

The UK Department for Energy Security and Net Zero

and

The Mayor and Burgesses of the London Borough of Brent

## **s.31 MEMORANDUM OF UNDERSTANDING**

**for the Green Heat Network Fund (GHNF)  
MAIN Scheme**

relating to Commercialisation and Construction grant funding

for the financial year (s) 2023-24 to 2024-25

for the South Kilburn District Heating Network Project

(GHNF application number GHNF\_020)

1. INTRODUCTION.....	1
2. DEFINITIONS AND INTERPRETATION.....	2
3. DURATION AND PURPOSE OF THE GRANT.....	10
4. PAYMENT OF GRANT.....	11
5. ELIGIBLE AND INELIGIBLE EXPENDITURE.....	14
6. EARLY WORKS.....	16
7. MONITORING AND REPORTING.....	16
8. AUDITING AND ASSURANCE.....	18
9. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY.....	19
10. CONFLICTS OF INTEREST.....	20
11. CONFIDENTIALITY.....	20
12. TRANSPARENCY.....	21
13. STATUTORY DUTIES.....	21
14. DATA PROTECTION AND PUBLIC PROCUREMENT.....	21
15. SUBSIDIES.....	22
16. INTELLECTUAL PROPERTY RIGHTS.....	22
17. ENVIRONMENTAL REQUIREMENTS.....	23
18. ASSETS.....	23
19. INSURANCE.....	24
20. ASSIGNMENT.....	25
21. SPENDING CONTROLS – MARKETING AND ADVERTISING.....	25
22. LOSSES, GIFTS AND SPECIAL PAYMENTS.....	25
23. BORROWING AND ON-FUNDING.....	25
24. PUBLICITY.....	27
25. CHANGES TO THE AUTHORITY’S REQUIREMENTS.....	27
26. CLAWBACK, EVENTS OF DEFAULT AND TERMINATION.....	28
27. DISPUTE RESOLUTION.....	36
28. LIMITATION OF LIABILITY.....	36

<b>29. WARRANTIES.....</b>	<b>36</b>
<b>30. VAT.....</b>	<b>37</b>
<b>31. CODE OF CONDUCT FOR GRANT RECIPIENTS .....</b>	<b>37</b>
<b>32. NOTICES .....</b>	<b>38</b>
<b>33. GOVERNING LAW .....</b>	<b>38</b>
<b>34. VARIATIONS .....</b>	<b>38</b>
<b>35. STATUS.....</b>	<b>38</b>
<b>36. THIRD PARTY RIGHTS.....</b>	<b>39</b>
<b>ANNEX 1: SUCCESSFUL NOTIFICATION LETTER.....</b>	<b>41</b>
<b>ANNEX 2: FUNDED ACTIVITIES .....</b>	<b>42</b>
<b>ANNEX 3: PAYMENT SCHEDULE.....</b>	<b>46</b>
<b>ANNEX 4: GHNF SUPPLIER INFORMATION FORM .....</b>	<b>47</b>
<b>ANNEX 5: STATUS REPORT TEMPLATE .....</b>	<b>49</b>
<b>ANNEX 6: MILESTONES .....</b>	<b>50</b>
<b>ANNEX 7: CONTACT DETAILS.....</b>	<b>52</b>
<b>ANNEX 8: CONDITIONS TO AWARD.....</b>	<b>53</b>

**This Memorandum of Understanding (MoU) is made on**

**Between:**

- (1) **Secretary of State for Energy Security and Net Zero**, whose principal address is at 1 Victoria St, Westminster, London SW1H 0ET (the “**Authority**”).
- (2) **The Mayor and Burgesses of the London Borough of Brent**, whose principal address is at Brent Civic Centre Engineers Way Wembley London London HA9 0FJ (the “**Grant Recipient**”).

**In relation to:**

**Project Name: South Kilburn District Heating Network**

**Project Number: GHNF\_020**

## **BACKGROUND**

- A The Grant is made pursuant to Section 31 of the Local Government Act 2003. If the payment of the Grant is subject to the satisfaction of conditions, those conditions precedent and the date for satisfaction are set out in Annex 8: Conditions to Award.
- B The Authority administers a process for grant applications in respect of the Green Heat Network Fund (GHNF).
- C The Grant Recipient was successful under that application process and the Authority awarded it a grant to deliver the Agreed Heat Network Project (subject to the conditions set out in Annex 8: Conditions to Award).
- D The Authority will provide the Grant to the Grant Recipient on the terms of this MoU.
- E The Grant Recipient will use the Grant solely for the Funded Activities.

The terms of this MoU are as follows:

### **1. INTRODUCTION**

- 1.1 This MoU sets out the conditions which apply to the Grant Recipient receiving the Grant from the Authority up to the Maximum Sum.
- 1.2 The Authority and the Grant Recipient have agreed that the Authority will provide the Grant up to the Maximum Sum as long as the Grant Recipient uses the Grant in accordance with this MoU.

- 1.3 The Authority makes the Grant to the Grant Recipient on the basis of the Grant Recipient's Grant Application for the provision of the Agreed Heat Network Project.
- 1.4 The Parties confirm that: (i) this MoU arises solely pursuant to the exercise of a statutory power by the Authority; and (ii) in entering into this MoU the Parties do not intend to create legal contractual relations.

## 2. DEFINITIONS AND INTERPRETATION

- 2.1 Where they appear in this MoU:

**Agreed Heat Network Project** means the scope of work that the Department for Energy Security and Net Zero has agreed to support through the grant funding covered by this MoU, a summary of which is set out in the Table 2.1 in Annex 2: Funded Activities, with further detail as recorded in the Grant Application;

**Annex** means the annexes attached to this MoU, which form part of the MoU;

**Application Round** means a defined period of time during which the GHNf is open to receiving grant applications;

**Bribery Act** means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning this legislation;

**Change of Control** means the sale of all or substantially all the assets of a Party; any merger, consolidation or acquisition of a person with, by or into another corporation, entity or person, or any change in the ownership of more than fifty percent (50%) of the voting capital stock of a person in one or more related transactions;

**Code of Conduct** means the Code of Conduct for Recipients of Government General Grants published by the Cabinet Office in November 2018 which is available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/754555/2018-11-06\\_Code\\_of\\_Conduct\\_for\\_Grant\\_Recipients.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/754555/2018-11-06_Code_of_Conduct_for_Grant_Recipients.pdf), including any subsequent updates from time to time;

**Commencement Date** means the date on which the MoU comes into effect, being the date hereof;

**Commercial Operations** has the meaning given to it in Annex 2: Funded Activities.

**Conditions Satisfaction Date** means the date by which the initial conditions for funding must be satisfied in accordance with Paragraph 4.8 and being the date identified as such in Annex 8: Conditions to Award;

**Confidential Information** means any information (however conveyed, recorded or preserved) disclosed by a Party or its personnel to another Party (and/or that Party's personnel) whether before or after the date of the MoU, including but not limited to:

- (a) any information that ought reasonably to be considered to be confidential (whether or not it is so marked) relating to:
  - (i) the business, affairs, customers, clients, suppliers or plans of the disclosing Party; and
  - (ii) the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing Party;
- (b) any information developed by the Parties in the course of delivering the Funded Activities;
- (c) any Personal Data supplied for the purposes of, or in connection with, the MoU by the Authority to the Grant Recipient; or
- (d) any information derived from any of the above.

Confidential Information shall not include information which:

- (a) was public knowledge at the time of disclosure (otherwise than by breach of Paragraph 11 of this MoU);
- (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (c) is received from a Third Party (who lawfully acquired it) without restriction as to its disclosure; or
- (d) is independently developed without access to the Confidential Information.

**Contracting Authority** means any contracting authority (other than the Authority) as defined in regulation 2 of the Public Contracts Regulations 2015 (as amended);

**Credit Support** means a parent company guarantee, bank guarantee, letter of credit or other such on-demand financial instrument issued by a party acceptable to the Authority (acting reasonably) in favour of the Authority, to support the obligations of the Grant Recipient under this MoU;

**Crown Body** means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and

particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

**Data Protection Legislation** means all applicable Law relating to the processing of Personal Data and privacy, including (i) the GDPR; (ii) the Data Protection Act 2018 to the extent that it relates to the processing of Personal Data and privacy;

**Delivery Partner** means Triple Point Investment Management LLP, a limited liability partnership registered in England and Wales, with registration number OC321250, having its registered office at 1 King William Street, London, United Kingdom, EC4N 7AF;

**Domestic Law** means an applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation which replaces EU law as a consequence of the UK leaving the European Union;

**Duplicate Funding** means funding provided by a Third Party to the Grant Recipient, which is for the same service or product for which the Grant was made and is not Match Funding approved by the Authority;

**Early Works** has the meaning given to it in Annex 2 – Funded Activities (if any);

**EIR** means the Environmental Information Regulations 2004;

**Eligibility Criteria** mean the Authority's selection criteria used for the Application Round in which the Grant Recipient's Grant Application was successful, to determine who should be allowed to be grant recipients including the Grant Recipient, and which Projects should be allowed to receive GHNF grants including the Agreed Heat Network Project (including, without limitation, the requirement that the Grant must not have financed more than 50% of Eligible Expenditure by the date falling 5 years after Commercial Operations have commenced);

**Eligible Expenditure** means the expenditure incurred by the Grant Recipient during the Funding Period for the purposes of delivering the Funded Activities which comply in all respects with the eligibility rules set out in paragraph 5 of this MoU;

**Evaluation Activities** are data collection activities delivered by a Third Party to the Authority.

**Event of Default** means an event or circumstance set out in paragraph 26.1;

**Financial Year** means the period running from 1 April to 31 March;

**FOIA** means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Funded Activities** means the activities set out in Annex 2: Funded Activities;

**Funded Activities Start Date** means date on which Funded Activities will commence, as indicated by the Grant Recipient in its Grant Application and also set out in Annex 2: Funded Activities;

**Funding Period** means the period for which the Grant is awarded, as further set out at Paragraph 3.1 and at Annex 3: Payment Schedule;

**GHNF** means the main scheme of the Green Heat Network Fund, which is a £288 million capital grant funding project of the Secretary of State for Energy Security and Net Zero to provide support by way of commercialisation and construction grants for low carbon heat network projects in England;

**GHNF Guidance for Applicants** means publicly available Application Round-specific guidance document issued by the Authority for all applicants applying to the GHNF through a given Application Round;

**General Data Protection Regulation** and **GDPR** means the General Data Protection Regulation (EU) 2016/679;

**Grant** means the sum or sums the Authority will pay to the Grant Recipient in accordance with paragraph 4 and subject to the provisions set out at paragraph 26;

**Grant Application** means the final application form and accompanying documentation of (or on behalf of) the Grant Recipient that was submitted to the Green Heat Network Fund grant support programme and approved on the Grant Application Approval Date;

**Grant Application Approval Date** means the date on which the Grant Application was approved by the Authority, being the date of the Successful Notification Letter;

**Grant Claim** means the payment request made via a Status Report submitted by the Grant Recipient to the Authority for payment of the Grant;

**Grant Manager** means the individual who has been nominated by the Authority to be the single point of contact for the Grant Recipient in relation to the Grant;

**HRA** means the Human Rights Act 1998 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;

**Ineligible Expenditure** means expenditure incurred by the Grant Recipient which is not Eligible Expenditure and as set out in paragraph 5 of this MoU;

**Information Acts** means the Data Protection Legislation, FOIA and the EIR, as amended from time to time;

**IP Completion Day** has the meaning given to it in the European Union (Withdrawal) Act 2018;



**IPR Material** means all material produced by the Grant Recipient or its Representatives in relation to the Funded Activities during the Funding Period (including but not limited to, materials expressed in any form of report, database, design, document, technology, information, know how, system or process);

**Investment Vehicle** means any entity which owns or operates (or will own or operate) the Project, other than the Recipient.

