



Heat Networks Investment Project Public Body Facility Agreement

relating to construction funding for the
2020/2021 financial year for London Borough of
Enfield

in relation to the
Enfield District Heating Networks Project
(North and West Extensions)

- (1) The Mayor And Burgesses Of The London Borough Of
Enfield, as Borrower
- (2) The Secretary Of State For Business, Energy and Industrial
Strategy, as Original Lender
- (3) Triple Point Investment Management LLP, acting as Agent
- (4) Triple Point Investment Management LLP, acting as
Account Trustee

Dated 19TH MARCH 2021

EXECUTION VERSION



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This Agreement is made the 19th MARCH 2021

Between:

- (1) **The Mayor And Burgesses Of The London Borough Of Enfield**, a local authority having its registered address at Civic Centre, Silver Street, London, United Kingdom, EN1 3XD (the **Borrower**);
- (2) **The Secretary Of State For Business, Energy and Industrial Strategy** as lender (the **Original Lender**);
- (3) **Triple Point Investment Management LLP**, a limited liability partnership registered in England and Wales under company number OC321250 whose registered office is at 1 King William Street, London, EC4N 7AF, as agent of the other Finance Parties (the **Agent**); and
- (4) **Triple Point Investment Management LLP**, a limited liability partnership registered in England and Wales under company number OC321250 whose registered office is at 1 King William Street, London, EC4N 7AF, as account trustee for the Original Lender (the **"Account Trustee"**).

It is agreed as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following words have the following meanings:

2020 Loan Agreement means the loan agreement entered into between the Parties on or about 26.3.2020

2020 Funding Agreements means the 2020 Loan Agreement and the £5,000,000 grant funding agreement entered on or about the date thereof

Account Bank means such bank as the Agent shall notify to the Borrower from time to time.

Accelerated Repayment Event means any event or circumstance specified as such in Clause 18 (*Accelerated Repayment Event*).

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Agency Protocol means the separate protocol dealing with aspects of the Agent's appointment, as amended from time to time, available from the Agent on request by the Borrower.

Application means the Borrower's original application to the Heat Networks Investment Project together with any further information provided by the Borrower as part of the application or award process prior to the date of this Agreement.



Approved Purpose	means funding Eligible Costs for the Project which, for avoidance of doubt, shall include payment of interest on a Loan during the construction period.
Authorisation	means an authorisation, consent, approval, resolution, licence, exemption, filing, notarisation or registration.
Availability Period	means the period detailed as such in Schedule 1 (<i>Project Description</i>).
Available Commitment	means a Lender's Commitment under the Facility minus: (a) the amount of its participation in any outstanding Loans under the Facility; and (b) in relation to any proposed Loan, the amount of its participation in that Loan that is due to be made on or before the proposed Utilisation Date.
Available Facility	means the aggregate for the time being of each Lender's Available Commitment.
Borrower's Bank Account	means the account detailed as such in Schedule 1 (<i>Project Description</i>).
Break Costs	means the amount (if any) by which: (a) the interest which a Lender should have received for the period from the date of receipt of all or any part of its participation in a Loan or Unpaid Sum to the last day of the current Interest Period in respect of that Loan or Unpaid Sum, had the principal amount or Unpaid Sum received been paid on the last day of that Interest Period; exceeds: (b) the amount which that Lender would be able to obtain by placing an amount equal to the principal amount or Unpaid Sum received by it on deposit with a leading bank for a period starting on the Business Day following receipt or recovery and ending on the last day of the current Interest Period provided that if the amount is a negative sum then it shall be deemed to be zero.
Business Day	means a day (other than a Saturday or Sunday) on which the Bank of England and banks in London are open for business.
Central Government Body	means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and



amended from time to time by the Office for National Statistics:

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department; or
- (d) Executive Agency.

Commitment

means:

- (a) in relation to the Original Lender, means the amount detailed as such in Schedule 1 (*Project Description*); and
- (b) in relation to any other Lender, the amount of any Commitment transferred to it under this Agreement,

to the extent not cancelled, reduced or transferred by it under this Agreement.

Completion Date

means the earlier to occur of:

- (a) issue of a completion certificate in respect of the Project under all Construction Contracts by the appropriate contractor or surveyor; or
- (b) the start of transmission of heat to the anchor load customer identified in Schedule 1 (*Project Description*).

Conditions Satisfaction Date

means the date identified as such in Schedule 1 (*Project Description*).

Construction Contracts

means those contracts that are required for the development, design, construction, management, commissioning and testing of the Project, which have been delivered to and approved by the Agent on or prior to delivery of the relevant Utilisation Request.

Construction Costs

means those costs incurred or to be incurred by the Borrower and which correspond with costs identified in the Construction Budget set out in Schedule 1 (*Project Description*) and the total amount of which does not exceed the total amount identified in the construction budget.

Data Protection Legislation

means all applicable legislation relating to privacy and the processing of personal data in force from time to time in the United Kingdom including the GDPR (for as long as applicable in the United Kingdom) and the Data Protection Act 2018.



Default	means an Accelerated Repayment Event or any event or circumstance specified as such in Clause 18 (<i>Accelerated Repayment Event</i>) which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Finance Documents or any combination of any of the foregoing) be an Accelerated Repayment Event.
Eligible Costs	means the capitalised costs for commercialisation, design, construction and commissioning which: (a) are specified in the Borrower's Application (provided that these are not excluded or qualified in Schedule 1 (<i>Project Description</i>) and are reasonably incurred in undertaking the Project); and (b) fall within the respective definitions of eligible cost for production plant and distribution network for the purposes of relevant Subsidy Control Law, but not including Excluded Costs.
Energetik	means Lee Valley Heat Network Operating Company Ltd. (company number 09763702) (trading as "Energetik").
Excluded Costs	means those costs identified as such in Schedule 1 (<i>Project Description</i>).
Facility	means the term loan facility made available under this Agreement as described in Clause 2 (<i>The Facility</i>).
Final Maturity Date	means the date referred to as such in Schedule 1 (<i>Project Description</i>).
Finance Documents	means this Agreement, the Application, the Agency Protocol, the Account Trust Deed, each Utilisation Request and any other document designated as such by the Agent and the Borrower and Finance Document shall mean any of them.
Finance Party	means the Agent, the Account Trustee or a Lender, together the Finance Parties .
Financial Indebtedness	means any indebtedness for or in respect of: (a) moneys borrowed; (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent; (c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;



- (d) the amount of any liability in respect of any lease or hire purchase contract which would, in accordance with GAAP, be treated as a balance sheet liability;
- (e) receivables sold or discounted (other than any receivables to the extent they are sold on a non-recourse basis);
- (f) any amount raised under any other transaction (including any forward sale or purchase agreement) of a type not referred to in any other paragraph of this definition having the commercial effect of a borrowing;
- (g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value (or, if any actual amount is due as a result of the termination or close-out of that derivative transaction, that amount) shall be taken into account);
- (h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (i) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (h) above.

Fixed Rate

means the fixed percentage rate per annum set out in Schedule 1 (*Project Description*).

GAAP

means generally accepted accounting principles in England and Wales.

General Data Protection Regulation / GDPR

means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data or any law which replaces, supersedes or supplements the European Union Regulation in relation to the United Kingdom (whether in whole or part) as a result of the United Kingdom ceasing to be a member state of the European Union.

Group

means:

- (a) for the purposes of clauses 15.13 (Anti-corruption law) and 18.17 (Corruption) only: the Borrower and its Subsidiaries for the time being; and



- (b) for the purposes of the remainder of this Agreement: the Borrower, Energetik, and any Subsidiaries of Lee Valley Heat Network Limited or Energetik.

If Lee Valley Heat Network Limited is not dissolved by 30.9.2020, it will automatically be deemed to be included in paragraph (b) above, with effect from 30.9.2020, until it is dissolved.

Heat Networks Investment Project	means the project of the Original Lender to provide up to three hundred and twenty million pounds by way of grants and loans in connection with heat network projects in England and Wales.
Holding Company	means, in relation to a person, any other person in respect of which it is a Subsidiary.
Interest Payment Date	means 30 June and 31 December of each calendar year. If, however, such day is not a Business Day, the Interest Payment Date will instead be the preceding Business Day.
Interest Period	means, in relation to a Loan, each period determined in accordance with Clause 9 (<i>Interest periods</i>) and, in relation to an Unpaid Sum, each period determined in accordance with Clause 8.3 (<i>Default interest</i>).
Investment Vehicle	means any entity which owns or operates (or will own or operate) the Project, other than the Borrower.
Intellectual Property Rights or IPR	means copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs, know-how, trade secrets and any modifications, amendments, updates and new releases of the same and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
IPR Material	means all material produced by the Borrower or its Representatives (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or process).
ITA	means the Income Tax Act 2007.
Lender	means: (a) any Original Lender; and (b) any entity which has become a Party in accordance with Clause 19 (<i>Changes to the parties</i>),



which in each case has not ceased to be a Party in accordance with the terms of this Agreement, and **Lenders** shall be construed accordingly.

Loan	means each loan made or to be made under the Facility following a Utilisation Request or the principal amount outstanding for the time being of that loan.
Longstop Date	means the date which is five calendar years after the first Utilisation Date.
Majority Lenders	means a Lender or Lenders whose Commitments aggregate more than 66 2/3% (sixty six and two thirds percent) of the Total Commitments (or, if the Total Commitments have been reduced to zero, aggregated more than 66 2/3% (sixty six and two thirds percent) of the Total Commitments immediately prior to the reduction).
Mandatory Requirements	means the key deliverables and assurances which formed part of the Application and which are detailed in Schedule 1 (<i>Project Description</i>).
Market Disruption Event	means any situation where the financial markets cease to function in a regular manner in response to external forces.
Material Adverse Change	means the events or circumstances described in Clause 18.13 (<i>Material Adverse Change</i>).
Material Adverse Effect	means in relation to any event or circumstance, the occurrence or effect of which in the reasonable opinion of the Majority Lenders, has materially impaired or could reasonably be expected to have a material adverse effect on: (a) the ability of the Borrower to perform its obligations under the Finance Documents; (b) the ability of the Borrower and/or any approved Investment Vehicle (if any) to perform its role in the Project; (c) the legality, validity, effectiveness, adequacy or enforceability of any Finance Document; (d) the rights and remedies of a Finance Party under the Finance Documents; or (e) the Project meeting the Mandatory Requirements.
New Lender	has the meaning given to that term in Clause 19 (<i>Changes to the parties</i>).



Original Financial Statements

means in relation to the Borrower and, if applicable, any Investment Vehicle, its audited consolidated financial statements for the financial year identified as such in Schedule 1 (*Project Description*).

Party

means a party to this Agreement.

Prohibited Use

means:

- (a) use to support activity intended to influence or attempt to influence Parliament, Government or political parties, or use in attempting to influence the awarding or renewal of contracts and grants, or use in attempting to influence legislative or regulatory action, or any other use of a political nature;
- (b) use of an exclusively religious nature;
- (c) use in respect of costs reimbursed or to be reimbursed by funding from other public authorities or from the private sector;
- (d) use in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money);
- (e) use to cover interest payments other than interest on a Loan under this Agreement (including service charge payments for finance leases);
- (f) use for the giving of gifts to individuals, other than promotional items with a value no more than £10 a year to any one individual;
- (g) use for entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current United Kingdom tax regulations);
- (h) use to pay statutory fines, criminal fines or penalties;
- (i) use to pay for Eligible Costs incurred before the date of this Agreement; or
- (j) use in respect of VAT that the Borrower is able to reclaim from HM Revenue and Customs.

Project

means the project as identified and detailed in Schedule 1 (*Project Description*).

Project Agreements

means any material documents entered into by the Borrower or Energetik in relation to the Project (including the Construction Contracts, any operation and maintenance contracts, plot connection agreements, energy services agreements, heat supply contracts, heat purchase contracts, on-funding agreements, management contracts and real estate arrangements)



and any other contract designated as such by the Agent following the date hereof (acting reasonably).

Projected Costs	means the total anticipated Eligible Costs of the Project as set out in the Application.
Protected Party	means a Finance Party which is or will be subject to any liability, or required to make any payment, for or on account of Tax in relation to a sum received or receivable (or any sum deemed for the purposes of Tax to be received or receivable) under a Finance Document.
First Repayment Date	has the meaning given to it in Clause 6.1.
Repayment Instalment	means, in relation to an Interest Payment Date, the instalment specified in the Repayment Schedule.
Repayment Schedule	means the repayment schedule to be calculated by the Agent on an annuity basis and delivered to the Borrower in accordance with Clause 6.1.4 (<i>Repayment of a Loan</i>).
Representative	means any delegate, agent, manager, administrator, nominee, attorney, trustee or custodian.
Restructuring	means any step taken, directly or indirectly, to modify in a material way the characteristics of the Project as described in the Application or, without prejudice to Clause 17.3 (Disposals and negative pledge) to assign, novate, transfer or otherwise dispose of any assets (or its interest in the assets) of the Project to a third party, other than in repair or replacement of obsolete, defective or failing assets.
Security	means a mortgage, charge, pledge, lien or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect.
State Subsidy	means any financial contribution granted by a public body authority or through State resources in any form whatsoever which confers a benefit on the recipient, which shall include, but not be limited to, the definition of a subsidy contained in the UK-EU TCA.
Subsidy Control Law	means all laws of the United Kingdom limiting State Subsidy, including the European Union (Future Relationship) Act 2020, any relevant secondary legislation and any other law which replaces or supersedes or implements, or retains the law embodied in Articles 107- 109 of the Treaty for the Functioning of the European Union ("TFEU") and any relevant primary or secondary legislation in relation to the United Kingdom (whether in whole or part) as a result of the United Kingdom ceasing to be a member state of the European Union, together with any guidance issued by a Central Government Body relating to the provision of State Subsidies, including the interaction of State Subsidies



with the United Kingdom's commitments as a member of the World Trade Organisation and under its trade agreements with other countries.

Subsidiary	means a subsidiary undertaking within the meaning of section 1162 of the Companies Act 2006.
Tax	means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).
Tax Deduction	means a deduction or withholding for on account of tax from a payment under a Finance Document.
Total Commitments	means the aggregate of the Commitments being, as at the date of this Agreement, the amount detailed as such in Schedule 1 (<i>Project Description</i>).
Trust Account	means the account held with the Account Bank which is operated in accordance with the Trust Account Deed.
Trust Account Deed	means the agreement entered into between the Original Lender, the Agent and the Account Trustee dated on or around the date of this Agreement.
UK-EU TCA	means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, signed on 30 December 2020, including such amendments as are agreed between its parties from time to time.
Unpaid Sum	means any sum due and payable but unpaid by the Borrower under the Finance Documents.
Utilisation	means the utilisation of the Facility by way of a Loan.
Utilisation Date	means the date of any Utilisation of the Facility, being the date on which a Loan is to be made.
Utilisation Request	means a notice substantially in the form set out in Schedule 3 (<i>Utilisation Request</i>) (noting that separate requests may be submitted to reflect milestone progress).
VAT	means: <ul style="list-style-type: none"> (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, including whether imposed in a member state of the European Union



in substitution for, or levied in addition to, such tax referred to in paragraph (a) above, or imposed elsewhere.

1.2 Construction

1.2.1 Unless a contrary indication appears, any reference in this Agreement to:

- (a) the **Agent**, any **Finance Party**, any **Lender** or any **Party** shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Finance Documents;
- (b) **approved Investment Vehicle** means any Investment Vehicle identified in the Application and approved by the Agent on or prior to the date of this Agreement or subsequently notified to and approved by the Agent (with the written consent of the Majority Lenders) pursuant to Clause 17.4 (*Use of Loan Proceeds*);
- (c) **assets** includes present and future properties, revenues and rights of every description;
- (d) a **Finance Document** or any other agreement or instrument is a reference to that Finance Document or other agreement or instrument as amended, novated, supplemented, extended or restated;
- (e) a **group of Lenders** includes all the Lenders;
- (f) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (g) a **person** includes any individual, firm, Borrower, corporation, government, state or agency of a state or any association, trust, joint venture, consortium, partnership or other entity (whether or not having separate legal personality);
- (h) a **regulation** includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
- (i) a reference to **law** or **laws** is a reference to that law or laws as amended, re-enacted, replaced, superseded or supplemented from time to time and a provision of law is a reference to that provision as amended, re-enacted, replaced, superseded or supplemented from time to time, including the introduction, replacement or modification of any provision of laws applying in United Kingdom as a consequence of the United Kingdom ceasing to be a member state of the European; and
- (j) a time of day is a reference to London time.

1.2.2 Section, Clause and Schedule headings are for ease of reference only.

1.2.3 Unless a contrary indication appears, a term used in any other Finance Document or in any notice given under or in connection with any Finance Document has the same meaning in that Finance Document or notice as in this Agreement.



