



Dated *10th May* 2019

- (1) London Bus Services Limited
- (2) Nel Hydrogen A/S

CONTRACT Ref tfl-scp-001600

Hydrogen Refuelling Facility and Hydrogen Supply Agreement relating to premises at Perivale Garage, Alperton Lane, Greenford, London

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[ALL PARTIES TO EXECUTE AS A DEED] **THIS DEED** is made on

10th May

2019

BETWEEN:

- (1) London Bus Services Limited a company registered in England and Wales (No 03914787) whose registered office is at 55 Broadway, London, United Kingdom, SW1H 0BD ("the Company"); and
- (2) Nel Hydrogen A/S, a company registered in Denmark Number 26933048 whose registered office is at Vejlevej 5, 7400 Herning (the "Contractor" or "Nel").

BACKGROUND:

- A. Subsequent to the Joint Initiative for Hydrogen Vehicles in Europe (JIVE) and the Models for Economic Hydrogen Refuelling infrastructure (MEHRLIN) initiatives, the Company wishes to develop a hydrogen economy in London and has run a tendering process for the provision of a Hydrogen Refuelling Facility for the supply of hydrogen to Buses owned or leased by the Company and other members of the TfL Group on the terms and conditions set out in this Contract.
- B. As a result of the tendering process and on the basis of the Contractor's responses submitted during the tendering process, the Company has agreed to enter into this Contract with the Contractor and the Contractor agrees to enter into this Contract on and subject to the terms and conditions of this Contract.
- C. The Contractor acknowledges that the Company has relied upon the expertise and skills set out in the Contractor's responses submitted during tendering process in selecting the Contractor.
- D. The Parties have agreed to enter into this Contract to set out the terms and conditions in respect of the agreed arrangements.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

1.1 **Definitions**

In this Contract, including the Background hereto, the following expressions will, unless the context otherwise requires, have the following meanings:

"Appointment" each of the deeds of appointment to be entered into with a member of the Professional Team;

"Affiliate" shall mean in relation to a Party, any company which is affiliated to it and a company is deemed to be affiliated to another if the first company is controlled by, is under common control with or controls the other; a company shall be deemed to have control of another if (directly or indirectly) it owns a majority of the voting shares of, or is entitled (directly or indirectly) to appoint a majority of the directors of, the other company;

"Authorisation" shall mean:

- (a) any authorisation, approval, agreement, indemnity, guarantee, consent, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or

exemption of a Governmental Agency;
or

- (b) in relation to anything which will be prohibited or restricted in whole or in part by law if a Governmental Agency intervenes or acts in any manner within a specified period after notification to it, the expiry of that period without intervention or action of the relevant Governmental Agency

and excluding Planning Permission;

“Available” shall have the meaning set out in **paragraph 3.2 of Schedule 11**

“Background Information” means any and all data, including technical data, information, drawings, designs, operating experience and techniques and other knowledge in any form including any and all Intellectual Property Rights therein relating to the Field owned and contributed, subject to the terms hereinafter provided, to the Project by or for a Party, a sub-contractor of the Contractor or the Buses Supplier;

“Bus Operator” shall mean any operator of the Buses appointed by the Company to operate Buses from Perivale Garage, Alperton Lane, Greenford, London, UB6 8AA and reference to the Bus Operator shall incorporate such bus operator’s premises and business operations;

“Buses” shall mean hydrogen powered buses owned, leased or operated by the Company or members of the TfL Group or operators nominated by the Company or members of the TfL Group;

“Buses Supplier” shall mean the supplier of the Buses;

“Business Day” shall mean any day excluding a Saturday, Sunday or a public holiday in England and Wales;

“CDM Regulations” shall mean the Construction (Design and Management) Regulations 2015, any replacement or re-enactment thereof and any guidance requirements issued by the Health and Safety Executive from time to time;

“Cessation Plan” a plan agreed between the Parties or determined by the Authority pursuant to **Clauses 28.1 to 28.5** (inclusive) to give effect to a Declaration of Ineffectiveness or **Clauses 28.6 to 28.10** (inclusive) to give effect to a Public Procurement Termination Event;

“Collateral Warranties” the collateral warranties to be provided by any member of the Professional Team and/or any Sub-Contractor as provided for in **Clause 5.37**

and/or **Clause 5.38**;

“Company Information”	shall mean any and all information (whether written or oral) that by its nature may reasonably be regarded as proprietary and confidential to the Company or any member of the TfL Group (whether commercial, financial, technical or otherwise) including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Company or any member of the TfL Group;
“Company Manager”	shall mean the Company’s director of operations, or such other person as may be notified by the Company to the Contractor from time to time;
“Company Project Manager”	shall mean the person notified as such by the Company to the Contractor from time to time;
“Company”	shall mean LBSL and its successors in title and permitted assigns;
“Completion Certificate”	shall mean the certificate issued by the Independent Certifier to the Company to certify that the Refuelling Facility has been installed, has satisfied the requirements of all tests required in accordance with the terms of this Contract, is fully operational and is not subject to any Major Defects, in accordance with the Contract (including the Hydrogen Purity Specification and Specification) to be issued in the form set out in Schedule 5 ;
“Concept Design”	shall mean a design satisfying the requirements for the concept design stage set out in the Specification;
“Concept Design Statement”	a written statement prepared by the Contractor outlining the principles of the design and the methods to be used in carrying out each material element of the Works, together with such supporting information as may be required by the Company pursuant to the Specification as stated in Volume 2, Part 2;
“Construction Industry Scheme”	the provisions of Chapter 3 of Part 3 of the Finance Act 2004 (Construction Industry Scheme) together with any regulations made pursuant to these provisions, including the Income Tax (Construction Industry Scheme) Amendment Regulations 2007;
“Consuming Parties”	shall mean the Company (including on behalf of the Company any Bus Operator appointed by the Company) together with other members of the TfL Group consuming Hydrogen during the Supply Period;
“Contract Commencement Date”	shall mean 2 April 2019 ;

“Contract”	shall mean this Contract, including the Schedules hereto, or as the same may be amended in writing by the Parties from time to time;
“Contract Information”	shall mean (i) the Contract in its entirety (including from time to time agreed changes to the Contract) and (ii) data extracted from the invoices submitted pursuant to this Contract which shall consist of the Contractor’s name, the expenditure account code, the expenditure account code description, the document number, the clearing date and the invoice amount;
“Contractor Information”	shall mean any and all information of or relating to the Contractor or any of its Affiliates which is in fact, or which could reasonably be regarded as, confidential, including without limitation, all Intellectual Property Rights owned or in the possession of the Contractor or any of its Affiliates, technical data, research and development information, know-how, trade secrets, designs, techniques, specifications, process, manufacturing, planning or marketing procedures, business records, notes, accounting procedures or financial information, tests and reports disclosed by or on behalf of the Contractor or any of its Affiliates to or obtained by the Company or any member of the TfL Group in connection with this Contract;
“Contractor’s Representative”	shall mean the person notified as such by the Contractor to the Company as at the date of the Contract or such other person as may be agreed by the Parties from time to time;
“Contractor”	shall mean the person, firm or company named as such in the Contract and its permitted successors and assigns;
“Contractor’s Design Documents”	shall mean the drawings, details, specifications of materials, goods and workmanship and other related documents and information prepared by or for the Contractor in relation to the design of the Works;
“Declaration of Ineffectiveness”	a declaration of ineffectiveness in relation to this Contract made by a Court of competent jurisdiction pursuant to Regulation 98 of the Public Contracts Regulations 2015 or Regulations 113(2)(a) or 118(3) of the Utilities Contracts Regulations 2016;
“Defects”	all and any design and/or works not in accordance with this Contract and the Specification including all defects, faults, snags and/or omissions from the Works and to include all Major Defects and all Minor Defects;
“Defects List”	shall mean the list of Defects to be provided to the Contractor by the Independent Certifier on issue of the Installation Certificate, in accordance with the requirements of Clause 5.27 ;

"Delay Damages"	shall mean the sum of £130 per vehicle per day;
"Deleterious Materials"	shall mean any goods, materials or substances which are themselves or which incorporate substances which are generally known at the time of recommendation, specification or use, to be deleterious to health and safety, or the durability of the completed Works in the particular circumstances in which they are used, or are otherwise not in accordance with British Standards, codes of practice or good building practice or techniques;
"Delivered Hydrogen"	shall mean the Hydrogen dispensed to the Buses at the Refuelling Facility as measured by the Contractor's installed metering equipment;
"Delivery"	shall mean the delivery of Hydrogen from the storage tanks at the Refuelling Facility to the Buses for the purpose of refuelling the Buses and "Deliver" and "Delivered" have corresponding meanings;
"Detailed Design"	shall mean detailed design stage of the design process as referred to in Clause 5.1 ;
"Dispensing Facility"	shall mean the dispenser and ancillary equipment and civil works forming part of the Refuelling Facility which will allow Delivery of Hydrogen into the Buses;
"Document Programme"	Submissions shall mean the Contractor's programme specifying when the Contractor intends to submit documents to the Company for approval pursuant to the processes under this Contract for the development of the design as such programme may be revised and updated from time to time in accordance with the Specification as stated I Volume 2 Part 2;
"Effective Date"	shall mean 3 March 2020 , or such other date as is calculated in accordance with Clause 6 ;
"Escrow Agent"	shall mean NCC GROUP ESCROW LIMITED with whom Escrow Documents will be deposited;
"Escrow Documents"	shall mean the documents specified in Schedule 7 which shall be required to be placed in escrow under the provisions of Clause 27 ;
"Expiry Date"	shall mean the expiry date of this Contract as determined in accordance with Clause 2 ;
"Field"	shall mean participation in the hydrogen for transport market and particularly participation in the design, installation and maintenance of hydrogen refuelling facilities and the supply of hydrogen fuel to that market;
"Force Majeure Event"	shall mean any event or circumstances or combination of events or circumstances which is beyond the reasonable control of the affected Party and which could not have been prevented or overcome by the use of reasonable diligence

by that Party and which prevents or impedes the performance of all or any of its obligations under this Contract. Without limited the generality of the foregoing, the following circumstances shall be regarded as Force Majeure: force of nature or other natural physical disaster, including storm, flooding or earthquake, fire, explosions, riots, civil commotion, malicious damage, sabotage, act of public enemy, hostilities, war (declared or undeclared), terrorist acts, blockade, revolution, radioactive contamination, toxic or dangerous chemical source from any source or other;

"Funder"	any company, bank or institution providing finance in connection with or secured (whether by charge, sale and leaseback or otherwise) upon the Works;
"Governmental Agency"	shall mean any government or governmental, senior governmental, administrative, fiscal or judicial body;
"Health and Safety Laws"	shall mean all relevant laws and regulations in force from time to time including, but not limited to, the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999, the CDM Regulations, the BCGA Code of Practice 41 and Code of Practice 33 and the Health and Safety Commission's Approved Code of Practice together with any guidance or requirements issued from time to time by the Health and Safety Executive and other relevant safety regulations, codes of practice or guidance documents provided they have legal force and effect;
"Holding Company"	shall mean any company which from time to time directly or indirectly controls the Contractor as set out by section 11.59 Companies Act 2006
"HSSE Standards"	means the Contractor's health, safety, security and environmental standards as set out in the Specification;
"Hydrogen"	shall mean hydrogen gas which complies with the Hydrogen Purity Specification;
"Hydrogen Price"	shall mean the price set out in Schedule 3 for the quantity of Delivered Hydrogen Delivered pursuant to this Contract;
"Hydrogen Storage Facility"	shall mean the facility, including all equipment and civil works, installed, operated and maintained for the storage and compression of Hydrogen;
"Hydrogen Purity Specification"	shall mean the specification for hydrogen gas purity as set out in the Specification;
"Independent Certifier"	shall mean a sufficiently qualified and experienced independent third party consultant to be appointed by the Contractor who shall have authority to issue the Installation

Certificate and the Completion Certificate in accordance with the terms of this Contract and who is either an individual (i) identified in **Schedule 8** who has been pre-approved by the Company, and who is notified to the Company from time to time in writing, or (ii) whose appointment shall be subject to the prior written approval of the Company, and in either case who shall provide a Collateral Warranty to the Company and to any Third Party (as appropriate);

“Insolvency Event”

shall mean in respect of a Party, that the Party:

the Contractor and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;

a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Contractor and/or the Holding Company;

being a company, the Contractor and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);

the Contractor and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;

being an individual or firm, the Contractor becoming bankrupt or dying;

any similar event to those in (a) to (e) above occurring in relation to the Contractor and/or the Holding Company under the law of any applicable jurisdiction for those purposes;

“Installation Certificate”

shall mean the certificate issued by the Independent Certifier to the Company to certify that the Refuelling Facility has been installed in accordance with the requirements of this Contract, in the form set out in **Schedule 4**;

“Intellectual Property Rights”

means any registered or unregistered intellectual property right arising anywhere in the world including but not limited to patent applications, patents, trademarks, copyrights, registered and unregistered design rights, database rights, utility models and trade secrets;

“Interest Rate”

shall mean 2% percent above the base rate from time to time of the Bank of England;

“Landlord”	shall mean any landlord other than the Company of the Refuelling Site and/or the Property and/or any part thereof;
“Legislation”	<p>shall mean all Acts of Parliament and other public or local legislation having legal effect in the United Kingdom together with:</p> <ul style="list-style-type: none"> • all secondary legislation made under that legislation including statutory instruments, rules, orders, regulations, notices, directions, bye laws and permissions for the time being made under or deriving validity from any Act of Parliament or other public or local legislation; • European directives or regulations and rules having the force of law in the United Kingdom; and • regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Works; and • all legislation listed in the Specification;
“Maintenance Fee”	the maintenance fee specified in Schedule 3 ;
“Major Defect”	shall mean all and any Defects in the Works which would prevent the Company or any other of the Consuming Parties from utilising the Refuelling Site and/or the Refuelling Facility as intended, to include (but not limited to) any software failures and/or any Defect which results in a breach of the Health and Safety Laws in accordance with the terms of this Contract;
“Milestone”	shall mean the milestones identified in the Pricing Schedule;
“Minor Defect”	shall mean all and any Defects in the Works which are not categorised as Major Defects and which are in the manner of snagging items;
“Minimum Annual Amount”	<p>shall mean (subject to review in accordance with Schedule 3):</p> <p>(i) nil for the first six months of the first Supply Year;</p> <p>(ii) the amount of 50,050kg for the remainder of the first Supply Year; and</p> <p>(iii) the amount of 100,100kg per Supply Year thereafter (or pro rata such lesser sum calculated on a daily basis if the final Supply Year is less than 364 days)</p> <p>(being 275kg multiplied by an assumed 364 days in each Supply Year) but less in each case the</p>

amount of 275kg for any day or part thereof when any part of the Refuelling Facility is not Available;

"Parties"	shall mean the parties to the Contract and any permitted successors and assignees and "Party" shall mean whichever of them is indicated by the context of the reference;
"Payment Application Date"	the last day of the Period following completion of a Milestone during the period of the Works;
"Period"	the Company's accounting periods as notified from time to time by the Company to the Contractor, each such period being of between 25 and 32 days and one of 13 periods during the financial year;
"Planning Permission"	shall mean any statutory approvals, consents, licences, permissions required from any local or other competent authority having jurisdiction in respect of the relevant works to enable the construction, completion and use of the Refuelling Facility at Perivale or, if applicable, a suitable alternative site;
"Pricing Schedule"	shall mean the document attached at Schedule 9 ;
"Professional Team"	shall mean the Independent Certifier and any civil and structural engineer, architect, mechanical and electrical engineer, environmental consultant, quantity surveyor, other specialist consultant and/or any other consultant with a material design responsibility in relation to the Works appointed by the Contractor;
"Programme"	shall mean the programme for the design, carrying out and completion of the Works in accordance with this Contract prepared by the Contractor in accordance with the requirements of Clause 5.8 and to be accepted by the Company;
"Project"	shall mean the design, installation, operation and maintenance of the Refuelling Facility and supply of Hydrogen;
"Property"	shall mean the property at Perivale Garage, Alperton Lane, Greenford, London, UB6 8AA occupied by the Bus Operator part of which property comprises the Refuelling Site which is being underlet to the Company by the Bus Operator as part of these arrangements;
"Public Procurement Termination Event"	has the meaning given to it in Clause 28.7 ;
"Public Procurement Termination Grounds"	any one or more of the grounds described either in Regulation 73(1) of the Public Contracts Regulations 2015 or Regulation 89(1) of the

Utilities Contracts Regulations 2016;

“Refuelling Facility Performance Information”	means any and all data including technical and operating data, information, and other knowledge which measures the performance and efficiency of the Refuelling Facility and the supply of Hydrogen from the Refuelling Facility, which is obtained by the Contractor as a consequence of the Contractor operating and maintaining the Refuelling Facility. Such information will include as a minimum the information specified in paragraph 2.10 of the Specification;
“Refuelling Facility”	shall mean a hydrogen storage and dispense refuelling facility to be installed by the Contractor on the Refuelling Site for the purposes of storing and dispensing Hydrogen at the Refuelling Site (or alternative site agreed pursuant to Clause 3) including delivering Hydrogen to the Buses which facility shall comprise the Hydrogen Storage Facility and the Dispensing Facility;
“Refuelling Site”	shall mean the proposed site for the Refuelling Facility at Perivale Garage, Alperton Lane, Greenford, London, UB6 8AA (or alternative site agreed pursuant to Clause 3);
“Requisite Consents”	the Planning Permission and all approvals of details pursuant to it, building regulation approvals, by-law approvals, and any other consents, permissions, licences (including any required under the Highways Act 1980) and authorisations required from any public authority or other competent authority, statutory undertaker or person either for the carrying out of the Works or for the intended use of the Project as contemplated by the terms of the Planning Permission, or otherwise;
“Retention”	shall mean 2% of the Value of Work To Date;
“Review Date”	shall mean 2 April 2020 or the Effective Date whichever is later and each anniversary thereof during the Supply Period;
“Service Levels”	shall mean as defined in Schedule 11 ;
“Specification”	means the specification set out in Schedule 1 ;
“Standards”	means such European, British and International Standards and associated Codes of Practice required by Company for the Contractor to comply with its obligations under this Contract and in accordance with good industry practice;
“Start-up Period”	shall mean the period of 3 months commencing on the date set out in Clause 5.28 ;
“Sub-Contract”	shall mean each of the sub-contract deeds to be entered into between the Contractor and a Sub-

