



AQUIND Limited

AQUIND INTERCONNECTOR

Signed Legal agreement with South Downs National Park Authority in respect of the Development Consent Obligation

The Planning Act 2008

Infrastructure Planning (Applications: Prescribed Forms and Procedure)

Regulations 2009 Regulation 5(2)(c)

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WSP

WSP House

70 Chancery Lane

London

WC2A 1AF

+44 20 7314 5000

www.wsp.com

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DATED 3rd March 2021

(1) AQUIND LIMITED

(2) SOUTH DOWNS NATIONAL PARK AUTHORITY

LEGAL AGREEMENT

made pursuant to section
65A Environment Act 1995
relating to the AQUIND Interconnector

Herbert Smith Freehills LLP

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THIS DEED made on
BETWEEN

3rd March

2021

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"), and
- (2) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH (the "**Authority**")

WHEREAS:

- (A) The Undertaker has made the Application
- (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 Authority is the local planning authority for the South Downs National Park which is in close proximity to the Converter Station Area and will be deemed to be a local planning authority for the purposes of section 106 of the 1990 Act in accordance with Article 8(4)(b) of the Development Consent Order
- (D) The Undertaker will be 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
- (E) If the Development Consent Order is granted in the final form proposed by the Undertaker, the Undertaker will be deemed to be a person interested in the DCO Land in accordance with Article 8(4)(a) of the Development Consent Order, and by virtue of Article 50 will not be authorised to commence the Development until a development consent obligation with the Authority has been completed in the form certified by the Secretary of State pursuant to the Development Consent Order
- (F) The Authority has agreed to enter into this Deed in order to provide the Undertaker with assurance that it will execute and authorise completion of a development consent obligation in the certified form at the Undertaker's request following the granting of the Development Consent Order

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,
"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,

“Authority”	means the South Down National Park Authority including successors to its statutory functions as the local planning authority,
“Certified Form”	means the form set out in the Appendix to this Deed,
“Commencement”	means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development and the words "Commence" and "Commenced" and cognate expressions shall be construed accordingly,
“DCO Land”	means the land within the Order limits for which the Authority is deemed by the Development Consent Order to be a planning authority,
“Development”	means those elements of the Project located in the UK and the UK Marine Area for which the DCO is granted,
“Development Consent Obligation”	means an agreement pursuant to section 106 of the 1990 Act between the Undertaker and the Authority in the Certified Form, subject only to such changes to references etc as are necessary to reflect the Development Consent Order as granted,
“Development Consent Order”	means the development consent order to be made pursuant to the Application and any variation properly made to that development consent order 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 7 to determine a Dispute between the parties to this Deed,
“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,
“Request”	means a written request from the Undertaker to the Authority to execute the Development Consent Obligation,
“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 or any person to whom the benefit of the Development Consent Order is lawfully transferred pursuant to powers in the Development Consent Order,

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 a reference to a clause, sub-clause, Schedule, recital or appendix is (unless the context otherwise requires) a reference to the relevant clause, sub-clause, Schedule, recital or appendix to this Deed,
- 1 2 5 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 6 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 7 where in this Deed the Authority is required to give any approval, consent or agreement then such approval, consent or agreement by the Authority shall not be deemed to have been given unless given in writing,
- 1 2 8 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 9 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 10 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 11 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 12 references to “notice” shall mean notice in writing,
- 1 2 13 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, and
- 1 2 14 the Interpretation Act 1978 shall apply to this Deed,

2 LEGAL EFFECT

2 1 This Deed is made pursuant to section 65A of the Environment Act 1995 and all other powers so enabling

3 CONDITIONALITY

3 1 The parties agree that the terms, conditions and provisions of this Deed shall have immediate operative effect when dated

4 **OBLIGATIONS IN RELATION TO EXECUTION OF THE DEVELOPMENT CONSENT OBLIGATION**

- 4 1 The Authority covenants with the Undertaker to lawfully execute the Development Consent Obligation and to return it to the Undertaker within ten (20) Working Days of a Request
- 4 2 The Authority confirms that the Undertaker has its irrevocable authority to complete the Development Consent Obligation following receipt of the Development Consent Obligation duly executed by the Authority
- 4 3 The Undertaker covenants to provide the Authority with the Development Consent Obligation or a certified copy thereof, within five (5) Working Days of completion of the Development Consent Obligation
- 4 4 Until such time as the Development Consent Obligation is completed, nothing in this clause shall prevent the Undertaker from serving additional Requests on the Authority PROVIDED THAT such further Requests shall only be made by the Undertaker in the case of an error in the form or execution of the Development Consent Obligation provided to the Authority with a previous Request

