

DATED

5 September 2022

(1) TYNE AND WEAR PASSENGER TRANSPORT EXECUTIVE

- and -

(2) PRAX TERMINALS LIMITED

CONNECTION CONTRACT

relating to
sidings at Jarrow oil terminal

CONTENTS

1.	DEFINITIONS AND INTERPRETATIONS.....	1
2.	EFFECTIVE DATE AND EXPIRY.....	7
3.	STANDARD OF PERFORMANCE.....	7
4.	DUAL TRACK WORKS.....	7
5.	PERMISSION TO CONNECT.....	8
6.	OBLIGATIONS OF THE TRADER.....	8
7.	OBLIGATIONS OF NEXUS.....	10
8.	JOINT OBLIGATIONS.....	11
9.	STATUS OF THE NEXUS NETWORK.....	11
10.	NEXUS RIGHTS.....	12
11.	LIEN.....	13
12.	LIABILITY.....	13
13.	FORCE MAJEURE.....	14
14.	TERMINATION.....	16
15.	EFFECT OF TERMINATION.....	17
16.	GOVERNING LAW.....	18
17.	DISPUTE RESOLUTION.....	18
18.	CONFIDENTIALITY.....	20
19.	FREEDOM OF INFORMATION.....	21
20.	ASSIGNMENT AND TRANSFER.....	22
21.	MISCELLANEOUS.....	22
22.	COSTS ETC. PAYABLE BY TRADER.....	25
	SCHEDULE 1 PLAN.....	27
	SCHEDULE 2 ACCESS ARRANGEMENTS.....	28
	SCHEDULE 3 INDICATIVE PLAN.....	32

BETWEEN:

- (1) **TYNE AND WEAR PASSENGER TRANSPORT EXECUTIVE**, whose principal address is at Nexus House, St James' Boulevard, Newcastle upon Tyne, NE1 4AX ("**Nexus**"); and
 - (2) **PRAX TERMINALS LIMITED** a company incorporated and registered in England (company number 04283393) which has its registered office at Harvest House, Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, KT13 0TJ (the "**Trader**"),
- each a "**Party**" and together the "**Parties**".

BACKGROUND:

- A On the transfer of the Relevant Line from Network Rail to Nexus (such that the Relevant Line becomes part of the Nexus Network), Nexus will be the owner of the Relevant Line.
- B The Trader is the owner or controller of the Trader's Facility, relevant parts of which are shown on the Plan at Schedule 1 to this Contract.
- C Prior to the transfer described in (A), the existing physical connection of the Trader's Facility to the Relevant Line was the subject of an agreement originally entered into between (1) the British Railways Board and (2) Shell-Mex and B.P. Ltd dated 25 January 1972 (with an earlier commencement date of 1 August 1968), as supplemented by a letter dated 31 March 1984, and as novated to Prax on 29 February 2016) (the "**Existing Connection Agreement**"). Network Rail is the successor of the British Railways Board.
- D In anticipation of the transfer of the Relevant Line, this Contract is entered into between the Parties setting out the Parties' respective obligations in connection with the physical connection of the Trader's Facility to the Relevant Line (and therefore the Nexus Network) and the operational interface between the Trader and Nexus.

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this contract unless the context otherwise requires:

"**Act**" means the Railways Act 1993;

"**Affected Party**" means, in relation to a Force Majeure Event, the party claiming relief under clause 13 by virtue of that Force Majeure Event, and "Non-affected Party" shall be construed accordingly;

"**Blue Siding**" means the part of the Sidings shaded blue as shown in the Plan;

"**Business Day**" means a day other than a Saturday or Sunday on which banks are open for domestic business in London;

"**Commencement Date**" means the date on the cover sheet of this contract;

"Commercially Sensitive Information" has the meaning given to it in clause 19.3;

"Confidential Information" means any information that is directly or indirectly disclosed (however conveyed) by one party (the **"Disclosing Party"**) to the other party (the **"Recipient"**) after the date of this Contract which would appear to a reasonable person to be confidential or is marked confidential, or is accompanied by a written statement saying that it is confidential or proprietary and which relates to the business affairs of the Disclosing Party other than information that:

- (a) was in the public domain at the time so disclosed (unless the information so disclosed was a compilation of such publicly available information in a form not previously known);
- (b) passes into the public domain after it has been disclosed without the Recipient being in breach of any obligation of confidentiality;
- (c) is given to the Recipient by a third party who is lawfully entitled to disclose it and has no duty to respect any right of confidence in the information;
- (d) was already known (or had been independently generated) by the Recipient prior to its receipt or disclosure; or
- (e) the Parties agree in writing is not confidential;

"Connection Point" means the point(s) at which the railway lines of the Nexus Network and the Trader's Facility connect as shown marked "C.P" on the Plan;

"Contract" means this document including all Schedules to it;

"Disclosing Party" has the meaning given to it in the definition of Confidential Information;

"Dual Track Works" has the meaning given to it in clause 4.1;

"Effective Date" means the date when the Relevant Line is transferred from Network Rail to Nexus;

"Emergency" means:

- (a) an event or circumstance affecting the Connection Point or the Red Siding 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 Nexus Network, the alleviation of which would entail the use or non-use of the Connection Point or the Red Siding;

"Environmental Damage" means any material injury or damage to persons, living organisms or property (including 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;

"FOIA" means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, as amended or replaced from time to time;

"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;
- (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 or, where the Trader is not an industry party, that sector of the economy in which the Trader operates; and
- (h) epidemic or pandemic;

"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;

"Information" means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine readable medium (including CD ROM, magnetic and digital form);

"Innocent Party" means, in relation to a breach of an obligation under this contract, 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 for "£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 21 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;

"Metro ADRR" means the set of rules entitled "Metro Access Dispute Resolution Rules" and as may be updated from time to time in accordance with its terms (such rules being available from Nexus's website and/or the website of the Access Disputes Committee);

"Network Rail" means Network Rail Infrastructure Limited, a company registered in England under number 2904587 having its registered office at 1 Eversholt Street, London, NW1 2DN;

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

"Operational Control" means the safe management and direction of rolling stock;

"ORR" means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations set out in the Act, and includes any successor to all or any of its functions;

"Performance Order" has the meaning ascribed to it in clause 17.3.2;

"Plan" means the plan at Schedule 1 to this Contract;

"Railway Group Standards" means all Railway Group Standards authorised by the Railway Group Standards Code prepared by the RSSB;

"Recipient" has the meaning given to it in the definition of Confidential Information;

"Red Siding" means the part of the Sidings on the Nexus Network shaded red as shown in the Plan;

"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 Contract;

"Relevant Line" means 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 Jarrow;

"Relevant Force Majeure Event" means a Force Majeure Event in relation to which an Affected Party is claiming relief under clause 13;

"Relevant Losses" means, in relation to:

- (a) a breach of this Contract; or
- (b) in the case of clause 12, any of the matters specified in clause 12.3.1, 12.3.2, 12.3.3 or clause 12.4.1, 12.4.2, 12.4.3 (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 contract in respect of which a Force Majeure Event has occurred and the Affected Party has claimed relief under clause 13;

"Request for Information" means a request for information under FOIA;

"RSSB" means the Rail Safety and Standards Board, a company incorporated in England with registered number 04655675, or any successor to all or any of its functions under any Applicable Laws and Standards;

"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;

"Metro Shared Network" has the meaning given to it in clause 4.2;

"Sidings" means together the Blue Siding and the Red Siding;

"Trader's Facility" means the network situated on the land serving Jarrow oil terminal, including the Blue Siding, but excluding the Red Siding; and

"Train Operator" means an operator of trains who has permission to use the Nexus Network under an access contract with Nexus.

1.2 Interpretation

In this Contract, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 any one gender includes the other;
- 1.2.3 all headings are for convenience of reference only and shall not be used in the construction of this Contract;
- 1.2.4 reference to an item of primary or secondary legislation is to that item as amended or replaced from time to time;
- 1.2.5 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;
- 1.2.6 reference to a party is to a party to this Contract, its successors and permitted assigns;
- 1.2.7 reference to a recital, clause or Schedule is to a recital, clause or Schedule of or to this Contract; reference in a Schedule to a Part of a Schedule is to a part of the Schedule in which the reference appears; reference in a Part of a Schedule to a paragraph is to a paragraph of that part;
- 1.2.8 where a word or expression is defined, cognate words and expressions shall be construed accordingly;
- 1.2.9 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;
- 1.2.10 **"otherwise"** and words following **"other"** shall not be limited by any foregoing words where a wider construction is possible;
- 1.2.11 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
- 1.2.12 words and expressions defined in the Act shall, unless otherwise defined in this Contract, have the same meanings in this Contract.

2. EFFECTIVE DATE AND EXPIRY

2.1 Commencement Date and Effective Date

2.1.1 Save as specified in clause 2.1.2, this Contract shall come into force on the Effective Date.

2.1.2 The following provisions shall take effect from the Commencement Date of this Contract: clause 1, clause 2 and clauses 16 to 22 (inclusive).

2.2 Expiry

This Contract shall continue in force until termination under clause 12.

3. STANDARD OF PERFORMANCE

3.1 General standard

Without prejudice to all other obligations of the Parties under this Contract, each party shall, in its dealings with the other for the purpose of, and in the course of performance of its obligations under, this Contract, 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:

3.1.1 network owner and operator (in the case of Nexus); and

3.1.2 owner of a facility adjacent to the Nexus Network (in the case of the Trader).

3.2 Good faith

The Parties to this Contract shall, in exercising their respective rights and complying with their respective obligations under this Contract (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. DUAL TRACK WORKS

4.1 Without prejudice to clause 10 of this Contract, Nexus has the option, at any time, to dual track that part of the Nexus Network that runs adjacent to the Relevant Line, such that the Relevant Line is physically incorporated into the Nexus Network, such works to include modifications to the Red Siding (the "**Dual Track Works**"). Nexus shall notify the Trader in accordance with clause 7.2.3 prior to the Dual Track Works commencing.

4.2 As a result of the Dual Track Works, the Parties acknowledge and agree that rail freight traffic serving the Trader's Facility and metro trains will each traverse and share that section of the rail track that runs between Pelaw Junction and up to the connection to the Red Siding (as such connection to the Red Siding may be modified by the Dual Track Works) (such section of the Nexus Network being the "**Metro Shared Network**"). It is acknowledged by the Parties that an indicative plan (which was prepared in December 2020) showing the proposed layout of the Metro Shared Network, Sidings and Connection Point after the completion of the Dual Track Works is contained in Schedule 3 to this Contract for reference only.

4.3 The Trader acknowledges that as part of the Dual Track Works, Nexus may be required to repair or replace track in the Blue Siding, and Nexus shall wholly at its own cost be entitled to

carry out such works provided that they are notified to the Trader in accordance with this Contract and are carried out reasonably expeditiously, and that the Dual Track Works do not worsen the condition of the Blue Siding and do not put the Trader in breach of this Contract.

4.4 Furthermore, following the completion of the Dual Track Works, it is acknowledged and agreed that:

4.4.1 Nexus will prepare an updated Plan in substitution of the Plan applicable prior to the Dual Track Works (such updated Plan does not require compliance with clause 21.3.2, but clause 21.3.3 shall apply);

4.4.2 references to the Nexus Network in this Contract shall be read as references to the Metro Shared Network; and

4.4.3 Nexus shall relocate the plaque marking the Connection Point accordingly, such relocated Connection Point to be located with due regard to best practice and to maintenance practicalities, and, subject to the foregoing, in as close proximity as is practicable to the location of Connection Point prior to the Dual Track Works.

5. PERMISSION TO CONNECT

5.1 Nexus grants the Trader permission to retain the connection of the Trader's Facility to the Nexus Network.

5.2 Nexus agrees to the use by the Trader of the Red Siding, together with any necessary signalling fencing gates and other works in connection therewith (the "**other works**") as the Trader may require, subject to the terms of this Contract.

5.3 Nexus acknowledges and agrees that the Red Siding is approved by Nexus for the carriage of oil products by railway and provided that the Trader shall observe and perform the terms and conditions on its part contained in this Contract, Nexus will not withdraw its approval of such use of the Red Siding.

6. OBLIGATIONS OF THE TRADER

6.1 The Trader shall:

6.1.1 not used;

6.1.2 pay any costs and expenses incurred by Nexus:

6.1.2.1 not used;

6.1.2.2 in complying with its Safety Obligations in respect of the Red Siding;

6.1.2.3 pursuant to clause 10.4.4;

6.1.3 maintain, repair and renew the Blue Siding, provided that such obligation will in no event require the Trader to maintain, repair or renew the Blue Siding to a higher standard of condition than the condition of the Blue Siding as at the Commencement Date (save that this proviso shall not apply where the condition of the Blue Siding may directly or indirectly damage the Red Siding or the Nexus Network);

- 6.1.4 provide and maintain lights to illuminate the Blue Siding to the reasonable satisfaction of Nexus provided that such obligation will in no event require the Trader to provide or maintain such lights to a higher standard than that in place at the Commencement Date;
 - 6.1.5 comply with its Safety Obligations in respect of the Blue Siding;
 - 6.1.6 take all reasonable precautions to prevent persons and animals trespassing from the Trader's Facility on to the Nexus Network, and be responsible for keeping any Blue Siding gates in existence as at the Commencement Date locked except when traffic is passing over the Blue Siding;
 - 6.1.7 ensure that the Blue Siding complies with applicable Railway Group Standards;
 - 6.1.8 be responsible for the Operational Control of all rolling stock movements on the Trader's Facility;
 - 6.1.9 ensure that:
 - 6.1.9.1 the operation of the Trader's Facility; and
 - 6.1.9.2 any person authorised by the Trader to be at or on the Trader's Facility, does not cause any disruption to the Nexus Network;
 - 6.1.10 establish and maintain adequate security at the Trader's Facility and promptly provide Nexus with any material amendments to the Trader's safety and security requirements, as listed in Schedule 2, in relation to the Trader's Facility;
 - 6.1.11 in the event of any Emergency, within a reasonable time of the occurrence of the Emergency, give notice to Nexus:
 - 6.1.11.1 (unless the Emergency is within limb (b) of the definition of Emergency) of the circumstances giving rise to the Emergency;
 - 6.1.11.2 the action taken by the Trader to deal with the Emergency;
 - 6.1.11.3 the impact of its actions on the Connection Point; and
 - 6.1.11.4 an indication of when it will be able to accept rolling stock off the Nexus Network to the Trader's Facility;
 - 6.1.12 provide any additional accommodation or works which may be considered by Nexus to be reasonably necessary for the proper handling of traffic over the Sidings which has increased to such an extent that this is required.
- 6.2 The Trader shall not:
- 6.2.1 make any alteration of or addition or extension to the Blue Siding or construct any buildings, works or appliances in close proximity thereto, if such alteration, addition, extension or construction is reasonably likely adversely to affect Nexus, without the prior consent of Nexus, such consent not to be unreasonably delayed or withheld;

- 6.2.2 sever the connection of the Nexus Network to the Trader's Facility, unless it has, except in an Emergency, given prior notice of such severance to Nexus; or
- 6.2.3 take any action or omit to take any action which impedes access to/from the Nexus Network at the Connection Point, unless it has, except in an Emergency, given prior notice of such action or omission to Nexus.

7. OBLIGATIONS OF NEXUS

7.1 Nexus shall not:

- 7.1.1 sever (except in accordance with clause 15) the connection of the Nexus Network to the Trader's Facility at the Connection Point other than as required by an Emergency; or
- 7.1.2 take any action or omit to take any action which impedes access to/from the Connection Point unless:
 - 7.1.2.1 it has, except in an Emergency, obtained the prior consent of the Trader (whose consent shall not be unreasonably withheld); or
 - 7.1.2.2 such access is impeded due to or in connection with the carrying out of the Dual Track Works.

7.2 Nexus shall:

- 7.2.1 re-instate, at its own cost, the connection of the Nexus Network to the Trader's Facility, where such connection has been severed by Nexus other than in accordance with clause 15:
 - 7.2.1.1 as soon as reasonably practicable after the date of severance; and
 - 7.2.1.2 in accordance with applicable Railway Group Standards;
- 7.2.2 inspect, test, maintain, repair and renew the Red Siding in accordance with applicable Railway Group Standards;
- 7.2.3 give the Trader at least five (5) weeks' notice of all planned maintenance, renewals or enhancements on the Nexus Network which may impede access at the Connection Point;
- 7.2.4 be responsible for the Operational Control of all rolling stock on the Nexus Network;
- 7.2.5 comply with its Safety Obligations in respect of the Red Siding;
- 7.2.6 take all reasonable precautions to prevent persons and animals trespassing from the Nexus Network on to the Trader's Facility;
- 7.2.7 ensure that all persons authorised by Nexus to be on the Red Siding or in the vicinity of the Trader's Facility observe the safety and security requirements in relation to the Trader's Facility as may be notified to Nexus by the Trader and that the presence of such persons does not cause any disruption to the operation of the Trader's Facility;

- 7.2.8 place and maintain suitable markers at the Connection Point which define the maintenance boundaries between the Parties; and
- 7.2.9 in an Emergency, Nexus shall, within a reasonable time of the occurrence of the Emergency, give notice to the Trader:
 - 7.2.9.1 of the circumstances giving rise to the Emergency;
 - 7.2.9.2 the action taken by Nexus to deal with the Emergency;
 - 7.2.9.3 the impact of its actions on the Red Siding and the Connection Point; and
 - 7.2.9.4 an indication of the timescale for reinstating the connection and allowing rolling stock access to the Trader's Facility.

7.3 Nexus shall not be called upon to perform any shunting or other work at the Sidings.

8. JOINT OBLIGATIONS

8.1 Nexus and the Trader shall:

- 8.1.1 review as necessary, and in accordance with Railway Group Standards, the arrangements for the safe transfer of Operational Control of rolling stock from one party to the other, in consultation with Train Operators who have permission to use the Trader's Facility;
- 8.1.2 review the validity of the Plan 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 in the event that:
 - 8.1.2.1 the part of the Nexus Network identified on the Plan as the Red Siding is not used solely for the support, guidance and operation of rolling stock to and from the Trader's Facility; or
 - 8.1.2.2 a part of the Nexus Network, not previously identified as being used solely for the support, guidance and operation of rolling stock to and from the Trader's Facility, fulfils that condition at the time of the review; and
- 8.1.3 inspect the condition of the Red Siding, Blue Siding and the Connection Point as necessary and as may reasonably be required by either of the Parties and, if necessary, audit Nexus's records of the maintenance, repair and renewal carried out to the Red Siding and the Connection Point, and the Trader's records of the maintenance, repair and renewal carried out to the Blue Siding, in each case at intervals as may be agreed between the Parties.

9. STATUS OF THE NEXUS NETWORK

9.1 It is acknowledged and agreed by the Parties that, as at the date of this Contract, the Nexus Network is an exempt network under the Regulations, and, to the extent that Metro Shared Network is not an exempt network under the Regulations, this shall not affect the status of the remainder of the Nexus Network (insofar as it is possible for the Parties to not affect the status of the Nexus Network in the absence of the ORR determining otherwise).

10. NEXUS RIGHTS

10.1 Widening of railway

Nexus may remove the Red Siding and the other works if and when it requires to do so for the purpose of widening or altering the Nexus Network but shall in case of such removal reinstate the Red Siding and the other works in an altered position at its own expense.

10.2 Use of connections

Nexus may wholly at its own expense at any time connect the Red Siding with any other siding or sidings which it may lay down or permit to be laid down for the use of any other person and for that purpose it shall be lawful for Nexus wholly at its own expense to alter the Red Siding and the other works to such extent as required, provided that such alteration and other works shall not result in any adverse impact on the Trader's Facility (unless the Trader provides its consent, such consent not to be unreasonably withheld or delayed) and every such person shall have full liberty to use the Red Siding and the other works in common with the Trader provided that every such person shall be required to pay to the Trader a fair proportion of any sum paid or to be paid by the Trader to Nexus under this Contract in respect of the Red Siding and, where relevant, the other works.

10.3 Use of sidings

Nexus may temporarily use the Red Siding for traffic other than the Trader's traffic but so as not to impede the working of the Trader's traffic.

10.4 Right of entry

10.4.1 Nexus shall seek permission from the Trader (which permission shall not be unreasonably withheld or delayed) to enter upon the Trader's Facility at all reasonable times upon giving notice and at any time in an Emergency for the following purposes:

10.4.1.1 to inspect, test, maintain, repair and renew any part of the Red Siding on or in the vicinity of the Trader's Facility in accordance with clause 7.2.2, which shall include a right to repair and renew any part of the Blue Siding to the extent required pursuant to clause 10.4.4; and

10.4.1.2 to carry out remedial procedures in the event of an Emergency.

10.4.2 The Trader shall ensure that Schedule 2 sets out the access arrangements by Nexus in the event of an Emergency in order that Nexus can incorporate these requirements into the emergency plans which it is required to prepare for the Nexus Network.

10.4.3 Neither party is entitled, for itself or on behalf of any other person, to any right of access (in the case of the Trader) to the Nexus Network located on Nexus's property or (in the case of Nexus) to the Trader's Facility, in each case, save as expressly set out in this Contract.

10.4.4 Where the Trader is in breach of its obligations pursuant to clauses 6.1.3, 6.1.5, 6.1.7, 6.1.9 and 6.1.11, and this affects the ability of Nexus to comply with its obligations pursuant to clause 7.2.1, 7.2.2, 7.2.5 or 7.2.9, then Nexus shall notify the Trader of such breaches, and either:

- 10.4.4.1 the Trader shall comply with such obligations within 30 days of such notification or such other period as may be agreed by Nexus (acting reasonably); or
- 10.4.4.2 where the Trader does not so comply, Nexus shall be entitled to enter onto the Blue Siding to carry out such works to the Blue Siding to enable Nexus to comply with its obligations pursuant to clauses 7.2.1, 7.2.2, 7.2.5 or 7.2.9, and the reasonable cost of such repair or renewals shall be paid by the Trader.

11. LIEN

Nexus shall at all times have a general lien on the Red Siding and the other works and any other property of the Trader upon the land of Nexus for all monies properly owing to them by the Trader whether under the terms of this Contract or otherwise and if such monies are not paid on demand Nexus may remove and sell or otherwise dispose of the Red Siding and the other works and such other property of the Trader as aforesaid or any part thereof and out of the proceeds pay and satisfy all such monies as well as the expenses incidental to such removal and sale or other disposal.

12. LIABILITY

12.1 Performance Orders in relation to breach

In relation to any breach of this Contract:

- 12.1.1 the Innocent Party shall be entitled to apply under clause 17.3.2 for a Performance Order against the Party in breach; and
- 12.1.2 if a Performance Order is made, the Party against whom it has been made shall comply with it.

12.2 Compensation in relation to breach

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

12.3 Trader indemnity

The Trader shall indemnify Nexus against all Relevant Losses resulting from:

- 12.3.1 a failure by the Trader to comply with its Safety Obligations;
- 12.3.2 any Environmental Damage arising directly from the acts or omissions of the Trader; and
- 12.3.3 any damage to the Nexus Network arising directly from the Trader's negligence.

12.4 Nexus indemnity

Nexus shall indemnify the Trader against all Relevant Losses resulting from:

- 12.4.1 a failure by Nexus to comply with its Safety Obligations;

12.4.2 any Environmental Damage arising directly from any acts or omissions of Nexus;
and

12.4.3 any damage to the Trader's Facility arising directly from Nexus's negligence.

12.5 **Mitigation**

In all cases, the Party establishing or alleging a breach of, or requiring indemnification under, this Contract shall use reasonable endeavours to minimise and mitigate the loss which has occurred or may occur as a result of the breach.

12.6 **Limitation of Liability**

Any claim for Relevant Losses shall exclude Relevant Losses which:

12.6.1 do not arise naturally from the breach; and

12.6.2 were not, or may not reasonably be supposed to have been, within the contemplation of the Parties:

12.6.2.1 at the time of the making of this Contract; or

12.6.2.2 where the breach relates to a modification or amendment to this Contract, at the time of the making of such modification or amendment,

as the probable result of the breach.

13. **FORCE MAJEURE**

13.1 **Nature and extent of relief for a Force Majeure Event**

To the extent that a Force Majeure Event occurs and the Affected Party is prevented from carrying out any of its obligations under this Contract by such Force Majeure Event, the Affected Party (subject to complying with this clause 13) will not incur any liability to the Non-affected Party for any Relevant Losses incurred by the Non-affected Party as a result of such non-performance of those obligations, nor shall the Non-affected Party be entitled to bring a claim for breach of those obligations against the Affected Party.

13.2 **Entitlement to Force Majeure relief**

An Affected Party is entitled to Force Majeure relief if and to the extent that:

13.2.1 performance of the Relevant Obligation has been prevented by reason of a Force Majeure Event;

13.2.2 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):

13.2.2.1 to avoid the occurrence of the Force Majeure Event; and

13.2.2.2 to minimise, and where practicable avoid, the effects of the Force Majeure Event on its ability to perform the Relevant Obligation; and

13.2.3 the Affected Party, its officers, employees or agents did not cause the Force Majeure Event.

13.3 Procedure for claiming relief

Without prejudice to clause 13.2, an Affected Party is only entitled to claim Force Majeure relief under this clause 13 if it complies with the obligations to give Force Majeure Notices, Force Majeure Reports and provide other information under clause 13.4 and to perform its obligations under clause 13.5.

13.4 Force Majeure Notices and Reports

13.4.1 *Force Majeure Notice*

In relation to any Relevant Force Majeure Event:

13.4.1.1 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 13 (and, in any event, within seventy two (72) hours of becoming aware of such circumstances), the Affected Party shall give a Force Majeure Notice; and

13.4.1.2 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.

13.4.2 *Force Majeure Report*

Following the giving of a Force Majeure Notice:

13.4.2.1 the Affected Party shall give a Force Majeure Report as soon as practicable, and in any event within seven (7) days of service of the Force Majeure Notice; and

13.4.2.2 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.

13.4.3 *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.

13.5 **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:

13.5.1 minimise the effects of such Force Majeure Event on the performance of the Relevant Obligations; and

13.5.2 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 13.5.

13.6 **Duration of relief for force majeure**

The right of an Affected Party to relief under clause 13.1 shall cease on the earlier of:

13.6.1 the date on which its performance of the Relevant Obligations is no longer prevented or materially impeded by the Relevant Force Majeure Event; and

13.6.2 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 13.5.

13.7 **Availability of Performance Order**

If and to the extent that a breach of this Contract 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 13.

14. **TERMINATION**

14.1 Without prejudice to:

14.1.1 the other rights of the Parties under this Contract; or

14.1.2 clauses 14.2,

Nexus or the Trader may terminate this Contract with immediate effect by written notice served in accordance with clause 21.5 if:

14.1.2.1 an Insolvency Event occurs in relation to the other party; or

14.1.2.2 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.

14.2 Notice to terminate

Subject to clauses 14.3 and 14.4, either party may terminate this Contract on twelve (12) months' written notice served in accordance with clause 21.5.

14.3 Nexus ceasing to operate the Metro Shared Network

14.3.1 If Nexus intends to exercise its right to terminate under clause 14.2 because it will no longer be operating the Metro Shared Network, it shall first notify the Trader in writing. In such circumstances it is intended that clause 14.4 shall not apply.

14.3.2 If the Trader so requests, within ten (10) Business Days of receipt of the notice from Nexus pursuant to clause 14.3.1, Nexus shall use its reasonable endeavours to take steps to facilitate the transfer (subject to clause 20.4) of this Contract to any successor operator of the Metro Shared Network.

14.3.3 If the Trader does not request that Nexus takes the steps set out in clause 14.3.2 or if Nexus, having used its reasonable endeavours, has been unable to transfer the Contract to any successor operator of the Metro Shared Network, Nexus may proceed to exercise its rights pursuant to 14.2 without being subject to the requirements of this clause 14.3.

14.4 Nexus Notice to Terminate

14.4.1 In circumstances where clause 14.3 does not apply, any notice of termination served by Nexus under clause 14.2 shall not take effect if the Trader 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 Nexus to enter into an access contract which provides for the continued connection of the Trader's Facility to the Nexus Network and for so long as that application shall not have been refused.

14.4.2 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 contract 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.

14.4.3 Where a notice has been served by Nexus in accordance with clause 14.2 and the Trader 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 14.2.

15. EFFECT OF TERMINATION

15.1 On the termination of the Contract (other than in circumstances where the Contract is transferred to a successor operator of the Metro Shared Network) Nexus may (subject to any directions of the ORR and/or requirements of the Act):

15.1.1 disconnect and remove the Red Siding and the other works and dispose of the material recovered as they think fit and make good the railway and the site and reinstate the fencing on Nexus's boundary indicated approximately by green colouring on the Plan and the cost thereof shall be paid by the Trader to Nexus (except where Nexus terminates the Contract in accordance with clause 14.2). The

value at such time of the recovered materials as certified by Nexus shall be set off against the cost of removal making good the railway and the site and reinstating the fencing and against all sums owing to Nexus by the Trader under the terms of this Contract or otherwise and if such value exceeds the total of such cost and sums the excess shall be paid to the Trader; or

15.1.2 take over and retain the Red Siding and the other works in their existing situation. The value for removal of the materials of the Red Siding and the other works as certified by Nexus (except where Nexus terminates the Contract in accordance with clause 14.2 or the Trader terminates the Contract in accordance with clause 14.1) shall be set off against any sums owing to Nexus by the Trader as aforesaid and if such value exceeds the total of such sums the excess shall be paid to the Trader.

16. GOVERNING LAW

This Contract and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with English law.

17. DISPUTE RESOLUTION

17.1 Arbitration

A Relevant Dispute shall be referred for resolution in accordance with the Metro ADRR in force at the time of the reference as modified by this clause 17, unless clause 17.2 applies.

17.2 Unpaid sums

17.2.1 Subject to clause 17.2.2, if either Party fails to pay:

17.2.1.1 any invoice issued to it under this Contract; or

17.2.1.2 any sum which has fallen due in accordance with the provisions of this Contract,

then:

- (A) the amount invoiced or sum due, as referred to in clause 17.2.1.1 or 17.2.1.2, shall immediately constitute a debt due and owing from the Party who has failed to pay the invoice or sum due to the other Party (and to any assignee of a Party's right to payment in respect of any other sum due);
- (B) such debt shall be recoverable by any means available under the laws of England and Wales; and
- (C) the dispute resolution procedures in clauses 17.1 and 17.3 to 17.5 shall not apply to proceedings commenced under this clause 17.2.

- 17.2.2 If the Trader withholds payment of the whole of or any part of an invoice or other statement of amounts payable under this Contract, the procedure for resolving such dispute shall be as follows:
- 17.2.2.1 within seven days of service of a notice by Nexus stating a sum that has fallen due pursuant to this Contract remains unpaid, the Parties shall meet to discuss the disputed aspects of the invoice or statement with a view to resolving the dispute in good faith;
 - 17.2.2.2 if, within seven days of that meeting (the "**first meeting**"), the Parties are for any reason still unable to agree the disputed aspects of the invoice or statement, each Party shall promptly (and in any event within seven days) prepare a written summary of the disputed aspects of the invoice or statement and the reasons for each such dispute and shall submit the summaries to the senior officer of each Party;
 - 17.2.2.3 within twenty eight (28) days of the first meeting, the senior officers shall meet with a view to resolving all disputes; and
 - 17.2.2.4 if no resolution results within fourteen (14) days of that meeting, either Party may refer the dispute for resolution under the Metro ADRR.

17.3 Performance Orders

- 17.3.1 For the purposes of section 39 of the Arbitration Act 1996, should any Relevant Dispute be allocated in accordance with the Metro ADRR to arbitration under Chapter F of the Metro ADRR, the arbitrator shall have power to order on a provisional basis any relief which he would have power to grant in a final award including Performance Orders.
- 17.3.2 A Performance Order:
- 17.3.2.1 is an order made under clause 17.3.3.2, relating to a Relevant Dispute, whether by way of interim or final relief; and
 - 17.3.2.2 may be applied for by Nexus or the Trader in the circumstances set out in clause 12.1, subject to the qualifications in clause 13.7,
- and an application for a Performance Order shall be without prejudice to any other remedy available to the claimant under this Contract (whether final or interim or by way of appeal).
- 17.3.3 Without prejudice to any additional remedies that may be ordered by the arbitrator under clause 17.4, where a dispute is allocated in accordance with the Metro ADRR to arbitration and a party has applied for a Performance Order, the Parties shall agree in a Procedure Agreement that:
- 17.3.3.1 the arbitrator shall decide as soon as possible whether the application is well founded or not; and
 - 17.3.3.2 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.

17.4 Remedies

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

17.4.1.1 the powers specified in sections 48(3) to (5) of the Arbitration Act 1996;

17.4.1.2 the powers specified in the Metro ADRR;

17.4.1.3 the power to make Performance Orders; and

17.4.1.4 the power to order within the same reference to arbitration any relief specified in clauses 17.4.1.1 to 17.4.1.3 (inclusive) consequent upon, or for the breach of, any interim or final Performance Order previously made.

17.5 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.

18. CONFIDENTIALITY

18.1 No party shall make, or permit any person to make, any public announcement concerning this Contract without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).

18.2 During the term of this Contract and for a period of ten (10) years after termination or expiry of this Contract, a Recipient of Confidential Information from a Disclosing Party shall keep that information strictly confidential and shall not copy, record or use it or disclose it other than for the purposes of the proper performance of, or to exercise its rights under, this Contract (both of which shall include disclosure under equivalent terms to the Recipient's employees, officers, representatives or advisors) or with the prior written consent of the Disclosing Party.

18.3 The obligations in this clause 18 shall not extend to any matter if (and only to the extent that) it is required by law, governmental or regulatory authority (including any relevant security exchange and/or the Serious Fraud Office), any court or other authority of competent jurisdiction.

18.4 If (and only to the extent that) the Disclosing Party's Confidential Information is no longer required by the Receiving Party for the purposes of the proper performance of, or to exercise its rights under, this Contract, the Disclosing Party shall (and ensure that its employees, officers, representatives or advisors) shall either promptly return the Confidential Information which is in its control, power or possession to the Disclosing Party or (at the Disclosing Party's option) promptly destroy it and certify to the Disclosing Party that it has done the same.

19. FREEDOM OF INFORMATION

- 19.1 The Trader acknowledges (and shall procure that its agents and subcontractors acknowledge) that Nexus is subject to the requirements of the FOIA. Accordingly, the Trader shall (and shall procure that its agents and subcontractors shall):
- 19.1.1 provide all necessary assistance and co-operation as reasonably requested by Nexus to enable Nexus to comply with its obligations under the FOIA including compliance with the timescales for compliance set out in section 10 of the Freedom of Information Act 2000 or Regulation 5 of the Environmental Information Regulations 2004 as applicable;
 - 19.1.2 transfer to Nexus any Request for Information received by the Trader (or its agents of subcontractors) as soon as practicable and in any event within two (2) Business Days of receiving any such Request for Information; and
 - 19.1.3 provide Nexus with a copy of all Information stipulated in a Request For Information which is in the Trader's possession or control (or that of the relevant agent or subcontractor) in the form that Nexus requires within five (5) Business Days (or such other period as Nexus may reasonably specify) of Nexus's request for such Information.
- 19.2 The Trader acknowledges that Nexus may be required under the FOIA to disclose Information without consulting or obtaining consent from the Trader. Nexus shall notify the Trader of any Request For Information that seeks disclosure of Confidential Information of the Trader to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) Nexus shall be responsible for determining in its absolute discretion whether any Information and/or any other information is exempt from disclosure in accordance with the FOIA.
- 19.3 Subject to clauses 19.1 and 19.2, by no later than the date which is thirty (30) Business Days after the date of this Contract (or any variation to this Contract) the Trader shall provide to Nexus details of any Information or provision of this Contract which the Trader believes are exempt from disclosure in accordance with the provisions of FOIA ("**Commercially Sensitive Information**");
- 19.4 For each item of Commercially Sensitive Information, the Trader should specify:
- 19.4.1 the exact piece of Information or provision of the Contract (or variation to the Contract) that the Trader believes should be exempt from disclosure; and
 - 19.4.2 the reason why the Trader believes that such exemption of Commercially Sensitive Information is justified in accordance with FOIA.
- 19.5 Nexus shall consult with the Trader in relation to the proposed Commercially Sensitive Information. If the Trader and Nexus are unable to agree upon any proposed Commercially Sensitive Information, Nexus shall be entitled to determine, in its absolute discretion, whether or not such information shall be treated as Commercially Sensitive Information. To the extent that the Trader does not provide details of Commercially Sensitive Information in accordance

with clause 19.3, then Nexus shall be entitled to assume that no Information and none of the provisions of the Contract are subject to exemption in accordance with the provisions of FOIA.

20. ASSIGNMENT AND TRANSFER

20.1 Subject to clauses 20.2 and 20.3, neither Party shall assign, novate, subcontract or otherwise transfer any of its rights, obligations or liabilities under or in connection with this Contract:

20.1.1 without the prior written consent of the other Party which shall not be unreasonably withheld or delayed; or

20.1.2 without the approval of the ORR in accordance with clause 20.4.

20.2 Each party is entitled to subcontract their respective maintenance responsibilities in connection with the Sidings. In such circumstances, each Party shall notify the other of the identity of their subcontractor at least five (5) business days prior to such subcontractor undertaking any works. The appointment by a Party of a subcontractor shall not relieve that Party of any obligation under this Contract and the acts and omissions of such subcontractor shall, for the purposes of this Contract, be deemed to be acts or omissions of the Party that appointed the subcontractor.

20.3 Subject to clause 20.4, either Party may assign, novate, subcontract or otherwise transfer, or deal in any way with, any of its rights, obligations or liabilities under or in connection with this Contract to:

20.3.1 any of such Party's subsidiaries; or

20.3.2 in the case of Nexus, to any successor body of Nexus, including any party who may become the owner of the Metro Shared Network,

in each case, without the consent of the other Party, or otherwise to any other third party with the prior consent of the other Party (such consent not to be unreasonably withheld or delayed). A Party shall take all such steps as may reasonably be required by the other Party in order to effect any transaction contemplated by this clause 20.3. It is acknowledged and agreed by the Trader that it shall be reasonable to include any amendments that are a factual and necessary consequence of any change in the status of the Metro Shared Network.

20.4 No such novation, assignment or transfer of this Agreement pursuant to clause 20.3 or clause 14.3.2 shall have effect unless approved by the ORR and effected in accordance with the conditions (if any) of its approval.

21. MISCELLANEOUS

21.1 Non-waiver

Any delay or failure by a party in exercising, or any waiver by a party of, its rights under or in connection with this Contract will not limit or restrict the future exercise or enforceability of those rights.

21.2 Relationship of the Parties

Nothing in this Contract is intended or shall be construed as creating a partnership, joint venture, relationship of principal and agent or any other legal relationship between the Parties that would impose liability upon one party for the act or failure to act of the other. Neither party has the authority or power to make representations or bind the other in any way.

21.3 Variations

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

No variation of this Contract shall be valid unless it is in writing and signed by, or on behalf of each of the Parties to this Contract, and, subject to clause 21.3.2, has been approved by the ORR.

21.3.2 *Office of Rail and Road approval needed*

As at the date of this Contract, modifications of the following do not require the approval of the Office of Rail and Road under section 22 of the Act:

21.3.2.1 modifications effected by virtue of any of the Schedules to this Contract unless the relevant provision expressly states that it requires the approval of the ORR; and

21.3.2.2 modifications effected by virtue of clause 21.6.

Any amendment made to the Plan requires the ORR's approval under section 22 of the Act (except as contemplated in clause 4.4.1).

21.3.3 *Conformed copy of Agreement*

Nexus shall produce and send to Prax and to the ORR a conformed copy of this Contract within 28 days of the making of any amendment or modification to this Contract.

21.4 Entire Contract

21.4.1 This Contract constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Commencement Date by, or on behalf of, the Parties and relating to its subject matter.

21.4.2 Each party confirms that it has not relied upon, and shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Contract) unless that warranty, statement, representation, understanding or undertaking is expressly set out in this Contract.

21.4.3 Neither party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Contract.

21.5 Notices

Any notice to be given under this Contract shall be in writing and signed by, or on behalf, of the party giving it. Notices shall be delivered to the recipient and address set out in this clause 21.5:

	Nexus	Trader
Email	traincontracts@nexus.org.uk (with a copy to: contactmetro@nexus.org.uk)	legal@prax.com (with copies to: [REDACTED] ([REDACTED]); and [REDACTED])
Postal Address	Nexus House, St James' Boulevard, Newcastle upon Tyne, NE1 4AX	Harvest House Horizon Business Village, 1 Brooklands Road, Weybridge, Surrey, KT13 0TJ
For the attention of	Commercial Manager	Legal ; and [REDACTED] and [REDACTED]

Delivery:

Manner of Delivery	Deemed time of delivery	Proof of Service
Email	9.00 am on the first Business Day after sending.	Dispatched in an emailed pdf form to the correct email address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00 am and 5.00 pm on a Business Day. Otherwise, delivery will occur at 9.00 am on the same Business Day (if delivery is before 9.00 am) or 9.00 am on the next Business Day (if after 5.00 pm).	Properly addressed and delivered as evidenced by signature of a delivery receipt.
Prepaid, Recorded delivery or other service providing proof of delivery	At the time recorded by the delivery service, provided that delivery is between 9.00 am and 5.00 pm on a Business Day. Otherwise, delivery will occur at 9.00 am on the same Business Day (if delivery is before 9.00 am) or 9.00 am on the next Business Day (if after 5.00 pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt.

21.6 **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 clause 21.5 by giving notice of such modification:

21.6.1 to the other party as soon as reasonably practicable; and

21.6.2 to the Office of Rail and Road within 14 days of such modification.

21.7 **Counterparts**

This Contract may be executed in any number of counterparts, and by the Parties as separate counterparts but will not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Contract, but all the counterparts shall together constitute one and the same contract.

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

21.8.1 *Application to third parties*

A person who is not a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("**CRTPA**") to enforce any term of the Contract. This clause 21.8 will not affect any right or remedy of any person which exists, or is available, otherwise than pursuant to CRTPA.

21.8.2 *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 Contract.

22. **COSTS ETC. PAYABLE BY TRADER**

Any costs and expense payable by the Trader to Nexus under this Contract shall be invoiced (and be accompanied by reasonable evidence of such costs and expenses) and paid by the Trader on demand.

IN WITNESS WHEREOF this Contract has been entered into as a deed on the day and year stated on page number 1 of the Contract.

Executed as a deed, but not delivered until the)
date specified on page 1, by **TYNE AND**)
WEAR PASSENGER TRANSPORT)
EXECUTIVE by the affixing of its common)
seal in the presence of:



Signature



Name (block capitals)



Authorised Signatory

Executed as a deed, but not delivered until the)
date specified on page 1, by **PRAX**)
TERMINALS LIMITED, acting by a)
director in the presence of a witness:

Signature

Name (block capitals)

Authorised Signatory

Witness signature

Witness name (block capitals)

Witness address

.....
.....

Witness occupation

Executed as a deed, but not delivered until the)
date specified on page 1, by **TYNE AND**)
WEAR PASSENGER TRANSPORT)
EXECUTIVE by the affixing of its common)
seal in the presence of:)

SEAL

Signature

Name (block capitals)

.....
Authorised Signatory

Executed as a deed, but not delivered until the)
date specified on page 1, by **PRAX**)
TERMINALS LIMITED, acting by a)
director in the presence of a witness:

Signature

Name (block capitals)

Authorised Signatory

Witness signature

Witness name (block capitals)

Witness address

Witness occupation

Schedule 1 PLAN

Schedule 2 ACCESS ARRANGEMENTS



PRAX TERMINALS STANDARD OPERATING PROCEDURE

PROCEDURE NAME	Emergency Access to Jarrow Terminal Rail Sidings by NEXUS rail
PROCEDURE NUMBER	L3-JARROW-08-OPERATIONS-PROCEDURE-418
VERSION NUMBER	1.0
TERMINAL	Jarrow
OWNER	[REDACTED]

CONTENTS:

1.0	Purpose	6.0	Roles, Responsibilities & Competency
2.0	Scope	7.0	Procedure
3.0	Definitions & Abbreviations	8.0	References
4.0	Frequency	9.0	
5.0	Equipment Required	10.0	

REVIEW/REVISION HISTORY:

VERSION	SUMMARY OF REVISION	COMPLETED BY	AUTHORISED BY
1.0	New Procedure	[REDACTED]	[REDACTED]



1.0 PURPOSE

This procedure is to set out the required steps that shall be followed to gain Emergency access to Jarrow terminal Rail Sidings by NEXUS rail.

2.0 SCOPE

In the event of an emergency NEXUS rail may need access to the main rail line via Prax Jarrow terminal. Access will be via gate 6 by road vehicle or pedestrian only.

Road vehicle access will go as far as the north end of the rail bridge, pedestrians can cross the bridge on foot. Rail bogies can cross the single-track bridge if the bogie is brought to site by road.

Note! Access to the terminal rail sidings is not assured as high-risk activities may be taking place, however, each access request will be assessed on a case-by-case basis and all endeavors will be taken to grant access.

3.0 DEFINITIONS & ABBREVIATIONS

TERM	DEFINITION
Event	A generic term for types of occurrences. Events may involve Prax employees, agency and self-employed staff, contractors and sub-contractors, visitors, and members of the public. An event will have resulted, or have had the potential to result, in injury / harm to people, environment, asset, or reputation.

4.0 FREQUENCY

This procedure applied each time an emergency request is made by Nexus rail.

5.0 EQUIPMENT REQUIRED

None

6.0 ROLES, RESPONSIBILITIES & COMPETENCY

ROLE	RESPONSIBILITY	COMPETENCY
Terminal Manager	<p>The Terminal Manager is responsible for:</p> <ul style="list-style-type: none"> ▪ Ensuring this procedure has been issued to all Terminal Operators/Terminal Supervisor. ▪ Ensuring this procedure has been read and understood by all Terminal Operators/Terminal Supervisor. 	<p>1. Knowledge of the terminals policies and procedures.</p>



ROLE	RESPONSIBILITY	COMPETENCY
Terminal Supervisor	<p>The Terminal Supervisor is responsible for:</p> <ul style="list-style-type: none"> Reading and understanding this procedure and to raise any anomalies with the Terminal Manager. 	1. Knowledge of the terminals policies and procedures.
Terminal Operator	<p>The Terminal Operator is responsible for:</p> <ul style="list-style-type: none"> Reading and understanding this procedure and to raise any anomalies with the Terminal Manager. Reporting of any events. 	1. Knowledge of the terminals policies and procedures.
NEXUS	<p>NEXUS is responsible for:</p> <ul style="list-style-type: none"> Reading and understanding this procedure. Ensuring this procedure has been read and understood by all relevant parties. 	

7.0 PROCEDURE

7.1 PERSONAL PROTECTIVE EQUIPMENT

PPE	Gloves	Head gear	Foot protection	Goggles	Hearing	Breathing
SYMBOL						
REQUIRED	✓	✓	✓	✓	x	x

7.2 FORMS

- None



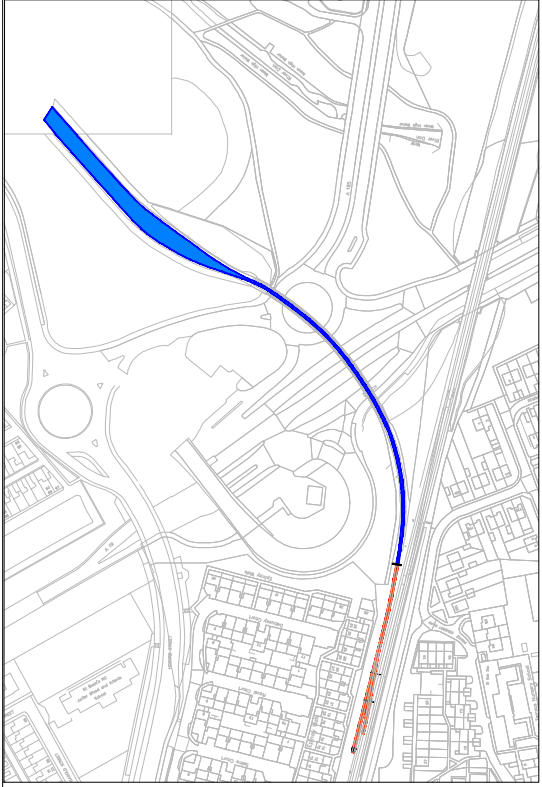
7.3 PROCEDURE

STEP	RESPONSIBILITY	ACTION
7.3.1	NEXUS	Contact Terminal Duty Operator either by phone or presenting at the main terminal admin building lobby (I.D. will be required). Fully explain the situation/reason for wanting Access to the rail sidings. Terminal operations phone number - 0191 428 0101 Prax Terminals Ltd Jarrow Terminal Priory Road Jarrow Tyne and Wear NE32 3QT
7.3.2	Terminal Operator	Confirm I.D. and reasoning, escort or meet NEXUS at Gate 6 and escort NEXUS down and through the partition gates.
7.3.3	NEXUS	If intermittent or continuous access is required, NEXUS or the emergency services must police gate 6 to keep the sidings secure.
7.3.4	Terminal Operator	All events shall be recorded on the My Compliance safety management system.

8.0 REFERENCES

DOC NUMBER	DOCUMENT NAME	AUTHOR
None		

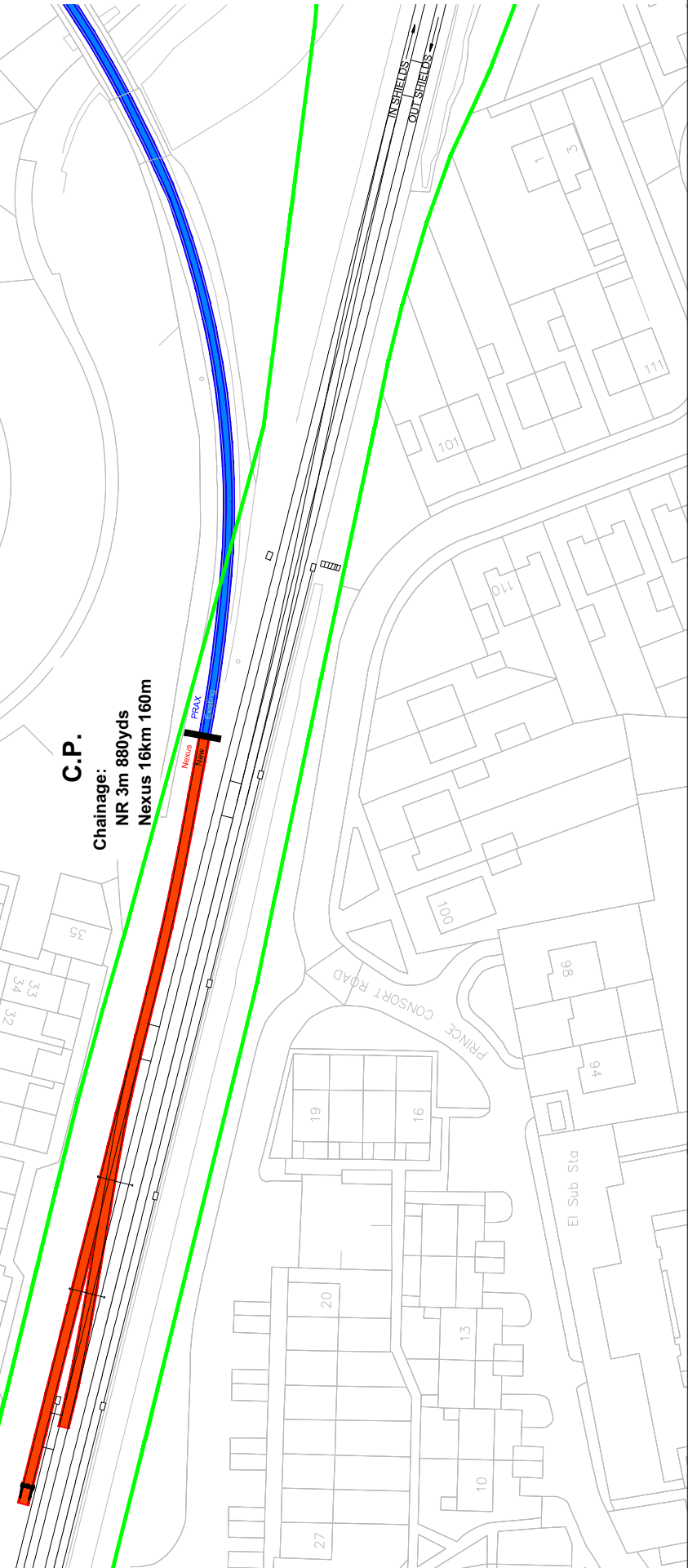
Schedule 3 INDICATIVE PLAN



Copyright © 2015 by the Metro Flow Engineering Office. All rights reserved. This drawing is the property of the Metro Flow Engineering Office. It is not to be used, copied, or reproduced in any form without the prior written consent of the Metro Flow Engineering Office. The information contained herein is confidential and proprietary to the Metro Flow Engineering Office. It is not to be used, copied, or reproduced in any form without the prior written consent of the Metro Flow Engineering Office. The information contained herein is confidential and proprietary to the Metro Flow Engineering Office. It is not to be used, copied, or reproduced in any form without the prior written consent of the Metro Flow Engineering Office.

NOTES

C.P.
 Chainage:
 NR 3m 880yds
 Nexus 16km 160m



REV	DATE	DESCRIPTION	BY	CHKD
1	2015.05.14	Issue for Construction	MM	MM
2	2015.05.14	Issue for Construction	MM	MM
3	2015.05.14	Issue for Construction	MM	MM
4	2015.05.14	Issue for Construction	MM	MM
5	2015.05.14	Issue for Construction	MM	MM
6	2015.05.14	Issue for Construction	MM	MM
7	2015.05.14	Issue for Construction	MM	MM
8	2015.05.14	Issue for Construction	MM	MM
9	2015.05.14	Issue for Construction	MM	MM
10	2015.05.14	Issue for Construction	MM	MM

AGREEMENT

METRO FLOW
 PRAX CONNECTION AGREEMENT
 PROPOSED CONNECTION POINT

DATE: 15.12.2010
 DRAWING NUMBER: BB025-202017-15-004

Scale: 1:1000

Project: Metro Flow Engineering Office
 Location: Metro Flow Engineering Office
 Date: 15.12.2010

Scale: 1:1000

Project: Metro Flow Engineering Office
 Location: Metro Flow Engineering Office
 Date: 15.12.2010

BB025-202017-15-004
 B