



Department for
Business, Energy
& Industrial Strategy

HEAT NETWORKS INVESTMENT PROJECT

SALIX

HEAT NETWORKS INVESTMENT PROJECT PILOT

Draft Heads of Terms for the HNIP Funding
Agreements



9 November 2016

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Draft Heads of Terms for the HNIP Funding Agreements

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Contents

1. About this document	2
2. Detailed Draft Terms for Funding Agreements	3
Definitions	3
Common Terms for either Grants or Loans	5
Grant Specific Terms	12
Loan Specific Terms	13
3. Annexes	15
Annex A: Eligible Projects	15
Annex B: Eligible Applicants	15
4. Schedule A: Project Description and Plan	16
5. Schedule B: Monitoring, Reporting and Record Keeping	17

1. About this document

A Pilot Scheme has been launched for Heat Network Funding applications. The budget available for the Pilot Scheme is £39m, split across two financial years (2016/17 and 2017/18). There will be separate Funding Agreements for each year and award.

- This Pilot will consist of one single competitive funding round and will inform the Main Scheme, which is expected to open in 2017 and run for four years.
- Detailed guidance for applicants is now available on the Salix Finance website, who will be delivering the Pilot Scheme.
- The Pilot Scheme is open to local authorities and other public sector bodies excluding central Government Departments, noting that there are some restrictions on the type of finance that some public sector organisations can accept.
- Applicants can apply for grants or loans. Applicants can on-lend or invest funding into Project companies.
- Any efficient heating and cooling network in England and Wales – including those that also generate electricity – is eligible for support.
- Eligible costs include the construction, expansion, refurbishment and interconnection of heat networks, including works to access recoverable heat and upgrade of heating systems inside some existing properties as well as commercialisation phase costs (where they are capitalised).
- Multiple criteria will be used to score and rank applications with respect to their carbon savings, customer impact and social net present value.
- Conditions in this agreement will reflect the Application and Guidance for HNIP as updated from time to time.

Please note: these draft Heads of Terms are indicative of the likely key terms of any Agreement, however, BEIS reserves the right to modify or add to these terms (including any additional terms appropriate to the nature of the Recipient entities).

2. Detailed Draft Terms for Funding Agreements

Definitions

In these heads of terms, capitalised terms having the meaning set out below.

Defined terms	
Accelerated Repayment Event	As defined in “ <i>Accelerated Repayment Events</i> ” in the Common Terms section and, in the case of a Loan, the “ <i>Additional Acceleration Repayment Events</i> ” in the Loan Specific Terms section.
Agreement	The binding agreement for provision of the Funding to be entered into between the Recipient and the Provider.
Anchor Load Customers	The minimum volume of customers necessary to enable a positive investment decision.
Approved Purpose	Funding of Eligible Costs for the commercialisation or construction (or a combination of both) of the Project, subject in the case of Funding provided by way of grant to the matters set out “ <i>Eligible Costs for Grant Funding</i> ” in the Grant Specific Terms section.
Availability Period	The period from and including the date of the Agreement (or, if different, the date stipulated in the Agreement as the first date on which the Funding can be drawn) to but excluding the date stipulated in the Agreement as the last date on which the Funding can be drawn.
Drawdown Date	The date on which the Funding is drawn down, which must occur within the Availability Period.
Eligible Costs	To be defined in detail in the Agreement having regard to the nature of the Project and the Approved Purpose for that Project, but excluding costs already incurred at the date of application.
Eligible Applicant	In accordance with Annex B.
Eligible Project	In accordance with Annex A.
First Principal Payment Due Date	As defined in “ <i>First Principal Payment Due Date</i> ” in the Loan Specific Terms section.
Funding	The funding provided by the Provider in relation to the Project,

	whether by means of loan or grant.
Funding Amount	The amount (in sterling) of Funding provided under the Agreement.
Information Rights	As defined in Schedule B.
Investment Vehicle	Any entity which owns or operates the Project or any holding company of such entity (if different from the Recipient).
Project	The relevant heat network.
Project Life	The expected duration of the Project as evidenced by the Recipient in accordance with Schedule A.
Provider	Secretary of State for Business Energy and Industrial Strategy (BEIS) of the UK Government.
Public Works Loan Board (PWLB) Rate	The rate equal to the “ <i>Standard New Loan Rate</i> ” published on the PWLB website at 9.30am on the Drawdown Date using the corresponding PWLB Period that matches the Loan Term and the corresponding PWLB Annuity Rate that matches the Loan Term.
Recipient	The recipient of the Funding.
Representations	The representations and warranties to be given by the Recipient to the Provider as part of the Agreement, as set out in the Common Terms section.

