





including but not limited to, oral, written, graphic, electronic, or electromagnetic form;

**“Purpose”** means the purpose described in Recital (B) of this Agreement; and

**“Receiving Party”** means the Party to whom Confidential Information has been disclosed.

## 2 Confidentiality obligations

Confidential Information disclosed by a Disclosing Party to a Receiving Party shall be treated as confidential and safeguarded by the Receiving Party for a period of five (5) years from the date of disclosure. In consideration of the disclosure of Confidential Information by the Disclosing Party to the Receiving Party, the Receiving Party agrees:

- 2.1 to use the Confidential Information solely for the Purpose;
- 2.2 to maintain the Confidential Information received hereunder in strict confidence and not to disclose or allow access to same to any person whatsoever (other than in accordance with this Agreement) without the prior written consent of the Disclosing Party and in strict accordance with the terms of such consent;
- 2.3 to only take such copies of any document or other material embodying any of the Confidential Information as are strictly necessary for the Purpose; and
- 2.4 that any Confidential Information disclosed hereunder shall remain at all times the property of the Disclosing Party.

## 3 Exceptions

The obligations set out in clause 2 of this Agreement shall cease to apply to Confidential Information which:

- 3.1 is or becomes generally available to the public other than as a result of a breach of this Agreement; or
- 3.2 is prior to any disclosure hereunder demonstrably already in the possession of the Receiving Party without restriction as to use or disclosure owed to the Disclosing Party; or
- 3.3 comes into the possession of the Receiving Party from a third party not under any confidentiality obligations to the Disclosing Party regarding the same; or
- 3.4 is independently developed by the Receiving Party without the direct or indirect use of the Confidential Information disclosed hereunder; or
- 3.5 the Receiving Party is obligated to produce as a result of an order of a court of competent jurisdiction or direction of another competent regulatory authority or pursuant to a statutory obligation, provided that the Disclosing Party shall have been given prompt written notice (not less than five (5) business days) upon receipt of such court order or regulatory direction or

government action and an opportunity to contest and assist in opposing any requirement to produce.

#### **4 Permitted disclosure**

Notwithstanding the provisions of clauses 2 and 3 of this Agreement, the Receiving Party shall be entitled to make any disclosure of the Disclosing Party's Confidential Information to those directors, officers, employees or advisors of the Receiving Party or of any of its Affiliates who have a need to know such Confidential Information for the Purpose in order to perform their roles or professional functions, and only upon making such persons aware of the confidential nature of the Confidential Information and their obligation to maintain the confidence thereof.

#### **5 Remedies**

The Parties agree that money damages would not be a sufficient remedy for any breach of this Agreement and that the Disclosing Party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of this Agreement by the Receiving Party or any of its employees.

#### **6 Warranty to protect Confidential Information**

The Receiving Party warrants that it applies reasonable safeguards against the unauthorised disclosure of confidential and proprietary information and agrees that it shall protect the Confidential Information of the Disclosing Party in the same manner and to the same degree that it protects its own confidential and proprietary information, but shall not take less than commercially reasonable precautions.

#### **7 Failure or delay not a waiver**

No failure or delay by either Party in exercising any right or power shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof, or the exercise of any other right or power hereunder.

#### **8 Prior disclosure**

Any Confidential Information disclosed to or received by the Receiving Party prior to the execution of this Agreement in relation to the Purpose shall be considered in the same manner and be subject to the same treatment as Confidential Information made available after the execution of this Agreement.

#### **9 Publication**

Except as may be required by applicable law or regulation or except as permitted under this Agreement, each Party agrees not to disclose to any person any of the terms, conditions or other facts with respect to a possible transaction between the Parties, including the status thereof, without the prior written consent of the other Party.

#### **10 Return of Confidential Information**

10.1 Upon expiration of the obligations of confidentiality and non-disclosure under this Agreement or sooner upon written request of Disclosing Party, all

Confidential Information in written or electronic form and all copies thereof in the possession of the Receiving Party shall be returned to the Disclosing Party or destroyed, at the option and instructions of the Disclosing Party.

10.2 Clause 10.1 does not apply to (i) a copy of any Confidential Information which the Receiving Party is required to retain for regulatory and compliance rules and (ii) a copy of any Confidential Information which may not be reasonably destroyed due to computer data backup procedures.

## **11 Warranties of Confidential Information excluded**

The Parties acknowledge that no warranty is given or implied as to the accuracy or completeness or fitness for any particular purpose of the Confidential Information.

## **12 Property in Confidential Information**

Nothing contained in this Agreement shall be construed as granting or conferring title or rights by licence or otherwise in any Confidential Information (including but not limited to patents, designs, trademarks, copyrights and trade secrets) disclosed to the Receiving Party. Confidential Information disclosed shall remain the sole and exclusive property of the Disclosing Party.

## **13 No Partnership**

This Agreement is not and shall not be construed as a commitment or agreement by either Party to enter into any type of transaction or contractual arrangement. This Agreement does not create a partnership, joint venture or any similar entity or relationship between the Parties. Neither Party shall be deemed to be a representative, agent or contractor of the other Party, nor shall either Party have any authority or right to assume or create any obligation of any kind or nature, express or implied, on behalf of or in the name of the other Party, nor to bind the other Party in any way. Except as expressly provided herein, this Agreement shall not restrict either Party's freedom to enter into or to refrain from entering into any transaction with any third party.

## **14 Notices**

All notices served by either Party under this Agreement shall be in writing and sent by facsimile or registered post or recorded delivery to the other Party at the address stated above or such other address as a Party may notify in accordance with this clause 14.

## **15 Severability**

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law or otherwise, such term or provision (or part thereof) shall to that extent be deemed not to form part of this Agreement but the enforceability of the remainder of this Agreement shall not be affected.

## **16 Amendment and assignment**

16.1 Any amendment to this Agreement must be in writing and signed by a duly authorised officer of each Party.

16.2 This Agreement is personal to the Parties and may not be assigned, unless both Parties agree in writing.

## **17 Counterparts**

This Agreement may be signed in two counterparts, each of which shall be deemed an original and which shall together constitute one Agreement.

## **18 Governing law and jurisdiction**

This Agreement shall be governed by and construed in accordance with the laws of Ireland and the Parties agree to submit to the non-exclusive jurisdiction of the Irish courts.

**SIGNED by**  
For and on behalf of  
**EIRGRID PLC**

In the presence of: -

**SIGNED by**  
For and on behalf of  
**[FULL NAME OF COMPANY]**

In the presence of: