



Questions and Answers

Accompanying the Central Government Real Estate Agency draft agreements

- Agreement preceding the creation of a Right of Superficies and the entering into of a Lease
- Creation of a right in rem of superficies and easement for wind turbines
- Lease for cables, pipelines, pipe sleeves and/or additional work

Final version (28 February, 2019)

Please note: In the event of any imperfections or errors, or where various interpretations are possible, the legislation takes precedence.

General			
No.	Art.	Question	Answer
1	Gen	What is the status of the appendices, such as the draft deed and the lease? Are these presumed to be attached as finalised documents, or as provisional drafts subject to further negotiation to closure between the parties?	They are attached as final drafts which are not subject to further negotiation and will only be supplemented in future with factual information.
2	Gen	Do the Right of Superficies and the Lease relate to the entire site?	No, the Right of Superficies is only created on the wind turbine foundations, including the scour protection (this equates to approx. circa 2000 m ² per turbine) and the Lease only relates to the restricted strip for the cables and pipelines. In both cases, this is limited to the area within the twelve-mile zone.
3	Gen	If the permit is extended or terminated, does this necessarily automatically apply also to the leases? Have provisions been made in this regard?	Yes, all the agreements provide that they will terminate by operation of law on the same day the operator no longer holds the Permit. See Article 11 of the Agreement, Article 4 of the Right of Superficies and Article 2 of the Lease for cables and pipelines. This applies to premature termination as well as extension of the Permit.
4	Gen	Regarding seabed/ground contamination (superficies as well as lease; as preceding agreement): can you confirm that disturbing the seabed/ground in accordance with the usual method for laying and installation (e.g. as regards pile driving) places no additional requirements or demands on the permit holder in terms of (investigating the presence of) seabed/ground contamination?	No further requirements or demands are imposed.
5	Gen	Regarding the level of the fees, it has often been argued that the fees must be set at a certain level to prevent 'low'	The Central Government Real Estate Agency is obliged under EU legislation to charge a normal market fee for buildings or structures

General			
		fees being regarded as illegal state aid. How has the State assessed this risk? Is it possible to provide legal positions or precedents? Has the European Commission's advice been sought?	to avoid improper state aid. To this end, a valuation of the land was carried out. This yields a market price for the land, thereby avoiding the risk of illegal state aid.
6	Gen	To what extent is account taken of the 10% annual decline in land costs for onshore wind? See also: https://www.rvo.nl/sites/default/files/2017/12/Eindadvies%20basisbedragen%20SDE%202018.pdf	The situation as regards onshore wind differs from that for offshore wind. As a consequence, the onshore land costs are determined by other factors than those for offshore wind.
7	Gen	To what extent is account taken of the fact that the tender for HKZWFS III and IV is a tender without any grant of subsidy?	The absence of SDE subsidy with this tender has consequences for the business case of the wind farm. The risk profile is adversely affected by the full exposure to the fluctuations in electricity prices. This has been taken into account when assessing the business case and setting the land fee.
8	Gen	To what extent does the valuation take account of the fact that the costs of building or utilising offshore space are higher than for onshore?	The business case on which the land fee for offshore wind is determined is based solely on the costs and revenues for offshore wind.

Agreement preceding the creation of a Right of Superficies and the entering into of a Lease			
No.	Art.	Question	Answer
1	Gen	Why must an Agreement preceding the creation of a Right of Superficies and the entering into of a Lease be signed?	This Agreement is the precursor of the definitive Right of Superficies that is created after the Permit has become irrevocable and the exact locations and type of wind turbines have been announced. This Agreement guarantees an exclusive right to the future allocation of land. In light of this exclusivity, a fee is required since, in principle, the seabed can no longer be put to any other use once the wind permit has been issued. The Agreement is the basis for this reservation fee.
2	Gen	Does the Agreement result in differing rights for the Other Party inside the twelve-mile zone and outside the twelve-mile zone? Can you confirm these agreements do not introduce any provisions or conditions which are more stringent than the Water Decree, general rules for offshore wind farms or Wind Farm Site Decisions, or [is] restricted to the legal framework of the Wind Farm Site Decision as a whole? As the Wind Farm Site Decisions are not yet irrevocable, please advise what has priority in case of inconsistencies.	No provisions under public law are laid down in the Agreement. Should there be any inconsistency, however, the Wind Farm Site Decision and the Water Decree shall be guiding.
3	Gen	The creation of a Right of Superficies for the wind turbines, on the one hand, and the conclusion of a separate Lease for the cabling, on the other, is not logical from a legal viewpoint, and is also unnecessarily cost-	Pursuant to Section 5:20(2) of the Dutch Civil Code, ownership of the cables and pipelines already rests with the installer (operator) so that no Right of Superficies need be created in this regard, and a Lease consequently suffices for the use of the seabed in this

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		inflationary. There are also doubts regarding the compatibility of this division with inter alia the methodology for wind farms (> 5W) opted for in the Electricity Act 1998.
		respect.
4	Gen	In the draft agreements (lease and superficies) no link is made between termination of lease in the public interest and termination of superficies in the public interest. The situation might then arise that the agreements can be terminated for various reasons as well as non-simultaneously. This is an undesirable scenario. Both agreements ought to be linked: if one agreement ends, the other agreement ought also to end automatically. Confirmation is requested that in the unexpected event that the agreements terminate before the expiry date of the permit, both agreements will terminate (simultaneously).
		While no link is made in the agreements, in practice there will be no reason for terminating one of the agreements due to a general interest or in the interest of a public duty. If only one of the agreements were to be terminated, the performance and enforceability of the other agreement would be practically impossible. This would result under private law in a ground for dissolution and compensation.
5	Gen	Can you confirm that if the agreements end, the compensation will be determined for the wind farm as an integral whole; and not just on the basis of the individual parts (i.e. one set of compensation for the wind turbines and one set of compensation for the cabling). If this has already been provided for in the agreements, you are requested to indicate which article(s) contain(s) the respective provisions.
		The amount will be determined between the parties by amicable agreement, and where necessary by means of civil proceedings brought before a court. Precisely which parts qualify for compensation depends on the facts and circumstances of the specific case.
6	Gen	Can you confirm that in case of early termination of the agreements, the wind farm developer/operator is entitled to full compensation, including loss of profits?
		The amount will be determined between the parties by amicable agreement, and where necessary by means of civil proceedings brought before a court. Precisely which parts qualify for compensation depends on the facts and circumstances of the specific case.
7	Gen	The Wind Farm Site Decision states the wind permit can be granted for 30 years. This is not adequately reflected in the agreements.
		The expiry dates of the Right of Superficies and the Lease are linked to the term of the permit. This is done in light of a possible extension or premature termination.
8	Gen	According to the Wind Farm Site Decision, the operating period may commence from the third year from the time the permit is issued (see Wind Farm Site Decision section 4.1.1: 'The wind farm may become operational from Year 3 and may continue to be operational until Year 29 (inclusive)'). Please confirm the agreements allow for the wind farm to become operational earlier than the four years currently stated therein (after the permit becomes irrevocable).
		Yes, the agreements do not preclude earlier commencement of operations than after four years. Only the obligation to pay the fee commences after four years.
9	Gen	The agreements are contrary to the new Offshore Wind Energy Act, which provides for a permit to be extended by a maximum of 10 years. See also question 11 on page
		The agreements follow, where possible, the provisions in the permit. This implies that if the term for the permits is altered in accordance with the possibilities the amendment of the Offshore

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9 of the Q&A of 12 November 2018. The agreements must provide that in the event of an extension of the permit/maintenance period of the wind farm, they too will be extended.

Wind Energy Act offers, this will also apply to the term for the Right of Superficies.

10 Gen

The Agreement preceding the creation of the Right of Superficies is signed after the Other Party has received the Permit. The creation of the Right of Superficies and the grant of the Right of Lease shall not take place until after the Permit has become irrevocable. By signing the Agreement preceding the creation of the Right of Superficies, the Other Party undertakes to pay: the fee for the Right of Superficies (Article 5 of the Agreement preceding the creation of 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; AND the Reservation Fee (Article 10 of the Agreement preceding the creation of the Right of Superficies): The reservation fee shall commence with retroactive effect on the day that the Permit is granted to the Other Party [...]. The Other Party does not have the option or possibility of early termination (Article 11 of the Agreement preceding the creation of the Right of Superficies). There is an obligation to pay the reservation fee or fee (for the Right of Superficies) unless the State gives notice to terminate the Agreement preceding the creation of the Right of Superficies (e.g. due to non-performance by the Other Party) or in case of transfer of the Permit (in accordance with the requirements set out in the Permit) as well as transfer of the Agreement preceding the creation of the Right of Superficies, Right of Superficies and the Right of Lease to a third party.

1. Yes, this continues to exist.

2. These payment obligations are separate from the administrative enforcement order and order for periodic penalty payments which can be enforced by the Minister of Economic Affairs and Climate Policy in case of non-fulfilment of the permit requirements. This is because these are governed by public law, while the Right of Superficies is of a private law nature.

1. Does the obligation to pay the reservation fee as well as the fee for the Right of Superficies in case of non-fulfilment of the obligation to build and operate the wind farm continue to exist until the State exercises its right of termination or until transfer to a third party takes place?

2. How do these payment obligations relate to the administrative enforcement order and order for periodic penalty payments in case of non-fulfilment of the

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		obligation to build and operate the wind farm?	
11	2.2	The creation of the Right of Superficies ... shall not take place until after the Permit has become irrevocable. This only indicates from when the rights can be created. It does not specify a time frame or period within which they are actually created. And more importantly: it does not give the other party any right or further procedure for relying on this obligation. Can the operator of the wind farm ultimately decide when the rights are created?	Yes, as far as the State is concerned, creation of the Right of Superficies shall take place as soon as possible after the Permit becomes irrevocable, but no later than one year after the Permit has become irrevocable. The operator has the necessary draft agreements and the State has no reason to delay signing, since the dates on which the fee and the lease fee commence are separate from the signing of the Right of Superficies and the Lease.
12	2.2	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. If the Wind Farm Site Decision has not yet become irrevocable, is this of any consequence?	The Permit is not irrevocable until both the Permit itself and the associated Wind Farm Site Decision are irrevocable.
13	3	The general terms and conditions of the right in rem and the lease (wind turbines RVOB 2012 and General Terms and Conditions 2008) have been declared applicable to the right in rem, but not to the 'preceding agreement'. Which terms and conditions apply to the site during the agreement phase?	During the period of the Agreement, the terms and conditions set out in the Agreement shall apply. From the moment the Right of Superficies is created and the Lease is entered into the associated General Terms and Conditions shall apply and shall supersede the terms and conditions in the Agreement.
14	7.1	The Immovable Property shall be accepted by the Other Party in its condition 'as is' immediately after the signing of the Deed and the Lease. This appears to suggest the Other Party may not take possession of the site (i.e. may not enter it) until the notarial deeds have been signed. Is this consistent with the Permit, which confers full access immediately after the Permit has been granted? Is the Other Party not impeded when trying to carry out site inspections for the further development of the project?	The Permit holder has the right to enter the Immovable Property and to carry out the necessary work activities for the development of the Works also during the period of the Agreement. The (actual) acceptance referred to in Article 7(1) of the Agreement relates to the passing, or transfer, of risk between the State and the operator.
15	10	The Other Party is obliged to pay a reservation fee. Is this a guarantee or actual payment?	It is an actual payment.
16	10	Why must fees be paid before and after the expiry of the Right of Superficies?	Because the parcels cannot be put to any other use during this period.
17	10	The Other Party is obliged to pay a reservation fee. Will this be repaid or is this a guarantee deposit securing payment of fees for buildings or structures?	The amounts will not be returned and this is not a guarantee deposit.
18	14.3, GC 11a agt	The non-transferability of the rights in rem and the Lease may be a hindrance to the financing arrangements. Is it possible to include conditions exempting any (conditional) transfer of the agreement/assets to financiers from prior written approval?	No, a transfer always requires written consent. Transferability of the Right of Superficies and the Lease is currently set out in Article 15 of the Right of Superficies and Article 17 of the Lease, respectively.
19	17.1	Have no contracts for use or other usage agreements been entered into with third parties regarding undersea cables? Additionally, these guarantees do not match the	Insofar as known, there are no other undersea cables in the area. For a small section in HKZWFS III and IV, TenneT intends to lay the power cable for HKZWFS III and IV in the maintenance zone. We