Common Terms for either Grants or Loans

Common Terms	
Funding Amount	The Funding Amount will be set out in the Agreement and must be equal to or within the maximum State aid threshold under Article 46 (investment aid for energy efficient district heating and cooling) of the General Block Exemption Regulation (GBER) ¹ .
Funding Form	Grant or Loan, to be specified in the Agreement.
Funding Type	Fiscal or non-fiscal Funding, to be specified in the Agreement. Recipient will not change the use of the funds from their intended purpose such that the categorisation of the funding by HMG has to be altered.
Drawdown Procedure	For Funding to be drawn down the Recipient must deliver a valid drawdown notice. A drawdown notice will not be regarded as a valid unless: <ul style="list-style-type: none"> • it confirms compliance with all Conditions Precedent; • it confirm the Representations remain true and correct; • it specifies a Drawdown Date at least 10 working days before the end of month “N” for funding to be drawn on or after the 10th working day of month “N+2”; • it attaches evidence of Eligible Costs for which Funding is needed in order for the Project to proceed; and • It requests drawdown of the Funding Amount in a single instalment.
Governing Law	English.
Jurisdiction	Courts of England.
Business Days	London.
Business Day convention	Following.
Fees	Nil.

¹ Commission Regulation (EU) No. 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty (OJ L 187, 26.06.14, p.1).

Administrator	<p>Salix Finance Ltd.</p> <p>The Administrator will administer the Agreement, including the application process, eligibility assessments, notifications, payment schedules, payments and repayments.</p> <p>The Provider reserves the right to replace the Administrator, and the Recipient shall make available to any successor Administrator such books and records as the successor Administrator may request and provide any other assistance reasonably requested.</p>
Variation of Approved Purpose	<p>The Provider will consider variation requests from the Recipient in its sole and absolute discretion.</p>
Conditions Precedent (general) ²	<p>These will include the following evidence in form and substance satisfactory to the Provider:</p> <ul style="list-style-type: none">• A budget for total expenditure relating to the Project demonstrating that spend will be as described in the original application (in particular setting out the year of spend and funding type);• The financial model produced for the Projects internal business case in a form suitable for financial analysis by the Provider;• Agreements entered into with anchor load customers;• The levelised heat price;• The carbon savings expected to result from the Project in the short-term, and details of future heat source options and phasing/expansion plans;• The quality of service to be provided to heat network customers;• The expected level of Social Net Present Value of the Project;• That all necessary internal authorisations have been obtained;• Details of any plans to on-invest or on-loan the Funding and, when available, copies of the documentation for any on-loan or on-investment by the applicant (whether by way of loan, grant or equity) or confirmation that the Recipient will not do so; and• [The Provider may require additional project-specific CPs]. <p>Such other evidence, confirmations or documentation as the Provider may require in order to confirm, clarify, supplement or update the information provided at the application stage.</p>

² If satisfactory evidence, confirmation or documentation of these matters has been provided at the application stage then it will not need to be re-submitted prior to drawdown.

