative Date**

5. The Arrangements originally came into operation on 7 May 2023 (“**Commencement Date**”). The Revised Arrangements came into operation on the Revision Date. These Arrangements shall continue until 31 March 2025 (“**Initial Term**”). The Combined Authorities may extend these Arrangements for further periods (each an “**Extended Term**”) by providing notice to the Operators at least three months’ prior to the expiry of the Initial Term or then current Extended Term. The Combined Authorities may terminate these Arrangements by giving Operators not less than three (3) months’ prior written notice.

### **Principal Area**

6. The principal area covered by the Arrangements is the administrative areas of the NECA (comprising of the local authority areas of the County Council of Durham, the Borough Council of Gateshead, the Council of the Borough of

South Tyneside and the Council of the City of Sunderland) and the NTCA (comprising of the local authority areas of the Council of the City of Newcastle upon Tyne, the Council of the Borough of North Tyneside and Northumberland County Council) (“**Principal Area**”).

#### **Services to which the Arrangements Apply**

7. The Arrangements shall apply to Eligible Persons who tender to the Operator on an Eligible Service the relevant Applicable Capped Fare when travelling on Eligible Services on Journeys between places in the relevant Principal Area (“**Arrangement Services**”).

#### **Eligible Persons and Nature of Concession**

8. Operators participating in the Arrangements will be required on all Arrangement Services to cap their fares as follows:

- (iv) in respect of single fares for Eligible Young Persons, £1.00;
- (v) in respect of daily tickets for Eligible Young Persons, £3.00;
- (vi) in respect of daily tickets for Eligible Adults:

<b>Area</b>	<b>Fare Cap</b>
Durham	£4.00
Northumberland	£5.00
Tyne & Wear	£6.00
Principal Area	£6.80

or, in each case, such other figure as may be notified to the Operators pursuant to paragraph 9.

9. The Combined Authorities may from time to time increase the value of the Fare Caps, the Specified Indexation Measure or these Arrangements by notice, and where relevant such notice should comply with the provisions of section 97(6) of the Transport Act 1985.

#### **Applicable Fare Caps**

10. Subject to paragraphs 13 and 14 the applicable capped fare payable by an Eligible Person under these Arrangements shall be a fare which is capped at the relevant Fare Cap where such fare is lower than the fare that an equivalent Non-Concessionary Passenger would have been required to pay in order to make such a Journey in the absence of these Arrangements (“**Applicable Capped Fare**”). For the avoidance of doubt, an Applicable Capped Fare may apply to multi-operator and multi-journey products.



11. Subject to paragraphs 13 and 14, references to fare shall include the amount paid for any ticket product which a Non-Concessionary Passenger could have purchased in the Principal Area for such Journey or Journeys including multi-operator and/or multi-journey products and which the Operator would accept from an equivalent 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.
12. The Operator shall not charge any Eligible Person more than the relevant Applicable Capped Fare for any Journey.
13. References in paragraph 10 to fares shall, in respect of daily tickets for Eligible Young Persons and/or Eligible Adults, not include fares in respect of ticket products which are:
  - (i) multi-modal tickets (i.e., tickets which are valid for travel by multiple modes of transport), save in respect of tickets which are valid on the Tyne & Wear Metro, the Shields Ferry and the Local Rail Services, but not other non-bus services;
  - (ii) family tickets.
14. Where any ticket product is valid on services outside the Principal Area, the Combined Authorities reserve the right to exclude such ticket product from the Fare Caps or require that the Operator offer an equivalent ticket product which can only be used within the Principal Area for the purposes of passengers entitled to a ticket product to which a Fare Cap applies.

#### **Payment Periods and Dates**

15. Payments will be made on the first Monday of each Payment Period.
16. Payments will be made via bank transfer. Operators must provide the Combined Authorities with details of their bank account number and sort code. The Combined Authorities will make a payment representing the calculation in accordance with Schedule 4 of the amount due to the Operator in that period, as this may be adjusted in accordance with the terms of this Scheme including paragraphs 33 to 36.

#### **Day Tickets**

17. It is acknowledged that revenue under a multi-operator ticketing scheme will be allocated in accordance with the terms of such scheme, and therefore the Combined Authorities shall in respect of any payment due to an Operator which is in respect of Revenue Forgone for a multi-operator ticket be entitled to notify the entity operating the multi-operator ticketing scheme in respect of such multi-operator ticket (including, where applicable, NTL) of the amounts paid in respect of such multi-operator tickets, including identifying to such entity the

basis upon which such sum has been calculated and the Operator or Operators to which such payment relates).

18. Each Operator shall procure that any entity operating a multi-operator ticketing scheme in which they participate (including, where applicable, NTL) shall promptly provide the Combined Authorities 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 these Arrangements.

#### **Additional Costs and Abstracted Revenue**

19. An Operator shall be entitled to a payment in respect of reimbursement for additional costs in accordance with Schedule 8 where:
  - (i) the Operator has necessarily incurred costs which are additional to basic operating costs and 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
  - (ii) those costs are such that they will not be met by Reimbursement Payments made in accordance with these Arrangements during the year in which the costs are incurred or during the 3 months immediately following the end of that year and will not otherwise be funded by revenue generated for that Operator by these Arrangements,

(“Additional Costs”).

20. An Operator shall be entitled to payment in respect of reimbursement for Abstracted Revenue in accordance with Schedule 9 where the Operator can demonstrate that:
  - (i) they have lost revenue as a result of Eligible Persons purchasing different products as a result of the implementation of the Fare Caps; and
  - (ii) such lost revenue has not been met by Reimbursement Payments made in accordance with these Arrangements during the year in which such revenue has been abstracted or during the 3 months immediately following the end of that year, and has not been replaced by revenue generated for that Operator by these Arrangements,

(“Abstracted Revenue”).

