

Dated 7 September **2022**

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

and

TYNE AND WEAR PASSENGER TRANSPORT EXECUTIVE

RAIL NETWORK CONNECTION AGREEMENT

in respect of a connection between the Network Rail Network and the Metro Shared Network
at Pelaw Junction

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THIS CONNECTION AGREEMENT is made on 7 September 2022

BETWEEN:

- (1) **Network Rail Infrastructure Limited**, a company registered in England under number 02904587 having its registered office at 1 Eversholt Street, London, NW1 2DN (“**Network Rail**”); and
- (2) **Tyne and Wear Passenger Transport Executive** (trading as Nexus), whose principal address is at Nexus House, St James’ Boulevard, Newcastle upon Tyne, NE1 4AX (“**Nexus**”).

WHEREAS:

- (A) It is intended that Nexus will, from the Transfer Date, be the owner of, and perform the role of Service Provider in respect of, the Jarrow Branch Line. The Jarrow Branch Line will be part of Metro Shared Network and will become fully integrated into the Metro Shared Network as part of the Dual Track Works.
- (B) Network Rail is the owner of the NR Network.
- (C) Following the Transfer Date, certain rail services will operate on the Metro Shared Network and then are expected to run onto the NR Network (and vice versa).
- (D) In anticipation of the transfer of the Jarrow Branch Line, this Contract is entered into between the Parties to set out the Parties’ respective obligations in connection with the physical connection of the Metro Shared Network and the NR Network, and the operational interface between Network Rail and Nexus.
- (E) Network Rail and Nexus intend to enter into a separate memorandum of understanding with regard to certain on-going matters in connection with Jarrow Branch Line (as incorporated into the Metro Shared Network) such as timetabling, to take effect on or around the Transfer Date.

IT IS AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement unless the context otherwise requires:

“**access contract**” has the meaning ascribed to it in section 17(6) of the Act;

“**Access Dispute Resolution Rules**” and “**ADRR**” mean the rules regulating the resolution of disputes between parties to access contracts entitled “The Access Dispute Resolution Rules” and annexed to the Network Code, as amended from time to time;

“**Act**” means the Railways Act 1993;

“Affected Party” means, in relation to a Force Majeure Event, the party claiming relief under Clause 17 by virtue of that Force Majeure Event, and **“Non-affected Party”** shall be construed accordingly;

“Affiliate” means:

- (a) in relation to any company:
 - (i) a company which is either a holding company or a subsidiary of such company; or
 - (ii) a company which is a subsidiary of a holding company, of which such company is also a subsidiary,

and for these purposes “holding company” and “subsidiary” have the meanings ascribed to them in section 1159 of the Companies Act 2006; or

- (b) in relation to Nexus, any subsidiary of Nexus or successor body of Nexus;

“Agreement” means this rail networks connection agreement, including all Schedules and annexes to it;

“Agreement Year” means each yearly period commencing on the Commencement Date and subsequently on each anniversary of such date;

“Allocation Chair” has the meaning ascribed to it in the ADRR;

“Applicable Procedures” means:

- (a) any applicable procedures, timescales or arrangements which have been or are formally agreed in writing by Network Rail and Nexus from time to time; but
- (b) to the extent any of the matters referred to in sub-paragraph (a) include standards in respect of the NR Network set by Network Rail, or standards in respect of the Metro Shared Network set by Nexus, then they shall be notified by the relevant standard-setting party to the other party rather than being formally agreed in writing;

“Commencement Date” means the date of signature of this Agreement;

“Competent Authority” means any local, national or supra-national agency, authority, department, inspectorate, minister, ministry, official, court, tribunal or public or statutory person (whether autonomous or not), which has, in respect of this Agreement, jurisdiction over either Network Rail and/or Nexus and/or the subject matter of this Agreement;

“Confidential Information” means information relating to the affairs of one party to this Agreement or any of its Affiliates which has been provided by any such person to the other party under or for the purposes of this Agreement, or any matter or thing contemplated by this Agreement or to which this Agreement relates, the disclosure

of which is likely to materially compromise or otherwise prejudice the commercial interests of any such person;

“Connection Point Assets” means Nexus Connection Point Assets and the Network Rail Connection Point Assets;

“Data Protection Laws” means the GDPR, together with the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as amended), the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019 and other data protection or privacy legislation in force from time to time in the United Kingdom;

“Dual Track Works” means the dual track works to incorporate the Jarrow Branch Line into the Metro Shared Network that runs adjacent to the Jarrow Branch Line, such that the Jarrow Branch Line is physically incorporated into the Metro Shared Network;

“Emergency” means:

- (a) an event or circumstance affecting the NR Network or the Metro Shared Network at or in the vicinity of the Pelaw Junction Connection Point giving rise to an immediate apprehension of damage to property, injury to persons or Environmental Damage, or
- (b) an event or circumstance which materially prevents or materially disrupts the operation of trains on the NR Network or Metro Shared Network, the alleviation of which would entail the use or non-use of the Pelaw Junction Connection Point;

“Environmental Damage” means any material injury or damage to persons, living organisms or property (include offence to man’s senses), or any pollution or impairment of the environment resulting from the discharge, emission, escape or migration of any substance, energy, noise or vibration;

“FOI Legislation” has the meaning ascribed to it in Clause 13.6.2;

“Force Majeure Event” means any of the following events (and any circumstance arising as a direct consequence of any of the following events):

- (a) an act of the public enemy or terrorists or war (declared or undeclared), threat of war, revolution, riot, insurrection, civil commotion, demonstration or sabotage;
- (b) acts of vandalism or accidental damage or destruction of machinery, equipment, track or other infrastructure;
- (c) natural disasters or phenomena, including extreme weather or environmental conditions (such as lightning, earthquake, hurricane, storm, fire, flood, drought or accumulation of snow or ice);

- (d) nuclear, chemical or biological contamination;
- (e) pressure waves caused by devices travelling at supersonic speeds;
- (f) discovery of fossils, antiquities or unexploded bombs; and
- (g) strike or other industrial action which is a single circumstance and which also is a strike or industrial action in sectors of the economy other than the railway industry;

“Force Majeure Notice” means a notice to be given by the Affected Party to the other party stating that a Force Majeure Event has occurred;

“Force Majeure Report” means a report to be given by the Affected Party to the other party following the giving of a Force Majeure Notice;

“GDPR” means the General Data Protection Regulation (EU) 2016/679 as transposed into United Kingdom national law by operation of section 3 of the European Union (Withdrawal) Act 2018 and subsequently amended by the Data Protection, Privacy and Electronic Communications (Amendments etc.) (EU Exit) Regulations 2019;

“Information” has the meaning ascribed to it in Clause 13.6.4;

“Information Request” has the meaning ascribed to it in Clause 13.6.5;

“Infrastructure Manager” has the meaning ascribed to it in the Railway Regulations;

“Initial Condition Statement” means the statement given by Network Rail in relation to the Connection Point Assets as detailed at Part 2 of Schedule 1;

“Innocent Party” means, in relation to a breach of an obligation under this Agreement, the party who is not in breach of that obligation;

“Insolvency Event” means in relation to either of the parties where:

- (a) any step which has a reasonable prospect of success is taken by any person with a view to its administration under Part II of the Insolvency Act 1986;
- (b) it stops or suspends or threatens to stop or suspend payment of all or material part of its debts, or is unable to pay its debts, or is deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
 - (i) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if instead of “£750” there was substituted “£50,000” or such higher figure as the parties may agree in writing from time to time; and
 - (ii) it shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section

123(1)(a) of the Insolvency Act 1986 is satisfied before the expiration of 21 days from such demand;

