

Dated 4th July 2018

**Deed of Co-operation relating to the Transport Joint
Committee and the North East LEP**

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Deed of Co-operation

This Deed is made on  day of July 2018 between:

- (1) The County Council of Durham, The Council of the Borough of Gateshead, The Council of the City of Newcastle upon Tyne, The Council of the Borough of North Tyneside, Northumberland County Council, The Council of the Borough of South Tyneside and The Council of the City of Sunderland; and
- (2) The Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority (the "NECA");

together the "Parties".

Whereas:

- (A) The Constituent Authorities (as defined below) were established as local authorities by the Local Government Act 1972 with all the functions of City, Metropolitan Borough and County Councils, and in particular the Constituent Authorities are the local highway authority and local traffic authority for their area.
- (B) On 15 April 2014 NECA was established as a Combined Authority for the Combined Area by the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014 (SI 2014 No.1012).
- (C) The Parties to this Deed anticipate that consent shall be given to the making of an order by the Secretary of State for the reduction in size of the area of NECA and the creation of a new and separate mayoral combined authority covering the administrative areas of the North of Tyne Authorities (as defined below).
- (D) The purpose of the agreement is as a framework for collaborative working and continuing the strong working relationship of the Constituent Authorities and the overall commitment that the two Combined Authorities will work together constructively; will continue partnership arrangements at relevant geographies and will unequivocally support the work of the North East Local Enterprise Partnership and the North East Strategic Economic Plan (or appropriate regional strategic economic policy document to be developed by the North East Local Enterprise Partnership).
- (E) The intention is that the new arrangements replicate, as far as possible, the governance already in place in relation to transport.
- (F) The opportunity will be taken to strengthen executive officer support for transport, reflecting the strategic importance of transport across the North East and to ensure that all decision making is transparent whilst maintaining a clear distinction between the functions exercised by the Transport Joint Committee (as defined below) and the functions exercised by the individual local highway authorities. The Proper Officer for Transport, as set out in the New Order, should be of Chief Officer level.
- (G) Local Transport Plan funding and Highways Maintenance funding will continue to be directed to each of the Constituent Authorities.
- (H) The Council of the City of Sunderland and NECA entered into a Host Authority and Accountable Body Agreement dated 14 June 2017 and the Constituent Authorities and NECA

entered into a Deed of Operation (as defined below) in respect of transport matters within the administrative area of NECA and the Parties intend to continue those working arrangements between the two Combined Authorities and between them and the Constituent Authorities in particular to support the work of North East LEP and the North East Strategic Economic Plan.

This Deed witnesses as follows:

1. **Definitions**

1.1. In this Deed:

"Authority"	means any of the Constituent Authorities;
"Chief Executive"	means the person discharging the role of Head of Paid Service of an Authority or Combined Authority;
"Chief Executive Group"	means the group established in accordance with clause 4.1;
"Combined Area"	means the administrative areas of the Constituent Authorities;
"Combined Authorities"	means NECA and MCA (and "Combined Authority" shall mean either one of them);
"Constituent Authorities"	means the Councils for the Local Government areas of Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland;
"Constitution"	means the Constitution of MCA or NECA as the case may be;
"County Councils"	means DCC and NCC;
"DCC"	means the County Council of Durham;
"Deed of Accession"	means a Deed in the form attached at Schedule 1 or as near thereto as possible under which the signatory becomes a Party to this Deed;
"Deed of Operation"	means the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Deed of Operation made between the NECA and the Constituent Authorities and entered into on 29 April 2014 as amended from time to time;
"Effective Date"	means the date of satisfaction of the last to be satisfied of the conditions set out in clause 3.1;

"Host Combined Authority"	means either of the Combined Authorities as determined in accordance with this Deed acting as accountable body for either the Transport Joint Committee or the North East LEP;
"LGA 1972"	means the Local Government Act 1972;
"Invest NE"	means the inward investment activities carried out by NECA at the date of this agreement under the name or style "Invest North East England";
"LDEDCA 2009"	means the Local Democracy, Economic Development and Construction Act 2009;
"Mayoral Combined Authority" or "MCA"	means the new combined authority for the administrative areas of the North of Tyne Authorities;
"Monitoring Officer"	means, as appropriate, each person appointed by NECA and MCA respectively pursuant to their Constitutions;
"NCC"	means Northumberland County Council;
"New Order"	means the order which the Parties anticipate will be made by the Secretary of State for Housing, Communities and Local Government with the effect of reducing the size of the area of NECA, the creation of the MCA and other matters;
"Nexus"	is the executive body of the NECA and pursuant to the New Order the MCA, for the purposes of Part 5 of the Local Transport Act 2008 and Part 6 of the Local Democracy Economic Development and Construction Act 2009;
"North East LEP"	means the North East Local Enterprise Partnership constituted in July 2011 from representatives of local businesses, local authorities and educational institutions;
"North East LEP Host Authority and Accountable Body Agreement"	means the agreement made on 14 June 2017 between the Parties and the North East LEP;
"North of Tyne Authorities"	means the Councils for the Local Government areas of Newcastle upon Tyne, North Tyneside and Northumberland;
"Order"	means the Durham, Gateshead, Newcastle upon Tyne, North Tyneside, Northumberland, South Tyneside and Sunderland Combined Authority Order 2014 (SI 2014

No.1012);

"Proper Officer for Transport"	means the proper officer for transport being the principal officer to assist the Joint Committee for Transport in the exercise of its transport functions, appointed pursuant to the New Order and Section 5.6 of this Deed;
"Regional Transport Team"	means the transport officers of the Parties working on transport matters in the Combined Area at the date of this Deed employed or engaged by the North East Combined Authority or successors to those officers;
"Transport Joint Committee"	means the joint committee established in accordance with the New Order;
"TWSC"	means the Tyne and Wear Sub-Committee of the Transport Joint Committee whose establishment is referred to at clause 5.3;
"Tyne and Wear Authorities"	means the Councils for the Local Government areas of Gateshead, Newcastle upon Tyne, North Tyneside, South Tyneside and of Sunderland; and
"2012 Regulations"	means the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012.

2. **Interpretation**

- 2.1. Clause, Schedule and Paragraph headings shall not affect the interpretation of this Deed;
- 2.2. The Schedule and Appendices form part of this Deed and shall have effect as if set out in full in the body of this Deed. Any reference to this Deed includes the Schedule and Appendices.
- 2.3. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular and reference by way of male pronoun shall include references to female pronouns and vice versa.
- 2.4. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 2.5. A reference to a statute or statutory provision shall include all subordinate legislation made under the relevant statute or statutory provision from time to time.
- 2.6. A reference to "this Deed" or to any other deed, agreement or document referred to in this Deed is a reference to this Deed or such other deed, document or agreement as varied from time to time.
- 2.7. References to Clauses, Schedules and Appendices are to the Clauses, Schedules and Appendices of this Deed and references to Paragraphs are to Paragraphs of the relevant Schedule.

- 2.8. No person other than a Party to this Deed shall have any rights to enforce any term of this Deed.
- 2.9. This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 2.10. If any court or competent authority finds that any provision of this Deed (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Deed shall not be affected.

3. Commencement Date, Term and Additional Party

- 3.1. This Deed is signed on the date appearing at the start of it but shall come into force only upon the establishment of the Mayoral Combined Authority by the New Order.
- 3.2. This Deed shall remain in effect from the Effective Date until terminated in accordance with its terms.
- 3.3. The North of Tyne Authorities agree and shall procure that within 90 days of the New Order coming into effect the MCA shall become a party to this Deed by signing a Deed of Accession and serving a copy of it on each other Party and the Parties agree that with effect from the execution of the Deed of Accession the MCA shall be a party to and be subject to the obligations and shall be entitled to the benefits attributable to it under this Deed.
- 3.4. Prior to the execution and delivery of the Deed of Accession the North of Tyne Authorities shall act and shall procure that MCA shall act as if the terms of this Deed applied to MCA and that MCA shall act and be liable accordingly for matters arising during that period.

4. Constituent Authorities and Chief Executive Group

- 4.1. The Constituent Authorities, NECA and MCA shall maintain during the term of this Deed a Chief Executive Group comprising:
 - 4.1.1. the Chief Executive of each of the Constituent Authorities;
 - 4.1.2. the Head of Paid Service of each of NECA and MCA (to the extent that they are separate post-holders and are not also a Chief Executive of a Constituent Authority); and
 - 4.1.3. the Executive Director of North East LEP (to the extent that he or she is a separate post-holder and is not also a Chief Executive of a Constituent Authority or a Combined Authority);(and in each case they may nominate a deputy to attend meetings of the Chief Executive Group in their place).
- 4.2. The Chief Executive Group shall be responsible for:
 - 4.2.1. the support and sponsorship of the effective strategic direction of executive activities across the Combined Area; and

- 4.2.2. receiving reports from, and giving strategic direction to, the Proper Officer for Transport.

5. **The Exercise of Transport Powers and Functions**

- 5.1. NECA and the Constituent Authorities have to date, pursuant to s.101(5) of the LGA 1972 discharged certain functions relating to transport jointly and the Combined Authorities shall in accordance with the New Order and this Deed operate through a Transport Joint Committee.
- 5.2. Until the Transport Joint Committee adopts its own rules and procedure it shall operate in accordance with the NECA Leadership Board rules and procedure set out in Part 4 of the NECA Constitution insofar as they are consistent with the New Order and the terms of this Deed.
- 5.3. The Transport Joint Committee shall establish a TWSC and such other sub-committees as it deems fit.
- 5.4. The Transport Joint Committee shall be constituted by the Combined Authorities in accordance with the New Order and operate in accordance with the New Order.
- 5.5. The New Order shall prescribe the matters which require the unanimous consent of the Transport Joint Committee and all other matters shall be determined by a simple majority of votes.
- 5.6. In addition to the matters specified in the New Order for determination by unanimous decision, the following matters shall be determined solely by the Transport Joint Committee by majority decision:
- 5.6.1. the appointment of a Host Combined Authority to hold, manage and account for the finances and staff deployed in relation to the discharge of transport functions in the Combined Area;
- 5.6.2. determining its own rules of procedure for the conduct of its proceedings (which to the extent necessary will be incorporated into the Host Combined Authority's standing orders or constitution) subject to the provisions on the quorum and proceedings contained in Schedule 2 of the New Order;
- 5.6.3. the appointment of members to any sub-committee and any individual co-optees to the Transport Joint Committee or any sub-committee;
- 5.6.4. the appointment and dismissal of the Proper Officer for Transport;
- 5.6.5. the approval of (and any amendment to or withdrawal of) all other major transport schemes (including such matters as Franchising Schemes, Advanced Quality Partnerships and/or Enhanced Partnership Plans and Schemes) which are funded from the North East transport budget which is managed by the Transport Joint Committee;
- 5.6.6. the approval of (and any amendment to or withdrawal of) a public transport strategy across the Combined Area;

