



Government of the Netherlands

THE STATE PROPERTY AND DEVELOPMENT AGENCY GENERAL TERMS AND CONDITIONS PERTAINING TO A RIGHT OF SUPERFICIES FOR WIND TURBINES 2012

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THE STATE PROPERTY AND DEVELOPMENT AGENCY

The State Property and Development Agency's (RVOB's) General Terms and Conditions pertaining to a right of superficies for wind turbines 2012

Article 1 Definitions

The following definitions apply to the terms used in the General Terms and Conditions:

State	The State of the Netherlands.
Right of Superficies	The right in rem to own or acquire buildings, works or plantings in, on or above an immovable property of the State.
Superficiary	The natural person or persons or the legal entity or entities with whom or with which the State has concluded the agreement creating the right of superficies, and the successor or successors in title.
Instrument	The notarial instrument creating the Right of Superficies, in which the present General Terms and Conditions are declared applicable.
Terms and Conditions	The present General Terms and Conditions as well as the special terms and conditions included in the Instrument or in an instrument amending the Right of Superficies.
Superficiary Property	The immovable Superficiary Property.
Superficies	The buildings, structures, or works permanently attached to the Superficiary Property, either directly or through incorporation with other buildings, structures, or works.
Permit under Public Law	The permit under public law referred to in the Instrument or its immediate replacement which, in the opinion of the State, is of equivalent effect with regard to the purpose described in the Instrument.
Initial Period	The period between the creation of the Right of Superficies and the start of the Production Period.
Production Period	A successive period recorded in the Instrument, immediately following the Initial Period, in which the turbines are in production and the grant is received.
Decommissioning Period	A successive period recorded in the Instrument, immediately following the Production Period, in which the turbines and associated works are decommissioned and dismantled.

Article 2 Payments

1. The Superficiary shall be obliged to pay the fee in the manner indicated in the Instrument and before, or by no later than, the due date or dates indicated in the Instrument.
2. The Superficiary shall be obliged to pay all amounts it owes under the Right of Superficies in the manner specified for the payment of the fee, within one month of the date on which they become due.
3. If the Superficiary fails to pay in time, it shall be in default without a notice of default being required and shall be obliged to pay interest at a rate of 12% per annum on the amount due for the day or days for which the State actually remains unpaid, calculated from the due date and subject to a minimum of twelve euros (€12).
4. Payments with regard to the Right of Superficies shall first be applied against costs, then against accrued interest together with the penalty or penalties forfeited, and finally against the most recent instalment or instalments of the principal and the accrual.

5. The Superficiary shall not be entitled to offset, compensate, reduce, deduct, or suspend what it owes under the Right of Superficies using claims it has against the State on another basis.

Article 3 Fee

1. The fee shall be divided into three periods, namely the Initial Period, the Production Period, and the Decommissioning Period.
2. A different fee from the fee payable during the Production Period shall apply to the Initial Period and the Decommissioning Period.
3. The fee and the method for reviewing it shall be established on the basis of the system laid down in the Instrument.

Article 4 Indexation of the fee

1. The fee shall be adjusted annually in accordance with the change in the average consumer price index figure, 'all households' series (average CPI for all households), established on the most recent time basis as published by Statistics Netherlands (CBS). The indexed fee shall comprise the latest fee applicable, multiplied by a factor consisting of a fraction whose numerator is equal to the annual price index figure, as referred to above, of the past year and whose denominator is equal to the aforementioned annual price index figure of the year before that. If the average CPI for all households in the past year has not yet been announced, the average CPIs for all households of the two years before that shall be used in the same way.
2. If the CBS stops announcing the aforementioned price index figure, or the basis for calculating it changes, an index figure comparable to it shall be applied as far as possible. In case of differing opinions on the matter, either party may request that the director of Statistics Netherlands make a decision that is binding on the parties. The parties shall each bear half of any costs involved in this process.
3. The indexed fee shall apply even if the Superficiary is not informed of the indexing by separate notification.

Article 5 Acceptance

1. The Superficiary is wholly familiar with the Superficiary Property and accepts it as found at the commencement of the Right of Superficies, with all the associated benefits and burdens, dominant and servient tenements, rights, and obligations on whatever account, but unencumbered by mortgages and attachments.
2. References in the Instrument to surface area, adjoining premises, form, nature, designated use or location of the Superficiary Property are intended as an indication only, without the Superficiary Property having to conform thereto. The Superficiary shall not be entitled to a reduction of the fee or compensation if that which is stated does not reflect the actual situation.
3. The State shall not be liable for any defects which the Superficiary Property turns out to have after the creation of the Right of Superficies and of which the State was, in fact, unaware at the time that it was created or of which it was not required to be aware on the basis of the prevailing opinion at that time. The State shall not be liable for any defects the Superficiary Property has, or for the consequences thereof, and of which the State was, in fact, unaware at the time the Right of Superficies was created or of which it was not required to be aware on the basis of the prevailing opinion at that time. Nor shall the State be liable for any visible and/or invisible defects, or for the consequences thereof, that arise or might arise after the Right of Superficies has been created. The State shall not be subject to an obligation to investigate or a duty to disclose in respect of visible and/or invisible defects arising after the Right of

Superficies has been created. The defects mentioned in the present paragraph shall not entitle the Superficiary to a reduction of the fee.

Article 6 Use in accordance with the intended purpose; obligation to tolerate

1. The Superficiary shall be obliged to use the Superficiary Property in accordance with the purpose indicated in the Instrument, as well as to keep and maintain it in a condition such that it can be used for this purpose.
2. The Superficiary may install only those Superficies and plantings in, on, or above the Superficiary Property for which a Permit under Public Law, where required, and the prior written consent of the State have been obtained.
3. The Superficiary shall not be entitled to install or allow advertising in, on, or above the Superficiary Property, the Superficies or the plantings without the prior written consent of the State. This provision shall not apply to advertising related to the business it is operating at the Superficiary Property.
4. The Superficiary shall not be entitled to install transmitting aerials in, on, or above the Superficiary Property without the prior written consent of the State. The aforementioned consent must be requested from the State Property and Development Agency (RVOB), Property Directorate (Directie Vastgoed), Regional Department North & East (Regionale directie Noord & Oost) in Zwolle by no later than 14 days before the installation of the transmitting aerials. The Superficiary shall undertake to comply strictly with the conditions set by the State. Should it install a transmitting aerial without having been authorised to do so, it shall forfeit the penalty referred to in Article 17, without prejudice to its obligation to pay a sum of compensation equal to the prevailing market price for the transmitting aerial at that time. Article 2 shall apply by analogy to the payment of that which the Superficiary owes to the State as a result.
5. After having been given notice to do so by the State, the Superficiary shall be obliged to remove any Superficies installed without a permit as well as any advertising and transmitting aerials installed or allowed without consent, and to make good any damage caused within a period to be specified in the notice. Where it persists in failing to carry out the above in time, the State shall be entitled to take the necessary action at the Superficiary's expense, without the authorisation of the court being required.
6. The Superficiary shall be obliged to install a suitable boundary partition for the Superficiary Property immediately after the commissioning, at its own expense and in consultation with the State. The State shall not be responsible for the supervision thereof.
7. The Superficiary must tolerate the exits and crossings deemed necessary by the State. It shall be entitled to claim compensation in connection with this matter, to be determined equitably. The amount of compensation shall be determined by the parties in joint consultation. Where they fail to reach agreement, the amount of compensation shall be determined with binding effect by three experts, in accordance with the provisions of Article 21 and without prejudice to the provisions of Article 21(1). The Superficiary shall not be entitled to allow or tolerate new exits or crossings for third parties without the State's written consent.
8. The Superficiary shall be obliged to tolerate work, maintenance work, renovation work, or modifications being performed around, on, in, or above the Superficiary Property which the State deems necessary in the public interest. Where the full use and enjoyment of the Superficiary Property is temporarily hindered or rendered impossible, the Superficiary shall be entitled to compensation or a reduction of the

fee. The amount of compensation, or the amount by which the fee is to be reduced, shall be determined by the parties in joint consultation. Where they fail to reach agreement, the amount of compensation, or the amount by which the fee is to be reduced, shall be determined with binding effect by three experts, in accordance with the provisions of Article 21 and without prejudice to the provisions of Article 21(1).

