

From: [Jarvis, Martyn](#)
To: [Rampion2](#)
Cc: [Clark, Juliet - REPG](#); [Bull, Naomi](#)
Subject: Further representations on behalf of AQUIND Limited
Date: 20 November 2024 18:26:42
Attachments: [Further Representation in relation to the Rampion 2 Proposals - 20.11.2024.pdf](#)
[Protective Provisions - For the Protection of AQUIND and RED.docx](#)

Dear Sir / Madam,

I attach a further representation in relation to the Rampion 2 OWF proposals on behalf of AQUIND Limited, which is issued following further discussions between the parties. Whilst there is little which is outstanding between the parties, unfortunately it has not been possible at this time for an agreement to be reached which is acceptable to each party. The representations explains the outstanding points of difference and AQUIND' understanding of the reasons for this.

Also attached is a word version of the revised form of protective provisions included within the pdf representation, and which AQUIND requests is included in any DCO which is made by the Secretary of State.

We should be grateful if you could provide these documents to the Secretary of State in connection with his determination of this matter, and we also confirm that AQUIND remains willing to respond to any request for further information which the Secretary of State may have in relation to this matter.

Best regards,
Martyn

Martyn Jarvis
Senior Associate
Herbert Smith Freehills LLP

T +44 [REDACTED] +44 [REDACTED]

[LinkedIn](#)

Herbert Smith Freehills LLP and its subsidiaries and Herbert Smith Freehills, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills.

This message is confidential and may be covered by legal professional privilege. If you are not the intended recipient you must not disclose or use the information contained in it. If you have received this email in error please notify us immediately by return email or by calling our main switchboard on +44 20 7374 8000 and delete the email.

Further information is available from www.herbertsmithfreehills.com, including our Privacy Policy which describes how we handle personal information.

Herbert Smith Freehills LLP is a Limited Liability Partnership registered in England and Wales with registered number OC310989. It is authorised and regulated by the Solicitors Regulation Authority of England and Wales (<https://www.sra.org.uk>), authorisation number 419682. A list of the members and their professional qualifications is open to inspection at the registered office, Exchange House, Primrose Street, London EC2A 2EG. We use the word

partner of Herbert Smith Freehills LLP to refer to a member of Herbert Smith Freehills LLP, or an employee or consultant with equivalent standing and qualifications. Herbert Smith Freehills LLP's registration number for Value Added Tax in the United Kingdom is GB 927 1996 83.

AQUIND LIMITED

FURTHER REPRESENTATIONS IN RELATION TO THE RAMPION 2 PROPOSALS

- 1.1 This update is provided to the Secretary of State by AQUIND Limited ("**AQUIND**") in connection with the ongoing discussions with Rampion Extension Development Limited ("**RED**" or the "**Applicant**") in relation to a Co-Operation Agreement to address the interface between the AQUIND Interconnector and the Rampion 2 Offshore Wind Farm projects during construction, operation, and decommissioning.
- 1.2 AQUIND last provided an update on the discussions on 1 August 2024¹ at the end of the examination for the Rampion 2 Offshore Wind Farm proposals, at which point it was explained that the key matter that remained outstanding in relation to the Co-Operation Agreement was in respect of the separation distances for Offshore Wind Turbine Generators ("**WTGs**") and Offshore Substations from the Order Limits for AQUIND Interconnector.
- 1.3 AQUIND has sought to continue to progress discussion on the minimum necessary separation distances at the current stage of design for both projects, and to allow for these to be further refined as appropriate in the future, informed by the relevant Crown Estate guidance² and industry experience and best practice in UK waters. Provided below is a summary of the discussions between AQUIND and RED since the last update on 1 August 2024:
 - 1.3.1 On 31 July 2024 AQUIND issued a proposal to RED which detailed proposed separation distances, which are those detailed at paragraph 1.10 of AQUIND's previous update dated 1 August 2024.
 - 1.3.2 AQUIND received a response from Eversheds on 8 August 2024. Within this response it was proposed that RED would proceed on the assumption that the AQUIND Cables would be installed in the centre line of the Order Limit and would provide for RED apparatus within 250m of AQUIND's order limit. This would mean that RED works could be located closer to AQUIND's Order Limit and where the AQUIND cables will be located.
 - 1.3.3 A call was held on 8 August 2024 to discuss the above proposal and it was agreed that RED would not place apparatus closer than 500m to the edge of AQUIND's Order limit. At this point what remained to be agreed was the separation distances between the RED assets which was to be informed by the anchor spread for a dynamic anchored barge repair.
 - 1.3.4 Alongside progressing its own technical analysis, on 14 August AQUIND requested RED to provide details of their analysis and calculation which provided for an anchor spread of 500m. which RED had identified as the appropriate anchor spread length to be used to determine the distances needed between RED apparatus to accommodate an anchored barge repair.
 - 1.3.5 On 21 August RED confirmed that they had not carried out a technical feasibility study of the AQUIND repair operations, and that they had based their position on a maintenance operation utilising a static barge (not a dynamic barge) at a

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/EN010117/EN010117-002196-Deadline%20%20submission%20-%20IPs%20Closing%20Submissions%20-%20Aquind%20Limited.pdf>

² Subsea Cables UK Guideline No 6: Proximity of Offshore Renewable Energy Installations & Submarine Cable Infrastructure in UK Waters - [REDACTED]

particular location. RED requested that AQUIND provide visibility of its technical analysis supporting the need to assume an anchor spread of 1000m.

- 1.3.6 On 29 August AQUIND provided its technical response to RED including indicative drawings which illustrated the calculations. AQUIND confirmed to RED that:
- (A) having regard to the nature of fault and required repairs, availability of vessels and other relevant factors for the relevant operations maintenance contractor would decide which vessel will be used for a repair. This could very likely be an anchored barge carrying out a dynamic repair, particularly taking into account the lesser availability of DP2 vessels in the market and the need for any repair to be actioned promptly to restore 1GW or 2GW of supply.
 - (B) To undertake a repair it will be necessary for the barge to move along the cable route (i.e. a dynamic barge repair). It is not practically possible to provide for a series of repeated fixed anchoring positions for the purpose of undertaking repair works.
 - (C) During the repair, a section of the cable, which can easily be 1000m or more in length, would need to be removed and a new section installed using an omega joint. It is expected that the barge will be able to move circa 250m in either direction from the centre point within the same anchor spread. Beyond that, a change of anchors will be required. To achieve that movement anchor spreads of 1000m are required, which means that the outer anchors would need to be able to be fixed at a distance of up to 750m from the AQUIND Order Limits.
 - (D) Based on this AQUIND identified that whilst tight to perform the operations, it would be possible where the distance between the edges of the hazard areas for WTG's is 2000m. If the turbines are spaced closer together and/or located closer to AQUIND's Order Limits the anchors and anchoring lines would overlap with the hazard areas for the RED works.
 - (E) Drawings illustrating the position where WTG's are placed with hazard areas 1250m apart and 2000m apart and issued to RED are located at **Appendix 1** to this statement.
- 1.3.7 On 2 September 2024 RED confirmed that they would review the information provided by AQUIND on 29 August 2024 and provide a technical response in relation to it.
- 1.3.8 AQUIND followed up with RED requesting its technical response to move matters forward on 9 September 2024, and again on 25 September 2024. No engineering response to the technical information provided by AQUIND has been provided by RED to date.
- 1.3.9 On 3 October 2024 Eversheds provided a revised draft of the Co-Operation Agreement. Amongst other amendments this provided that where WTG's are located within 250m – 750m of the AQUIND Order Limit, the minimum separation distance between the WTG's would be 2000m. The draft did not make reference to and it was apparent had disregarded the need for hazard areas around the RED assets and for those not to be encroached upon. A copy of the draft Co-Operation Agreement issued by RED and showing the amendments made to this is located at **Appendix 2** to this statement.
- 1.3.10 On 23 October 2024 this firm returned the draft Co-Operation Agreement with amendments so that hazard areas were included for, aligned with AQUIND's last technical response. A copy of the draft Co-Operation Agreement issued by this firm and showing the amendments made to this is located at **Appendix 3** to this statement.

- 1.3.11 On 4 November 2024 Eversheds responded and explained, inter alia, that "*The REDL position remains that in applying the separation distances between Rampion 2 WTGs of 2000m in the same Proximity Zone, and 1250m in the opposite Proximity Zone allows sufficient safety buffer whilst also allowing both developments to achieve the required operational capacity.*" As RED had provided no technical response to support the assertion that "*applying the separation distances between Rampion 2 WTGs of 2000m in the same Proximity Zone, and 1250m in the opposite Proximity Zone allows sufficient safety buffer*" this firm requested an explanation of the basis of this statement.
- 1.3.12 On 5 November Eversheds responded and explained, inter alia, that "*REDL's position (as put forward in the draft of 2/10), takes on Aquind's preference for the boundary of the Overlap Area to be the point from which the separation distances are to be measured (although the cable itself will lie on a yet to be determined route within those limits). REDL does not dispute the concept of the hazard area. However, the calculations must take into account that the starting point for the separation distance is the boundary of Aquind limits rather than the cable route itself. So not to unnecessarily sterilise a disproportionate area of the Rampion 2 limits, the proposal is based on the distances between RED assets, as well as including a 250m exclusion zone either side of the Aquind order limits. This was proposed as a compromise to give effect to an exclusion zone (notably from the Order limits as opposed to the cable route) and sufficient separation distance between WTGs to ensure sufficient room within the Aquind Order limits for repair vessels, balanced against the need to avoid over sterilisation of the RED limits.*"
- 1.3.13 As no technical response was provided to substantiate why the distances proposed by RED provide for a safe working area this firm again requested this. AQUIND was informed in response that RED does not accept a position where the reasonable worst case (of cable circuits being located towards the outer edges of AQUIND's Order Limit and repair by an anchored barge) is assumed, because this will erode RED's developable area.
- 1.3.14 The parties have continued discussions since this date and explored if a compromise position could be reached. However, AQUIND has explained that it is unable to agree to lesser separation distances than those which its technical response has identified are needed to ensure the safe deliverability and operability of the AQUIND Interconnector, nor to a position where the Co-Operation Agreement is silent on the minimum required separation distances. Having regard to the need to micro-site the cables within the AQUIND Order Limit and to keep the cable circuits a reasonable distance apart to accommodate cable repair means it is more likely than not that cables will be located towards the outer edge of the Order Limits, and this should be accounted for.
- 1.3.15 RED has stated that it is unwilling to increase the separation distance of the WTG's within the affected area by the requested circa 500 metres to properly account for the necessary hazard areas because it does not accept AQUIND assuming a reasonable worst case, in terms of where the cables will be located and the type of vessel which will be used to undertake repairs where imperative to do so in the shortest possible timescale, because this may impact on the number of turbines that are able to be located in the affected area.
- 1.4 As has been previously expressed by AQUIND, it cannot agree to a position which as a starting point secures less than the minimum that is necessary to ensure the ability for AQUIND Interconnector to be safely constructed and operated, in the interest of both projects. The position which RED have now stated is their final position has the very real potential to result in safety critical and operational issues for AQUIND Interconnector, which would materially prejudice its ability to secure contractors to perform necessary works, to secure investment, to satisfy regulatory and contractual requirements and to obtain suitable insurances. This has been explained in clear terms to RED.

