

DATED

2nd July

2015

(1) MERSEYTRAVEL

- and -

(2) ARRIVA MERSEYSIDE LIMITED

AGREEMENT

relating to

Concessionary Reimbursement
Arrangements for Bus Transport in
Merseyside between 1 April 2015 and
31 March 2018

CONTENTS

1.	DEFINITIONS	2
2.	TERM OF AGREEMENT	3
3.	SETTLEMENT TERMS	4
4.	SMART TICKETING	6
5.	PAYMENT MECHANISM	6
6.	INDEPENDENT EXPERT	9
7.	CONFIDENTIALITY	8
8.	GOVERNING LAW	10
9.	GENERAL	10

THIS AGREEMENT is made on

2nd July

2015

BETWEEN

- (1) **MERSEYTRAVEL ("Merseytravel")** a body corporate established by statute whose address is at No.1 Mann Island, Liverpool, L3 1BP;
- (2) **ARRIVA MERSEYSIDE LIMITED** a company registered in England and Wales with company number 01990871 whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland, SR3 3XP ("**Arriva**"),

jointly (the "**Parties**").

WHEREAS

- (A) Merseytravel is the passenger transport executive body for the Merseyside area and Arriva is a supplier of transport services including bus services in Merseyside.
- (B) Merseytravel has in place a concessionary scheme for bus travel in Merseyside from 1 April 2015 ("**2000 Act Scheme**") in accordance with the Transport Act 2000 ("**2000 Act**"). The Halton, Knowsley, Liverpool, St Helens, Sefton and Wirral Combined Authority ("**Liverpool City Region Combined Authority**") has in place a discretionary concessionary scheme for bus travel in the Merseyside area from 1 April 2015 ("**1985 Act Scheme**") in compliance with the Transport Act 1985 ("**1985 Act**"). Merseytravel manages the 1985 Act Scheme on behalf of the Liverpool City Region Combined Authority. In accordance with section 149(2)(a) of the 2000 Act the Parties have reached agreement as to the required reimbursement under the 2000 Act Scheme in respect of Arriva for the three (3) Financial Years starting 1 April 2015, such total reimbursement also to include any payments to be properly made under the 1985 Act Scheme, on the terms set out in this Agreement.
- (C) The Parties now wish to agree concessionary reimbursement arrangements for the next three (3) years on the following terms.

IT IS AGREED in consideration of the matter set out in this Agreement that:

1. DEFINITIONS

1.1 In this agreement, unless the context requires otherwise:

"Agreement" shall mean this agreement and its terms for concessionary reimbursement between the Parties for the Financial Years 2015-2016, 2016-2017 and 2017-2018 to replace any existing reimbursement obligations under the Schemes;

"Agreement Area" shall mean the areas comprised by areas A-D (inclusive) of the Merseytravel map attached to this Agreement in the Appendix.

"Arriva Group Companies" shall mean Arriva any subsidiary, holding company or subsidiary of any holding company of Arriva and **"Arriva Group Company"** shall be construed accordingly

"Button Push Data" means data for such relevant Financial Year provided by Arriva to Merseytravel which shows the total concessionary passenger journeys on Arriva's bus services in the Agreement Area which have been recorded by way of operating a push button on the Smart Ticketing System as opposed to being recorded automatically by the Smart Ticketing System;

"Financial Year" shall mean 1 April to 31 March in the following calendar year;

"Independent Expert" means the person appointed pursuant to clause 6 being an independent transport consultant specialising in public transport of good repute with relevant experience;

"Lower Limit" shall mean for each Financial Year, the figure specified in the column headed "Lower Limit" in clause 5.3;

"National Scheme" shall mean any scheme for reimbursement of concessionary travel under which reimbursement to operators is calculated and paid on a national basis which replaces the terms of the 2000 Act Scheme;

"Payment Mechanism" shall mean the agreed terms for payment from time to time under this Agreement as set out in clause 5;

"Payment Periods" shall have the meaning given to it in paragraph 11 of the 2000 Act Scheme (for the avoidance of doubt this shall be thirteen (13) four (4) week accounting periods);

"Retail Prices Index" means the index as published in Table 02 by the Office for National Statistics on a monthly basis for RPI, failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree (in each case with the intention of putting the parties in no better or worse position than they would have been had the index not ceased to be published or the relevant fundamental changes not been made);

"Schemes" shall mean the 1985 Act Scheme and the 2000 Act Scheme and any replacements for such Schemes which have been published on or before 1 April 2015;

