

Connection Agreement (Entry) Hynetwork Services B.V.

Confidential and non-binding draft, for discussion purposes in consultation only. Subject to internal and external approvals.

Subject to further review by HNS. Draft dated 26 April 2022.



CONNECTION AGREEMENT

**CONCERNING THE CONNECTION OF THE HNS TRANSPORT SYSTEM
AND A HYDROGEN PRODUCTION SYSTEM**

HYNETWORK SERVICES B.V. ("HNS")

Date version [•]

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This Connection Agreement is made and entered into on [DATE] by and between:

[Name of Company], having its registered office at [address], [postal code], [city], [land], hereinafter referred to as "**Connected Party**", for the purposes hereof duly represented by [name],

and

Hynetwork Services B.V., having its registered office at Concourslaan 17, 9727 KC, Groningen, the Netherlands, hereinafter referred to as "**HNS**", for the purposes hereof duly represented by [name],

Connected Party and HNS are hereinafter also collectively referred to as "**Parties**" and individually as "**Party**".

Whereas:

HNS is the system operator of the HNS Transport System;

Connected Party controls and operates the hydrogen production system located at [location] connected to the HNS Transport System;

Parties wish to agree upon the terms and conditions as set out below;

Connected Party and HNS have duly executed this Agreement in twofold.

	Connected Party	HNS
Date:		
Name:		
Title:		
Signature:		

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ANNEXES

1. Definitions	<i>Included</i>
2. Standard Connection Terms	<i>To be determined</i>
3. Connection	<i>To be determined</i>
4. Quality and pressure specifications	<i>To be determined</i>
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6. Near real time data interface	<i>To be determined</i>
7. Fiscal Metering Manual	<i>To be determined</i>
8. Operating Procedure	<i>To be determined</i>
9. Allocation Procedure, including Near Real Time allocations	<i>To be determined</i>

Possible list of additional Annexes (every Annex individually 'if applicable'):

10. Telemetry
11. Nomination and Matching Procedure
12. Non-fiscal-metering manual
13. Offline Fiscal Data transfer
14. Operational Balancing Account

1. Definitions and interpretation

1.1 Definitions

1.1.1 Capitalised terms used in the Agreement are defined in Annex 1 (*Definitions*).

1.2 Interpretation

1.2.1 In the Agreement, unless a contrary indication appears:

- a. any reference to the "Agreement", any "Annex" or any other document also refers to any amendment to it and any restatement of it;
- b. any reference to a "Party" also refers to its successors in title (*rechtsopvolgers onder algemene titel*), permitted assigns and permitted transferees;
- c. an "electronic signature" includes an electronic signature, an advanced electronic signature and a qualified electronic signature within the meaning of article 3 of the eIDAS Regulation and article 3:15a of the Dutch Civil Code;
- d. an "encumbrance" includes any security right or other limited right (*beperkt recht*), title retention arrangement, right of retention, attachment (*beslag*) or other encumbrance (and "encumber" is to be construed accordingly);
- e. a "person" includes any natural person, legal entity or other person (whether under public or private law, whether or not having legal personality and wherever existing or registered);
- f. "the Netherlands" means the European part of the Kingdom of the Netherlands (and all derivative terms, including "Dutch", are to be construed accordingly);
- g. references to time are to Local European Time (LET), based on a 24-hour clock;
- h. In the Agreement, unless a contrary indication appears:
 - i. "as of" includes the day or moment referred to by it;
 - ii. "including" means including without limitation (and all derivative terms are to be construed accordingly).

1.2.2 Headings do not affect the interpretation of the Agreement.

1.2.3 Presented values are shown in the English format (i.e. decimals are shown as a dot ".").

1.2.4 Units of pressure (Pascal), energy (Joule, kWh), thermodynamic temperature (Kelvin) and length (metre) respectively, have the meanings ascribed thereto in the publication International Standard ISO 80000-1:2013 "Quantities and units - Part 1: General (ISO 80000-1:2009 + Cor 1:2011)", "SI units and recommendations for the use of their multiples and certain other units". The prefix "G" is equal to one billion (1,000,000,000), "M" is equal to one million (1,000,000) and the prefix "k" is equal to one thousand (1,000). A "bar" is equal to one hundred thousand (100,000) Pa. A "°C" means degree Celsius, and $x\text{ °C} = x + 273.15\text{ K}$.

2. General

2.1 General

- 2.1.1 The purpose of the Agreement is to allow Gas to flow through the Connection. The Agreement specifies the terms and conditions under which such flows are allowed.
- 2.1.2 Each Party shall act as a Reasonable and Prudent party.
- 2.1.3 Parties shall act in accordance with all relevant legislation and regulation applicable from time to time. In this context, Parties shall respect each other's respective role.
- 2.1.4 Connected Party acknowledges and agrees that maintenance, expansions and extensions of the HNS Transport System and the addition of new and potential users of this system are likely to occur. Connected Party agrees to cooperate with the reasonable requests of HNS in connection with such maintenance, expansions, extensions and addition of new and potential users of the HNS Transport System.
- 2.1.5 HNS shall provide access to and usage of the HNS Transport System on transparent and reasonable terms and on a non-discriminatory basis.
- 2.1.6 Parties agree that the Facilities of the Parties shall be operated, maintained and developed in a good, prudent and safe manner, in order to allow Gas to flow through the Connection without hampering or damaging in any way (the correct operation of) the other Party's Facilities and the HNS Transport System or posing any threat to the health and life of any person and/or to the environment.
- 2.1.7 Each Party will bear its own costs with regard to fulfilling its obligations under and execution of the Agreement including but not limited to costs of auditors and (legal) advisers, unless specifically provided otherwise for in the Agreement or by law.
- 2.1.8 HNS will retain title to the Cushion Gas and HNS Linepack¹.
- 2.1.9 Connected Party shall notify HNS as soon as possible if any agreement for the delivery or offtake of Gas at the Connection has been suspended or terminated for any reason, unless such agreement is immediately and without interruption replaced by a similar agreement.

¹ **Note to Connected Parties:** please note that the HNS Linepack definition and mechanics are still under construction.

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2.1.10 On or before [1 September] of each Year, Connected Party provides HNS with the Estimated Five Year Gas Feed-In Demand. At the request of HNS, Connected Party shall supply additional (background) information on the Estimated Five Year Gas Feed-In Demand. Connected Party represents for the benefit of HNS that the Estimated Five Year Gas Feed-In Demand was determined in a Reasonable and Prudent manner and provides the most accurate estimate of how much Gas Connected Party will feed in over the relevant period. For the avoidance of doubt, in no way does (the determination of) the Estimated Five Year Gas Feed-In Demand guarantee any available capacity in the HNS Transport System to deliver any Gas.

3. Entry into force, duration, suspension and termination

3.1 Duration

3.1.1 The Agreement commences on the Start Date.

3.1.2 The Agreement is valid for an indefinite period and can only be terminated by mutual written agreement, unless it is terminated in accordance with any of the provisions of Article 3.2.1.

3.2 Suspension and termination

3.2.1 Each Party shall be entitled to terminate the Agreement in writing with immediate effect, without judicial intervention and/or to suspend the fulfilling of his obligations under the Agreement, if:

- a. the other Party is declared bankrupt (*in staat van faillissement verklaard*) or is granted a (provisional) suspension of payment (*surséance van betaling*) or is declared in a similar legal status affecting the rights of creditors in general; or
- b. the other Party terminates its activities or existence; or
- c. in case such other Party is Connected Party, a Change of Control occurs in respect of Connected Party without the prior approval of HNS (not to be unreasonably withheld); or
- d. the Connection between Parties' Facilities has been closed in accordance with Article 5.2.8 for a period longer than three hundred and sixty-five (365) consecutive Days; or
- e. the other Party is subject to prolonged Force Majeure subject to and in accordance with Article 11.1.3.

Termination under the provisions of this Article 3.2.1(d) and (e) shall only be permitted if Parties have consulted each other and have tried in good faith to reach a joint solution taking into account the interests of both Parties.

3.2.2 After termination of the Agreement Parties will close the Connection between their Facilities. From the date of termination of the Agreement each Party has the right to disconnect and remove its Facilities, provided always that Parties shall consult each other beforehand with the aim to minimise the impact on the Facilities of the other Party.

3.2.3 The obligations which in their nature are intended to continue after the termination of the Agreement will remain in force after termination of the Agreement for a period of [3] years.

4. Quality and pressure specifications, pressure control and pressure safety

4.1 General

4.1.1 The Gas at the Connection delivered and/or to be delivered by Connected Party in the HNS Transport System shall comply with (i) the specifications as set out in Annex [4] (*Quality and pressure specifications*) or (ii) if accepted under Article 4.2.2(b), the specifications described in the notice mentioned in Article 4.2.1.

4.1.2 The pressure control and pressure safety arrangements of Connected Party at the Connection shall comply with the specifications as set out in Annex [5] (*Pressure control and pressure safety*).

4.2 Non Compliant Gas

4.2.1 Connected Party shall (i) immediately and automatically close the Connection in case it detects that the Gas at the Metering Point has or will become Non Compliant Gas and (ii) immediately notify HNS of the characteristics (which specifications and to what extent) of the non compliance. Connected Party will with all possible diligence and without delay investigate the cause(s) of the non compliance and notify HNS thereof and take those actions within its control to expeditiously reduce and/or remedy the non compliance.

4.2.2 The notice mentioned in Article 4.2.1 under (ii) may include a request by Connected Party to HNS for a (partial) acceptance of the Non Compliant Gas. In that case HNS shall as soon as practically possible after such notice inform Connected Party of its decision (acting in its sole discretion) either:

- a. to refuse the Non Compliant Gas until the non compliance has been remedied; or
- b. to accept a specified part or all of the Non Compliant Gas until further notice, which acceptance may be revoked (with effect as of the revocation) at any point in time.

Solely if HNS has notified Connected Party of its decision to (partially) accept the Non Compliant Gas, the (partially) accepted Gas is deemed to comply with such specifications according to, and to the extent of, the notice mentioned in Article 4.2.1 under (ii) the Gas did not comply with.

4.2.3 Notwithstanding HNS' right to close the Connection pursuant to Article 5.2.8(f), to the extent that HNS has (i) refused the Non Compliant Gas pursuant to Article 4.2.2(a) or (ii) has not accepted Non Compliant Gas pursuant to Article 4.2.2(b), Connected Party remains solely responsible for the Non Compliant Gas and any consequences of the non compliance. Under no circumstances shall HNS be deemed to be required to exercise its rights under Article 5.2.8(f).

4.2.4 Each Party will with all possible diligence and without delay investigate the cause(s) of the non compliance and notify the other Party thereof and take those actions within its control to expeditiously reduce and/or remedy the non compliance.

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- 4.2.5 In case of Non Compliant Gas, Parties agree to exchange all relevant information relating to the non compliance and the cause thereof such as, but not limited to, the measurement results, log books, processing data following Annex [7] (*Fiscal Metering Manual*) and Annex [12] (*Non-Fiscal Metering Manual*).

