



**Consultation on Transmission Connection
Agreements and Use of System
Agreements – CER/10/232**

Viridian Power & Energy Response

18 February 2011

Introduction

Viridian Power and Energy (VPE) welcomes the opportunity to respond to this important consultation. VPE restricts its comments in this response to the proposed Transmission Connection Agreement which has been marked up by EirGrid (ref. Version 2.00 submitted to CER on 14th December 2010).

VPE, having consulted with its legal, technical and financial advisors, proposes reasonable and prudent amendments to the above necessary to help ensure that developers are able to address the concerns of potential funders in financing renewable projects, that connection of new projects (in the most efficient manner) is facilitated, and that renewable targets are achieved.

Having carefully reviewed the proposed Transmission Connection Agreement VPE has significant concerns in relation to the following:

1. Compliance with obligations set out in the Offer Letter under Clause 2.3.3
2. The default position under Clause 3 of automatic termination where EirGrid has failed to achieve consents or complete the works
3. The default charge of €10k/MW for reduction in MEC in Clause 5.5
4. The timeframes provided in Clause 6.4.7 and 6.48 if a deemed lapsed provision is added
5. The required duration of leaseholds and the requirement for leasehold interests to be free from user restrictions in Schedule 12
6. Mapping requirements in Schedule 12 to be submitted in CAD format
7. Special condition in the Contract for Sale of Schedule 12
8. Property deliverables under Completion of Legal Transfer in Schedule 12

We discuss each of these concerns in the detailed comments below and suggest alternative drafting to the Transmission Connection Agreement that is necessary to help address them.

In addition we have remaining concerns about the detailed drafting of Schedule 12 and suggest modified wording as appropriate in Annex 1 of this response. We believe the majority of the marked up amendments in schedule 12 are self explanatory and uncontentious and, to the extent possible (in light of the fact that the nature of the title which can be offered will be different for each Site), have tried to

keep the word as generic as possible. The intent here is not to restrict the Company's ability to secure what it needs in terms of title requirements to each Site but to avoid being unnecessarily prescriptive and allowing the maximum flexibility. We believe that the title requirements need to be cognisant of the fact that the Customer will be required to negotiate with third party landowners to meet the requirements of the Company and its ability to meet the Company's title requirements is subject to the outcome of those negotiations. Thus, rather than prescribe absolutely the form of Deed required to secure (for example) easements over third party lands, we would suggest that the Customer securing easements by way of Deed in the current Land Registry prescribed format or otherwise in line with prudent conveyancing practice, would be an acceptable alternative. Note however that some of the suggested amendments to Schedule 12 require further explanation and this is covered where relevant in the detailed comments.

Detailed comments

1. Compliance with obligations set out in the Offer Letter under Clause 2.3.3

The Offer Letter will contain some ongoing obligations on the Customer, as well as obligations on the Customer that will first take effect after the milestones covered by Clauses 2.3 (Carrying out the Works); 2.4 (Connection) and 2.5 (Implementation of Commissioning Instructions) have been achieved. Accordingly, any requirement to comply with the provisions of the Offer Letter as a condition precedent to achieving those milestones must be limited to those conditions required to be complied with for achieving the relevant milestone. Suggested wording provided below.

Suggested wording to Clause 2, Transmission Connection Agreement

2.3.3 the Customer has complied with any other obligations [required to be complied with before the carrying out of the Works](#) as set out in the Offer Letter;

2.4.5 complied with any other obligations [required to be complied with before Connection](#) as set out in the Offer Letter;

2.5.2 the Customer has complied with its obligations [required to be complied with before the implementation of the Commissioning Instructions](#) as set out in the Offer Letter

The TSO proposes to reword Clause 2.3.3 as follows - "the Customer has complied with any other obligations which are required to be satisfied prior to the carrying out of the Works, as set out in the Offer Letter."

The TSO proposes to reword Clause 2.4.5 as follows - "complied with any other obligations which are required to be satisfied prior to Connection, as set out in the Offer Letter."

The TSO proposes to reword Clause 2.5.2 as follows - “the Customer has complied with any other obligations which are required to be satisfied prior to the implementation of the Commissioning Instructions, as set out in the Offer Letter.”

2. The default position under Clause 3 of automatic termination where EirGrid has failed to achieve consents or complete the works

Clause 3, Transmission Connection Agreement

VPE is very concerned with the proposed drafting as it provides for automatic termination of the Connection Agreement for a failure of consents without the agreement of both Parties acting reasonably. After entering into a signed connection offer and paying the connection deposit, the Customer is likely to have incurred significant development expenditure on its project, proceeding in good faith with a reasonable expectation that the connection will be delivered and the project will need to be ready to comply with the connection timetable. The Customer would face significant financial loss if the connection agreement is terminated, so it should not be allowed to automatically terminate by default. In addition to the Customer facing a significant financial loss, an automatic termination of connection agreement could make a project unbankable. Lenders may not be prepared to lend to a project where an agreed and deposited connection offer can be automatically terminated.

VPE notes that it has limited control over the “Consents Issue Date Long Stop Date”. The Consents Issue Date is limited by a long-stop date, which is 36 months after the “Scheduled Consents Issue Date”, which is EirGrid’s estimate of the date on which both EirGrid and the Customer will have obtained the necessary consents. VPE notes that there is no obligation on EirGrid to act reasonably in determining this Scheduled Consents Issue Date or in considering whether to agree an extension to the Consents Issue Date Long Stop Date. As the Customer may ultimately be at the mercy of EirGrid with regards timing for consents, it is appropriate that termination for a failure of consents should be by agreement of the Parties acting reasonably. Suggested wording provided below.

Suggested wording - Clause 3, Transmission Connection Agreement

‘If:

3.2.1 the confirmation under Clause 2.6 has not been notified by the CID Longstop Date; or

3.2.2 the confirmation under Clause 2.6 has not been notified by the Scheduled Operational Date Longstop Date;

~~Then the Connection Agreement will be terminated automatically unless both Parties agree to do otherwise.~~

Then, subject to Clause 20.8 of the General Conditions, the Connection Agreement may be terminated by mutual agreement of the Parties, acting reasonably’.

This Clause was also highlighted by IWEA in their response. In response, TSO notes that per Section 2.2.13 of CER/09/138, TSO is quoted as stating that “it is agreeable to reviewing the termination provisions to ensure additional clarity for both contracting parties”. The Connection Agreement documentation will be revised to take account of this. It is proposed that the following text be inserted after “...unless both parties agree to do otherwise” – “The Company shall not issue a termination notice pursuant to this Clause 3.2 if CID or the Operational Date has not been achieved as a result of an obligation or obligations of the Company not having been performed unless exceptional circumstances exist including, without limitation, significant technical reasons”.

Additionally, in response to IWEA’s comment re notice, the TSO is in agreement with IWEA’s suggestion that “by written notice to the Customer by the Company” be inserted after the word “automatically” in Clause 3.2 and “automatically” will be deleted. Please refer to comments made by TSO and TAO earlier re use of qualifying language. Finally, please note that mutual agreement is not deemed appropriate in this instance.

More generally, please note that both DSO and TSO are discussing the issue of Longstop Date enforcement and administration in the coming weeks. It is possible that a public consultation will be required in this context. To pre-empt the outcome of such discussions and/or consultation would be premature at this time.

Clause 20.8 of the General Conditions

Incidental amendments to Clause 20.8 of the General Conditions are necessary in light of VPE’s comments above. Suggested wording provided below.

Suggested wording – 20.8 Termination Due to lack of Consents (excluding Operational Consents)

‘If the Consents Issue Date does not occur by the Consents Issue Date Longstop Date because either Party has not obtained the Consents (excluding the Operational Consents), ~~the Customer or the Company~~then, subject to the provisions of Clause 6.4 of the Connection Agreement, the Parties, acting reasonably, may terminate the Connection Agreement by ~~giving notice of termination to the other~~mutual agreement. Nothing in this Clause 20.8 shall release either Party ~~whereupon the~~from its obligations to use prudent and commercial endeavours to obtain the Consents it requires for its Connection Agreement ~~shall terminate if the other Party is satisfied that a failure of Consents (excluding the Operational Consents) has occurred despite the terminating Party’s best efforts to secure the Consents (excluding the Operational Consents) acting in accordance with Prudent Electricity Utility Practice, on the expiry of three (3) Business Days following delivery of such~~

~~notice~~Works. If a Party is not satisfied that a failure of Consents (excluding the Operational Consents) has occurred then that Party may refer the matter to resolution by an Expert in accordance with the provisions of Clause 12’.

Section 5.8.3, Points 7 and 8 and the paragraph thereafter on pages 84 and 85 of CER/09/138 are relevant here, stating that the Commission would consider the longstop dates for individual projects where the relevant Longstop Date has passed and CID or the Operational Date has not been reached. The provisions of Clause 12 of the General Conditions re Dispute Resolution Procedures and the CER’s dispute process may be relied upon in the context of all of the terms and conditions of the Connection Agreement, irrespective of whether there is express statement to this effect or not. As a result, the above amendments are not considered appropriate. Please also refer to earlier comments re qualifying language.

Clause 20.9 of the General Conditions

VPE believes that in circumstances where there is an obligation on EirGrid to obtain Operational Consents, it would be inappropriate to provide it with a right to terminate for a failure to obtain such consents. Accordingly, VPE has suggested amendments to Clause 20.9 to address this and also to include obligations on EirGrid in relation to obtaining Operational Consents similar to those imposed on the Parties in obtaining Consents.

Suggested wording – 20.9 Termination due to lack of Operational Consents

‘If an Operational Consent required by the Company is not obtained within a reasonable period of time to enable the Company complete the Company’s Connection Works within the Connection Works Completion Period, then subject to the provisions of Clause 6.4 of the Connection Agreement, ~~either Party~~the Customer may terminate the Connection Agreement by notice to the ~~other Party~~Company. The Company will use prudent and commercial endeavours to obtain the Operational Consents’.

Clause 4.3 of the Connection Agreement states that – “The Company shall maintain and operate the Transmission System in accordance with the Grid Code and otherwise to a standard equal to Prudent Electricity Utility Practice.” The Company will employ Prudent Electricity Utility Practice in obtaining Operational Consents (and carrying out all of the TSO’s functions under the Connection Agreement) and it is not considered necessary to expressly state this as suggested above. Regarding the limitation of termination at the option of the Customer, this is not considered appropriate. In any case, please note that in the absence of agreement re the termination of a Connection Agreement in any circumstances, the provisions of Clause 12 of the General Conditions re Dispute Resolution Procedures and the CER’s dispute process may be relied upon.

3. The default charge of €10k/MW for reduction in MEC in Clause 5.5

VPE considers that the cost of €10,000 is likely to be excessive in some circumstances and that it is inappropriate to charge this by default for a reduction in MEC. Indeed a reduction in MEC is likely to be beneficial as acknowledged in the recent Connections Policy consultation paper. VPE believes that in circumstances where there is a cost to EirGrid as a result of a reduction in MEC, then the Customer should only be required to reimburse to EirGrid the actual amount of that cost, which, in the interests of cost certainty, should be subject to a cap of €10,000 per MW of MEC reduction. This approach would be consistent with the spirit of Clause 5.4.4 whereby “The Company (acting in accordance with Prudent Electricity Utility Practice) shall incur only such costs and/or expenses as are reasonably necessary in the circumstances”. Suggested wording provided below.

Suggested wording – Clause 5.5 General Conditions, Reduction in MEC

‘The Customer can reduce the MEC applicable to this Connection Agreement, prior to the commencement of the construction of Connection Works ~~at a~~, provided always that the Customer shall be obliged on receipt of the Company’s invoice to pay to the Company in accordance with the payment provisions contained in the General Conditions the reasonable costs and expenses to the Company of the MEC reduction, such costs to have been necessarily and actually incurred and subject to an overall cap of €10,000 per MW of MEC reduction’.

This comment is outside of the scope of this consultation. Please note that the rate of €10,000 per MW was set out in CER/09/138. Please also note that (for added clarity only) IWEA’s suggested rewording of Clause 5.5 to the following has been accepted by TSO: “At any given time prior the commencement of the construction of Connection Works, the Customer has the right to reduce the MEC applicable to this Connection Agreement by issuing a written notice to that effect to the Company and subject to paying the Company an amount of €10,000 per each MW of reduced MEC”.

