

DATED THE 20th DAY OF December 2010

THE MINISTER FOR THE ENVIRONMENT HERITAGE AND LOCAL
GOVERNMENT

One part

-WITH-

EIRGRID INTERCONNECTOR LTD

And

EIRGRID PLC.

(THE LICENSEE)

Second Part

FORESHORE LICENCE

DAVID J. O'HAGAN
CHIEF STATE SOLICITOR,
OSMOND HOUSE,
LITTLE SHIP STREET,
DUBLIN 8.

Ref: 2009/06886

MEMORANDUM OF AGREEMENT made the 20th day of December 2010 BETWEEN THE MINISTER FOR THE ENVIRONMENT, HERITAGE AND LOCAL GOVERNMENT of Government Buildings, Upper Merrion Street, Dublin 2 (hereinafter called "the Minister" which expression shall include his Successors or Assigns where the context so requires or admits), of the One Part and EIRGRID INTERCONNECTOR LIMITED having its registered office at the Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 and EIRGRID PLC. having its registered office at the Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 (hereinafter called "the Licensee") of the Other Part.

INTRODUCTION

- A. The Licensee has applied to the Minister for a Foreshore Licence to enter onto, use and occupy the Licensed Area for the purpose of pre-installation surveying, site investigation, constructing, maintaining, inspecting, repairing, replacing and operating the Facilities as set out in the Second Schedule herein (hereinafter referred to as "the Facilities") and in accordance with the provisions of this Licence
- B. The Minister in exercise of the power conferred on him by section 3(1) of the Foreshore Act, as amended by Section 2 of the Foreshore (Amendment) Act, 1992, and thereafter amended by the Foreshore and Dumping at Sea (Amendment) Act 2009 has agreed to grant a Foreshore Licence to the Licensee on the terms and conditions set out herein.

IT IS HEREBY AGREED AS FOLLOWS:

- 1 **DEFINITIONS:** In this Licence the following words and expressions have the following meaning:
- 1.1 **"Assignment"** means any assignment, novation, transfer or any other legal or equitable parting with possession of any description, directly or indirectly, in whole or in part;
- 1.2 **"Business Day"** means a day that is not a Saturday, Sunday or a bank or public holiday in a place where an act is to be performed or a payment is to be made;
- 1.3 **"Centreline"** means the geographic centre line of the Facilities more accurately described in the Fourth Schedule;
- 1.4 **"Change in Control"** means any change in the control of the Licensee, occurring other than as a result of a transfer of a legal or beneficial ownership of any shares that are listed on a stock exchange;
- 1.5 **"Commencement Date"** has the meaning in Clause 4.1;
- 1.6 **"Control"** has the same meaning as in Section 432 of the *Taxes Consolidation Act 1997*;
- 1.7 **"Cure Notice"** has the meaning set out in Clause 11.1;
- 1.8 **"Dispute"** means a difference or dispute of whatsoever nature arising between all or any of the parties under or in connection with this Licence;
- 1.9 **"Dispute Notice"** has the meaning set out in Clause 19.2;
- 1.10 **"Dispute Resolution Procedure"** means the procedure outlined in Clause 19;
- 1.11 **"Euro"** means the single currency of participating member states of the European Union;
- 1.12 **"Facilities"** means the works set out in the Second Schedule;
- 1.13 **"Force Majeure"** means an event or circumstance or a combination of events and/or circumstances not within the reasonable control of a party which has the effect of delaying or preventing that party from complying with its obligations under this Licence including:
- 1.13.1 acts of terrorists or protestors;
- 1.13.2 war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- 1.13.3 sabotage, acts of vandalism, criminal damage or the threat of such acts;
- 1.13.4 extreme weather or environmental conditions including lightning, fire, landslide, accumulation of snow or ice, meteorites or volcanic eruption or other natural disasters, measured by reference to local meteorological records published by Met Eireann over the previous ten years;

- 1.13.5 the occurrence of radioactive or chemical contamination or ionizing radiation, explosion including nuclear explosion, pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds and impact by aircraft or other vehicles;
- 1.13.6 any strike or other industrial action which is part of a labour dispute of a national or industry wide character occurring in Ireland;
- 1.13.7 the act or omission of any contractor or supplier of a party, provided that the act or omission was due to an event which would have been an event of Force Majeure had the contractor or supplier been a party to this Licence;
- 1.13.8 the unavailability of essential infrastructure or services required to comply with obligations pursuant to this Licence, other than due to an act or omission of all or any of the Licensees;
- 1.13.9 mechanical or electrical breakdown or failure of machinery, plant or other Facilities owned, installed or utilised by any party, which breakdown or failure was outside the control of the party acting in accordance with the Law; provided that Force Majeure shall not include:
 - a. lack of funds and/or the inability of a party to pay
 - b. mechanical or electrical breakdown or failure of machinery, plant or other Facilities owned, installed or utilised by any party other than as a result of the circumstances identified in Clauses 1.13.1 to 1.13.8 above;
 - c. any strike or industrial action not falling within clause 1.13.6 above
- 1.14 **"Foreshore"** has the same meaning as in section 1 of the Foreshore Act;
- 1.15 **"Foreshore Act"** means the Foreshore Act 1933 as amended;
- 1.16 **"Foreshore Licence"** means a licence granted by the Minister pursuant to section 3(1) of the Foreshore Act;
- 1.17 **"Law"** mean any Act of the Oireachtas, regulation, statutory instrument, European Community obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, licence or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, but does not include this Licence;
- 1.18 **"Licensee"** means the party or parties named as the Licensee at the commencement of this Licence and includes the person for the time being entitled to the Licensee's interest created by this Licence;
- 1.19 **"Licence Fee"** means €6,000,000 (Six Million Euro) payable on the execution of this Licence;
- 1.20 **"Licensed Area"** means that part of the Foreshore more accurately described in the First Schedule;
- 1.21 **"Outgoings"** means all rates taxes and charges (including emergency service charges) of any description (whether or not of a capital or non-recurring nature) which may at any time during the Term be payable in respect of the Licensed Area and the Utilities enjoyed in connection therewith including any insurance excesses or other sums not recoverable by the Licensee (unless due to its own neglect or default);
- 1.22 **"Representations and Warranties"** means the representations and warranties given by the Licensee to the Minister pursuant to Clause 15.1;
- 1.23 **"Specific Conditions"** means the specifications set out in the Third Schedule, as may be amended from time to time pursuant to Clause 8.2;
- 1.24 **"Term"** has the meaning set out in Clause 4 and 2.15;
- 1.25 **"Utilities"** means water, soil, steam, air, gas, electricity, radio, television, telegraphic, telephonic, electronic and other communications, and other services of whatsoever nature;

2. INTERPRETATION

- 2.1 Where two or more persons are included in the expression "The Minister" or "the Licensee", such expressions include all or either or any of such persons and the covenants which are expressed to be made by the Minister, or the Licensee shall be deemed to be made by or with such persons jointly and severally.

