

## MODEL ANSWER: HEADS OF TERMS

### Background:

Overarching aim is to maximise income available to the estate. Nakatomi Solar Limited (**Nakatomi**) wish to take an option for a 30 year lease of 50ha (123.5 acres).

Included within the land identified for the solar development is 30ha that is subject to the AHA tenancy. Nakatomi will require access to the land during the option period for surveys/testing and vacant possession of the land on lease completion.

It's likely planning will be applied for via a DCO. Whilst the biodiversity net gain (**BNG**) is not required for a DCO project consented prior to Nov 2025, on the basis it will take circa 2 years to achieve a DCO, Nakatomi have asked if some land could be made available to meet the BNG of the proposed solar development.

Solar Option for Lease HoTs	
Subject to contract and confidential - <b><i>always mark up as STC and Confidential</i></b>	
Landowner	Bruce and Holly, Gennero Estate
Tenant	Nakatomi Solar Limited <b><i>confirm company number; registered office and consider the Tenant's reputation in the market for building out. Often the tenant vehicle will be an SPV but tenant covenant strength is less of an issue due to the provision of decommissioning security covered later on</i></b>
Landowner's solicitor	[insert details]
Landowner's agent	[insert details]
Tenant/Tenant's solicitor	[insert details]
Option Area	50ha (123.5 acres) edged red by reference to plan <b><i>Define the option area by reference to a plan</i></b>  Ability for option to be exercised over entire area or substantial part at Tenant's election provided any sterilised land (wider estate land Landowner reasonably considers unable/unviable for agriculture following development e.g. corridor between fence line and existing boundary) is included and rentalised.
Landowner Retained Land	Landowner retained land edged blue (over which Tenant may require easements for access/cables etc.)
Generation Size	Anticipated MW solar generation and anticipated acres required. <b><i>More important for rents calculated by reference to £ per MW. Acting for landowner try to agree a minimum MW capacity/land take to ensure minimum rental expectation. Tenants will resist but</i></b>

	<b><i>a reasonable endeavours obligation could be agreed with a sensible minimum level.</i></b>
Initial Option Period	Initial option period of between 3-5 years. <b><i>Initial option periods are getting longer due to grid connection delays with 10 years included in recent deals.</i></b>
Initial Option Fee	Negotiable depending on level of rent agreed. Non-refundable, non-deductible. <b><i>Initial Option fee could be nominal if amortised over term by way of higher rent or they could be an upfront payment and typically we are seeing these between £1k-£10k. Consider whether the Landowner wants an instant return by way of an initial capital payment or a higher rent later down the line subject to build out.</i></b>
Option Period Extension	Rolling extension or Tenant ability to call for extension of typically 3-5 year period in the following events: <ol style="list-style-type: none"> <li>1. Planning decision/DCO applied for and awaited;</li> <li>2. outstanding appeal/JR related to planning decision/DCO;</li> <li>3. planning granted or refused within 8 weeks prior to expiry of Initial Option Period; or</li> <li>4. Grid connection agreement applied for but outstanding</li> </ol> <p>Subject to paying the extension Option Fee, multiple extensions but subject always to the Longstop Date.</p>
Option Extension Fee	Extension fee of circa £5,000 per annum indexed from the date of Option Agreement. Non-refundable, non-deductible. <b><i>Again, these vary depending on the bargaining strength of the parties.</i></b>
Longstop Date	10 years from date of Option. <b><i>Typically these are around 10 years at present due to connection delays but consider whether the landowner wants a shorter drop dead date.</i></b>
Land Registry	UN1 and no disposition restriction without deed of covenant is standard to protect the option.
Landowner Chargee Consent	Landowner to procure chargee consent to Option and Lease.
Direct Agreement/Funder step in rights	Landowner to enter into a direct agreement reasonably required by a tenant's funder at Tenant's expense. The parties agree that the provisions for rent, alienation, indemnity, limitation of liability or public liability, term of

	<p>the Lease, landlord covenants and the yielding up and decommissioning provisions shall not be amended and the Landowner can reject any attempt to amend the same. The Tenant will use reasonable but commercially prudent endeavours to mitigate any adverse impact or onerous obligations on the Landowner.</p> <p><b><i>This is a standard clause included in all Options and repeated in the Lease to enable later funding. They are rarely entered into in practice however when acting for landowner always ensure the landowner is not obliged to agree amendments to level of rent/rent review, term of the lease, extent of Option Area, changes to indemnities in lease, yielding up/decommissioning provisions. Essentially a funder's direct agreement cannot change the commercial deal.</i></b></p>
<p>Tenant rights prior to lease completion</p>	<ol style="list-style-type: none"> <li>1. Right of entry to install monitoring equipment, carry out site inspections/surveys, soil tests including any required for planning permission e.g. digging trial holes/boreholes, environmental/ecological surveys (such locations to be reasonably agreed by the landowner);</li> <li>2. Access over any access roads;</li> <li>3. Any other operations/investigations reasonably necessary for implementation;</li> <li>4. Right to submit planning application in accordance with Option Agreement; and</li> <li>5. Temporary licensed access for site compound outside of demise during construction phase (9 months).</li> </ol> <p>Subject to Tenant entry conditions:</p> <ol style="list-style-type: none"> <li>1. Prior notice to Landowner/occupiers;</li> <li>2. Making good damage to Landowner/Occupiers' reasonable satisfaction;</li> <li>3. Restrictions on plant/equipment;</li> <li>4. Compliance with H&amp;S;</li> <li>5. Maintaining public liability not less than £5m;</li> <li>6. Liable for any enviro damage.</li> </ol>

	Indemnity to make good damage to Landowner's reasonable satisfaction of the Option Area but also the Landowner's Retained Land.
Landowner restrictions	<p>Obligations on the Landowner during the Option Period not to do anything which could materially adversely affect:</p> <ol style="list-style-type: none"> <li>1. Tenant's application for planning /grid connection;</li> <li>2. Economic viability of the solar development;</li> <li>3. Exercise of the Tenant rights under the Option Agreement;</li> <li>4. Compliance with planning/stat requirements.</li> </ol> <p><b><i>Consider Landowner retained ability to continue arable operations during Option Period and graze the Option Area post lease completion.</i></b></p>
Landowner obligations	<p>The Landowner will provide reasonable assistance to Tenant with regard to:</p> <ol style="list-style-type: none"> <li>1. Identifying services/land drains;</li> <li>2. Providing construction/contamination information;</li> <li>3. Keeping Option Area in general condition as at date of agreement (<b><i>ensure no obligation to make good damage caused by general agri operations</i></b>);</li> <li>4. Not install anything which would impact solar irradiation e.g. tree planting/telecoms mast;</li> <li>5. Support and not object to planning (ensure landowner not obliged to attend meetings etc.);</li> <li>6. Not allow a third party to develop a solar park on the Landowner's neighbouring property or carry out investigations during the Option Period. <b><i>Acting for Landowner consider a fixed radius given the estate is large.</i></b></li> </ol>
Lease Completion Conditionality	<p>Lease completion conditional on:</p> <ol style="list-style-type: none"> <li>1. Tenant obtaining planning permission/DCO and discharge on all pre-commencement planning obligations; and</li> </ol>

	<p>2. Tenant receiving connection date from DNO following completion of grid connection agreement and design approval of substation.</p> <p><b>Usually, vacant possession is just a Landowner completion deliverable but consider making lease completion and any access rights during the Option Period conditional on Landowner obtaining vacant possession (noting AHA over part) and any positive Landowner obligations to use reasonable endeavours to obtain surrender/variation to AHA at Tenant's cost or Landowner's cost (where Option Fee compensates). Note the Landowner/Tenant can also apply for statutory rights of access for surveying (s.53 Planning Act 2008) as part of the DCO process which if granted facilitates access during the Option Period subject to compensating the occupier and making good damage. Once granted, obstruction is a criminal offence liable to a fine.</b></p> <p>Tenant to use reasonable endeavours to exercise the option within 6 months of the satisfaction of the above conditions.</p>
<p>Planning Application</p>	<p>Tenant to submit draft application to Landowner and take on board Landowner's representations together with area of sterilised land to be agreed between the parties and included in the Option Area (subject to expert determination if no agreement). <b>Consider how much the Landowner wants to be involved in the planning process. Most Tenants will only agree to keep the Landowner reasonably informed but rights of approval are usually requested in first instance.</b></p> <p>Tenant to use reasonable endeavours at its own costs during the Option Period to:</p> <ol style="list-style-type: none"> <li>1. pursue the grant of a suitable planning consent; and</li> <li>2. enter into a grid connection agreement.</li> </ol> <p>Should the Tenant not decide not to progress the project, Tenant to novate grid connection to Landowner together with all necessary documentation. Tenant to reimburse Landowner's associated costs subject to evidence. <b>This gives the Landowner the ability to gain a valuable grid connection in the rare event the Tenant does not pursue or sell on.</b></p>
<p>Planning Agreements</p>	<p>Landowner will enter into any planning agreements the Tenant may reasonably require the Landowner to enter into relating to the Option Area. The Tenant shall</p>

	<p>indemnify the Landowner against all liabilities arising under such agreements and pay any costs incurred by the planning permission and its conditions.</p> <p>The Landowner shall not in any event be obliged to enter into any obligation or restriction in a planning agreement that affects the Landowner's Retained Land.</p> <p><b>Planning permission is often time limited to encourage reinstatement of land following expiry of a set period and also to prevent long term impact on value. Ensure any planning agreements e.g. s.106 obligations cannot go beyond planning date/lease term and confine these to the Option Area or by separate agreement the Landlord's Retained Land.</b></p>
DNO Documents	<p>Where required by the Tenant, the Landowner will grant wayleaves and enter into deeds of easements and/or substation leases necessary for the development and operation of the site provided that the cable route will be subject to the Landowner's approval. These will be standard DNO, TNO or telecoms operators forms of documents to be reviewed by the Landowner's Agent and Landowner's Solicitor at the Tenant's cost.</p>
Option/Lease Assignment	<p>Tenant able to assign to group co. or funder without landowner consent.</p> <p>Assign to third parties subject to landowner consent (such consent not to be unreasonably withheld or delayed where in the reasonable opinion of the Landowner the proposed assignee is a demonstrably competent operator). <b>Acting for landowner preserve the right for landowner vetting of assignees.</b></p> <p>On any assignment of the Option and/or Lease to any third party, the Tenant shall procure that the assignee covenants directly with the Landowner to comply with the terms of the Option and/or the Lease from the date of the assignment. <b>Acting for landowner consider an assignment premium, sometime one-off fees circa £10k can be agreed</b></p>
Crop Loss	<p>Tenant will make reasonable endeavours to exercise the Lease at a time to minimise loss of crop on any land. However, if it is necessary for the lease to be exercised the Tenant will compensate the Landowner for any crop loss experienced at that time.</p> <p>Tenant will also pay for any damage to or loss to crops caused during any early access for surveys</p>

	investigations etc. during the Option Period. All sums to be assessed under CAAV guidelines.
Vacant Possession	Landowner to provide vacant possession of the Option Area upon completion. <b>See Conditionality note above, consider the AHA surrender/variation required.</b>
Schedule of Condition	Photographic schedule of condition to be prepared by Tenant (at its cost) prior to lease grant to include detailed soil survey (including ph, organic matter, p, k and mh levels). Schedule to be annexed to lease for reinstatement purposes.
<b>Lease</b>	
Solar Lease Rent	<p><u>Solar Acreage Rent</u>: No. acres demised (inc. substation if located outside demise, new access roads and sterilised farming land multiplied by £1,000 indexed linked to RPI/CPI. Payable in advance on quarter days.</p> <p><u>Sterilised Land</u>: Whether you can get any sterilised land included in the Option Area and re-charged at the full Solar Acreage Rent or re-charged at a lower rent will depend on the bargaining strength of the parties.</p> <p><u>Consider Battery Storage Rent</u> (between £1k-£2.5k per MW per annum) rent and indexed linked should battery be planned at the outset or in the future. Payable in advance on quarter days.</p> <p><u>Top-up Turnover Rent</u>: amount by which 5-6.5% of Gross Income for any payment year exceeds the Solar Acreage Rent for preceding payment year. Payable per annum in arrears.</p> <p>Any indexation is to be assessed from the date of the Option Agreement.</p>
Term	30 years.
Tenant Break Right	10 <sup>th</sup> anniversary on 6 months' notice.
1954 Act	Lease to be contracted outside of the security provisions of the 1954 Act.
Repair	<p>Tenant will be responsible for ongoing maintenance and repairs. Tenant to also keep property neat and tidy and free of injurious/annual weeds and keep equipment safe and in accordance with statutory requirements.</p> <p>Tenant to install new drainage scheme, maintain throughout term and put in place revised drainage to</p>

	<p>the Landowner's reasonable specification or as documented in the Schedule of Condition on yielding up.</p> <p>Tenant to also install deer fencing around the site and dismantling/removing it at the end of the lease term. If agreed by the parties it shall be left in situ in a good condition at no cost to the Landowner.</p>
Environmental Agreement	A Tenant will try for a statutory agreement that all pre lease contamination is landowner's responsibility which is standard but ensure that this does not apply to any liability triggered by the Tenant's actions.
Alienation	<p>Assignment to mirror Option Agreement HoTs.</p> <p>Tenant may underlet or share occupation of any switchgear house/substation without Landowner consent subject to third party being a Statutory Undertaker and subject to the Landowner's prior written consent (such consent not to be unreasonably withheld or delayed).</p>
Reinstatement/Yield Up	Tenant to reinstate site to its current state or as agreed between the parties at the end of the Lease in accordance with the Schedule of Condition. This includes reinstatement of the soil to allow immediate cultivation.
Forfeiture	Non-payment of rent within 21 days, tenant material breach (subject to Landowner notice and period to rectify), plus funder step in rights and no forfeiture for tenant insolvency.
Decommissioning Security	<p>A Decommissioning Bond/Insurance Product/Bank Guarantee (or combination thereof) will be set up on or before the 10<sup>th</sup> anniversary of the lease by and at the expense of the Tenant exclusively to cover the full costs of decommissioning and reinstatement.</p> <p>The value will be assessed every five years from setup by a suitably qualified and experienced surveyor. Following the assessment any shortfall in the account shall be increased by the Tenant within 90 days.</p>
Biodiversity Net Gain	<p>Landowner and Tenant to consider the provision of land to enable Tenant's BNG provision in compliance with its planning obligations subject to the parties agreeing to factor this into the solar acreage rent (where included in the Option Area) or a separate minimum rent for a quantified area. <b>Most common at present for the BNG to be factored into the Option Area and rentalised via the acreage rent.</b></p>



	Any additional BNG credits generated by the mitigation on the Option Area above that needed for the development to be split 50/50 between Landowner and Tenant. All other rights to enter into any Nat Cap Schemes are to be retained by the landowner together with all associated income. Lease to contain a good faith clause enabling a review of the BNG position during the Term to cater for evolution in this area. <b><i>This is one market approach and is subject to continual change.</i></b>
Rates	The Tenant will pay all rates (including but not limited to business rates, water rates, drainage rates, CIL and s106 agreement costs and will arrange for those not already in existence at the start of the Lease to be removed at the end of the Lease)
Land Agent Fee	The Tenant will give an undertaking to pay the Landowner's Agent proper and reasonable fees up to the sum of [£10k] plus VAT. 50% payable on signature of HoT's and 50% payable upon exchange of the Option. <b><i>Fees remain deal specific.</i></b>
Legal Costs	Tenant will provide an undertaking for the Landowner's proper legal fees up to the sum of [£15k] plus VAT whether or not this matter proceeds to exchange or completion. <b><i>Fees remain deal specific.</i></b>
Confidentiality	Neither party is to disclose any data relating to this Heads of Terms without prior written consent of the other (other than to a professional advisor (solicitor, accountant, surveyor and agent) or to the local planning authority or any statutory undertaker.