	Contractor;
"Sub-Contractor"	shall mean all sub-contractors with any responsibility for design, and such other sub-contractor(s) as the Company may from time to time by notice to the Contractor designate;
"Sub-Underlease"	shall mean the sub-underlease to be entered into between the Company and the Contractor in accordance with the provisions of Clause 4 and Schedule 10 ;
"Supply Period"	shall mean a period of 10 years commencing on the Effective Date unless extended in accordance with Clause 2.2 or terminated in accordance with the Contract;
"Supply Year"	shall mean a period of 13 Periods as specified by the Company, the first Supply Year commencing on the Effective Date.
"TfL"	Transport for London, a statutory corporation established under the Greater London Authority Act 1999;
"TfL Group"	shall mean TfL and any subsidiary (as defined in section 736 of the Companies Act 1985) thereof from time to time including the Company and reference to any "member of the TfL Group" shall refer to TfL or any such subsidiary;
"Third Parties"	shall mean any Funder or Landlord;
"Transparency Commitment"	shall mean the Company's commitment to publish its contracts, tender documents and data from invoices received in accordance with the Local Government Transparency Code 2015 and the Company's own published transparency commitments;
"Value of Work To Date"	shall mean the total of the lump sum prices for each completed Milestone in accordance with the Pricing Schedule;
"VAT"	shall mean value added tax as provided for in the Value Added Tax Act 1994 and any tax replacing the same or of a similar nature;
"Vehicle Performance Information"	means any and all data including technical and operating data, information, and other knowledge, including any and all Intellectual Property Rights therein, which measures the performance and efficiency of the Buses which is obtained by either the Supplier or the operator of the Buses or the Buses Supplier;
"Works"	shall mean all or any part of the works to design, manufacture, construct, install, test, complete and/or rectify defects in relation to, the Refuelling Facility, together with any ancillary works on the Refuelling Site properly required in order to facilitate such works (including (but not

limited to) surveys, monitoring, site investigations and connections to utilities and comms);

“Works Contract Sum”

shall mean the total of the lump sum prices as set out in the Pricing Schedule unless later changed in accordance with this Contract;

“Works Document”

shall mean checked calculations, design and check certificates, specifications, detailed drawings, design method statements, risk assessments, key component details, bills of materials, tests or any other information relevant to the design of the Works.

In this Contract:

- 1.2 a reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders;
- 1.3 a reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of the Contract;
- 1.4 a reference to any document other than as specified in **Clause 1.3** and save as expressed otherwise shall be construed as a reference to the document as at the date of execution of the Contract;
- 1.5 headings are included in the Contract for ease of reference only and do not affect the interpretation or construction of the Contract;
- 1.6 references to Conditions and Schedules are, unless otherwise provided, references to conditions of, and schedules to, the Contract 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;
- 1.7 in the event, and only to the extent, of any conflict between the Conditions and the Schedules, the Conditions prevail, except where the conflicting part of the Schedule is explicitly expressed to take precedence;
- 1.8 the Schedules form part of the Contract and will have the same force and effect as if expressly set out in the body of the Contract;
- 1.9 the expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture; and
- 1.10 the words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.

2. COMMENCEMENT AND DURATION

- 2.1 The Contract shall commence on and including the Contract Commencement Date and shall continue for a period of 10 years from and including the Effective Date subject to extension in accordance with **Clause 2.2** and unless and until terminated in accordance with the provisions set out in **Clause 25** (Termination) or elsewhere in this Contract.
- 2.2 The Company may at its sole discretion extend the Contract in twelve month increments for up to a period of 5 years from and including the original anticipated Expiry Date

provided that the Company gives the Contractor not less than 3 months written notice prior to and including the Expiry Date or any extension thereof.

3. **AUTHORISATIONS AND PLANNING PERMISSION**

- 3.1 Subject to **Clause 3.3**, the Contractor shall be responsible for ensuring that all relevant Authorisations are obtained and maintained in order to lawfully and safely operate the Refuelling Facility.
- 3.2 The Company shall and shall use reasonable endeavours to procure that the other Consuming Parties shall ensure that when the Company and other Consuming Parties undertake activities at the Refuelling Facility the Consuming Parties shall comply with any Authorisations that may be reasonably applicable to them. The Contractor shall ensure that when the Contractor undertakes activities at the Refuelling Facility the Contractor shall comply with any Authorisations that may be reasonably applicable to it.
- 3.3 The Company shall be responsible for obtaining all and any Planning Permission required by law or as may be necessary to install and operate the Refuelling Facility at the Refuelling Site. The Contractor shall assist the Company to obtain such Planning Permission by providing supporting documentation and information and assistance as may be reasonably requested by the Contractor from time to time at the Contractor's own cost.
- 3.4 If the Company is delayed in obtaining the Planning Permission or such Planning Permission is refused by the relevant authority for the installation of the Refuelling Facility at the Refuelling Site the Company shall be entitled to suspend or terminate this Contract with immediate effect. The Parties acknowledge and agree that any costs to be incurred by the Contractor prior to planning permission being obtained shall be governed by **Clause 5.9** of the Contract.
- 3.5 In the event that the Company suspends the Contract in accordance with **Clause 3.4**, the suspension shall continue until the Planning Permission is granted to the Company except that in the event that any suspension of the Contract remains in effect twelve months after the Commencement Date or in the event that there is no suspension in effect but there is material delay or refusal pursuant to **Clause 3.4** continuing twelve months after the Commencement Date, the Company shall consult with the Contractor to agree a resolution that is reasonable and appropriate for both Parties. If the Parties are unable to agree a resolution within 30 Business Days, the Company shall be entitled to terminate the Contract with immediate effect.
- 3.6 Subject to **Clauses 3.4 and 3.5**, in the event that the Company is not successful in obtaining the Planning Permission required by law for the installation of a Refuelling Facility at the Refuelling Site, the Company and the Contractor shall, in good faith, use their reasonable endeavours to agree upon, as soon as practicable, a suitable alternative site for the installation of a Refuelling Facility in accordance with the Contract and the provisions of **Clauses 3.3 to 3.5** shall apply to such alternative site. In the event that this **Clause 3.6** applies and an alternative site is agreed, the Contractor's additional costs associated with this **Clause 3.6** shall be limited to such re-design costs as the Contractor can evidence to the reasonable satisfaction of the Company have been reasonably and properly incurred as a result of the change of site.
- 3.7 For the avoidance of doubt, if it becomes apparent to the Company that Planning Permission for the installation of the Refuelling Facility will not be approved or granted under any circumstances at the Refuelling Site or at any suitable alternative site, the Company shall be entitled to terminate the Contract with immediate effect.

4. **PROPERTY PROVISIONS**

- 4.1 The provisions of **Schedule 10** will apply.

5. DESIGN, INSTALLATION, TESTING AND USE OF THE REFUELLING FACILITY

Design of the Works¹

- 5.1 Upon execution of this Contract, the Contractor shall at its own expense design the Refuelling Facility. At appropriate points during the course of the design process for both the Concept Design and the Detailed Design, the Contractor shall organise and attend individual or collective meetings with any approved Sub-Contractor, the Company, the Buses Supplier and/or the Bus Operator as may be reasonable in the circumstances, to include the progress meetings provided for in the Specification. During such meetings the Contractor shall provide appropriate updates to such parties in relation to the progress of the design of the Refuelling Facility. For each of the Concept Design and the Detailed Design stages, the Contractor shall follow the design approvals process set out in **Schedule 18**.
- 5.2 Without prejudice to the requirements of **Schedule 18**, before finalisation and execution of the design of the Refuelling Facility, the Contractor will seek the prior written approval of the Company (such approval not to be unreasonably withheld or delayed) in relation to:
- 5.2.1 the layout and aesthetics of the Refuelling Facility;
 - 5.2.2 the branding of the Refuelling Facility;
 - 5.2.3 planning permission conditions or any requirements from a Government Agency and/or the European Commission that will impact the final design of the Refuelling Facility;
 - 5.2.4 interface with the refuelling nozzles on the Buses; and
 - 5.2.5 other interfaces with the Buses.

The Parties acknowledge that it is intended that the Contractor will brand the Refuelling Facility with its trademarks and also those of the Company and the European Commission and the Parties, acting reasonably, shall agree the size and the location of those trademarks on the Refuelling Facility.

- 5.3 The Company acknowledges that the Contractor may need to request information from the Company and/or the Buses Supplier in connection with its design and/or construction of the Works. In such circumstances, the Contractor:
- 5.3.1 ensures the request is made in good time and in accordance with the requirements of the Programme and this Contract;
 - 5.3.2 makes the request in writing to the Company detailing the information required and the reason it is required; and
 - 5.3.3 may make such request at any time up until the issue of the Installation Certificate.

The Company shall respond to all reasonable requests for information as soon as reasonably practicable taking account of the timing and nature of the request and shall use reasonable endeavours to procure that the Buses Supplier responds to all reasonable requests for information. In the event the Company and/or the Bus Supplier is not able to provide the information, the Company will respond to the Contractor accordingly. Notwithstanding any information provided to the Contractor in accordance with this **Clause 5.3** (or otherwise), the Contractor shall be responsible for the accuracy of all specifications, plans, designs, drawings and technical information prepared or approved by the Contractor for the purposes of this Contract, whether such specifications, plans, designs, drawings or technical information are prepared or supplied to the Contractor or

¹ Access to Site for surveying etc. to be dealt with in the Property provisions.

the Company or any other person and any expression or approval by the Company of any specification, plan, design or drawing or technical information shall not relieve the Contractor of such responsibility or from the full compliance with the provisions and requirements of this Contract.

5.4 The Contractor has had an opportunity of inspecting the physical conditions (including the sub-surface conditions and condition of any existing assets) and other conditions of or affecting the Refuelling Site and is deemed to be fully acquainted with the same before the Contract Commencement Date and to have obtained all necessary information as to risks, contingencies and all other circumstances which may influence or affect the design and execution of the Works. No failure on the part of the Contractor to discover or foresee any such condition, risk, contingency or circumstance entitles the Contractor to any additional payment (whether by way of an addition to the Works Contract Sum or otherwise) or to any change to the Effective Date.

5.5 As between the Contractor and the Company, the Contractor does not rely upon any survey, report or other document prepared by or on behalf of the Company regarding any such matter as is referred to in this clause or as set out in the Specification (Volume 2 Part 2) and the Company makes no representation or warranty as to the accuracy or completeness of any such survey, report or document. The Company has no liability arising out of or in relation to any such survey, report or document or from any representation or statement, whether negligently or otherwise made, contained in such survey, report or other document. The Contractor shall undertake any other surveys and /or investigations that may be necessary to facilitate his detailed design and construction of the Works.

5.6 The Contractor accepts sole responsibility for the design of the Works and for the selection and standards of all materials, goods and workmanship forming part of the Works, including without limitation:

5.6.1 all and any design and other work undertaken in relation to the Works before the date of this Contract by any other person whether on behalf of the Contractor or by or on behalf of the Company; and

5.6.2 all and any design and other work undertaken in relation to the Works after the date of this Contract by any other person on behalf of the Contractor

and all such design and other work undertaken by any such person shall be treated for all the purposes of this Contract as undertaken by the Contractor.

5.7 The Contractor shall design the Works exercising all the skill, care and diligence to be expected of a competent and properly qualified designer experienced in designing works of a similar nature type location and complexity to the Works so as to be and to be capable of being carried out:

5.7.1 in accordance with the Specification;

5.7.2 in accordance with the relevant approved Works Documents including the approved Concept Design Statement;

5.7.3 in accordance with the Standards;

5.7.4 free from Deleterious Materials;

5.7.5 in accordance with the Requisite Consents;

5.7.6 in compliance with all Legislation, including the CDM Regulations and Health and Safety Laws;

5.7.7 in accordance with all relevant Standards;

5.7.8 so as to ensure that they do not adversely affect the safety or operation of the Bus Operator; and

5.7.9 in accordance with the obligations contained in this Contract.

Mobilisation, Construction and Installation

5.8 The Contractor shall submit to the Company Project Manager the first Programme for acceptance not later than **35 calendar days** after the Contract Commencement Date. In relation to each Programme submitted for acceptance:

5.8.1 the Contractor will show:

5.8.1.1 the starting date, access date(s), Milestones and the date planned for issue of the Completion Certificate;

5.8.1.2 the planned Effective Date;

5.8.1.3 the order and timings of the operations which the Contractor plans to do in order to carry out and complete the Works;

5.8.1.4 the order and timings of any work to be undertaken by the Company or any third parties as agreed with the Contractor, or, as stated in the Specification or any approved Works Documents or Contractor's Design Documents;

5.8.1.5 the dates when the Contractor plans to complete each Milestone and to complete any work required in order for the Company or any third parties to do their work;

5.8.1.6 provisions for:

(a) float;

(b) time risk allowance;

(c) health and safety requirements; and/or

(d) the procedures set out in this Contract

5.8.1.7 the dates when in order to carry out and complete the Works in accordance with the Programme, the Contractor will need:

(a) access to a part of the Refuelling Site if later than the access date;

(b) acceptances;

(c) any plant, materials or equipment to be provided by the Company or by third parties;

(d) any information required from the Company or any third parties.

5.8.2 for each operation, the Contractor shall:

5.8.2.1 provide a statement of how the Contractor plans to do the work identifying the principle equipment and other resources which he plans to use; and

5.8.2.2 any other information the Specification requires the Contractor to show on a Programme submitted for acceptance.

- 5.8.3 the procedure for obtaining acceptance shall be as follows:
- 5.8.3.1 within 2 weeks of the Contractor submitting a Programme for acceptance, the Company Project Manager either accepts the Programme or notifies the Contractor of his reasons for not accepting it. A reason for not accepting a Programme is:
- (a) the Contractor's plans which it shows are not practicable;
 - (b) it does not show the information the Contract requires;
 - (c) it does not represent the Contractor's plans realistically; or
 - (d) it does not comply with the Specification.
- 5.8.4 the Contractor shall provide information which shows how each activity on the Pricing Schedule relates to the operations on each Programme which he submits for acceptance.
- 5.8.5 the Contractor shows on each revised Programme:
- 5.8.5.1 the actual progress reached on each operation and its effect upon the timing of the remaining work;
 - 5.8.5.2 the effects of any agreed extension of the Effective Date in accordance with **Clause 6**;
 - 5.8.5.3 how the Contractor intends to deal with any delays and to correct notified Defects; and
 - 5.8.5.4 any other changes which the Contractor proposes to make to the current accepted Programme.
- 5.8.6 the Contractor shall submit a revised Programme for acceptance:
- 5.8.6.1 within five Business Days of an instruction to do so from the Company Project Manager; and/or
 - 5.8.6.2 when the Contractor chooses to, and in any case
 - 5.8.6.3 at no longer interval than 4 weeks, on Friday of week 3 in accordance with the following schedule until issue of the Completion Certificate:

Financial Year	Company Period	End of Week 3
18/19	12	22/02/2019
18/19	13	22/03/2019
19/20	1	19/04/2019
19/20	2	17/05/2019
19/20	3	14/06/2019
19/20	4	12/07/2019
19/20	5	09/08/2019
19/20	6	06/09/2019
19/20	7	04/10/2019
19/20	8	01/11/2019
19/20	9	29/11/2019

Financial Year	Company Period	End of Week 3
19/20	10	27/12/2019
19/20	11	24/01/2020
19/20	12	21/02/2020
19/20	13	19/03/2020
20/21	1	24/04/2020
20/21	2	22/05/2020
20/21	3	19/06/2020
20/21	4	17/07/2020
20/21	5	14/08/2020
20/21	6	11/09/2020
20/21	7	09/10/2020
20/21	8	06/11/2020
20/21	9	04/12/2020
20/21	10	01/01/2021
20/21	11	29/01/2021
20/21	12	26/02/2021
20/21	13	26/03/2021

5.9 The Parties acknowledge and agree that the Contractor may initiate the procurement of the equipment and/or materials necessary to install the Refuelling Facility and take other ancillary steps to ensure the Refuelling Facility is fully operational with effect from and including the Effective Date before:

5.9.1 the Company has obtained the necessary Planning Permission for the installation of the Refuelling Facility at the Refuelling Site; and

5.9.2 the Contractor has been granted adequate and proper rights in accordance with **Clause 4**;

provided that if the forecast cost of such equipment and/or materials for any Period is estimated to be equal to or greater than £75,000 such costs shall not be incurred by the Contractor without the Company's prior written approval (such approval not to be unreasonably withheld or delayed). Any additional costs that do not meet the requirements of this **Clause 5.9** shall be incurred at the Contractor's risk.

5.10 The Contractor shall, in accordance with the requirements of the Programme, obtain all Requisite Consents (excluding the Planning Permission) that may from time to time be necessary to enable the Contractor lawfully to commence and to carry out the Works or, if any part of the Works are destroyed or damaged, to reinstate them.

5.11 Prior to the commencement of the Works, the Contractor is to procure and deliver to the Company at its own cost:

5.11.1 a pre-construction health and safety plan for the Company's written approval (not to be unreasonably withheld or delayed); and

5.11.2 a detailed condition survey of the Refuelling Site and the Property prepared by an appropriately qualified professional. If such survey contains a recommendation that further investigations are required, the Contractor shall arrange at its cost for such further investigations as the Company shall require.

- 5.12 Upon the grant of the Planning Permission, and provided that the Contractor has been granted adequate and proper rights in accordance with **Clause 4** the Contractor shall carry out and complete the Works and shall ensure that the Refuelling Facility at the Refuelling Site is fully operational with effect from and including the Effective Date in order to be able to meet the Contractor's obligations in respect of the supply of Hydrogen to the Company under this Contract.
- 5.13 In carrying out and completing the Works the Contractor shall procure that:
- 5.13.1 it's employees, agents, consultants and sub-contractors follow the requirements for access to the Refuelling Site set out in Annexe 1 (Civils Specification) to the Specification;
 - 5.13.2 proper provision is made for the security and protection of the Bus Operator during the carrying out of the Works and for the protection of any materials, plant and equipment;
 - 5.13.3 proper precautions are taken for the safety of all persons upon or in the vicinity of the Refuelling Site, to include (but not limited to) the Bus Operator. Such precautions shall include maintaining such hoardings, fences, security patrols, safeguards and arrangements of lighting the Works and other security measures as the Company (acting properly) or any competent statutory or other authority may consider necessary in the interest of public safety or the safety of employees or passengers of the Bus Operator or other persons or (if the Company shall take any such precautions) repay to the Company the proper costs of so doing;
 - 5.13.4 proper provision is made for the support of land, buildings and boundaries adjoining the Refuelling Site and for the protection of all services benefiting land adjoining or near to the Refuelling Site;
 - 5.13.5 all escape routes in relation to the Property are kept free and unobstructed at all times; and
 - 5.13.6 no obstruction is caused or permitted to be caused (save during the proper carrying out of the Works and only to the extent that they have been approved by the Company) to the means of access:
 - 5.13.6.1 for buses and any other vehicles used or operated by the Bus Operator;
 - 5.13.6.2 to any plant, machines and equipment serving the Refuelling Site or the Property; and
 - 5.13.6.3 to service ducts and risers serving the Refuelling Site or the Property.
- 5.14 The Contractor shall ensure that the Works are carried out in a manner which does not cause any nuisance, annoyance, inconvenience, injury, loss, danger, disruption or interference to the Bus Operator or its officers, servants, agents or persons on the Property.
- 5.15 The Contractor shall carry out and complete or procure that the Works shall be carried out and completed:
- 5.15.1 in a good and workmanlike manner and free from any defects;
 - 5.15.2 in accordance with the Specification;
 - 5.15.3 in accordance with the approved Works Documents;
 - 5.15.4 in accordance with Standards;;

- 5.15.5 free from Deleterious Materials;
- 5.15.6 in accordance with the requirements of the insurances arranged under **Clause 24**;
- 5.15.7 diligently, expeditiously, with all reasonable despatch and in accordance with the requirements of the Programme;
- 5.15.8 in accordance with the Requisite Consents;
- 5.15.9 in compliance with all Legislation, including the CDM Regulations and Health and Safety Laws;
- 5.15.10 in accordance with all relevant codes of practice and British and European Standards at the date of the commencement of the Works;
- 5.15.11 so that the Works will on completion be in accordance with the approved design
- 5.15.12 so as to ensure that they do not adversely affect the safety or operation of the Bus Operator; and
- 5.15.13 in accordance with the obligations contained in this Contract.

which requirements shall also apply to the rectification of Defects.

- 5.16 The Works shall, at all times, be at the Contractor's risk and, save as expressly provided in this Contract, the Company shall have no responsibility or liability in respect of them or be under any obligations to insure the same. The Works shall be carried out in a manner:
 - 5.16.1 so as not to cause injury, loss, danger or unauthorised interference with the Bus Operator and/or to the Company or persons using the bus depot or any adjoining or neighbouring property (whether owned or operated by the Company, or otherwise);
 - 5.16.2 so as to mitigate any nuisance to the Bus Operator and/or the Company and or persons making use of the bus depot and/or any adjoining or neighbouring property (whether owned or operated by the Company or otherwise), to include, but not limited to, the nearby London Underground railway line;
 - 5.16.3 so as not to interfere with any access or egress from the bus depot or from adjoining or neighbouring property by the owners or occupiers of such adjoining or neighbouring property.
- 5.17 During the carrying out of the Works, the Company Manager and/or the Company Project Manager and/or the Independent Certifier may enter the Refuelling Site to view the state and progress of the Works and to inspect the workmanship and the materials used. In exercising these rights, the Company Manager and/or the Company Project Manager and/or the Independent Certifier will:
 - 5.17.1 give reasonable prior notice to the Contractor;
 - 5.17.2 exercise the rights at reasonable times;
 - 5.17.3 comply with the reasonable requirements of the Contractor;
 - 5.17.4 refer all matters arising to the Contractor and not to its agents, workmen, Sub-Contractors or to members of the Professional Team;
 - 5.17.5 not interfere with the Works or, save in an emergency, attempt to give instructions to any person employed upon or in connection with the Works other than to the Contractor.

- 5.18 If the Company, the Company Project Manager or the Independent Certifier gives notice to the Contractor that any works or materials are not in accordance with the terms of this Contract, to include (but not limited to) the Specification or are not otherwise to the standard or quality required under this Contract, the Contractor shall or shall procure that the Works are corrected to address the comments made.

Construction Documentation

- 5.19 The Contractor shall be responsible for the appointment of the members of the Professional Team and the Sub-Contractors. The Parties have agreed a list of companies/practices who may be appointed by the Contractor, if it so chooses, to be a member of the Professional Team or a Sub-Contractor, as set out at **Schedule 8**. Prior to entering into any Appointment or Sub-Contract, the Contractor shall submit to the Company the names of the Professional Team member(s) and/or Sub-Contractor(s) whom it is intended will be appointed or employed, which may be companies/practices listed in **Schedule 8** or such alternative companies/practices as the Company may require. Where the member of the Professional Team and/or Sub-Contractor:

5.19.1 is identified in **Schedule 8** the Company shall be deemed to have pre-approved such intended appointee;

5.19.2 is not identified in **Schedule 8** the Company shall within 10 (ten) Business Days of receipt of notification from the Contractor of its intended appointee(s) confirm in writing its consent or non-approval of such intended appointment(s), such consent not to be unreasonably withheld.

In the event of non-approval, the Company shall in its written notification confirm the reason(s) for withholding consent and the Contractor shall be required to take such steps as are necessary to meet the Company's concerns so as to satisfy the Company that the intended appointee(s) is/are appropriate for the proposed role in relation to the Works or may choose to select an alternative appointee in accordance with the provisions of this **Clause 5.19**.

- 5.20 The Appointments and the Sub-Contracts are to include obligations on each member of the Professional Team and each Sub-Contractor:

5.20.1 not to use or specify the use of or approve the use of Deleterious Materials in the Works;

5.20.2 to maintain professional indemnity insurance for not less than £10,000,000 (TEN MILLION POUNDS) in respect of each claim (or such lesser sum as may be agreed in advance with the Company) for a period of not less than twelve years from the date of the Completion Certificate and to provide evidence, on reasonable request, that such insurance is in place;

5.20.3 to provide a Collateral Warranty, if requested, for the benefit of the Company in accordance with **Clause 5.37** and/or for the benefit of any Third Party, in accordance with **Clause 5.38**.

- 5.21 The Appointments and Sub-Contracts shall:

5.21.1 be executed as deeds;

5.21.2 not contain a net contribution clause; and/or

5.21.3 not contain any caps or limits on liability which have the effect of capping or limiting the liability of the member of the Professional Team or Sub-Contractor to less than £10,000,000 (ten million pounds Sterling) for any one claim or series of claims arising out of one event. Any other cap or limit on liability proposed by a member of the Professional Team or Sub-Contractor shall not be agreed without the prior written approval of the Company.

- 5.22 On completion of each Appointment and each Sub-Contract, and, at the latest within 14 days of each appointment, the Contractor shall provide a certified copy of the Appointment or the Sub-Contract to the Company. The Contractor shall not alter, waive, vary, or depart from any terms of the relevant Appointment or Sub-Contract without the Company's prior written consent.
- 5.23 The Contractor shall use all reasonable endeavours to ensure that each member of the Professional Team and each Sub-Contractor complies with the terms of their Appointment or Sub-Contract. In the event a member of the Professional Team or a Sub-Contractor is in default of its obligations, the Contractor shall take reasonable and necessary steps to enforce its rights under the Appointment or Sub-Contract to seek to ensure performance of the obligations under such Appointment or Sub-Contract in order to deliver the Works in accordance with the Contractor's obligations under this Contract. In the event the Contractor is unable to do so, the Contractor shall take steps to seek an alternative solution to comply with its obligations under this Contract. The Contractor shall not:
- 5.23.1 (without the prior consent of the Company), do or omit to do any act or thing which would enable a member of the Professional Team or a Sub-Contractor to treat its appointment as terminated by breach; or
- 5.23.2 receive any commissions, inducements or pecuniary or other advantages at any time arising from the appointment of a member of the Professional Team or a Sub-Contractor.
- 5.24 If there is any rescission of an Appointment or a Sub-Contract, the Contractor is as soon as reasonably practicable to notify the Company in writing of such rescission and the reasons for it and the Contractor shall appoint another company/practice in accordance with the provisions of **Clause 5.19**.

CDM Regulations

- 5.25 For the purposes of the CDM Regulations the Contractor:
- 5.25.1 shall take full responsibility for the adequacy, stability and safety of their site operations and methods of construction and comply fully with the requirements of the CDM Regulations;
- 5.25.2 complies with all the requirements set out in the Specification, to include (but not limited to) the requirements in Annexe 1, warrants that it is fully conversant with the guidance and any codes of practice published by the Health and Safety Executive in relation to the CDM Regulations;
- 5.25.3 shall be the Principal Designer and Principal Contractor. The Contractor shall comply with all its obligations as Principal Designer and Principal Contractor under the CDM Regulations in relation to the Works;
- 5.25.4 warrants to the Company that it has the skills, knowledge, experience, organisational capability and level of resources necessary to meet the requirements of the CDM Regulations and to fulfil the role of 'Principal Contractor', 'Principal Designer', 'Contractor' and 'Designer' (as applicable) as defined in the CDM Regulations;
- 5.25.5 at all times co-operates, so far as is reasonably practicable, with all parties having health and safety responsibilities on or adjacent to the Refuelling Site, for the effective discharge of those responsibilities;
- 5.25.6 procures that its employees, agents, Professional Team and/or Sub-Contractors comply fully with the requirements of the CDM Regulations; and
- 5.25.7 acknowledges that the Company shall be the only client for the purposes of the CDM Regulations.

Completion of Installation, Testing and Start-Up

- 5.26 The Contractor is to give the Company Manager and the Company Project Manager not less than [10 (ten)] Business Days prior written notice of the date and time at which any inspection for the purposes of:
- 5.26.1 issue of the Installation Certificate; and/or
 - 5.26.2 all and any start-up testing; and/or
 - 5.26.3 issue of the Completion Certificate
- is to take place. The Contractor shall permit the Company Manager and/or the Company Project Manager and/or those authorised by them, to attend such inspections and the Independent Certifier shall have due regard to any reasonable representations made by the Company Manager and/or the Company Project Manager or their representatives.
- 5.27 Upon completion of the installation of the Refuelling Facility by the Contractor, the Independent Certifier shall immediately issue the Installation Certificate to the Company. On issue of the Installation Certificate, the Independent Certifier shall also issue the Defects List. The Contractor shall, at its own cost, rectify the items in the Defects List as soon as reasonably practicable. In relation to such Defects:
- 5.27.1 failure to rectify any Major Defect on the Defects List shall entitle the Independent Certifier to refuse to issue the Completion Certificate;
 - 5.27.2 in cases of urgency the Company may require a Defect to be made good within such period of time specified by the Company as the circumstances require;
 - 5.27.3 in the event that the Contractor is notified of a Defect and does not rectify the Defect within a reasonable time or confirm proposals to rectify the Defect that are acceptable to the Company, the Company reserves the right to arrange for a third party to rectify the Defect and to seek to recover the cost from the Contractor through the Contract or as a debt.
- 5.28 The Start-up Period shall commence upon the date of issue of the Installation Certificate. The Parties acknowledge that the purpose of the Start-up Period is to fully test the Refuelling Facility and to ensure that the Refuelling Facility is operating safely and effectively and in accordance with the requirements of the Specification.
- 5.29 During the Start-up Period the Contractor shall produce and/or supply such quantities of Hydrogen to the Refuelling Facility as are necessary in order to test the operation of the Refuelling Facility in accordance with the requirements of the Specification.
- 5.30 The following provisions shall apply to Start-Up:
- 5.30.1 Not less than 4 weeks before the commencement of the Start-up Period the Contractor shall provide the Company Project Manager and the Independent Certifier with details of those tests which it intends to conduct during the Start-up Period, including those tests required by the Specification. The Contractor will provide the Company Project Manager and the Independent Certifier with a reasonable opportunity to review and comment on the proposed tests and for the Company Project Manager and/or the Independent Certifier to request additional testing to be provided. The Contractor will consider all reasonable requests made by the Company Project Manager and/or the Independent Certifier and shall incorporate these additional tests into its proposed testing regime.
 - 5.30.2 During the Start-up Period, the Contractor shall, at its own expense, carry out any and all tests including those incorporated under **Clause 5.30.1** that are necessary to ensure that the Refuelling Facility is operating safely and in accordance with the Contract (including the Hydrogen Purity Specification) and

shall demonstrate to the reasonable satisfaction of the Company Project Manager and/or the Independent Certifier on request that the tests have been carried out and successfully passed. The Company Project Manager and/or the Independent Certifier shall, on giving the Contractor reasonable notice, have the right at any time during the term of this Contract to audit any and all testing documents and reports prepared by the Contractor whilst conducting testing of the Refuelling Facility prior to the Effective Date.

- 5.30.3 The Contractor shall give the Company Project Manager and the Independent Certifier a minimum of 10 Business Days' notice of the dates and places at which the Contractor intends to carry out the tests. The Company Project Manager and/or the Independent Certifier shall be entitled to witness any of the tests and shall inform the Contractor of those tests that he wishes to witness at least 5 Business Days before the date of the relevant scheduled test.
- 5.30.4 The Contractor shall give the Company Project Manager and/or the Independent Certifier access to the Contractor's premises and permit the Company Project Manager and/or the Independent Certifier to observe the tests. If the Refuelling Facility or any part thereof are being manufactured on other premises, the Contractor shall use reasonable endeavours to obtain for the Company Project Manager and/or the Independent Certifier permission to observe the tests at the premises where the parts are being manufactured.
- 5.30.5 The Contractor shall supply test results and any other relevant documentation to the Company Project Manager and the Independent Certifier as soon as reasonably practicable during the Start-up Period. The Company Project Manager shall be entitled to disclose a copy of such test results to a third party expert appointed by him for the purposes of determining whether the Refuelling Facility complies with applicable Health and Safety Laws and terms and conditions of this Contract (including the Hydrogen Purity Specification).
- 5.30.6 Within five (5) Business Days of receipt of all testing results from the Contractor, the Company Project Manager and/or the Independent Certifier shall notify the Contractor whether, in their reasonable opinion, the whole or part of the Refuelling Facility is unsafe or not in accordance with applicable Health and Safety Laws and/or the Contract (including the Hydrogen Purity Specification). As soon as reasonably practicable upon such receipt of notification, the Contractor shall (acting reasonably) determine whether any further retesting and/or any rectification to the Refuelling Facility is required and if so promptly carry out such retesting and/or rectification at the Contractor's own cost and expense.
- 5.30.7 In circumstances where the Contractor is notified that the Independent Certifier or a third party expert appointed by the Company Project Manager reasonably decides that the whole or part of the Refuelling Facility does not comply with applicable Health and Safety Laws, the Contractor shall have the right to appoint an independent health and safety expert to carry out health and safety tests at the Refuelling Facility. If the Contractor's independent health and safety expert determines that the Refuelling Facility does not comply with applicable Health and Safety Laws, the Contractor shall within ten (10) Business Days, or such other period as agreed between the Parties, commence work to correct the health and safety deficiencies identified by the Contractor's independent health and safety expert at the Contractor's own cost and expense. The provisions of this **Clause 5.30.7** shall not release the Contractor from any of its obligations under the Contract.
- 5.30.8 Upon the expiry of the Start-up Period the Contractor shall notify the Company Project Manager and the Independent Certifier that it considers that the Refuelling Facility is fully operational and that Hydrogen can be Delivered to the Company in a safe and effective manner and in accordance with the Contract (including the Hydrogen Purity Specification and Specification). If the Contractor considers that the Refuelling Facility meets such requirements, the

Contractor shall request that the Independent Certifier issues the Completion Certificate.

- 5.30.9 The Independent Certifier may refuse to issue the Completion Certificate if:
- 5.30.9.1 the Refuelling Facility fails to pass any tests (including any repetition thereof); and/or
 - 5.30.9.2 there is some other reason, to include (but not limited to) the Contractor's failure to rectify all or any Major Defects notified in accordance with the terms of this Contract.
- In such circumstances, the Independent Certifier will notify the Contractor accordingly and the Contractor shall take steps to rectify the issue(s) raised by the Independent Certifier, at the Contractor's own expense.
- 5.30.10 Once the Contractor considers that it has rectified any issues identified by the Independent Certifier in accordance with **Clause 5.30.9 above**, the Contractor shall repeat the request in **Clause 5.30.8** for the Independent Certifier to issue the Completion Certificate. Subject to **Clause 5.30.11** below, the certification procedure in this **Clause 5.30** shall be repeated as necessary until the Independent Certifier issues the Completion Certificate.
- 5.30.11 If the Independent Certifier is unable to issue the Completion Certificate three (3) months after the date of the issue of the Installation Certificate, the Parties shall meet and use reasonable endeavours to agree an appropriate resolution. In the event that the Parties are unable to reach agreement within thirty (30) Business Days from the initial meeting, the Company shall be entitled to reject the Refuelling Facility and such failure to pass any tests and/or procure the issue of the Completion Certificate may constitute a material breach for the purposes of **Clause 25** (Termination).