5 **RELEASE AND EXPIRY**

- 5 1 If the Development Consent Order expires without having been Commenced then this Deed shall forthwith determine and cease to have effect
- 5 2 Upon service by the Undertaker of confirmation to the Authority that the Development Consent Obligation has been completed, performance discharge or other fulfilment of the obligations of the Authority or the Undertaker under the terms of this Deed shall absolutely cease and determine save in respect of any antecedent breach

6 **RESOLUTION OF DISPUTES**

- 6 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
- 6 2 If the parties are unable to resolve the Dispute amicably pursuant to clause 6 1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination
- 6 3 The Notice must specify
- 6 3 1 the nature, basis and brief description of the Dispute,
- 6 3 2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen, and
- 6 3 3 the proposed Expert
- 6 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
- 6 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 6 4 to settle the appointment of the replacement Expert
- 6 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

- 6 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
- 6 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
- 6 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
- 6 10 Nothing in this Deed shall fetter any party's right to bring an action in Court

7 **NOTICES**

- 7 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 7 3
- 7 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
- 7 2 1 if delivered by hand, upon delivery at the relevant address, and
- 7 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
- 7 3 Subject to clause 7 4, the address, relevant addressee and reference for each party are
- 7 3 1 in the case of the Authority
- | | |
|--------------------|---|
| Address | South Down National Park Authority, Planning S106 Officer, South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH, with a copy also sent by e-mail to planning@southdowns.gov.uk |
| Relevant addressee | Mike Hughes, Major Planning Projects and Performance Manager |
| Reference | AQUIND Interconnector S106 |
- 7 3 2 For the Undertaker
- | | |
|--------------------|---|
| Address | AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to [REDACTED]@aquind.co.uk |
| Relevant addressee | Kirill Glukhovskoy – Managing Director |
| Reference | AQUIND Interconnector S106 |
- 7 4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause provided that such notification shall only be effective on
- 7 4 1 the date specified in the notification as the date on which the change is to take place, or
- 7 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

8. **NO FETTER ON DISCRETION**

- 8.1 Save as provided for in Clause 4 nothing herein contained or implied shall prejudice of affect the discretionary powers, duties and obligations of the Authority under all statutes, by-laws, instruments, orders and regulations in the exercise of its statutory functions.
- 8.2 Nothing in this Deed shall be taken to operate so as to fetter or prejudice the statutory rights, powers, discretions or duties of the Authority or the Undertaker.

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

- 9.1 The parties agree with one another to act reasonably and in good faith in the fulfilment of their respective obligations in this Deed.
- 9.2 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.

10. **LEGAL FEES AND COSTS**

- 10.1 The Undertaker shall pay on the date of this Deed to the Authority its reasonable legal costs properly incurred in the negotiation and completion of this Deed up to the sum of £800.

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

- 11.1 No person other than the Undertaker or the Authority (which for the avoidance of doubt shall include their successors) has any right to enforce any term of this Deed under the Contract (Rights of Third Parties) Act 1999.

12. **JURISDICTION**

- 12.1 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.
- 12.2 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).

13. **COUNTERPARTS**

- 13.1 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.

14. **DATE OF DELIVERY**

- 14.1 This Deed is delivered on the date of this Deed.

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 SOUTH)
DOWNS NATIONAL PARK)
AUTHORITY by: -)

[Redacted signature area]

Authorised signatory



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

Director

Director/Secretary

[Redacted signature area]

APPENDIX 1
CERTIFIED FORM OF DEVELOPMENT CONSENT OBLIGATION

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DATED _____ 2021

(1) AQUIND LIMITED

(2) SOUTH DOWNS NATIONAL PARK AUTHORITY

**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 is made on
BETWEEN.

2021

- (1) **AQUIND LIMITED** (company registration number 06681477) whose registered office is at OGN House, Hadrian Way, Wallsend NE28 6HL (the "**Undertaker**"), and
- (2) **SOUTH DOWNS NATIONAL PARK AUTHORITY** of South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH (the "**Authority**")