5. Parties' Facilities

5.1 Compliance

- 5.1.1 Parties' Facilities will comply with the relevant International Standards and any applicable legislation and regulation from a Competent Authority and Parties shall keep their Facilities technically and operationally compatible so that Parties' Facilities are safely connected and the Gas can enter and/or leave Parties' Facilities in a safe, controllable and measurable way. In case of newly published International Standards Parties shall in good faith discuss whether or not to implement the changes in such standards. For the avoidance of doubt, in the event of a conflict between a mandatory applicable law and an International Standard, the applicable law will prevail.
- 5.1.2 Before any Gas Flow through the Connection will (re-)commence and, thereafter, at any time for the duration of the Agreement at the request of HNS (but without obligation for HNS to monitor), Connected Party must demonstrate to HNS's satisfaction that the Connection and Connected Party's Facilities comply with the International Standards and any applicable legislation and regulation from a Competent Authority. At the request of HNS, Connected Party shall provide at its own cost all relevant information, including in relation to the construction and maintenance of the Connection and Connected Party's Facilities.
- 5.1.3 In the event Connected Party's Facilities fail to comply with the International Standards and any applicable legislation and regulation from a Competent Authority, HNS may:
- a. investigate Connected Party's Facilities at the cost of Connected Party; and
 - b. require Connected Party to at its own cost remedy any non-compliance within the time and manner stipulated by HNS.
- 5.1.4 Connected Party shall not use the Connection for grounding electricity facilities, equipment, lightning rods or similar devices, nor for any other purpose than explicitly allowed for pursuant to the terms of the Agreement. Connected Party shall not break or let any third party break any seals affixed to the Connection by or on behalf of HNS.

5.2 Gas Flow and the Connection

- 5.2.1 Both Parties are able to discontinue a Gas Flow through the Connection.
- 5.2.2 At the Connection the operations of the transport of Gas transfers from Connected Party to HNS.
- 5.2.3 At the Facilities of Connected Party, the telemetry system of HNS connects to the measurement signals of Connected Party.
- 5.2.4 The control of the Gas Flow shall comply with the arrangements as set out in Annex [8] (*Operating Procedure*).

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- 5.2.5 Parties will prevent situations wherein the Gas Flow is lower or higher than the Measuring Capacities as set out in Annex [7] (*Fiscal Metering Manual*).
- 5.2.6 Connected Party shall not let the Gas Flow be higher than the Measuring Capacities, unless this was caused by application of Article 6.3.1(b). Connected Party acknowledges that Gas Flow higher than the Measuring Capacities jeopardizes the safe, efficient and reliable operation of the HNS Transport System. Connected Party shall as soon as possible notify HNS of any higher or expected higher Gas Flow higher than the Measuring Capacities and shall comply with any subsequent instructions of HNS.
- 5.2.7 Connected Party must timely notify HNS of any modifications to Connected Party's Facilities that may in any way impact the safety or uninterrupted operation of the HNS Transport System and whether it shall close the Connection for purposes of such modifications, prior to the execution of such modification. In the event of modifications that may impact the safety or uninterrupted operation of the HNS Transport System, HNS has the right to close the Connection.
- 5.2.8 Each Party is entitled to close the Connection between Parties' Facilities without prior notice if:
- a. any of the Parties notices that there is not a Transport Agreement in place concerning the Connection; or
 - b. any of the Parties notices that a shipper under a Transport Agreement creates an imbalance in breach of the terms of the relevant Transport Agreement; or
 - c. the other Party does not fulfil any of the obligations under the Agreement provided that this non-fulfilment has a material effect; or
 - d. the other Party fails to fulfil any other obligation under the Agreement within five (5) Business Days after having been summoned to do so in writing, the non-fulfilment of the obligation not being due to Force Majeure; or
 - e. the other Party suffers an emergency or Force Majeure; or
 - f. notwithstanding anything to the contrary in Article 4, in case of Non Compliant Gas; or
 - g. to safeguard and prevent damage or harm to the safety or uninterrupted operation of the HNS Transport System, the health and life of any persons, or the environment.

Each Party warrants to the other Party that its Facilities are designed to accommodate the immediate closure of the Connection without prior notice by the other Party in accordance with the Agreement. Each Party shall not be entitled to any compensation, remedy or other entitlement in connection with such closure of such Connection or any damage as a result thereof.

The relevant Party will again open up the Connection as soon as the situation(s) meant in this Article 5.2.8 is/are remedied.

5.3 Access to the Facilities

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- 5.3.1 Each Party and its agents and representatives shall in connection with the Agreement, be entitled to enter the Facilities of the other Party at all reasonable hours in the presence of the other Party's agents or representatives. If and to the extent a Party and its agents and representatives are at the Facilities of the other Party, the visiting Party and its agents and representatives shall at all times strictly adhere to the safety requirements of the other Parties. The visiting Party will always timely announce its visits to the Facilities to the other Party well in advance.
- 5.3.2 In the event (a part of) the site belonging to Connected Party where HNS' Facilities are situated (or have become situated) are disposed of by Connected Party, or the right (of use) of Connected Party to (a part of) the site is terminated, Connected Party shall timely notify HNS of such an event. Connected Party shall, if necessary in cooperation with a third party, before execution of such disposal, grant a right of superficies to HNS for the continuation of the use by HNS of HNS' Facilities on site after transfer of Connected Party's respective ownership to a third party. In case the site is not owned by Connected Party and Connected Party is solely a tenant and therefore limited in exercising rights in relation to the site, Connected Party shall undertake its best endeavours to have granted a right of superficies to HNS by the owner of the site for the continuation of the use by HNS of HNS' Facilities.

6. Maintenance

6.1 Disruption of Gas Flow due to Maintenance

- 6.1.1 For the purpose of Maintenance, HNS shall have the right to discontinue, increase, or reduce Gas Flow (including without limitation by closing the Connection). HNS shall notify Connected Party of the Maintenance, including the expected starting date and time and estimate of duration, as soon as reasonably possible and in any event at least thirty (30) Days before the start thereof.

6.2 Disruption of Gas Flow due to other reasons

- 6.2.1 HNS has the right (to instruct Connected Party) to discontinue, increase, or reduce Gas Flow for other reasons than as set out in Article 6.1 (and Connected Party shall promptly comply with such instruction). HNS shall inform Connected Party as soon as reasonably possible after such disruption for such other reasons occurs. Insofar possible, such information shall contain the expected amount of reduction or increase of Gas Flow, the expected duration of and reasons for such disruption.