**Instalment Period** means the intervals set out in Annex 3: Payment Schedule when the Authority will release, in tranches, payment of the Grant to the Grant Recipient during the Funding Period;

**Intellectual Property Rights or IPRs** 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;

**Law** means any applicable law, statute, byelaw, regulation, order, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements of any regulatory body, delegated or subordinate legislation, including international law;

**Losses** means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and **Loss** will be interpreted accordingly;

**Market Transformation Commitments (MTCs)** mean commitments made by the Grant Recipient to deliver change in the heat network market needed to grow and deliver net zero. MTCs are the component of the Grant Application that focuses on activities for applicants and projects to invest in infrastructure, skills, and innovation of the heat network sector. This consists of guidance for projects, data to be provided to the Authority and plans provided by the Grant Recipient.

**Market Transformation Commitment (MTC) Action Plan** means a commitment made by the Grant Recipient in their Grant Application. It obliges the Grant Recipient to deliver against the MTC Guidance and produce monitoring data and specific deliverables set out by the Grant Recipient in this action plan. Action plans will be unique for each project.

**Market Transformation Commitment (MTC) Guidance** means Application Round-specific guidance on how to establish MTCs in grant applications and implement those MTCs when commercialising and implementing GHNf-supported projects.

**Match Funding** means any contribution to the Funded Activities from a Third Party to the Grant Recipient or the Investment Vehicle to meet the balance of the Eligible Expenditure not

supported by the Grant (whether or not it matches the amount of the Grant and whether it is commercialisation / construction financing or a refinancing following commercialisation / construction);

**Maximum Sum** means the maximum amount of the Grant the Authority may provide to the Grant Recipient for the Funded Activities (in aggregate and per Instalment Period) subject to paragraph 26;

**Memorandum of Understanding (MoU)** means this agreement together with its annexes and schedules including but not limited to the Annex 1: Successful Notification Letter;

**Milestones** means the milestones to be achieved by the Project, as set out in Annex 6: of this MoU (Milestones);

**Northern Ireland Protocol** means the Protocol on Ireland/Northern Ireland in the EU withdrawal agreement;

**Party** means the Authority or Grant Recipient and Parties shall be each Party together;

**Personal Data** has the meaning given to it in the Data Protection Legislation as amended from time to time;

**Prohibited Act** means:

- (a) directly or indirectly offering, giving or agreeing to give to any servant of the Authority or the Crown any gift or consideration of any kind as an inducement or reward for:
  - (i) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of the Funding Agreement; or
  - (ii) showing or not showing favour or disfavour to any person in relation to the Funding Agreement;
- (b) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to the Funding Agreement; or
  - (iv) defrauding or attempting to defraud or conspiring to defraud the Authority or the Crown;

**Project** means the heat network project (as per the application submitted by the Grant Recipient as part of the GHN application round) and further described in Annex 2: Funded Activities;

**Projected Expenditure** means the total anticipated Eligible Expenditure of the Agreed Heat Network Project as set out in the Grant Application.

**Publication** means any announcement, comment or publication of any publicity material by the Grant Recipient concerning the Funded Activities or the Authority;

**Remedial Action Plan** means the plan of action submitted by the Grant Recipient to the Authority following an Event of Default pursuant to the process set out in paragraph 26.11;

**Reporting Period** means the period from the Commencement Date to the earlier of (a) the Reporting End Date or (b) a written confirmation from the Authority that the Reporting Period has ceased;

**Reporting End Date** is (a) the date falling on the fifteenth anniversary of the date on which Commercial Operations of the Project commence; or (b) if Commercial Operations have not commenced by the fifteenth anniversary of this MoU, the fifteenth anniversary of this MoU);

**Representatives** means any of the Parties' duly authorised directors, employees, officers, agents, professional advisors and consultants (including in the case of the Authority, the Delivery Partner and its subcontractors);

**Special Payments** means ex gratia expenditure by the Grant Recipient to a third party where no legal obligations exist for the payment and/or other extra-contractual expenditure. Special Payments may include, but is not limited to, out-of-court settlements, compensation or additional severance payments to the Grant Recipient's employees;

**State Aid Law** means the law embodied in Articles 107- 109 of section 2, Title VII of the Common Rules on Competition, Taxation and Approximation of Laws – Consolidated Versions of the Treaty on European Union and the Treaty for the Functioning of the European Union to the extent it continues to apply in the United Kingdom;

**State Subsidy** means any subsidy as defined in the Subsidy Control Act 2022 or the Trade and Co-operation Agreement;

**Status Report** means a report to be provided on the terms of this MoU, in form and substance substantially similar to the template either annexed at Annex 5 – Status Report Template or provided under separate cover, in each case as may be amended by the Authority from time-to-time;

**Subsidy Control Law** means all laws of the United Kingdom limiting State Subsidy, including the Subsidy Control Act 2022, the European Union (Future Relationship) Act 2020, any relevant secondary legislation and any relevant guidance issued by a Crown Body;

**Successful Notification Letter** means the letter the Authority issued to the Grant Recipient, a copy of which is set out in Annex 1: Successful Notification Letter.

**Third Party** means any person or organisation other than the Grant Recipient or the Authority;

**Trade and Co-operation Agreement** 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 (as that agreement is modified or supplemented from time to time in accordance with any provision of it or of any other future relationship agreement);

**Unspent Monies** means any monies paid to the Grant Recipient in advance of its Eligible Expenditure, which remains unspent and uncommitted at the end of the Financial Year, the Funding Period or because of termination or breach of this MoU;

**VAT** means value added tax chargeable in the UK; and

**Working Day** means any day from Monday to Friday (inclusive) which is not specified or proclaimed as a bank holiday in England and Wales pursuant to section 1 of the Banking and Financial Dealings Act 1971 including Christmas Day and Good Friday.

2.2 In this MoU, unless the context otherwise requires:

2.2.1 the singular includes the plural and vice versa;

2.2.2 reference to a gender includes the other gender and the neuter;

2.2.3 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Crown Body, and in each case its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under this MoU;

2.2.4 a reference to any Law includes a reference to that Law as amended, extended, consolidated, replaced or re-enacted from time to time;

2.2.5 any reference in this MoU which immediately before IP Completion Day was a reference to (as it has effect from time to time):

- (a) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (“EEA”) agreement (“EU References”) which forms part of Domestic Law by application of section 3 of the European Union (Withdrawal) Act 2018 shall be read on and after IP Completion Day as a reference to the EU References as they form part of Domestic Law by virtue of section 3 of the European Union (Withdrawal) Act 2018 as modified by Domestic Law from time to time; and

- (b) any EU institution or EU authority or other such EU body shall be read on and after IP Completion Day as a reference to the UK institution, authority or body to which its functions were transferred;
- 2.2.6 the words “including”, “other”, “in particular”, “for example” and similar words will not limit the generality of the preceding words and will be construed as if they were immediately followed by the words “without limitation”;
- 2.2.7 references to “writing” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing will be construed accordingly;
- 2.2.8 references to “representations” will be construed as references to present facts, to “warranties” as references to present and future facts and to “undertakings” as references to obligations under the MoU;
- 2.2.9 references to “paragraphs” and “Annexes” are, unless otherwise provided, references to the paragraphs and annexes of this MoU and references in any Annex to parts, paragraphs and tables are, unless otherwise provided, references to the parts, paragraphs and tables of the Annex in which these references appear; and
- 2.2.10 the headings in this MoU are for ease of reference only and will not affect the interpretation or construction of this MoU.
- 2.3 Where there is any conflict between the documents that make up this MoU the conflict shall be resolved in accordance with the following order of precedence:
- 2.3.1 the paragraphs and annexes set out within this MoU (excluding Annex 1: The Authority’s Successful Notification Letter); and
- 2.3.2 Annex 1: The Authority’s Successful Notification Letter.
- 2.4 The Grant Recipient acknowledges that the Authority has appointed the Delivery Partner to manage the GHNF on behalf of the Authority. For the purposes of this MoU, the Grant Recipient shall treat any communication from the Delivery Partner as if it were a communication from the Authority. The Authority shall notify the Grant Recipient of the identity of the Delivery Partner from time to time.
- 3. DURATION AND PURPOSE OF THE GRANT**
- 3.1 The Funding Period starts on the Grant Application Approval Date (unless otherwise agreed in writing by the Authority) and ends on the last day of the last Instalment Period set out in Annex 3: Payment Schedule, unless terminated earlier in accordance with this MoU.

- 3.2 The Grant Recipient will ensure that the Funded Activities start on the Funded Activities Start Date but where this has not been possible, that they start no later than 1 month after such date.
- 3.3 The Grant Recipient shall use the Grant (and shall procure that the Grant is used) solely for the delivery of the Funded Activities.
- 3.4 The Grant Recipient acknowledges that, as at the date hereof, the GHNf provides committed grant funding until 31st March 2025 on the terms of this MoU. Any line items in Annex 3: Payment Schedule indicating any actual or potential ability by the Authority to provide grant funding beyond 31st March 2025 is indicative only and must not be relied upon by the Grant Recipient. All claims for grant funding, in accordance with paragraph 4 (Payment of Grant) below must take place no later than 31st March 2025
- 3.5 If, following a UK central government spending review, the overall budget for GHNf is reduced, the Authority may reduce or cancel any Unspent Monies on 10 Working Days' written notice to the Grant Recipient. The Authority shall, to the extent possible, use its reasonable efforts to consult with the Grant Recipient in relation to such notice.

#### **4. PAYMENT OF GRANT**

- 4.1 Subject to the remainder of this paragraph 4:
- 4.1.1 the Authority shall pay the Grant Recipient an amount not exceeding the amounts in aggregate and per Instalment Period as set out in Annex 3: Payment Schedule. The Authority shall pay the Grant in pound sterling (GBP) and into a bank located in the UK; and
- 4.1.2 if Annex 3: Payment Schedule sets out that an amount of Grant has been reserved for Early Works in an Instalment Period:
- (a) such amount shall be the maximum amount available for Early Works in that Instalment Period, but
  - (b) if any amount available for Early Works in that Instalment Period has not been utilised in full for Early Works, the remainder may, with the prior agreement of the Authority, be applied towards other Eligible Expenditure in that Instalment Period.
- 4.2 Subject to the terms of this MoU, the Grant Recipient will be paid the total Grant amount for an Instalment Period up-front and shall provide evidence for incurred and defrayed expense to the Authority as part of the monthly Status Reports.
- 4.3 Prior to receiving its first instalment of the Grant in accordance with Annex 3: Payment Schedule, the Grant Recipient must have completed and signed Annex 4: the GHNf Supplier Information Form as part of their application to the GHNf. No payment can be made in advance of receipt of a correctly completed and signed form.



- 4.4 The signatory must be the chief finance officer or someone with proper delegated authority. Any change of bank details must be notified immediately on the same form and signed by an approved signatory. Any change of signatory must be notified to the Authority for approval, as soon as known.
- 4.5 The Grant represents the Maximum Sum the Authority will pay to the Grant Recipient under the Funding Agreement. The Maximum Sum will not be increased in the event of any overspend by the Grant Recipient in its delivery of the Funded Activities.
- 4.6 Each Status Report shall contain confirmations by the Grant Recipient, stating:
- 4.6.1 the updated sources and uses of funds for completing the Project;
  - 4.6.2 whether there is any forecast funding shortfall for completing the Project;
  - 4.6.3 the expected amount of Grant that will be drawn by the Project in the current Instalment Period; and
  - 4.6.4 whether any budget forecasts (for any Instalment Period) have increased or decreased by more than 15% of the original forecasts.
- 4.7 If the Status Report submitted in November indicates an expected underspend of Grant for any Financial Year, the Authority may at its absolute discretion cancel the unclaimed Grant amount for that Financial Year (in an amount equal to the expected underspend), or allow a change of budget split between Financial Years. Any such changes shall be reflected by amending Annex 2: and/or Annex 3: of this MoU accordingly.
- 4.8 The Authority will only pay the first instalment of the Grant in accordance with Annex 3: Payment Schedule to the Grant Recipient, if the Authority has received all of the documents and other relevant evidence listed as conditions precedent in Annex 8: Conditions to Award in form and substance satisfactory to the Authority prior to the Conditions Satisfaction Date.
- 4.9 The Authority will only pay any instalment of the Grant (including the first instalment) in accordance with Annex 3: Payment Schedule to the Grant Recipient, if the Authority is satisfied that the Grant Recipient has achieved satisfactory progress against all relevant Milestones at the time of such proposed Grant disbursement, in each case in form and substance satisfactory to the Authority.
- 4.10 The Grant Recipient will provide the Authority with evidence of the payments, which are classified as Eligible Expenditure in paragraph 5 which may include (but will not be limited to) receipts and invoices or any other documentary evidence specified by the Authority.
- 4.11 The Grant Recipient shall declare to the Authority any Match Funding which has been approved or received, before the Commencement Date. If the Grant Recipient (or the Investment Vehicle) intends to apply for, is offered or receives any further Match Funding during the Funding Period, the Grant Recipient shall notify the Authority before accepting or using any such Match Funding.

On notifying the Authority of the Match Funding the Grant Recipient shall confirm the amount, purpose and source of the Match Funding and the Authority shall confirm whether it is agreeable to the Grant Recipient (or the Investment Vehicle) accepting the Match Funding.

- 4.12 Where the use of Match Funding is permitted the Grant Recipient must declare any Match Funding it (or the Investment Vehicle) receives to the Authority. This is to give the Authority data on the total funding the Project has received for the Funded Activities. The Authority will not be required to disburse any amount of the Grant in relation to any Project for which the Grant Recipient does not have sufficient committed funding to successfully complete such Project (or the relevant phase of such Project) in the opinion of the Authority (acting reasonably). In relation to any proposed loan or lender to the Project, the Authority shall have regard, without limitation, to any applicable “know your customer” requirements, Law, Subsidy Control Law, State Aid Law, financial credit standing, Eligibility Criteria, updated financial model and any other factors relevant at the appropriate time.
- 4.13 The Grant Recipient agrees that:
- 4.13.1 it will not apply for, or obtain, (and shall procure that any Investment Vehicle does not apply for or obtain) Duplicate Funding in respect of any part of the Funded Activities which have been paid for in full using the Grant;
  - 4.13.2 the Authority may refer the Grant Recipient (or any Investment Vehicle) to the police should it dishonestly and intentionally obtain Duplicate Funding for the Funded Activities;
  - 4.13.3 the Authority will not make the first payment of the Grant and/or any subsequent payments of the Grant unless or until, the Authority is satisfied that:
  - 4.13.4 the Grant will be used for Eligible Expenditure only; and
  - 4.13.5 if applicable, any previous Grant payments have been used for the Funded Activities or, where there are Unspent Monies, have been repaid to the Authority.
- 4.14 The Grant Recipient shall submit by the first Working Day of an Instalment Period an updated Status Report to claim the full value of the Grant up front for that Instalment Period.
- 4.15 Unless otherwise stated in this MoU, payment of the Grant will be made within 10 Working Days of the Authority approving the Grant Recipient’s Grant Claim.
- 4.16 The Authority will have no liability to the Grant Recipient for any Losses caused by a delay in the payment of a Grant Claim howsoever arising.
- 4.17 The Authority reserves the right not to pay any Grant Claims, which are not submitted by the date set out in paragraph 4.14 or Grant Claims which are incomplete, incorrect or submitted without the full supporting documentation.



- 4.18 The Grant Recipient shall promptly notify and repay immediately to the Authority any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where the Grant Recipient is paid in error before it has complied with its obligations under the MoU. Any sum, which falls due under this paragraph 4.18, shall fall due immediately. If the Grant Recipient fails to repay the due sum immediately or within any other timeframe specified by the Authority the sum will be recoverable summarily as a civil debt.
- 4.19 Where the Grant Recipient enters into a contract with a Third Party in connection with the Funded Activities, the Grant Recipient will remain responsible for paying that Third Party. The Authority has no responsibility for paying Third Party invoices.
- 4.20 Onward payment of the Grant and the use of sub-contractors shall not relieve the Grant Recipient of any of its obligations under the MoU, including any obligation to repay the Grant.
- 4.21 The Grant Recipient may not retain any Unspent Monies without the Authority's prior written permission.
- 4.22 If at the end of the relevant Financial Year there are Unspent Monies, the Grant Recipient shall promptly repay such Unspent Monies to the Authority.
- 4.23 The Authority is under no obligation to provide the Grant Recipient with any further funding in respect of the Agreed Heat Network Project, the Project or for any other purpose.
- 4.24 A GHNF application, successful or not, made by a Recipient does not preclude the Recipient from applying for GHNF grant funding in subsequent GHNF bidding rounds.
- 4.25 Subject to the terms of this MoU (including paragraph 23), and in the absence of an Event of Default, the Grant Recipient may on-grant an amount of Grant to an Investment Vehicle, in an amount equal to the Eligible Expenditure to be incurred by the Investment Vehicle in the three month period following such on-grant.

## 5. ELIGIBLE AND INELIGIBLE EXPENDITURE

- 5.1 The Authority will only pay the Grant in respect of Eligible Expenditure incurred by the Grant Recipient (or the Investment Vehicle) to deliver the Funded Activities and the Grant Recipient will use the Grant solely for delivery of the Funded Activities (as set out in Annex 2: of this MoU - Funded Activities).
- 5.2 The Grant Recipient may not in any circumstance claim the following non-exhaustive list as Eligible Expenditure (and the Grant Recipient should further refer to the GHNF Guidance for Applicants):
- 5.2.1 liabilities incurred before the Grant Application Approval Date unless otherwise agreed in writing by the Authority.

- 5.2.2 pay for works or activities which the Grant Recipient (or the Investment Vehicle) has a statutory duty to undertake, or that are fully funded by other sources;
- 5.2.3 pay for activities of a political or exclusively religious nature;
- 5.2.4 use the Grant in respect of costs reimbursed or to be reimbursed by funding from public authorities or from the private sector;
- 5.2.5 use the Grant in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money);
- 5.2.6 cover interest payments (including service charge payments for finance leases);
- 5.2.7 pay for the giving of gifts to individuals or businesses;
- 5.2.8 pay for entertaining (entertaining for this purpose includes anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- 5.2.9 statutory fines, criminal fines or penalties civil penalties, damages or any associated legal costs;
- 5.2.10 make payments for unfair dismissal or other compensation;
- 5.2.11 pay bad debts to related parties;
- 5.2.12 pay for depreciation, amortisation or impairment of assets owned by the Grant Recipient (or the Investment Vehicle);
- 5.2.13 use the Grant in respect of Value Added Tax that the Recipient is able to reclaim from HM Revenue and Customs;
- 5.2.14 pay for lobbying, which means using the Grant to fund lobbying (via an external firm or in-house staff) in order to undertake activities intended to influence or attempt to influence Parliament, government or political activity; or attempting to influence legislative or regulatory action;
- 5.2.15 use the Grant to directly enable one part of government to challenge another on topics unrelated to the agreed purpose of the grant;
- 5.2.16 use the Grant to petition for additional funding; and
- 5.2.17 (unless the Grant Recipient can demonstrate to the Authority's sole satisfaction that such expenditure should be treated as being Eligible Expenditure) use the Grant for marketing, advertising, communications and related consultancy expenditure.

5.3 If at any time, the total Eligible Expenditure of the Project for a particular Financial Year is projected to be less than the Projected Expenditure for that Financial Year, the Grant Recipient shall notify the Authority and shall repay the Grant in an amount equal to the difference in the Projected Expenditure within 10 Working Days of the date of notification before any other amounts are paid to any of the Grant Recipient's other funding providers.

## 6. EARLY WORKS

6.1 This paragraph 6 shall only apply if Early Works have been approved and included in part 5 of Annex 2 – Funded Activities.

6.2 For as long as any Early Works are being conducted, the Grant Recipient shall provide to the Authority such additional information as the Authority may reasonably request.

## 7. MONITORING AND REPORTING

7.1 The Grant Recipient shall closely monitor the delivery and ongoing success of the Funded Activities throughout the Reporting Period to ensure that the aims and objectives of the Funded Activities are achieved. The Grant Recipient shall ensure that the procurement of contractors for respective design, build, operate and maintain contract(s) includes a requirement on such contractors to provide the Grant Recipient with any relevant information to fulfil the reporting requirements of GHNf.

7.2 The Grant Recipient shall provide the Authority and the Authority's Representatives with all reasonable assistance and co-operation in relation to any ad-hoc information, explanations and documents as the Authority or the Authority's Representatives may require, from time to time, so the Authority may establish if the Grant Recipient has used the Grant in accordance with the MoU (until the first anniversary of the Reporting End Date).

7.3 The Grant Recipient shall also provide the Authority and the Authority's Representatives with a monthly Status Report throughout the Funding Period on the progress made towards achieving the agreed activities and Milestones as set out in this MoU, and a semi-annual Status Report for the remainder of the Reporting Period in relation to the ongoing operations of the Project. Where possible, the report will quantify what has been achieved by reference to the Funded Activities' targets and Milestones, evidence of incurred spend, Eligible Expenditure, and any other documentation as prescribed by the Authority, from time to time. The Status Report (Annex 5:) will be completed and submitted by all Grant Recipients to the Delivery Partner (in accordance with paragraph 32 (Notices) and Annex 7: Contact Details) by the first Working Day of each (a) month throughout the Funding Period and (b) semi-annual period, for the remainder of the Reporting Period). It is understood that a Status Report submitted on the first Working Day of a month will not report on progress made in the month immediately before the submission of such Status Report, but will rather relate to the month before that (i.e. a Status Report submitted on 1 March will relate to the month of January).

- 7.4 Until the first anniversary of the Reporting End Date, the Grant Recipient will permit any person authorised by the Authority and the Authority's Representatives reasonable access, with or without notice, to its employees, agents, premises, facilities and records, for the purpose of discussing, monitoring and evaluating the Grant Recipient's fulfilment of its obligations under the MoU and will, if so required, provide appropriate oral or written explanations to such authorised persons as required until the first anniversary of the Reporting End Date.
- 7.5 The Grant Recipient will record in its financial reports the amount of Match Funding it receives together with details of what it has used that Match Funding for.
- 7.6 The Grant Recipient will notify the Authority and the Authority's Representatives as soon as reasonably practicable of:
- 7.6.1 any actual or potential failure to comply with any of its obligations under the MoU, which includes those caused by any administrative, financial or managerial difficulties; and
  - 7.6.2 actual or potential variations to the Eligible Expenditure within the Funded Activities and/or any event which materially affects the continued accuracy of such information.
- 7.7 The Grant Recipient represents and undertakes (and shall repeat such representations on delivery of its monthly Status Report):
- 7.7.1 that the reports and information it gives pursuant to this paragraph 7 are accurate;
  - 7.7.2 that it has diligently made full and proper enquiry of the matter pertaining to the reports and information given; and
  - 7.7.3 that any data it provided pursuant to an application for the Grant may be shared within the powers conferred by legislation with other organisations for the purpose of preventing or detecting crime.
- 7.8 The Authority may share any information relevant to the Project with the Authority's Representatives, other public authorities and their agents, if the Authority considers this necessary, and where such information sharing complies with the law.
- 7.9 To assist the Authority, the Grant Recipient will be asked to provide draft and final project outputs, along with monthly Status Reports while the Agreed Heat Network Project is being completed. The Grant Recipient has agreed to provide these outputs and respond to any reasonable requests for information and general assistance promptly and accurately, throughout the Reporting Period.
- 7.10 On or after the Commencement Date, the Authority will include a summary of the Project within the Department for Energy Security and Net Zero's Heat Networks quarterly pipeline (summary template provided in Annex 2: Funded Activities) on the Gov.uk website. The Grant Recipient's designated representative will be provided with a copy of the summary in advance of publication

for comment. In subsequent quarters the Grant Recipient will be expected to provide an update of the Project's status, through amendments to the summary, up until the point that either the Funded Activities are completed or else abandoned.

## **8. AUDITING AND ASSURANCE**

8.1 Until the first anniversary of the Reporting End Date, the Grant Recipient has agreed to:

8.1.1 respond fully, truthfully and promptly to any enquiries the Authority, or the Comptroller and Auditor General, or their Representatives, may make about the Agreed Heat Network Project or the use of the Grant and provide any information and evidence reasonably requested, including by providing a statement of Grant usage (at such times, and in such form, as they may reasonably specify);

8.1.2 allow the Authority, the Comptroller and Auditor General, and their Representatives, access to all relevant documents and records, and reasonable access for inspecting any relevant site; and

8.1.3 where requested, ensure that any information or evidence provided to the Authority, the Comptroller and Auditor General, or their Representatives, is audited by an identified and independent reporting accountant or otherwise confirmed or verified by a person of such other relevant expertise as they may reasonably specify.

8.2 Within six months of the end of each Financial Year the Grant Recipient will provide the Authority with independent assurance that the Grant has been used for delivery of the Funded Activities. To satisfy this requirement the Grant Recipient will provide the Grant Recipient's annual audited accounts.

8.3 The Grant Recipient shall maintain records of all expenditure incurred in relation to the Project until the Reporting End Date and make such records available to the Authority on request. The Authority may, at any time during and up to 5 years after the end of the MoU, conduct additional audits or ascertain additional information where the Authority considers it necessary. The Grant Recipient agrees to grant the Authority or its Representatives access, as required, to all Funded Activities sites and relevant records. The Grant Recipient will ensure that necessary information and access rights are explicitly included within all arrangements with sub-contractors.

8.4 If, until the first anniversary of the Reporting End Date, the Authority requires further information, explanations and documents, in order for the Authority to establish that the Grant has been used properly in accordance with the MoU, the Grant Recipient will, within 5 Working Days of a request by the Authority, provide the Authority, free of charge, with the requested information.

8.5 The Grant Recipient shall:

8.5.1 identify separately the value and purpose of the Grant Funding in its audited accounts and its annual report; and

- 8.5.2 maintain a record of internal financial controls and procedures and provide the Authority with a copy if requested.
- 8.6 The Grant Recipient shall retain all invoices, receipts, accounting records and any other documentation (including but not limited to, correspondence) relating to the Eligible Expenditure; income generated by the Funded Activities during the Funding Period until the first anniversary of the Reporting End Date.
- 8.7 The Grant Recipient shall ensure that all its (or the Investment Vehicle's) sub-contractors retain each record, item of data and document relating to the Funded Activities until the first anniversary of the Reporting End Date.
- 8.8 The Grant Recipient will provide forecasts of expenditure and Eligible Expenditure at the request of the Authority.
- 8.9 The Grant Recipient shall promptly provide the Authority with copies of its annual accounts and shall also provide the Authority with copies of any Investment Vehicle's annual return, accounts and charity annual return (as applicable) within five days of these being filed at Companies House and/or the Charity Commissioner. If a Grant Recipient fails to comply with paragraphs 8.7 or 8.8 of this MoU, the Authority may suspend funding or terminate the MoU in accordance with paragraph 26 of this MoU.

## **9. FINANCIAL MANAGEMENT AND PREVENTION OF BRIBERY**

- 9.1 The Grant Recipient will at all times comply (and shall procure that any Investment Vehicle complies) with all applicable Laws, statutes and regulations relating to anti-bribery and anti-corruption, including but not limited to the Bribery Act.
- 9.2 The Grant Recipient must have (and shall procure that any Investment Vehicle has) a sound administration and audit process, including internal financial controls to safeguard against fraud, theft, money laundering, counter terrorist financing or any other impropriety, or mismanagement in connection with the administration of the Grant. The Grant Recipient shall require that the internal/external auditors report on the adequacy or otherwise of that system.
- 9.3 All cases of fraud or theft (whether proven or suspected) relating to the Funded Activities must be notified to the Authority as soon as they are identified. The Grant Recipient shall explain to the Authority what steps are being taken to investigate the irregularity and shall keep the Authority informed about the progress of any such investigation. The Authority may however request that the matter referred (which the Grant Recipient is obliged to carry out) to external auditors or other Third Party as required.
- 9.4 The Authority will have the right, at its absolute discretion, to insist that the Grant Recipient address any actual or suspected fraud, theft or other financial irregularity and/or to suspend future payment of the Grant to the Grant Recipient. Any grounds for suspecting financial irregularity includes what the Grant Recipient, acting with due care, should have suspected as well as what it actually proven.



- 9.5 The Grant Recipient agrees and accepts that it may become ineligible for Grant support and may be required to repay all or part of the Grant if it, the Investment Vehicle, or anyone on its or their behalf, engages in tax evasion or aggressive tax avoidance in the opinion of Her Majesty's Revenue and Customs.
- 9.6 For the purposes of paragraph 9.4 "**financial irregularity**" includes (but is not limited to) potential fraud or other impropriety, mismanagement, and the use of the Grant for any purpose other than those stipulated in the MoU. The Grant Recipient may be required to provide statements and evidence to the Authority or the appropriate organisation as part of pursuing sanctions, criminal or civil proceedings.

## 10. CONFLICTS OF INTEREST

- 10.1 Neither the Grant Recipient nor its Representatives shall engage in any personal, business or professional activity which conflicts or could conflict with any of their obligations in relation to the MoU.
- 10.2 The Grant Recipient must have and will keep in place adequate procedures to manage and monitor any actual or perceived bias or conflicts of interest.

## 11. CONFIDENTIALITY

- 11.1 Except to the extent set out in this paragraph 11 or where disclosure is expressly permitted, the Grant Recipient shall treat all Confidential Information belonging to the Authority as confidential and shall not disclose any Confidential Information belonging to the Authority to any other person without the prior written consent of the Authority, except to such persons who are directly involved in the provision of the Funded Activities and who need to know the information.
- 11.2 The Grant Recipient gives its consent for the Authority to publish the MoU in any medium in its entirety (but with any information which is Confidential Information belonging to the Authority or the Grant Recipient redacted), including from time to time agreed changes to the MoU.
- 11.3 Nothing in this paragraph 11 shall prevent a Party disclosing any Confidential Information obtained from the other Party:
- 11.3.1 for the purpose of the examination and certification of the Authority's accounts; or pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which such Party has used its resources;
  - 11.3.2 to the Delivery Partner;
  - 11.3.3 any government department, consultant, contractor or other person engaged by such Party, provided that in disclosing such information the Authority only discloses the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate; or

11.3.4 where disclosure is required by Law, including under the Information Acts.

11.4 Nothing in this paragraph 11 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of its obligations under the MoU in the course of its normal business, to the extent that this does not result in a disclosure of the other Party's Confidential Information or an infringement of the other Party's Intellectual Property Rights.

## 12. TRANSPARENCY

12.1 The Authority and the Grant Recipient acknowledge that, except for any information, which is exempt from disclosure in accordance with the provisions of the Information Acts, the content of the MoU is not confidential.

## 13. STATUTORY DUTIES

13.1 Each Party agrees to adhere (and the Grant Recipient shall procure that any Investment Vehicle adheres) to its obligations under the Law including but not limited to the Information Acts and the HRA.

13.2 Where requested by a Party (the "**First Party**"), the other Party will provide reasonable assistance and cooperation to enable the First Party to comply with its information disclosure obligations under the Information Acts.

13.3 On request from the First Party, the other Party will provide the First Party with all such relevant documents and information relating to the other Party's data protection policies and procedures as the First Party may reasonably require.

13.4 Each Party acknowledges that the First Party, acting in accordance with the codes of practice issued and revised from time to time under the Information Acts, may disclose information concerning the other Party and the MoU without consulting the other Party.

13.5 The First Party will take reasonable steps to notify the other Party of a request for information to the extent that it is permissible and reasonably practical for it to do so. Notwithstanding any other provision in the MoU, the First Party will be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the Information Acts.

## 14. DATA PROTECTION AND PUBLIC PROCUREMENT

### Data Protection

14.1 Each of the Grant Recipient and the Authority will comply at all times with its respective obligations under Data Protection Legislation.

### Public Procurement



- 14.2 The Grant Recipient will ensure that any of its (or any Investment Vehicle's) **Representatives** involved in the Funded Activities will adopt such policies and procedures that are required in order to ensure that value for money has been obtained in the procurement of goods or services funded by the Grant.
- 14.3 Where the Grant Recipient is a Contracting Authority within the meaning of the **Procurement Regulations** the Grant Recipient will comply (and shall procure that any Investment Vehicle complies), as necessary, with the Procurement Regulations when procuring goods and services in connection with the MoU and the Authority shall not be liable for the Grant Recipient's failure to comply with its obligations under the Procurement Regulations.

## 15. SUBSIDIES

- 15.1 The Grant Recipient will comply with all relevant aspects of Subsidy Control Law and any State Aid Law applicable to the receipt of the Grant and use of the Grant and will ensure that delivery of the Funded Activities does not put the Authority in breach of the UK's international obligations in respect of subsidies.
- 15.2 The Grant Recipient will maintain (and shall procure that any Investment Vehicle maintains) appropriate records of compliance with Subsidy Control and any relevant State Aid Law and will take all reasonable steps to assist the Authority to comply with the same and respond to any proceedings or investigation(s) into the Funded Activities by any relevant court or tribunal of relevant jurisdiction or regulatory body.
- 15.3 The Grant Recipient acknowledges and represents that the Grant is being awarded on the basis that the Funded Activities being undertaken using the Grant do not affect trade in goods and electricity between Northern Ireland and the European Union and shall ensure that the Grant is not used in way that affects any such trade.
- 15.4 The Grant Recipient undertakes to notify the Authority of any other forms of subsidy that the Project may receive after entering into the MoU.
- 15.5 If the Project is, at any time, in receipt of any other subsidy, the Grant Recipient undertakes to provide the Authority with evidence of a supportive Subsidy Control legal assessment (individually per subsidy and in aggregate).

## 16. INTELLECTUAL PROPERTY RIGHTS

- 16.1 Intellectual Property in all IPR Material will be the property of the Grant Recipient. Other than as expressly set out in this MoU, 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.
- 16.2 If it is legally able to do so, the Grant Recipient grants to the Authority a non-exclusive irrevocable and royalty-free, sub-licensable, worldwide licence to use all the IPR Material for the purpose of supporting other projects.

- 16.3 Ownership of Third Party software or other IPR necessary to deliver Funded Activities will remain with the relevant Third Party.
- 16.4 The Grant Recipient 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 Grant Recipient will be responsible for obtaining and maintaining all appropriate licences to use the Third Party software.
- 16.5 In undertaking the Agreed Heat Network Project, the Grant Recipient shall use reasonable endeavours not to infringe the intellectual property rights of any Third Party.
- 16.6 Unless otherwise agreed with the Authority, where the Agreed Heat Network Project give rise to the generation of any intellectual property, the Grant Recipient agrees not to subsequently seek to make profit from the use of such intellectual property, for example through the use of licences.

## 17. ENVIRONMENTAL REQUIREMENTS

- 17.1 The Grant Recipient shall perform (and shall procure that any Investment Vehicle performs) the Funded Activities in accordance with the Authority'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.
- 17.2 The Grant Recipient shall pay due regard to the use of recycled products, so long as they are not detrimental to the provision of the Funded Activities or the environment, to include the use of all packaging, which should be capable of recovery for re-use or recycling.
- 17.3 The Grant Recipient shall take all possible precautions to ensure that any equipment and materials used in the provision of the Funded Activities do not contain chlorofluorocarbons, halons or any other damaging substances, unless unavoidable, in which case the Authority shall be notified in advance of their use. The Grant Recipient shall endeavour to reduce fuel emissions wherever possible.