- 1.2.4 A Default (other than an Accelerated Repayment Event) is **continuing** if it has not been remedied to the reasonable satisfaction of the Lenders or waived and an Accelerated Repayment Event is **continuing** if it has not been waived.
- 1.2.5 The Parties agree that entry into (and performance of) this Agreement shall not be deemed to be a contravention of the 2020 Funding Agreements.
- 1.2.6 The Parties agree that entry into (and performance of) the 2020 Funding Agreements shall not be deemed to be a contravention of this Agreement.
- 1.2.7 Notwithstanding any reference in this Agreement to the Trust Account, the Trust Account Deed, or the Account Trustee, the Lender reserves the right to fund the Loan directly to the Borrower.

1.3 Currency symbols and definitions

£, **GBP** and **sterling** denote the lawful currency of the United Kingdom.

1.4 Third party rights

Subject to Clause 20.3.2 (*Exclusion of liability*), a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement.

2 THE FACILITY

2.1 The Facility

Subject to the terms of this Agreement, the Lenders make available to the Borrower a sterling term loan facility in an aggregate amount equal to the Total Commitments.

2.2 Funding type

The Borrower acknowledges that the Facility constitutes non-fiscal funding for the purposes of the Heat Networks Investment Project annual budget.

2.3 Finance Parties' rights and obligations

- 2.3.1 The obligations of each Finance Party under the Finance Documents are several. Failure by a Finance Party to perform its obligations under the Finance Documents does not affect the obligations of any other Party under the Finance Documents. No Finance Party is responsible for the obligations of any other Finance Party under the Finance Documents.
- 2.3.2 The rights of each Finance Party under or in connection with the Finance Documents are separate and independent rights and any debt arising under the Finance Documents to a Finance Party from the Borrower is a separate and independent debt in respect of which a Finance Party shall be entitled to enforce its rights in accordance with Clause 2.3.3 below. The rights of each Finance Party include any debt owing to that Finance Party under the Finance Documents and, for the avoidance of doubt, any part of the Loan or any other amount owed by the Borrower which relates to a Finance Party's participation in the Facility or its role under a Finance Document (including any such amount payable to the Agent on its behalf) is a debt owing to that Finance Party by the Borrower.
- 2.3.3 A Finance Party may, except as specifically provided in the Finance Documents, separately enforce its rights under or in connection with the Finance Documents.



3 PURPOSE

3.1 Purpose

The Borrower shall apply all amounts borrowed by it under the Facility towards the Approved Purpose only and for no other purpose.

3.2 Monitoring

No Finance Party is bound to monitor or verify the application of any amount borrowed pursuant to this Agreement.

4 CONDITIONS OF DISBURSEMENT TO TRUST ACCOUNT

4.1 Initial conditions precedent

The Borrower may not deliver a Utilisation Request unless, and the Borrower acknowledges that the Original Lender will only be required to disburse the proposed Loan to the Trust Account once the Agent has received all of the documents and other evidence listed in Part 1 (Conditions to Award) to Schedule 2 (*Conditions Precedent*) in form and substance satisfactory to the Agent on or prior to the Conditions Satisfaction Date. The Agent shall notify the Borrower and the Original Lender promptly upon being so satisfied. The proposed Loan shall be deposited by the Original Lender in the Trust Account in accordance with the Agency Protocol.

4.2 Further conditions precedent

Subject to Clause 4.1 (*Initial conditions precedent*) and Clause 5 (*Utilisation*), the Agent will only be obliged to instruct the Account Trustee to release funds from the Trust Account if on the date of the Utilisation Request and on the proposed Utilisation Date:

- 4.2.1 no Default is continuing or would result from the proposed Loan;
- 4.2.2 the Agent has received all of the documents and other evidence listed in Part 2 (Conditions Precedent to Utilisation Request) of Schedule 2 (Conditions Precedent) in form and substance satisfactory to the Agent;
- 4.2.3 the representations set out in Clause 15 (*Representations*) are true and correct; and
- 4.2.4 the aggregate amount of the proposed Loan, together with all other Loans outstanding, is no greater than the Available Facility.

5 UTILISATION

5.1 Delivery of a Utilisation Request

The Borrower may utilise the Facility by delivery to the Agent of a duly completed Utilisation Request not later than 5pm on a date which is at least 3 Business Days before the requested Utilisation Date.

5.2 Completion of a Utilisation Request

- 5.2.1 Each Utilisation Request is irrevocable and will not be regarded as having been duly completed unless:



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- (a) it evidences the purpose of the Loan except where the purpose is the payment of accrued interest in respect of the Loan;
- (b) the proposed Utilisation Date is a Business Day within the Availability Period and is on or after the 3rd Business Day following the date of the Utilisation Request;
- (c) other than in respect of a Utilisation in respect of Future Eligible Costs, it evidences (to the reasonable satisfaction of the Agent) that the activity or work related to that milestone (if any) has been satisfactorily completed and the relevant Eligible Costs have become due and payable;
- (d) the amount of any State Subsidy in respect of the Project remains compatible with relevant Subsidy Control Law;
- (e) it confirms that, to the best of the Borrower's knowledge and belief, the Agent has received all of the documents and evidence listed in Part 2 (Conditions Precedent to Utilisation Request) of Schedule 2 (Conditions Precedent) and that the representations set out in Clause 15 (*Representations*) remain true and correct;
- (f) it includes a statement of the total anticipated Eligible Costs of the Project as at that date;
- (g) it includes a declaration from a director of the Borrower that it is not aware of any Material Adverse Effect having occurred.

5.2.2 Evidence of the purpose of a Loan will be confirmed as follows:

- (a) in so far as any amount of the Loan to be advanced to the Borrower is to be applied in funding to Eligible Costs for the Project which will have been incurred by the Borrower or Energetik **on or before** the relevant Funding Date ("**Relevant Eligible Costs**") the Utilisation Request:
 - (i) sets out details of those Relevant Eligible Costs;
 - (ii) has appended to it invoices or other evidence of the total costs and expenses of the Project, including a breakdown of which costs and expenses constitute Eligible Costs and specifying details of the Relevant Eligible Costs to be funded using the Loan; and
 - (iii) contains a declaration from an authorised signatory of the Borrower that such costs and expenses need to be paid in order for the Project to proceed and cannot be (and will not be) funded or reimbursed from other sources (including any other facility or other agreement or memorandum of understanding relating to the Heat Networks Investment Project);
- (b) in so far as any amount of the Loan to be advanced to the Borrower is to be applied in funding to Eligible Costs for the Project which will be incurred by the Borrower or Energetik **after** the relevant Funding Date ("**Future Eligible Costs**") the Utilisation Request:
 - (i) sets out details of those Future Eligible Costs; and
 - (ii) includes a statement that the Borrower will comply with the provisions of Clause 5.2.3 or 5.2.4 below (as applicable), in relation to those Future Eligible Costs.



- 5.2.3 In so far as any amount of the Loan has been advanced to the Borrower in accordance with this Clause 5 which relates to Future Eligible Costs (and such amount is not requested pursuant to Clause 5.2.4 below), the Borrower shall deliver to the Agent the following:
- (a) invoices or other evidence of the total costs and expenses of the Project incurred by the Borrower or Energetik prior to the date of delivery of such invoices or other evidence, including a breakdown of which costs and expenses constitute Eligible Costs and specifying which Future Eligible Costs were funded using the Loan; and
 - (b) a declaration from an authorised signatory of the Borrower that such costs and expenses were incurred in order for the Project to proceed and could not be (and were not) funded or reimbursed from other sources (including any other facility or other agreement or memorandum of understanding relating to the Heat Networks Investment Project),
- no later than 31 March 2022.
- 5.2.4 In so far as any amount of a Loan has been requested by the Borrower in accordance with this Clause 5 which relates to Future Eligible Costs, the Borrower:
- (a) may on-fund such amount of the Loan to Energetik as is evidenced by Energetik (to the Recipient and the Agent) to be required for the following 3 months of construction expenditure (once the Borrower has confirmed to the Agent that Condition Subsequent **Error! Reference source not found.** has been satisfied); and
 - (b) the Borrower shall procure that Energetik shall only be permitted to utilise such amounts for the purposes of the Project (a "**Construction Utilisation**") if Energetik has complied with the conditions set out in Clause 5.2.5 below for each such Construction Utilisation.
- 5.2.5 Before any Construction Utilisation, Energetik shall submit to the Borrower (and the Borrower shall forward to the Agent) a request which shall be in form and substance substantially similar to the template set out in Schedule 3 *mutatis mutandis* (a "**Construction Utilisation Request**") and accompanied by:
- (a) a utilisation spreadsheet as required under paragraph 3.5 of the template Utilisation Request;
 - (b) evidence satisfactory to the Agent that the relevant stage of completion or milestone under the Construction Contracts has been met;
 - (c) invoices or other evidence satisfactory to the Agent that the relevant Construction Costs have become due and payable;
 - (d) a certificate from the Borrower confirming that the relevant Construction Costs are Eligible Costs;
 - (e) a certificate from the Borrower's technical advisor or engineer appointed pursuant to the Construction Contracts confirming that the Completion Date is reasonably likely to occur before the Longstop Date; and
 - (f) a certificate from the Borrower confirming that, to the best of its knowledge and belief, no Material Adverse Change has occurred.



5.2.6 Unless otherwise agreed by the Agent, no more than one Utilisation Request may be submitted by the Borrower in any month.

5.2.7 It shall be an Accelerated Repayment Event for the purposes of Clause 18 (*Accelerated Repayment Events*) for the Borrower to spend or on-fund any amount in contravention of Clause 5.2.5.

5.3 Release from Trust Account

If the conditions set out in this Agreement have been met, the Agent is authorised to make the amount stated in the Utilisation Request available through requesting the Account Trustee to make a withdrawal from the Trust Account and to make payment to the Borrower's Bank Account.

5.4 Cancellation of Commitment

The Commitments which, at that time, are unutilised shall be immediately cancelled at the end of the Availability Period or where a Utilisation Request has not been delivered by the Borrower to the Agent by the Conditions Satisfaction Date.

6 REPAYMENT

6.1 Repayment of a Loan

6.1.1 The Borrower shall repay each Loan in instalments on each Interest Payment Date commencing on the earlier of:

- (a) the first Interest Payment Date after the Completion Date; and
- (b) the Longstop Date,

such date being the "**First Repayment Date**".

6.1.2 Each Repayment Instalment (other than the last) will be the amount set out opposite the Interest Payment Date on which it is due in the Repayment Schedule.

6.1.3 The last Repayment Instalment shall be repaid on the Final Maturity Date and will be the balance of any outstanding Loan.

6.1.4 The Agent shall deliver the initial Repayment Schedule to the Borrower within 10 Business Days of the first Utilisation Date based on the anticipated Completion Date, which shall be updated by the Agent and delivered to the Borrower within 10 Business Days of the earlier of:

- (a) receiving notice of the Completion Date from the Borrower; and
- (b) the date which is 10 Business Days prior to the fifth anniversary of the date of this Agreement.

6.2 Reborrowing

The Borrower may not reborrow any part of the Facility which is repaid.



7 EARLY REPAYMENT AND CANCELLATION

7.1 Voluntary cancellation

The Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, cancel the whole or any part of the Available Facility (being a minimum amount of £50,000 and provided that the remaining amount of the Available Facility following such cancellation must be not less than £50,000 (or such lesser amount as the Majority Lenders may agree)).

7.2 Voluntary early repayment of Loan

7.2.1 The Borrower may, if it gives the Agent not less than 10 Business Days' (or such shorter period as the Majority Lenders may agree) prior notice, repay the whole or any part of the Loans early (but, if in part, being an amount that reduces the amount of the Loans by a minimum amount of £50,000 and provided that the outstanding balance of the Loans following such early repayment must be not less than £50,000).

7.2.2 Any Loans may only be repaid early after the last day of the Availability Period (or, if earlier, the day on which the Available Facility is zero).

7.2.3 Any early repayment under this Clause 7.2 shall satisfy the obligations under Clause 6.1 (*Repayment of a Loan*) in inverse order.

7.2.4 Break Costs (as applicable) shall be payable on any early repayment of the Loans.

7.3 Early repayment of unspent budget

If, either:

7.3.1 prior to the Completion Date, the Borrower notifies the Agent of a material reduction in the Projected Costs (and for the purposes of this clause a material reduction shall be greater than 10 per cent (10 %)); or

7.3.2 following the Completion Date, the total Eligible Costs of the Project as notified pursuant to Clause 16.7.4 (*Information: additional*) are less than the Projected Costs,

then the Borrower shall prepay the Loan in an amount equal to the reduction in Projected Costs within 10 Business Days of the Borrower's notice to the Agent or the Completion Date (as the case may be) before any other amounts are paid to any of the Borrower's other funding providers.

7.4 Illegality

If it becomes unlawful in any applicable jurisdiction for a Lender to perform any of its obligations as contemplated by this Agreement or to fund, issue or maintain its participation in a Loan:

7.4.1 that Lender shall promptly notify the Borrower upon becoming aware of that event;

7.4.2 upon that Lender notifying the Borrower, that Lender's Available Commitment will be immediately cancelled; and

7.4.3 the Borrower shall repay that Lender's proportion of that Loan together with any Break Costs on the last day of the Interest Period occurring after that Lender has notified the Borrower or, if earlier, the date specified by that Lender in the notice



delivered to the Borrower (being no earlier than the last day of any applicable grace period permitted by law).

7.5 Fraud and Bad Faith

Where:

7.5.1 Clause 18.4 (*Misrepresentation and Fraud*) applies; or

7.5.2 the Borrower wilfully breaches Clause 3.1 (*Purpose*) or Clause 17.4 (*Use of Loan Proceeds*),

the Borrower shall immediately repay the Loans together with any Break Costs.

7.6 Restrictions

7.6.1 Any notice of cancellation or early repayment given by a Party under this Clause 7 (*Early repayment and cancellation*) shall be irrevocable and, unless a contrary indication appears in this Agreement, shall specify the date or dates upon which the relevant cancellation or early repayment is to be made and the amount of that cancellation or early repayment.

7.6.2 Any early repayment under this Agreement shall be made together with accrued interest on the amount prepaid and, subject to any Break Costs, without premium or penalty.

7.6.3 The Borrower may not reborrow any part of the Facility which is repaid early.

7.6.4 The Borrower shall not repay all or any part of the Loans or cancel all or any part of the Commitments except at the times and in the manner expressly provided for in this Agreement.

7.6.5 No amount of the Total Commitments cancelled under this Agreement may be subsequently reinstated.

7.6.6 If all or part of any Lender's participation in a Loan is repaid an amount of that Lender's Commitment (equal to the amount of the participation which is repaid) will be deemed to be cancelled on the date of repayment.

7.7 Application of early repayments

Any early repayment of the Loans pursuant to Clause 7.2 (*Voluntary early repayment of Loan*) shall be applied pro rata to each Lender's participation in the Loans.

8 INTEREST

8.1 Interest

The rate of interest on each Loan is the Fixed Rate.

8.2 Payment of interest

The Borrower shall pay accrued interest on each Loan on the last day of each Interest Period as shown in the Repayment Schedule delivered by the Agent.



8.3 Default interest

8.3.1 If the Borrower fails to pay any amount payable by it under a Finance Document on its due date, interest shall accrue on the overdue amount from the due date up to the date of actual payment (both before and after judgment) at a rate which, subject to Clause 8.3.2 below, is 2 per cent. per annum higher than the rate which would have been payable if the overdue amount had, during the period of non-payment, constituted a Loan in the currency of the overdue amount for successive Interest Periods, each of a duration selected by the Agent (acting reasonably). Any interest accruing under this Clause 8.3 shall be immediately payable by the Borrower on demand by the Agent.

8.3.2 If any overdue amount consists of all or part of a Loan which became due on a day which was not the last day of an Interest Period:

- (a) the first Interest Period for that overdue amount shall have a duration equal to the unexpired portion of the current Interest Period relating to that Loan; and
- (b) the rate of interest applying to the overdue amount during that first Interest Period shall be 2 per cent. per annum higher than the rate which would have applied if the overdue amount had not become due.

8.3.3 Default interest (if unpaid) arising on an overdue amount will be compounded with the overdue amount at the end of each Interest Period applicable to that overdue amount but will remain immediately due and payable.

8.4 Market Disruption

If, prior to making any Utilisation, any of the Lenders determine that the cost to it of funding its participation in a Loan from whatever sources it may reasonably select would, owing to any Market Disruption Event, be in excess of the Fixed Rate, the Agent and the Borrower shall in good faith enter into negotiations (for a period of not more than 30 (thirty) days) with a view to agreeing a substitute basis for determining the rate of interest.

9 INTEREST PERIODS

9.1 Length of Interest Period

9.1.1 The first Interest Period for a Loan will start on the Utilisation Date and will end on the next Interest Payment Date.

9.1.2 Each subsequent Interest Period for a Loan will start on the last day of the immediately preceding Interest Period and will end on the next Interest Payment Date.

9.1.3 The final Interest Period will end on the Final Maturity Date.

9.2 Non-Business Days

If an Interest Period would otherwise end on a day which is not a Business Day, that Interest Period will instead end on the preceding Business Day.



10 CHANGES TO BREAK COSTS

10.1 Break Costs

- 10.1.1 The Borrower shall, within three Business Days of demand by a Finance Party, pay to that Finance Party its Break Costs attributable to all or any part of a Loan or Unpaid Sum being paid by the Borrower on a day other than the last day of an Interest Period for that Loan or Unpaid Sum.
- 10.1.2 Each Lender shall, as soon as reasonably practicable after a demand by the Agent, provide a certificate confirming the amount of its Break Costs for any Interest Period in which they accrue.

11 TAX GROSS UP AND INDEMNITIES

11.1 Tax gross-up

- 11.1.1 The Borrower shall make all payments to be made by it without any Tax Deduction, unless a Tax Deduction is required by law.
- 11.1.2 The Borrower shall promptly upon becoming aware that it must make a Tax Deduction (or that there is any change in the rate or the basis of a Tax Deduction) notify the Agent accordingly. Similarly, a Lender shall notify the Agent on becoming so aware in respect of a payment payable to that Lender.
- 11.1.3 If a Tax Deduction is required by law to be made by the Borrower, the amount of the payment due from it shall be increased to an amount which (after making any Tax Deduction) leaves an amount equal to the payment which would have been due if no Tax Deduction had been required.
- 11.1.4 Within thirty days of making either a Tax Deduction or any payment required in connection with that Tax Deduction, the Borrower shall deliver to the Agent for the Finance Party entitled to the payment a statement under section 975 of the ITA or other evidence reasonably satisfactory to that Finance Party that the Tax Deduction has been made or (as applicable) any appropriate payment paid to the relevant taxing authority.

11.2 Tax indemnity

- 11.2.1 The Borrower shall (within three Business Days of demand by the Agent) pay to a Protected Party an amount equal to the loss, liability or cost which the Protected Party determines will be or has been (directly or indirectly) suffered by for or on account of Tax by that Protected Party in respect of a Finance Document (other than Tax imposed on its overall net income).
- 11.2.2 A Protected Party making, or intending to make, a claim under this Clause 11.2 shall promptly notify the Agent of the event which will give, or has given, rise to the claim, following which the Agent shall notify the Borrower.
- 11.2.3 A Protected Party shall, on receiving a payment from a Borrower under this Clause 11.2, notify the Agent.

11.3 Stamp taxes

The Borrower shall pay and, within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability that Finance Party incurs in relation to all stamp duty, registration and other similar Taxes payable in respect of any Finance Document.



11.4 VAT

- 11.4.1 All amounts expressed to be payable under a Finance Document by any Party to a Finance Party which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to Clause 11.4.2 below, if VAT is or becomes chargeable on any supply made by any Finance Party to any Party under a Finance Document and such Finance Party is required to account to the relevant tax authority for the VAT, that Party must pay to such Finance Party (in addition to and at the same time as paying any other consideration for such supply) an amount equal to the amount of the VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that Party).
- 11.4.2 If VAT is or becomes chargeable on any supply made by any Finance Party (the **Supplier**) to any other Finance Party (the **Recipient**) under a Finance Document, and any Party other than the Recipient (the **Relevant Party**) is required by the terms of any Finance Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):
- (a) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Clause 11.4.2(a) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT chargeable on that supply; and
 - (b) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.
- 11.4.3 Where a Finance Document requires any Party to reimburse or indemnify a Finance Party for any cost or expense, that Party shall reimburse or indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.
- 11.4.4 Any reference in this Clause 11.4 to any Party shall, at any time when such Party is treated as a member of a group for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the representative member of such group at such time (the term **Representative Member** to have the same meaning as in the Value Added Tax Act 1994).
- 11.4.5 In relation to any supply made by a Finance Party to any Party under a Finance Document, if reasonably requested by such Finance Party, that Party must promptly provide such Finance Party with details of that Party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.



12 INCREASED COSTS

12.1 Increased costs

12.1.1 Subject to Clause 12.3 (*Exceptions*) the Borrower shall, within three Business Days of a demand by the Agent, pay for the account of a Finance Party the amount of any Increased Costs incurred by that Finance Party or any of its Affiliates as a result of (i) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation or (ii) compliance with any law or regulation made after the date of this Agreement.

12.1.2 In this Agreement **Increased Costs** means:

- (a) a reduction in the rate of return from the Facility or on a Finance Party's (or its Affiliate's) overall capital;
- (b) an additional or increased cost; or
- (c) a reduction of any amount due and payable under any Finance Document, which is incurred or suffered by a Finance Party or any of its Affiliates to the extent that it is attributable to that Finance Party having entered into its Commitment or funding or performing its obligations under any Finance Document.

12.2 Increased cost claims

12.2.1 A Finance Party intending to make a claim pursuant to Clause 12.1 (*Increased costs*) shall notify the Agent of the event giving rise to the claim, following which the Agent shall promptly notify the Borrower.

12.2.2 Each Finance Party shall, as soon as practicable after a demand by the Agent, provide a certificate confirming the amount of its Increased Costs.

12.3 Exceptions

12.3.1 Clause 12.1 (*Increased costs*) does not apply to the extent any Increased Cost is:

- (a) attributable to a Tax Deduction required by law to be made by the Borrower;
- (b) compensated for by Clause 11.2 (*Tax indemnity*); or
- (c) attributable to the wilful breach by the relevant Finance Party or its Affiliates of any law or regulation.

13 OTHER INDEMNITIES

13.1 Currency indemnity

13.1.1 If any sum due from the Borrower under the Finance Documents (a **Sum**), or any order, judgment or award given or made in relation to a Sum, has to be converted from the currency (the **First Currency**) in which that Sum is payable into another currency (the **Second Currency**) for the purpose of:

- (a) making or filing a claim or proof against the Borrower;
- (b) obtaining or enforcing an order, judgment or award in relation to any litigation or arbitration proceedings,



the Borrower shall as an independent obligation, within three Business Days of demand, indemnify each Finance Party to whom that Sum is due against any cost, loss or liability arising out of or as a result of the conversion including any discrepancy between (A) the rate of exchange used to convert that Sum from the First Currency into the Second Currency and (B) the rate or rates of exchange available to that person at the time of its receipt of that Sum.

13.1.2 The Borrower waives any right it may have in any jurisdiction to pay any amount under the Finance Documents in a currency or currency unit other than that in which it is expressed to be payable.

13.2 Other indemnities

The Borrower shall within three Business Days of demand, indemnify each Finance Party against any cost, loss or liability incurred by that Finance Party as a result of:

- 13.2.1 the occurrence of any Accelerated Repayment Event;
- 13.2.2 a failure by the Borrower to pay any amount due under a Finance Document on its due date;
- 13.2.3 funding, or making arrangements to fund, its participation in the Loan requested by the Borrower in the Utilisation Request but not made by reason of the operation of any one or more of the provisions of this Agreement (other than by reason of default or negligence by that Finance Party alone);
- 13.2.4 a Loan (or part of a Loan) not being repaid early in accordance with a notice of early repayment given by the Borrower;
- 13.2.5 breach by the Borrower of any Data Protection Legislation; or
- 13.2.6 any other cost, loss or liability incurred as a result of the Borrower's or any Investment Vehicle's actions or omissions or in respect of the Project.

13.3 Indemnity to the Agent

The Borrower shall promptly indemnify the Agent against any cost, loss or liability incurred by the Agent (acting reasonably) as a result of:

- 13.3.1 investigating any event which it reasonably believes is a Default;
- 13.3.2 acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised; or
- 13.3.3 instructing lawyers, accountants, tax advisers, surveyors or other professional advisers or experts as permitted under this Agreement.

13.4 Indemnity to the Account Trustee

The Borrower shall promptly indemnify the Account Trustee against any cost, loss or liability incurred by the Account Trustee (acting reasonably) as a result of:

- 13.4.1 any default by the Borrower in the performance of any of the obligations expressed to be assumed by it in the Finance Documents;
- 13.4.2 acting or relying on any notice, request or instruction given to it by the Agent or any Lender which it reasonably believes to be genuine, correct and appropriately authorised.



14 COSTS AND EXPENSES

14.1 Amendment costs

If the Borrower requests an amendment, waiver or consent the Borrower shall, within three Business Days of demand, reimburse each Finance Party for the amount of all costs and expenses (including legal fees) reasonably incurred by each Finance Party in responding to, evaluating, negotiating or complying with that request or requirement.

14.2 Enforcement costs

The Borrower shall, within three Business Days of demand, pay to each Finance Party the amount of all costs and expenses (including legal fees) incurred by that Finance Party in connection with the enforcement of, or the preservation of any rights under, any Finance Document.

15 REPRESENTATIONS

The Borrower makes the representations and warranties set out in this Clause 15 (*Representations*) to each Finance Party on the date of this Agreement.

15.1 Status

15.1.1 It is a local authority established pursuant to relevant legislation, duly incorporated and validly existing under the laws of England and Wales.

15.1.2 Any approved Investment Vehicle is established pursuant to the relevant legislation, duly incorporated and validly existing under the laws of England and Wales.

15.1.3 It and each of its Subsidiaries has the power to own its assets and carry on its business as it is being conducted.

15.2 Binding obligations

The obligations expressed to be assumed by it in each Finance Document are legal, valid, binding and enforceable obligations.

15.3 Non-conflict with other obligations

The entry into and performance by it of, and the transactions contemplated by, the Finance Documents and the Project do not and will not conflict with:

15.3.1 any law or regulation applicable to it (including, without limitation, the Local Government Act 2003 and CIPFA's Prudential Code for Capital Finance in Local Authorities in relation to the Borrower's ability to incur Financial Indebtedness under this Agreement);

15.3.2 its or any of its Subsidiaries' constitutional documents;

15.3.3 any agreement or instrument binding upon it or any of its Subsidiaries or any of its or any of its Subsidiaries' assets; or

15.3.4 any applicable Subsidy Control Law.



15.4 Power and authority

Following 31.7.2021, it will have the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Finance Documents to which it is a party, the transactions contemplated by those Finance Documents and the Project.

15.5 Validity and admissibility in evidence

Following 31.7.2021, all Authorisations required or desirable:

- 15.5.1 to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Finance Documents to which it is a party;
- 15.5.2 to make the Finance Documents to which it is a party admissible in evidence in its jurisdiction of incorporation; and
- 15.5.3 in respect of the Project

will have been obtained or effected and be in full force and effect.

15.6 No filing or stamp taxes

It is not necessary that the Finance Documents be filed, recorded or enrolled with any court or other authority or that any stamp, registration or similar tax be paid on or in relation to the Finance Documents or the transactions contemplated by the Finance Documents.

15.7 No default

- 15.7.1 No Accelerated Repayment Event is continuing or might reasonably be expected to result from the making of any Utilisation.
- 15.7.2 No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or any of its Subsidiaries or to which its (or any of its Subsidiaries') assets are subject which might have a Material Adverse Effect.

15.8 No misleading information

- 15.8.1 Any factual information provided by any member of the Group or any person on behalf of any member of the Group, in connection with any Finance Document (including, without limitation, the Application) was, to the best of its knowledge and belief, after due and careful consideration and enquiry, true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.
- 15.8.2 The financial projections contained in the Application or otherwise provided by the Borrower (or any member of the Group, or any person on behalf of any member of the Borrower's Group, if applicable) in connection with any Finance Document have been prepared in good faith on the basis of recent historical information and on the basis of assumptions believed by it to be fair and reasonable as at the date they were prepared and supplied.
- 15.8.3 Nothing has occurred or been omitted from the Application and no information has been given or withheld and no circumstances have changed that results in the information contained in the Application or provided in connection with this Agreement being untrue or misleading in any material respect.



15.8.4 The confirmations given by the Borrower in the Application remain true and accurate in all material respects, including without limitation:

- (a) the contractual arrangements envisaged and the technical specification of the network (as set out in the Application) do not prevent interconnection, future expansion or further decarbonisation;
- (b) the Project will comply with the Heat Networks (Metering and Billing Regulations) 2014 (as amended from time to time);
- (c) the preparation and briefing, feasibility and design sections of CIBSE ADE Heat Network Code of Practice CP1:2015 ("CP1") were used or will be used (as applicable) in the design process; and
- (d) the heat network (and any approved, or to be approved, tariff regime) will result in there being no increase in the average price paid for heat by customers.

15.8.5 All information provided by the Borrower to the Agent in connection with a proposed Restructuring was true and accurate in all material respects as at the date it was provided or as at the date (if any) at which it is stated.

15.9 Financial statements and material adverse change

15.9.1 The Borrower's and any approved Investment Vehicle's Original Financial Statements were prepared in accordance with GAAP consistently applied.

15.9.2 The Borrower's and any approved Investment Vehicle's Original Financial Statements fairly represent the financial condition of the Borrower or approved Investment Vehicle (as applicable) as at the end of the relevant financial year and operations during the relevant financial year (consolidated in the case of the Borrower).

15.9.3 There has been no material adverse change in its business circumstances or financial condition (or the business or consolidated financial condition of the Group), since the date of the Application and it is not aware of any circumstances which have occurred since the date of the Application which might have a Material Adverse Effect.

15.10 Pari passu ranking

Its payment obligations under the Finance Documents rank at least pari passu with the claims of all its other unsecured and unsubordinated creditors, except for obligations mandatorily preferred by law applying to entities of the same type as the Borrower generally.

15.11 No breach of laws

It has not (and none of its Subsidiaries has) breached any law or regulation which breach has or is reasonably likely to have a Material Adverse Effect.

15.12 No proceedings pending or threatened

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect has or have (to the best of its knowledge and belief) been started or threatened against it or any of its Subsidiaries.



15.13 Anti-corruption law

Each member of the Group has conducted its businesses in compliance with applicable anti-corruption and anti-bribery laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

15.14 The Project

15.14.1 Its role in the Project is as described in Schedule 1 (*Project Description*).

15.14.2 No change has occurred to the Project which has a Material Adverse Effect.

15.15 Approved Purpose

The Loans will be used for the Approved Purpose only and not used for any Prohibited Use.

15.16 Subsidy Control

15.16.1 To the best of the Borrower's knowledge and belief, each Loan does not (or will not, once utilised) breach any Subsidy Control Law.

15.16.2 Each Loan will only be used in compliance with Schedule 5 (*Subsidy Control*), and the Borrower represents that the Borrower complies with all conditions in that Schedule and has taken legal advice in respect of such compliance.

15.16.3 To the best of the Borrower's knowledge and belief, the factual position on which any Subsidy Control certification has been given has not changed.

15.17 Security

No Security exists over any part of the Project.

15.18 Repetition

The representations set out in this Clause 15 are deemed to be made by the Borrower on the date of this Agreement and repeated on the date of each Utilisation Request, on the Utilisation Date and the first day of each Interest Period, in each case by reference to the facts and circumstances then existing.

16 INFORMATION UNDERTAKINGS

The undertakings in this Clause 16 remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

16.1 Financial statements

As soon as the same become available, but in any event within 180 days after the end of each financial year, the Borrower shall notify the Agent of a website address where its audited consolidated financial statements for that financial year and the audited financial statements of any approved Investment Vehicle for that financial year can be accessed (or, if such financial statements are not publicly accessible, shall supply the Agent with sufficient physical copies for all the Lenders).



16.2 Requirements as to financial statements

- 16.2.1 Each set of financial statements delivered by the Borrower pursuant to Clause 16.1 (*Financial statements*) shall be certified by an authorised officer of the Borrower (or, for financial statements for an approved Investment Vehicle, a director of that approved Investment Vehicle) as fairly representing its financial position and operations as at the date as at which those financial statements were drawn up.
- 16.2.2 The Borrower shall procure that each set of financial statements delivered pursuant to Clause 16.1 (*Financial statements*) is prepared using GAAP.

16.3 Budget

- 16.3.1 The Borrower shall supply to the Agent in sufficient copies for all the Lenders, as soon as the same become available but in any event within 60 days before the start of each financial year, an annual budget in respect of the Project for that financial year.
- 16.3.2 The Borrower shall ensure that the Project's budget for each financial year is in a form reasonably acceptable to the Agent and includes a projected consolidated profit and loss, balance sheet and cashflow statement for the Project and any approved Investment Vehicle for that financial year and:
- (a) is prepared in accordance with the Accounting Principles and the accounting practices and financial reference periods applied to financial statements under Clause 16.1 (*Financial statements*); and
 - (b) has been approved by the appropriate officers of the Borrower and the board of directors of any approved Investment Vehicle.
- 16.3.3 If the budget is updated or changed, the Borrower shall, within not more than 10 days of the update or change being made, deliver to the Agent, in sufficient copies for each of the Lenders, such updated or changed budget together with a written explanation of the main changes in that budget.