6.3 General

- 6.3.1 In respect of any disruption of Gas Flow pursuant to this Article 6:

- a. HNS shall determine in its sole discretion whether a disruption of Gas Flow is necessary (as well as the duration thereof) for purposes of Maintenance or for other reasons. HNS shall use reasonable endeavours to (i) minimise disruption and the duration thereof and (ii) take into account the reasonable interests of Connected Party. HNS and Connected Party shall at all times exchange such information and take such measures as necessary to together coordinate Maintenance and use reasonable endeavours to minimise disruption of Gas Flow.
- b. Insofar Maintenance requires that a certain amount of Gas or Gas pattern will flow through the Connection, HNS and Connected Party shall work together, also with other users of the HNS Transport System, to realise such Gas Flow.
- c. Connected Party shall not be entitled to any compensation, remedy or other entitlement for any reduction in Gas Flow.

7. Metering and measurement terms

7.1 Measuring Station

- 7.1.1 Connected Party is responsible for the construction, maintenance and operation of the Measuring Station at its own cost. The design, construction, maintenance, cleaning and modification of that building (and its premises) shall comply with the requirements set by HNS.
- 7.1.2 Connected Party acknowledges and agrees to its responsibilities as described in Annex [7] (*Fiscal Metering Manual*) and Annex [12] (*Non-Fiscal Metering Manual*) with respect to the construction, maintenance and operation of a Measuring Station. This Measuring Station shall be designed for and equipped with the equipment and instruments necessary for accurate measurement of the relevant physical properties of the Gas in accordance with the relevant International Standards, functional requirements made available by HNS and with Annex [4] (Quality and pressure specifications), Annex [7] (*Fiscal Metering Manual*) and Annex [12] (*Non-Fiscal Metering Manual*).

7.2 Metering

- 7.2.1 In view of Article 4.1.1, Connected Party shall measure the components mentioned in Annex [4] (Quality and pressure specifications) and provide said measurements to HNS via [*telemetry*] in accordance with Annex [10] (*Telemetry*). Exemptions to the measurement of one or more components can be made for as long as Connected Party can ensure to HNS' satisfaction that such components will not affect the compliance of the Gas. If Connected Party can no longer ensure that such components will not affect the compliance of the Gas, this exemption is revoked.
- 7.2.2 Connected Party will continuously measure the Gas Flow and commodity in the Measuring Station in accordance with Annex [7] (*Fiscal Metering Manual*).
- 7.2.3 All measuring methods and procedures shall be in accordance with the relevant International Standards and all measurements shall be traceable to international physical standards. In case of newly published International Standards Parties shall in good faith discuss whether or not to implement the changes in such standards.
- 7.2.4 HNS may use all available data from other connected parties at Entry and/or Exit Points to evaluate the correctness of the individual measuring results. If necessary Parties will agree on implementing an offset to correct for deviations between metering results and physical gas balance.

7.3 Inspection and recalculation

- 7.3.1 If HNS has reasonable doubts as to the correct operation of the measuring appliances, HNS is entitled to demand an inspection by an independent institution, the choice of which will be agreed upon by the Parties. Parties shall acknowledge the result of this inspection. The costs of the inspection procedure shall be borne by the Party proven to be wrong.

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- 7.3.2 Recalculation of energy shall be done in case measurement corrections are obliged in accordance with the conditions for recalculations mentioned in Annex [7] (*Fiscal Metering Manual*).
- 7.3.3 For the recalculation mentioned in Article 7.3.2, Parties will issue amended allocations for the recalculation according to Annex [9] (*Allocation Procedure, including Near Real Time allocations*). The amendment period will be limited to the Year the error is observed plus four (4) Months following the end of the Year the error is observed, unless another amendment period is imposed by a Competent Authority.
- 7.3.4 The recalculation and issuing of amended allocations will take place within six (6) months from the date the error is observed.

8. Allocation and verification²

8.1 Allocation

8.1.1 The allocation procedure relevant for each side of the Connection as set out in Annex [9] (*Allocation Procedure, including Near Real Time allocations*) shall apply, both for the offline allocation and for the near real time allocation.

8.1.2 Connected Party and HNS may agree upon allocations to be delivered by Connected Party to HNS. In that case Connected Party shall provide HNS with near-real-time allocations in accordance with the procedures and conditions stipulated in Annex [9] (*Allocation Procedure, including Near Real Time allocations*).

8.1.3 The allocation shall be based upon the Metering result, the agreed allocation method as set out in Annex [9] (*Allocation Procedure, including Near Real Time allocations*) and Annex [14] (*Operational Balancing Account*) (if applicable) and the result of the operational matching as set out in Annex [11] (*Nomination and Matching Procedure*) (if applicable).

8.2 Verification

8.2.1 The Parties shall apply the relevant verification procedures as described in Annex [9] (*Allocation Procedure, including Near Real Time allocations*) to check whether the results of the allocation at the Metering Point are corresponding.

² **Note to Connected Parties:** HNS may unilaterally introduce a nomination procedure with a prior notice of at least one (1) year. HNS estimates that a nomination procedure may be introduced in 2026 or 2027, although this is not yet certain.

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9. Operations

9.1 Operating procedure

9.1.1 The Parties shall apply the Operating Procedure.

9.1.2 Parties shall meet on a regular basis and discuss the operations under the Agreement. Agreed changes in operational procedures, if any, following these discussions will be included in the relevant Annexes.

10. Liability

10.1 Liability

10.1.1 No Party shall be liable to the other Party under any circumstances for any loss or damage, including damage to property or persons incurred by the other Party in connection with the Agreement, except as set out in this Article 10.

10.1.2 A Party shall be liable to the other Party for direct damage to the other Party's Facilities (which shall include, solely for the purpose of this Article 10.1.2, in respect of HNS' Facilities the HNS Transport System), including the reasonable costs of cleaning and, solely in case of HNS' Facilities, replacement of any Gas of third parties and any Cushion Gas and/or HNS Linepack, to the extent such damage is caused by and is a consequence of a shortcoming in the fulfilment of any material obligation under the Agreement, the non-fulfilment of any safety obligation and/or the non-fulfilment of any obligation mentioned in Article 4. As soon as reasonably practicable after the damage was discovered the other Party shall give notice to the first Party of such damage.