- (c) its directors make any proposal under section 1 of the Insolvency Act 1986, or it makes any agreement for the deferral, rescheduling or other readjustment (or makes a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all or a material part of its debts, or a moratorium is agreed or declared in respect of or affecting all or a material part of its debts;
- (d) any step is taken to enforce security over or a distress, execution or other similar process is levied or served out against the whole or a substantial part of its assets or undertaking, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) any step is taken by any person with a view to its winding up or any person presents a winding-up petition which is not dismissed within 14 days, or it ceases or threatens to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the other party before that step is taken (which approval shall not be unreasonably withheld or delayed); or
- (f) any event occurs which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above,

unless:

- (i) in any case, a railway administration order (or application for such order) has been made or such order (or application) is made within 14 days after the concurrence of such step, event, proposal or action (as the case may be) in relation to the party in question under sections 60, 61 or 62 of the Act and for so long as any such order (or application) remains in force or pending; or
- (ii) in the cases of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by that party with timely recourse to all appropriate measures and procedures;

“Jarrow Branch Line” means, as at the Commencement Date, the single track railway, known as the Jarrow branch line, branching off from the Durham coast line at Pelaw junction (located to the east of Pelaw metro station) and running to the connection point for the sidings to the Jarrow oil terminal;

“Liability Cap” has the meaning ascribed to it in paragraph 1 of Schedule 3;

“Metro Shared Network” means the part of the Nexus Network, which connects with Network Rail’s railway network at the Pelaw Junction Connection Point and runs to the connection point for the Jarrow oil terminal and includes any changes or

extensions to such Metro Shared Network, which have been notified to ORR and in respect of which ORR has consented;

“**network**” has the meaning ascribed to it under section 83(1) of the Act;

“**Network Code**” means the document now known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995;

“**Network Licence**” means a licence granted pursuant to Section 8 of the Railways Act 1993 (as amended by the Transport Act 2000);

“**Network Rail Connection Point Assets**” means those assets of Network Rail which are located in the vicinity of the Pelaw Junction Connection Point as more particularly described in Part 1(B) of Schedule 1 and/or the Applicable Procedures;

“**Nexus Connection Point Assets**” means those assets of Nexus which are located in the vicinity of the Pelaw Junction Connection Point as more particularly described in Part 1(A) of Schedule 1 and/or the Applicable Procedures;

“**Nexus Network**” means the network of which Nexus is the owner which is situated in Tyne and Wear, England;

“**NR Network**” means the network of which Network Rail is the owner and which is situated in England, Wales and Scotland;

“**Office of Rail and Road**” has the meaning ascribed to it under section 15 of the Railways and Transport Safety Act 2003, and “**ORR**” shall be construed accordingly;

“**Operational Control**” means the safe management and direction of rolling stock;

“**Performance Order**” has the meaning ascribed to it in Clause 12.3.2;

“**Procedure Agreement**” has the meaning ascribed to it in the ADRR;

“**Pelaw Junction Connection Point**” means the points at which the railway lines of the NR Network and the Metro Shared Network connect at or around the boundary of the Metro Shared Network and the NR Network as shown marked ‘C.P.’ on the Pelaw Junction Plan;

“**Pelaw Junction Plan**” means the plan set out in Schedule 4 to this Agreement;

“**Railway Group Standards**” means all:

- (a) technical standards to which railway assets or equipment used on or as part of the NR Network or the Metro Shared Network (as the case may be) must conform; and
- (b) operating procedures with which the operators of railway assets must comply, in each case as issued by the Rail Safety and Standards Board Limited and

authorised pursuant to the Railway Group Standards Code (and references to Railway Group Standard shall be construed accordingly);

“Railway Regulations” means The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016;

“Relevant Dispute” means any difference between the parties arising out of or in connection with this Agreement;

“Relevant Force Majeure Event” means a Force Majeure Event in relation to which an Affected Party is claiming relief under Clause 17;

“Relevant Losses” means, in relation to:

- (a) a breach of this Agreement; or
- (b) in the case of Clause 9, any of the matters specified in Clause 9.3(a), (b) or (c) or Clause 9.4(a), (b) or (c) (each a “breach” for the purpose of this definition),

all costs, losses (including loss of profit and loss of revenue), expenses, payments, damages, liabilities, interest and the amounts by which rights or entitlements to amounts have been reduced, in each case incurred or occasioned as a result of or by such breach;

“Relevant Obligation” means an obligation under this Agreement in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under Clause 17;

“rolling stock” has the meaning ascribed to it in section 83(1) of the Act;

“Safety Obligations” means all applicable obligations concerning health and safety (including any duty of care arising at common law, and any obligation arising under statute, statutory instrument or mandatory code of practice) in Great Britain;

“Service Provider” has the meaning ascribed to it in the Railway Regulations;

“Supervisory Authority” means:

- (a) the UK Information Commissioner’s Office; and
- (b) any similar regulatory authority responsible for the enforcement of Data Protection Laws;

“Train Operator” means an operator of trains who has permission to use track under an access contract;

“Transfer Date” means the date on which Nexus becomes the Service Provider in respect of the Jarrow Branch Line; and

“Value Added Tax” means value added tax as provided for in the Value Added Tax Act 1994, and any tax similar or equivalent to value added tax or any turnover tax replacing or introduced in addition to them, and **“VAT”** shall be construed accordingly.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) any one gender includes the other;
- (c) all headings are for convenience of reference only and shall not be used in the construction of this Agreement;
- (d) reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- (e) reference to a contract, instrument or other document is to that contract, instrument or other document as amended, novated, supplemented or replaced from time to time;
- (f) reference to a party is to a party to this Agreement, its successors and permitted assigns;
- (g) reference to a recital, Clause, annex or Schedule is to a recital, Clause, annex or Schedule of or to this Agreement; reference in an annex or a Schedule to a Part of an annex or a Schedule is to a part of the annex or Schedule in which the reference appears; and reference in a Part of an annex or a Schedule to a paragraph is to a paragraph of that part;
- (h) where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- (i) references to the word “person” or “persons” or to words importing persons include individuals, firms, corporations, government agencies, committees, departments, authorities and other bodies incorporated or unincorporated, whether having separate legal personality or not;
- (j) “otherwise” and words following “other” shall not be limited by any foregoing words where a wider construction is possible;
- (k) the words “including” and “in particular” shall be construed as being by way of illustration or emphasis and shall not limit or prejudice the generality of any foregoing words; and
- (l) words and expressions defined in the Act shall, unless otherwise defined in this Agreement, have the same meanings in this Agreement.

1.3 **Indemnities**

Indemnities provided for in this Agreement are continuing indemnities in respect of the Relevant Losses to which they apply, and hold the indemnified party harmless on an after tax basis.

2 **COMMENCEMENT**

2.1 **Commencement Date**

Clauses 1, 2, 10, 11, 12, 13, 14, 18 and Schedule 3 shall come into force on the Commencement Date and shall continue in force thereafter.

2.2 **Transfer Date**

The remaining provisions of this Agreement shall take effect on the Transfer Date and shall continue in force thereafter until termination in accordance with this Agreement.

3 **STANDARD OF PERFORMANCE**

3.1 **General standard**

Without prejudice to all other obligations of the parties under this Agreement, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this Agreement, act with due efficiency and economy and in a timely manner with that degree of skill, diligence, prudence and foresight which should be exercised by a skilled and experienced:

- (a) network owner and operator (in the case of Network Rail); and
- (b) Service Provider (in the case of Nexus).

3.2 **Good faith**

The parties to this contract shall, in exercising their respective rights and complying with their respective obligations under this Agreement (including when conducting any discussions or negotiations arising out of the application of any provisions of this contract or exercising any discretion under them), at all times act in good faith.

4 **PERMISSION TO CONNECT**

4.1 Network Rail grants Nexus permission to connect the Metro Shared Network to the NR Network at the Pelaw Junction Connection Point.

4.2 Nexus grants Network Rail permission to connect the NR Network to the Metro Shared Network at the Pelaw Junction Connection Point.