- 1.5 It is noted for completeness that it has not been clearly evidenced by RED that providing for a reasonable realistic worst case and the separation distances which AQUIND has identified are required at this stage will impact upon the ability to deliver an offshore windfarm which achieves the full generation capacity which any DCO for the project would permit or which is capable of delivering the “*up to 90 offshore wind turbine generators*” applied for³ across the whole of the RED Order Limits. It is also noted that RED has been aware of the AQUIND Order Limits for a significant period of time prior to their application for development consent being submitted and whilst their proposals were formulated and will therefore have been able to plan sufficiently to ensure the overlap does not preclude them achieving the full capacity applied for. Moreover, from the information contained in the application available to AQUIND it is apparent that the inclusion of the necessary separation distances between the hazard areas would not preclude RED from delivering an offshore windfarm which achieves its full permitted generation capacity.
- 1.6 AQUIND remains willing for the location of RED apparatus to be subject to lesser separation distances where detailed design information shows how this is possible without causing safety critical or operational issues for either project. However, AQUIND has undertaken considerable technical work to evidence the necessary starting position based on a reasonable realistic worst case. AQUIND is not able to agree to the inclusion of distances which are less than what this technical analysis has shown are necessary, including in circumstances where RED argues the Co-Operation Agreement terms would otherwise allow for the final separation distances to be greater than what is stated in the agreement where future detailed design identifies this is necessary. This is an illogical position, the minimum necessary distances based on the current level of design should be included for so that those can, where possible, be refined down in the future as design information is produced.
- 1.7 Noting the above, included at **Appendix 4** and to this statement is an updated version of the protective provisions to be included in the Rampion 2 DCO which reflects the technical analysis that has been undertaken, and at **Appendix 5** a redline showing the updates made to the previous version issued. AQUIND requests that these protective provisions are included in any Order which is made by the Secretary of State for the necessary protection of both projects.
- 1.8 Should the Secretary of State require any further information in relation to this matter prior to taking his decision on the Rampion 2 Offshore Wind Farm proposals AQUIND confirms its continued willingness to respond to any request for this.

Herbert Smith Freehills LLP for and on behalf of AQUIND Limited

20 November 2024

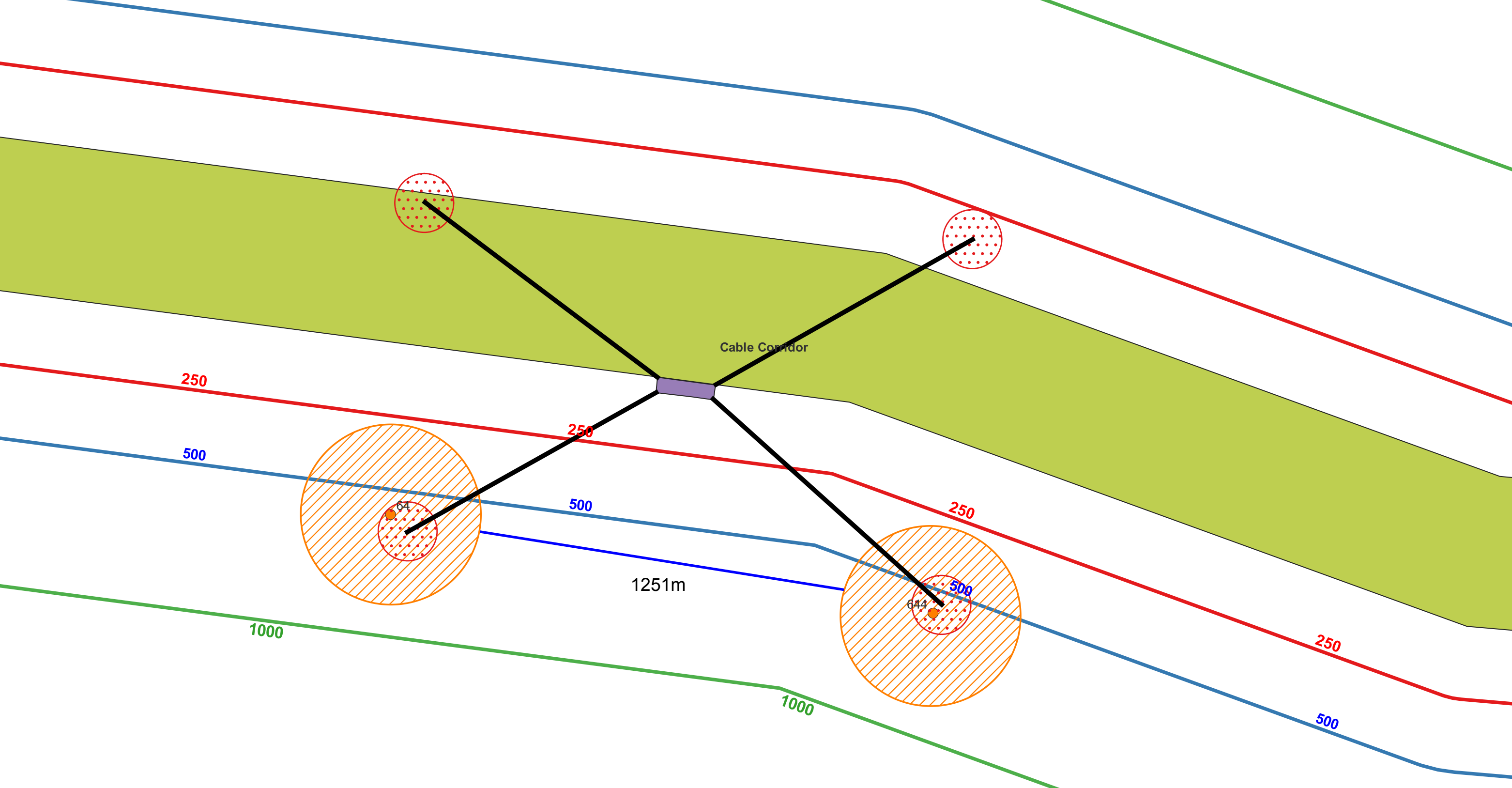
18857/31049436

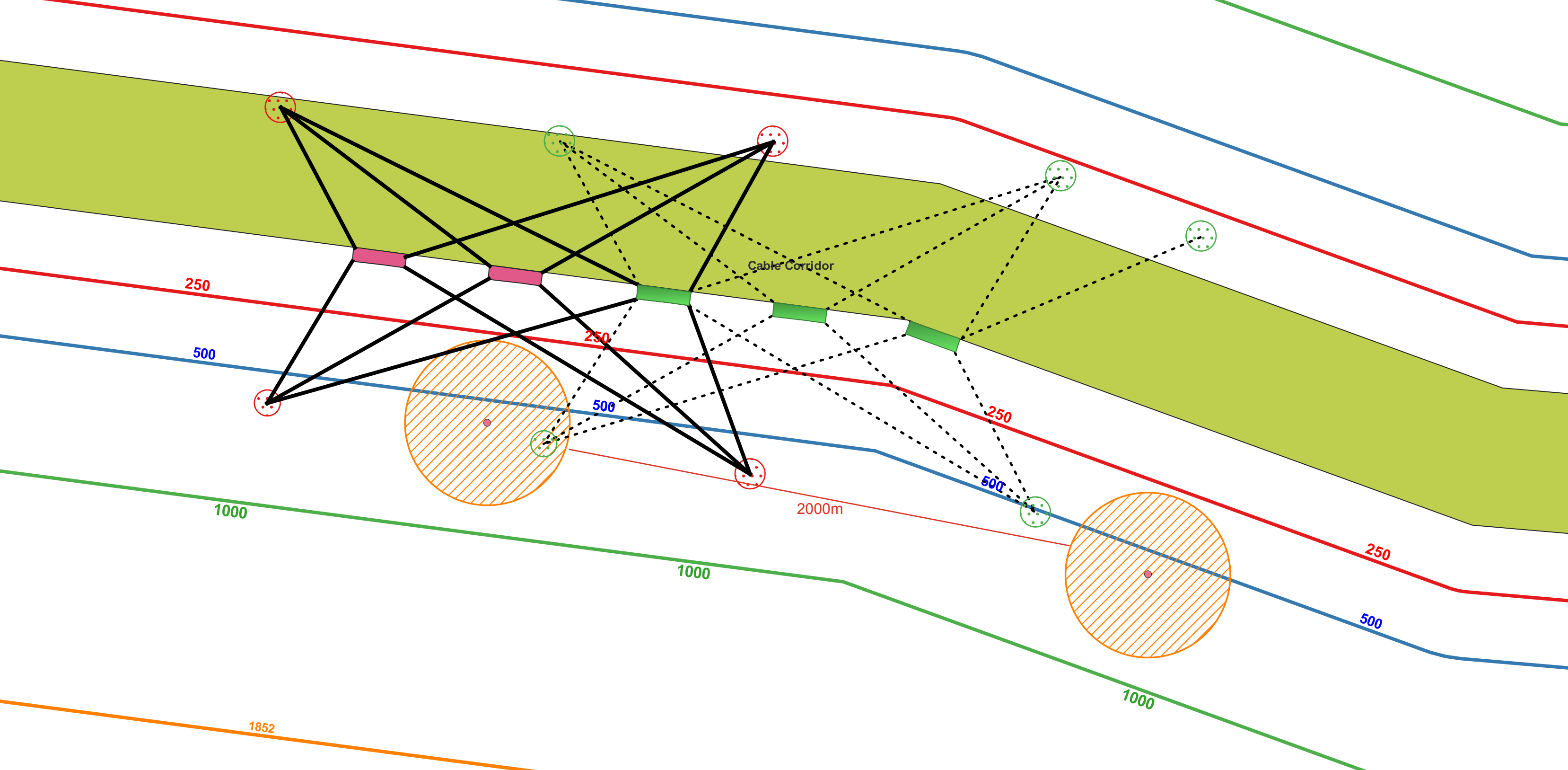
³ See:

1.3.1. of the Planning Statement [RED [APP-036](#)]

4.1.13.1. of the Proposed Development, the Environmental Statement, Volume 2, Chapter 4 [RED [APP-045](#)]

APPENDIX 1 – ILLUSTRATIVE TECHNICAL DRAWINGS





APPENDIX 2 – RED DRAFT CO-OPERATION AGREEMENT DATED 2 OCTOBER 2024

DATED _____ 2024

(1) AQUIND LIMITED

(2) RAMPION EXTENSION DEVELOPMENT LIMITED

CO-OPERATION AGREEMENT

relating to the AQUIND Interconnector
Order 202[X] and the Rampion 2 Offshore Wind
Farm Order 202[X]

Herbert Smith Freehills LLP

THIS AGREEMENT is made on

2024

BETWEEN:

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at 5 Stratford Place, London, England, W1C 1AX (Company number 06681477) ("**AQUIND**");
and
- (2) **RAMPION EXTENSION DEVELOPMENT LIMITED** of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB (Company number 12091939) ("**RED**")

WHEREAS:

- (A) On 14 November 2019 AQUIND submitted the application for the AQUIND Order to the Secretary of State for Business, Energy & Industrial Strategy in respect of the AQUIND Works and following completion of examination on 8 March 2021 and subsequent consideration of the application by the Secretary of State is awaiting a decision on whether the AQUIND Order will be granted.
- (B) It is intended that AQUIND will be the undertaker for the purposes of the AQUIND Order once granted. AQUIND intends to construct, operate and maintain the AQUIND Works pursuant to the AQUIND Order.
- (C) On 10 August 2023 RED submitted the application for the RED Order to the Secretary of State for Energy Security and Net Zero. The examination of the application for the RED Order commenced on 6 February 2024.
- (D) It is intended that RED (or the "RED Transferee") will be the undertaker for the purposes of the RED Order once granted. RED intends to construct, operate and maintain the RED Works pursuant to the RED Order.
- (E) AQUIND and RED acknowledge the need to co-operate with one another in connection with ensuring the delivery of both the AQUIND Works and the RED Works where there is actual and the potential for interface between those works.
- (F) The parties are entering into this Agreement which is to be entered into as a deed on the understanding that AQUIND and RED will perform the covenants contained herein.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (which includes the recitals to it) the following words and expressions have the following meanings unless the context otherwise requires:

"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 Information"	Post-Construction 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 applied for on 14 November 2019 as 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

Eversheds Sutherland [ES1] February 26, 2024 04:13 PM
~~See comment below: pre-construction information should be reciprocal: for discussion.~~

Herbert Smith Freehills [HSF2] February 29, 2024 08:12 PM
~~The pre-construction information for each project has been taken from what is required by the respective marine licences to be submitted to the MMO for each project. The rationale for this approach is each party only has to provide for approval what they will otherwise be submitting to the MMO, so will not need to produce 'additional' information. We do not consider this approach to be controversial.~~

Eversheds Sutherland [ES3] March 11, 2024 03:42 PM
~~Noted. Definitions now consistent and take into account potential amendments/adjustments as agreed with MMO.~~

Eversheds Sutherland [ES4] February 14, 2024 08:46 PM
~~Suggest that this is captured in the definition of Transmission Cables as presumably they will be laid together, and auxiliary cables is not defined~~

Herbert Smith Freehills [HSF5] February 27, 2024 05:41 PM
~~The amendments to this clause are not accepted. The definition has been taken from and mirrors the Rampion 2 DCO. It is in that definition in the DCO that 'auxiliary cable' is not defined. We can only assume that the DCO submitted to the Planning Inspectorate is accurate to describe the proposed Rampion 2 Works, and this is why we have drawn relevant definitions from it into this Agreement. If it is not, please confirm the updates that you will be making to the DCO, such that they can be mirrored in this Agreement as necessary and addressed in the SoCG between the parties that is to be submitted.~~

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 clause 5.1, 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;

"Necessary Crossing"

means any point at which an Array Cable comprised in the RED Works cross the AQUIND ~~Order Limits~~[Works](#);

Eversheds Sutherland [ES6] February 14, 2024 09:00 PM

~~For discussion: there is a significant degree of overlap between the Crossing Agreement and this Co-operation Agreement. Parties to ascertain what the Crossing Agreement is to include and explore whether it would be appropriate to (i) embed relevant provisions in this Agreement or (ii) a standard form (if necessary two separate standard forms depending on which project advances first) is appended to this Co-operation Agreement.~~

~~It would not be appropriate that RED be required to enter into a Crossing Agreement where AQUIND have not yet commenced works/ laid cables but the provisions as to Crossing Agreement would be relevant going forward in any interface.~~

Herbert Smith Freehills [HSF7] February 29, 2024 08:21 PM

~~There is no intention on AQUIND's part to agree the form of a Crossing Agreement now. There is not sufficient information to do so, and it is more appropriate to do this once the relevant detail is available. This will be after DCO grant. On this basis, this Agreement will capture the need for such Agreements, and require the parties to work together to enter into those in the future.~~

~~The crossings of the AQUIND cables are permitted by the RED works, so those crossings need to be designed and RED works constructed so as not to prevent AQUIND construction, including where the AQUIND works have not yet been delivered. On this basis the provisions needs to be as previously drafted, but we have sought to incorporate amendments where identified to be appropriate to protect RED works.~~

Eversheds Sutherland [ES8] March 11, 2024 03:52 PM

~~Provision drafted to ensure reciprocity. New clause [xx] sets out reciprocal provision for Crossing Agreement which should not be required to be entered into until the construction of one or other project has commenced (i.e. where there is an interface).~~

"Proximity Agreement"

means any agreement entered into by the parties pursuant to clause 5.3 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 parties;
- b) exclusion/inclusion of consequential losses;
- c) details of financial compensation arrangements for each party 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 party carrying out the work and accepted by the other party as suitable prior to work proceeding;~~

~~h) future Maintenance requirements of both assets which may include the method by which notification of operations by each party is given~~

Eversheds Sutherland [ES9]
 September 25, 2024 04:52 PM
 Definition does not include any reference to requirement for agreement on proximity specification. As previously explained, this limb is outside of the definition of Proximity Agreement as set out in the Guideline. Clause 4 sets the separation distances as per technical discussions. On the basis that those distances are prescribed and proximity agreements will apply to assets within them, there is need for separate provision for discussion regarding distances.

Herbert Smith Freehills [HSF10] June 6, 2024 12:23 AM
 The deletion of this is not accepted. The Guidance from which the contents of the Proximity Agreement are taken for this definition provides:-
When site specific proximity limits have been agreed, a bilateral proximity agreement with accompanying method statement can then be drafted based on a standard template and these guidelines. Such a proximity agreement should be based on the format and spirit of existing cable crossing and proximity agreements in common use throughout both industries, where appropriate.
It is recommended that where possible, finalisation of wind farm layout planning should not be undertaken until such time as Proximity Agreements and the requirements therein have been properly reviewed, discussed and agreed at least in principle, with the wind farm developer, the cable owner and any affected maintenance providers.
 Clearly site specific proximity limits need to be agreed, and this limb provides for this. There is not anything in this Agreement which states that this must be 1000m, the Proximity Limits are a point for future discussion and agreement, and that discussion will have regard to and be informed by the Proximity Guidelines and technical project information.

to the other;

h) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);

i) provision of representatives from one party to the other party's operations and their rights, obligations and limitation of their authority;

"Proximity Guidelines Zone"

~~means the European Subsea Cables Association Guideline No.6 – The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructures dated August 2014 (or as may be amended or replaced from time to time)~~ has the meaning given in clause 4.2;

"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 overlap shown shaded [XXX] appended at Appendix 1 to the

Agreement;¹

"RED Order"

means The Rampion 2 Offshore Wind Farm Order ~~202[X] as it is~~ applied for on 10 August 2023 as made by the Secretary of State;

"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 Post-Construction Information"

means the post-construction monitoring plan, the updated cable monitoring plan, the report setting out details of the cable protection and the close out report, as required in accordance with paragraphs 18, 20, 22 and 24 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order;

"RED Works"

means

- 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
- 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

in each case in so far as such works are within the Overlap Area and within 750m from the boundary of the Overlap Area;

¹ HSF Note: This will be the extent of the AQUIND Order Limits within the Rampion Order Limits. It is also intended the co-ordinates will be included for accuracy.

Eversheds Sutherland [ES11]
February 26, 2024 04:13 PM
~~See comment below: pre-construction information should be reciprocal for discussion.~~

Herbert Smith Freehills [HSF12]
February 29, 2024 08:12 PM
~~The pre-construction information for each project has been taken from what is required by the respective marine licences to be submitted to the MMO for each project. The rationale for this approach is each party only has to provide for approval what they will otherwise be submitting to the MMO, so will not need to produce 'additional' information. We do not consider this approach to be controversial.~~

Eversheds Sutherland [ES13] March 11, 2024 03:42 PM
~~Noted. Definitions now consistent and take into account potential amendments/adjustments as agreed with MMO.~~

Eversheds Sutherland [ES14]
February 26, 2024 04:13 PM
~~The Pre-Construction Information for each party should be reciprocal.~~

Herbert Smith Freehills [HSF15]
February 29, 2024 08:27 PM
~~See comments above, which note how this reflects the relevant pre-construction information in the respective marine licences.~~

Eversheds Sutherland [ES16]
September 25, 2024 04:50 PM
Definition adjusted to apply defined area (i.e. the proximity area - see clause 4.2) within which the provisions of the Agreement apply to the RED Works. This mirrors (in terms of reciprocity) the fact that the AQUIND Works are defined to mean such part of them as falls within the Overlap Area.
It is not in any interests to have the restrictions (eg requirement for Pre-Construction Information) to apply widely to all works. Equally, it did not make sense that the definition related only to RED Works within the Overlap Area.

"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.

1.2 In this Agreement, unless stated otherwise:

- 1.2.1 reference to the masculine feminine and neuter genders shall include other genders;
- 1.2.2 reference to the singular include the plural and vice versa unless the contrary intention is expressed;

- 1.2.3 references to natural persons include firms, companies, corporations, and vice versa;
- 1.2.4 headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation;
- 1.2.5 a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix to this Agreement;
- 1.2.6 the recitals, table of contents and headings in this Agreement are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;
- 1.2.7 reference to “the parties” shall mean the parties to this Agreement and reference to a “party” shall mean any one of the parties;
- 1.2.8 references to “notice” shall mean notice in writing;
- 1.2.9 references to “including” shall mean “including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word” and the word “include” and its derivatives shall be construed accordingly;
- 1.2.10 the Interpretation Act 1978 shall apply to this Agreement; and
- 1.2.11 unless otherwise provided for references in this Agreement to any statute or statutory provision include references to:
 - (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
 - (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
 - (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force, and
- 1.2.12 references to articles of the AQUIND Order are references to the articles of the draft Order submitted to the Secretary of State on 23 May 2023 and shall be read so as to reflect the relevant articles of the AQUIND Order as made by the Secretary of State.
- 1.2.13 references to articles of the RED Order are references to the articles of the draft Order submitted to the Planning Inspectorate acting on behalf of the Secretary of

State on 18 January 2024 and shall be read so as to reflect the relevant articles of the RED Order as made by the Secretary of State.

2. LEGAL EFFECT AND CONDITIONALITY

Save for clauses 1, this clause 2, 7, 8, 9, 10 and 12 to 17 which shall take effect at the date of this Agreement, the provisions of this Agreement are conditional upon the coming into force of the AQUIND Order or the RED Order following the making of either of those by the Secretary of State.

3. COVENANTS OF AQUIND

3.1 AQUIND Covenants with RED as follows:

3.1.1 not less than 6 months prior to the Commencement of any part of the AQUIND Works to submit to RED and to 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; and

3.1.2 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 by the parties in their absolute discretion) and where the AQUIND Pre-Construction has not been agreed 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 by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and

3.1.3 AQUIND shall 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

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

3.1.5 where received from RED pursuant to clause 4, to use all reasonable endeavours to agree the RED Pre-Construction Information with RED in the interest of not

Spencer, Oliver [SO17] February 23, 2024 03:17 PM
Could also address Umair's later comment re termination events here that the protections for the other project cease in the event that the period for commencing that project under the respective DCO has ceased without the development havin

Herbert Smith Freehills [HSF18] February 29, 2024 08:31 PM
Now addressed in the Termination provisions.

Herbert Smith Freehills [HSF19] June 6, 2024 03:16 PM
See Clause 12 which provides the termination provisions.

Eversheds Sutherland [ES20] February 16, 2024 03:51 PM
Include a covenant not to apply for a disposal site outside the AQUIND Order limits without first securing the consent of RED where the proposed disposal site falls within the RED Order limits

Eversheds Sutherland [ES21] May 9, 2024 11:22 AM
See new clause 3.2.2

Eversheds Sutherland [ES22] February 14, 2024 08:54 PM
This provision will need to be amended for both Aquind and RED to reflect the proposals in each draft DCO for the pre-construction information to be submitted to the MMO for approval r

Eversheds Sutherland [ES23] February 14, 2024 08:52 PM
Suggest that this clause should have a time reference to it - may depend on the approach taken to the time for provision of information for agreement, ie if this is to be agreed prior to submission to the SoS then this provision will need to accomod

Eversheds Sutherland [ES24] February 26, 2024 04:28 PM
The Agreement need to provide for the scenario where the parties do not agree. As currently drafted, after the expiry of the 90-day period AQUIND simply then go ahead and construct their works notwithstanding that RED considers that it may advers

Herbert Smith Freehills [HSF25] February 29, 2024 08:44 PM
The matter would go to dispute resolution if there is not agreement. Drafting now included for a timescale for agreement - express reference to referral to dispute if not agreed.

Eversheds Sutherland [ES26] March 11, 2024 04:15 PM
Principle agreed. Wording "where constructed first" removed as the concept of ensuring safe interface etc should apply through operation and maintenance on both sides.

adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

3.2 AQUIND further covenants with RED:

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

3.2.2 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;

- 3.2.3 to 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.

3.2.4 to 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.

3.2.5 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.

3.2.6 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

Herbert Smith Freehills [HSF27]
February 29, 2024 08:39 PM
~~This is not the balance of considerations, what will be needed to protect the AQUIND works will be required irrespective of impact on RED programme. The sam~~

Herbert Smith Freehills [HSF28] June 6, 2024 10:56 PM
~~This is not accepted. AQUIND will construct and repair within its Order Limits, as previously agreed. We have always been clear vessels are not also restricted to those when carrying out operations within them. AQUIND will comply with relevant safety guidance, and the Proximity Agreement will ensure this. Whilst we note there will~~

Eversheds Sutherland [ES29] May 9, 2024 11:18 AM
~~The minimum distance for laying of the AQUIND cable from AQUIND Limits is required to ensure that cable repair bight is within those limits. See Technical Note: Proximity of AQUIND AS-Build Assets to AQUIND DCO Boundary.
Refer to plan to clarify that the restric~~

Eversheds Sutherland [ES30]
February 14, 2024 09:05 PM
~~These notification periods do not seem sufficient - particularly if the Parties have not reached consensus over the Pre-Constructon Information. We suggest that the notification is for the intended commencement date, ie when the pre-construction information is due to be submitted to the MMO. This notifica~~

Herbert Smith Freehills [HSF31]
March 19, 2024 10:30 AM
~~This comment has now been addressed.~~

Eversheds Sutherland [ES32]
February 26, 2024 04:44 PM
RED to confirm time period

Herbert Smith Freehills [HSF33]
February 29, 2024 08:49 PM
~~This time period is suggested as it provides a reasonable period of time for it to be produced and submitted to and approved by the MMO. Could instead state once approved by the MMO?~~

Eversheds Sutherland [ES34]
February 26, 2024 04:47 PM
~~Suggest that this obligation is extended to include obligation on AQUIND to provide RED upon request by RED (acting reasonably) where AQUIND are maintaining their works in the vicinity of RED Works, copies of method statements etc. for approval before commencing~~

Herbert Smith Freehills [HSF35]
February 29, 2024 08:50 PM
~~This would only be applicable where there is a crossing, and there will be separate crossing agreements governing that. So this suggested addition is not identified to be necessary.~~

will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed Information.

3.2.7 where received from RED to 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 AQUIND Works.

3.2.8 to 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.

3.2.9 to withdraw any and all objections to the RED Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to the RED and to refrain from any further opposition to the RED Order save as authorised by Clause 3.2.10 below.

3.2.10 Nothing in this Agreement shall prejudice or affect the right of AQUIND to object to any new or amended provisions of the RED Order that may be introduced after the date of this Agreement which make a material change which is deemed by AQUIND to be prejudicial to the AQUIND Works and/or its obligations in this Agreement.

Eversheds Sutherland [ES36]

February 16, 2024 03:49 PM

RED to confirm time frame "as soon as reasonably practicable"

Herbert Smith Freehills [HSF37]

February 29, 2024 08:51 PM

If you consider this is required, please suggest a process for AQUIND to consider. Otherwise could include "as soon as is reasonably practicable" wording, and/or a timeframe after which the matter is referred to an Expert via the dispute resolution provisions?-

4. COVENANTS OF RED

4.1 RED covenants with AQUIND as follows:

4.1.1 not less than 6 months prior to the Commencement of any part of the RED Works to submit to AQUIND and to 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; and

4.1.2 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 by the parties in their absolute discretion) 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 by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and

4.1.3 ~~and~~ RED shall 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

Eversheds Sutherland [ES38]

February 14, 2024 09:11 PM

Same comments as per Aquind clause for the majority of the content of this clause save that there is no requirement for seeking consent for approval for disposal sites

as is agreed between the parties or as determined by the Expert (and as may be varied by agreement between the parties from time to time); and

4.1.4 where received from AQUIND pursuant to clause 3.1, 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.

4.2 RED further covenants with AQUIND:

4.2.1 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;

4.2.2 not to place any Wind Turbine Generators, Offshore Substations or Transmission Cables (save for Array Cables) comprised in the RED Works within:

(A) 250m of the boundary Overlap Area ("the Exclusion Zone"); and

(B) 250m-750m of the boundary of the Overlap Area ("the Proximity Zone") except where the conditions in (1) and (2) of this 4.2.2(B) (and as shown on the indicative plan) are met;

~~not to 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 Clause 5 of this Agreement; and~~

(1) Within the same Proximity Zone, the minimum separation distance between Wind Turbine Generators is 2000m;

(2) Within opposite Proximity Zone either side of the Overlap Area, the minimum separation distance between Wind Turbine Generators is 1250m;

unless the parties (both acting reasonably) agree to waive those conditions.

4.2.2.3 not to 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

Eversheds Sutherland [ES39]
February 16, 2024 03:56 PM
Distance not accepted – see technical note

Herbert Smith Freehills [HSF40]
February 29, 2024 08:54 PM
Subject to technical discussions

Eversheds Sutherland [ES41] March 11, 2024 04:25 PM
AQUIND to comment on Technical Note

Eversheds Sutherland [ES42]
September 25, 2024 04:54 PM
Separation distances amended to reflect technical discussions -see also Indicative Plan which we propose is attached to the Agreement.

Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

4.2.34.2.4

to 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.

4.2.44.2.5

to 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.

4.2.54.2.6

to 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.

4.2.64.2.7

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) to inform AQUIND of the Safety Zones proposed to be applied for; and
- (B) to agree with AQUIND (both parties 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 to 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).

4.2.74.2.8

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

Eversheds Sutherland [ES43]
February 14, 2024 09:16 PM
~~This should relate to active construction and maintenance, or planned and notified to RED, otherwise it would be a permanent restriction on application for safety zones which might overlap even slightly with the AQUIND Order limits. Further, should be unless otherwise agreed, as there may not be any impacts even if there is an overlap. What is 'impact on the Overlap Area' intended to cover? Is it AQUIND's intention that it will apply for safety zones for any parts of its works? If so this clause should be reciprocated by AQUIND~~

Herbert Smith Freehills [HSF44]
February 29, 2024 10:01 PM
~~Impacts on the Overlap Area are those impacts stated at the start of the clause, so it would prevent access, or restrict construction and maintenance works. Unless otherwise agreed wording will not be accepted, as those impacts are in no circumstances acceptable. It is not AQUIND's intention to apply for safety zones, because they are not applicable to the AQUIND project in accordance with the relevant legislation and what that applies to.~~

Eversheds Sutherland [ES45] March 12, 2024 12:13 AM
~~Not agreed - should relate to active construction of the AQUIND Works. For discussion in context of AQUIND Technical response.~~

Herbert Smith Freehills [HSF46]
March 19, 2024 10:48 AM
~~This is not agreed. AQUIND cannot agree to anything which would prevent access for construction or maintenance works. RED to consider if any dispensation could be applied for AQUIND in the Safety Zones such that it does not prevent access.~~

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.

~~4.2.8~~ 4.2.9 where received from AQUIND to 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.

~~4.2.9~~ 4.2.10 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.

~~4.2.10~~ 4.2.11 subject to the AQUIND Order having not been made at the relevant time, to withdraw any and all objections and representations to the AQUIND Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to AQUIND and to refrain from any further opposition to or representation on the AQUIND Order save as authorised by Clause 4.2.12 below.

~~4.2.11~~ 4.2.12 nothing in this Agreement shall prejudice or affect the right of RED to object to any new or amended provisions of the AQUIND Order that may be introduced after the date of this Agreement which make a material change which is deemed by RED to be prejudicial to the RED Works and/or its obligations in this Agreement.

Eversheds Sutherland [ES47]
February 26, 2024 04:58 PM
Only to the extent that a decision on the Aquind DCO has not been made.

5. CROSSING AGREEMENTS AND PROXIMITY AGREEMENTS

5.1 The Parties 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:

5.1.1 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;

5.1.2 in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the interface at the crossing points of the AQUIND Works by the Array Cables ~~and prior to the interface construction~~ of the AQUIND Works ~~and the Array Cables~~ in order that the construction of such crossings by the Array Cables shall not be prevented or give rise to

Eversheds Sutherland [ES48]
September 25, 2024 04:54 PM
RED – new provision to consolidate the arrangements as regards Crossing Agreements. For comment – further scenarios to be accounted for? For discussion: Whether Proximity Agreement arrangements required to reinforce obligations in clauses 4.1.1 and 4.1.2.
Clause 5.1 amended to reflect reciprocity

interference with the operation or Maintenance of them once constructed., and shall not give rise to interference with the operation or Maintenance of the AQUIND Works;

5.1.3 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.

and the parties agree that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only.

5.2 The parties agree that unless otherwise agreed (each acting reasonably) 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.

5.3 The Parties 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 boundary of the Overlap Area~~ the Proximity Zone.

~~5.4 The Parties agree that they 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 each Party shall not 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 party shall in its sole discretion determine and where in the opinion of either Party (acting reasonably) the other Party is not using all reasonable endeavours in the manner provided for by this Clause 5.4 or has identified a matter as one which is safety critical of would lead to operational issues and this is not agreed by the other Party, they may refer the matter for dispute resolution in accordance with Clause 8.~~

~~5.5~~ 5.4 Any dispute pursuant to this clause 5 will be referred to dispute resolution in accordance with clause 8.

6. COSTS AND EXPENSES

6.1 Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to Clause [11] of this Agreement:

6.1.1 AQUIND shall be responsible for the costs of RED in respect of:

- (A) approving the AQUIND Pre-Construction Information;
- (B) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;

Eversheds Sutherland [ES49]

February 26, 2024 04:34 PM

~~If separate crossing agreements are entered into – how will those agreements work alongside this agreement – as they would seem to be covering very similar obligations (eg. approval of works that interface between the projects). As above, suggest appending form of Crossing Agreement. Or, embedding the crossing provisions into this agreement so the one agreement covers both works in the vicinity of each other and also crossing works.~~

~~If a separate Crossing Agreement is to be entered into, neither party can risk delay. This needs to be clarified through the wording.~~

Herbert Smith Freehills [HSF50]

February 29, 2024 08:46 PM

~~That approach is not accepted for the reasons set out above. Separate Crossing Agreements will be needed, and is there is not sufficient information available for those to be entered into now.~~

~~A Crossing Agreement would be in addition to, and would take precedence over this agreement. See amendments below which address this.~~

Eversheds Sutherland [ES51] March

11, 2024 04:21 PM

~~Principle accepted that this Co-operation Agreement will be 'Agreement to agree'. As regards Crossing Agreements however, the obligation should only bite where (i) one project has already been construction or (ii) where the construction of both is simultaneous (it would not make sense for a Crossing Agreement to apply to an area where there is no infrastructure in the ground).~~

(C) 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;

Eversheds Sutherland [ES52]
February 14, 2024 09:19 PM
~~Should (c) refer to "amendments"? To include the costs of seeking approval for any amendments from the MMO where necessary.~~

Herbert Smith Freehills [HSF53]
February 29, 2024 09:06 PM
~~RED to clarify this comment~~

(D) 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

Eversheds Sutherland [ES54]
February 16, 2024 04:21 PM
~~And the costs of securing any necessary marine licence to facilitate works to the RED Works~~

(E) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;

Herbert Smith Freehills [HSF55]
March 1, 2024 10:29 AM
~~All RED works required in connection with crossing the Overlap Area are to be included in the DCO (and the DML), and so AQUIND will not be bearing the cost of any amendments which are required.~~

6.1.2

RED shall be responsible for the costs of AQUIND in respect of:

(A) approving the RED Pre-Construction Information;

(B) approving information relevant to how the decommissioning of the RED works will be undertaken;

Eversheds Sutherland [ES56]
February 16, 2024 04:22 PM
~~Limit to the Overlap Area or works in any other area that (considered reasonably) may impact on the RED Works~~

(C) 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;

Herbert Smith Freehills [HSF57]
February 29, 2024 09:11 PM
~~Definition of AQUIND Works is limited to the Overlap Area.~~

(D) 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

Eversheds Sutherland [ES58]
February 26, 2024 04:59 PM
~~As drafted, there does not seem to be any rights to allow representatives to watch and inspect the works in the body of the agreement (however suggest that this is provided for).~~

(E) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works; and

Herbert Smith Freehills [HSF59]
February 29, 2024 09:08 PM
~~Drafting added to Clause 3 and 4.~~

Eversheds Sutherland [ES60]
February 16, 2024 04:22 PM
~~Same comments as per AQUIND Works~~

6.1.3 when incurring costs, expenses or losses which are payable by the other party to this Agreement the relevant party must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

7. CONSULTATION AND CO-OPERATION

7.1 Each party 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 Agreement 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 Agreement or the carrying out of the AQUIND Works or the RED Works.

7.2 Where any approval, agreement, consent or confirmation of a party is required pursuant to the terms of this Agreement (including for the avoidance of doubt in connection with any Method Statement), it shall not be unreasonably withheld or delayed.

8. DISPUTE RESOLUTION

8.1 Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same the parties 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.

8.2 In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in clause [8.1] 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.

8.3 The Expert shall:

8.3.1 have at least ten years post qualification experience in the subject matter of the dispute;

8.3.2 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;

8.3.3 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;

8.3.4 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;

8.3.5 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 Clause 7.

8.4 It is hereby declared and agreed between the parties hereto that nothing in this Clause [8] shall be taken to fetter the ability of any party to seek legal redress of any breach of the obligations contained in this Agreement.

9. CONFIDENTIALITY

9.1 The parties 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.

10. TRANSFER OF POWERS AND NOVATION

10.1 In the event that:

10.1.1 any person other than AQUIND is appointed as the "Undertaker" (as defined in the AQUIND Order) for the purposes of the AQUIND Order in relation to parts of the AQUIND Works; and/or

10.1.2 powers of the "Undertaker" relevant to the parts of the AQUIND Works under the AQUIND Order are devolved to any other person,

(the 'AQUIND Transferee'), AQUIND will:

10.1.3 prior to the transfer of powers require the AQUIND Transferee to enter into a deed of covenant in favour of RED that the AQUIND Transferee shall observe and perform the obligations and restrictions on AQUIND under this Agreement as they relate to the exercise of the powers which are to be transferred as though the AQUIND Transferee had been an original party to this Agreement and following such transfer references to AQUIND in this Agreement shall be deemed to include reference to the AQUIND Transferee; and

Eversheds Sutherland [ES61]

February 14, 2024 09:22 PM

~~Forthwith on his appointment? Otherwise notice could be given on day 9 requiring submissions on day 10. Copied to each other otherwise when does the 5 days start?~~

Eversheds Sutherland [ES62]

February 26, 2024 05:01 PM

~~Suggest confidentiality provisions is extended for more clarity - is technical information eg. the AQUIND Post Construction Information deemed to be Confidential Information - as this will need to be shared with consultants/contractors for their comments etc. - parties will also need to be able to share information received under this agreement within their shareholder group and also with potential lenders etc. For discussion.~~

Herbert Smith Freehills [HSF63]

February 29, 2024 09:16 PM

~~The post construction information is information that will be submitted to the MMO, and therefore will be on the public record and able to be disclosed unless protected by law (and therefore Confidential information as defined). Unclear how the need to share information with shareholder groups / lenders etc. adds to this. That person will simply need to be bound to a legally enforceable requirement to keep such information confidential.~~

Eversheds Sutherland [ES64]

February 16, 2024 04:23 PM

~~And following such transfer references to AQUIND in this Agreement shall be deemed to include reference to the AQUIND Transferee~~

10.1.4 remain liable for any breach of this Agreement relevant to such part of the AQUIND Works for which the AQUIND Transferee is to be the "Undertaker" or to which AQUIND Transferee the powers of AQUIND are to be devolved until the AQUIND Transferee has entered into a deed of covenant in accordance with this clause.

10.2 AQUIND shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of RED (such consent not to be unreasonably withheld or delayed).

10.3 In the event that:

10.3.1 any person other than RED is appointed as the "Undertaker" (as defined in the RED Order) for the purposes of the RED Order in relation to parts of the RED Works; and/or

10.3.2 powers of the "Undertaker" relevant to the parts of the RED Works under the RED Order are devolved to any other person,

(the 'RED Transferee'), RED will:

10.3.3 prior to the transfer of powers require the RED Transferee to enter into a deed of covenant in favour of AQUIND that the RED Transferee shall observe and perform the obligations and restrictions on RED under this Agreement as they relate to the exercise of the powers which are to be transferred as though the RED Transferee had been an original party to this Agreement and following such transfer references to RED in this Agreement shall be deemed to include reference to the RED Transferee; and

10.3.4 remain liable for any breach of this Agreement relevant to such part of the RED Works for which the RED Transferee is to be the "Undertaker" or to which RED Transferee the powers of RED are to be devolved until the RED Transferee has entered into a deed of covenant in accordance with this clause.

10.4 RED shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of AQUIND (such consent not to be unreasonably withheld or delayed).

11. INDEMNITIES LIABILITY AND INSURANCE

11.1 AQUIND shall indemnify/compensate 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 Agreement;

11.2 RED shall indemnify/compensate AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses

Eversheds Sutherland [ES65] February 16, 2024 04:24 PM Clarify that following such transfer references to RED in this Agreement shall be deemed to include reference to the RED Transferee

Eversheds Sutherland [ES66] September 25, 2024 05:00 PM As discussed, RED's position is that uncapped indemnity in the Agreement is not accepted. Options for discussion: (1) Propose a cap of £30million for a single event and £60million in any 12 month period. (2) Given that this Co operation is essentially an agreement to agree, it arguably might work better in this document to set out the framework (limit/cap/principles) of the indemnity that would then be enforced through the Crossing Agreements or Proximity Agreement as the case may be. Revised drafting to address compensation for loss rather than indemnity - which will be dealt with in the Proximity Agreement.

Eversheds Sutherland [ES67] February 16, 2024 04:25 PM The principal of an uncapped indemnity is not accepted. RED will revert separately in respect of a proposed limit on liability. As drafted appears to cover loss of revenue?

Herbert Smith Freehills [HSF68] February 29, 2024 09:27 PM Uncapped indemnities included in the protective provisions issued by RED relating to the AQUIND works, so that position on an uncapped indemnity is unexpected. Please however send across your position and AQUIND will consider, noting parity will be required. The wording otherwise reflects the protective provisions issued by RED to AQUIND, and we also understand this covers loss of revenue.

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 Agreement;

11.3 Nothing in this Agreement imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party 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 party or of any person in the other party's employment or of the other party's contractors or agents.

11.4 Nothing in this Agreement is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for:

11.4.1 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

11.4.2 any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

11.5 Each party 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.

11.6 Each of the parties to this Agreement shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this clause [10] applies and if requested to by the other party, shall provide an explanation of how any such claims have been minimised and each party shall only be liable for claims reasonably incurred by the other party, and any action taken by a party pursuant to this clause [110] will be at the reasonable cost of the other party.

11.7 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.