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 Authority is the local planning authority for the South Downs National Park which is in close proximity to the Converter Station Area and is deemed to be a local planning authority for the purposes of section 106 of the 1990 Act in accordance with Article 8(4)(b) of the Development Consent Order
- (D) The Undertaker is the undertaker for the purposes of the Development Consent Order. The Undertaker intends to construct, operate and maintain the Project in the UK as authorised by the Development Consent Order and is deemed to be a person interested in the Converter Station Area in accordance with Article 8(4)(a) of the Development Consent Order
- (E) 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,

"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,

"Authority" means South Downs National Park Authority,

"Commencement" means the carrying out of a material operation as defined in section 155 of the 2008 Act comprised in the Development other than operations consisting of Onshore Site Preparation

	Works and the terms "Commence" and "Commenced" and cognate expressions shall be construed accordingly,
"Commencement Date"	means the date of Commencement,
"Contributions"	means the Woodland Improvement Contribution, the Public Rights of Way Contribution and the Section 106 Agreement Monitoring Fee,
"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 Area"	means the area where the Converter Station is to be located shown edged red on Converter Station Area Plan,
"Converter Station Area Plan"	means the plan located at Appendix 1 of this Deed,
"Development"	means those elements of the Project for which the DCO is granted located in the Converter Station Area,
"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 12 to determine a Dispute between the parties to this Deed,
"Index"	means the All in Tender Price Index published by the Building Costs Information Service of the Royal Institute of Chartered Surveyors or any successor or amending body,
"Index Linked"	means increased (if applicable) in accordance with Clause 14,
"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,

	<ul style="list-style-type: none"> 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),
"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,
"Public Rights of Way Contribution"	means the sum of £20,000 Index Linked payable by the Undertaker to be applied towards improvements to the public rights of way network within two kilometres of the Converter Station only,
"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 Converter Station Land for the purposes of Section 106(1) of the 1990 Act,
"Section 106 Agreement Monitoring Fee"	means the sum of £5,000 payable by the Undertaker to be applied towards monitoring this Deed only,
"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,
"Woodland Improvement Contribution"	means the sum of £250,000 00 (two hundred and fifty thousand pounds) Index linked payable by the Undertaker in accordance with paragraph 1 of Schedule 1 and which is to be applied towards Woodland Improvements only,
"Woodland Improvements"	means <ul style="list-style-type: none"> a) the creation of new woodland planting, b) the enhancement of existing areas of woodland, including through new planting, c) measures to address the effects of Ash Dieback, and d) gapping up of hedgerows, within five kilometres of the Converter Station,
"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 Authority include the successors to the Authority's statutory functions as the 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 Authority is required to give any approval, consent or agreement then such approval, consent or agreement by the Authority 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 65A of the Environment Act 1995 and all other powers so enabling
- 2 2 The planning obligations contained within this Deed are enforceable by the Authority 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 Converter Station Area as bound under clause 3, and
- 2 2 2 the Undertaker's Successors to its Qualifying Interest in the Converter Station Area as bound under clause 3

3 LAND BOUND

- 3 1 Subject to clause 4 (Conditionality) and clause 7 (Release and Expiry) the planning obligations in this Deed bind the Converter Station Area
- 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 Converter Station Area 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 Converter Station Area (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 Converter Station Area from time to time or any person deriving title from such mortgagee or chargee unless and until any such party takes possession of the Converter Station Area (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 Converter Station Area (or any part thereof to which such obligation relates)

4 CONDITIONALITY

- 4 1 Subject to clauses 4 2 and 4 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
- 4 2 Where the Development Consent Order becomes the subject of any judicial review proceedings
- 4 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,
- 4 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 Authority pursuant to Schedule 1 and not spent or committed by the Authority shall be repaid in full within 20 Working Days of the final determination of such proceedings, and
- 4 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

- 4 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
- 4 3 1 proceedings by way of judicial review are finally determined
- 4 3 2 when permission to bring a claim for judicial review has been refused and no further application may be made,
- 4 3 3 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
- 4 3 4 when any appeal is finally determined and no further appeal may be made

5 **OBLIGATIONS OF THE UNDERTAKER**

- 5 1 The Undertaker covenants with the Authority to observe and perform or cause to be observed and performed the obligations on the part of the Undertaker contained in Schedule 1 at the times and in the manner provided therein
- 5 2 The Undertaker covenants with the Authority to serve written notice to the Authority at least twenty Working Days in advance of the proposed Commencement Date
- 5 3 Where the proposed Commencement Date provided in clause 5 2 does not take place, the Undertaker shall provide written notice to the Authority 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 **OBLIGATIONS OF THE AUTHORITY**

- 6 1 The Authority covenants with the Undertaker to observe and perform or cause to be observed and performed the obligations on the part of the Authority contained in Schedule 2 at the times and in the manner provided therein

7 **RELEASE AND EXPIRY**

- 7 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 Converter Station Area (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
- 7 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
- 7 3 Nothing in this Deed shall prohibit or limit the right to develop any part of the Converter Station Area 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
- 7 4 No Successor to the Undertaker shall be liable for any breach of any obligation in this Deed committed at a time when that Successor does not hold a Qualifying Interest in the Converter Station Area
- 7 5 Upon the performance discharge or other fulfilment of the covenants and obligations (or any of them) of the Undertaker, any Successor, or the Authority under the terms of this Deed such covenant, obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach

8 **LOCAL LAND CHARGES**

- 8 1 This Deed is a local land charge and may be registered as such by the Authority

9 **WAIVER**

- 9 1 No waiver (whether express or implied) by the Authority 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 Authority 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

10 **REMEDIES**

- 10 1 Where the Authority becomes aware of a breach or non-compliance with a provision of this Deed by the Undertaker, the Authority 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
- 10 2 The Undertaker shall within 10 Working Days of receiving a notice served pursuant to clause 10 1 give written notification to the Authority 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 it rejects the notice for the reason that no breach has occurred
- 10 3 The Authority and the Undertaker shall hold discussions about the notice of the breach where either party so requests
- 10 4 In the event of a dispute arising regarding any notice of breach served pursuant to clause 10 1, the matter shall be determined under clause 12

11 **CERTIFICATES OF COMPLIANCE**

- 11 1 The Authority will without delay upon request by the Undertaker certify compliance or partial compliance (as and if appropriate) with the provisions of this Deed

12 **RESOLUTION OF DISPUTES**

- 12 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 2 representatives from each party
- 12 2 If the parties are unable to resolve the Dispute amicably pursuant to clause 12 1, one party may by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination
- 12 3 The Notice must specify
- 12 3 1 the nature, basis and brief description of the Dispute,
- 12 3 2 the clause or paragraph of this Deed pursuant to which the Dispute has arisen, and
- 12 3 3 the proposed Expert
- 12 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
- 12 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 12 4 to settle the appointment of the replacement Expert
- 12 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

- 12.7 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.
- 12.8 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.
- 12.9 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.
- 12.10 Nothing in this Deed shall fetter any party's right to bring an action in Court.

13. NOTICES

- 13.1 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 13.3.
- 13.2 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:
- 13.2.1 if delivered by hand, upon delivery at the relevant address; and
- 13.2.2 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.

- 13.3 Subject to clause 13.4, the address, relevant addressee and reference for each party are:

- 13.3.1 in the case of the Authority:

Address: South Downs National Park Authority, S106 Officer, South Downs Centre, North Street, Midhurst, West Sussex, GU29 9DH with a copy also sent by e-mail to planning@southdowns.gov.uk.

Relevant addressee: Mike Hughes, Major Planning Projects and Performance Manager

Reference: AQUIND Interconnector S106

- 13.3.2 For the Undertaker:

Address: AQUIND Limited, 78 Pall Mall, London, SW1Y 5ES with a copy also sent by e-mail to [\[REDACTED\]@aquind.co.uk](mailto:[REDACTED]@aquind.co.uk).

Relevant addressee: Kirill Glukhovskoy – Managing Director

Reference: AQUIND Interconnector S106

- 13.4 Any party may give notice of a change to its name, address, or relevant addressee for the purposes of this clause 13 provided that such notification shall only be effective on:

- 13.4.1 the date specified in the notification as the date on which the change is to take place; or
- 13.4.2 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.

14. INDEXATION

- 14.1 Any sum which is referred to in this Deed as Index Linked and required to be paid by the Undertaker to the Authority 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 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 12.

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 Authority 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

- 18.1 The Undertaker shall pay on the date of this Deed to the Authority its reasonable legal costs properly incurred in the completion of this Deed.