5 OBLIGATIONS IN RESPECT OF THE CONNECTION OF THE METRO SHARED NETWORK TO THE NR NETWORK

5.1 Obligations of Nexus

5.1.1 Nexus shall not:

- (a) sever the connection of the NR Network to the Metro Shared Network at the Pelaw Junction Connection Point; or
- (b) take any action or omit to take any action at or in the vicinity of the Pelaw Junction Connection Point which impedes and/or interferes with access to/from the Metro Shared Network at or around the Pelaw Junction Connection Point,

unless it has, except in an Emergency, obtained the prior written consent of Network Rail (whose consent shall not be unreasonably withheld) in respect of such severance, interference, impediment, action or omission and, where applicable, acted in accordance with any Applicable Procedures in relation to the undertaking of any inspection, maintenance, repair or renewal of the Metro Shared Network.

5.1.2 In an Emergency, Nexus shall, within a reasonable time of the occurrence of the Emergency and in accordance with any Applicable Procedures, give notice to Network Rail:

- (a) of the circumstances giving rise to the Emergency;
- (b) describing the action taken by Nexus to deal with the Emergency;
- (c) describing the impact of its actions on the Pelaw Junction Connection Point; and
- (d) giving an indication of the timescale for reinstating the connection and allowing rolling stock access to the NR Network.

5.1.3 Nexus shall:

- (a) reinstate, at its own cost, the connection of the Metro Shared Network to the NR Network, where such connection has been severed by Nexus:
 - (i) as soon as reasonably practicable after the date of severance; and
 - (ii) in accordance with applicable Railway Group Standards;
- (b) consult with Network Rail in respect of all planned inspections, maintenance, renewals or enhancements on the Metro Shared Network which may impede access to and/or from the NR Network in accordance with any Applicable Procedures, and have due regard to any comments and representations reasonably made by Network Rail in relation thereto;

- (c) be responsible for the Operational Control of all rolling stock movements on the Metro Shared Network;
- (d) ensure that:
 - (i) all persons authorised by Nexus to be on Network Rail's land and/or premises at or in the vicinity of the Pelaw Junction Connection Point (for any duration) observe the safety and security requirements of Network Rail relating to the Pelaw Junction Connection Point as set out in the Applicable Procedures; and
 - (ii) where the presence of such persons causes disruption to the operation of the NR Network, Nexus shall use reasonable endeavours to minimise the effects of such disruption;
- (e) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the NR Network arising from:
 - (i) the exercise of its rights or performance of its obligations under this Agreement; or
 - (ii) any person authorised by Nexus to be at or in the vicinity of the Pelaw Junction Connection Point.

Without prejudice to the foregoing, where a matter described in sub-clause 5.1.3(e)(i) or 5.1.3(e)(ii) above gives rise to disruption on the NR Network, Nexus shall:

- (A) use reasonable endeavours to minimise the extent of such disruption; and
 - (B) act in accordance with good industry practice and any Applicable Procedures in relation to the management and remediation of the consequences of operational disruption;
- (f) promptly provide, in accordance with the Applicable Procedures, Network Rail with any amendments to Nexus's safety and security requirements that relate to the Pelaw Junction Connection Point; and
 - (g) establish and maintain or procure the establishment and maintenance of adequate security at the Pelaw Junction Connection Point.

5.2 **Obligations of Network Rail**

5.2.1 Network Rail shall not:

- (a) sever the connection of the Metro Shared Network to the NR Network at the Pelaw Junction Connection Point; or

- (b) take any action or omit to take any action at or in the vicinity of the Pelaw Junction Connection Point which impedes and/or interferes with access to/from the NR Network at or around the Pelaw Junction Connection Point,

unless it has, except in an Emergency, obtained the prior written consent of Nexus (whose consent shall not be unreasonably withheld) in respect of such severance, interference, impediment, action or omission and, where applicable, acted in accordance with any Applicable Procedures in relation to the undertaking of any inspection, maintenance, repair or renewal of the NR Network.

5.2.2 In an Emergency, Network Rail shall, within a reasonable time of the occurrence of the Emergency and in accordance with any Applicable Procedures, give notice to Nexus:

- (a) of the circumstances giving rise to the Emergency;
- (b) describing the action taken by Network Rail to deal with the Emergency;
- (c) describing the impact of its actions on the Pelaw Junction Connection Point; and
- (d) giving an indication of the timescale for reinstating the connection and allowing rolling stock access to the Metro Shared Network.

5.2.3 Network Rail shall:

- (a) re-instate, at its own cost, the connection of the NR Network to the Metro Shared Network, where such connection has been severed by Network Rail:
 - (i) as soon as reasonably practicable after the date of severance; and
 - (ii) in accordance with applicable Railway Group Standards;
- (b) inspect, test, maintain, repair and renew that part of the NR Network in the vicinity of the Pelaw Junction Connection Point in accordance with:
 - (i) the Initial Condition Statement; and
 - (ii) applicable Railway Group Standards;
- (c) consult with Nexus in respect of all planned inspections, maintenance, renewals or enhancements on the NR Network which may impede access to and/or from the Metro Shared Network in accordance with any Applicable Procedures, and have due regard to any comments and representations reasonably made by Nexus in relation thereto;
- (d) be responsible for the Operational Control of all rolling stock movements on the NR Network;

- (e) ensure that:
 - (i) all persons authorised by Network Rail to be on Nexus's land and/or premises at or in the vicinity of the Pelaw Junction Connection Point (for any duration) observe the safety and security requirements of Nexus relating to Pelaw Junction Connection Point as set out in the Applicable Procedures; and
 - (ii) where the presence of such persons causes disruption to the operation of the Metro Shared Network, Network Rail shall use reasonable endeavours to minimise the effects of such disruption;
- (f) use reasonable endeavours to minimise the likelihood of any disruption to the operation of the Metro Shared Network arising from:
 - (i) the exercise of its rights or performance of its obligations under this Agreement; or
 - (ii) any person authorised by Network Rail to be at or in the vicinity of the Pelaw Junction Connection Point.

Without prejudice to the foregoing, where a matter described in sub-clause 5.2.3(f)(i) or 5.2.3(f)(ii) above gives rise to disruption on the Metro Shared Network, Network Rail shall:

- (A) use reasonable endeavours to minimise the extent of such disruption; and
 - (B) act in accordance with good industry practice and any Applicable Procedures in relation to the management and remediation of the consequences of operational disruption;
- (g) promptly provide, in accordance with the Applicable Procedures, Nexus with any amendments to Network Rail's safety and security requirements relating to the Pelaw Junction Connection Point; and
 - (h) establish and maintain or procure the establishment and maintenance of adequate security at the Pelaw Junction Connection Point.

5.2.4 Network Rail agree that Nexus will not be in breach of this Agreement for failure to keep the connection open in accordance with Clause 5.1 to the extent that such failure to keep the connection open as described in Clause 5.1 is because Network Rail have failed to:

- (a) comply with its obligations under clause 9 (*Liability of the Seller Prior to Completion*) of the option agreement (entered into between the parties on 8 August 2022) prior to the Transfer Date, except to the extent that such failure is a result of an act or omission of Nexus or any of its employees, agents, subcontractors, tenants or any other party for whom Nexus is responsible at law; or

- (b) maintain the Connection Point Assets in accordance with the Initial Condition Statement prior to the Transfer Date,

and any such failure prevents the safe use of the Pelaw Junction Connection Point.

6 JOINT OBLIGATIONS AND INTERFACE

6.1 Network Rail and Nexus shall:

- (a) review as necessary, and in accordance with Railway Group Standards, arrangements for the safe transfer of Operational Control of rolling stock movements from one party to the other, in consultation with Train Operators who have permission to use the Metro Shared Network;
- (b) work together to ensure that the interface between the Metro Shared Network and the NR Network is and continues to be:
 - (i) compatible, to the extent reasonably necessary to ensure the operation of railway services across the Pelaw Junction Connection Point; and
 - (ii) compliant with applicable Railway Group Standards, save to the extent that Nexus or Network Rail has been granted any derogations from such Railway Group Standards;
- (c) inspect the condition of the Connection Point Assets in accordance with the Applicable Procedures, and (as may reasonably be requested) provide access to the other Party to their records in respect of the maintenance, repair and renewal carried out to that Party's network within a five hundred (500) metre radius of the Pelaw Junction Connection Point and in relation to the Pelaw Junction Connection Point itself;
- (d) in accordance with the Applicable Procedures, place and maintain suitable markers at the Pelaw Junction Connection Point which define the maintenance boundaries between the parties; and
- (e) review the validity of the Pelaw Junction Plan and Part 1 of Schedule 1 as necessary and as may reasonably be required by either of the Parties, and make such amendments to either or both of them as are appropriate.