4. The timeframes provided in Clause 6.4.7 and 6.48 if a deemed lapsed provision is added

VPE considers that the timeframes provided in Clause 6.4.7 and 6.48 are too tight, given the need for the Customer to give due consideration to any revised Offer Letter together with its technical advisors. Suggested amendments provided below.

Suggested wording – Clause 6.4.7 General Conditions

‘6.4.7 Except as provided for under Clause 6.4.8, if the Customer notifies the Company within ~~ten~~twenty (~~10~~) Business ~~d~~Days of receiving the Company's proposal that it is agreeable to the proposal, then the Offer Letter shall be deemed to be replaced with the revised Offer Letter, the details in Schedule 2 shall (to the extent necessary) be deemed to be amended in accordance with that revised Offer Letter and the provisions of this Clause 6 shall apply mutatis mutandis to such alternative proposal. If the Customer notifies the Company within ~~ten~~twenty (~~10~~) Business ~~d~~Days of receiving the Company's proposal, that it is dissatisfied with the proposal then the Parties shall meet and endeavour to resolve the matter within a further ten (10) Business ~~d~~Days of the Customer notification of dissatisfaction so that a further Offer Letter may be revised and issued. Where the Company and the Customer fail to agree a proposal within the said period, the Company acting reasonably, shall issue a revised Offer Letter, being in its opinion the best available alternative proposal for the Customer, taking due account of the circumstances encountered. The Customer shall have a further ~~ten~~twenty (~~10~~) Business ~~d~~Days from receipt of the proposal to accept this final proposal. Where the Customer does not notify the Company in writing that it is satisfied to accept the final proposal without qualification within the allotted period, it shall be deemed to have lapsed. In the event of a dispute as to whether the Company has acted reasonably in preparing alternative proposals the matter shall be determined by the Independent Engineer in accordance with the Dispute Resolution Procedure of the General Conditions’.

Suggested wording – Clause 6.4.8 General Conditions

‘6.4.8 Where the failure of an Operational Consent has occurred, if the Customer notifies the Company within ~~ten~~twenty (~~10~~) Business ~~d~~Days of receiving the Company's proposal that it is agreeable to the proposal, then the Offer Letter shall be deemed to be replaced with the revised Offer Letter, the details in Schedule 2 shall (to the extent necessary) be deemed to be amended in accordance with that revised Offer Letter and the provisions of this Clause 6 shall apply mutatis mutandis to such alternative proposal. If the Customer notifies the Company within ~~ten~~twenty (~~10~~) Business ~~d~~Days of receiving the Company's proposal, that it is dissatisfied with the proposal then the Parties shall meet and endeavour to resolve the matter within a further ten (10) Business ~~d~~Days of the Customer notification of dissatisfaction so that a further Offer Letter may be revised and issued. Where the Company and the Customer fail to agree a proposal within the said period, the Company acting reasonably, shall issue a revised Offer Letter, being in its opinion the best available alternative proposal for the Customer, taking due account of the circumstances encountered. The Customer shall have a further ~~ten~~twenty (~~10~~) Business ~~d~~Days from receipt of the proposal to accept this final proposal without qualification. Where the Customer does not notify the Company in writing that it is satisfied to accept the final proposal within the allotted period, then the Company shall be entitled to drawdown under the MEC Capacity Bond and/or MIC Capacity Bond as applicable and the Connection Agreement shall terminate. In the event of a dispute as to whether the Company has acted reasonably in preparing alternative proposals, the matter shall be determined

by the Independent Engineer in accordance with the Dispute Resolution Procedure of the General Conditions’.

The revision of references to “Business Days” in place of “days” is agreed. However, the application of a timeframe of 10 Business Days to each of the actions detailed above is still considered reasonable. It is the TSO’s understanding that no issues have arisen in practice in this context up to now and that industry has not previously expressed concern in this context.

Suggest adding an additional Clause 6.4.9 to Clause 6.4, Transmission Connection Agreement as follows

‘The Customer shall be entitled to notify the Company if, in its opinion, any of the circumstances set out in Clauses 6.4.1 to 6.4.4 inclusive has or is likely to occur. The Company shall be obliged to consider any such notification and act reasonably in making a determination for the purposes of this Clause 6.4’.

The TSO agrees with this suggested insertion with the exception of “and act reasonably” for reasons referred to earlier by both TSO and TAO re qualifying language.

Please refer to TAO’s comments regarding the remainder of this document.

5. The required duration of leaseholds and the requirement for leasehold interests to be free from user restrictions in Schedule 12

The obligation in Schedule 12 that a leasehold interest be free from any user restriction is unduly onerous (and indeed inconsistent with the very nature of a long leasehold interest which is typically used as a means of retaining control over the use to which the property can be put). VPE has amended this so that only user restrictions which are inconsistent with the proposed use of the property in question will be prohibited. We note for example that landowners are increasingly insisting upon mobile phone mast covenants in leasehold agreements but that this type of restriction would have no bearing on the use of the land for a substation and therefore should not be considered relevant for the purposes of this obligation. We believe our proposed wording should give the appropriate level of comfort and flexibility. VPE has also included an obligation that such matters will be considered on a case by case basis, and an obligation to act reasonably which we trust will allow the maximum flexibility and will meet the interests of all parties concerned. Suggested amendments provided below.

Suggested wording – Paragraph 1 of Schedule 12 (“One Month after the Consents Issue Date”) - page 47

The landowner will be required to transfer **freehold ownership** of the site to the TAO. Where the landowner is unable to transfer a freehold interest, a leasehold interest (which the Customer shall use all reasonable endeavours to ensure shall be free from any user restrictions as would be inimical to the intended use of the site), of at least one hundred (100) years will be accepted. The TAO will consider (in line with CER/09/138) a leasehold interest of less than one hundred (100) years on a case by case basis, and shall act reasonably in all cases. The landowner is advised to notify the Company as soon as reasonably possible if it is envisaged that there may be difficulty in meeting these requirements, and the Company shall consider each such requirement on a case by case basis and shall act reasonably in all circumstances.

6. The mapping requirements in Schedule 12 to be submitted in CAD format

VPE's only comment in relation to the mapping requirements concerns the necessity of being submitted in CAD format. VPE would strongly suggest that hardcopy should be acceptable or if electronic format is absolutely necessary then PDF format should also be acceptable. We believe that submitting in CAD format would breach terms of purchase of the mapping from OSI given that it would be possible to extract the mapping from the drawing and reproduce without OSI's permission. Suggested amendments provided below.

Suggested wording – Map requirements in Schedule 12

- the map must be produced in hardcopy (or electronic PDF) form

7. Special condition in the Contract for Sale of Schedule 12

VPE would suggest that a provision needs to be added for a long-stop date after which the contract can be rescinded in order to give certainty to the parties to the contract. We believe that this would be in both parties' interests, and the relevant long-stop date can be agreed in a case by case basis. Suggested amendments provided below.

Suggested wording – special condition in the Contract for Sale in Schedule 12

There will be a special condition in the Contract for Sale allowing for the contract to be rescinded in the event of any of the following: -

- (a) Failure to fulfil material Connection Agreement requirements and

- (b) Where contestably built and there is no CER direction to transfer assets to the TAO

(In either case) on or before [agreed long stop date]

The terms of the Contract for Sale, including the special condition referred to above, shall be negotiated in good faith between the parties and, in default of agreement, may be referred for independent determination by an expert appointed by agreement or (in default of agreement) nominated by the President of the Law Society of Ireland.

8. Property Deliverables in Schedule 12

VPE would expect that the Law Society General Conditions of Sale will govern the property deliverables on completion and therefore this should be made explicit in the context of Schedule 12. The general conditions will legislate for a lot of the closing requirements and, in particular, we feel that paragraphs 4, 5 and 6 of the closing requirements would be more accurately described “vacant possession” and “mortgagee consent/release if necessary”.

We also understand that the Solicitors’ Regulations prohibit the giving of certain undertakings to procure registration in commercial property transactions, such as that set out at paragraph 5 of the draft completion list.

We also understand that matters such as capital acquisitions tax and capital gains tax do not attach to the property and as such are not relevant as property completion requirements.

Finally, we suggest that where the title on offer is leasehold and landlord consent is required to the assignment, then the Contract for Sale should be made conditional upon the same issuing and we have included a form of wording to this effect in the completion list.

Suggested amendments to capture the above provided below.