Post-Completion

- 5.31 As soon as reasonably practicable following issue of the Completion Certificate, the Contractor shall:
- 5.31.1 prepare and provide the Company with copies of:
 - 5.31.1.1 the commissioning reports, test certificates and operating and maintenance manuals for the Refuelling Facility;
 - 5.31.1.2 the Health and Safety File maintained under the CDM Regulations;
 - 5.31.1.3 a complete set of the as-built plans, drawings and specifications for the Works; and
 - 5.31.1.4 all guarantees, indemnities or warranties relating to the Works and/or the Refuelling Facility and/or the Refuelling Site.
 - 5.31.2 provide, at its expense, all necessary training to personnel of the Company or members of the TfL Group, and the Bus Operator or in each case their authorised representatives who have a direct operational need to understand the operation of the Dispensing Facility and any other related equipment together with all information the Contractor may consider reasonably necessary or as the Company may reasonably require, including without limitation the training required in accordance with the Specification, and all manuals or other documentation containing relevant information relating to the handling and use of the Hydrogen and operation of the Dispensing Facility and generally in relation to the use of the Dispensing Facility. Such training shall

include an explanation of the relevant documentation provided by the Contractor.

- 5.31.3 In relation to such training as is required pursuant to **Clause 5.31.2**:
 - 5.31.3.1 prior to delivering the training, the Contractor shall allow the Company the opportunity to confirm its training requirements and the Contractor shall use reasonable endeavours to incorporate such training requirements into its schedule of training (including without limitation training that allows authorised representatives of the Company, or members of the TfL Group to provide further training to its staff);
 - 5.31.3.2 the Company shall require all of its personnel or authorised representatives (including the vehicle operators appointed by the Company) responsible for operating the Refuelling Facility or responsible for refuelling the Buses at the Refuelling Facility to be trained first;
 - 5.31.3.3 the cost of the Contractor providing the training shall not include the costs of the personnel of the Company or TfL Group attending such training or the travelling expenses incurred by such personnel in commuting to and from the training.
- 5.31.4 Between 6 and 8 weeks before the anticipated issue of the Completion Certificate, the Company and the Contractor shall meet to agree the precise requirements of the Company in relation to this **Clause 5.31**.
- 5.32 Following issue of the Completion Certificate, the Company shall not be required to release the Retention until:
 - 5.32.1.1 the provision of documents and the training requirements set out in **Clause 5.31** have been satisfied in full;
 - 5.32.1.2 the Contractor has rectified all Minor Defects to the satisfaction of the Independent Certifier, to include any set out in the snagging list issued with the Completion Certificate as provided for in the Specification; and
 - 5.32.1.3 the Contractor has provided all Collateral Warranties requested by the Company in accordance with **Clause 5.37** and **Clause 5.38**.

Payment

- 5.33 The following provisions shall apply to payment for the Works:
 - 5.33.1 On each Payment Application Date the Contractor shall submit an application for payment to the Company Project Manager (each a "**Payment Application**") showing the Contractor's assessment of the Amount Due. Each Payment Application shall specify the sum that the Contractor considers will become due on the payment due date and the basis upon which that sum is calculated. The Contractor shall submit any supporting documents that are reasonably necessary to enable the Company Project Manager to check the Payment Application and the Contractor's assessment of the Amount Due.
 - 5.33.2 The payment due date shall be the later of:
 - 5.33.2.1 the Payment Application Date; and
 - 5.33.2.2 the date of receipt by the Company Project Manager of the Contractor's Payment Application.

- 5.33.3 The final date for payment shall be [thirty (30) days] after each payment due date.
- 5.33.4 The "**Amount Due**" is:
- 5.33.4.1 the Value of Work To Date or as agreed in advance in writing by the Company;
 - 5.33.4.2 plus other amounts to be paid to the Contractor;
 - 5.33.4.3 less any amounts to be paid by or retained from the Contractor, to include (but not limited to) the Retention.
- 5.33.5 The Company Project Manager shall assess the Amount Due and the Payment Application(s) and shall notify the Contractor in writing not later than [fourteen (14) days] after the due date of:
- 5.33.5.1 the amount (if any) the Company Project Manager considers to be due at the payment due date which in the case of the first payment shall be the Amount Due and for other payments shall be the change in the Amount Due since the last Payment Certification; and
 - 5.33.5.2 the basis on which the amount was calculated,
- a "**Payment Certification**". It is immaterial for the purposes of this **Clause 5.33.5** that the amounts referred to in **Clause 5.33.5.1** or **Clause 5.33.5.2** may be zero.
- 5.33.6 The Contractor makes a payment to the Company if the Company Project Manager certifies that the Amount Due is less than the amount that has been paid to the Contractor.
- 5.33.7 Within [five (5) days] of receipt of a Payment Certification and in any event before the final date for payment of the relevant payment the Contractor shall issue a VAT invoice for the amount stated in that Payment Certification to the Company.
- 5.33.8 Subject to **Clause 5.33.9** the Company shall pay the Contractor the sum referred to in the Company Project Manager's Payment Certification pursuant to **Clause 5.33.5** (or, if the Company Project Manager has not served a Payment Certification, the sum referred to in the Contractor's Payment Application under **Clause 5.33.1**) (the "**Notified Sum**") on or before the final date for payment.
- 5.33.9 If the Company intends to pay less than the Notified Sum, the Company or the Company Project Manager (as the case may be) should notify the Contractor in writing not later than three (3) days prior to the final date for payment (the "**Prescribed Period**") of:
- 5.33.9.1 the amount (if any) that it considers to be due on the date the notice is served and the basis upon which that sum is calculated; or
 - 5.33.9.2 if there is more than one basis, each basis and the amount attributable to it.

It is immaterial for the purposes of this **Clause 5.33.9** that the amounts referred to in **Clause 5.33.9.1** and **Clause 5.33.9.2** may be zero. Where a notice is given under this **Clause 5.33.9** the Company's obligation to pay the Notified Sum under **Clause 5.33.8** applies only in respect of the sum specified pursuant to this **Clause 5.33.9**. Within one (1) Working Day of receipt of a

pay less notice under this **Clause 5.33.9** the Contractor shall issue a VAT invoice for the amount stated in that pay less notice to the Company.

- 5.33.10 The Company shall pay the Contractor any VAT properly chargeable on the Works. Any amount expressed as payable to the Contractor under this Contract is exclusive of VAT unless stated otherwise. To the extent that such VAT is properly chargeable, it shall be charged at the rate in force on the date of the Payment Application(s) and will be shown as a separate item on all Payment Applications.
- 5.33.11 Notwithstanding **Clause 5.33.8 and 5.33.9** if the Contractor is subject to an Insolvency Event after the Prescribed Period, the Company shall not be required to pay the Contractor the Notified Sum on or before the final date for payment.
- 5.33.12 The Company Project Manager may correct any wrongly assessed Amount Due in a later Payment Certification.
- 5.33.13 The Works Contract Sum shall only be changed in accordance with this Contract.
- 5.33.14 If either Party fails to pay to the other any amount payable in connection with this Contract on or before the final date for payment, interest shall accrue on the overdue amount from the final date for payment until the date of actual payment (whether before or after judgement) at the Interest Rate. Any interest accruing under this **Clause 5.33.14** shall be immediately payable by the paying Party on demand.
- 5.33.15 Where the Construction Industry Scheme applies to any payment to be made by the Company to the Contractor under the Contract, the obligations of the Company to make such payment are subject to the provisions of the Construction Industry Scheme. Unless and until HM Revenue and Customs confirms to the Company that the Company can make any payment to the Contractor without any tax deduction, the Company shall deduct any tax from payments due to the Contractor under this contract at the rate specified by HM Revenue and Customs pursuant to the Construction Industry Scheme before paying the balance to the Contractor. The Company accounts to HM Revenue and Customs for any tax so deducted.
- 5.33.16 The Company shall be entitled to retain the Retention from each Payment Certification. The Company:
 - 5.33.16.1 shall not be required to release the Retention to the Contractor until all of the requirements of **Clause 5.32** have been satisfied;
 - 5.33.16.2 shall not have a fiduciary interest in the Retention, either as a trustee for the Contractor, or otherwise;
 - 5.33.16.3 relationship with the Contractor with regard to Retention shall be solely that of debtor and unsecured creditor;
 - 5.33.16.4 shall have no obligation to invest the Retention or any part of it, or to segregate the Retention or any part of it in a separate bank account, or in any other manner whatsoever;
 - 5.33.16.5 shall be entitled to the full beneficial interest in the Retention and every part of it (and its interest and any income arising from it) unless and until the Retention is paid to the Contractor pursuant to this Contract.

Maintenance of the Refuelling Facility

5.34 For the duration of the Contract:

- 5.34.1 the Contractor shall be responsible for maintaining at its expense in proper operating condition the Refuelling Facility and in consideration of the Contractor performing such services the Company will pay the Contractor the Maintenance Fee;
- 5.34.2 the Company shall notify the Contractor upon becoming aware that any damage or destruction has been caused to the Refuelling Facility or where any defect or want of maintenance or repair becomes apparent to the Company or is suspected.
- 5.34.3 the Contractor shall regularly inspect the Refuelling Facility and carry out such tests and any inspections and maintenance in accordance with good industry practice from time to time.
- 5.34.4 following the initial training to be provided by the Contractor in accordance with **Clause 5.31**, the Contractor will provide, at the Contractor's cost, training every six months to new personnel or authorised representatives of the Company or members of the TfL Group (as applicable) in the operation and use of the Dispensing Facility. The Contractor shall provide any additional training requested by the Company or the Bus Operator at a reasonable cost to be decided at the time between the Contractor and the Company and shall provide updates to refreshers to such training not less than every twelve months or through availability of an online training module as required.

Title

- 5.34.5 Title to the Refuelling Facility and each item of equipment relating thereto will pass to the Company on delivery of that item to the Refuelling Site or upon payment by the Company for such item if earlier. The Contractor's rights to the Refuelling Facility shall following the Effective Date be to use the Refuelling Facility for the purpose of Delivering Hydrogen to the Consuming Parties in accordance with the provisions of this Contract.
- 5.34.6 The Contractor shall not:
 - 5.34.6.1 without the Company's prior written consent (which it may in its absolute discretion withhold) transfer, encumber, pledge, credit, hire out, dispose of, mortgage, assign, or grant any lien, option, right of first refusal, pre-emption or security over the whole or part of the Refuelling Facility or enter into any other arrangement having similar effect with any third party;
 - 5.34.6.2 use the Refuelling Facility or make Hydrogen available through the Refuelling Facility to supply surplus Hydrogen to any third party (other than a Consuming Party) unless instructed to do so in writing by the Company and agreed between the Company and the Contractor (such agreement not to be unreasonably withheld or delayed).
- 5.34.7 Risk in the Refuelling Facility and each item of equipment relating thereto will remain with the Contractor up to the issue of the Completion Certificate and will transfer to the Company upon issue of the Completion Certificate.

Access to equipment and the Refuelling Facility

- 5.34.8 The Contractor will provide at its expense accurate metering equipment (as more particularly described in the Specification) available from the Contract Commencement Date for the purpose of measuring the quantity of Delivered Hydrogen and will provide access to that metering equipment at such times as

may reasonably be requested by the Company to authorised personnel for the purpose of verifying the accuracy of the metering equipment.

- 5.34.9 The Company and any member of the TfL Group (as applicable) and their authorised representatives (to include, but not limited to the Bus Operator) shall have access to the Refuelling Facility on every day of the Supply Period provided that:
- 5.34.9.1 all attendees must have completed any and all relevant training provided by the Contractor pursuant to this **Clause 5** before handling, using or operating the Dispensing Facility;
 - 5.34.9.2 all attendees who have completed any and all relevant training provided by the Contractor pursuant to this **Clause 5** and who need to attend to and use the Dispensing Facility for operational purposes shall be issued individual Personal Identification Numbers (PIN) and shall always use such numbers during attendance at the Refuelling Facility. Individual PIN numbers will only be used by the individuals to whom they were assigned and shall not be reused or loaned to other individuals;
 - 5.34.9.3 where there is no direct operational need for the attendees to have access, the Contractor is given at least 5 Business Days' notice of such visit and is given the opportunity to accompany the attendee if deemed appropriate;
 - 5.34.9.4 the Company shall not allow any other person not provided for in this **Clause 5.34.9** to access the Refuelling Facility without obtaining the prior written consent of the Contractor and the Contractor reserves the right to accompany any attendees as appropriate.
- 5.34.10 A local security procedure shall be agreed between the Parties to ensure that there is no unauthorised access to or use of the Refuelling Facility.

Security documentation

- 5.35 Within 14 days of the formation of this Contract, the Contractor shall deliver to the Company duly executed:
- 5.35.1 a parent company guarantee in the form annexed at **Schedule 19** from the Contractor's ultimate parent company, namely, Nel ASA (company registration number 979 938 799), in favour of the Company, together with a legal opinion in the form annexed at **Schedule 19**, if required; and
 - 5.35.2 a bond in the amount of 10% of the Works Contract Sum in the form annexed at **Schedule 19**, the surety being such surety as the Company may in its absolute discretion approve. The bond expiry date shall be the date of issue of the Completion Certificate.
- 5.36 In relation to the security documentation required in accordance with **Clause 5.35**:
- 5.36.1 the Company shall not be obliged to make any payment to the Contractor under this Contract unless and until the parent company guarantee, the legal opinion (if applicable) and the bond have been provided in a form satisfactory to the Company;
 - 5.36.2 the Contractor shall be regarded as being in material breach of this Contract which is incapable of remedy in the event that any parent company guarantee and/or bond (as the case may be) is or becomes invalid or otherwise unenforceable;

- 5.36.3 where any variation is made in accordance with the relevant provisions of this Contract, the Company may in its discretion require the Contractor to provide at its expense a replacement performance bond for a greater sum where such variation either alone or when aggregated with any other variations has resulted in a material increase to the value of the Contract to the Company;
- 5.36.4 the Contractor shall give notice to the Company within 10 Business Days where there is any change in the ownership of the guarantor of the parent company guarantee where such change relates to 50% or more of the issued share capital of the guarantor. The Company shall have the right to terminate the Contract within sixty (60) calendar days of receipt of the required notice from the Contractor, or in the event that the Contractor fails to give the required notice, within sixty (60) calendar days of the Company becoming aware of such event, unless the Contractor has within such period provided a parent company guarantee or other appropriate security from a replacement guarantor acceptable to the Company on terms identical to the parent company guarantee.

Collateral Warranties

- 5.37 Within 21 days of a written request from the Company, the Contractor shall procure that any of the following parties enter into a Collateral Warranty for the benefit of the Company:
- 5.37.1 the Independent Certifier;
 - 5.37.2 any member of the Professional Team; and/or
 - 5.37.3 any Sub-Contractor
- 5.38 Within 21 days of a written request from the Company, the Contractor shall, or shall procure, that any of the following parties enter into a Collateral Warranty for the benefit of any Third Party specified in the request from:
- 5.38.1 the Contractor;
 - 5.38.2 the Independent Certifier;
 - 5.38.3 any member of the Professional Team; and/or
 - 5.38.4 any Sub-Contractor.
- 5.39 Any Collateral Warranty provided in accordance with **Clause 5.37** or **Clause 5.38** shall:
- 5.39.1 be executed as a deed;
 - 5.39.2 be in the form annexed at **Schedule 20**, subject to any amendments approved in advance by the Company on a case by case basis;
 - 5.39.3 include an obligation to maintain professional indemnity insurance for not less than £10,000,000 (TEN MILLION POUNDS) in respect of each claim (or such lesser sum as may be agreed in advance with the Company) for a period of not less than twelve years from the date of the Completion Certificate and to provide evidence to the beneficiary, on reasonable request, that such insurance is in place; and
 - 5.39.4 shall not contain:
 - 5.39.4.1 a net contribution clause; and/or

5.39.4.2 any cap or limit on liability which has the effect of capping or limiting liability to less than £10,000,000 (ten million pounds Sterling) for any one claim or series of claims arising out of one event. Any other cap or limit on liability shall not be agreed without the prior written approval of the Company.

5.40 The obligations in **Clause 5.37**, **Clause 5.38** and **Clause 5.39** shall continue notwithstanding termination of this Contract or determination of the Contractor's employment under this Contract, for any reason whatsoever included a breach by the Company.

6. EXTENSION OF THE EFFECTIVE DATE AND LIQUIDATED DAMAGES

6.1 In the event that any of the following circumstances occurs:

- 6.1.1 delay in the grant of Planning Permission;
- 6.1.2 delay in carrying out any of the tests pursuant to **Clause 5** where such delay is a consequence of any act or omission of the Company;
- 6.1.3 delay caused by a breach of this Contract or an act of prevention by the Company;
- 6.1.4 a variation requested by the Company in accordance with **Clause 30**;
- 6.1.5 a Force Majeure Event; or
- 6.1.6 any other circumstances which may be agreed by the Parties from time to time;

the Effective Date shall be extended by a period equal to the period of any delay caused by the occurrence of any of the circumstances or combination thereof set out in this **Clause 6** provided always that none of the foregoing circumstances occur as a consequence of any act or omission of the Contractor and subject to any other applicable terms and conditions of this Contract.

