

From: [Guymer, Tim](#)
To: [Aquind Interconnector](#)
Cc: [Drury, Holly](#); [Stickland, Caroline \(Solicitor\)](#); [Murray, Chris \(Planning\)](#); [Richard Turney](#); [Hirst, Chris](#); [Ackerman, Ian](#)
Subject: EN020022 Aquind Interconnector - Section 106 Agreement between applicant and Hampshire County Council (Reference: 20025080)
Date: 01 March 2021 17:20:45
Attachments: [AOUIND DCO - Section 106 Agreement with Hampshire County Council - FINAL.pdf](#)

Dear Sirs

For completeness, please find attached a agreed copy of the Section 106 Agreement between the applicant and Hampshire County Council.

I'm conscious that you may well receive the same copy from the applicant. In which case, I am happy for you to disregard this email.

Many thanks

Tim Guymer

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DATED

202[X]

(1) AQUIND LIMITED

(2) HAMPSHIRE COUNTY COUNCIL

**DEED OF DEVELOPMENT CONSENT
OBLIGATIONS**

pursuant to section 106 of
the Town and Country Planning Act 1990
relating to the AQUIND Interconnector

Herbert Smith Freehills LLP

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THIS DEED made on

202[X]

BETWEEN:

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of Hampshire County Council, The Castle, Winchester, SO23 8UJ (the "**County Council**")

WHEREAS:

- (A) On [XXX] the Secretary of State for Business, Energy and Industrial Strategy made the Development Consent Order.
- (B) The terrestrial elements of the Project in the UK are to be located between Eastney, Portsmouth and the National Grid Substation at Lovedean, being part of the Project comprising a high voltage direct current electrical interconnector between France and the UK.
- (C) The County Council is a local highway authority and lead local flood authority for the area within which the DCO Land is situated. The County Council is also a local planning authority with the capacity to enter into planning obligations in accordance with section 106 of the 1990 Act.
- (D) The Undertaker is the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Development as authorised by the Development Consent Order and is deemed to be a person interested in the DCO Land in accordance with Article 8(4)(a) of the Development Consent Order.
- (E) The Undertaker intends to acquire freehold and/or leasehold interests in the DCO Land in the future in connection with the Development (whether compulsorily or by agreement).
- (F) The Parties to this Deed have agreed to enter into this Deed in order to secure the performance of the development consent obligations contained in it pursuant to the provisions of section 106 of the 1990 Act and all other enabling powers.

IT IS AGREED as follows:

1. **DEFINITIONS AND INTERPRETATION**

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

"1990 Act"	means the Town and Country Planning Act 1990;
"2008 Act"	means the Planning Act 2008;
"Access and Rights of Way Plans"	means the plans certified as the access and rights of way plans by the Secretary of State under article 43 (Certification of plans and documents, etc.) and identified in Schedule 6 to the DCO;
"Account"	means an interest bearing account of the County Council into which the Bus Delay Mitigation Fund the Bus Delay Mitigation Contingency Fund and the Patronage Marketing Contribution

shall be held by the County Council and from which the County Council may draw down sums in accordance with Schedule 3;

“AIL Street Works”	means temporary works to streets and street furniture for which the County Council is responsible to facilitate the movement of abnormal indivisible loads in connection with the construction of the Development;
“Application”	means the application for the DCO submitted to the Secretary of State for the Development and accepted by the Planning Inspectorate on 12 December 2019 with reference EN020022;
“Baseline Condition”	means the average journey time between the relevant bus stops for the relevant Specified Route for the relevant month in the Baseline Year;
“Baseline Year”	means January 2019 – January 2020;
“Bus Delay Mitigation Contingency Fund”	means the sum of £275,517.50 (two hundred and seventy five thousand five hundred and seventeen pounds and fifty pence) (Index Linked) which once paid is to be drawn down by the County Council to be paid to the relevant Bus Operator in respect of the cost of the provision of an additional bus(es) on the Specified Route in arrears;
“Bus Delay Mitigation Fund”	means the sum of £1,102,070 (one million one hundred and two thousand and seventy pounds) (Index Linked) which once paid is to be drawn down by the County Council to be paid to the relevant Bus Operator in respect of the cost of the provision of an additional bus(es) on the Specified Route in arrears;
“Bus Delay Mitigation Request”	means a written request from a Bus Operator in respect of a Specified Route which includes the following information: <ul style="list-style-type: none">a) the Specified Route Baseline for the Specified Route;b) the percentage decrease in Start Point Compliance for the Specified Route prior to the provision of an additional bus;c) actual journey time point to point data identifying all delays experienced by the Specified Route;d) actual journey time point to point data identifying delays experienced by the Specified Route in connection with Traffic Management;e) Scheduled Journey Time;f) Traffic Management Journey Time; andg) evidence that an additional bus has been provided on the Specified Route;
“Bus Operators”	means First Bus and Stagecoach (respectively) or any successor operator in respect of a Specified Route;
“CAVAT Assessment”	means the assessment of the value of any Highways Tree to be removed in connection with the construction of the Development to be undertaken in accordance with the

	CAVAT Assessment Methodology and which shall calculate the CAVAT Compensation Amount for the Highways Tree to be removed;
“CAVAT Assessment Methodology”	means the Capital Asset Value of Amenity Trees methodology produced by the London Tree Officers Association dated January 2020 or any replacement thereof;
“CAVAT Compensation Amount”	means the compensation to be paid to the County Council in connection with the removal of any Highways Tree which is to be determined in accordance with the CAVAT Assessment and which is to be applied by the County Council towards the provision of replacement trees;
“Commencement”	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development on the DCO Land other than operations consisting of Onshore Site Preparation Works and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly;
“Commencement Date”	means the date of Commencement;
“Completion of Construction”	means the date of service of a notice on the County Council by the Undertaker stating that the construction of the Development is complete prior to commissioning;
“Completion of HCC Highway Works”	means the date of service of a notice on the County Council by the Undertaker stating that the construction of all parts of Work No.4 as are located on the highway within the DCO Land is complete;
“Completion of Work No.4”	means the completion of the construction of all parts of Work No.4 which are located on the public highway;
“Control Routes”	means: <ul style="list-style-type: none"> a) in relation to any Patronage Marketing Contribution Request by First Bus bus route no. X5 and 9; or b) in relation to any Patronage Contribution Request by Stagecoach bus route no. 1 (Aldershot) and Pulse (Worthing);
“Converter Station”	means the converter station and associated electrical equipment to be constructed as part of the Development and which comprises Work No.2;
“Converter Station Access Works”	means the permanent access junction and associated gated highway link to be constructed as part of the Development and which comprises Work No.2 (bb) in general accordance with drawing number AQD-WSP-UK-OS-DR-Z-200215 Rev 05 located at Appendix 2 together with the 4 no. passing places to be constructed on Day Lane in connection with the construction of the Development;
“Converter Station Access Works Completion Certificate”	means a certificate to be issued by the County Council pursuant to the Converter Station Access Works Highways Agreement to denote the completion of the Converter Station Access Works to the satisfaction of the County Council;