7 RIGHT OF ENTRY

7.1 Nexus shall be entitled to enter onto the land and/or premises of Network Rail in the vicinity of the Pelaw Junction Connection Point for the following purposes:

- (a) to inspect, test, maintain, repair and renew those of Nexus Connection Point Assets that are located on Network Rail's land and/or premises; and

- (b) to carry out remedial procedures in the event of an Emergency,

provided that at all times (including in an Emergency) in entering and while upon such land and/or premises Nexus shall act in accordance with good industry practice and any Applicable Procedures.

7.2 Network Rail shall be entitled to enter onto the land and/or premises of Nexus in the vicinity of the Pelaw Junction Connection Point for the following purposes:

- (a) to inspect, test, maintain, repair and renew those of the Network Rail Connection Point Assets that are located on Network Rail's land and/or premises; and

- (b) to carry out remedial procedures in the event of an Emergency,

provided that at all times (including in an Emergency) in entering and while upon such land and/or premises Network Rail shall act in accordance with good industry practice and any Applicable Procedures.

7.3 Save as expressly set out in this Agreement and save for any rights of access which a party may have granted to the other party by way of easement, under contract, wayleave and/or other right or as otherwise provided under law:

- (a) Nexus shall not be entitled, for itself or on behalf of any other person, to any right of access to the NR Network; and

- (b) Network Rail shall not be entitled, for itself or on behalf of any other person, to any right of access to the Metro Shared Network.

8 TERMINATION

8.1 Termination Events

Without prejudice to:

- (a) the other rights of the parties under this contract; or

- (b) Clauses 8.2 or 8.3,

Network Rail or Nexus may terminate this Agreement on giving written notice to the other in accordance with Clause 18.4, if:

- (c) an Insolvency Event occurs in relation to the other party; or

- (d) the other party defaults in the due performance or observance of any material obligation under this contract and (in case of a remediable breach) fails to remedy the breach within a reasonable time specified by the other party.

8.2 **Notice to terminate**

Subject to Clause 8.3, either party may terminate this Agreement on three months' written notice served in accordance with Clause 18.4.

8.3 **Network Rail Notice to Terminate**

8.3.1 Any notice of termination served by Network Rail under Clause 8.2 shall not take effect if Nexus has, after the date of service of any notice of termination and before the date of that notice taking effect, applied to the Office of Rail and Road under section 17 of the Act for directions to be given to Network Rail to enter into an access contract which provides for the continued connection of the Metro Shared Network to the NR Network, and for so long as that application shall not have been refused.

8.3.2 Where the Office of Rail and Road gives directions that a new access contract (whether on the same or different terms as this contract) should be entered into between the parties under section 17 of the Act (the "New Contract"), this Agreement shall automatically expire on the commencement date of the New Contract or the latest date specified in such directions by when the parties must enter into the New Contract, whichever is the sooner.

8.3.3 Where a notice has been served by Network Rail in accordance with Clause 8.2 and Nexus does not apply to the Office of Rail and Road for directions under section 17 of the Act, the notice will apply in accordance with Clause 8.2.

8.4 **Effect of Termination**

8.4.1 Upon the termination of this Agreement, Network Rail:

- (a) may:
 - (i) disconnect the NR Network from the Metro Shared Network;
 - (ii) not used; and
 - (iii) make good the NR Network, and
- (b) not used,

and the reasonable and properly incurred costs of any action under Clause 8.4.1(a) or (b) shall be paid by Nexus to Network Rail except where this Agreement is terminated:

- (A) by Nexus in accordance with Clause 8.1; or
- (B) by Network Rail in accordance with Clause 8.2,

in which case Network Rail shall carry out any action under Clause 8.4.1(a) or (b) at its own cost.

8.4.2 Upon the termination of this Agreement, and if Network Rail has not exercised its rights under Clause 8.4.1, Nexus may (subject to Clause 8.4.3):

- (a) disconnect the Metro Shared Network from the NR Network; and
- (b) make good the Metro Shared Network,

and the reasonable and properly incurred costs of any action under Clause 8.4.2(a) or (b) shall be at Nexus's own cost except where this Agreement is terminated:

- (i) by Nexus in accordance with Clause 8.1; or
- (ii) by Network Rail in accordance with Clause 8.2,

in which case any action carried out under Clause 8.4.2(a) or (b) shall be paid by Network Rail to Nexus.

8.4.3 Nexus's rights pursuant to Clause 8.4.2(a) and (b) are subject to Nexus entering into a basic asset protection agreement with Network Rail in respect of the activities contemplated by Clauses 8.4.2(a) and (b), and Network Rail agrees that it shall act reasonably in concluding and entering into a basic asset protection agreement with Nexus.

8.5 **Mitigation**

In complying with the provisions of Clause 8.4.1(a) Network Rail shall use all reasonable efforts to mitigate the cost of carrying out such actions. In complying with the provisions of Clause 8.4.2(a) and (b) Nexus shall use all reasonable efforts to mitigate the cost of carrying out such actions.

9 **LIABILITY**

9.1 **Performance Orders in relation to breach**

In relation to any breach of this Agreement:

- (a) the Innocent Party shall be entitled to apply under Clause 12.3 for a Performance Order against the party in breach; and
- (b) if a Performance Order is made, the party against whom it has been made shall comply with it.

9.2 **Compensation in relation to breach**

In relation to any breach of this Agreement the party in breach shall indemnify the Innocent Party against all Relevant Losses.

9.3 **Nexus indemnity**

Nexus shall indemnify Network Rail against all Relevant Losses resulting from:

- (a) a failure by Nexus to comply with its Safety Obligations, but only insofar as they relate to the exercise of its rights or performance of its obligations under this Agreement;
- (b) any Environmental Damage arising directly from the acts or omissions of Nexus; and
- (c) any damage to the NR Network arising directly from Nexus's negligence.

9.4 **Network Rail indemnity**

Network Rail shall indemnify Nexus against all Relevant Losses resulting from:

- (a) a failure by Network Rail to comply with its Safety Obligations, but only insofar as they relate to the exercise of its rights or performance of its obligations under this Agreement;
- (b) any Environmental Damage arising directly from any acts or omissions of Network Rail; and
- (c) any damage to the Metro Shared Network arising directly from Network Rail's negligence.

10 **RESTRICTIONS ON CLAIMS**

10.1 **Notification and mitigation**

A party wishing to claim in relation to a breach of this Agreement or under an indemnity provided for in this Agreement:

- (a) shall notify the other party of the relevant circumstances giving rise to that claim as soon as reasonably practicable after first becoming aware of those circumstances (and in any event within 365 days of first becoming so aware); and
- (b) subject to Clause 10.1(c), shall take all reasonable steps to prevent, mitigate and restrict the circumstances giving rise to that claim and any Relevant Losses connected with that claim; but
- (c) shall not be required to exercise any specific remedy available to it under this Agreement.

10.2 **Restrictions on claims by Network Rail**

Any claim by Network Rail against Nexus in relation to a breach of this Agreement or under an indemnity for Relevant Losses:

- (a) shall exclude payments to any person under or in accordance with the provisions of any access contract;
- (b) shall exclude loss of revenue in respect of permission to use any part of the NR Network under or in accordance with any access contract with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which Network Rail would not have incurred as network owner and operator but for the relevant breach or negligence; and
 - (ii) give credit for any savings to Network Rail which result or are likely to result from the incurring of such amounts.

10.3 **Restrictions on claims by Nexus**

Any claim by Nexus against Network Rail in relation to a breach of this Agreement or under an indemnity for Relevant Losses:

- (a) shall exclude payments to any person under or in accordance with the provision of any access contract;
- (b) shall exclude loss of revenue in respect of permission to use any part of the Metro Shared Network under or in accordance with any access contract with any person; and
- (c) shall:
 - (i) include Relevant Losses only to the extent that these constitute amounts which Nexus would not have incurred as network owner and operator but for the relevant breach or negligence; and
 - (ii) give credit for any savings to Nexus which result or are likely to result from the incurring of such amounts.

10.4 **Restriction on claims by both parties**

Any claim in relation to a breach of this Agreement or under an indemnity for Relevant Losses shall exclude Relevant Losses which:

- (a) do not arise naturally from the breach; and

(b) were not, or may not reasonably be supposed to have been, within the contemplation of the parties:

(i) at the time of the making of this Agreement; or

(ii) where the breach relates to a modification or amendment to this Agreement, at the time of the making of such modification or amendment,

as the probable result of the breach.

10.5 **Limitation on liability**

Schedule 3 shall have effect so as to limit the liability of the parties to one another in relation to a breach of this Agreement or under the indemnities in Clause 9 of this Agreement, in each case subject to Clause 18.3.3 of this Agreement.

11 **GOVERNING LAW**

This Agreement and any non-contractual obligations arising out of or in connection with this Agreement shall be governed by and construed in accordance with the laws of England and Wales.

12 **DISPUTE RESOLUTION**

12.1 **Arbitration**

A Relevant Dispute shall be referred for resolution in accordance with the ADRR in force at the time of the reference as modified by this Clause 12.

12.2 **Not used.**

12.3 **Performance Orders**

12.3.1 *Power to order provisional relief*

For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the ADRR to arbitration under Chapter F of the ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have the power to grant in a final award, including Performance Orders.

12.3.2 *Performance Orders*

A Performance Order:

(a) is an order made under Clause 12.3.3(b), relating to a Relevant Dispute, whether by way of interim or final relief; and

- (b) may be applied for by Network Rail or Nexus in the circumstances set out in Clause 9.1, subject to the qualifications in Clause 17.7,

and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this Agreement (whether final or interim or by way of appeal).

12.3.3 *Duties of the arbitrator in relation to Performance Orders*

Without prejudice to any additional remedies that may be ordered by the arbitrator under Clause 12.4, where a dispute is allocated in accordance with the ADRR to arbitration and a party has applied for a Performance Order, the parties shall agree in a Procedure Agreement that:

- (a) the arbitrator shall decide as soon as possible whether the application is well founded or not; and
- (b) if the arbitrator decides that the application is well founded, it shall be required to make an interim or final declaration to that effect and, in that event, the arbitrator may also make any interim or final order directing any party to do or to refrain from doing anything arising from such declaration which it considers just and reasonable in all the circumstances.

12.4 **Remedies**

The powers exercisable by the arbitrator as regards remedies shall include:

- (a) the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;
- (b) the powers specified in the ADRR;
- (c) the power to make Performance Orders; and
- (d) the power to order, within the same reference to arbitration, any relief specified in Clause 12.4(a), (b) and (c) consequent upon, or for the breach of, any interim or final Performance Order previously made.

12.5 **Exclusion of applications on preliminary points of law**

Any recourse to any Court for the determination of a preliminary point of law arising in the course of the arbitration proceedings is excluded.

13 **CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION**

13.1 **Confidential Information**

13.1.1 *General obligation*

Except as permitted by Clause 13.2, all Confidential Information shall be kept confidential during and after the continuance of this Agreement and shall not be

divulged in any way to any third party without the prior written approval of the other party.

13.1.2 *Network Rail – Affiliates*

Except as permitted by Clause 13.2, Network Rail shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose Confidential Information.

13.1.3 *Nexus - Affiliates*

Except as permitted by Clause 13.2, Nexus shall procure that its Affiliates and its and their respective officers, employees and agents shall keep confidential and not disclose to any person any Confidential Information.

13.2 **Entitlement to divulge**

Either party and its Affiliates, and its and their respective officers, employees and agents, shall be entitled in good faith to divulge any Confidential Information without the approval of the other party in the following circumstances:

- (a) to the Office of Rail and Road;
- (b) to the Secretary of State for Transport;
- (c) to the Health and Safety Executive;
- (d) to any Affiliate of either party;
- (e) to any officer or employee of the party in question or any person engaged in the provision of goods or services to or for him, if disclosure is necessary or reasonably required to enable the party in question to perform its obligations under this Agreement, upon obtaining an undertaking of strict confidentiality from such officer, employee or person;
- (f) to any professional advisers or consultants of such party engaged by or on behalf of such party and acting in that capacity, upon obtaining an undertaking of strict confidentiality from such advisers or consultants;
- (g) to any insurer or insurance broker from whom such party is seeking insurance or in connection with the making of any claim under any policy of insurance, upon obtaining an undertaking of strict confidentiality from the insurer or insurance broker;
- (h) to any lender, security trustee, bank or other institution from whom such party is seeking or obtaining finance or credit support for such finance, or any advisers to any such entity, or any rating agency from whom such party is seeking a rating in connection with such finance or credit support, upon obtaining an undertaking of strict confidentiality from the entity, advisers or rating agency in question;

- (i) to the extent required by the Act, any licence under section 8 of the Act held by the party in question, any other applicable law, the rules of any recognised stock exchange or regulatory body, or any written request of any taxation authority;
- (j) to the extent that it has become available to the public, other than as a result of a breach of confidence; and
- (k) under the order of any court or tribunal of competent jurisdiction (including the Allocation Chair or any relevant ADRR Forum).

13.3 **Return of Confidential Information**

Each of Network Rail and Nexus shall promptly return to the other party any Confidential Information requested by the other party if such request:

- (a) is made within two months after the date on which this contract is terminated;
- (b) is reasonable; and
- (c) contains a sufficient description of the relevant Confidential Information to enable such information to be readily identified and located.

13.4 **Retention or destruction of Confidential Information**

If Network Rail or Nexus, as the case may be, has not received a request to return any Confidential Information to the other party under and within the time limits specified in Clause 13.3, it may destroy or retain such Confidential Information.

13.5 **Ownership of Confidential Information**

All Confidential Information shall be and shall remain the property of the party which supplied it to the other party.

13.6 **Freedom of Information Act**

For the purposes of Clauses 13.7 to 13.10:

- 13.6.1 **“Assisting Party”** means the party assisting and cooperating with the FOI Party;
- 13.6.2 **“FOI Legislation”** means the Freedom of Information Act 2000 (“FOIA”), all regulations made under it and the Environmental Information Regulations 2004, and any amendment or re-enactment of any of them, and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 13.6.3 **“FOI Party”** means the party which is subject to the provisions of the FOI Legislation;

13.6.4 **“Information”** means information recorded in any form held by the Assisting Party on behalf of the FOI Party; and

13.6.5 **“Information Request”** means a request for any information under the FOI Legislation.

13.7 **Acknowledgement**

The Assisting Party acknowledges that if, and for so long as, the FOI Party is subject to the provisions of the FOI Legislation:

- (a) the FOI Party is subject to the FOI Legislation and the Assisting Party agrees to assist and co-operate with the FOI Party, to enable the FOI Party to comply with its obligations under the FOI Legislation, including providing to the FOI Party all information it may reasonably request; and
- (b) it may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Assisting Party.

13.8 **Freedom of Information Act Obligations**

Without prejudice to the generality of Clause 13.9, the Assisting Party shall:

- (a) transfer to such person as may be notified by the FOI Party to the Assisting Party each Information Request relevant to this Agreement, as soon as practicable and in any event with 2 Working Days of receiving such Information Request; and
- (b) in relation to the Information held by the Assisting Party on behalf of the FOI Party, provide the FOI Party with details about and/or copies of all such Information that the FOI Party requests, and such details and/or copies shall be provided within 5 Working Days of a request from the FOI Party (or such other period as the FOI Party may reasonably specify) and in such form as the FOI Party may reasonably specify.

13.9 **Confidential Information and Information Requests**

The FOI Party, having regard to its statutory duties, shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation, save that, where any Information Request relates to Confidential Information disclosed by the Assisting Party under this Agreement, the FOI Party shall, where practicable, in advance of making any disclosure under the FOI Legislation, acting reasonably, take due account of all reasonable representations by the Assisting Party that such Confidential Information is exempt information. The Assisting Party shall not itself respond to any person making an Information Request, save to acknowledge receipt, unless authorised in writing to do so by the FOI Party.

13.10 **Data Protection**

For the purposes of this Clause 13.10, the terms, “**Controller**”, “**Data Subject**”, “**Personal Data**”, and “**Processing**” shall have the same meaning as in the Data Protection Laws, and their cognate terms shall be construed accordingly.

13.10.1 The parties agree that each party Processes Personal Data shared by the other party in connection with this Agreement as independent Controller.

13.10.2 With respect to its Processing of Personal Data under this Clause 13.10, each party shall:

- (a) comply with all applicable Data Protection Laws when Processing Personal Data and shall not do, cause, or permit anything to be done which may result in a breach by the other party of Data Protection Laws in connection with the Processing of Personal Data under this Agreement; and
- (b) co-operate with the other party, and provide such information and assistance as the other party may reasonably require to enable the other party:
 - (i) to comply with its obligations under Data Protection Laws in respect of the Personal Data shared under this Agreement; and
 - (ii) to deal with and respond to all investigations and requests for information relating to the Personal Data processed under this Agreement from the relevant Data Subject or from a Supervisory Authority.

13.10.3 If a party (“**First Party**”) receives any complaint, notice or communication which relates directly or indirectly to the other party’s:

- (a) Processing of the relevant Personal Data; or
- (b) potential or actual failure to comply with Data Protection Laws,

the First Party shall, to the extent permitted by applicable laws, promptly forward the complaint, notice or communication to the other party and, to the extent requested by the other party, provide the other party with reasonable co-operation and assistance in relation to the same.

14 ASSIGNMENT

14.1 Prohibition on Assignment, Novation and Transfer

Subject to Clause 14.2, neither party may assign its rights or novate or otherwise transfer any of its rights or obligations under this Agreement:

- (a) without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed); and
- (b) without the approval of the ORR in accordance with Clause 14.3.

14.2 **Assignment, Novation and Transfer to Affiliates**

Subject to Clause 14.3, either party shall be entitled to assign its rights or novate or otherwise transfer its rights and obligations under this Agreement to any Affiliate of that party without any further consent required from the other party, provided that if such Affiliate is to cease to be an Affiliate of the assigning party (except in the case of a successor body), the assigning party shall procure that the Affiliate shall assign, novate or otherwise transfer back to the assigning party its rights and obligations under this Agreement.

14.3 **Approval of the ORR**

No such novation, assignment or transfer of this Agreement pursuant to Clause 14.1 or Clause 14.2 shall have effect unless approved by the ORR and effected in accordance with the conditions (if any) of its approval.

15 **REVIEW OF THE OPERATION OF THIS AGREEMENT**

15.1 The following matters shall be reviewed by Network Rail and Nexus on or before: (1) April 2024; and (2) each five year anniversary of 1 April 2024 thereafter:

- (a) the validity of the Pelaw Junction Plan and Schedule 1; and
- (b) the operation of this Agreement including:
 - (i) whether it is operating effectively and as anticipated by Network Rail and Nexus;
 - (ii) the principle that no sums are paid by either party to the other under this Agreement; and
 - (iii) not used.

15.2 If, as a consequence of any review contemplated by Clause 15.1, Network Rail and Nexus agree that any amendments should be made to this Agreement, Clause 18.2 shall apply.

16 **NOT USED**

17 **FORCE MAJEURE EVENTS**

17.1 **Nature and extent of relief for Force Majeure Event**

Relief for a Force Majeure Event under this Clause 17:

- (a) extinguishes the obligation of the Affected Party to indemnify the other party under Clause 9.2 in respect of Relevant Losses sustained as a result of the failure of the Affected Party to perform a Relevant Obligation; but
- (b) is not available in respect of any other obligation to do or refrain from doing any other thing provided for in this Agreement.

17.2 Entitlement to relief in respect of Force Majeure Event

An Affected Party is entitled to relief in the event of a Force Majeure Event if and to the extent that:

- (a) performance of the Relevant Obligation has been prevented or materially impeded by reason of a Force Majeure Event;
- (b) it has taken all reasonable steps, taking account of all relevant circumstances (including as to whether the event in question could reasonably have been anticipated):
 - (i) to avoid the occurrence of the Force Majeure Event; and
 - (ii) to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and
- (c) except in the case of paragraph (g) of the definition of Force Majeure Event, none of the Affected Party, its officers, employees, or agents caused the Force Majeure Event.

17.3 Procedure for claiming relief

Without prejudice to Clause 17.2, an Affected Party is only entitled to claim relief for a Force Majeure Event under this Clause 17 if it complies with the obligations to give Force Majeure Notices and Force Majeure Reports, provide other information under Clause 17.4, and perform its obligations under Clause 17.5.

17.4 Force Majeure Notices and Reports

17.4.1 *Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

- (a) as soon as reasonably practicable after the Affected Party becomes aware, or ought reasonably to have become aware, that such Force Majeure Event qualifies for relief under this Clause 17 (and, in any event, within 72 hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and
- (b) the Force Majeure Notice shall include detailed particulars (to the extent available) of the Relevant Force Majeure Event and its consequences, its effects on the Affected Party, the Relevant Obligations, the likely duration of such consequences and effects, and the remedial measures proposed by the Affected Party to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects.

17.4.2 *Force Majeure Report*

Following the giving of a Force Majeure Notice:

- (a) the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within 7 days of service of the Force Majeure Notice; and
- (b) the Force Majeure Report shall constitute a full report on the Relevant Force Majeure Event, amplifying the information provided in the Force Majeure Notice and containing such information as may reasonably be required by the Non-affected Party, including the effect which the Relevant Force Majeure Event is estimated to have on the Affected Party's performance of the Relevant Obligations.

17.4.3 *Other information*

The Affected Party shall promptly give the Non-affected Party all other information concerning the Relevant Force Majeure Event and the steps which could reasonably be taken, and which the Affected Party proposes to take, to avoid or remove the Relevant Force Majeure Event or to mitigate its consequences and effects, as may reasonably be requested by the Non-affected Party from time to time.

17.5 **Mitigation**

The Affected Party shall, promptly upon becoming aware of the occurrence of a Force Majeure Event in respect of which it intends to claim relief, use all reasonable endeavours to:

- (a) minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and
- (b) minimise the duration of such Force Majeure Event,

and shall keep the Non-affected Party fully informed of the actions which it has taken or proposes to take under this Clause 17.5.

17.6 **Duration of relief for Force Majeure Event**

The right of an Affected Party to relief under Clause 17.2 shall cease on the earlier of:

- (a) the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and
- (b) the date on which such performance would no longer have been prevented or materially impeded if the Affected Party had complied with its obligations under Clause 17.5.

17.7 **Availability of Performance Order**

If and to the extent that a breach of this Agreement has been caused by a Relevant Force Majeure Event, the Non-affected Party shall not be entitled to a Performance Order except to secure performance by the Affected Party of its obligations under this Clause 17.

18 **MISCELLANEOUS**

18.1 **Non waiver**

18.1.1 *No waiver*

No waiver by either party of any failure by the other to perform any obligation under this Agreement shall operate or be construed as a waiver of any other or further default, whether of a like or different character.