#### **Standard Method of Determining Passenger Journeys and Fare Values for Reimbursement**

21. The standard method(s):
  - (i) for assessing the total number of journeys made by Eligible Persons under the Arrangements is set out in Schedule 2;
  - (ii) for assessing the fares value to be attributed to those journeys is set out in Schedule 3;

- (iii) for calculating the reimbursement for Revenue Forgone due to the Operator will be on the basis of the formula and parameters set out in Schedule 4;
  - (iv) for calculating the reimbursement for Additional Costs is set out in Schedule 8; and
  - (v) for calculating the reimbursement for Abstracted Revenue is set out in Schedule 10.
- 22. In calculating the reimbursement due to the Operator, the Combined Authorities will take into account any data supplied by the Operator if it can be shown that the data supplied is more accurate than the standard method and is more likely to enable the Combined Authorities to meet the Objective.
- 23. Where an Arrangement Service has been procured by the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive in accordance with section 63 of the Transport Act 1985 or section 9A of the Transport Act 1968 (as applicable), that party may request that the Combined Authorities shall make any reimbursement payment due in relation to that Arrangement Service which is in respect of Revenue Forgone to the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive (as applicable) provided that the terms of the contract for such Arrangement Service make provision for this, such that the Operator should not be adversely affected by such request, and that the data from such Arrangement Services can be disaggregated from the data provided in respect of these Arrangements such that the Operator is not reimbursed in respect of such services.
- 24. By agreement between an Operator and the Combined Authorities, the standard method need not be applied in respect of calculating the reimbursement in respect of that Arrangement Service if any one of the following conditions are satisfied:
  - (i) the vehicles normally used by the Operator in providing the Arrangement Services have 8 or less seats available for fare paying passengers;
  - (ii) the mileage run by vehicles is less than 150,000 miles per annum within the Principal Area during the times at which the Fare Caps are available;
  - (iii) except during the first 3 months of operation of the Arrangements, there has not expired a period of 3 months commencing with the date on which the Operator commences participation in the Arrangements in respect of an Arrangement Service.
- 25. Where Reimbursement Payments are estimated or calculated otherwise than by reference to the standard method, the Combined Authorities shall adjust such Reimbursement Payments accordingly if, and to the extent that, any information upon which they were based is shown to be inaccurate in any material respect.

26. The Combined Authorities reserve the right in calculating the reimbursement of an Operator to:

- (i) divide the area covered by the scheme into a number of separate parts; and
- (ii) 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 the Combined Authorities consider this appropriate to ensure that they meet the Objective.

27. In order to ensure that the reimbursement paid to an Operator accords with the general principle that Operators both individually and collectively meet the requirements of the Objective, the Combined Authorities reserve the right to apply the standard methodology for calculating reimbursement to any individual service where the Combined Authorities, acting reasonably, believe that the nature of that service or the fares charged on that service do or could distort the general application of the standard methodology as applied to the Operator's other services.

### **Data**

28. When an Operator commences the operation of Arrangement Services within the Principal Area, it shall supply to the Combined Authorities, within 7 days:

- (i) a list of Arrangement Services to be operated by that Operator;
- (ii) all relevant fares, fare stages and fare tables and a list of the ticket types valid for travel on such services;
- (iii) the Operator's estimate of the number of Journeys that will be taken by Eligible Persons on Arrangement Services over the following 12 months; and
- (iv) the running boards/drivers' duties applicable to such Arrangement Services;

to enable surveys to be scheduled and assessment of its entitlement to reimbursement.

29. The Operator shall inform the Combined Authorities of the introduction or cessation of any Arrangement Services, changes to the times at which and routes on which Arrangement Services operate and any circumstances leading to the temporary cessation of or major disruptions to such services within 7 days of such event occurring.

30. The Operator shall provide data to the Combined Authorities on an ongoing basis in accordance with the provisions of Schedule 6 for the purposes of calculating reimbursement under these Arrangements.

31. 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 either:

- (i) in the case of a payment due in accordance with paragraph 15, in sufficient time to allow the Combined Authorities to form a reasonable estimate of the amount of the payment; or
- (ii) in the case of a payment due in accordance with paragraph **Error! Reference source not found.**, in sufficient time to allow the Combined Authorities to calculate the amount of the payment,

then the Combined Authorities may in their discretion 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 they consider appropriate in the absence of such data or survey information.

- 32. Where it becomes apparent to the Combined Authorities that any eligible service is or has been subject to material disruption, or has not been operated in accordance with the registered timetable, then the Combined Authorities 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 they consider necessary to reflect the effects of such disruption or non-operation.

### **Recalculation of Reimbursement**

- 33. At the end of each Reconciliation Period the Combined Authorities shall review the reimbursement calculations made in accordance with these Arrangements during that Reconciliation Period. Such review shall be concluded within two Payment Periods following the end of such Reconciliation period. The review shall consider how any Revenue Forgone calculations in accordance with Schedule 6 would have varied had they been based on the actual data during that Reconciliation Period, rather than the assumptions upon which payments were based.
- 34. If following a review carried out in accordance with paragraph 33 it is determined by the Combined Authorities that the amount of reimbursement paid during the previous Reconciliation Period should have been higher, the Combined Authorities shall pay the difference to the Operator within 1 months of the date of recalculation.
- 35. If following a review carried out in accordance with paragraph 33 it is determined by the Combined Authorities that the amount of reimbursement paid during the previous Reconciliation Period should have been less, the Combined Authorities shall either:
  - (i) deduct by equal instalments the amount of over reimbursement from the next six payments to be made under paragraph 15 above; and/or
  - (ii) if such next six 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 14 days of receiving such demand.
- 36. If, following a review of the reimbursement calculations in accordance with the provisions of paragraph 33 above, there is a dispute between an Operator and

the Combined Authorities in respect of the level of reimbursement paid to that Operator, then if such dispute relates to either:

- (i) the fares value to be attributed to Journeys by Eligible Persons on such Operator's Arrangement Services covered by the Arrangements;
- (ii) the total number of Journeys made by Eligible Persons on such Operator's Arrangement Services covered by the Arrangements; or
- (iii) the number of additional Journeys generated in consequence of the availability on such Operator's Arrangement Services of the Applicable Capped Fares,

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

### **Survey Facilities**

37. The provisions of Schedule 5 shall apply in respect of surveys.

### **Other Requirements of the Arrangements**

38. Any Operator participating in the Arrangements shall display on his vehicle any sign, supplied by the Combined Authorities, for the purpose of showing that the Fare Caps apply on such vehicles.
39. Operators shall not discriminate against Eligible Persons or any class of Eligible Persons in the provision of Arrangement Services or associated services and facilities.
40. Operators shall 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 Arrangement Services.
41. The Combined Authorities shall, in respect of any concessionary travel scheme they promote, and shall use reasonable endeavours to ensure that under any concessionary travel scheme promoted by the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive, including but not limited to any scheme promoted pursuant to section 145A of the 2000 Act or section 93 of the Transport Act 1985, that the relevant concessionary travel authority shall use the Shadow Commercial Fares under these Arrangements in respect of Eligible Adults to represent the relevant adult fares which would have been payable in the absence of such a scheme for the relevant Applicable Capped Fares.

### **Delegation of rights and obligations**

42. The Combined Authorities may, at their sole election, delegate any of their rights or obligations under these Arrangements to the Proper Officer for Transport.

