

Terms and Conditions

Digarbon Round 2

Terms of loan

1. DURATION

- 1.1 These Terms will come into effect from the date that the Public Sector Body has signed the Project Loan Summary and will continue until the Loan (together with all other sums due under these Terms) is repaid in full.
- 1.2 These Terms are entered into by the Agent and issued to the Public Sector Body strictly in its capacity as agent for the Lender (and their successors, assigns and transferees) and accordingly the Loan is to be treated as having been advanced by the Lender as principal and not by the Agent. The Agent does not assume any obligations to the Public Sector Body in acting as agent for the Lender. Unless and until the Public Sector Body is advised otherwise in writing by the Lender it may deal with the Agent as the agent for the Lender with full authority to act as its agent in relation to the Loan in all respects. All of these Terms will be read and construed to give effect to this agency appointment.

2. THE LOAN

- 2.1 The Loan shall be unsecured and, subject to these Terms, shall be disbursed to the Public Sector Body by the Lender via the Agent on the Drawdown Dates. The interest rate on the Loan shall be the rate per annum set out in the Project Loan Summary. Interest shall accrue on the Loan on a daily basis and shall be payable annually in arrears on 28 February each year and on the date on which the Loan is repaid or prepaid in full.
- 2.2 The Lender's agreement to provide the Loan to the Public Sector Body only arises once the Agent receives the requisite funding from the Lender (which the Lender may decide not to provide in their sole and absolute discretion) and then only once the Agent has received all the documents and evidence specified in these Terms, in the form and containing the information required by it and the Lender, which includes (but is not limited to):
- 2.2.1 these Terms (and Project Loan Summary) signed by all parties;
 - 2.2.2 a counter fraud form completed by the Public Sector Body in a form acceptable to the Agent;
 - 2.2.3 a signed bank verification form;
 - 2.2.4 a completed Direct Debit Mandate; and
 - 2.2.5 any other information in relation to the Public Sector Body or the Project reasonably requested by a Finance Party.
- 2.3 Without prejudice to clause 2.2 above, the Lender's obligation to make the Loan (and, the Agent's obligation to process the disbursement of that Loan) to the Public Sector Body is subject to the further conditions precedent that prior to and on the Drawdown Date:
- 2.3.1 the Warranties are true and correct in all material respects and will be true and correct in all material respects immediately after drawdown; and
 - 2.3.2 no Event of Default or other breach of these Terms is continuing or would result from the proposed Loan.
- 2.4 The conditions specified in Clauses 2.2 and 2.3 are inserted solely for the benefit of each Finance Party. The Agent (acting on the instructions of the Lender) may waive them, in whole or in part and with or without conditions, without prejudicing the right to require subsequent fulfilment of such conditions.
- 2.5 The Public Sector Body shall, irrespective of any decarbonisation savings achieved or the suitability of the Project and whether or not the Project (or any assets comprised or utilised in the Project) remains under the control or ownership of the Public Sector Body, pay back the Loan to the Lender, in the instalments, to the account of the Agent set out in the Direct Debit Mandate and on the dates detailed in the Project Loan Summary, unless otherwise agreed in writing by the Agent (acting on the instructions of the Lender). The Public Sector Body may not re-borrow any amount of the Loan which has been repaid. The Public Sector Body may repay the full outstanding balance of the Loan (together with any other sums which may be due under these Terms) at any time on giving the Agent at least 90 days' written notice in advance and provided further that the notice must be given at least 90 days before the next payment date for any principal or interest.
- 2.6 Where required to do so by law or if the Public Sector Body does not pay any principal it is obliged to pay under these Terms when it is due, the Public Sector Body shall pay interest on that unpaid principal amount from time to time outstanding at the rate of 1% above the

interest rate payable on the Loan pursuant to Clause 2.1 or at such higher rate as required by law for the period beginning on its due date and ending on the date the Lender receives it, both before and after judgment.

