

EWIC Interconnector Administrator Deed

This **DEED** is made on the day of 201

BETWEEN:

- (1) **EirGrid Interconnector Designated Activity Company**, a company registered in Ireland (registered number 473045) whose registered office is at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 (“EIDAC”)
- (2) [*Name of EWIC Capacity User*] registered in [*jurisdiction*] (Registered Number [*number*]) whose registered office is at [*address*] (the “EWIC Capacity User”)

RECITALS:

- (A) EIDAC is authorised under the EWIC Licence to participate in the transmission of electricity across and the maintenance of the East West Interconnector (“Interconnector”).
- (B) EIDAC owns and maintains the Interconnector and grants third parties rights to use the capacity of the Interconnector under arrangements established under the EWIC Licence and applicable legislation from time to time and on the terms of the EWIC User Agreements and EWIC Access Rules.
- (C) In order for transfers of electricity across the Interconnector to take effect, certain administrative functions must be performed and an Interconnector Administrator and an Interconnector Error Administrator must be appointed under the BSC. EIDAC performs the functions of the Interconnector Administrator and Interconnector Error Administrator under the BSC and the other EWIC Administration Functions in order to facilitate use of the Interconnector, subject to each EWIC Capacity User executing and delivering a current EWIC Interconnector Administrator Deed as a condition of its right to use capacity, and subject to cost recovery.
- (D) The EWIC Capacity User wishes to participate in transactions for the sale and purchase of electricity that will involve the transfer of electricity between Ireland and Great Britain using the Interconnector. The BSC, the EWIC User Agreements, the EWIC Access Rules, and the provisions of this Deed establish the arrangements under which the EWIC Administration Functions will be performed.
- (E) The EWIC Capacity User has therefore executed this Deed in favour of EIDAC, as required for the purposes of the registration process.

NOW IT IS AGREED AS FOLLOWS:

1. Definitions and interpretation

1.1 In this Deed the following words and phrases bear the following meanings except where the context requires otherwise:

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| “BM Unit Identifier” | as defined in the CUSC; |
| “BSC” | means the Balancing and Settlement Code of Great Britain; |
| “Claim” | means any claim or demand for any Loss in respect of the performance or non-performance by any EIDAC Party of any obligation or the exercise by any EIDAC Party of or failure by any EIDAC Party to exercise any power or right, in each case in respect of any EWIC Administration Function whether such claim or demand is in respect of breach of contract, tort |

(including negligence), breach of duty (statutory or otherwise) or any other ground;

“EIDAC”	means EirGrid Interconnector Designated Activity Company;
“EIDAC Party”	means EIDAC and its officers, employees and agents, now and in the future;
“Energy Costs”	means amounts paid for or in respect of electricity, whether under a bilateral contract or a contract for differences or by way of payments under the BSC or the TSC for differences between nominated volumes of electricity and metered volumes;
“Excluded Loss”	means Energy Costs, consequential, indirect or incidental loss or damage, economic loss, loss of actual or anticipated profits or savings, loss of sales or turnover, loss of production, loss of or damage to reputation, loss of goodwill, loss of business opportunity, and loss of customers;
“EWIC Access Rules	means the rules for use of the Interconnector established by EIDAC in its capacity as Interconnector Administrator as may be amended by EIDAC from time to time;
“EWIC Administration Function”	means any of the functions described in the EWIC Access Rules and the functions of the Interconnector Administrator under the BSC, the Interconnector Error Administrator under the BSC, the operator of the Interconnector and agent for submission of Physical Notifications under clause 3 of this Deed;
“EWIC Capacity User”	means the Party executing this Deed in favour of EIDAC, being a party to an EWIC User Agreement or someone to whom capacity has been assigned in accordance with that agreement;
“EWIC Licence”	means any licence from time to time held by EIDAC under section 14(1)(i) of Electricity Regulation Act 1999 or any other relevant law of any jurisdiction which authorises EIDAC to transport electricity across and maintain the interconnector;
“EWIC User Agreement”	means the agreement with EIDAC pursuant to which EIDAC grants rights to use the capacity of the Interconnector;
“Interconnector”	means the electrical interconnector between Ireland and Great Britain which is owned by EIDAC and referred to in this Deed as “East West Interconnector or EWIC”.
“Interconnector Administrator”	as defined in the BSC;
“Interconnector BM Unit”	means an Interconnector BM Unit as defined in the BSC;
“Interconnector Error”	means in relation to the BSC, the BM Unit Metered Volume (as that term is defined in the BSC) for the relevant Interconnector BM Unit of the Interconnector Error Administrator;
“Interconnector Error Administrator”	has the meaning given to it in the BSC (in relation to that role under the BSC);
“Interconnector Error Expenses”	means the costs, charges and expenses incurred by the Interconnector Error Administrator (whether ultimately borne by the Interconnector Error Administrator or not) in relation to

any Interconnector Error, and shall include, but not be limited to, charges imposed on Trading Parties (as that term is defined in the BSC) under the BSC;

“Loss”	means any and all losses of whatever nature (including Excluded Losses), judgments, remedies, claims, debts, damages, expenses and liabilities (including legal costs);
“Party” or “Parties”	either or both of EIDAC and the EWIC Capacity User, as the context requires;
“Physical Notification”	as defined in the BSC;
“Termination”	includes rescission, revocation and cancellation and “Terminate” shall be construed accordingly;
“TSC”	means the Single Electricity Market Trading and Settlement Code, as further defined in the Transmission Licence.

1.2 This Deed is made by the EWIC Capacity User in favour of EIDAC and its officers, subsidiaries, contractors, employees and agents whether EIDAC is carrying on the EWIC Administration Functions as principal or as agent.

2. Terms of use

2.1 Subject to clause 2.3, the EWIC Capacity User agrees that as between the EWIC Capacity User and EIDAC, EWIC Administration Functions are carried out by EIDAC on the terms of and subject to this Deed and the EWIC Access Rules.

2.2 Subject to clause 2.3, the EWIC Capacity User agrees to be bound by and to comply with the terms of this Deed and the EWIC Access Rules.

2.3 Clauses 2.1 and 2.2 are without prejudice to the terms of the TSC, the BSC and any EWIC User Agreement in respect of the Interconnector and do not relieve the EWIC Capacity User from any of its obligations under those instruments.

2.4 The EWIC Capacity User acknowledges and agrees that:

2.4.1 the TSC provides for the Interconnector Administrator to submit the Active Interconnector Unit Capacity Holding Data (as defined in the TSC);

2.4.2 the TSC provides for Interconnector Users to submit Commercial Offer Data (as defined in the TSC);

2.4.3 EIDAC is entitled to submit Active Interconnector Unit Capacity Holding Data of zero in the circumstances contemplated by the EWIC Access Rules;

2.4.4 where zero values are submitted as contemplated in clause 2.4.3 the Interconnector User will not be able to use the Interconnector;

2.4.5 under the EWIC User Agreement, the TSC, the BSC and/or the CUSC, there are circumstances in which no transfers of electricity across the Interconnector will take place; and

2.4.6 EIDAC shall have no liability to either party to a transaction involving a transfer of electricity between Ireland and Great Britain in any of the circumstances contemplated in clauses 2.4.3, 2.4.4 and 2.4.5.

3. Submission of Physical Notifications

- 3.1 The EWIC Capacity User hereby appoints EIDAC as its agent for the purpose of submitting Physical Notifications in respect of Transfer Nominations in accordance with the BSC.
- 3.2 The EWIC Capacity User hereby undertakes that it will not itself submit Physical Notifications relating to use of capacity of the Interconnector.
- 3.3 The EWIC Capacity User shall indemnify the EIDAC Parties against any Losses that any EIDAC Party may incur in connection with a breach by the EWIC Capacity User of the undertaking in clause 3.2.
- 3.4 Subject to paragraph 4.1, the EWIC Capacity User hereby waives to the fullest extent permissible by law, and releases each EIDAC Party in respect of, any and all Claims, howsoever arising, the EWIC Capacity User may have against any EIDAC Party in respect of EIDAC's appointment as agent pursuant to Clause 3.1.

4. Waiver and indemnity

- 4.1 Nothing in this Deed shall exclude or limit the liability of either Party for death or personal injury resulting from its negligence or that of any of its officers, employees or agents nor for any liability in respect of fraudulent misstatement. Without prejudice to the terms of the BSC, the TSC or the CUSC, clause 3.4 is not intended by the Parties to limit or exclude the liability of either Party to the other where such liability arises as the result of a breach of an obligation owed by a Party under the terms of the BSC in that Party's capacity as a party to the BSC.
- 4.2 The EWIC Capacity User shall indemnify and hold harmless EIDAC on demand from and against all Interconnector Error Expenses suffered or incurred by EIDAC arising out of or in connection with any failure by the EWIC Capacity User to comply with the terms of this Deed or the EWIC Access Rules and notwithstanding any right that EIDAC might have, but for payment by the EWIC Capacity User under this clause 4.2, to recover some or all of those Interconnector Error Expenses under any other instrument.
- 4.3 Without prejudice to clause 4.1 and except where this Deed provides for an indemnity, the Parties agree that neither Party nor any of its officers, employees or agents shall be liable to the other Party or to any of that Party's officers, employees or agents in any circumstances in respect of any Excluded Loss.