- 5.6.7. decisions concerning the monitoring and overseeing of the activities and performance of the County Councils in the discharge of the transport functions delegated to them by the Transport Joint Committee;
 - 5.6.8. decisions concerning the monitoring the capital programme and the activities carried out by Nexus, NCC and DCC;
 - 5.6.9. decisions concerning recommendation or comments on the adequacy of resources, capacity and expert support required to assist the Proper Officer for Transport and the Regional Transport Team to discharge their functions; and
 - 5.6.10. decisions concerning governance including ensuring its own decision making is effective and ensuring the good governance of Nexus in accordance with the responsibilities applicable to the Combined Authorities as set out in the Transport Act 1968 and other relevant legislation.
- 5.7. In addition to the matters specified in 5.6, the following matters may be determined by the Transport Joint Committee by majority decision:
- 5.7.1. decisions concerning influence and/or co-ordination of strategic investment in the highway network across the administrative area of the Constituent Authorities;
 - 5.7.2. decisions concerning the co-ordination, with the statutory Highway Authorities, of the development of a joint highway management plan;
 - 5.7.3. the strategic influence of the development and operation of air, rail, road, river, sea and public transport networks;
 - 5.7.4. the approval of (and any amendment to or withdrawal from) formal partnership agreements and arrangements with external partners and other stakeholders (e.g. central government, MPs/MEPs, rail franchisors/franchisees, Transport for the North) on strategic transport issues;
 - 5.7.5. the formulation, development and monitoring of procedures for public consultation on, and lobbying for, the North East's transport policies including taking responsibility for the active promotion of the transport interests of the administrative areas of the Constituent Authorities;
 - 5.7.6. advising upon the borrowing limits of the Host Combined Authority in relation to transport matters pursuant to Section 3 of the Local Government Act 2003;
 - 5.7.7. the development of policies for the promotion and encouragement of safe, efficient and economic transport facilities and services;
 - 5.7.8. the formulation of general policies with respect to the availability and convenience of public passenger services across the Combined Area pursuant to Section 9A(5)-(7) of the Transport Act 1968.
- 5.8. In the exercise of functions in accordance with 5.5 to 5.7 above, the Transport Joint Committee shall not incur or cause to incur any expenditure other than that which the Transport Joint Committee has approved as the total budget relating to the discharge of

transport functions and which is administered by the Host Combined Authority for such purpose.

- 5.9. The Transport Joint Committee shall have no authority in relation to the Highways Maintenance Block Funding which shall be paid individually to the Constituent Authorities in the amounts specified by the Department for Transport.
- 5.10. The Parties shall procure that the Transport Joint Committee passport Local Transport Plan Integrated Transport Block Funding to each Authority and NEXUS minus any agreed top-slice to fund the Regional Transport Team and Proper Officer for Transport in accordance with the protocol agreed pursuant to 13.1 below.
- 5.11. The Proper Officer for Transport shall be responsible for developing in consultation with the Constituent Authorities and the Combined Authorities, (for approval by the Joint Committee), transport strategies and for facilitating operational and policy alignment on transport matters including the role of Nexus within the Combined Area or part or parts of it.
- 5.12. The Parties shall procure that:
 - 5.12.1. the Regional Transport Team shall report to the Proper Officer for Transport;
 - 5.12.2. the Proper Officer for Transport shall on a regular basis consult with and report to and take strategic direction from both the Chief Executive Group and the Transport Joint Committee; and
 - 5.12.3. the Proper Officer for Transport shall be an officer of the relevant Host Combined Authority and shall owe employment responsibilities and duties to the Head of Paid Service of the relevant Host Combined Authority.

