

Dated the day of , 20



Confidentiality Agreement

Please note that no amendments should be made to the text of this Confidentiality Agreement. Only changes to highlighted sections shall be accepted.

Legal Department
EirGrid plc
Block 2, The Oval
160 Shelbourne Road
Dublin 4

Ref:

THIS AGREEMENT is made the day of , 20

BETWEEN: -

- (1) **EIRGRID PLC**, a statutory corporation registered in Ireland with registered number 338522 and registered office at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 ("**EirGrid**") (which expression shall include where the context so admits or requires its assigns and legal successors in title under any restructuring by the Government of Ireland), of the One Part; and
- (2) **[COMPANY]**, a company registered in **[]** with registered number **[]** and registered office at **[]** ("**[Company/Name]**"), of the Other Part;

(each a "**Party**" and together the "**Parties**").

WHEREAS:

- (A) Following adoption of European Communities (Internal Market in Electricity) Regulations 2000 (S.I. No. 445 of 2000) (as amended), EirGrid has responsibility for carrying out the functions of Transmission System Operator in Ireland.
- (B) The Parties wish to disclose certain technical and commercial information to each other on a confidential basis in connection with the electricity transmission system operated by EirGrid and potential connection thereto by **[Company/Name]** at **[insert name of demand side unit and address of control centre, or name and address of relevant facility as applicable]**.
- (C) The Parties have agreed to enter into this Agreement in order to protect the confidentiality of the information so disclosed to each other.

NOW THEREFORE: In consideration of the mutual agreements and undertakings herein contained, the Parties hereby agree as follows:

1. Interpretation

In this Agreement the following expressions shall, save where the context otherwise requires, have the following meanings:

"Affiliate"	means, in relation to a Party, any subsidiary or holding company of that Party or any subsidiary of any such holding company;
"Confidential Information"	means Information of a confidential or proprietary nature which either Party desires to protect against unrestricted disclosure or competitive use, including without limitation Information which is labelled as confidential by the Disclosing Party at the time of delivery to the Receiving Party;
"Disclosing Party"	means whichever Party (together with its directors, employees, Affiliates and advisors) discloses Confidential Information to the other;
"Information"	means information, knowledge, know-how, communications, data, or other material, in any form 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.

15. Amendment and assignment

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

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

16. Counterparts

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

17. 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.

IN WITNESS WHEREOF the Parties have executed this Agreement on the date first set forth above.

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: -