

**INVESTMENT AGREEMENT**

**BETWEEN**

**HYNETWORK SERVICES B.V.**

**AND**

**[NAME OF COMPANY]**

**CONCERNING THE REALIZATION OF THE CONNECTION BETWEEN  
[ENTRY / EXIT] FACILITIES OF [NAME OF COMPANY]**

**AT [LOCATION]**

**AND**

**THE HNS TRANSPORT SYSTEM**

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This Agreement is made and entered into on [DATE] ("Effective Date") by and between:

1. [NAME OF COMPANY] with its statutory office in [LOCATION] and its registered office at [ADRESS], registered in the trade register of the Chamber of Commerce under number [NUMBER], legally represented by [NAME] in the position of [POSITION], hereinafter referred to as: "**Connected Party**"; and
2. **Hynetwork Services B.V.**, with its statutory office in Groningen and its registered office at Concorsostraat 17, 9727 KC Groningen, registered in the trade register of the Chamber of Commerce under number 69441960, legally represented by [NAME] in the position of General Director, hereinafter referred to as: "**HNS**";

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

**WHEREAS:**

- A. HNS is developing the HNS Transport System, a multi-user national hydrogen network, which offers open access to market parties on terms that are reasonable, transparent and non-discriminatory;
- B. Connected Party wishes to connect its Facilities at its location to the HNS Transport System with certain specifications as stipulated in Annex A (*Connection Request*). For this, Parties intend to realize a connection between the HNS Transport System and Connected Party Facilities;
- C. Parties intend to agree upon a Connection Agreement Entry respectively Exit, and this Agreement indicates that Parties are in an advanced stage of negotiation towards a Connection Agreement;
- D. Parties will apply the HNS General Terms and Conditions for Connection Entry respectively Exit (hereinafter: the "**GTC**") to this Agreement, as amended from time to time, by reference;
- E. Parties are aware that capacity in the HNS Transport System has to be contracted separately;
- F. The Parties wish to agree upon the terms and conditions as set out below.

**PARTIES HAVE AGREED AS FOLLOWS:**

**1 Definitions and interpretations**

**1.1 Definitions**

- 1.1.1 Capitalised terms used in this Agreement but not defined herein shall have the meaning given thereto in the GTC. The principles of interpretation set out in the GTC shall apply to this Agreement. Unless explicitly stated otherwise the following words and expressions have the following meaning:

"Actual RFO":  
has the meaning given thereto in clause 4.2.6 below.

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

“Connected Party Scope”:

has the meaning given thereto in clause 3.1.2 below.

“Connection Agreement”:

means any agreement that relates to the operational phase between HNS and a Connected Party regarding several aspects of the physical connection to the HNS Transport System, including, among others, (operational) safety, measurement, allocation, operational aspects, conditions of operation, data transfers, financial aspects and/or arrangements with regard to installations.

“Effective Date”:

means the date as such first written above or in absence thereof the date this Agreement became fully executed.

“GTC”:

has the meaning given thereto in Whereas D above.

“HNS Scope”:

has the meaning given thereto in clause 3.1.1 below.

“Material Permits”:

has the meaning given thereto in clause 6.2.1 below.

“Planned RFO”:

has the meaning given thereto in clause 4.2.2 below.

“Project”:

has the meaning given thereto in clause 3.1.3 below.

## 1.2 Annexes and conflict of terms

- 1.2.1 The Annex(es) (if any) are an integral part of this Agreement. In case of any conflict or inconsistency between the provisions of any Annex and the main text of this Agreement, the main text of this Agreement will prevail unless explicitly agreed otherwise.

## 1.3 General Terms and Conditions

- 1.3.1 Connected Party hereby declares that it has received a copy of the GTC. The GTC is known to the Parties and the GTC – as well as any amendments and supplements thereto – is part of this Agreement and is applicable to the extend this Agreement refers to it.

