



[SUBJECT TO CONTRACT]

Contract Reference Number: TfL_scp_001600

Date:

Mutual Company Confidentiality Agreement

between

Transport for London

and

[Name of Third Party]

Version: TfL Group January 2013

- 1.7 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.9 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.
- 1.10 References to Clauses and Schedules are, unless otherwise provided, references to clauses of, and schedules to, this Agreement and any reference to a paragraph in any schedule shall, in the absence of provision to the contrary, relate to the paragraph in that schedule.

Confidentiality Obligations

2. In connection with the Business Purpose, the Parties intend to disclose Confidential Information to each other and, in relation to each disclosure, the Recipient shall keep the Disclosing Party's Confidential Information confidential and the Recipient agrees to be bound by the terms and conditions set out in this Agreement.
3. The Recipient acknowledges that the Confidential Information is of a proprietary and confidential nature and the Recipient undertakes:
 - 3.1 to keep the Confidential Information confidential;
 - 3.2 not to use or exploit the Confidential Information in any way except for the Business Purpose;
 - 3.3 not without the Disclosing Party's prior written consent in each case to communicate or disclose any part of the Confidential Information to any person except:
 - 3.3.1 to directors, officers and employees of the Recipient on a need to know basis who are directly connected with the Business Purpose;
 - 3.3.2 to third parties engaged by the Recipient who are directly connected with the Business Purpose and who have been authorised in writing by the Disclosing Party to receive the Confidential Information prior to disclosure;
 - 3.3.3 the Recipient's auditors and any other persons or bodies having a legal right or duty to know the Confidential Information in connection with the business of the Recipient;
 - 3.4 to notify the Disclosing Party as soon as practicable if it is required to disclose the Confidential Information under Clause 3.3.3 and to take

account of the Disclosing Party's reasonable requirements in relation to such disclosure;

- 3.5 to ensure that all persons and bodies mentioned in Clauses 3.3.1 to 3.3.3 are made aware, prior to the disclosure of the Confidential Information, of the confidential nature of that information, that they owe a duty of confidence to the Disclosing Party, and they agree to hold that information in confidence in accordance with the terms of this Agreement. The Recipient must use its best endeavours to ensure that such persons and bodies comply with such obligations;
- 3.6 not to use, copy, transform, reduce to writing or circulate the Confidential Information within its own organisation except solely to the extent necessary in connection with the Business Purpose or any other purpose authorised in writing by the Disclosing Party;
- 3.7 to apply and maintain the same security measures and degree of care to the Confidential Information as the Recipient applies to its own Confidential Information; and
- 3.8 to notify the Disclosing Party promptly of any unauthorised use, copying or disclosure of the Confidential Information of which the Recipient becomes aware and to provide all reasonable assistance to the Disclosing Party to terminate such unauthorised use and/or disclosure.

Exceptions

4. The obligations of confidentiality in Clause 3 shall not apply where the Confidential Information:
 - 4.1 is or has come into the public domain through no fault of the Recipient, its employees, agents or sub-contractors;
 - 4.2 is lawfully received from an independent third party without any restriction and without any obligation of confidentiality;
 - 4.3 is independently developed by the Recipient without access to, or knowledge of, or use of, the Confidential Information;
 - 4.4 is required by law or by order of a court of competent jurisdiction to be disclosed; or
 - 4.5 is required to be disclosed to the Mayor of London.

Materials

5. All Confidential Information shall remain the property of the Disclosing Party and must not be copied or reproduced in whole or in part without the Disclosing Party's prior written consent. Each Party reserves all rights in it Confidential Information. No rights, including, but not limited to, intellectual

property rights, in respect of a Party's Confidential Information are granted to the other Party and no obligations are imposed on the Disclosing Party other than those expressly stated in this Agreement.

6. At the Disclosing Party's request, and in any event upon the completion of the Business Purpose, the Recipient must:
 - (a) promptly destroy or return to the Disclosing Party all materials containing, incorporating or based on the Confidential Information supplied by the Disclosing Party; and
 - (b) certify, in writing, within 14 days of such request or completion of the Business Purpose, that it has fully complied with its obligations under this Clause.
7. The Recipient shall comply with all the requirements of any Act of Parliament, statutory instrument or order or any other regulation having the force of law or bye-law and all regulatory requirements relevant to its business from time to time in force, which are or may become applicable to the obligations of the Parties under this Agreement.

Reservation of Rights

8. Except as expressly stated in this Agreement, the Disclosing Party makes no express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
9. The Recipient acknowledges that damages would not be an adequate remedy for any breach of this Agreement and that (without prejudice to any other rights or remedies that the Disclosing Party may be entitled to as a matter of law), the Disclosing Party will be entitled to the remedies of injunction, specific performance, and other equitable relief to enforce the provisions of this Agreement and no proof of special damages shall be necessary for the enforcement of the provisions of this Agreement.

