

THE CROWN ESTATE’S HEADS OF TERMS FOR SUBMARINE TELECOMMUNICATION CABLES – Standard Licence (with effect from 1st January 2010)

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1.0 INTRODUCTION

The Crown Estate, in its role as landowner, grants licences for the right to install cables on Crown Estate property. Consent must be obtained from The Crown Estate for the installation and use of any telecommunications apparatus on The Crown Estate’s seabed and foreshore.

This document is intended to provide an overview of our standard terms. Any questions should be directed to Jack Steven in the first instance.

2.0 OUR STANDARD TERMS

The Crown Estate seeks to offer similar terms unilaterally to all operators and hence publishes a standard licence, standard charges and standard conditions which are open to each individual party to adopt. These terms, licence and fees are updated periodically to reflect changes in the law, the market and other relevant criteria. These Terms have not been agreed with any industry bodies but have been subject to consultation exercise with our licensees. The Terms remain The Crown Estate’s terms.

3.0 START DATE

We have published standard Licences and Terms since the early 1990s and the current terms are the third major revision. We anticipate fully reviewing these Terms again in 2020 but reserve the right to do so before then if circumstances warrant.

These Terms are effective from 1 January 2010 and will apply to all new Submarine Telecommunications Cables received after that date. The Terms are not retrospective to existing licences.

The Terms apply to both “*International*” and “*Domestic*” systems and have been simplified to only containing two categories of cables: Standard or Transiting Cables.

Standard Cables either comprise;

- “*International*” cables are those which make landfall in the UK and exit UK Territorial Sea with an International Destination.
- “*Domestic*” cables are those which both start and terminate in the UK.

“*Transiting*” Cables are those which pass through UK Territorial Sea but do not make a Landfall in the UK.

The Terms, Standard Licence and Decommissioning Guidelines are all available on The Crown Estate’s website (<http://www.thecrownestate.co.uk/marine/cables-and-pipelines/>). The Licence available to view from our website is for systems located in English and Welsh waters. The form of Licences for systems located in Scotland and Northern Ireland is slightly different owing to differences in applicable law; the terms however are consistent to all regions. Multiple licenses will be needed for systems transiting different jurisdictions. A copy of our Standard Licences for Scotland and Northern Ireland is available on request.

4.0 STANDARD LICENCE FEES FOR ALL INTERNATIONAL CABLES

The Crown Estate charges standardised licence fees for all International Cables. Domestic, Transiting and cables to the Channel Islands and Isle of Man will be dealt with on a case by case basis.

The fees for International cables are set out below. (For renew provisions see paragraph 8.3.)

4.1 *Operational fee*

This fee applies when the cable is in its main operational phase and applies from the Operational Date which is the sooner of the Longstop Operational Date or date on which the system becomes available for operational use. The standard International Cable fee as at 1 January 2010 is £140,000 pa (excluding VAT) and this is indexed in accordance with RPI to the start of the Licence and at review. The fee is inclusive of foreshore if this falls within the ownership of The Crown Estate.

This fee applies irrespective of length, destination, size or capacity.

4.2 *Pre-Operational fee*

During the period of construction a Pre-Operational fee will apply. The Pre-Operational fee is 30% of the Operational Fee.

4.3 *Non-Operational fee*

In a change from previous Terms The Crown Estate now allows a temporary reduction in fees should a cable be temporarily taken out of service. The reduction to the Non-Operational Fee of 30% of the Operational Fee is available on 12 months’ notice for up to a maximum period of 5 years in total and may be taken in more than 1 period.

4.4 Out of Service Fee

If the Licensee has permanently taken the Cable out of use and the parties have agreed to a final decommissioning plan (both parties acting reasonably and in good faith) the Licensee shall have the right to give the Licensor an out of service notice. This means that from the later of either:-

- (a) 18 months from the service of the out of service notice or
- (b) 12 months after agreeing the final decommissioning plan

The current licence fee (which will either be the Operational Fee or the Non-Operational Fee) will reduce to £1000 per annum subject to annual RPI increases. From this point the Cable will be considered to be permanently out of service.

5.0 INDEXATION

The start date for the purposes of indexation is 2 months prior to 1 January 2010.

For future reviews the index for the month two months prior to the date of review will be used. This is consistent with the index taken for November 2009 and is due to that index being the most recent available at the date of review.

