

Dated 05-Jul-21 | 10:16 AM BST



NOVATION AGREEMENT

between

EIRGRID PLC

and

PROFILE PARK POWER CO 1 LIMITED

and

VANTAGE DATA CENTERS DUB11 LIMITED

THIS AGREEMENT is made on the 05-Jul-21 | 10:16 AM BST

BETWEEN:

- (1) **EIRGRID PLC**, a statutory corporation having its principal office at The Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4 and company registration number 338522 (hereinafter called the “**Continuing Party**”), its legal successors or assigns;
- (2) **PROFILE PARK POWER CO 1 LIMITED**, a company incorporated in Ireland having its registered office is at Lisgrew, Emyvale, Monaghan, H18 Y362 and company registration number 608286 (hereinafter called the “**Outgoing Party**”), its legal successors or assigns; and
- (3) **VANTAGE DATA CENTERS DUB11 LIMITED**, a company incorporated in Ireland having its registered office is at 1-2 Victoria Buildings, Haddington Road, Dublin 4 and company registration number 683471 (hereinafter called the “**Incoming Party**”), its legal successors or assigns;

and each of the parties hereto being a “**Party**” and the term “**Parties**” shall be construed accordingly.

WHEREAS:

- A. The Outgoing Party and the Continuing Party are parties to an agreement for D47 Profile Park Demand Facility at Kilcarbery, Co. Dublin dated 1st April 2021 (the “**Connection Agreement**”).
- B. The Outgoing Party wishes to transfer its rights and obligations under the Contract to the Incoming Party.
- C. Pursuant to Clause 14 of the General Conditions of the Connection Agreement (Version 2.00 July 2013) (the “**General Conditions**”), the Outgoing Party may not transfer any of its rights or obligations under the Connection Agreement without the prior written consent of the Continuing Party.
- D. The Parties have therefore entered into this Agreement to record the following:
 - a. The consent of the Continuing Party to the proposed novation of the Connection Agreement from the Outgoing Party to the Incoming Party; and
 - b. To novate the Outgoing Party’s rights, obligations and liabilities under the Connection Agreement to the Incoming Party on the terms of this Agreement with effect from the date of this Agreement (the “**Effective Date**”);

AGREED TERMS:

1. Definitions and Interpretation

In this Agreement, capitalised words and expressions shall, save where the context or subject matter may otherwise require, have the same meaning as set out in the Connection Agreement. The provisions of Clause 2 (Interpretation) of the General Conditions shall apply to this Agreement.

2. Consent to Novation

The Continuing Party hereby confirms its consent to the novation of the Connection Agreement from the Outgoing Party to the Incoming Party in accordance with the terms of this Agreement.

3. Preconditions to Novation

Novation of this Agreement is conditional upon the Incoming Party providing to the Continuing Party the following:

- a. A Bond(s) from a bank or financial institution [REDACTED] and in the required form (as set out in Schedule 7C of the Connection Agreement);
- b. An Interface Undertaking (in relation to the Transmission System) executed by the Incoming Party in accordance with Clause 12 and Schedule 11 of the Connection Agreement and as attached at Appendix 2 of this Agreement; and
- c. An Interface Undertaking (in relation to the Distribution System) executed by the Incoming Party in accordance with Clause 12 and Schedule 13 of the Connection Agreement and as attached at Appendix 3 of this Agreement.

4. Novation of the Connection Agreement

Subject to the Incoming Party's compliance with Clause 3 of this Agreement, with effect from the Effective Date:

- a. The Outgoing Party hereby transfers all its rights, obligations and liabilities under the Connection Agreement to the Incoming Party;
- b. The Incoming Party fully assumes all rights, obligations, and liabilities of the Outgoing Party under the Connection Agreement and all references to the Outgoing Party in the Connection Agreement shall be read and construed as references to the Incoming Party.
- c. The Incoming Party hereby agrees to perform the Connection Agreement and be bound by its terms in every way as if the Incoming Party were the original party to it in place of the Outgoing Party.

- d. The Incoming Party hereby agrees to perform the Connection Agreement for a nominal sum of €1 (receipt of which is hereby acknowledged by the Continuing Party) and be bound by its terms in every way as if the Incoming Party were the original party to it in place of the Outgoing Party.