6.2 If the Completion Certificate is not issued on or before the Effective Date (or any extension of the Effective Date pursuant to **Clause 6.1**) the Contractor shall:

- 6.2.1 as soon as reasonably practicable notify the Company of the extent to which the failure to achieve completion of the Works ("Completion") is or was due to an issue or issues relating (i) to the construction or commissioning of the Refuelling Facility (each a "Facility Delay") or (ii) to the hydrogen supplied for testing of the Refuelling Facility (each a "Supply Delay"), and the Contractor shall provide supporting information sufficient to allow the Company (acting reasonably) to assess the correctness of the Contractor's determination (and if the Company does not agree with the Contractor's assessment, **Clause 42** shall apply); and
- 6.2.2 pay Delay Damages for each day from the Effective Date (or any extension of the Effective Date pursuant to **Clause 6.1**) to the date of issue of the Completion Certificate [REDACTED]

6.3 All sums payable by the Contractor to the Company pursuant to **Clause 6.2** shall be paid as liquidated damages for delay and not as a penalty and the Parties acknowledge that such amounts are a genuine pre-estimate of the loss that may be suffered by the Company in the event of any such failure of the Contractor to achieve Completion by the Effective Date (or any extension of the Effective Date pursuant to **Clause 6.1**). Such sums shall be the sole and exclusive monetary remedy of the Company against the

Contractor in respect of any failure whatsoever by the Contractor to achieve Completion by the Effective Date (or any extension of the Effective Date pursuant to **Clause 6.1**).

7. HEALTH AND SAFETY

- 7.1 The Contractor shall ensure that the Hydrogen and the Refuelling Facility shall comply with any and all applicable laws, including but not limited to those in relation to the environment and all Health and Safety Laws, in the UK and Europe and that it is suitable for the purposes of meeting the Contractor's obligations under this Contract. In addition the Contractor will ensure that (i) the Refuelling Facility is installed, maintained and operated and that (ii) Hydrogen is supplied and used in accordance with the Contractor's health, safety, security and environmental standards ("**HSSE Standards**").
- 7.2 The Company (including the Buses operator nominated by the Company) together with any member of the TfL Group (as applicable) and their authorised representatives shall:
- 7.2.1 comply with any reasonable written instruction given by the Contractor or documentation issued by the Contractor in relation to the handling and use of the Hydrogen and operation of the Dispensing Facility and generally in relation to the use of the Refuelling Facility; and
 - 7.2.2 cooperate with the Contractor to the extent that may be necessary to ensure that both the Contractor and the Company and any member of the TfL Group (as applicable) and their authorised representatives, comply with the Health and Safety Laws in relation to the use of the Refuelling Facility;

save that where the Contractor is present at the Refuelling Site and it is impractical to issue written instructions the Contractor or any of its representatives may issue verbal instructions in relation to the handling and use of the Hydrogen and operation of the Dispensing Facility and generally in relation to the use of the Refuelling Facility to the Company (including the Buses operator nominated by the Company) together with any member of the TfL Group (as applicable) and their authorised representatives. In such cases, the Contractor or its representative shall provide written confirmation of the verbal instructions to the Company Project Manager as soon as reasonably practicable. Any documentation or written instructions or other such material issued by the Contractor pursuant to this Clause shall use clear language that will be appropriate to and capable of understanding by its intended recipients and users.

- 7.3 The Company will ensure any reasonable instruction given or documentation issued by the Contractor to the Company pursuant to **Clause 7.2** are provided to such of the Company's officers, employees, contractors, sub-contractors, servants and agents, together with officers and employees of the TfL Group (as applicable) who need to know the same in connection with the handling and use of Hydrogen and operation of the Dispensing Facility. The Contractor reserves the right to amend and update its HSSE Standards from time to time and will issue revised HSSE Standards to the Company as soon as reasonably practicable following any revision or update.
- 7.4 The Company shall ensure that its personnel and authorised representatives and those of the Buses Operator and/or Consuming Parties who use the Refuelling Facility receive training from the Contractor in accordance with **Clause 5.34.4** and that only such persons are permitted to use the Refuelling Facility.
- 7.5 The Contractor and the Company acknowledge that health and safety and environmental knowledge, practice and procedures relating to Hydrogen will develop during the term of the Contract and agree to co-operate with each other to develop and refine best health and safety and environmental practices.
- 7.6 The Company shall as soon as reasonable practicable notify the Contractor's Representative of any problems it becomes aware of at the Refuelling Facility or in connection with the use or handling of Hydrogen.

7.7 Neither Party shall be required to perform any of its obligations under this Contract if one Party, in good faith, reasonably believes:

7.7.1 such performance by the other Party shall entail a material breach of any applicable Health and Safety Laws; or

7.7.2 that the other Party has materially breached any applicable Health and Safety Laws and such breach is ongoing.

In the event of the foregoing, it shall promptly notify the other Party in writing and the Parties shall meet as soon as reasonably practicable to discuss, in good faith, how to remedy the circumstances giving rise to the cessation of performance so that performance can be resumed.

7.8 If the Parties are unable to reach agreement on such remedy within twenty (20) Business Days of the date of receipt of the notice (referred to above) by the other Party and the circumstances detailed in **Clauses 7.7.1 or 7.7.2** continue to apply, the Company shall refer the issue to an independent health and safety expert (the "Expert") who shall determine whether or not one of the circumstances in **Clauses 7.7.1 or 7.7.2** has arisen or applies. The Expert shall also determine what remedy he considers appropriate to resolve the issue, and at whose cost such that performance can be resumed. The costs of the Expert shall be borne equally between the Parties or as the Expert shall otherwise direct.

7.9 The Parties shall (acting reasonably) agree to the Expert's determination and implement such remedy such that performance can be resumed. If one Party, acting reasonably and in good faith does not agree with the Expert's determination, such Party shall have the right to terminate the Contract upon 20 Business Days' notice in writing to the other Party provided that such right to terminate shall cease and that Party be deemed to have accepted the Expert's determination if such right is not exercised within 30 Business Days of the date of the Expert's determination (which shall be in the form of a written report).

8. **SUPPLY OF HYDROGEN**

8.1 The Parties acknowledge and agree that the Refuelling Facility has been designed to Deliver and is capable of Delivering quantities and quality of Hydrogen in accordance with the Specification including the Hydrogen Purity Specification.

8.2 The Parties will consult at such times as may be required to review any proposed changes to the Hydrogen Purity Specification or any other aspects of the Specification and any amendments to the Hydrogen Purity Specification or the Specification will be recorded in writing between the Parties.

8.3 The Contractor will, subject to the terms of this Contract make Hydrogen available for dispense to the Consuming Parties at the Refuelling Site, and provide such other services and perform such other obligations in accordance with the services and Service Levels and the requirements set out in **Schedule 11**.

8.4 The Contractor will ensure that in operating and maintaining the Refuelling Facility, dispensing and Delivering Hydrogen and occupying the Refuelling Site, the Contractor will not cause, or allow to be caused any damage or loss to any Buses or to any user or occupier of the Property or the Refuelling Site and in the event that any such damage or loss occurs, the Contractor will indemnify the Company, the Bus Operator and any other third parties affected against all such damage or loss incurred subject in the case of loss or damage incurred by the Company to the Company proving its loss.

9. **HYDROGEN PRICE AND VALUE ADDED TAX**

9.1 During the Supply Period, the Contractor shall report to the Company and shall submit invoices to the Company in arrears at the end of each four week period for the volume of Hydrogen Delivered by the Consuming Parties at the Refuelling Facility in each four week

period at the Hydrogen Price and the Company shall provide the dates of those four week periods during the Supply Period to the Contractor.

- 9.2 The Hydrogen Price will be reviewed on each Review Date during the Supply Period in accordance with **Schedule 3**.
- 9.3 During the Supply Period the Company will pay to the Contractor the Maintenance Fee in accordance with this **Clause 9** and **Schedule 3**.
- 9.4 The Maintenance Fee will be reviewed on each Review Date during the Supply Period in accordance with **Schedule 3**.
- 9.5 The Company agrees that if in a Supply Year the Company has not taken Delivery of at least the Minimum Annual Amount of Hydrogen then the Company will pay the Shortfall.

The Shortfall shall be calculated as:

$$S = (\text{MAA minus ADH}) \times \text{HP}$$

where

S is the shortfall amount (if any) payable by the Company in relation to the Supply Year in question

MAA is the Minimum Annual Amount of Hydrogen in the Supply Year in question

ADH is the actual amount of Delivered Hydrogen in the Supply Year in question

HP is the Hydrogen Price applicable at the commencement of the Supply Year in question

- 9.6 If any Shortfall is payable in relation to any Supply Year the Contractor will within four weeks of the end of the relevant Supply Year notify the Company that such amount is payable together with the Contractor's detailed calculation thereof.
- 9.7 All invoices submitted by the Contractor shall be clear, concise, accurate, adequately descriptive and in the format required by the Company and in particular shall quote the Contract Number as listed on the front cover of this Contract, the Company SAP number as provided by the Company from time to time and state the details of the Hydrogen in respect of which payment is claimed, including a breakdown of the Hydrogen consumption per Bus type during each four (4) week period.
- 9.8 All invoices shall be submitted, along with all relevant supporting documentation, to the Company at the following address:

Transport for London
Accounts Payable
14 Pier Walk,
London,
SE10 0ES
- 9.9 Any loss and/or additional expenses incurred by the Contractor in correcting and resubmitting any invoice shall be at the Contractor's expense.
- 9.10 If the Company considers that any Hydrogen Price, Maintenance Fee or Shortfall claimed by the Contractor in any invoice has:
 - 9.10.1 been correctly calculated and that such invoice is otherwise correct, the invoice shall be approved and payment shall be made by the bank transfer (Bank Automated Clearance System (BACS)) or such other method as the Company may choose from time to time within 30 days of receipt of such invoice.

- 9.10.2 not been calculated correctly and/or if the invoice or any element of any report contains any other error or inadequacy, the Company shall notify the Contractor and the Parties shall work together to resolve the error or inadequacy as soon as reasonably practicable. Upon resolution, the Contractor shall submit a revised invoice to the Company and the provisions of this **Clause 9.10.2** shall apply to such invoice.
- 9.11 Subject to **Clause 9.10**, unless otherwise expressly provided, the Hydrogen Price is inclusive of all costs and expenses and all ancillary and other works and expenditure, whether separately or specifically mentioned or described in the Contract or not, which are necessary to supply the Hydrogen or which may contingently become necessary to overcome difficulties in providing the same.
- 9.12 The Hydrogen Price payable under the Contract unless otherwise stated is exclusive of VAT and VAT where applicable must be shown as a separate charge.
- 9.13 For the avoidance of doubt, where the Contractor subcontracts any part of the Contract to a third party (in accordance with the obligations on subcontracting in **Clause 12** of this Contract), the Contractor is responsible for the payments to that third party, such payments to meet the requirements of the Public Contracts Regulations 2015 for the payment of subcontractors.
- 9.14 No payment by the Company (including any final payment) or act or omission or approval by the Company or Company Manager or Company Project Manager (whether related to payment or otherwise) shall:
- 9.14.1 indicate or be taken to indicate the Company's acceptance or approval of all or any Hydrogen supplied or any act or omission of the Contractor or otherwise prejudice any rights, powers or remedies which the Company may have against the Contractor, or absolve the Contractor from any obligation or liability imposed on the Contractor under or by virtue of the Contract; or
- 9.14.2 prevent the Company from recovering any amount overpaid or wrongfully paid including payments made to the Contractor by mistake of law or fact. Without prejudice to **Clause 10**, the Company shall be entitled to withhold such amount from any sums due to which may become due to the Contractor or the Company may recover such amount as a debt.
- 9.15 All payments made under the Contract shall be made in pounds sterling.
- 9.16 If any sum payable under this Agreement is not paid when due then, without prejudice to the other party's other rights under this Agreement, that sum will bear interest from the due date until payment is made in full both before and after any judgment, at 2 per cent per annum over Bank of England base rate from time to time.

10. **SET OFF**

All damages, costs, charges, expenses, debts, sums or other amounts arising (contingently or otherwise) to or incurred by the Company arising out of or attributable to the Contract may be deducted by the Company from monies due or which may become due to the Contractor under the Contract or the Company may recover such amounts which are due to it as a debt provided that the Company gives the Contractor 10 Business Days' prior written notice.

11. **CONTRACT MANAGEMENT**

- 11.1 The Company authorises the Company Project Manager to act as the Company's representative in respect of all technical matters relating to the Contract up to the end of the Start-up Period and authorises the Company Manager to act as the Company's representative in respect of all commercial matters relating to the Contract. Other key personnel relating to this Contract are detailed in **Schedule 2**.

- 11.2 The Company Project Manager and Company Manager may delegate any of their functions and may at any time revoke any such delegation. Any such delegation shall be in writing and shall state which function is delegated and the person or persons to whom the same is delegated.
- 11.3 The Company Project Manager and/or the Company Manager (as the case may be) shall meet the Contractor's Representative as follows:
- 11.3.1 not less than every two weeks during installation and prior to the Effective Date at premises in the UK specified by the Company;
 - 11.3.2 not less than every four weeks during the six month period following the Effective Date and not less than every three months thereafter;
 - 11.3.3 at such other times and at such locations upon request of the Company Manager.
- 11.4 Subject to the Company's obligations to make payment in accordance with **Clause 5.33**, no act, omission comment or approval of either the Company, the Company Project Manager or the Company Manager under or in connection with the Contract (to include, but not limited to, design approvals in accordance with **Schedule 18**) shall in any way operate to relieve the Contractor of its responsibility for performing the Contract provided that nothing in this Clause will prejudice any rights of the Contractor to suspend performance due to non-payment as permitted under any relevant legislation.
- 11.5 The Contractor authorises the Contractor's Representative to act as its representative for all purposes of the Contract. In the event that the Contractor is required to change the Contractor's Representative, the outgoing Contractor's Representative shall provide an appropriate hand-over to the incoming Contractor's Representative. The Contractor's Representative cannot be changed without the prior written approval of the Company, such approval not to be unreasonably withheld or delayed.
- 11.6 The Company may by notice in writing to the Contractor object to any of the Contractor's personnel who have misconducted themselves or been incompetent or negligent and the Contractor shall immediately remove such person from performing the Contract and provide a suitable replacement (to be approved by the Company Project Manager, if they are key personnel).
- 11.7 The Contractor shall at all times during the term of the Contract co-operate, meet and share information with and act in good faith and in a collaborative manner with the Company, the Buses Supplier and the Bus Operator (including their respective employees, contractors, sub-contractors and/or agents), the European Commission and such other third parties who are interested in or connected with the Project as the Company may reasonably designate including without limitation in relation to any design of fuelling systems, the supply of Hydrogen and hydrogen consumption and ensuring Hydrogen fuel deliveries do not disrupt operation of any (re)fuelling facility provided always that the Contractor shall not be obliged to disclose to the Buses Supplier, the Bus Operator or any third party information of a commercially sensitive or price sensitive nature.
- 11.8 The Company shall, and shall use reasonable endeavours to ensure that the Buses Supplier and any relevant third parties shall, co-operate, meet and share information with and act in good faith and in a collaborative manner with the Contractor to provide such information to the Contractor as the Contractor may reasonably require regarding the Buses and the supply of Hydrogen thereto.
- 11.9 The Contractor shall provide the Company with:
- 11.9.1 monthly Refuelling Facility Performance Information in an agreed form and in accordance with section 2.10 of the Specification;
 - 11.9.2 the other information and reports as set out and at the frequency specified in the Specification;

11.9.3 keep the Company informed on a prompt basis of all material developments which may affect the subject matter of this Contract;

and shall:

11.9.4 subject to **Clause 20**, provide the Company with additional reports and information;

11.9.5 at the Contractor's cost attend relevant and appropriate meetings related to this Contract (including but not limited to steering group meetings with the Company and/or TFL Group) and, where reasonable and appropriate for the Contractor to do so, to deliver presentations;

11.9.6 use reasonable endeavours to attend relevant and appropriate conferences including but not limited to delivering an agreed number of presentations and promoting hydrogen fuelled vehicles (provided that the Contractor reasonably agrees with the content of the presentation or promotion suggested by the Company);

as the Company may reasonably request from time to time.

12. **SUB-CONTRACTING AND CHANGE OF OWNERSHIP**

12.1 Subject to the provisions of **Clause 5.19**, the Contractor shall not sub-contract all or any part of the Contract without the prior written consent of the Company in accordance with this Clause.

12.2 No approval by the Company of the use of any sub-contractor shall in any way relieve the Contractor from any liability or obligation in relation to the subject matter of this Contract or otherwise under this Contract. Where the Contractor sub-contracts all or any part of the Contract to any person with the consent of the Company, the Contractor shall:

12.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the Contractor under the Contract insofar as they relate to the Contract or part of it (as the case may be) which that sub-contractor is required to provide;

12.2.2 be responsible for payments to that person;

12.2.3 remain solely responsible and liable to the Company for any breach of the Contract or any performance, non-performance, part-performance or delay in performance of the Contract by any sub-contractor to the same extent as if such breach, performance, non-performance, part-performance or delay in performance had been carried out by the Contractor;

12.2.4 on or before the Contract Commencement Date, notify the Company in writing of the name, contact details and details of the legal representatives of any such sub-contractor (of any tier), to the extent that such information has not already been provided by the Contractor to the Company under the Contract;

12.2.5 promptly notify the Company in writing of any change to the information notified under **Clause 12.2.4** and provide in writing the name, contact details and details of the legal representatives of each such sub-contractor (of any tier) who is engaged after the Contract Commencement Date;

12.2.6 without prejudice to the provisions of **Clause 15**, ensure compliance with the Bribery Act 2010 and any guidance issued by the Secretary of State under it when appointing any such sub-contractor;

12.2.7 include a term in each sub-contract (of any tier):

- 12.2.7.1 requiring payment to be made by the Contractor or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid and undisputed invoice as defined by the sub-contract requirements;
- 12.2.7.2 a requirement that any invoices for payment submitted by the sub-contractor are considered and verified by the Contractor or (in respect of a sub-contract below the first tier) the payer under the relevant sub-contract, in a timely manner and that any undue delay in doing so shall not in itself be sufficient justification for failing to treat an invoice as being valid and undisputed under the sub-contract requirements;
- 12.2.7.3 entitling the Contractor or (in respect of a sub-contract below the first tier) the payer under the relevant subcontract to terminate that sub-contract if the relevant sub-contractor fails to comply in the performance of its contract with legal obligations in the fields of environmental, social or labour law; and
- 12.2.7.4 a requirement that the sub-contractor includes a provision having the same effect as **Clause 12.2.7.3** above in any sub-contract it awards.

