



Government of the Netherlands

Draft version 20 December 2018

AGREEMENT PRECEDING THE CREATION OF A RIGHT OF SUPERFICIES AND THE ENTERING INTO OF A LEASE FOR THE OPERATION OF THE HOLLANDSE KUST (ZUID) WIND FARM ZONE SITES III & IV

Hollandse Kust (zuid) Wind Farm Zone Sites III & IV

This document has been drawn up by the Central Government Real Estate Agency in collaboration with the Netherlands Enterprise Agency. No rights may be derived from this document.

*>> Sustainable. Agricultural. Innovative.
International.*

AGREEMENT PRECEDING THE CREATION OF A RIGHT OF SUPERFICIES AND THE ENTERING INTO OF A LEASE FOR THE OPERATION OF THE HOLLANDSE KUST (ZUID) WIND FARM SITES III & IV

The undersigned:

1. Mr [**], Head [**] of the Lettings & Valuations Directorate of the Central Government Real Estate Agency, with its business address in [**] (Postbus 16700, 2500 BS Den Haag), duly representing the State of the Netherlands in this matter, authorised to do so under the provisions of the Central Government Real Estate Agency Mandate Decision 2016 of 27 June 2016 (Government Gazette, 8 July 2016, No 35455), acting on behalf of the State Secretary for the Interior and Kingdom Relations, hereinafter also referred to as “**the State**”;
2. [**], with its registered office in [**] and business address at [**] in [**], listed in the Commercial Register of the Chamber of Commerce under number [**], represented in this matter by [**] on behalf of [**] in the capacity of director under the articles of association, hereinafter referred to as “**the Other Party**”;

hereinafter jointly referred to as “**the Parties**”;

Whereas:

- a. Following an open procedure pursuant to the Dutch Offshore Wind Energy Act (*Wet windenergie op zee, Wwoz*), the Other Party has received a Permit for the construction, operation and removal of a Wind Farm for Hollandse Kust (zuid) Wind Farm Sites III and/or IV with the indication [Permit details];
- b. A Right of Superficies for the Wind Turbines as well as a Lease for the cabling and pipelines are required in order to utilise that permit;
- c. It is inadvisable to create a Right of Superficies or to conclude a Lease before the above Permit and the preceding Wind Farm Site Decisions for Hollandse Kust (zuid) Wind Farm Sites III and IV have been granted and become irrevocable;
- d. The Parties wish to record further agreements on the Right of Superficies to be created and the Lease to be concluded in this Agreement;
- e. The Parties wish to meet in full the conditions as set upon the granting of the above Permit;

Have agreed as follows:

Article 1 Definitions

Unless otherwise indicated, the following terms have the following meanings in this Agreement:

- **Instrument:**
The notarial instrument required for the creation of the Right of Superficies, where the Right of Superficies will be created by the State for the Other Party, the draft of which is attached as **Appendix 1** to the Agreement.
- **General Conditions for Wind Turbines:**
The “State Property and Development Agency (RVOB)'s General Conditions pertaining to a Right of Superficies for Wind Turbines 2012”, a copy of which is appended as **Appendix 2** to this Instrument and which were lodged with the court registry of the District Court of Utrecht on 8 October 2012 under number 177/2012 and were registered with the public registers for property subject to registration on 5 September 2012 in the register Mortgages 4, part 61912, number 146.
- **General Lease Conditions:**

The "State Property Service's General Lease Conditions for Unbuilt Immovable Property 2008", a copy of which is appended as **Appendix 3** to this instrument and which were lodged with the court registry of the District Court of Utrecht on 5 March 2008 under number 86/2008.

- **Restricted Strip**
The area of land that the pipeline owner needs in order to operate the pipeline safely. This strip is also required to enable inspections and maintenance work to be carried out.
- **The State:**
The State of the Netherlands, the undersigned referred to under 1.
- **Documentation:**
All the information provided by the State in relation to the Location, the Right of Superficies, the Right of Lease and the Works, which information was provided to the Other Party during the preceding open procedure [tender details], including the Tender Scheme, the Other Party's tender and the supplements and/or changes thereto as a result of further information that has come to the attention of the State. No rights may be derived by the Other Party from the information referred to herein. The purpose of this information is to enable the Other Party to conduct further research.
- **Lease:**
The Lease relating to the Right of Lease to be concluded between the State and the Other Party for the performance of the Agreement, which Lease shall be signed by the State and the Operator immediately after the creation of the Right of Superficies, the draft of which is attached as **Appendix 4** to the Agreement.
- **Right of Lease:**
The Right of Lease to be granted by the State to the Other Party for the internal site cabling, including the cables for electricity conduits and telecommunication, cables and pipes, for the Hollandse Kust (zuid) Wind Farm Sites III and IV.
- **Civil-law Notary:**
[Details], civil-law notary at [**], or his or her deputy.
- **Point at which the permit becomes irrevocable:**
The date on which the permit referred to in this Article was granted and no legal remedies against the granting of the permit or the underlying Wind Farm Site Decisions (III ([Government Gazette 2018, 2543](#)) and IV ([Government Gazette 2018, 2497](#))) are available. When that date is known, both Parties shall be responsible for ensuring that each is in no doubt as to precisely what the date is.
- **Immovable Property:**
All parcels of seabed, located under the Wind Turbines to be installed, including the rock armour for scour protection, located within the 12 nautical mile zone for which the Right of Superficies is being created.
- **Open Tendering Procedure:**
The open procedure held between [**] and [**] pursuant to the Offshore Wind Energy Act (*Wet windenergie op zee*, Wwoz) for the construction, operation and removal of a Wind Farm in Hollandse Kust (zuid) Wind Farm Sites III and IV, as detailed in the Terms and Conditions.
- **Right of Superficies:**
The Right of Superficies over the Immovable Property which entitles the Other Party to construct, maintain, inspect, operate, remove, change, replace, service and own the Works in accordance with the present intended use, namely the generation of wind energy, to be created by the State for the Other Party.
- **Transfer Date:**
The date on which the Instrument is executed before the Civil-law Notary.
- **Agreement:**
The agreements between the Parties as laid down in this document.
- **Closing Date:**
The date on which the present private agreement is signed by the last of the Parties.
- **Award**
The State's decision relating to the award of the Permit.
- **Permit**
[Details of the permit], as well as the requirements set for it in the preceding Wind Farm Site Decisions III ([Government Gazette 2018, 2543](#)) and IV ([Government Gazette 2018, 2497](#)) and the Offshore Wind Energy Act ([Bulletin of Acts and Decrees 2015, 261](#)).

- **Terms and Conditions:**
The conditions and provisions applicable to the Open Tendering Procedure/Tender Scheme, included in the Documentation.
- **The Other Party:**
The undersigned referred to under 2.
- **Works:**
The Works to be realised on the Immovable Property, a Wind Farm as referred to in the Offshore Wind Energy Act, comprising, among other things, Wind Turbines with a total capacity of between 342 MW (minimum) and 380 MW (maximum) for each site, and associated works such as, but not limited to, switching gear, metering equipment and grid connection equipment, cables, pipelines, works for conduits for electric cables and/or the transport of energy carriers, as well as for telecommunications including other accessories and foundations, including scour protection.
- **Wind Farm Zone:**
Hollandse Kust (zuid) Wind Farm Sites III and IV as specified in the Documentation.

The definitions may be used in the singular or plural without losing their substantive meaning.

Article 2 The Agreement and the creation of a Right of Superficies and the conclusion of a Right of Lease

1. The State intends to create the Right of Superficies and grant the Right of Lease for the Other Party with due observance of the Conditions, the Documentation and the Permit.
2. The creation of the Right of Superficies and the granting of the Right of Lease shall not take place until after the Permit becomes irrevocable, but no later than one year after it has become irrevocable. The agreements to create the Right of Superficies and to grant the Right of Lease will be concluded jointly.
3. Drafts of the Instrument for the creation of the Right of Superficies and the Lease for the granting of the Right of Lease, as well as the General Conditions applicable to those agreements, are appended to this Agreement.
4. This Agreement shall end by operation of law as soon as the Right of Superficies has been created for and the Right of Lease has been granted to the Other Party.

Article 3 General and special conditions

1. The following shall apply to the Right of Superficies:
 - I. the General Conditions for Wind Turbines, in so far as not provided otherwise in the Instrument or an instrument amending the Right of Superficies.
2. The following shall apply to the Right of Lease:
 - I. the General Lease Conditions, in so far as not provided otherwise in the Lease or an agreement amending the Right of Lease.
3. The Other Party declares that it has received copies of the General Conditions for Wind Turbines and the General Lease Conditions before the Agreement is concluded, is entirely familiar with the content of these Conditions and accepts their applicability in their entirety in so far as not provided otherwise in the present Agreement or in future agreements.
4. In addition to the General Conditions for Wind Turbines, the following provisions shall also apply:
 - I. Routine maintenance activities, inspections carried out in connection with the State's public function and repairs, in so far as not arising from use of the Right of Superficies, shall be at the risk and expense of the State.
 - II. The Other Party shall allow the State access to the Immovable Property at any time in order to carry out maintenance activities and inspections in connection with the public function within the management area of the North Sea.
5. The references to Article 2 in Article 6(6), Article 6(7) and Article 15(2) of the General Conditions for Wind Turbines are not applicable to the Right of Superficies.
6. Article 3 and Article 5(4) and (5) of the General Lease Conditions are not applicable to the Right of Lease.

Article 4 Duration

The duration of the Right of Superficies and the Right of Lease is laid down in the Instrument and in the Lease. Both agreements shall in any event end by operation of law on the end date of the Permit. This shall apply by analogy if the Permit, for whatever reason, is revoked in the interim, ends for another reason, or is extended for a fixed period.

Article 5 Fee for the Right of Superficies and Rent

1. The Other Party shall be obliged to pay a fee for the Right of Superficies. Regardless of when the operation of the Wind Farm starts, this obligation shall enter into effect on the day when four (4) years have elapsed since the date on which the Permit became irrevocable and shall expire on the date on which twenty-nine (29) years have elapsed since the issuing of the Permit. Where the term of the Permit is extended, that extension shall apply by analogy to the end date of the obligation to pay the fee.
2. The annual fee for the Right of Superficies shall be determined on the basis of the total number of megawatts of the Wind Farm (fixed at 350 MW for each site), the percentage of the Wind Farm Zone that is located within the 12 nautical mile zone relative to the total Wind Farm Zone as specified in the documentation (Wind Farm Site III: 71.85%, Wind Farm Site IV: 68.23%), the determination of the number of full load hours (fixed at 4,000 hours) and the price of €0.98 per generated MWh per year. The following formula shall be used to calculate the fee:
 - I. Wind Farm Site III: 350 megawatts *times* 71.85% *times* 4,000 full load hours *times* €0.98 per MWh per year. This sum amounts to €985,782 per year.
 - II. Wind Farm Site IV: 350 megawatts *times* 68.23% *times* 4,000 full load hours *times* €0.98 per MWh per year. This sum amounts to €936,115.60 per year.
3. The fee shall be indexed on an annual basis and for the first time five (5) years after the Permit becomes irrevocable in accordance with the provisions of Article 4 of the General Conditions for Wind Turbines.
4. Article 21 of the General Conditions for Wind Turbines shall not apply with respect to the adjustment of the fee.
5. The indexed fee shall apply even if the Other Party is not informed of the indexing by separate notification.
6. The Other Party shall be obliged to pay rent for the Right of Lease. The rent is a lump sum which must be paid immediately after the Lease is signed. The rent shall be determined on the basis of a fixed amount of €3.17 per square metre of Restricted Strip for cables, measured on the basis of the percentage of the site that is located within the 12 nautical mile zone. This has been fixed in advance at 0.3 metres wide and 60,000 metres long for Site III and 70,000 metres long for Site IV. The following formula shall be used to calculate the rent.
 - I. Wind Farm Site III: €3.17 *times* 60,000 *times* 0.3 *times* 71.85%, which equals €40,997.61.
 - II. Wind Farm Site IV: €3.17 *times* 70,000 *times* 0.3 *times* 68.23%, which equals €45,420.71.

Article 6 Method of payment for the fee for the Right of Superficies and the rent

1. The fee and the rent must be paid before or on the due date by direct debit collection or transfer to bank account NL34INGB0705002683 in the name of the Ministry of the Interior and Kingdom Relations.
2. The sending of an invoice for or the payment of the fee and rent after the end of the Right of Superficies and the Right of Lease, or after the time at which the fee and/or the rent can be reviewed, shall not confer a right to extend the Right of Superficies or the Right of Lease, or to an unchanged fee or unchanged rent for a new period.

Article 7 Acceptance; Right of Superficies year and Lease year

1. The Immovable Property shall be accepted by the Other Party as found immediately after the signing of the Instrument and the Lease.
2. The Right of Superficies year and the Lease year shall run from 1 January to the following 31 December inclusive.

Article 8 Designated use

The Other Party shall be obliged to use the Immovable Property exclusively in accordance with the Permit.

Article 9 Other restrictions

To the extent that any other restrictions of which the State has not been informed and/or of which the State is unaware are applicable to the Transfer Date, the Other Party shall accept those rights on the Transfer Date, without being entitled to compensation or reimbursement of the fee and/or rent or the reservation fee referred to below.

Article 10 Reservation fee

1. The Other Party shall be obliged to pay a reservation fee.
2. The obligation to pay a reservation fee shall commence with retroactive effect on the day that the Permit is granted to the Other Party. The obligation shall end when this Agreement ends in accordance with Article 2(4) or in accordance with the provisions of Article 11.
3. The reservation fee shall amount to €650 per planned megawatt (fixed at 350 MW) per year, multiplied by the percentage of the site that is located within the 12 nautical mile zone (Wind Farm Site III: 71.85%, Wind Farm Site IV: 68.23%).

The following formula shall be used to calculate the reservation fee.

- I. Wind Farm Site III: €650 *times* 350 *times* 71.85% *which equals* €163,458.75 per year.
- II. Wind Farm Site IV: €650 *times* 350 *times* 68.23% *which equals* €155,223.25 per year.
4. The reservation fee must be paid before or on the due date by direct debit collection or transfer to bank account NL34INGB0705002683 in the name of the Ministry of the Interior and Kingdom Relations.
5. If, through no attributable fault of the Other Party, the Permit does not become irrevocable, the Other Party shall be entitled to reclaim the reservation fee already paid, notwithstanding the provisions of Article 12(1) and (2). No statutory interest shall be payable on that sum.
6. The Other Party shall also be obliged to pay a reservation fee from the date on which the fee for the Right of Superficies expires, as provided for in Article 5.1, until the date on which the Permit expires or ends for another reason. The reservation fee for the Decommissioning Period shall be calculated in the same way as the reservation fee for the Initial Period (Article 10(3)) is calculated, and will be indexed at the commencement of the Decommissioning Period in accordance with Article 4 of the General Conditions for Wind Turbines, with the date of the Instrument for the Right of Superficies being used as the commencement date for indexing.

Article 11 Early termination, no liability for compensation on the part of the State

1. The Other Party shall not be entitled to terminate the Agreement early, except to the extent provided in Article 23.
2. This Agreement, or the Instrument and Lease yet to be concluded, shall end by operation of law if the Other Party, for whatever reason, no longer has disposal of the Permit.
3. The State shall be entitled to terminate the Agreement early by bailiff's notification or registered letter where:
 - I. the Other Party fails to pay the reservation fee referred to above in Article 10;
 - II. the situations as provided for below in Article 20 exist.
4. Where the Agreement is terminated early in accordance with the provisions of Article 11.2, the Other Party shall not be entitled to compensation, subject, however, to compliance with the provisions of Article 11.5 set out below.
5. In the event of termination of the Permit, and also at the end of the Right of Superficies and the Right of Lease, the Other Party must act in accordance with the requirements set in the Permit, particularly in relation to the obligations on the part of the Other Party to demolish the Immovable Property.

Article 12 Costs and taxes

1. All costs, charges and fees, as well as any transfer tax and turnover tax payable connected with this Agreement and the creation of the Right of Superficies and the granting of the Right of Lease shall be borne by the Other Party.

2. The provisions of Article 12.1 shall remain in full force if the Agreement – for whatever reason – is terminated, terminated by giving notice or ends for another reason.
3. Unless agreed otherwise, the costs of an adviser engaged by a Party shall be borne by the Party that gave the assignment to the adviser concerned.
4. All amounts stated in this Agreement are exclusive of turnover tax, if and in so far as any is payable.

Article 13 Special charges and encumbrances

1. The State guarantees that the Immovable Property is unencumbered by mortgages and attachments and registrations thereof at the time of the creation of the Right of Superficies and the Right of Lease.
2. The State is unaware of the existence of any encumbrances by reason of easements, perpetual clauses and other charges and encumbrances relating to the Immovable Property.
3. The Other Party shall accept all charges and encumbrances that are registered in public registers, but are not shown in the Agreement.
4. According to the land registry record as at the Closing Date, which is appended to the Agreement as **Appendix 5**, there are no known restrictions under public law.

Article 14 Devolution and transfer of claims

The Other Party may transfer the Right of Superficies and the Right of Lease to a third party to which it is also transferring the Permit only after it has met all the requirements as stated in the Permit relating to a transfer to third parties. The Other Party shall inform the State of the manner in which and the time at which the transfer takes place. The Other Party shall not be entitled to transfer the Permit to third parties without also transferring the Right of Superficies and the Right of Lease.

Article 15 Oversize or undersize

Neither Party may make any claim based on undersize or oversize of the immovable property so no adjustment for the difference shall be made.

Article 16 Payment of property charges

1. Any owner's property charges payable by the State for the current year on the Transfer Date are or will be paid in their entirety by the State. Those charges for the year in which the Right of Superficies is created will be settled between the Parties on and as of the Transfer Date in proportion to the time elapsed. If an assessment has not yet been imposed, the amount of the charge concerned shall be estimated by the Parties, with no subsequent adjustment of the estimate taking place.
2. No adjustment relating to charges other than those referred to in this Article shall take place.

Article 17 Guarantees provided by the State

1. Except in so far as the Agreement provides otherwise, the State shall guarantee the following:
 - I. The State is entitled to create the Right of Superficies and to grant the Right of Lease, as well as the undermentioned easement.
 - II. No obligations towards third parties by reason of a pre-emption right or right of option, nor by reason of a repurchase stipulation or leasing exist, or will exist on the Transfer Date.
 - III. No subsidies in connection with which obligations must be met have been applied for or granted by the authorities in respect of the Immovable Property.
 - IV. Unless otherwise provided in the Agreement, no leases, tenancy agreements or other contracts for use, or agreements which could lead to the entering into such agreements, other than those stated in this Agreement have been or will be concluded before the Closing Date. Nor shall agreements as referred to in the previous sentence be concluded on the Transfer Date.
2. As soon as any of the aforementioned legal facts occurs after the Closing Date, but before the Transfer Date, the State shall notify the Other Party immediately after having taken cognisance of a notification to that effect and, if necessary, shall discuss the consequences thereof with the Other Party. In no circumstances shall a change as referred to in this Article ever result in the

Agreement being terminated unless the legal fact in question is of a nature such that the Wind Farm can no longer be developed, built and/or operated in the manner proposed at the time of the Closing Date.

Article 18 Environment

1. The State and the Other Party have not had an analysis carried out to establish the existence, if any, of ground contamination for the purpose of the Right of Superficies and Right of Lease referred to in Article 2.
2. The discovery of ground contamination during the term of the present Right of Superficies and Right of Lease shall not constitute a defect.
3. The State shall not be liable for any loss suffered by the Other Party as a result of the existence of ground contamination in the Immovable Property.
4. The Other Party shall report all existing ground contamination discovered during the operation of the Immovable Property and during the term of the Right of Superficies and the Right of Lease to the State without delay.
5. The Other Party shall make every effort to prevent contamination of the ground belonging to the Immovable Property during the operation of the Immovable Property and during the term of the present Right of Superficies and Right of Lease.
6. The Other Party shall always report any ground contamination that occurs during the term of the present Right of Superficies and Right of Lease directly to the State and the manager of the waters directly, comply with any resultant orders issued by the manager as referred to in Section 5:1 of the Dutch Water Act (*Waterwet*) regardless of the party on which they have been imposed, directly and at its own expense, and shall also transmit reports transmitted to the manager and decisions received from the manager in this context to the State directly. The aforementioned obligation for the Other Party to comply with orders directly and at its own expense shall not apply if the Other Party can prove that the contamination cannot reasonably be attributed to it.
7. The Other Party shall be liable towards the State for the costs of remedying any contamination of the ground belonging to the Immovable Property during the term of the present Right of Superficies and Right of Lease and for all other loss (including any decrease in value of the Immovable Property) and costs with which the State is faced as a result of that contamination, unless it can prove that the contamination cannot reasonably be attributed to it.
8. The Right of Superficies and the Right of Lease shall be deemed to continue until any orders to be implemented by the Other Party as referred to in subclause 6 have been implemented to the satisfaction of the manager as evidenced by a decision issued by the manager.
9. The Other Party cannot derive any rights with respect to the State from the obligation to implement orders as referred to in subclause 6 regardless of on whom it has been imposed.

Article 19 Risk transfer

The Immovable Property shall be at the Other Party's risk as from the time of signing of the Instrument to be specified in that Instrument. The Immovable Property shall be the responsibility of the Other Party as from the Transfer Date.

Article 20 Termination of the Agreement for reasons of public interest

1. The State shall be entitled to terminate the Agreement in respect of the Immovable Property in its entirety or for any part of the Immovable Property that it chooses for reasons of public interest. Termination shall take place in writing in the manner provided for in Book 5, Section 104(2) in conjunction with Book 5, Section 88 of the Dutch Civil Code (*Burgerlijk Wetboek, BW*), provided that a period of six (6) months is applicable instead of the period referred to in the latter Section.
2. In addition to that which is stated in subclause 1 of this Article, the State shall also be entitled to terminate the Agreement in full or in part if it requires the Immovable Property, or part thereof, for the performance of its public duty or duties.
3. If the Agreement ends by termination as referred to in Article 20.1 or 20.2, the Other Party shall be entitled to compensation.

4. The compensation referred to in Article 20.3 shall be set by the Parties at an amount representing reimbursement of the investment which the Other Party has made until that point in connection with the development and construction of the Works.
5. The State shall be entitled to deduct all claims which it has against the Other Party by reason of the Agreement from the compensation payable by it, but only for the amount that demonstrably pertains to the part of the Immovable Property to which the termination of the Agreement relates.

Article 21 Indemnification

1. The Other Party shall indemnify the State against all claims (of whatever kind) of third parties in respect of loss suffered which can be attributed to the construction, operation and/or removal of the Hollandse Kust (zuid) Wind Farm by or on behalf of the Other Party.
2. In this Article, construction, operation and/or removal of the Works is also understood to mean the removal of anything in, on or above the Immovable Property.
3. In the event of loss, including consequential loss, which has a direct causal link with the construction, operation and/or removal of the Wind Farm, suffered by a State user or users of land immediately adjoining the Immovable Property, the Other Party shall compensate that land user or those land users directly on the proviso that the Parties expressly neither agree nor intend a third-party clause.

Article 22 Easement to be created

1. The easement described below in this Article shall be created simultaneously with the creation of the Right of Superficies.
 - I. To create as easements on the parts of the Immovable Property that remain in the full ownership of the State, recorded in the Land Register as [**], section [**], numbers [**] and [**], jointly constituting the servient land, for the benefit and enjoyment of the Immovable Property, being the dominant land, the easement entailing the obligation for the party entitled to the servient land to tolerate rotor blades sweeping over the servient land and their being allowed to be kept there;
2. the Parties declare that they will accept the easement.
3. The easement relates only to the part of the Immovable Property as indicated in the site plan or plans, which are attached to the Instrument.
4. The easement shall be entered into with due observance of the Permit and the Documentation.
5. The easement shall end as soon as the Right of Superficies ends and the Wind Farm has been removed in accordance with Article 12 of the General Conditions for Wind Turbines.
6. The Other Party, its staff, third parties designated by the Other Party, as well as anyone carrying out work on the instructions of all of the aforementioned officers, shall have access to the Immovable Property and also to the servient land referred to in subclause 1 for the purposes of the tasks assigned to them.
7. No fee shall be payable for the easement described in this Article. The Parties expressly take the view that the easement is valueless.

Article 23 Notice of default; default and termination or partial termination; compensation

1. If either Party, after having been declared in default of any of its obligations under the Agreement by registered letter, continues to be in default for a further eight (8) days, including the date on which notice of default is given, such Party shall be in breach and the Other Party will then have the choice between:
 - I. demanding performance of the Agreement; or
 - II. declaring the Agreement terminated by a written declaration.
2. The aforementioned choice of the Other Party shall be communicated to the Party declared in default by registered letter within two (2) weeks of the date on which default commences.
3. If the Agreement ends by termination as referred to in this Article, the Party that failed to comply or failed to comply in time shall be obliged to compensate the Other Party.
4. The payment referred to in Article 23.3 shall be set by the Parties by agreement. If they fail to reach an agreement, that compensations shall be set by the competent court. The compensation then payable shall in any case include all the costs incurred by the party that is

not in default in connection with the creation of the Right of Superficies and the Right of Lease, the Works to be constructed in connection therewith, and the management duty in respect of the Immovable Property arising from the Right of Superficies and the Right of Lease at the time of termination.

5. Without prejudice to the provisions of Article 23.4, the party in default shall be liable for all losses related to costs and interest incurred by the Other Party as a result of the termination, regardless of whether the party in default is in default within the meaning of this Article and regardless of whether the breach is imputable to it or not.

Article 24 Indivisibility and several liability

1. The obligations arising under the Agreement for the Parties are indivisible.
2. If an obligation arising under the Agreement must be met by more than one person or legal person, the debtors concerned shall be jointly and severally liable.
3. Third parties cannot derive any rights from the Agreement.

Article 25 Time limits

The Dutch General Extension of Time Limits Act (*Algemene termijnenwet, Atw*) is applicable to the time limits stated in the Agreement.

Article 26 Dispute resolution

1. Disputes relating to this Agreement shall initially be resolved in joint consultation.
2. Where the joint consultation does not lead to agreement, mediation pursuant to the regulations of the Netherlands Institute at Rotterdam (NMI) shall be used.
3. Where it proves impossible to resolve a dispute with the aid of mediation, the dispute shall be settled by the competent court in The Hague.

Article 27 Choice of an address for service & Choice of law

1. This Instrument and the Lease shall be deposited at the offices of the Civil-law Notary, which the Parties have chosen as their address for service for the purposes of this Agreement.
2. This Agreement is governed by Dutch law.

Article 28 Miscellaneous

1. All communications, notifications and other declarations connected with the Agreement may be made only by bailiff's notification, by a recorded and signed for letter, by letter delivered by a courier against a receipt, or by fax.
2. The titles of Articles are intended only to improve readability; no right whatsoever may be derived from them.
3. The Agreement contains all that which has been agreed in connection with the creation of the Right of Superficies and the Right of Lease.

Article 29 Original version

This Agreement has been drawn up in Dutch. Rights may be derived from the Dutch version only. Any translations provided are purely for information purposes.

Signed by the Other Party at _____ on _____

[Name]
[Position]

Signed by the State at _____ on _____

[***]
Head [**]

Appendices:

1. Draft Instrument for the Right of Superficies
2. General Conditions for Wind Turbines:
3. General Lease Conditions:
4. Draft Lease
5. Extract of the Land Register