- 2.7 All recurring payments that the Public Sector Body is required to make under these Terms shall be made by Direct Debit and the Public Sector Body must complete and return to the Agent, prior to the Drawdown Date, the Direct Debit Mandate attached to these Terms. All payments under these Terms (whether made under this clause or otherwise) must be to the Agent (on behalf of the Lender) made in full, without any counter-claim, deduction, setoff or withholding.
- 2.8 Any payment which is due to be made on a day which is not a Business Day shall be made on the next Business Day in the same calendar month (if there is one), or the immediately preceding Business Day (if there is not).
- 2.9 The Public Sector Body hereby acknowledges and agrees that if it does not claim any part of the Loan in full by the relevant Drawdown Date applicable to that part of the Loan, the Public Sector Body's right to claim and be paid that part of the Loan, shall terminate forthwith and it is agreed by the Lender and the Public Sector Body that the Public Sector Body shall no longer have any right to claim and be paid that part of the Loan and that the Agent and the Lender are under no obligation whatsoever to pay that part of the Loan to the Public Sector Body.
- 2.10 Without prejudice to any other rights that a Finance Party may have under these Terms or at law, they each reserve the right to reduce, suspend, or withhold payment of the Loan or require repayment of the Loan where such person considers at its sole discretion that it is reasonable in the circumstances to do so, which shall include, but shall not be limited to, circumstances where there is any overpayment of the Loan; the Public Sector Body fails to carry out any work under the Project; the Public Sector Body fails to comply with any of these Terms or the Public Sector Body sells any items purchased with the Loan.
- 2.11 Nothing in these Terms gives rise to, and neither Finance Party is under any obligation to, provide further funding to the Public Sector Body in addition to the Loan.

3. OBLIGATIONS OF THE PUBLIC SECTOR BODY

- 3.1 The Public Sector Body shall only use the Loan for the Project or the repayment of capital expenditure and other expenses previously approved by the Agent (acting on the instructions of the Lender) in relation to the Project. Neither Finance Party is obliged to monitor or verify how the Loan is used.
- 3.2 The Public Sector Body shall not make any change to the Project without the prior written consent of the Agent (acting on the instructions of the Lender), such consent not to be unreasonably withheld.
- 3.3 The Public Sector Body shall ensure that in undertaking the Project and in using the Loan it shall comply with all applicable laws including (but not limited to):
- 3.3.1 EU law relating to procurement;
 - 3.3.2 Subsidy Control Rules;
 - 3.3.3 the Equality Act 2010;
 - 3.3.4 the Bribery Act 2010;
 - 3.3.5 relevant planning permissions, building regulations and other consents; and
 - 3.3.6 applicable health and safety legislation.
- 3.4 The Public Sector Body is prohibited (without the prior consent of the Agent (acting on the instructions of the Lender)) from receiving any other public funding, subsidy, benefit or advantage (including any tax rebate or other tax relief), which is attributable to any UK or EU public authority (including the Public Sector Body), to cover, incentivise or subsidise the costs of the Project.
- 3.5 The Public Sector Body shall, during the term of the Loan, provide such information, evidence and assistance as is reasonably required, and in such form as specified, by a Finance Party including, but not limited to, annual financial statements certified by the Chief Financial Officer of the Public Sector Body (or equivalent officer of the Public Sector Body as approved by the Agent (acting on the instructions of the Lender)), any information relating to the amount of carbon savings and cost effectiveness of such savings expected to be attained through the Project and the verification of the Project and/or the use of the Loan.
- 3.6 The Public Sector Body agrees that a Finance Party (or an agent or contractor acting on their behalf) or any statutory auditor (as required by a Finance Party and at the Public Sector Body's cost) may conduct an audit of the Loan and of the information or evidence provided by the Public Sector Body to ensure compliance by the Public Sector Body of these Terms and the verification of the completion of the Project and/or the use of the Loan. The Public

Sector Body agrees to afford the Finance Parties (or any agent or contractor acting on their behalf) assistance in relation to any such audit, to include reasonable access (upon reasonable notice being given) to such buildings or premises or other assets or equipment of the Public Sector Body as required.

- 3.7 The Public Sector Body agrees to meet with one or more of the Finance Parties once every three months to discuss progress with the Project and shall permit representatives of the Finance Parties and the Welsh Government Energy Service to visit (at least once every three months) the Site(s) where the Project is being undertaken, in order to view its progress.