11.8 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

Herbert Smith Freehills [HSF69]

March 19, 2024 11:01 AM

~~A cap is acceptable in principle.~~

~~The risk to each project is not the same because of what the impact of damaging cables in a specific location would be. For AQUIND this would likely mean an outage for half of the Project, and the impact would be less for Rampion but a smaller amount of the Array would be impacted.~~

~~Appropriate caps required for each project, but given the potential impact the caps, reflecting the risk to each project, may not be the same.~~

~~AQUIND are further considering caps which would be adequate to cover repair cost and lost revenue, and we would also like to understand on what basis the above caps have been proposed.~~

Eversheds Sutherland [ES70] May 13, 2024 12:03 AM

~~This Cooperation Agreement now includes provision to enter into Proximity Agreements which are defined to include indemnity provisions. RED's position is that it is appropriate that the Indemnity provisions are included in those Proximity Agreements, not this document.~~

Herbert Smith Freehills [HSF71] May 22, 2024 11:56 PM

~~This removes an indemnity in respect of costs rising out of the breach of this co-operation agreement, and that is not acceptable. An indemnity is required and must sufficiently protect AQUIND's interests.~~

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.

11.9 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.

11.10 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.

11.11 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.

11.12 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.

12. TERMINATION

12.1 This Agreement will terminate if any of the following events occur:

12.1.1 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

Eversheds Sutherland [ES72]
February 26, 2024 05:07 PM
Why is operation refereneed here - why would operation of the works require insurance to be in place?

Herbert Smith Freehills [HSF73]
February 29, 2024 09:34 PM
For if there is interference as a consequence of operation-

AQUIND notifying the Secretary of State of the withdrawal and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2;

12.1.2 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 Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);

12.1.3 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;

12.1.4 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 Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 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);

12.1.5 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;

12.1.6 the application for the RED Order is withdrawn, in which case RED shall provide AQUIND with written notification of such withdrawal within 10 Working Days of RED notifying the Secretary of State of the withdrawal and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ;

12.1.7 the Secretary of State having decided the application for the RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND 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 RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10

Eversheds Sutherland [ES74]

February 14, 2024 09:32 PM

~~Termination needs to also be on the basis of the parties not delivering the project during the consent being live phase or if FID isn't secured by X.
2. This will require a decision to be made in order for the 10 WDs to run. Suggest 'determining not to...'~~

Herbert Smith Freehills [HSF75]

February 29, 2024 09:58 PM

~~Do not consider anything further is needed following the amendments made. FID provision will not be included, as transfer could still occur at that stage, and so must be linked to ability to commence expiring with the works having been.~~

Eversheds Sutherland [ES76]

February 14, 2024 09:33 PM

~~Of what? Presumably this needs a positive decision not to proceed with the JR? Query how the 10 days relates to the expiration of the period for bringing a challenge. Or is it intended that if AQUIND determine not to challenge they can terminate this agreement by giving this notice rather than waiting for the end of the JR period?~~

Eversheds Sutherland [ES77]

February 14, 2024 09:36 PM

~~Is this intended to cover the scenario where the Order is granted but challenged by third party? This option does not appear to be covered - it could be accommodated here~~

Herbert Smith Freehills [HSF78]

February 29, 2024 09:51 PM

~~It is covered in this clause already, because that would be a final determination in respect of any challenge proceedings in respect of the decision in relation to the AQUIND order.~~

Eversheds Sutherland [ES79]

February 14, 2024 09:34 PM

~~Aquind~~

Eversheds Sutherland [ES80]

February 16, 2024 04:35 PM

~~Similar comment to above, but presumably the agreement will terminate within either 10 days of service of the written notice or 10 days of the expiration of the period for bringing a JR?~~

Eversheds Sutherland [ES81]

February 16, 2024 04:36 PM

~~Same comments apply as to AQUIND provisions above~~

Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);

12.1.8 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order a decision by the Secretary of State to refuse development consent is upheld;

12.1.9 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order the decision is quashed and the Court orders the application for the RED Order to be remitted to the Secretary of State and the application for the RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND 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 RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);

12.1.10 if following the RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

13. VARIATIONS

13.1 No variation of this Agreement is effective unless it is duly executed in writing and is signed by or on behalf of a duly authorised representative of each of the parties.

14. NOTICES

14.1 Any notice given under or in relation to this Agreement shall be in writing and shall refer to the Agreement 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 Agreement or to such other address as they may from time to time designate by written notice to the other.

14.2 Any notice sent in accordance with clause 1[4].1 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.

14.3 Any notice sent by RED to AQUIND in accordance with clause 1[4].1 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to.

14.4 Any notice sent by the Undertaker to the Council in accordance with clause 1[4].1 shall be addressed to [XXX] and shall also be sent to RED by e-mail to [XXX].

Eversheds Sutherland [ES82]
 February 26, 2024 05:09 PM
 Project rep and CoSec rep.

Herbert Smith Freehills [HSF83]
 February 29, 2024 09:57 PM
 Please provide those details.

Herbert Smith Freehills [HSF84]
 March 19, 2024 11:03 AM
 Details awaited.

15. RIGHTS OF THIRD PARTIES

15.1 No third party may enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

16. JURISDICTION

16.1 This Agreement including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement ~~or its~~ subject matter or formation (including non-contractual disputes or claims).

Eversheds Sutherland [ES85]
February 16, 2024 04:38 PM
~~Referred to as an Agreement elsewhere
albeit executed as a deed~~

17. ENTIRE AGREEMENT

17.1 This Agreement represents the entire agreement between the parties in relation to the subject matter hereof.

IN WITNESS whereof this Agreement has been duly executed as a deed by the parties to this Agreement on the date which appears at the head of this document.

EXECUTED by)
AQUIND LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

EXECUTED by)
RAMPION EXTENSION)
DEVELOPMENT LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

APPENDIX 1 - OVERLAP AREA

APPENDIX 3 – AQUIND DRAFT CO-OPERATION AGREEMENT DATED 23 OCTOBER 2024

DATED _____ 2024

(1) AQUIND LIMITED

(2) RAMPION EXTENSION DEVELOPMENT LIMITED

CO-OPERATION AGREEMENT

relating to the AQUIND Interconnector
Order 202[X] and the Rampion 2 Offshore Wind
Farm Order 202[X]

Herbert Smith Freehills LLP

THIS AGREEMENT is made on

2024

BETWEEN:

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at 5 Stratford Place, London, England, W1C 1AX (Company number 06681477) ("**AQUIND**");
and
- (2) **RAMPION EXTENSION DEVELOPMENT LIMITED** of Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, England, SN5 6PB (Company number 12091939) ("**RED**")

WHEREAS:

- (A) On 14 November 2019 AQUIND submitted the application for the AQUIND Order to the Secretary of State for Business, Energy & Industrial Strategy in respect of the AQUIND Works and following completion of examination on 8 March 2021 and subsequent consideration of the application by the Secretary of State is awaiting a decision on whether the AQUIND Order will be granted.
- (B) It is intended that AQUIND will be the undertaker for the purposes of the AQUIND Order once granted. AQUIND intends to construct, operate and maintain the AQUIND Works pursuant to the AQUIND Order.
- (C) On 10 August 2023 RED submitted the application for the RED Order to the Secretary of State for Energy Security and Net Zero. The examination of the application for the RED Order commenced on 6 February 2024.
- (D) It is intended that RED (or the "RED Transferee") will be the undertaker for the purposes of the RED Order once granted. RED intends to construct, operate and maintain the RED Works pursuant to the RED Order.
- (E) AQUIND and RED acknowledge the need to co-operate with one another in connection with ensuring the delivery of both the AQUIND Works and the RED Works where there is actual and the potential for interface between those works.
- (F) The parties are entering into this Agreement which is to be entered into as a deed on the understanding that AQUIND and RED will perform the covenants contained herein.

IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement (which includes the recitals to it) the following words and expressions have the following meanings unless the context otherwise requires:

- "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 applied for on 14 November 2019 as 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 clause 5.1, 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;

"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;

"Hazard Area"

means an area around a fixed offshore structure with a radius equal to the greater of:

- a) 250m; or
- b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator.

as measured from the outer edge of such fixed offshore structure including its substructure;

"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;

"Necessary Crossing"

means any point at which an Array Cable comprised in the RED Works cross the AQUIND WorksOrder Limits;

"Proximity Agreement"

means any agreement entered into by the parties pursuant to clause 5.3 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 parties;
- b) exclusion/inclusion of consequential losses;
- c) details of financial compensation arrangements for each party where applicable relating to specific arrangements;
- d) indemnity provisions as appropriate to regulate respective liability in construction interface;
- e) clearly defined limits of the area to which the Proximity Agreement applies;
- f) details of how proximate work would be carried out, to include method statements provided by the party carrying out the work and accepted by the other party as suitable prior to work proceeding;
- g) future Maintenance requirements of both assets which may include the method by which notification of operations by each party is given to the other;
- h) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);

Eversheds Sutherland [ES1]
September 25, 2024 04:52 PM
~~Definition does not include any reference to requirement for agreement on proximity specification. As previously explained, this limb is outside of the definition of Proximity Agreement as set out in the Guideline. Clause 4 sets the separation distances as per technical discussions. On the basis that those distances are prescribed and proximity agreements will apply to assets within them, there is need for separate provision for discussion regarding distances.~~

	<p>i) provision of representatives from one party to the other party's operations and their rights, obligations and limitation of their authority;</p>
"Proximity Zone"	<p>has the meaning given in clause 4.2;</p>
"Offshore Substation"	<p>means a structure above LAT and attached to the seabed by means of a foundation, with one or more decks containing</p> <ul style="list-style-type: none">a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; andb) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, <p>comprised in the RED Works;</p>
"Offshore Substation Interconnector Cable"	<p>means Transmission Cables connecting Offshore Substations comprised in the RED Works;</p>
"Overlap Area"	<p>means the overlap shown shaded [XXX] appended at Appendix 1 to the Agreement;¹</p>
"RED Order"	<p>means The Rampion 2 Offshore Wind Farm Order applied for on 10 August 2023 as made by the Secretary of State;</p>
"RED Pre-Construction Information"	<p>means the documentation and information required in accordance with paragraph 11 of Part 2 of Schedule 11 and/or Schedule</p>

¹ HSF Note: This will be the extent of the AQUIND Order Limits within the Rampion Order Limits. It is also intended the co-ordinates will be included for accuracy.

12 to the RED Order, as amended or agreed with the MMO;

"RED Post-Construction Information"

means the post-construction monitoring plan, the updated cable monitoring plan, the report setting out details of the cable protection and the close out report, as required in accordance with paragraphs 18, 20, 22 and 24 of Part 2 of Schedule 11 and/or Schedule 12 to the RED Order;

"RED Works"

means

- 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
- 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

in each case in so far as such works are within the Overlap Area ~~and/or with a Hazard Area with an outer edge that is~~ within 750m from the boundary of the Overlap Area at any point;

"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

Eversheds Sutherland [ES2]
September 25, 2024 04:50 PM
~~Definition adjusted to apply defined area (i.e. the proximity area – see clause 4.2) within which the provisions of the Agreement apply to the RED Works. This mirrors (in terms of reciprocity) the fact that the AQUIND Works are defined to mean such part of them as falls within the Overlap Area.~~

~~It is not in any interests to have the restrictions (eg requirement for Pre-Construction Information) to apply widely to all works. Equally, it did not make sense that the definition related only to RED Works within the Overlap Area.~~

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.