“Converter Station Access Works Highways Agreement”	means an agreement to be entered into between the Undertaker and the County Council pursuant to section 278 of the Highways Act 1980 in relation to the delivery of the Converter Station Access Works substantially in the form located at Appendix 3;
“County Council”	means Hampshire County Council;
“DCO Land”	means so much of the land within the Order limits as is within the administrative boundary of Hampshire County Council as shown shaded and edged red on the DCO Land Plan;
“DCO Land Plan”	means the plan located at Appendix 1 of this Deed;
“Development”	means those elements of the Project located onshore in the UK and for which the DCO is granted;
“Development Consent Order”	means the AQUIND Interconnector Order 202[X] made by the Secretary of State for Business, Energy and Industrial Strategy on [XXX] and references to “ DCO ” shall be construed accordingly;
“Dispute”	means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Deed or the parties' obligations and rights pursuant to it (other than in respect of any matter of law);
“Expert”	means an independent person appointed in accordance with the provisions of clause 13 to determine a Dispute between the parties to this Deed;
“First Bus”	means First Hampshire & Dorset Limited of Empress Road, Southampton SO14 0JW with company registration number 01999120 and any Group Company of the same;
“Group Company”	means any connected person (as defined in by Section 122 of the Corporation Tax Act 2010);
“Highways Tree”	means a tree which is located on the public highway within the DCO Land and which is in the ownership of the County Council;
“Index”	means the Retail Price Index published by the Office for National Statistics or any successor or amending body;
“Index Linked”	means increased (if applicable) in accordance with clause 19;
“Ladybridge Roundabout Development Works”	means the works for the realignment improvement and widening of the existing roundabout at the junction of London Road and Ladybridge Road and re-alignment of Purbrook Heath Road and provision of a toucan crossing on London Road south of the existing roundabout shown indicatively on the Ladybridge Roundabout Development Works Plan which are to be undertaken by or on behalf of the County Council as required in accordance with the Section 106 Agreement dated 30 March 2012 entered into in connection with the planning permission with reference 10/02868/OUT dated 30 March 2012 issued by Winchester City Council;

“Ladybridge Roundabout Development Works Plan”	means the plan located at Appendix 6 of this Deed;
“Ladybridge Roundabout Highway Works”	means such parts of Work No.4 as overlap with the Ladybridge Roundabout Development Works;
“Monitoring Fee”	means the sum of £2,000;
“Onshore Cable Route”	means any part of Work No.4 which is located on the public highway;
“Onshore Site Preparation Works”	means operations consisting of: <ul style="list-style-type: none"> a) pre-construction archaeological investigations; b) environmental surveys and monitoring; c) site clearance; d) removal of hedgerows, trees and shrubs (excluding any Highways Tree); e) investigations for the purpose of assessing ground conditions; f) remedial work in respect of any contamination or adverse ground conditions; g) receipt and erection of construction plant and equipment; h) the temporary display of site notices and advertisements; i) erection of temporary buildings, structures or enclosures; and j) Work No.2 (bb) (access junction and associated gated highway link);
“Order Limits”	has the same meaning as is given in the DCO;
“Patronage Marketing Contribution”	means the sum of £290,000 (two hundred and ninety thousand pounds) (Index Linked) which once paid is to be drawn down by the County Council and paid to the Bus Operators towards costs incurred in respect of pro-bus marketing campaigns following the Completion of Work No.4 in accordance with the provisions of paragraph 2 of Schedule 3;
“Patronage Marketing Contribution Request”	means a request from a Bus Operator which includes the following information: <ul style="list-style-type: none"> a) the percentage increase in bus patronage for the Specified Routes of the relevant Bus Operator for the period between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of confirmation of the Completion of Work No.4; and b) the percentage increase in patronage for the Control Routes for the period between the date of the

payment of the Bus Delay Mitigation Fund into the Account and the date of confirmation of the Completion of Work No.4;

“Project”	means AQUIND Interconnector a new 2,000 MW subsea and underground High Voltage Direct Current (‘HVDC’) bi-directional electric power transmission link between the South Coast of England and Normandy in France;
“Qualifying Interest”	means such interest in the land sufficient to meet the requirements of Section 106(1) of the 1990 Act which shall include the Undertaker’s status as undertaker for the purposes of the DCO in accordance with the provisions of article 8(4)(a) of the DCO whereby the undertaker is deemed to be a person interested in the DCO Land for the purposes of Section 106(1) of the 1990 Act;
“Scheduled Journey Time”	means the journey time for a bus to travel between the bus stop before the Traffic Management and first bus stop following the Traffic Management in the Baseline Condition;
“Specified Routes”	means the following bus routes operating within the Order limits: <ul style="list-style-type: none">a) First Bus bus route No.7b) First Bus bus route No.8c) First Bus bus route No. 13d) First Bus bus route No. D1e) First Bus bus route No. D2f) Stagecoach bus route No. 20g) Stagecoach bus route No. 21h) Stagecoach bus route No. 23i) Stagecoach bus route No. 37j) Stagecoach bus route No. 39
“Specified Route Baseline”	means the percentage of Start Point Compliance for the relevant Specified Route within the relevant month of the Baseline Year;
“Stagecoach”	means Stagecoach (South) Limited of 10 Stagecoach Shared Service Centre, One Stockport Exchange, 20 Railway Road, Stockport SK1 3SW with company registration number 1673542 and any Group Company of the same;
“Start Point Compliance”	means where a bus on a Specified Route leaves its first stop not more than 4 minute and 59 seconds after the scheduled start time;
“Successor”	means any person deriving title from the Undertaker in respect of its Qualifying Interest and for the purposes of Section 106(3)(b) of the 1990 Act shall include any person to whom powers are transferred further to Article 7 of the DCO;
“Supplemental Deed”	means a supplemental deed substantially in the form attached at Appendix 9;

“TCF Works”	means the works to be undertaken by the County Council to deliver highway improvements pursuant to funding secured from the government’s Transforming Cities Fund to introduce a northbound bus gate to the south of Ladybridge Roundabout and reactivation of the southbound bus gate 570m to the north of the roundabout along with on carriageway cycle priority for northbound movements through the bus gate shown on the TCF Works Plan;
“TCF Works Plan”	means the plan located at Appendix 5 of this Deed;
“TD Plan Monitoring Annual Fee”	means the sum of £3,000 per annum until the Completion of HCC Highway Works payable by the Undertaker and to be applied towards the monitoring and evaluation of the TD Plan;
“TD Plan”	means the travel demand plan submitted to and approved by the County Council pursuant to Requirement 25 of the DCO;
“Temporary Construction Access”	means such new temporary means of access or improved existing means of access within the DCO Land (including in the locations identified on the Access and Rights of Way Plans) as the Undertaker reasonably requires for the purposes of the construction of the Development and which for the avoidance of doubt excludes the permanent access junction comprised in the Converter Station Access Works and the typical layout for which is shown on the Temporary Construction Access Typical Layout Drawing;
“Temporary Construction Access Completion Certificate”	means a certificate to be issued by the County Council pursuant to a Temporary Construction Access Highways Agreement to denote the completion of a Temporary Construction Access to the satisfaction of the County Council;
“Temporary Construction Access Highways Agreement”	means an agreement to be entered into between the Undertaker and the County Council pursuant to section 278 of the Highways Act 1980 in relation to the delivery of any Temporary Construction Access substantially in the form located at Appendix 4;
“Temporary Construction Access Typical Layout Drawing”	means the drawing located at Appendix 7 of this Deed;
“Traffic Management”	means traffic management associated with the construction of the Onshore Cable Route;
“Traffic Management Journey Time”	means the actual journey time between the bus stop before the Traffic Management and the first bus stop following the Traffic Management;
“Travel Plan”	means any and all travel plans for the contractor’s workforce submitted to and approved by the County Council pursuant to Requirement 21 of the DCO;