"Smart Ticketing System" shall mean any electronic ticketing system employing the use of smartcard tickets and supporting applications, as promoted by the Integrated Transport Smartcard Organisation ("ITSO") and designed to facilitate the use of interoperable smartcards in transport, and shall include Merseytravel's current ITSO Host Operator Processing System;

"Upper Limit" shall mean for each Financial Year, the figure specified in the column headed "Upper Limit" in paragraph 5.3; and

1.2 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted;

1.3 reference to any gender includes the other genders and words denoting the singular
~~include the plural and vice versa;~~

1.4 unless the context requires otherwise, reference to a clause, paragraph or schedule is to a clause, paragraph or schedule (as the case may be) of this Agreement; and

2. TERM OF AGREEMENT

2.1 The terms of this Agreement shall commence on the date of this Agreement. The term shall be three (3) years from 1 April 2015 subject to any extension or earlier termination in accordance with the terms of this Agreement.

3. SETTLEMENT TERMS

3.1 The Parties agree that this Agreement sets out the terms for full and final reimbursement of Arriva under the Schemes for the three (3) Financial Years starting 1 April 2015 and that in respect of the 2000 Act Scheme this Agreement is in compliance with the rights of the Parties to reach a separate agreement under Section 149(a) of the 2000 Act.

3.2 Arriva warrants that it has not, and will not, appeal against the 2000 Act Scheme.

3.3 If a National Scheme is introduced during the term of this Agreement, such that there is any change in legislation which materially affects:

3.3.1 the entitlement of persons to concessionary travel; and/or

3.3.2 the method of calculating reimbursement under the 2000 Act; and/or

3.3.3 Arriva's receipt of the sums stated hereunder

then this Agreement shall terminate on the date the parties then agree in writing or otherwise on the date such National Scheme comes into effect in respect of Merseyside (either such date being the "Relevant Date") and any further payment in respect of concessionary travel shall be made pursuant to the terms of such National Scheme. If the National Scheme is introduced during a Financial Year any payment due under the Scheme shall be pro-rated to reflect that proportion of the year prior to the Relevant Date.

3.4 The Payment Mechanism set out in clause 5 below is based upon:

3.4.1 the current levels of commercial bus services provided by Arriva in the Agreement area;

3.4.2 the expected level of bus services to be provided by Arriva over the next three years; and

3.4.3 Arriva providing all concessionary travel required by the Schemes, in accordance with the terms of the Schemes.

3.5 If Arriva shall:

- 3.5.1 dispose of part or all of its bus services to another operator; or
- 3.5.2 acquire bus services from another operator; or
- 3.5.3 do anything else which means that Arriva will be reimbursed (directly or indirectly and through either the Schemes, this Agreement or otherwise) more than once for the carriage of any concessionary passenger, including, but not limited to, operation of existing Arriva services (or similar services) through any other Arriva Group Company or joint venture between any Arriva Group Company and any other party; or
- 3.5.4 cease to operate any of its services in the Agreement Area under tender on a minimum cost basis and shall instead operate any of those services on a minimum subsidy basis; or
- 3.5.5 be adversely affected by annual inflation exceeding 20%, as measured by the Retail Prices Index over a rolling 12 month period,

then the Parties shall negotiate, at all times acting in good faith, to agree appropriate variations to the provisions of this Agreement to reflect fairly the increase or decrease in Arriva's bus services caused thereby and in the case of an acquisition such variation shall be intended to ensure that Arriva is put in a position that is no better and no worse both in respect of continued reimbursement of Arriva in respect of existing services pursuant to this Agreement and ensuring that Merseytravel reimburses Arriva in respect of the acquired business on the same terms as Merseytravel reimbursed such business in respect of concessionary travel prior to such acquisition.

3.5.6 If the Parties cannot agree appropriate variations to the provisions of this Agreement in accordance with clause 3.5 then either Party shall be entitled to refer the matter to an Independent Expert under clause 6 of this Agreement. For the avoidance of doubt, both Parties agree that by entering into this Agreement the Parties agree to be bound by the terms of this Agreement for three (3) years and, subject to early termination of this Agreement, waive any right to appeal against these terms or to rely on any alternative scheme.

3.6 Subject to the introduction of a National Scheme on or before the expiry of this Agreement, the Parties shall negotiate in good faith during the third year of this Agreement an extension of this Agreement or the terms of a new agreement.

- 3.7 For the avoidance of doubt, if no National Scheme is in place at the expiry of this Agreement and the Parties have failed to agree an extension to this Agreement or a new agreement then Merseytravel shall introduce a new scheme for the year 2018-2019 which Arriva would have the right to appeal against under the terms of the 2000 Act.

