

Dated

9th September

2021

UNILATERAL UNDERTAKING

relating to
Upper Ogmore Windfarm Proposal

given under Section 106 of the
Town and Country Planning Act 1990

Given by:

RENEWABLE ENERGY SYSTEMS LIMITED (1)

THE CHANCELLOR AND COUNCIL OF HER MAJESTY'S
DUCHY OF LANCASTER and JONATHAN PUGH (2)

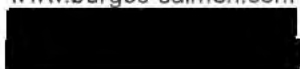
HSBC Bank PLC (3)

To:

BRIDGEND COUNTY BOROUGH COUNCIL (4)

CERTIFIED A TRUE AND COMPLETE COPY OF THE ORIGINAL
SIGNED: [REDACTED]
BURGES SALMON LLP
DATE: 9 SEPT 2021 SOL REF: PROJ
6 New Street Square, London EC4A 3BF Burgess Salmon LLP is authorised and regulated by the Solicitors Regulation Authority

Ref: OH01/ED04
Burgess Salmon LLP
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THIS DEED is made on

9th September

2021

GIVEN BY:

- (1) **RENEWABLE ENERGY SYSTEMS LIMITED** incorporated and registered in England and Wales with company number 01589961 whose registered office is at Beaufort Court, Egg Farm Lane, Station Road, Kings Langley, Hertfordshire, WD4 8LR ("the **Developer**")
- (2) **THE CHANCELLOR AND COUNCIL FOR HER MAJESTY'S DUCHY OF LANCASTER** acting for the purposes of signature by **NATHAN JAMES THOMPSON** the Clerk of the said Council of the Duchy of Lancaster of 1 Lancaster Place Strand London WC2E 7ED (the "**First Owner**") and **JONATHAN PUGH** of Ty Talgarth, Nantymoel, Bridgend, CF32 7NR (the "**Second Owner**") (the **First Owner** and the **Second Owner** together are referred to as the "**Owners**")
- (3) **HSBC BANK PLC** (company registration number 00014259) of 8 Canada Square, London E14 5HQ ("**Mortgagee**")

TO:

- (4) **BRIDGEND COUNTY BOROUGH COUNCIL** of Civic Offices, Angel Street, Bridgend, CF31 4WB ("**Council**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of the TCPA 1990 for the area in which the Site is situated.
- (B) The Duchy of Lancaster is the freehold owner of the land edged blue on the Site Plan.
- (C) Jonathan Pugh is the freehold owner of the land edged green on the Site Plan.
- (D) The Mortgagee has a charge in respect of the Jonathan Pugh Land.
- (E) The Developer has made the DNS Application and is proposing to carry out the Development.
- (F) The Developer intends to develop the Site pursuant to the DNS Permission and has the benefit of option agreements to be granted leases of the Site for terms of 40 years.
- (G) The Owners and the Developer are prepared to provide this Deed on the terms contained herein in support of the DNS Application with the intention that the obligations contained in this Deed may be enforced by the Council against the Developer and their successors in title and the Owners and their successors in title.

AGREED TERMS

1 INTERPRETATION

In this Deed unless the context otherwise requires, the following definitions apply.

1.1 Definitions:

"**TCPA 1990**" means the Town and Country Planning Act 1990 (as amended)

"**Commencement of Development**" means the carrying out in relation to the Development of any material operation as defined by section 56(4) of the TCPA 1990 but disregarding (for the purposes of this Deed and for no other purpose) the following operations: demolition works, site survey works and associated temporary welfare facilities, archaeological investigation, investigations for the purpose of assessing ground conditions, and "**Commence Development**" and similar expressions shall be construed accordingly

"Development" means the proposed development of the Site relating to the construction and operation of seven horizontal access wind turbines, four of the turbines to a maximum height of 149.9m and three up to a maximum height of 130m which together will have a total installed capacity of approximately 25.2MW, together with a new site entrance, new access tracks, crane hardstandings, control buildings and substation compound, electricity transformers, underground cabling, energy storage containers, drainage works and upgrades to a forestry track and associated tree felling

"Option Agreement" means the option agreement dated 22 April 2015 made between the First Owner (1) the Solicitor for the Affairs of the Duchy of Lancaster (2) and the Developer (3) and all deeds supplemental thereto

"Site Plan" means the attached plan entitled Biodiversity Enhancement Plan with reference number 02959-RES-IMP-DR-EN-001 showing for the purposes of identification only the Site that is subject of the DNS Application, the Duchy Land, the Jonathan Pugh Land and the locations of works referred to in Schedule 1 of this Deed