10.1.3 To the extent a Party is not liable to the other Party for loss or damage to the other Party pursuant to this Article 10, the other Party shall hold harmless and indemnify that Party from and against all claims by third parties concerning that loss or damage.

10.1.4 Notwithstanding anything contained in this Article 10, neither of the Parties is liable to the other Party for any indirect damage, including, without limitation, loss of profit, loss of business expectations or opportunities, loss of contract or any loss or damage to third parties.

10.1.5 Connected Party shall be liable for and indemnify HNS against any damage as a result of a successful claim (whether as payment, compensation or settlement) from a third party and only concerning direct damage suffered by that third party in connection with Non Compliant Gas provided that: (i) this damage was caused by Non Compliant Gas that was fed into the Facilities of HNS by Connected Party, (ii) the Non Compliant Gas was not accepted by HNS, (iii) HNS has taken appropriate actions to counter such claim including properly invoking any relevant exclusion or limitation of relevant liability clauses to such third party, (iv) HNS has given notice to Connected Party of such claim from third parties within six (6) months after the claim for damages by third party due to Non Compliant Gas was received by HNS. For the avoidance of doubt, any damage payable pursuant to this Article 10.1.5 does not qualify as indirect damage as referred to in Article 10.1.4.

Further to this Article 10.1.5 under (iv) HNS shall give Connected Party promptly notice of any such claim and shall supply Connected Party with all relevant details and information which it may have relative to the claim.

Parties will undertake their reasonable endeavours to agree with their respective counterparties up-stream and down-stream in an arrangement on the consequences of non compliant gas (such as the liability for such non compliant gas), including that such arrangement will be an exclusive remedy for the party that suffers damage.

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Furthermore, HNS will undertake its reasonable endeavours to include in any settlement of such claim an obligation on that third party to acknowledge that the settlement shall serve as sole remedy for the relevant damage.

- 10.1.6 In the event a Party is liable to the other Party, all liabilities to the other Party for whatever kind of damage, except for liabilities based on Non Compliant Gas as set out in this Article 10, will per Year be limited to [€10,000,000 (ten million Euro)]. All liabilities to the other Party in respect of Non Compliant Gas as set out in this Article 10 will per event per Entry Point be limited to [€ 15,000,000 (fifteen million Euro)].
- 10.1.7 The limitations stipulated in Article 10.1.6 will not apply in case of Wilful Misconduct or Gross Negligence of the defaulting Party or in respect of any liability pursuant to Article 10.1.3.
- 10.1.8 Any relief from liability, indemnity given or received, or benefit in favour of a Party under the Agreement shall extend to the respective Affiliated Companies of the companies or corporations concerned, their respective contractors, subcontractors and suppliers and to its or their respective employees, officers, managing and supervisory directors, consultants and agents.

11. Force Majeure

11.1 Force Majeure

- 11.1.1 If a Party is unable, in whole or in part, to fulfil any obligation under the Agreement due to Force Majeure, such Party will be relieved of its obligations under the Agreement to the extent that the fulfilment of these obligations is rendered impossible by such Force Majeure. The Party claiming Force Majeure shall give notice and reasonably full particulars to the other Party promptly after the occurrence of such Force Majeure and shall also notify the other Party of the period of time which said Party estimates it will require to remedy the Force Majeure and shall keep the other Party regularly informed as to the progress of such remedy.
- 11.1.2 The Party claiming Force Majeure shall use reasonable endeavours to mitigate the effects of such Force Majeure and to rectify the circumstances causing the failure. However, there shall be no obligation of the Party claiming Force Majeure (i) to settle any labour dispute, except in such a manner as it shall deem fit in its own judgement, and (ii) to negotiate, arrange or agree alternative delivery or acceptance of, as the case may be, Gas.
- 11.1.3 Without prejudice to Article 5.2.8(e), if any Party claims Force Majeure under the Agreement, the other Party will not be entitled to suspend or terminate any of its obligations under the Agreement or to suspend or terminate the Agreement on the grounds of such Force Majeure provided however, that if, a Force Majeure situation lasts for a period of more than three hundred and sixty-five (365) consecutive Days after the Party claiming Force Majeure giving notice thereof, the Party who did not claim Force Majeure shall be entitled to terminate the Agreement, provided that the Force Majeure situation still exists at the time of the termination. Such a termination shall be made in accordance with Article 3.2.1.

12. Assignments

12.1 Assignments

12.1.1 No Party may fully or partly transfer, assign or encumber rights and/or obligations under an Agreement without the other Party's prior written consent. Without this consent, no transfer, assignment or encumbrance is effected.

12.1.2 Consent shall be deemed to be reasonably withheld if in the case of any proposed transfer of contract the Party making the transfer is unable to demonstrate to the reasonable satisfaction of the other Party that the proposed transferee has the ability to perform the obligations transferred to it.

12.1.3 No transfer of contract pursuant to Article 12.1.1 shall be effective unless and until transferor has ensured that the proposed transferee provides to the other Party a direct covenant in favour of and in a form reasonably satisfactory to the other Party that the transferee will observe and perform the obligations to be transferred to it.

12.1.4 Notwithstanding Article 12.1.1, HNS may transfer its rights and obligations under an Agreement to an Affiliated Company without Connected Party's prior written consent. Connected Party hereby cooperates with any transfer in anticipation (*bij voorbaat*). Any transfer shall take effect by notice to Connected Party (whether prior to or after the transfer).