“Travel Plan Monitoring Annual Fee”	means the sum of £3,000 per annum until the Completion of Construction payable by the Undertaker and to be applied towards the auditing and monitoring of the Travel Plan;
“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; and
“Undertaker”	means AQUIND Limited and any Successors;

1.2 In this Deed, 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 references to the County Council include the successors to the County Council’s statutory functions as the lead flood authority, local highway authority and local planning authority;
- 1.2.5 references to the Undertaker shall include its Successors and its respective successors in respect of its Qualifying Interest (except where the contrary is expressly provided);
- 1.2.6 references to “Work Nos.” or to a “Work No.” are references to the works forming part of the Development listed in Schedule 1 to the DCO;
- 1.2.7 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 Deed;
- 1.2.8 words denoting an obligation on a party to do any act, matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to cause, permit or suffer any infringement of the restriction;
- 1.2.9 references in this Deed 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;
- 1.2.10 where in this Deed the County Council is required to give any approval, consent or agreement then such approval, consent or agreement by the County Council shall not be deemed to have been given unless given in writing;
- 1.2.11 if any provision of this Deed shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Deed shall not in any way be deemed thereby to be affected, impaired or called into question;

- 1.2.12 the recitals, table of contents and headings in this Deed are for convenience only and shall not affect its construction, interpretation or otherwise have any binding legal effect;
- 1.2.13 in the event of any conflict between the terms, conditions and provisions of this Deed and of any document appended hereto or referred to herein, the terms, conditions and provisions of this Deed shall prevail;
- 1.2.14 reference to “the parties” shall mean the parties to this Deed and reference to a “party” shall mean any one of the parties;
- 1.2.15 references to “notice” shall mean notice in writing;
- 1.2.16 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;
- 1.2.17 the Interpretation Act 1978 shall apply to this Deed; and
- 1.2.18 where any payment in this Deed is expressed to be payable before an event or activity that event or activity shall not commence until the relevant payment has been made.

2. **LEGAL EFFECT**

- 2.1 This Deed contains planning obligations that are development consent obligations for the purposes of section 106 of the 1990 Act and is also entered into pursuant to section 1 of the Localism Act 2011, section 111 of the Local Government Act 1972 and all other powers so enabling.
- 2.2 The planning obligations contained within this Deed are enforceable by the County Council as local planning authority in accordance with section 106(3) of the 1990 Act against:
 - 2.2.1 the Undertaker in respect of its Qualifying Interest in the DCO Land as bound under clause 3;
 - 2.2.2 the Undertaker’s Successors to its Qualifying Interest in the DCO Land as bound under clause 3.

3. **LAND BOUND**

- 3.1 Subject to clause 5 (Conditionality) and clause 8 (Release and Expiry) the planning obligations in this Deed bind the DCO Land.
- 3.2 The parties agree that the planning obligations contained in this Deed will not be enforceable against any other owner of any land interest in the DCO Land who is not a party to this Deed nor against any successors in title to or any person claiming through or under the other such owner's interest in the DCO Land (save for the Undertaker) unless that person itself undertakes any part of the Development.
- 3.3 The parties agree that the planning obligations contained in this Deed shall not be enforceable against any mortgagee or chargee of the whole or any part of the DCO Land from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the DCO Land (or any part thereof to which such obligation relates) in which case it will be bound by the obligations as a person deriving title from the Undertaker PROVIDED THAT neither any mortgagee or chargee or person deriving title through such mortgagee or chargee will be liable for any breach of the obligations contained in this Deed unless committed at a time when that person is in possession of the DCO Land (or any part thereof to which such obligation relates).

4. **BINDING FURTHER INTERESTS**

- 4.1 If and to the extent that the Undertaker acquires any freehold interest or leasehold interest of seven years or more in respect of any part of the DCO Land the Undertaker covenants

to notify the County Council in writing of each and every such acquisition within three (3) Working Days of the same occurring and to promptly enter into and deliver to the County Council an executed agreement substantially in the form of the Supplemental Deed so as to bind and make such interests subject to the obligations, covenants and conditions contained in this Deed in so far as they relate to such interests and/or parts of the DCO Land and remain to be observed, performed and/or complied with.

5. **CONDITIONALITY**

5.1 Subject to clauses 5.2 and 5.3, the parties agree that, save for the covenant in clause 18.1, none of the terms, conditions or provisions of this Deed shall have operative effect unless and until the Development has been Commenced.

5.2 Where the Development Consent Order becomes the subject of any judicial review proceedings:

5.2.1 until such time as such proceedings including any appeal have been finally determined, the terms and provisions of this Deed will remain without operative effect unless the Development has been Commenced;

5.2.2 if following the final determination of such proceedings the Development Consent Order is quashed and, in the event that the court orders the Application to be remitted to the Secretary of State, the Application is subsequently refused, this Deed will cease to have any further effect and any money paid to the County Council pursuant to Schedule 1 or Schedule 3 and not spent or committed by the County Council shall be repaid in full within 20 Working Days of the final determination of such proceedings; and

5.2.3 if following the final determination of such proceedings the Development Consent Order is capable of being Commenced, then this Deed will take effect in accordance with its terms.

5.3 Wherever in this Deed reference is made to the final determination of judicial review proceedings (or cognate expressions are used), the following provisions will apply:

5.3.1 proceedings by way of judicial review are finally determined:

(A) when permission to bring a claim for judicial review has been refused and no further application may be made;

(B) when the court has given judgment in the matter and the time for making an appeal expires without an appeal having been made or permission to appeal is refused; or

(C) when any appeal is finally determined and no further appeal may be made.

6. **OBLIGATIONS OF THE UNDERTAKER**

6.1 The Undertaker covenants with the County Council to observe and perform or cause to be observed and performed the obligations on the part of the Undertaker contained in Schedule 1 and Schedule 3 at the times and in the manner provided therein.

6.2 The Undertaker covenants with the County Council to serve written notice to the County Council at least twenty Working Days in advance of the proposed Commencement Date.

6.3 Where the proposed Commencement Date provided in clause 6.2 does not take place, the Undertaker shall provide written notice to the County Council of the revised date as soon as is reasonably practicable and in any event at least 10 Working Days in advance of the revised date.

6.4 The Undertaker covenants with the County Council to serve written notice to the County Council notifying of the Completion of Construction as soon as reasonably practicable following the Completion of Construction.

6.5 The Undertaker covenants with the County Council to serve written notice to the County Council notifying of the Completion of HCC Highway Works as soon as reasonably practicable following the Completion of HCC Highway Works.

7. OBLIGATIONS OF THE COUNTY COUNCIL

7.1 The County Council covenants with the Undertaker to observe and perform or cause to be observed and performed the obligations on the part of the County Council contained in Schedule 2 and Schedule 3 at the times and in the manner provided therein.

8. RELEASE AND EXPIRY

8.1 The Undertaker shall not be liable for a breach of any of its obligations under this Deed after it has parted with all of its interests in the DCO Land (including Qualifying Interests) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

8.2 If the Development Consent Order expires without having been Commenced or is revoked prior to the Commencement Date then this Deed shall forthwith determine and cease to have effect.

8.3 Nothing in this Deed shall prohibit or limit the right to develop any part of the DCO Land in accordance with a planning permission or development consent order or other statutory authority (other than the DCO) granted (whether or not on appeal) after the date of this Deed.