12.3 The Contractor shall:

- 12.3.1 not without the prior written consent of the Company undergo any change in the ownership of the Contractor where such change relates to 50% or more of the issued share capital of the Contractor; and
- 12.3.2 give notice to the Company in the event that there is any change in the ownership of the Holding Company where such change relates to 50% or more of the issued share capital of the Holding Company such notice to be given within 10 Business Days of the date on which such change takes effect.

12.4 The Company may sub-contract all or any part of the Contract without the prior written consent of the Contractor.

13. **CONFLICT OF INTEREST**

13.1 The Contractor warrants that it does not and will not have at the Contract Commencement Date any interest in any matter where there is or is reasonably likely to be a conflict of interest with the subject matter of the Contract or any member of the TfL Group, save to the extent fully disclosed to and approved by the Company.

13.2 The Contractor shall check for any conflict of interest at regular intervals throughout the Contract and in any event not less than once in every six months and shall notify the Company in writing immediately upon becoming aware of any actual or potential conflict of interest with the subject matter of the Contract or any member of the TfL Group and shall work with the Company to do whatever is necessary (including the separation of staff working on, and data relating to, the subject matter of the Contract from the matter in question) to manage such conflict to the Company's satisfaction, provided that, where the Company is not so satisfied, it may terminate the Contract in accordance with **Clause 25 (Termination)**.

14. **WARRANTIES AND UNDERTAKING**

14.1 The Contractor warrants to the Company that the Hydrogen and separately the Refuelling Facility shall:

- 14.1.1 be designed, manufactured, constructed, supplied and maintained in a good and workmanlike manner and in accordance with the Contract (including the Specification);
 - 14.1.2 be designed, manufactured, constructed, supplied and maintained by the Contractor exercising all the skill, care and diligence to be expected of a competent and properly qualified designer and design and build contractor experienced in designing, manufacturing, constructing and supplying hydrogen and separately a refuelling facility of a similar scope, type, nature and complexity to that required under the Contract;
 - 14.1.3 meet all of the requirements set out in the Contract (including the Specification) or as reasonably inferred from the Contract and shall (at its own expense) annually upon request by the Company prove to the Company's entire satisfaction that the condition of the Hydrogen and separately the Refuelling Facility complies with the standards required or reasonably inferred under the Contract (including the Specification);
 - 14.1.4 ensure that the Hydrogen and separately the Refuelling Facility supplied shall be of satisfactory quality and fit for any purpose set out by the Company in the Contract (including the Specification);
 - 14.1.5 comply with all statutory requirements of any Act of Parliament, statutory instrument or order or any other regulation having force of law or bye-law and all regulatory requirements relevant to the Contractor's or the Company's business from time to time in force or which may become applicable to the sale and supply of the Hydrogen and separately applicable to the Refuelling Facility.
- 14.2 Without prejudice to any warranties expressed elsewhere in the Contract or implied by law, the Contractor warrants, represents and undertakes to the Company that the Contractor:
- 14.2.1 has full capacity and authority and all necessary licences, permits, permissions, powers and consents (including, where its procedures so require, the consent of its holding company as require, the consent of its holding company as defined in section 736 of the Companies Act 1985) to enter into and to perform the Contract; and
 - 14.2.2 is aware of the purposes for which the Hydrogen and separately the Refuelling Facility are required and acknowledges that the Company is reliant upon the Contractor's expertise and knowledge in the provision of the Hydrogen and separately the Refuelling Facility; and
 - 14.2.3 the Contract is executed by a duly authorised representative of the Contractor.
- 14.3 The Contractor shall provide all labour needed by it to comply with its obligations under the Contract:
- 14.3.1 with the highest degree of skill, care and diligence normally exercised by recognised professional firms or by highly skilled and experienced contractors providing services of a similar scope, type and complexity to the labour under this Contract and with sufficient resources;
 - 14.3.2 in conformance in all respects with the Contract (including the Specification) and so that they fulfil the purpose indicated by or to be reasonably inferred from the Contract (including the Specification); and
 - 14.3.3 in a safe manner and free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner.
- 14.4 The Contractor agrees that during the term of this contract it will cooperate and liaise fully with the Bus Operator and the Buses Supplier as required or as reasonably requested

by the Company in relation to all matters relating to operations at the Refuelling Site and the Bus Operator's operations

- 14.5 All materials, equipment and goods used or supplied by the Contractor in connection with the Contract shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979 (as amended), sound in design and in conformance in all respects with the Contract (including the Specification).
- 14.6 All documents, drawings, work prepared or developed by the Contractor or supplied to the Company under the Contract shall not infringe any Intellectual Property Rights or any other legal or equitable right of any person.
- 14.7 Without prejudice to any of the Company's other rights, powers or remedies (whether under the Contract or otherwise) if the Contractor is in breach of any of its warranties and/or obligations under this **Clause 14** and/or any of its other obligations under the Contract, the Contractor shall, in the first instance, promptly remedy any/or re-perform its obligations under the Contract or part of them at its own expense to ensure compliance with such warranties and/or obligations. In the event that the Contractor fails to remedy the breach in accordance with this **Clause 14**, the Company may procure or require the Contractor to procure the provision of any Hydrogen or any remedial action in respect of any Hydrogen from an alternative remedial contractor. The Company shall be entitled to recover from the Contractor all additional cost, loss and expense incurred by the Company and attributable to the Company procuring such Hydrogen or remedial action from such alternative contractor PROVIDED that prior to authorising remedial action by any alternative contractor, the Company shall seek advice from the Contractor regarding any health, safety and environmental risks and/or any risk of damage to the Hydrogen or the Refuelling Facility associated with the provision of services by an alternative contractor and take all necessary steps to prevent any such health safety and environmental risks or any damage from arising.
- 14.8 Each warranty in this **Clause 14** shall be construed as a separate warranty and shall not be limited or restricted by reference to, or reference from, the terms of any other warranty or any other term of the Contract.

15. **COMPLIANCE WITH LAWS AND OTHER RULES**

- 15.1 Whilst present on the Refuelling Site the Contractor shall ensure that its personnel observe at all times all rules and safety requirements applicable to the premises notified to the Contractor by the Company Project Manager, the Company Manager, the Bus Operator or their authorised representative in relation to supplying the Hydrogen. The Company Project Manager, the Company Manager or their authorised representative may notify the Contractor that certain of the Contractor's personnel have not complied with such rules and safety requirements and the Contractor or Company may ask such personnel at any time to leave the premises in which event they shall do so immediately.
- 15.2 The Contractor acknowledges the Company's statutory duty to provide or secure safe and efficient services and shall at all times during the Contract have regard to such duties and the Contractor shall not in the performance of the Contract endanger the safety of or interfere with the convenience of the public and shall minimise any disruption to the same.
- 15.3 In addition to the general requirement of **Clause 15.2** the Contractor shall comply and shall ensure the compliance of its subcontractors with all Health and Safety Laws applicable to the performance of its obligations in the Contract.
- 15.4 The Contractor shall be responsible for obtaining and keeping in force any Authorisations that may be necessary for the performance of the Contract from any relevant local authority or any other body.
- 15.5 The Contractor:

- 15.5.1 shall promptly notify the Contractor's personnel and the Company of any health and safety hazards that exist or may arise in connection with the supply and/or the performance of the Hydrogen;
- 15.5.2 shall provide the Hydrogen in compliance with all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), bye-laws, treaties and other regulatory requirements relevant to the Contractor's business and/or the Company's business, from time to time in force which are or may become applicable to the Hydrogen. The Contractor shall promptly notify the Company if the Contractor is required to make any change to the Hydrogen for the purposes of complying with its obligations under this **Clause 15.5.2**;
- 15.5.3 without limiting the generality of **Clause 15.5.2**, shall not unlawfully discriminate, and shall ensure that the Contractor's personnel do not unlawfully discriminate within the meaning and scope of the Race Relations Act 1976, the Race Relations (Amendment) Act 2000, the Employment Equality (Religion or Belief) Regulations 2003, the Sex Discrimination Act 1975 as amended, Equal Pay Act 1970, Employment Equality (Sexual Orientation) Regulations 2003, Sex Discrimination (Gender Reassignment) Regulations 1999, and the Disability Discrimination Act 1995 and the Disability Discrimination Act 2005 and any other relevant enactments in force from time to time relating to discrimination in employment;
- 15.5.4 acknowledges that the Company is under a duty under section 149 of the Equality Act 2010 to have due regard to need to eliminate unlawful racial discrimination and to promote equality of opportunity and good relations between persons of different racial groups. In performing its obligations under this Contract, the Contractor shall reasonably assist and cooperate with LBSL and/or the Company where possible in satisfying this duty;
- 15.5.5 acknowledges that LBSL and the TfL Group is under a duty by virtue of a direction under section 404(2) of the Greater London Authority Act 1999 to have due regard to the need to:
 - 15.5.5.1 promote equality of opportunity for all persons irrespective of their race, sex, disability, age, sexual orientation or religion;
 - 15.5.5.2 eliminate unlawful discrimination; and
 - 15.5.5.3 promote good relations between persons of different racial groups, religious beliefs and sexual orientation

and in performing its obligations under this Contract, the Contractor shall assist and co-operate with the Company where possible to enable TfL to satisfy its duty;
- 15.5.6 comply with the security policy set out in **Schedule 13**; and

in all cases, the costs of compliance with this **Clause 15** shall be borne by the Contractor.

- 15.6 The Company's workplace harassment policy ("**Policy**") as up-dated from time to time (copies of which are available on request from the Company) requires the Company's own staff and those of its contractors to comply fully with the Policy to eradicate harassment in the workplace. Without prejudice to **Clause 15.5**, the Contractor shall:
 - 15.6.1 ensure that its staff, and those of its sub-contractors, working on the Delivery Site are fully conversant with the requirements of the Policy;
 - 15.6.2 fully investigate allegations of workplace harassment in accordance with the Policy;

- 15.6.3 ensure that appropriate, effective action is taken where harassment is found to have occurred;
 - 15.6.4 comply with policies developed by the with regard to compliance with the Company's duties referred to in **Clause 15.5** as are relevant to the Contract and the Contractor's activities;
 - 15.6.5 obey directions from the Company with regard to the conduct of the Contract in accordance with the duties referred to in **Clause 15.5**;
 - 15.6.6 assist, and consult and liaise with, the Company with regard to any assessment of the impact on and relevance to the Contract of the duties referred to in **Clause 5.5**;
 - 15.6.7 on entering into any contract with a sub-contractor in relation to this Contract, impose obligations upon the sub-contractor to comply with this **Clause 15.6** as if the sub-contractor were in the position of the Contractor;
 - 15.6.8 provide to the Company, upon request, such evidence as the Company may require for the purposes of determining whether the Contractor has complied with this **Clause 15.6**. In particular, the Contractor shall provide any evidence requested within such timescale as the Company may require, and co-operate fully with the Company during the course of the Company's investigation of the Contractor's compliance with its duties under this **Clause 15.6**; and
 - 15.6.9 inform the Company forthwith in writing should it become aware of any proceedings brought against it in connection with this Contract by any person for breach of the Equality Act 2010.
- 15.7 shall promptly notify the Company of any health and safety hazards that exist or may arise in connection with the performance of the Services;
 - 15.8 without limiting the generality of **Clause 15.5.2**, shall comply with the Bribery Act 2010 and any guidance issued by the Secretary of State under it; and
 - 15.9 where applicable to the Contractor and without limiting the generality of **Clause 15.5.2**, shall comply with the Modern Slavery Act 2015 and any guidance issued by the Secretary of State under it.
 - 15.10 In all cases, the costs of compliance with this **Clause 15** shall be borne by the Contractor.
 - 15.11 In providing the Services, the Contractor shall (taking into account best available techniques not entailing excessive cost and the best practicable means of preventing, or counteracting the effects of any noise or vibration) have appropriate regard (insofar as the Contractor's activities may impact on the environment) to the need to:
 - 15.11.1 preserve and protect the environment and to the need to avoid, remedy and mitigate any adverse effects on the environment;
 - 15.11.2 enhance the environment and have regard to the desirability of achieving sustainable development;
 - 15.11.3 conserve and safeguard flora, fauna and geological or physiological features of special interest; and
 - 15.11.4 sustain the potential of natural and physical resources and the need to safeguard the life-supporting capacity of air, water, soil and ecosystems.
 - 15.12 The Company shall promptly notify the Contractor of any health and safety hazards that the Company is aware exist in connection with the Buses and/or the Refuelling Site.

16. **ENVIRONMENTAL ISSUES**

16.1 The provisions of **Schedule 15** will apply (Environmental Specification)

17. **ADDITIONAL CLAUSES**

17.1 The provisions of **Schedule 14** will apply (Additional Clauses).

18. **RESPONSIBLE PROCUREMENT**

18.1 The Contractor will comply with the provisions of **Schedule 16** (Responsible Procurement)

19. **CONFIDENTIALITY AND ANNOUNCEMENTS**

19.1 Subject to **Clause 20**, the Contractor will keep confidential:

19.1.1 the terms of this Contract; and

19.1.2 any and all Company Information that it may acquire.

19.2 The Contractor shall not and shall procure that its Affiliates do not for a period of five (5) years from the date of expiry or termination of the Contract make any use of any of Company Information or any part of it except for performance of Contractor's obligations under the Contract, unless the Contractor is permitted to do so under the Contract.

19.3 Subject to **Clause 19.5** (and unless otherwise permitted pursuant to **Clause 19.6**) and **Clause 20**, the Company shall:

19.3.1 keep confidential all Contractor Information for a minimum of five (5) years from the date of receipt of Contractor Information and shall use at least the same standard of care in the storage, transportation and handling of the Contractor Information as the Company normally uses in respect of its own proprietary data and information so as to prevent theft and unauthorised copying or disclosure of the Contractor Information;

19.3.2 not allow any persons to have unauthorised access to Contractor Information; and

19.3.3 not disclose any Contractor Information to any person without the Contractor's prior written consent unless falling within the circumstances specified in **Clause 19.5**

19.4 Subject to **Clause 19.5**, the Contractor shall:

19.4.1 keep confidential all of the Company Information for a minimum of five (5) years from the date of receipt of Company Information and shall use at least the same standard of care in the storage, transportation and handling of the Company Information as the Contractor normally uses in respect of its own proprietary data and information so as to prevent theft and unauthorised copying or disclosure of the Company Information;

19.4.2 not allow any persons to have unauthorised access to the Company Information; and

19.4.3 not disclose any of Company Information to any person without the Company's prior written consent unless falling within the circumstances specified in **Clause 19.4**.

19.5 Notwithstanding the provisions of **Clauses 19.1 to 19.2**, in the circumstances set out below a Party shall not be required to obtain the prior written consent of the other Party

in respect of disclosure of Contractor Information or of Company Information, as applicable, and each Party is hereby authorised to make such disclosure:

- 19.5.1 to directors, officers and employees of such Party and of its Affiliates or group members (or TfL Group or in the case of the Company), as appropriate, to the extent required for the proper performance of a Party's obligations under the Contract PROVIDED THAT such Party shall ensure that such directors, officers and employees keep Contractor Information or the Company Information, as applicable, confidential on the same terms as are provided in this **Clause 19**;
- 19.5.2 to consultants, contractors (including sub-contractors) and agents of such Party, as appropriate, to the extent required for the proper performance of a Party's obligations under the Contract PROVIDED THAT such Party shall ensure that such consultants, contractors (including sub-contractors) and agents keep Contractor Information or the Company Information, as applicable, confidential on the same terms as are provided in this **Clause 19**;
- 19.5.3 to persons professionally engaged by either Party, provided that they in turn are required by that Party to treat the information disclosed as confidential;
- 19.5.4 to any Governmental Agency having jurisdiction over that Party provided that the Party (i) promptly and prior to such disclosure notifies the other Party specifying what Contractor Information or Company Information, as applicable, is required to be disclosed and to whom and (ii) provides reasonable cooperation to the other Party in the event that the other Party elects to challenge the validity of the requirement to disclose;
- 19.5.5 to any Governmental Agency or other body, including the European Commission, providing funding in relation to this Contract or arrangements relating thereto;
- 19.5.6 to the extent required by any applicable laws or judicial process provided that the Party (i) promptly and prior to such disclosure notifies the other Party specifying what Contractor Information or Company Information, as applicable, is required to be disclosed and to whom and (ii) provides reasonable cooperation to the other Party in the event that the other Party elects to challenge the validity of the requirement to disclose;

PROVIDED THAT

- (a) the disclosing Party shall keep the disclosure of Contractor Information or Company Information, as applicable, to the minimum necessary for the purposes for which it is disclosed;
 - (b) where disclosure is made to any third party referred to in **Clauses 19.5.1 to 19.5.6** any disclosure or use of Contractor Information or Company Information, as applicable, so disclosed to it by any such third party for purposes other than relating to the Contract shall be deemed to be an unauthorised disclosure or use by the Party disclosing the same; and
 - (c) the disclosing Party shall use reasonable endeavours to enforce any such confidentiality provisions at the request of the non-disclosing Party.
- 19.6 The Company and any member of the TfL Group may during the term of the Contract and for a period of five (5) years from the date of expiry or termination of the Contract make any use of any Contractor Information or any part of it and any information provided in the Refuelling Facility Performance Information for any non-commercial purpose including assessing the performance of Hydrogen fuel and Hydrogen fuel vehicles and the performance of the Contractor under this Contract, for publicity and for any purpose connected with or required by any grant funding.