# 2 **General**

## 2.1 General

- 2.1.1 The purpose of this Agreement is to lay down the scope of the Project, under which conditions the Project will be executed, the manner in which the Project will be executed and within what timeframe, and which costs are involved with the Project.
- 2.1.2 Parties will under this Agreement collaboratively draft certain annexes to the foreseen Connection Agreement and in order to make such Connection Agreement executable sign a contract data sheet (CDS) with the applicable annexes.

### **3**      **Scopes**

#### 3.1      Scopes

- 3.1.1    HNS shall realize the works as set out in Annex B (*HNS Scope*) hereto (the "**HNS Scope**").
- 3.1.2    Connected Party shall for its own risk and account realize the works as set out in Annex C (*Connected Party Scope*) hereto (the "**Connected Party Scope**").
- 3.1.3    The realisation of the HNS Scope and the Connected Party Scope will together be the project (the "**Project**").

#### 3.2      Scope changes

- 3.2.1    If either Party becomes aware of any matter, which may indicate that their respective scope must be amended or varied, Parties shall consult in good faith with each other to determine such scope changes and agree in writing to any such scope changes, including any consequences of such scope changes relating to, without limitation, planning and costs.

#### 3.3      Changes to the scope of the HNS Transport System

- 3.2.1    In addition to clause 3.2, if HNS becomes aware of any matter, which may indicate that the scope of the HNS Transport System must be amended or varied, and therefore the HNS Scope must also be amended or varied, HNS will inform Connected Party as soon as possible. When HNS becomes aware of such a matter, HNS may, acting as a Reasonable and Prudent party, unilaterally amend the HNS Scope[, including any consequences of a Scope Change relating to, without limitation, planning and costs].

#### 3.4      Asset Ownership, control and possession

- 3.4.1    HNS shall be the legal owner of, and shall be in control and possession of, HNS' Facilities as further described in Annex B hereto.
- 3.4.2    Connected Party shall be the legal owner of, and shall be in control and possession of, Connected Party's Facilities as further described in Annex C hereto.
- 3.4.3    Each Party shall deemed to be the legal owner of, and shall deemed to be in control and possession of, the relevant assets at its own side of the Facilities as laid down in Annex B and C.

### **4**      **Project execution**

#### 4.1      Access and usages rights to premises

- 4.1.1    Connected Party shall provide HNS and any of its contractors and subcontractors (of any tier) with access to Connected Party's premises during the execution of the Project.
- 4.1.2    The Connected Party declares itself in advance willing and authorized, if necessary with the cooperation of third parties, to grant HNS a right of superficies on the premises where HNS' Facilities are located, to the extent necessary to ensure that the ownership of HNS' Facilities remains with HNS. The costs of establishing this right of superficies shall be borne by HNS.

4.2 Planning

- 4.2.1 HNS has established a planning for the development of the HNS Scope and a ready for operation date.
- 4.2.2 When referring to a planned 'ready for operation date', the definition "**Planned RFO**" shall apply.
- 4.2.3 The Planned RFO for the Project is scheduled to be [•], further detailed in Annex D (*Planning*).
- 4.2.4 Connected party shall plan the execution of its part of the Project so that the (commissioning of the) Connected Party Scope is successfully completed timely prior to the Planned RFO, to allow for the Actual RFO.
- 4.2.5 HNS may, acting as a Reasonable and Prudent party, unilaterally amend the planning for the development of the HNS Scope and the Planned RFO (e.g. clause 6.2 Material Permits). When such a situation occurs HNS will inform Connected Party as soon as possible and Connected Party may amend the planning of the Connected Party Scope in accordance with the new planning for the development of the HNS Scope and/or Planned RFO.
- 4.2.6 The date on which:
- (i) the (commissioning of the) HNS Scope and Connected Party Scope is successfully completed to enable an actual flow of substances from a Party's Facilities to the other Party's Facilities; or
  - (ii) the date on which the (commissioning of the) HNS Scope is successfully completed but no substances can flow from a Party's Facilities to the other Party's Facilities because the (commissioning of the) Connected Party Scope is not successfully completed, to be determined by HNS in its sole discretion,
- shall be the actual 'ready for operation date' under this Agreement (hereinafter: the "**Actual RFO**").