### **Contact for Communications**

43. All notices, data and other information required to be given to the Combined Authorities under the Arrangements shall be provided to the following contact point (or such other contact point as may be nominated by the Combined Authorities to Operators in writing from time to time):

Position: Head of Enhanced Partnerships

Address: Transport North East, C/o Gateshead Civic  
Centre, Regent Street, Gateshead, NE8  
1HH

E-mail: [buses@transportnortheast.gov.uk]

44. On commencing the provision of Arrangement Services in the Principal Area, an Operator shall provide to the Combined Authorities details of the name, address, email address and telephone number of its official contact for communications in relation to these Arrangements and shall by notice in writing inform the Combined Authorities of any changes to the same.
45. Any notice or communication sent to the last such address or email 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 the Combined Authorities of such an official contact, then the Combined Authorities 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**

**2000 Act** means the Transport Act 2000;

**Abstracted Revenue** shall have the meaning set out in paragraph 19;

**Abstraction Rate** shall have the meaning set out in paragraph 3.1.1 of Schedule 4;

**Additional Costs** shall have the meaning set out in paragraph 20;

**Applicable Capped Fare** shall have the meaning set out in paragraph 10;

**Arrangements** shall have the meaning set out in recital C;

**Arrangement Services** shall have the meaning set out in paragraph 7;

**Combined Authorities** shall have the meaning set out in recital A;

**Commencement Date** shall have the meaning given to such term in paragraph 5;

**Concessionary Passenger** means a passenger who qualifies for a concessionary fare on a Journey either by virtue of section 145A of the 2000 Act or under any concessionary fares arrangements established by the Combined Authorities, the County Council of Durham, Northumberland County Council or Tyne and Wear Passenger Transport Executive pursuant to section 93 of the Transport Act 1985 or otherwise.

**CPI** means the Consumer Price Index, published by the Office for National Statistics, or any equivalent official index substituted for it or, where the Office for National Statistics ceases to publish this index, such other index as the Combined Authorities may reasonably determine is the nearest equivalent price index to the Consumer Price Index.

**Durham** means the local authority area of the County Council of Durham;

**Eligible Person** means all Eligible Young Persons;

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

**Eligible Young Person** means all young persons eligible to purchase an Applicable Capped Fare in accordance with the Arrangements, which shall be any Non-Concessionary Passenger aged between 16 and 21 years (inclusive);

**EP Plan** means an Enhanced Partnership Plan;

**EP Scheme** means initial Enhanced Partnership Scheme;

**Extended Term** has the meaning given to it in paragraph 5;

**Fare Cap** means the cap for a fare as described in paragraph 8 and as amended from time to time pursuant to paragraph 9;



**Financial Year** means a twelve (12) month period commencing on 1 April and running up to and including 31 March in the following calendar year, and includes any part year thereof;

**Independent Expert** has the meaning given to such term in paragraph 2 of Schedule 7;

**Initial Data** shall have the meaning given to it in paragraph 6.1.1 of Schedule 4

**Initial Term** has the meaning given to it in paragraph 5;

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

**Local Rail Services** means the rail services operated by Northern Trains Limited between Sunderland and Blaydon;

**Maximum Profit Margin** means a profit margin of 7% in respect of all Arrangement Services provided by the Operator, or such other figure as the Combined Authorities may (in their sole discretion) agree with an Operator is a Reasonable Profit;

**NECA** means the Durham, Gateshead, South Tyneside and Sunderland Combined Authority, known as the North East Combined Authority, comprising of the local authority areas of the County Council of Durham, the Borough Council of Gateshead, the Council of the Borough of South Tyneside and the Council of the City of Sunderland;

**NEJTC** shall have the meaning set out in recital A;

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

**Northumberland** means the local authority area of Northumberland County Council;

**NTCA** means the Newcastle Upon Tyne, North Tyneside and Northumberland Combined Authority known as the North of Tyne Combined Authority, comprising of the local authority areas of the Council of the City of Newcastle upon Tyne, the Council of the Borough of North Tyneside and Northumberland County Council;

**NTL** means Network Ticketing Limited, a limited company with registered number 02197910;

**Objective** has the meaning given to such term in paragraph 2;

**Operator** means an operator of registered local services in the Principal Area, and, where any provisions of this Scheme relate to multi-modal tickets the term "Operator" shall also include the operator of Tyne & Wear Metro; the Shields Ferry and Local Rail Services;

**Payment Period** means a twenty-eight (28) day period commencing on a Sunday and expiring at the end of the fourth Saturday following commencement of the relevant period in any Financial Year, but with the following exceptions:

- (a) the first Payment Period in any Financial Year shall always commence on 1 April and its length shall be adjusted accordingly;

- (b) the final (thirteenth) Payment Period in any Financial Year shall always end on 31 March and its length shall be adjusted accordingly; and
- (c) the first Payment Period for the purposes of this Scheme shall commence on the Commencement Date and end on 27 May 2023, and shall be deemed to be second Payment Period in that Financial Year;

**Principal Area** shall have the meaning set out in paragraph 6;

**Proper Officer for Transport** means the officer so designated by NEJTC;

**Product** has the meaning given to it in paragraph 3.1 of Schedule 4;

**Reasonable Profit** shall, subject to paragraph 4(ii), mean a rate of return on capital that is normal for the provision of the Arrangement Services, taking into account the risks, or absence of risk, taken by an Operator as a result of these Arrangements, and which shall not exceed the Maximum Profit Margin;

**Reconciliation Period** means a period covering:

- a) the first seven Payment Periods in any Financial Year; or
- b) the last six Payment Period in any Financial Year,

provided that the first Reconciliation Period in the first Financial Year shall begin on the Commencement Date and end at the end of the seventh Payment Period for that Financial Year (which ends on 14 October 2023)

**Regulation 1370/2007** has the meaning given to such term in paragraph 1;

**Reimbursement Payments** shall have the meaning given to it in paragraph 3;

**Revenue Forgone** shall have the meaning given to it in paragraph 1.3 of Schedule 4;

**Revised Arrangements** means the capped fee arrangements that have been revised on 5 September 2023 as part of this Bus Reform Programme;

**Revision Date** means the date from which the revisions will be effective;

**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** has the meaning given to it in paragraph 2.3 of Schedule 3;

**Specified Indexation Measure** means CPI or such other indexations measure as may be notified in accordance with paragraph 9;

**TNE** shall have the meaning set out in recital A;

**Tyne & Wear** means the area covering the local authority areas of the Borough Council of Gateshead, the Council of the City of Newcastle upon Tyne, the Council of the Borough of North Tyneside, the Council of the Borough of South Tyneside and the Council of the City of Sunderland; and

**Zone** means each of Durham, Northumberland and Tyne & Wear, and references to **Zones** shall be construed accordingly.

