

**Unilateral Undertaking relating to the Penderi Solar Farm on land at
and adjoining Blaenhiraeth Farm, Llangennech, Llanelli,
Carmarthenshire SA14 8JZ**

**made pursuant to
Section 106 of the Town and Country Planning Act 1990**

Given by:

MTS Penderi Solar 2 Limited (1)

and

John Stuart Poulson (2)

to

Carmarthenshire County Council

THIS UNILATERAL UNDERTAKING is made this 26 day of March 2021

AND GIVEN BY:

- (1) **MTS PENDERI SOLAR 2 LIMITED** (Company registration number: 09199977) of One Lyric Square, Lyric Square, Hammersmith, London, England W6 0NB (the **Developer**);
- (2) **JOHN STUART POULSON** of Blaenhiraeth Farm, Llangennech, Llanelli SA14 8JZ (the **Owner**)

TO:

CARMARTHENSHIRE COUNTY COUNCIL of County Hall, Carmarthen SA31 1JP (the **Council**)

RECITALS

- 1 The Council is the Local Planning Authority for the purposes of the Act for the area in which the Site is located.
- 2 The Owner is the owner of the freehold interest in the Site.
- 3 The Developer has made the Planning Application and is proposing to carry out the Development.
- 4 The Developer intends to develop the Site pursuant to the Planning Permission and has entered into an option agreement dated 8 December 2017 with the Owner.

DEFINITIONS

For the purposes of this Deed the following expressions shall unless the context otherwise requires have the meanings given to them below:

- "the Act"** means the Town and Country Planning Act 1990 as amended
- "the Commencement of Development"** means the carrying out on the Site of any material operation pursuant to the Planning Permission and "**material operation**" shall have the meaning given to it under Section 56 subsection 4(a) to (e) of the Act PROVIDED THAT for the avoidance of doubt the Development shall not be deemed to have been commenced by the carrying out of any survey sampling inspections or remediation works or archaeological works or demolition or site clearances or

site preparation or work involving the diversion of services on site or soil investigations or the erection of any boundary fences or hoardings as a preliminary to the commencement of works on the Development

“Community Benefit Payment”

means the total of the Llannon Community Payment, the Llangennech Community Payment and the Llanelli Community Payment

“the Development”

means the development described in the Planning Application

“Indexation”

means the recalculation of any payment specified in this Deed by applying the following formula:

$$A \times \frac{B}{C} = D$$

Where:

A = the payment specified in this Deed in pounds sterling

B = the figure shown in the RPI for the month last published prior to the date the payment is made under this Deed

C = the figure shown in the RPI for the month immediately prior to the date of this Deed

D = the recalculation sum in pounds sterling payable under this Deed

“Index Linked”

means the adjustment of payments due under this Deed as a result of Indexation from the date of this Deed to the date of actual payment

“First Generation”

means the date on which the Development commences exporting electricity to the National Grid on a commercial basis (excluding any periods of testing)

“Interest”

means a rate of 3% above Barclays Bank's interest rate in place from time to time and any money due which is to include Interest shall be assessed from the date that the payment became due until the date that the payment is made

“Llanelli Community Payment”

means a payment of £2,000 (two thousand pounds) Index Linked to Llanelli Rural Council to be used for the benefit of the local

community being those individuals situated in the community of Llanelli Rural

“Llanelli Rural Council” means the Community Council of Llanelli established under the Local Government Act 1972 covering the community of Llanelli Rural

“Llangennech Community Council” means the Community Council of Llangennech established under the Local Government Act 1972 covering the community of Llangennech

“Llangennech Community Payment” means a payment of £2,400 (two thousand four hundred pounds) Index Linked to Llangennech Community Council to be used for the benefit of the local community being those individuals situated in the community of Llangennech

“Llannon Community Council” means the Community Council of Llannon established under the Local Government Act 1972 covering the community of Llannon

“Llannon Community Payment” means a payment of £5,600 (five thousand six hundred pounds) Index Linked to Llannon Community Council to be used for the benefit of the local community being those individuals situated in the community of Llannon

"National Grid" the high voltage electric power transmission network in the United Kingdom connecting power stations and major substations operated in England and Wales by National Grid Plc and the associated electricity distribution network operated by Distribution Network Operators and for the avoidance of doubt the terms National Grid Plc and Distribution Network Operator shall include their successors or a subsidiary company holding a licence authorising the distribution of electricity

“Party” means any party to this Deed and shall include 'party' 'Party' or any variation thereof

"Plan" means the plan number DV_GEN_101_02.00 appended to this Deed showing the Planning Application redline plan

“the Planning Application” means the application submitted to the Welsh Government under ref: DNS/3213164 for a planning permission for the installation,

operation and subsequent decommissioning of a renewable energy scheme comprising ground mounted photovoltaic solar arrays together with substation compound, transformer stations, internal access track and other associated infrastructure with a modelled operational lifespan of 35 years

“the Planning Permission”

means the planning permission issued by the Welsh Government pursuant to the Planning Application

“RPI”

means the All Items Index of Retail Prices issued by the Office for National Statistics or if the RPI shall cease to be compiled or the formula shall otherwise be incapable of operation then such other equivalent means as shall be proposed by the Developer (and approved by the Council in writing) to recalculate such payment with the intent that it shall have like effect

“the Site”

means the land comprised within the redline boundary shown on the Plan

“Working Days”

any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales

1 INTERPRETATION

For the purposes of this Deed:

- 1.1 Reference to any act of Parliament or section of such act shall include reference to any replacement or modification or re-enactment of it.
- 1.2 The masculine gender includes the feminine and neuter genders and vice versa.
- 1.3 The singular includes the plural and vice versa.
- 1.4 Reference to persons include firms companies corporations authorities and other bodies and vice versa.
- 1.5 References to the Council's consent shall mean the prior written consent of the Council which consent shall not be unreasonably withheld or delayed and shall be expressed to be pursuant to this Deed and such consent shall be in addition to and not in substitution for any other permission that may be necessary.

- 1.6 References to any party in this Deed shall include their successors in title and assigns.
- 1.7 Any covenant by the Owner or the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.
- 1.8 If any provision in this Deed is held to be illegal invalid or unenforceable the legality validity and enforceability of the remainder of this Deed so far as is practicable is to be unaffected.
- 1.9 Nothing in the clause headings to this Deed shall affect its interpretation.
- 1.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted after the date of this Deed.

IT IS HEREBY UNDERTAKEN AND DECLARED as follows:

- 1.11 This Deed is made in pursuance of the provisions of Section 106 of the Act.
- 1.12 The covenants and agreements by the Developer and Owner contained within the Schedule of this Deed are planning obligations for the purposes of Section 106 of the Act with the intent that the same shall be enforceable by the Council against the Developer and the Owner and its successors in title and any person corporate or otherwise claiming through or under it an interest or estate in any part of parts of the Site as if that person had also been an original covenanting party in respect of the interest or estate for the time being held by them.
- 1.13 The Developer and the Owner shall not be liable for any breach of this Deed unless it holds an interest in actual occupation of the part of the Site in respect of which such breach occurs or held such an interest at the date of the breach.

2 CONDITIONALITY

- 2.1 This Deed is conditional and the planning obligations contained within the Schedule to this Deed shall only take effect upon the grant of the Planning Permission and Commencement of the Development.
- 2.2 If the Planning Permission expires without Commencement of the Development or is quashed revoked or otherwise withdrawn or modified by any statutory procedure without the consent of the Developer this Deed shall cease to have effect.
- 2.3 This Deed is provided on the condition that where this Deed ceases to have effect the Council shall on written request vacate or cancel the entry made in the Local Land Charges register in relation to this Deed or otherwise to record the fact that it has come to an end and no longer affect the Site.

2.4 This Deed is provided on the condition that where this Deed ceases to have effect any monies paid under this Deed which are not Spent for the purposes of the Schedule to this Deed are to be returned to the Party that made that payment.

2.5 For the purposes of clause 2.4 any monies which are not Spent within five years of the cessation of this Deed or within five years of the last date a payment was made (whichever is later) shall be returned to the Party that made that payment within 28 days plus Interest.

3 LAND CHARGE

3.1 This Deed shall be registered as a Local Land Charge in the Local Land Charges Register maintained by the Council.

4 VARIATIONS

4.1 Variations of the terms of this Deed (other than minor amendments or variations of a transitory nature not affecting the nature or extent of liability hereunder) may be evidenced only by a supplemental deed executed as a deed of variation unless the Council otherwise indicates in writing or is a party thereto and a copy of any supplemental agreement shall be sent to the Council for the purpose of amending the Local Land Charges Register.

4.2 The parties may rescind or vary this Deed without the consent of a third party to whom an express right to enforce any of its terms has been provided.

5 MORTGAGEES

5.1 Any future mortgagee of the Site shall have no liability under this Deed unless it itself caused the breach of this Deed whilst mortgagee in possession, in which case it too will be bound by the obligations as if it were a person deriving title in the Site from the Owner.

5.2 Any future mortgagee of the Site shall in no circumstances be liable for any pre-existing breach.

5.3 Any future mortgagee of the Site shall have no liability after they have discharged the security or disposed of the Site which is subject to their security, whether by sale or otherwise.

6 NOTICES

6.1 Any notice given under this Deed shall be deemed to have been validly served on or communicated to the relevant party upon whom such notice is being served if sent by prepaid post recorded delivery or delivered by hand to their registered address (if appropriate) or such other address for services as shall from time to time be notified in writing.

6.2 The Developer will serve fourteen days' written Notice upon the Council of its intention to Commence the Development.

7 DETERMINATION OF DISPUTES

7.1 Subject to clause 7.8 if any dispute arises relating to or arising out of the terms of this Deed any Party may give to the others written notice requiring the dispute to be determined under this clause 7.

7.2 The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to the dispute

7.3 For the purposes of this clause 7 a "Specialist" is a person qualified to act as an expert in relation to the dispute having not less than ten years' professional experience in relation to developments in the nature of the Development and property in the same locality as the Site.

7.4 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of any Party to the President or next most senior available officer of the Law Society who will have the power with the right to take such further advice as he may require to determine the appropriate type of Specialist and to arrange his nomination under clause 7.5.

7.5 Any dispute over the identity of the Specialist is to be referred at the request of any Party to the President or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination. If no such organisation exists or the Parties cannot agree the identity of the organisation then the Specialist is to be nominated by the President or next most senior available officer of the Law Society.

7.6 The Specialist is to act as an independent expert and:

- (a) each Party may make written representations within ten working days of his appointment and will copy the written representations to the other Parties;
- (b) each Party is to have a further ten working days to make written comments on the others' representations and will copy the written comments to the other Parties;
- (c) the Specialist is to be at liberty to call for such written evidence from the parties and to seek such legal or other expert assistance as he or she may reasonably require;