2.2 Unless the context otherwise requires-

2.2.1 words importing a person include any unincorporated association or corporate body and vice versa;

2.2.2 any reference to the masculine gender includes reference to the feminine gender and any reference to the neuter gender includes the masculine and feminine genders;

2.2.3 any reference to the singular includes reference to the plural.

2.3 Any covenant in the Licence by the Licensee not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and to use best endeavours to prevent such act or thing being done by another person.

2.4 References to any right of the Minister to have access to or entry upon the Licensed Area shall be construed as extending to all persons lawfully authorised by the Minister including agents, professional advisers, prospective purchasers of any interest of the Minister in the Licensed Area or in the adjoining Property, contractors, workmen and others provided that such persons have given reasonable notice (except in the case of an emergency) and have sufficient reason to require access.

2.5 Any reference to a statute (whether specifically named or not) or to any sections or sub-sections therein includes any amendments or re-enactments thereof for the time being in force and all statutory instruments, orders, notices, regulations, directions, bye-laws, certificates, permissions and plans for the time being made, issued or given there under or deriving validity there from.

2.6 Headings are inserted for convenience only and do not affect the construction or interpretation of this Licence.

2.7 Any reference to a clause, sub-clause or schedule means a clause, sub-clause or schedule of this Licence.

2.8 If any terms or provision in this Licence is held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of this Licence but the enforceability of the remainder of this Licence is not affected.

2.9 References in this Licence to any rights granted to the Licensee shall be construed as being granted to the Licensee and all persons authorised by the Licensee to exercise such rights.

2.10 Rights excepted to the Minister or reserved to any indemnities to the Minister are to benefit also any other Minister and if necessary and appropriate the occupiers of the remainder of the Licensed Area, any occupier or adjoining or neighbouring Property and any other person authorised by the Minister or having similar rights.

2.11 Where under the terms of this Licence the consent or approval of the Minister is required for any matter or thing then the reference thereto shall be deemed to include the consent or approval of any other Minister where such consent or approval is required and in each case the consent or approval of the Minister shall not be unreasonably withheld or delayed and the Minister shall use all reasonable endeavours to ensure that the consent or approval of any other Minister is not unreasonably withheld or delayed.

2.12 Any right or privilege conferred on the Minister under this Licence shall be deemed to be exercisable by the Minister during the Term.

2.14 Reference to "month" or "months" mean a calendar month or months.

- 2.15 The Term shall extend only to and is properly determined in accordance with the provisions herein, the Term shall mean the Term up to the date of such determination and expression such as the last year of the Term shall be construed accordingly.

3. GRANT OF LICENCE

- 3.1 The Minister in exercise of the powers vested in him by section 3(1) of the Foreshore Act 1933, as amended by section 2 of the Foreshore (Amendment) Act, 1992 and further amended by the Foreshore and Dumping at Sea (Amendment) Act 2009 hereby grants to the Licensee a licence to enter onto, use and occupy the Licensed Area, on the terms and conditions set out in this Licence, for the purposes of:

- (1) pre-installation surveying, site investigation, constructing, maintaining, inspecting, repairing, replacing and operating the Facilities as set out in the Second Schedule herein
- (2) carrying out works which are strictly necessary or incidental to the activities described in Clause 3.1.(1)
- (3) Unless otherwise permitted by Law, the Licensee shall not use the Licensed Area for any other purposes other than the purposes described in this Clause 3.1.

- 3.2 For the avoidance of all doubt, this Licence does not include the right to get and take any minerals within the meaning of section 2(7) of the Foreshore Act.

4. TERM

- 4.1 This Licence shall commence from the 9th of November 2010.
- 4.2 Subject to Clause 12, this Licence shall remain in force for a period of 99 years from the Commencement Date
- 4.3 The Licensee hereby acknowledges, accepts and agrees that the grant of Licence herein does not give rise to any expectation on the part of the Licensee for the grant by the Minister to the Licensee of any extension of the term in respect of the Licence herein.

5. LICENCE FEE

- 5.1 In consideration of the grant of this Licence, the Licensee shall pay to the Minister the sum of:
- (i) €6,000,000 (Six Million Euro) on the execution of this Licence
 - (ii) €1.00, if demanded, on or before each anniversary of the Commencement Date.

6. COMMENCEMENT OF OPERATIONS

- 6.1 The Licensee shall not commence any works associated with the construction or installation of Facilities in the Licensed Area, without the prior written consent of the Minister.
- 6.2 The Minister is not obliged to grant consent pursuant to Clause 6.1 unless and until the Licensee has obtained and provided to the Minister in respect of the relevant works, activities or operations, copies of all the necessary consents, permissions, permits, licences and authorisations.

7. COMPLIANCE WITH APPLICABLE LAWS

- 7.1** The Licensee shall at all times comply with all applicable Laws.
- 7.2** Without prejudice to the generality of Clause 7.1, the Licensee shall at all times hold all necessary licences, consents, permissions or authorisations associated with any activities of the Licensee in connection with the Licensed Area.

8. SPECIFIC CONDITIONS

- 8.1** Unless the prior written approval of the Minister is obtained, which approval may be granted subject to conditions, the Licensee shall ensure that:
- (1) all Facilities are constructed and/or installed in accordance with the Specific Conditions and such Facilities at all times comply with the Specific Conditions which are applicable at the date that such Facilities were constructed and /or installed; and
 - (2) no development, work, construction or installation is undertaken in the Licensed Area that does not comply with the Specific Conditions
- 8.2** The Specific Conditions may be amended from time to time:
- (1) by agreement between the parties;
 - (2) by the Minister by notice in writing to the Licensee if the Minister reasonably considers it necessary to do so for reasons of public safety or protection of the environment.
- 8.3** If at any stage the Licensee becomes aware that any Facilities or works do not comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed (whether as a result of notification by the Minister or other competent authority or otherwise), the Licensee shall immediately:
- (1) notify the Minister, unless the Licensee is notified by the Minister;
 - (2) unless the Minister otherwise agrees in writing, take all reasonable steps to ensure that:
 - (a) such Facilities or works comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed, as the case may be; and
 - (b) any adverse consequence arising out of the fact that Facilities were not constructed and/or installed in accordance with the Specific Conditions or works were not performed in accordance with the Specific Conditions, as the case may be, are rectified to the satisfaction of the Minister as soon as is reasonably practicable.

9. OPERATIONS IN CONNECTION WITH THIS LICENCE

- 9.1** The Licensee may, from time to time, with the prior consent of the Minister occupy and use such area adjacent to the Licensed Area as is reasonably required by the Licensee to exercise its rights pursuant to Clause 3.1.