1.2 In this Agreement, unless stated otherwise:

- 1.2.1 reference to the masculine feminine and neuter genders shall include other genders;
- 1.2.2 reference to the singular include the plural and vice versa unless the contrary intention is expressed;
- 1.2.3 references to natural persons include firms, companies, corporations, and vice versa;
- 1.2.4 headings in this Agreement are for reference purposes only and shall not be taken into account in its construction or interpretation;
- 1.2.5 a reference to a clause, sub-clause, paragraph, sub-paragraph, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause,

paragraph, sub-paragraph, Schedule, recital or appendix to this Agreement;

1.2.6 the recitals, table of contents and headings in this Agreement are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;

1.2.7 reference to "the parties" shall mean the parties to this Agreement and reference to a "party" shall mean any one of the parties;

1.2.8 references to "notice" shall mean notice in writing;

1.2.9 references to "including" shall mean "including without limitation or prejudice to the generality of any description, defining terms or phrase preceding that word" and the word "include" and its derivatives shall be construed accordingly;

1.2.10 the Interpretation Act 1978 shall apply to this Agreement; and

1.2.11 unless otherwise provided for references in this Agreement to any statute or statutory provision include references to:

- (A) all Acts of Parliament and all other legislation having legal effect in the United Kingdom as enacted at the date of this Deed;
- (B) any orders, regulations, instruments or other subordinate legislation made or issued under that statute or statutory provision; and
- (C) in each case shall include any re-enactment thereof for the time being in force and any modifications or amendments thereof for the time being in force, and

1.2.12 references to articles of the AQUIND Order are references to the articles of the draft Order submitted to the Secretary of State on 23 May 2023 and shall be read so as to reflect the relevant articles of the AQUIND Order as made by the Secretary of State.

1.2.13 references to articles of the RED Order are references to the articles of the draft Order submitted to the Planning Inspectorate acting on behalf of the Secretary of State on 18 January 2024 and shall be read so as to reflect the relevant articles of the RED Order as made by the Secretary of State.

2. LEGAL EFFECT AND CONDITIONALITY

Save for clauses 1, this clause 2, 7, 8, 9, 10 and 12 to 17 which shall take effect at the date of this Agreement, the provisions of this Agreement are conditional upon the coming into force of the AQUIND Order or the RED Order following the making of either of those by the Secretary of State.

3. COVENANTS OF AQUIND

3.1 AQUIND Covenants with RED as follows:

- 3.1.1 not less than 6 months prior to the Commencement of any part of the AQUIND Works to submit to RED and to 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; and
- 3.1.2 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 by the parties in their absolute discretion) and where the AQUIND Pre-Construction has not been agreed 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 by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and
- 3.1.3 AQUIND shall 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
- 3.1.4 thereafter AQUIND shall carry out the construction of the AQUIND Works in accordance with the AQUIND Pre-Construction Information as is agreed between the parties or as determined by the Expert (and as may be varied by agreement between the parties from time to time; and

3.1.5 where received from RED pursuant to clause 4, to 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.

3.2 AQUIND further covenants with RED:

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

3.2.2 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;

3.2.3 to 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.

3.2.4 to 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.

3.2.5 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.

3.2.6 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.

3.2.7 where received from RED to 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 AQUIND Works.

3.2.8 to 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.

3.2.9 to withdraw any and all objections to the RED Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to the RED and to refrain from any further opposition to the RED Order save as authorised by Clause 3.2.10 below.

3.2.10 Nothing in this Agreement shall prejudice or affect the right of AQUIND to object to any new or amended provisions of the RED Order that may be introduced after the date of this Agreement which make a material change which is deemed by AQUIND to be prejudicial to the AQUIND Works and/or its obligations in this Agreement.

4. COVENANTS OF RED

4.1 RED covenants with AQUIND as follows:

4.1.1 not less than 6 months prior to the Commencement of any part of the RED Works to submit to AQUIND and to 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; and

4.1.2 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 by the parties in their absolute discretion) 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 by the parties in their absolute discretion) either party may refer the matter to be determined by an Expert in accordance with Clause 8; and

4.1.3 RED shall 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

between the parties or as determined by the Expert (and as may be varied by agreement between the parties from time to time); and

4.1.4 where received from AQUIND pursuant to clause 3.1, 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.

4.2 RED further covenants with AQUIND:

4.2.1 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;

4.2.2 not to place any Wind Turbine Generators, ~~or~~ Offshore Substations ~~or~~ ~~Transmission Cables (save for Array Cables)~~ comprised in the RED Works ~~within:~~

(A) ~~250m of the boundary~~ such that the outer edge of the Hazard Area is closer than 250m to the Overlap Area (~~"the Exclusion Zone"~~) at any point; and

(B) with a Hazard Area with an outer edge that is between 250m-750m of the boundary of the Overlap Area ("the "Proximity Zone") at any point except where the conditions in (1) and (2) of this 4.2.2(B) (~~and as shown on the indicative plan~~) are met:

(1) Within the same Proximity Zone, the minimum separation distance between ~~Wind Turbine Generators~~ the closest points of the outer edges of the Hazard Areas is 2000m;

(2) Within the opposite Proximity Zone either side of the Overlap Area, the minimum separation distance between ~~Wind Turbine Generators~~ the closest points of the outer edges of the Hazard Areas is 1250m;

unless the parties (~~both acting reasonably~~) agree to waive those conditions.

4.2.3 not to place any Transmission Cables comprised in the RED Works within 250m of the boundary of the Overlap Area;

Eversheds Sutherland [ES3]
September 25, 2024 04:54 PM
~~Separation distances amended to reflect technical discussions - see also Indicative Plan which we propose is attached to the Agreement.~~

4.2.4 unless otherwise agreed between the parties not to place any RED Works (excluding Array Cables) within the area which is defined by the radius which is equal to 700m from the outward point of any Necessary Crossing;

4.2.34.2.5 not to 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/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

4.2.44.2.6 to 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.

4.2.54.2.7 to 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.

4.2.64.2.8 to 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.

4.2.74.2.9 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) to inform AQUIND of the Safety Zones proposed to be applied for; and
- (B) to agree with AQUIND (both parties 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 to 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).

~~4.2.8~~4.2.10 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.

~~4.2.9~~4.2.11 where received from AQUIND to 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.

~~4.2.10~~4.2.12 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.

~~4.2.11~~4.2.13 subject to the AQUIND Order having not been made at the relevant time, to withdraw any and all objections and representations to the AQUIND Order in writing within 5 working days of the date of this Agreement and to provide a copy of that withdrawal to AQUIND and to refrain from any further opposition to or representation on the AQUIND Order save as authorised by Clause 4.2.12 below.

~~4.2.12~~4.2.14 nothing in this Agreement shall prejudice or affect the right of RED to object to any new or amended provisions of the AQUIND Order that may be introduced after the date of this Agreement which make a material change which is deemed by RED to be prejudicial to the RED Works and/or its obligations in this Agreement.

5. CROSSING AGREEMENTS AND PROXIMITY AGREEMENTS

Eversheds Sutherland [ES4]
September 25, 2024 04:54 PM
~~Clause 5.1 amended to reflect reciprocity~~

5.1 The Parties 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:

5.1.1 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;

5.1.2 in the event that the AQUIND works progress in advance of the RED Works, agreement regarding the interface ~~at the crossing points~~ of the AQUIND Works by the Array Cables prior to the construction of the AQUIND Works in order that the construction of such crossings by the Array Cables shall not be prevented or give rise to interference with the operation or Maintenance of them once constructed, and shall not give rise to interference with the operation or Maintenance of the AQUIND Works;

5.1.3 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;

and the parties agree that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only.

5.2 The parties agree that unless otherwise agreed (each acting reasonably) 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.

5.3 The Parties will co-operate and 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 the Proximity Zone.

5.4 Any dispute pursuant to this clause 5 will be referred to dispute resolution in accordance with clause 8.

6. COSTS AND EXPENSES

6.1 Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to Clause [11] of this Agreement:

6.1.1 AQUIND shall be responsible for the costs of RED in respect of:

- (A) approving the AQUIND Pre-Construction Information;
- (B) approving information relevant to how the decommissioning of the AQUIND works will be undertaken;
- (C) 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;

- (D) 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
- (E) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;

6.1.2 RED shall be responsible for the costs of AQUIND in respect of:

- (A) approving the RED Pre-Construction Information;
- (B) approving information relevant to how the decommissioning of the RED works will be undertaken;
- (C) 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;
- (D) 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
- (E) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works; and

6.1.3 when incurring costs, expenses or losses which are payable by the other party to this Agreement the relevant party must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

7. CONSULTATION AND CO-OPERATION

7.1 Each party 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 Agreement 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 Agreement or the carrying out of the AQUIND Works or the RED Works.

7.2 Where any approval, agreement, consent or confirmation of a party is required pursuant to the terms of this Agreement (including for the avoidance of doubt in connection with any Method Statement), it shall not be unreasonably withheld or delayed.

8. DISPUTE RESOLUTION

8.1 Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same the parties 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.

8.2 In the event that the dispute has not been resolved amicably following the expiry of the period of 20 Working Days referred to in clause [8.1] 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.

8.3 The Expert shall:

8.3.1 have at least ten years post qualification experience in the subject matter of the dispute;

8.3.2 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;

8.3.3 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;

8.3.4 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;

8.3.5 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 Clause 7.

8.4 It is hereby declared and agreed between the parties hereto that nothing in this Clause [8] shall be taken to fetter the ability of any party to seek legal redress of any breach of the obligations contained in this Agreement.

9. CONFIDENTIALITY

9.1 The parties 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.

10. TRANSFER OF POWERS AND NOVATION

10.1 In the event that:

10.1.1 any person other than AQUIND is appointed as the "Undertaker" (as defined in the AQUIND Order) for the purposes of the AQUIND Order in relation to parts of the AQUIND Works; and/or

10.1.2 powers of the "Undertaker" relevant to the parts of the AQUIND Works under the AQUIND Order are devolved to any other person,

(the 'AQUIND Transferee'), AQUIND will:

10.1.3 prior to the transfer of powers require the AQUIND Transferee to enter into a deed of covenant in favour of RED that the AQUIND Transferee shall observe and perform the obligations and restrictions on AQUIND under this Agreement as they relate to the exercise of the powers which are to be transferred as though the AQUIND Transferee had been an original party to this Agreement and following such transfer references to AQUIND in this Agreement shall be deemed to include reference to the AQUIND Transferee; and

10.1.4 remain liable for any breach of this Agreement relevant to such part of the AQUIND Works for which the AQUIND Transferee is to be the "Undertaker" or to which AQUIND Transferee the powers of AQUIND are to be devolved until the AQUIND Transferee has entered into a deed of covenant in accordance with this clause.

10.2 AQUIND shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of RED (such consent not to be unreasonably withheld or delayed).