4. SMART TICKETING

- 4.1 Upon commencement of this Agreement Arriva shall operate a Smart Ticketing System for use on all Arriva buses operating in the Agreement Area (and, at Merseytravel's request provide evidence of the same) and thereafter use reasonable endeavours to, entirely at its own cost, utilise and maintain operational use of a Smart Ticketing Systems on all Arriva buses operating in the Agreement Area.
- 4.2 Merseytravel shall record the number of concessionary passenger journeys made on Arriva services utilising the Smart Ticketing System ("**ITSO Concessionary Passenger Journeys**") and Arriva shall record and provide to Merseytravel every 4 weeks the number of concessionary passenger journeys as shown in the Button Push Data ("**Button Push Concessionary Passenger Journeys**")
- 4.3 The Parties agree that the aggregate of the ITSO Concessionary Passenger Journeys and Button Push Concessionary Passenger Journeys are used for the purposes of calculating the ACJ (for the purposes of clause 5.5).
- 4.4 For the avoidance of doubt, neither the ITSO Concessionary Passenger Journeys nor the ~~Button Push Concessionary Passenger Journeys shall be used to dispute or query~~ any payments previously made pursuant to this Agreement or the Schemes.

5. PAYMENT MECHANISM

- 5.1 For the avoidance of doubt, payments made pursuant to this clause 5 shall be full and final reimbursement pursuant to the terms of both the 2000 Act Scheme and the 1985 Act Scheme, including all claims for additional costs.
- 5.2 Subject to clauses 5.3, 5.4 and 5.5, payments due for each Payment Period shall be payable by Merseytravel to Arriva no later than the Friday of the third week of such payment period, on the following basis:

- 5.2.1 in each Financial Year, Merseytravel shall pay Arriva one thirteenth of the payment for that year in each Payment Period,
- 5.2.2 in the Financial Year commencing 1 April 2015, Merseytravel shall pay Arriva £29,766,587 (twenty nine million, seven hundred and sixty six thousand, five hundred and eighty seven pounds) in aggregate divided equally between each Payment Period in that Financial Year. In recognition that payments have already been made in this Financial Year commencing 1 April 2015, the payments for the remaining periods shall be adjusted accordingly;
- 5.2.3 in the Financial Year commencing 1 April 2016, Merseytravel shall pay Arriva £ 30,361,919 (thirty million, three hundred and sixty one thousand, nine hundred and nineteen pounds) in aggregate divided equally between each Payment Period in that Financial Year, subject to clause 5.4;
- 5.2.4 in the Financial Year commencing 1 April 2017, Merseytravel shall pay Arriva £ 30,969,157 ((thirty million, nine hundred and sixty nine thousand, one hundred and fifty seven pounds) in aggregate divided equally between each Payment Period in that Financial Year, subject to clause 5.4.

- 5.3 The payments to be made pursuant to paragraph 5.2 are calculated on the assumption that the number of actual concessionary passenger journeys (“ACJ” as defined in clause 5.5) made by elderly and disabled persons on Arriva services are within the following limits:

Financial Year	Lower limit	Upper limit
2015/16	22,000,000	29,000,000
2016/17	24,000,000	31,000,000
2017/18	25,000,000	34,000,000

- 5.4 At present the Smart Ticketing System shows significantly lower levels of patronage than has been indicated by previous survey data. The Lower Limit and Upper Limits have been set at a level that assumes a proportion of unrecorded journeys. Arriva shall address this issue to reduce unrecorded journeys over time. In recognition of this, the Lower Limit and Upper Limit vary as set out above over the course of this Agreement on the assumption that unrecorded journeys will significantly diminish.

5.5 At the end of the Financial Year commencing 1 April 2015, 1 April 2016, and 1 April 2017 Merseytravel and Arriva shall review the actual concessionary passenger journeys ("ACJ") being the total number of passenger journeys made by elderly and disabled concessionary passengers boarding in Merseyside using the relevant concession on Arriva's services for that year, calculated using the ITSO Concessionary Passenger Journeys together with the Button Push Concessionary Passenger Journeys against the limits set out in paragraph 5.3 above and where the ACJ exceeds or is below the limits, the Parties agree to negotiate in good faith a suitable adjustment to the payments for future Financial Years under the terms of this Agreement. However, for the avoidance of doubt, any adjustment for future Financial Years shall not attempt to recover or compensate for ACJ's falling below or exceeding the limits set out in paragraph 5.3 above, but shall relate solely to a reasonable adjustment in respect of the future Financial Year.

6. INDEPENDENT EXPERT

6.1 In the event that the Parties are not able to agree between them the necessary fair adjustments to be made in accordance with the provisions of clause 3.5, or 5.5, they shall be entitled to refer the matter to an Independent Expert the identity of whom shall be agreed between the Parties within twenty one (21) days of either Party serving details of a suggested expert on the other, or, in the absence of agreement, either Party shall then be entitled to request that the Chartered Institute of Logistics and Transport (UK) appoint an Independent Expert.

6.2 The Parties are entitled to make submissions to the Independent Expert within twenty ~~one (21) days of the Expert being instructed and will continue to provide (or procure~~
~~that others provide)~~ the Independent Expert with such assistance and documents as the Independent Expert reasonably requires for the purpose of determining the appropriate adjustments to the provisions of this Agreement.

6.3 If the Independent Expert dies or becomes unwilling or incapable of acting, or does not deliver a decision within the period of three (3) months from the date of such appointment then:

6.3.1 either Party may apply to The Chartered Institute of Logistics and Transport (UK) to discharge the Independent Expert and to appoint a replacement Independent Expert with the required expertise; and

- 6.3.2 the provisions of this clause 6 shall apply in relation to the new independent expert as if he were the first Independent Expert appointed.
- 6.4 The Independent Expert shall act as an independent expert in order to calculate the appropriate adjustment to the provisions of this Agreement
- 6.5 The Independent Expert shall act as an expert and not as an arbitrator. The Independent Expert's decision in relation to the adjustment to the provisions of this Agreement shall, subject to clause 6.6 be final and binding in the absence of manifest error or fraud.
- 6.6 Where the matter referred has arisen pursuant to clause 3.5 then either Party shall be entitled to terminate this Agreement by giving notice within 28 days of such decision, with effect from the end of the then current Financial Year, if such Party does not wish to be bound by the Independent Expert's final decision pursuant to clause 6.5 and until such termination shall be without prejudice to each Party's accrued rights and to the performance of obligations consequential on the completion of the services for that Financial Year.
- 6.7 The Independent Expert's fees and any costs properly incurred by him in arriving at his decision (including any fees and costs of any advisers appointed by the Independent Expert) shall be borne equally by the Parties or as the Independent Expert may otherwise direct.
- 6.8 Until the Independent Expert makes its determination the then existing terms of this ~~Agreement shall continue to apply as if the matter in dispute had not arisen~~
~~PROVIDED~~ that this provision shall not be construed in any way so to be prejudicial to any determination of the Independent Expert with retrospective effect.

7. CONFIDENTIALITY

The Parties agree to keep all the circumstances surrounding this Agreement and the terms strictly confidential but that nothing in this Agreement shall prevent either Party from disclosing information as required by law or in order to take legal advice or as ordered by a court of competent jurisdiction. Further, Merseytravel acknowledges that each of the Button Push Data and the data detailing the number of concessionary passenger journeys made on Arriva services utilising the Smart Ticketing System constitute confidential data, the release of which to third parties would materially harm the commercial interests of Arriva and

Merseytravel therefore undertakes not to disclose this information to any party other than Arriva, the Department for Transport or other government agency for statistical purposes (in which case Merseytravel shall aggregate the Button Push data with other anonymous passenger data) and its own senior employees and officers who need to know such information for the purposes of exercising Merseytravel's rights or carrying out its obligations under or in connection with this agreement. Finally, Merseytravel shall ensure that its senior employees and officers to whom it discloses the such confidential information comply with this clause 7.

8. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with English law and any dispute or claim arising out of this Agreement shall be referred for resolution to the court of England and Wales.

