

## Part 8

### FOR THE PROTECTION OF AQUIND AND RED

#### Application

1. The provisions of this Part of this Schedule apply for the protection of AQUIND Limited and have effect unless otherwise agreed in writing between RED and AQUIND Limited.

2. In this Part of this Schedule —

"AQUIND" means AQUIND Limited (company number 06681477) or the person who has the benefit of the AQUIND Order in accordance with article 6 (Benefit of Order) and 7 (Consent to transfer benefit of Order) of the AQUIND Order;

"AQUIND Pre-Construction Information" means the documentation and information required in accordance with paragraph 4 (1) of Part 2 of Schedule 15 to the AQUIND Order, as amended or agreed with the MMO;

"AQUIND Post-Construction Information" means the cable burial management plan required in accordance with paragraph 11 of Part 2 of Schedule 15 to the AQUIND Order;

"AQUIND order" means The AQUIND Interconnector Order 202[X] as it is made by the Secretary of State;

"AQUIND Order Limits" has the same meaning as is given to the term 'Order limits' in the AQUIND Order;

"AQUIND Works" means Work No. 7 as described at paragraph 3 and any associated development as described at paragraph 4 of Part 1 of Schedule 15 to the AQUIND Order in so far as such works are within the Overlap Area;

"Array Cables" means the network of offshore subsea Transmission Cables connecting Wind Turbine Generators to each other and to the Offshore Substations comprised in the RED Works;

"Cable Protection" means measures for the protection of Transmission Cables and auxiliary cables from physical damage and exposure including but not limited to concrete mattresses and/or rock placement, bagged solutions filled with stone, rock or gravel, grout, concrete and other materials and protective shells or sheaths;

"Commencement" means —

- (a) in respect of the AQUIND Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;
- (b) in respect of the RED Works the first carrying out of any licensed marine activities comprised within those works, excluding any non-intrusive pre-construction surveys;

"Confidential Information" means information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) and includes information whose disclosure would or would be likely to prejudice the commercial interests of any persons trade secrets, intellectual property rights and know-how and all personal data and sensitive personal data within the meaning of the Data Protection Act 2018;

"Crossing Agreement" means any agreement entered into by the parties pursuant to paragraph 5 hereof for —

- (a) the crossing of the AQUIND Works by Array Cables to ensure the Array Cables do not give rise to interference with the operation or Maintenance of the AQUIND Works; or

- (b) the crossing of the Array Cables by the AQUIND Works to ensure that the cables or other elements comprising the AQUIND Works or any part of them do not give rise to interference with the operation or Maintenance of the RED Works; or
- (c) to manage the safe interface of the installation of subsea cable crossings as part of the RED Works and the AQUIND Works for their mutual protection including in the event the AQUIND Works have not yet been constructed in respect of the crossing by the Array Cables of any area where the AQUIND Works may be constructed in accordance with the AQUIND Order to ensure the Array Cables do not prevent the construction of the AQUIND Works and will not give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;

"Export Cable" means Transmission Cables connecting the Offshore Substations to works which are landwards of mean high water springs authorised by the RED Order comprised in the RED Works;

"Maintenance" means maintain, inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

"MMO" means the Marine Management Organisation;

"Necessary Crossing" means any point at which an Array Cable comprised in the RED Works cross the AQUIND Order Limits;

"Proximity Agreement" means any agreement entered into by AQUIND and RED pursuant to paragraph 5 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to) —

- (a) clauses to define the liabilities and rights of both AQUIND and RED;
- (b) exclusion/inclusion of consequential losses;
- (c) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- (d) agreement on proximity limits informed by the Proximity Guidelines and which may include for the proximity limits to be modified up or down by agreement depending on the method statements submitted and agreed;
- (e) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (f) clearly defined limits of the area to which the Proximity Agreement applies;
- (g) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (h) future Maintenance requirements of both AQUIND and RED which may include the method by which notification of operations by each is given to the other;
- (i) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (j) provision of representatives from one entity to the other entity's operations and their rights, obligations and limitation of their authority;

"Proximity Guidelines" means the European Subsea Cables Association Guideline No.6 - The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructures dated 23 November 2023 (or as may be amended or replaced from time to time);

"Offshore Substation" means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing—

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and

- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

"Offshore Substation Interconnector Cable" means Transmission Cables connecting Offshore Substations comprised in the RED Works;

"Overlap Area" means the extent to which the RED Order Limits overlap the AQUIND Order Limits;

"RED" means Rampion Extension Development Limited (company number 12091939) or the person who has the benefit of the RED Order in accordance with article 5 (Benefit of Order) of the RED Order;

"RED Order" means this Order;

"RED Order Limits" has the same meaning as is given to the term 'Order limits' in the RED Order;

"RED Pre-Construction Information" means the documentation and information required in accordance with paragraph 11 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order, as amended or agreed with the MMO;

"RED Works" means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and
- (b) Work Nos. 3 and 4 of and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order;

"Safety Zone" means a safety zone for the purposes of the Energy Act 2004;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero (or any such successor Secretary of State performing that function);

"Transmission Cable" means any offshore cable circuits for the transmission of electricity and communications and includes direct lay cables and/or cables pulled through cable ducts or under protective covers in connection with those comprised in the RED Works;

"Wind Turbine Generators" means a structure comprising a tower, rotor with three blades connected at the hub, nacelle, transition piece and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation to be constructed pursuant to Work No. 1 comprised in the RED Works; and

"Working Day" means any day apart from Saturday, Sunday and any statutory bank holiday on which clearing banks are open in England for the transaction of ordinary business.

## **AQUIND Works**

### **3. AQUIND shall—**

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works to submit to RED and use all reasonable endeavours to agree with RED the AQUIND Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed, within not more than 2 months from the date on which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed with RED) and where the AQUIND Pre-Construction has not been agreed with RED within 2 months from the date on which the AQUIND Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed with RED) either AQUIND or RED may refer the matter to be determined by an Expert in accordance with paragraph 8 hereof; and

(2) not commence the AQUIND Works or such part of the AQUIND Works (as is relevant in the circumstances) until the AQUIND Pre-Construction Information for the AQUIND Works or the relevant part thereof is agreed with RED or has been determined by the Expert; and

(3) thereafter carry out the construction of the AQUIND Works in accordance with the AQUIND Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between AQUIND and RED from time to time); and

(4) where received from RED pursuant to paragraph 4(1) hereof, use all reasonable endeavours to agree the RED Pre-Construction Information with RED in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

(5) not install the AQUIND Works outside of the boundary of the AQUIND Order Limits nor undertake any repair to the AQUIND Works which involves any part of the AQUIND Works or repair being installed outside of the boundary of the AQUIND Order Limits without the prior approval of RED (not to be unreasonably withheld or delayed and as may be given subject to reasonable conditions);

(6) not to apply for a disposal site in connection with the AQUIND Works outside the AQUIND Order Limits without first securing the consent of RED where the proposed disposal site falls within the RED Order Limits;

(7) provide RED with—

(a) not less than 10 Working Days prior written notification of the Commencement of the AQUIND Works;

(b) notification of the completion of construction of the AQUIND Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and

(c) not less than 5 Working Days' notice of any planned Maintenance works to the AQUIND Works.

(8) provide to RED the AQUIND Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the AQUIND Works;

(9) to Maintain the AQUIND works in good order such that they do not give rise to any damage to the RED Works by reason of non-repair;

(10) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed Information;

(11) where received from RED use all reasonable endeavours to agree with RED as soon as reasonably practicable the decommissioning information for the RED Works in the interest of confirming how those works will not adversely impact the AQUIND Works; and

(12) allow RED and representatives of RED and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the AQUIND Works.

#### **RED Works**

4. RED shall—

(1) not less than 6 months prior to the Commencement of any part of the RED Works submit to AQUIND and use all reasonable endeavours to agree with AQUIND the RED Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the construction of AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed, within not more than 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed with RED) and where the RED Pre-Construction has not been agreed within 2 months from the date on which the RED Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed

with RED) either party may refer the matter to be determined by an Expert in accordance with paragraph 8; and

(2) not commence the RED Works or such part of the RED Works (as is relevant in the circumstances) until the RED Pre-Construction Information is agreed with AQUIND or has been determined by the Expert and thereafter RED shall carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information as is agreed or as determined by the Expert (and as may be varied by agreement between the parties from time to time); and

(3) where received from AQUIND pursuant to paragraph 3(1) hereof, to use all reasonable endeavours to agree with AQUIND the AQUIND Pre-Construction Information for the AQUIND Works in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed.

(4) not to place any Wind Turbine Generators, Substations or Transmission Cables comprised in the RED Works within the boundary of the Overlap Area, save for Array Cables in respect of which a Crossing Agreement has been entered into which provides for those Array Cables to cross the Overlap Area;

(5) not place any Wind Turbine Generators, Offshore Substations or Transmission Cables comprised in the RED Works within 1000 metres of the boundary of the Overlap Area or following the construction of the AQUIND Works within 1000 metres of the as-built AQUIND Works unless and until a Proximity Agreement in respect of the relevant Wind Turbine Generator(s), Offshore Substation(s) or Transmission Cables or a Crossing Agreement in respect of a relevant Array Cable has been entered into in accordance with paragraph 5 hereof; and

(6) not make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to the RED Order within 500 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

(7) provide AQUIND with—

- (a) not less than 10 Working Days prior written notification of the Commencement of the RED Works;
- (b) notification of the completion of construction of the RED Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
- (c) not less than 5 Working Days notice of any planned Maintenance works to the RED Works.

(8) provide to AQUIND the RED Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works.

(9) Maintain the RED works in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair.

(10) prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works—

- (a) inform AQUIND of the Safety Zones proposed to be applied for;
- (b) agree with AQUIND (both AQUIND and RED acting reasonably) the terms of dispensation from the enforcement of that Safety Zone so that it does not prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works prior to any such Safety Zone being applied for or promoted; and
- (c) otherwise inform AQUIND of any and all Safety Zones applied for which may impact upon the Overlap Area and of the publication of any notice of a proposed Safety Zone which may impact

upon the Overlap Area as soon as is reasonably practicable following their submissions or publication (as is relevant in the circumstances).

(11) not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed Information.

(12) where received from AQUIND use all reasonable endeavours to agree with AQUIND the decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact RED Works.

(13) to allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the RED Works.

### **Crossing Agreements and Proximity Agreements**

#### **5. AQUIND and RED—**

(1) will co-operate and use all reasonable endeavours to enter into Crossing Agreements in respect of each Necessary Crossing to ensure that appropriate arrangements are in place for each of the following scenarios:

- (a) in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or Maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;
- (b) in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the crossing points of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented and shall not give rise to interference with the operation or Maintenance of the AQUIND Works;
- (c) in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or Maintenance of the AQUIND Works or the Array Cables.

(2) acknowledge that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only.

(3) agree that no construction will take place in the Overlap Area in connection with either the AQUIND Works or the RED Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place.

(4) will co-operate and use all reasonable endeavours to enter into Proximity Agreements to regulate the interface of the AQUIND Works and any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works within 1000 metres of the boundaries of the Overlap Area.

(5) shall when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable SAVE THAT neither AQUIND or RED shall be obliged to enter into any Proximity Agreement where there are safety critical or operational issues that have not been resolved as appropriate at that stage as each shall in its sole discretion determine and where in the opinion of either (acting reasonably) the other is not using all reasonable endeavours in the manner provided for by this sub-paragraph 5 or has identified a matter as one which is safety critical or

would lead to operational issues and this is not agreed by the other, they may refer the matter for dispute resolution in accordance with paragraph 8 hereof.

### **Costs and Expenses**

6. —(1) Save where otherwise agreed in writing between AQUIND and RED (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof —

- (a) AQUIND shall be responsible for RED's costs in respect of —
  - (i) approving the AQUIND Pre-Construction Information;
  - (ii) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;
  - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed AQUIND Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed AQUIND Pre-Construction Information;
  - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being decommissioned in accordance with the agreed decommissioning information; and
  - (v) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;
- (b) RED shall be responsible for AQUIND's costs in respect of —
  - (i) approving the RED Pre-Construction Information;
  - (ii) approving information relevant to how the decommissioning of the RED works will be undertaken;
  - (iii) any works which are required to the AQUIND Works to carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being undertaken in accordance with the agreed RED Pre-Construction Information;
  - (iv) any works which are required to the AQUIND Works to carry out the decommissioning of the RED Works in accordance with the agreed decommissioning information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being decommissioned in accordance with the agreed decommissioning information; and
  - (v) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works;
- (c) When incurring costs, expenses or losses which are payable by the other AQUIND and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

### **Consultation and Co-operation**

7. —(1) AQUIND and RED shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part 8 of Schedule 10 to the RED order and otherwise do nothing to hinder or prevent the other party from the proper execution of any right or obligation allowed or required under this Part 8 of Schedule 10 to the RED order or the carrying out of the AQUIND Works or the RED Works.

(2) Where any approval, agreement, consent or confirmation of AQUIND or RED is required pursuant to the terms of this Part 8 of Schedule 10 to the RED order (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

### **Dispute Resolution**

**8.**—(1) Save for matters of interpretation (which shall be matters for the Court) in the event of any dispute arising between AQUIND and RED in respect of any matter contained in this Part 8 of Schedule 10 to the RED Order including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same AQUIND and RED will use reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

(2) In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in sub-paragraph 1 above despite the parties using reasonable endeavours to resolve the dispute amicably, any party may refer the dispute to an expert ("**Expert**") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President of the Institution of Civil Engineers and the Expert's decision shall (in the absence of manifest error) be final and binding on the parties hereto and whose costs shall be borne by the parties at his discretion.

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert's costs and the parties' legal and professional costs of engaging in the dispute resolution process under this paragraph 8 of this Part 8 of Schedule 10 to the RED Order.

### **Confidential Information**

**9.** AQUIND and RED must not disclose any Confidential Information to any other person (save where such person is bound by a legally enforceable requirement and indemnity which benefits the party who provided the relevant Confidential information to keep such information confidential) except with the other party's prior consent, which may not be unreasonably withheld or delayed but which may be provided subject to reasonable conditions.

### **Indemnities and Insurance**

**10.**—(1) AQUIND shall indemnify RED in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by AQUIND that is in breach of this Part 8 of Schedule 10 to the RED Order;

(2) RED shall indemnify AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the

same are reasonably incurred in connection with any act or omission by RED that is in breach of this Part 8 of Schedule 10 to the RED Order;

(3) Nothing in this Part 8 of Schedule 10 to the RED Order imposes any liability on AQUIND or RED with respect to any damage, cost, expense or loss which is attributable to the negligence of the other or of any person in the other's employment or of the other's contractors or agents and any liability of AQUIND or RED (as is relevant) under this Agreement must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other or of any person in the other's employment or of the other's contractors or agents.

(4) Nothing in this paragraph 10 of Part 8 of Schedule 10 to the RED Order is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for:

- (a) death or personal injury from its negligence or by the negligence of a person for whom it is vicariously liable (negligence being defined in section 1(1) of the Unfair Contract Terms Act 1977); and/or
- (b) any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

(5) AQUIND and RED must give the other reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme without first consulting the other and considering its representations.

(6) Each of AQUIND and RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnities in this paragraph 10 applies and if requested to by the other, shall provide an explanation of how any such claims have been minimised and each of AQUIND and RED shall only be liable for claims reasonably incurred by the other, and any action taken by a party pursuant to this paragraph 10 will be at the reasonable cost of the other party.

(7) AQUIND must not commence construction (and must not permit the commencement of such construction) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the construction period of the AQUIND Works from the proposed date of commencement of construction of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

(8) RED must not commence construction (and must not permit the commencement of such construction) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the construction period of the RED Works from the proposed date of commencement of construction of the RED Works) and AQUIND has confirmed the same in writing to RED.

(9) AQUIND must not commence operation or Maintenance (and must not permit the commencement of operation or Maintenance) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND or its contractor has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the period of Maintenance in respect of the AQUIND Works from the proposed date of commencement of operation of the AQUIND Works and to provide evidence of renewal of such insurance as appropriate) and RED has confirmed the same in writing to AQUIND.

(10) RED must not commence operation and Maintenance (and must not permit the commencement of operation and Maintenance ) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the period of Maintenance in respect of the RED Works from the proposed date of commencement of operation of the RED Works and to provide evidence of renewal of such insurance as appropriate) and AQUIND has confirmed the same in writing to RED.

(11) AQUIND must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the AQUIND Works until RED is satisfied acting reasonably (but subject to all necessary regulatory constraints) that AQUIND has procured acceptable insurance (and provided evidence to RED that it must maintain such acceptable insurance for the decommissioning period of the AQUIND Works from the proposed date of commencement of decommissioning of the AQUIND Works) and RED has confirmed the same in writing to AQUIND.

(12) RED must not commence decommissioning (and must not permit the commencement of decommissioning) of any part of the RED Works until AQUIND is satisfied acting reasonably (but subject to all necessary regulatory constraints) that RED has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the decommissioning period of the RED Works from the proposed date of commencement of decommissioning of the RED Works) and AQUIND has confirmed the same in writing to RED.

### **Effect**

**11.** This Part 8 of Schedule 10 to the RED Order shall cease to be of effect where:

- (a) the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide RED with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Part 8 of Schedule 10 to the RED Order shall cease immediately on the date of delivery of the notice in accordance with paragraph 12 below;
- (b) the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND not choosing to bring a judicial review in relation to such refusal, in which case AQUIND will provide RED with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part 8 of Schedule 10 to the RED Order will terminate immediately on the date of delivery of the notice in accordance with paragraph 12 below or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide RED with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part 8 of Schedule 10 to the RED Order will terminate immediately on the date of delivery of the notice in accordance with paragraph 12 below or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (e) if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires.

### **Notices**

**12.—**(1) Any notice given under or in relation to this Part 8 of Schedule 10 to the RED Order shall be in writing and shall be deemed to be sufficiently served if addressed to the AQUIND, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 12 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with this paragraph 12 shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by RED to AQUIND in accordance with this paragraph 12 shall be addressed to the Managing Director, and shall also be sent to AQUIND by e-mail to [info@aquind.co.uk](mailto:info@aquind.co.uk)

(4) Any notice sent by RED in accordance with this paragraph 12 shall be addressed to [XXX] and shall also be sent to RED by e-mail to [XXX].