4. COVENANTS

- 4.1 In consideration of the Loan being made and for so long as any amount remains outstanding

under the Terms, the Public Sector Body undertakes to each Finance Party:

- 4.1.1 not to use the Loan otherwise than in respect of the Project and in full compliance with all of the requirements of the Guidance Notes (including, without limitation, only to use the Loan for eligible buildings, eligible costs and eligible technologies as set out in the Guidance Notes), not to use the Loan to subsidise any economic activity, and in particular not to use the Loan to generate revenue or capital gain, or for any other Prohibited Use;
- 4.1.2 not to create, or permit to subsist, any mortgage, charge (whether floating or specific), pledge, lien or other security interest on any of its undertaking, property or assets comprised or utilised in the Project without the prior written consent of the Agent (acting on the instructions of the Lender);
- 4.1.3 that it will respond fully, promptly and truthfully (to the best of its knowledge) to any enquiries that a Finance Party and/ or the Relevant Authorities may make about the Project and/or use of the Loan and that it will allow them access to all relevant documents and records;
- 4.1.4 where reasonably specified by a Finance Party and/ or the Relevant Authorities, it shall ensure that any information or evidence provided under these Terms is audited by an identified and independent reporting accountant or, otherwise confirmed or verified by a person of such other relevant expertise;
- 4.1.5 that it will acknowledge the Loan from the Lender in any publicity material that it creates and / or distributes in relation to the Project whilst always maintaining its duty to the Finance Parties to preserve confidential information;
- 4.1.6 that it will ensure at all times that it has appropriate auditing arrangements in place in relation to the Loan and its use, which shall include, but shall not be limited to, keeping and maintaining full and accurate records and evidence of the expenditure of the Loan, including expenses defrayed, and of any third parties indirectly benefitting from the Loan, in particular contractors, manufacturers and installers of equipment installed as part of the Project;
- 4.1.7 that it will retain the records maintained under Clause 4.1.6 for a period of ten years from the date of these Terms;
- 4.1.8 that it shall not knowingly or recklessly do, permit or omit to do anything that may attract adverse publicity or damage the reputation of either Finance Party;
- 4.1.9 that it will notify both Finance Parties in writing immediately on the happening of any Event of Default or as soon as it becomes aware that an Event of Default may occur;
- 4.1.10 that it will maintain or cause to be maintained in full force and effect adequate insurances in respect of all its assets comprised or utilised in the Project against all risks and contingencies;
- 4.1.11 that it will ensure that all professional consultants and/or contractors involved in the provision of services in relation to the Project hold and maintain appropriate professional indemnity insurance cover in relation to the services carried out or to be carried out and that the Public Sector Body obtains copies of the relevant certificates;
- 4.1.12 that it shall comply, in all respects, with all of the requirements of the Guidance Notes (including, without limitation, to use the Loan only in connection with the eligible buildings, eligible costs and eligible technologies set out in the Guidance Notes), all relevant legislation and regulations in relation to the Loan and the Project, including, without limitation, any Subsidy Control Rules;

- 4.1.13 that it will complete the Project by no later than the Project completion date stated in the Project Loan Summary;
- 4.1.14 that it will not make any amendments to the design or delivery of the Project after the date of the Public Sector Body's application for the Loan is submitted to the Agent without the prior written consent of the Agent. Any request for such an amendment must be accompanied by an updated application form and supporting documents to ensure continued compliance with the Guidance Notes and the Decarbonisation Fund for Tertiary Education in Wales;
- 4.1.15 that it will, until the Loan is repaid in full, submit an annual Welsh net zero report to the Welsh Government (and provide a copy to the Agent) in accordance with the timescales and requirements of the Welsh Public Sector Net Zero Carbon Reporting Guide issued by the Welsh Government from time to time;
- 4.1.16 that it will provide to the Agent, up to and until completion of the Project, within 30 days of each Quarter Date, a monitoring report (in a form provided by and acceptable to the Agent) covering the previous quarter period ending on that Quarter Date, setting out details of the following:
 - (a) key areas of work undertaken on the Project during that quarter period;
 - (b) key areas of work to be undertaken on the Project during the next quarter period;
 - (c) dates by which key milestones on the Project will be achieved and an updated Project programme;
 - (d) evidence of costs incurred to date on the relevant Project, in the form of invoices or any other format as agreed by the Agent from time to time;
 - (e) any expected changes to the Project that have not been provided to the Agent previously, together with details of any related impact on costs and any mitigation measures being put in place; and
 - (f) any updates or changes during that quarter period to the Public Sector Body's risk register relating to the Project or any governance processes relating to the Project; and
- 4.1.17 that it will, within 14 days of practical completion of the Project, deliver a Completion Certificate to the Agent in respect of the Project; and
- 4.1.18 that it will provide such further updates and additional information on progress of the Project as the Agent or the Lender may request.