6. **The Tyne and Wear Sub-Committee**

- 6.1. The TWSC shall be constituted by the Transport Joint Committee and in accordance with the New Order.
- 6.2. The following transport matters shall be reserved solely for the decision of the TWSC insofar as those matters relate to the Tyne and Wear Authority areas:
 - 6.2.1. the consideration and making of recommendations to the Transport Joint Committee on the creation and development of:
 - 6.2.1.1. Advanced Quality Partnership Schemes pursuant to sections 113C to 113O of the Transport Act 2000;
 - 6.2.1.2. Franchising Schemes pursuant to sections 123A to 123X of the Transport Act 2000; and
 - 6.2.1.3. Enhanced Partnership Plans and Schemes pursuant to sections 138A to section 138S of the Transport Act 2000
 - 6.2.2. implementing Concessionary Travel Schemes pursuant to Sections 93 to 105 of the Transport Act 1985;

- 6.2.3. implementing Advanced Ticketing Schemes pursuant to Sections 134C to 134G of the Transport Act 2000;
- 6.2.4. determining local bus information to be made available, and the way in which it should be made available, pursuant to Sections 139 to 143B of the Transport Act 2000;
- 6.2.5. determining the operation, performance and development of accessible transport provision (including the provision of grants) pursuant to Section 106 of the Transport Act 1985;
- 6.2.6. setting tolls in relation to the Tyne Tunnels;
- 6.2.7. appointing members to the Tyne and Wear Passenger Transport Executive (Nexus), the appointment and dismissal of the Director General of Nexus and discharging all other responsibilities falling on either of the Combined Authorities pursuant to the Transport Act 1968;
- 6.2.8. without limitation to 6.2.1 to 6.2.7 above:
 - 6.2.8.1. authorising the acquisition, disposal and development of land held by either of the Combined Authorities or NEXUS in relation to the transport functions discharged by the Transport Joint Committee (including pursuant to sub-sections 10(1)(xx), (xxii) and (xxiii) of the Transport Act 1968);
 - 6.2.8.2. determining the operation, performance and development of tendered bus services, bus stations/stops and passenger transport services pursuant to Section 10(1)(vi)(a) of the Transport Act 1968;
 - 6.2.8.3. monitoring the operation and performance of the metro service and the associated activities of NEXUS and recommending appropriate action;
 - 6.2.8.4. any other matter previously falling to be discharged by the Tyne and Wear Integrated Transport Authority prior to the creation of NECA unless such matter shall have been specifically reserved for decision by the Transport Joint Committee;
- 6.2.9. monitoring the operation and performance of bus, ferry and local rail services and recommending appropriate action;
- 6.2.10. such further transport related functions as may be delegated to it by the Transport Joint Committee.

7. Transport functions delivered by DCC and NCC



- 7.1. The transport functions delegated by NECA and the Constituent Authorities (as applicable) shall remain in place until the Transport Joint Committee determines otherwise.
- 7.2. The following transport functions shall be delegated by the Combined Authorities (acting through the Transport Joint Committee) to each of DCC and NCC in relation to their

respective administrative areas (and each County Council shall be able to exercise these respective functions provided that it does not cause the Host Combined Authority to incur any expenditure other than that which the Transport Joint Committee has authorised for such purposes):

- 7.2.1. Considering and recommending to the Transport Joint Committee the creation and development of:
 - 7.2.1.1. Advanced Quality Partnership Schemes pursuant to sections 113C to 113O of the Transport Act 2000;
 - 7.2.1.2. Franchising Schemes pursuant to sections 123A to 123X of the Transport Act 2000; and
 - 7.2.1.3. Enhanced Partnership Plans and Schemes pursuant to sections 138A to section 138S of the Transport Act 2000
- 7.2.2. Implementing Concessionary Travel Schemes pursuant to sections 93 -105 of the Transport Act 1985;
- 7.2.3. Implementing Advanced Ticketing schemes pursuant to sections 134C to 134G of the Transport Act 2000;
- 7.2.4. determining local bus information to be made available, and the way in which it should be made available, pursuant to Sections 139 to 143B of the Transport Act 2000;
- 7.2.5. Determining the operation, performance and development of accessible transport provision (including the provision of grants) pursuant to section 106 of the Transport Act 1985;
- 7.2.6. All obligations of County Councils relating to mandatory travel concessions pursuant to sections 145A to 150 of the Transport Act 2000;
- 7.2.7. Those functions of County Councils set out in Part IV of the Transport Act 1985 (Passenger Transport in areas other than Integrated Transport Areas) under;
 - 7.2.7.1. Section 63 - functions of local Councils with respect to passenger transport
 - 7.2.7.2. Section 81 - provision, maintenance and operation of bus stations
 - 7.2.7.3. Section 82 - bus stations: restriction on discriminatory practices.

8. **Accountable Body for the North East LEP and for Transport**

- 8.1. The Transport Joint Committee and North East LEP shall each determine which body shall be the accountable body for it.
- 8.2. The Constituent Authorities shall procure that NECA shall be the Host Combined Authority for the Transport Joint Committee and the functions discharged by it.