"Specialist" means a person qualified to act as an expert in relation to any dispute or subject matter having not less than ten years' professional experience in relation to the subject matter in dispute and the nature of the Development

"DNS Application" means an application for a development of national significance ("DNS") which was validated by the Planning Inspectorate on 10 December 2020 Reference Number DNS/3213662

"DNS Permission" means the permission to be granted by the Welsh Ministers in respect of the DNS Application

"Duchy Land" means that part of the land shown edged in blue on the Site Plan

"Jonathan Pugh Land" means that part of the land shown edged in green on the Site Plan

"Site" means the land to which the Development relates shown for identification purpose only edged red on the Site Plan

"Working Day" means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales.

- 1.2 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 1.3 Unless stated otherwise, references to clauses and Schedule are to the clauses and Schedule of this Deed.
- 1.4 A reference to a paragraph is to the paragraph of the Schedule in which the reference is made, unless stated otherwise.
- 1.5 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 1.6 Unless the context otherwise requires, words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 The Council shall include the successors to its respective statutory functions.
- 1.9 Unless this Deed states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations,

directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

- 1.10 References to the Site includes any part of it.
- 1.11 A reference to this deed or to any other deed or document referred to in this deed is a reference to this Deed or such other deed or document as varied or novated (in each case, other than in breach of the provisions of this deed) from time to time.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Where an obligation falls to be performed by more than one person, the obligation can be enforced against every person so bound jointly and against each of them individually.

2 STATUTORY PROVISIONS

- 2.1 This Deed constitutes a planning obligation for the purposes of section 106 of the TCPA 1990, section 111 of the Local Government Act 1972 and any other enabling powers.
- 2.2 To the extent that they fall within the terms of section 106 of the TCPA 1990, the obligations contained in this Deed are planning obligations for the purposes of those sections of the TCPA 1990 and are enforceable by the Council.
- 2.3 Nothing in this Deed restricts or is intended to restrict the proper exercise at any time by the Council of any of its statutory powers, functions or discretions in relation to the Site or otherwise.
- 2.4 This Deed shall come into effect immediately save that the covenants in Schedule 1 are conditional upon the grant of the DNS Permission.
- 2.5 This Deed may be registered as a Local Land Charge in the Register of Local Land Charges maintained by the Council.

3 OBLIGATIONS OF THE PARTIES

- 3.1 The Developer and Owners covenant with the Council to comply with the obligations set out in Schedule 1 in relation to the Development.
- 3.2 The Owners shall only be responsible for obligations affecting land owned by them and no person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site or that part of the Site in relation to which such breach occurs but without prejudice to liability for any subsisting breach arising prior to parting with such interest but provided that the termination of the lease(s) of the Site shall not relieve the Developer of liability hereunder by virtue of this sub-clause.

4 DETERMINATION OF DEED

- 4.1 This Deed and the obligations therein shall determine in its entirety and have no further effect if the DNS Permission:
 - (a) is varied or revoked other than at the request of the Developer or Owners;
 - (b) is quashed following a successful legal challenge; or
 - (c) if the DNS Permission expires before Commencement of Development.

5 DISPUTE RESOLUTION

If any dispute arises relating to or arising out of the terms of this Deed any party may give to the other written notice requiring the dispute to be determined under this clause

5. The notice is to propose an appropriate Specialist and specify the nature and substance of the dispute and the relief sought in relation to that dispute.
- 5.1 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.
- 5.2 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 the next most senior available officer of the Law Society.
- 5.3 The Specialist is to act as an independent expert and:-
- (a) each party may make written representation within twenty 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;
 - (d) the Specialist is not to take oral representations from the parties without giving each party the opportunity to be present and to give evidence and to cross-examine each other;
 - (e) the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision; and
 - (f) the Specialist is to use reasonable endeavours to publish his decision within 30 working days of receipt of all relevant material in respect of the dispute.
- 5.4 The decision of the Specialist shall be final and binding upon the parties.
- 5.5 Any party participating in this dispute resolution process shall bear their own costs of referring a dispute to the Specialist under this clause.
- 5.6 This clause does not apply to disputes in relation to matters of law or the construction or interpretation of this agreement which will be subject to the jurisdiction of the courts
- 6 NOTICES**
- 6.1 A notice or other communication to be given under or in connection with this Deed must be in writing and must be:
- (a) delivered by hand; or
 - (b) sent by pre-paid first class post or other next working day delivery service.
- 6.2 Any notice or other communication to be given under this Deed must be sent to the relevant party as follows:
- (a) to the Council at: Civic Offices, Angel St, Bridgend, CF31 4WB marked for the attention of Mr Phil Thomas, Principal Planning Officer, Communities Directorate, Bridgend County Borough Council [REDACTED]

- (b) to the First Owner at: 1 Lancaster Place, Strand, London, WC2E 7ED marked for the attention of Mr Archie Rose, Estates Surveyor, [REDACTED]
- (c) to the Second Owner at: Ty Talgarth, Nantymoel, Bridgend, CF32 7NR marked for the attention of Jonathan Pugh [REDACTED]
- (d) to the Mortgagee at: 8 Canada Square, London E14 5HQ marked for the attention of the Company Secretary;
- (e) To the Developer at: Beaufort Court, Egg Farm Lane, Station Road, Kings Langley, Hertfordshire, WD4 8LR marked for the attention of the Company Secretary;

or as otherwise specified by the relevant person by notice in writing to each other person.

6.3 Any notice or other communication given in accordance with clause 6.1 and clause 6.2 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address provided; and
- (b) if sent by pre-paid first class post or other next working day delivery service at 9.00 am on the second Working Day after posting.

6.4 If any notice or other communication is delivered before 9.00 am on a Working Day, the notice will be deemed to have been received at 9.00 am on that day, and if delivered after 5.00 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9.00 am on the next Working Day.

6.5 A notice or other communication given under this Deed shall not be validly given if sent by e-mail.

7 MORTGAGEE'S CONSENT

7.1 The Mortgagee acknowledges and declares that this Deed has been entered into by Jonathan Pugh with its consent and that the Jonathan Pugh Land will be bound by the obligations in this Deed as if this Deed had been entered into before the charges of the Mortgagee and that the security of the charges over the Jonathan Pugh Land will take effect subject to the same PROVIDED THAT THE MORTGAGEE (and any receiver or agent appointed on its behalf) will have no liability under this Deed unless the Mortgagee takes possession of the Jonathan Pugh Land in which case subject to clause 7.2 below it too will be bound by the obligations as if it were a person deriving title from Jonathan Pugh.

7.2 The Mortgagee and any future mortgagee or chargee from time to time which shall have the benefit of a mortgage or charge of or on any part or parts of the Jonathan Pugh Land shall not be liable for any breach of the obligations in this Deed unless committed or continuing at a time when it takes possession of the Jonathan Pugh Land or any part thereof to which such obligations relates.

8 INDEMNITY

The Developer hereby covenants with the First Owner to observe and perform the obligations set out in Schedule 1 and hereby indemnifies the First Owner from and against liability in respect of all loss damage actions proceedings claims demands costs damages and expenses of whatsoever nature arising in any way directly or indirectly out of this Deed including but not limited to (i) any rights of commoners in respect of the Duchy Land (ii) any works carried out pursuant to the BEMP (as defined in Schedule 1) (iii) any flooding on the Duchy Land caused by or resulting from the works carried out pursuant to the BEMP and (vi) the covenants given to the Council.

9 COVENANTS BY THE DEVELOPER

9.1 Prior to submitting any material for inclusion in the BEMP to the Council for approval in accordance with Paragraph 1.1 of Schedule 1 the Developer covenants with the First Owner as follows:

- (a) to consult with the First Owner in regard to the terms of the BEMP (which for the avoidance of doubt shall be limited to the works specified in Schedule 1 shown in the locations on the Site Plan) and to take account of any reasonable representations observations and requirements that the First Owner makes; and
- (b) to obtain the First Owner's approval (not to be unreasonably withheld or delayed where the terms comply with the provisions of clause 8.7.2 of the Option Agreement) to the BEMP to be submitted to the Council pursuant to paragraph 1.1 of Schedule 1 and not to make any changes to the same without the First Owner's prior approval (not to be unreasonably withheld or delayed).

9.2 In the event the Developer shall dispose of its interest in the Option Agreement (or any lease granted pursuant to it) then the Developer shall procure that the disponent covenants with the First Owner in like terms to clauses 8 and 9 of this Agreement.

10 THIRD PARTY RIGHTS

A person who is not a party to this Deed shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

11 LOCAL LAND CHARGE

This Deed is a Local Land Charge and shall be registrable as such at the Local Land Charges Registry for the purposes of the Local Land Charges Act 1975.