8.4 No Successor to the Undertaker shall be liable for any breach of any obligation which occurs in relation to any area of the DCO Land which that Successor does not own or control or which is carried out by any person other than that Successor.

8.5 Upon the performance discharge or other fulfilment of the covenants and obligations (or any of them) of the Undertaker, any Successor, or the County Council under the terms of this Deed such covenant, obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.

9. LOCAL LAND CHARGES

9.1 This Deed is a local land charge and may be registered as such by the County Council.

10. WAIVER

10.1 No waiver (whether express or implied) by the County Council of any breach or default by the Undertaker in performing or observing any of the obligations, covenants or conditions on the Undertaker's part contained in this Deed shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the said obligations, covenants and conditions or from acting upon any subsequent breach or default in respect thereof by the Undertaker.

11. REMEDIES

11.1 Where the County Council becomes aware of a breach or non-compliance with a provision of this Deed by the Undertaker, the County Council may serve notice of such breach upon the Undertaker and the notice of breach shall state the nature of the breach, the steps reasonably required to remedy the breach and a reasonable timescale for remedying the breach.

11.2 The Undertaker shall within 10 Working Days of receiving a notice served pursuant to clause 11.1 give written notification to the County Council of its response to the notice including any claim that it will remedy the breach within the stated timescale, that the timescale is too short or that that it rejects the notice for the reason that no breach has occurred.

11.3 The County Council and the Undertaker shall hold discussions about the notice of the breach where either party so requests.

11.4 In the event of a dispute arising regarding any notice of breach served pursuant to clause 11.1, the matter shall be determined under clause 13.

12. **CERTIFICATES OF COMPLIANCE**

12.1 The County Council will without delay upon request by the Undertaker certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed.

13. **RESOLUTION OF DISPUTES**

13.1 In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least 3 representatives from each party unless expressly stated otherwise.

13.2 If the parties are unable to resolve the Dispute amicably pursuant to clause 13.1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination.

13.3 The Notice must specify:

13.3.1 the nature, basis and brief description of the Dispute;

13.3.2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen;
and

13.3.3 the proposed Expert.

13.4 In the event that the parties are unable to agree whom should be appointed as the Expert within 10 Working Days after the date of the Notice then either party may request the President of the Law Society to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within 10 Working Days of the request, and any failure for such nomination to be made within 10 Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England and Wales instead.

13.5 If the appointed Expert is or becomes unable or unwilling to act, any party may within 5 Working Days of the Expert being or becoming unable or unwilling to act, serve a notice on all the other parties proposing a replacement Expert and the parties will follow the process at clause 13.4 to settle the appointment of the replacement Expert.

13.6 The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.

13.7 The Expert is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision.

13.8 The Expert will be appointed subject to an express requirement that he reaches his 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 not more than 30 Working Days from the date of his appointment to act.

13.9 The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within 10 Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further 10 Working Days in respect of any such submission and material.

13.10 Nothing in this Deed shall fetter any party's right to bring an action in Court.

14. **NOTICES**

14.1 Any notice, consent or approval or other communication required to be given under or in connection with this Deed to or upon the parties must be in writing and shall be addressed as provided for in clause 14.3.

14.2 Any such notice must be delivered by hand (including by courier or process server) or by pre-paid recorded delivery post and shall conclusively be deemed to have been received:

14.2.1 if delivered by hand, upon delivery at the relevant address; and

14.2.2 if sent by first class post, at 9:00 a.m. on the second Working Day after the date of posting,

except that where any such notice or other communication is or would be deemed to be received after 5:30 p.m., such notice shall be deemed to be received at 9:00 a.m. on the next Working Day.

14.3 Subject to clause 14.4, the address, relevant addressee and reference for each party are:

14.3.1 in the case of the County Council:

Address: Hampshire County Council, Legal Services, The Castle, Winchester, SO23 8UJ with a copy also sent by e-mail to HLS@hants.gov.uk.

Relevant addressee: David Kelly – Head of Legal Services

Reference: Aquind Interconnector s106/135915

14.3.2 For the Undertaker:

Address: AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to kirill.glukhovskoy@aquind.co.uk.

Relevant addressee: Kirill Glukhovskoy – Managing Director

Reference: AQUIND Interconnector S106

14.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 14 provided that such notification shall only be effective on:

14.4.1 the date specified in the notification as the date on which the change is to take place; or

14.4.2 if no date is specified or the date specified is less than five clear Working Days after the date on which the notice is received or deemed to be received, the fifth Working Day after the notice of any such change is given.

15. **NO FETTER ON DISCRETION**

15.1 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the County Council or the Undertaker.

16. **GOOD FAITH, GOOD PRACTICE AND REASONABLENESS**

16.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.

16.2 Unless expressly stated otherwise where under this Deed any approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response is required to be given by or reached or taken by any party or any response is requested by any such approval, agreement, consent, certificate, confirmation or an expression of satisfaction or response, it will not be unreasonable or unreasonably withheld or delayed and the parties will act reasonably at all times.

17. **COMMUNITY INFRASTRUCTURE LEVY**

17.1 The Parties agree that the planning obligations contained in the Schedules to this Deed are necessary to make the Development acceptable in planning terms, are directly related to the Development and are fairly and reasonably related in scale and kind to the

Development and thus satisfy the three tests set out in regulation 122(2)(a) – (c) of the Community Infrastructure Regulations 2010.

18. LEGAL FEES AND COSTS

- 18.1 The Undertaker shall pay on the date of this Deed to the County Council its reasonable legal costs properly incurred in the negotiation and completion of this Deed and the Monitoring Fee.

19. INDEXATION

- 19.1 Any sum which is referred to in this Deed as Index Linked and required to be paid by the Undertaker to the County Council shall be increased by an amount equivalent to the increase in the Index from the date hereof until the date on which such sum is payable in accordance with the following formula:

$$A \times (B/C) = D$$

Where:

A is the amount of money to be paid pursuant to this Deed

B is the figure shown in the relevant index for the period immediately prior to the date on which the sum concerned is due to be paid in accordance with the provisions in this Deed;

C is the figure shown in the relevant index for the period immediately prior to the date the Development Consent Order is made unless expressly stated otherwise; and

D is the amount of money required to be paid

PROVIDED THAT if the relevant index is no longer maintained then the above formula will be applied mutatis mutandis (so far as it relates to periods after it ceases to be do maintained) by reference to such other publication or index as may be agreed from time to time between the Parties or determined by an Expert pursuant to clause 13.

20. INTEREST ON LATE PAYMENTS

- 20.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the County Council if any payment of any sum referred to herein shall have become due but shall remain unpaid for a period exceeding 5 Working Days the Undertaker shall pay on demand to the County Council interest thereon at the interest rate of four percent per annum above the base lending rate of National Westminster Bank plc from the date when the same became due until payment thereof.

21. VAT

- 21.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof.
- 21.2 The Undertaker acknowledges and agrees that if at any time VAT is required to be paid in respect of any of the payments made under this Deed then to the extent that VAT had not been previously charged in respect of that payment the County Council shall have the right to issue a VAT invoice to the Undertaker in respect of any vatiable supplies properly incurred under this Deed and the VAT shall be paid by the Undertaker accordingly following the receipt of a valid VAT invoice.

22. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 22.1 Without prejudice to clauses 1.2.4 and 1.2.5, a person who is not a party to this Deed does not have any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.

23. **JURISDICTION**

23.1 This Deed 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.

23.2 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 Deed or its subject matter or formation (including non-contractual disputes or claims).

24. **COUNTERPARTS**

24.1 This Deed may be executed in any number of counterparts, each of which is an original and all of which may together evidence the same agreement.

25. **DATE OF DELIVERY**

25.1 This Deed is delivered on the date of this Deed.

SCHEDULE 1
UNDERTAKER OBLIGATIONS

1. CONVERTER STATION ACCESS WORKS

- 1.1 The Undertaker shall not Commence the Development unless and until it has:
- 1.1.1 provided evidence of ownership of the land that is to be dedicated as highway in accordance with the Converter Station Access Works Highways Agreement or of the agreement of all persons with ownership of that land to the dedication of that land in the future to the satisfaction of the County Council prior to entering into the Converter Station Access Works Highways Agreement with the County Council referred to in paragraph 1.1.2 below; and
 - 1.1.2 entered into the Converter Station Access Works Highways Agreement with the County Council.
- 1.2 The Undertaker shall not Commence the Development unless and until the Converter Station Access Works have been completed and the County Council has issued the Converter Station Access Works Completion Certificate in respect of the whole of the Converter Station Access Works.

2. TEMPORARY CONSTRUCTION ACCESSES

- 2.1 The Undertaker shall not Commence the construction of any Temporary Construction Access unless and until it has entered into a Temporary Construction Access Highways Agreement with the County Council in relation to that Temporary Construction Access.
- 2.2 The Undertaker shall not permit the use of any Temporary Construction Access for the purposes of constructing the Development on the DCO Land unless and until that Temporary Construction Access has been completed and the County Council has issued the Temporary Construction Access Completion Certificate in relation to it.

3. HIGHWAY WORKS DESIGN CONSULTATION

- 3.1 Not less than two months prior to the anticipated date of the submission for approval of any Ladybridge Roundabout Highway Works and any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO, the Undertaker must issue to the County Council the proposed design details for Ladybridge Roundabout Highway Works and any parts of Work No.4 which overlap with the TCF Works, such design details to include:
- 3.1.1 proposed layout of the onshore HVDC cables;
 - 3.1.2 proposed depth of installation of the onshore HVDC cables; and
 - 3.1.3 indicative location of any joint bays, link boxes and link pillars
- and following submission of the relevant design details, the Undertaker shall use reasonable endeavours to discuss the design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) with the County Council to agree how those design details and the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) may be revised having regard to:
- 3.1.4 the respective project requirements for the Undertaker and the County Council in relation to the delivery of:
 - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
 - 3.1.5 the need for:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
 - (B) The TCF Works and any parts of Work No.4 which overlap with the TCF Works;
- to be delivered in a timely manner;
- 3.1.6 the nature and location of the constraints associated with:
- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
- 3.1.7 the anticipated sequence of the delivery of:
- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
 - (B) the TCF Works any parts of Work No.4 which overlap with the TCF Works;
- and;
- 3.1.8 the desire to avoid the design of:
- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works,
- increasing the cost of the delivery of Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works or the TCF Works and any parts of Work No.4 which overlap with the TCF Works (as is relevant) and the costs for the County Council associated with the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant).
- 3.2 Following the receipt of any comments from the County Council in accordance with paragraph 3.2 of Schedule 2 in relation to the design details submitted to the County Council by the Undertaker, the Undertaker shall have regard to those comments and use reasonable endeavours to amend the relevant design details to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) prior to the submission for approval of any Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO (as is relevant in the circumstances) and where the County Council do not provide comments within the time period provided for within paragraph 3.2 of Schedule 2 the Undertaker shall not be required to amend the relevant design details and the County Council shall not be able to seek the payment of any additional costs in relation to such works.
- 3.3 The Undertaker shall following receipt from the County Council of the estimated amount of any additional costs to the County Council in undertaking the delivery and the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works, use reasonable endeavours to agree the amount of such additional costs and the phasing for the payment of any such amount with the County Council as soon as reasonably practicable and the Undertaker may refer the matter to be determined in accordance with clause 13 where not agreed within three months of the County Council providing to the Undertaker the estimate of any additional costs in accordance with paragraph 3.3 of Schedule 2.

- 3.4 The Undertaker covenants to pay to the County Council the amount of any additional costs agreed with the County Council in accordance with paragraph 3.3 of this Schedule 1 or otherwise determined in accordance with clause 13 in accordance with the phasing for the payment of any such amount agreed with the County Council or otherwise determined in accordance with clause 13.

4. **HIGHWAYS TREES**

- 4.1 The Undertaker shall not remove any Highways Tree in connection with the construction of the Development on the DCO Land unless and until:

4.1.1 the Undertaker has submitted to the County Council a CAVAT Assessment for that Highways Tree for agreement; and

4.1.2 the CAVAT Assessment for that Highways Tree has been agreed by the County Council and the Undertaker.

- 4.2 The Undertaker must within not more than 20 Working Days of the date of removal of any Highways Tree on the DCO Land pay to the County Council the CAVAT Compensation Amount in accordance with the CAVAT Assessment agreed between the Undertaker and the County Council for that Highways Tree pursuant to paragraph 4.1.2 of this Schedule.

5. **TRAVEL PLAN AND TD PLAN MONITORING FEES**

- 5.1 The Undertaker must pay to the County Council the Travel Plan Monitoring Annual Fee and the TD Plan Monitoring Annual Fee prior to the Commencement of the Development and shall not Commence the Development unless and until such time as the Travel Plan Monitoring Fee and the TD Plan Monitoring Annual Fee has been paid to the County Council.

- 5.2 The Undertaker must pay to the County Council the Travel Plan Monitoring Annual Fee within not more than 20 Working Days following each anniversary of the Commencement Date until the Completion of Construction.

- 5.3 The Undertaker must pay to the County Council the TD Plan Monitoring Annual Fee within not more than 20 Working Days following each anniversary of the Commencement Date until the Completion of HCC Highways Works.

6. **AIL STREET WORKS**

- 6.1 The Undertaker covenants with the County Council not to undertake any AIL Street Works unless and until a minor works agreement pursuant to section 278 of the Highways Act 1980 has been entered into with the County Council in relation to those AIL Street Works.

SCHEDULE 2

COUNTY COUNCIL'S OBLIGATIONS

1. USE OF CONTRIBUTIONS

- 1.1 The County Council shall use the Travel Plan Monitoring Annual Fee, the TD Plan Annual Monitoring Fee and any CAVAT Compensation Amount paid to the County Council for the purposes for which they are paid only.

2. HIGHWAYS AGREEMENTS

- 2.1 The County Council covenants with the Undertaker to use reasonable endeavours to enter into:
- 2.1.1 the Converter Station Access Works Highways Agreement;
 - 2.1.2 any and all Temporary Construction Access Highways Agreements;
 - 2.1.3 any and all minor works agreement pursuant to section 278 of the Highways Act 1980 in respect of AIL Street Works.

3. HIGHWAY WORKS DESIGN CONSULTATION

- 3.1 Following the receipt of any design details from the Undertaker in accordance with paragraph 3.1 of Schedule 1, the County Council shall use reasonable endeavours to discuss those design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) with the Undertaker within not more than 20 Working Days to agree how those design details and the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) may be revised having regard to:
- 3.1.1 the respective project requirements for the Undertaker and the County Council in relation to the delivery of:
 - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
 - 3.1.2 the need for:
 - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; and
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works ;to be delivered in a timely manner;
 - 3.1.3 the nature and location of the constraints associated with:
 - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;
 - 3.1.4 the anticipated sequence of the delivery of the:
 - (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
 - (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works;and;
 - 3.1.5 the desire to avoid the design of:

- (A) the Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works; or
- (B) the TCF Works and any parts of Work No.4 which overlap with the TCF Works

increasing the cost of the delivery of Ladybridge Roundabout Highway Works and the Ladybridge Roundabout Development Works or the TCF Works and any parts of Work No.4 which overlap with the TCF Works (as is relevant) and the costs for the County Council associated with the future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant).

- 3.2 Following the discussion with the Undertaker in relation to the design details and how they relate to the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) in accordance with paragraph 3.1 of this Schedule 2, the County Council shall provide the Undertaker with comments in relation to the design details submitted to the County Council by the Undertaker within not more than 30 Working Days of the date of the submission of the relevant design details by the Undertaker to the County Council pursuant to paragraph 3.1 of Schedule 1 to confirm the amendments that are reasonably considered to be required to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) having regard to the amendments that may reasonably be made to the design of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works and where the County Council do not provide comments to the Undertaker within the time period provided for within this paragraph 3.2 the Undertaker shall not be required to amend the relevant design details and the County Council shall not be able to seek the payment of any additional costs in relation to such works.
- 3.3 Following the approval of any Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works pursuant to the requirements of the DCO (as is relevant in the circumstances) the County Council shall within not more than 30 Working Days provide to the Undertaker an estimate of any additional costs to the County Council in undertaking the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works **SUBJECT ALWAYS** to the need to take into account the amendments that may have reasonably been made to the design of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant) to minimise any additional cost to the County Council in respect of the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works.
- 3.4 The County Council shall use reasonable endeavours to agree with the Undertaker the amount of the additional costs to the County Council in undertaking the delivery and future maintenance of the Ladybridge Roundabout Development Works or the TCF Works (as is relevant in the circumstances) solely as a consequence of the approved design of the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works and the phasing for the payment of any such amount with the Undertaker as soon as reasonably practicable and the County Council may refer the matter to be determined in accordance with clause 13 where not agreed within three months of the County Council providing to the Undertaker the estimate of any additional costs in accordance with paragraph 3.3 of this Schedule 2.
- 3.5 The County Council covenants to keep the Undertaker informed of the progress made in relation to the design and proposed delivery of the Ladybridge Roundabout Development Works and the TCF Works prior to the submission of all design details by the Applicant in relation to the Ladybridge Roundabout Highway Works or any part of Work No.4 which overlaps with the TCF Works (as is relevant) and the County Council shall provide to the

Undertaker details of the proposed design for the Ladybridge Roundabout Development Works or any of the TCF Works not less than three months before such design details are anticipated to be approved and shall use reasonable endeavours to agree how those design details and the Ladybridge Roundabout Highway Works or any parts of Work No.4 which overlap with the TCF Works (as is relevant) may be revised having regard to the matters listed in paragraph 3.1 prior to the approval of those design details.

4. HIGHWAYS TREES

4.1 Where the County Council is requested to provide agreement of a CAVAT Assessment pursuant to paragraph 4.1.1 of Schedule 1 the County Council shall use reasonable endeavours within 10 Working Days of that request from the Undertaker to:

4.1.1 confirm the agreement of the CAVAT Assessment in writing to the Undertaker; or

4.1.2 give notice in writing to the Undertaker of the reasons why CAVAT Assessment cannot be agreed to by the County Council including any further information that it may require from the Undertaker

and where the County Council is unable to satisfy the requirements of paragraph 4.1.1 or paragraph 4.1.2 within 10 Working Days it shall provide the Undertaker with a reasonable explanation of the reasons for not being able to do so.

4.2 The procedure set out in paragraph 4.1 above shall be repeated following the provision of any updated CAVAT Assessment or the provision of any further information in relation to any CAVAT Assessment to address the reasons specified in the notice given by the County Council pursuant to paragraph 4.1.2 SAVE THAT nothing in this paragraph 4 shall restrict the ability of either party to refer any Dispute in respect of the CAVAT Assessment (including the CAVAT Compensation Amount) to an Expert for determination in accordance with clause 13.

SCHEDULE 3
BUS MITIGATION

1. BUS DELAY MITIGATION FUND

- 1.1 The Undertaker covenants not to Commence any part of the Onshore Cable Route unless and until it has paid the Bus Delay Mitigation Fund to the County Council and it shall notify the County Council in writing on the date of payment that such payment has been made whereupon the County Council shall pay the Bus Delay Mitigation Fund into the Account and provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.
- 1.2 Following the receipt of a Bus Delay Mitigation Request from a Bus Operator the County Council must verify the Bus Delay Mitigation Request to confirm whether a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management.
- 1.3 Where the County Council following the verification of a Bus Delay Mitigation Request confirm a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management the County Council shall provide a copy of the verified Bus Delay Mitigation Request to the Undertaker and the Undertaker may dispute the Bus Delay Mitigation Request within a period of 5 Working Days following the receipt of the verified Bus Delay Mitigation Request.
- 1.4 Where following the receipt of a verified Bus Delay Mitigation Request from the County Council the Undertaker disputes that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 5 Working Days and only where the dispute is not resolved between the parties within 5 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.
- 1.5 Where following the receipt of a verified Bus Delay Mitigation Request from the County Council:
- 1.5.1 the Undertaker confirms this is not disputed or otherwise does not dispute the Bus Delay Mitigation Request within a period of 5 Working Days following the receipt of the verified Bus Delay Mitigation Request from the County Council;
 - 1.5.2 the Undertaker does dispute in accordance with paragraph 1.3 but that dispute is resolved between the parties in accordance with paragraph 1.4 confirming a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management; or
 - 1.5.3 the Expert determines that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management;
- the County Council may draw down the amount of £2,885 from the Account (provided the Account is in credit to that sum) and provide those monies to the Bus Operator which is equivalent to the cost of providing an additional bus on the Specified Route for a period of 7 days.
- 1.6 Following the verification by the County Council of a Bus Delay Mitigation Request which confirms a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline as a result of Traffic Management and which:
- 1.6.1 the Undertaker does not dispute in accordance with paragraph 1.3;
 - 1.6.2 the Undertaker does dispute in accordance with paragraph 1.3 but that dispute is resolved between the parties in accordance with paragraph 1.4 confirming a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management; or

1.6.3 the Expert determines in relation to that Bus Delay Mitigation Request that a decrease in Start Point Compliance of 3 percent or more against the Specified Route Baseline is as a result of Traffic Management;

the County Council will provide to the undertaker the information provided to them by the Bus Operator evidencing in respect of each 7 day period that:

1.6.4 the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time; and

1.6.5 an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

and the Undertaker may dispute the information provided within a period of 5 Working Days following the receipt from the County Council and **FOR THE AVOIDANCE OF DOUBT** the information to be provided may relate to any period of time which is in excess of 7 days.

1.7 Where following the receipt of the information from the County Council pursuant to paragraph 1.6 the Undertaker disputes that information it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 5 Working Days and only where the dispute is not resolved between the parties within 5 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.

1.8 Where following the receipt of the information from the County Council pursuant to paragraph 1.6:

1.8.1 the Undertaker confirms this is not disputed or otherwise does not dispute information within a period of 5 Working Days following the receipt of the information from the County Council;

1.8.2 the Undertaker does dispute the information in accordance with paragraph 1.6 but that dispute is resolved between the parties in accordance with paragraph 1.7 confirming the 7 day periods where the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time and an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time; or

1.8.3 the Expert determines in relation to that information the 7 day periods where the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time and an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

the County Council may draw down the amount of £2,885 from the Account in respect of each 7 day period that is confirmed (provided the Account is in credit to that sum):

1.8.4 the Traffic Management Delay Journey Time exceeds the Scheduled Journey Time; and

1.8.5 an additional bus has been provided on the Specified Route as a result of the increase in journey time between the Traffic Management Journey Time and the Scheduled Journey Time,

and provide those monies to the relevant Bus Operator.

1.9 The County Council will promptly provide to the Undertaker a statement each six months following the payment of the Bus Delay Mitigation Fund and otherwise on reasonable written request to confirm the payments made out of the Account and the amount which is remaining in the Account (including the amount of any accrued interest).

1.10 The County Council shall notify the Undertaker where the amount Bus Mitigation Delay Fund held in the Account is an amount which is less than 10 percent of the full amount of the Bus Delay Mitigation Fund and the Undertaker shall in those circumstances pay the

Bus Delay Mitigation Contingency Fund to the County Council within 20 Working Days following the receipt of the notification from the County Council whereupon the County Council shall pay the Bus Delay Mitigation Contingency Fund into the Account provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.

- 1.11 The Undertaker shall notify the County Council of the Completion of Work No.4 and the County Council shall:
 - 1.11.1 confirm their agreement that the Completion of Work No.4 has occurred; or
 - 1.11.2 dispute that the Completion of Work No.4 has occurred,within not more than 10 Working Days following the receipt of the notification from the Undertaker.
- 1.12 Where the County Council dispute that the Completion of Work No.4 has occurred the parties shall use reasonable endeavours to agree whether the Completion of Work No.4 has occurred and either party may refer the dispute to be determined by the Expert in accordance with clause 13 where not agreed within 20 Working Days.
- 1.13 Within not more than 20 Working Days following:
 - 1.13.1 the County Council confirming their agreement that Completion of Work No.4 has occurred; or
 - 1.13.2 the Expert determining that the Completion of Work No.4 has occurred;and
 - 1.13.3 all claims in relation to draw down from the Account having been fully and finally settled,the County Council shall repay to the Undertaker any and all remaining amounts of the Bus Delay Mitigation Fund and/or the Bus Delay Mitigation Contingency Fund held in the Account (including any accrued interest).

2. **PATRONAGE MARKETING CONTRIBUTION**

- 2.1 Prior to the Completion of Work No.4 the Undertaker shall pay the Patronage Marketing Contribution to the County Council and shall notify the County Council in writing on the date of payment that such payment has been made whereupon the County Council shall pay the Patronage Marketing Contribution into the Account and provide the Undertaker with written notice of receipt and acknowledgement in the form attached at Appendix 8 to this Deed.
- 2.2 Where following the Completion of Work No.4 the County Council receive a Patronage Marketing Contribution Request from a Bus Operator which states that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes the County Council shall notify the Undertaker of the same and provide to the Undertaker the Patronage Marketing Contribution Request.
- 2.3 The Undertaker may dispute a Patronage Marketing Contribution Request within a period of 20 Working Days following the receipt of the Patronage Marketing Contribution Request.
- 2.4 Where the Undertaker disputes a Patronage Marketing Contribution Request it shall inform the County Council in writing providing reasons for the dispute and the parties shall use reasonable endeavours to resolve that dispute amicably within not more than 20 Working Days and only where the dispute is not resolved between the parties within 20 Working Days may either party refer dispute to the Expert for determination in accordance with clause 13.
- 2.5 Where:

- 2.5.1 the Undertaker confirms this is not disputed or otherwise does not dispute a Patronage Marketing Contribution Request in accordance with paragraph 2.3; or
- 2.5.2 the Undertaker does dispute the information in accordance with paragraph 2.3 but that dispute is resolved between the parties in accordance with paragraph 2.4 confirming the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes; or
- 2.5.3 the Expert determines in relation to a Patronage Marketing Contribution Request that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Bus Delay Mitigation Fund into the Account and the date of the confirmation that the Completion of Work No.4 has occurred in accordance with paragraph 1.11 or 1.12 is more than 2 percent less than the increase in bus patronage on the relevant Control Routes;

the County Council may draw down the Patronage Marketing Contribution from the Account and may pay this to the relevant Bus Operator(s) towards costs incurred in respect of pro-bus marketing campaigns following the Completion of Work No.4 and the County Council covenants with the Undertaker not to use the Patronage Marketing Contribution for any other purpose.

2.6 Where:

- 2.6.1 no Patronage Marketing Contribution Request is made by a Bus Operator within 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12; or
- 2.6.2 Patronage Marketing Contribution Requests are made by the Bus Operators within 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12 but it is subsequently determined by the Expert in relation to those that the increase in bus patronage on the relevant Specified Routes between the date of the payment of the Patronage Marketing Contribution into the Account and the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12 is not more than 2 percent less than the increase in bus patronage on the relevant Control Routes such that the Patronage Marketing Contribution is not eligible for draw down from the Account by the County Council;

the County Council shall repay to the Undertaker the Bus Patronage Contribution held in the Account (including any accrued interest) within not more than 20 Working Days of:

- 2.6.3 the date which is 3 months of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12; or
- 2.6.4 the date of determination by the Expert that the Patronage Marketing Contribution is not eligible for draw down in respect of all Patronage Marketing Contribution Requests made within 3 months of the of the date on which the Completion of Work No.4 is confirmed to have occurred in accordance with paragraph 1.11 or 1.12;

whichever is the later.

3. **CONFIDENTIALITY**

- 3.1 The Undertaker acknowledges that any and all information provided to the Undertaker by the County Council in relation to any Bus Delay Mitigation Request and any Patronage Marketing Contribution Request constitutes confidential information and the Undertaker covenants with the County Council that if required to do so by the County Council or the Bus Operators it shall enter into non-disclosure agreements and further covenants not to release any such information received from the County Council to any other person save

where necessary in connection with the referral of a matter for determination by an Expert in accordance with Clause 13.

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

EXECUTED as a **DEED** by)
affixing the common seal of)
HAMPSHIRE COUNTY)
COUNCIL in the presence of: -)

Authorised signatory

Name

Position

SIGNED as a **DEED** by)
AQUIND LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

APPENDIX 1
DCO LAND PLAN

APPENDIX 2
CONVERTER STATION ACCESS WORKS DRAWING

APPENDIX 3
CONVERTER STATION ACCESS WORKS HIGHWAYS AGREEMENT

APPENDIX 4
TEMPORARY CONSTRUCTION ACCESS WORKS HIGHWAYS AGREEMENT

APPENDIX 5
TCF WORKS PLAN

APPENDIX 6

LADYBRIDGE ROUNDABOUT DEVELOPMENT WORKS PLAN

APPENDIX 7

TEMPORARY CONSTRUCTION ACCESS TYPICAL LAYOUT DRAWING

APPENDIX 8
FORM OF NOTICE OF RECEIPT AND ACKNOWLEDGEMENT

ON THE LETTERHEAD OF THE COUNTY COUNCIL

[Date]]

Dear Sirs

We refer to the Deed of *[insert date of deed]* made between AQUIND Limited and the County Council ("the "Deed"), and in particular paragraph [x.x] of Schedule 3 thereto.

We hereby acknowledge receipt of the sum of *[insert amount of the contribution received]* (being the amount of the *[insert reference to contribution as defined in the Deed]* and confirm that this amount is held, and shall not be used other than, in accordance with and for the purposes specified in the Deed.