13. Confidentiality

13.1 Confidentiality

13.1.1 Parties agree that the contents of the Agreement and all information obtained hereunder by each Party from the other Party, including all engineering and operational data, shall be held strictly confidential by the receiving Party during the term of the Agreement and for a period of three (3) years from the end date of the Agreement or the date of early termination. Parties declare that they shall not make or have made public any information with regard to the contents of the Agreement without prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

However, a Party may make available said contents or information without such prior written consent to:

- a. its employees or employees of Affiliated Companies or shareholders or members of corporate bodies of an Affiliated Company to the extent reasonably necessary for the approval and performance of the Agreement, provided that such employees, shareholders and members shall be bound by equivalent provisions of confidentiality as set forth in this Article 13; or
- b. any Competent Authority, subsidy grantor or recognised security exchange, if such disclosure is required by law, order or regulation; in such case the disclosing Party will notify the other Party in advance of such disclosure and of its extent; or
- c. banking and financial institutions and their consultants, if such disclosure is necessary in connection with financing arrangements, provided that such Party shall first obtain a written undertaking of confidentiality from such banking and financial institutions and their consultants, similar to the undertaking of confidentiality that is set forth in this Article 13; or
- d. independent consultants, strategic partners or contractors nominated by a Party for the purpose or in connection with the Agreement, provided that such Party shall first obtain a written undertaking of confidentiality from each consultant or contractor, similar to the undertaking of confidentiality that is set forth in this Article 13; or
- e. any person or legal entity to which pursuant to Article 12 any right or obligation under the Agreement has been or will be transferred, assigned or encumbered or any legal successor of a Party, provided that the Party assigning or to be legally succeeded shall first obtain a written undertaking of confidentiality from such assignee or legal successor, similar to the undertaking of confidentiality that is set forth in this Article 13.

13.1.2 Notwithstanding the provisions in Article 13.1.1, the Party receiving information may disclose such information without the other Party's prior written consent if and to the extent that such information:

- a. is already lawfully known to the Party receiving the information; or
- b. is already in or enters the public domain other than through the act or omission of the Party receiving the information; or
- c. is acquired independently from a third party that is entitled to disseminate such information at the time it is acquired by the Party receiving the information.

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13.1.3 Notwithstanding Article 13.1.1, both Parties are entitled to inform its relevant (prospective) users of the HNS Transport System or the hydrogen production system of the relevant parts of the Agreement or the relevant data resulting from the Agreement in case and only to the extent this is necessary for fulfilling their obligations under their respective (future) agreements for the transmission of Gas with these parties or for fulfilling its statutory tasks.

13.1.4 Notwithstanding Article 13.1.1, HNS may pursuant to any legal or regulatory requirement publish information if so required.

14. Information and communication

14.1 Notices

14.1.1 All notices shall be given in the English language.

14.1.2 Unless otherwise stipulated in the Agreement any notice to be given herein shall be in writing and shall be deemed given and effective upon receipt by the Party addressed, or, in case the receipt is disputed:

- a. if posted in the Netherlands, postage prepaid, to an address in the Netherlands on the next Business Day subsequent to posting; or
- b. if posted outside the Netherlands or to an address outside the Netherlands, via airmail and postage prepaid, on the fifth (5th) Business Day subsequent to posting; or
- c. if given by electronic mail, on the next Business Day after the dispatch thereof, or, if this is earlier, the moment at which the recipient of the electronic mail confirms the receipt of the electronic mail.

14.2 Disclosure of information

14.2.1 Parties will at all times give each other all such information deemed necessary or useful to enable Parties to carry out their obligations under the Agreement and/or to meet regulatory or safety requirements to the extent that the disclosing Party is entitled to disclose such information to the other Party.

14.3 Addresses

14.3.1 The address and e-mail addresses (and the department of the officer, if any, for whose attention the communication is made) of each Party for any communication to be made under or in connection with the Agreement are:

- a. those identified with its name in Annex [•]; or
- b. any substitute address or department or officer as the Party may notify to the other Party by not less than five (5) Business Days' notice.

14.4 Data transmission

14.4.1 For the transmission of telemetry-data, Parties will meet/comply with the requirements of Annex [10] (*Telemetry*).

14.4.2 For the transmission of data for the matching process, Parties will, if applicable, meet/comply with the requirements of Annex [11] (*Nomination and Matching Procedure*).

14.4.3 For online data transmission, Parties will meet/comply with the requirements of Annex [6] (*Near real time data interface*) and if applicable Annex [9] (*Allocation Procedure, including Near Real Time allocations*).

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14.4.4 For offline data transmission, Parties will meet/comply with the requirements of Annex [13]
(*Offline Fiscal Data transfer*).

15. Sundries

15.1 Sundries

15.1.1 All agreements between Parties prior to the date of the Agreement concerning any of the matters that are now dealt with in the Agreement, are superseded by the contents of the Agreement.

15.1.2 The Annexes form an integral part of the Agreement.

15.1.3 In case of any conflict or inconsistency between the provisions of any Annex and the main text of the Agreement, the latter will prevail unless explicitly agreed otherwise.

15.1.4 The failure at any time of either Party to require performance by the other Party of any provision of the Agreement shall in no way affect the right of a Party to require any performance which may be due thereafter pursuant to such provision nor shall the waiver by either Party of any breach of any provision under the Agreement be taken or held to be a waiver of any subsequent breach of such provision.

15.1.5 Parties undertake to co-operate in good faith with any third parties in so far as involvement of those parties is directly or indirectly necessary for the fulfilment by HNS or Connected Party of any obligation under the Agreement.

15.1.6 If one or more of the provisions of the Agreement should be totally or partially void or ineffective, this shall not affect the legal status of the other provisions. Parties undertake to cooperate in agreeing as soon as possible on an effective new provision, which approaches the purpose and any other effect of the ineffective or void provision as closely as possible. Until such new provision has been agreed upon, in case legal proceedings are pending in which the ineffective provision(s) are of any significance, each Party may request the Court for the application of article 3:42 of the Dutch Civil code, if such application is legally possible.

15.1.7 Each Party warrants to the other Party per the date of the Agreement that:

- a. it is validly existing and duly incorporated under its laws of incorporation;
- b. it has taken all corporate action to enter into the Agreement and to undertake the obligations arising therefrom; and
- c. it has full power and authority to enter into the Agreement and to undertake the obligations arising therefrom.

15.1.8 If the value of the CPI in a given year has changed from the value of the CPI for [October 2022], then the financial amounts in the Agreement will be adjusted for indexation (but only if such adjustment would result in a higher financial amount) in accordance with the value of the CPI whereby CPI means the consumer price index published under the name "*Consumentenprijsindices (CPI) alle huishoudens, 2015 = 100*" on the website of the Dutch *Centraal Bureau voor de Statistiek* (CBS) (www.cbs.nl).

16. Amendments to the Agreement

16.1 Amendments

16.1.1 Any and all amendments to the Agreement shall not be valid unless drawn up in writing, labelled as subsequent amendment and signed by Parties or their assigns or successors.

16.1.2 Notwithstanding Article 16.1.1, HNS is entitled to unilaterally amend the Agreement if, in the reasonable judgement of HNS, such amendment is necessary or useful:

- a. to accommodate any national and international legislation and regulations, guidance or decisions from any Competent Authority applicable to HNS or any of its Affiliated Companies; or
- b. to accommodate any applicable conditions relating to any subsidy or government investment granted to HNS or any of its Affiliated Companies and/or, if applicable, any other users of the HNS Transport System; or
- c. to accommodate any decision in connection with a state aid notification procedure at the European Union or other decision of the European Union); or³
- d. to avoid, limit and/or remedy inefficiencies in the use or management of the HNS Transport System; or
- e. to secure or improve the integrity of the HNS Transport System; or
- f. to accommodate integration and expansions of the HNS Transport System; or
- g. to secure the reliability of the performance of a service; or
- h. to accommodate future and/or revised services (such as, but not limited to, balancing services and interruptible capacity services); or
- i. to cope with the consequences of abusive contracting or use of a service; or
- j. to improve or clarify the wording of the Agreement; or
- k. in the event of unforeseen circumstances within the meaning of Section 6:258 of the Dutch Civil Code.

Such amendments will have effect, in case of Article 16.1.2(a), from the date the new legislation enters into force, in case of Article 16.1.2(b), from the date the applicable conditions become applicable, and in each other case on the date the amendment is notified by HNS to Connected Party.

If possible, HNS will notify Connected Party at least three (3) months before the entering into force of a material change pursuant to this Article 16.1.2.

Furthermore, HNS will only amend an Agreement in case of Article 16.1.2(f), (h), (i) and (j) after having consulted Connected Parties. HNS will take the outcome of this consultation into consideration, but the outcome of this consultation is for information purposes only and not binding on HNS and will not require HNS to change the proposed amendments.

Connected Party irrevocably agrees to these amendments in advance.

³ **Note to Connected Parties:** please note that the terms in paragraph and (c) are only relevant for Launching Customers and will only be included in the relevant Connection Agreement with Launching Customers (included in this draft for reference). These terms will not be included in the final version of the Agreement.

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16.2 No suspension or termination due to amendments

16.2.1 Any amendments to the Agreement pursuant to this Article 16 do not entitle a Connected Party to suspend or terminate an Agreement.

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17. Applicable law and dispute resolution

17.1 Applicable law

17.1.1 The Agreement (including Article 17.2.1 below) and any non-contractual obligations arising out of or in connection with it shall exclusively be governed by and interpreted in accordance with the laws of the Netherlands. The application of the Convention on the International Purchase of Goods and the Conclusion of International Purchase Contracts is explicitly excluded.

17.2 Dispute resolution

17.2.1 All disputes arising out of or in connection with the Agreement, including disputes concerning its existence, its validity and any non-contractual obligation, will be resolved by the Groningen District Court.

Annex 1. Definitions

Unless explicitly stated otherwise the following words and expressions have the following meaning:

"Affiliated Company":

means in relation to a person (the *first person*), another party which directly or indirectly controls the first person, is controlled by the first person or under common control with the first person, in each case as to a majority of ownership or voting rights or the equivalent rights to determine the decisions of the first person.

"Agreement":

means this document as amended from time to time in accordance with its terms including the Annex(es) attached hereto.

"Annex":

means an annex attached to the Agreement.

"Bar(e)":

means the pressure in bar which is in excess of the atmospheric pressure.

"Business Day":

means any day which is not a Saturday or Sunday or an official holiday as meant in article 3 of the Dutch Act *"Algemene Termijnenwet"*.

"Change of Control":

means:

- a. a person ceases to directly or indirectly:
 - i. hold beneficially more than fifty per cent (50%) of the issued share capital or similar rights of ownership of Connected Party; or
 - ii. control more than fifty per cent (50%) of the voting rights or similar rights in Connected Party; or
 - iii. have the right to appoint or remove all, or the majority, of the directors or other equivalent officers of Connected Party; or
- b. the sale, transfer or other disposition, in one or a series of related transactions, of all or substantially all of the assets of Connected Party.

"Confirmed Quantity":

means the matched Nominated Quantity for off take or delivery (as the case may be) at the Connection and complying with the procedure as set out in Article [●] of Annex [11] (*Nomination and Matching Procedure*).

"Connected Party":

means the person named as such in the Agreement.

"Connection":

means the physical connection between the Facilities of the Parties as shown in Annex [3] (*Connection*).

"Cushion Gas":

means the Gas which is necessary for the physical operation of the HNS Transport System up to the minimal operating pressure as indicated by HNS. Cushion Gas does not include HNS Linepack.

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"Day":

means a period commencing at 00:00 hours LET on any calendar day and ending at 00:00 hours LET on the following calendar day; the date of any Day shall be the date of its beginning as herein defined.

"Entry Point":

means a point where Gas enters or is deemed to enter the HNS Transport System.

"Estimated Five Year Gas Feed-In Demand":

means an estimate of the maximum amount of Gas Connected Party will feed in expressed in kWh (net)/Hour for the coming five (5) Years in respect of each Connection.

