

MMC594 MOR-EVS-DOC-0024

Dated: 2021

(1) **ISLE OF ANGLESEY COUNTY COUNCIL**

(2) **MENTER MON MORLAIS LIMITED**

Agreement

*under section 106 Town and Country Planning Act 1990 relating to the Morlais
Demonstration Zone*

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BETWEEN:

- (1) **ISLE OF ANGLESEY COUNTY COUNCIL** of Council Offices, Llangefni, Anglesey LL77 7TW (**"the Council"**);
- (2) **MENTER MON MORLAIS LIMITED** (Co. Regn. No. 10747114) whose registered office is at Neuadd Y Dref, Bulkeley Square, Llangefni, United Kingdom, LL77 (**"the Developer"**)

BACKGROUND

- (A) For the purposes of the 1990 Act, the Council is the local planning authority for the area within which the Site is located and the person who is entitled to enforce the obligations contained in this Agreement.
- (B) The Developer has a leasehold interest in the [Landfall Substation Site] pursuant to a lease granted on [] which leasehold interest [is pending registration at the Land Registry/is registered at the Land Registry under title number []] free from encumbrances that would prevent the Developer from entering into this Agreement.
- (C) The Developer applied to the Welsh Ministers for the Order and for associated deemed planning permission pursuant to section 90(2) of the 1990 Act in respect of the Development and on [] the Order was made and the Deemed Planning Permission was granted
- (D) [The Deemed Planning Permission included a condition preventing the commencement of development until an obligation had been entered into under section 106 of the 1990 Act to secure compensation for the impact of the Development on the landscape and seascape character of the area]
- (E) The parties have agreed to enter into this Agreement [to discharge condition [x] of the Deemed Planning Permission] to secure the payment of a contribution towards compensating the residual impacts of the Development on the Designations and hereby agree that the obligations contained in this Agreement are
 - (i) necessary to make the development acceptable in planning terms;
 - (ii) directly related to the development; and
 - (iii) fairly and reasonably related in scale and kind to the developmentand may be enforced by the Council against the Developer and its successors in title as set out herein.

OPERATIVE PROVISIONS

1. INTERPRETATION

- 1.1 In this Agreement, the following words and expressions have the following meanings:

"1990 Act"

the Town and Country Planning Act 1990

"Approval"

each approval of a document scheme or plan required prior to the deployment of a Tidal Device or a berth of Tidal Devices pursuant to the Order (or an equivalent approval under the terms of a marine licence pursuant to article 3(7) of the Order) including (but not limited to) the Environmental Mitigation and Monitoring Plan and the Device Deployment Protocol (as defined in the Order)

"Commencement Date"	the date specified in clause 3.1
"Contribution"	the sum of £600,000 Index Linked which shall be payable to the Council in accordance with the provisions of Schedule 1
"Deemed Planning Permission"	the deemed planning permission for the onshore elements of the Development which are to be undertaken within the Site which has been allocated reference []
"Development"	the construction, operation, maintenance, repowering and decommissioning of a new offshore generating station with a gross output capacity of up to 240 megawatts comprising tidal devices and associated infrastructure offshore together with onshore cabling and connection to the existing electricity network as permitted by the Order and the Deemed Planning Permission
"Environmental Statement"	shall have the same meaning as in the Order
"Index"	the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government or such alternative index or comparable measure of price inflation as the parties agree to take account of any change in the method used to calculate the Index of the base figure used in its calculation
"Index Linked"	the increase of a sum due under the terms of this Agreement from the date hereof until the date on which it is due or paid (if earlier)
"Interest"	interest at 4% per annum above the Bank of England base rate from time to time
["Landfall Substation Site"	that part of the Site on which the landfall substation comprising the Development is to be constructed which is shown for the purpose of identification only edged [red] on Plan 2]
NRW	Natural Resources Wales and any successor in function
"Order"	the [Morlais Demonstration Zone Order 2020] made by the Welsh Ministers on []
"Plan 1"	the plan attached to this Agreement marked Plan 1
"Plan 2"	the plan attached to this Agreement marked Plan 2
"Receptors"	those landscape and seascape character areas and designations and receptors identified in the Environmental Statement as likely to experience significant effects as a consequence of the Development after mitigation, which are set out in Schedule 2, and each may be a ' Receptor ' individually as the context requires

"Site"	the land on which the onshore elements of the Development may be undertaken which is shown for the purpose of identification only edged red on Plan 1
"Specialist"	has the meaning given to it in clause 9.2
"Tidal Device"	a discrete tidal energy generator comprising tidal energy converter(s), foundations and support structures which is deployed as part of the Development
"Working Day"	any day that is not a Saturday, a Sunday, a bank holiday or a public holiday in Wales

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
 - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom as directly or indirectly amended, consolidated, extended, replaced or re-enacted by any subsequent legislation; and
 - 1.2.3.2 any orders, regulations, instruments or other subordinate legislation made under that statute or statutory provision;
- 1.2.4 references to the [Landfall Substation Site] include any part of it;
- 1.2.5 references to any party in this Agreement include the successors in title of that party and any references to the Council include any successor authority exercising the same functions;
- 1.2.6 "including" means "including, without limitation";
- 1.2.7 any covenant by the Developer not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing;
- 1.2.8 where two or more people form a party to this Agreement, the obligations they undertake may be enforced against them all jointly or against each of them individually; and
- 1.2.9 if any provision is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remainder of the Agreement is to be unaffected.

- 1.3 The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it excepting any successor in title to the Developer.

2. **EFFECT OF THIS AGREEMENT**

- 2.1 This Agreement is made pursuant to section 106 of the 1990 Act and to the extent that they fall within the terms of that section 106 the obligations contained in this Agreement are planning obligations and are enforceable by the Council.

- 2.2 The covenants, restrictions and obligations contained in this Agreement are planning obligations for the purposes of section 106 of the 1990 Act and are entered into by the Developer with the intention that they bind the interests held by the Developer in the [Landfall Substation Site] and their successors and assigns.
- 2.3 To the extent that any of the obligations contained in this Agreement are not planning obligations within the meaning of the 1990 Act, they are entered into pursuant to the powers contained in section 111 Local Government Act 1972 and all other enabling powers.
- 2.4 Nothing contained or implied in this Agreement 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 [Landfall Substation Site] or otherwise.
- 2.5 This Agreement will be registered as a local land charge by the Council.
- 2.6 Nothing in this Agreement prohibits or limits the right to develop any part of the Landfall Substation Site in accordance with a planning permission, other than one relating to the development as permitted pursuant to the Deemed Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal.
3. **COMMENCEMENT DATE**
- 3.1 The obligations contained in **clauses 4.1 and 4.2** and the Schedules referred to therein do not come into effect until the date on which the Development commences onshore by the carrying out on the Site pursuant to the Deemed Planning Permission of a material operation as specified in section 56(4) of the 1990 Act (subject to the provisions of **clause 3.2**)
- 3.2 The Commencement Date will not be triggered by any of the following operations:
- 3.2.1 site investigations or surveys;
 - 3.2.2 site decontamination;
 - 3.2.3 construction of access and service roads;
 - 3.2.4 the demolition of any existing buildings or structures;
 - 3.2.5 the clearance or regrading of the Site;
 - 3.2.6 works connected with infilling; or
 - 3.2.7 works for the provision of drainage or mains services to prepare the Site for development.
4. **OBLIGATIONS OF THE PARTIES**
- 4.1 The Developer agrees with the Council to comply with their obligations set out in **Schedule 1**
- 4.2 The Council agrees with the Developer to comply with its obligations set out in **Schedule 1**
- 4.3 The Council and the Developer each agree to act reasonably in exercising their discretion and discharging their functions under this Agreement and where any notice, consent, approval, authorisation, agreement or other similar affirmation is required under the terms of the Agreement, the parties will not unreasonably withhold or delay such notice, consent, approval, authorisation, agreement or other similar affirmation.
- 4.4 No person will be liable for any breach of the terms of this Agreement occurring after the date on which they part with the whole of their interest in the [Landfall Substation

Site] but they will remain liable for any breaches of this Agreement occurring before that date PROVIDED THAT neither the reservation of any rights or the inclusion of any covenants or restrictions over the [Landfall Substation Site] in any transfer of the [Landfall Substation Site] will constitute an interest for the purposes of this **clause 4.7**.

5. **TERMINATION OF THIS AGREEMENT**

5.1 This Agreement will come to an end if:

5.1.1 subject to **clause 5.2**, the Deemed Planning Permission is quashed, revoked or otherwise withdrawn other than at the request of either of the Developer at any time so as to render this Agreement or any part of it irrelevant, impractical or unviable; or

5.1.2 the Deemed Planning Permission expires before the Commencement Date without having been implemented.

5.2 Where the Agreement comes to an end under **clause 5.1**:

5.2.1 the Council is to vacate or cancel the entry made in the Local Land Charges register in relation to this Agreement or otherwise to record the fact that it has come to an end and no longer affects the Site; and

5.2.2 any monies paid under this Agreement to the Council, with the exception of fees paid under **clause 7**, are to be returned to the party that made the payment within one month of the Agreement coming to an end together with interest accrued on the monies from and including the date of payment to and including the date of repayment.

5.1 Where the Agreement is released in part by a future agreement, the Council will place a note against the entry made in the Local Land Charges Register stating which obligations no longer have effect.

5.2 If the Developer makes a request in writing at any time after each or all of the obligations under this Agreement have been discharged and complied with (and subject to the payment of the Council's reasonable and proper costs), the Council will issue a written confirmation of such performance or discharge.

5.3 Following the performance and full satisfaction of all the terms of this Agreement or if this Agreement is determined pursuant to **clause 5.1** (and subject to payment of the Council's reasonable and proper costs and charges) the Council will on the written request of the Developer cancel all entries made in the local land charges register in respect of this Agreement.

6. **NOTICES**

6.1 Any notice, demand or any other communication served under this Agreement will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery unless otherwise agreed in writing between the parties.

6.2 Any notice, demand or any other communication served is to be sent to the address of the relevant party set out at the beginning of this Agreement or to such other address as one party may notify in writing to the others at any time as its address for service.

6.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:

6.3.1 if delivered by hand, at the time of delivery;

6.3.2 if sent by post, on the second Working Day after posting; or

6.3.3 if sent by recorded delivery, at the time delivery was signed for.

6.4 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.

6.5 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

7. **COSTS OF THIS AGREEMENT**

Upon completion of this Agreement the Developer shall pay to the Council its reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement

8. **INTEREST**

If any payment due under this Agreement is paid late, Interest will be payable on the sum outstanding from the date payment is due to the date of payment

9. **VALUE ADDED TAX**

All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

10. **DETERMINATION OF DISPUTES**

10.1 Subject to **clause 10.7**, if any dispute arises relating to or arising out of the terms of this Agreement, either party may give to the other written notice requiring the dispute to be determined under this **clause 10**. 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.

10.2 For the purposes of this **clause 10** 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, where reasonably available, with property in the same locality as the Site.

10.3 Any dispute over the type of Specialist appropriate to resolve the dispute may be referred at the request of either 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 10.4**.

10.4 Any dispute over the identity of the Specialist is to be referred at the request of either 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.

10.5 The Specialist is to act as an independent expert and shall be responsible for agreeing the process by which the dispute is to be determined with the Parties within ten Working Days of their appointment.

10.6 Responsibility for the costs of referring a dispute to a Specialist under this **clause 10**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any party in relation to a dispute,

will be decided by the Specialist (or if the Specialist makes no direction, then the costs shall be borne equally between the parties to the dispute).

- 10.7 This **clause 10** 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.

11. **WAIVER**

No failure or delay by the Council to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

12. **DATA PROTECTION**

- 12.1 The parties to this Agreement acknowledge and agree that information as to compliance with obligations pursuant to this Agreement (including as to whether or not contributions have been paid) may be passed to:

12.1.1 Persons who make enquiries on such matters and who advise that they or their clients are proposing to acquire an interest in the Site and it is acknowledged that recipients of such information may then disseminate it further; and

12.1.2 Any person when so required in order to comply with statutory requirements including the Freedom of Information Act 2000 or with any reporting requirements of the Council.

13. **JURISDICTION**

- 13.1 This Agreement is to be governed by and interpreted in accordance with the law of Wales

- 13.2 The courts of England and Wales are to have jurisdiction in relation to any disputes between the parties arising out of or related to this Agreement

14. **EXECUTION**

The parties have executed this Agreement as a deed and it is delivered on the date set out above.

SCHEDULE 1

Obligations

Part 1 – the Developer’s Obligations

1. The Developer covenants with the Council to notify the Council and NRW in writing of
 - 1.1 the proposed date of Commencement of Development not less than 10 Working Days prior to the date Commencement of Development is proposed;
 - 1.2 the Commencement of Development within 5 Working Days of that event; and
 - 1.3 the date on which the Development was commissioned and commenced generating electricity to the national grid within 10 Working Days thereof
 - 1.4 the grant of the final Approval for the deployment of one or more Tidal Devices for an array area comprising the Development no less than [14 days] in advance such notice to confirm the generating capacity of the relevant deployment
2. The Developer covenants on behalf of itself and its successors in title with the Council so as to bind its interest in the [Landfall Substation Site] to pay the Contribution to the Council in accordance with the following:
 - 2.1 £10,000 (ten thousand pounds) shall be paid on or before the grant of the final Approval required for deployment of the first Tidal Device
 - 2.2 a further £20,000 (twenty thousand pound) shall be paid on completion of the construction of the onshore elements of the Development so as to permit the commissioning of any Tidal Devices to export electricity to the national electricity grid
 - 2.1 a further £60,000 (sixty thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other Tidal Devices deployed previously or concurrently or for which all Approvals have been granted, will have the capacity for generation of 30 megawatts of power through the substation on the [Landfall Substation Site] to the national electricity grid
 - 2.2 a further £80,000 (eighty thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other Tidal Devices deployed previously or concurrently or for which all Approvals have been granted, will have the capacity for generation of more than 30 megawatts but no more than 60 megawatts in total of power through the substation on the [Landfall Substation Site] to the national electricity grid
 - 2.3 a further £80,000 (eighty thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other Tidal Devices deployed previously or concurrently or for which all Approvals have been granted, will have the capacity for generation of more than 60 megawatts but no more than 100 megawatts in total of power through the substation on the [Landfall Substation Site] to the national electricity grid
 - 2.4 a further £100,000 (one-hundred thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other Tidal Devices deployed previously or concurrently

or for which all Approvals have been granted, will have the capacity for generation of more than 100 megawatts but no more than 150 megawatts in total of power through the substation on the [Landfall Substation Site] to the national electricity grid

2.5 a further £100,000 (one-hundred thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other Tidal Devices deployed previously or concurrently or for which all Approvals have been granted, will have the capacity for generation of more than 150 megawatts but no more than 200 megawatts in total of power through the substation on the [Landfall Substation Site] to the national electricity grid

2.6 a further £150,000 (one-hundred and fifty thousand pounds) shall be paid on or before the grant of the final Approval required for first deployment of any Tidal Device which, either alone or in combination with the operation of other installed Tidal Devices deployed previously or concurrently or for which all Approvals have been granted, will have the capacity for generation of more than 200 megawatts (and up to 240 megawatts) in total of power through the substation on the [Landfall Substation Site] to the national electricity grid

PROVIDED THAT each payment under paragraphs 2.1 to 2.6 shall only be paid once and the sums taken together shall not exceed the Contribution

Part 2 – the Council’s Obligations

3. The Council covenants with the Developer as follows

3.1 to apply each and every of part of the Contribution paid pursuant to paragraph 1 above towards measures which, in the opinion of the Council (acting reasonably) in consultation with NRW insofar as the said measures relate in any way to the Anglesey AONB (and the Council having regard to NRW’s response in determining the measures to which the Contribution shall be applied), will compensate for the residual impact of the Development on the Receptors and for no other purpose whatsoever. The measures to compensate may include:

3.1.1 undertaking landscape enhancement works in land owned or controlled by the Council

3.1.2 providing funding to projects carrying out landscape restoration or enhancement programmes

3.1.3 directly funding landscape enhancement works on land in third party ownership and

3.1.4 improving public access to land, including provision of new public rights of way or improvement of existing rights of way

and application of funds for the purposes of this Schedule includes funding the cost of time of the Council’s officers spent on delivering such measures.

3.2 within 28 days of a written request from the Developer to provide details as to the purposes to which the Contribution or any part thereof has been applied to pursuant to paragraph 3.1 above and a copy of said details insofar as they relate in any way to the AONB shall also be given to NRW within 14 days of being provided to the Developer

3.3 in the event that any part of the Contribution has not been applied or committed for expenditure towards measures to compensate for the residual impact of the Development on the Receptors within the period of 5 years from the date of payment of the relevant instalment the Council shall repay the unexpended or uncommitted part of the Contribution to the Developer together with accrued interest thereon

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SCHEDULE 2

Receptors

SCA 13 – Holyhead Mountain

SCA 14 – Rhoscolyn

Isle of Anglesey Area of Outstanding Natural Beauty

Heritage Coast (Holy Island)

Dispersed residential properties in North West Holy Island

Transport routes comprising minor roads in North West Holy Island

Recreational Receptors comprising users of long distance footpaths, other public rights of way and Open Access Land, promoted cycle routes, and visitors to South Stack RSPB Visitor Centre and the beach at Abraham's Bosom

Executed as a deed by affixing
the common seal of
ISLE OF ANGLESEY COUNTY COUNCIL
in the presence of

)
)
)
)

Executed as a deed by
MENTER MON MORLAIS LIMITED
acting by two directors or a director and
its secretary

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)
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Director

Director/Secretary

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