Suggested wording – property deliverables in Schedule 12

The following is a non-exhaustive list of closing requirements that the Customer is required to produce to the Company, for the benefit of the TAO, on completion:-

1. Executed Deed of Assurance from the Customer to the TAO in respect of the site(s) and equipment, in the form of the TAO standard template (attached) or such other form permitted under paragraph 3 and tax type and number details of Customer (for stamping purposes).
 2. Where appropriate, transfer by Deed to the TAO of rights acquired in respect of Easements for overhead lines and Wayleaves for underground cables (in the form of the TAO standard templates attached), or such other format as shall be acceptable according to current Land Registry practice or (in the case of unregistered title), prudent standards of conveyancing practice in the Republic of Ireland.
 3. Certification in the current Law Society recommended format that the sale of the site is not affected by the Family Home Protection Act or S. 72 burdens (if relevant).
 4. Vacant Possession
 5. Mortgagee consent / release, if necessary
 6. Confirmation that there are no deaths or voluntary dispositions on the title within the past twelve years
 7. Where appropriate, detailed description of equipment on the land (specified by the Company) to be transferred to the TAO.
 8. Where the landowner is a company, a copy Certificate of Incorporation and Memorandum & Articles of Association.
 9. Where leasehold title is given, the original lease and assignment if any and the landlord's [and head landlord's] consent to assign / to alterations / change of user will be required and the Contract for Sales shall be conditional upon the same issuing.
 10. Certificate(s) of Compliance with planning permission (where contestably built).
- Customer's VAT details where VAT is deemed chargeable.

Annex 1

VPE's suggested marked up amendments to Schedule 12 of Transmission Connection Agreement Version 2.0 (as submitted by EirGrid to CER on 14th December 2010)

SCHEDULE 12

Transfer of Ownership

Checklist of requirements to transfer ownership of site and equipment and/or rights over land to ESB as Transmission Asset Owner (TAO). The template Deeds set out in the attached Annexes may be subject to change from time to time.

IMMEDIATELY AFTER PLANNING PERMISSION HAS BEEN GRANTED

1. The Customer is required to furnish copies of full planning permission documentation as soon as reasonably possible after a full and final planning permission has been granted (where the Customer has applied for planning permission).

ONE MONTH AFTER THE CONSENTS ISSUE DATE

The Customer is required to produce to the Company, for the benefit of the TAO, the following items **no later than one month after the Consents Issue Date**:-

1. Satisfactory title documentation as follows:

Where the landowner's title is registered, up-to-date (to within 6 months), certified copy folio(s) and filed plan(s) showing ownership of site; or

Where the landowner's title is unregistered (Registry of Deeds) a certified copy Deed of Conveyance, Lease or Assignment to landowner and such prior title as would be required to establish good and marketable title in accordance with current recommendations of the Law Society Conveyancing Committee will be required.

The landowner will be required to transfer **freehold ownership** of the site to the TAO. Where the landowner is unable to transfer a freehold interest, a leasehold interest (which the Customer shall use all reasonable endeavours to ensure shall be free from any user restrictions as would be inimical to the intended use of the site), of at least one hundred (100) years will be accepted. The TAO will consider (in line with CER/09/138) a leasehold interest of less than one hundred (100) years on a case by case basis, and shall act reasonably in all cases. The landowner is advised to notify the Company as soon as reasonably possible if it is envisaged that there may be difficulty in meeting these requirements, and the Company shall consider each such requirement on a case by case basis and shall act reasonably in all circumstances.

2. All relevant maps

Where the site is owned by an individual, the Customer is required to furnish all relevant maps, conforming to the requirements set out below, in relation to the transfer of ownership of the site and equipment and/or rights over land. The Company will facilitate the TAO in verifying the relevant maps.

Map requirements:-

- the most up to date OS mapping for the area (the most up to date map for each area can be checked out online at www.osismartmaps.ie or www.osi.ie).
 - the map must be produced with the new ITM coordinate system.
 - the map must be produced on the largest scale map available.
 - the map must be produced in hardcopy (or electronic PDF) form
 - the map must show the following:-
 - site to be transferred outlined in red;
 - right of way from public road to be shown shaded yellow;
 - where an overhead line (easement) is required the area of the easement is to be marked hatched blue in accordance with standard industry practice [specific minimum easement widths for standard Deeds of Grant are set out in Annex 4]; and
 - where an underground cable (wayleave) is required the line is to be marked blue.
3. The Customer must procure from third parties the requisite rights of wayleave, easement and access (rights of way) where it is necessary for overhead lines, cable routes or access routes to traverse third party lands between the points of the sub-station as far as the Connection Point. Without prejudice to paragraph 4 (below), all such **rights must be acquired by way of Deed** and must be in the format of the template Deeds attached at Annex 2 (Deeds A & B) or such other format as shall be acceptable according to current Land Registry practice or (in

cases of unregistered titles) prudent standards of conveyancing practice in the Republic of Ireland.