18.1.2 *Failure or delay in exercising a right or remedy*

The failure to exercise or delay in exercising a right or remedy under this Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies, and no single or partial exercise of any right or remedy under this Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

18.2 **Variations**

18.2.1 *Amendments to be in writing and to be approved*

No amendment of any provision of this Agreement shall be effective unless such amendment is in writing and signed by, or on behalf of, the parties and, subject to Clause 18.2.2, has been approved by the Office of Rail and Road.

18.2.2 *Office of Rail and Road approval needed*

Modifications of the following do not require the approval of the Office of Rail and Road under section 22 of the Act:

- (a) modifications effected by virtue of any of the Schedules to this Agreement unless the relevant provision expressly states that it requires the approval of the Office of Rail and Road;
- (b) not used; and
- (c) modifications effected by virtue of Clause 18.4.2.

Any amendment made to the Pelaw Junction Plan requires the Office of Rail and Road's approval under section 22 of the Act.

18.2.3 *Conformed copy of Agreement*

Network Rail shall produce and send to Nexus and to the Office of Rail and Road a conformed copy of this Agreement within 28 days of the making of any amendment or modification to this Agreement.

18.3 **Entire Agreement and exclusive remedies**

18.3.1 *Entire Agreement*

Subject to Clause 18.3.3:

- (a) this Agreement contains the entire agreement between the parties in relation to the subject matter of this Agreement;
- (b) each party acknowledges that it has not been induced to enter into this Agreement in reliance upon, nor has it been given, any warranty, representation, statement, agreement or undertaking of any nature whatsoever other than as expressly set out in this Agreement and, to the extent that this is not the case, the relevant party unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to any such matter; and
- (c) neither party shall have any right to rescind or terminate this Agreement either for breach of contract or for misrepresentation or otherwise, except as expressly provided for in this Agreement.

18.3.2 *Exclusive remedies*

Subject to Clause 18.3.3 and except as expressly provided in this Agreement:

- (a) neither party shall have any liability (including liability arising as a result of any negligence, breach of contract or breach of statutory obligation) to the other in connection with the subject matter of this Agreement; and
- (b) the remedies provided for in this Agreement shall be the sole remedies available to the parties in respect of any matters for which such remedies are available.

18.3.3 *Fraud, death and personal injury*

Without prejudice to the generality of this Clause 18.3, nothing in this Agreement shall exclude, restrict or limit, or purport to exclude, restrict or limit:

- (a) any liability which either party would otherwise have to the other party, or any right which either party may have to rescind this Agreement, in respect of any statement made fraudulently by the other party before the execution of this Agreement;
- (b) any right which either party may have in respect of fraudulent concealment by the other party;

- (c) any right which either party may have in respect of a statement of the kind referred to in section 146 of the Act, whether or not proceedings have been instituted in that respect; or
- (d) any liability which either party may have towards the other party for death or personal injury resulting from its negligence or the negligence of any of its officers, employees or agents.

18.4 Notices

18.4.1 *Giving of notices*

Any notice to be given under this Agreement:

- (a) shall be in writing; and
- (b) shall be duly given if signed by or on behalf of a person duly authorised to do so by the party giving the notice, and:
 - (i) if delivered by hand, by sending it by prepaid first class post to the relevant address set out in Schedule 2; or
 - (ii) if by Email, by sending it to the relevant Email address set out in Schedule 2 with a confirmation copy sent by prepaid first class post to the relevant address set out in Schedule 2.

For the purposes of this Clause 18.4.1, delivery by hand shall include delivery by a reputable firm of couriers.

18.4.2 *Right to modify communication details*

A party shall be entitled to modify in any respect the communication particulars which relate to it and which are set out in Schedule 2 by giving notice of such modification:

- (a) to the other party as soon as reasonably practicable; and
- (b) to the Office of Rail and Road within 14 days of such modification.

18.4.3 *Deemed receipt*

A notice shall be deemed to have been given and received:

- (a) if sent by hand or recorded delivery, at the time of delivery; or
- (b) if sent by prepaid first class post from and to any place within the United Kingdom, three working days after posting unless otherwise proven; or
- (c) not used; or

- (d) if sent by Email (subject to confirmation of receipt of delivery) before 1700 hours on a working day, on the day of transmission and, in any other case, at 0900 hours on the next following working day.

18.5 If Schedule 2 specifies any person to whom copies of notices shall also be sent:

- (a) the party giving a notice in the manner required by Clause 18.4 shall send a copy of the notice to such person at the address for sending copies as specified in Schedule 2, or to such other person or address as may, from time to time, have been notified by the party to be notified to the notifying party under Clause 18.4.2; and
- (b) such copy notice shall be sent immediately after the original notice.

18.6 **Counterparts**

This Agreement may be executed in two counterparts which, taken together, shall constitute one and the same document. Either party may enter into this Agreement by signing either of such counterparts.

18.7 **Survival**

Those provisions of this Agreement which by their nature or implication are required to survive expiry or termination of this Agreement (including the provisions of Clauses 9 (Liability), 10 (Restrictions on Claims), 11 (Governing Law), 13 (Confidentiality, Freedom of Information and Data Protection), 17 (Force Majeure Events) and Schedule 3 (Limitation on liability)) shall so survive and continue in full force and effect, together with any other provisions of this Agreement necessary to give effect to such provisions.

18.8 **Contracts (Rights of Third Parties) Act 1999**

18.8.1 *Application to third parties*

Save as provided in this Clause 18.8 or as expressly provided elsewhere in this Agreement, no person who is not a party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

18.8.2 *Application to the Office of Rail and Road*

The Office of Rail and Road shall have the right under the Contracts (Rights of Third Parties) Act 1999 to enforce directly such rights as have been granted to it under this Agreement.

SCHEDULE 1: CONNECTION POINT ASSETS

PART 1 CONNECTION POINT ASSETS

Part 1(A) – Nexus Connection Point Assets

The assets highlighted blue at Appendix 1.

Part 1(B) – Network Rail Connection Point Assets

The assets highlighted green at Appendix 1.

The connecting network is identified in the Pelaw Junction Connection Point Plan set out at Schedule 4.

PART 2 INITIAL CONDITION STATEMENT

Prior to the Transfer Date, Network Rail has maintained the Nexus Connection Point Assets and the Network Rail Connection Point Assets in accordance with the applicable Railway Group Standards and Network Rail’s asset management and operational obligations under its Network Licence, and Network Rail confirms that as at the Transfer Date the assets are suitable for the current traffic then operating and are “fully maintained” as detailed in the column entitled “Asset Status” at Appendix 1.

APPENDIX 1**CONNECTION POINT ASSETS DETAILS****Supply point assets**

Asset Number	Asset Desc 1	ELR	Mileage From	Mileage To	Asset Status
967253	PTS:2296A(PS) PELAW EAST KIOSK B	JAW1	000.0266	000.0266	FM - Fully Maintained

Signalling & Telecoms assets

Asset Number	Asset Desc 1	ELR	Mileage From	Mileage To	Asset Status
967781	LOC:00/16B(AH) TSC/PELAW JN	JAW1	0.052	0.052	FM - Fully Maintained
967782	LOC:00/16A(AH) TSC/PELAW JN	JAW1	0.052	0.052	FM - Fully Maintained
967783	LOC:98/02D(AH) TSC/PELAW JN	JAW1	0.0375	0.0375	FM - Fully Maintained
967784	LOC:98/02C(AH) TSC/PELAW JN	JAW1	0.0374	0.0374	FM - Fully Maintained
971750	TRC:PRD(HF) TSC/PELAW JN	JAW1	0.037	0.039	FM - Fully Maintained
971758	TRC:PRE(HF) TSC/PELAW JN	JAW1	0.037	0.039	FM - Fully Maintained
972653	TDL:1(Q) TSC/PELAW JCN	JAW1	0.0372	0.0372	FM - Fully Maintained
973553	PTS:2296A(HP) TSC/PELAW JN	JAW1	0.0266	0.0266	FM - Fully Maintained
973631	SIG:T31(CO) TSC/PELAW JN	JAW1	0.0366	0.0366	FM - Fully Maintained
985188	RTI:T31(TH) TSC/PELAW JN	JAW1	0.0366	0.0366	FM - Fully Maintained
1804780	SIG:T31(SM) TSC/JARROW	JAW1	0.0376	0.0376	FM - Fully Maintained
1851508	HEBBURN/TSC	JAW1	0.06	0.06	FM - Fully Maintained
1851509	JARROW/TSC	JAW1	0.152	0.152	FM - Fully Maintained
2461328	SIG:T31(PL) TSC/PELAW JN	JAW1	0.0366	0.0366	FM - Fully Maintained
2829751	LST:T31(SP) PELAW JCN	JAW1	0.0366	0.0366	FM - Fully Maintained