5. WARRANTIES

- 5.1 In consideration of the Loan being made, from the date that the Public Sector Body has signed the Project Loan Summary and for so long as any amount remains outstanding under these Terms, the Public Sector Body warrants to each Finance Party that:
 - 5.1.1 it is a public sector body which provides further or higher education in Wales and has the power to own its assets and carry on its business as it is being conducted;
 - 5.1.2 it has full capacity, power and authority to undertake the Project and to execute, deliver and perform its obligations under these Terms and the transactions contemplated by them. No limit on its powers will be exceeded as a result of the borrowing contemplated by these Terms;
 - 5.1.3 that, to the best of its knowledge, there are no circumstances present which would give rise to the right for the Agent (on behalf of the Lender) to demand immediate repayment of the Loan as detailed in clause 6 of these Terms.
 - 5.1.4 the execution, delivery and performance of the obligations in, and transactions contemplated by, these Terms do not and will not contravene or conflict with the Public Sector Body's constitutional documents or any agreement binding on it or its assets or any law or regulation or judicial or official order, applicable to it;
 - 5.1.5 it has taken all necessary action and obtained all required or desirable consents to enable it to undertake the Project and to execute, deliver and perform its obligations under these Terms and any such authorisations are in full force and effect;
 - 5.1.6 its obligations under these Terms are legal, valid, binding and enforceable;
 - 5.1.7 all declarations made and all information, in written or electronic format, supplied by the Public Sector Body to either Finance Party in connection with the Loan was, to the best of the Public Sector Body's knowledge, complete, true and accurate in all material respects at the time it was made or supplied, that circumstances have not materially changed and that such information is neither misleading in any material respect, nor rendered misleading by a failure to disclose other information;

- 5.1.8 there has been no material adverse change in the business or financial condition of the Public Sector Body since the date of the application for the Loan and it knows of no circumstances which might materially and adversely impact upon its ability to undertake the Project; and
- 5.1.9 in submitting its claim for the Loan it has complied with Clause 3.3.

6. REPAYMENT OF LOAN

- 6.1 The Agent (acting on the instructions of the Lender) or the Lender may require all or part of the Loan (together with all accrued but unpaid interest thereon) to be immediately repaid if:
- 6.1.1 the Public Sector Body fails to pay any monies payable by it under these Terms when due; or
- 6.1.2 the Public Sector Body fails (other than a failure to pay) to comply with any clause or covenant or condition of these Terms or the reasonable directions of a Finance Party or any of the Warranties are not complied with or are incorrect; or
- 6.1.3 any declaration made or information provided by the Public Sector Body in the application for the Loan or in subsequent or supporting correspondence is found to be incorrect or incomplete to an extent which the Agent (acting on the instructions of the Lender) or the Lender considers to be material; or
- 6.1.4 any statement by or on behalf of the Public Sector Body with the Completion Certificate proves to be untrue or incapable of being substantiated;
- 6.1.5 there is a failure by the Public Sector Body to keep and maintain the records in relation to the Project as required by either Finance Party; or
- 6.1.6 the Loan has been used for a Prohibited Use or otherwise not for the purpose for which it was given; or
- 6.1.7 a Material Adverse Event shall occur; or
- 6.1.8 if any part of the Loan is considered to be an unlawful subsidy under Subsidy Control Rules and an order for its repayment is made by any body or court which has the power to make such order, the Public Sector Body will repay the Loan within 15 days of demand together with any such interest which may be applicable;
- 6.1.9 if any failure or breach as referred to above is remediable, the same is not remedied by the Public Sector Body within 7 Business Days of a written notice from the Agent (acting on the instructions of the Lender) (or the Lender) to do so; or
- 6.1.10 a report or opinion from a reporting accountant, or from any other expert, is unsatisfactory because it contains an adverse opinion, a qualified opinion or a disclaimer, to which the Public Sector Body has not (in the reasonable opinion of the Agent) responded appropriately,
- 6.1.11 the Public Sector Body is unable or admits inability to pay its debts as they fall due, suspends making payments on any of its debts or, by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors (excluding the Lender in its capacity as such) with a view to rescheduling any of its indebtedness; or
- 6.1.12 the value of the assets of the Public Sector Body is less than its liabilities (taking into account contingent and prospective liabilities); or
- 6.1.13 a moratorium is declared in respect of any indebtedness of the Public Sector Body; or
- 6.1.14 any corporate or legal proceeding or other procedure or step (including the presentation of a petition (other than a winding up petition presented on frivolous or vexatious grounds contested by the relevant person in good faith and by appropriate proceedings which is discharged, stayed or dismissed within 14 days of its presentation and before being advertised)) is take in relation to:
- (a) the suspension of payments, a moratorium of any indebtedness, winding-up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Public Sector Body; or
 - (b) a composition, compromise, assignment or arrangement with any creditor of the Public Sector Body other than where such composition, assignment or arrangement is made with the prior written consent of the Agent; or
 - (c) the appointment of a liquidator, receiver, administrator, administrative receiver, compulsory manager or other similar officer in respect of the Public Sector Body or any of its assets; or

- (d) the enforcement of any security interest over any part of the assets of the Public Sector Body; or
 - (e) the enforcement of any floating charge affecting any asset of the Public Sector Body; or
- or any analogous procedure or step is taken in any jurisdiction; or
- 6.1.15 any expropriation, attachment, sequestration, distress or execution affects an asset or assets of the Public Sector Body having an aggregate value of at least £100,000 and is not discharged within 14 days; or
- 6.1.16
- (a) any Financial Indebtedness of the Public Sector Body (other than Financial Indebtedness under these Terms) is not paid when due (or within any applicable grace period set forth in the original terms relating to that Financial Indebtedness); or
 - (b) any Financial Indebtedness of the Public Sector Body (other than Financial Indebtedness under these Terms) is declared to be or otherwise becomes due and payable, or capable of being declared due and payable, prior to its specified maturity as a result of an event of default (howsoever described) in relation to such Financial Indebtedness; or
 - (c) any commitment for any Financial Indebtedness of the Public Sector Body (other than commitment for any Financial Indebtedness under these Terms) is cancelled or suspended by a creditor of the Public Sector Body as a result of an event of default (howsoever described); or
 - (d) any creditor of the Public Sector Body becomes entitled to declare any Financial Indebtedness of the Public Sector Body (other than Financial Indebtedness under these Terms) due and payable prior to its specified maturity as a result of an event of default (howsoever described).
- (the circumstances referred to in Clause 6.1.1 to 6.1.16 each being an "Event of Default").
- 6.2 The Public Sector Body agrees that on receipt of any notice from the Agent (acting on the instructions of the Lender) (or the Lender) requiring repayment of all or any part of the Loan (together with all accrued but unpaid interest thereon) under Clause 6.1 that it shall make such repayment within 20 Business Days of receipt of such notice, except in the case of any repayment demanded pursuant to Clause 6.1.8, which shall be made in accordance with the terms of that clause.
- 6.3 The Public Sector Body shall promptly notify both Finance Parties if it becomes aware that a Material Adverse Event may occur.
- 6.4 If the Loan (together with all accrued but unpaid interest thereon) becomes due and payable as provided by Clause 6.1, the Public Sector Body will reimburse each Finance Party on a full indemnity basis all reasonable costs and expenses, including legal fees, incurred by such Finance Party in connection with the enforcement, or the preservation, of any rights under these Terms and will indemnify each Finance Party against all losses incurred by the Finance Parties and attributable to each Finance Party having entered into the Loan, including in liquidating or employing deposits from third parties acquired to effect or maintain the Loan or any part thereof.
- 6.5 The Agent (acting on the instructions of the Lender) or the Lender may require the Public Sector Body to repay all or any part of the Loan (together with all accrued but unpaid interest thereon) or may otherwise vary the Terms if:
- 6.5.1 any law or regulation is introduced or changed the effect of which makes it unlawful for the Lender to fund or maintain the Loan, or allow the Loan to remain outstanding at all or in accordance with the then current Terms; or
 - 6.5.2 any other authority binding on a Finance Party or the Public Sector Body makes it unlawful for the Loan to be funded or maintained, or allow the Loan to remain outstanding at all or in accordance with the then current Terms; or
 - 6.5.3 such repayment or variation is necessary in order that the Agent, the Lender or the Public Sector Body complies with any direction, request or requirement (whether or not having the force of law) from any monetary agency or governmental or regulatory authority.
- The Agent (acting on the instructions of the Lender) or the Lender (as applicable) shall give notice to the Public Sector Body of any repayment or variation required pursuant to Clause 6.5, giving the date for that repayment or variation, which shall be the last date for payment or variation under the applicable law, regulation, regulatory requirement, request or direction.

7. REPAYMENT OF THE LOAN TO THE LENDER

- 7.1 The Public Sector Body acknowledges the Agent has made the Loan available to the Public Sector Body as agent for the Lender (and that the Lender accordingly made funding available to the Agent to enable it to provide the Loan to the Public Sector Body). Without prejudice to the appointment of the Agent as agent for the Lender, each of the Public Sector Body and the Agent agree that in accordance with the Contracts (Rights of Third Parties) Act 1999, the Lender may enforce these Terms (including, but not limited to, the right to obtain information and evidence from the Public Sector and the right to demand repayment of the Loan).
- 7.2 The Public Sector Body agrees that the Loan is as a matter of contract and entitlement repayable to the Lender (as the lender of record) and that such repayment is to be made as and when the Loan is due to be repaid in accordance with the Terms (but without prejudice to the Lender's right to require immediate earlier repayment in accordance with Clause 6.1) if:
- 7.2.1 the Lender overpays the grant, in which case the overpayment is repayable;
- 7.2.2 the Lender:
- a) is required to cease grant funding or to recover all, or any proportion, of the loans scheme moneys by virtue of a decision of a court of competent jurisdiction or of the European Commission; or
 - b) has reasonable grounds to consider that the payment of the grant, or the use of the loans scheme moneys, contravenes any requirement of law, in particular (but without limitation) law relating to Subsidy Control Rules, anti-bribery laws or anti-corruption laws under EU law, English law or in another jurisdiction to which the Agent or the Public Sector Body is subject.

8. INDEMNITY

- 8.1 The Public Sector Body agrees that it remains fully liable for, and shall indemnify each Finance Party against any direct and indirect claims, demands, actions, proceedings, costs, charges, expenses, losses, damages, or other liabilities, that may arise as a result of it undertaking the Project and/or its non-compliance with the Terms (including the non-compliance with the Terms by its employees, contractors, partners and agents).

9. CAPITAL ASSETS

- 9.1 The Public Sector Body shall not, during the useful life of any Capital Asset and whilst any part of the Loan remains outstanding, sell, transfer or otherwise dispose of such Capital Asset without re-payment to the Lender of (at the Lender's sole discretion) all or any part of the Loan remaining outstanding.

10. VAT

- 10.1 Where the Public Sector Body is registered for VAT, the Loan is made exclusive of VAT and no part of the Loan shall be used by the Public Sector Body towards meeting any VAT incurred by the Public Sector Body.
- 10.2 Where the Public Sector Body is not registered for VAT, the Loan shall include VAT.

11. INFORMATION SHARING AND PUBLICATION

- 11.1 The Public Sector Body agrees that any Finance Party may share information and data about them (including any correspondence between the Agent, the Lender and/or the Public Sector Body), the Project, these Terms and the Loan with the Lender and other public authorities (including the Secretary of State for Energy Security and Net Zero, the Secretary of State for Education, other government departments, the devolved administrations and the European Commission) and their agents.
- 11.2 The Public Sector Body acknowledges that the Agent, the Lender and the other public bodies referred to in Clause 11.1 may publish information about the Public Sector Body and the Project, including (but not limited to) for the purpose of the publication of reports.

12. LAW AND JURISDICTION

- 12.1 These Terms and the Loan shall be governed by and construed in accordance with English law and each party hereby submits to the exclusive jurisdiction of the English Courts.

13. SEVERANCE

- 13.1 If any provision of these Terms is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of these Terms.

14 NOTICES

- 14.1 Any notice required to be given by the Public Sector Body to a Finance Party shall be:
- 14.1.1 in writing; and
 - 14.1.2 in the case of the Agent:
 - (a) delivered by hand or by pre-paid first class or other next working day delivery service to the Agent's registered office; or
 - (b) sent by email to such email address as provided by the Agent to the Public Sector Body;
 - 14.1.3 in the case of the Lender:
 - (a) by hand or pre-paid first class or other next working day delivery service to Welsh Government, Cathays Park — CP2, Cardiff, CF10 3NQ (FAO Lindsey Bromwell (Head of Public Sector Decarbonisation and Adaptation)); or
 - (b) sent by email, to lindsey.bromwell@gov.wales to such contact details to be provided by the Agent at the written request of the Public Sector Body.
- 14.2 Any notice shall be deemed to have been received:
- 14.2.1 if delivered by hand, on signature of a delivery receipt.
 - 14.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.
 - 14.2.3 if sent by email before 5.00 pm on a Business Day at the time of transmission, otherwise it will be deemed to have been received at 9.00 am on the next Business Day.

15. LIMITATION OF LIABILITY

- 15.1 The liability of each Finance Party to the Public Sector Body is limited in aggregate to the payment of the Loan which is conditional on full and timely compliance with these Terms.
- 15.2 The Public Sector Body remains entirely responsible for the risks and liabilities in undertaking the Project and neither Finance Party shall be liable for any direct, indirect or consequential liabilities, costs, expenses, damages or other losses that result from the Public Sector Body's acts or omissions in undertaking, completing or otherwise resulting from the Project.

16. MISCELLANEOUS

- 16.1 No amendment or variation of these Terms or, for the avoidance of doubt, the Project Loan Summary shall be effective unless made in writing and agreed by the Agent (acting on the instructions of the Lender).
- 16.2 Each Finance Party may assign any of its rights under these Terms or transfer all its rights or obligations under these Terms by novation or other legal means to another person.
- 16.3 The Public Sector Body may not assign any of its rights or transfer any of its rights or obligations under these Terms in any manner without the prior written consent of the Agent (acting on the instructions of the Lender).
- 16.4 Any waiver of any right or consent given under these Terms is only effective if it is in writing and signed by the waiving or consenting party. It only applies in the circumstances for which it is given and shall not prevent the party giving it from subsequently relying on the relevant provision.
- 16.5 No delay or failure to exercise any right under these Terms shall operate as a waiver of that right.
- 16.6 These Terms may be executed and delivered in any number of counterparts, each of which is an original and which, together, have the same effect as if each party had signed the same document.
- 16.7 The Public Sector Body accepts that nothing in these Terms will be deemed to give rise to, affect or create a relationship of employment, agency, partnership or joint venture between the Public Sector Body, the Agent and/or the Lender.
- 16.8 Other than the Lender, a person who is not a party to these Terms cannot enforce or enjoy the benefit of any term of these Terms under the Contracts (Rights of Third Parties) Act

1999. The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under these Terms are not subject to the consent of any other person (other than the Lender).

16.9 The Public Sector Body agrees that the Agent (with the consent of the Lender) and the Lender may appoint one or more agents from time to time to carry out its obligations and exercise its rights under these Terms.

17. SUBSIDY CONTROL RULES

17.1 The Public Sector Body has made its own assessment of the compliance of the Loan with Subsidy Control Rules and confirms that to the extent that the Loan is a "subsidy" as defined in the applicable Subsidy Control Rules, the award of the Loan by the Lender is compliant with the Subsidy Control Rules on the basis that it meets the requirements set out in the applicable Subsidy Control Rules.

17.2 The Public Sector Body agrees that the Lender shall publish information relating to the grant on the national database in line with the requirements of the applicable Subsidy Control Rules.

17.3 The Public Sector Body shall keep detailed records to demonstrate compliance with the Subsidy Control Rules and shall provide a copy of such records to the Lender and / or the Agent upon reasonable request.

18. DEFINITIONS AND INTERPRETATIONS

18.1 The definitions and rules of interpretation in this Clause apply in these Terms.

"Agent" means Salix Finance Ltd (a company limited by guarantee and not having a share capital) registered in England and Wales under company number 5068355, the registered office of which is at 10 South Colonnade, Canary Wharf, London E14 4PU (and its statutory successors assigns and transferees);

"Business Day" means a day (other than a Saturday, a Sunday or any public holiday) on which commercial banks are open for general business in London;

"Capital Asset" means any item of equipment or other asset which has, or any two or more similar items which collectively have, a purchase value of five hundred pounds (£500) or more and which:

- (a) on the date of its or their purchase has or have a useful life of more than one year; and
- (b) is or are purchased wholly or partly out of the Loan or such purchase is being re-financed out of the Loan;

"Completion Certificate" means the certificate given by the main contractor on the Project, certifying completion of the Project (in a form acceptable to the Agent);

"Drawdown Date" means the date or dates shown as such in the Project Loan Summary or such other dates as the Agent may agree;

"Event of Default" means any of the events set out in Clause 6.1;

"Financial Indebtedness" means any indebtedness for or in respect of:

- (a) moneys borrowed;
- (b) any amount raised by acceptance under any acceptance credit facility or dematerialised equivalent;
- (c) any amount raised pursuant to any note purchase agreement or the issue of bonds, notes, debentures, loan stock or any similar instrument;
- (d) the amount of any liability under any finance lease;
- (e) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price;
- (f) any counter indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; and
- (g) the amount of any liability in respect of any guarantee or indemnity for any of the items referred to in paragraphs (a) to (f) above;

"Finance Party" means the Lender and the Agent;

"Guidance Notes" means the guidance notes relating to the Digarbon Decarbonisation Fund for Tertiary Education in Wales issued by the Finance Parties in May 2025 (as amended and varied and updated or replaced from time to time);

"Lender" means the Welsh Ministers whose principal place of business is at 5th Floor, Tŷ Hywel, Cardiff Bay, CF99 1NA;

"Loan" means the amount advanced (or to be advanced) by the Lender (via the Agent) to the Public Sector Body (or such part of it as is for the time being owing by the Public Sector Body to the Lender) under the Decarbonisation Fund for Tertiary Education in Wales to fund or re-finance the Project, the maximum amount of which is detailed on the Project Loan Summary;

"Material Adverse Event" means any event or circumstance which, in the reasonable opinion of the Agent (acting on the instructions of the Lender) or the Lender (as applicable), is likely to materially and adversely affect the Public Sector Body's ability to perform all or any of its obligations under, or otherwise comply with, these Terms;

"Prohibited Use" means a use which is:

- (a) to support activity intended to influence or attempt to influence Parliament, Government or political parties, or use in attempting to influence the awarding or renewal of contracts and grants, or use in attempting to influence legislative or regulatory action, or any other use of a political nature;
- (b) of an exclusively religious nature;
- (c) in respect of costs reimbursed or to be reimbursed by funding from other public authorities or from the private sector;
- (d) in connection with receipt of contributions in kind;
- (e) for the giving gifts to individuals, other than promotional items with a value of no more than £10 a year to any one individual;
- (f) to cover interest payments (including service charge payment for finance leases);
- (g) for entertaining (meaning anything that would be a taxable benefit to the person being entertained, according to current UK tax regulations);
- (h) for the payment of statutory fines, criminal fines or penalties;
- (i) VAT which may be reclaimed from HM Revenue and Customs; and
- (j) any other use or activity prohibited under these Terms.

"Project" means the project operated by the Public Sector Body and approved in advance by the Agent (acting on the instructions of the Lender) to assist in decarbonisation of tertiary education facilities in Wales, as detailed in the Project Loan Summary;

"Project Loan Summary" means the summary of the Project and the Loan set out in the Schedule to these Terms;

"Public Sector Body" means the Public Sector Body named on the Project Loan Summary, and its successors or permitted assigns;

"Quarter Date" means 31 March, 30 June, 30 September and 31 December in each year;

"Relevant Authorities" means the Lender and/or any other body which the Agent, the Lender or the Public Sector Body is required to provide information or evidence to by law (including, but not limited to, the Comptroller and Auditor General and the European Commission);

"Subsidy Control Rules" means the applicable subsidy control rules adopted by the UK from time to time;

"Terms" means the terms and conditions relating to the Loan and set out in these Terms together with the Project Loan Summary and all other terms and conditions of the Decarbonisation Fund for Tertiary Education in Wales;

"Warranties" means the warranties given by the Public Sector Body under Clause 5 of these Terms;

"VAT" means value added tax payable by virtue of the Value Added Tax Act 1994 and any similar tax from time to time in addition to it, replacing it or performing a similar fiscal function.

18.2 Words in the singular include the plural and vice versa.

18.3 A reference to a person shall include a reference to an individual, firm, company, corporation, unincorporated body of persons, or any state or any agency of any person.

18.4 A reference to these Terms (or any provision of it) or any other document shall be construed as a reference to these Terms, that provision or that document as it is in force for the time being and as amended, varied or supplemented in accordance with its terms or with the agreement of the relevant parties.

18.5 A reference to a "regulation" includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, inter-governmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation.

18.6 A reference to a statute, statutory provision, laws, legislation, regulation or similar is a reference to it as amended, extended or re-enacted from time to time.

18.7 Where these Terms apply to a Loan (or any part of a Loan) for a Project undertaken jointly by two or more Public Sector Bodies, the term "Public Sector Body" shall refer to all of them and they shall be jointly and severally liable under these Terms