5. Agreement between the Continuing Party and the Outgoing Party

- a. The Continuing Party and the Outgoing Party release each other from all future obligations to the other under the Connection Agreement.
- b. Each of the Continuing Party and the Outgoing Party releases and discharges the other from all claims and demands under or in connection with the Connection Agreement, including without limitation claims for negligence and fraud, whether arising before or on the Effective Date, and in each case whether known or unknown to the releasing party.
- c. Each of the Continuing Party and the Incoming Party shall have the right to enforce the Connection Agreement and pursue any claims and demands under the Connection Agreement against the other with respect to matters arising before, on or after the Effective Date as though the Incoming Party were the original party to the Connection Agreement instead of the Outgoing Party.

6. Agreement between the Continuing Party and the Incoming Party

Subject to the Incoming Party's compliance with Clause 3 of this Agreement, it is hereby agreed between the Continuing Party and the Incoming Party that with effect from the Effective Date:

- a. The Incoming Party shall be entitled to rights and benefits identical to those to which the Outgoing Party was entitled under or in connection with the Connection Agreement; and
- b. The Continuing Party shall be entitled to rights and benefits in relation to the Incoming Party, identical to those to which it was entitled in relation to the Outgoing Party under or in connection with the Connection Agreement.

7. Amendments to the Connection Agreement

With effect from the Effective Date, the Connection Agreement is hereby amended as follows:

- a. Schedule 8 of the Connection Agreement shall include the letter of request from the Outgoing Party the Continuing Party requesting the novation to the Incoming Party as set out in Appendix 1 to this Agreement;

- b. Schedule 11 of the Connection Agreement shall include an executed Interface Undertaking between the Incoming Party and the Continuing Party in the form set out in Appendix 2 to this Agreement; and
- c. Schedule 13 of the Connection Agreement shall include an executed Interface Undertaking between the Incoming Party and the Continuing Party in the form set out in Appendix 3 to this Agreement.

8. The Connection Agreement

The Connection Agreement shall, save as herein provided, remain in full force and effect.

9. Counterparts

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute this agreement between the Parties.

10. 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.

11. Governing Law

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.

12. Miscellaneous Provisions

General Conditions 13 (Confidentiality), 17.3 (Waiver of Rights) and 18 (Entire Agreement) of the Connection Agreement shall be incorporated into this Agreement, mutatis mutandis, and such provisions shall be given full effect as if the same were set out in full in this Agreement.

SIGNED BY

DocuSigned by:
Siobhan O'Shea
90C9350G345442B...

for and on behalf of **EIRGRID PLC**

Print Name

Siobhan O'Shea

SIGNED BY

DocuSigned by:
Michael Treanor
698F6BDB617C412...

for and on behalf of **PROFILE PARK POWER CO 1 LIMITED**

Print Name

Michael Treanor

SIGNED BY

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[Signature]
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[Signature]
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for and on behalf of **VANTAGE DATA CENTERS DUB11 LIMITED**

Print Name

Antoine Boniface

Stephen Kinch



APPENDIX 1

Letter of request from the Outgoing Party to the Continuing Party requesting the novation of the Connection Agreement to the Incoming Party and supporting documentation

APPENDIX 2

Insert Interface Undertaking (in relation to the Transmission System) executed by the Incoming Party in accordance with Clause 12 and Schedule 11 of the Connection Agreement

SCHEDULE 11

Interface Undertaking

The Customer agrees as a counterparty to the Agreement to give and maintain, on its own behalf and on behalf of their officers, employees, agents and contractors, throughout the term of the Agreement and surviving its termination, the following undertaking (“Interface Undertaking”) in favour of the Company in relation to the Customer’s connection to the Transmission System;

1. In this Schedule, the following expressions shall have the following meanings:

“Statutory Instrument” means the European Communities (Internal Market in Electricity) Regulations, 2000 (statutory instrument No. 445 of 2000) as amended by statutory instrument No. 328 of 2003 and by statutory instrument No. 60 of 2005;

“Infrastructure Agreement” means the agreement made on 16 March 2006 pursuant to the requirement of Regulation 18 of the Statutory Instrument that ESB and the Company are required to enter into such agreement for the purpose of enabling the transmission system operator to discharge its functions under the Statutory Instrument.