9. GENERAL

9.1 Headings in this Agreement are inserted for convenience only and shall not affect the construction of the Agreement.

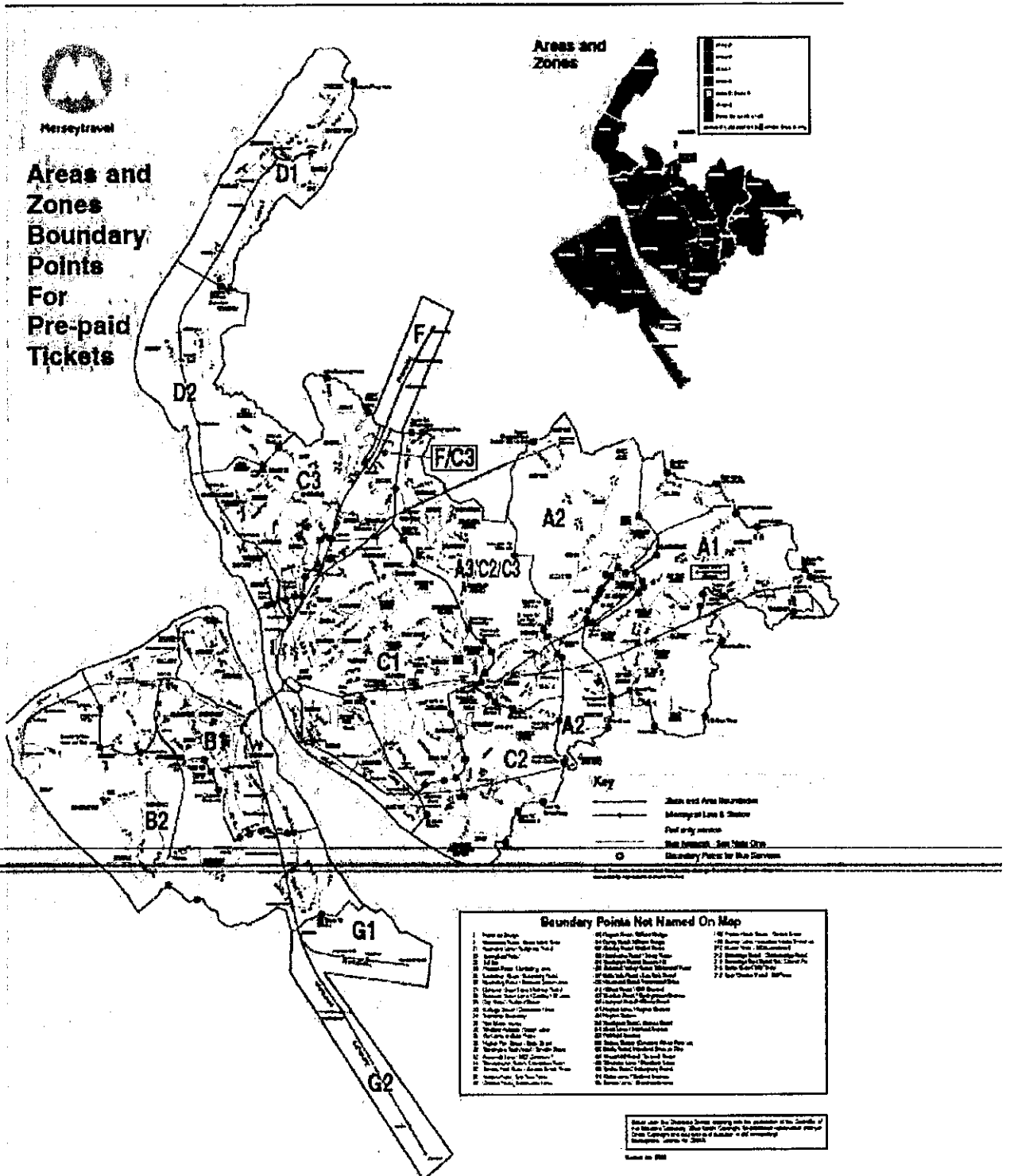
9.2 The various provisions and sub-provisions of this Agreement are severable and if any provision or other identifiable part is held to be unenforceable by any court of competent jurisdiction then such unenforceability shall not affect the enforceability of the remaining provisions or identifiable parts of this Agreement.

9.3 This Agreement may be executed in any number of counterparts which when executed and delivered shall be an original but all of which when taken together shall constitute a single instrument.

9.4 The Parties each acknowledge that this Agreement represents the entire agreement between them regarding the subject matter and that they are not relying on any representations or commitments made by any of the others by entering into it, otherwise than set out in this Agreement.

9.5 For the avoidance of doubt, reimbursement under this Agreement is in respect of (and in full and final settlement for all concessionary travel on) any services operated by Arriva in the Agreement Area and Arriva shall indemnify Merseytravel from and against all and any claims for concessionary travel reimbursement made outside the

APPENDIX



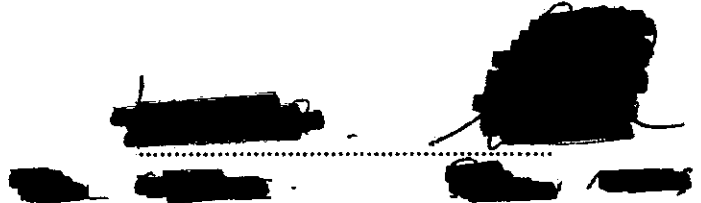
Duly authorised for and on behalf of
MERSEYTRAVEL

Title:

Louisa
.....
Authorised Signatory
.....

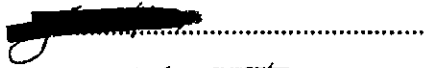
Executed by

**ARRIVA MERSEYSIDE
LIMITED** acting by
(a director)



in the presence of a witness:

Witness signature:



Witness name:
(block capitals)



Witness address:

