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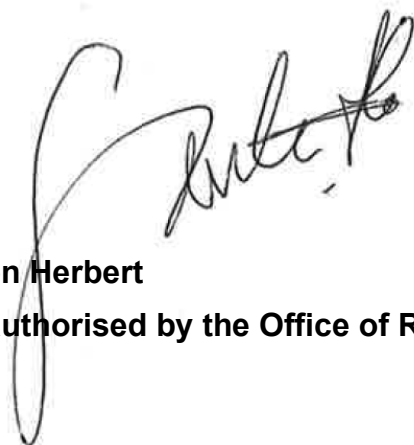
22 August 2022

Access Agreement between Tyne and Wear Passenger Transport Executive (Nexus) and DB Cargo Limited

Pursuant to section 18 of the Railways Act 1993, I approve the terms of the Access Agreement submitted to ORR by Nexus and DB Cargo on 23 June 2022, to the extent that the agreement is covered by the Railways Act 1993 and where relevant network is not exempted under the Railways (Class and Miscellaneous Exemptions) Order 1994, and subject to the modifications, on which you have been consulted, as specified in the schedule to these directions.

I direct Nexus to enter into the agreement as described in the annex, no later than 11 September 2022.

Nexus shall be released from the duty to enter into the agreement if DB Cargo does not enter into it as described on or before 11 September 2022.



Gordon Herbert

Duly authorised by the Office of Rail and Road



SCHEDULE

Modifications to the access agreement submitted

A. *General changes in respect of ORR's role:*

- Remove references to Schedule 4A of the Act in clause 18.2.1.
- Insert the following clause at 18.2A:

18.2A Review of terms in the first two years following the Transfer Date

18.2A.1 Subject to the remaining provisions of this clause and notification to ORR, on or before 12 September 2024, the parties to this contract shall commence (on the instigation of either party) a combined review of the terms of this contract and associated documents including the Metro Network Code (together with all other access beneficiaries holding Access Agreements) to prepare a document (a “**Proposal**”) that proposes a simpler form of contract (including the Metro Network Code) for the parties to use (which is proportional to the Metro Shared Network) as may be reasonably necessary and expedient, taking into account:

- (a) the nature and extent of the Metro Shared Network;
- (b) the parties’ experience of the contract (and all other Access Agreements) and the Metro Network Code following the Transfer Date;
- (c) any relevant guidance or regulatory statements published by ORR;
- (d) any material issues relating to the interface between the operation of the contract (and all other Access Agreements) and with the operation of corresponding arrangements in the Network Rail Track Access Agreements; and
- (e) where continued alignment between the operation of the contract (and all other Access Agreements) and with the operation of corresponding arrangements in the Network Rail Track Access Agreements remains beneficial for the parties, and the Proposal shall include proposed amendments reflecting a simpler form of contract.

18.2A.2 The parties shall, within a reasonable time period and in any event no later than 60 Working Days of commencing the combined review with all access beneficiaries holding Access Agreements (as described in clause 18.2A.1), agree the Proposal (such Proposal being agreed by all other access beneficiaries holding Access Agreements). Following such agreement, and any wider industry consultation as required by any relevant ORR guidance, Nexus shall submit the proposed contract amendments to ORR under section 22 of the Act. After ORR approval, clause 18.2.4 shall apply.

18.2A.3 If the parties fail to agree a Proposal within the timeframe specified in clause 18.2A.2, Nexus shall inform ORR that no Proposal was agreed and accordingly there will not be a Proposal to take forward in accordance with clause 18.2A.2 (with regard to an industry consultation and the submission of proposed contract amendments to the ORR).

18.2A.4 This clause 18.2A and any report to ORR under 18.2A.3 shall not limit either party's right to propose any other changes to the contract pursuant to and in accordance with clause 18.2.

B. Changes specific to the Access Agreement with DB Cargo:

- In Schedule 5, annex 1 of DB Cargo's Access Agreement, the Rights Table is to be amended so to reflect DB Cargo's current balance of firm rights taking into account that Colas Rail is now the incumbent freight operator on the Jarrow Branch Line.

C. Minor changes to the Access Agreements and associated documentation

The following changes also to be made:

1 Access Agreements

- (a) remove "DRAFT WITHOUT PREJUDICE AND SUBJECT TO CONTRACT" from the cover page.
- (b) remove any 'Notes'.
- (c) 'service provider', as a defined term, to be capitalised where used.
- (d) in clause 5.3, the cross references to clause '5.2(d)' to be removed (as redundant).
- (e) In Schedule 1 contact details to be checked and populated.
- (f) in Schedule 4, the cross reference in definition of "Early Notice Possession" to be updated to refer to sections 4 and 5 (removing the cross reference to section 7).

2 Metro Network Code

- (a) remove 'draft' on covering page.
- (b) add the date on covering page as appropriate.
- (c) remove "DRAFT SUBJECT TO FINALISATION" header on pages 2 and 3.
- (d) remove of document reference number in footer.
- (e) part A, para 1.1(a) italicise the sub-heading for consistency.
- (f) part A, para 1.1(h) – punctuation correction to the list (i) to (iii) (to amend the list so that it reads: "(i) the Metro Network Code; (ii) the Access Agreement; and (iii) time limits").
- (g) part A, para 1.2 – the definition of Metro Access Dispute Resolution Rules to have the words "and annexed to this Metro Network Code" added at the end of the definition (this is consistent with Rule J48 which describes the Rules as forming part of the Metro Network Code). In addition:

- (i) page 2 of the Metro Network Code “Arrangement of Parts and Conditions” to have “Annex” and “Metro Access Dispute Resolution Rules” added as a final line.
- (ii) the Metro Access Dispute Resolution Rules will be appended as an Annex to the Metro Network Code.
- (h) part A, para 1.2 – add a full stop at the end of the definition of “Working Timetable”.
- (i) part B, definitions – remove the “; and” at the end of the definition of “Performance Monitoring System” and replace with a full stop.
- (j) part B, para 2.4.1 – amend to read “in accordance with Condition B2.3.2”
- (k) part C, definitions – insert “and” after the definition of “Metro Proposal for Change”.
- (l) part C, para 3.3 – amend to read as “The procedural requirements which are required to have been followed...”
- (m) part D, para 1.1.9 – amend to read as “and, as may be required, with Network Rail”.
- (n) part D, definitions – population of relevant dates into the square brackets in the definition of “Metro Timetable Planning Rules”. Nexus will confirm these dates prior to completion.
- (o) part D, para 2.1.6 – “Timetable Period” to be put in bold.
- (p) part D, para 3.2.1 – change “5pm” to “1700”.
- (q) part D, para 8.5 – paragraph (d) change to a hanging paragraph (sitting beneath and applicable to (a) to (c), rather than as a part of the list).
- (r) part H, definitions – the definition of “Metro Shared Network ROC Section” – remove blank sub-paragraphs (a), (b) and (i).

3 Metro Access Disputes Resolution Rules

- (a) remove ‘draft’ on the covering page.
- (b) add date on covering page, as appropriate.
- (c) remove blank page on page 18.
- (d) Chapter F, para 24 – the heading “Awards” to be put in bold.
- (e) Chapter H, para 23 – the heading “Length of References, Responses and Joint References and method of service” put in bold.
- (f) Chapter I, paras 10 and 30 – the titles “Procedure” and “Confidentiality” put in bold.