- 8.3. The Parties shall use their best endeavours to procure that as soon as reasonably practicable after this Deed comes into effect:
- 8.3.1. the MCA shall be the Host Combined Authority for the North East LEP and Invest NE and the North East LEP Host Authority and Accountable Body Agreement shall be terminated in accordance with its terms;
 - 8.3.2. no Constituent Authority shall be the accountable body for the North East LEP or the Transport Joint Committee;
 - 8.3.3. no Combined Authority may be the Host Combined Authority for both North East LEP and the Transport Joint Committee;
 - 8.3.4. the staff employed, seconded or otherwise engaged as members of the Regional Transport Team are seconded to NECA as soon as possible after an endorsement by the Transport Joint Committee in accordance with 8.2 above that NECA shall be its accountable body;
 - 8.3.5. the staff employed, seconded or otherwise engaged in discharging the functions of the North East LEP and Invest North East who are not already employed by NECA shall transfer to NECA in accordance with TUPE;
 - 8.3.6. immediately following the transfer of staff referred to in clause 8.3.5 above and subject to the agreement of the North East LEP, all of the staff engaged in discharging the functions of the North East LEP and Invest North East shall be seconded by NECA to the MCA;
 - 8.3.7. the staff seconded to NECA pursuant to clause 8.3.4 shall transfer to NECA in accordance with TUPE no later than ~~31st March~~ 2019;
1st April 
 - 8.3.8. the staff seconded to the MCA pursuant to clause 8.3.6 shall transfer to the MCA in accordance with TUPE no later than ~~31st March~~ 2019;
1st April 
 - 8.3.9. the said transfers of staff to NECA and the MCA respectively (pursuant to clauses 8.3.7 and 8.3.8) shall occur at the same time; and
 - 8.3.10. the Transport Joint Committee appoint a Proper Officer for Transport of Chief Officer level.
- 8.4. The relevant Host Combined Authority shall in discharging its obligations as accountable body for the Transport Joint Committee or the North East LEP respectively:
- 8.4.1. accept responsibility for financial accountability and funding obligations to funding bodies and for overseeing the legal and financial management of those funds and ensuring that funds received are applied in accordance with the relevant objectives, criteria and terms applicable to that funding;
 - 8.4.2. implement the decisions of the Transport Joint Committee or North East LEP Board respectively provided that where a decision is made in the following circumstances it shall not be obliged to act upon that decision and upon refusing to act it will report its reasons promptly to the Transport Joint Committee or North East LEP Board respectively:

- 8.4.2.1. it is not made or given in accordance with the Host Combined Authority's constitution (standing orders), including financial procedures and code of conduct;
 - 8.4.2.2. it is not made in accordance with any protocol concerning the operation of the Transport Joint Committee or North East LEP Board respectively agreed between the Combined Authorities or set out in the North East LEP Constitution;
 - 8.4.2.3. it is inconsistent with the principles of probity or sound financial practice;
 - 8.4.2.4. it is inconsistent with public law principles or illegal.
- 8.5. Subject to clause 8.4, the Host Combined Authority and the Constituent Authorities acknowledge that the role as Host Combined Authority is one of administration and management to implement the decisions and directions of the Transport Joint Committee or any sub-committee with relevant delegated authority or the North East LEP Board or any sub-committee with relevant delegated authority (as the case may be) and does not involve a commercial or economic review of any decision or direction.
 - 8.6. Where assets in relation to transport are held jointly by both Combined Authorities they shall procure that the actions in relation thereto agreed by the Transport Joint Committee or sub-committee with relevant delegated authority shall be promptly given effect.
 - 8.7. The North East LEP Board may from time to time determine in accordance with its own rules and the Constitution which body shall be its accountable body.
 - 8.8. The appointment and dismissal of the Executive Director of the North East LEP will be a matter for the North East LEP Board and will be implemented by the Host Combined Authority for the North East LEP as legal employer.
 - 8.9. The Host Combined Authority for the North East LEP shall make available and accessible adequate capacity and expertise of a Head of Paid Service, Monitoring Officer and Section 151/73 Officer to ensure timely operational input and decision making.
 - 8.10. The Host Combined Authority for the Transport Joint Committee and the functions discharged by it shall make available and accessible adequate capacity and expertise of a Head of Paid Service, Monitoring Officer and Section 151/73 Officer to ensure timely operational input and decision making.
 - 8.11. The Constituent Authorities shall procure that additional capacity and expert support is provided to the North East LEP and the Transport Joint Committee (or Proper Officer for Transport) under SLA terms (to be agreed) from any of the Constituent Authorities or the other Combined Authority subject to agreeing recharging arrangements.
 - 8.12. The Parties agree that there shall be no financial or operational detriments to the North East LEP operations as a consequence of the New Order or any change in Host Combined Authority (other than any move to cost recovery arrangements for services provided to North East LEP in accordance with arrangements described in clause 8.11 above which are matched by a corresponding increase in the contributions of the Constituent Authorities increasing the overall North East LEP budget).

8.13. Without prejudice to clause 12 below the running costs and liabilities (without limitation including pensions liabilities) of the relevant Host Combined Authority reasonably attributable to the exercise of:

8.13.1. its functions in acting as the Host Combined Authority for the North East LEP shall be incorporated in the North East LEP budget and shared by the Constituent Authorities in equal shares.

8.13.2. its functions in acting as the Host Combined Authority for the Transport Joint Committee shall be incorporated in the transport budget which is managed by the Transport Joint Committee and will be shared by the Constituent Authorities as follows:

a. those costs and liabilities which are attributable to the exercise of functions across the Combined Area (including but not limited to the Proper Officer for Transport and the Regional Transport Team and the costs of supporting the Transport Joint Committee) shall be borne by the Constituent Authorities in equal shares;

b. those costs and liabilities which are attributable to the exercise of functions exclusively in the areas of either DCC or NCC shall be borne by DCC or NCC respectively; and

c. those costs and liabilities which are attributable to the exercise of functions exclusively in the area of the Tyne and Wear Authorities (including but not limited to the cost of supporting TWSC and the historic pension liabilities which passed to NECA from the former Tyne and Wear ITA under the Order) shall be shared between the Tyne and Wear Authorities on a per capita basis relating to their resident populations at that time.

8.13.3. its functions acting as the Host Combined Authority for Invest NE shall be shared by the Constituent Authorities in equal shares (and it is agreed that such costs shall be funded by the Constituent Authorities at the level applying at the date of this Deed (and in future years at this level adjusted for inflation)).

9. **Property issues**

9.1. It is acknowledged by the Parties that DCC and NCC retain any and all rights in any property or assets associated with the delivery of any of their respective transport functions on behalf of the NECA or the MCA as appropriate, and that they retain, without limitation, the rights to dispose of, develop and raise income and revenue from such property or assets. If any court or tribunal decide that Article 11(4) of the Order or any provision of the New Order has the effect of transferring any such property to either Combined Authority, that Combined Authority undertakes to transfer such property or assets back to the relevant County Council at a nominal consideration as soon as is reasonably practicable following the finalisation of any procedures or requirements required to be entered into or undertaken to enable any transaction to be for a nominal consideration.

9.2. All assets and rights (including any right to revenue or income) of the Combined Authorities relating to their transport functions (save as provided in clause 9.1) shall:

- 9.2.1. where they are situated in or relate to the exercise of functions in the area of the Tyne and Wear Authorities, be held for the benefit of the Tyne and Wear Authorities collectively as tenants in common with the beneficial interest in such assets and rights being apportioned on a per capita basis relating to their resident populations at that time;
- 9.2.2. where they are situated in or relate to the exercise of functions exclusively within the areas of NCC or DCC respectively, be held for the benefit of NCC or DCC (as the case may be) exclusively; and
- 9.2.3. any other assets and rights of the Combined Authorities relating to their transport functions shall be held for the benefit of all the Constituent Authorities in equal shares.

10. **Transport Functions Undertaken by Nexus**

- 10.1. Subject to the monitoring and oversight of the TWSC, Nexus will discharge in the administrative areas of the Tyne and Wear Authorities the functions and responsibilities that fall to it under the following legislation:

Transport Act 1968;

The Tyneside Passenger Transport Area (Designation) Order 1969;

Tyneside Metropolitan Railway Act 1973;

Tyne and Wear Passenger Transport Act 1979;

Transport Act 1983;

Transport Act 1985 - Parts III, IV and V

Tyne and Wear Passenger Transport Act 1989;

Railways Act 1993;

The Railways (Class and Miscellaneous Exemptions) Order 1994;

The Tyne and Wear Passenger Transport (Sunderland) Order 1994;

Transport Act 2000 - Part II;

Railways Act 2005;

Local Transport Act 2008

- 10.2. Nexus will discharge in the administrative areas of Tyne and Wear Authorities any functions and responsibilities given to it by further legislation or any amendments to the legislation set out in clause 10.1 above.

11. **Other Provisions.**

- 11.1. The Transport Joint Committee and its sub-committees will conduct business in accordance with its own procedures which to the extent relevant will be adopted by the Host Combined

Authority in its own Constitution subject to the provisions on the quorum and proceedings contained in Schedule 2 of the New Order.

12. **Indemnity**

- 12.1. The Tyne and Wear Authorities shall indemnify the County Councils in respect of any costs, claims, liabilities or expenses that may arise to the County Councils as a consequence of their participation in or membership of either Combined Authority or the Transport Joint Committee to the extent that they arise as a consequence of any decision for the provision of transport within any part or the whole of the Tyne and Wear Authorities area (being the former ITA area) and not within the area of the County Councils.
- 12.2. Each County Council shall indemnify the Tyne and Wear Authorities in respect of any costs, claims, liabilities or expenses that may arise to the Tyne and Wear Authorities as a consequence of the Tyne and Wear Authorities participation in, or membership of, either Combined Authority or the Transport Joint Committee to the extent that they arise as a consequence of any decision for the provision of transport within any part or the whole of the County Council areas, and not within the area of any of the Tyne and Wear Authorities.
- 12.3. Each of the Constituent Authorities shall indemnify the Host Combined Authority in equal proportions for all and any costs, claims, liabilities and expenses that may arise from the Host Combined Authority acting as the accountable body for the Transport Joint Committee or the North East LEP respectively, unless the costs, claims, liabilities and expenses are incurred as a result of a negligent act or default of one or more Constituent Authorities, in which case only that or those Constituent Authorities shall indemnify the Host Combined Authority.
- 12.4. In the absence of any agreement to the contrary:
 - 12.4.1. the carrying out of any works relating to any property or assets described in clause 9.2.1 will be a matter for and the responsibility of the Tyne and Wear Authorities; and
 - 12.4.2. the carrying out of any works relating to any property or assets described in clause 9.2.2 will be a matter for and the responsibility of the County Council within whose boundaries such property or assets are situate;
 - 12.4.3. any income or revenue which is derived from assets, functions or operations which transferred from the former Integrated Transport Authority to either Combined Authority by virtue of the New Order (including but not limited to the Tyne Tunnels) shall be ring-fenced for use within the area of the Tyne and Wear Authorities;
 - 12.4.4. any income or revenue which is derived from functions or operations which transferred from either of the County Councils to either Combined Authority by virtue of the New Order or which are derived from assets relating to or connected with such functions or operations shall be ring-fenced for use within the area of the relevant County Council.
- 12.5. Each of the Constituent Authorities and the Combined Authorities shall indemnify the others in respect of the actual or purported exercise of any statutory power and any costs, claims, liabilities and expenses as a consequence of a Constituent Authority or Combined Authority