16.4 Monitoring reports

- 16.4.1 On or before the date falling 5 Business Days after the first day of each calendar month during the commercialisation and construction phases of the Project the Borrower shall supply to the Agent the information set out in Part 1 (Construction) of Schedule 4 (*Project Monitoring Reports*) in respect of the previous month or financial quarter year (as applicable).
- 16.4.2 During the operational phase of the Project up to and including April 2033, the Borrower shall supply to the Agent the information set out in Part 2 (*Operation*) of Schedule 4 (*Project Monitoring Reports*) in respect of the previous month or financial quarter year (as applicable).
- 16.4.3 The Agent may from time to time give written notice to the Borrower that the Agent (and/or the Lenders) require amendments to the form and/or substance of the information set out in Part 1 (Construction) of Schedule 4 (*Project Monitoring Reports*) and/or Part 2 (*Operation*) of Schedule 4 (*Project Monitoring Reports*) and, with effect from receipt of such notice, the Borrower shall provide or procure the provision of such information in the updated form but without requiring the Borrower to incur material additional cost to provide or procure such information.



16.5 Supply chain reporting

Not used.

16.6 Project monitoring

Not used.

16.7 Information: additional

The Borrower shall supply to the Agent (in sufficient copies for all the Lenders, if the Agent so requests):

- 16.7.1 in relation to the Project only, all documents dispatched by the Borrower to its stakeholders (or any class of them) or its creditors generally at the same time as they are dispatched (and any information in such papers that does not relate to the Project may be redacted);
- 16.7.2 promptly upon becoming aware of them, the details of any litigation, arbitration or administrative proceedings which are current, threatened or pending against any member of the Group, and which might, if adversely determined, have a Material Adverse Effect;
- 16.7.3 promptly after becoming aware of the same, details of any other State Subsidy being received in respect of the Project by the Borrower or any approved Investment Vehicle;
- 16.7.4 within 5 Business Days of the Completion Date occurring, notice of the occurrence of the Completion Date and a statement of the total Eligible Costs of the Project;
- 16.7.5 within 5 Business Days following:
 - (a) any event or circumstance which has a Material Adverse Effect on the Project; or
 - (b) the Borrower becoming aware that such an event or circumstance is anticipated,

an exception report in form and substance satisfactory to the Agent specifying the steps proposed to be taken to mitigate the impact of such event or circumstance on the Project.

- 16.7.6 within 5 Business Days of becoming aware that Eligible Costs actually incurred have exceeded the Projected Costs, an updated statement of the total anticipated Eligible Costs of the Project; and
- 16.7.7 promptly, such further information regarding: (i) the financial condition, business and operations of any member of the Group or any approved Investment Vehicle; or (ii) the Project as any Finance Party (through the Agent) may reasonably request.

16.8 Notification of default

- 16.8.1 The Borrower shall notify the Agent of any Default (and the steps, if any, being taken to remedy it) promptly upon becoming aware of its occurrence.
- 16.8.2 Promptly upon a request by the Agent, the Borrower shall supply to the Agent a certificate signed by two of its senior officers on its behalf certifying that no Default



is continuing (or if a Default is continuing, specifying the Default and the steps, if any, being taken to remedy it).

16.9 Record keeping

The Borrower shall maintain records of all expenditure incurred in relation to the Project up until the end of April 2033 and provide such records to the Finance Parties.

16.10 Access

16.10.1 The Borrower shall ensure that the Lenders have audit rights over the Project as required by the National Audit Office and other government audit functions or audit functions appointed by a Lender.

16.10.2 The Borrower shall, in a full and timely manner, provide evidence or information required by the Agent, a Lender, Parliament or any Parliamentary Committee, the National Audit Office, the European Commission or any other public body entitled by law to that information (acknowledging that those bodies may share that information with each other and with their agents, and may publish information relating to the Facility and the Project); and co-operate with the Finance Parties in relation to disclosure of any information required by law (including under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

16.10.3 Except where to do so would constitute a breach of Data Protection Legislation, the Borrower shall as soon as reasonably practicable following a request provide any information reasonably requested by a Finance Party for the purpose of evaluating the performance of the Heat Networks Investment Project and, if so requested, participate and co-operate in evaluation surveys and case studies but without being required to incur any material additional cost.

16.11 "Know your customer" checks

16.11.1 If:

- (a) the introduction of or any change in (or in the interpretation, administration or application of) any law or regulation made after the date of this Agreement;
- (b) any change in the status of the Borrower after the date of this Agreement; or
- (c) a proposed assignment or transfer by a Lender of any of its rights and obligations under this Agreement to a party that is not a Lender prior to such assignment or transfer,

obliges the Agent or any Lender (or, in the case of Clause 16.11.1(c) above, any prospective new Lender) to comply with "know your customer" or similar identification procedures in circumstances where the necessary information is not already available to it, the Borrower shall promptly upon the request of the Agent or any Lender supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself or on behalf of any Lender) or any Lender (for itself or, in the case of the event described in Clause 16.11.1(c) above, on behalf of any prospective new Lender) in order for the Agent, such Lender or, in the case of the event described in Clause 16.11.1(c) above, any prospective new Lender to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.



16.11.2 Each Lender shall promptly upon the request of the Agent supply, or procure the supply of, such documentation and other evidence as is reasonably requested by the Agent (for itself) in order for the Agent to carry out and be satisfied it has complied with all necessary "know your customer" or other similar checks under all applicable laws and regulations pursuant to the transactions contemplated in the Finance Documents.

17 GENERAL UNDERTAKINGS

Except as explicitly provided in this Agreement or the "Continuing Obligations" agreement as scheduled hereto, the undertakings in this Clause 17 (*General undertakings*) remain in force from the date of this Agreement for so long as any amount is outstanding under the Finance Documents or any Commitment is in force.

17.1 Authorisations

The Borrower shall promptly:

17.1.1 obtain, comply with and do all that is necessary to maintain in full force and effect; and

17.1.2 supply certified copies to the Agent of,

any Authorisation required under any law or regulation to enable it to perform its obligations under the Finance Documents and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation of any Finance Document.

17.2 Compliance with laws

The Borrower shall comply, and ensure the Project complies, in all respects with all laws and regulations to which it or the Project may be subject (including, without limitation, Data Protection Legislation, Procurement Regulations and all applicable Subsidy Control Law).

17.3 Disposals and negative pledge

17.3.1 The Borrower shall not (and shall procure that any Investment Vehicle does not) enter into a single transaction or a series of transactions (whether related or not) and whether voluntary or involuntary to sell, lease, transfer or otherwise dispose of its interest in the Project (or in any entity which owns, directly or indirectly, an interest in the Project) without the prior written consent of the Majority Lenders in their absolute discretion (including the imposition of any conditions to the giving of such consent).

17.3.2 The Borrower shall not (and shall procure that any approved Investment Vehicle does not) resign from its position as operator of the Project or sub-contract, assign or invoke its rights or obligations as operator without the prior written consent of the Majority Lenders (such consent not to be unreasonably withheld or delayed).

17.3.3 The Borrower shall not create or allow to exist any Security over or encumber in any manner the whole or any part of the Project.

17.4 Use of Loan Proceeds

17.4.1 The Borrower shall ensure that the proceeds of the Loans are used for the Approved Purpose only and not for any other purpose (including, without limitation, any Prohibited Use) and any Loan utilisation request, disbursement of a Loan or its utilisation is compliant with applicable Subsidy Control Law.



17.4.2 The Borrower may not use the proceeds of any Loan to fund an equity investment in, or loan or grant to, any other entity (including any Affiliate) (an **Onward Investment**) without the prior written approval of the Majority Lenders (including, without limitation, approval of the terms of the relevant documentation), other than any such loan, grant or equity investment expressly approved by the Original Lender in writing as part of the Application or subsequently notified to and approved by the Agent (with the written consent of the Majority Lenders) pursuant to this Clause 17.4.

17.4.3 The terms of any Onward Investment permitted pursuant to Clause 17.4.2 above must:

- (a) be legally binding on all parties thereto when entered into;
- (b) require the recipient to repay the Onward Investment if a Loan becomes due and payable under the terms of this Agreement; and
- (c) require the recipient to provide such information as the Lenders may require in relation to the Project, including without limitation the information set out in Clause 16 (*Information undertakings*);
- (d) comply with any applicable Subsidy Control Law and oblige the recipient to comply with all relevant Subsidy Control Law;
- (e) be on arm's length terms and consistent with market practice; and
- (f) where the Onward Investment is a loan, charge interest at a rate which is not greater than the Fixed Rate unless a higher interest rate has been approved by the Majority Lenders.

17.4.4 Notwithstanding any approval the Lenders may give pursuant to 17.4.3(b) above, the Borrower is responsible for ensuring that any approved Investment Vehicle complies with the terms of this Agreement as they apply to the Project.

17.5 Reclaiming costs and expenses

The Borrower may not claim funding or reimbursement for costs or expenses discharged using the proceeds of the Loans:

17.5.1 from other funding providers; or

17.5.2 pursuant to any other facility agreement or memorandum of understanding relating to the Heat Networks Investment Project.

17.6 Quality of service

The Borrower shall ensure that the Project is a member of the Heat Trust or puts in place equivalent customer protection standards, where applicable, before the heat network is operational.

17.7 Mandatory Requirements

The Borrower shall ensure that the Mandatory Requirements are, or will be at the relevant time, be satisfied and will remain satisfied.



17.8 Restructuring

The Borrower shall not undertake any Restructuring without the prior written consent of the Agent (acting on the instruction of the Majority Lenders). The Borrower acknowledges that any approval given by the Agent (acting on the instructions of the Majority Lenders) may be conditional upon the Borrower repaying the outstanding Loans in whole or part.

17.9 Conditions Subsequent

The Borrower shall ensure that it complies with all conditions listed in Part 3 (Conditions Subsequent) of Schedule 2 (Conditions Precedent), in each case on an ongoing basis and to the satisfaction of the Agent.

18 ACCELERATED REPAYMENT EVENT

Each of the events or circumstances set out in this Clause 18 is an Accelerated Repayment Event (save for Clause 18.20 (*Acceleration*)).

18.1 Non-payment

The Borrower does not pay on the due date any amount payable pursuant to a Finance Document at the place and in the currency in which it is expressed to be payable unless its failure to pay is caused by administrative or technical error and payment is made within 3 Business Days of its due date.

18.2 Approved Purpose and compliance with laws

The Borrower does not comply with Clauses 17.2 (*Compliance with laws*) or 17.4 (*Use of Loan Proceeds*).

18.3 Other obligations

18.3.1 The Borrower does not comply with any material provision of the Finance Documents (other than those referred to in Clause 18.1 (*Non-payment*) or 18.2 (*Approved Purpose and compliance with laws*)).

18.3.2 No Accelerated Repayment Event under Clause 18.3.1 above in will occur if the failure to comply is capable of remedy and is remedied within 5 Business Days of the earlier of (A) the Agent giving notice to the Borrower and (B) the Borrower becoming aware of the failure to comply.

18.4 Misrepresentation and Fraud

18.4.1 Any representation or statement made or deemed to be made by the Borrower in the Finance Documents or any other document delivered by or on behalf of the Borrower under or in connection with any Finance Document (including, without limitation, the Application) is or proves to have been incorrect or misleading in any material respect when made or deemed to be made.

18.4.2 The Borrower (or any person on its behalf) has committed fraud in relation to its Application or any Loan including without limitation in respect of any information, reports, data, calculations, notifications or certifications provided to the Agent or the Lenders whether in connection with fulfilling the reporting requirements under this Agreement, following a request for information made by the Agent, the Borrower seeking any consents or waivers, or the Borrower making any claim under the Insurances or otherwise.



18.5 Cross default

- 18.5.1 Any Financial Indebtedness of any member of the Group or any approved Investment Vehicle is not paid when due nor within any originally applicable grace period (including without limitation any grant funding provided by the Original Lender to the Borrower in relation to the Project).
- 18.5.2 Any Financial Indebtedness of any member of the Group or any approved Investment Vehicle is declared to be or otherwise becomes due and payable prior to its specified maturity as a result of an Accelerated Repayment Event (however described).
- 18.5.3 Any commitment for any Financial Indebtedness of any member of the Group or any approved Investment Vehicle is cancelled or suspended by a creditor of any member of the Group or any approved Investment Vehicle as a result of an Accelerated Repayment Event (however described).
- 18.5.4 Any creditor of any member of the Group or any approved Investment Vehicle becomes entitled to declare any Financial Indebtedness of any member of the Group or any Investment Vehicle due and payable prior to its specified maturity as a result of an Accelerated Repayment Event (however described).
- 18.5.5 Any amount due from any member of the Group or any approved Investment Vehicle to a Lender or a Central Government Body is not paid when due.
- 18.5.6 Any event of default occurs or is declared under any Third Party Funding Agreement.
- 18.5.7 No Event of Default will occur under this Clause if:
- (a) the aggregate amount of the Financial Indebtedness or commitment for Financial Indebtedness is less than £100,000; or
 - (b) in the case of a member of the Group, such event or circumstance would not have a Material Adverse Effect.

18.6 Insolvency

- 18.6.1 A member of the Group or any approved Investment Vehicle:
- (a) is unable or admits inability to pay its debts as they fall due;
 - (b) suspends making payments on any of its debts; or
 - (c) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding any Finance Party in its capacity as such) with a view to rescheduling any of its indebtedness.
- 18.6.2 The value of the assets of any member of the Group or any approved Investment Vehicle is less than its liabilities (taking into account contingent and prospective liabilities).
- 18.6.3 A moratorium is declared in respect of any indebtedness of any member of the Group or any approved Investment Vehicle.

18.7 Insolvency proceedings

Any corporate action, legal proceedings or other procedure or step is taken in relation to:



- 18.7.1 the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of any member of the Group or any approved Investment Vehicle;
- 18.7.2 a composition, compromise, assignment or arrangement with any creditor of any member of the Group or any approved Investment Vehicle;
- 18.7.3 the appointment of a liquidator, receiver, administrative receiver, administrator, compulsory manager or other similar officer in respect of any member of the Group or any approved Investment Vehicle or any of its assets; or
- 18.7.4 enforcement of any Security over any assets of any member of the Group or any approved Investment Vehicle,

or any analogous procedure or step is taken in any jurisdiction.

This Clause shall not apply to any winding-up petition which is frivolous or vexatious and is discharged, stayed or dismissed within 21 days of commencement or is being contested in good faith and with due diligence.

18.8 Creditors' process

Any expropriation, attachment, sequestration, distress or execution affects any asset or assets of a member of the Group or any approved Investment Vehicle and is not discharged within 21 days.

18.9 Cessation of Business

Any member of the Group or any approved Investment Vehicle suspends or ceases to carry on (or threatens to suspend or cease to carry on) all or a material part of its business.

18.10 Change of Control

Any person or group of persons gains control of the Borrower or any approved Investment Vehicle. For the purposes of this Clause, **Control** means:

- 18.10.1 the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:
 - (a) cast, or control the casting of, more than 50% of the maximum number of votes that might be cast a general meeting of the Borrower or any approved Investment Vehicle;
 - (b) appoint or remove all, or the majority of, the director or other equivalent officers of the Borrower or any approved Investment Vehicle; or
 - (c) give directions with respect to the operating and financial policies of the Borrower or any approved Investment Vehicle with which the directors or other equivalent officers of the Borrower or any approved Investment Vehicle are obliged to comply; or
- 18.10.2 the holding beneficially or more than 50% of the issued share capital (if any) of the Borrower or any approved Investment Vehicle (excluding any part of that issued share that carries no right to participate beyond a specified amount in a distribution of either profits or capital),



but in each case noting that collapsing Lee Valley Heat Network Limited such that the Borrower becomes the sole shareholder in Energetik shall not constitute a Change of Control).

18.11 Unlawfulness

It is or becomes unlawful for the Borrower to perform any of its obligations under the Finance Documents.

18.12 Repudiation

The Borrower repudiates a Finance Document or evidences an intention to repudiate a Finance Document.

18.13 Material adverse change

18.13.1 A change to the business or function of any member of the Group or any approved Investment Vehicle or a change to the characteristics of the Project which the Majority Lenders reasonably consider would have made a material difference to the Original Lender's assessment of the Application or the terms on which the Original Lender was willing to provide the Loan.

18.13.2 Any event or circumstance (or combination thereof) occurs which the Majority Lenders reasonably consider will have a Material Adverse Effect.

18.13.3 Any repayment event or event of default (howsoever described) occurs under any funding arrangements between the Borrower (as borrower or recipient) and the public works loan board in relation to the Project.

18.14 Exclusion

Any of the grounds for mandatory or discretionary exclusion in Regulation 57 of the Public Contracts Regulations 2015 arise, at any time, in relation to any member of the Group or any Investment Vehicle.

18.15 Overpayment

The proceeds of the Loan not yet spent by the Borrower are greater than the amount of anticipated Eligible Costs not yet discharged.