- 9.2 Without prejudice to any other rights and obligations under this Licence or at Law, in exercising any of the rights or performing any obligations in connection with this Licence, the Licensee shall:
- (1) comply with the Specific Conditions described in the Third Schedule at all times;
 - (2) ensure that all Facilities or other works or structures in the Licensed Area are at all times maintained in a good and proper state of repair and condition, to the reasonable satisfaction of the Minister, which ensures that they do not constitute a public health hazard or danger to persons, animals, marine life or the environment; not be injurious to navigation, the adjacent lands or the public interest.
 - (3) not Encumber this Licence or any Facility without the written consent of the Minister;
 - (4) at all times maintain appropriate resources to ensure the proper exercise of all rights and the performance of all obligations in connection with this Licence including:
 - (a) ensuring that all necessary competent persons are engaged to carry out any works activities, or operations pursuant to this Licence;
 - (b) using suitable machinery and equipment which is in good repair and condition and maintained to proper safety standards;
 - (5) use all reasonable endeavours to minimize damage and disturbance to the sea bed, fisheries and all other maritime activities and restore any damage which does occur to the reasonable satisfaction of the Minister;
 - (6) not commit or suffer any waste, spoil or destruction on the Foreshore, other than waste spoil or destruction:
 - (a) which is reasonably necessary as a consequence of the exercise of rights and performance of obligations pursuant to this Licence; and
 - (b) in respect of which the Licensee holds all necessary consents, licences or permissions required by Law;
 - (7) carry out an analysis and monitoring of the Licensed Area and the waters within the immediate vicinity and to pay to the Minister all reasonable expenses incurred by the Minister or a person duly authorised by him, to carry out such analysis and monitoring;
 - (8) unless otherwise permitted by Law, not undertake any works, activities or operations, other than navigation, outside the Licensed Area without the prior written consent of the Minister and, where appropriate, any occupiers of such sea bed;
 - (9) not, without the prior written consent of the Minister, carry out any works, activities or operations which, in the reasonable opinion of the Minister, are injurious to or interfere unreasonably with fishing, navigation, adjacent lands, approved scientific research or the public interest;
 - (10) ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during construction and, where necessary, for the duration of this Licence;
 - (11) permit the Minister and any person(s) duly authorised by him at any time to remove from the Licensed Area and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent required under this Licence or which may in the reasonable opinion of the Minister be injurious to navigation, the adjacent land or the public interest and to restore the Licensed Area to its former or proper condition and to erect or construct any building or works which in the reasonable opinion of the Minister may be required for the purposes of navigation, the adjacent land or the public interest. The Licensee shall compensate the Minister for all reasonable costs associated with the aforesaid removal or abatement.

9.3 The Special Conditions may be amended from time to time:

- (1) by agreement between the parties; or

- (2) by the Minister by notice in writing to the Licensee if the Minister considers it necessary to do so for reasons of public safety and protection of the environment.

9.4 Without prejudice to any other remedy under this Licence or at Law, if the Minister is of the view that the Licensee is in breach of any obligation pursuant to Clause 9.2, the Minister may, by notice in writing, require that the Licensee to rectify such breach, within such reasonable time period as is specified by the Minister.

9.5 The Licensee shall comply with any reasonable direction of the Minister under Clause 9.4 within the time specified in the notice.

10. INVESTIGATIONS, INSPECTIONS AND ENQUIRIES

10.1 The Minister may conduct or cause to be conducted such investigations, inspections and enquiries in connection with this Licence as he sees fit.

10.2 The Licensee shall use all reasonable endeavours to co-operate fully and provide all reasonable assistance in relation to any investigation, inspection or enquiry conducted pursuant to Clause 10.1.

10.3 The Licensee acknowledges and agrees that, unless the contrary intention is expressed, any investigation, inspection or enquiry undertaken pursuant to this Licence:

- (1) is without prejudice to the Licensee's rights and obligations under this Licence or at Law and does not amount to a waiver of any such rights or relieve the Licensee from any such obligations; and
- (2) does not amount to an acknowledgement by the Minister, or any officer, servant or agent of the Minister, that the Licensee has complied with this Licence or Law in relation to any matters to which the investigation, inspection or enquiry relates.

11. STEP IN RIGHTS

11.1 If, at any time, any material obligation of the Licensee under this Licence is not performed, the Minister may give written notice to the Licensee ("Cure Notice") describing the obligation which is not performed and requiring such failure to be remedied within the period specified in the Cure Notice (which period must be reasonable having regard to the nature of the obligation which was not performed).

11.2 If the failure to perform the obligation referred to in the Cure Notice is not remedied within the period specified in such Notice, the Minister shall be entitled to engage any personnel, execute any works and to provide and install any equipment which in the reasonable opinion of the Minister may be necessary to secure the performance of the relevant obligations.

11.3 The Minister may recover the costs and expenses of exercising all rights under Clause 11.2 from the Licensee as a civil debt in any court of competent jurisdiction.

11.4 The rights under this Clause 11 are without prejudice to any other remedies available to the Minister under this Licence or at Law.

12. TERMINATION

12.1 The Minister may, without prejudice to any other remedies available under this Licence or at Law, terminate this Licence, by notice in writing to the Licensee upon the occurrence of the following events:

- (i) Where, in respect of the application for this Licence, material information has been wilfully withheld from the Minister by the Licensee or material information provided to the Minister by the Licensee is false or misleading in any material particular;
- (ii) If any moneys payable by the Licensee under this Licence are not paid by the due date for payment and such failure is not remedied within 21 days after receipt by the Licensee of a notice from the Licensee requiring such breach or non-observance to be remedied and stating that this Licence may be terminated pursuant to Clause 12.1(ii) if such breach or non-observance is not remedied;
- (iii) Any material breach or non-observance by the Licensee of any provision of this Licence or applicable law, which is capable of being remedied and which is not remedied within 21 days after receipt by the Licensee of a notice from the Minister requiring such breach or non-performance to be remedied and stating that this Licence may be terminated pursuant to Clause 12.1 (iii) if such breach or non-performance is not remedied;
- (iv) Any material breach or non-observance by the Licensee of any provision of this Licence which is not capable of being remedied;
- (v) Repeated breach or non-observance by the Licensee of any provision of this Licence or applicable Law which has been notified to the Licensee by the Minister and which has not been disputed in good faith, whether or not they are remedied, which are not of themselves material breaches, but which collectively are reasonably determined by the Minister to constitute a material breach and which continue after receipt of by the Licensee of a notice from the Minister stating that the Licence may be terminated if such breaches or non-observances continue;
- (vi) Any purported Assignment of this Licence;
- (vii) In the event that the Licensee fails to carry out execute and complete the development in accordance with the plans and specifications approved by the Minister to the satisfaction of the Minister within the space of four years calculated from the date of commencement of the Term.
- (viii) The Minister is of the view that the capability of the Licensee to discharge fully its obligations under this Licence is materially impaired, including by reason of:
 - (a) The occurrence of the Insolvency/Liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation) of the Licensee; or
 - (b) Any other adverse change in the managerial, technical or financial competence of the Licensee;

12.2 Without prejudice to Clause 12.1, this Licence may be determined at any time by either the Minister or the Licensee giving three months notice in writing, expiring on any day, to the other, and upon the termination of such notice the Licence and permission hereby granted shall be deemed to be revoked and withdrawn without payment of any compensation or refund by the Minister to the Licensee and without prejudice to any claim by the Minister in respect of any antecedent breach of any covenant or condition herein contained or without prejudice to any obligation or liability on the part of the Licensee arising under any applicable Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence).