acting as accountable body for the North East LEP or North East transport matters prior to the date of this Deed.

- 12.6. Nothing in this Clause 12 shall extend to indemnify any party to the extent that any liability in respect of which indemnification is sought has been caused or contributed to by any act or omission of the Party seeking the benefit of this indemnity.
- 12.7. It is acknowledged by the parties that all costs claims and liabilities that may arise in respect of the pension funds for the Tyne and Wear Authorities and DCC and NCC will be calculated in accordance with the terms of the provisions of clause 8.13.
- 12.8. To the extent that any loss or damage is caused or suffered by or any claim arises against any Party as a result of any transfer of an asset, function, employee or liability by reason of the New Order or the giving effect to this Deed on the Effective Date and save as provided in clauses 12.1 to 12.7 the Constituent Authorities shall indemnify the Party suffering or bearing the same in equal shares.
- 12.9. The indemnities set out in Clause 12.1 to 12.8 and Clause 9.2 shall be reviewed as considered appropriate by the Constituent Authorities (with any variation made in accordance with the terms of this Deed). The said indemnities and Clause 9.2 shall be reviewed in any event if it is proposed that Nexus should operate beyond the geographical boundaries of the Tyne and Wear Authority areas (with any variation made in accordance with the terms of this Deed).
- 12.10. The North of Tyne Authorities shall indemnify the other Authorities and NECA for any professional costs and fees (including but not limited to the actuarial work referred to in clause 17.1) reasonably and properly incurred in advance of the date appearing at the start of this Deed and those arising within 24 months of this Deed coming into effect, as a consequence of the making or implementation of the New Order and the implementation of the changes contemplated by clauses 8.2 and 8.3.

13. **Transport Protocols**

- 13.1. The Transport Joint Committee shall develop and agree on behalf of the Constituent Authorities detailed protocols in relation to the operation and discharge of transport functions by covering at least the following:
 - 13.1.1. the passporting of Local Transport Plan Integrated Transport block funding to Constituent Authorities and (if applicable) Nexus] (in the amount specified by the Department for Transport, minus any agreed top-slice to fund the Regional Transport Team and the Proper Officer for Transport). The agreement of Constituent Authorities will be required for any change to this arrangement. This protocol will also confirm that there will be no change in relation to the payment of highway maintenance block funding to individual local authorities and the Transport Joint Committee and Proper Officer for Transport will have no authority in relation to these funding streams;
 - 13.1.2. the practical management of funding swaps between the Combined Authorities;
 - 13.1.3. the development and communication of transport policies in relation to matters that cover the administrative area of the Constituent Authorities; and
 - 13.1.4. the exercise of transport functions by DCC and NCC.

13.2. The Parties will keep the protocols under regular review and the Combined Authorities may revise them from time to time and shall submit any such revised, new or further protocols, to the Transport Joint Committee for consideration and approval.

13.3. Protocols drawn up agreed or revised under this Clause will not override anything provided for or required by this Deed and will not in themselves constitute arrangements for the discharge of functions made in accordance with Section 101 of the LGA 1972 and/or the 2012 Regulations or Article 10(2) of the New Order.

14. **Overview and Scrutiny Arrangements**

14.1. In accordance with the New Order an Overview and Scrutiny Committee will be established to enable the Constituent Authorities to exercise an overview and scrutiny role in relation to the decisions and activities of the following bodies -

14.1.1. the Transport Joint Committee

14.1.2. the TWSC

14.1.3. any other committees, sub-committees or joint committees of the above

15. **Review of Arrangements**

15.1. The Parties will undertake a review of the functioning and procedural rules of the Transport Joint Committee, the North East LEP Board and the Invest North East at least once each year and report the outcomes of such reviews to the Transport Joint Committee, the North East LEP Board and Invest North East respectively.

16. **Amendments to this Deed**

16.1. This Deed may be amended following agreement in writing by all the Parties.

16.2. The operation of this Deed will be subject to an annual review.

17. **Agreement of Transition Liabilities**

17.1. The Parties will work together and attempt where legally permissible to minimise and mitigate costs and liabilities arising out of the implementation of the changes contemplated by Clauses 8.2 and 8.3. This will include work by the Parties and the Tyne and Wear Pension Fund and its Actuary designed to minimise the pension costs resulting from the changes detailed in Clauses 8.2 and 8.3.