"Exit Point":

means a point where Gas leaves or is deemed to leave the HNS Transport System.

"Facilities":

means the pipelines and related equipment including the measurement and safety equipment of either Party, operated and/or controlled by either Party or by a third party for or on behalf of this Party, necessary to enable a Gas Flow through the Connection.

"Force Majeure":

means any situation in which the conditions of article 6:75 of the Dutch Civil Code are met.

"Gas":

means a substance that exists in a gaseous state and consists primarily of hydrogen.

"Gas Flow":

means a quantity of Gas, in units of kWh (net) per Hour, that flows through the Connection.

"Gas Sampling Point":

means the point where Gas samples will be taken.

"HNS Linepack":

means [the quantity of Gas in addition to the Cushion Gas which HNS determines in its sole discretion to be required or useful for the efficient operations of the HNS Transport System].

"HNS Transport System":

means the part of the Gas pipelines and related equipment owned, controlled and operated by HNS in the Netherlands to which the Connection is connected, which from time to time shall include any expansion as contemplated in Article 2.1.4.

"Hour" or "Hourly":

means the period of one clock hour, starting at the full hour.

"Hourly Quantity":

means a quantity of Gas expressed in kWh (net) per Hour to be delivered or off taken in a specific Hour.

"International Standards":

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means the standards and practices from time to time in force applicable to the ownership, design, equipment, operation or maintenance of the Facilities established by the CEN, ISO (or any successor body of the same) and/or any other (inter)nationally recognised agency or organisation with whose standards and practices it is customary for (inter)national operators of such systems for the transport and/or treatment of Gas to comply.

"kWh (net)":

means three decimal six (3.6) million Joules of energy accounted from the Superior Calorific Value of hydrogen only, disregarding any energy from other Gas components.

"Local European Time" or "LET":

means local European time, including daylight saving, being equal to UTC + 1 outside the daylight saving period and equal to UTC + 2 during the daylight saving period. For the avoidance of doubt, the daylight saving period starts at UTC 01:00 hours on the last Sunday in March and ends at UTC 01:00 hours on the last Sunday in October, and UTC is Coordinated Universal Time, according to ISO 8601: 1988 (E).

"Maintenance":

means the maintenance or expansion of, or any other activities affecting the HNS Transport System, the HDS, or the HNS' Facilities.

"Measuring":

means determination of individual component(s).

"Measuring Capacity":

means the quantity of Gas, that can technically be measured by the equipment described in Annex [7] (*Fiscal Metering Manual*).

"Measuring Station":

means the equipment shown and described in Annex [7] (*Fiscal Metering Manual*) and Annex [12] (*Non-Fiscal Metering Manual*).

"Metering":

means determination of accountable quantities (comprising both the local measurements and data processing).

"Metering Manual":

means the manual as set out in Annex [7] (*Fiscal Metering Manual*).

"Metering Point":

means the point where the Gas Flow, the quality, the pressure and the temperature of the Gas are Measured, Metered and the Gas Flow is controlled, the outcome of which is deemed to take place/ deemed to have taken place at the Connection.

"Month" or "Monthly":

means a period commencing at 00:00 hours LET on the first day of a calendar month and ending at 00:00 hours LET on the first day of the subsequent calendar month.

"Nominated Quantities":

means Hourly Quantities stated in the Nomination.

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"Nomination":

means the message from Connected Party to the dispatching centre of HNS in which Connected Party notifies HNS of all Hourly Quantities of the Day involved of Gas to be taken off or fed into by Connected Party.

"Non Compliant Gas":

means Gas that does not comply with the specifications as set out in Annex [4] (*Quality and pressure specifications*).

"Non-fiscal-metering":

means measurement of Gas components for the purpose of safe and undisturbed transportation and use of the Gas, in accordance with Annex [12] (*Non-Fiscal Metering Manual*).

"Operating Procedure":

means the procedure set out in Annex [8] (*Operating Procedure*).

"Pascal" ("Pa"), "Joule" ("J") "Kelvin" ("K"), "kilogram" ("kg"), and "metre" ("m"):

means all units have the meanings ascribed to them in the publication International Standard ISO 1000-1992-11 00 (E), *"SI units and recommendations for the use of their multiples and certain other units"*.

"Reasonable and Prudent":

means a Party fulfilling its obligations under the Agreement with that degree of diligence, skill, prudence and foresight as reasonably and ordinarily exercised by experienced parties complying with all applicable laws and International Standards and engaged in the same line of business under the same or similar circumstances and conditions and in accordance with good operating practice, and in case of HNS, taking into account the interest of the HNS Transport System and its users as a whole.

"Start Date":

means the Start Date as stipulated on the signature page of the Agreement.

"Superior Calorific Value":

means the amount of energy, expressed in MJ, released by the complete combustion in air of one (1) m³(n) of Gas in such a way that the pressure of 101.325 kPa (1.01325 bar) at which the reaction takes place remains constant and all the products of combustion are returned to the same temperature of 298.15 K as the temperature of the reactants, all of these products being in the gaseous state except for water formed by combustion which is condensed to the liquid state at a temperature of 298.15 K.

"Transport Agreement":

means an agreement between HNS and a user of the HNS Transport System concerning the transportation of Gas through the HNS Transport System.

"Wilful Misconduct or Gross Negligence":

means wilful misconduct (*opzet*) or gross negligence (*bewuste roekeloosheid*) by a Party or any of its Affiliated Companies (acting for and on behalf of a Party) and/or its (or such Affiliated Company's) officers, directors or employees of managerial or supervisory status of the terms of the Agreement in utter disregard of avoidable and harmful consequences but shall not include any act, omission, error of judgement or mistake made in the exercise in good faith of any function, authority or discretion vested in or exercisable by such person and which in the exercise of such

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good faith is justifiable by special circumstances, including safeguarding of life, property or the environment and other emergencies.

"Year":

means a period (or a reference to a period) commencing at 00:00 hours LET on January 1st and ending at 00:00 hours LET on the following January 1st.