

## Crown Estate Scotland Heads of Terms for Sub-Sea Telecommunications Cables within Scottish Territorial Waters

### Definitions

- “**International Cable**” means a cable which starts/terminates in Scotland and starts/terminates out with Scottish Territorial Waters and which is not a Local Cable.
- “**Local Cable**” means a cable which starts and terminates in the UK, Ireland and the Isle of Man, serving local connectivity demands.
- “**Transiting Cable**” means a cable which passes through Scottish Territorial Waters but does not make a landfall in the UK.
- “**Scottish Territorial Waters**” means the area of seabed from the baseline (broadly the mean low water springs) out to the 12 nautical mile limit managed by Crown Estate Scotland.

### Summary

- The following are the licence terms of Crown Estate Scotland for sub-sea telecommunications cables located or to be located with Scottish Territorial Waters.
- These terms are to cover the period from 1 January 2021 to 31 December 2030. However, Crown Estate Scotland may vary or extend these terms from time to time during this period.
- These terms have been adopted by Crown Estate Scotland following a review of market conditions in 2020 and sit alongside Crown Estates Scotland’s rights and responsibilities under all current regulatory regimes (as applicable).
- These terms will apply on a non-discriminatory basis to new licences and, where agreed with current licensees, to existing licences.
- Crown Estate Scotland charges standardised licence fees for all Transiting Cables and International Cables (as set out below). However, the licence fees for all Local Cables will be dealt with on a case by case basis.
- Nothing in these terms imply any obligation on the part of Crown Estate Scotland to grant a licence.
- These terms will not affect the construction or interpretation of any existing licence or any existing amended/varied licence.
- All parties to any licence will also comply with all relevant statutory and regulatory regimes as applicable during the term of the licence.

### Licence

<b>Licensor</b>	Crown Estate Scotland
<b>Licensee</b>	[            ]
<b>Term</b>	25 years  (a longer term or a shorter term may be considered on a case by case basis)
<b>Cable(s)</b>	The section of the Cable(s) system within Scottish Territorial Waters consisting of a number of cables to be confirmed by the Licensee.  (a specification will be required which will be appended to the Licence. This specification will include details of the

	Cable(s) to be located within the Cable Corridor, together with details of the Cable(s) joint and safety apparatus that will be permanently attached to the Cable(s) and required for the operation of it/them, and any temporary works required in relation to the laying and commissioning of the Cable(s) within the Cable Corridor and/or the Works Restriction Zone (as appropriate)).
<b>Cable Corridor</b>	A strip of foreshore (as necessary/appropriate) and seabed 30m in width, within which the Cable(s) will lie.
<b>Permitted Use</b>	For transmitting communications or other signals as part of an electronic communications network and as ancillary to that use but for no other purpose.
<b>As Laid plans and co-ordinates</b> (for the Cables(s))	Within [30] working days of the Cable(s) being installed, the Licensee will provide as laid plans and co-ordinates
<b>Licence Start Date</b>	[            ]  (to be agreed between the Licensor and the Licensee)
<b>Non-Operational Fee</b>  (This is the fee that will be payable from the Licence Start Date to the Operational Date)	30% of the Operational Fee.
<b>Longstop Operational Date</b>  (This is the date the Licensee's project is assumed to be operational, whether or not this is the case. It provides certainty for the Licensor as to the latest date the Operational Fee will fall payable)	[            ]  (to be agreed between the Licensor and the Licensee following receipt by the Licensor of the Licensee's detailed operational programme)
<b>Operational Date</b>	The date which is the earlier of: (a) the date on which the Cable(s) is/are first used for the Permitted Use; and (b) the Longstop Operational Date.
<b>Operational Fee</b>  (This fee is payable from the Operational Date and will replace	In respect of Transiting Cables and International Cables only, a fixed fee of £190,000.00 per annum, payable from the Operational Date (indexed in accordance with CPI from [1 November 2020] to the start of the Licence and annually

<p>the Non-Operational Fee)</p>	<p>thereafter)</p> <p>The Operational Fee for Local Cables will be agreed on a case by case basis. We will require visibility of the business/economic case for the installation of the Cable(s), which will form the basis of the negotiation of the Operational Fee.</p>
<p><b>Out of Service Fee</b></p> <p>(This is the fee that will be payable (for a maximum of 24 months) if the Licensee notifies the Licensor that the Licensee intends to permanently take the Cable(s) out of use)</p>	<p>£1 per annum.</p>
<p><b>Out of Service Date</b></p>	<p>The date which is the later of:</p> <ul style="list-style-type: none"> <li>• The payment date stated in an out of service notice, when the Cable(s) will be taken permanently out of service;</li> <li>• The payment date 18 months after service of the out of service notice; or</li> <li>• The payment date 12 months after the parties have agreed the final decommissioning plan.</li> </ul>
<p><b>Acceptable Covenant Strength</b></p> <p>(This is the measure used by the Licensor to determine the financial strength of the Licensee and if these criteria cannot be met then the Licensee is required to provide the Licensor with a guarantor or other type of security)</p>	<p>The Licensee will be considered to have an acceptable covenant if the Licensee has either:</p> <ul style="list-style-type: none"> <li>(a) A BBB- or higher rating with Standard &amp; Poor’s rating group or Baa3 or higher with Moody’s Investor Services Inc; or</li> <li>(b) Net Assets of not less than 10 x the contractual liability (and the Net Assets figure will be calculated specifically for the Licensee) subject to upwards only annual inflation adjustments.</li> </ul> <p>The Licensee will produce confirmation of meeting the acceptable covenant criteria (noted above) on each anniversary of the Term Start Date and at any other time during the Licence within 5 working days of request by the Licensor.</p> <p>If the Licensee is unable to meet the acceptable covenant criteria (noted above), either at the beginning of Licence or during the Term, the Licensee will provide an acceptable guarantee or security and provide evidence on each anniversary of the Term Start Date that such guarantor/security provider can satisfy the acceptable covenant test.</p>

<b>No dredging Zone</b>	235 metres either side of the Cable Corridor
<b>Works Restriction Zone</b>	<p>In water less than 55m below chart datum, 235 metres either side of the Cable Corridor,</p> <p>In water greater than 55m below chart datum, 485 metres either side of the Cable Corridor</p>
<b>Rent Reviews</b>	<p>There will be two forms of review. These are:</p> <p><b>1. Indexation</b> The Operational Fee and the Non-Operational Fee will be subject to review on the Licence Start Date and each subsequent anniversary of the Licence Start Date.</p> <p>Reviews will be upwards only and in line with the Office for National Statistics CPI figure.</p> <p><b>2. Market Review</b> In addition, on the 10<sup>th</sup> anniversary of the Licence Start Date and each subsequent 10<sup>th</sup> anniversary of the Licence Start Date the Operational Fee and the Non-Operational Fee will be subject to a market value review.</p> <p>Market value reviews will be upwards only.</p> <p>If the Licensor and the Licensee cannot agree the revised market value review, then an agreed third party (or if no agreement, who will be appointed by the Chair of the Royal Institution of Chartered Surveyors) may be appointed to determine the market value.</p>
<b>Diversion</b>	<p>The Licensor may at any time or any times request a diversion of the Cable(s) to a reasonable alternative route.</p> <p>In the event of such a request:</p> <ul style="list-style-type: none"> <li>(a) The Licensee will use reasonable endeavours to obtain any necessary consents in a reasonable time frame;</li> <li>(b) The Licensor will pay the costs and expenses reasonably incurred in obtaining the consent and other Expenses; and</li> <li>(c) The provision of the Licence will apply to the Cable(s) in the altered route.</li> </ul>
<b>Alienation</b>	The Licensee will not hold the Licence on trust, grant a sub-licence, novate or assign, in part or whole, unless permitted.

<b>Indemnity</b>	The Licensee will fully indemnify and keep the Licensor indemnified for the entirety of the Licence.
<b>Insurance</b>	The Licensee will effect and maintain third party and public liability insurance at a minimum level of £25,000,000 for each and every event.
<b>Maintenance</b>	Where necessary to repair damage, the Licensee may replace a part of the Cable(s) or make additions to the Cable(s) or carry out such re-protection or additional re-protection works. As soon as reasonably practical following works, new as laid plans and co-ordinates must be provided to the Licensor.
<b>Decommissioning</b>	<p>An initial decommissioning plan and estimate of decommissioning costs will be supplied by the Licensee for approval by the Licensor prior to entering into the Licence.</p> <p>The Licensee will decommission the Cable(s) in accordance with the final decommissioning plan as agreed with the Licensor.</p> <p>(Subject to statutory consents, decommissioning will presume full removal of the Cable(s) within 3km of the shoreline. The requirement to remove the rest of the Cable(s) will be confirmed by the Licensor on a case by case basis as part of the final decommissioning plan.)</p>
<b>Residue of the Cable(s)</b>	<p>Any sections to be left within the Cable Corridor will be identified and specified in the final decommissioning plan.</p> <p>After completion of the decommissioning works, any sections left within the Cable Corridor will remain the property of the Licensee and the Out of Service Fee will apply until the earlier of the date 24 months after the Out of Service Date (to be defined in the Licence and determined by the service of an out of service notice by the Licensee) and the end of the Licence.</p>
<b>Termination of the Licence</b>	Either party may terminate the Licence at any time after the Cable(s) has/have been fully decommissioned, subject to 6 months' notice expiring on a payment day and the Operational Licence Fee or Out of Service Fee (as appropriate) having been paid up-to-date.
<b>Indexation</b>	The Operational Fee and Out of Service Fee will be indexed from [1 November 2020] and any other indexation will be as follows.

	<p>Where an amount is to be increased by Indexation or Indexed [and the date of Indexation is not provided], the relevant amount will be multiplied by <math>(CPI1 / CPI2)</math> where:</p> <p>CPI1 is the higher of:</p> <ul style="list-style-type: none"><li>(a) the value of the CPI Index published in respect of the month two (2) months prior to the relevant calculation date; and</li><li>(b) the highest value of the CPI index published after the date of the Licence; and</li></ul> <p>CPI2 is the base index figure immediately prior to (1) the execution of the agreement to enter into the Licence; or (2) if agreement is entered into, the base index figure immediately prior to the execution of the Licence.</p>
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**These Heads of Terms are not intended to be contractual in effect**