

Dated

2010

**Darlington Borough Council
Durham County Council
Gateshead Council
Hartlepool Borough Council
Middlesbrough Council
Newcastle upon Tyne City Council
North Tyneside Metropolitan Borough Council
Northumberland County Council
Redcar & Cleveland Borough Council
South Tyneside Council
Stockton-on-Tees Borough Council
The Council of the City of Sunderland
Tyne and Wear Passenger Transport Executive**

and

The Tyne and Wear Integrated Transport Authority

North East Smart Ticketing Initiative (NESTI)

Collaboration Agreement

2nd DRAFT - 12.05.10

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This Agreement is dated day of 2010

Between

- (1) The bodies whose names and addresses are set out in Schedule 1 to this Agreement; and
- (2) The Tyne and Wear Integrated Transport Authority ("**the ITA**") of Civic Centre, Newcastle upon Tyne, NE99 1RD.

Together, ("**the Parties**")

Background

- (A) The Parties are seeking to establish a single integrated ITSO-compliant smart card ticketing environment for regional bus, Metro, ferry and possibly rail operations in the administrative area of the Parties, a project currently known as the North East Smart Ticketing Initiative as more fully described in the Outline Business Plan as defined below ("**the NESTI Project**").
- (B) In order to establish and implement the NESTI Project the Parties are entering this Agreement to mutually commit funding to the NESTI Project and set out the terms which are to govern the relationship between each of them in relation to the NESTI Project.
- (C) Each of the Parties (other than Nexus) has well being powers under Local Government Act 2000 (to be exercised having regard to their sustainable community strategy) or in the case of the ITA under s99 Local Transport Act 2008.
- (D) Under s99 of Local Transport Act 2008 the ITA may delegate its well being functions to Nexus which under s10 Transport Act 1968 also has the power to do all things which are in its opinion necessary to facilitate the proper carrying out of its business.

In consideration of the grant finance to be provided by each of the Parties towards the NESTI Project and the mutual benefit to the Parties of the NESTI Project, **it is now agreed as follows:-**

1. **Interpretation**

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement.

"ANEC Leaders' Board"	means the Leaders' Board of the Association of North East Councils or any body (or bodies) established in substitution therefor which represents (or together represent) or acts as a decision making forum for the Local Authorities;
"Board"	means the board established under clause 3;
"Board Administrator"	means the person appointed by the ITA under paragraph 1.6 of Schedule 2
"Business Day"	means any day that is not a Saturday, a Sunday or a public holiday in England and Wales;

"Capital Contributions"	means the sums set out in Schedule 3;
"Commencement Date"	means 1 April 2010 or if later the date of this Agreement;
"DPA"	means the Data Protection Act 1998 as amended or any re-enactment thereof;
"EIR"	means the Environmental Information Regulations 2004;
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	means any cause materially affecting the performance by a Party of its obligations under this Agreement arising from any act beyond its reasonable control and affecting any Party, including without limitation: acts of God, war, industrial action, protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism, national emergencies or the failure of a third party supplier to the NESTI Project;
"Head of Paid Service"	means the Chief Executive or other head of paid service of each Party
"HOPS"	means a Host Operating System
"ITSO"	means the specification created by ITSO Ltd to provide interoperability for smart ticketing schemes;
"Local Authorities"	means Durham CC, the ITA, Northumberland CC, the Tees Valley Authorities and the Tyne and Wear Authorities;
"Metro Ticketing and Gating Scheme"	means the scheme to be undertaken by Nexus to implement gating at 13 Metro stations, smart ticketing machines at all Metro stations and back office facilities all of which shall be compliant with level 2.1.4 of ITSO;
"NESTI Project Bank Account"	means the bank account of the NESTI Project as detailed at Schedule 4;
"Outline Business Plan"	means the outline business plan as detailed at Schedule 5 as amended in accordance with clause 3.5 from time to time;
"Principles of Co-operation"	means the principles set out in Schedule 6;
"Representative"	means a Party's or Parties' representative on the Board;
"Tees Valley Authorities"	means Darlington BC, Hartlepool BC,

Middlesbrough, Redcar & Cleveland BC and Stockton-on-Tees BC;

"Term" Means the period determined in accordance with clause 2.1;

"Tyne and Wear Authorities" means Newcastle CC, Sunderland CC, Gateshead CC, North Tyneside and South Tyneside

- 1.2. Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3. A person includes a natural person, corporate or unincorporated body (whether or not having a separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
- 1.4. The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.5. A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.6. Words in the singular include the plural and vice versa.
- 1.7. A reference to one gender shall include a reference to the other genders.
- 1.8. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.9. A reference to writing or written includes faxes but not email.
- 1.10. Documents in agreed form are documents in the form agreed by the Parties and initialled by them for identification.
- 1.11. References to clauses and Schedules are to the clauses and Schedules of this Agreement; references to paragraphs are to a paragraph of the relevant Schedule.
- 1.12. Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words "without limitation" following them and, where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
- 1.13. Any obligation in this Agreement on a person not to do something includes an obligation not to agree that thing to be done.

2. **Commencement and Duration**

- 2.1. This Agreement shall begin on the Commencement Date and shall continue on the terms of this Agreement until the expiry of a period of 5 (five) years from the Commencement Date or such longer period as the Parties shall agree.
- 2.2. This Agreement wholly supersedes all earlier agreements, arrangements or understandings relating to the NESTI Project between the Parties and each of the

Parties mutually releases and discharges the others from all future claims, demands, actions and proceedings in respect of such agreements or arrangements but without prejudice to any antecedent liabilities.