4.3 Construction and commissioning

- 4.3.1 Parties will construct and commission the Project in accordance with the Planned RFO in order to enable an actual flow of substances from a Party's Facilities to the other Party's Facilities on the Actual RFO.

4.4 Contractors

- 4.4.1 Each Party may contract contractors and subcontractors (of any tier) to execute any part of their respective scope. Such Party shall remain fully liable for the due performance of any and all obligations under this Agreement.

4.5 Operational standard of care

- 4.5.1 In order to complete the Project, each Party:
- (a) including that Party's contractors and subcontractors (of any tier), shall communicate, coordinate, assist and work together with the other Party and any of its contractors and subcontractors (of any tier) in good faith;
  - (b) shall ensure the adequacy, stability and safety of its operations to execute its respective scope and of all methods of construction;

(c) shall ensure the technical and operational compatibility of any works constructed under its respective scope with the works constructed by the other Party under its respective scope.

#### 4.6 Compliance

4.6.1 In the execution of the Project, each Party shall comply with (i) the relevant International Standards, (ii) any applicable legislation and regulation (including in relation to environmental matters), clearances, permits, licenses and similar instruments required by law from a Competent Authority, (iii) any conditions relating to any subsidy or government investment granted to HNS or any of its Affiliated Companies and (iv) the applicable conditions of the GTC.

#### 4.7 Insurances

4.7.1 Each Party shall during the term of this Agreement, at its own expense, take out or maintain adequate insurance coverage, with a reputable insurance company, of the kind and minimum amounts customary in the market for the relevant responsibilities under this Agreement.

### **5 Costs and payment**

#### 5.1 Estimate

5.1.1 Parties agree that costs from previous phases – such as but not limited to the extensive study phase under the connection study agreement (if any) between Parties – (in case these costs have not yet been paid) are carried over to this Agreement.

5.1.2 The estimate costs for the realization of the HNS Scope are attached to this Agreement as Annex E (*Cost Estimate*).

#### 5.2 Change of estimate

5.2.1 If during the Project it appears that the estimate of the HNS Scope is or will be exceeded by more than 10% from the budget as planned, HNS shall inform Connected Party of such exceeding.

#### 5.3 Reimbursement by Connected Party of costs of the HNS Scope

5.3.1 Connected Party shall reimburse HNS for all actual costs incurred by HNS or on behalf of HNS in respect of the HNS Scope.

5.3.2 Connected Party shall, for the avoidance of doubt, bear the costs of the Connected Party Scope.

#### 5.4 Invoicing

5.4.1 HNS shall invoice Connected Party in the following instalments:

- a. first instalment: 5% of the cost estimate as stipulated in Annex E, at the Effective Date;
- b. second instalment: 35% of the cost estimate as stipulated in Annex E, at the start of the construction of the HNS Scope;
- c. third instalment: 50% of the cost estimate as stipulated in Annex E, at the Actual RFO; and
- d. final instalment: all reimbursable costs incurred by or on behalf of HNS minus the prior instalments, when all actual costs are known.

- 5.4.2 Connected Party is obligated to pay HNS all costs and expenses (actual costs) of the HNS Scope under this Agreement, including costs from previous phases (in case these costs have not yet been paid). For that purpose all clauses of the GTC related to payment shall apply including clause 11 GTC regarding invoicing, payment and creditworthiness. This clause shall survive any termination of this Agreement.
- 5.4.3 In case no Connection Agreement is concluded at the Actual RFO, all costs and expenses of the HNS Scope shall become due and payable by Connected Party immediately. For that purpose all clauses of the GTC related to payment shall apply including clause 11 GTC regarding invoicing, payment and creditworthiness. This clause shall survive any termination of this Agreement.
- 5.5 Creditworthiness
- 5.5.1 Based on an analysis of the creditworthiness of Connected Party by HNS the risk category of Connected Party is determined by HNS. HNS may request a Connected Party to provide security. All items concerning creditworthiness are covered in the Annex [9] GTC (*Credit Control Protocol*).
- 5.5.2 A Connected Party shall at all times comply with the Credit Control Protocol.