Conditions precedent (commercialisation)	<p>These will include (but may not be limited to) the following evidence in form and substance satisfactory to the Provider:</p> <ul style="list-style-type: none">• A structure chart showing the planned commercial structure;• A budget showing all the planned spend for the purposes of commercialisation; and• A copy of the Recipient's delivery plan and procurement strategy.
Conditions precedent (construction)	<p>These will include (but may not be limited to) the following evidence in form and substance satisfactory to the Provider:</p> <ul style="list-style-type: none">• That the Project has a delivery process and negotiated delivery contract(s) procured in accordance with public procurement regulations;• That there is a robust Governance process with a detailed organisational structure, clear authority to contract and a project management team with (i) sufficient resources and (ii) an adequate plan committed to by the Recipient to oversee the Project during development, construction and operation and maintenance;• That other funding required to complete the Project has been secured and is available (including where relevant evidence of the satisfaction of any conditions precedent);• A copy of the final design and evidence that the final design has been completed at least in accordance with minimum standards identified in the appropriate sections of the CIBSE ADE Code of Practice CP1:2015;• That all necessary permissions and permits for construction have been obtained and;• Copies of project documentation as described in Schedule A.

Representations and Warranties

The following warranties will be made by the Recipient on the date the agreement is signed and deemed to be repeated on the date a Drawdown Notice is submitted, the Drawdown Date and each interest payment date:

- It has the capacity and authority to undertake the Project and to agree and enter into the Agreement;
- It has obtained any consents necessary to undertake the Project;
- The information in its application remains true, complete and accurate and there has been no material change in its circumstances since its applications;
- It is not aware of any circumstances that constitute an Accelerated Repayment Event;
- It is not aware of any circumstances that might materially and adversely impact on its ability to undertake the Project or comply with the Agreement;
- The Recipient can lawfully comply with all requirements in the Agreement;
- It has not breached any law or regulation which breach would have a material adverse effect on its business, function, operations or ability to undertake the Project;
- It has conducted its business, function and operations in compliance with applicable anti-corruption laws;
- *[representations confirming the nature of its involvement with the Project]*;
- All Funding to be drawn down will be, and all Funding already drawn down has been, used for the Approved Purpose only and, without limitation, will not be used for any Prohibited Use; and
- That the use of the Funding is State aid compliant.

If any of these representations prove to be incorrect or misleading when given, this will constitute an Accelerated Repayment Event.

<p>Undertakings</p>	<p>The Recipient gives each of the undertakings below in favour of the Provider:</p> <ul style="list-style-type: none"> • Not to on-lend or on-invest the Funding without the Provider’s prior written approval; • To ensure that all documentation for any on lending or on-investment provides for: <ul style="list-style-type: none"> (a) repayment of the on-loan or on-investment by the relevant Investment Vehicle to the Recipient if the Funding has to be repaid by the Recipient to the Provider; and (b) access for the Provider to the information it requires regarding the Project as laid out in Schedule B; • Not to dispose of the Project or, if applicable, its interest in the entity which owns the Project, without the Provider’s prior written consent; • To comply and ensure the Project complies with all EU and UK law and regulatory requirements; • To ensure that the Funding for is used for the Approved Purpose only and, without limitation, not for any Prohibited Use; • To ensure that the Project is or becomes a member of the Heat Trust or an equivalent customer protection scheme; • To comply with the Information Rights at all times; and • <i>[Additional undertakings may be needed depending on the nature of the Recipient].</i> <p>A breach of these undertakings will constitute an Accelerated Repayment Event.</p>
<p>Limitation on liability and indemnity</p>	<ul style="list-style-type: none"> • The parties agree that the Provider’s liability to the Recipient is limited only to the payment of the Funding. • The Recipient remains entirely responsible for its risks and liabilities in undertaking the Project. • The Recipient indemnifies the Provider against all claims, demands actions proceedings, costs, charges, or any similar impost arising from the Recipient’s actions or omissions or those of its employees, agents, contractors and any Investment Vehicle in regards to the Project.

Accelerated Repayment	<p>Each of the following events or circumstances constitutes an Accelerated Repayment Event:</p> <ul style="list-style-type: none"> • Failure to comply with State aid regulation or any other requirement of law; • Any information given by the Recipient in its application or any Representation is or proves to be incorrect or misleading when given or the Recipient does not inform the Provider prior to accepting any Drawdown that any Representation is no longer correct; • A material failure by the Recipient to comply with the Agreement; • A sum is recoverable from or repayable by the Recipient under any other agreement with the Provider or another Government department; • A change to the Recipient’s or any Investment Vehicle’s business or function which the Provider reasonably considers would have made a material difference to eligibility for the Funding or the conditions on which the Funding was offered; • Failure to use the Funding for the Approved Purpose by either the Recipient or any Investment Vehicle; • Any overpayment of Funding; • The Recipient or any Investment Vehicle ceases carrying on its business or a material part of it, or becomes insolvent, or is subject to insolvency proceedings; • The Provider has reasonable grounds to believe the Recipient or any Investment Vehicle has failed to comply with anti-bribery and anti-corruption laws; • Any of the grounds for mandatory or discretionary exclusion in regulation 57 of the Public Contracts Regulations 2015 arise, at any time, in relation to the Recipient or, where relevant, any Investment Vehicle; and • any event or circumstance occurs which the Provider reasonably considers will have a material adverse effect on the Recipient’s or any Investment Vehicle’s business, function or operations or ability to carry out the Project, or the ability of the Recipient to perform its obligations under the Agreement. <p>On and at any time after the occurrence of an Accelerated Repayment Event which is continuing the Provider may (or where required by law, shall) by notice to the Recipient cancel the availability of any Funding which has not yet been drawn down and declare any Funding already advanced (together with accrued but unpaid interest) immediately due and payable.</p>
Information Rights	Recipient to comply with Schedule B.

Confidentiality	<p>The Recipient agrees (subject to any disclosure of information required by law) not to publicise their funding award until such a time as an official announcement of the Funding awarded from the relevant funding round has been released.</p> <p>Please note all information in regards to HNIP Funding may be made public.</p>
Standard Terms and Conditions	<ul style="list-style-type: none">• The Agreement will contain terms and conditions relating to State aid as required by the GBER.
Prohibited Use	<ul style="list-style-type: none">• Use to support activity intended to influence or attempt to influence Parliament, Government or political parties, or use in attempting to influence the awarding or renewal of contracts and grants, or use in attempting to influence legislative or regulatory action, or any other use of a political nature.• Use of an exclusively religious nature.• Use in respect of costs reimbursed or to be reimbursed by funding from other public authorities or from the private sector.• Use in connection with the receipt of contributions in kind (a contribution in goods or services as opposed to money).• Use to cover interest payments (including service charge payments for finance leases), other than interest in repayment of the Loan where the Funding is provided by Loan.• Use for the giving of gifts to individuals, other than promotional items with a value no more than £10 a year to any one individual.• Use for entertaining (entertaining for this purpose means anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations).• Use to pay statutory fines, criminal fines or penalties.• Use in respect of VAT that the Recipient is able to reclaim from HM Revenue and Customs.

Grant Specific Terms

Grant	
Eligible costs for Grant Funding	As granted by the Provider any Eligible Costs of commercialisation ³ , design, commissioning and construction of the Project.
Partial Acceleration Event	Fifty percent (50 %) of any grant for commercialisation will be become repayable on demand if the Recipient decides not to proceed to construction.

³ Only the proportion of commercialisation phase costs that can be capitalised are eligible for HNIP Grant funding.

Loan Specific Terms

Loan Terms	
Loan Term	The shorter of: a) a term equal to the Project Life, minus two (2) years; or b) forty (40) years, commencing from the first day of the Availability Period.
Loan Form	An annuity repayment term loan from First Principal Payment Due Date. The Recipient will make a series of semi-annual payments of principal and interest over the loan term.
Interest Rate	The rate of interest on the Loan is a percentage rate per annum equal to the greater of: (a) One percent (1.00%) below the Public Works Loan Board (PWLB) Rate; and (b) One basis point (0.01%).
Interest Accrual and payment	The Loan will accrue interest from Drawdown Date at the Interest Rate and interest will be paid semi-annually (every six months) in arrears.
First Interest Payment Date	Six (6) months after the Drawdown Date.
Interest Rate Day Count Convention	Interest will be calculated on an actual / actual basis, using the actual number of days in a semi-annual interest period and actual number of days in the year.
First Principal Payment Due Date	On the first Interest Payment Date which occurs following the earlier of: <ul style="list-style-type: none"> • The Completion Date; or • Five (5) years after the first day of the Availability Period. And semi-annually thereafter.

Completion Date	<p>The Completion Date will be deemed to occur on the earlier of:</p> <ol style="list-style-type: none"> 1. Issuance of a completion certificate by the contractor or surveyor; or 2. Where production and transmission of heat to the Anchor Load Customers has started. <p>(to be specified in the Agreement)</p> <p>The Borrower must notify the Provider of the Completion Date within five (5) business days of it occurring.</p>
Principal Payment Calculation	<p>Semi-annual (every six months) instalments over the life of the loan from the First Principal Payment Due Date calculated on an annuity basis by the Administrator. Following notice of the Completion Date the Administrator will provide, within 10 Business Days, a schedule of interest and principal payments to the end of the Loan Term.</p>
Early Principal Prepayments	<p>Allowed without any penalties on not less than ten (10) Business Days' notice on any Interest Payment Date.</p> <p>These funds cannot be redrawn.</p>
Seniority	<p>The Loan will rank pari passu with all other senior debt of the Recipient.</p>
Novation	<p>The Provider has the right to assign its rights or novate the Loan Agreement to a third party in its absolute discretion.</p>
Additional Loan Accelerated Repayment Events	<p>In addition to those set out in the "Common Terms" section of this document:</p> <ul style="list-style-type: none"> • failure by the Recipient to pay an amount when due under the Agreement; • any other financial indebtedness of the Recipient or any Investment Vehicle is not paid when due or declared to be (or is capable of being declared to be by the relevant creditor) due and payable prior to its specified maturity; • failure to proceed or meet the key milestones defined in Schedule A or provide updates; • Change of Control (or any economically equivalent event); or • Failure to reach Completion Date within five (5) years from Drawdown Date.

3. Annexes

Annex A: Eligible Projects

As laid out in the full application guidance section 6.2

Annex B: Eligible Applicants

As laid out in the full application guidance section 6.1

4. Schedule A: Project Description and Plan

As detailed in Section 7.4 of the full application guidance, plus:

- A description, scope of work and timelines for the Project.
- Key milestones and how these will be tested and reported.
- Evidence for the project life. This will be in the form of concession agreements, heat supply contracts, offtake agreements, or other arrangements.
- Key project contracts with their indemnities and warranties.
- Capital structure, sources and uses of all the funding streams, facilities and their conditions for the Project.
- Details on how the Funding will be invested – whether a public or private sector controlled heat network.

5. Schedule B: Monitoring, Reporting and Record Keeping

Monitoring and reporting requirements for each Project will be defined in the funding agreement. These will include requests for project data for monitoring purposes and requests to help support project evaluation e.g. financial accounts and refinancing information. BEIS will run periodic information sharing events and make use of information sharing software to facilitate this.

In particular, the Recipient must:

- Provide (and ensure any Investment Vehicle provides) quarterly, annual management accounts, forecasts and statutory accounts along with KPI or similar performance reports.
- Keep account of all Project expenditure (for at least a ten (10) year period) and make such accounts available to the Provider upon request.
- Provide monthly progress reports.
- Ensure that the Provider has audit rights over the Project as required by the National Audit Office (NAO) and other government audit functions or those appointed by the Provider.
- Provide details of any other State aid they are receiving in relation to the Project and demonstrate how it will invest the Funding in manner which complies with applicable State aid law and regulation.
- In a full and timely manner provide evidence or information required by the Administrator, Provider, Parliament or any Parliamentary Committee, NAO, the European Commission or any other public body being entitled by law to that information (acknowledging that those bodies may share that information with each other and with their agents, and may publish information relating to the Funding and the Project); and cooperate with Provider in relation to disclosure of any information required by law (including under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004).

Without qualifying the generality of the requirements above, the Recipient shall provide information (at intervals specified in the Agreement) on:

- The monitoring requirements set out in Annex F of the Application Guidance;
- Leveraging public and private investment;
- How to share lessons learned from the Project;
- Provide information requested by the Provider (or the Providers agents) for the purpose of evaluating the performance of the HNIP, including the provision of data, cooperation and participation in evaluation surveys and case studies.

