Dated the 13th day of June 2023

MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE

"the Licensor"

One part

AND

UISCE ÉIREANN

"the Licensee"

Other part

FORESHORE LICENCE

Chief State Solicitor's Office
Osmond House
Ship Street Little
Dublin 8
File ref.: 2023/02219

LICENCE AGREEMENT made the 13th day of June 2023

BETWEEN THE MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE, of Custom House in the city of Dublin, D01 W6X0 (hereinafter called "the Licensor" which expression shall include his successors or assigns where the context so requires or admits) of the one part; and **UISCE ÉIREANN** having its registered office at Colvill House, 24/26 Talbot Street, Dublin 1, D01 NP86 (hereinafter called "the Licensee") of the other part.

INTRODUCTION

A. The Licensee applied to the Licensor for a Foreshore Licence to enter onto, use and occupy the Licensed Area to construct, install, operate, repair and maintain the Facilities at the Licensed Area being (1) part of a pump station and part of a rising main at Rostellan, (2) part of a pump station, overflow pipe from the pump station and part of a rising main from the pump station at Whitegate, and (3) marine outfall at White Bay, Glanagow, as specified in the Plans.

B. The Licensor in exercise of the power conferred on him by section 3(1) of the Foreshore Act, 1933 as amended has agreed to grant a Foreshore Licence to the Licensee on the terms and conditions set out in this deed.

IT IS HEREBY AGREED AS FOLLOWS:

1 **DEFINITIONS AND INTERPRETATION**

In this Licence, the following words and expressions have the following meanings:

1.1 "**Adjoining Property**" means any Foreshore, land and/or buildings adjoining or neighbouring the Licensed Area owned by the Licensor;

1.2 "**Business Day**" means a day that is not a Saturday, Sunday or a bank or public holiday in a place where an act is to be performed or a payment is to be made;

1.3 **"Confirmation Statement"** means the document issued by the State Claims Agency which sets out the details and applicability of State Indemnity;

1.4 "**Commencement Date**" has the meaning in clause 4.1;

1.5 "**Control**" has the same meaning as in section 432 of the *Taxes Consolidation Act 1997;*

1.6 "**Cure Notice**" has the meaning set out in clause 11.1;

1.7 "**Dispute**" means a difference or dispute of whatsoever nature arising between all or any of the parties under or in connection with this Licence;

1.8 "**Dispute Notice**" has the meaning set out in clause 20.2;

1.9 "**Dispute Resolution Procedure**" means the procedure outlined in clause 20;

1.10 "**Encumber**" means the placing of a charge, mortgage, lien or other burden on all or part of the Licensed Area to include lodging this Licence with anyone as security;

1.11 **"Environment"** includes any Foreshore, reclaimed Foreshore, land (including without limitation soil, surface land and subsurface strata, sea bed or river bed and any natural or man-made structures), any sea water, inland waters, surface waters, ground waters and water in pipes, drains or other conduits and air (including without limitation air within buildings and other natural or man-made structures above or below ground);

1.12 **"Environmental Law"** means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and judgements having the force of law in Ireland concerning Environmental Matters and protection of the Environment including without limitation the Air Pollution Act, 1987, the Dangerous Substances Act, 1972, the Dumping at Sea Act, 1996, as amended, the Litter Act, 1982, the Planning and Development Acts, 2000 to 2020 as amended, the Waste Management Act, 1996, as amended, the Environmental Protection Agency Act 1992, as amended, the Protection of the Environment Act, 2003, the Waste Water Discharge (Authorisation) Regulations, 2007, as

amended, the European Communities (Birds and Natural Habitats) Regulations, 2011 and all other regulations, bye-laws, orders and codes made thereunder;

1.13 **"Environmental Licences"** means any permit, licence, approval, consent, registration or other authorisation required by or pursuant to any applicable Environmental Law or relating to Environmental Matters;

1.14 **"Environmental Matters"** means any matter arising out of, relating to or resulting from pollution, contamination, protection of the Environment, human health or safety, health and safety of animal and plant life, sanitation and any matters relating to emissions, discharges, releases or threatened releases of hazardous materials into the Environment;

1.15 "**Euro**" means the single currency of participating member states of the European Union or such replacement equivalent currency thereof;

1.16 **"Facilities"** means the construction, installation, operation, repair and maintenance at the Licensed Area of (1) part of a pump station and part of a rising main at Rostellan, (2) part of a pump station, overflow pipe from the pump station and part of a rising main from the pump station at Whitegate, and (3) marine outfall at White Bay, Glanagow, for the Permitted Use and as specified in the Plans.

1.17 "**Force Majeure**" means an event or circumstance or a combination of events and/or circumstances not within the reasonable control of a party which has the effect of delaying or preventing that party from complying with its obligations under this Licence including:

(a) acts of terrorists or protesters;

(b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;

(c) sabotage, acts of vandalism, criminal damage or the threat of such acts;

(d) extreme weather or environmental conditions including lightning, fire, landslide, accumulation of snow or ice, meteorites or volcanic eruption or

other natural disasters, measured by reference to local meteorological records published by Met Eireann over the previous ten years;

(e) the occurrence of radioactive or chemical contamination or ionizing radiation, explosion including nuclear explosion, pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds and impact by aircraft or other vehicles;

(f) any strike or other industrial action which is part of a labour dispute of a national or industry wide character occurring in Ireland;

(g) the act or omission of any contractor or supplier of a party, provided that the act or omission was due to an event which would have been an event of Force Majeure had the contractor or supplier been a party to this Licence;

(h) the unavailability of essential infrastructure or services required to comply with obligations pursuant to this Licence, other than due to an act or omission of the Licensee;

(i) mechanical or electrical breakdown or failure of machinery, Plant or other facilities owned, installed or utilized by any party, which breakdown or failure was outside the control of the party acting in accordance with Environmental Law or the Law;

provided that Force Majeure shall not include:

(a) lack of funds and/or the inability of a party to pay;

(b) mechanical or electrical breakdown or failure of Plant or other facilities owned or utilized by any party other than as a result of the circumstances identified in clauses 1.17(a) to 1.17(i), above; or

(c) any strike or industrial action not falling within clause 1.17(f) above;

1.18 "**Foreshore**" has the same meaning as in section 1 of the Foreshore Act as amended by section 60 of the Maritime Safety Act, 2005;

1.19 "**Foreshore Act**" means the Foreshore Act 1933 as amended;

1.20 **"Foreshore Licence"** means a licence granted by the Licensor pursuant to section 3(1) of the Foreshore Act;

1.21 **"Insured Risks"** means any or all of the following risks: fire (including subterranean fire), storm, tempest, flood, earthquake, lightning, explosion, impact, riot, civil commotion, aircraft, labour disturbance and malicious damage, bursting or overflowing of water tanks, apparatus or pipes and such other risks as the Licensor may in his absolute discretion from time to time determine;

1.22 **"Law"** means any Act of the Oireachtas, regulation, statutory instrument, European Community obligation, direction of a regulatory or other competent authority, condition of any consent, authorization, licence or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, but does not include this Licence;

1.23 **"Licence"** means this deed and any schedule to it, as may be amended by supplemental indenture from time to time or which is entered into pursuant to or in accordance with the terms hereof;

1.24 "**Licensee**" means Uisce Éireann Designated Activity Company (Companies Registration Office No. 530363) of Colvill House, 24/26 Talbot Street, Dublin 1, D01 NP86;

1.25 "**Licensor**" means the Minister for Housing, Local Government and Heritage and which expression shall include his successors or assigns where the context so requires or admits ;

1.26 "**License Fee**" has the meaning set out in Clause 5.1;

1.27 "**Licensed Area**" means that part of the Foreshore more particularly described in the First Schedule;

1.28 **"Outgoings"** means all rates, taxes and charges (including emergency service charges) of any description (whether or not of a capital or non-recurring

nature) which may at any time during the Term be payable in respect of the Licensed Area and the Utilities enjoyed in connection therewith including any insurance excesses or other sums not recoverable by the Licensee (unless due to its own neglect or default);

1.29 "**Permitted Use**" means the use of the Licensed Area for the purpose of:

(1) constructing, installing and locating the Facilities;

(2) operating, maintaining, inspecting, testing, repairing or replacing all or any of the Facilities; and

(3) carrying out works which are necessary or incidental to the activities described in clauses (1) and (2).

1.30 **"Plans"** means the plans and drawings in the custody of and approved by the Licensor.

1.31 **"Plant"** means any lifts, lift machinery, central heating and air conditioning systems, sprinkler system, boilers, and other electrical and mechanical machinery, equipment, and apparatus of whatsoever nature or kind located in the Licensed Area;

1.32 "**Representations and Warranties**" mean the representations and warranties given by the Licensee to the Licensor pursuant to clause 15.1;

1.33 "**Specific Conditions**" mean the specifications set out in the Second Schedule, as may be amended from time to time pursuant to clause 8.2;

1.34 **"State Indemnity"** means indemnity that is given to third parties or individuals by the State, to compensate them for any losses that they incur as a result of the activities of the State (or a State Body) and in a situation where the State has been negligent in some way. Although State Indemnity is not analogous to a commercial insurance policy it will cover such loss where relevant and is unlimited in amount;

1.35 "**Term**" has the meaning set out in clause 4;

1.36 "**Utilities**" mean water, soil, steam, air, gas, electricity, radio, television, telegraphic, telephonic, computer linking, electronic and other communications, oil and heating fuels and other services of whatsoever nature.

2 INTERPRETATION

2.1 Where two or more persons are included in the expression "the Licensor" or "the Licensee", such expressions include all or either or any of such persons and the covenants which are expressed to be made by the Licensor, or the Licensee shall be deemed to be made by or with such persons jointly and severally.

2.2 Unless the context otherwise requires:

2.2.1 words importing a person include any unincorporated association or corporate body and vice versa;

2.2.2 any reference to the masculine gender includes reference to the feminine gender and any reference to the neuter gender includes the masculine and feminine genders;

2.2.3 any reference to the singular includes reference to the plural.

2.3 Any covenant in the Licence by the Licensee not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and to use best endeavours to prevent such act or thing being done by another person.

2.4 References to any right of the Licensor to have access to or entry upon the Licensed Area shall be construed as extending to all persons lawfully authorised by the Licensor including agents, professional advisers, prospective purchasers of any interest of the Licensor in the Licensed Area or in the adjoining property or Foreshore, contractors, workmen and others provided that such persons have given reasonable notice (except in the case of an emergency) and have sufficient reason to require access.

2.5 Any reference to a statute (whether specifically named or not) or to any sections or sub-sections therein includes any amendments or re-enactments thereof for the time being in force and all statutory instruments, orders, notices, regulations, directions, bye-laws,

certificates, permissions and plans for the time being made, issued or given there-under or deriving validity there-from.

2.6 Headings are inserted for convenience only and do not affect the construction or interpretation of this Licence.

2.7 Any reference to a clause, sub-clause or schedule means a clause, sub-clause or schedule of this Licence.

2.8 If any term or provision in this Licence is held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of this Licence but the enforceability of the remainder of this Licence is not affected.

2.9 References in this Licence to any rights granted to the Licensee shall be construed as being granted to the Licensee and all persons authorised by the Licensee to exercise such rights.

2.10 Rights excepted to the Licensor or reserved to any indemnities to the Licensor are to benefit also any other licensor and if necessary and appropriate the occupiers of the remainder of the Licensed Area, any occupier of adjoining or neighbouring property or Foreshore and any other person authorised by the Licensor or having similar rights.

2.11 Any right or privilege conferred on the Licensor under this Licence shall be deemed to be exercisable by the Licensor during the Term.

2.12 References to "month" or "months" mean a calendar month or months.

2.13 The Term shall extend to and include the term set out herein and if properly determined prior to the expiry of the Term, the Term shall mean the Term up to the date of such determination and expression such as the last year of the Term shall be construed accordingly.

3 GRANT OF LICENCE

3.1 The Licensor in exercise of the powers vested in him by section 3(1) of the Foreshore Act, 1933 hereby grants to the Licensee a licence to enter onto, use and occupy the Licensed Area on the terms and conditions set out in this Licence and in particular the

Specific Conditions set out in the Second Schedule for the purpose of the Permitted Use.

3.2 Unless otherwise permitted by Law and with the written consent of the Licensor, the Licensee shall not use the Licensed Area for any other purpose other than the Permitted Use.

3.3 For the avoidance of all doubt, this Licence does not include the right to get and take any minerals within the meaning of section 3 (8) of the Foreshore Act.

4 TERM

4.1 This Licence shall commence on the 13th day of June 2023.

4.2 Subject to clause 12, this Licence shall remain in force for a period of 35 (Thirty five) years from the Commencement Date.

5 LICENCE FEE

5.1 In consideration of the grant of this Licence, the Licensee shall pay to the Licensor the sum of:

(i) [redacted]

(ii)

6 COMMENCEMENT OF OPERATIONS

6.1 The Licensee shall not commence any works associated with the Facilities in the Licensed Area, without the prior written consent of the Licensor.

6.2 The Licensor is not obliged to grant consent pursuant to clause 6.1 unless and until the Licensee has obtained and provided to the Licensor in respect of the relevant works, activities or operations copies of all the necessary permits, licences, approvals, consents, registrations, permissions and authorisations.

6.3 The Licensee shall notify the Licensor in writing at least 14 (fourteen) days in advance of the commencement of works associated with the Facilities in the Licensed Area.

7 COMPLIANCE WITH APPLICABLE LAWS

7.1 The Licensee shall at all times comply with all applicable Law and Environmental Law.

7.2 Without prejudice to the generality of clause 7.1, the Licensee shall at all times hold all necessary permits, licences, approvals, consents, permissions, registrations or authorisations associated with any activities of the Licensee in connection with the Licensed Area (to include Plant and equipment utilised therein).

8 SPECIFIC CONDITIONS

8.1 Unless the prior written approval of the Licensor is obtained, which approval may be granted subject to conditions, the Licensee shall ensure that:

(1) all Facilities are constructed and/or installed in accordance with the Specific Conditions and such Facilities at all times comply with the Specific Conditions which are applicable at the date that such Facilities were constructed and /or installed; and

(2) no development, work, construction or installation is undertaken in the Licensed Area that does not comply with the Specific Conditions.

8.2 The Specific Conditions may be amended from time to time:

8.2.1 by agreement between the parties;

8.2.2 by the Licensor by notice in writing to the Licensee if the Licensor reasonably considers it necessary to do so for reasons of public safety or protection of the environment.

8.3 If at any stage the Licensee becomes aware that any Facilities or works do not comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed (whether as a result of notification by the Licensor or other competent authority or otherwise), the Licensee shall immediately:

(1) notify the Licensor, unless the Licensee was notified by the Licensor;

(2) unless the Licensor otherwise agrees in writing, take all reasonable steps to ensure that:

(a) such Facilities or works comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed, as the case may be; and

(b) any adverse consequence arising out of the fact that the Facilities were not constructed and/or installed in accordance with the Specific Conditions or works were not performed in accordance with the Specific Conditions, as the case may be, are rectified to the satisfaction of the Licensor as soon as is reasonably practicable.

9 OPERATIONS IN CONNECTION WITH THIS LICENCE

9.1 The Licensee may, from time to time, with the prior written consent of the Licensor, occupy and use so much of the adjacent Foreshore as is reasonably required by the Licensee to exercise its rights pursuant to clause 3.1 and shall restore the said Foreshore to its proper condition to the satisfaction of the Licensor after such occupation and use.

9.2 Without prejudice to any other rights and obligations under this Licence, or at Law or Environmental Law, in exercising any of the rights or performing any obligations in connection with this Licence, the Licensee shall:

(1) not use the Licensed Area or permit the same to be used otherwise than for the Permitted Use and for no other purpose or purposes whatsoever;

(2) comply with the Specific Conditions described in the Second Schedule hereto at all times;

(3) ensure that all Facilities, Plant, works or structures in the Licensed Area (if any) are at all times maintained in a good and proper state of repair and condition to the satisfaction of the Licensor, ensuring that they do not constitute a public health hazard or danger to persons, animals, marine life or the Environment, nor

be injurious to navigation, the adjacent lands and/or Foreshore or the public interest;

(4) not Encumber this Licence or any part of the Facilities without the prior written consent of the Licensor;

(5) at all times maintain appropriate resources to ensure the proper exercise of all rights and the performance of all obligations in connection with this Licence including:

(a) ensuring that all necessary competent persons are engaged to carry out any works, activities, or operations pursuant to this Licence;

(b) using suitable Plant, machinery and equipment which is in good repair and condition and maintained to proper safety standards;

(6) use all reasonable endeavours to minimize damage and disturbance to the Environment, fisheries and all other maritime activities and restore any damage which does occur, to the satisfaction of the Licensor;

(7) not commit or suffer any waste, spoil or destruction on the Foreshore, other than waste, spoil or destruction:

(a) which is reasonably necessary as a consequence of the exercise of rights and performance of obligations pursuant to this Licence; and

(b) in respect of which the Licensee holds all necessary permits, consents, licences, permissions, authorisations or registrations required by Law or Environmental Law;

(8) carry out an analysis and monitoring of the Licensed Area and the waters within the immediate vicinity to the satisfaction of the Licensor or to pay to the Licensor all expenses incurred by the Licensor or a person duly authorised by him, to carry out such analysis and monitoring;

(9) unless otherwise permitted by Law, not undertake any works, activities or operations, other than navigation, outside the Licensed Area without the prior

written consent of the Licensor and, where appropriate, any occupiers of such sea-bed;

(10) not, without the prior written consent of the Licensor, carry out any works, activities or operations which, in the reasonable opinion of the Licensor, are injurious to or interfere unreasonably with fishing, navigation, adjacent lands and/or Foreshore, approved scientific research or the public interest;

(11) ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during construction or otherwise and, where necessary, for the duration of this Licence;

(12) permit the Licensor and any persons duly authorised by him at any time to remove from the Licensed Area and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent required under this Licence or which may in the opinion of the Licensor be injurious to navigation, the adjacent lands and/or Foreshore, or the public interest and to restore the Licensed Area to its former or proper condition and to erect or construct any building or works which in the opinion of the Licensor may be required for the purposes of navigation, the adjacent lands and/or Foreshore or the public interest. The Licensee shall compensate the Licensor for all costs associated with the aforesaid removal or abatement.

9.3 Without prejudice to any other remedy under this Licence, at Law or Environmental Law, if the Licensor is of the view that the Licensee is in breach of any obligation pursuant to clause 9.2, the Licensor may, by notice in writing, require that the Licensee rectify such breach within such reasonable time period as is specified by the Licensor.

9.4 The Licensee shall comply with any direction of the Licensor under clause 9.3 within the time specified in the notice.

10 INVESTIGATIONS, INSPECTIONS AND ENQUIRIES

10.1 The Licensor may conduct or cause to be conducted such investigations, inspections and enquiries in connection with this Licence as he sees fit.

10.2 The Licensee shall use all reasonable endeavours to co-operate fully and provide all reasonable assistance in relation to any investigation, inspection or enquiry conducted pursuant to clause 10.1.

10.3 The Licensee acknowledges and agrees that, unless the contrary intention is expressed, any investigation, inspection or enquiry undertaken pursuant to this Licence:

(1) is without prejudice to the Licensee's rights and obligations under this Licence, at Law or Environmental Law and does not amount to a waiver of any such rights or relieve the Licensee from any such obligations; and

(2) does not amount to an acknowledgement by the Licensor, or any officer, servant or agent of the Licensor, that the Licensee has complied with this Licence, Law or Environmental Law in relation to any matters to which the investigation, inspection or enquiry relates.

11 STEP IN RIGHTS

11.1 If at any time any obligation of the Licensee under this Licence is not performed, the Licensor may give written notice to the Licensee (hereinafter referred to as a **"Cure Notice"**) describing the obligation which is not performed and requiring such failure to be remedied within the period specified in the Cure Notice (which period must be reasonable having regard to the nature of the obligation which was not performed).

11.2 If the failure to perform the obligation referred to in the Cure Notice is not remedied within the period specified in such Cure Notice, the Licensor shall be entitled to engage any personnel, execute any works and to provide and install any equipment which in the opinion of the Licensor may be necessary to secure the performance of the relevant obligations.

11.3 The Licensor may recover the costs and expenses of exercising all rights under clause 11.2 from the Licensee as a civil debt in any court of competent jurisdiction.

11.4 The rights under this clause 11 are without prejudice to any other remedies available to the Licensor under this Licence, at Law or Environmental Law.

12 TERMINATION

12.1 The Licensor may, without prejudice to any other remedies available under this Licence, applicable Law or Environmental Law, terminate this Licence, by notice in writing to the Licensee upon the occurrence of the following events **without payment of any compensation or refund by the Licensor to the Licensee and without prejudice to any claim by the Licensor in respect of any antecedent breach of any covenant or condition herein contained or without prejudice to any obligation or liability on the part of the Licensee arising under any applicable Law or Environmental Law pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence)**:

(i) Where, in respect of the application for this Licence, information has been withheld from the Licensor or information provided to the Licensor is false or misleading in any particular;

(ii) if any moneys payable by the Licensee under this Licence are not paid by the due date for payment and such failure is not remedied within 21 days after receipt by the Licensee of a notice from the Licensor requiring such breach or non-observance or non-performance to be remedied and stating that this Licence may be terminated pursuant to clause 12.1(ii) if such breach or non-observance or non-performance is not remedied;

(iii) any breach, non-performance, or non-observance by the Licensee of any covenant on the Licensee's part, condition or agreement contained in this Licence, applicable Law or Environmental Law, which is capable of being remedied and which is not remedied within 21 days after receipt by the Licensee of a notice from the Licensor requiring such breach, non-performance or non-observance to be remedied and stating that this Licence may be terminated pursuant to clause 12.1(iii) if such breach or non-performance or non-observance is not remedied;

(iv) any breach, non-observance or non-performance by the Licensee of any covenant on the Licensee's part (including a covenant for payment of rent,

royalty or other money), condition or agreement contained in this Licence, applicable Law or Environmental Law;

(v) repeated breach, non-observance or non-performance by the Licensee of any provision of this Licence, at Law and/or Environmental Law which has been notified to the Licensee by the Licensor and which has not been disputed in good faith, whether or not they are remedied, which are reasonably determined by the Licensor to constitute a breach and which continue after receipt by the Licensee of a notice from the Licensor stating that the Licence may be terminated if such repeated breach, non-observance or non-performance continues;

(vi) in the event that the Licensee fails to construct and/or install the Facilities in accordance with the Plans approved by the Licensor to the satisfaction of the Licensor;

(vii) the Licensor is of the view that the capability of the Licensee to discharge fully its obligations under this Licence is materially impaired, including by reason of:

(1) the occurrence of the insolvency/liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation) of the Licensee; or

(2) any other adverse change in the managerial, technical or financial competence of the Licensee;

(viii) the Licensee is listed as dissolved or struck off the Register in the Companies Registration Office in the Republic of Ireland; or

(ix) the Licensee otherwise ceases to exist.

12.2 Without prejudice to Clause 12.1, this Licence may be determined at any time by the Licensor giving three months' notice in writing, expiring on any day, to the Licensee, and upon the termination of such notice the Licence and permission hereby granted shall be deemed to be revoked and withdrawn without payment of any compensation or refund by the Licensor to the Licensee and without prejudice to any claim by the Licensor in respect of any antecedent breach of any covenant or condition herein

contained or without prejudice to any obligation or liability on the part of the Licensee arising under any applicable Law, Environmental Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence).

13 RIGHTS AND OBLIGATIONS ON TERMINATION OR EXPIRY

13.1 On the termination or expiry of this Licence:

(1) All rights and powers exercisable by the Licensee pursuant to this Licence shall cease and determine, but without prejudice to any obligation or liability arising under any applicable Law, Environmental Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence) or without prejudice to any claim by the Licensor in respect of any antecedent breach of any covenant or condition herein contained.

(2) All Facilities belonging to the Licensee shall be removed by the Licensee on the termination or expiry of this Licence at its own expense to the satisfaction of the Licensor and the Licensee shall make good any damage caused by such removal and shall restore the **Licensed Area to its former condition to the satisfaction of the Licensor.**

In the event that the Facilities shall not be removed in agreement with the Licensor on the termination or expiry of this Licence, the Licensor may cause the Facilities to be removed and the Licensee shall pay to the Licensor all reasonable costs, expenses and outgoings incurred in so removing the Facilities, restoring the Licensed Area to its former condition and making good any damage thereby occasioned.

(3) The Licensor may recover the costs and expenses of exercising all rights under clause 13.1 (2) from the Licensee as a civil debt in any court of competent jurisdiction.

(4) Any moneys paid to the Licensor under the terms of this Licence shall not be re-paid.

14 PAYMENT AND INVOICING

14.1 All payments by the Licensee in connection with this Licence:

(1) shall be made by electronic funds transfer delivered on or before the due date for payment, to the Licensor's account which shall be notified to the Licensee by the Licensor in writing and;

(2) shall be paid in full, without deduction or set off in respect of any amounts in dispute or any other amounts whatsoever.

14.2 If any amount which is payable under this Licence has not been paid on or before the date that payment is due:

(1) the party to whom payment is due may institute proceedings for recovery from the other party; and

(2) in addition to any other remedies under this Licence, the party to whom payment is due is to be paid interest on the outstanding amount at Euribor + 1%, such interest to be calculated from the date that payment was due until the date of actual repayment.

15 REPRESENTATION AND WARRANTIES

15.1 The Licensee represents and warrants to the Licensor that:-

(1) The Licensee is duly incorporated and organised under the laws of its place of incorporation;

(2) The Licensee has the corporate capacity and authorisation (internal and external) to enter into and perform the terms of the Licence;

(3) The representative signing this Licence on behalf of the Licensee is duly authorised in that behalf.

15.2 This Licence expressly excludes any warranty, condition or other undertaking implied at law or by custom and supersedes all previous agreements and understandings

between the parties with respect to the subject matter hereof, other than as expressly provided for in this Licence.

16 ASSIGNMENT AND CHANGE OF CONTROL

16.1 The benefit of this Licence is personal to the Licensee and not assignable and the rights given hereunder may only be exercised by the Licensee.

16.2 For the purposes of this clause, assignment includes any change in Control of the Licensee.

17 INDEMNITIES

17.1 To keep the Licensor, the State, and their officers, servants, visitors, agents and employees fully indemnified, whether by State Indemnity or otherwise (during the Term of the Licence as well as after the expiration of the Term by effluxion of time or otherwise and including any extension or renewal of this Licence) from and against all or any actions, proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities arising directly or indirectly from:

17.1.1 breach by the Licensee of any of the provisions of this Licence;

17.1.2 the state of repair or condition of the Licensed Area;

17.1.3 the existence of any additions, articles or alterations in, on or to the Licensed Area or from the state of repair or condition of any such additions, articles or alterations;

17.1.4 the use or enjoyment of the Licensed Area;

17.1.5 any work carried out or in the course of being carried out to the Licensed Area (to include work undertaken from the Adjoining Property) by the Licensee, his servants, agents or any other person with its actual or implied authority or from anything now or hereafter attached to or projecting from the Licensed Area;

17.1.6 any act, neglect or default of the Licensee or any person on the Licensed Area with his actual or implied authority or consent;

17.1.7 the execution of any works or the provision or maintenance of any arrangements so directed or required by any Law;

17.1.8 any contravention of the Planning Acts, the Building Control Acts, Construction Regulations, Environmental Laws and/or the Public Health Acts and from any applications for planning permission, commencement notices, fire safety certificates, Environmental Licences and works and actions taken in pursuance thereof;

17.1.9 any contravention of the Local Government (Water Pollution) Act, 1977 as amended;

17.1.10 any other cause whatsoever arising out of the Facilities and/or Licensed Area;

and to make good all loss sustained by the Licensor in consequence of any breach by the Licensee of any covenants or conditions herein.

17.2 whenever required to do so by the Licensor, to produce to the Licensor for inspection the Confirmation Statement and to comply with all conditions pertaining to State Indemnity.

18 JOINT AND SEVERAL LIABILITY (IF MORE THAN ONE LICENSEE)

Save where otherwise specified, any obligations of the Licensee under this Licence are joint and several obligations.

19 FORCE MAJEURE

19.1 Except as otherwise provided by this Licence, where any party or parties are rendered wholly or partially incapable of performing all or any of their obligations under this Licence by reason of Force Majeure:

(1) as soon as is reasonably practicable, the party affected by Force Majeure shall notify the other parties, identifying the nature of the event, its expected duration and the particular obligations affected and shall furnish reports at such intervals reasonably requested by the other party during the period of Force Majeure;

(2) this Licence shall remain in effect but that party's obligations, except for an obligation to make payment of money, and the corresponding obligations of the other party, shall be suspended, provided that the suspension shall be of no greater scope and no longer duration than is required by the Force Majeure;

(3) subject to full compliance with this clause 19.1, during suspension of any obligation pursuant to clause 19.1(2), the relevant party or parties shall not be treated as being in breach of that obligation;

(4) the party affected by the Force Majeure shall use all reasonable efforts to remedy its inability to perform all or any of its obligations under this Licence by reason of Force Majeure and to resume full performance of its obligations under this Licence as soon as is reasonably practicable;

(5) as soon as is reasonably practicable after notification of the Force Majeure, each party shall use all reasonable endeavours to consult with the other party as to how best to give effect to their obligations under this Licence so far as is reasonably practicable during the period of the Force Majeure;

(6) upon cessation of a party's inability to perform all or any of its obligations under this Licence by reason of Force Majeure, that party shall notify the other party; and

(7) insofar as is possible, any party affected by an event of Force Majeure shall do all things reasonably practicable to mitigate the consequences of the Force Majeure.

19.2 Clause 19.1(4) shall not require the settlement of any strike, walk-out, lock-out or other labour dispute on terms which, in the sole judgement of the party involved in the dispute, are contrary to its interests.

20 DISPUTE RESOLUTION

20.1 Subject to clause 20.10, no party may commence proceedings in relation to any Dispute in connection with this Licence without first complying with the provisions of clause 20.

20.2 Any party may notify the other party of the occurrence or discovery of any item or event which the notifying party acting in good faith considers to be a Dispute under or in connection with this Licence (hereinafter referred to as a "**Dispute Notice**").

20.3 A Dispute Notice shall:

(1) set out the particulars of the issues in dispute in sufficient detail and be accompanied by sufficient supporting documentation (if relevant) to enable the recipient or recipients of the notice to fully understand the Dispute; and

(2) identify an individual to represent that party in discussions in relation to the Dispute, such individual to have:

(a) expertise or experience in the subject matter of the Dispute; and

(b) authority to negotiate in relation to the Dispute.

20.4 The recipient of a Dispute Notice shall, within 10 Business Days after the date of the Dispute Notice:

(1) appoint an individual to represent that recipient in discussions in relation to the Dispute, such individual to have:

(a) expertise or experience in the subject matter of the Dispute; and

(b) authority to negotiate in relation to the Dispute; and

(2) notify the details of that individual to the sender of the Dispute Notice.

20.5 The nominated representatives shall meet as soon as practicable, but in any event not more than 20 Business Days after the date of the Dispute Notice, to attempt in good faith using all reasonable endeavours to resolve the Dispute satisfactorily.

20.6 If a Dispute is not resolved to any party's satisfaction by the nominated representatives under clause 20.5 within 30 Business Days after the date of the Dispute Notice, the Dispute may, by notice in writing by any party to the other party to the Dispute, be referred to arbitration for determination by a single arbitrator appointed by agreement between the parties.

20.7 Failing agreement on the appointment of an arbitrator within the time frame set out in clause 20.6, the arbitrator shall be appointed at the request of any party, after giving notice in writing to the other party to the Dispute, by the President for the time being of the Law Society of Ireland.

20.8 The provisions of the Arbitration Acts 2010 and any amendments thereto shall apply to the arbitration.

20.9 Performance of obligations under this Licence shall continue during any Dispute Resolution Procedure pursuant to this clause 20.

20.10 Nothing in this clause 20 prevents any party from seeking urgent declaratory injunctive or other interlocutory relief.

21 COMPLIANCE WITH PLANNING

21.1 The Licensee shall obtain all planning permissions, fire safety certificates, Environmental Licences, permissions and other consents required for the construction, installation and operation of the Facilities and comply at its own cost therewith and any local authority requirements. On the completion of the construction and installation of the Facilities, the Licensee shall furnish the Licensor with its architect's certificate of compliance in respect of such permissions.

21.2 The Licensee shall not implement any planning permission before it and all required fire safety certificates and Environmental Licences have been produced to the Licensor.

21.3 In the event of the Licensed area or the Facilities or the construction and installation thereof not conforming to the planning permission, fire safety certificate or Environmental Licences procured in respect thereof, the Licensee shall carry out such alterations or amendments as shall be necessary to comply therewith. However in the

event of it becoming impossible to comply with the planning permission, fire safety certificate or Environmental Licences procured, to restore the Licensed Area to its former condition and to the satisfaction of the Licensor.

21.4 The Licensee shall not do anything on or in connection with the Licensed Area, Plant and equipment the doing or omission of which shall be a contravention of the Planning and Development Acts, 2000 to 2020 as amended, the Building Control Acts 1990 to 2014, as amended and the Safety, Health and Welfare at Work Act 1989 and 2005, as amended or of any notices, orders, licenses, consents, permissions and conditions (if any) served, made, granted or imposed thereunder. In the event of permission or approval from any local authority under the Planning and Development Acts 2000 to 2020, as amended, or the Building Control Acts 1990 to 2014, as amended, or the Local Government (Sanitary Services) Act, 1878, as amended or the Public Health Acts 1878 to 2001, as amended, and any statutory modification or re-enactment thereof for the time being in force and regulations or order made thereunder being necessary for any addition, alteration or change in or to the Licensed Area for the change of use thereof, to apply, at its own cost to the relevant local authority for all approvals, certificates, consents and permissions which may be required in connection therewith and to give notice to the Licensor of the grant or refusal (as the case may be) together with copies of all such approvals, certificates, consents and permissions forthwith on receipt thereof and to comply with all conditions, regulations, bye-laws and other matters prescribed by any competent authority whether generally or specifically in respect thereof and to carry out such works at the Licensee's own expense in a good and workmanlike manner to the satisfaction of the Licensor. The Licensee shall produce to the Licensor on demand all plans, documents and other evidence as the Licensor may reasonably require in order to satisfy himself that the provisions of this Licence have been complied with in all respects.

21.5 The Licensee shall give notice forthwith to the Licensor of any notice, order or proposal for a notice under the Planning and Development Acts, 2000 to 2020 as amended or the Building Control Acts 1990 to 2014 as amended, or the Local Government (Sanitary Services) Act, 1878, as amended, or the Public Health Acts, 1878 to 2001, as amended and comply at its own cost therewith.

21.6 The Licensee shall at the request of the Licensor, but at its own cost, make or join in making such objections or representations in respect of any proposal the Licensor may require to be made.

22 OUTGOINGS

22.1 The Licensee shall pay and discharge:

(i) All rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever charged, levied, assessed, imposed upon or payable in respect of the Licensed Area.

(ii) All costs associated with the construction and installation of the Facilities and the continued operation and use thereof including the cost of any work which the Licensor may have to do to facilitate any act or thing hereby authorised.

23 EXERCISE OF RIGHTS

23.1 To exercise the Licence hereby granted in such a manner as to cause no damage or injury to the Licensed Area, the Licensor, the occupants of the Licensed Area and any adjoining property or Foreshore and to forthwith from time to time with due diligence repair and make compensation for any such damage or injury that may be so caused.

24 INSURANCE/STATE INDEMNITY

Without prejudice to the Licensee's liability to indemnify the Licensor (and others as specified in clause 17) in accordance with the provisions of Clause 17:-

24.1 to insure and keep insured, in an insurance office licensed to operate in the State or which has received authorisation to operate in the State in accordance with Article 14 of Directive 2009/138EC in the joint names of the Licensor and the Licensee in the full reinstatement cost thereof (to be determined from time to time by the Licensor or his surveyor and including an inflationary factor) the Licensed Area and all buildings thereon and the fixtures and fittings therein (if any) against loss or damage by the Insured Risks, including demolition and site clearance expenses, architects' and other fees and taxes in relation to the

reinstatement of the Licensed Area, such policy to include a non-invalidation clause acceptable to the Licensor.

24.2 to effect and keep in force a public liability insurance policy of indemnity in the joint names of the Licensor and Licensee in an insurance office licensed to operate in the State with a limit of €6,500,000.00 (six million, five hundred thousand euro) (or such increased amount as the Licensor may from time to time determine) in respect of any one claim or a series of claims arising out of a single occurrence for any damage, loss or injury which may occur to any property (not being the property of the Licensor or the Licensee) or to any person by or arising out of the admission of any person to the Licensed Area, and to extend such policy so that the Licensor is indemnified by the insurers in the same manner as the Licensee or to provide the Confirmation Statement referred to at 24.5 below. This policy should include an indemnity to principles clause with a specific indemnity to the Licensor.

24.3 to effect and keep in force an employer's liability insurance policy of indemnity in the joint names of the Licensor and Licensee in an insurance office licensed to operate in the State with a limit of €12,700,000.00 (twelve million, seven hundred thousand euro) (or such increased amount as the Licensor may from time to time determine) for any one claim or a series of claims arising out of a single occurrence and to extend such policy so that the Licensor is indemnified by the insurers in the same manner as the Licensee in respect of all actions, costs, proceedings, losses, damages, or claims for personal injuries by employees of the Licensee or to provide the Confirmation Statement referred to at 24.5 below. This policy should include an indemnity to principles clause with a specific indemnity to the Licensor.

24.4 in the event that the Licensed Area or the Facilities or any part thereof, shall be destroyed or damaged by fire or any of the Insured Risks, then and as often as shall happen, to lay out all monies received in respect of such insurance as aforesaid as soon as practicable in or upon rebuilding, repairing or reinstating the Licensed Area in a good and substantial manner and in the event that such

monies shall be insufficient for the said purpose, to make good the deficiency.

24.5 whenever required to do so by the Licensor, to produce to the Licensor for inspection the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or policies together with evidence of waiver of subrogation rights against the Licensor by the Licensee's insurers, and to comply with all conditions pertaining to any such policy or policies or where State Indemnity is relied on whenever required to do so by the Licensor, to produce to the Licensor for inspection the Confirmation Statement.

24.6 such joint policy or policies, if required, to contain a non-vitiation clause whereby subject to the terms, conditions, limitations of the policy or policies, any non-disclosure, mistake or misrepresentation of a material fact by the Licensee gives sufficient reason for the insurer to prove the insurance policy to be void, the Licensor will not be denied the protection of the policy.

24.7 not to do or omit to do anything which might cause any policy of insurance (if required) relating to the Licensed Area or any Adjoining Property owned by the Licensor to become void or voidable, wholly or in part, nor (unless the Licensee has previously notified the Licensor and the Licensee has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable.

24.8 to immediately notify the Licensor in writing of the making of any claim under any policy of insurance or State Indemnity and to provide the Licensor with all information in relation to any such claim.

24.9 to ensure that any contractors, servants, agents, invitees or visitors of the Licensee engaged in connection with activities in the Licensed Area or otherwise in connection with this Licence have appropriate insurance and that all copies of such insurance policies shall be provided to the Licensor as soon as is reasonably practicable.

25. NOTICES

25.1 Save where otherwise provided, any demand or notice to be made, given, or served on foot of this Licence may be given in writing by sending same by pre-paid post to (i) the registered office of the Licensee at Colvill House, 24/26 Talbot Street, Dublin 1, D01 NP86 or such other address as shall be notified by the Licensee to the Licensor, in writing, or (ii) the office of the Licensor being Custom House, Dublin, D01 W6X0 or such other address as shall be notified to the Licensee, in writing.

25.2 Any such demand or notice shall be deemed to have been made, given or served when posted at the expiration of three working days after the envelope containing the same and properly addressed was put in the post.

26. VARIATION

26.1 No amendment to this Licence shall be effective unless it is in the form of a supplemental instrument executed by the parties.

26.2 The Licensor reserves the right to review and amend by way of supplemental instrument any of the terms of this License.

27. RELATIONSHIP OF THE PARTIES

27.1 Nothing in this Licence may be interpreted or construed as creating any landlord and tenant relationship, any tenancy in or right to possession of or any right of easement over or in respect of the Licensed Area or adjoining property/Foreshore of the Licensor, or any agency, association, joint venture or partnership between the Licensor and the Licensee.

27.2 Except as is expressly provided for in this Licence, nothing in this Licence grants any right, power or authority to any party to enter into any agreement or undertaking for, act on behalf of or otherwise bind any other party.

27.3 It is hereby certified for the purposes of Section 238 of the Companies Act 2014 that the Licensor is not a director or a person connected with a director of the Licensee.

28. SEVERABILITY

28.1 If any provision of this Licence is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the relevant body of the European Union, that provision shall be severed and the remainder of this Licence shall remain in full force and effect.

28.2 The parties shall comply with this Licence as amended in accordance with this clause 28.

29. STAMP DUTY

To stamp (if applicable) this Licence and counterpart thereof as soon as practicable after the execution of same and to furnish the counterpart duly stamped to the Chief State Solicitor on behalf of the Licensee within three months of the date of execution of the Licence.

30. GOVERNING LAW

30.1 The Licence shall be governed and construed in accordance with the laws of Ireland.

30.2 Subject to clause 20, the parties hereby submit irrevocably to the non-exclusive jurisdiction of the courts of Ireland.

FIRST SCHEDULE

"LICENSED AREA"

ALL THAT AND THOSE that part of the Foreshore comprising 0.026 hectares or thereabouts metric measure together with any works or other structures thereon or to be hereafter constructed thereon, situate at Rostellan, County Cork more particularly shown outlined in red and marked with the letters "Area A – 0.015Ha" and "Area B – 0.011Ha" on Dwg. No: "IW-10015229-03-04-001", Rev: "12" attached hereto and including, without prejudice to the generality of the foregoing, the Plans.

AND

ALL THAT AND THOSE that part of the Foreshore comprising 0.69 hectares or thereabouts metric measure together with any works or other structures thereon or to be hereafter constructed thereon, situate at Whitegate, County Cork more particularly shown outlined in red and marked with the letters "Area C1 – 0.36Ha" and "Area C2 – 0.33Ha" on Dwg. No: "IW-10015229-03-04-002", Rev: "13" attached hereto and including, without prejudice to the generality of the foregoing, the Plans.

AND

ALL THAT AND THOSE that part of the Foreshore comprising 1.30 hectares or thereabouts metric measure together with any works or other structures thereon or to be hereafter constructed thereon, situate at White Bay, Glanagow, County Cork more particularly shown outlined in red and marked with the letters "Area E – 1.30Ha" on Dwg. No: "IW-10015229-03-04-003", Rev: "12" attached hereto and including, without prejudice to the generality of the foregoing, the Plans.

SECOND SCHEDULE

"SPECIFIC CONDITIONS"

31. The Licensee shall throughout the Term:

31.1 The Licensee shall use that part of the Foreshore, the subject matter of this Licence for the purposes as outlined in the application and for no other purposes whatsoever.

31.2 Ensure that the Facilities and works shall be completed in accordance with the application documents and drawings submitted by the Licensee to the Licensor.

31.3 The Licensee shall submit to the Licensor a detailed report on the existing outfall pipelines to be repurposed to serve as combined Emergency Overflows/Surface Water Overflows. The report shall include the location, detailed description and drawings, condition and licencing status etc. of the outfalls. Any short comings identified must be rectified to the satisfaction of the Licensor. Please note it is a requirement of the Licensor that Emergency Overflows/Surface Water Overflows shall discharge to below the line low water springs.

31.4 Ensure that the construction works of the Facilities shall be scheduled so to avoid the bathing season from 1st May to 30th September at White Bay.

31.5 The Licensee shall notify the Licensor at least 14 days in advance of the commencement of any Facilities and works on the Foreshore. This notification shall include an up to date Programme of Works for the completion of the Facilities and project.

31.6 Ensure that strict adherence to the DAHG 2014 Guidance to manage the risk to marine mammals from man-made sound sources in Irish waters, when undertaking all geophysical and geotechnical surveys.

31.7 Ensure that a survey to determine whether or not otter holts are present will be undertaken within a 300 meter radius of all intertidal Facilities and works. This work should be undertaken by an otter specialist.

31.8 Ensure that if otter holts or couches are located within 50 meters of the proposed Facilities or works or a possible natal holt within 250 meters of the Facilities or works, a licence to derogate from the Habitats Directive and disturb an otter resting or breeding place shall be obtained from NPWS before the initiation of any work.

31.9 Ensure that prior to commencement of the Facilities and works dialogue between Irish Water/Uisce Éireann and those projects identified in Section 4.4 of the Appropriate Assessment Report (Roughan & O'Donovan, February 2023) are carried out, to ensure no likely significant in combination effects.

31.10 Ensure that a Marine Notice shall be published detailing the nature of the Facilities and works and any vessels, which may be engaged, prior to the commencement of construction of the Facilities.

31.11 Shall ensure that to ensure the safety of navigation for all maritime users, the construction area within the tidal zone shall be clearly identifiable to all maritime users. Where deemed necessary temporary marker buoys shall be installed upon consultation with the harbour authority.

31.12 The Licensee shall be obliged to inform the United Kingdom Hydrographic office (UKHO) detailing the nature and location of the Facilities and works to ensure that relevant navigation charts and nautical publications are updated.

31.13 The Licensee is required to apply to the commissioner of Irish Lights for sanction to establish an outfall mark or buoy.

31.14 Ensure that should a pollution event occur, the SFPA Clonakilty Port office should contacted immediately so measures can be put in place to restrict potentially contaminated shellfish being placed on the market.

31.15 The Licensee is required to engage the services of a suitably qualified archaeologist to monitor all areas of the proposed Facilities and works. It is recommended that the archaeologist be licensed under the National Monuments Acts 1930-2014 where a monitoring & testing strategy will be agreed by the

Licensor.

31.16 Should archaeological material, wreckage, timbers, or other artefacts be found during the course of monitoring the construction of the outfall pipe, the archaeologist shall have work on the site stopped, pending a decision as to how best to deal with the archaeology. The Licensee shall be advised by the Licensor with regard to any necessary mitigating action (e.g. preservation in situ, dive and/or geophysical survey or excavation). The Licensee shall facilitate the archaeologist in recording any material found.

IN WITNESS whereof a person so authorised by the Licensor under Section 15(1) of the Ministers and Secretaries Act 1924 has hereunto subscribed his name and the Licensor and Licensee has hereunto affixed his seal the day and year first herein **WRITTEN**.

PRESENT when the Official Seal of the

MINISTER FOR HOUSING, LOCAL GOVERNMENT

AND HERITAGE

was affixed hereto and was authenticated by the

signature of:-

Ciara Ní Liathain

A person authorised by Section 15(1)

of the Ministers and Secretaries Act, 1924

to authenticate the Seal of the said Minister

Witness to print

Full name: Erica Daly

Position held: Executive Officer

Address: Custom House

Dublin 1

Given under the common seal of **UISCE ÉIREANN**

in the presence of:-

[redacted]

Authorised Signatory

[redacted]

Authorised Signatory

Dated 13th day of June 2023

MINISTER FOR HOUSING, LOCAL GOVERNMENT AND HERITAGE

"the Licensor"

One part

-AND-

UISCE ÉIREANN

"the Licensee"

Other Part

FORESHORE LICENCE

Chief State Solicitor's Office
Osmond House
Ship Street Little
Dublin 8
Ref: File ref.: 2023/02219