## **6 Term and termination**

### **6.1 Term**

- 6.1.1 This Agreement shall be effective and binding as per the Effective Date, and shall thereafter remain in full force and effect until its termination under clause 6.4 below.

### **6.2 Material Permits**

- 6.2.1 Parties acknowledge that certain material clearances, permits, licenses and similar instruments required by law for the construction, operation and maintenance of the HNS Scope and of the relevant part of the HNS Transport System (hereinafter the "**Material Permits**") need to be obtained by or on behalf of HNS, its Affiliated Companies and/or their contractors.
- 6.2.2 In case not all Material Permits are granted and irrevocable, HNS, at its sole discretion, shall be entitled without judicial intervention to terminate (*opzeggen*) this Agreement. In case HNS terminates this Agreement pursuant to this clause 6.2.2, Connected Party is obligated to pay HNS all costs and expenses (actual costs) of the HNS Scope, including costs from previous phases – such as but not limited to the extensive study phase under the connection study agreement (if any) between Parties –. For that purpose all clauses of the GTC related to payment shall apply including clause 11 GTC regarding invoicing, payment and creditworthiness. This clause shall survive any termination of this Agreement.

### **6.3 Right to terminate before the Planned RFO**

- 6.3.1 Connected Party shall be entitled without judicial intervention to terminate (*opzeggen*) this Agreement up to [...] Months before the Planned RFO. In case Connected Party terminates this Agreement pursuant to this clause 6.3.1, Connected Party is obligated to pay HNS all costs and expenses (actual costs) of the HNS Scope, including costs from previous phases – such as but not limited to the extensive study phase under the connection study agreement (if any) between Parties –. For that purpose all clauses of the GTC related to

payment shall apply including clause 11 GTC regarding invoicing, payment and creditworthiness. This clause shall survive any termination of this Agreement.

- 6.3.2 HNS shall be entitled without judicial intervention to terminate (*opzeggen*) this Agreement up to [...] Months before the Planned RFO in case it, in the opinion of HNS, becomes clear that the relevant part of the HNS Transport System is or will not (timely) be realized. In case HNS terminates this Agreement, each Party shall bear its own costs.

#### 6.4 Termination

- 6.4.1 This Agreement shall terminate (*eindigen*):

- (a) on the date this Agreement is fulfilled in its entirety;
- (b) on the date HNS has terminated this Agreement pursuant to clause 6.2 above;
- (c) on the date of rightful termination pursuant to clause 6.3 above;
- (d) on the date of rightful termination pursuant to clause 6.4.2 below; or
- (e) on the date mutually agreed upon in writing by the Parties;

whatever is earlier.

- 6.4.2 Each Party shall be entitled without judicial intervention to suspend the performance of any of its obligations (*opschorten*) under this Agreement and/or terminate (*opzeggen*) this Agreement as determined in clauses 3.2 of the GTC; mutatis mutandis. Clause 3.3 of the GTC shall apply mutatis mutandis regarding payment in case of termination in accordance with clause 3.2 GTC.

#### 6.5 Survival of terms

Clauses 7 ("Confidentiality"), 8 ("Warranties"), 9 ("Liability"), 10.10("Notices and addresses"), 11 ("Applicable Law and Dispute Resolution") and all other clauses that stipulate to - or by their nature are intended to - survive termination of this Agreement shall survive the termination of this Agreement.

### **7 Confidentiality**

#### 7.1 Confidentiality

Clause 16 of the GTC shall apply.

### **8 Warranties**

#### 8.1 Authority to engage – warranty

Clause 12.1 GTC shall apply.