## **SCHEDULE 2**

### **STANDARD METHOD OF DETERMINING PASSENGER JOURNEYS**

#### **1 Operation of the Standard Method**

- 1.1 The Combined Authorities will determine their reimbursement payments to the Operator so as to satisfy the Objective 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 Arrangement Services.
- 1.2 For all Operators (except where paragraph 24 of these Arrangements applies), and subject to paragraph 2, 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 will be based upon reporting by the Operator in accordance with the terms of these Arrangements. Each Operator shall, following a request by the Combined Authorities, provide the Combined Authorities with the number of Applicable Capped Fares and the relevant passenger Journeys made by Eligible Persons using such Applicable Capped Fares as requested by the Combined Authorities. The Combined Authorities shall have the right to audit any such information provided by an Operator under the terms of these Arrangements and that Operator shall provide the Combined Authorities and/or their professional advisers with access to its premises, personnel, systems and relevant records to verify such information provided is accurate.
- 2 The Combined Authorities reserve the right to make their estimate of the total number of passengers journeys for which reimbursement should be calculated on the basis of any combination of data sources that the Combined Authorities consider is appropriate to ensure that they meet the Objective, including:
  - 2.1 transactions based on Smartcard recorded passenger journeys;
  - 2.2 Operator reported Electronic Ticket Machine data; and
  - 2.3 survey data obtained by, or on behalf of, the Combined Authorities in accordance with Schedule 5.
- 3 The information required from Operators is set out in Schedule 6.
  - 3.1 To enable surveys in accordance with this Schedule 2, the Operator shall provide the Combined Authorities with full details of the Arrangement Services on which Eligible Persons may use the relevant concession, as specified in paragraphs 28 to 32 of the Arrangements. The Operator also agrees to the use of survey data and other data provided to the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive for the purposes of their respective concessionary fares arrangements whether established pursuant to section 145A of the 2000 Act or section 93 of the Transport Act 1985 or otherwise.
  - 3.2 The Operator is required to allow surveyors employed by either of the Combined Authorities or their agents (including any of the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive) access to all passengers using its Arrangement Services, as specified in Schedule 5.

#### **4 Output from the Standard Method**

- 4.1 The Combined Authorities will calculate for each Payment Period:
  - 4.1.1 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 the Combined Authorities for the purposes of determining the reimbursement payments to Operators; and
  - 4.1.2 the total number of each Applicable Capped Fare sold by the Operator for use on Arrangement Services. The quantity of Applicable Capped Fares so calculated may be analysed into such separate categories as are deemed appropriate by the Combined Authorities for the purposes of determining the reimbursement payments to Operators.

#### **5 Estimates to be made in the absence of information from an Operator**

- 5.1 In the event that an Operator fails to provide sufficient information to enable the Combined Authorities to operate their survey procedures, the Combined Authorities may at their discretion make such estimates as they think fit of the Journeys made by Eligible Persons using the Applicable Capped Fares on that Operator's Arrangement Services, subject to correction as and when better information becomes available.

### SCHEDULE 3

#### STANDARD METHOD OF DETERMINING FARES VALUE

1. The Combined Authorities will determine their reimbursement payments to each Operator so as to satisfy the Objective on the basis of:
  - 1.1 the actual fares that would have been payable by an Eligible Person using the relevant Operator's relevant Arrangement Services as notified in accordance with clause 28 of these Arrangements; or
  - 1.2 where the information referenced in paragraph 1.1 above is not available, the Combined Authorities shall determine the fares based on the estimate they make of the relevant commercial 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 the Combined Authorities as may be reasonably necessary to allow the Combined Authorities to determine such fares,

which:

- 1.3 in respect of paragraph 1.1 above shall be the actual fares charged by the Operators at a point no earlier than 1 November 2021, uplifted by the CPI rate published in August 2022, such fares to be to the nearest penny and not subject to rounding; and
- 1.4 in respect of paragraph 1.2, such determination to be calculated as at the date of these Arrangements,

in each case as at the date of these Arrangements, (“**Initial Commercial Fares**”). The Initial Commercial Fares shall be deemed to be the Shadow Commercial Fares for the relevant Operator on the date of these Arrangements, and any changes to the Shadow Commercial Fares shall be made in accordance with Schedule 4.

2. Subject to paragraph 3 below, an Operator may notify the Combined Authorities of proposed changes to the Shadow Commercial Fares, provided that:
  - 2.1 such fares shall only change at the start of a Payment Period;
  - 2.2 such fares shall only change once in any 12 month period unless the Operator has demonstrated to the reasonable satisfaction of the Combined Authorities that a further fare change is required due to objective commercial factors which have either been reflected in a requirement to change other commercial fares of the Operator or where this is not the case, can be demonstrated as required to ensure that the Operator's services remain viable; and
  - 2.3 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;

(together a “**Shadow Fare Increase**”).

3. Where an Operator will incur an increase in underlying costs in the provision of the Arrangement Services such that the Shadow Fare Increase would not offset such increase and wishes to increase one or more Shadow Commercial Fares by an amount higher than the Shadow Fare Increase to reflect such increased costs, that Operator shall notify the Combined Authorities of the same at least 60 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, the Combined Authorities and the relevant Operator shall, each acting reasonably, negotiate in good faith any such increase, provided that the Combined Authorities shall not be considered to be acting unreasonably in not agreeing any proposed increase to the Shadow Commercial Fares where, in their 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 Arrangement Services, taking into account any underlying cost impacts the Operator has incurred in relation to providing the Arrangement 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 CPI 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, NTL) notify the Combined Authorities 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 NTL).

## SCHEDULE 4

### STANDARD METHOD OF DETERMINING REVENUE FORGONE

#### 1 Calculation of Reimbursement for Revenue Forgone

- 1.1 The Combined Authorities will calculate reimbursement payments so as to satisfy the Objective.
- 1.2 Calculation of the reimbursement due will be made for each Payment Period. Where a Payment Period has more or less than 28 days, then figures which are based on a 28 day Payment Period shall be prorated accordingly.
- 1.3 Reimbursement for revenue forgone is taken to mean the Combined Authorities' estimate of the revenue by way of fares that an Operator would have earned if the Arrangements did not exist, less any revenue which the Operator has earned in respect of the Applicable Capped Fares ("**Revenue Forgone**").