3. **Vires and Governance**

- 3.1. In order to ensure that the NESTI Project is implemented and managed in an efficient manner the Parties agree to establish the Board.
- 3.2. The Board shall be constituted and governed by the provisions of Schedule 2.
- 3.3. The ITA represents and warrants to each of the other Parties that under s9 Transport Act 1968, ss108 and 113 Transport Act 2000 and s99 Local Transport Act 2008 it has a duty to improve transport provision for the Tyne and Wear Authorities and has the powers required to carry out the NESTI Project.
- 3.4. Each Party separately represents and warrants to the other Parties that it has the power to enter into this Agreement and has and will properly delegate its authority for the matters which are the subject matter of Schedule 2 to the Representatives who will sit on the Board and agrees that decisions of the ANEC Leaders' Board in accordance with this Agreement and of the Board made in accordance with the provisions of Schedule 2 will be binding upon it.
- 3.5. The ITA is authorised to undertake any action as set out in the Outline Business Plan or which comprises a variation to the Outline Business Plan provided such variation (i) meets the objectives of the NESTI Project or Outline Business Plan and (ii) is first approved by the ANEC Leaders' Board (acting by a majority in accordance with its constitution) where such variation either (a) results in a change in the purpose of any expenditure amounting in aggregate to £250,000 (two hundred and fifty thousand pounds) or more or 20% or more of any category of expenditure ("the Approval Amount") or (b) is otherwise regarded by the Board and the ITA as significant enough to justify its prior consideration and approval by the ANEC leaders' Board.
- 3.6. The ITA shall as soon as practicable and in any event within three calendar months of the Commencement Date submit to the ANEC Leaders' Board for its approval detailed cost estimates and project plans for the NESTI Project which shall, in such form as may be approved by that Board, then become part of the Outline Business Plan
- 3.7. The ITA is authorised to delegate the implementation of the NESTI Project to Nexus so far as it is legally able to do so.

4. **Finance and Ownership**

- 4.1. Each Party will make the Capital Contributions to the NESTI Project in the amounts set out opposite their names in Schedule 3 but shall not be obliged to make any further or other commitment of cash or resources to the NESTI Project save as set out in this Agreement.
- 4.2. Each Party will ensure that its Capital Contribution is paid into the NESTI Project Bank Account and irrevocably committed to the NESTI Project on or before the Commencement Date.

- 4.3. The NESTI Project Bank Account shall be maintained by the ITA who shall ultimately apply the Capital Contributions only towards the NESTI Project in accordance with the Outline Business Plan.
- 4.4. The ITA shall subject to the other Parties complying with their obligations under this clause apply the Capital Contributions solely towards the NESTI Project.
- 4.5. It shall be a condition of any grant funding to transport operators as part of the NESTI Project that equipment procured by them as part of the NESTI Project shall be compliant with ITSO and the aims set out in the Outline Business Plan.
- 4.6. Title to the assets and software licences acquired using the Capital Contributions shall be held by the ITA (or as it may direct Nexus on its behalf) save in so far as the ITA shall in accordance with the Outline Business Plan make grants to transport operators as a contribution to the cost of transport operators equipment in which case a condition of such grants shall include a provision that title to such equipment shall be held by the relevant operator or its asset holding partner for the operating life of the equipment for the purposes of the NESTI Project.
- 4.7. The ITA (or, as it may direct, Nexus on its behalf) shall acquire equipment software, services and an ITSO compliant HOPS system as set out in the Outline Business Plan up to the value of the Capital Contributions and use its reasonable endeavours to ensure that they are made available to the Local Authorities (subject to their compliance with this Agreement) and local transport operators during the Term.
- 4.8. The NESTI Project may be terminated prior to the expiry of the Term only on the recommendation of the ANEC Leaders Board and with the written agreement of a majority of the Parties and in that event any unused Capital Contributions shall be returned to the Parties in proportion to the Capital Contributions made by them subject to deduction of any sums liable to be payable under any outstanding contractual or other obligation which has arisen under the Project.

5. **Risk and Operations**

- 5.1. The ITA:
 - 5.1.1. is authorised to procure that Nexus shall act as project manager for the NESTI Project and shall not be liable for the acts or omissions of Nexus in relation to the implementation of the NESTI Project;
 - 5.1.2. shall ensure that Nexus procures title to the operation of a HOPS system for the Metro Ticketing and Gating Scheme in such a way that it provides operation for and integrates with the NESTI Project;
 - 5.1.3. subject to it complying with its other obligations under this Agreement shall not be liable to reimburse any Local Authority in respect of any claw back which may be imposed in respect of the Capital Contributions; and
 - 5.1.4. without prejudice to clause 18 shall not be responsible to the Local Authorities for any loss or damage, claw back or other loss of use which arises from any act of Force Majeure.
- 5.2. In implementing the NESTI Project the ITA shall endeavour to:

- 5.2.1. facilitate the most effective and integrated system as described in the Outline Business Plan which complies with the ITSO standard;
 - 5.2.2. pass the maximum operational risk to the transport operators (which may include Nexus in so far as it may act as a transport operator for the Tyne and wear Metro and Tyne Ferry and as a procurer of tendered bus services) and the suppliers of the HOPS managed service and other elements of the NESTI Project;
 - 5.2.3. secure the operability of the equipment and management of the NESTI Project for the whole of the Term;
 - 5.2.4. liaise with each Local Authority with regard to the placement of validators and ticket machines within the Local Authority boundaries, as may be deemed appropriate by the ITA in consultation with the Board for the effective operation of the NESTI Project ;
 - 5.2.5. make grants to transport operators in a way which maximises the benefit of the NESTI Project to each of the Local Authorities and the integration of the transport network;
 - 5.2.6. consult with the Board on a regular basis.
- 5.3. If and to the extent that any surpluses are generated through the NESTI Project and/or further grants are made available to the ITA (whether directly or indirectly) to support the NESTI Project, the ITA shall consult with the Board with regard to the most effective allocation of such funds with regard to the enhancement of the NESTI Project and so far as necessary seek further approval from the ANEC Leaders' Board or the Board as provided herein to changes to the Outline Business Plan.
- 5.4. Each of the Parties agrees to abide by the Principles of Co-operation.
- 5.5. The ITA and Nexus shall keep all written records and accounts relating to the NESTI Project for at least seven years and shall make them available for inspection by any of the Local Authorities or their auditors at any reasonable time on reasonable notice.