Termination

10. If either Party decides no longer to be involved with the Business Purpose, it shall notify the other Party in writing giving 30 days' notice. The obligations of each Party shall, notwithstanding any earlier termination of negotiations or discussions between the Parties in relation to the Business Purpose, continue for a period of 6 years from the termination of this Agreement.
11. Neither the termination of this Agreement for any reason, nor the completion of the Business Purpose shall affect the Recipient's obligations or the Disclosing Party's rights under this Agreement.

General

12. The Recipient must not make or permit others to make any reference to this Agreement, or the Confidential Information in any public announcements, promotional, marketing or sales materials or efforts without the prior written consent of the Disclosing Party except as required by law or any governmental or regulatory authority or competent jurisdiction.
13. The failure of the Disclosing Party to insist upon strict performance of any provision of this Agreement, or the failure or delay of the Disclosing Party to exercise any right or remedy to which it is entitled under this Agreement, does not constitute a waiver of such right or remedy and will not cause a diminution of the obligations established by this Agreement. A waiver of any right or remedy is only effective if it is expressly stated to be such. A waiver of any breach of this Agreement does not constitute a waiver of any subsequent breach.
14. If and to the extent that the Confidential Information includes any personal data (as defined in the Data Protection Act 1998 (“**DPA**”)), the Recipient undertakes to comply with all of its obligations under the DPA and to process such data only in accordance with instructions from the Disclosing Party. The Recipient shall take appropriate technical and organisational security measures that are satisfactory to the Disclosing Party against any unauthorised or unlawful processing of such data and against accidental loss, destruction of, or damage to such data.
15. Save that any Group Company of a Party has the right to enforce the terms of the Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 (“**Third Party Act**”), the Parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Third Party Act by any person not a Party to it.
16. This Agreement does not constitute a licence to use the Confidential Information except to the extent that such use is necessary in connection with the Business Purpose or any other purpose authorised in writing by the Disclosing Party.
17. No variation of this Agreement shall be effective unless it is in writing and signed by each of the Parties.
18. Except as otherwise provided in this Agreement, the Recipient may not assign, sub-contract or deal in any way with, any of its rights or obligations under this Agreement or any document referred to in it.
19. This Agreement contains all of the terms which the Parties have agreed relating to the subject matter of the Agreement and it supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing relating to the Disclosing Party’s disclosure of Confidential Information to the Recipient. Neither Party has been induced to enter into the Agreement by a statement it does not contain. Nothing in this Clause 19

excludes any liability which one Party would otherwise have in respect of any statement it has made fraudulently to the other Party.

- 20. No act of or omission by or approval from the Disclosing Party in performing any of their respective duties under or in connection with the Agreement shall in any way operate to relieve the Recipient of any its duties, responsibilities, obligations or liabilities under the Agreement.
- 21. Any notice, demand or communication in connection with this Agreement will be in writing and may be delivered by hand, prepaid recorded delivery or first class post addressed to the Party at its registered office, the address stated at the top of the Agreement or any other address notified to the other Party in writing in accordance with this Clause as an address to which notices, invoices and other documents may be sent. The notice, demand or communication will be deemed to have been duly served:
 - (a) if delivered by hand, at the time of delivery; or
 - (b) if delivered by post, 2 Business Days after being posted or in the case of Airmail 14 Business Days after being posted.
- 22. This Agreement shall be governed by and construed in accordance with English Law and is subject to the exclusive jurisdiction of the English courts.

THIS AGREEMENT has been signed by for and on behalf of the Parties on the day and year written above.

Signed by)
 for and on behalf of)
 [insert name of TfL Company])
Name:
Position:

Signed by)
 for and on behalf of)
 [insert name of Recipient])
Name:
Position:

Schedule

Description of the Business Purpose

TfL have committed to purchasing a number of hydrogen fuel cell buses as part of the JIVE programme, and in support of this project, TfL requires a Hydrogen Refuelling Station (HRS) to be commissioned in order to fuel the buses.

During 2017 (and in parallel with the fuel cell bus programme), TfL intend to complete a procurement exercise and enter into a contractual Agreement with a supplier, for the procurement of a HRS ready to place an order towards the middle of 2017.

TfL have identified a potential site for the HRS and would like the proposed solution outlined in your response to the Market Sounding Questionnaire (MSQ) to be based on this site.

To facilitate this, TfL have provided to scale plan drawings of the proposed site along with satellite images of potential additional development areas for your information in the MSQ.

In order to ensure the secure and transparent disclosure of information, each supplier will be required to sign this Non-Disclosure Agreement (NDA) before being given access to this MSQ.

Please note that a summary of the findings from this MSQ may be shared with other UK cities as part of the JIVE project, however all cities that are provided with this report will be required to sign an NDA to ensure the security of the information you provide.