#### 2 Reimbursement for Revenue Forgone for Under 22 Fares

- 2.1 Revenue Forgone for Under 22 single and daily Applicable Capped Fares (**RevenueForgoneU22<sub>PP</sub>**) for a Payment Period (**PP**) shall be calculated as follows:

$$RFU22_{PP} = \sum_0^{Product} ERevU22_{PP} - \sum^{Product} TotalNewRevU22_{PP}$$

being the sum of  $ERevU22_{PP}$  calculated for each Product for Eligible Young Persons, less the sum of  $TotalNewRevU22$  for all Products and Applicable Capped Fares for Eligible Young Persons

Where:

**ERevU22<sub>PP</sub>** has the meaning given to it in paragraph 3; and

**TotalNewRevU22<sub>PP</sub>** has the meaning given to it in paragraph 4; and

**Product** means each ticketing product which has been replaced by an Applicable Capped Fare for an Eligible Young Person, as determined in accordance with paragraph 3.

#### 3 Estimated Revenue for Under 22 Fares

- 3.1 The estimated revenue that was received in respect of those tickets and fares (**Products**) the use of which has been replaced by use of either the single or daily Applicable Capped Fares in respect of Eligible Young Persons (**ERevenueU22<sub>22</sub>**) shall be determined by the Combined Authorities on the following basis:
- 3.1.1 Based on the data provided pursuant to paragraph 4 of Schedule 6, the Combined Authorities shall determine what proportion of each Product (including singles, returns, daily and other period products) would be expected to be replaced by use by Eligible Young Persons of Applicable Capped Fares (the **Abstraction Rate**), on the following basis:



- 3.1.1.1 100% of single tickets which were valid for Eligible Young Persons and which were priced higher than the Applicable Capped Fare for single tickets for Eligible Young Persons would be replaced by such Applicable Capped Fare;
- 3.1.1.2 100% of return tickets which were valid for Eligible Young Persons and which were priced higher than twice the Applicable Capped Fare for single tickets for Eligible Young Persons would be replaced by use of two single tickets at the Applicable Capped Fare;
- 3.1.1.3 The proportion of period tickets which were valid for Eligible Young Persons and which were priced higher than the Applicable Capped Fare for daily tickets which would be replaced by the use of such Applicable Capped Fare will be determined based upon whether they offer better value for money, with an assumption that where they do, 75% of such fares would be replaced by the daily Applicable Capped Fare for Eligible Young Persons
- 3.1.1.4 The proportion of adult tickets which are eligible for use by Eligible Young Persons which it is assumed would be replaced by an Applicable Capped Fare for Eligible Young Persons would be 20%;
- 3.1.1.5 The assumptions in paragraph 3.1.1.1 to 3.1.1.4 shall only be a starting assumption and may be varied based upon any more accurate data or analysis provided by the Operator or the Combined Authorities.
- 3.1.2 The ERevU22<sub>PP</sub> for a Payment Period for a Product shall then be calculated by multiplying the number of such Product sold for the Payment Period which is used as a baseline for calculation by the value of such Product. Where the Product is still sold and used by a material number of passengers then this shall be the price that such Product is sold by the Operator. Where the Product is not sold by the Operator or the number of sales is immaterial, then the value of the Product shall be the Shadow Commercial Fare for such Product as determined in accordance with Schedule 3.
- 3.1.3 For the avoidance of doubt, where an Operator is able to provide better data as to the actual extent to which Current Tickets Sold are replaced in usage by Applicable Capped Fares, the Combined Authorities will, in good faith, review whether the ERevU22<sub>PP</sub> shall be varied.
- 3.2 The yield per journey (**Y**) for a Product shall be calculated by dividing ERevU22<sub>PP</sub> for that Product by the number of journeys recorded as made using such Product in the relevant Payment Period (**J**).
- 3.3 The average journeys (**AVJ**) for a Product shall be calculated by dividing the number of journeys recorded as made using such Product in the relevant Payment Period (**J**), by the number of that Product sold during such Payment Period (**T**).
- 3.4 The yield per sale (**YS**) for a Product shall be calculated by dividing ERevU22<sub>PP</sub> for a Payment Period for a Product by the number of that Product sold during such Payment Period (**T**).
- 3.5 The number of sales of a Product lost in a Payment Period as a result of abstraction by an Applicable Capped Fare (**T1**) shall be equal to number of that Product sold during such Payment Period (**T**) multiplied by the Abstraction Rate (**AR**) determined for that Product in respect of such Applicable Capped Fare pursuant to paragraph 3.1.1.

- 3.6 The Revenue Lost in respect of a Product as a result of the Applicable Capped Fare shall be calculated by multiplying T1 (as calculated in accordance with paragraph 3.5 for such Product in such Payment Period) by YS (as calculated in accordance with paragraph 3.4 for such Product in such Payment Period).

#### 4 Total New Revenue for Under 22 Fares

- 4.1 The Total New Revenue for a Product for a Payment Period shall be calculated as follows:

$$TotalNewRevU22_{PP} = \sum RT_{ACF} + \sum RT_{Product}$$

Where:

$RT_{ACF}$  means the revenue received from sales of each Applicable Capped Fare for Eligible Young Persons as calculated in accordance with paragraph 4.2;

$RT_{product}$  means the revenue received from sales of each Product for Eligible Young Persons as calculated in accordance with paragraph 4.3 in respect of each Applicable Capped Fare;

- 4.2 The value of  $RT_{ACF}$  for an Applicable Capped Fare in respect of a Product for a Payment Period shall be calculated by multiplying the number of journeys recorded as made using such Product in the relevant Payment Period (**J**) by the Abstraction Rate (**AR**) determined for that Product in respect of such Applicable Capped Fare pursuant to paragraph 3.1.1 and multiplying that by the Applicable Capped Fare:
- 4.3 The value of  $RT_{product}$  for a Product for a Payment Period shall be calculated as follows:

$$RT_{product} = (T - T1) \times AVJ \times Y$$

Where:

**T** is the number of that Product sold during such Payment Period (**T**)

**T1** is the number of sales of that Product lost in a Payment Period as a result of abstraction by an Applicable Capped Fare as calculated in accordance with paragraph 3.5;

**AVJ** is the average journeys for that Product as calculated in accordance with paragraph 3.3; and **Y** is the yield for such Product as calculated in accordance with paragraph 3.2,

- 4.4 The Combined Authorities shall, for the avoidance of doubt, be able to exclude from reimbursement any passengers under the age of 16 who are travelling on the Applicable Capped Fare for an Eligible Young Person. Where an Operator is not able to disaggregate such journeys from those made by Eligible Young Persons, the Combined Authorities shall be entitled to assume the volume of such Journeys made is equal to that prior to these Arrangements, as notified in accordance with paragraph 4 of Schedule 6, or otherwise.

- 4.5 The value of  $RF_{U22}$  calculated in respect of each Operator shall be notified to NTL (or any other party who is responsible for allocation of reimbursement under any multi-operator ticketing scheme) for the purposes of revenue allocation under their multi-operator ticketing scheme.

## 5 Reimbursement for Revenue Forgone for Adult Capped Fares

- 5.1 Subject to paragraph 5.2, Revenue Forgone for Applicable Capped Fares for Eligible Adults (**RevenueForgoneAdult<sub>PP</sub>**) for a Payment Period (**PP**) shall be calculated as follows:

$$RFA_{PP} = \sum_0^{Product} ERevA_{PP} - \sum^{Product} TotalNewRevA_{PP}$$

being the sum of  $ERevA_{PP}$  calculated for each Product for Eligible Adults, less the sum of  $TotalNewRevA$  for all Products and Applicable Capped Fares for Eligible Adults

Where:

**ERevA<sub>PP</sub>** has the meaning given to it in paragraph 6; and

**TotalNewRevA<sub>PP</sub>** has the meaning given to it in paragraph 7; and

**Product** means each ticketing product which has been replaced by an Applicable Capped Fare for an Eligible Adult, as determined in accordance with paragraph 3.

- 5.2 In respect of the Applicable Capped Fares in respect of Adults for Tyne & Wear and the whole Principal Area, Revenue Forgone for Applicable Capped Fares for Eligible Adults (**RevenueForgoneAdult<sub>PP</sub>**) for a Payment Period (**PP**) shall be calculated as follows:

$$RFA_{PP} = \sum_0^{Product} ERevA_{PP} - \left( \sum^{Product} TotalNTLRevA_{PP} + \sum RT_{Product} \right)$$

being the sum of  $ERevA_{PP}$  calculated for each Product for Eligible Adults, less the sum of  $TotalNTLRevA_{PP}$  for those Products

Where:

**ERevA<sub>PP</sub>** has the meaning given to it in paragraph 6; and

**TotalNTLRevA<sub>PP</sub>** has the meaning given to it in paragraph 8;

**RT<sub>product</sub>** has the meaning given to it in paragraph 7.3

**Product** means each ticketing product which has been replaced by an Applicable Capped Fare for an Eligible Adult, as determined in accordance with paragraph 3.

## 6 Estimated Revenue for Adult Fares

- 6.1 The estimated revenue that was received in respect of those tickets and fares (**Products**) the use of which has been replaced by use of either the single or daily Applicable Capped Fares in respect of Eligible Adults (**ERevenueA<sub>22</sub>**) shall be determined by the Combined Authorities on the following basis:
- 6.1.1 Based on the data provided pursuant to paragraph 4 of Schedule 6, the Combined Authorities shall determine what proportion of each Product (including singles, returns, daily and other period products) would be expected to be replaced by use by Eligible Adults of Applicable Capped Fares (the **Abstraction Rate**), on the following basis:
- 6.1.1.1 The proportion of period tickets which were valid for Eligible Adults and which were priced higher than the Applicable Capped Fare for daily tickets which would be replaced by the use of such Applicable Capped Fare will be determined based upon whether they offer better value for money, with an assumption that where they do, 75% of such fares would be replaced by the daily Applicable Capped Fare for Eligible Adults
- 6.1.1.2 The assumptions in paragraphs 6.1.1.1 to 6.1.1.2 shall only be a starting assumption and may be varied based upon any more accurate data or analysis provided by the Operator or the Combined Authorities.
- 6.1.2 The ERev<sub>APP</sub> for a Payment Period for a Product shall then be calculated by multiplying the number of such Product sold for the Payment Period which is used as a baseline for calculation by the value of such Product. Where the Product is still sold and used by a material number of passengers then this shall be the price that such Product is sold by the Operator. Where the Product is not sold by the Operator or the number of sales is immaterial, then the value of the Product shall be the Shadow Commercial Fare for such Product as determined in accordance with Schedule 3.
- 6.1.3 For the avoidance of doubt, where an Operator is able to provide better data as to the actual extent to which Current Tickets Sold are replaced in usage by Applicable Capped Fares, the Combined Authorities will, in good faith, review whether the ERev<sub>APP</sub> shall be varied.
- 6.2 The yield per journey (**Y**) for a Product shall be calculated by dividing ERev<sub>APP</sub> for that Product by the number of journeys recorded as made using such Product in the relevant Payment Period (**J**).
- 6.3 The average journeys (**AVJ**) for a Product shall be calculated by dividing the number of journeys recorded as made using such Product in the relevant Payment Period (**J**), by the number of that Product sold during such Payment Period (**T**).
- 6.4 The yield per sale (**YS**) for a Product shall be calculated by dividing ERev<sub>APP</sub> for a Payment Period for a Product by the number of that Product sold during such Payment Period (**T**).
- 6.5 The number of sales of a Product lost in a Payment Period as a result of abstraction by an Applicable Capped Fare (**T1**) shall be equal to number of that Product sold during such Payment Period (**T**) multiplied by the Abstraction Rate (**AR**) determined for that Product in respect of such Applicable Capped Fare pursuant to paragraph 6.1.1.

- 6.6 The Revenue Lost in respect of a Product as a result of the Applicable Capped Fare shall be calculated by multiplying T1 (as calculated in accordance with paragraph 6.5 for such Product in such Payment Period) by YS (as calculated in accordance with paragraph 6.4 for such Product in such Payment Period).

## 7 Total New Revenue for Adult Fares

- 7.1 The Total New Revenue for a Product for a Payment Period shall be calculated as follows:

$$TotalNewRev_{APP} = \sum RT_{ACF} + \sum RT_{Product}$$

Where:

$RT_{ACF}$  means the revenue received from sales of each Applicable Capped Fare for Eligible Adults as calculated in accordance with paragraph 4.2;

$RT_{product}$  means the revenue received from sales of each Product for Eligible Adults as calculated in accordance with paragraph 4.3 in respect of each Applicable Capped Fare;

- 7.2 The value of  $RT_{ACF}$  for an Applicable Capped Fare in respect of a Product for a Payment Period shall be calculated by multiplying the number of journeys recorded as made using such Product in the relevant Payment Period (**J**) by the Abstraction Rate (**AR**) determined for that Product in respect of such Applicable Capped Fare pursuant to paragraph 3.1.1 and multiplying that by the Applicable Capped Fare:
- 7.3 The value of  $RT_{product}$  for a Product for a Payment Period shall be calculated as follows:

$$RT_{product} = (T - T1) \times AVJ \times Y$$

Where:

**T** is the number of that Product sold during such Payment Period (**T**)

**T1** is the number of sales of that Product lost in a Payment Period as a result of abstraction by an Applicable Capped Fare as calculated in accordance with paragraph 6.5;

**AVJ** is the average journeys for that Product as calculated in accordance with paragraph 6.3; and **Y** is the yield for such Product as calculated in accordance with paragraph 6.2.

- 7.4 The value of  $RFA_{PP}$  calculated in respect of each Operator shall be notified to NTL (or any other party who is responsible for allocation of reimbursement under any multi-operator ticketing scheme) for the purposes of revenue allocation under their multi-operator ticketing scheme.

## 8 NTL for Tyne & Wear and area wide Adult Fares

- 8.1  $TotalNTLRev_{App}$  is the Total Revenue received by that Operator from NTL (or any other party who is responsible for allocation of reimbursement under any multi-operator ticketing scheme where the Products are subject to the Applicable Capped Fares) in respect of Products subject to the Applicable

Capped Fares for Adults in respect of Tyne & Wear and the Principal Area in the relevant Payment Period.

## **9 Adjustments to baseline data**

### **9.1.1 For:**

#### **9.1.1.1 the first Reconciliation Period; and**

#### **9.1.1.2 the first Reconciliation Period following the Revision Date,**

the figures notified in respect of single and daily Products sold to the relevant Eligible Persons as notified pursuant to paragraph 4 of Schedule 6 shall be used for the purposes of calculation under this Schedule 4 (**Initial Data**).

9.1.2 Following that period, the Abstraction Rate, the journeys made using a Product or Applicable Capped Fare; the sales of any Product or Applicable Capped Fare may be adjusted by the Combined Authorities for each Operator to reflect the overall change in patronage level for that Operator as notified pursuant to paragraph 1 of Schedule 6, including any modification required to reflect patronage recovery outside the effects of these Arrangements. In determining this level the Combined Authorities may take into account any relevant factors, including data provided by the Operator, provided that such adjustments assume that the first 10% of any growth from the data first provided pursuant to paragraph 1 of Schedule 6 is not generated by the Scheme. This may include, but not be limited to, taking into account the change in sales of ticket products which are not affected by these Arrangements, such as adult single and return sales, but in doing so the Combined Authorities should consider whether there are any other factors which mean that such changes in ticket sales are not representative of broader market growth.

9.1.3 The Combined Authority may require provision of such evidence as they may reasonably require in respect of past and current travel patterns on an Operator's Eligible Services, and in particular evidence supporting any other factors which an Operator believes may affect generation of Journeys on those services following introduction of the Applicable Capped Fares, including the evidence to be provided pursuant to paragraph 5 of Schedule 6. Where an Operator is unable to provide such evidence or information requested the Combined Authority shall be entitled to reach their own conclusions based on the evidence available. The Combined Authorities acknowledge that such information may be confidential and/or commercially sensitive, and where this is identified by an Operator, then the Combined Authorities shall ensure that such confidentiality and/or commercial sensitivity is taken into account in the use of such information.

9.1.4 It is acknowledged that where a new Operator joins these Arrangements during their term, such information and data may not be available. In this case, the Combined Authority shall act reasonably in setting assumed value of Initial Product Sales for that Operator by reference to the information available, which may include consideration of the Assumed Number of Product Sales for one or more Operators providing services of a similar nature

- 9.1.5 Where the Operator does not agree with any determination of the change in Assumed Number of Product Sales then such dispute shall be the subject of the dispute resolution procedure set out in Schedule 7.

## **SCHEDULE 5**

### **SURVEY FACILITIES**

1. An Operator shall allow each of the Combined Authorities' officers servants or agents (including, but not limited to, representatives of the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive) to have access to (including the right to travel free of charge) the vehicles of the Operator on which the Fare Caps are available for the purpose of:
  - (a) surveying or counting or estimating the number of passengers (whether generally or of any particular description) and the fares paid by those passengers; and
  - (b) obtaining information on other matters relating to the journeys made by passengers which is necessary for the calculation by the Combined Authorities of reimbursement payments.
2. The survey data will be utilised by the Combined Authorities in calculating the reimbursement payable to the Operator and/or validating the data supplied by the Operator for the purpose of enabling the Combined Authorities to calculate the reimbursement due to the Operator.
3. Without prejudice to the generality of paragraph 1 above, the information to be obtained from passengers may include the following:-
  - (a) whether or not the passenger is an Eligible Person;
  - (b) if the passenger is an Eligible Person, what category of Eligible Person he or she is;
  - (c) if the passenger is not an Eligible Person, whether the passenger is a child under the age of 5, a child under the age of 16 or an elderly person;
  - (d) if the passenger has paid on-bus or is using a pre-paid ticket;
  - (e) if the passenger has paid on-bus, the fare paid and the type of ticket bought;
  - (f) if the passenger is using a pre-paid ticket, the type of ticket;
  - (g) 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;
  - (h) if the passenger is to interchange with another mode of transport;
  - (i) permit or ticket fraud or misuse on the relevant services; and
  - (j) such other information as the Combined Authorities may from time to time reasonably consider it necessary or desirable to obtain in order to enable the Combined Authorities to reimburse each Operator in accordance with this Arrangement.



4. Each Operator is requested to ensure that each driver of its vehicles will make available to any survey staff who request 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 together with readings of the number of tickets issued.

## **SCHEDULE 6**

### **DATA PROVISION**

1. Every Operator claiming reimbursement under the Arrangements is required to submit to the Combined Authorities a statement relating to each Payment Period, within 10 working days of the end of that Payment Period containing the following:
  - i. the total number of Journeys made by:
    - a. each category of Eligible Persons;
    - b. other classes of passengers as may be specified by the Combined Authorities;

on the Operator's Arrangement Services during the preceding Payment Period, which may be broken down by ticket type utilized where requested by the Combined Authorities because this is required for the purposes of calculation of reimbursement.
  - ii. the total amount of fares received by the Operator in respect of each category of the passengers referred to in (i) above (whether received on or off bus).
  - iii. the total volume and value of:
    - single tickets purchased by Eligible Young Persons subject to the Fare Cap;
    - daily tickets purchased by Eligible Young Persons subject to the Fare Cap; and
    - daily tickets purchased by Eligible Adults subject to the Fare Cap (which shall be separated between such tickets that are valid in Durham, Northumberland, Tyne & Wear or the whole Principal Area).
  - iv. how many times daily tickets purchased by Eligible Young Persons subject to the Fare Cap were recorded as being used.
2. The information provided by an Operator under subsection iii above should include both its Electronic Ticket Machine (ETM) records, journeys based on Smartcard transactions, and should include all of an Operator's retail sales channels, save where the Combined Authorities have expressly agreed to the exclusion of a retail sales channel on the basis that the data is not significant to the Arrangements.
3. Smartcard transactions should be sourced from the Operator's ticketing backend and may be verified by the Combined Authorities.
4. Each Operator shall also provide the Combined Authorities with a baseline of the data specified in paragraph 1 for a 28 day period. For Operators participating in the Arrangements from their commencement, this should cover the period from 4 September 2022 and 1 October 2022 and should be provided on or about the commencement of these Arrangements. It is acknowledged that in respect of single and daily tickets purchased by Eligible Young Persons,

Operators may not have equivalent products prior to the date of participation in this Scheme, and therefore may provide data on single, return and daily products which may have been purchased by Eligible Young Persons prior to participation by the Operator in the Scheme, and any relevant data in respect of usage of those products by Eligible Young Persons which may inform any calculation under this Scheme.