2. The Customer agrees to comply with the technical requirements for connection to the Transmission System set out in the Agreement and to install protection equipment as required by the Company to protect its facility from faults on the Transmission System.
3. The Customer agrees that ESB is permitted to take any steps it is authorised to take by the Statutory Instrument or the Infrastructure Agreement and the Customer agrees not to make any claim against the ESB in connection with such steps except to the extent that such claim would be permitted under the Agreement if the ESB were a party to that Agreement in place of the Company.
4. The Customer agrees to comply with the ESB Safety Rules and procedures and other requirements reasonably specified by the Company and or ESB to ensure the health and safety of persons coming into contact with, or working in close proximity to, assets forming part of the Transmission System and to ensure that all persons under its control or direction working on or in close proximity to the Transmission System are adequately trained in those requirements.
5. The Customer agrees to grant the ESB access to the Customer’s premises and facilities on reasonable notice and subject to the Customer’s own health and safety requirements for the purpose of enabling the Board to fulfil its obligations under the Infrastructure Agreement.
6. The Customer agrees to permit the Company to give the ESB information about the Customer’s connection to the Transmission System reasonably

required by the ESB to fulfil its obligations under the Infrastructure Agreement subject always to the Company's obligations under the Infrastructure Agreement and the Statutory Instrument.

7. Where the Customer has discovered any fault or other unusual circumstance in relation to its connection to the Transmission System, or in relation to the Transmission System more generally, the Customer will notify both the Company and representatives of the ESB (as designated by the Company) as soon as reasonably possible.
8. The Customer agrees to ensure that public liability insurance is procured and maintained by the Customer in accordance with the Agreement extends to damage suffered by the ESB and its officers, employees, agents and contractors.
9. The Customer agrees that except in the case of claims in respect of death and personal injury, and to the extent permitted by law, not to make, and to waive its rights now and for the future in respect of, any claim against the ESB or any of its directors, officers, employees, agents or contractors for any loss, damage, cost, claim, demand, suit, liability, fine, penalty or expense, whether based in contract, tort, breach of duty or on any other grounds, in connection with the Customer's connection to the Transmission System except for any such claim that, had the ESB been a party to the Agreement in place of the Company, it would have been entitled to claim against the ESB under the terms of the Agreement, and then subject to the ESB being entitled to rely on the limitations and exclusions of liability and indemnities available to a party to the Agreement in the position of the Company.
10. The Customer agrees that except in the case of claims in respect of death and personal injury and other liability that cannot, by law, be excluded or limited, and without prejudice to paragraph 9 above and paragraph 11 below or to any right of indemnity in the Agreement, not to make any claim against the ESB arising from any act or omission of the ESB or its officers, agents, employees or contractors in respect of any loss, damage, claim, liability, cost or expense in respect of:
 - a) physical damage being occasioned to the property of the Customer, its officers, employees or agents; or
 - b) the liability of the Customer to any other person for loss in respect of physical damage caused directly to the property of such other person; or
 - c) the disconnection or de-energisation of the Customer's connection in circumstances permitted under the Agreement; or
 - d) negligence or breach of statutory duty on the part of the ESB or of any of its officers, employees, agents, or contractors; or

- e) any other matter connected with the Customer's connection to the Transmission System or with the Agreement

for an amount in respect of any one event in excess of the Connection Liability Amount and further, for an amount in respect of all events during the term of the Agreement in excess of the Connection Liability Cap.

11. The Customer agrees that except in the case of claims in respect of death or personal injury and without prejudice to paragraphs 9 and 10 above or to any rights of indemnity in the Agreement, not to make any claim against the ESB or its directors, officers, employees, contractors or agents for, and to waive its rights now and for the future in respect of, any:

- a) indirect or consequential loss, punitive, special, exemplary or incidental damages;
- b) loss of profit, loss of use, loss of contract, loss of goodwill or loss of revenue;
- c) loss damage, cost, demand, suit, liability, fine, penalty or expense whether incurred by the Company or any other person in respect of constraints on the transportation of electricity using the Transmission System or entry to or exit from the Transmission System howsoever arising and including whether due to the size of the Transmission System, planned or unplanned outages, faults, unavailability or arising through the operation of any code or contract;
- d) loss resulting from the liability of the Customer to any other person howsoever and whensoever arising save as expressly provided in 10(b) above,

regardless of whether suffered by the Customer or not and regardless of whether such a claim is based on contract, warranty, tort (including negligence), breach of duty, strict liability or any other legal or equitable principle.

12. The Company in accordance with the terms of clause 6 of the Infrastructure Agreement is required to ensure that the Customer gives and maintains an Interface Undertaking to the Company in the form and in accordance with the terms of Schedule 11 of this Agreement. This Interface Undertaking shall be given in favour of the Company and enforceable as a contract by the Company against the Customer for the purpose of ensuring that the legitimate interest of ESB as a owner of the Transmission System is protected.