## 18. ASSETS

- 18.1 The Grant Recipient shall not create or permit to be created any charge, legal mortgage, debenture or lien over any Asset prior to the first anniversary of the Reporting End Date (except for granting security required by the provider of Match Funding that is permitted by the Authority).
- 18.2 In respect of any Assets, the Grant Recipient must ensure that such Assets are maintained in good condition.
- 18.3 If the Grant Recipient (or any Investment Vehicle) disposes of any Asset, the Grant Recipient must use all reasonable endeavours to achieve the market price for the Assets and must pay to the Authority a proportion of the proceeds of such sale, equivalent to the proportion of the

purchase or development costs of the Assets that was funded by the Grant, provided that the Grant Recipient may keep all or a part of the relevant proceeds (as applicable) where:

- 18.3.1 the sale of the Assets takes place after the first anniversary of the Reporting End Date;
- 18.3.2 the proceeds of sale are to be applied directly to the purchase by the Grant Recipient of assets that are equivalent to or replacements for the Assets;
- 18.3.3 the proceeds of sale are pledged to a beneficiary of security, permitted under Paragraph 18.1 above; or
- 18.3.4 the Authority is otherwise satisfied that the Grant Recipient will apply those proceeds for purposes related to the Funded Activities,

such proceeds that are kept by the Grant Recipient pursuant to paragraphs 18.3.2 – 18.3.4 being “**Sale Profits**”.

18.4 The Grant Recipient shall:

- 18.4.1 notify the Authority as to its proposed use of the Sale Profits in the course of its ongoing reporting under paragraph 7; and
- 18.4.2 use its reasonable efforts to reinvest any Sale Profits into the Project, including without limitation into delivering its MTC Action Plan if so required by the Authority, acting reasonably.

18.5 For the purposes of this Paragraph 18 (Assets):

- 18.5.1 “**Asset**” means any assets that form part of the Agreed Heat Network Project, including equipment or any other assets which may be a Fixed Asset as appropriate in the relevant context, and “**Assets**” will be construed accordingly; and
- 18.5.2 “**Fixed Assets**” means any Asset which consists of land, buildings, plant and equipment acquired, developed, enhanced, constructed in connection with the Funded Activities.

## 19. INSURANCE

- 19.1 The Grant Recipient will ensure that it has and maintains, at all times (or procures that any approved Investment Vehicle has and maintains) adequate insurance with an insurer of good repute to cover claims under the MoU or any other claims or demands which may be brought or made against it by any person suffering any injury damage or loss in connection with the Funded Activities or the MoU.

19.2 The Grant Recipient will upon request produce to the Authority its policy or policies of insurance or where this is not possible, a certificate of insurance issued by the Grant Recipient's insurance brokers confirming the insurances are in full force and effect together with confirmation that the relevant premiums have been paid.

## **20. ASSIGNMENT**

20.1 The Grant Recipient will not transfer, assign, novate or otherwise dispose of the whole or any part of the MoU or any rights under it, to another organisation or individual, without the Authority's prior approval.

20.2 Any approval given by the Authority will be subject to a condition that the Grant Recipient has first entered into a MoU, authorised by the Authority, requiring the Grant Recipient to work with another organisation in delivering the Funded Activities.

## **21. SPENDING CONTROLS – MARKETING AND ADVERTISING**

21.1 The Grant Recipient must seek permission from the Authority prior to any proposed expenditure on advertising, communications, related consultancy or marketing either in connection with, or using the Grant.

21.2 The Grant Recipient should provide evidence that any marketing, advertising, communications and consultancy expenditure carried out in connection with, or using the Grant will deliver measurable outcomes that meet government objective to secure value for money.

## **22. LOSSES, GIFTS AND SPECIAL PAYMENTS**

22.1 The Grant Recipient must obtain prior written consent from the Authority before:

22.1.1 writing off any debts or liabilities;

22.1.2 offering to make any Special Payments; or

22.1.3 giving any gifts,

in connection with any Funded Activities or this MoU.

22.2 The Grant Recipient will keep a record of all gifts, both given and received, in connection with the Grant or any Funded Activities.

## **23. BORROWING AND ON-FUNDING**

23.1 In accordance with this paragraph 23, the Grant Recipient must obtain prior written consent (including, without limitation, on the terms of the relevant documentation) from the Authority before:

- 23.1.1 borrowing or lending money from any source in connection with the MoU or any Funded Activities (and in relation to any proposed loan or lender to the Project, the Authority shall have regard, without limitation, to any applicable “know your customer” requirements, Law, Subsidy Control Law, State Aid Law, financial credit standing, Eligibility Criteria, updated financial model and any other factors relevant at the appropriate time);
  - 23.1.2 giving any guarantee, indemnities or letters of comfort that relate to the MoU, or have any impact on the Grant Recipient’s ability to deliver the Funded Activities set out in the MoU; or
  - 23.1.3 on-funding any element of the Grant to any Third Party, including to any Investment Vehicle (and any such on-funding shall in any event be by way of a grant to the Third Party).
- 23.2 The terms of any on-funding approved permitted in accordance with paragraph 23.1 above must:
- 23.2.1 be legally binding on all parties thereto when entered into;
  - 23.2.2 require the recipient to repay the onward investment if the Grant becomes repayable under the terms of this MoU;
  - 23.2.3 require the recipient to provide such information as the Authority may require from the Grant Recipient pursuant to this MoU;
  - 23.2.4 comply with all applicable Law and oblige the recipient to comply with all applicable Law (in each case including Subsidy Control Law and any relevant State Aid Law); and
  - 23.2.5 be on arm’s length terms and consistent with market practice.
- 23.3 Notwithstanding any approval the Authority may give pursuant to 23.1 above:
- 23.3.1 the Grant Recipient is responsible for ensuring (and shall procure that) the approved Investment Vehicle complies with the terms of this MoU as they apply to the Project and the Grant Recipient (in each case including the compliance with Subsidy Control Law and any relevant State Aid Law); and
  - 23.3.2 any reference in paragraph 26.1 to the Grant Recipient committing a breach shall be deemed to be a reference to the Grant Recipient failing to prevent the Investment Vehicle from committing that breach.

## 24. PUBLICITY

- 24.1 The Grant Recipient gives consent to the Authority to publicise in the press or any other medium the Grant and details of the Funded Activities using any information gathered from the Grant Recipient's initial Grant Application or any monitoring reports submitted to the Authority in accordance with paragraph 7.2 of this MoU.
- 24.2 The Grant Recipient will comply with all reasonable requests from the Authority to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Authority in its promotional and fundraising activities relating to the Funded Activities.
- 24.3 Subject to 24.7, the Authority consents to the Grant Recipient carrying out any reasonable publicity about the Grant and the Funded Activities as required, from time to time.
- 24.4 Any publicity material for the Funded Activities must refer to the programme under which the Grant was awarded and must feature the Authority's logo. If a Third Party wishes to use the Authority's logo, the Grant Recipient must first seek permission from the Authority.
- 24.5 The Grant Recipient will acknowledge the support of the Authority in any materials that refer to the Funded Activities and in any written or spoken public presentations about the Funded Activities. Such acknowledgements (where appropriate or as requested by the Authority) will include the Authority's name and logo (or any future name or logo adopted by the Authority) using the templates provided by the Authority from time to time.
- 24.6 In using the Authority's name and logo, the Grant Recipient will comply with all reasonable branding guidelines issued by the Authority from time to time.
- 24.7 The Grant Recipient shall not, and shall take reasonable steps to ensure that its Representatives shall not, make any press announcement or publicise the MoU, any part of the MoU or its involvement with GHNH in any way, except with the prior written consent of the Authority.

## 25. CHANGES TO THE AUTHORITY'S REQUIREMENTS

- 25.1 If the Authority is required by Law, HM Treasury or UK Government policy to require changes to the Funded Activities, which are supported by the Grant, the Authority will promptly notify the Grant Recipient of any such required changes (but shall, to the extent possible, use its reasonable efforts to consult with the Grant Recipient in relation to such notice).
- 25.2 The Grant Recipient will accommodate any changes to the Authority's needs and requirements as notified pursuant to paragraph 25.1 above.



## 26. CLAWBACK, EVENTS OF DEFAULT AND TERMINATION

### Events of Default

- 26.1 The Authority may exercise its rights set out in paragraph 26.2 if any of the following events occur:
- 26.1.1 the Grant Recipient or the Project:
    - (a) does not satisfy any part of the Eligibility Criteria by the fifth anniversary of the commencement of Commercial Operations; or
    - (b) having satisfied any part of the Eligibility Criteria, ceases to meet such part of the Eligibility Criteria thereafter at any time during the Reporting Period;
  - 26.1.2 the Grant Recipient (or any Investment Vehicle) uses the Grant for a purpose other than the Funded Activities;
  - 26.1.3 the Grant Recipient fails to comply with any obligation under this MoU, which is material in the opinion of the Authority;
  - 26.1.4 where delivery of the Funded Activities does not start within one (1) month of the Funded Activities Start Date and the Grant Recipient fails to provide the Authority with a satisfactory explanation for the delay, or fails to agree a new date on which the Funded Activities shall start with the Authority;
  - 26.1.5 the Grant Recipient (or any Investment Vehicle) uses the Grant for Ineligible Expenditure;
  - 26.1.6 the Grant Recipient fails, in the Authority's opinion, to make satisfactory progress with the Funded Activities and in particular, with meeting the Milestones set out in Annex 6: Milestones (but a breach solely of this paragraph 26.1.6 shall not enable the Authority to claw back already spent Grant pursuant to paragraph 26.2.3);
  - 26.1.7 the Grant Recipient fails to:
    - (a) submit an adequate Remedial Action Plan to the Authority following a request by the Authority pursuant to paragraph 26.2.6; or
    - (b) improve delivery of the Funded Activities in accordance with the Remedial Action Plan approved by the Authority;
  - 26.1.8 the Grant Recipient (or any Investment Vehicle) is, in the opinion of the Authority, delivering the Funded Activities in a negligent manner (in this context negligence includes but is not limited to committing, failing to prevent, or report actual or anticipated fraud or corruption);

- 26.1.9 the Grant Recipient (or any Investment Vehicle) receives Duplicate Funding without the express prior written approval of the Authority;
- 26.1.10 the Grant Recipient (or any Investment Vehicle) fails to declare any Match Funding, or receives Match Funding without prior written approval from the Authority, in each case in accordance with paragraph 4.11;
- 26.1.11 the Grant Recipient (or any Investment Vehicle) receives funding from a Third Party which, in the opinion of the Authority, undertakes activities that are likely to bring the reputation of the Funded Activities or the Authority into disrepute;
- 26.1.12 the Grant Recipient provides the Authority with any materially misleading or inaccurate information and/or any of the information provided in their Grant Application or in any subsequent supporting correspondence is found to be incorrect or incomplete to an extent which the Authority considers to be significant;
- 26.1.13 the Grant Recipient (or any Investment Vehicle) commits or has committed a Prohibited Act or fails to report a Prohibited Act to the Authority, whether committed by the Grant Recipient, its Representatives or a Third Party, as soon as they become aware of it;
- 26.1.14 the Authority determines (acting reasonably) that the Grant Recipient or any of its Representatives has:
- (a) acted dishonestly or negligently at any time during the term of the MoU and to the detriment of the Authority; or
  - (b) taken any actions which unfairly bring or are likely to unfairly bring the Authority's name or reputation and/or the Authority into disrepute. Actions include omissions in this context;
  - (c) transferred, assigns or novates the Grant to any Third Party without the Authority's consent;
  - (d) failed to act in accordance with the Law; howsoever arising, including incurring expenditure on unlawful activities;
- 26.1.15 the European Commission or the Court of Justice of the European Union or any court, tribunal or independent body or authority of competent jurisdiction requires any Grant paid to be recovered by reason of a breach of State Aid Law through its application under Article 10 of the Northern Ireland Protocol;
- 26.1.16 the Authority is required to cease Grant funding or to reasonably recover all or any reasonable proportion, of the Grant by virtue of a decision of a court, tribunal or independent body or authority of competent jurisdiction;



- 26.1.17 a court, tribunal or independent body or authority of competent jurisdiction requires any Grant paid to be recovered by reason of a breach of Subsidy Control Law or the UK's obligations under the Trade and Co-operation Agreement;
- 26.1.18 the Authority has reasonable grounds to consider that the payment of the Grant, or the Grant Recipient's use of it, contravenes any requirement of Law, including Subsidy Control Law or any relevant State Aid Law;
- 26.1.19 The Grant Recipient breaches the Code of Conduct and/or fails to report an actual or suspected breach of the Code of Conduct by the Grant Recipient or its Representatives in accordance with paragraph 31.2;
- 26.1.20 The Grant Recipient fails to report to the Authority as per the monitoring and reporting requirements set out in Paragraph 7;
- 26.1.21 The Grant Recipient (or any Investment Vehicle) undergoes a Change of Control and:
- (a) the Authority, acting reasonably, considers such Change of Control will be materially detrimental to the Funded Activities;
  - (b) the new body corporate cannot continue to receive the Grant because they do not meet the Eligibility Criteria used to award the Grant to the Grant Recipient;
  - (c) the Authority believes that the Change of Control would raise national security concerns; and/or;
  - (d) the new body corporate intends to make fundamental change(s) to the purpose for which the Grant was given.
- 26.1.22 The Project's overall network carbon intensity:
- (a) exceeds the GHNF maximum network carbon intensity criteria (as set out by the Authority in the GHNF Guidance for Applicants for the Application Round through which this Project was selected and any confirmatory statement around carbon intensity provided by the Grant Recipient as part of their Application approved by the GHNF Investment Committee) in any given year of the Reporting Period after the fifth anniversary of the commencement of Commercial Operations; or
  - (b) having met the GHNF maximum network carbon intensity criteria (as set out by the Authority in the GHNF Guidance for Applicants for the Application Round through which this Project was selected and any confirmatory statement around carbon intensity provided by the Grant Recipient as part of their Application approved by the GHNF Investment Committee) prior to the

fifth anniversary of the commencement of Commercial Operations, then ceases to meet such carbon intensity criteria at any time during the Reporting Period.

- 26.1.23 The Grant Recipient fails to demonstrate their best endeavours to deliver their MTC Action Plan. Where there is a disagreement surrounding best endeavours to determine what actions need to be undertaken, Parties enter into Dispute Resolution (paragraph 27).
- 26.1.24 If the Grant Recipient is required to take part in Evaluation Activities and fails to participate.
- 26.1.25 The Credit Support (if any was required pursuant to the terms of this MoU) ceases to be in full force and effect, and is not renewed or replaced on terms acceptable to the Authority.
- 26.1.26 The Grant Recipient serves a notice on the Authority in accordance with paragraph 26.8 below, detailing any Non-Continuation Events (but a breach solely of this paragraph 26.1.26 shall not enable the Authority to claw back already spent Grant pursuant to paragraph 26.2.3).
- 26.1.27 Any failure to comply with paragraph 8 (without prejudice to also triggering a separate Event of Default under paragraph **Error! Reference source not found.** in case of material breach) (but a breach solely of this paragraph 26.1.27 shall not enable the Authority to claw back already spent Grant pursuant to paragraph 26.2.3).

### Rights reserved for the Authority in relation to an Event of Default

- 26.2 Where the Authority determines that an Event of Default has or may have occurred, the Authority may take any one or more of the following actions:
  - 26.2.1 suspend or terminate the payment of Grant for such period as the Authority shall determine;
  - 26.2.2 reduce the Maximum Sum in which case the payment of Grant shall thereafter be made in accordance with the reduction and notified to the Grant Recipient;
  - 26.2.3 require the Grant Recipient to repay to the Authority the whole or any part of the amount of Grant previously paid to the Grant Recipient, plus interest within a particular period of time. Such sums shall be recovered as a civil debt;
  - 26.2.4 require the Grant Recipient to provide monitoring and reporting information in addition to the obligations set out in paragraph 7, and attend regular meetings with the Authority to review that information;
  - 26.2.5 recover any Unspent Monies;

- 26.2.6 give the Grant Recipient an opportunity to remedy the Event of Default (if remediable) in accordance with the procedure set out in paragraphs 26.11 to 26.17;
- 26.2.7 terminate the MoU; and/or
- 26.2.8 enter into Dispute Resolution (paragraph 27).
- 26.3 Where the Authority determines that an Event of Default has or may have occurred, the Authority shall notify the Grant Recipient to that effect in writing, setting out any relevant details of the failure to comply with this MoU or pertaining to the Event of Default, and details of any action that the Authority intends to take or has taken. As far as possible, the Authority will consider the Grant Recipient's representations in relation to this notification made within any reasonable timeframe required by the Authority.
- 26.4 Where the Authority requests repayment in accordance with paragraph 26.2.3, interest will be calculated from the date of the first Grant payment to the Grant Recipient, in accordance with:
- 26.4.1 the retail prices index over the relevant period (that index being taken as 0% for any period during which the index is negative); or
- 26.4.2 any other rate required by Law in the circumstances, if it is higher.
- 26.5 Where the Grant Recipient does not make the relevant repayment within the timeframe required pursuant to paragraph 26.2.3, further interest on the outstanding sum (in addition to interest already charged under paragraph 26.4) will accrue, after that deadline, at the same rate as the Bank of England base rate.
- 26.6 Should the Authority not exercise the options under paragraph 26.2 or there is a delay in doing so, this shall not constitute a waiver of those rights unless the Authority confirms such a waiver in writing. Furthermore, any such written waiver shall not be taken as a precedent for any other, or subsequent, circumstances.
- 26.7 Without prejudice to paragraphs 26.1 and 26.2, and in the absence of an Event of Default, where the Grant Recipient withdraws from the Project:
- 26.7.1 the Grant Recipient will return to the Authority all Unspent Monies as at the date the decision was taken not to proceed; and
- 26.7.2 any contractual payments in relation to the Project that fall due on or after the date the decision was taken not to proceed will be met by the Grant Recipient.
- 26.8 Without prejudice to paragraphs 26.1 and 26.2, and in the absence of an Event of Default, the Parties agree that as soon as reasonably practicable when the Grant Recipient becomes aware that there is a material issue which means that the Project may be unable to proceed:

- 26.8.1 the Grant Recipient shall notify the Authority detailing the circumstances that may lead to any such decision (the “**Non-Continuation Events**”);
- 26.8.2 the Grant Recipient and Authority shall arrange meetings as soon as reasonably practicable in order to discuss and agree how such Non-Continuation Events might be resolved (acting reasonably and in good faith);
- 26.8.3 the Grant Recipient shall use all commercially reasonable endeavours to resolve the Non-Continuation Events in order to procure the continuation of the Project (taking into account any representations made by the Authority in discussions with the Grant Recipient); and
- 26.8.4 the Grant Recipient shall demonstrate (to the Authority’s reasonable satisfaction) that any decision not to proceed is based on genuine external factors which cannot be resolved despite the use of all commercially reasonable endeavours of the Recipient (and for the avoidance of doubt, loss of any Grant amount in accordance with the terms of this Agreement is not a genuine external factor except if such loss was due to paragraph 3.5),

and the Parties agree that having taken such steps to the Authority’s reasonable satisfaction, any decision not to proceed with the Project shall be deemed to: (a) be outside the Grant Recipient’s reasonable control: (b) have resulted from a “change in circumstances justifying the withdrawal” for the purposes of paragraph 26.9.

- 26.9 Without prejudice to paragraphs 26.1 and 26.2, and in the absence of an Event of Default, where the Grant Recipient withdraws from the Project following completion of the process set out at paragraph 26.8 above, and the Authority, acting reasonably, considers that there has been no change in circumstances justifying the withdrawal, the Grant Recipient, in addition to complying with paragraph 26.7, must, at the request of the Authority, repay to the Authority 50% of the Grant monies that have been disbursed to the Grant Recipient and already spent or committed by the Grant Recipient. Paragraphs 26.4 to 26.6 apply in relation to a request under this paragraph as if references there to paragraph 26.2.3 or 26.2 were to this paragraph. For the avoidance of doubt, paragraph 7 (Monitoring and Reporting) shall continue in effect throughout the Reporting Period. If the Project (or a replacement project utilising any Grant awarded to the Agreed Heat Network Project) does not meet any part of the Eligibility Criteria at any time during the Reporting Period, paragraph 26.1.1 shall apply.
- 26.10 In the case of any suspension, unless the Authority confirms a contrary agreement in writing:
  - 26.10.1 the Grant Recipient will continue to comply with the requirements of this MoU including any deadlines occurring during the period of suspension; but
  - 26.10.2 the Grant Recipient will not make any further use of the Grant until the Authority has authorised continued use of the Grant in writing.

**Opportunity for the Grant Recipient to remedy an Event of Default**

- 26.11 Where the Grant Recipient is provided with an opportunity to remedy the Event of Default, the Grant Recipient must submit a draft Remedial Action Plan to the Authority for approval, within 15 Working Days of the Grant Recipient receiving notice from the Authority.
- 26.12 The draft Remedial Action Plan shall set out:
- 26.12.1 full details of the Event of Default; and
  - 26.12.2 the steps which the Grant Recipient proposes to take to rectify the Event of Default including timescales.
- 26.13 On receipt of the draft Remedial Action Plan and as soon as reasonably practicable, the Authority will submit its comments on the draft Remedial Action Plan to the Grant Recipient.
- 26.14 The Authority shall have the right to accept or reject the draft Remedial Action Plan. If the Authority rejects the draft Remedial Action Plan, the Authority shall confirm, in writing, the reasons why they have rejected the draft Remedial Action Plan and will confirm whether the Grant Recipient is required to submit an amended Remedial Action Plan to the Authority.
- 26.15 If the Authority directs the Grant Recipient to submit an amended draft Remedial Action Plan, the Parties shall agree a timescale for the Grant Recipient to amend the draft Remedial Action Plan to take into account the Authority's comments.
- 26.16 If the Authority does not approve the draft Remedial Action Plan the Authority may, at its absolute discretion, terminate the MoU.
- 26.17 The Authority shall not by reason of the occurrence of an Event of Default which is, in the opinion of the Authority, capable of remedy, exercise its rights under either paragraph 26.2.3 or 26.2.7 unless the Grant Recipient has failed to rectify the default to the reasonable satisfaction of the Authority.

### **Return of monies**

- 26.18 All monies repayable to the Authority pursuant to the terms of this Agreement shall be returned to the Authority within 30 days of the date of receipt of a written notice from the Authority.
- 26.19 The Authority will not be liable to pay any of the Grant Recipient's costs or those of any contractor/supplier of the Grant Recipient related to any transfer or termination of employment of any employees engaged in the provision of the Funded Activities.

### **Change of Control**

- 26.20 The Grant Recipient shall notify the Authority immediately in writing and as soon as the Grant Recipient is aware (or ought reasonably to be aware) that it (or any Investment Vehicle) is anticipating, undergoing, undergoes or has undergone a Change of Control, provided such notification does not contravene any Law.

- 26.21 The Grant Recipient shall ensure that any notification made pursuant to paragraph 26.20 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.
- 26.22 Where the Grant has been awarded to a consortium and the Grant Recipient has entered into a collaboration agreement, the notification required under paragraph 26.20 shall include any changes to the consortium members as well as the lead Grant Recipient.
- 26.23 Following notification of a Change of Control the Authority shall be entitled to exercise its rights under paragraph 26.1 of this MoU providing the Grant Recipient with notification of its proposed action in writing within one (1) month of:
  - 26.23.1 being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
  - 26.23.2 where no notification has been made, the date that the Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred.
- 26.24 The Authority shall not be entitled to terminate where an approval was granted prior to the Change of Control.
- 26.25 The Authority shall be entitled to require reasonable amendments to this MoU depending on the identity of the new owners of the Grant Recipient (or any Investment Vehicle).

**Record keeping**

- 26.26 The Grant Recipient has agreed to keep records relating to any spending funded (or defrayed) by the Grant. Such records should indicate:
  - 26.26.1 the identity of the Third Party concerned and their business;
  - 26.26.2 the MoUs the Grant Recipient has been given;
  - 26.26.3 the purpose for which the money was spent;
  - 26.26.4 evidence that the contracts have been awarded in accordance with public procurement law, where applicable; and
  - 26.26.5 any significant sub-contracting by the Grant Recipient.

**Continuing Obligations**

- 26.27 Notwithstanding termination of this Agreement:
  - 26.27.1 paragraph 7, 8, 11, 13, 18 and 26 (and all related definitions and interpretation provisions) shall survive termination; and



26.27.2 the Grant Recipient shall remain liable for all of its acts and omissions under or pursuant to this Agreement that occurred, and all liabilities that accrued, prior to the termination date.

## 27. DISPUTE RESOLUTION

- 27.1 The Parties will use all reasonable endeavours to negotiate in good faith, and settle amicably, any dispute that arises during the continuance of the MoU.
- 27.2 All disputes and complaints (except for those which relate to the Authority's right to withhold funds or terminate the MoU) shall be referred in the first instance to the Parties' representatives.
- 27.3 If the dispute cannot be resolved between the Parties' representatives within a maximum of 30 Working Days, then the matter will be escalated to formal meeting between the Grant Manager and the Grant Recipient's chief executive (or equivalent).

## 28. LIMITATION OF LIABILITY

- 28.1 The Authority and its Representatives accept no liability for any consequences, whether direct or indirect, that may come about from the Grant Recipient delivering/running the Funded Activities, the use of the Grant or from withdrawal, withholding or suspension of the Grant. The Recipient shall indemnify and hold harmless the Authority and its Representatives with respect to all actions, claims, charges, demands Losses and proceedings arising from or incurred by reason of the actions and/or omissions of the Grant Recipient in relation to the Funded Activities, the non-fulfilment of obligations of the Grant Recipient under this MoU or its obligations to Third Parties. Any Representative of the Authority may rely on this Paragraph 28.1.
- 28.2 The Parties agree that the Authority's liability to the Grant Recipient is limited to payment of the Grant (and payment of the Grant is subject to the Grant Recipient's compliance with the terms of the MoU and to upholding the Authority's rights set out therein).
- 28.3 Subject to this paragraph 28, the Authority's liability under this MoU is limited to the amount of Grant outstanding.

## 29. WARRANTIES

- 29.1 In agreeing to this MoU, the Grant Recipient represents and warrants that:
- 29.1.1 it has full capacity and authority to undertake the Agreed Heat Network Project and to agree to the terms of the MoU and its Annexes;
- 29.1.2 entry into the MoU and any drawdown of the Grant is in full compliance with its corporate authorisations and constitutional documents;

- 29.1.3 it will obtain any consents, licences or planning permissions necessary, prior to undertaking any Agreed Heat Network Project work for which such consents, licences or planning permissions are required;
- 29.1.4 it will obtain any real estate and access rights necessary, prior to undertaking any Agreed Heat Network Project for which such real estate and access rights are required;
- 29.1.5 the information and evidence in its application and any other information provided by the Grant Recipient was true at the time of the application and remains true, complete and accurate, and that its circumstances have not materially changed since submitting its application or providing further information to the Authority or reaching further agreements with the Authority; and
- 29.1.6 the Grant Recipient knows of the existence of no circumstances which might materially and adversely impact on its ability to undertake the Agreed Heat Network Project or meet the terms set out in this MoU (other than any circumstances that have been fairly disclosed to the Authority by the Grant Recipient in writing).

### **30. VAT**

- 30.1 This Grant does not cover VAT. All payments shall be deemed to be exclusive of all VAT and the Authority shall not be obliged to pay any amount by way of VAT.
- 30.2 All sums or other consideration payable to or provided by the Grant Recipient to the Authority at any time shall be deemed to be exclusive of all VAT payable and where any such sums become payable or due or other consideration is provided, the Grant Recipient shall at the same time or as the case may be on demand by HMRC in addition to such sums, or other consideration, pay to HMRC all the VAT so payable upon the receipt of a valid VAT invoice.

### **31. CODE OF CONDUCT FOR GRANT RECIPIENTS**

- 31.1 The Grant Recipients acknowledges that by signing the MoU it agrees to take account of the Code of Conduct, which includes ensuring that its Representatives undertake their duties in a manner consistent with the principles set out in the Code of Conduct.
- 31.2 The Grant Recipient shall immediately notify the Authority if it becomes aware of any actual or suspected breaches of the principles outlined in the Code of Conduct.
- 31.3 The Grant Recipient acknowledges that a failure to notify the Authority of an actual or suspected breach of the Code of Conduct may result in the Authority immediately suspending the Grant funding, terminating the MoU and taking action to recover some or all of the funds paid to the Grant Recipient as a civil debt in accordance with paragraphs 26.1.19 and 26.2.



## **Anti-discrimination**

31.4 The Grant Recipient has agreed to comply with the requirements of the Equality Act 2010.

## **Responsibility for employees, contractors, agents and partners**

31.5 The Grant Recipient has agreed to ensure that its employees, contractors, agents and partners comply with the terms set out in the MoU and that the Grant Recipient will be responsible for any breach by them of those terms. In particular, the Grant Recipient has agreed to be responsible for ensuring that other local authorities and/or organisations referred to in the application, or which participate in the Project, comply with the terms of this MoU.

## **32. NOTICES**

32.1 All notices and other communications in relation to this MoU shall be in writing and shall be deemed to have been duly given if personally delivered, e-mailed, or mailed (first class postage prepaid) to the address of the relevant Party or the Delivery Partner, as referred to in Annex 7: Contact Details or otherwise notified in writing. All notices and other communications must be marked for the attention of the contact specified in Annex 7: Contact Details. If personally delivered or if e-mailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

## **33. GOVERNING LAW**

33.1 This MoU will be governed by and construed in accordance with the law of England and Wales and the Parties irrevocably submit to the exclusive jurisdiction of the English courts.

## **34. VARIATIONS**

34.1 No variation of the provisions set out or referred to in this MoU will be effective unless it is agreed in writing and signed by both Parties. This does not prevent the Authority making reasonable changes in relation to the administrative arrangements in MoU (such as departmental contact details).

## **35. STATUS**

35.1 Nothing in this MoU is intended to, or shall be deemed to, establish any partnership, joint venture, or relationship of employment between the parties, constitute either Party as the agent of the other Party, nor authorise either of the Parties to make or enter into any commitments for or on behalf of the other Party. Accordingly, the Grant Recipient will not hold itself out as having any such relationship with the Authority.

35.2 This MoU is not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from this MoU. The parties do, however, enter into the MoU intending to honour all their commitments under it.

**36. THIRD PARTY RIGHTS**

36.1 Unless otherwise stated in this MoU (including without limitation at paragraphs 2.4, 8 and 28.1), 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 MoU.

**Memorandum of Understanding  
between the  
Secretary of State for Energy Security and Net Zero  
and  
The Mayor and Burgesses of the London Borough of Brent**

**Signed:-**

**For the Secretary of State for Energy Security and Net Zero**

**Name:** Chris Small **Date:**

**Position:** Deputy Project Director, Heat Networks,  
Department for Energy Security and Net Zero

**Signed:**

**Executed as a Deed by**

**The Mayor and Burgesses of the London Borough of Brent  
by affixing hereto its common seal in the presence of**

**Signature:**

**Name:** **Date:**

**Position:** **Seal Register No.**  
**Chief Lawyer / Solicitor / Authorised Officer**

## ANNEX 1: SUCCESSFUL NOTIFICATION LETTER



9 March 2023

Francesca Campagnoli  
 Brent Council  
 Brent Civic Centre  
 Engineers Way  
 Wembley  
 London  
 HA9 0FJ

Dear Ms Campagnoli,

**Green Heat Network Fund: Application Reference GHNf-R3-020**

Thank you for submitting an application to the Green Heat Network Fund (GHNf).

I am writing to inform you that we have considered your application for funding for the South Kilburn District Heating Network, and I am delighted to confirm, that we are minded to offer support as follows;

	FYE 2024 (£)	FYE 2025 (£)	Total (£)
<b>Grant for Commercialisation</b>	450,000.00		<b>450,000.00</b>
<b>Grant for Construction</b>		4,708,849.00	<b>4,708,849.00</b>
<b>Total</b>	<b>450,000.00</b>	<b>4,708,849.00</b>	<b>5,158,849.00</b>

The Department of Energy Security and Net Zero (DESNZ) will generally expect to make funding available to projects in line with the above however, in order to achieve the Green Heat Network Fund's wider ambitions, the DESNZ reserves the right, at its sole discretion, to provide funding in the same amount, from a subsequent budget year.

Your offer is subject to Section 31 approval which has now been obtained. We would be grateful if you could respond to this letter soonest to confirm that your organisation intends to proceed with the GHNf award process. If you do not intend to proceed, please do let us know as soon as possible.

This letter is neither a formal offer of funding or other acceptance to the scheme. Negotiations of the terms and conditions will not be permitted.

Accompanying this note is a grant cashflow forecast to be completed and returned at your earliest opportunity. Do please remember that you will be required to provide invoices in respect of eligible expenditure (and proof of payment of those invoices) by the 5th working day of the month.

We fully expect that your actual drawdowns will change over time but we'd be grateful if you could take the time now to make these forecasts as accurate as possible.



## ANNEX 2: FUNDED ACTIVITIES

### 1 Background/purpose of the Grant

#### 1.1 Background

The Authority’s vision for the GHNf is to incentivise heat network market transition to low carbon heat sources via targeted financial support, that will help stimulate the increased deployment of low carbon technologies at scale.

The GHNf objectives are to:

- Achieve carbon savings and decreases in carbon intensity of heat supplied.
- Increase the total amount of low carbon heat utilisation in heat networks (both retrofitted and new heat networks).
- Help prepare the market for future ‘low carbon’ regulation and ensure compliance with existing regulations and forthcoming requirements (such as the Heat Network (Metering and Billing) Regulations 2014, Heat Network Market Framework, and the Future Homes/Buildings Standard).

Furthermore, applicants to the GHNf main scheme must show what actions they can take as part of their projects that will provide a benefit to the wider market. In line with Build Back Better, the Authority’s plan for growth, the GHNf provides an enabling platform to influence developer and their supply chain behaviours to make a lasting difference for a stronger supply chain that can support the high growth expectations.

#### 1.2 Aims and objectives of the Funded Activities

As per Grant Application.

### 2 Funded Activities

As per Grant Application.

### 3 Funded Activities Start Date: As per Grant Application.

### 4 Commercial Operations commencing means: the first supply of heat to a customer from the Project’s principal low carbon source of heat.

### 5 Early Works: N/A.

**Table 2.1: Project Summary**

South Kilburn District Heating Network

Last Updated: Click or tap here to enter text.

**Project Sponsor:**  
London Borough of Brent

FID	Construction Start	Heat On (initial)	Heat On (full)
3/13/2023	2/13/2024	4/1/2025	4/1/2030

**Project Contact Details:**

Applicant org.:	GHNF team
Contact Name:	GHNF team

**Technical Information:**

**Primary energy sources:**

Heating: Heat pump: air source

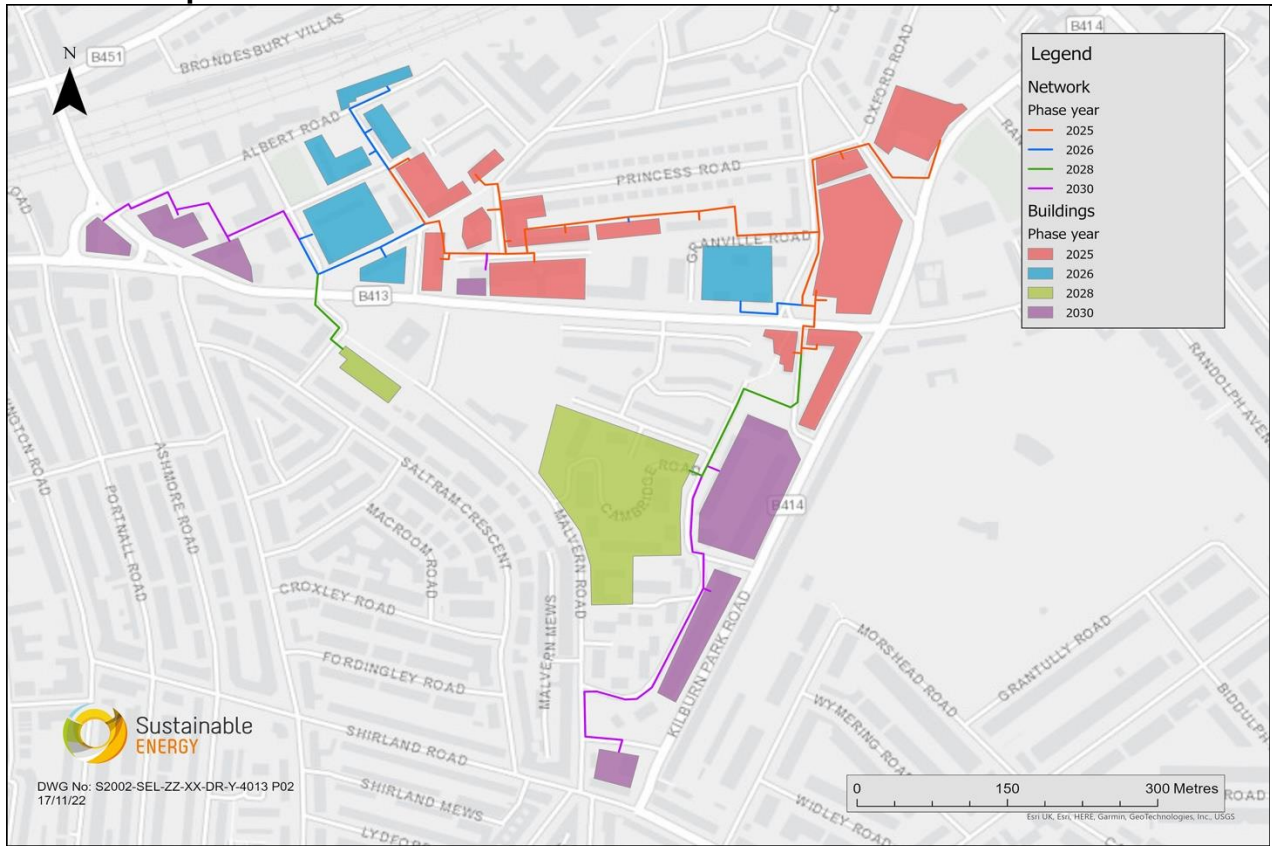
Cooling:

**Project description:**

Capex: £17.1m (commercially sensitive)  
The South Kilburn District Heat Network, supports the South Kilburn Regeneration programme in providing a centralised heat hub for the area. The initial phase (1.2GWh) will supply heat using air source heat pumps utilising existing gas boilers to provide backup heat generation. The technical strategy also includes for thermal stores. Additional heat generating plant may be required. Due to a lack of electrical capacity, it is likely that this will need to be provided by gas boilers initially. In each of the subsequent phases (Phase 2-4), the heating generating capacity is expected to increase by 0.4 GWh. This will be achieved through a second energy centre on the roof of the neighbouring building along with complementary plant in the basement. Brent Council is proposing to directly deliver, own and operate the network with one Design Build Operate Maintain contract. The DBOM proposed procurement strategy is a two stage competitive dialogue.



**Network Map:**



Error! Unknown document property name.

**Summary forecast financial information (to be updated in Status Reports if required):**

	2021/22	2022/23	2023/24	2024/25	2025/26	Total
Energy generation capex (£m)	0	0	0	-4.94	-2.3	-9.73
Pipework / distribution capex (£m)	0	0	0	-2.76	-1.97	-7.39
Customer connection costs (£m)	0	0	0	0	0	0
Other capex (£m)	0	0	0	0	0	0
<b>Total capex (£m)</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>-7.7</b>	<b>-4.27</b>	<b>-17.12</b>

Project IRR* -		6.5%
Av. Annual demand (GWh/Y)		17.6

\* Real pre-tax pre-finance post GHNf grant

### ANNEX 3: PAYMENT SCHEDULE

Instalment Period	Maximum Grant Sum Payable (£)
Year 1 (1 April 2022 – 31 March 2023)	0.00
Year 2 (1 April 2023 – 31 March 2024)	450,000.00
Year 3 (1 April 2024 – 31 March 2025)	4,708,849.00
Year 4 (1 April 2025 – 31 March 2026) indicative only, not currently contemplated within GHNF.	0.00
Year 5 (1 April 2026 – 31 March 2027) indicative only, not currently contemplated within GHNF.	£0.00

## ANNEX 4: GHNF SUPPLIER INFORMATION FORM

**Error! Unknown document property name.**

## Oracle SUPPLIER INFORMATION FORM

*This form should be used for all organisations*

**IF FACTOR IS USED PLEASE ATTACH DETAILS SEPARATELY**

**1. Name of Company**

London Borough of Brent

**2. VAT Registration Number (if applicable)**

**3. Company Address**

First Line

Engineers Way

City /

Wembley Park

County

Postcode

HA9 0FJ

*e-mail*

Francesca.Campagnoli@brent.gov.uk

**4. Site Contact**

Name

Francesca Campagnoli

Tel. No.

020 8937 3772

*e-mail*

Francesca.Campagnoli@brent.gov.uk

**5. Bank Details**

Bank Name

Natwest

Account No

76700682



Sort Code

5 0 2 3 0 9

Branch Name

Kingsbury Road, Kingsbury

Account Holder  
Name

London Borough of Brent

**6. Number of Full Time (or equivalent) Employees**

## ANNEX 5: STATUS REPORT TEMPLATE

Excel file provided under separate cover.

**Error! Unknown document property name.**



## ANNEX 6: MILESTONES

The Grant Recipient is required to achieve the following milestones and performance measures in connection with the Grant:

Milestone	Details
<b>M_S_01 - Offtake Commitments</b>	<p>Has the Recipient demonstrated sufficient progress on gaining legal commitment from offtakers (consistent with the Project) such as signed letters of intent, heads of terms and heat connection and supply agreements?</p>
	<p>Post-award, progress will need to be monitored and assessed with regard to:</p> <ul style="list-style-type: none"> <li>- Drafting, negotiation and signing of heads of terms and ultimately full connection and supply agreements with the planned offtakers.</li> </ul> <p>Release of construction funding would not be expected until there is significant progress against this Milestone showing that a sufficient amount of the heat loads to be connected are either controlled by the applicant, are obliged to connect under planning agreements or have shown some legal commitment to connecting.</p>
Milestone	Details
<b>M_S_02 - Permits and Land Rights</b>	<p>Has the Recipient demonstrated sufficient progress with obtaining:</p> <ul style="list-style-type: none"> <li>- Any property rights necessary to build the Energy Centre (where relevant), pipe route and any other related infrastructure for the Project;</li> <li>- Any legal permits or permissions necessary to build the Energy Centre (where relevant), pipe route and any other related infrastructure for the Project.</li> </ul>
	<p>Post-award, progress will need to be monitored and assessed with regard to:</p> <ul style="list-style-type: none"> <li>- The applicant securing planning consent for the new design of the Energy Centre. Release of construction funding would not be expected without progress being demonstrated to provide reasonable level of assurance that the necessary planning permission is granted or likely to be granted.</li> </ul>
Milestone	Details
<b>M_S_03 - Permits and Land Rights</b>	<p>Has the Recipient demonstrated sufficient progress with obtaining:</p> <ul style="list-style-type: none"> <li>- Any property rights necessary to build the Energy Centre (where relevant), pipe route and any other related infrastructure for the Project;</li> <li>- Any legal permits or permissions necessary to build the Energy Centre (where relevant), pipe route and any other related infrastructure for the Project.</li> </ul>

	<p>Post-award, progress will need to be monitored and assessed with regard to:</p> <ul style="list-style-type: none"> <li>- The applicant securing any necessary land rights and planning or other regulatory consents for laying the pipe network.</li> <li>- The applicant securing the easement from Notting Hill Genesis for laying pipework under the car park of Len Williams Court.</li> </ul> <p>Release of construction funding would not be expected without progress being demonstrated to provide reasonable level of assurance that the easement and any necessary land rights and regulatory consents are granted or likely to be granted.</p>
Milestone	Details
<b>M_S_04</b> <b>Access to Other Sources of Funding</b>	- Has the Recipient demonstrated sufficient progress on gaining legal commitments for the other (non-GHNF) sources of funding that [will be necessary to complete the Project / relevant stage of the Project]?
	<p>Post-award progress will need to be monitored and assessed that all stated non-GHNF funding has been committed and secured during commercialisation prior to release of construction funding.</p>

## ANNEX 7: CONTACT DETAILS

The Authority’s main departmental contact in connection with the Grant is:

Name of contact	Barbora A. Sladkova
Position in organisation	GHNF Scheme Delivery Manager
Email address	BarboraAnna.Sladkova@beis.gov.uk
Telephone number	020 7215 4712
Postal address	1 Victoria Street London SW1H 0ET

The Delivery Partner’s contact in connection with the Grant is:

Name of contact	GHNF M&R Team
Position in organisation	/
Email address	GHNFRreporting@tp-heatnetworks.org
Telephone number	As advised from time to time.

Monthly status reports will be submitted to Triple Point Heat Networks Investment Management via a sharepoint site. More information about this process will be sent to you. This information is correct at the date of the Grant Funding Agreement. The Authority will send you a revised contact sheet if any of the details change.

This information is correct at the date of the MoU. The Authority will send you a revised contact sheet if any of the details change.

The Grant Recipient’s main contact in connection with the MoU is:

Reference	GHNF_020
Organisation	London Borough of Brent
Name of contact	Francesca Campagnoli
Position in organisation	District Energy Network Manager
Email address	francesca.campagnoli@brent.gov.uk
Telephone number	07776665837
Postal address	Brent Civic Centre Engineers Way Wembley London London HA9 0FJ

Please inform the Authority and the Delivery Partner if the Grant Recipient’s main contact changes.

## ANNEX 8: CONDITIONS TO AWARD

### 1 Project-specific conditions

A signed copy of this MoU and the Grant Recipient's "s.151" confirmation letter.

The Grant Recipient must provide written confirmation that, within 1 year of connection of a site containing domestic or micro business customers to the heat network, the Grant Recipient will have registered as a participant of the Heat Trust and registered the site with that scheme, or have put in place equivalent provisions.

The Grant Recipient must provide a clear programme of works up to the point that all customers included in the Grant Application will be connected to the heat network, together with a monthly projected spend profile for the next 12 months.

Any "know your customer" documentation required by the Authority or the Delivery Partner.

Conditions precedent must be satisfied by: 31 December 2023

### 2 No Default / other

- 2.1 Grant Recipient confirmation (to the satisfaction of the Authority) that no Event of Default under this MoU is continuing or would result from the proposed Grant.
- 2.2 Grant Recipient confirmation (to the satisfaction of the Provider) that all representations in this MoU are true and correct.
- 2.3 Any other evidence as may be required by the Authority, in relation to the Project.