12 COUNCIL'S COSTS

The Developer shall pay to the Council on the date of this Deed the sum of £1750 being the Council's reasonable legal costs

13 COUNTERPART

This Deed may be executed in any number of counterparts, each of which when completed shall constitute an original of this Deed but all the counterparts shall together constitute the same planning obligation

14 GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales as applied in Wales.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **RENEWABLE ENERGY SYSTEMS LIMITED** acting by a director, in the presence of:

[REDACTED]
[SIGNATURE OF WITNESS]

[REDACTED]
[SIGNATURE OF DIRECTOR]
Director

Name of Witness
[IN BLOCK CAPITALS]

GEORGE BRIDGE

Address of Witness

82 COLDHARBOUR Rd, BRISTOL, BS6 7LX

Occupation of Witness

TRAINEE SOLICITOR

Executed as a deed by on behalf of the First Owner by
NATHAN JAMES THOMPSON

[REDACTED]

in the presence of:

Witness

Signature: [REDACTED]

Witness

Name: HUGH BRUCE-WATT

Address: 1 LANCASTER PLACE

Occupation: LONDON

THE SOLICITOR FOR THE AFFAIRS
OF THE DUCHY OF LANCASTER

Signed as a deed by **JONATHAN PUGH**
in the presence of:

[REDACTED]

[SIGNATURE OF WITNESS]

Name of Witness
[IN BLOCK CAPITALS]

Address of Witness

Occupation of Witness

[REDACTED]

[SIGNATURE OF PARTY]

GEORGE BRIDGE

82 COLDHARBOUR Rd. BRISTOL, BS6 7LX

TRAINEE SOLICITOR

Signed as a deed by

Christopher Paul Smales
[NAME OF ATTORNEY]

as attorney for HSBC UK Bank plc, pursuant
to a power of attorney dated 22 January 2019,
acting as attorney for HSBC Bank plc,
pursuant to a power of attorney granted to
HSBC UK Bank plc dated 1 July 2018 in the
presence of:

[REDACTED]

[SIGNATURE OF WITNESS]

Name of Witness
[IN BLOCK CAPITALS]

Address of Witness

Occupation of Witness

[REDACTED]

[SIGNATURE OF ATTORNEY] as attorney for
HSBC

RICHARD JAMES ETCHES

HSBC UK Bank plc
Sheffield Securities
Processing Centre

Bank Official

Schedule 1

Owners and Developers Obligations in Relation to Ecological Enhancement

1 COVENANTS

- 1.1 Prior to Commencement of Development the Developer shall submit a Biodiversity Enhancement Management Plan (BEMP) in writing to the Council providing for the following land management works, the locations of which are shown for identification purposes only on the Site Plan.
- 1.2 Upper Garw Valley - Natural Sediment Management initiative and wider habitat creation works at the head of the Garw Valley (the northern end of Cwm Garw) and on Mynydd Llangeinwyr:
- (a) to slow down waterflow into the Upper Garw river catchment in order to reduce the quantity of excess fine sediment entering the river system, reduce scour and siltation of watercourses and pools further down the catchment and thereby improve water quality by installation of works such as gully blocks, channel stuffing and leaky barriers.
 - (b) to re-wet and reduce erosion of marshy grassland and bog habitats thereby improving habitat for water vole, breeding ground nesting birds, reptiles and wetland invertebrates in areas south of the Development.
 - (c) in association with the habitat creation above to erect kestrel boxes in areas beyond 1 km from the Development.
- 1.3 **Water Vole Conservation Works**
- (a) to increase the extent of optimal habitat for water vole within land in the eastern part of the DNS Application area by fencing off areas around watercourses and introducing localised water management measures (such as gully blocks, channel stuffing and leaky barriers), preventing access to the water by sheep, creating better vegetation structure and slowing down water transfer into the Ogmore Valley.
- 1.4 The BEMP shall address the following with regard to the works identified above:
- (a) Description and evaluation of features to be managed.
 - (b) Ecological trends and constraints on site that might influence management.
 - (c) Aims and objectives of management.
 - (d) Details of the appointed ecologist who will monitor the project and ensure compliance with all relevant regulatory and other requirements, method statements and plans, and to report to the principal contractor and the Council;
 - (e) Management options for achieving these aims and objectives.
 - (f) Prescriptions for management actions.
 - (g) Preparation of a work schedule detailing all methods for all species and habitat protection including aftercare and timescales for each element; (including an annual work plan capable of being rolled forward over a five-year period).
- 1.5 Development shall not commence until the Council has approved the BEMP in writing.
- 1.6 The Developer and Owners will observe and comply with the requirements of the BEMP.

Appendix 1

Site Plan