5. Term and Termination

- 5.1 This Deed shall come into effect on the date of its execution and delivery by the EWIC Capacity User and shall continue in full force and effect notwithstanding any amendment, variation or replacement of the BSC, the EWIC Access Rules, the Transmission Licence or any EWIC User Agreement.
- 5.2 Subject to clauses 5.3 and 5.4, this Deed may not be Terminated by either Party for so long as the EWIC Capacity User remains a party to an EWIC User Agreement.
- 5.3 If EIDAC ceases to be Interconnector Administrator under the BSC, then EIDAC's appointment as agent for the EWIC Capacity User under clause 3.1 of this Deed terminates with effect from the time that EIDAC ceases to perform that function.
- 5.4 If EIDAC ceases to be Interconnector Administrator or Interconnector Error Administrator under the BSC, EIDAC shall give notice to the EWIC Capacity User of the cessation of such role and shall have no liability to the EWIC Capacity User whatsoever for ceasing to carry out any of the EWIC Administration Functions.
- 5.5 The Termination of this Deed does not affect any rights or obligations which may have accrued prior to such Termination.
- 5.6 Clauses 5.5 (accrued rights), 6.2 (third party rights) 6.3 (law and jurisdiction) and 6.4 (dispute resolution) shall survive the Termination of this Deed.

6. Disclosure

- 6.1 Subject To Section F3 of the EWIC Access Rules, the EWIC Capacity User agrees that EIDAC and its agents are permitted to disclose information relating to the use by the EWIC Capacity User of the Interconnector where necessary to enable EIDAC to perform the EWIC Administration Functions, including disclosure of:
- 6.1.1 the BM Unit Identifiers of the EWIC Capacity User (if any) to EIDAC in order to enable EIDAC to perform its roles under the CUSC; and
 - 6.1.2 information relating to transfers over the Interconnector including Modified Interconnector Unit Nominations, Despatch Quantities and Metered Quantities (each as defined in the TSC) for the purpose of the TSC, BSC, CUSC (as defined in the BSC) and the EWIC Access Rules.
- 6.2 If the EWIC Capacity User is under a legal obligation to protect the interests of any third person in any information reasonably likely to be disclosed by EIDAC under clause 6.1, then the Parties shall discuss in good faith mutually acceptable arrangements to protect the interests of that third party in that information in accordance with the relevant legal obligation.

7. General

- 7.1 **Law and Jurisdiction:** Without prejudice and subject to clause 7.4, this Deed shall be governed by and construed in accordance with the laws of Ireland and the Courts of Ireland shall have exclusive jurisdiction in relation to any matter arising under or in respect of this Deed.
- 7.2 **Waiver:** No omission to exercise or delay in exercising any right, power or remedy (“Right”) provided by law or under this Deed shall constitute a waiver of any such Right, or any other Right, and no single or partial exercise of any Right precludes or impairs any other or further exercise or the exercise of any other Right provided by law or under this Deed. Any waiver of any Right under this Deed must be in writing and may be subject to such conditions as the grantor thinks fit.
- 7.3 **Assignment:** Neither Party may assign the benefit of this Deed without the prior written consent of the other Party. This Deed is binding upon and enures for the benefit of the permitted assigns of each of the Parties.
- 7.4 **Severance:** Each of the provisions of this Deed is severable. If any such provision is or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, such illegality, invalidity or unenforceability shall not prejudice the legality, validity or enforceability in that jurisdiction of the remaining provisions of this Deed which shall remain in full force and effect and continue to bind the Parties.
- 7.5 **Deed:** This Deed shall take effect as a deed notwithstanding that it may not have been executed as a deed by one or more of the Parties.

8. Variation and replacement of this Deed

- 8.1 No variation to this Deed shall be of any effect unless it is expressly contemplated by this Deed or is agreed in writing, signed by or on behalf of each Party.
- 8.2 Nothing in this clause 8 prevents EIDAC from requiring the EWIC Capacity User to execute a new form of EWIC Interconnector Administrator Deed. The EWIC Capacity User acknowledges that it will be required to execute and deliver to EIDAC any such new form of deed to replace this Deed as a condition of its right to use capacity.

9. Disputes

- 9.1 Any difference or dispute of whatever nature between the Parties arising out of or in connection with this Deed (“Dispute”) must be resolved in accordance with this clause 9.

9.2 Where there is a Dispute, a representative of each of EIDAC and the EWIC Capacity User with authority to resolve the Dispute must meet within 10 Business Days of a request to meet made by either Party and seek to resolve the Dispute. If the Parties are unable to resolve the Dispute within 28 Business Days of the meeting (or such longer time as may be agreed) then the Parties may agree to refer the Dispute to arbitration pursuant to the Arbitration Act 2010. In default of that agreement within 5 Business Days of either Party making a request to agree, each Party may take such other action in relation to the Dispute as it considers appropriate.

9.3 Nothing in this clause 9 prevents either Party from at any time seeking interim or interlocutory relief from a court.

IN WITNESS WHEREOF this deed has been duly executed and delivered by the Parties as a deed on the day and year first written above.

PRESENT when the **COMMON SEAL** of)
[INSERT NAME OF EWIC CAPACITY USER] was)
 affixed hereto and this deed was delivered¹)
)
)
 Director)
 (Name))
)
 Director/Secretary)
 (Name))

PRESENT when the **COMMON SEAL** of)
EirGrid Interconnector DAC, was affixed)
 hereto and this deed was delivered)
)
)
 Director)
 (Name))
)
 Director/Secretary)
 (Name))

¹ Please obtain legal advice to ensure that this execution block is tailored to meet the jurisdictional requirements of the User.