17.2. Any additional ongoing pension costs incurred from the date of the staff transfers referred to in Clause 8.3 to the 31st March 2020 will be met solely by the North of Tyne Authorities. For the avoidance of doubt, these costs shall be limited to the additional employer contributions payable for that period as a result of the transfer of the staff engaged in discharging the functions of the North East LEP and Invest North East to the MCA (pursuant to Clause 8.3.8) less the reduction in employer pension contributions as a result of the transfer of the Regional Transport staff to NECA (pursuant to Clause 8.3.7).

17.3. Ongoing pension costs in respect of any employees transferred as a result of the changes contemplated by Clauses 8.2 and 8.3 will from 1st April 2020 be divided between the parties in accordance with Clauses 8.13 and 12.7.

- 17.4. Within 24 months of this Deed coming into effect NECA will prepare a schedule of costs and liabilities arising as a consequence of the making or implementation of the New Order and the creation of the MCA , other than those costs and liabilities referred to in Clauses 12.10 and 17.2 above. The Parties will agree the extent to which it is appropriate either that these costs and liabilities are met solely by the North of Tyne authorities or are met by the Constituent Authorities in equal shares.

18. **Dispute Resolution**

- 18.1. Any dispute between the Parties arising out of this Deed which cannot be settled shall be referred to the Heads of Paid Service of the Parties to the dispute who will negotiate to resolve the matter in good faith.

19. **Termination**

- 19.1. This Deed will be terminated by

19.1.1. the making of an order by the Secretary of State under sections 104 to 107 of the Local Democracy, Economic Development and Construction Act 2009; or

19.1.2. the agreement of all Parties.

20. **Notices**

- 20.1. Any notice, demand or other communication required to be served on any Party under this Deed shall be sufficiently served if delivered personally to or sent by prepaid first class recorded delivery post or email [or facsimile] transmission to the Monitoring Officer of that Party at the principal office of that Party. If so sent, any such notice, demand or other communication shall, subject to proof to the contrary, be deemed to have been received by the relevant Monitoring Officer at the time of personal delivery or on the second working date after the date of posting or transmission as the case may be.

21. **Good Faith**

- 21.1. Each of the Parties agrees that it will act in a manner which promotes the objectives of this Deed and that it will act in all times in good faith towards the other Parties to this Deed.

22. **Counterparts**

- 22.1. In the event of this Deed being prepared in several parts each of the parties may execute one or more parts and the parts so executed shall constitute one agreement and be binding on the parties as if they had all executed the same document.

In witness whereof the Parties have caused this Deed to be executed the day, month and year first before mentioned.

EXECUTED as a **DEED** (but not delivered until the
date of it) by the affixing of the Common Seal of

THE COUNTY COUNCIL OF DURHAM

The Common Seal of

THE BOROUGH COUNCIL OF GATESHEAD

was affixed in the presence of

Executed as a deed by affixing the common seal of

THE COUNCIL OF THE CITY OF NEWCASTLE UPON TYNE

in the presence of

The Common Seal of **THE COUNCIL OF**

THE BOROUGH OF NORTH TYNESIDE

was affixed in the presence of

The Common Seal of **NORTHUMBERLAND COUNTY COUNCIL**

was hereunto affixed in the presence of



The Common Seal of **THE COUNCIL OF
THE BOROUGH OF SOUTH TYNESIDE**
was hereunto affixed in the presence of

The seal of **THE COUNCIL OF THE CITY OF
SUNDERLAND** was hereunto affixed in the presence of

The Common Seal of **THE DURHAM, GATESHEAD,
NEWCASTLE UPON TYNE, NORTH TYNESIDE,
NORTHUMBERLAND, SOUTH TYNESIDE and
SUNDERLAND COMBINED AUTHORITY**
was affixed hereunto in the presence of


C. P. JUDGE
MONITORING OFFICER



Schedule 1 – Deed of Accession

This Deed of Accession is made the _____ day of _____ 20[] by
Mayoral Combined Authority of
(hereinafter called "**the Covenantor**").

Supplemental to the Deed of Co-operation dated _____ day of _____ 2018 and made between (1) The Constituent Authorities and (2) NECA (each as therein defined) as modified by *[here set out the details of any instrument modifying the original agreement]* (the "**Deed of Co-operation**").

Witnesseth as follows:

1. The Covenantor hereby confirms that it has been supplied with a copy of the Deed of Co-operation and hereby covenants with each of the other parties to the Deed of Co-operation from time to time to observe, perform and be bound by all the terms of the Deed of Co-operation which are capable of applying to the Covenantor and which have not been performed at the date hereof to the intent and effect that the Covenantor shall be deemed with effect from the date on which the Covenantor signs this Deed to be a party to the Deed of Co-operation.
2. This Deed shall be governed by and construed in accordance with the laws of England.

Executed as a Deed the date and year first before written.