6.0 TERMINATION, DECOMMISSIONING AND RESIDUAL LIABILITY

The general principle that applies is that the Licensee will be required to remove cables on permanent cessation of use or expiry of the Licence.

Applicants will be required to prepare an Initial Decommissioning Plan prior to Licence grant (which will be updated during the course of the Licence as appropriate), including an estimate of the likely cost. Prior to actual decommissioning a Final Decommissioning Plan will be prepared and agreed with The Crown Estate.

Guidance on decommissioning is available at:

<http://www.thecrownestate.co.uk/marine/cables-and-pipelines/>

On completion of satisfactory decommissioning, and the relevant notice, the Licence (and the fee) will cease. The Licensee will remain liable for any sections of cable left in situ and this will be documented in an Out of Service Deed. An Out of Service Fee will apply and this is described at point 4.4.

7.0 STANDARD PROCESS FOR THE GRANT OF NEW TELECOMS LICENCE

7.1 *Survey Consent (Small Works Consent)*

We anticipate that many prospective Licensees will wish to undertake survey work prior to finalising development plans. Survey Consent is required from The Crown Estate for intrusive works. A copy of our standard offshore survey consent/small works consent is available on request.

The grant of survey consent allows us to highlight any potential conflicts on the marine estate, such as existing cables, pipelines or other infrastructure. The grant of survey consent will typically take two weeks from the date on which all necessary information has been received. The permission of existing and committed developments within the vicinity of the survey works will need to be obtained as a condition of the consent. A list of the parties from whom permission is needed will be provided and included in the consent.

We will require (as a minimum):

- Payment of the one-off fee of £1,000 per consent (on completion)
- Plans of proposed survey area and Route Position List (RPL)
- Details of proposed investigations including a Method Statement
- Confirmation of suitable insurance being in place

7.2 *Grant of a New Telecommunications Licence*

Our standard terms are summarised here and a copy of our pro-forma cable licence is available to view from the following link <http://www.thecrownestate.co.uk/marine/cables-and-pipelines/>. These are available unilaterally to all parties. We are prepared to discuss variations to these terms but such variations may affect the licence fee and other clauses.

Your initial contact should be either with The Crown Estate or our Managing Agents (Powis Hughes). We would anticipate that agreement and finalising documents will take in the region of 12-15 weeks and therefore encourage early discussions with us.

Before drafting the licence a Heads of Terms document is prepared. The Heads of Terms document identifies the key terms of agreement and allows discussion of them before instructing solicitors. The Heads of Terms document is subject to contract and used as a discussion document only; when complete it will inform the drafting of the licence. A copy of our pro-forma Heads of Terms document can be made available on request.

Entry is not permitted until the Licence is in place.

You will be responsible for securing all necessary consents and this includes any statutory consents and crossing or proximity agreements from existing and committed developments within the vicinity of the cable. A list of our existing licensees from who permission is needed will be included as a schedule to the licence. The Crown Estate requires confirmation of the necessary consents being in place before completion of the Licence.

We will require (as a minimum):

- Details and plans of the proposed installation including RPL
- Details of third party public liability insurance
- Details about the Licensee (including for example financial background information) and, if required, the Guarantor
- UK registered address for the service of notices
- Legal Opinion from relevant overseas solicitors (if company is registered outside the UK)
- The Initial Decommissioning Plan
- Proposed Timetable including expected Operational Date
- Confirmation that you will meet our reasonable legal and professional fees, an estimate of which will be given on request
- Payment of the Pre-Operational rental on completion.

Our licence includes a test of acceptable covenant strength. Expressed as a level of net assets the acceptable covenant strength is determined from the estimated decommissioning cost, licence fees and other potential costs to The Crown Estate which together constitutes the total liability. A multiplier is then applied to give a level of performance at which the licensee is able to meet its commitments to The Crown Estate. Additional security will be needed where the proposed licensee is unable to meet the required level of assets and this is often the case for newly established SPVs. Our preference on additional security is for cash deposit equal to the total liability or a parent company guarantee from a company equal to the test of covenant strength. Alternatives can be considered where these options are not possible.

7.3 General presumptions and expectations

It is standard practice for applications to The Crown Estate for a licence to use seabed for cable routes to be dealt with on a first come, first served basis. The standard terms set out general requirements such as obtaining all necessary consents before a licence will be granted by The Crown Estate. This prevents 'land-banking' of seabed and ensures regulation through the proper democratic channels. Our standard terms also contain commercial deadlines for installation date, commissioning, etc, again to prevent sterilisation of seabed for other purposes.

The seabed is becoming more and more crowded with subsea cables and other uses. Certain areas of foreshore/beach are more suitable than others for cable landfall and some of these sites already accommodate multiple cables. We require developers to optimise their routes and especially landfalls to allow space for other cables to make landfall, where possible. Systems may not be developed simultaneously but we ask that your engineering plans acknowledge possible future demand and provide sufficient space, in so far as is reasonably practicable, for the installation and subsequent operation of future cables, including any maintenance or monitoring requirements.

Where The Crown Estate manages the foreshore as well as the seabed our licence will include that area, otherwise it will be a licence to use the seabed only and you will need to negotiate separately with the relevant adjacent landowner. In general, foreshore is the area between mean high to mean low water in England, Wales and Northern Ireland and the area between mean high water springs and mean low water

springs in Scotland. In Cornwall the boundary between The Crown Estate's seabed and the foreshore is the lowest astronomical tide and the same applies in Lancashire.

8.0 ONGOING MATTERS

8.1 *Licence Period*

The typical licence period is 20 years. A longer licence period can be granted in specific instances and subject to suitable justification of the longer licence period being needed.

8.2 *Route Position List*

As-laid coordinates or similar will need to be submitted following completion of installation works and at such time during the licence when repair works have been carried out.

8.3 *Fee Reviews*

The rent review process is set out in the Licence. The fees are paid 6 monthly in advance by standing order. Fees are revised annually in line with the movement in the Retail Prices Index.

Our agents, Powis Hughes, will contact you 6 months in advance of the Fee Review date with an estimate of the revised rent (and the background calculation). Notice of the Reviewed Rent will be sent on publication of the appropriate index. Once agreed, a brief Memorandum of Fee Review will be prepared and signed by both parties; this is to formally record the agreement.

We do not collect legal or professional costs for concluding reviews.

We will require:

- A current contact with whom to agree the review.
- A current billing address/purchase order number for invoices.

Licences granted for a period greater than 20 years will include open market review provisions. The Crown Estate reserves the option to require Open Market Review on the 20th anniversary of the commencement date and every subsequent 10th anniversary.

The Open Market Fee is the best yearly Licence Fee that might reasonably be expected to become payable on a licence of the Rights by a willing licensor to a willing licensee in the open market on the Market Review Date. The matter can be referred to the Valuation Office should the parties fail to agree.

8.4 *Temporary Cessation of Use (Non-Operational fee)*

The Operational Fee (£140,000) can be reduced to the Non-Operational Fee (30% of the Operational Fee) on 12 months' notice of the system being non-operational. Use of the system during this non-operational period is prohibited. Notice should be given of the system coming back into operational use.

We will require:

- 12 months' notice of cessation of use (temporary or permanent).
- Estimates of the timescale for re-use.

On expiry of the 12 month period and confirmation of eligibility (i.e. no more than 5 years non-operational) we will implement the reduction in fees. We may periodically require you to reconfirm that a cable remains non-operational.

8.5 Permanent Cessation of Use

Notice should be given of the system being permanently taken out of service. This also starts the formal decommissioning process.

If the Licensee has permanently taken the Cable out of use and the parties have agreed to a final decommissioning plan (both parties acting reasonably and in good faith) the Licensee shall have the right to give the Licensor an out of service notice.

The Out of Service Fee will then apply as described in 4.4.

The Out of Service Period is for a maximum of 2 years after which the payment then returns to either the Operational Fee or Non-operational fee subject to the right to break after decommissioning.

We will require:

- Notice of permanent cessation of use
- Final Decommissioning Plan (in draft for approval)
- Timetable for decommissioning

9.0 DOCUMENTS

We are happy to receive all documents electronically and can read all standard formats. Coordinates should be given in WGS84 decimal degrees. Plans and data will be imported to our GIS system.

10.0 CONFIDENTIALITY

We take your confidentiality seriously and will undertake to keep your information confidential. Non-Disclosure Agreements can be entered where necessary; however, we are subject to the Freedom of Information Act and can be required to disclose information in accordance with it and all other applicable law.

11.0 CONFLICTS WITH OTHER SEABED USERS

We will prepare a conflict check to highlight any potential conflict of which we are aware and likely to be impacted by your proposal. You should nonetheless make your own investigations as to the presence of existing installations. The Crown Estate is unable to guarantee the completeness or accuracy of the information it provides.

We will not secure consent for you from these other users; however, we will assist you in making contact with other parties should you require. We will not be liable for the costs of securing these consents. The consent of existing tenants/licenses and affected dealings must be secured in advance of entering the Licence.

Systems will need to be planned and then installed in a way so as not to unnecessarily sterilise or inhibit the landing or crossing of subsequent cables or pipelines.

12.0 SUMMARY

Parties	:	Her Majesty the Queen The Crown Estate Commissioners (the Operator of the Cable)
Rights	:	over The Crown Estate Seabed (and Foreshore if owned by The Crown Estate) up to the 12nm Territorial Limit to install and use cable.
Apparatus	:	The cable including any ancillary apparatus as defined by its location, destination and name.
Guarantor	:	The Crown Estate reserves the right to require a guarantee.
VAT	:	VAT does not apply in the majority of instances but we reserve the right to do so as needed.
Licence Period	:	20 years
Licence Fee	:	Paid 6 monthly in advance:

Fee	From	To	Fee prior to RPI Indexation
Pre-Operational fee	Commencement of the licence	Operational Date, which is the earlier of:	30% Operational

		1. Longstop Date 2. Actual Operational Date	Fee
Operational Fee	The earlier of: 1. The date on which the system becomes available for operational use 2. Longstop Date	Non-Operational Date	£140,000 pa
Non-Operational Fee	12 months after the notice of Non-Operational Date	1. Notice of resumption of use 2. The end of the Licence 3. Maximum 5 years non-operational	30% Operational Fee
Out of Service Fee	Agreement of final Decommissioning Plan	2 years later	£1,000 pa

Non-Operational Period : For any period for which the cable is out of use up to a maximum period of 5 years.

Review of fees : The fees are indexed in line with the Retail Prices Index. The relevant dates are 2 months prior to the Start Date and the Review Date. Upward only.

Index Review Dates : Annually from the commencement date

Open Market Review Dates: 20th anniversary of the commencement date and every subsequent 10th anniversary.

Insurance : Third Party Public Liability. The Licensee will insure up to a sum to be agreed in each case. Typically £25m. To be varied from time to time.

Indemnity : The Licensee will indemnify The Crown Estate from all costs, damages and expenses. This is not a capped liability.

Works Restriction Zone :

- a. The area inside the Territorial Limit extending to 250m either side of the Centre Line in water depths up to 55m below chart datum. (The Centre Line is an imaginary line between cables if more than one)
- b. The area inside the Territorial Limit extending to 500m either side of the Centre Line in water depths greater than 55m below chart datum.

- No Dredging Zone** : 250m on either side of the Centre Line of the cable.
- Ongoing Licensee's Rights** : To use the cable.
To repair damage and to replace a part of a cable. Notice of repair works should be provided in advance of the works and as laid coordinates of any resulting works given following completion.

To decommission.
- Diversion of the Cable** : The Crown Estate may require the diversion of the cable to an alternative position subject to the payment of the Licensee's reasonable moving costs.
- Decommissioning** : Licensees are liable for decommissioning cables properly
Licensees will submit an Initial Decommissioning Plan when the new system is proposed. To be agreed prior to licence grant.
The Initial Decommissioning Plan will be revised during the life of the cable, as appropriate.
Prior to actual decommissioning a Final Decommissioning Plan will be prepared.
Generally all sections of cable should be removed except when certain exclusions apply. It should be noted that even if sections of the cable are permitted to remain in situ, the other sections may still need to be removed.
The Licensee remains liable for any sections left in situ after decommissioning and will be required to remove cable sections should an incoming developer identify a new use for that area.
- Dispute Resolution** : In the event the parties cannot agree then the matter will be referred to the President of the Institute of Arbitrators, except:

If the parties dispute any matters associated with the decommissioning works in which case either party may reserve the right to refer the matter to an agreed independent expert on the basis that both parties agree to undertake the expert view. If the parties cannot agree on a suitable expert then the matter will be referred to the President of RICS.
- Costs** : The Licensee will meet The Crown Estate's reasonable legal and professional fees in granting any licence.