- 19.7 Upon the termination or expiry of the Contract, the Company shall be entitled to retain copies of the Contractor Information for any non-commercial purpose including assessing the performance of Hydrogen fuel and Hydrogen fuel vehicles and the performance of the Contractor under this Contract.
- 19.8 Upon the termination or expiry of the Contract, the Contractor shall (except to the extent that Contractor is legally obliged to retain one copy of documents or records) as soon as reasonably practicable deliver to the Company all of the Company Information which is in its possession or control and is in a form capable of return, and shall delete or erase all such material contained in an electronic form.
- 19.9 The obligations set out in **Clauses 19.1 to 19.7** shall not apply to any Contractor Information or Company Information, as appropriate, which: -
- 19.9.1 the receiving Party can show by documentary evidence was already in its lawful possession and at its free disposal before the disclosure by the disclosing Party; or
- 19.9.2 is hereafter lawfully disclosed to the receiving Party without any obligations of confidence, by a third party who has not derived it directly or indirectly from the disclosing Party;
- 19.9.3 is or becomes generally available to the public in any printed publication in general circulation through no act or default on the part of the receiving Party or
- 19.9.4 is developed by the receiving Party independently of any of the disclosing Party's Contractor Information or Company Information, as applicable.
- 19.10 The Parties acknowledge that damages would not be an adequate remedy for any breach of this **Clause 19** by the receiving Party and that (without prejudice to all other remedies to which the disclosing Party may be entitled to as a matter of law) the disclosing Party shall be entitled to any form of equitable relief to enforce the provisions of this **Clause 19**.
- 19.11 The Contractor shall not without the prior written consent of either the Company Project Manager or the Company Manager advertise, or make any statement or announcement, or communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of the Contract or any aspect of its subject matter including that it is that it is supplying the Refuelling Facility or Hydrogen to the Company, and the Company shall have the right to approve any advertisement or announcement before it is made.

20. **FREEDOM OF INFORMATION**

20.1 For the purpose of this **Clause 20**:

- 20.1.1 **"FOI Legislation"** means the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004 and any amendment or re-enactment of any of them; and any guidance or statutory codes of practice issued by the Information Commissioner, the Ministry of Justice, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation;
- 20.1.2 **"Information"** means information recorded in any form by the Company or by the Contractor on behalf of the Company; and
- 20.1.3 **"Information Access Request"** means a request for Information under the FOI Legislation.

20.2 The Contractor acknowledges that the Company:

- 20.2.1 is subject to the FOI Legislation and agrees to assist and co-operate with the Company to enable the Company to comply with its obligations under the FOI Legislation; and
 - 20.2.2 may be obliged under the FOI Legislation to disclose Information without consulting or obtaining consent from the Contractor.
- 20.3 Without prejudice to the generality of **Clause 20.2**, the Contractor shall and shall procure that its sub-contractors shall:
- 20.3.1 transfer to the Contract Manager (or such other person as may be notified by the Company to the Contractor) each Information Access Request relevant to the Contract, the Services or any member of TfL Group that it or they (as the case may be) receive as soon as practicable and in any event within 2 Business Days of receiving such Information Access Request; and
 - 20.3.2 in relation to Information held by the Contractor on behalf of the Company, provide the Company with details about and/or copies of all such Information that the Company requests and such details and/or copies shall be provided within 5 Business Days of a request from the Company (or such other period as the Company may reasonably specify), and in such forms as the Company may reasonably specify.
- 20.4 The Company shall be responsible for determining whether Information is exempt information under the FOI Legislation and for determining what Information will be disclosed in response to an Information Request in accordance with the FOI Legislation.
- 20.5 The Contractor shall not itself respond to any person making an Information Access Request, save to acknowledge receipt, unless expressly authorised to do so by the Company.
- 20.6 The Contractor acknowledges that the Company is subject to the Transparency Commitment. Accordingly, notwithstanding any other provision of this Contract, the Contractor hereby gives its consent for the Company to publish the Contract Information to the general public.
- 20.7 The Company may in its absolute discretion redact all or part of the Contract Information prior to its publication. In so doing and in its absolute discretion the Company may take account of the exemptions/exceptions that would be available in relation to information requested under the FOI Legislation.
- 20.8 The Company may in its absolute discretion consult with the Contractor regarding any redactions to the Contract Information to be published pursuant to **Clause 20.6**. The Company shall make the final decision regarding both publication and redaction of the Contract Information.
- 20.9 The Company shall:
- 20.9.1 notify the Contractor of a request for information which may extend to the Contractor's information made under Freedom of Information Act 2000 ("FOI") within 5 Business Days from the date of receipt of the request; and
 - 20.9.2 consult in good faith and in writing with the Contractor in determining:
 - 20.9.2.1 whether compliance with the duty to confirm or deny under Section 1(1)(a) of FOI would constitute an actionable breach of confidence for the purpose of Section 4(2) of FOI as would, or would be likely, prejudice commercial interests for the purpose of Section 43(3) of FOI;
 - 20.9.2.2 whether compliance with the duty to communicate information requested under Section 1(1) (6) of FOI would constitute an

actionable breach of confidence for the purpose of Section 41(1)(b) of FOI or would, or would be likely to, prejudice commercial interests for the purpose of Section 43(1) of FOI;

20.9.2.3 whether the public interest test in Section 2(1)(b) and Section 2(2)(b) of FOI applies.

21. INTELLECTUAL PROPERTY

- 21.1 Any Contractor Information and any Background Information of the Contractor which is made available by the Contractor to the Company for the purposes of carrying out the Project shall, at all times, remain the property of the Contractor. Other than as expressly provided for herein, nothing shall be interpreted as granting the Company any right to or ownership of the Contractor's Contractor Information or Background Information.
- 21.2 Any Company Information and any Background Information of the Company which is made available by the Company to the Contractor for the purposes of carrying out the Project shall, at all times, remain the property of the Company. Other than as expressly provided for herein, nothing shall be interpreted as granting the Contractor any right to or ownership of the Company's Company Information or Background Information.
- 21.3 During the term of the Contract and any extension thereof, the Company shall have the right to:
- 21.3.1 use the Background Information of the Contractor for the purposes of assessing the performance of the Refuelling Facility and the Contractor's performance under the Contract and assessing the performance of Hydrogen as a fuel and the performance of Hydrogen fuelled buses; and
- 21.3.2 use any Background Information of any approved Sub-Contractor, in relation to which the Contractor shall use all reasonable endeavours to procure for the Company the right to use such Background Information from the approved Sub-Contractor.
- 21.4 If the Company informs the Contractor that the Buses Supplier or the Bus Operator can reasonably demonstrate to the Contractor a need to use any Background Information of the Contractor, the Contractor shall disclose its Background Information to the Buses Supplier or the Bus Operator (as the case may be). The Company shall seek to procure the Buses Supplier's and/or the Bus Operator's agreement that it will keep the Contractor's Background Information confidential in accordance with **Clause 20** as if the Buses Supplier or the Bus Operator were a party to the Contract.
- 21.5 The Parties acknowledge that any Background Information of the Buses Supplier which is made available by the Buses Supplier to either or both of the Parties for the purposes of carrying out the Project shall, at all times, remain the property of the Buses Supplier. The Parties further acknowledge that other than as expressly provided for herein, nothing shall be interpreted as granting the Parties any right to or ownership of the Buses Supplier's Background Information.
- 21.6 The Contractor grants to the Company and members of the TfL Group, with immediate effect, an irrevocable, royalty-free, non-exclusive licence (to remain in full force and effect notwithstanding discharge, termination or disputes of or under this Contract) to use the Contractor's Intellectual Property Rights and to copy the Contractor's Design Documents, O&M manuals and training documents and any other items provided by the Contractor, for any purpose relating directly or indirectly to the Works, the Refuelling Facility, the Refuelling Site and/or the Property to include construction, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment, repair and training, and any process for the re-letting of the supply of Hydrogen and maintenance of the Refuelling Facility upon termination of this Contract. The licence shall carry the right to grant sub-licences and shall be transferable to third parties. The licence shall enable the Company to use and reproduce the Contractor's Design Documents for any extension of the Refuelling Facility, but shall not include a licence to reproduce the Intellectual Property in the Contractor's Design Documents for use on another site, save

where the Contractor is appointed by the Company (or a member of the TfL Group) to complete similar works on another site. Provided that the Contractor is not in breach of this Contract and/or that the Company does not have a right to terminate the Contract, the Company shall not use its rights under this **Clause 21.6** during the period up to the Expiry Date to manufacture, or allow for the manufacture of, spare parts or components on the basis of the Contractor's Intellectual Property Rights.

- 21.7 The Contractor shall not grant to any third party the right to use any of the Contractor's Design Documents or any Intellectual Property in any of the Contractor's Design Documents except under any Collateral Warranty it is obliged to give under this Contract.
- 21.8 The Contractor warrants that the Contractor's Design Documents (except to the extent that duly authorised members of the Professional Team or Sub-Contractors are used) are the Contractor's own original work and that in any event their use in connection with the Works shall not infringe the rights of any third party. The Contractor further warrants that where duly authorised members of the Professional Team or Sub-Contractors are used their work shall be original and shall be covered by the licence granted to the Company under **Clause 21.6**.
- 21.9 The Contractor agrees on reasonable request at any time and following reasonable prior written notice to give to the Company, or those authorised by the Company, access to the Contractor's Design Documents and to provide copies (including electronic and digital copies in a readable form) of the Contractor's Design Documents at the Company's expense.
- 21.10 The Contractor shall:
- 21.10.1 promptly notify the Company in writing upon becoming aware of an infringement or alleged infringement or potential infringement of any Intellectual Property Right which affects or may affect the performance of the Contractor's obligations under this Contract or the operation of the Refuelling Facility or the Delivery of Hydrogen or if any claim or demand is made or action brought for infringement or alleged infringement of any Intellectual Property Right; and
 - 21.10.2 indemnify, keep indemnified and hold harmless the Company from and against all actions, claims, demands, costs, charges or expenses (including legal costs on a full indemnity basis) that arise from or are incurred by the Company by reason of any infringement or alleged infringement of any Intellectual Property Rights of any person arising out of the use or operation of the Refuelling Facility or anything arising from the performance of this Contract (other than to the extent due to the use of the Company Information or Background Information of the Company) and from and against all costs and damages of any kind which the Company may incur in or in connection with any related actual or threatened proceedings before any court or arbitrator.
- 21.11 If a claim or demand is made or action brought to which **Clause 21.10** applies ("an IPR Claim") or is likely to be made or brought, the Contractor shall:
- 21.11.1 immediately give written notice to the Company (stating in reasonable detail the nature of the IPR Claim and, if practicable, the amount claimed) and consult with the Company in respect of the IPR Claim;
 - 21.11.2 not settle or compromise or make any admission of liability, agreement or compromise in relation to any IPR Claim without the prior written consent of the Company, such consent not to be unreasonably withheld or delayed;
 - 21.11.3 at all times disclose in writing to the Company all information and documents relating to the IPR Claim;
 - 21.11.4 take all such reasonable actions as the Company may request to dispute, resist, defend, appeal, settle, compromise, remedy or mitigate the IPR Claim

including using professional advisers nominated by Company; the Company being responsible to reimburse the Contractor for all reasonable professional costs properly incurred as a result of such a request; and

- 21.11.5 observe the requirements of **Clause 19** in relation to the IPR Claim and shall make no announcement or public statement in relation to any IPR Claim without the prior written approval of the Company which the Company may in its absolute discretion withhold.
- 21.12 In addition to the requirements of **Clause 21.11**, the Contractor shall ensure that the Company shall control the conduct of any claim or proceedings issued in the name of the Company to contest any such claim, demand or action in relation to any infringement or alleged infringement or potential infringement of any Intellectual Property Right and the Contractor shall, at the request of the Company, give the Company all reasonable assistance in doing so. The Contractor shall reimburse the Company for all costs and expenses (including legal costs) incurred by the Company in relation to any such claims, demands or actions.
- 21.13 If a claim or demand is made or action brought to which **Clause 21.10** applies or in the reasonable opinion of the Company is likely to be made or brought, the Contractor may, after consultation with and with the consent of the Company, at the Contractor's own expense and within a reasonable time, modify or substitute any or all aspects of the Refuelling Facility so as to avoid the infringement or the alleged infringement, provided that the terms of the Contract shall continue to apply.

22. **RECORDS**

- 22.1 The Contractor shall, and will use reasonable endeavours to procure that its sub-contractors shall:
 - 22.1.1 maintain a complete and correct set of records pertaining to all activities relating to the performance of the Contract and the Contractor's obligations under the Contract and all transactions entered into by the Contractor for the purposes of the Contract (including where relevant time sheets for the Contractor's personnel where such records are material to the calculation of any prices ("**Records**"));
 - 22.1.2 retain all Records during the Contract and for a period of not less than 6 years (or such longer period as may be required by law) except Records containing Personal Data (as defined in section 1(1) of the Data Protection Act 1998 and the General Data Protection Regulation (EU) 2016/679) which shall only be retained for as long as necessary, following termination or expiry of the Contract ("**Retention Period**").
- 22.2 The Company and any person nominated by the Company has the right to audit any and all Records at any time during the Retention Period on giving to the Contractor reasonable notice (whether in writing or verbally) and in any event not less than 5 Business Days' notice and at any reasonable time to inspect any aspect of the Contractor's performance of the Contract and the Contractor shall give all reasonable assistance to the Company or its nominee in conducting such inspection, including making available documents and staff for interview.

23. **BEST VALUE**

- 23.1 The Contractor acknowledges that the Company is a best value Company for the purposes of the Local Government Act 1999 and as such the Company is required to make arrangements to secure continuous improvement in the way it exercises its functions, having regard to a combination of economy, efficiency and effectiveness, as such, the Contractor shall, where reasonably requested by the Company, participate in any relevant best value review.

24. **INDEMNITY, INSURANCE AND LIABILITY**

24.1 The Contractor shall be responsible for and shall indemnify and keep indemnified the Company, any member of the TfL Group, the Buses Supplier, their employees, sub-contractors, and agents against all actions, claims, demands, costs, charges, expenses, losses and liabilities or proceedings whatsoever ("losses") arising in connection with the death or injury to any person or loss of or damage to property (including property belonging to the Company or for which it is responsible) and in respect of any losses which may arise out of or in the course of or by reason of any breach of contract, tort (including negligence), breach of statutory duty, misrepresentation, misstatement, restitution, act or omission or default of the Contractor, its employees, agents or sub-contractors in the Contractor's performance, non-performance or part-performance of the Contract save to the extent caused by the negligence of the Company, any member of the TfL Group the Buses Supplier and their employees, sub-contractors and agents.

24.2 Without prejudice to its liability to indemnify the Company under this Clause or any other provision of the Contract, the Contractor shall arrange and maintain throughout the duration of the Contract (unless otherwise stated):

24.2.1 employer's liability insurance in the sum of not less than £10 million any one event;

24.2.2 public liability insurance in the sum of not less than £10 million any one event;

24.2.3 a product liability insurance in the sum of not less than £10 million any one event;

24.2.4 professional indemnity insurance in the sum of not less than £10 million any one claim and in the aggregate per annum;

with an insurer or insurers authorised to underwrite such risks in the United Kingdom and on terms approved by the Company (the "insurances"). Where the insurances contain a care, custody or control exclusion the Contractor shall ensure that the relevant policy shall be endorsed so as to make clear that any premises (including contents) owned or occupied by the Company and where the Contractor is performing the Contract shall not be deemed to be within the Contractor's care, custody or control.

24.3 The Contractor shall ensure that the insurances cover the Contractor's legal liability (including liability assumed under the Contract) which may arise out of or in the course of or by reason of the Contractor's performance, non-performance or part-performance of the Contract and extend to indemnify the Company as principal.

24.4 The Contractor shall provide evidence satisfactory to the Company on or before the commencement of the Contract and each anniversary thereof that the insurances have been effected and are in force.

24.5 The Contractor shall comply with the terms and conditions of the insurances and all reasonable requirements of the insurers, including without limitation, in connection with the prosecution, defence and settlement of claims, the recovery of losses and the prevention of accidents. The Contractor shall bear the cost of all exclusions and limitations under the insurances.

24.6 In relation to the insurances except that required under **Clause 24.2** the Contractor agrees that the Company shall have the right to control and to supervise all dealings with the press and any other media in relation to any incident, event, claim or action.

24.7 The Contractor will accept unlimited liability for:

24.7.1 death or personal injury caused by the negligence of the Contractor;

24.7.2 fraud committed by the Contractor;

- 24.7.3 infringement or alleged infringement of third party Intellectual Property Rights;
 - 24.7.4 any breach of **Clause 19** (Confidentiality and Announcements);
 - 24.7.5 wilful default of its obligations under this Agreement
 - 24.7.6 any breach of the requirements set out in the following paragraphs of **Schedule 14**:
 - 24.7.6.1 Paragraph 4 (Work Related Road Risk); and
 - 24.7.6.2 Paragraph 6 (Privacy and Data Protection);
 and
 - 24.7.7 any other liability to the extent which it cannot be lawfully excluded.
- 24.8 Subject to **Clause 24.7** and as hereafter provided, the Contractor's liability whether in contract (including under any indemnity), in tort (including negligence), under statute or otherwise under or in connection with this Contract will not exceed £10,000,000 (ten million pounds Sterling) per claim (or series of claims arising out of one event),
- 24.9 Subject to **Clause 24.7** the Contractor will not be liable to the Company whether in contract, tort (including negligence), breach of statutory duty or otherwise for any special, indirect or consequential loss arising under or in connection with this Contract.
25. **TERMINATION**
- 25.1 This Contract may be terminated by the Company upon three (3) months' written notice to the Contractor such notice to expire on either the fifth or the seventh anniversary of the Effective Date. If the Company exercises its right to terminate pursuant to this Clause the Contractor shall be entitled to a payment calculated and payable in accordance with **Schedule 12**.
- 25.2 This Contract may be terminated by either Party forthwith or on such period of notice as the affected Party ("Terminating Party") in its discretion considers appropriate (such notice not to exceed 12 months) by giving written notice to the other Party ("Defaulting Party") if:
- 25.2.1 the Defaulting Party is subject to an Insolvency Event;
 - 25.2.2 the Defaulting Party commits any persistent or material breach of any term of the Contract and in the case of such breach which is capable of remedy fails to remedy the same within 20 Business Days after receipt of written notice giving full particulars of the breach and requiring it to be remedied;
- 25.3 In addition to **Clause 25.1**, the Company is entitled to terminate the Contract with immediate effect where;
- 25.3.1 the Contractor is in breach of **Clause 12.3 (Change of Control)**; or
 - 25.3.2 the Company is not satisfied on the issue of any conflict of interest in accordance with **Clause 13**;
 - 25.3.3 the Sub-Underlease terminates for any reason;
 - 25.3.4 the Company has the right to terminate in accordance with the provisions of **Clause 3**;
 - 25.3.5 the Company has the right to terminate in accordance with the provisions of **Schedule 11**;

- 25.3.6 the Contractor shall give promise or offer any gift, loan, reward or advantage of any material value to any member, officer or servant of the Terminating Party;
- 25.3.7 the Contractor or any of its officers, employees or agents commits any act of bribery described in the Bribery Act 2010;
- 25.3.8 the Contractor commits any of the money laundering related offences listed in the Public Contracts Regulations 2015; or
- 25.3.9 the Contractor fails to comply in the performance of the Services with legal obligations in the fields of environmental, social or labour law.