13. RIGHTS AND OBLIGATIONS ON TERMINATION OR EXPIRY

13.1 On the termination or expiry of this Licence:

- (1) All rights and powers exercisable by the Licensee pursuant to this Licence shall cease and determine, but without prejudice to any obligation or liability arising under any applicable Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence) or without prejudice to any claim by the Minister in respect of any antecedent breach of any covenant or condition herein contained.
- (2) All Facilities belonging to the Licensee shall be removed by the Licensee within twelve calendar months of the termination or expiry of this Licence at its own expense (if requested by the Minister to do so) to the satisfaction of the Minister and the Licensee shall make good any damage caused by such removal and shall restore the Property of the Minister to its former condition save where such removal and/or restoration is not reasonably possible by reference to relevant technical or environmental considerations.

Subject to the foregoing paragraph, in the event that the Facilities shall not be removed within twelve calendar months of the termination or expiry of this Licence the Licensee shall pay to the Minister all reasonable costs, expenses and outgoings incurred in so removing the Facilities and making good any damage thereby occasioned.

- (3) Any moneys paid to the Minister under the terms of this Licence shall not be repaid.

14. PAYMENT AND INVOICING

14.1 All payments by the Licensee in connection with this Licence:

- (1) shall be made by cheque, bank draft or money order, delivered on or before the due date for payment or by the due date by electronic funds transfer to an account specified by the Minister in writing to the Licensee, to the Minister's address for service pursuant to Clause 19 or such other address notified to the Licensee by the Minister in writing and;
- (2) shall be paid in full, without deduction or set off in respect of any amounts in dispute or any other amounts whatsoever.

14.2 If any amount which is payable under this Licence has not been paid on or before the date that payment is due:

- (1) the party to whom payment is due may institute proceedings for recovery from the other party and;
- (2) in addition to any other remedies under this Licence, the party to whom payment is due is to be paid interest on the outstanding amount at Euribor + 1%, such interest to be calculated from the date that payment was due until the date of actual repayment.

15. REPRESENTATION AND WARRANTIES

15.1 The Licensee(s) represent(s) and warrant(s) to the Minister that:

- (1) The Licensee is duly incorporated and organised under the laws of its place of incorporation;
- (2) The Licensee has the corporate capacity and authorisation (internal and external) to enter into and perform the terms of the Licence;
- (3) The representative signing this Licence on behalf of the Licensee is duly authorised in that behalf;

- 15.2 This Licence expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings between the parties, other than as expressly provided for in this Licence.

16. ASSIGNMENT AND CHANGE OF CONTROL

- 16.1 The benefit of this Licence is personal to the Licensee and not assignable and the rights given hereunder may only be exercised by the Licensee.

17. INDEMNITIES

- 17.1 The Licensee hereby indemnifies (as well as after the expiration of the Term by effluxion of time or otherwise as during its continuance) and agree to keep indemnified and hold harmless the State, the Minister and his/her officers, servants, agents and employees, against all or any actions, expenses, costs, claims, demands, damages and other liabilities whatsoever in respect of:

- 17.1.1 the grant of this Licence
- 17.1.2 the performance of works in the Licensed Area by the Licensee or their servants, agents employees or contractors;
- 17.1.3 the injury, sickness or death of any person (including the Minister's servants, agents and employees and any other occupants of the Licensed Area or any adjoining Property);
- 17.1.4 all damage to or loss to or of any Property or business arising out of or in any way connected with the existence of the Facilities on the Licensed Area and Licensee's use of the Facilities or the exercise of any of its rights herein contained;
- 17.1.5 as a result of any breach by the Licensee of the terms of this Licence;
- 17.1.6 any acts or omissions or negligence of the Licensee, its servants, agents, Licensees, invitees, or any persons in or about the Licensed Area expressly or impliedly with the Licensee's authority;
- 17.1.7 in particular but without prejudice to the generality of the foregoing arising directly or indirectly out of:-
 - 17.1.7.1 the construction and/or installation of the Facilities on the Licensed Area;
 - 17.1.7.2 the state of repair and condition of the Facilities;
 - 17.1.7.3 the use of the Facilities;
 - 17.1.7.4 any other cause whatsoever arising out of the Facilities.

18. FORCE MAJEURE

- 18.1 Except as otherwise provided by this Licence, where any party or parties are rendered wholly or partially incapable of performing all or any of their obligations under this Licence by reason of Force Majeure:

- (1) as soon as is reasonably practicable, the party affected by Force Majeure shall notify the other parties, identifying the nature of the event, its expected duration and the particular obligations affected and shall furnish reports at such intervals reasonably requested by the other parties during the period of Force Majeure;
- (2) this Licence shall remain in effect but that party's obligations, except for an obligation to make payment of money, and the corresponding obligations of the other party, shall be suspended, provided that the suspension shall be of no greater scope and no longer duration than is required by the Force Majeure;
- (3) subject to full compliance with this Clause 18.1 (1), during suspension of any obligation pursuant to Clause 18.1(1), the relevant party or parties shall not be treated as being in breach of that obligation;

- (4) the party affected by the Force Majeure shall use all reasonable efforts to remedy its inability to perform all or any of its obligations under this Licence by reason of Force Majeure and to resume full performance of its obligations under this Licence as soon as is reasonably practicable;
- (5) as soon as is reasonably practicable after notification of the Force Majeure, each party shall use all reasonable endeavours to consult with the other party as to how best to give effect to their obligations under this Licence so far as is reasonably practicable during the period of the Force Majeure;
- (6) upon cessation of a party's inability to perform all or any of its obligations under this Licence by reason of Force Majeure, that party shall notify the other parties; and
- (7) insofar as is possible, any party affected by an event of Force Majeure shall do all things reasonably practicable to mitigate the consequences of the Force Majeure.

18.2 Clause 18.1(4) shall not require the settlement of any strike, walkout, lock-out or other labour dispute on terms which, in the sole judgement of the party involved in the dispute, are contrary to its interests

19. DISPUTE RESOLUTION

19.1 Subject to Clause 19.10, no party may commence proceedings in relation to any Dispute in connection with this Licence without first complying with the provisions of Clause 19.

19.2 Any party may notify another party or parties of the occurrence or discovery of any item or event which the notifying party acting in good faith considers to be a Dispute under or in connection with this Licence ("Dispute Notice").

19.3 A Dispute Notice shall:

- (1) set out the particulars of the issues in dispute in sufficient detail and be accompanied by sufficient supporting documentation (if relevant) to enable the recipient of the notice to fully understand the Dispute; and
- (2) identify an individual to represent that party in discussions in relation to the Dispute, such individual to have:
 - (a) expertise or experience in the subject matter of the Dispute; and
 - (b) authority to negotiate in relation to the Dispute.

19.4 Any recipient of a Dispute Notice shall, within 10 Business Days after the date of the Dispute Notice:

- (1) appoint an individual to represent that recipient in discussions in relation to the Dispute, such individual to have:
 - (a) expertise or experience in the subject matter of the Dispute; and
 - (b) authority to negotiate in relation to the Dispute; and
- (2) notify the details of that individual to the sender of the Dispute Notice

19.5 The nominated representatives shall meet as soon as reasonably practicable, but in any event not more than 20 Business Days after the date of the Dispute Notice, to attempt in good faith using all reasonable endeavours to resolve the Dispute satisfactorily.

19.6 If a Dispute is not resolved to any party's satisfaction by the nominated representatives under Clause 19.5 within 30 Business Days after the date of the Dispute Notice, the Dispute may, by notice in writing by any party to each other party to the Dispute, be referred to Arbitration for determination by a single arbitrator appointed by agreement between the parties.

19.7 Failing agreement on the appointment of an arbitrator within the time frame set out in Clause 19.6, the arbitrator shall be appointed at the request of any party, after giving

notice in writing to all other parties to the Dispute, by the President for the time being of the Law Society of Ireland.

- 19.8 The provisions of the Arbitration Act 2010 and any amendments thereto shall apply to the Arbitration.
- 19.9 Performance of obligations under this Licence shall continue during any Dispute Resolution Procedure pursuant to this Clause 19.
- 19.10 Nothing in this Clause 19 prevents any party from seeking urgent declaratory injunctive or other interlocutory relief.

20. COMPLIANCE WITH PLANNING

- 20.1 The Licensee shall obtain all Planning Permissions and Fire Safety Certificates (if applicable) required for the construction, installation and operation of the Facilities and comply at its own cost therewith and any Local Authority requirements. On the completion of the construction and installation of the Facilities, the Licensee shall furnish the Minister with its Architects Certificate of Compliance in respect of such permissions.
- 20.3 In the event of the Facilities or the construction and installation thereof not conforming to the Planning Permission or Fire Safety Certificate (if applicable) procured in respect thereof, the Licensee shall carry out such alterations or amendments as shall be necessary to comply therewith. However in the event of it becoming impossible to comply with the Planning Permission and Fire Safety Certificate (if applicable) procured, the Licensee shall restore the Licensed Area to its former condition and to the satisfaction of the Minister.
- 20.4 The Licensee shall not do any anything on or in connection with the Licensed Area, the doing or omission of which shall be a contravention of the Local Government (Planning and Development) Act, 2000, the Building Control Act, 1990 and the Safety, Health and Welfare at Work Act, 2005 as amended, or of any notices, orders, licenses, consents, permissions and conditions (if any) served, made, granted or imposed thereunder. In the event of permission or approval from any Local Authority under the Local Government (Planning and Development) Act, 2000 or Building Control Act, 1990 or the Public Health Acts 1878 to 1931, and any statutory modification or re-enactment thereof for the time being in force and Regulations or Order made thereunder being necessary for any addition, alteration or change in or to the Licensed Area of for the change of user thereof, to apply, at its own cost to the relevant Local Authority for all approvals, certificates, consents and permissions which may be required in connection therewith and to give notice to the Minister of the grant or refusal (as the case may be) together with copies of all such approvals, certificates, consents and permissions forthwith on receipt thereof and to comply with all conditions, Regulations, Bye-Laws and other matters prescribed by any competent authority whether generally or specifically in respect thereof and to carry out such works at the Licensee's own expense in a good and workmanlike manner to the satisfaction of the Minister. The Licensee shall produce to the Minister on demand all plans, documents and other evidence as the Minister may reasonably require in order to satisfy himself that the provisions of this Licence have been complied with in all respects.
- 20.5 The Licensee shall give notice forthwith to the Minister of any notice, order or proposal for a notice under the Local Government (Planning and Development) Act, 2000 or the Building Control Act, 1990 or the Public Health Acts, 1878 to 1931 and any subsequent amendments of any of these Acts and comply at its own cost therewith.

- 20.6 The Licensee shall at the reasonable request of the Minister, but at its own cost, make or join in making such objections or representations in respect of any proposal the Minister may reasonably require to be made.

22. OUTGOINGS

- 22.1 The Licensee shall pay and discharge:

- (i) All rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever charged, levied, assessed, imposed upon or payable in respect of the Facilities hereby granted.
- (ii) All costs associated with the construction and installation of the Facilities and the continued operation and use thereof including the cost of any work which the Minister may have to do to facilitate the carrying out of the works or any act or thing hereby authorised.

23. EXERCISE OF RIGHTS

- 23.1 The Licensee shall exercise the Licence hereby granted in such a manner as to cause no damage or injury to the Licensed Area, the Minister, the occupants of the Licensed Area and any adjoining lands or Property and to forthwith from time to time with due diligence repair and make compensation for any such damage or injury that may be so caused.

24. INSURANCE

- 24.1 Without prejudice to the Licensee's liability to indemnify the Minister in accordance with the provisions of Clause 17, the Licensee shall effect and maintain with the Minister's interest noted therein from the Commencement Date until the termination or expiry of this Licence (and for such further period thereafter as the Minister may reasonably require) the following policies of insurance in an insurance office licensed to operate in the State or which has received official authorisation to operate in the State in accordance with Article 6 of Directive 73/239/EEC:-

- 1) The Licensed Area and all Facilities and buildings thereon and the fixtures and fittings therein (if any) in the full reinstatement cost thereof (to be determined from time to time by the Minister or his surveyor and including any inflationary factor) against loss or damage by fire, explosion or lightning, impact earthquake, aircraft, floods, storm and tempest, riot, civil commotion and malicious damage or bursting or overflowing of water tanks, apparatus or pipes and including demolition and site clearance expenses, engineer's and other fees and taxes in relation to the reinstatement of the Licensed Area. In the event that the Licensed Area or the Facilities or any part thereof shall be destroyed or damaged by fire or any of the aforesaid risks, then and as often as shall happen, the Licensee shall lay out all monies received in respect of such insurance as aforesaid as soon as practicable in or upon rebuilding, repairing or reinstating the Licensed Area in a good and substantial manner and in the event that such monies shall be insufficient for the said purpose, the Licensee shall make good the deficiency.
- (2) A Public Liability Insurance Policy of Indemnity with a limit of €6,500,000.00 (six million five hundred thousand euro) (or such increased amount as the Minister may from time to time determine) in respect of any one event or series of events arising out of any one occurrence and unlimited any one period of insurance.
- (3) An Employers Liability Insurance Policy indemnifying the Minister and the State to provide cover for claims in respect of any one event or series of

events arising out of any one occurrence and unlimited any one period of insurance.

24.2 The Licensee shall produce such policy or policies of insurance and the latest receipt of the premium paid for renewal of the said policy or policies to the Minister for inspection as and when called upon to do so by the Minister and to comply with all conditions pertaining to any such policy or policies.

24.3 The Licensee must immediately notify the Minister in writing of the making of any claim under any policy of insurance and must provide the Minister with all information in relation to any such claim.