SCHEDULE 2: CONTACT DETAILS

1A. Network Rail's address for service of notices is:

Network Rail Infrastructure Limited
1 Eversholt Street
London
NW1 2DN

Email: notices@networkrail.co.uk

All written notices to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

The Managing Director
Network Rail Eastern Route
George Stephenson House,
Toft Green,
York,
YO1 6JT

Email: [REDACTED]

1B. Network Rail's address for service of invoices or other statements of amounts payable, if different from paragraph 1A above, is:

Network Rail Infrastructure Limited Accounts Receivable
PO Box 4150
Square One
2nd Floor
4 Travis Street
Manchester
M1 2NY

All invoices/statements of amounts payable to be marked:

“URGENT: ATTENTION THE COMPANY SECRETARY AND SOLICITOR”

and copied to:

National Receivables Manager

Email: accountqueries@networkrail.co.uk

2A. Nexus's address for the service of notices, invoices or other statements of amounts payable is:

Nexus
Nexus House,
St James' Boulevard
Newcastle upon Tyne
NE1 4AX

Email: railcontracts@nexus.org.uk

All written notices to be marked:

“URGENT: Commercial Manager”

and copied to: contactmetro@nexus.org.uk or such other replacement details as may be advised in writing from time to time to Network Rail.

SCHEDULE 3: LIMITATION ON LIABILITY

1. Definitions

In this Schedule:

“**Liability Cap**” means:

- (a) in relation to the first Agreement Year, the sum of [REDACTED]; and
- (b) in relation to any subsequent Agreement Year, the sum calculated in accordance with the following formula:

$$C_n = C_1 \times \frac{CPI_n}{CPI_1}$$

where:

- (i) C_1 is the sum of [REDACTED];
- (ii) C_n is the Liability Cap in the nth subsequent Agreement Year;
- (iii) CPI_n is the Consumer Prices Index published or determined with respect to the first month of the subsequent Contract Year n; and
- (iv) CPI_1 is the Consumer Prices Index published or determined with respect to the month in which this contract became effective under Clause 2.1.

2. Application

The limitations on liability contained in this Schedule 3 apply in the circumstances set out in Clause 10.5.

3. Limitation on Network Rail’s liability

In relation to any claim for indemnity made by Nexus to which this Schedule 3 applies:

- (a) Network Rail shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and
- (b) to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Network Rail shall have no further liability for it.

4. Limitation on Nexus's liability

In relation to any claims for indemnity made by Network Rail to which this Schedule 3 applies:

- (a) Nexus shall not be liable to make payments in relation to such claims which are admitted in writing or finally determined in any Agreement Year to the extent that its liability for such claims exceeds the Liability Cap for such Agreement Year; and
- (b) to the extent its liability for such claims exceeds the Liability Cap for such Agreement Year, any claim for payment of a sum which exceeds such Liability Cap shall be extinguished and Nexus shall have no further liability for it.

5. Disapplication of limitation

To the extent that any Relevant Losses:

- (a) result from a conscious and intentional breach by a party; or
- (b) are in respect of obligations to compensate any person for liability for death or personal injury, whether resulting from the negligence of a party or the negligence of any of its officers, employees or agents, or from a failure by a party to comply with the safety and security requirements provided in accordance with Clauses 5.1.3(g) and 5.2.3(h),

such Relevant Losses:

- (i) shall not be subject to the limitation of liability in this Schedule 3; and
- (ii) shall not be taken into account when calculating the amount of Relevant Losses in respect of claims admitted or finally determined in an Agreement Year for the purposes of the limitations of liability in this Schedule 3.

6. Exclusion of legal and other costs

The limits on the parties' liabilities provided for in paragraphs 3 and 4 shall not apply to costs incurred in recovering any amount under a relevant claim, including legal, arbitral and other professional fees and expenses.

7. Exclusion of certain Relevant Losses

A party shall have no claim for Relevant Losses to the extent that such Relevant Losses result from its own negligence or breach of this Agreement.

8. Continuing breaches

Nothing in this Schedule 3 shall prevent a party making a new claim for indemnity in respect of a continuing breach of contract which:

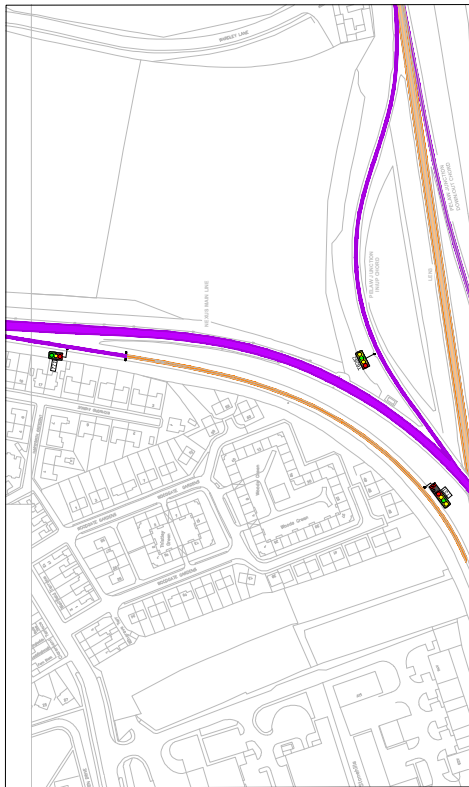
- (a) is a continuing breach of contract which continues for more than 12 months;
- (b) is a continuing breach of contract which continues beyond a period within which it might reasonably be expected to have been remedied; or
- (c) is a breach of a Performance Order in relation to a breach of contract,

but any such new claim shall not include any sum which was the subject matter of a previous claim and was extinguished by virtue of paragraph 3(b) or 4(b).

9. Final determination of claims

For the purpose of this Schedule 3, a determination of a claim for Relevant Losses by a Court or other tribunal shall be treated as final when there is no further right of appeal or review from such determination or in respect of which any right of appeal or review has been lost, whether by expiry of time or otherwise.

SCHEDULE 4: PELAW JUNCTION PLAN



KEY
C.P. Connection Point

Nexus Network

Network Rail Network

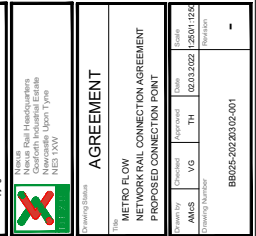
Issue	Date	Description	Drawn	Checked

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AGREEMENT

METRO FLOW
 NETWORK RAIL CONNECTION AGREEMENT
 PROPOSED CONNECTION POINT

Contract Number	Contract	Project	Issue
AMS	YS	TH	02.03.2022
Contract Number	294011328		
Contract Number	BB025-2022-02-001		



This contract was signed by Network Rail and Nexus as first dated above.

SIGNED BY 

Print name Sarah Reid

Duly authorised on behalf of
NETWORK RAIL INFRASTRUCTURE LIMITED

SIGNED BY 

Print name head of legal

Duly authorised on behalf of
TYNE AND WEAR PASSENGER TRANSPORT EXECUTIVE