The County Council further acknowledges its obligations in paragraph[s] *[insert paragraph references relevant to the payment of the contribution received]* to repay those funds to AQUIND Limited (or its Successor) in the circumstances set out in that paragraph.

Yours faithfully,

For and behalf of Hampshire County Council

APPENDIX 9
SUPPLEMENTAL DEED

THIS SUPPLEMENTAL DEED is made the [] day of [] 20[]

BETWEEN:

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"); and
- (2) **HAMPSHIRE COUNTY COUNCIL** of Hampshire County Council, The Castle, Winchester, SO23 8UJ (the "**County Council**")

WHEREAS:

- (A) On [XXX] the Secretary of State for Business, Energy and Industrial Strategy made the Development Consent Order.
- (B) On [XXX] the Undertaker and the County Council entered into the Principal Agreement (as defined within this Deed) which contains development consent obligations relating to the Development.
- (C) Clause 4 of the Principal Agreement requires the Undertaker, upon acquiring any freehold interest or leasehold interest of seven years or more in the DCO Land, to enter into an agreement so as to bind and make such interests subject to the obligations, covenants and conditions contained in the Principal Agreement in so far as they relate to such interests and/or parts of the DCO Land and remain to be observed, performed and/or complied with.
- (D) The Undertaker acquired a [freehold interest/leasehold interest] in the Acquired Land (as defined within this Deed) on [].
- (E) The Parties have agreed to enter into this Deed so that the undertakings, obligations and covenants contained in the Principal Agreement bind the Undertaker's interest in the Acquired Land for the purposes of section 106 of the 1990 Act.

Operative Clauses

1. DEFINITIONS AND INTERPRETATION

1.1 In this Deed where the context so admits:

- 1.1.1 references to clauses, paragraphs and Schedules are references to those clauses, paragraphs and Schedules in the Principal Agreement; and
- 1.1.2 words and phrases whose meanings are not set out in clause 1.1 have the same meanings as in the Principal Agreement.

1.2 The following expressions shall have the meanings set out below:

- 1.2.1 "**Acquired Land**" means the land shown edged in [] on the plan annexed to this Deed;
- 1.2.2 "**Parties**" means the parties to this Deed and "Party" shall be construed accordingly; and

1.2.3 **"Principal Agreement"** means the Deed dated [] 202[x] made pursuant to section 106 of the 1990 Act which was entered into between (1) the Undertaker and (2) the County Council.

2. **LEGAL EFFECT**

- 2.1 *This Deed is supplemental to the Principal Agreement and relates to and binds the Undertakers [freehold/leasehold] interest in the Acquired Land and is made pursuant to the provisions of section 106 of the 1990 Act section 111 Local Government Act 1972 section 1 of the Localism Act 2011 and all other enabling powers.*
- 2.2 *This Deed contains development consent obligations for the purposes of the 1990 Act which are given by the Undertaker so as to bind the Undertaker's [freehold/leasehold] interest in the Acquired Land and are enforceable by the County Council as local planning authority.*
- 2.3 *The Undertaker agrees that as from the date hereof the development consent obligations and other covenants, agreements and provisions in the Principal Agreement given by the Undertaker to the County Council in so far as such development obligations and other covenants, agreements and provisions in the Principal Agreement relate to the Undertaker's interest in the Acquired Land and remain to be observed, performed and/or complied with shall be binding on the Undertaker's [freehold/leasehold] interest in the Acquired Land pursuant to section 106 of the 1990 Act as if the relevant development consent obligations and other covenants, agreements and provisions in the Principal Agreement were set out herein in full with the intent that the relevant development consent obligations and other covenants, agreements and provisions shall be enforceable by the County Council not only against the Undertaker but also against any successors in title to or assignees of the Undertaker and any person claiming through or under it an interest or estate in the Acquired Land as if the Undertaker had been an original covenanting party in respect of its interest in the Acquired Land when the Principal Agreement was entered into.*
- 2.4 *The County Council agrees that as from the date hereof the covenants in the Principal Agreement given by the County Council to the Undertaker shall be given to the Undertaker in relation to the Undertaker's interest in the Acquired Land as if the relevant covenants in the Principal Agreement were set out herein in full with the intent that the relevant covenants shall be enforceable by the Undertaker against the County Council in relation to the Undertaker's interest or estate in the Acquired Land.*
- 2.5 *This Deed comes into effect on the date of this Deed.*
- 2.6 *[The Mortgagee/Chargee/Beneficiary agrees that its security over the Undertaker's [freehold/leasehold] interest in the Acquired Land shall take effect subject to this Deed and the Principal Agreement PROVIDED THAT the Mortgagee/Chargee/Beneficiary shall otherwise have no liability under this Deed and the Principal Agreement and shall not be enforced against unless it takes possession of the whole or any part of the Acquired Interest or any part thereof in which case it too will be bound by the obligations in relation to that part of the Acquired Land as if it were a person deriving title from the Undertaker.] [WHERE APPLICABLE]*
- 2.7 *To the extent that any development consent obligations and other covenants, agreements and provisions in the Principal Agreement have already been satisfied in accordance with the terms of the Principal Agreement, such development consent obligations and other covenants, agreements and provisions shall be deemed to be similarly so satisfied under the terms of this Deed.*
- 2.8 *No person shall be liable for any breach of the obligations, covenants and conditions contained in this Deed in relation to any part of the Acquired Land in which they no longer have an interest (but without prejudice to the liability of such person for any breach occurring prior to its parting with such interest).*
- 2.9 *The Parties agree that any mortgagee or chargee (from time to time) of the whole or part of the Acquired Land will be bound by the obligations in this Deed and that the security of the mortgage or charge over the Acquired Land or any part of thereof shall take effect subject*

to this Deed PROVIDED THAT the mortgagee or chargee (from time to time) shall have no liability under this Deed unless it takes possession of the whole or part of the Acquired Land in which case it too will be bound by the obligations in relation to that part of the Acquired Land as a person deriving title from the Undertaker.

3. **LOCAL LAND CHARGE**

3.1 *This Deed is a local land charge and shall be registered as such by the County Council.*

4. **ENDORSEMENT**

4.1 *Promptly following completion of this Deed the County Council and the Undertaker shall endorse a memorandum of variation on the Principal Agreement in the following terms:*

"A Supplemental Deed dated [] and made between (1) AQUIND Limited (2) Hampshire County Council [and (3) [Mortgagee/Chargee/Beneficiary]] has been entered in relation to this Agreement."

5. **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

5.1 *A person who is not a party to this Deed shall not have any rights under, or in connection with, it by virtue of the Contracts (Rights of Third Parties) Act 1999.*

6. **JURISDICTION**

6.1 *The construction validity and performance of this Deed including its enforcement and any dispute or claim arising out of or in connection with it or its subject matter or information (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law and shall be subject to the jurisdiction of the English Courts.*

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

EXECUTED as a **DEED** by)
affixing the common seal of)
HAMPSHIRE COUNTY)
COUNCIL in the presence of: -)

Authorised signatory

Name

Position

SIGNED as a **DEED** by)
AQUIND LIMITED)
acting by two directors or one director)
and the company secretary:)

Director

Director/Secretary

SIGNED as a **DEED** by)
[MORTGAGEE/CHARGE/)
BENEFICIARY] acting by two)
directors or one director and)
the company secretary:)

Director

Director/Secretary