18.16 Failure to meet Project milestones

Any of the key milestones for the Project as set out in Schedule 1 (*Project Description*) are not met, and/or there is no reasonable prospect in the Majority Lender's opinion (acting reasonably) that the Completion Date will occur before the Longstop Date, or the Completion Date does not occur by the Longstop Date.

18.17 Corruption

The Majority Lenders have reasonable grounds to believe that the Borrower or any Investment Vehicle (or any person on its or their behalf) has failed to comply with applicable anti-bribery or anti-corruptions laws.

18.18 Subsidy Control and breach of law

18.18.1 One or more Lenders are required to cease providing a Loan or to recover all, or any proportion, of a Loan by virtue of a decision of the courts or any



body appointed to oversee the granting of State Subsidies in the United Kingdom, or as a requirement of any applicable law.

18.18.2 There are reasonable grounds to consider, in the opinion of the Majority Lenders, that the advance of any Loan, or the Borrower's use of the proceeds of a Loan, contravenes any requirement of law, in particular (but without limitation) any Subsidy Control Law.

18.19 Total destruction of Project

All or a material part of the Project is damaged or destroyed where, in the opinion of the Majority Lenders, any insurance proceeds will be insufficient to make good the damage or destruction, repair or restoration is likely to take longer than 2 years to be completed, or the level of revenue the reinstated project is expected to generate is likely to be materially adversely affected.

18.20 Acceleration

On and at any time after the occurrence of an Accelerated Repayment Event which is continuing the Agent may, and shall if so directed by the Majority Lenders, by notice to the Borrower:

18.20.1 declare that the obligation of the Lenders to make the Total Commitments available is suspended;

18.20.2 cancel the Total Commitments whereupon they shall immediately be cancelled and reduced to zero;

18.20.3 declare that all or part of the outstanding Loans (or any part), together with accrued interest and all other amounts accrued or outstanding under the Finance Documents be immediately due and payable, whereupon they shall become immediately due and payable;

18.20.4 declare that all or part of the outstanding Loans (or any part) be payable on demand, whereupon they shall immediately become payable on demand by the Agent on the instructions of the Majority Lenders; and/or

18.20.5 give any instructions to the Account Trustee to act on the directions of the Agent or the Lenders in relation to the operation of the Trust Account including its suspension or closure or making withdrawals.

Following an Accelerated Repayment Event pursuant to Clause 18.18 (*Subsidy Control and breach of law*), the Majority Lenders may, if required by law or any decision of a court or of the European Commission, vary the rate of interest applicable to the Loans with retrospective effect.

19 CHANGES TO THE PARTIES

19.1 Assignments and transfers by the Lenders

Subject to this Clause 19, a Lender (the **Original Lender**) may:

19.1.1 assign any of its rights; or

19.1.2 transfer by novation any of its rights and obligations,

to another party (the **New Lender**) in its absolute discretion.



19.2 Conditions of assignment or transfer

19.2.1 The consent of the Borrower is not required for an assignment or transfer by an Original Lender.

19.2.2 An assignment will only be effective on:

- (a) receipt by the Agent of written confirmation from the New Lender (in form and substance satisfactory to the Agent) that the New Lender will assume the same obligations to the other Finance Parties as it would have been under if it was an Original Lender; and
- (b) performance by the Agent of all necessary "know your customer" or other similar checks under all applicable laws and regulations in relation to such assignment to a New Lender, the completion of which the Agent shall promptly notify to the Original Lender and the New Lender.

19.3 Security over Lenders' rights

In addition to the other rights provided to Lenders under this Clause 19, each Lender may without consulting with or obtaining consent from the Borrower, at any time charge, assign or otherwise create Security in or over (whether by way of collateral or otherwise) all or any of its rights under any Finance Document to secure obligations of that Lender including, without limitation:

19.3.1 any charge, assignment or other Security to secure obligations to a federal reserve or central bank; and

19.3.2 any charge, assignment or other Security granted to any holders (or trustee or representatives of holders) of obligations owed, or securities issued, by that Lender as security for those obligations or securities,

except that no such charge, assignment or Security shall:

19.3.3 release a Lender from any of its obligations under the Finance Documents or substitute the beneficiary of the relevant charge, assignment or Security for the Lender as a party to any of the Finance Documents; or

19.3.4 require any payments to be made by the Borrower other than or in excess of, or grant to any person any more extensive rights than, those required to be made or granted to the relevant Lender under the Finance Documents.

19.4 Assignments and transfer by the Borrower

The Borrower may not assign any of its rights or transfer any of its rights or obligations under the Finance Documents without the prior written consent of the Majority Lenders.

20 ROLE OF THE AGENT AND ACCOUNT TRUSTEE

20.1 Appointment of the Agent

20.1.1 Each of the Lenders appoints the Agent to act as its agent under and in connection with the Finance Documents.

20.1.2 Each of the Lenders authorises the Agent to perform the duties, obligations and responsibilities and to exercise the rights, powers, authorities and discretions specifically given to the Agent under or in connection with the Finance Documents together with any other incidental rights, powers, authorities and discretions.



20.1.3 The terms of the Agent's appointment shall be governed by the Agency Protocol, which shall be incorporated in this Agreement by reference. The Agency Protocol may be amended from time to time by agreement between the Agent and the Lenders, provided that the Borrower's consent shall be required to any amendment which adversely affects the Borrower's obligations or liabilities to, or rights against, the Agent.

20.1.4 As between the Borrower and the Lenders, the Borrower acknowledges and agrees that the Majority Lenders may appoint a replacement Agent without the consent of the Borrower.

20.2 Miscellaneous agency provisions

20.2.1 The Agent shall promptly forward to a Party the original or a copy of any document which is delivered to the Agent for that Party by any other Party.

20.2.2 Unless a Finance Document expressly provides otherwise the Agent may disclose to any other Party any information it reasonably believes it has received as agent under this Agreement.

20.2.3 Notwithstanding any other provision of any Finance Document to the contrary, the Agent is not obliged to do or omit to do anything if it would or might in its reasonable opinion constitute a breach of any law or regulation or a breach of a fiduciary duty or duty of confidentiality.

20.3 Exclusion of liability

20.3.1 Without limiting Clause 20.3.3 below, no Finance Party will be liable to the Borrower for:

- (a) any injury, damages, costs, expenses or losses to any person if and to the extent caused by that person's negligence or wilful misconduct or breach of their obligations under this Agreement;
- (b) exercising, or not exercising, any right, power, authority or discretion given to it by, or in connection with, any Finance Document or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with, any Finance Document, other than by reason of its gross negligence or wilful misconduct; or
- (c) without prejudice to the generality of Clause 20.3.1(a) and 20.3.1(b) above, any damages, costs or losses to any person, any diminution in value or any liability whatsoever (but not including any claim based on the fraud of the Finance Party) arising as a result of:
 - (i) any act, event or circumstance not reasonably within its control; or
 - (ii) the general risks of investment in, or the holding of assets in, any jurisdiction,

including (in each case and without limitation) such damages, costs, losses, diminution in value or liability arising as a result of: nationalisation, expropriation or other governmental actions; any regulation, currency restriction, devaluation or fluctuation; market conditions affecting the execution or settlement of transactions or the value of assets; breakdown, failure or malfunction of any third party transport, telecommunications, computer services or systems; natural disasters or acts of God; war, terrorism, insurrection or revolution; or strikes or industrial action.



- 20.3.2 The Borrower may not take any proceedings against any officer, employee or agent of any Finance Party in respect of any claim it might have against that Finance Party in respect of any act or omission of any kind by that officer, employee or agent in relation to any Finance Document and any officer, employee or agent of any Finance Party may rely on this Clause notwithstanding Clause 1.4 (*Third party rights*).
- 20.3.3 The Agent will not be liable for any delay (or any related consequences) in crediting an account with an amount required under the Finance Documents to be paid by the Agent if the Agent has taken all necessary steps as soon as reasonably practicable to comply with the regulations or operating procedures of any recognised clearing or settlement system used by the Agent for that purpose.
- 20.3.4 Without prejudice to any provision of any Finance Document excluding or limiting any Finance Party's liability, any liability of a Finance Party to the Borrower arising under or in connection with any Finance Document shall be limited to the amount of actual loss which has been suffered (as determined by reference to the date of default of the Finance Party or, if later, the date on which the loss arises as a result of such default) but without reference to any special conditions or circumstances known to the Finance Party at any time which increase the amount of that loss. In no event shall a Finance Party be liable for any loss of profits, goodwill, reputation, business opportunity or anticipated saving, or for special, punitive, indirect or consequential damages, whether or not the Finance Party has been advised of the possibility of such loss or damages.

20.4 Designation of Trust Account

The Account Trustee will open, maintain and operate the Trust Account with the Account Bank in accordance with the Trust Account Deed.

20.5 Trust Account operation

- 20.5.1 The Borrower has no signing rights in relation to the Trust Account.
- 20.5.2 The Borrower must ensure that any amount payable by it under this Agreement is paid into an account as directed by the Agent.
- 20.5.3 Except as provided in this Agreement and subject to the conditions set out in this Agreement, the Borrower may request a Utilisation and the Account Trustee shall disburse amounts from the Trust Account to the Borrower to be applied for the Approved Purpose in relation to the Project.
- 20.5.4 No interest shall accrue for the benefit of the Borrower on any balance from time to time standing to the credit of the Trust Account in respect of the Available Commitment.
- 20.5.5 The Borrower acknowledges that the Original Lender shall be permitted from time to time to replace the Account Trustee without the consent of the Borrower.
- 20.5.6 At any time when a Default is continuing the Agent may:
- (a) notify the Account Trustee that no withdrawal should be made to satisfy a Utilisation Request; and
 - (b) instruct the Account Trustee to effect withdrawals from, and return to the Lenders, undrawn amounts of the Available Commitment held in the Trust Account.



20.6 Miscellaneous trust account provisions

20.6.1 No Finance Party is responsible or liable to the Borrower for:

- (a) any liability incurred by the Borrower in relation to the operation of the Trust Account in good faith by the Account Trustee; or
- (b) any withdrawal wrongly made, if made in good faith.

20.6.2 The Borrower must, within five Business Days of any request by the Agent, supply the Agent with the following information in relation to any payment paid by the Borrower into the Trust Account:

- (a) the date of payment;
- (b) the payer; and
- (c) the purpose of the payment.

21 CONDUCT OF BUSINESS BY THE FINANCE PARTIES

No provision of this Agreement will:

- 21.1.1 interfere with the right of any Finance Party to arrange its affairs (tax or otherwise) in whatever manner it thinks fit;
- 21.1.2 oblige any Finance Party to investigate or claim any credit, relief, remission or repayment available to it or the extent, order and manner of any claim; or
- 21.1.3 oblige any Finance Party to disclose any information relating to its affairs (tax or otherwise) or any computations in respect of Tax.

22 PAYMENT MECHANICS

22.1 Payments to the Agent

- 22.1.1 On each date on which the Borrower is required to make a payment under a Finance Document, the Borrower shall make the same available to the Agent (unless a contrary indication appears in a Finance Document) for value on the due date in sterling.
- 22.1.2 Payment shall be made to such account in London and with such bank as the Agent (on behalf of the Account Trustee), in each case, specifies.

22.2 Partial payments

- 22.2.1 If the Agent receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Finance Documents, the Agent shall apply that payment towards the obligations of the Borrower under the Finance Documents in the following order:
 - (a) first, in or towards payment pro rata of any unpaid amount owing to the Agent under the Finance Documents;
 - (b) secondly, in or towards payment pro rata of any unpaid amount owing to the Account Trustee under the Finance Documents;



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- (c) thirdly, in or towards payment pro rata of any accrued interest, fee or commission due but unpaid under this Agreement;
- (d) fourthly, in or towards payment pro rata of any principal due but unpaid under this Agreement; and
- (e) fifthly, in or towards payment pro rata of any other sum due but unpaid under the Finance Documents.

22.2.2 The Agent shall, if so directed by the Majority Lenders, vary the order set out in Clauses 22.2.1(b) to 22.2.1(e) above.

22.2.3 Clauses 22.2.1 and 22.2.2 above will override any appropriation made by the Borrower.

22.3 No set-off

All payments to be made by the Borrower under the Finance Documents shall be calculated and be made without (and free and clear of any deduction for) set-off or counterclaim.

22.4 Business Days

22.4.1 Any payment under the Finance Documents which is due to be made on a day that is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one) or the preceding Business Day (if there is not).

22.4.2 During any extension of the due date for payment of any principal or Unpaid Sum under this Agreement interest is payable on the principal or Unpaid Sum at the rate payable on the original due date.

23 SET-OFF

A Finance Party may set off any matured obligation due from the Borrower under the Finance Documents (to the extent beneficially owned by that Finance Party) against any matured obligation owed by that Finance Party to the Borrower, regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Finance Party may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

24 NOTICES

24.1 Communications in writing

Any communication to be made under or in connection with the Finance Documents shall be made in writing and, unless otherwise stated, may be made by fax or letter.

24.2 Addresses

The address and fax number (if any) (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Finance Documents is:

24.2.1 in the case of the Borrower, that identified with its name below (which is, as at the date hereof, set out on the signature page hereto);



24.2.2 in the case of each Lender, that notified in writing to the Agent on or prior to the date on which it becomes a Party (which is, as at the date hereof, set out on the signature page hereto); and

24.2.3 in the case of the Agent and the Account Trustee, that identified with its name below (if any) (which is, as at the date hereof, set out on the signature page hereto),

or any substitute address or fax number or department or officer as the Party may notify to the Agent (or the Agent may notify to the other Parties, if a change is made by the Agent) by not less than five Business Days' notice.

24.3 Delivery

24.3.1 Any communication or document made or delivered by one person to another under or in connection with the Finance Documents will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or five Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address;

and, if a particular department or officer is specified as part of its address details provided under Clause 24.2 (*Addresses*), if addressed to that department or officer.

24.3.2 Any communication or document to be made or delivered to the Agent will be effective only when actually received by the Agent and then only if it is expressly marked for the attention of the department or officer identified with the Agent's signature below (or any substitute department or officer as the Agent shall specify for this purpose).

24.3.3 All notices from or to the Borrower shall be sent through the Agent.

24.3.4 Any communication or document which becomes effective, in accordance with Clauses 24.3.1 to 24.3.3 above, after 5:00 pm. in the place of receipt shall be deemed only to become effective on the following day.

24.4 Notification of address and fax number

Promptly upon changing its address or fax number, the Agent shall notify the other Parties.

24.5 Electronic communication

24.5.1 Any communication to be made between any two Parties under or in connection with the Finance Documents may be made by electronic mail or other electronic means (including, without limitation, by way of posting to a secure website) if those two Parties:

- (a) notify each other in writing of their electronic mail address and/or any other information required to enable the transmission of information by that means; and
- (b) notify each other of any change to their address or any other such information supplied by them by not less than five Business Days' notice.



24.5.2 Any such electronic communication as specified in Clause 24.5.1 above to be made between the Borrower and a Finance Party may only be made in that way to the extent that those two Parties agree that, unless and until notified to the contrary, this is to be an accepted form of communication.

24.5.3 Any such electronic communication as specified in Clause 24.5.1 above made between any two Parties will be effective only when actually received (or made available) in readable form and in the case of any electronic communication made by a Party to the Agent only if it is addressed in such a manner as the Agent shall specify for this purpose.

24.5.4 Any electronic communication which becomes effective, in accordance with Clause 24.5.3 above, after 5:00 pm. in the place in which the Party to whom the relevant communication is sent or made available has its address for the purpose of this Agreement shall be deemed only to become effective on the following day.

24.5.5 Any reference in a Finance Document to a communication being sent or received shall be construed to include that communication being made available in accordance with this Clause 24.5.

25 CALCULATIONS AND CERTIFICATES

25.1 Accounts

In any litigation or arbitration proceedings arising out of or in connection with a Finance Document, the entries made in the accounts maintained by a Finance Party are prima facie evidence of the matters to which they relate.

25.2 Certificates and Determinations

Any certification or determination by a Finance Party of a rate or amount under any Finance Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

25.3 Day count convention

Any interest, commission or fee accruing under a Finance Document will accrue from day to day and is calculated on the basis of the actual number of days elapsed and a year of 365 days.

26 PARTIAL INVALIDITY

If, at any time, any provision of a Finance Document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

27 REMEDIES AND WAIVERS

No failure to exercise, nor any delay in exercising, on the part of any Finance Party, any right or remedy under a Finance Document shall operate as a waiver of any such right or remedy or constitute an election to affirm any of the Finance Documents. No election to affirm any Finance Document on the part of any Finance Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies



provided in each Finance Document are cumulative and not exclusive of any rights or remedies provided by law.

28 AMENDMENTS AND WAIVERS

28.1 Required consents

28.1.1 Subject to Clause 28.2 (*All Lender matters*) and Clause 28.3 (*Other exceptions*) any term of the Finance Documents may be amended or waived only with the consent of the Majority Lenders and the Borrower and any such amendment or waiver will be binding on all Parties.

28.1.2 The Agent may effect, on behalf of any Finance Party, any amendment or waiver permitted by this Clause 28.

28.2 All Lender matters

An amendment or waiver of any term of any Finance Document that has the effect of changing or which relates to:

28.2.1 the definition of Approved Purpose in in Clause 1.1 (*Definitions*);

28.2.2 the definition of **Majority Lenders** in Clause 1.1 (*Definitions*);

28.2.3 an extension to the date of payment of any amount under the Finance Documents;

28.2.4 a reduction in the amount of any payment of principal, interest, fees or commission payable;

28.2.5 an increase in any Commitment, an extension of the Availability Period or any requirement that a cancellation of Commitments reduces the Commitments of the Lenders rateably under the Facility;

28.2.6 a change to the Borrower;

28.2.7 any provision which expressly requires the consent of all the Lenders; or

28.2.8 Clause 2.3 (*Finance Parties' rights and obligations*), Clause 7.7 (*Application of early repayments*), Clause 19 (*Changes to the parties*), this Clause 28, Clause 34 (*Governing law*) or Clause 35 (*Jurisdiction*),

shall not be made without the prior consent of all the Lenders.

28.3 Other exceptions

An amendment or waiver which relates to the rights or obligations of the Agent or the Account Trustee may not be effected without the consent of the Agent or the Account Trustee, as the case may be.

29 CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY

29.1 Definitions

For the purposes of this Clause 29 (*Confidentiality, transparency and publicity*):



Confidential Information	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party (including information provided prior to the date of this Agreement) and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
FOIA	means the Freedom of Information Act 2000
Information	has the meaning given under section 84 of the FOIA (and includes information provided prior to the date of this Agreement);
Request for Information	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term Request shall apply);
Staff	means all directors, officers, employees, agents, consultants and contractors of the relevant Party and/or of any sub-contractor of the relevant Party engaged in the performance of the Relevant Party's obligations under the Agreement.

29.2 Confidentiality

29.2.1 Subject to Clause 29.2.2, each Party shall:

- (a) treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
- (b) not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

29.2.2 Notwithstanding Clause 29.2.1, a Party may disclose Information, including Confidential Information which it receives from the other Party:

- (a) where such Information was received prior to the date of the Application;
- (b) where such Information is aggregated with information relating to three or more other Projects;
- (c) where disclosure is required by applicable law or by a court of competent jurisdiction;
- (d) to its auditors or for the purposes of regulatory requirements;
- (e) on a confidential basis, to its professional advisers and prospective funders;
- (f) to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;



- (g) where the receiving Party is the Agent or the Borrower, to the Staff on a need to know basis to enable performance of their obligations under the Agreement provided that the Agent or Borrower (as applicable) shall procure that any Staff to whom it discloses Confidential Information pursuant to this Clause 29.2.2(g) shall observe their confidentiality obligations under the Agreement;
- (h) on a confidential basis to the employees, agents, consultants and contractors of that Lender;
- (i) on a confidential basis to any Central Government Body, any successor body to a Central Government Body or any company to which the Lender transfers or proposes to transfer all or any part of its business;
- (j) to the extent that the Party (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (k) in accordance with Clause 29.5 (*Freedom of Information Act*),

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Lender under this Clause 29.2.

29.3 Publication of the Agreement

The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations 2004, the content of the Agreement is not Confidential Information and the Agent and the Borrower hereby give their consent for the Original Lender to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA or Environmental Information Regulations 2004 redacted) including any changes to the Agreement agreed from time to time. The Original Lender may consult with the Agent or Borrower (or both) to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA or Environmental Information Regulations 2004.

29.4 Other publicity

Neither the Agent or the Borrower shall, and each of the Agent and the Borrower shall take reasonable steps to ensure that their Staff shall not, make any press announcement or publicise the Agreement, any part of the Agreement or their involvement with the Heat Networks Investment Project, in any way, except with the prior written consent of the Lenders.

29.5 Freedom of Information Act

29.5.1 Each Party acknowledges that the Borrower and the Original Lender are subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Original Lender or the Borrower to enable it to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;



- (b) transfer to the Original Lender or the Borrower all Requests for Information relating to this Agreement that it receives as soon as practicable and in (in the case of the Borrower) any event within 2 Business Days of receipt;
- (c) provide the Original Lender or the Borrower with a copy of all Information belonging to the Original Lender or the Borrower (as applicable) requested in the Request for Information which is in its possession or control in the form that the Original Lender or the Borrower (as applicable) requires within 5 Working Days in the case of the Borrower (or such other period as the Original Lender may reasonably specify) of the Original Lender's or the Borrower's (as applicable) request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Borrower or the Original Lender (as applicable). If such authorisation has not been received in a timely fashion, the relevant party may respond to such Request for Information if it believes (acting reasonably) that not responding at that time would result in a breach of the FOIA or the Environmental Information Regulations 2004.

29.5.2 The Parties acknowledge that the Original Lender and the Borrower may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Parties or the Finance Documents (including commercially sensitive information) without consulting or obtaining consent from the other Parties. In these circumstances the Original Lender shall or the Borrower (as applicable), in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the other Parties advance notice, or failing that, to draw the disclosure to the other Parties' attention after any such disclosure.

29.5.3

Notwithstanding any other provision in the Agreement, the Original Lender or the Borrower (as applicable) shall be responsible for determining in its absolute discretion whether any Information relating to the Agent, the Borrower or the Finance Documents is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

29.6 Entire agreement

This Clause 29 constitutes the entire agreement between the Parties in relation to the obligations of the Finance Parties under the Finance Documents regarding Confidential Information and supersedes any previous agreement, whether express or implied, regarding Confidential Information.

29.7 Continuing effect

The obligations in this Clause 29 are continuing and, in particular, shall survive and remain binding on each Finance Party for a period of twelve months from the earlier of:

- 29.7.1 the date on which all amounts payable by the Borrower under or in connection with this Agreement have been paid in full and all Commitments have been cancelled or otherwise cease to be available; and
- 29.7.2 the date on which such Finance Party otherwise ceases to be a Finance Party.



30 COUNTERPARTS

Each Finance Document may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Finance Document.

31 INTELLECTUAL PROPERTY RIGHTS

- 31.1 Intellectual Property in all IPR Material will be the Property of the Borrower. Other than as expressly set out in this Agreement, neither Party will have any right to use any of the other Party's names, logos or trade marks on any of its products or services without the other Party's prior written consent.
- 31.2 The Borrower grants to the Finance Parties a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting other projects.
- 31.3 Ownership of third party software or other IPR necessary to deliver the Project will remain with the relevant third party.
- 31.4 The Borrower must ensure that they have obtained the relevant agreement from the third party proprietor before any additions or variations are made to the standard 'off-the-shelf' versions of any third party software and other IPR. The Borrower will be responsible for obtaining and maintaining all appropriate licences to use the third party software.

32 ENVIRONMENTAL REQUIREMENTS

- 32.1 The Borrower shall ensure that the Project is undertaken in accordance with the Original Lender's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.
- 32.2 The Borrower shall pay due regard to the use of recycled products, so long as they are not detrimental to the performance of the Project or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 32.3 The Borrower shall take all possible precautions to ensure that any equipment and materials used in the construction and operation of the Project do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Agent shall be notified in advance of their use (and shall in turn notify the Original Lender). The Borrower shall endeavour to reduce fuel emissions wherever possible.

33 INSURANCE

- 33.1 The Borrower shall ensure that it has and maintains (or procures that any approved Investment Vehicle has and maintains) adequate insurance cover with an insurer of good repute to cover claims or demands that might be brought against it (or any approved Investment Vehicle) by any person suffering any injury, damage or loss in connection with the Project, or any physical damage to the assets or equipment comprising the Project for their full reinstatement value.
- 33.2 The Borrower will upon request produce to the Agent its policy or policies of insurance, or where this is not possible, a certificate of insurance issued by the Borrower's (or, where applicable, approved Investment Vehicle's) insurance broker confirming the insurances are in full force and effect together with confirmation that all premiums have been paid.



34 GOVERNING LAW

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by English law.

35 JURISDICTION

35.1 The courts of England and Wales have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement (including a dispute relating to the existence, validity or termination of this Agreement or any non-contractual obligation arising out of or in connection with this Agreement) (a **Dispute**).

35.2 The Parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

35.3 This Clause 35 is for the benefit of the Finance Parties only. As a result, no Finance Party shall be prevented from taking proceedings relating to a Dispute in any other courts with jurisdiction. To the extent allowed by law, the Finance Parties may take concurrent proceedings in any number of jurisdictions.

36 CONTINUING OBLIGATIONS

Without prejudice to Clause 29.7 (*Continuing effect*):

36.1 Certain obligations set out in this Agreement are continuing and shall survive and remain binding on the Borrower; and

36.2 the Borrower shall, as a condition of being released from all indebtedness under this Agreement, deliver to the Lender an executed original of the deed of agreement set out in Schedule 6 (*Continuing Obligations*) where such obligations are set out.

This Agreement has been entered into on the date stated at the beginning of this Agreement.



Lux Nova Partners

clean energy lawyers

LABS Hawley Lock, Hawley Wharf, 1 Water Lane,
London NW1 8NZ

www.luxnovapartners.com

Signature page to the Public Body Facility Agreement between: (i) The Mayor And Burgesses Of The London Borough Of Enfield, as Borrower; (ii) The Secretary of State for Business, Energy and Industrial Strategy, as Original Lender; (iii) Triple Point Investment Management LLP, as Agent; and (iv) Triple Point Investment Management LLP, as Account Trustee.

Between

BORROWER

The Common Seal of The Mayor and Burgesses of the London Borough of Enfield was hereunto affixed in the presence of:-



.....
Authorised signatory
DUNCAN CREEVY

Address: Civic Centre, Silver Street, Enfield Council, Enfield, EN1 3XY

FAO (Department or Officer): Jeremy Chambers, Director of Law & Governance

Fax number: N/A

Email: Jeremy.chambers@enfield.gov.uk

ORIGINAL LENDER

Signed by the **Secretary of State for Business, Energy and Industrial Strategy**

David Capper, Authorised Signatory

DocuSigned by:
David Capper
F8C69F0F48E44C8

Address:
Department of Business, Energy and Industrial Strategy, 1 Victoria Street, London, SW1H 0ET

FAO (Department or Officer): Daniel Osgood / HNIP team



AGENT

Signed by **Triple Point Investment Management LLP**)
acting by two designated members)

DocuSigned by:
Claire Ainsworth
97F2938E39844C2
Claire Ainsworth
(Designated Member) in their capacity as a director of Triple Point Holdings Limited, itself a designated member of Triple Point Investment Management LLP

DocuSigned by:
Michael Bayer
F7F094558FA04E6
Michael Bayer
(Designated Member) in their capacity as a designated member of Triple Point LLP, itself a designated member of Triple Point Investment Management LLP

Address:
1 King William Street, London, EC4N 7AF
FAO (Department or Officer): Ken Hunnisett

ACCOUNT TRUSTEE

Signed by **Triple Point Investment Management LLP**)
acting by two designated members)

DocuSigned by:
Claire Ainsworth
97E2538E39544C2
Claire Ainsworth
(Designated Member) in their capacity as a director of Triple Point Holdings Limited, itself a designated member of Triple Point Investment Management LLP

DocuSigned by:
Michael Bayer
F7F094558FA04E6
Michael Bayer
(Designated Member) in their capacity as a designated member of Triple Point LLP, itself a designated member of Triple Point Investment Management LLP

Address:
1 King William Street, London, EC4N 7AF
FAO (Department or Officer): Ken Hunnisett

**SCHEDULE 1****Project Description****CONTAINS SOME COMMERCIALY SENSITIVE INFORMATION****1.1 Project definitions**

Applicant Guidance	means the guidance issued to applicants, including any amendments from time to time) explaining the rules of the Heat Networks Investment Project and project and applicant eligibility for funding: https://www.gov.uk/government/publications/apply-for-heat-networks-investment-project-hnip-funding
Application	means the Borrower's final, submitted application for funding, together with any responses to clarifications during the assessment and award process dated 02/10/2020
Authority	means a London Borough Council
Availability Period	means the period commencing on the date of this Agreement to and including the last Business Day occurring before 31 March 2021
Borrower's Bank Account	Bank name – HSBC Bank Address - 1 The Town, Enfield, Middlesex. EN2 6LD Account Name – London Borough of Enfield Account Number – 81228307 Sort Code – 40-20-23 BIC – MIDLGB22 IBAN – GB88MIDL40202381228307
Commitment	means the sum of £11,859,000 in respect of the Financial Year 2020/21. Note that this is additional to any grant or loan funding advanced separately.
Conditions Satisfaction Date	means 19 March 2021.
Construction Budget	means £48,646,000 as set out in the "Capex" line item in paragraph 1.2 below.



Excluded Costs	means the following costs (except to the extent that a qualification set out below in the second column applies):	
	Costs	Qualifications
	(a) costs incurred by the Borrower before the date of the Application	None
	(b) costs met or subsidised by any other public funding or subsidy, including any other Loan or grant made under the Heat Networks Investment Project	None
	(c) costs relating to the construction of heat sources where the primary function of the heat source is not to supply the heat network (costs falling under this exclusion encompass: costs incurred in the construction of an energy from waste facility; and construction of manufacturing, industrial or other pieces of infrastructure from which heat is to be recovered)	None
(d) costs relating to secondary distribution systems in buildings	<p>the exclusion in paragraph (d) does not apply (subject to the restriction on Eligible Costs below) to the Borrower's costs (where forming part of the Borrower's Application and permitted by Subsidy Control Law) in:</p> <p>a) installing a secondary distribution system (such as a communal heating system) within the premises of an anchor load customer; and</p> <p>b) connecting that secondary distribution system to the heat network;</p> <p>where this qualification applies, the investment costs (for the purpose of Subsidy Control Law) are limited to such costs as the Borrower can demonstrate (to the Original Lender's satisfaction) exceed any costs in replacing an existing system or in upgrading that system to</p>	



		comply with buildings and/or planning regulations.
	(e) costs relating to tertiary systems	<p>the exclusion in paragraph (e) does not apply (subject to the restriction on Eligible Costs below) to the Borrower's costs (where forming part of the Borrower's Application and permitted by Subsidy Control Law) in installing a tertiary system and connecting it to the heat network, where all of the following conditions are met:</p> <p>a) the tertiary system is a wet system which is being installed for the first time to replace a heating or cooling system of another kind (such as to replace electric space heating);</p> <p>b) that system is situated in a property which is:</p> <ul style="list-style-type: none"> • part of an anchor load; and • an existing building which is (and remains) publicly owned and in exclusive use as a domestic dwelling(s); <p>c) the end users of that tertiary system are (and remain) domestic customers;</p> <p>where this qualification applies, the investment costs (for the purpose of Subsidy Control Law) are limited to such costs as the Borrower can demonstrate (to the Original Lender's satisfaction) exceed costs for like-for-like replacement of the existing heating system (such as where the existing heating system is electric space heating the Eligible Costs are limited to the difference in cost between installing a replacement electric space heating system and installing the tertiary wet system, assuming that the cost of installation of the tertiary wet system is more expensive).</p>
Final Maturity Date	means 25 years following the First Repayment Date.	



Fixed Rate	means 0.01%
Mandatory Requirements	<p>means the Heat Networks Investment Project mandatory eligibility criteria, as explained in the Applicant Guidance including, in particular:</p> <ul style="list-style-type: none"> a) the standards set out in (or standards equivalent to those set out in) <i>"Heat Networks: Code of Practice for the UK"</i>, published by the Chartered Institute of Building Services Engineers in collaboration with the Association for Decentralised Energy (CP1) must be used in the construction of the Project; b) the Project must comply with the requirements of the Heat Network Metering and Billing Regulations 2014 (as amended from time to time); c) the Project must avoid customer detriment to residential or micro-business consumers, and (where applicable) must either register the Project with the Heat Trust and comply with Heat Trust standards or must comply with at least equivalent standards; and d) over the first 15 years operation, the Project must deliver carbon savings (compared to the counter-factual set out in the Application) substantially in line with those projected in the Application.
Original Financial Statements	means in relation to the Borrower and, if applicable, any Investment Vehicle, its audited consolidated financial statements for the financial year ended 2019 (or 2020 if available)
Project	means the Enfield District Heating Networks Project (comprising the Meridian Water heat network and Satellite Scheme heat network extensions), as more particularly described in the Application Form



1.2 General

The Project is described by the key information set out in the table below and within the latest version of the Application provided by the Borrower. If the information in the table below differs from the information within the latest version of the Application the table below prevails.

