

From: [Culot, Leon](#)
To: [Aquind Interconnector](#)
Cc: [Howard, Catherine](#)
Subject: Submission on behalf of AQUIND Limited [HSF-GBR01.FID473952]
Date: 15 January 2025 15:52:55
Attachments: [2024.01.13 - AQUIND Submission to DESNZ \[Consolidated\].pdf](#)
[Appendix 5 - WP mark-up of reciprocal protective provisions for inclusion in AQUIND Order \(CLEAN\).docx](#)

Dear Sir / Madam

We write on behalf of AQUIND Limited ("**AQUIND**").

In the context of the Rampion 2 Offshore Wind Farm application also before the Secretary of State for Energy Security & Net Zero for decision, AQUIND has made the attached submission regarding the interface of the AQUIND Interconnector and Rampion 2 Offshore Wind Farm. This responds to letters dated 12 December 2024 that were submitted to the Secretary of State in relation to each application by Rampion Extension Development Limited ("**RED**"), the promoter of the Rampion 2 scheme.

As explained in section 3 of the attached submission, AQUIND continues to consider it legally proper for a single set of protective provisions governing joint working arrangements between AQUIND and RED to be included solely in the Rampion 2 DCO. On this basis, the protective provisions submitted by RED to the Secretary of State for inclusion in the AQUIND DCO would not be necessary. However, AQUIND has submitted without prejudice drafting such that this is available should the Secretary of State conclude that there should be separate reciprocal provisions in each of the AQUIND and Rampion 2 DCOs.

For completeness, AQUIND's submission to the Secretary of State and its appendices, including the without prejudice form of provisions to be included in the AQUIND DCO for the protection of RED should the Secretary of State conclude this is necessary, are attached to this email and are submitted in relation to the determination of the AQUIND Interconnector DCO. A Word version of the aforementioned protective provisions (Appendix 5 to the submission) is also included for convenience.

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

Yours faithfully

Herbert Smith Freehills LLP

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AQUIND LIMITED

FURTHER REPRESENTATIONS IN RELATION TO THE RAMPION 2 OFFSHORE WIND FARM APPLICATION

1. INTRODUCTION

- 1.1 This statement is submitted to the Secretary of State on behalf of AQUIND Limited ("**AQUIND**"), the applicant for development consent for the AQUIND Interconnector (application reference EN020022) and an interested party in the present Application.
- 1.2 This statement is submitted by way of response to the letter dated 12 December 2024 submitted to the Secretary of State by Eversheds Sutherland (International) LLP on behalf of Rampion Extension Development Limited ("**RED**") (the "**Dec Submission**"), which was submitted in response to the submissions of this firm on behalf of AQUIND dated 20 November 2024. The Dec Submission appended RED's proposed form of protective provisions for the protection of the AQUIND Interconnector to be included in the Rampion 2 DCO.
- 1.3 A further letter dated 12 December 2024 was also sent to the Secretary of State in respect of the AQUIND Interconnector DCO which appended RED's proposed form of protective provisions for the protection of the Rampion 2 Offshore Wind Farm to be included in the AQUIND Interconnector DCO.
- 1.4 We provide comments below in respect of the Dec Submission with reference to the following previous submissions made on AQUIND's behalf:
 - 1.4.1 the submission of this firm on behalf of AQUIND dated 20 November 2024 to the Secretary of State and its appendices;
 - 1.4.2 AQUIND's Closing Statement [[REP6-321](#)]; and
 - 1.4.3 the representations submitted on behalf of AQUIND at Deadline 4 [[REP4-100](#)].

2. SEPARATION DISTANCES

- 2.1 As AQUIND has understood to be the case since submitting its Closing Statement at Deadline 6 [[REP6-321](#)] (though now subject to paragraph 4.2 below), the only matter which is outstanding between the parties is the extent of the separation distances required between RED and AQUIND's respective apparatus.
- 2.2 As AQUIND has explained in its previous submissions, the separation distances it is seeking incorporate the required hazard areas to ensure the safety of infrastructure and operatives, which are necessary to ensure that both the AQUIND Interconnector and the Rampion 2 Offshore Wind Farm can be safely constructed and operated. This will ensure the avoidance of material prejudice to AQUIND's ability to secure contractors to perform necessary repair and maintenance works in due course, to secure investment, to satisfy regulatory and contractual requirements associated with each project, and to obtain suitable insurances.
- 2.3 It is necessary and proper in circumstances where the detailed design of both projects is not yet known for a reasonable, realistic scenario of using tugged and anchored barges for repair and maintenance works, which is one of the standard approaches in this industry, to be adopted in setting the minimum separation distances between apparatus. It is also necessary to ensure those minimum separation distances are secured at the outset to provide necessary certainty of safe operations, and that any reductions of those are informed by the detailed design of the projects as those details become known.
- 2.4 The reasonable scenario of using the said barges must necessarily cater for: (i) the AQUIND Interconnector cables being installed towards the edge of the AQUIND Order limits, as would be permitted by the AQUIND Interconnector DCO and (ii) repair vessels being those that are likely to be readily available at short notice, rather than those that require the smallest operating space (which are less common and therefore less likely to

be available for any emergency repairs). Neither of these assumptions is unreasonable, and no reasoned evidence has been put forward by RED which establishes otherwise.

- 2.5 AQUIND reiterates (per paragraph 1.6 of its 20 November 2024 submission) that it agrees to lesser separation distances being adopted where this will not give rise to safety critical or operational issues for either project once detailed design has been progressed and this can be established. The protective provisions proposed by AQUIND in its 20 November 2024 submission expressly allow the parties to agree to waive or vary the separation distances for this reason.
- 2.6 RED's description of AQUIND's proposed separation distances as "*arbitrary*" and unjustified is also not accepted. Whilst the exact siting of the marine cables within the cable route for the AQUIND Interconnector is not known at this stage (which, as the Secretary of State will be aware, is entirely normal for projects of this nature), the AQUIND Order limits within which the cables will be located are known and AQUIND's proposed separation distances ensure safe construction and maintenance of the interconnector cables where they are installed within those limits, importantly ensuring the necessary hazard areas in respect of RED apparatus are properly accounted for.
- 2.7 It is also understood that RED is currently unable to confirm the exact locations of the relevant infrastructure of its proposed development, which is also typical for this stage of offshore wind farm development.
- 2.8 RED also states in the Dec Submission that AQUIND's proposed separation distances would sterilise "*significant parts*" of the Rampion 2 Order limits and thus "*be detrimental to the delivery*" of the Rampion 2 Offshore Wind Farm project. In that respect we wish to make clear that the difference between the parties is the incorporation of the necessary hazard areas around RED apparatus into the minimum required separation distances only. As detailed in the protective provisions submitted on behalf of AQUIND, a hazard area:

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

(a) 250 metres; or

(b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator,

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

- 2.9 As such, the main point of difference between the parties' positions is an increase in the lateral separation of RED fixed offshore structures from the overlap area for the two projects of circa 500 metres.
- 2.10 The concept and definition of a hazard area is taken directly from the *European Subsea Cables Association Guideline No. 6 – The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructure* dated 23 November 2023. This is the most recent and extant version of the relevant proximity guidelines applicable to stakeholders undertaking relevant activities in UK waters. As these are the proximity guidelines which apply to UK waters and persons undertaking relevant operations within them their requirements must be properly reflected in the protections for each project.
- 2.11 AQUIND does not accept that the incorporation of hazard areas into the separation distances for the RED fixed offshore structures means a "*significant part*" of the Rampion 2 Order limits as a whole are impacted by contrast to where they are not incorporated, or that their inclusion will jeopardise the delivery of the Rampion 2 Offshore Wind Farm as is asserted.
- 2.12 Moreover, RED has not evidenced to any extent the assertion that the inclusion of the hazard areas within the separation distances would prevent the building out of the Rampion 2 Offshore Wind Farm to the maximum generation capacity for which development consent is sought (see e.g. paragraph 1.5 of AQUIND's 20 November 2024 submission). Where RED (or indeed the Secretary of State) seeks to rely on this as a

reason to adopt separation distances which do not include the necessary hazard areas, RED would at the least need to have provided robust supporting evidence as to how the generation capacity of the wind farm would not be able to be achieved due to the hazard areas being incorporated into the minimum separation distances between fixed offshore structures.

- 2.13 However, even if such evidence could be provided, it should not come at the expense of the AQUIND Interconnector project as a whole to facilitate what AQUIND anticipates could only be at best a marginally higher capacity by decreasing separation areas by circa 500m in a limited area of the RED Order limits. As explained at paragraph 1.4 of AQUIND's 20 November 2024 submission, that would be the clear risk if RED were permitted to install apparatus closer than the minimum separation distances that the technical analysis drawing on relevant guidance has identified to be necessary to avoid safety critical and operations issues for the AQUIND Interconnector.
- 2.14 Finally, RED cites its Supplementary Technical Note at Appendix F to its Comments on Deadline 4 Submissions [[REP5-122](#)] in support of resisting the reasonable worst case scenario. This document does not warrant a departure from AQUIND's approach and must be read with regard to AQUIND's comments set out in paragraph 1.17 of AQUIND's Closing Statement [[REP6-321](#)].

3. **APPROACH TO PROTECTIVE PROVISIONS**

- 3.1 The Dec Submission asserts that it is "*inappropriate*" for the Rampion 2 DCO to include protective provisions that comprise a bilateral agreement relating to the Rampion 2 DCO and the AQUIND Interconnector DCO, though it is noted that no reason is provided as to why this would not be legally effective or is otherwise inappropriate. AQUIND maintains the position (as expressed in the letters from this firm dated 8 and 22 December 2023 to the then-Secretary of State in relation to the AQUIND Interconnector application) that a DCO is made as a statutory instrument and is therefore binding on all relevant persons. It is legally proper for a single set of protective provisions governing joint working arrangements between the parties to be included solely in the Rampion 2 DCO.
- 3.2 This notwithstanding, should the Secretary of State decide that separate reciprocal provisions are necessary, AQUIND wishes to ensure that the Secretary of State has a form of the protective provisions available which include separation distances that ensure the safe deliverability of the AQUIND Interconnector. We have therefore included at Appendices 3 – 6 to this statement clean and tracked changes mark-ups of the reciprocal protective provisions submitted by RED for inclusion in the Rampion 2 DCO and AQUIND DCO, respectively. These mark-ups align the reciprocal protective provisions with the protective provisions submitted by AQUIND on 20 November 2024, as well as correcting a number of errata that were noted in RED's submitted provisions. These provisions are provided on a without prejudice basis to AQUIND's primary position stated at paragraph 3.1 above.
- 3.3 In addition, having produced the reciprocal protective provisions referred to above this firm has also undertaken a review of drafting consistency with the protective provisions submitted with AQUIND's 20 November 2024 submission. A further revised version of the protective provisions submitted with AQUIND's 20 November 2024 submission are included at Appendices 1 – 2 (in clean and tracked changes) which address non-substantive points of drafting consistency and clarity.

4. **CONTENT OF PROTECTIVE PROVISIONS**

- 4.1 The Dec Submission notes the revised protective provisions submitted with AQUIND's 20 November 2024 submission but does not engage with them save to dismiss them in full as "*unacceptable*" due to their incorporation of the necessary hazard areas within the separation distances. As above, these separation distances are the minimum safe distances required having regard to the relevant guidance, best practice and technical analysis. RED's proposed protective provisions would not provide the necessary separation

distances to ensure the safe construction and operation of the AQUIND Interconnector, as explained above and in AQUIND's previous submissions.

- 4.2 By way of specific additional comment on RED's proposed form of protective provisions, AQUIND is disappointed to note that RED's provisions only prohibit disposal of natural and/or dredged material produced during the Rampion 2 works within 250 metres of the 'Overlap Area' (i.e. the AQUIND Order limits) (paragraph 3(7)). AQUIND had understood for some time that a limit of 500 metres from the Order limits was agreed with RED, as was noted in AQUIND's Closing Statement [REP6-321] (paragraphs 1.3 – 1.4) and shown unamended by Eversheds Sutherland within the draft Cooperation Agreement at Appendix 2 to AQUIND's 20 November 2024 submission (clause 4.2.3). The need for a 500 metre distance for sediment disposal was explained in section 5 of the Position Statement appended to AQUIND's Deadline 4 submission [REP4-100].

5. CONCLUDING REMARKS

- 5.1 For the above reasons, which reiterate those in AQUIND's previous submissions, AQUIND requests that the form of protective provisions at Appendix 1 to this statement be included in the Rampion 2 DCO, if granted.
- 5.2 Should the Secretary of State conclude that separate and reciprocal provisions are necessary in both the Rampion 2 DCO and AQUIND Interconnector DCO, AQUIND requests that the forms of protective provisions at Appendices 3 and 5 of this statement are included in each respective DCO.
- 5.3 Adopting separation distances which incorporate the necessary hazard areas will ensure the safe and effective construction, operation and maintenance of the AQUIND Interconnector whilst preserving RED's ability to build out the Rampion 2 Offshore Wind Farm, by contrast to the significant uncertainty that would be introduced for the deliverability of the AQUIND Interconnector where the necessary hazard areas are not incorporated.

Herbert Smith Freehills LLP
on behalf of AQUIND Limited

13 January 2025
21992/31049436

Appendices

Appendix 1 – clean revised version of the protective provisions submitted with AQUIND's 20 November 2024 submission for inclusion in the Rampion 2 DCO

Appendix 2 – tracked changes revised version of the protective provisions submitted with AQUIND's 20 November 2024 submission for inclusion in the Rampion 2 DCO

Appendix 3 – clean without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the Rampion 2 DCO for the protection of AQUIND

Appendix 4 – tracked changes without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the Rampion 2 DCO for the protection of AQUIND

Appendix 5 – clean without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the AQUIND DCO for the protection of RED

Appendix 6 – tracked changes without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the AQUIND DCO for the protection of RED

APPENDIX 1

Clean revised version of the protective provisions submitted with AQUIND's 20 November 2024 submission for inclusion in the Rampion 2 DCO

Part 8
FOR THE PROTECTION OF AQUIND AND RED

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of AQUIND and have effect unless otherwise agreed in writing between RED and AQUIND (together, the "parties").

2. In this Part of this Schedule —

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

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

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

"AQUIND Order" means The AQUIND Interconnector Order applied for on 14 November 2019 as it is made by the Secretary of State;

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

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

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

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

"Commencement" means —

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

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

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

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

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

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

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

"Maintenance" means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

"MMO" means the Marine Management Organisation;

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

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

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

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

- (c) clauses to define the liabilities and rights of both AQUIND and RED;
- (d) exclusion/inclusion of consequential losses;
- (e) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- (f) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (g) clearly defined limits of the area to which the Proximity Agreement applies;
- (h) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (i) future Maintenance requirements of both AQUIND and RED which may include the method by which notification of operations by each is given to the other;

- (j) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (k) provision of representatives from one entity to the other entity's operations and their rights, obligations and limitation of their authority;

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

"Proximity Zone" has the meaning given in paragraph 4(5) hereof;

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

"RED Order" means this Order;

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

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

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

"RED Works" means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to the RED Order; and
 - (b) Work Nos. 3 and 4 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to the RED Order,
- in each case in so far as such works are within the Overlap Area or with a Hazard Area with an outer edge that is within 750 metres from the boundary of the Overlap Area at any point;

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

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

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

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

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

AQUIND Works

3. AQUIND shall—

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

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

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

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

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

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

(7) provide RED with—

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

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

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

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

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

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

RED Works

4. RED shall—

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

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

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

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

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

- (a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and
- (b) with a Hazard Area with an outer edge that is between 250 - 750 metres of the boundary of the Overlap Area (the "Proximity Zone") except where the conditions in (i) and (ii) of this subparagraph (5)(b) are met:
 - (i) where located on the same side of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metres;
 - (ii) where located on opposite sides of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres,

unless both parties agree to waive or vary those conditions;

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

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

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

(9) provide AQUIND with—

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

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

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

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

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

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

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

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

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

Crossing Agreements and Proximity Agreements

5. AQUIND and RED—

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

- (a) in the event that the RED Works progress in advance of the AQUIND Works, agreement regarding the interface of the Array Cables and the AQUIND Works prior to the construction of the Array Cables in order that such crossings do not prejudice the operation or Maintenance of the Array Cables and shall not prevent the construction of the AQUIND Works or give rise to interference with the operation or Maintenance of the AQUIND Works once constructed;
- (b) in the event that the AQUIND Works progress in advance of the RED Works, agreement regarding the interface of the AQUIND Works by the Array Cables and the interface of the AQUIND Works and the Array Cables in order that the construction of such crossings by the Array Cables shall not be prevented or give rise to interference with the operation or Maintenance

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

- (c) in the event that the AQUIND Works and the RED Works progress simultaneously, agreement for the provision of the crossing points of the AQUIND Works and the Array Cables to ensure that each of the AQUIND Works and the Array Cables can be constructed without preventing the construction of the other and shall not prejudice the operation or Maintenance of the AQUIND Works or the Array Cables;

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

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

(4) will co-operate to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works within the Proximity Zone.

Costs and Expenses

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

- (a) AQUIND shall be responsible for RED's costs in respect of —
 - (i) approving the AQUIND Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND Works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed AQUIND Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed AQUIND Pre-Construction Information;
 - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works;
- (b) RED shall be responsible for AQUIND's costs in respect of —
 - (i) approving the RED Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the RED Works will be undertaken;
 - (iii) any works which are required to the AQUIND Works to carry out the construction of the RED Works in accordance with the agreed RED Pre-Construction Information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being undertaken in accordance with the agreed RED Pre-Construction Information;
 - (iv) any works which are required to the AQUIND Works to carry out the decommissioning of the RED Works in accordance with the agreed decommissioning information, including any costs of AQUIND incurred in undertaking works to AQUIND Works to facilitate the RED Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) the reasonable costs for AQUIND watching and inspecting the construction and decommissioning of the RED Works;

- (c) When incurring costs, expenses or losses which are payable by the other AQUIND and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

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

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

Dispute Resolution

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

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

(3) The Expert shall—

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

Confidential Information

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

Indemnities and Insurance

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

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

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

(4) Nothing in this paragraph 10 is intended and nor shall it exclude or restrict liability for:

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

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

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

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

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

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

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

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

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

Effect of Protective Provisions

11. This Part of this Schedule will cease to have effect if any of the following events occur:

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

Notices

12.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to the Order and shall be deemed to be sufficiently served if addressed to AQUIND, or RED, as the

case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 12 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 12(1) shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by RED to AQUIND in accordance with this paragraph 12 shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to kirill.glukhovskoy@aquind.co.uk.

(4) Any notice sent by RED in accordance with this paragraph 12 shall be addressed to The Company Secretary and Project Lead Umair Patel, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB and shall also be sent to RED by e-mail to umail.patel@rwe.com.

APPENDIX 2

**Tracked changes revised version of the protective provisions submitted with AQUIND's 20
November 2024 submission for inclusion in the Rampion 2 DCO**

Part 8

FOR THE PROTECTION OF AQUIND AND RED

Application

1. Subject to paragraph 10, ~~the~~ provisions of this Part of this Schedule apply for the protection of AQUIND ~~Limited~~ and have effect unless otherwise agreed in writing between RED and AQUIND ~~Limited~~ (together, the "parties").

2. In this Part of this Schedule —

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

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

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

"AQUIND ~~O~~order" means The AQUIND Interconnector Order ~~202[X]~~ applied for on 14 November 2019 as it is made by the Secretary of State;

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

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

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

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

"Commencement" means —

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

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

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

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

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

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

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

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

"Maintenance" means ~~maintain~~ maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

"MMO" means the Marine Management Organisation;

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

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

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

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

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

- (c) clauses to define the liabilities and rights of both AQUIND and RED;
- (d) exclusion/inclusion of consequential losses;
- (e) details of financial compensation arrangements for each of AQUIND and RED where applicable relating to specific arrangements;
- (f) indemnity provisions as appropriate to regulate respective liability in construction interface;
- (g) clearly defined limits of the area to which the Proximity Agreement applies;

- (h) details of how proximate work would be carried out, to include method statements provided by the entity carrying out the work and accepted by the other entity as suitable prior to work proceeding;
- (i) future Maintenance requirements of both AQUIND and RED which may include the method by which notification of operations by each is given to the other;
- (j) definition of the expiry of the Proximity Agreement (for example, at the decommissioning of one or other of the relevant assets);
- (k) provision of representatives from one entity to the other entity's operations and their rights, obligations and limitation of their authority;

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

"Proximity Zone" has the meaning given in paragraph 4(5) hereof;

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

- ~~(a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage; and~~
- ~~(b)(a) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;~~

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

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

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

"RED Order" means this Order;

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

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

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

"RED Works" means—

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

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

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

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

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

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

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

AQUIND Works

3. AQUIND shall—

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

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

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

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

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

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

(7) provide RED with—

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

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

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

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

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

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

RED Works

4. RED shall—

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

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

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

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

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

- (a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and
- (b) with a Hazard Area with an outer edge that is between 250 ~~metres~~ 750 metres of the boundary of the Overlap Area (the "Proximity Zone") except where the conditions in (i) and (ii) of this sub-paragraph (5)(b) ~~below~~ are met:

- (i) ~~where located on the same side of the Overlap Area within the same Proximity Zone~~, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metres;
- (ii) ~~where located on opposite sides of the Overlap Area, within the opposite Proximity Zone either side of the Overlap Area~~, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres,

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

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

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

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

(9) provide AQUIND with—

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

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

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

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

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

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

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

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

Crossing Agreements and Proximity Agreements

5. AQUIND and RED—

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

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

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

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

(4) will co-operate to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works within the Proximity Zone.

Costs and Expenses

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

- (a) AQUIND shall be responsible for RED's costs in respect of —
 - (i) approving the AQUIND Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND ~~works~~ Works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed AQUIND Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed AQUIND Pre-Construction Information;
 - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND

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

Consultation and Co-operation

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

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

Dispute Resolution

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

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;

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

Confidential Information

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

Indemnities and Insurance

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

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

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

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

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

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

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

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

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

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

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

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

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

Effect of Protective Provisions

11. This Part ~~8 of this~~ Schedule ~~10 to the RED Order shall~~ will cease to ~~be of~~ have effect if any of the following events occur ~~where~~:

- (a) the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide RED with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Part ~~8 of this~~ Schedule ~~10 to the RED Order~~ shall cease immediately on the date of delivery of the notice in accordance with paragraph 12 below;

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

Notices

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

(2) Any notice sent in accordance with ~~this~~ paragraph 12(1) shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

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

(4) Any notice sent by RED in accordance with this paragraph 12 shall be addressed to [The Company Secretary and Project Lead Umair Patel, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB \[XXX\]](#) and shall also be sent to RED by e-mail to umail.patel@rwe.com ~~[XXX]~~.

APPENDIX 3

Clean without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the Rampion 2 DCO for the protection of AQUIND

Part 8

FOR THE PROTECTION OF AQUIND

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of AQUIND and have effect unless otherwise agreed in writing between the undertaker and AQUIND (together, the “parties”).