19. INTEREST ON LATE PAYMENTS

- 19.1 Without prejudice to any other right remedy or power herein contained or otherwise available to the Authority 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 Authority 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

20 **VAT**

- 20 1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable in respect thereof
- 20 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 Authority shall have the right to issue a VAT invoice to the Undertaker in respect of any vatable supplies properly incurred under this Deed and the VAT shall be paid by the Undertaker accordingly following the receipt of a valid VAT invoice

21 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 21 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

22 **JURISDICTION**

- 22 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
- 22 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)

23 **COUNTERPARTS**

- 23 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

24 **DATE OF DELIVERY**

- 24 1 This Deed is delivered on the date of this Deed

**SCHEDULE 1
UNDERTAKER OBLIGATIONS**

1 **WOODLAND IMPROVEMENT CONTRIBUTION**

- 1 1 The Undertaker shall pay to the Authority the Woodland Improvement Contribution in the following instalments
- 1 1 1 £100,000 (one hundred thousand pounds) prior to the Commencement of the Development,
- 1 1 2 £100,000 (one hundred thousand pounds) on the first anniversary of the payment made in accordance with paragraph 1 1 1 of this Schedule 1, and
- 1 1 3 £50,000 (fifty thousand pounds) on the second anniversary of the payment made in accordance with paragraph 1 1 1 of this Schedule 1

2 **PUBLIC RIGHTS OF WAY CONTRIBUTION**

- 2 1 The Undertaker shall pay to the Authority the Public Rights of Way Contribution prior to the Commencement of the Development

3 **SECTION 106 AGREEMENT MONITORING FEE**

- 3 1 The Undertaker shall pay to the Authority the Section 106 Agreement Monitoring Fee prior to the Commencement of the Development

**SCHEDULE 2
AUTHORITY'S OBLIGATIONS**

1 USE OF CONTRIBUTIONS

- 1 1 The Authority shall use the Contributions paid to the Authority for the purposes for which they are paid only
- 1 2 The Authority will provide to the Undertaker an annual statement of how the Contributions paid by the Undertaker to the Authority prior to the date of each statement have been applied and the amount of the Contributions not yet applied and still held by the Authority together with the amount of any accrued interest
- 1 3 In the event the Authority has not spent or entered into a commitment to spend any part of the Contributions received by the Authority pursuant to this Deed within 10 years of the date of the payment made pursuant to paragraph 1 1 1 of Schedule 1 to this Deed the Authority shall repay to the Undertaker (here meaning the person who paid the Contributions or relevant part thereof) within 30 Working Days of the 10th anniversary of the payment made pursuant to paragraph 1 1 1 of Schedule 1 to this Deed or the relevant part thereof which remains unspent together with accrued interest (if any)