24.4 The Licensee must ensure that any contractors engaged in connection with activities in the Licensed Area or otherwise in connection with this Licence have appropriate insurance and all copies of such insurance policies should be provided to the Minister as soon as is reasonably practicable

25. OTHER ACTIVITIES WITHIN LICENSED AREA

The Licensor hereby covenants with the Licensee that during the Term, the Licensor will not without the Licensee's consent, such consent not to be unreasonably withheld, grant any other licence or consent for the construction of any works or dredging or removal of minerals within the Licensed Area as set out in the First Schedule hereto.

26. NOTICES

26.1 Save where otherwise specified, any notice to be given on foot of this Licence may be given in writing sending same by prepaid post to the registered office of the Licensee for the time being or such other address as shall be notified to the Minister.

26.2 Any such written notice shall be deemed to have been given when posted at the expiration of three Business Days after the envelope containing the same and properly addressed was put in the post.

27. VARIATION

27.1 No amendment to this Licence shall be effective unless it is in the form of a supplemental indenture executed by the parties.

28. RELATIONSHIP OF THE PARTIES

28.1 Nothing in this Licence may be interpreted or construed as creating any landlord tenant relationship, any tenancy in or right to possession of or any right of easement over or in respect of the Property of the Minister, or any agency, association, joint venture or partnership between the Minister and the Licensee.

28.1 Except as is expressly provided for in this Licence, nothing in this Licence grants any right, power or authority to any party to enter into any agreement or undertaking for, to act on behalf of or to otherwise bind any other party.

29. SEVERABILITY

29.1 If any provision of this Licence is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the relevant

body of the European Union, that provision shall be severed and the remainder of this Licence shall remain in full force and effect.

- 29.2** The parties shall comply with this Licence as amended in accordance with this Clause 29.

30. GOVERNING LAW

- 30.1** The Licence shall be governed and construed in accordance with the laws of Ireland.

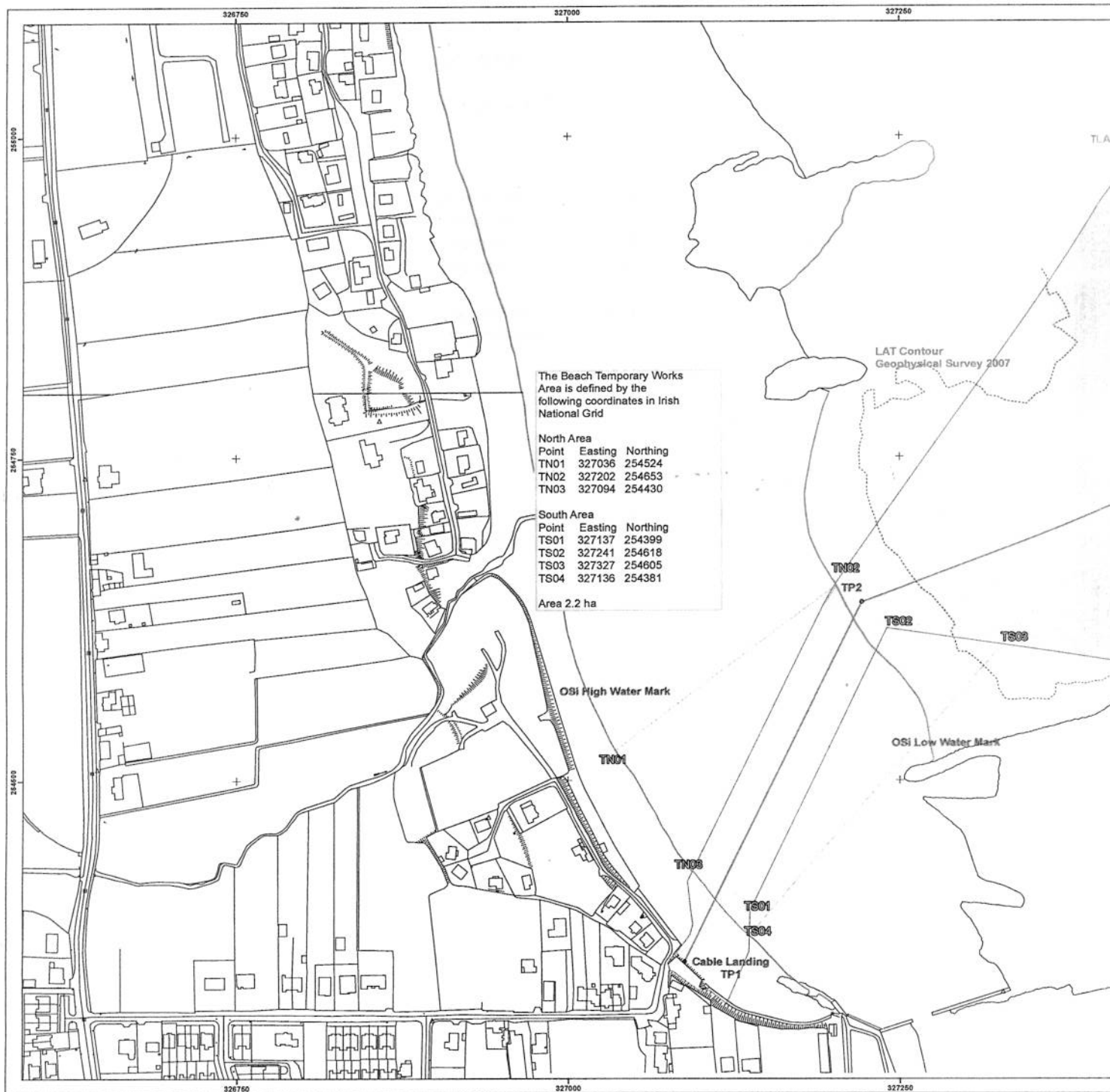
- 30.2** The parties hereby submit irrevocably to the non-exclusive jurisdiction of the courts of Ireland.

IT IS HEREBY CERTIFIED THAT The Family Home Protection Act, 1976, the Family Law Act, 1981, the Judicial Separation and Family Law Reform Act, 1989, Family Law Act 1995 and the Family Law (Divorce) Act, 1996, do not affect the Property.

FIRST SCHEDULE
(THE LICENSED AREA)

1. The area of Foreshore extending 250 metres from both sides of the Centreline as built, except in proximity to the shore where the licensed area is as shown and defined in the attached drawing, as nominally set out in Schedule 4 and updated with 'as built' centreline coordinates upon installation of the Facilities
2. The Beach Temporary Works Area as shown on the attached drawing to be used as a temporary set down and works area for a limited period of time during construction

[Drawing attached entitled: Ireland Foreshore Licence entitled P1129/GIS/Ireland Foreshore Licence Works 2010-03-03]



EirGrid East-West Interconnector Ireland Foreshore Licence

Date	03 March 2010	
Projection	Irish National Grid	
Spheroid	Airy Modified	
Datum	TM 1965	
Data Source	Client Supplied	
File Reference	P1129\GIS\Ireland Foreshore Licence Works 2010-03-03.mxd	
Checked	Produced By	David Sinclair
	Reviewed By	Colin Campbell

Legend

- OSI - High Water Mark
- OSI - Low Water Mark
- LAT Contour (2007 Survey)
- EirGrid Route Position List (Rev 4B)
- Beach Temporary Works Area
- The Licensed Area

Shore detail plan provided by Ordnance Survey Ireland.
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Admiralty Chart 1121 © British Crown & SeaZone Solutions Limited.
All rights reserved. Product Licence No. 072009.002.