2. In this Part of this Schedule—

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

“AQUIND Order” means The AQUIND Interconnector Order applied for on 14 November 2019 as it is made by the Secretary of State;

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in the AQUIND Order;

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

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

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

“Commencement” means the first carrying out of any licensed marine activities comprised within the RED Works, excluding any non-intrusive pre-construction surveys;

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

“Crossing Agreement” means any agreement entered into by the parties pursuant to paragraph 4 hereof for—

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

“Hazard Area” means an area around a fixed offshore structure with a radius equal to the greater of—

- (a) 250 metres; or

(b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator,

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

“Maintenance” means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works crosses the AQUIND Order Limits;

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

“Order Limits” has the same meaning as is given to the term ‘Order limits’ in this Order;

“Overlap Area” means the extent to which the Order Limits overlap the AQUIND Order Limits;

“Post-Construction Information” means the post-construction monitoring plan, the updated cable monitoring plan, the report setting out the details of the Cable Protection and the close out report, as required in accordance with paragraphs 18, 20, 22 and 24 of Part 2 to Schedule 11 and/or Schedule 12 to this Order;

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

“Proximity Agreement” means any agreement entered into by AQUIND and the undertaker pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

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

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

“Proximity Zone” has the meaning given in paragraph 3(5) hereof;

“RED Works” means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to this Order; and
 - (b) Work Nos. 3 and 4 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to this Order;
- in each case in so far as such works are within the Overlap Area or with a Hazard Area with an outer edge that is within 750 metres from the boundary of the Overlap Area at any point;

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

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

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

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

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

For the Protection of AQUIND Interconnector

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the RED Works submit to AQUIND and use all reasonable endeavours having regard to the Proximity Guidelines to agree with AQUIND the Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the construction of AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed, within not more than 2 months from the date on which the Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the parties), and where the Pre-Construction Information has not been agreed with AQUIND within 2 months from the date on which the Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

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

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

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

(5) not place any Wind Turbine Generators or Offshore Substations comprised in the RED Works—

- (a) such that the outer edge of the Hazard Area is closer than 250 metres to the Overlap Area at any point; and
- (b) with a Hazard Area with an outer edge that is between 250 - 750 metres of the boundary of the Overlap Area (“the Proximity Zone”) except where the conditions in (i) and (ii) of this subparagraph (6)(b) are met—

- (i) where located on the same side of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 2000 metres;
 - (ii) where located on opposite sides of the Overlap Area, the minimum separation distance between the closest points of the outer edges of the Hazard Areas is 1250 metres;
- unless both parties agree to waive or vary those conditions;
- (6) not place any Transmission Cables comprised in the RED Works within 250 metres of the boundary of the Overlap Area;
- (7) unless otherwise agreed between the parties not place any RED Works (excluding Array Cables) within the area which is defined by the radius which is equal to 700 metres from the outward point of any Necessary Crossing;
- (8) not make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to this Order within 500 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;
- (9) provide AQUIND with—
- (a) not less than 10 Working Days prior written notification of the Commencement of the RED Works;
 - (b) notification of the completion of construction of the RED Works as soon as is reasonably practicable and not later than 48 hours of completion of construction; and
 - (c) not less than 5 Working Days notice of any planned Maintenance works to the RED Works.
- (10) provide to AQUIND the Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works;
- (11) Maintain the RED Works in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair;
- (12) prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works—
- (a) inform AQUIND of the Safety Zones proposed to be applied for;
 - (b) agree with AQUIND (both AQUIND and the undertaker acting reasonably) the terms of dispensation from the enforcement of that Safety Zone so that it does not prevent access to any part of the AQUIND Order Limits in connection with the construction, Maintenance and decommissioning of the AQUIND Works or restrict to any extent the construction, Maintenance and decommissioning of the AQUIND Works prior to any such Safety Zone being applied for or promoted; and
 - (c) otherwise inform AQUIND of any and all Safety Zones applied for which may impact upon the Overlap Area and of the publication of any notice of a proposed Safety Zone which may impact upon the Overlap Area as soon as is reasonably practicable following their submissions or publication (as is relevant in the circumstances);
- (13) not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours having regard to the Proximity Guidelines to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed information;
- (14) where received from AQUIND use all reasonable endeavours having regard to the Proximity Guidelines to agree with AQUIND as soon as reasonably practicable any decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact the RED Works; and
- (15) allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and

inspect the construction, Maintenance and decommissioning of the RED Works.

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with AQUIND and—

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

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

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

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

(4) both parties will co-operate to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works within the Proximity Zone.

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

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

Consultation and Co-operation

- 6.—(1) AQUIND and the undertaker shall act in good faith to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule and otherwise do nothing to hinder or prevent the other party from the proper execution of any right or obligation allowed or required under this Part of this Schedule or the carrying out of the AQUIND Works or the RED Works.
- (2) Where any approval, agreement, consent or confirmation of AQUIND or the undertaker is required pursuant to the terms of this Part of this Schedule (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.
- (3) AQUIND must use all reasonable endeavours having regard to the Proximity Guidelines to agree with the undertaker the Pre-Construction Information submitted to AQUIND pursuant to paragraph 3(1) hereof for the RED Works in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed.

Dispute Resolution

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

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph 7.

Confidential Information

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

Indemnity and Insurance

9.—

- (1) The undertaker shall indemnify AQUIND in respect of all costs and expenses incurred (including

legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by the undertaker that is in breach of this Part of this Schedule.

(2) Nothing in this Part of this Schedule imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party pursuant to this Part of this Schedule must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this paragraph 9 is intended and nor shall it exclude or restrict liability for—

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

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

(5) AQUIND shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by AQUIND, and any action taken by AQUIND pursuant to this paragraph 9 will be at the reasonable cost of the undertaker.

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

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

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

Effect of Protective Provisions

10.—(1) This Part of this Schedule will cease to have effect if any of the following events occur—

- (a) the application for the AQUIND Order is withdrawn, in which case AQUIND shall provide the undertaker with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Part of this Schedule shall cease immediately on the date of delivery of the notice in accordance with paragraph 11 below;
- (b) the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND not choosing to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part of

- this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
 - (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
 - (e) if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires.

Notices

11.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to this Order and shall be deemed to be sufficiently served if addressed to AQUIND, or the undertaker, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 11 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11(1) shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to AQUIND in accordance with paragraph 11(1) shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to [REDACTED]

(4) Any notice sent by AQUIND to the undertaker in accordance with paragraph 11(1) shall be addressed to The Company Secretary and Project Lead [REDACTED] Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire SN5 6PB and shall also be sent to the undertaker by e-mail to [REDACTED]

APPENDIX 4

Tracked changes without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the Rampion 2 DCO for the protection of AQUIND

Part 8

FOR THE PROTECTION OF AQUIND-~~INTERCONNECTOR~~

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of AQUIND ~~Limited~~ and have effect unless otherwise agreed in writing between ~~RED~~ the undertaker and AQUIND ~~Limited~~ (together, the “parties”).

2. In this Part of this Schedule—

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

“AQUIND Order” means The AQUIND Interconnector Order applied for on 14 November 2019 as it is made by the Secretary of State;

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in the AQUIND Order;

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

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

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

“Commencement” means the first carrying out of any licensed marine activities comprised within the RED Works, excluding any non-intrusive pre-construction surveys;

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

“Crossing Agreement” means any agreement entered into by the pParties pursuant to paragraph 45 hereof for—

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

“Hazard Area” means an area around a fixed offshore structure with a radius equal to the greater of—

- (a) 250 metres; or

(b) (in the case of a Wind Turbine Generator) the diameter of the rotor of that Wind Turbine Generator,

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

“Maintenance” means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works crosses the AQUIND Order Limits;

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

~~“Offshore Substation Interconnector Cable” means Transmission Cables connecting Offshore Substations comprised in the RED Works;~~

“Order Limits” has the same meaning as is given to the term ‘Order limits’ in this Order;

“Overlap Area” means the extent to which the Order Limits overlap the AQUIND Order Limits;

“Post-Construction Information” means the post-construction monitoring plan, the updated cable monitoring plan, the report setting out the details of the Cable Protection and the close out report, as required in accordance with paragraphs 18, 20, 22 and 24 of Part 2 to Schedule 11 and/or Schedule 12 to this Order;

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

“Proximity Agreement” means any agreement entered into by AQUIND and the undertaker pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

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

~~“Proximity Zone” has the meaning given in paragraph 4.2;~~ “Proximity Guidelines” means the European

[Subsea Cables Association Guideline No.6 – The Proximity of Offshore Renewable Energy Installations & Subsea Cable Infrastructures dated 23 November 2023 \(or as may be amended or replaced from time to time\)](#);

[“Proximity Zone” has the meaning given in paragraph 3\(5\) hereof;](#)

“RED Works” means—

- (a) Work Nos. 1 and 2 and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 11 to ~~the RED~~[this](#) Order; and
- (b) Work Nos. 3 and 4 ~~of~~ and any associated development or ancillary works in connection with those works described at paragraph 3 of Part 1 of Schedule 12 to ~~the RED~~[this](#) Order;
in each case in so far as such works are within the Overlap Area [or with a Hazard Area with an outer edge that is](#) ~~and~~ within 750 metres from the boundary of the Overlap Area [at any point](#) ~~(or such varied distance as may be agreed by the Parties acting reasonably)~~;

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

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

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

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

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

For the Protection of AQUIND Interconnector

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the RED Works submit to AQUIND and use all reasonable endeavours [having regard to the Proximity Guidelines](#) to agree with AQUIND the Pre-Construction Information in respect of such part of the RED Works in the interest of not adversely impacting the construction of AQUIND Works or the operation and ~~M~~aintenance of the AQUIND Works once constructed, within not more than 2 months from the date on which the ~~RED~~ Pre-Construction Information is submitted to AQUIND (or such longer period as may otherwise be agreed by the ~~p~~Parties ~~acting reasonably~~), and where the Pre-Construction [Information](#) has not been agreed with AQUIND within 2 months from the date on which the Pre-~~Construction~~ Information is submitted [to AQUIND by the undertaker](#) (or such longer period as may otherwise be agreed by the ~~p~~Parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

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

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

~~(4) where received from AQUIND pursuant to Schedule 13 Part 7 to the AQUIND Order, to use all reasonable endeavours to agree with AQUIND the AQUIND pre-construction information for the AQUIND Works in the interest of not adversely impacting the construction of the RED Works or the operation and maintenance of the RED Works once constructed;~~

~~(5)~~[\(4\)](#) not ~~to~~ place any Wind Turbine Generators, [Offshore](#) Substations or Transmission Cables comprised in the RED Works within the boundary of the Overlap Area, save for Array Cables in respect

of which a Crossing Agreement has been entered into which provides for those Array Cables to cross the Overlap Area;

~~(6)~~(5) not place any Wind Turbine Generators, ~~or~~ Offshore Substations ~~or Transmission Cables (save for Array Cables)~~ comprised in the RED Works ~~within~~—

- (a) ~~such that the outer edge of the Hazard Area is closer than~~ 250 metres ~~of to~~ the ~~boundary of the~~ Overlap Area ~~at any point~~ ~~(“the Exclusion Zone”)~~; and
- (b) ~~with a Hazard Area with an outer edge that is between 250 - 750 metres of either side of the~~ boundary of the Overlap Area (“the Proximity Zones”) except where the conditions in (i) and (ii) of this ~~sub~~-paragraph ~~(6)5~~(b) are met—
 - (i) ~~where located on the same side of the Overlap Area, within a Proximity Zone of the same side of the Overlap Area boundary,~~ the minimum separation distance between ~~Wind Turbine Generators~~ ~~the closest points of the outer edges of the Hazard Areas~~ is 2000 metres;
 - (ii) ~~where located on opposite sides of the Overlap Area, within Proximity Zones either side of the Overlap Area,~~ the minimum separation distance between ~~the closest points of the outer edges of the Hazard Areas~~ ~~Wind Turbine Generators~~ is 1250 metres;

unless both parties ~~(both acting reasonably)~~ agree to waive ~~or vary~~ those conditions; ~~and~~

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

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

~~(7)~~(8) not make any disposal of any inert material of natural origin and/or dredged material produced during construction drilling or seabed preparation for foundation works and cable installation works undertaken pursuant to ~~the this~~ Order within ~~500~~250 metres of the Overlap Area excluding such disposal as is associated with any Necessary Crossing and/or where otherwise provided for in the relevant Crossing Agreement or Proximity Agreement;

~~(8)~~(9) provide AQUIND with—

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

~~(9)~~(10) provide to AQUIND the Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the RED Works;

~~(10)~~(11) Mmaintain the RED Wworks in good order such that they do not give rise to any damage to AQUIND Works by reason of non-repair;

~~(11)~~(12) prior to applying for or promoting any Safety Zone where compliance with it would prevent access to any part of the AQUIND Order Limits in connection with the construction, Mmaintenance and decommissioning of the AQUIND Works or would restrict to any extent the construction, Mmaintenance and decommissioning of the AQUIND Works—

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

~~(12)~~(13) not less than 90 days prior to the decommissioning of any part of the RED Works to submit to AQUIND and to use all reasonable endeavours having regard to the Proximity Guidelines to agree with AQUIND information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the AQUIND Works and not to commence the decommissioning of any part of the RED Works until the information relevant to how the decommissioning works will be undertaken is agreed with AQUIND and thereafter to carry out the decommissioning works in accordance with the agreed ~~I~~ information;

~~(13)~~(14) where received from AQUIND use all reasonable endeavours having regard to the Proximity Guidelines to agree with AQUIND as soon as reasonably practicable ~~the any~~ decommissioning information for the AQUIND Works in the interest of confirming how those works will not adversely impact the RED Works; and

~~(14)~~(15) ~~to~~ allow AQUIND and representatives of AQUIND and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the RED Works.

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with AQUIND and—

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

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

(2) acknowledges that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables only ~~(unless otherwise agreed by the Parties acting reasonably);~~

(3) agrees; ~~subject to any decision made by the Expert pursuant to paragraph 7,~~ that no construction will take place in the Overlap Area in connection with the RED Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place; and

(4) both parties will co-operate ~~and use all reasonable endeavours~~ to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) any Wind Turbine Generators, Offshore Substations or Transmissions Cables (where not subject to a Crossing Agreement) comprised in the RED Works within the Proximity Zone;

~~(5) shall when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable and in the event of dispute (including a dispute under sub paragraph (3)) either party may refer the matter for resolution in accordance with paragraph 7, and any decision made further to that process is binding on both parties.~~

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between ~~AQUIND and the undertaker~~the parties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) ~~T~~The undertaker shall be responsible for AQUIND's ~~reasonable~~ costs in respect of—

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

Consultation and Co-operation

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

~~(2)~~ (2) Where any approval, agreement, consent or confirmation of AQUIND or ~~RED~~ the undertaker is required pursuant to the terms of this Part of this Schedule 8, or Part 7 of Schedule 13 to the AQUIND Order (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

(3) AQUIND must use all reasonable endeavours having regard to the Proximity Guidelines to agree with the undertaker the Pre-Construction Information submitted to AQUIND pursuant to paragraph 3(1) hereof for the RED Works in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed.

Dispute Resolution

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

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting

each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;

- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert's costs and the parties' legal and professional costs of engaging in the dispute resolution process under this paragraph ~~7-8 of this Part 8 of Schedule 10 to the RED Order.~~

Confidential Information

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

Indemnity ~~Liability~~ and Insurance

9.—

(1) The undertaker shall ~~compensate~~ indemnify AQUIND in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by the undertaker that is in breach of this Part of this Schedule.

(2) Nothing in this Part of this Schedule imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party ~~under pursuant to this Part of this Schedule Agreement~~ must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this ~~Part~~ paragraph 9 is intended and nor shall it ~~be construed as an attempt by any party to this Agreement to~~ exclude or restrict liability for—

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

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

(5) AQUIND shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this paragraph 9 applies and if requested by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by AQUIND, and any action taken by ~~either party~~ AQUIND pursuant to this paragraph 9 will be at the reasonable cost of the ~~other party~~ undertaker.

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

(7) The undertaker must not commence operation ~~and or~~ maintenance (and must not permit the commencement of operation ~~and or~~ Maintenance-) of any part of the RED Works until AQUIND is satisfied

acting reasonably (but subject to all necessary regulatory constraints) that the undertaker or its contractor has procured acceptable insurance (and provided evidence to AQUIND that it must maintain such acceptable insurance for the period of ~~m~~Maintenance in respect of the RED Works from the proposed date of commencement of operation of the RED Works and to provide evidence of renewal of such insurance as appropriate) and AQUIND has confirmed the same in writing to the undertaker.

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

Effect of Protective Provisions

- 10.—(1) This Part of this Schedule will cease to have effect if any of the following events occur—
- (a) ~~T~~he application for the AQUIND Order is withdrawn, in which case AQUIND shall provide the undertaker with written notification of such withdrawal within 10 Working Days of AQUIND notifying the Secretary of State of the withdrawal and this Part of this Schedule shall cease immediately on the date of delivery of the notice in accordance with paragraph 11 below;
 - (b) the Secretary of State having decided the application for the AQUIND Order decides to refuse development consent and AQUIND not choosing to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
 - (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order a decision by the Secretary of State to refuse development consent is upheld;
 - (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the AQUIND Order the decision is quashed and the Court orders the application for the AQUIND Order to be remitted to the Secretary of State and the application for the AQUIND Order is subsequently refused and AQUIND chooses not to bring a judicial review in relation to such refusal, in which case AQUIND will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by AQUIND and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by AQUIND (whichever is sooner);
 - (e) if following the AQUIND Order being made the works authorised by the AQUIND Order are not commenced before the period within which they must commence expires.

Variations Notices

11.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to ~~the~~-this Order and shall be deemed to be sufficiently served if addressed to ~~the~~-AQUIND, or the undertaker, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 11 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11~~(-1)~~ shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to AQUIND in accordance with ~~clause-paragraph~~ 11(-1) shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to AQUIND by e-mail to kirill.glukhovskoy@aquind.co.uk.

(4) Any notice sent by ~~the~~-AQUIND to the undertaker in accordance with ~~clause-paragraph~~ 11(-1) shall be addressed to The Company Secretary and Project Lead [REDACTED] Windmill Hill Business Park,

| Whitehill Way, Swindon, Wiltshire SN5 6PB and shall also be sent to ~~RED~~[the undertaker](#) by e-mail to
[REDACTED]

APPENDIX 5

Clean without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the AQUIND DCO for the protection of RED

Part 7

FOR THE PROTECTION OF RED

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of RED and have effect unless otherwise agreed in writing between RED and the undertaker (together, the “parties”).

2. In this Part of this Schedule—

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in article 2 of this Order;

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

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

“Commencement” means the first carrying out of any licensed marine activities comprised within the AQUIND Works, excluding any non-intrusive pre-construction surveys;

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

“Crossing Agreement” means any agreement entered into by the parties pursuant to paragraph 4 hereof for—

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

“Hazard Area” means an area around a fixed offshore structure with a radius equal to the greater of —

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

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

“Maintenance” means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and “Maintain” and similar terms shall be construed accordingly;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works crosses

the AQUIND Order Limits;

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

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

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

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

“Proximity Agreement” means any agreement entered into by the undertaker and RED pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

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

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

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

“RED Order” means the Rampion 2 Offshore Wind Farm Order as applied for on 10 August 2023 as it is made by the Secretary of State and “Rampion 2” means the Offshore Wind Farm;

“RED Order Limits” has the same meaning as is given to the term ‘Order limits’ in the RED Order;

“RED Works” means—

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

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

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

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

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

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

For the Protection of Rampion 2 Wind Farm

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works submit to RED and use all reasonable endeavours having regard to the Proximity Guidelines to agree with RED the Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed, within not more than 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties); and where the Pre-Construction Information has not been agreed with RED within 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

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

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

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

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

(6) provide RED with—

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

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

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

(9) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit

to RED and to use all reasonable endeavours having regard to the Proximity Guidelines to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed information;

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

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

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with RED and —

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

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

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

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

(4) both parties will co-operate to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works.

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) the undertaker shall be responsible for RED's costs in respect of—
 - (i) approving the Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND Works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed Pre-Construction Information;
 - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND

Works being decommissioned in accordance with the agreed decommissioning information;
and

- (v) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works.
- (b) When incurring costs, expenses or losses which are payable by the other the undertaker and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

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

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

(3) RED must use all reasonable endeavours having regard to the Proximity Guidelines to agree with the undertaker the Pre-Construction Information submitted to RED pursuant to paragraph 3(1) hereof for the AQUIND Works in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

Dispute Resolution

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

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph 7.

Confidential Information

8. The undertaker and RED must not disclose any Confidential Information to any other person (save

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

Indemnity and Insurance

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

(2) Nothing in this Part of this Schedule imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party pursuant to this Part of this Schedule must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this paragraph 9 is intended and nor shall it exclude or restrict liability for—

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

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

(5) RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by RED, and any action taken by RED pursuant to this paragraph 9 will be at the reasonable cost of the undertaker.

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

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

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

Effect of Protective Provisions

10.—(1) This Part of this Schedule will cease to have effect if any of the following events occur—

- (a) the application for the RED Order is withdrawn, in which case RED shall provide the undertaker with written notification of such withdrawal within 10 Working Days of RED notifying the

Secretary of State of the withdrawal and this Part of this Schedule shall cease immediately on the date of delivery of the notice in accordance with paragraph 11 below;

- (b) the Secretary of State having decided the application for the RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order the decision is quashed and the Court orders the application for the RED Order to be remitted to the Secretary of State and the application for the RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
- (e) if following the RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

Notices

11.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to this Order and shall be deemed to be sufficiently served if addressed to the undertaker, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 11 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11(1) shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to RED in accordance with paragraph 11(1) shall be addressed to The Company Secretary and Project Lead Umair Patel, Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB and shall also be sent to RED by e-mail to umair.patel@rwe.com.

(4) Any notice sent by RED to the undertaker in accordance with paragraph 11(1) shall be addressed to Kirill Glukhovskoy – Managing Director, and shall also be sent to the undertaker by e-mail to kirill.glukhovskoy@aquind.co.uk.

APPENDIX 6

Tracked changes without prejudice mark-up of RED's reciprocal protective provisions for inclusion in the AQUIND DCO for the protection of RED

Part 7

FOR THE PROTECTION OF ~~RAMPION 2~~RED

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of ~~Rampion 2~~RED and have effect unless otherwise agreed in writing between RED and the undertaker (together, the “parties”).

2. In this Part of this Schedule—

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in ~~the~~ article 2 of ~~the~~ this Order;

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

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

“Commencement” means the first carrying out of any licensed marine activities comprised within the AQUIND Works, excluding any non-intrusive pre-construction surveys;

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

“Crossing Agreement” means any agreement entered into by the parties pursuant to paragraph 4 hereof for—

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

“Hazard Area” means an area around a fixed offshore structure with a radius equal to the greater of —

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

“Maintenance” means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and "Maintain" and similar terms shall be construed accordingly;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works crosses

the AQUIND Order Limits;

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

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

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

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

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

“Proximity Agreement” means any agreement entered into by the undertaker and RED pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

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

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

- ~~(a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and~~
- ~~(b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;~~

~~“Overlap Area” means the extent to which the RED Order Limits overlap the AQUIND Order Limits;~~

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

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

“Rampion 2 RED Order” means ~~this~~-the Rampion 2 Offshore Wind Farm Order as applied for on 10

August 2023 as it is made by the Secretary of State and “Rampion 2” means the Offshore Wind Farm;

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

“RED Order Limits” has the same meaning as is given to the term ‘Order limits’ in the ~~Rampion 2~~ RED Order;

“RED Works” means—

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

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

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

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

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

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

For the Protection of Rampion 2 Wind Farm

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works, submit to RED and use all reasonable endeavours ~~having regard to the Proximity Guidelines~~ to agree with RED the Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and ~~m~~Maintenance of the RED Works once constructed, within not more than 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the ~~p~~Parties ~~acting reasonably~~); and where the Pre-Construction ~~Information~~ has not been agreed with RED within 2 months from the date on which the Pre-Construction Information is submitted ~~by the undertaker to RED~~ (or such longer period as may otherwise be agreed by the ~~p~~Parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

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

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

~~(4) where received from RED pursuant to Part 8 of Schedule 10 to the Rampion 2 Order, use all reasonable endeavours to agree with RED the RED pre-construction information for the RED Works in the interest of not adversely impacting the construction of the AQUIND Works or the operation and maintenance of the AQUIND Works once constructed;~~

~~(5)~~(4) not install the AQUIND Works outside of the boundary of the ~~AQUIND~~ Order Limits nor

undertake any repair to the AQUIND Works which involves any part of the AQUIND Works or repair being installed outside of the boundary of the AQUIND Order Limits without the prior approval of RED (not to be unreasonably withheld or delayed and as may be given subject to reasonable conditions);

~~(6)~~(5) not ~~to~~ apply for a disposal site in connection with the AQUIND Works outside the AQUIND Order Limits without first securing the consent of RED where the proposed disposal site falls within the RED Order Limits;

~~(7)~~(6) provide RED with—

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

~~(8)~~(7) provide to RED the Post-Construction Information as soon as is reasonably practicable following and in all cases within not more than four months of the completion of construction of the AQUIND Works;

~~(9)~~(8) ~~to m~~Maintain the AQUIND ~~W~~works in good order such that they do not give rise to any damage to the RED Works by reason of non-repair;

~~(10)~~(9) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit to RED and to use all reasonable endeavours [having regard to the Proximity Guidelines](#) to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed information;

~~(11)~~(10) where received from RED ~~under Part 8 of Schedule 10 to the Rampion 2 Order~~ use all reasonable endeavours [having regard to the Proximity Guidelines](#) to agree with RED as soon as reasonably practicable ~~the any~~ decommissioning information for the RED Works in the interest of confirming how those works will not adversely impact the AQUIND Works; and

~~(12)~~(11) allow RED and representatives of RED and those employed on their behalf to watch and inspect the construction, Maintenance and decommissioning of the AQUIND Works.

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with RED and —

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

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

(2) acknowledges that Crossing Agreements may be required for up to four crossings of the Overlap Area by Array Cables [only \(unless otherwise agreed by the Parties acting reasonably\)](#);

(3) agrees, ~~subject to any decisions made by the Expert pursuant to paragraph 7,~~ that no construction will take place in the Overlap Area in connection with the AQUIND Works until such time as both parties are satisfied that any relevant necessary Crossing Agreement in respect of such part of those works is in place; and

(4) both parties will co-operate ~~and use all reasonable endeavours~~ to enter into Proximity Agreements to regulate the interface of the AQUIND Works and ~~any Wind Turbine Generators, Offshore Substations or Transmissions Cables~~ (where not subject to a Crossing Agreement) ~~comprised in~~ the RED Works;

~~(5) shall when using all reasonable endeavours expeditiously and diligently negotiate the relevant Crossing Agreement or Proximity Agreement in good faith and shall enter into such Crossing Agreement or Proximity Agreement as soon as is reasonably practicable and in the event of dispute (including a dispute under sub-paragraph (3)) either party may refer the matter for resolution in accordance with paragraph 7, and any decision made further to that process is binding on both parties.~~

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between the pParties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) ~~T~~he undertaker shall be responsible for RED's ~~reasonable~~ costs in respect of—
- (i) approving the Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND ~~w~~Works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed Pre-~~e~~Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed Pre-~~Constructions~~ Information;
 - (iv) any works which are required to the RED Works to carry ~~ou~~t the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being decommissioned in accordance with the agreed decommissioning information; and
 - (v) ~~T~~he reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works.
- (b) When incurring costs, expenses or losses which are payable by the other ~~AQUIND—the~~ undertaker and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

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

(2) Where any approval, agreement, consent or confirmation of ~~AQUIND—the undertaker~~ or RED is required pursuant to the terms of this Part ~~7 of this Schedule, or of Part 8 of Schedule 10 to the Rampion 2 Order~~, (including for the avoidance of doubt in connection with any method statement), it shall not be unreasonably withheld or delayed.

(3) RED must use all reasonable endeavours having regard to the Proximity Guidelines to agree with the undertaker the Pre-Construction Information submitted to RED pursuant to paragraph 3(1) hereof for the AQUIND Works in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

Dispute Resolution

7.—(1) Save for matters of interpretation (which shall be matters for the Court) in the event of any dispute arising between ~~AQUIND—the undertaker~~ and RED in respect of any matter contained in this Part ~~7 of of Schedule 13 to the Order~~ this Schedule including questions as to the propriety and/or necessity of any cost or and any question of reasonableness of the same ~~AQUIND—the undertaker~~ and RED will use

reasonable endeavours to attempt to resolve that dispute amicably (including holding a meeting attended by at least one representative from each party if considered appropriate) for a period of 20 Working Days from the date on which any party notifies the other party in writing that a dispute has arisen.

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph ~~78 of this Part 8 of Schedule 10 to the RED Order.~~

Confidential Information

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

~~Liability-Indemnity and Insurance~~

9.—(1) The undertaker shall ~~compensate-indemnify~~ RED in respect of all costs and expenses incurred (including legal, surveying and engineering costs and disbursements) and damages or losses suffered to the extent that the same are reasonably incurred in connection with any act or omission by the undertaker that is in breach of this Part ~~of this Schedule.~~

(2) Nothing in this Part ~~of this Schedule~~ imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party’s employment or of the other party’s contractors or agents and any liability of the relevant party ~~under-pursuant to this Part of this Schedule Agreement~~ must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party’s employment or of the other party’s contractors or agents.

(3) Nothing in this ~~Part~~paragraph 9 is intended and nor shall it ~~be construed as an attempt by any party to this Agreement to~~ exclude or restrict liability for—

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

(4) RED must give the undertaker reasonable notice of any claim or demand and no settlement,

admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without ~~the a party~~Parties first consulting ~~one and the~~ other and considering its representations.

(5) RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which ~~the indemnity in this~~ paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by RED, and any action taken by ~~either party~~RED pursuant to this paragraph 9 will be at the reasonable cost of the ~~other party~~undertaker.

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

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

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

Effect of Protective Provisions

10. —(1) This Part ~~of this Schedule~~ will cease to have effect if any of the following events occur—

- (a) the application for the ~~Rampion-2~~RED Order is withdrawn, in which case RED shall provide the undertaker with written notification of such withdrawal within 10 Working Days of RED notifying the Secretary of State of the withdrawal and this Part of this Schedule shall cease immediately on the date of delivery of the notice in accordance with paragraph 11 below;
- (b) the Secretary of State having decided the application for the ~~Rampion-2~~RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part ~~of this Schedule~~ will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the ~~Rampion-2~~RED Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the ~~Rampion-2~~RED Order the decision is quashed and the Court orders the application for the ~~Rampion-2~~RED Order to be remitted to the Secretary of State and the application for the ~~Rampion-2~~RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this ~~Agreement will terminate immediately~~Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);

- (e) if following the ~~Rampion-2~~RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

Notices

11.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to ~~the~~ this Order and shall be deemed to be sufficiently served if addressed to the ~~AQUIND~~ undertaker, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this ~~Agreement~~ paragraph 11 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11 ~~(1)~~ shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to RED in accordance with paragraph 11 ~~(1)~~ shall be addressed to The Company Secretary and Project Lead [REDACTED] Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB and shall also be sent to RED by e-mail to [REDACTED]

(4) Any notice sent by ~~the~~ RED to the undertaker in accordance with paragraph 11 ~~(1)~~ shall be addressed to [REDACTED] – Managing Director, and shall also be sent to the undertaker by e-mail to [REDACTED]

Part 7

FOR THE PROTECTION OF RED

Application

1. Subject to paragraph 10, the provisions of this Part of this Schedule apply for the protection of RED and have effect unless otherwise agreed in writing between RED and the undertaker (together, the “parties”).

2. In this Part of this Schedule—

“AQUIND Order Limits” has the same meaning as is given to the term ‘Order limits’ in article 2 of this Order;

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

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

“Commencement” means the first carrying out of any licensed marine activities comprised within the AQUIND Works, excluding any non-intrusive pre-construction surveys;

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

“Crossing Agreement” means any agreement entered into by the parties pursuant to paragraph 4 hereof for—

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

“Hazard Area” means an area around a fixed offshore structure with a radius equal to the greater of —

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

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

“Maintenance” means maintenance, inspection, upkeep, repair, adjustment, alteration, improvement, preservation and further includes removal, reconstruction and replacement of any part of the AQUIND Works and the RED Works (as is relevant) and “Maintain” and similar terms shall be construed accordingly;

“MMO” means the Marine Management Organisation;

“Necessary Crossing” means any point at which an Array Cable comprised in the RED Works crosses

the AQUIND Order Limits;

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

- (a) electrical equipment required to switch, transform, convert electricity generated at the Wind Turbine Generators to a higher voltage ; and
- (b) accommodation, storage, workshop auxiliary equipment, and facilities for operating, maintaining and controlling the substation or Wind Turbine Generators, comprised in the RED Works;

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

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

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

“Proximity Agreement” means any agreement entered into by the undertaker and RED pursuant to paragraph 4 hereof setting out the technical and commercial terms on which the RED Works and the AQUIND Works will be located and operated in proximity to one another including (but not limited to)—

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

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

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

“RED Order” means the Rampion 2 Offshore Wind Farm Order as applied for on 10 August 2023 as it is made by the Secretary of State and “Rampion 2” means the Offshore Wind Farm;

“RED Order Limits” has the same meaning as is given to the term ‘Order limits’ in the RED Order;

“RED Works” means—

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

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

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

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

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

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

For the Protection of Rampion 2 Wind Farm

3. The undertaker shall—

(1) not less than 6 months prior to the Commencement of any part of the AQUIND Works submit to RED and use all reasonable endeavours having regard to the Proximity Guidelines to agree with RED the Pre-Construction Information in respect of such part of the AQUIND Works, in the interest of not adversely impacting the construction of the RED Works or the operation and Maintenance of the RED Works once constructed, within not more than 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties); and where the Pre-Construction Information has not been agreed with RED within 2 months from the date on which the Pre-Construction Information is submitted to RED (or such longer period as may otherwise be agreed by the parties) either party may refer the matter to be determined by an Expert in accordance with paragraph 7 hereof;

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

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

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

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

(6) provide RED with—

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

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

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

(9) not less than 90 days prior to the decommissioning of any part of the AQUIND Works to submit

to RED and to use all reasonable endeavours having regard to the Proximity Guidelines to agree with RED information relevant to how the decommissioning works will be undertaken and confirming how those works will not adversely impact the RED Works and not to commence the decommissioning of any part of the AQUIND Works until the information relevant to how the decommissioning works will be undertaken is agreed with RED and thereafter to carry out the decommissioning works in accordance with the agreed information;

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

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

Crossing Agreements and Proximity Agreements

4. The undertaker will co-operate with RED and —

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

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

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

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

(4) both parties will co-operate to enter into Proximity Agreements to regulate the interface of the AQUIND Works and (where not subject to a Crossing Agreement) the RED Works.

Costs and Expenses

5.—(1) Save where otherwise agreed in writing between the parties (including where agreed in any Crossing Agreement) and subject always to paragraph 10 hereof—

- (a) the undertaker shall be responsible for RED's costs in respect of—
 - (i) approving the Pre-Construction Information;
 - (ii) approving information relevant to how the decommissioning of the AQUIND Works will be undertaken;
 - (iii) any works which are required to the RED Works to carry out the construction of the AQUIND Works in accordance with the agreed Pre-Construction Information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND Works being undertaken in accordance with the agreed Pre-Construction Information;
 - (iv) any works which are required to the RED Works to carry out the decommissioning of the AQUIND Works in accordance with the agreed decommissioning information, including any costs of RED incurred in undertaking works to RED Works to facilitate the AQUIND

Works being decommissioned in accordance with the agreed decommissioning information;
and

- (v) the reasonable costs for RED watching and inspecting the construction and decommissioning of the AQUIND Works.
- (b) When incurring costs, expenses or losses which are payable by the other the undertaker and RED must at all times act reasonably and in the same manner as they would if they were funding the cost, expenses or losses themselves.

Consultation and Co-operation

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

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

(3) RED must use all reasonable endeavours having regard to the Proximity Guidelines to agree with the undertaker the Pre-Construction Information submitted to RED pursuant to paragraph 3(1) hereof for the AQUIND Works in the interest of not adversely impacting the construction of the AQUIND Works or the operation and Maintenance of the AQUIND Works once constructed.

Dispute Resolution

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

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

(3) The Expert shall—

- (a) have at least ten years post qualification experience in the subject matter of the dispute;
- (b) be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event in not more than 40 Working Days from the date of his appointment to act;
- (c) be required to give notice to each of the parties within 5 Working Days of appointment inviting each of them to submit within 10 Working Days of that notice written submissions and supporting material which shall also be issued by the parties to each other within the same 10 Working Day period and shall afford to each of the parties an opportunity to make counter submissions within a further 5 Working Days in respect of any such submission and material and disregard any representations made out of time;
- (d) give its decision in writing within 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 15 Working Days of receipt of the written submissions and supporting material with reasons for the decision;
- (e) make a determination as to payment of the Expert’s costs and the parties’ legal and professional costs of engaging in the dispute resolution process under this paragraph 7.

Confidential Information

8. The undertaker and RED must not disclose any Confidential Information to any other person (save

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

Indemnity and Insurance

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

(2) Nothing in this Part of this Schedule imposes any liability on either party with respect to any damage, cost, expense or loss which is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents and any liability of the relevant party pursuant to this Part of this Schedule must be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the other party or of any person in the other party's employment or of the other party's contractors or agents.

(3) Nothing in this paragraph 9 is intended and nor shall it exclude or restrict liability for—

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

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

(5) RED shall use reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, losses, demands or penalties, to which the indemnity in this paragraph 9 applies and if requested to by the undertaker, shall provide an explanation of how any such claims have been minimised and the undertaker shall only be liable for claims reasonably incurred by RED, and any action taken by RED pursuant to this paragraph 9 will be at the reasonable cost of the undertaker.

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

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

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

Effect of Protective Provisions

10.—(1) This Part of this Schedule will cease to have effect if any of the following events occur—

- (a) the application for the RED Order is withdrawn, in which case RED shall provide the undertaker with written notification of such withdrawal within 10 Working Days of RED notifying the

Secretary of State of the withdrawal and this Part of this Schedule shall cease immediately on the date of delivery of the notice in accordance with paragraph 11 below;

- (b) the Secretary of State having decided the application for the RED Order decides to refuse development consent and RED not choosing to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
- (c) if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order a decision by the Secretary of State to refuse development consent is upheld;
- (d) if following the final determination of any challenge proceedings in respect of the decision in relation to the RED Order the decision is quashed and the Court orders the application for the RED Order to be remitted to the Secretary of State and the application for the RED Order is subsequently refused and RED chooses not to bring a judicial review in relation to such refusal, in which case RED will provide the undertaker with written notification thereof within 10 Working Days of its decision not to bring a judicial review or the period to bring a judicial review expiring without any judicial review being lodged by RED and this Part of this Schedule will cease to have effect immediately on the date of delivery of the notice in accordance with paragraph 11(2) or within 10 Working Days of the period to bring a judicial review expiring without any judicial review being lodged by RED (whichever is sooner);
- (e) if following the RED Order being made the works authorised by the RED Order are not commenced before the period within which they must commence expires.

Notices

11.—(1) Any notice given under or in relation to this Part of this Schedule shall be in writing and shall refer to this Order and shall be deemed to be sufficiently served if addressed to the undertaker, or RED, as the case may be, and sent by recorded delivery or registered post to the address of the parties given in this paragraph 11 or to such other address as they may from time to time designate by written notice to the other.

(2) Any notice sent in accordance with paragraph 11(1) shall be deemed, in the absence of evidence of earlier receipt, to have been delivered two days after posting or dispatch, exclusive of the day of posting.

(3) Any notice sent by the undertaker to RED in accordance with paragraph 11(1) shall be addressed to The Company Secretary and Project Lead [REDACTED] Windmill Hill Business Park, Whitehill Way, Swindon, Wiltshire, SN5 6PB and shall also be sent to RED by e-mail to [REDACTED]

(4) Any notice sent by RED to the undertaker in accordance with paragraph 11(1) shall be addressed to [REDACTED] – Managing Director, and shall also be sent to the undertaker by e-mail to [REDACTED]