Where appropriate the acquired rights must be transferred to the TAO on completion of legal transfer and in the format of the template Deeds attached at Annex 3. (Deed C)

4. Where lines are contestably built, the Customer may opt to serve section 53 wayleave notices, instead of acquiring deeds by agreement with third parties, once they have obtained CER consent and being formally appointed as an “authorised undertaker” within the meaning of the Electricity (Supply) Act 1927 CER agrees not to unreasonably withhold its consent to such appointment. In the event that the Customer opts to serve such notices, the Customer shall (if necessary) transfer all rights acquired under these notices to the TAO (see template Deed D attached at Annex 4). The Customer shall also be required to furnish copies of such section 53 notices to the Company for the benefit of the TAO.

WITHIN SIX MONTHS OF CONSENTS ISSUE DATE

The Customer is required to produce to the Company, for the benefit of the TAO, the following items **no later than six months after the Consents Issue Date**:-

1. A Contract for Sale between the Customer and the TAO, signed by the Customer;

The Contract for Sale and title furnished shall demonstrate satisfactory title being furnished as specified at clause 1. The Contract for Sale shall cover:-

- Sale (freehold or leasehold title) of the **site** to the TAO including the equipment specified by the Company with the benefit of **wayleaves, easements and rights of way** where it is necessary for overhead lines, cable routes or access routes to traverse third party property including public highways to link the Site as far as the Connection Point / public maintained roadways.

There will be a special condition in the Contract for Sale allowing for the contract to be rescinded in the event of any of the following: -

- (a) Failure to fulfil material Connection Agreement requirements and
- (b) Where contestably built and there is no CER direction to transfer assets to the TAO

(In either case) on or before [agreed long stop date]

The terms of the Contract for Sale, including the special condition referred to above, shall be negotiated in good faith between the parties and, in default of agreement, may

be referred for independent determination by an expert appointed by agreement or (in default of agreement) nominated by the President of the Law Society of Ireland.

COMPLETION OF LEGAL TRANSFER

The Customer shall complete the transfer of legal ownership to the TAO **within eight weeks** of the CER making a direction to transfer ownership as per Section 37(4) Electricity Regulation Act, 1999.

The following is a non-exhaustive list of closing requirements that the Customer is required to produce to the Company, for the benefit of the TAO, on completion:-

11. Executed Deed of Assurance from the Customer to the TAO in respect of the site(s) and equipment, in the form of the TAO standard template (attached) or such other form permitted under paragraph 3 and tax type and number details of Customer (for stamping purposes).
12. Where appropriate, transfer by Deed to the TAO of rights acquired in respect of Easements for overhead lines and Wayleaves for underground cables (in the form of the TAO standard templates attached), or such other format as shall be acceptable according to current Land Registry practice or (in the case of unregistered title), prudent standards of conveyancing practice in the Republic of Ireland.
13. Certification in the current Law Society recommended format that the sale of the site is not affected by the Family Home Protection Act or S. 72 burdens (if relevant).
14. Vacant Possession
15. Mortgagee consent / release, if necessary
16. Confirmation that there are no deaths or voluntary dispositions on the title within the past twelve years
17. Where appropriate, detailed description of equipment on the land (specified by the Company) to be transferred to the TAO.
18. Where the landowner is a company, a copy Certificate of Incorporation and Memorandum & Articles of Association.

19. Where leasehold title is given, the original lease and assignment if any and the landlord's [and head landlord's] consent to assign / to alterations / change of user will be required and the Contract for Sales shall be conditional upon the same issuing.

20. Certificate(s) of Compliance with planning permission (where contestably built).

21. Customer's VAT details where VAT is deemed chargeable.