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

**SIGNED as a DEED by SOUTH)
DOWNS NATIONAL PARK)
AUTHORITY by -)**

Authorised Signatory

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



Director

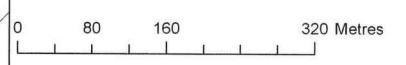
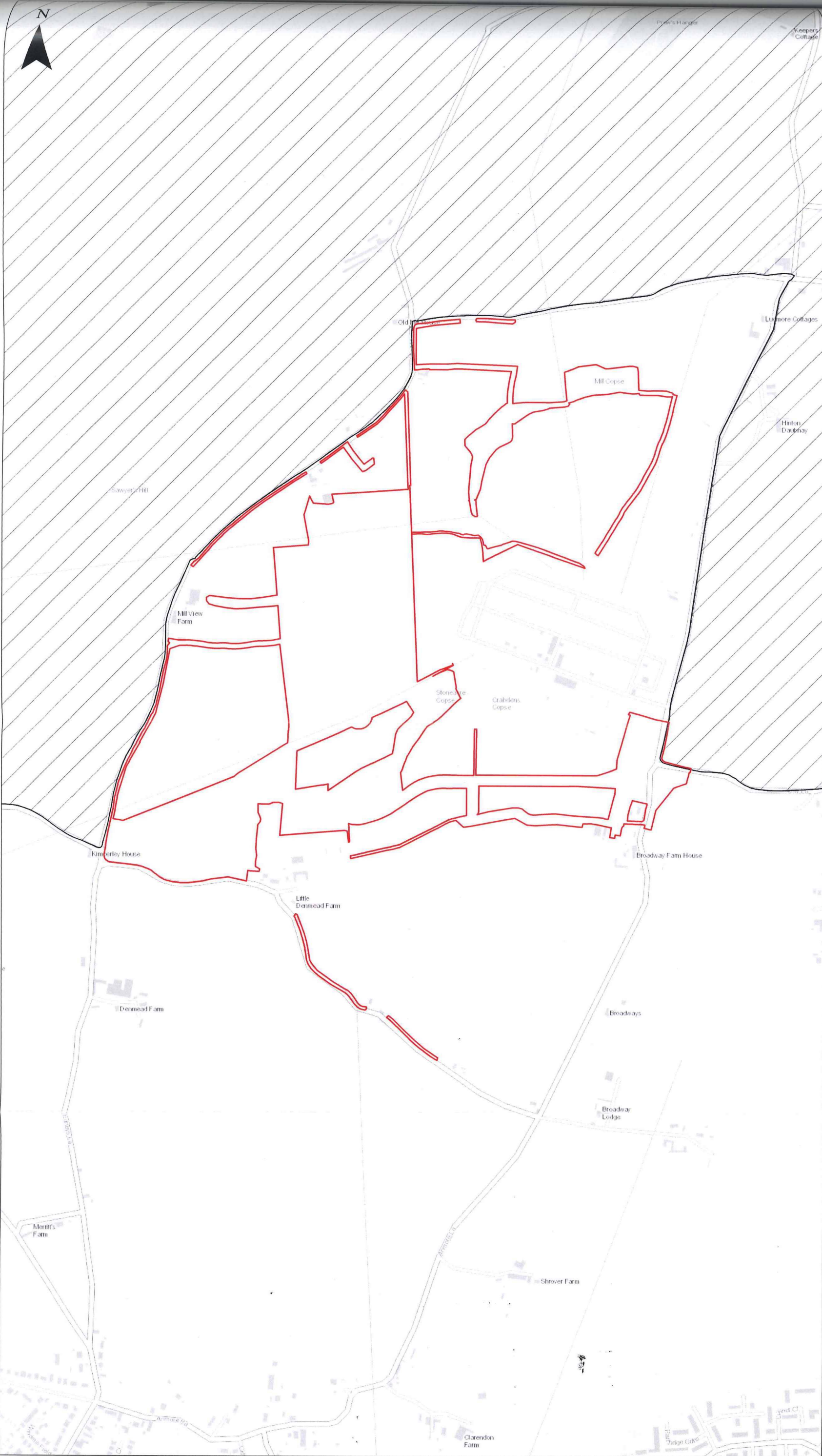
Director/Secretary

APPENDIX 1
CONVERTER STATION AREA PLAN



AQUIND Interconnector
Converter Station Area Plan

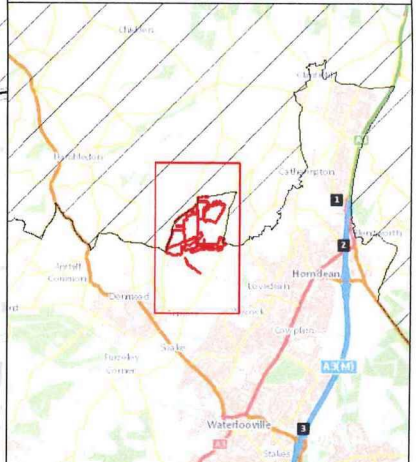
 South Downs National Park Administrative Area
 Converter Station Area



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Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 - Regulation 5(2)(i)

REV	DATE	BY	DESCRIPTION	CHK	APP
01	18/02/2021	AH	First Issue	DL	VB

DRAWING STATUS: FOR APPROVAL



WSP House, 70 Chancery Lane, London, WC2A 1AF, UK.
T+ 44 (0) 20 7314 5000
wsp.com

CLIENT:



PROJECT:

AQUIND Interconnector

TITLE:

Converter Station Area Plan
Sheet 1 of 1

SCALE AT A1	CHECKED	APPROVED
1:4,000	DL	VB
PROJECT NO:	DESIGNED	DRAWN
EN020022	AH	AH
		DATE
		18/02/2021
DRAWING NO:	REV/NO:	
EN020022-EM-7.5.26.1-Sheet1	01	