5. To support the Combined Authorities in determining whether these Arrangements meet the Objectives, each Operator shall also provide the Combined Authorities with the following data on an annual basis (within 28 days of the Revision Date and then no later than 28 days after the anniversary of the Revision Date) in respect of the preceding year:
  - a. The total ticket revenue received (and, for comparison purposes, where the Operator was providing local services in the Principal Area on that date the total ticket revenue received in the year ending in November 2022);
  - b. The number of Products subject to the Applicable Capped Fares that were sold (broken down by Product type);
  - c. usage data in respect of each of the Products referred to in paragraph 5(b);
  - d. the Operator's view of abstraction by the Products from other products offered by the Operator which are not subject to the Applicable Capped Fare;
  - e. revenue support received from the Department for Transport by the Operator in respect of the National Bus Fare Cap; and
  - f. payments received from NTL (or any other ticketing company providing multi-operator products in the Principal Area).
6. In the event of any delay or failure on the part of any Operator to provide to the Combined Authorities any information to which the Combined Authorities are entitled pursuant to the Arrangements, the Combined Authorities shall be entitled to delay or withhold payment of reimbursement to the Operator concerned for such period of time as the Combined Authorities require in order to form a reasonable estimate of the amount of such payment, and/or calculate the amount of such payment (as applicable).

#### **Audit Requirements**

7. A certificate of completeness and accuracy issued by an approved person who is a member of either:
  - a. the Institute of Chartered Accountants – England and Wales;
  - b. the Institute of Chartered Accountants of Scotland; or
  - c. Association of Chartered Certified Accountants,

shall be forwarded when requested by the Combined Authorities at the Operator's expense certifying the agreed information on which reimbursement shall be based at annual intervals including a certificate of mileage operated in the Principal Area.

8. This certificate will also certify the correctness of the fare scales and any boarding data submitted to the Combined Authorities.
9. An Operator who fails to provide the certificate of accuracy within 3 months of such a request shall be regarded as failing to provide the proper information and the Combined Authorities reserve the right to withhold interim payments to that Operator until such information has been provided. If necessary, any adjustment to be made to an Operator's payment shall be made within the next interim payment due to that Operator.
10. The submission of such certificates shall be deemed full and final proof of accuracy of the information so submitted. No retrospective adjustments will be considered once the certificates of accuracy have been signed by an approved person and received by the Combined Authorities.

**Failure to provide certified statement or certificate of completeness and accuracy**

11. In the event that an Operator fails to provide a certificate of completeness and accuracy (as the case may be) in respect of information which has been used to calculate a reimbursement payment that has been made to that Operator, or the certificate of completeness and accuracy (as the case may be) 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 of completeness and accuracy (as the case may be)) or the amount of the overpayment (in the case of a certificate of completeness and accuracy (as the case may be) 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 these Arrangements which cannot be resolved by agreement between the parties representatives within 5 working days of the dispute arising, senior representatives of the parties shall, within 5 working days of a written request from either party to the other, meet in good faith to attempt to resolve the dispute.
2. If the dispute is not resolved as a result of such meeting, either the Combined Authorities or the Operator may (at such meeting or within 5 working 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 5 working days from the date of the proposal to appoint an Independent Expert or within a further 5 working 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 3 above, then:
  - (a) 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 the Combined Authorities 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) the Combined Authorities 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).

## **SCHEDULE 8**

### **ADDITIONAL COSTS**

#### **1 Reimbursement for Additional Costs**

- 1.1 An Operator shall be entitled to reimbursement for Additional Costs in accordance with paragraph 19 of the Arrangements.
- 1.2 Reimbursement for Additional Costs is taken to mean the Combined Authorities' estimate based on Operator data of any Additional Costs which an Operator has incurred as a result of participation in these Arrangements, but which have not otherwise been funded by Generated Revenues for that Operator by these Arrangements.
- 1.3 Additional Costs shall be zero (0) unless the Operator has demonstrated that generation of passenger journeys has occurred as a result of the Arrangements, and the Operator is to be reimbursed for Revenue Forgone on the basis of such generation.
- 1.4 Additional Costs shall be determined by the Combined Authorities acting reasonably to reflect any Additional Costs which an Operator is able to fully evidence have occurred as a result of the Arrangements and which the Operator can demonstrate have not been funded by revenue generated for that Operator by the Arrangements. In determining such figures, the Combined Authorities may have regard to the basis of calculation of Additional Costs under its concessionary reimbursement schemes (or the concessionary reimbursement schemes of the County Council of Durham, Northumberland County Council or the Tyne and Wear Passenger Transport Executive as the case may be), but acknowledging that under these Arrangements, revenue generated for an Operator by the Arrangements will cover some or all of such Additional Costs. Where an Operator and the Combined Authorities cannot agree the value of the Additional Costs for a Payment Period, then either party shall be able to refer the dispute as to the value or existence of Additional Costs for determination in accordance with Schedule 7.

## **SCHEDULE 9**

### **ABSTRACTED REVENUE**

- 1 Reimbursement for Abstracted Revenue
  - 1.1 Reimbursement for Abstracted Revenue is taken to mean the Combined Authorities' estimate of any revenue by way of fares which an Operator would have earned in the absence of these Arrangements, 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 these Arrangements.
  - 1.2 Abstracted Revenue shall be zero (0) unless the Operator has demonstrated that generation of passenger journeys has occurred as a result of the Arrangements, and the Operator is to be reimbursed for Revenue Forgone on the basis of such generation.
  - 1.3 Abstracted Revenue shall be determined by the Combined Authorities acting reasonably to reflect any Abstracted Revenue which an Operator is able to fully evidence has occurred as a result of these Arrangements 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 these Arrangements. Where an Operator and the Combined Authorities cannot agree the value of the Abstracted Revenue for a Payment Period, 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.