26. CONSEQUENCES OF TERMINATION

- 26.1 On any expiry or termination of the Contract under **Clause 25** the Contractor shall take steps as soon as practicable to bring to any end the performance of the Contract in an orderly manner but with all reasonable speed and economy, and shall deliver to the Company and undertake the following:
 - 26.1.1 the Contractor will, if so requested by the Company, and at the reasonable cost of the Company, decommission the Refuelling Facility including removing all equipment and returning the Refuelling Site to its original condition all in accordance with paragraph 2.20 of the Specification;
 - 26.1.2 deliver up the Refuelling Site in accordance with the terms of the Sub-Underlease;
 - 26.1.3 immediately deliver up to the Company such documents as the Company may reasonably request to enable the Company or a third party to operate and maintain the Refuelling Facility.
- 26.2 On termination of the Contract the Company shall pay to the Contractor sums comprising the Hydrogen Price remaining due to the Contractor in relation to the Delivered Hydrogen by the Consuming Parties up to the date of termination calculated so far as possible.
- 26.3 Each Party shall, at its own expense execute any agreement and do any acts reasonably necessary to effect the Parties' agreement with regards to the continued operation, decommissioning and removal, transfer of the Refuelling Facility or other arrangement, on expiry or termination of the Contract.
- 26.4 Any termination of the Contract shall be without prejudice to the accrued rights and remedies of either Party in respect of any negligence, omission or default of the other prior to such termination.
- 26.5 The rights to terminate the Contract given by this Contract shall not prejudice any other right or remedy under the Contract or at common law) of either Party in respect of the breach concerned (if any) or any other breach.

27. ESCROW

- 27.1 The Contractor shall in accordance with the terms of **Schedule 7** deposit the Escrow Documents with the Escrow Agent and enter into an escrow agreement with the Escrow Agent in respect of those Escrow Documents, such agreement to name the Company as the relevant beneficiary thereunder. This obligation shall apply to all updates and revisions to the Escrow Documents utilised in connection with this Contract and the Contractor shall deposit the Escrow Documents in respect of any such updates and revisions with the Escrow Agent promptly following such updates and/or revisions being issued.
- 27.2 The charges payable to the Escrow Agent under **Clause 27.1** shall be borne by the Contractor, unless expressly agreed otherwise by the Company.

27.3 The Contractor shall, as minimum, ensure that the escrow agreements referred to in **Clause 27.1** and provide that the relevant Escrow Documents are released (subject to the restrictions of use set out in **Clause 19** but without any time limit, and **Clause 21**) to the Company if this Contract terminates or the Contractor is subject to an Insolvency Event.

28. **DECLARATION OF INEFFECTIVENESS AND PUBLIC PROCUREMENT TERMINATION EVENT**

28.1 In the event that a court makes a Declaration of Ineffectiveness, the Company shall promptly notify the Contractor. The Parties agree that the provisions of **Clause 26 and Clauses 28.1, 28.2, 28.4 to 28.6 (inclusive) and 28.12** shall apply as from the time when the Declaration of Ineffectiveness is made.

28.2 The Declaration of Ineffectiveness shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such Declaration of Ineffectiveness in respect of the period prior to the Declaration of Ineffectiveness, save as otherwise expressly provided to the contrary in **Clauses 28.1 to 28.6** inclusive.

28.3 During any court proceedings seeking a Declaration of Ineffectiveness, the Company may require the Contractor to prepare a Cessation Plan in accordance with this **Clause 28.3** by issuing a notice in writing. As from the date of receipt by the Contractor of such notification from the Company, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:

28.3.1 an orderly and efficient cessation of services or (at the Company's request) a transition of services to the Company or such other entity as the Company may specify; and

28.3.2 minimal disruption or inconvenience to the Company or to customers or to public passenger transport services or facilities,

in accordance with the provisions of **Clauses 28.2 to 28.6** (inclusive) and which the Parties agree would have effect in the event that a Declaration of Ineffectiveness is made.

28.4 Where there is any conflict or discrepancy between the provisions of **Clause 25 and Clauses 28.2 to 28.6 (inclusive)** or the Cessation Plan, the provisions of these **Clauses 28.2 to 28.6 (inclusive)** and the Cessation Plan shall prevail.

28.5 The Parties will comply with their respective obligations under the Cessation Plan (as agreed by the Parties or, where agreement cannot be reached, as reasonably determined by the Company) in the event that a Declaration of Ineffectiveness is made.

28.6 The Company shall pay the Contractor's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by the Company. Provided that the Company shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract pursuant to any Declaration of Ineffectiveness.

28.7 Without prejudice to the Company's rights of termination implied into the Contract by Regulation 73(3) of the Public Contracts Regulations 2015 or Regulation 89(3) of the Utilities Contracts Regulations 2016, in the event that the Company exercises its right to terminate pursuant to this **Clause 28.7** (a "**Public Procurement Termination Event**"), the Company shall promptly notify the Contractor and the Parties agree that:

28.7.1 the provisions of **Clause 25** and these **Clauses 28.7 to 28.12** (inclusive) shall apply as from the date of receipt by the Contractor of the notification of the Public Procurement Termination Event; and

- 28.7.2 if there is any conflict or discrepancy between the provisions of **Clause 25** and these **Clauses 28.7 to 28.12** or the Cessation Plan, the provisions of these **Clauses 28.7 to 28.12** and the Cessation Plan shall prevail.
- 28.8 Termination on the Public Procurement Termination Grounds shall not prejudice or affect any right, liability or remedy which has accrued or shall accrue to either Party prior to or after such termination on Public Procurement Termination Grounds, in respect of the period prior to such termination, save as otherwise expressly provided in **Clauses 28.7 to 28.12** inclusive.
- 28.9 As from the date of receipt by the Contractor of the notification of the termination on Public Procurement Termination Grounds, the Parties (acting reasonably and in good faith) shall agree or, in the absence of such agreement, the Company shall reasonably determine an appropriate Cessation Plan with the object of achieving:
- 28.9.1 an orderly and efficient cessation or (at the Company's election) a transition to the Company or such other entity as the Company may specify of: (i) the Services; or (at Company's election), (ii) the part of the Services which are affected by the Public Procurement Termination Grounds; and
- 28.9.2 minimal disruption or inconvenience to the Company or to customers or to public passenger transport services or facilities,
- in accordance with the provisions of these **Clauses 28.7 to 28.11** (inclusive) and to take account of the circumstances of the Public Procurement Termination Grounds.
- 28.10 Upon agreement, or determination by the Company, of the Cessation Plan the Parties will comply with their respective obligations under the Cessation Plan.
- 28.11 The Company shall pay the Contractor's reasonable costs in assisting the Company in preparing, agreeing and complying with the Cessation Plan. Such costs shall be based on any comparable costs or Charges agreed as part of this Contract or as otherwise reasonably determined by the Company, provided that the Company shall not be liable to the Contractor for any loss of profit, revenue, goodwill or loss of opportunity as a result of the early termination of this Contract as a result of Public Procurement Termination Grounds.
- 28.12 For the avoidance of doubt, the provisions of this **Clause 28** (and applicable definitions) shall survive any termination of the Contract following a Declaration of Ineffectiveness or termination on Public Procurement Termination Grounds.
29. **FORCE MAJEURE**
- 29.1 Neither Party shall be deemed to be in breach of the Contract or otherwise licence to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is due to a Force Majeure Event.
- 29.2 If on the expiry of three months after the occurrence of a Force Majeure event where the Force Majeure event is continuing and has a material adverse effect on:
- 29.2.1 the Contractor's performance of the Contract then for as long as such Force Majeure event continues and has that effect the Company shall have the option to terminate all or part of the Contract by 10 Business Day's written notice; or
- 29.2.2 the Company's performance of its obligations under the Contract then for as long as such Force Majeure event continues and has that effect the Contractor may terminate the Contract in its entirety by 10 Business Day's written notice.
- 29.3 If termination occurs pursuant to **Clause 29.2**, neither Party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

29.4 The relief so afforded under this **Clause 29** shall not apply to any failure of a Party to pay any amounts due and owing under this Contract unless the event or circumstances of Force Majeure affects all reasonable methods of payment.

30. **VARIATIONS**

30.1 At any time during the term of the Contract the Company may require or the Contractor may recommend, variations to the Contract. All variations shall be dealt with in accordance with the procedure set out in **Schedule 6**.

31. **CORRUPT GIFTS AND PAYMENT OF COMMISSION**

31.1 The Contractor shall not, and shall ensure that its employees, agents and sub-contractors do not, pay any commission, fees or grant any rebates to any employee, officer or agent of the Company or any member of the TfL Group nor favour any employee, officer or agent of the Company or any member of the TfL Group with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of the Company or any member of the TfL Group other than as a representative of the Company, without the Company's prior written approval.

32. **WAIVER**

32.1 Failure by any Party at any time to enforce any of the provisions of the Contract shall not be construed as a waiver by such Party of such provisions or in any way affect the validity of this Contract or any part thereof.

33. **ENTIRE AGREEMENT**

33.1 Subject to **Clause 29.4** and without prejudice to the Contractor's obligations under the Contract, the Contractor shall be responsible for and shall make no claim against the Company in respect of any misunderstanding affecting the basis of the Contractor's tender in respect of the Contract or any incorrect or incomplete information howsoever obtained.

33.2 The Contract constitutes the whole and only contract between the Parties relating to the subject matter of the Contract and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto. Neither party has been induced to enter into the Contract by a statement which the Contract does not contain.

33.3 Each Party acknowledges that in entering into the Contract it is not relying upon any representation, warranty, promise or assurance made or given by any other party or any other person, whether or not in writing, at any time prior to the execution of the Contract which is not expressly set out herein.

33.4 Nothing in **Clauses 29.1** and **Clause 29.4** or otherwise in the Contract shall exclude any liability for fraudulent misrepresentation.

34. **RELATIONSHIP OF THE PARTIES**

34.1 Nothing in the Contract constitutes, or shall be deemed to constitute, a partnership between the Parties. Except as expressly provided in the Contract, neither Party shall be deemed to be the agent of the other, nor shall either Party hold itself out as the agent of the other.

34.2 Each Party warrants and represents to the other Party that it is entering into this Contract as principal and not as agent for any person and that it will act as an independent contractor in carrying out its obligations under this Contract.

34.3 Subject to any express provisions to the contrary in the Contract, the Contractor has no right or Company to and shall not do any act, enter into any contract, make any

representation, give warranty, incur any liability, assume any obligation, whether express or implied, of any kind on behalf of the Company or bind the Company in any way.

- 34.4 Each party will do or procure the doing of all acts and things and execute or procure the execution of all such documents as the other Party reasonably considers necessary to give full effect to the provisions of the Contract.

35. **SEVERABILITY**

- 35.1 If any provision of the Contract, in whole or in part, shall become or be declared illegal, invalid or unenforceable for any reason whatsoever, such provision or part thereof shall be divisible from the Contract and shall be deemed to be deleted from the Contract in so far as the continued operation of the Contract is concerned provided always that if such deletion substantially affects or alters the commercial basis of the Contract, the Parties shall negotiate in good faith to amend and modify the provisions and terms of the Contract as may be necessary or desirable in the circumstances.

36. **SURVIVAL**

- 36.1 The provisions of **Clauses 11, 19, 20, 21, 23, 24, 33, 40, 41, 42** shall survive the expiry or termination of the Contract and continue in full force and effect, along with any other Clauses or Schedules of the Contract necessary to give effect to them. In addition, any other provision of the Contract which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the expiry or termination of the Contract shall survive such expiry or termination as aforesaid.

37. **NOTICES**

- 37.1 Any notice or other documents to be given under the Contract shall be in writing and shall be deemed to have been duly given if delivered by hand or sent by first class pre-paid post, telex or facsimile transmission to:

37.1.1 in the case of the Company, Head of Commercial, London Bus Services Limited, 55 Broadway, London, SW1H 0BD; and

37.1.2 in the case of the Contractor to the registered address set out in this Contract

or such other address as one Party may from time to time designate by written notice to the other.

38. **LANGUAGE**

- 38.1 English shall be the language of the Contract and all documentation or information required or produced in the course of or in connection with the Contractor's performance shall be in English.

39. **THE CONTRACTS (RIGHT OF THIRD PARTIES) ACT 1999**

- 39.1 Save that any member of the Company Group and any Replacement contractor has the right to enforce the terms of the Contract in accordance with the Contracts (Rights of Third Parties) Act 1999, the Parties do not intend that any of the terms of the Contract will be enforceable by virtue of the Third Party Act by any person not a party to it.

- 39.2 Notwithstanding **Clause 39.1**, the Parties are entitled to vary or rescind the Contract without the consent of any other person including any member of the Company Group.

40. **ASSIGNMENT OR NOVATION**

40.1 The Contractor shall not assign or novate all or any part of the contract without the prior written consent of the Company (consent may be returned or given with such conditions as the Company sees fit).

40.2 The Company may assign or novate all or any part of the Contract at any time without the consent of the Contractor.

41. **GOVERNING LAW**

41.1 This Contract shall in all respects be construed and governed by English Law.

41.2 Without prejudice to **Clause 42**, the Parties submit to the exclusive jurisdiction of the courts of England and Wales provided that the Company has the right in its absolute discretion to enforce a judgement and/or to take proceedings in any other jurisdiction in which the Contractor is incorporated or in which any assets of the Contractor may be situated. The Parties agree irrevocably to submit to that jurisdiction.

42. **DISPUTE RESOLUTION**

42.1 The Company and the Contractor shall use all reasonable endeavours to negotiate in good faith and settle any dispute or difference that may arise out of or relate to the Contract ("**Dispute**") before resorting to litigation.

42.2 If the Dispute is not settled through discussion between the Company Manager and the Contractor's Representative within a period of seven Business Days of the date on which the Dispute arose, the Parties may refer the Dispute in writing to a director or chief executive (or equivalent) ("**Senior Personnel**") of each of the Parties for resolution.

42.3 If the Dispute is not resolved within 14 Business Days of referral to the Senior Personnel, either Party may propose by notice to the other Party ("**Notice**") that a mediation be entered into.

42.4 If the Parties are unable to agree on a mediator, or if the agreed mediator is unable or unwilling to act within 28 Business Days of the service of the Notice, either Party may apply to the Centre for Effective Dispute Resolution ("**CEDR**") in London to appoint a mediator. The costs of that mediator shall be divided equally between the Parties or as the Parties may otherwise agree in writing.

42.5 Where a dispute is referred to mediation under **Clause 42.3**, the Parties will attempt to settle such Dispute by mediation in accordance with the model mediation procedures published by CEDR or such other procedures as the mediator may recommend.

42.6 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be recorded in writing and once signed by the Parties' authorised representatives, shall be final and binding on the Parties.

42.7 If either Party refuses at any time to participate in the mediation procedure and in any event if the Parties fail to reach agreement on the Dispute within 40 Business Days of the service of the Notice either Party may commence proceedings in accordance with **Clause 42**.

42.8 Notwithstanding any other provision of this Contract, where Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended) applies, either Party may refer a Dispute to adjudication at any time under the Scheme, which Scheme shall take effect, subject to the provisions of this **Clause 42**, as if it was incorporated into this Contract.

42.9 The adjudicator shall be appointed by the Chartered Institute of Arbitrators (CI Arb) or any successor organisation.

- 42.10 As soon as possible after reaching his/her decision, the adjudicator will provide each Party with a copy of his/her decision, supported by his/her reasons.
- 42.11 The adjudication and all matters arising in the course of the adjudication, must be kept confidential by the Parties, except as may be properly required for the purpose of obtaining legal or professional advice or for the purpose of any subsequent proceedings.
- 42.12 In any reference to adjudication:
- 42.12.1 each Party shall bear its own costs;
 - 42.12.2 the adjudicator's fees shall be shared equally between the parties, unless the adjudicator decides otherwise as part of his/her decision.
- 42.13 For the avoidance of doubt, the Contractor shall continue to perform its obligations in accordance with the Contract and without delay or disruption while the Dispute is being resolved pursuant to this **Clause 42**.
- 42.14 Neither Party shall be prevented from, or delayed in, seeking any order for specific performance or for interim or final injunctive relief as a result of the provisions of this **Clause 42** shall not apply in respect of any circumstances where such remedies are sought.

EXECUTION PAGE

Executed as a deed by affixing
the common seal of

London Bus Services Limited



in the presence of:

Authorised signatory...



J. WRM

Executed as Deed

for and on behalf of

NEL HYDROGEN A/S

acting by

Authorised

Signature

Name: *JARN ROSEN LUND*



~~and~~

In the presence of:

~~Authorised~~

Signature

Name: *Jacobs Krogsgaard*

*Mejdal Søvej 23C
7500 Hørsteholm
Denmark
SVP Nel Solutions*



SCHEDULE 1
SPECIFICATION

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