### **9 Liability**

#### 9.1 Liability

- 9.1.1 Neither Party shall be liable to the other Party, to the maximum extent allowable by law, for any loss or damage incurred by the other Party in connection with this Agreement, except as set out in this clause 9.

- 9.1.2 Parties hold each other harmless from the direct and indirect damages they suffer howsoever caused.
- 9.1.3 The limitations stipulated in this clause 9.1 will not apply in case of Wilful Misconduct or Gross Negligence of the defaulting Party.

9.2 Claims and third parties

- 9.2.1 Any relief from liability or indemnity under this Agreement shall extend to the respective Affiliated Companies of such Party, its contractors, subcontractors and suppliers and to its or their respective employees, officers, managing and supervisory directors, consultants and agents.
- 9.2.2 To the extent a Party is pursuant to this clause 9 not liable for a certain loss or damage if the other Party were to claim compensation therefor, the other Party shall hold harmless and indemnify that Party from and against all claims by third parties concerning that loss or damage.

**10 Miscellaneous**

10.1 Reasonable and prudent

- 10.1.1 Clause 2.2 GTC shall apply.

10.2 Disclosure of information

- 10.2.1 Clause 2.5 GTC shall apply.

10.3 Assignment, transfer and encumbrance

- 10.3.1 Clause 15 GTC shall apply.

10.4 Transport Agreement

- 10.4.1 Connected Party intends to enter into, or intends to ensure that another entity enters into, a Transport Agreement in order to contract capacity in the HNS Transport System at the intended Connection.

10.5 Entire agreement

Clause 17.1 GTC shall apply.

10.6 Force Majeure

- 10.6.1 Clause 14 GTC shall apply.

10.7 Independent parties

- 10.7.1 Save as may be expressly provided herein, nothing in this Agreement shall be read so as to construe any partnership, joint venture or agency between the Parties for any purpose whatsoever. Consequently no Party shall have any power or authority to assume on behalf of or in the name of the other Party any obligations or duties or to bind the other Party to any agreement, obligation or other commitment vis-à-vis any third party.

10.8 No Exclusivity

10.8.1 During the term of this Agreement, the Parties will work together on a non-exclusive basis, meaning that this Agreement does not intend to prevent a Party to negotiate subject matters of this Agreement with any third party and enter into agreements of any kind relating to the subject matters of this Agreement with such third party.

10.9 No deemed waiver

10.9.1 Clause 17.2 GTC shall apply.

10.10 Notices and addresses

10.10.1 Clause 17.3 GTC shall apply, whereby regarding the addresses under 17.3.3 sub a GTC the following shall apply:

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 this Agreement are:

(a) for HNS:

Hynetwork Services B.V., Concourslaan 17, 9727 KC Groningen

Attention: [NAME]

E-mail: [EMAIL]

(b) for the Connected Party:

[COMPANY NAME, POSTAL ADDRESS FOR COURIERS]

Attention: [NAME]

E-mail: [EMAIL]

10.11 Sanctions

10.11.1 Clause 17.4 GTC shall apply.

10.12 Severability

10.12.1 Clause 17.5 GTC shall apply.

10.13 Third Parties

10.13.1 Clause 17.6 GTC shall apply.

**11 Applicable Law and Dispute Resolution**

11.1 Applicable law

11.1.1 This Agreement (including clause 11.2 ("Dispute resolution")) 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.

11.2 Dispute resolution

- 11.2.1 All disputes arising out of or in connection with this Agreement, including disputes concerning its existence, its validity and any non-contractual obligation, will be referred exclusively to the District Court Noord-Nederland location Groningen.

Connected Party and HNS have duly executed this Agreement.

**[COMPANY NAME]**

**Hynetwork Services B.V.**

Date: .....

Name: .....

Title: .....

Signature: .....

**ANNEX A - Connection Request**

[To be added]

**ANNEX B - HNS Scope**

[To be added]

**ANNEX C - Connected Party Scope**

[To be added]

**ANNEX D - Planning**

[to be added]

**ANNEX E - Cost Estimate**

[To be added]