6. **Procurement**

- 6.1 The ITA acting as lead authority warrants that the implementation of the NESTI Project will comply with all relevant procurement rules and regulations which are in force at the Commencement Date or which come into force during the Term.

7. **Indemnity**

- 7.1. Any Party who is in material breach of any of the provisions of this Agreement shall indemnify and keep indemnified the other Parties from and against all losses, liabilities, expenses and payments resulting from that breach, without prejudice to any other right or remedy of the other Parties howsoever arising and the limit of each Party's total liability in this regard shall be the amount of its Capital Contribution.

8. **Notices**

- 8.1. Any notice required by this Agreement to be given by any Party to the others shall be in writing and shall be served personally, by fax or by sending it by registered post or recorded delivery to the appropriate address or fax number notified to each of the others (and to the Board Administrator) for such purposes and the address for postal or personal service shall be as set out in clause 8.3 as set out below.
- 8.2. Any notice served personally will be deemed to have been served on the day of delivery; any notice sent by post will be deemed to have been served 48 (forty eight) hours after it was posted; and any notice sent by fax will be deemed to have been served 24 (twenty four) hours after it was despatched save where the deemed date of service falls on a day other than a Business Day in which case the date of service will be the following Business Day.
- 8.3. The address to be used for the purposes of a notice served under the provisions of clause 8.1 above shall be the address listed in Schedule 1 against that Party or such other address as shall be notified by that Party to all of the other Parties in accordance with clause 8.1.

9. **Relationship of Parties**

- 9.1 Nothing in this Agreement, and no action taken by the Parties pursuant to this Agreement, shall constitute, or be deemed to constitute, a partnership between the Parties, or shall constitute any Party as the agent, employee or representative of the other.

10. **Entire Agreement**

- 10.1 This Agreement constitutes the entire agreement between the Parties relating to the subject matter of the NESTI project. This Agreement supersedes all prior negotiations, representations and undertakings, whether written or oral, except that this clause 10 shall not exclude liability in respect of any fraudulent misrepresentation.

11. **Publicity**

- 11.1. Without prejudice to the Parties' obligations under the FOIA or EIR, none of the Parties shall make any press announcements or publicise the NESTI Project or any part thereof in any way, except with the written consent of all of the other Parties (such consent not to be unreasonably withheld or delayed).
- 11.2. The Parties shall take all reasonable steps to ensure the observance of the provisions of this clause by all of their servants, employees, sub-contractors, agents, professional advisers and consultants.
- 11.3. The Board shall as soon as practicable prepare and agree a suitable Communications Protocol for the NESTI Project which the Parties will then adhere to.

12. **Data Protection**

- 12.1 Each Party shall (and shall procure that any of its employees, servants or agents, involved in the provision of the NESTI Project) comply with any requirements under the DPA.

- 12.1.1 The Board shall as soon as practicable prepare and agree a suitable Data Protection Protocol for the NESTI Project which the Parties will then adhere to.

13. **Freedom of Information**

- 13.1. The Parties are each subject to the FOIA and the EIR ("the Acts"). As part of each Party's duties under the Acts, they may be required to disclose information forming part of this Agreement to anyone who makes a reasonable request. Each Party has absolute discretion to apply or not to apply any exemptions under the Acts.
- 13.2. Each of the Parties shall assist and cooperate with each other to enable any Party to comply with the information disclosure requirements under the Acts and in so doing will comply with any timescale notified to it by the Party subject to the request.

14. **Best Value**

- 14.1 Each Party is required to collaborate with the other Parties during the term of this Agreement to achieve continuous improvement in the quality and delivery of the NESTI Project in accordance with each Party's obligations under Part I of the Local Government Act 1999.

15. **Variation**

- 15.1 No variation or modification to the Agreement is valid unless it is in writing and signed by each of the Parties.

16. **Third Party Rights**

- 16.1. This Agreement is enforceable by the original Parties to it, by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Agreement pursuant to The Contracts (Rights of Third Parties) Act 1999 are excluded.

17. **Waiver**

- 17.1. Failure by any Party at any time to enforce any one or more of the provisions of this Agreement or to require performance by the other Parties of any of the provisions shall not constitute or be construed as a waiver of the provision or of the right at any time subsequently to enforce all terms and conditions of this Agreement nor affect the validity of the Agreement or any part of it or the right of the Parties to enforce any provision in accordance with its terms.
- 17.2. No waiver of any of the provisions of this Agreement shall be effective unless it is expressed to be a waiver in writing and communicated in accordance with clause 8.

18. **Force Majeure**

- 18.1 No Party shall be liable for failure to perform its obligations under this Agreement if such failure results from Force Majeure.

19. **Severance**

- 19.1 If any provision of this Agreement shall become or shall be declared by any court of competent jurisdiction to be invalid or unenforceable in any way, such invalidity

shall not impair or affect any other provision all of which shall remain in full force and effect.

20. **Costs and Expenses**

- 20.1 Each of the Parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this Agreement.

21. **Law and Jurisdiction**

- 21.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.

This Agreement has been signed by the Parties and takes effect on the Commencement Date.

Schedule 1- The Parties

1. Darlington Borough Council, Town Hall, Feethams, Darlington, County Durham, DL1 5QT ("**Darlington BC**");
2. Durham County Council, County Hall, Durham, County Durham, DH1 5UG ("**Durham CC**");
3. Gateshead Council, Civic Centre, Regent Street, Gateshead, Tyne and Wear, NE8 1HH ("**Gateshead CC**");
4. Hartlepool Borough Council, Civic Centre, Victoria Road, Hartlepool, Cleveland, TS24 8AY ("**Hartlepool BC**");
5. Middlesbrough Council, Transporter Bridge, Ferry Road, Middlesbrough, Cleveland, TS2 1PL ("**Middlesbrough**");
6. Newcastle City Council, Civic Centre, Barras Bridge, Newcastle Upon Tyne, Tyne and Wear, NE1 8PP ("**Newcastle CC**");
7. Nexus, being the Tyne and Wear Passenger Transport Executive, Nexus House, 33 St James Boulevard, Newcastle Upon Tyne, Tyne and Wear, NE1 4AX ("**Nexus**");
8. North Tyneside Metropolitan Borough Council, Quadrant, Silverlink North, Cobalt Business Park, Newcastle Upon Tyne, Tyne and Wear, NE27 0BY ("**North Tyneside**");
9. Northumberland County Council, County Hall, Morpeth, Northumberland, NE61 2EF ("**Northumberland CC**");
10. Redcar & Cleveland Borough Council, Town Hall, Fabian Road, South Bank, Middlesbrough, Cleveland, TS6 9AR ("**Redcar & Cleveland BC**");
11. South Tyneside Council, Town Hall, Westoe Road, South Shields, Tyne and Wear, NE33 2RL ("**South Tyneside**");
12. Stockton-on-Tees Borough Council, Municipal Buildings, Church Road, Stockton-on-Tees, Cleveland, TS18 1XE ("**Stockton BC**");
13. The Council of the City of Sunderland, Civic Centre, Burdon Road, Sunderland, Tyne and Wear, SR2 7DN ("**Sunderland CC**")
14. Tyne and Wear Integrated Transport Authority, Civic Centre, Barras Bridge, Newcastle upon Tyne, Tyne and Wear, NE1 8PP ("**the ITA**")

Schedule 2- Governance

1. Structure

- 1.1. Each Party agrees that the Board shall consist of 1 (one) senior officer Representative from each of the Parties; save that:
 - 1.1.1. any two or more of the Tees Valley Authorities may (if they each agree) be represented by a single nominee; and
 - 1.1.2. any two or more of the Tyne and Wear Authorities may (if they each agree) be represented by a single nominee.
- 1.2. Each Party shall inform the Board Administrator of the identity and contact details for its Representative and any changes from time to time.
- 1.3. The ITA shall:
 - 1.3.1. act as the lead authority of the NESTI Project ; and
 - 1.3.2. will be accountable to the ANEC Leaders' Board and via the Board to the Parties for the implementation of the Outline Business Plan as supplemented and informed by the advice and recommendations of the Board and for the management of the Capital Contributions made by the Parties in accordance with the terms of this Agreement and any conditions applicable to such funds.
 - 1.3.3. take the fullest account of any decisions by the Board as to the preferred or recommended method of implementation of the Outline Business Plan
 - 1.3.4. so far as it is legally able to do so engage Nexus to manage the NESTI Project.
- 1.4. The Board shall act as an advisory and consultative body to the ITA in implementing the NESTI Project and will oversee its delivery of the Outline Business Plan.
- 1.5. The Board may at any time submit a report to the ANEC Leaders Board on any aspect of the NESTI Project which it considers it appropriate for that Board to be aware of.
- 1.6. The ITA shall arrange to provide all necessary services to support meetings of the Board (and shall nominate a Board Administrator to co-ordinate such support) the reasonable costs of which (as agreed by the Board) shall be met by the NESTI budget.

2. Meetings and voting

- 2.1 Meetings of the Board shall be held as often as the Representatives deem appropriate but in any event an ordinary meeting of the Board shall be convened at least once in every alternate calendar month by the ITA.
- 2.2 Every meeting of the Board shall be governed by the following provisions:

- 2.2.1 a meeting may be called by any 2 (two) Representatives of the Parties notifying the Board Administrator;
- 2.2.2 a meeting may be held at such time and place convenient to the Parties as the ITA or the Representatives calling the meeting think fit and notify to the Board Administrator;
- 2.2.3 a notice of meeting specifying the place, day and time of the meeting and containing a statement of the matters to be discussed at the meeting, shall be served by the Board Administrator on all of the Representatives;
- 2.2.4 except in the case of an emergency not fewer than 10 (ten) Business Days notice of a meeting shall be given to all Representatives, provided that shorter notice shall be valid if all the Representatives attend the meeting or if it is ratified by the majority Representatives at a subsequent meeting. If not sent with the notice of meeting, any report for the meeting shall so far as practicable be provided to each Representative no later than two Business Days before the meeting;
- 2.2.5 the ITA Representative shall serve as the Chair of the meeting;
- 2.2.6 each Representative shall be entitled to 1 (one) vote provided that (a) any Representative who acts as a single nominee for two or more Parties under paragraph 1.1.1 or 1.1.2 above shall have 1 (one) vote for each of those Parties and (b) any Representative shall have 1 (one) additional vote for each Representative for whom they shall otherwise act as a proxy under paragraph 2.2.11 below;
- 2.2.7 the Chair shall have a second and casting vote in the case of an equality of votes;
- 2.2.8 the quorum for a meeting is that number of Representatives attending in person or by their nominated proxy present in person or by telephone or by video-link who are entitled between them to cast at least 5 votes pursuant to paragraph 2.2.6 above;
- 2.2.9 where the quorum is not present within 15 (fifteen) minutes of the start time stated in the notice of the meeting the meeting shall be adjourned to a date not less than two Business Days later provided that any resolution passed at a meeting which is not quorate shall be deemed to have been passed if it is ratified later by the required majority in attendance at a subsequent duly convened quorate meeting;
- 2.2.10 minutes shall be prepared of all meetings and shall be approved by a meeting and signed by the Chair of the meeting as evidence of the proceedings and the contents of the duly signed minutes shall be evidence of the proceedings and may be relied upon as authority for the matters set out therein until amended by any subsequent meetings or resolution of the Board.
- 2.2.11 a Representative may, in writing, appoint another Representative or a single named individual to be his proxy with the right to attend and vote on his behalf at any meeting of the Representatives. Any

- 2.2.12 Where a matter requires the decision of the Representatives under this Agreement, such matter shall be determined by the Representatives by simple majority vote (subject to paragraph 2.2.6) at a duly convened meeting.
- 2.3 A written resolution signed by all the Representatives (or their proxies) shall be valid as if it had been passed at a meeting of the Representatives.
- 2.4 The proxy of a Representative may:
- 2.4.1 exercise that Representative's powers; and
- 2.4.2 carry out that Representative's responsibilities
- in the absence of the Representative.
- 2.5 Any proxy, appointed in accordance with this Schedule shall be counted in the quorum for the meeting.