9. The persons designated by the State for this purpose shall have free access to the Superficiary Property. They shall notify the Superficiary of their planned attendance in good time before their arrival.
10. The Superficiary shall not be entitled to remove gravel, sand, or other spoil from the Superficiary Property, or to cut out sods and remove them, without the prior written consent of the State. It shall be obliged to restore the Superficiary Property to its original condition and to provide compensation for any damage. Where the Superficiary persists in failing to take the necessary remedial action in time, the State shall be entitled to have the necessary action taken at the Superficiary's expense, without the authorisation of the court being required.
11. The consent referred to in paragraph 10 must be requested by submitting the relevant forms to the State Property and Development Agency, Property Directorate, Regional Department South in Breda by no later than 14 days before the start of the extraction or filling activities. The Superficiary shall undertake to comply strictly with the conditions set by the State. Should it retain spoil, or place it at the disposal of third parties without being authorised to do so, it shall forfeit the penalty referred to in Article 17, without prejudice to its obligation to pay a sum of compensation equal to the prevailing market price for the spoil at that time. Article 2 shall apply by analogy to the payment of that which the Superficiary owes to the State as a result.
12. The State reserves all rights to the accretion.

Article 7 Transfer, division, separation, contribution, and exercise of the Right of Superficies; qualitative obligations; perpetual clause

1. The Superficiary shall not be entitled to dispose of or assign the Right of Superficies in whole or in part, or to separate it by transferring or assigning the Right of Superficies to part of the Superficiary Property, without the State's prior written consent.
2. The Superficiary shall not be entitled to put the Right of Superficies into a partnership, a general partnership, a limited partnership, a public partnership, or a legal entity, or to assign the Right of Superficies upon its division and distribution to the extent forming part of an undivided property, without the prior written consent of the State.
3. The Superficiary shall not be entitled to attach restricted rights to the Right of Superficies or the Superficiary Property, with the exception of a right of mortgage, without the prior written consent of the State.
4. The Superficiary shall not be entitled to give the Superficiary Property or the Superficies in whole or in part to a sub-superficiary, or to let them, lease them, or otherwise make them available for use, without the prior written consent of the State.
5. For matters involving consent, the Superficiary shall be obliged to submit the draft of the notarial instrument or the agreement relating to the legal acts referred to in paragraphs 1 to 4 inclusive, and to send the State a copy of the notarial instrument or the agreement within a month after execution or conclusion, where consent is given. The duty to send the aforementioned copy or agreement shall also apply in the

case of a sale under execution by the mortgage holder in accordance with Book 3, Section 268 of the Dutch Civil Code (BW).

6. The permission referred to in paragraphs 1 to 3 inclusive shall, in any case, be refused where a right in rem has been created or an in personam right has been granted whose term ends after the date on which the Right of Superficies ends.
7. Upon the transfer of the Right of Superficies and upon the granting of a real or personal right of use or right of enjoyment, the Superficiary shall be obliged and shall give an undertaking to the State, which undertaking the State shall accept, to accept and impose on the State's behalf the performance obligations described in the terms and conditions on the new Superficiary or the owner of the rights in rem or the rights in personam.
8. The provisions of paragraph 7 shall apply only in so far as the obligations are not transferred by operation of law to the new Superficiary or holder of a limited right resulting from the transfer of the Right of Superficies or the creation of the limited right.

Article 8 End of the Right of Superficies

The Right of Superficies shall end by:

- a. The expiry of the period indicated in the Instrument, without prejudice to the provisions of Book 5, Section 58 of the Dutch Civil Code;
- b. Notice of termination by the State as referred to in Article 9(2);
- c. Notice of termination by the State for reasons of public interest, as referred to in Article 10(1);
- d. The ending of the Permit under Public Law other than through revocation at the Superficiary's request, irrespective of the period indicated in the Instrument;
- e. The extinction of the right from which the limited right was derived;
- f. The introduction of a resolute condition;
- g. A waiver;
- h. A merger.

Article 9 Termination of the Right of Superficies

1. The Superficiary may not terminate the Right of Superficies.
2. The State shall be entitled to terminate the Right of Superficies for the Superficiary Property in its entirety or for whatever part thereof, as it sees fit, if the Superficiary has failed to pay the fee for two consecutive years or has seriously failed in the performance of its other obligations.
3. Notice of termination, as referred to in the previous paragraph, shall be given by bailiff's notification, with due observance of a period of at least three months, which shall be served within eight days on the persons recorded in the public registers as holders of a limited right or as attaching parties for the Right of Superficies.
4. Where the Right of Superficies ends by termination, as referred to in paragraph 2, the State shall compensate the Superficiary in the amount of the value of the Right of Superficies at that time.
5. The compensation referred to in paragraph 4 shall be set by the parties in joint consultation. Where they fail to reach agreement, the amount of compensation shall be determined with binding effect by three experts, in accordance with the provisions of Article 21 and without prejudice to the provisions of Article 21(1).
6. The State shall be entitled to deduct from the compensation, the claims which it has against the Superficiary by virtue of the Right of Superficies, including the costs. The

compensation shall remain unpaid until the Superficiary Property and the Superficies have been made fully available to the State.

Article 10 Termination for reasons of public interest

1. The State shall be entitled to terminate the Right of Superficies for reasons of public interest. Notice of termination shall be given with due observance of the period and manner stipulated in Book 5, Section 104(2), in conjunction with Book 7, Section 88, of the Dutch Civil Code.
2. Where the Right of Superficies ends by termination as referred to in paragraph 1, the Superficiary shall be entitled to compensation.
3. The compensation referred to in paragraph 2 shall be set by the parties in joint consultation. Where they fail to reach an agreement, that compensation shall be set by the competent court.
4. The amount of the compensation referred to in paragraph 2 shall be determined as the amount the State would have to pay the Superficiary if the Right of Superficies had been expropriated on the day the right based on the provisions of paragraph 1 ends, with the proviso that, where the termination is due to scheduled reconstruction or renovation, account is taken of the costs of that scheduled reconstruction or renovation, in accordance with the requirements of reasonableness and fairness, in the determination of the compensation for the loss of use of the Superficiary Property. The stipulation on terminability of the Right of Superficies, as referred to in paragraph 1, shall not be taken into account in the determination of the compensation.
5. The State shall be entitled to deduct from the compensation, the claims it has against the Superficiary by virtue of the Right of Superficies. The compensation shall remain unpaid until the Superficiary Property and the Superficies have been made fully available to the State.

Article 11 Payment of the fee in case of termination

1. Where the Right of Superficies is terminated on the basis of the stipulations in Article 9(2), the fee for the past year in which the Right of Superficies existed shall be payable in full.
2. Where the Right of Superficies is terminated on the basis of the stipulations in Article 10(1), as many one-twelfth parts of the fee as there are months of the current year in which the Right of Superficies exists that have expired in full or in part shall be due and payable, provided the Superficiary Property has been delivered in accordance with the stipulations in Article 12(1).
Where the termination relates to part of the Superficiary Property, the annual fee shall be reduced on a proportional basis and a reduction for the fee of the current year in which the Right of Superficies exists shall also be permitted, calculated in the manner described above.
3. Where the Right of Superficies is terminated on the basis of the stipulations in Article 10(1), the fee shall not be payable over the Decommissioning Period.
4. Where the fee has been paid in advance, the overpaid amount shall be refunded with due observance of the stipulations in paragraph 2.

Article 12 Delivery

At the end of the Right of Superficies, the Superficiary shall be obliged to deliver the Superficiary Property in a proper condition to the satisfaction of the State, with the Superficies and plantings retained to the extent the State wishes. It shall be obliged to remove the Superficies and the plantings the State does not wish to retain. Where it persists in failing to carry out the above, the State shall be entitled to take the necessary action, at the Superficiary's expense, without the authorisation of the court being required, and the fee shall remain due and payable until the time at which the necessary arrangements have been made.

Article 13 Site visit and inspection

1. The State shall be entitled to ascertain, by a site visit, whether the Superficiary has met its obligations arising from the law and the present agreement.
2. The State shall inform the Superficiary of the date on which a site visit will be held in good time.
3. The persons designated by the State to this end shall have free access to the Superficiary Property. They shall notify the Superficiary of their planned arrival.
4. Failure at any time to exercise the power referred to in paragraph 1 shall not prejudice the exercise of the State's rights where the Superficiary fails to meet its obligations arising under the law and the agreement.
5. If the State wishes to sell the Superficiary Property to others, the Superficiary shall be obliged to make the Superficiary Property available for inspection in the customary way.

Article 14 Performance and enforcement

1. The State shall be entitled to demand the Superficiary complies with its obligations arising from the Right of Superficies and to give it instructions in that context relating to compliance therewith. The Superficiary shall be obliged to follow those instructions without delay.
2. Where the Superficiary fails to meet its obligations, it shall be obliged to undo that which has been done in breach of those obligations, at the State's first demand, or to effect that which would have resulted from compliance with the obligation where it has failed to do that which it was obliged to do.
3. The State shall be entitled to undo that which has been done in breach of an obligation arising from the Right of Superficies or to effect that which would have resulted from compliance with the obligation, without authorisation by the court. The costs incurred by or on account of the State in connection with this matter shall be borne by the Superficiary. The foregoing shall apply without prejudice to the State's right to demand alternative compensation and/or additional compensation and to terminate the Right of Superficies.

Article 15 Failure to comply

1. Where the Superficiary fails to comply with an obligation arising from the Right of Superficies, it shall be in default without notice of default being required.
2. In any event, a breach of Articles 2, 6, 7, 12, 18(3), and 19 shall be considered a serious failure as referred to in Book 5, Section 87, of the Dutch Civil Code.

Article 16 Extrajudicial costs

1. Where the Lessee or the State fails to comply with an obligation arising from the Lease, resulting in damage being caused, within the meaning of Book 6, Section 96(2), of the Dutch Civil Code, the party in breach shall be obliged to compensate for that damage.
2. With regard to the determination of the damage referred to in paragraph 1, the costs incurred to obtain an out-of-court settlement shall be established in accordance with Recommendation I of the Voorwerk II Report – Extrajudicial costs (November 2000) of the Netherlands Association for the Judiciary (Nederlandse Vereniging voor Rechtspraak), all the foregoing being to the extent that the rules on legal costs pursuant to Section 241 of the Code of Civil Procedure (Rv) are applicable in the given case.

Article 17 Penalties

Without prejudice to the State's right to demand compliance and additional compensation or to terminate the Right of Superficies, the Superficiary shall forfeit the following penalties without notice of default being required and without prejudice to its obligation to remove or rectify:

- a. For each breach of the stipulations in Article 7 – a penalty in the amount of ten times the annual fee, with a minimum of four hundred and fifty euros (€450);
- b. For each failure to comply with an obligation, as referred to in Articles 6, 12, 14, 18(3), 19, and 24 – a penalty of twenty euros (€20) for each day or part of a day the situation caused by the failure continues.

Article 18 Joint and several liability

1. Where the Right of Superficies belongs to two or more persons as partners, each of them shall be jointly and severally liable for compliance with all the obligations arising under the Right of Superficies.
2. Following the transfer or assignment of the Right of Superficies for the Superficiary Property in full or in part, or a share in the Right of Superficies, the acquirer and its predecessor in title shall be jointly and severally liable for the fee, owed by the latter, which became due and payable in the five preceding years.
3. The Superficiary shall be obliged to notify the State immediately if there is a risk of damage occurring, if damage has occurred, or if a defect in the Superficiary Property should manifest itself. The Superficiary shall also be obliged, as far as it is able, to take all necessary measures in order to prevent and limit damage to the Superficiary Property.
4. The Superficiary shall be liable for damage of whatever kind to the Superficiary Property resulting from an attributable failure to comply with an obligation arising under the Instrument or the present Terms and Conditions. All damage shall be presumed to result from such failure. The Superficiary shall be liable to the State for the conduct of persons who are present on the Superficiary Property with its consent, as if it were its own conduct.

Article 19 Duty of disclosure; undivided interest

1. In case of the Superficiary's death, the heirs shall be obliged to notify the State thereof within three months of this date. They shall also be obliged to inform the State in the same communication, upon submission of a notarial declaration, of the identity of the person to whom the Right of Superficies has been transferred.
2. If the Superficiary is a legal entity and it is being dissolved, the liquidators shall be obliged to notify the State thereof within one month of the dissolution.

3. Possession of the Right of Superficies for more than three years as a joint holder of an undivided interest, as referred to in paragraph 1, shall not be permitted.

Article 20 Consent

1. In cases where the State's consent is required, the Superficiary shall be obliged to transmit the details requested by the State related to the consent the State may or may not give. The State shall be entitled to attach conditions to its consent.
2. The fact of consent having been given shall not affect the Superficiary's existing obligations under the laws or regulations to request a permit or consent.
3. The fact of consent having been granted shall not release the Superficiary from the obligation to request consent again, whenever such is necessary, and shall not oblige the State to give its consent in such a case.
4. The fact of consent having been given shall not release the Superficiary from due compliance with the obligations arising for it under the Right of Superficies and the State shall accept no risk or liability in giving its consent.

Article 21 Experts

1. The party wishing to appoint experts shall notify the other party of this fact in writing, after which the latter shall be entitled to the choice of having the dispute resolved by the competent court for a period of one month. That choice shall be communicated to the other party in writing. Where the period of one month passes without being used, the parties shall be deemed to have agreed the dispute will be resolved by way of a binding decision, based on the present Article.
2. Where a procedure involving experts is followed, each party shall appoint one expert from the three experts within 14 days of the written notification referred to in paragraph 1 having reached the other party, or within 14 days of the period referred to in paragraph 1 having expired unused. An expert shall state within eight days after the date of the instruction whether he accepts it. Both experts thus appointed shall jointly appoint a third expert within 14 days. The third expert shall state within eight days after the date of the instruction whether he accepts it. Where one of the parties fails to appoint an expert within 14 days or where the experts appointed by the parties fail to appoint the third expert within 14 days, that expert or the third expert shall be appointed by the sub-district court in whose jurisdiction the Superficiary Property is located, at the request of either of the parties.
3. By accepting their appointments, the experts shall be subject to the terms and conditions.
4. Where the experts come to a different conclusion, the average shall be taken as the amount to be determined.
5. The experts shall produce their opinions within two months after the appointment of the third expert. The experts' decision shall be substantiated, given in writing, and have the force of a binding opinion.
6. The costs of the experts' determination shall be borne equally by the parties.

Article 22 Property charges and taxes

The property charges and taxes levied in relation to the Superficiary Property and the Superficies shall be borne by the Superficiary with effect from the date on which the Right of Superficies was created, irrespective of on whom the assessment is imposed.

Article 23 Costs and taxes

1. The costs of the Instrument, the costs of the copy to be issued to the State, those due for its execution, and those of any measurements by the Land Registry of the Superficiary Property, as well as any turnover tax and/or transfer tax payable, shall be borne by the Superficiary.
2. The costs of an Instrument amending the Right of Superficies, the costs of the copies to be issued, and those due for its execution shall be borne by the party requesting the amendment.
3. All costs and taxes concerning the construction, maintenance, operation, and removal of the Superficies shall be borne by the Superficiary.

Article 24 Insurance

1. Simultaneously with the commencement of the Right of Superficies, the Superficiary shall ensure that third-party insurance is taken out for the Superficiary Property and for the Superficies in the amount of at least one million euros per event, with the date of creation of the Right of Superficies taken as the start date, as well as fire and storm insurance to the extent arising from the construction, operation, and removal of the Superficies.
2. The Superficiary shall be obliged to maintain the insurance policies mentioned in paragraph 1 throughout the existence of the Right of Superficies.
3. The Superficiary shall transmit a copy of the insurance policies mentioned in paragraph 1 to the State within one month after the creation of the Right of Superficies.

Article 25 Communications; place of establishment

1. Unless provided otherwise, extrajudicial communications from and to the State must be made by means of registered letter by and to the person representing the State in relation to the Right of Superficies.
2. The parties have chosen the offices of the civil-law notary who drew up the Instrument as their address for service.
3. The State is retaining its address in The Hague as the address for service of judicial communications, such as bailiff's notifications and other writs.

Article 26 Applicable law

The Right of Superficies is governed by Dutch law.

Article 27 Description

The present General Terms and Conditions may be referred to as the State Property and Development Agency (RVOB's) General Terms and Conditions pertaining to a right of superficies for wind turbines 2012.

Recorded in the public registers held by the Land Registry at 09:00 on 5 September 2012 under part 61912, number 146 of Mortgages 4 (Hypotheken 4).

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