

Dated 9 July **2024**

THE CROWN ESTATE COMMISSIONERS
and
WEST BURTON SOLAR PROJECT LIMITED

AGREEMENT OF UNDERTAKING
relating to
THE WEST BURTON PROJECT ORDER 202[]

THIS AGREEMENT is dated 9 July 2024 and made between:

- (1) **HIS MAJESTY THE KING**
- (2) **THE CROWN ESTATE COMMISSIONERS** of 1 St James' Market, London SW1Y 4AH on behalf of His Majesty acting in exercise of the powers of the Crown Estate Act 1961 (hereinafter referred to as **the Commissioners**);
- (3) **WEST BURTON SOLAR PROJECT LIMITED** (company number 13049324) whose registered office is at Unit 25.7 Coda Studios 189 Munster Road, London, England, SW6 6AW (hereinafter referred to as **the Undertaker**);

WHEREAS:

- (A) The Undertaker applied in March 2023 for West Burton Project Order 202[*] (the **Order**).
- (B) To the extent that the freehold interest in the Plots forms part of the Crown Estate, the Commissioners are charged and empowered by the Crown Estate Act 1961 to enter into this Agreement.
- (C) The Order when made will include the CPO Powers which will enable the Undertaker to acquire rights in the Plots (other than the Commissioners' interests) and the Undertaker and the Commissioners have agreed to the same subject to the terms of this Agreement.

1 INTERPRETATION AND DEFINITIONS

1.1 Interpretation

In this Agreement:

- (a) words importing gender shall include any other gender and words importing persons shall include companies and corporations and vice versa
- (b) words importing the singular number only shall include the plural and vice versa and where there are two or more persons included then covenants herein expressed to be made by that person shall be covenants by such persons jointly and severally
- (c) the headings appearing in this Agreement are for convenience of reference only and shall not form part of nor affect the construction of this Agreement
- (d) any reference to a clause or schedule shall mean a clause of or schedule to this Agreement

- (e) where any obligation is imposed on a party by this Agreement not to do or cause anything to be done the obligations shall be deemed to include an obligation not to permit or suffer the same to be done
- (f) where Articles of the Order are referred to in this Agreement they refer to the Articles in the Order as made which are equivalent to the Article of that number in the version of the Order submitted to the examination by the Undertaker at deadline 3.

1.2 Definitions

In this Agreement:

- (a) **"CPO Powers"** shall mean the powers of compulsory acquisition contained in Articles 20 and 22 of the Order in so far as they are exercisable in respect of any third party interests in the Plots.
- (b) **"Order"** shall mean The West Burton Project Order 202[•] which is to be made by the Secretary of State.
- (c) **"Plots"** shall mean the parcels of land identified in the book of reference accompanying the Order and which are listed in the Schedule to this Agreement.

2 Restriction on the exercise of the CPO Powers by the Undertaker

2.1 In consideration of the Commissioners agreeing to the inclusion in the Order of the CPO Powers the Undertaker covenants with the Commissioners not to use the CPO Powers in respect of any interests in the Plots unless and until:

- (a) the Undertaker has given the Commissioners at least 28 days' prior written notice of the proposed use of the CPO Powers in respect of that interest; and
- (b) the Commissioners have given their prior written consent to the exercise of the CPO Powers in respect of that interest.

3 The Commissioners' agreement to the inclusion of the CPO Powers in the Order

3.1 In consideration of the obligations and covenants on the part of the Undertaker contained in this Agreement the Commissioners acknowledge and agree that:

- (a) the Order shall contain the CPO Powers;

- (b) the Commissioners shall provide written notice of their consent or refusal to consent to the proposed use of the CPO Powers within 21 days of receipt of the Undertaker's notice referred to in clause 2.1(a);
- (c) where pursuant to clause 3.1(b) the Commissioners provide written notice of their refusal to consent to the exercise of the CPO Powers they shall provide reasons; and
- (d) the Commissioners shall be entitled in their absolute discretion to withhold consent or attach terms to their consent so as to ensure their compliance with the Commissioners' duties under the Crown Estate Act 1961.

3.2 For the avoidance of doubt, any covenant, agreement or obligation made by the Commissioners or otherwise implied on the part of Commissioners under this Agreement is made by or implied on the part of the Commissioners acting in exercise of the powers conferred by The Crown Estate Act 1961 and no covenant, agreement or obligation is given by His Majesty or anyone who reigns after him or by the Commissioners in any personal or private capacity.

4 Indemnity

- 4.1 The Undertaker shall fully indemnify and keep fully indemnified the Commissioners from and against all and any claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Commissioners by reason of any breach of this Agreement.
- 4.2 The liability of the Undertaker under this Agreement shall not be reduced, discharged or otherwise adversely affected by any act or omission done by any party (including but not limited to any payment, variation or extension of time).
- 4.3 The indemnity under clause 4.1 shall not apply in respect of any claim, demand, proceeding, cost, damage, expense or loss which may arise out of or be incidental to any negligent act or breach by the Commissioners of any of their obligations in this Agreement.
- 4.4 The maximum liability of the Undertaker to the Commissioners under this clause 4 shall not exceed £5,000,000.00 (five million pounds).

5 Restriction on transfer of the Order

- 5.1 Prior to transferring the benefit of all or any part of the Order pursuant to Article 35(1)(a) of the Order the Undertaker shall:
 - (a) give the Commissioners at least 28 days' prior written notice of the proposed transfer; and

- (b) to the extent that the transfer includes a transfer of any or all of the CPO Powers in respect of the Plots procure that the transferee enters into a new agreement with the Commissioners in the same terms as this Agreement and the Undertaker shall continue to remain liable under this Agreement until such time as the transferee enters into such new agreement and reasonable security for the transferee's obligations in this Agreement is provided to the Commissioners (unless the transfer results in the Undertaker retaining the ability to exercise any or all of the CPO Powers in respect of the Plots, in which case the Undertaker shall continue to remain liable under this Agreement).

5.2 The Undertaker shall not grant the benefit of all or any part of the Order pursuant to Article 35(1)(b) of the Order until:

- (a) the Undertaker has given the Commissioners at least 28 days' prior written notice of the proposed grant; and
- (b) to the extent that such grant relates to any or all of the CPO Powers, the Undertaker has procured that the lessee enters into a new agreement with the Commissioners in the same terms as this Agreement for the duration of the grant and the Undertaker shall continue to remain liable under this Agreement; and
- (c) to the extent that such grant relates to the Plots and would constitute an agreement to which Article [36 applies or a lease granted by or under such agreement, the Commissioners have given their prior written consent to the grant in respect of the Plots.

5.3 In the event that the consent of the Commissioners is sought pursuant to clause 5.2:

- (a) The Commissioners shall provide written notice of their consent or refusal to consent to the proposed grant within 21 days of receipt of the Undertaker's notice referred to in clause 5.2(a);
- (b) where pursuant to clause 5.3(a) the Commissioners provide written notice of their refusal to consent to the proposed grant they shall provide reasons; and
- (c) the Commissioners shall be entitled in their absolute discretion to withhold consent or attach terms to their consent (acting reasonably) so as to ensure their compliance with the Commissioners' duties under the Crown Estate Act 1961.

6 Assignment

6.1 Subject to the provisions of clause 5 of this Agreement the Undertaker may not assign, transfer, mortgage, charge, sub-contract, declare a trust or deal in any other manner with any or all of its

respective rights and obligations under this Agreement without the prior written consent of the Commissioners (such consent not to be unreasonably conditioned withheld or delayed).

7 Governing Law and Jurisdiction

- 7.1 This Agreement 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.
- 7.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

8 Costs and compensation

- 8.1 The Undertaker shall pay the Commissioners' reasonable legal costs in the negotiation and completion of this Agreement.
- 8.2 Nothing in this Agreement shall affect the right of the Commissioners or the owner of any other interest in the Plots to claim compensation under the Order or pursuant to any statutory provision applied by the Order.

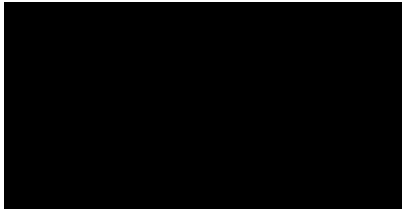
9 Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

10 Third Party Rights

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

Signed by Jonathan Treadaway



For and on behalf of **THE CROWN ESTATE COMMISSIONERS**

Signed by

For and on behalf of **WEST BURTON SOLAR PROJECT LIMITED**

(Director)



Ian Lawrie

In the presence of:

Signature of Witness:



Name of Witness

Columb Harrington

Schedule - Details of the Plots

Plot	Area (m²)	Crown Estate Interest
07-117	323	Drain east of the River Trent and west of A156
07-119	14,255	Bed and banks of River Trent
07-119a	5,669	Bed and banks of River Trent