3. Reporting

- 3.1 Following each meeting, the Chair of the Board shall within 10 Business Days of the meeting submit a copy of the minutes of such meeting to the Representative of each Party.
- 3.2 The Chair of the Board shall also procure that there is issued to each Representative and to each Head of Paid Service in advance of each bi-monthly meeting of the Board a written statement on the progress of the NESTI Project setting out progress towards the objectives set out below:
- Smart ticket machines on buses and Metro stations;
 - A smart back-office (ITSO HOPS);
 - Ways for customers to buy operators' smart ticketing products and load them to a smartcard, including ticket machines at bus stations;
 - An "e-purse" product which allows customers to pay as they travel using a smartcard;
 - A way for smaller operators to access and use smart ticket machines when they are providing Local Authority tendered services;
 - A marketing programme to explain the benefits of smart ticketing to customers and encourage them to use it to access public transport;
 - Interfaces to other smartcard schemes;
 - Progress of the NESTI Project against budget.

Such statement shall, if reasonably possible, be sent with notice of the Board Meeting under paragraph 2.2.3 or, if not so possible, shall be provided no later than two Business Days before the meeting.

- 3.3 At least once for every 6 (six) month period (measured consecutively from the Commencement Date) the Board shall procure that a monitoring report in the name of the Chair of the ITA is prepared and sent to the ANEC Leaders' Board and to each Representative and to the Head of Paid Service of each Party including at least:

- 3.3.1 a summary of the progress with the NESTI Project to date;
- 3.3.2 a summary of the current budget of the NESTI Project;
- 3.3.3 a summary of the expenditure committed to the NESTI Project and the funds available;
- 3.3.4 any other issues which are considered, by the Chair or the Board, relevant for inclusion in the report; and

the report ("**the Monitoring Report**") shall be issued by the Chair of the ITA but with the endorsement of the Board not more than 20 Business Days after the expiry of the relevant 6 month period.

Schedule 3 – Grant Funding

<u>Party's name</u>	<u>% of total</u>	<u>Amount (£)</u>
Darlington Borough Council	4.41%	441,406
Durham City Council	14.97%	1,496,931
Gateshead Metropolitan Borough Council	7.69%	769,252
Hartlepool Borough Council	3.04%	303,850
Middlesbrough Borough Council	5.09%	508,650
Newcastle City Council	9.24%	924,386
Tyne and Wear PTE ("Nexus") and Tyne and Wear ITA ("ITA")	16.83%	1,683,315
North Tyneside Council	5.94%	594,308
Northumberland County Council	9.04%	904,018
Redcar and Cleveland Borough Council	3.99%	398,996
South Tyneside Council	4.72%	472,098
Stockton-on-Tees Borough Council	5.74%	574,498
Sunderland City Council	9.28%	928,292

Schedule 4- NESTI Project Bank Account

Newcastle City Council

Sort code -08-90-06

Account -61145043

Schedule 5- Outline Business Plan



This is
NESTI

Outline Business Case

April 2010

1. NESTI

NESTI stands for North East Smart Ticketing Initiative.

It is a programme to establish a smart ticketing infrastructure covering the North East region, jointly funded by the 12 Local Authorities in the North East, the Tyne and Wear Integrated Transport Authority (ITA), and Nexus (the Tyne and Wear Passenger Transport Executive).

At a meeting of the Association of North East Councils in October 2009, the Local Authority Leaders and Elected Mayors agreed to commit a total of £10 million to the NESTI programme. They also agreed that the ITA would take on the role of Lead Authority, and Nexus would act as programme manager.

This document is an accompanying document to a formal legal agreement (the 'NESTI Collaboration Agreement'), and explains exactly what will the funding will be used to deliver, by whom, and when.

NESTI will deliver the following infrastructure to the North East:

- a) Smart ticket machines on buses and Metro stations;
- b) A smart back-office (called an ITSO HOPS) available for use by any local authority to process its Concessionary Travel scheme for five years;

The total cost of this infrastructure is expected to be £XXX, although these are indicative figures at this time.

The balance of funding will be used to start the development or procurement of:

- c) A range of ways for customers to buy operators' smart ticketing products and load them to a smartcard, including ticket machines at bus stations;
- d) An 'e-purse' product which allows customers to pay as they travel using a smartcard;
- e) A way for smaller operators to access and use smart ticket machines when they are providing Local Authority tendered services;
- f) A marketing programme to explain the benefits of smart ticketing to customers and encourage them to use it to access public transport;
- g) Interfaces to other smartcard schemes.

2. Who is involved and what are they contributing?

North East Authorities and Nexus

The North East authorities who are funding NESTI are: Darlington Borough Council, Durham County Council, Gateshead Council, Hartlepool Borough Council, Middlesbrough Borough Council, Newcastle City Council, North Tyneside Council, Northumberland County Council, Redcar & Cleveland Borough Council, South Tyneside Council, Stockton-on-Tees Borough Council, and Sunderland City Council, and the Tyne and Wear Integrated Transport Authority.

In 2009 the Region requested that DfT transfer a share of £10 million from the North East Regional Funding Allocation (RFA) to each Local Authority's Integrated Transport Block in the North East region. This was subsequently pooled to form the NESTI funding pot.