General	
Project name	North and west strategic extensions to Meridian Water Heat Network
Project location	Edmonton EcoPark
Type of project (new / existing)	Existing
Narrative describing project including scope of works [300 words max]	
<p>To extend Energetik's Meridian Water heat network north and west with a total of ca. 18km of new pipe network which will provide over 100GWh of new heat demand, saving over 22,000 tonnes of carbon per annum. Energetik has identified and engaged with developers bringing four large scale developments forward, totalling a combined ca. 4,750 properties. Planning policy at local, regional and national level requires connection to heat networks where possible, and Energetik are keen and willing to connect to these developments in order to generate additional carbon savings in Enfield. A commitment is required now so as not miss the opportunity to connect and serve these significant developments in the Borough.</p> <p>In addition, extending to these four developments allows two significant existing developments to be connected to the Meridian Water Heat Network that are along the route of its extension, the North Middlesex Hospital and the Civic Centre. These two developments alone would save 5,000 tonnes of carbon per year when connected to the heat network and the heat network is connected to the NLWA energy from waste facility.</p> <p>A 20MW strategic connection to the London Boroughs of Haringey and Hackney is facilitated to allow these boroughs to benefit from energy from waste heat with heat being transferred from Energetik to the boroughs at cost without profit.</p> <p>Further, it has always been Energetik's goal to connect its 'satellite' schemes at Arnos Grove, Ponders End and Oakwood to the Meridian Water heat network, in order to decarbonise them by taking them off gas supply, and at the same time install infrastructure that can serve other developments along the routes, which includes care homes and up to 6,000 Council homes.</p>	
Commercial structure narrative including ownership structure % (i.e. public/private) [300 words max]	<p>Energetik is Enfield Council's 100% owned heat company and the delivery vehicle for its heat networks. Energetik are building and will own and operate the heat production plant, the heat network infrastructure and will be the supplier of heat to its customers.</p> <p>Enfield council has taken this decision in order to control the quality of its heat networks and ultimately the service that its customers receive. Furthermore, by delivering the heat networks via Energetik, the benefits derived as a</p>



	<p>result stay within the borough, therefore adding additional value to the council and Enfield residents.</p> <p>Whilst Energetik will be the owner/operator of the network and infrastructure assets, it will sub-contract the design, build and operation to industry experts. The design to planning part of the project has been let to Vital Energi, and was secured under an OJEU compliant procurement process for the design, build and operation (DBO) of Energetik's networks. The DBO contractor will retain overall network operation and maintenance responsibility, to ensure that the right quality is delivered from the outset. Energetik will supply heat to directly to end customers as the energy services company (ESCo). To do this, the company has procured a sub-contractor to undertake its customer service, metering and billing functions. They are already operational on Energetik's satellite scheme.</p> <p>Energetik will contract directly with developers via connection and supply agreements which will govern the heat supply obligations for all parties.</p>
Forecast Costs	
Commercialisation costs [£]	£0
Capex [£]	£48,646,000
Repex [£]	£15,476,200
Opex (aggregated figure over 15 years) [£]	£12,427
Quality of service to customers	
Heat Trust membership expected when the Project is operational (yes/no)	Yes
Long term carbon savings	
Narrative on carbon savings of future heat source options and phasing/expansion plans (As per section 7.4 of the full application guidance)	
<p>The Meridian Water Heat Network will operate on CHP and gas boilers until connection to the EFW in 2026. The heat supply agreement with the NLWA permits sufficient heat supply to meet Energetik's business plan with a supply capacity of 35MW. From 2026 it is forecast that at least 95% of the heat delivered to customers will be generated via the EFW, providing an 93% carbon reduction compared with the counterfactual.</p> <p>The Arnos Grove Heat Network is operating with CHP with gas boiler backup but this will be connected to the Meridian Water Heat Network via this Project, and so from 2026 it is forecast that at least 95% of the heat delivered to customers will be generated via the EFW, providing an 93% carbon reduction compared with the counterfactual.</p> <p>The Ponders End Heat Network and the Oakwood Heat Network will operate CHP with gas boiler backup from 2021, but this will be connected to the Meridian Water Heat Network via this Project, and so from 2026 it is forecast that at least 95% of the heat delivered to customers will be generated via the EFW, providing an 93% carbon reduction compared with the counterfactual</p> <p>Energetik has designed its Meridian Water Heat Network with capacity to serve at least 30,000 homes, and this Project will ensure that this additional number of connected homes is more attainable in addition to the 10,000 homes forecast at Meridian Water.</p>	



HNIP capital funding spend characteristics	
Type of funding to be provided by BEIS to the Recipient by year (loan/grant, fiscal/non-fiscal by year) subject always to the terms and requirements of this Agreement	Single-drawdown fiscal grant of £12,000,000 to be advanced as per Clauses 4 and 5 of this Agreement.
Expected loan repayment start date	N/A
Key Milestones	
Commercialisation phase	
Start of commercialisation phase [date]	N/A
Contract let dates for main Project delivery items i.e. key project delivery contractors, long lead items, etc. [for each key project delivery contract]	N/A
Licences & permits	
Planning permission [date]	By 31 st March 2022
Highway licenses (e.g. section 50, parking restriction permit, traffic arrangement, etc.) if applicable [dates]	Before installation of the relevant part of the network between 1 st April 2022 – 31 st March 2024
Environmental permits (e.g. Environmental Agency, Canal and River Trust, Coal Authority, etc.) if applicable [dates]	Before installation of the relevant part of the network between 1 st April 2022 – 31 st March 2024
Construction phase	
Start of construction contract [date] (" Construction Start Date ")	31/03/2022
Start on site [date]	1 st April 2022
Completion of energy centre(s) and heat source(s) [date for each energy centre/heat source]	31/12/2022
Completion of distribution network(s) [date for each network]	31/03/2024
Start of commissioning [date]	Phased from 30/06/23 – 31/03/24
Handover to operator [date]	31/03/2024
Operation and maintenance phase	
Heat supply on date [date for each customer]	Colosseum Retail Park – 30/06/23 Haringey – 31/03/26 North Middlesex Hospital – 31/03/25
Cooling supply on date [date for each customer]	N/A
Power supply on date [date for each customer]	N/A
End of defects liability period (final capex position) [date for each key project delivery contract]	31/03/25
Lifecycle works, expansions and upgrades	



Heat, cooling and/or power source(s) / energy centre(s) replacement, upgrade and/or addition (if planned) [date]	N/A
Heat/cooling/power distribution network replacement, upgrade and/or extension (if planned) [date]	N/A
Inter-connection to other heat, cooling and/or power distribution network (if planned) [date]	N/A
Customers	
Peak heat demand [kW]	60,000
Peak cooling demand [kW]	N/A
Peak power demand [kW]	N/A
Customer 1	Haringey / Hackney bulk supply
Customer 2	North Middlesex Hospital
Customer 3	Colosseum Retail Park
Customer 1	
Document name	Connection Agreement
Commercial/bulk customer name or retail/individual customer type/group	Haringey / Hackney bulk supply
Heat load type (i.e. bulk/commercial, individual/retail)	Commercial - (B1 - Business)
Number of individual customers (if applicable)	1
Contract start [date]	2026
Contract end [date]	
Heat demand at point of customer interface [kWh per year]	34,000,000
Cooling demand at point of customer interface [kWh per year]	N/A
Power demand at point of customer interface [kWh per year]	N/A
Price formula – Standing charge (Heat)	N/A
Price formula – Standing charge (Cooling)	N/A
Price formula – Standing charge (Power)	N/A
Price formula – Variable charge (Heat)	NLWA Heat Supply Agreement



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Price formula – Variable charge (Cooling)	N/A
Price formula – Variable charge (Power)	N/A
Price formula – Any other charges	N/A
Indexing arrangements	NLWA Heat Supply Agreement
Customer 2	
Document name	Connection Agreement
Commercial/bulk customer name or retail/individual customer type/group	North Middlesex Hospital
Heat load type (i.e. bulk/commercial, individual/retail)	Public Sector - (C2 - Schools, Hositals, Care Homes etc.)
Number of individual customers (if applicable)	1
Contract start [date]	2025
Contract end [date]	Not defined
Heat demand at point of customer interface [kWh per year]	14,000,000
Cooling demand at point of customer interface [kWh per year]	N/A
Power demand at point of customer interface [kWh per year]	N/A
Price formula – Standing charge (Heat)	To be defined
Price formula – Standing charge (Cooling)	N/A
Price formula – Standing charge (Power)	N/A
Price formula – Variable charge (Heat)	3 p/kWh
Price formula – Variable charge (Cooling)	N/A
Price formula – Variable charge (Power)	N/A
Price formula – Any other charges	N/A
Indexing arrangements	ONS CPI
Customer 3	
Document name	Connection Agreement
Commercial/bulk customer name or retail/individual customer type/group	Colosseum Retail Park
Heat load type (i.e. bulk/commercial, individual/retail)	Residential - (C4 - Multiple Tenancy Dwelling)
Number of individual customers (if applicable)	1700
Contract start [date]	30/06/23
Contract end [date]	40 year break clause
Heat demand at point of customer interface [kWh per year]	5,780,000



Cooling demand at point of customer interface [kWh per year]	N/A
Power demand at point of customer interface [kWh per year]	N/A
Price formula – Standing charge (Heat)	100.6 p/day per dwelling
Price formula – Standing charge (Cooling)	N/A
Price formula – Standing charge (Power)	N/A
Price formula – Variable charge (Heat)	4.1 p/kWh
Price formula – Variable charge (Cooling)	N/A
Price formula – Variable charge (Power)	N/A
Price formula – Any other charges	N/A
Indexing arrangements	ONS CPI
Capital funding structure	
Capital structure description [200 words max]	
Energetik receives funding via an equity investment and/or an onlending agreement from the London Borough of Enfield. The London Borough of Enfield receives low cost funding on behalf of Energetik in the form of grants and loans. Grants are passed on to Energetik as an equity investment and loans are passed on to Energetik at an onlending rate that ensures Energetik is state aid compliant	
Capital funding source 1	
Provider name	HNIP
Type of facility	Grant & Loan
Amount [£]	£12,000,000 and £11,859,000
Conditions	Max 50% with match funding
Use(s)	For the Project
Agreement date [date]	Forecast by 19/03/21
Capital funding source 2	
Provider name	Local Authority Public Works Loan Board (PWLB)
Type of facility	Loan
Amount [£]	£24,787,000
Conditions	Standard PWLB
Use(s)	For the Project
Agreement date [date]	Forecast by 30/06/21
Capital funding source 3	
Provider name	N/A
Type of facility	N/A



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Amount [£]	N/A
Conditions	N/A
Use(s)	N/A
Agreement date [date]	N/A

Key project delivery contracts (construction, operation and maintenance)	
Description of procurement route of contractors/partners (i.e. negotiated contract; design, build, maintain and operate; etc.)	4) Integrated Design, Build Operations and Maintenance (DBOM) contract. Vital Energi have been procured by Energetik (executed 29 March 2019) via a full OJEU tender process to design, build operate and maintain the energy centre and heat network. Following a successful tender and evaluation process, Vital Energi were awarded the DBOM contract
Key project delivery contract 1	
Provider	Vital Energi
Scope of contract [100 words max]	To design, build and operate Energetik's MWHN and extend Energetik's three existing heat networks (Satellite Schemes)
Value of contract [£]	Forecast in excess of £50,000,000
Contract start and end [date]	29th March 2017 – 29th March 2032

Energy sources	
Technology 1	
Technology type	Heating
Technology (inc. fuel)	Heat from EfW [Industrial Heat]
Thermal capacity [kW]	35,000
Cooling capacity [kW]	N/A
Electrical capacity [kW]	N/A
Installation date [date]	2026
Number of years until technology is replaced (UEL)	60
Technology 2	
Technology type	Heating



Technology (inc. fuel)	Boiler - Type 1 [Natural Gas]
Thermal capacity [kW]	20,000
Cooling capacity [kW]	N/A
Electrical capacity [kW]	N/A
Installation date [date]	
Number of years until technology is replaced (UEL)	25
Technology 3	
Technology type	N/A
Technology (inc. fuel)	N/A
Thermal capacity [kW]	N/A
Cooling capacity [kW]	N/A
Electrical capacity [kW]	N/A
Installation date [date]	N/A
Number of years until technology is replaced (UEL)	N/A

Heat distribution network	
Type of network	Heating
Existing heat distribution network	
Existing length of heat distribution network [km]	8.5
Existing heat distribution network hot water/steam flow/return temperature [Celsius degree]	90/55
Existing primary heat system/network heat losses [% of energy supplied to network]	Forecast at 5%
Existing secondary heat systems/network heat losses [% of energy supplied to network]	Forecast at 18%
New heat distribution network	
New length of heat distribution network [km]	18.43
New heat distribution network hot water/steam flow/return temperature [Celsius degree]	90/55
New primary heat system/network heat losses [% of energy supplied to network]	Forecast at 5%
New secondary heat systems/network heat losses [% of energy supplied to network]	Forecast at 18%
Cooling distribution network	
Existing cooling distribution network	
Existing length of cooling distribution network [m]	N/A
Existing cooling distribution network water flow/return temperature [Celsius degree]	N/A



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Existing primary cooling system/network heat losses [% of energy supplied to network]	N/A
Existing secondary cooling systems/network heat losses [% of energy supplied to network]	N/A
New cooling distribution network	
New length of cooling distribution network [km]	N/A
New cooling distribution network hot water/steam flow/return temperature [Celsius degree]	N/A
New primary cooling system/network heat losses [% of energy supplied to network]	N/A
New secondary systems/network heat losses [% of energy supplied to network]	N/A
Private wire	
Private wire 1	
From power source [power source name]	N/A
To customer [customer name]	N/A
	N/A
	N/A
Trench length [km]	N/A
Capacity [kW]	N/A



SCHEDULE 2

Conditions Precedent

PART 1 – CONDITIONS TO AWARD

1. Evidence to the satisfaction of the Lender that all Conditions Precedent set out in Part 1 of Schedule 2 to the Grant Funding Agreement entered into with the Borrower (as Recipient) on or about the date of this Agreement (the "GFA") have been satisfied.
2. **No Default / other**
 - 2.1. Borrower confirmation (to the satisfaction of the Lender) that no Default under this Agreement is continuing or would result from entry into this Agreement.
 - 2.2. Borrower confirmation (to the satisfaction of the Loan) that all representations in this Agreement are true and correct.
 - 2.3. Any other evidence as may be required by the Lender.

PART 2 – CONDITIONS PRECEDENT TO LOAN UTILISATIONS

1. Borrower confirmation (to the satisfaction of the Lender) that, on the proposed day of disbursing any Loan amounts from the Trust Account, all conditions set out in Part 1 above have been discharged and remain true, complete and correct and in full force and effect, and do not require updating to take account of any events or circumstances that have taken place since such evidence or documentation was first provided.
2. The Utilisation Request has been submitted not earlier than 6.4.2020 and not later than 19.3.2021.
3. **Project-specific conditions**
 - 3.1. Evidence to the satisfaction of the Lender that all Conditions Precedent set out in Part 2 of Schedule 2 to the GFA have been met.
 - 3.2. Entry into a "match funding agreement" with MEEF, to regulate intercreditor position (only applicable if MEEF is a lender or investor in relation to the Project).
 - 3.3. All Finance Documents have been executed by the Borrower.
 - 3.4. Receipt of evidence (to the satisfaction of the Agent) of commitment to spend the Loan over the following 12 months.
4. **No Default / other**
 - 4.1. Borrower confirmation (to the satisfaction of the Lender) that no Default under this Agreement is continuing or would result from the proposed Loan.
 - 4.2. Borrower confirmation (to the satisfaction of the Loan) that all representations in this Agreement are true and correct.
 - 4.3. Any other evidence as may be required by the Lender.
 - 4.4. There is no default or accelerated repayment event (howsoever defined) outstanding under any 2020 Funding Agreement.



PART 3 – CONDITIONS SUBSEQUENT

- 1.1. Ensure compliance with the requirements of the Electricity Act 1989, including that any electricity supplies made by the Project are licensed under that Act or are exempt from the requirement to hold a licence under the Electricity Act (Class Exemption from the Requirement for a Licence) Order 2001.
- 1.2. Ensure that all Project Agreements entered into are consistent with the Application and the Mandatory Requirements.
- 1.3. Ensure that all agreements for the sale of heat by the Project (including connection fees and heat tariffs) are consistent with the Application and the Mandatory Requirements.
- 1.4. Ensure that all property rights necessary for the construction and operation of the energy distribution network and/or the energy centre have been obtained, prior to commencement of relevant construction works, on terms that are consistent with the Application and the Mandatory Requirements (and in any case not later than 30.4.2022).
- 1.5. Ensure that all planning permissions and other consents and authorisations required for the construction and operation of the energy distribution network and the energy centre have been obtained, prior to commencement of relevant works, on terms that are consistent with the Application and the Mandatory Requirements and that such permissions, consents and authorisations are complied with (and in any case not later than 30.4.2022).
- 1.6. Ensure that all relevant agreements and approvals are obtained, maintained and are complied with for the connection and supply of all relevant utilities including gas, electricity, water and telecoms) to the Project (and, where relevant, for the export of electricity from the Project) on terms that are consistent with the Application and the Mandatory Requirements.
- 1.7. Ensure that all agreements for the purchase of heat by the Project (including in respect of fees and tariffs payable) are consistent with the Application and the Mandatory Requirements.
- 1.8. Any documents that were accepted by the Lender in "settled form" (or any other form which was not fully signed, dated and effective) for the purposes of Parts 1-2 above, must be delivered in fully signed, dated and effective form within a reasonable period of time for such document (and must be in the form approved by the Lender before such document was signed).
- 1.9. Conditions Subsequent 1.9 - 1.11 of the GFA are satisfied by their respective deadlines.
- 1.10. No later than 31.3.2022, evidence (to the satisfaction of the Lender) that the Loan has been spent.



SCHEDULE 3

Utilisation Request

[NOTE: BORROWER TO PULL OUT AND POPULATE THIS TEMPLATE.]

From: [Borrower]

To: Triple Point Investment Management LLP (as Agent)

Dated:

Dear Sirs

[Borrower] – [] Facility Agreement

dated [] (the **Agreement**)

1 We refer to the Agreement. This is a Utilisation Request. Terms defined in the Agreement have the same meaning in this Utilisation Request unless given a different meaning in this Utilisation Request.

2 We wish to borrow the Loan on the following terms:

Proposed Utilisation Date: [] (or, if that is not a Business Day, the next Business Day)

Amount: [] or, if less, the Available Facility

Interest Period: []

3 We confirm that:

3.1 the Loan requested will be used only for an Approved Purpose;

3.2 to the best of our knowledge and belief:

- (a) each condition specified in Clause 4.1 (*Initial conditions precedent*) and Clause 4.2 (*Further conditions precedent*) is satisfied on the date of this Utilisation Request and the Agent has received all of the documents and evidence listed in Schedule 2 (*Conditions Precedent*) that are applicable to this Utilisation Request;
- (b) the representations given in Clause 15 of the Agreement are true and correct in all respects;
- (c) no Default is continuing or would result from the proposed Loan;
- (d) all undertakings set out in this Agreement have been complied with as at the date hereof;
- (e) no Material Adverse Change has occurred;
- (f) all Construction Costs detailed in this Utilisation Request are either Relevant Eligible Costs or Future Eligible Costs (each as defined in clause 5.2.2 of the Agreement);



- (g) there is no default or accelerated repayment event (howsoever defined) outstanding under any 2020 Funding Agreement;
 - (h) the Project complies with Subsidy Control Law;
 - (i) the Completion Date is reasonably likely to occur before the Longstop Date, as confirmed by the certificate appended at Annex 1;
- 3.3 [the following milestone has been reached: [INSERT DETAILS AS APPLICABLE / IF ANY], as confirmed by the evidence set out in Annex 2;]
- 3.4 [the Construction Costs detailed in this Utilisation Request:
- (a) have become due and payable[, as evidenced by the invoices appended at Annex 2];
 - (b) are in accordance with the Construction Budget;
 - (c) need to be paid in order for the Project to proceed and cannot be (and will not be) funded or reimbursed from other sources (including any other facility agreement or memorandum of understanding relating to the Heat Networks Investment Project)]
- 3.5 [the amount of this Utilisation Request and all previous Utilisation Requests are set out accurately in the utilisation spreadsheet set out in Annex 3.]
- 1 The proceeds of the Loan should be credited to the bank account as set out in Schedule 1 of the Agreement[, or such other bank account as noted here and agreed to by the Agent in advance *[insert bank account details if required]*].
- 2 Further to clause 5.2.1 of the Agreement:
- 2.1 the purpose of the proposed Loan is to [insert details / attach evidence if needed];
 - 2.2 the total anticipated Eligible Costs of the Project as at today's date are: [insert details / attach evidence if needed.]
- 3 **[delete if n/a]** Further to clause 5.2.2(a) of the Agreement:
- 3.1 we note that this Utilisation Request relates to Relevant Eligible Costs;
 - 3.2 the details of such Relevant Eligible Costs are as evidenced by the documentation appended at Annex 2 (append invoices or other evidence of the total costs and expenses of the Project, including a breakdown of which costs and expenses constitute Eligible Costs and specifying details of the Relevant Eligible Costs to be funded using the Loan);
- 4 **[delete if n/a]** Further to clause 5.2.2(b) of the Agreement:
- 4.1 we note that this Utilisation Request relates to Future Eligible Costs;
 - 4.2 the details of such Future Eligible Costs are as evidenced by the documentation appended at Annex 2 (append invoices or other evidence of the total costs and expenses of the Project, including a breakdown of which costs and expenses constitute Eligible Costs and specifying details of the Future Eligible Costs to be funded using the Loan); and
 - 4.3 the Borrower will comply with the provisions of clause 5.2.3 of the Agreement, in relation to such Future Eligible Costs.



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- 5 **[delete if n/a]** Further to clause 5.2.4 of the Agreement:
- 5.1 we note that this Utilisation Request relates to Future Eligible Costs;
- 5.2 the details of such Future Eligible Costs are as evidenced by the documentation appended at Annex 2 (append invoices or other evidence of the total costs and expenses of the Project, including a breakdown of which costs and expenses constitute Eligible Costs and specifying details of the Future Eligible Costs to be funded using the Loan); and
- 4 the Borrower will comply with the provisions of clause 5.2.4 of the Agreement, in relation to such Future Eligible Costs.
- 5 This Utilisation Request is irrevocable.

Yours faithfully

.....

authorised signatory for

[name of relevant Borrower]



Annex 1 – Engineers confirmation on progress towards Completion Date

[COMPLETION DATE CERTIFICATE]

From: [Borrower's engineer/technical advisor]

To: [Agent]

Dated:

Dear Sirs

[Borrower] – [] Facility Agreement

dated [] (the **Agreement**)

- 1 We refer to the Agreement. Terms defined in the Agreement have the same meaning in this certificate unless given a different meaning in this certificate.
- 2 We confirm that:
 - (a) milestone [INSERT AS APPLICABLE / IF ANY] has been reached;
 - (b) to the best of our knowledge and belief, based on progress to date, the Completion Date is reasonably likely to occur before the Longstop Date.

Yours faithfully

.....

authorised signatory for

[name of relevant engineer/technical advisor]

Annex 2 – Invoices or other evidence supporting milestone

Annex 3 – Utilisation spreadsheet



SCHEDULE 4

Project Monitoring Reports

The Borrower must report in accordance with the HNIP Monitoring & Reporting Guidance, as published from time to time on the Department for Business, Energy and Industrial Strategy website:

<https://www.gov.uk/government/publications/hnip-monitoring-and-reporting-guidance-and-templates>

This includes:

1 CONSTRUCTION

MONTHLY REPORT (CONSTRUCTION)

<https://www.gov.uk/government/publications/hnip-monitoring-and-reporting-guidance-and-templates> to be submitted to the Agent on the 5th Business Day of each calendar month, and sent to: reporting@tp-heatnetworks.org or such other address as indicated by the Agent and to include invoices or other evidence of the total costs and expenses of the Project incurred by the Borrower prior to the date of delivery of such invoices or other evidence, including a breakdown of which costs and expenses constitute Eligible Costs and specifying which Future Eligible Costs were funded using the Loan (noting the terms of Clause 5.2).

2 OPERATIONS

"MONTHLY / QUARTERLY REPORT (OPERATIONS)"

<https://www.gov.uk/government/publications/hnip-monitoring-and-reporting-guidance-and-templates> to be submitted to the Agent monthly in the agreed short form, and quarterly in the agreed long form, and sent to: reporting@tp-heatnetworks.org or such other address as indicated by the Agent.

In each case, the Agent may, in its discretion, require such additional information to be reported on as it considers appropriate for the purpose of proper management of this Agreement or of the Heat Networks Investment Programme or as required by the Department of Business, Energy and Industrial Strategy.



SCHEDULE 5

Subsidy Control

The Borrower shall comply with all relevant Subsidy Control Law.

The Parties agree to update this Schedule 5 when reasonably requested by the Lender, to reflect the requirements of all relevant Subsidy Control Law.

Such update shall set out a level of detail commensurate with the granularity set out in schedule 5 of the 2020 Loan Agreement.



SCHEDULE 6

Continuing Obligations

DEED OF AGREEMENT

between

SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY

and

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD

**relating to a Facility Agreement
(Enfield District Heating Networks Project
(North and West Extensions))**



THIS DEED OF AGREEMENT ("Deed") is dated _____ **and made between:**

- (1) **SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY ("Original Lender");** and
- (2) **THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF ENFIELD**, a local authority having its registered address at Civic Centre, Silver Street, London, United Kingdom, EN1 3XD (the "**Borrower**").

Background:

- (A) The parties entered into a facility agreement dated on or about the date hereof, pursuant to which the Original Lender made available a loan facility to the Borrower (the "**Facility Agreement**").
- (B) As a condition of the Original Lender agreeing to make certain loans available to the Borrower pursuant to the Facility agreement the Borrower agreed to enter into this Deed so that certain obligations on the Borrower under the Facility Agreement expressed to survive termination would continue to be performed by the Borrower notwithstanding that all loans and amounts outstanding under the Facility Agreement have been fully repaid and the Borrower is fully released from all its covenants, liabilities and obligations under the Facility Agreement.

IT IS HEREBY AGREED as follows:

1 INTERPRETATION

In this Deed words and expressions defined in and rules of interpretation set out in the Facility Agreement shall have the same meaning and effect when used in this Deed except where the context requires otherwise.

2 EFFECTIVE DATE AND TERM

This Deed shall have effect from the date hereof and shall remain in effect until the later of (i) the Final Maturity Date and (ii) 23:59 hours on 30 April 2033 ("**Expiry Date**").

3 ONGOING OBLIGATIONS

In accordance with the terms of this Deed, the following clauses of the Facility Agreement shall survive termination of the Facility Agreement until the Expiry Date:

- (a) Clause 16.4 (Monitoring reports);
- (b) Clause 16.7 (Information: additional);
- (c) Clause 16.8 (Notification of default);
- (d) Clause 16.9 (Record keeping);
- (e) Clause 16.10 (Access);
- (f) Clause 17.2 (Compliance with laws);
- (g) Clause 17.4 (Use of Loan Proceeds); and



- (h) Clause 17.7 (Mandatory Requirements).
- (i) Clause 17.9 (Conditions Subsequent) and the related Part 3 of Schedule 2.

4 EFFECT OF THIS DEED ON THE FACILITY AGREEMENT

The parties agree that the clauses in the Facility Agreement expressed as surviving termination shall remain in full force and effect in accordance with the terms of the Facility Agreement, and with effect from and including the date hereof until the Expiry Date, all references in the Facility Agreement to the "Agreement", "herein", "hereof", "hereunder" and other similar expressions shall, unless the context requires otherwise, be read and construed as a reference to the Facility Agreement as supplemented by this Deed.

5 RIGHTS OF THE ORIGINAL LENDER

Without prejudice to:

- (a) any other express right of the Original Lender pursuant to the Facility Agreement;
- (b) any remedy that the Original Lender may have at law, in equity or in statute including the right to seek injunctive relief or a decree of specific performance or other discretionary remedies of the court,
- (c) in respect of any breach by the Borrower of this Deed, the Original Lender shall have the right to instruct a third party to carry out any rectification of such failure and to seek reimbursement from the Borrower as a debt due immediately upon demand for such costs incurred in doing so.

6 GOVERNING LAW AND JURISDICTION

- 6.1 This Deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.
- 6.2 Each party irrevocably agrees that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation. Nothing in this clause shall limit the right of the Lender to take proceedings against the Company in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

7 THIRD PARTY RIGHTS

No person who is not a party to this Deed shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

8 COSTS

Each party shall bear their own costs in connection with the execution of this Deed.



9 FURTHER ASSURANCE

The Borrower shall, at its own cost, at the request of the Original Lender, promptly execute and deliver such documents and perform all such acts as may be reasonably required to give full effect to the terms of this Deed.

10 COUNTERPARTS

This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original, but all the counterparts shall together constitute one and the same instrument.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **SECRETARY OF STATE FOR BUSINESS ENERGY AND INDUSTRIAL STRATEGY** acting by

in the presence of:

.....

David Capper, Authorised signatory

Name of Witness: Penny Pereira

Signature of Witness:

Address of Witness:

Occupation of Witness:

The Common Seal of The Mayor and Burgesses of the London Borough of Enfield was hereunto affixed in the presence of:-

.....

Authorised signatory

**SCHEDULE 7****Initial Repayment Schedule**

From the Utilisation Date until the First Repayment Date, Interest Payments are to be made semi-annually on 30 June and 31 December.

From the First Repayment Date until the Final Maturity Date both Interest and Principal payments are to be paid.

The Principal amounts and corresponding payment dates are outlined in the schedule below.

Drawdown date assumed as 31/03/2021 (Final date able to drawdown this year, to be adjusted for actual drawdown date, therefore interest if before this date will increase slightly).

First repayment date assumed as 30/06/2024 as first date post current heat on date per application of 31/03/2024 and as per first repayment in financial model. To be updated should Borrower specify otherwise.

Repayment Date	Repayment Date Adjusted for business days	Principal Repayment	Interest repayment
30-Jun-21	30-Jun-21	£0.00	£298.91
31-Dec-21	31-Dec-21	£0.00	£597.82
30-Jun-22	30-Jun-22	£0.00	£588.08
31-Dec-22	30-Dec-22	£0.00	£594.57
30-Jun-23	30-Jun-23	£0.00	£591.33
31-Dec-23	29-Dec-23	£0.00	£591.33
30-Jun-24	28-Jun-24	£232,239.67	£591.33
31-Dec-24	31-Dec-24	£232,245.01	£592.49
30-Jun-25	30-Jun-25	£232,264.49	£565.04
31-Dec-25	31-Dec-25	£232,271.52	£562.70
30-Jun-26	30-Jun-26	£232,287.62	£542.01
31-Dec-26	31-Dec-26	£232,294.84	£539.28
30-Jun-27	30-Jun-27	£232,310.75	£518.97
31-Dec-27	31-Dec-27	£232,318.17	£515.86
30-Jun-28	30-Jun-28	£232,332.55	£498.67
31-Dec-28	29-Dec-28	£232,344.14	£487.08
30-Jun-29	29-Jun-29	£232,355.72	£475.50
31-Dec-29	31-Dec-29	£232,363.58	£471.56
30-Jun-30	28-Jun-30	£232,382.62	£444.87
31-Dec-30	31-Dec-30	£232,385.77	£450.43
30-Jun-31	30-Jun-31	£232,403.34	£426.79
31-Dec-31	31-Dec-31	£232,411.52	£422.15



30-Jun-32	30-Jun-32	£232,425.41	£405.97
31-Dec-32	31-Dec-32	£232,434.89	£398.72
30-Jun-33	30-Jun-33	£232,449.67	£380.69
31-Dec-33	30-Dec-33	£232,459.22	£373.24
30-Jun-34	30-Jun-34	£232,471.83	£359.61
31-Dec-34	29-Dec-34	£232,483.42	£348.02
30-Jun-35	29-Jun-35	£232,495.01	£336.43
31-Dec-35	31-Dec-35	£232,504.03	£330.19
30-Jun-36	30-Jun-36	£232,518.30	£313.24
31-Dec-36	31-Dec-36	£232,528.30	£304.96
30-Jun-37	30-Jun-37	£232,542.31	£288.46
31-Dec-37	31-Dec-37	£232,551.65	£281.52
30-Jun-38	30-Jun-38	£232,565.47	£265.40
31-Dec-38	31-Dec-38	£232,575.00	£258.07
30-Jun-39	30-Jun-39	£232,588.63	£242.33
31-Dec-39	30-Dec-39	£232,598.96	£233.35
30-Jun-40	29-Jun-40	£232,611.19	£220.47
31-Dec-40	31-Dec-40	£232,621.17	£212.32
30-Jun-41	28-Jun-41	£232,636.02	£194.02
31-Dec-41	31-Dec-41	£232,644.08	£189.76
30-Jun-42	30-Jun-42	£232,658.16	£173.12
31-Dec-42	31-Dec-42	£232,668.46	£164.26
30-Jun-43	30-Jun-43	£232,681.33	£150.04
31-Dec-43	31-Dec-43	£232,691.82	£140.80
30-Jun-44	30-Jun-44	£232,704.19	£127.67
31-Dec-44	30-Dec-44	£232,715.51	£116.70
30-Jun-45	30-Jun-45	£232,727.43	£104.46
31-Dec-45	29-Dec-45	£232,739.03	£92.86
30-Jun-46	29-Jun-46	£232,750.64	£81.25
31-Dec-46	31-Dec-46	£232,761.77	£70.79
30-Jun-47	28-Jun-47	£232,774.33	£57.08
31-Dec-47	31-Dec-47	£232,785.07	£47.45
30-Jun-48	30-Jun-48	£232,797.19	£34.83
31-Dec-48	31-Dec-48	£232,808.74	£23.47
30-Jun-49	30-Jun-49	£232,820.47	£11.55