10.3 In the event that:

10.3.1 any person other than RED is appointed as the "Undertaker" (as defined in the RED Order) for the purposes of the RED Order in relation to parts of the RED Works; and/or

10.3.2 powers of the "Undertaker" relevant to the parts of the RED Works under the RED Order are devolved to any other person,

(the 'RED Transferee'), RED will:

10.3.3 prior to the transfer of powers require the RED Transferee to enter into a deed of covenant in favour of AQUIND that the RED Transferee shall observe and perform the obligations and restrictions on RED under this Agreement as they relate to the exercise of the powers which are to be transferred as though the RED Transferee had been an original party to this Agreement and following such transfer references to RED in this Agreement shall be deemed to include reference to the RED Transferee; and

10.3.4 remain liable for any breach of this Agreement relevant to such part of the RED Works for which the RED Transferee is to be the "Undertaker" or to which RED Transferee the powers of RED are to be devolved until the RED Transferee has entered into a deed of covenant in accordance with this clause.

10.4 RED shall not transfer, assign or otherwise part with the benefit of this Agreement in whole or in part without the prior written consent of AQUIND (such consent not to be unreasonably withheld or delayed).

11. LIABILITY AND INSURANCE

11.1 AQUIND shall compensate 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 Agreement;

11.2 RED shall compensate 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 Agreement;

11.3 Nothing in this Agreement imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in

Eversheds Sutherland [ES5]

September 25, 2024 05:00 PM

~~Revised drafting to address compensation for loss rather than indemnity which will be dealt with in the Proximity Agreement.~~

the other party's employment or of the other party's contractors or agents and any liability of the relevant party 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 party or of any person in the other party's employment or of the other party's contractors or agents.

11.4 Nothing in this Agreement is intended and nor shall it be construed as an attempt by any party to this Agreement to exclude or restrict liability for:

11.4.1 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

11.4.2 any losses caused by the fraud of either party, its contractors or any other person for whom that party is responsible.

11.5 Each party 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.

11.6 Each of the parties to this Agreement shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this clause [10] applies and if requested to by the other party, shall provide an explanation of how any such claims have been minimised and each party shall only be liable for claims reasonably incurred by the other party, and any action taken by a party pursuant to this clause [110] will be at the reasonable cost of the other party.

11.7 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.

11.8 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.

11.9 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.

11.10 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.

11.11 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.

11.12 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.

12. TERMINATION

12.1 This Agreement will terminate if any of the following events occur:

12.1.1 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 Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2;

12.1.2 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 Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);

12.1.3 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;

12.1.4 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 Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 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);

12.1.5 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;

12.1.6 the application for the RED Order is withdrawn, in which case RED shall provide AQUIND with written notification of such withdrawal within 10 Working Days of RED notifying the Secretary of State of the withdrawal and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause ;

12.1.7 the Secretary of State having decided the application for the RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND 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 RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);

12.1.8 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order a decision by the Secretary of State to refuse development consent is upheld;

12.1.9 if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order the decision is quashed and the Court orders the application for the RED Order to be remitted to the Secretary of State and the application for the RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide AQUIND 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 RED and this Agreement will terminate immediately on the date of delivery of the notice in accordance with clause 14.2 or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);

12.1.10 if following the RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

13. VARIATIONS

13.1 No variation of this Agreement is effective unless it is duly executed in writing and is signed by or on behalf of a duly authorised representative of each of the parties.

14. NOTICES

14.1 Any notice given under or in relation to this Agreement shall be in writing and shall refer to the Agreement 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 Agreement or to such other address as they may from time to time designate by written notice to the other.

14.2 Any notice sent in accordance with clause 14.1 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.

14.3 Any notice sent by RED to AQUIND in accordance with clause 14.1 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to.

14.4 Any notice sent by the Undertaker to the Council in accordance with clause 14.1 shall be addressed to [XXX] and shall also be sent to RED by e-mail to [XXX].

15. RIGHTS OF THIRD PARTIES

15.1 No third party may enforce the terms of this Agreement under the Contracts (Rights of Third Parties) Act 1999.

16. JURISDICTION

16.1 This Agreement including its construction, validity, performance and enforcement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.

16.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

17. ENTIRE AGREEMENT

17.1 This Agreement represents the entire agreement between the parties in relation to the subject matter hereof.

IN WITNESS whereof this Agreement has been duly executed as a deed by the parties to this Agreement on the date which appears at the head of this document.

EXECUTED by)
AQUIND LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

EXECUTED by)
RAMPION EXTENSION)
DEVELOPMENT LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

APPENDIX 1 - OVERLAP AREA

APPENDIX 4 – REVISED FOR OF PROTECTIVE PROVISIONS

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;

"Hazard Area" means an area around a fixed offshore structure with a radius equal to the greater of:

- (a) 250 metres; or
- (b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator,

as measured from the outer edge such fixed offshore structure including its substructure;

"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) —

- (c) clauses to define the liabilities and rights of both AQUIND and RED;
- (d) exclusion/inclusion of consequential losses;
- (e) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- (f) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (g) clearly defined limits of the area to which the Proximity Agreement applies;
- (h) 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;
- (i) 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;
- (j) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (k) 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,

in each case in so far as such works are within the Overlap Area or with a Hazard Area with an outer edge that is within 750m from the boundary of the Overlap Area at any point;

"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 submit to RED and use all reasonable endeavours having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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; and

(4) not place any Wind Turbine Generators, Offshore 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 or Offshore Substations comprised in the RED Works:

- (a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and
- (b) with a Hazard Area with an outer edge that is between 250 metres -750 metres of the boundary of the Overlap Area (the "Proximity Zone") except where the conditions in (i) and (ii) below are met:
 - (i) within the same Proximity Zone, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metre;
 - (ii) within the opposite Proximity Zone either side of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres,

unless the parties agree to waive or vary those conditions; and

(6) not place any Transmission Cables comprised in the RED Works within 250 metres of the boundary of the Overlap Area; and

(7) unless otherwise agreed between the parties not to place any RED Works (excluding Array Cables) within the area which is defined by the radius which is equal to 700 metres from the outward point of any Necessary Crossing; and

(8) 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; and

(9) 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.

(10) 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.

(11) 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.

(12) 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).

(13) 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 having regard to the Proximity Guidelines 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.

(14) where received from AQUIND use all reasonable endeavours having regard to the Proximity Guidelines 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.

(15) 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 interface 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 or give rise to interference with the operation or Maintenance of them once constructed 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 to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works within the Proximity Zone.

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

(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].

APPENDIX 5 REVISED FORM OF PROTECTIVE PROVISIONS SHOWING AMENDMENTS

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;

"Hazard Area" means an area around a fixed offshore structure with a radius equal to the greater of:

- (a) 250 metres; or
- (b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator, as measured from the outer edge such fixed offshore structure including its substructure;

"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) —

- ~~(ac)~~ clauses to define the liabilities and rights of both AQUIND and RED;
- ~~(bd)~~ exclusion/inclusion of consequential losses;
- ~~(ee)~~ 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;-~~
- ~~(ef)~~ indemnity provisions as appropriate to regulate respective liability in construction interface;
- ~~(fg)~~ clearly defined limits of the area to which the Proximity Agreement applies;
- ~~(gh)~~ 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;
- ~~(hi)~~ 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;
- ~~(ij)~~ definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- ~~(jk)~~ 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;

[in each case in so far as such works are within the Overlap Area or with a Hazard Area with an outer edge that is within 750m from the boundary of the Overlap Area at any point;](#)

"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 [having regard to the Proximity Guidelines](#) 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 [having regard to the Proximity Guidelines](#) 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 bight 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 [having regard to the Proximity Guidelines](#) 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 [having regard to the Proximity Guidelines](#) 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 [having regard to the Proximity Guidelines](#) 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 having regard to the Proximity Guidelines 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; ~~and~~ and

(4) not ~~to~~ place any Wind Turbine Generators, Offshore 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 or Offshore Substations comprised in the RED Works:

(a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and

(b) with a Hazard Area with an outer edge that is between 250 metres -750 metres of the boundary of the Overlap Area (the "Proximity Zone") except where the conditions in (i) and (ii) below are met:

(i) within the same Proximity Zone, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metre;

(ii) within the opposite Proximity Zone either side of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres,

unless the parties agree to waive or vary those conditions; and

~~(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; and~~

(7) unless otherwise agreed between the parties not to place any RED Works (excluding Array Cables) within the area which is defined by the radius which is equal to 700 metres from the outward point of any Necessary Crossing; 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; and~~

~~(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).

(413) 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 [having regard to the Proximity Guidelines](#) 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.

(4214) where received from AQUIND use all reasonable endeavours [having regard to the Proximity Guidelines](#) 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.

(4315) 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~~[interface](#) 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 [or give rise to interference with the operation or Maintenance of them once constructed](#) 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~~the Proximity Zone.

~~(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. —a) 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. —b) 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.

(1) 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. —c) 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.

(1) 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.

(2) 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. —d) 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;

(1) 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;

(2) 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.

(3) 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.

(4) 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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

(11) 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. —e) 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.

(1) 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.

(2) 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

(3) 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].

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;

"Hazard Area" means an area around a fixed offshore structure with a radius equal to the greater of:

- (a) 250 metres; or
- (b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator,

as measured from the outer edge such fixed offshore structure including its substructure;

"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) —

- (c) clauses to define the liabilities and rights of both AQUIND and RED;
- (d) exclusion/inclusion of consequential losses;
- (e) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- (f) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (g) clearly defined limits of the area to which the Proximity Agreement applies;
- (h) 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;
- (i) 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;
- (j) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (k) 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,

in each case in so far as such works are within the Overlap Area or with a Hazard Area with an outer edge that is within 750m from the boundary of the Overlap Area at any point;

"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 submit to RED and use all reasonable endeavours having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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 having regard to the Proximity Guidelines 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; and

(4) not place any Wind Turbine Generators, Offshore 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 or Offshore Substations comprised in the RED Works:

- (a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and
- (b) with a Hazard Area with an outer edge that is between 250 metres -750 metres of the boundary of the Overlap Area (the "Proximity Zone") except where the conditions in (i) and (ii) below are met:
 - (i) within the same Proximity Zone, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metre;
 - (ii) within the opposite Proximity Zone either side of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres,

unless the parties agree to waive or vary those conditions; and

(6) not place any Transmission Cables comprised in the RED Works within 250 metres of the boundary of the Overlap Area; and

(7) unless otherwise agreed between the parties not to place any RED Works (excluding Array Cables) within the area which is defined by the radius which is equal to 700 metres from the outward point of any Necessary Crossing; and

(8) 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; and

(9) 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.

(10) 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.

(11) 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.

(12) 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).

(13) 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 having regard to the Proximity Guidelines 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.

(14) where received from AQUIND use all reasonable endeavours having regard to the Proximity Guidelines 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.

(15) 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 interface 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 or give rise to interference with the operation or Maintenance of them once constructed 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 to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works within the Proximity Zone.

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

(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].