The contribution of each regional partner is shown in the following table:

Transport Authority Name	% split of total	Amount (£m)
Darlington Borough Council	4.41%	0.4
Durham County Council	14.97%	1.5
Gateshead Council	7.69%	0.8
Hartlepool Borough Council	3.04%	0.3
Middlesbrough Borough Council	5.09%	0.5
Newcastle City Council	9.24%	0.9
Tyne and Wear ITA and PTE (jointly)	16.83%	1.7
North Tyneside Council	5.94%	0.6
Northumberland County Council	9.04%	0.9
Redcar & Cleveland Borough Council	3.99%	0.4
South Tyneside Council	4.72%	0.5
Stockton-on-Tees Borough Council	5.74%	0.6
Sunderland City Council	9.28%	0.9
Total		10.0

The ITA will act as Lead Authority and Accountable Body for this budget, seeking to make sure that the partners' requirements are delivered. The governance and management arrangements for the scheme will be set out in detail in the 'Collaboration Agreement'. The ITA will be assisted by a Board comprising officer representatives of all the partner authorities which will have oversight of implementation of the project. The ITA will report to each local authority individually on a bi-monthly basis, outlining progress towards the development of the scheme and giving transparency of costs incurred. The Chair of the

ITA will formally present a detailed progress report endorsed by the Board to the Leaders' Board of ANEC, as well as each local authority, every six months.

No authority will be obliged to make any further financial contributions to NESTI without their express agreement.

Nexus are replacing ticketing equipment on the Tyne and Wear Metro using £14.9 million of separate DfT Major Scheme funding under the 'Metro Ticketing & Gating' Scheme. The ITA will as appropriate pass NESTI funding to Nexus so that it can deliver ITA policy and the NESTI scheme by extending the coverage of the Nexus equipment and services to both make it 'smart' and to form a large part of the region-wide infrastructure.

As described more fully in section 5, NESTI will be delivered in two phases. In return for the transfer of the NESTI funding, Nexus and the ITA will deliver phase one and provide revenue funding to cover operation of the ITSO HOPS for five years from the date of commencement of the Collaboration Agreement. They are able to do so by passing some risk on to bus operators and the suppliers of Nexus's smart ticketing equipment. . The ITA and Nexus will also use their best endeavours to deliver phase two within the funding available. However the costs and delivery risks for phase two are not fully known at this point and so this is cannot be a firm commitment.

The ITA will have full accountability for the delivery of the scheme, as set out in the Collaboration Agreement, to the ANEC Leaders Board whose agreement will be sought to the overall strategic programme for the scheme and any significant variations to it which may be felt appropriate.

An officer Partnership Board representing the partner authorities will oversee development of the NESTI programme under the terms of the 'Collaboration Agreement'. Any minor variations to the OBP shall be discussed with the Partnership Board. Nexus and the ITA will share detailed information and implementation proposals with the Partnership Board and seek its views on key decisions as they are taken. However because the ITA and Nexus are assuming operational responsibility for delivering phase one, it is important to note that this will be a process of consultation rather than formal approval in relation to day to day implementation of the Outline Business Plan.

Transport Operators


The largest bus operators in the North East are Arriva, Stagecoach and Go North East. They will shortly begin replacement of their bus electronic ticketing machines, and the ITA will provide NESTI grant funding to them so that they can buy equipment capable of reading smart tickets fully compatible with the rest of the NESTI infrastructure. This grant funding will be available to any operator that wishes to access it to assist in the purchase of ITSO smart electronic ticketing equipment.

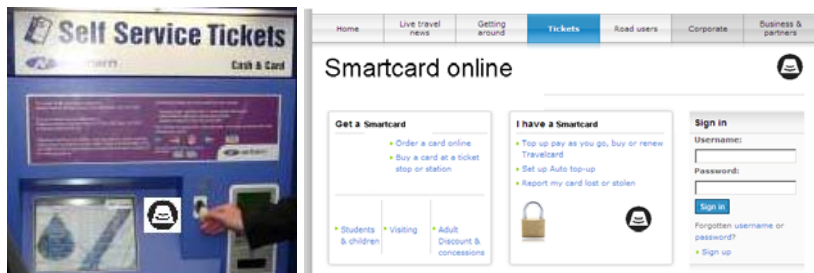
Smaller bus operators, Northern Rail, and Network Ticketing Ltd have all been involved in developing the scheme. Nexus will work with suppliers to develop a facility that allows those operators who do not wish to purchase smart ticketing equipment outright, to nevertheless have access to this equipment and participate in the scheme.



Northern Rail do not currently have a rail franchise commitment to adopt ITSO smart ticketing (unlike some other operators); however they have expressed a desire to be involved in the future development of the scheme.


Network Ticketing Ltd will make a commercial decision whether or not to participate in the scheme, in terms of making their integrated ticketing products 'smart'. Note however that this does not involve the use of NESTI funds.




3. How will public transport users benefit from NESTI?



Wherever smart ticketing infrastructure has been paid for by NESTI (wholly or in part) or uses NESTI infrastructure, the scheme symbol  will be displayed on it along the lines shown below:





Customers will know that if they have a smartcard with  on it, it will be accepted for travel wherever they see  displayed (provided of course that they have loaded products to the smartcard that are valid for travel on the service they are using).

Because the major bus operators and Metro will display  prominently on their ticketing equipment, it will soon become widely recognised in the North East as a sign of common acceptance similar to the Visa or Mastercard symbols, but specific to public transport in the North East.

It is unlikely that many customers will stop to think about what  means, particularly because it looks more like a universal symbol than a commercial brand. But through time  will start to improve integration, because customers will begin to realise that they do not need separate tickets or smartcards wherever they see ; they can just use the one.

Customers will be able to choose from a range of smartcards offered to them. They will be able to get one from a transport operator (at minimum the three main bus operators and Nexus will offer them) and quite possibly from their local council. Provided the card has  on it, they will know that the card can be used for travel on any operator, anywhere in the North East. If the smartcard they got from their bus operator does not have  on it (which will be a choice for each individual operator), they will be able to get one from Nexus or their council that does.