Signed for and on behalf of:-

DocuSigned by:
Siobhan O'Shea
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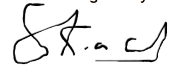
EIRGRID PLC.

Print Name

Siobhan O'Shea

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VANTAGE DATA CENTERS DUB11 LIMITED

Print Name

Antoine Boniface

Stephen Kinch





APPENDIX 3

Insert Interface Undertaking (in relation to the Distribution System) executed by the Incoming Party in accordance with Clause 12 and Schedule 13 of the Connection Agreement

SCHEDULE 13

Interface Undertaking

The Customer agrees as a counterparty to the Agreement to give and maintain, on its own behalf and on behalf of their officers, employees, agents and contractors, throughout the term of the Agreement and surviving its termination, the following undertaking (“Interface Undertaking”) in favour of the Company in relation to the Customer’s connection to the Transmission System;

1. The Customer agrees to comply with the technical requirements for connection to the Transmission System set out in the Connection Agreement and to install protection equipment as required by the Company to protect its facility from faults on the Distribution System.
2. The Customer agrees that DSO is permitted to take any steps it is authorised to take under law, including, without limitation, by its’ licence or the Distribution Code and the Customer agrees not to make any claims against DSO in connection with such steps.
3. The Customer agrees to permit the Company to give DSO information about the Customer’s connection to the Transmission System reasonably required by DSO to fulfill its obligations under its licence and the Distribution Code.
4. In the event that the Customer is unable to notify the Company, the Customer hereby consents to the Company notifying DSO promptly of any fault or other unusual circumstance that it discovers in relation to the Distribution System in connection with the Company’s connection.
5. The Customer shall ensure that the public liability insurance procured and maintained by it in accordance with its Connection Agreement with the Company extends to damage suffered by DSO and its officers, employees, agents and contractors.
6. The Customer agrees that except in the case of claims in respect of death and personal injury, and to the extent permitted by law, not to make, and to waive its rights now and for the future in respect of, any claim against the DSO or any of its directors, officers, employees, agents, distribution connected customers or contractors for any loss, damage, cost, claim, demand, suit, liability, fine, penalty or expense, whether based in contract, tort, breach of duty or on any other grounds, in connection with the Customer’s connection to the Transmission System or the DSO’s operation of the Distribution System except for any such claim that it is entitled to make against the DSO as set out in paragraph 7 below and subject always to paragraph 8 below.
7. The Customer agrees that, except in the case of claims in respect of death and personal injury and other liability that cannot, by law, be excluded or limited, and without prejudice to paragraph 6 above and paragraph 8 below or to any right of indemnity in the Connection Agreement, not to make any claim against DSO arising from any act or omission of DSO or its officers, agents, employees,

distribution connected customers or contractors in respect of any loss, damage, claim, liability, cost or expense in respect of:

- a) physical damage being occasioned to the property of the Customer, its officers, employees or agents; or
- b) the liability of the Customer to any other person for loss in respect of physical damage cause directly to the property of such other person; or
- c) the disconnection or de-energisation of the Customer's connection in circumstances permitted under the Connection Agreement; or
- d) negligence or breach of statutory duty on the part of or of any of its officers, employees, agents, or contractors; or
- e) any other matter connected with the Customer's connection to the Transmission System and/or related to the operation by the DSO of the Distribution System or with the Connection Agreement

for an amount in respect of any one event in excess of the Connection Liability Amount and further, for an amount in respect of all events during the term of the Connection Agreement in excess of the Connection Liability Cap.

8. The Customer agrees that, except in the case of claims in respect of death or personal injury and without prejudice to paragraphs 6 and 7 above to any rights of indemnity in the Agreement, not to make any claim against DSO or its directors, officers, employees, contractors, distribution connected customers or agents for, and to waive its rights now and for the future in respect of, any:

- a) indirect or consequential loss, punitive, special, exemplary or incidental damages;
- b) loss of profit, loss of use, loss of contract, loss of goodwill or loss of revenue;
- c) loss resulting from liability of the Customer to any other person howsoever and whensoever arising save as expressly provided in 7(b) above,

regardless of whether suffered by the Customer or not and regardless of whether such a claim is based on contract, warranty, tort (including negligence), breach of duty, strict liability or any other legal or equitable principle.


Signed for and on behalf of EirGrid plc:-

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Siobhan O'Shea
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EIRGRID PLC

Print Name

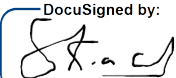
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VANTAGE DATA CENTERS DUB11 LIMITED

Print Name

Antoine Boniface

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Stephen Kinch