The Beach Temporary Work Areas are shown define these areas are shown in the panel wit

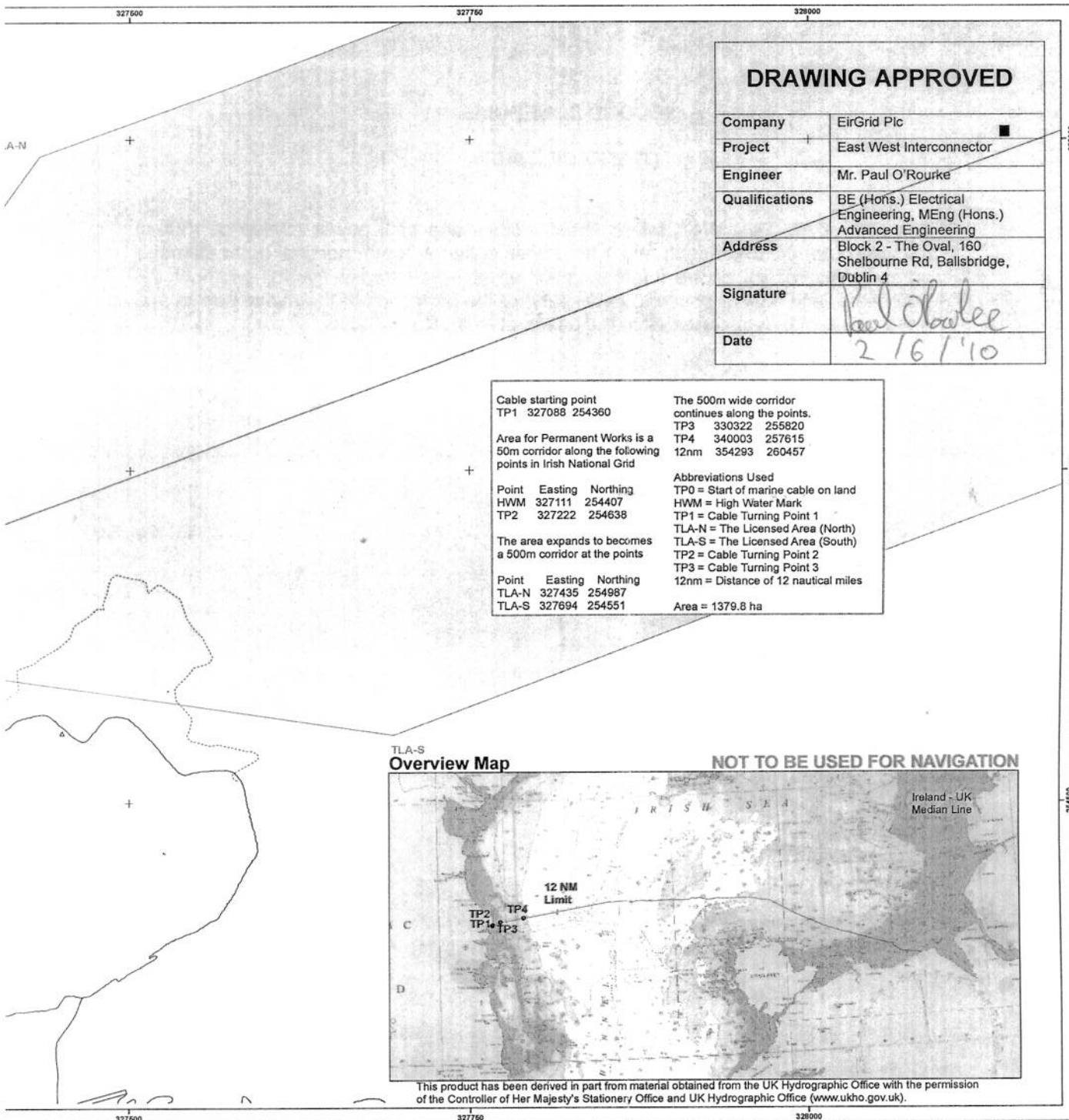
The Beach Temporary Works Area starts at th
Ordnance Survey of Ireland mapping.

The Beach Temporary Work Areas extends se
of the The Licensed Area, across the inter-tid
300 metres, which is a water depth of zero (L
and bathymetric survey of 2007.

The Beach Temporary Work Areas exclude α
The total area of both sites is 2.2 hectares.

Scale Bar for Main Map





in yellow hatch on this map. Coordinates that define the cable route from which The Licensed Area is created are shown in the main map.

The High Water Mark as provided on the Ordnance Survey of Ireland mapping.

seawards from the High Water Mark, either side of the beach for a distance of approximately 50 metres (from the geophysical survey of the lowest Astronomic Tide) from the geophysical survey of the lowest Astronomic Tide.

coastal rocks close to the Low Water Mark.

The Licensed Area is shown in grey on this map. Coordinates that define the cable route from which The Licensed Area is created are shown in the main map.

The Licensed Area starts at the High Water Mark as provided on the Ordnance Survey of Ireland mapping.

The area extends as a corridor of 50 metres width from the cable start at TP1 along cable route to the first Turning Point TP2, this is located at approximately the Low Water Mark as provided on the Ordnance Survey of Ireland mapping.

From TP2 The Licensed Area expands to cover a corridor of 250 metres either side of the cable route. This 500 metre wide corridor continues to the 12 nautical mile limit.

Total area of The Licensed Area from the High Water Mark to the 12 nautical mile limit is 1379.8 ha.

300 400 Meters



SECOND SCHEDULE

(THE FACILITIES)

1. The part of the East West Interconnector consisting of 2 power cables of 130mm nominal outer diameter each and 1 fibre optic cable of 25mm nominal outer diameter primarily for control of the interconnector all of which transit the full width of the Foreshore, any rock or concrete necessary for the protection of the above cables and a maximum of 3 ducts installed in the beach at Rush North Beach.

THIRD SCHEDULE
(SITE SPECIFIC CONDITIONS)

The works shall be carried out in accordance with the conditions hereunder.

1. The Licensee shall use that part of the foreshore the subject matter of this licence for the purposes as outlined in the application and for no other purposes whatsoever.
2. The Licensee shall notify the Department of the Environment, Heritage and Local Government at least 14 days in advance of the commencement of the works on the foreshore.
3. The Licensee shall provide the Department of the Environment, Heritage and Local Government with details of the exact cable burial method to be used as soon as this information becomes available.
4. The Licensee shall ensure that all environmental management and mitigation measures detailed in Section 15 of the Environmental Report accompanying the application are implemented.
5. The Licensee shall liaise with Dublin Port Company, Drogheda Port Company and Dundalk Port Company prior to and during the cable laying phase of the proposed works.
6. The Licensee shall furnish the names/registered number of all vessels involved in the operation to the Marine Survey Office in Dublin to ensure compliance with respect to Irish Load line and other relevant vessel certification.
7. The Licensee shall arrange the publication of a Marine Notice giving a general description of operations and approximate dates of commencement and completion.
8. The Licensee shall arrange the publication of a local marine notice giving general description of operations and approximate dates of commencement and completion in respect of near shore and landfall cable laying operations
9. An Exclusion Zone for marine mammals (whales, dolphins and seals) shall be established, extending to 500 metres away from the cable laying operations prior to the commencement of operations.
10. All cable laying operations shall commence during suitable weather and visibility to ensure that this Exclusion Zone can be achieved
11. A qualified Marine Mammal Observer shall be on site during the commencement of all cable laying operations to ensure that the Exclusion Zone is clear of marine mammals.
12. The Marine Mammal Observer shall undertake thirty minutes of survey prior to commencement of the soft-start procedure to ensure that no marine mammals are within the Exclusion Zone.
13. Cable laying may continue if weather conditions deteriorate or if marine mammals enter the Exclusion Zone following the appropriate start up.
14. The Licensee shall engage the services of a suitably qualified archaeologist to carry out an inter-tidal survey of the landfall, incorporating metal detector survey, under

licence from the Department of the Environment, Heritage and Local Government. This survey shall be carried out well in advance of the proposed construction works.

15. An Exclusion Zones of 100 metres around known wrecks shall be established and the Licensee shall inform the Department of the Environment, Heritage and Local Government in the event that route changes impinge on such Exclusion Zones.
16. The Licensee shall supply geophysical and geotechnical logs to the Department of the Environment, Heritage and Local Government from any further survey works along the route. The Licensee shall ensure that such reports are assessed by a suitably qualified and experienced archaeologist.
17. The Licensee shall inform the Department of the Environment, Heritage and Local Government of the programme of works both before and after installation of the cable, including planned ongoing burial surveys.
18. The Licensee shall continue to advise the Department of the Environment, Heritage and Local Government as pre-lay survey, burial and post-installation survey methods become available.
19. The Department of the Environment, Heritage and Local Government may require further archaeological mitigation should archaeological material be discovered during the programme of works.
20. In order to ensure the preservation of underwater archaeological sites and features the Licensee shall engage the services of a suitably qualified archaeologist to monitor all ground and seabed disturbance works associated with the development, including the car park works, pre-lay surveys, grapnel clearance works, any cable-laying works and any dredging operations. The archaeologist shall be licensed under the National Monuments Acts 1930-2004.
21. Should archaeological material be found during the course of monitoring, the archaeologist may have work on the site stopped, pending a decision as to how best to deal with the archaeology. The Licensee shall be advised by the National Monuments Service with regard to any necessary mitigating action (e.g. preservation *in situ*, dive and/or geophysical survey or excavation). The licensee shall facilitate the archaeologist in recording any material found.
22. The National Monuments Service of the Department of the Environment, Heritage and Local Government shall be furnished with a report describing the results of the monitoring.
23. An as-constructed survey of the cable route shall be provided to the Department of the Environment, Heritage and Local Government.
24. The Licensee is required to seek an amendment of this Licence if it opts to make commercial use of the fibre optic cable, in order that appropriate provisions can be made in the Licence for the commercial use of the fibre optic cable.
25. The Licensee is required to pay an additional commercial fee if it opts to make commercial use of the fibre optic cable.

FOURTH SCHEDULE

(CENTRELINE)

1. The nominal Centreline runs the width of the Foreshore along an imaginary line connected by the following points:

Point	Longitude (WGS84)	Latitude (WGS84)	ING- East	ING- North	UTM- East	UTM Northing	Location
TP1	6° 05' 04.07" W	53° 31' 26.52" N	327088	254362	295544	5934995	Landfall
TP2	6° 04' 56.40" W	53° 31' 35.40" N	327222	254638	295698	5935263	
TP3	6° 02' 06.42" W	53° 32' 10.88" N	330322	255820	298873	5936224	
TP4	5° 53' 18.25" W	53° 32' 59.92" N	340003	257615	308654	5937335	
12NM	5° 40' 17.72" W	53° 34' 17.38" N	354293	260457	323104	5939167	12NM

IN WITNESS whereof a person so authorised by the Minister under Section 15(1) of the Ministers and Secretaries Act 1924 has hereunto subscribed his name and the Licensee has hereunto affixed his seal the day and year first herein **WRITTEN**.

**PRESENT WHEN THE OFFICIAL
SEAL OF THE MINISTER FOR THE ENVIRONMENT,
HERITAGE AND LOCAL GOVERNMENT**

WAS AFFIXED HERETO:-

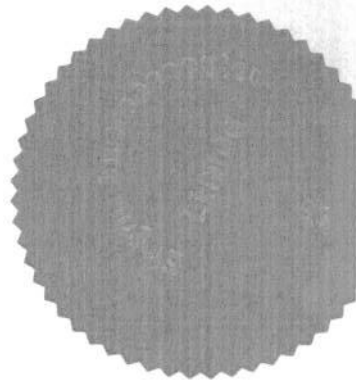
*Assistant Principal
Department of the Environment
Heritage & Local Government*

**A person authorised
by Section 15(1) of
the Ministers and
Secretaries Act,
1924 to authenticate
the Seal of the said
Minister.**

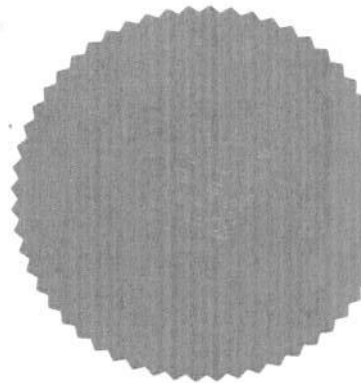
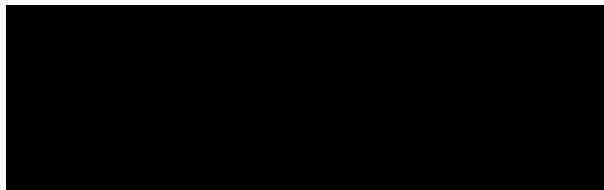
WITNESS

*Assistant Principal
Department of the Environment, Heritage
& Local Government*

PRESENT when the **COMMON SEAL**
Of **EIRGRID INTERCONNECTOR LIMITED** was affixed hereto (in
accordance with its Memorandum and Articles
of Association)



PRESENT when the **COMMON SEAL**
Of **EIRGRID PLC.** was affixed hereto (in
accordance with its Memorandum and Articles
of Association)



DATED THE 20th DAY OF December 2010

THE MINISTER FOR THE ENVIRONMENT HERITAGE AND LOCAL
GOVERNMENT

One part

-WITH-

EIRGRID INTERCONNECTOR LTD

And

EIRGRID PLC

(THE LICENSEE)

Second Part

FORESHORE LICENCE

DAVID J. O'HAGAN
CHIEF STATE SOLICITOR,
OSMOND HOUSE,
LITTLE SHIP STREET,
DUBLIN 8.

Ref: 2009/06886