The Nexus smartcard will be called 'XXX' and will of course have  displayed on it. One of XXX's selling points will be its flexibility – although it will be the standard smartcard for Nexus customers it will not be aimed at customers of any specific operator but at public transport users more generally. It will be available to anyone in the North East and even beyond. 'XXX' will be an adaptable brand which has the potential to be mixed with other brands. For example, it could be added to a council's if that council so wished to give customers the flexibility of using the same smartcard for both public transport and council services.

In the longer term provided that the available funding is sufficient and as long as the right commercial partners can be found to develop an 'electronic purse',  will also come to mean 'pay as you travel'. It will tell customers that, as long as they have loaded enough money to their smartcard, they can travel on any public transport service in the North East without having to pay with cash.

4. How will local authorities benefit from NESTI?

Smart Ticketing

NESTI will deliver an infrastructure to the North East that will allow smart ticketing to be offered by transport operators, and local authorities for their concessionary travel.

So the first and principal benefit to local authorities will be that smart ticketing for public transport will be launched in the North East, and as described in section 3 it will be possible for a single smartcard to be used for travel almost anywhere in the North East. This will not only apply to holders of free concessionary travel passes but also to commercial passengers.

Efficiency

By acting together using a capital pot, the North East authorities can deliver smart ticketing much more cost-effectively than acting alone. Economies of scale apply to all areas of smart ticketing activity; whether striking commercial deals with bus operators and suppliers, procuring a single smart back-office rather than one for each, or buying stocks of smartcards.

Concessionary travel is an important element of smart ticketing. All CT cards in the North East are already 'smart' – but there is no smart infrastructure on which to use them. Smart technology can help to make reimbursement significantly more efficient, and reduce administration costs. It will also provide much more information about CT journeys than available today, helping with forward planning of budgetary requirements. It will help to quantify the number of trips made by CT passholders from outside the region, for which local Travel Concession Authorities are liable.

A smart ticketing infrastructure will allow local authorities to join up existing smartcard products (such as library cards) with transport applications, making services easier for people to access and sometimes adding to efficiency by sharing space on a single card. It will also potentially allow new local authority applications to be developed at a reduced cost compared to having to develop a new infrastructure as well.

Nexus is in discussion with several local authority departments and universities about how their existing or planned smartcard schemes could share either smartcards or back office facilities. Further discussions will take place as part of the NESTI programme, through ANEC and the RIEP as appropriate.

Promoting public transport


Smart ticketing will make public transport more attractive and easier to access. When accompanied by effective products and backed by marketing, it will attract new passengers to public transport.

5. What will happen and when?

In order to remove risk from the local authorities beyond their initial capital investment, whether that is the risk of ongoing revenue costs or of additional funding being needed to complete the programme, Nexus and the ITA propose to deliver NESTI in two separate phases (although these overlap in time):

Phase one: confirmed programme (April 2010 – Dec 2012)

- Major bus operators will install smart electronic ticket machines on all their buses operating in the NE Region
- Nexus will install smart ticket gates, validators, and ticket vending machines on Metro stations and ticket issuing machines at its travel shops
- Nexus will implement an ITSO HOPS which any North East local authority (that is also a Travel Concession Authority) could use to manage its Concessionary Travel Scheme, should it wish to, without charge for five years from commencement of the Collaboration Agreement.
- Nexus will develop a smart retailing website that allows customers to obtain a 'XXX' smartcard by post
- A region wide marketing programme will explain the benefits of smart ticketing to customers and encourage them to use it to access public transport

Once phase one delivery is complete, it will be possible to travel almost anywhere in the North East by bus and Metro using a single smartcard. The 'XXX' smartcard will be available to anyone (subject to legal confirmation), and it will be possible to load the smart products of any operator onto it. When customers see  they will know that travel using a smartcard is possible. Concessionary pass holders will be able to use their existing CT card as a smartcard wherever the authority that issued it decides to 'go smart' by using the ITSO HOPS. Authorities who do so will have access to detailed information on CT usage.

It is possible to refer to this phase as 'confirmed' because all three major bus operators have confirmed their intention to participate subject to grant funding being made available (see letters attached in appendix A), and Nexus has a confirmed programme with a supplier to install and enable equipment for Metro including an ITSO HOPS and a smart retailing website.

No authority will be obliged to make any further financial contribution to phase one of NESTI without its express agreement. Should for any reason Nexus and the ITA be unable to deliver phase one, the project will be terminated and any unused funding will be refunded to each contributing authority in proportion to its share of the initial funding.


The transfer of NESTI funding to the ITA to deliver phase one will also allow Nexus to release funding it had previously earmarked for procurement of the smart back office over five years. This will entitle any partner local authority that wishes to use the smart back office to manage its smart CT transactions for five years from the date of commencement of the Collaboration Agreement.

No later than six months before the end of the five year period, Nexus and the ITA will make a proposal to the local authorities for the future operation of the smart back office. This proposal may take the form of a proposal for a directly managed service, a joint procurement of a management contract from an external supplier, discontinuing the use of the facility, or other options to be identified. Although this may involve commitment to future costs, no authority will be obliged to accept any ongoing financial commitment without its express agreement.

An important point to note is that any partner authority wishing to use the smart back office to process its CT transactions will need to join ITSO, and will therefore incur membership costs (further details available from ITSO Ltd). Furthermore, issuing of national CT cards will still be the responsibility of individual local authorities and this cost will remain with them.

Phase two: intended programme (April 2011 – July 2013)

- A retail network will be developed that allows customers to put products on their 'XXX', council, or operator smartcard at ticket machines in key locations around the North East (numbers and sites yet to be identified)
- An 'e-purse' product will be developed which allows customers to pay as they travel using a smartcard
- Smaller bus operators will be able to lease smart electronic ticket machines
- Interfaces will be built to expand NESTI to work alongside national rail and into wider council uses

Once phase two delivery is complete, customers will see greatly improved access to public transport; they will be able to 'top up' their smartcard easily, and use it to pay for travel wherever they see  displayed. They will also start to use their transport smartcard beyond transport, for example to access council facilities.

There is much less certainty involved in the delivery of phase two than phase one; much of it will rely on commercial agreements that have yet to be fully scoped, or use networks and equipment that have yet to be identified and costed.

Therefore Nexus and the ITA will use their best endeavours to deliver this phase within the £10 million funding pot. As further detailed information becomes available we will share it with NESTI partners, and we will consult where important choices need to be taken (for example, the extent of the retail network and the design of the small operator solution).

No NESTI partner will be bound to accept any additional or ongoing costs through development of phase two, unless it explicitly chooses to do so. For the avoidance of doubt, this equally applies to Nexus and the ITA as to the other authorities involved.

6. What will the NESTI budget be used for?

The indicative high-level cost breakdown for the NESTI programme is as follows:

Component	Cost (£m)
Equipment	4.7
Smart card back office	1.7
Project Management	1.1
Retail Infrastructure	0.9
Integration Costs	0.6
Contingency	1.0
Total	10.0

The above figures have been developed using support from an expert advisor with significant experience in developing local authority smart ticketing solutions. However it should be noted that the figures are indicative only; as relationships with suppliers and partners develop, costs will become clearer. Full information on costs will be shared with NESTI partners except where Nexus or the ITA are bound by commercial confidence.

[Detailed workstream costs to follow and to be agreed by Leaders' Board of ANEC]

A number of extra funding streams sourced by Nexus and the ITA have already been confirmed; to date they amount to approximately £3 million (made up of £2.2 million grant funding from DfT, and £780k from the Tyne and Wear Integrated Transport Block). Some of this funding will be used to strengthen the contingency until the delivery programme for phase two is clearer in terms of scope and cost.

As discussed in section 2, Nexus are replacing ticketing equipment on the Tyne and Wear Metro using £14.9 million of separate DfT Major Scheme funding under the 'Metro Ticketing & Gating' Scheme. This will deliver retailing equipment and a back-office system which, with the addition of NESTI funding, will be capable of supporting the region-wide smart ticketing infrastructure.

Appendix A – Letters confirming operator participation

[To follow]

Schedule 6 – Principles of Co-operation

1. The ITA, shall be the lead authority and the accountable body for the NESTI Project and the ITA agrees to use its reasonable endeavours, working in conjunction with the Board to work towards achieving the objectives set out in the Outline Business Plan.
2. Each Party agrees and acknowledges that the ITA shall be free to refuse to implement any recommendation of the Board which would result in any action which would be ultra vires, in breach of any grant conditions imposed upon it in relation to the NESTI Project or which it otherwise considers would be inconsistent with the efficient or effective implementation of the NESTI Project objectives.
3. Each Party is obliged and has a duty to co-operate to:
 - 3.1 use its reasonable skills and endeavours to promote and carry on the NESTI Project for the benefit of the Parties, and conduct itself in a proper and responsible manner, and devote such time and attention as is necessary for the proper performance of its duties under this Agreement;
 - 3.2 identify both its own particular needs in relation to the NESTI Project and the key issues for the NESTI Project and promptly to communicate these needs and issues to the ITA and the Board; and
 - 3.3 take reasonable steps to ensure that the ITA and the Board understands the needs and issues which have been communicated to the ITA and the Board.
4. Following communications from each Party in accordance with sub paragraph 3.2 above, the ITA in liaison with the Board shall:
 - 4.1 decide whether the identified needs and/or key issues can be met and if so, decide how the needs will be met; and
 - 4.2 in circumstances where the identified needs and/or key issues cannot be met, set out the options and decide on the most appropriate course of action.
5. The Board, the ITA and the Local Authorities shall work together to resolve problems through active co-operation in order to achieve so far as possible the objectives of the Outline Business Plan.
6. Each of the Parties shall if required to either enable them to participate in the benefits of the NESTI Project or to facilitate the effective implementation of the Project across the whole region:
 - 6.1 join (or as the case may be) remain a member of ITSO paying all annual and other membership fees and expenses required by ITSO during the Term; and
 - 6.2 sign an ITSO Operating Licence in the form required by ITSO from time to time; and
 - 6.3 sign up to any framework agreement required by ITSO in order to give effect to the NESTI Project.

Signed by **Darlington Borough Council** in the presence of:

Authorised Signatory of Darlington
Borough Council

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Durham City Council** in the presence of:

Authorised Signatory of Durham City
Council

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Gateshead Council** in the presence of:

Authorised signatory of Gateshead City
Council

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Hartlepool Borough Council** in the presence of:

Authorised Signatory Of Hartlepool
Borough Council

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **The Tyne And Wear Integrated Transport Authority** in the presence of:

Authorised Signatory Of The Tyne And
Wear Integrated Transport Authority

.....
[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Middlesbrough Council** in
the presence of:

.....

Authorised Signatory Of Middlesbrough
Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Newcastle upon Tyne City
Council** in the presence of:

.....

Authorised Signatory Of Newcastle City
Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Nexus** in the presence of:

.....

Authorised Signatory Of Nexus

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **North Tyneside
Metropolitan Borough Council** in the
presence of:

.....

Authorised Signatory Of North Tyneside
Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Northumberland County
Council** in the presence of:

Authorised Signatory Of

Northumberland County Council

.....

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Redcar & Cleveland
Borough Council** in the presence of:

.....

Authorised Signatory Of Redcar &
Cleveland Borough Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

Signed by **Stockton-On-Tees Borough
Council** in the presence of:

.....

Authorised Signatory Of Stockton-On-
Tees Borough Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

[Signed by **South Tyneside Council** in
the presence of:

.....

Authorised Signatory Of South Tyneside
Council

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]

[Signed by **The Council of the City of
Sunderland** in the presence of:

.....

.....

Authorised Signatories Of The Council
of the City of Sunderland

[SIGNATURE OF WITNESS]

[NAME, ADDRESS [AND
OCCUPATION] OF WITNESS]