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		guarantees referred to in the notarial deed.	assume the operator is itself in contact with TenneT about this. The State is of the opinion that the contracts are consistent with one another.
20	17.2	It is unclear which consequences or compensation mechanism will become effective in the event of termination in full of the preliminary agreement because, in light of the legal fact, the wind farm can no longer (in brief) be operated as initially intended. This is also of importance due to the bankability of the project. Furthermore, when will the State make a 'notification' under this article, and when will the Permit holder be consulted to discuss the consequences?	In the event a legal fact referred to in this article occurs, the State will consult the Permit holder. The amount of any compensation will be determined between the parties by amicable agreement, and where necessary by means of civil proceedings brought before a court. Precisely which parts qualify for compensation depends on the facts and circumstances of the specific case.
21	18	It would appear that a new environmental supervisory authority is being introduced here on top of the legal and regulatory requirements and the Wind Farm Site Decision. Does this signify the introduction of requirements above and beyond the scope of the Wind Farm Site Decision?	No, RWS (the executive agency of the Ministry of Infrastructure and Water Management, i.e. the competent authority) acts for the State to ensure no unauthorised or illegal contamination occurs during the construction, operation and removal of the wind farm.
22	18	The State has not investigated the presence of seabed/ground contamination, nor is the Superficiary deemed to have done so. How will it be determined whether any contamination found is attributable to the Permit holder?	If this comes to light during an investigation or work, this can be determined by examining the age of the contamination. If this cannot be demonstrated, it will be the State's responsibility. It should be noted also that if the operator contaminates land belonging to the State, this shall constitute an unlawful act pursuant to Section 6:162 of the Dutch Civil Code. The burden of proof is on the alleging party, in principle. If the State asserts the operator has contaminated the seabed/ground, the State must prove this is the case. If this is not possible, the risk shall be for the State. If this is possible, the operator may of course try to prove this is not the case.
23	18	The State has not investigated the presence of seabed/ground contamination, nor is the Superficiary deemed to have done so. Will a baseline measurement be performed?	No, but the operator is free to carry out a baseline measurement independently.
24	19	The Immovable Property shall be at the Other Party's risk as from the time of signing of the Deed to be specified in that Deed. The Immovable Property shall be the responsibility of the Other Party as from the Transfer Date. Which rights (where applicable) does the Other Party have in respect of the site prior to the Transfer Date?	The Other Party is the Permit holder of the site for construction of the wind farm. By entering into the Agreement prior to the creation of the Right of Superficies, the State signals its firm intention to enter into the Right of Superficies with the Other Party. The Other Party has access to the site and may carry out any necessary actions in connection with the Permit. However, it is not possible to start any installation work on or in the seabed until the Right of Superficies has been created and the Lease has been signed. As far as the State is concerned, signature shall take place as soon as possible after the Permit becomes irrevocable, but no later than

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			one year after the Permit has become irrevocable.
25	20.1 GC 15.1f Lease agt	The ability of the Central Government Real Estate Agency to terminate the contracts in the 'general interest' appears to create ambiguity and hence uncertainty. Can the State give an example of such a case?	The Agreement between the operator and the Central Government Real Estate Agency will expire in any event when the operator no longer holds the Permit. However, the State additionally reserves the right to terminate these contracts in the light of sufficiently serious considerations of general or public interest. This does not contribute to uncertainty since the State also has this ability through expropriation proceedings, without this being stipulated as such in these agreements. It is, however, preferable to include this provision in the Agreement from a procedural viewpoint. Should this provision be exercised, this shall constitute a lawful government act with the associated legal acts and compensation provisions. To date there has never been an instance of termination of such an agreement in the general interest, and it is not likely that this article will need to be used.
26	20.2	The State is 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. What is the difference with 'general interest'?	General interest and public duty can overlap, although they do not necessarily do so. Public duty refers to specific, legally stipulated, duties or tasks the State must perform. The general interest can also relate to matters which are not specifically entrusted to the State by law, but whose consequences have such an impact on the general interest that the State is obliged to take action. Conversely, the State may have statutory public duties which cannot be considered as falling under the general interest.
27	20	The State is 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. Is this subject to reasonable deliberation and a reasonable term in the event this article is applied?	Yes, this is deliberated at cabinet level.
28	20	The State is 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. Will reimbursement be made or will the consequential loss or damage be compensated in the event a developer is ultimately not able to realise the project? If so, will this be full reimbursement?	The amount will be determined between the parties by amicable agreement, and where necessary by means of civil proceedings brought before a court.
29	23.3	If the Agreement is terminated after a party is found to be in default, the defaulting party shall be obliged to pay compensation to the Other Party. How is this compensation determined and which elements are included in it?	The amount will be agreed in consultation between the parties, and where necessary by means of civil proceedings brought before a court. Precisely which parts qualify for compensation depends on the facts and circumstances of the specific case.
30	3.4	Which maintenance tasks and inspection tasks in connection with the public function should the Permit holder contemplate when reading this article?	Water-based public maintenance tasks include deepening navigable channels, for example. Inspection tasks are tasks for monitoring and enforcement.

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31	9	Can you give an example of the restrictions you would include under this article?	Tasks in the context of the management of Rijkswaterstaat (Directorate-General for Public Works and Water Management) under public law.
32	17.2	It is unclear which consequences or compensation mechanism will become effective in the event of termination in full of the preliminary agreement because, in light of the legal fact, the wind farm can no longer (briefly) be operated as initially intended. This is also of importance due to the bankability of the project. Furthermore, when will the State make a 'notification' under this article, and when will the permit holder be consulted to discuss the consequences?	In the event a legal fact referred to in this article occurs, the State will consult the Permit holder. The amount of any compensation will be determined between the parties by amicable agreement, and where necessary by means of civil proceedings brought before a court. Precisely which parts qualify for compensation depends too much on the circumstances of the case for us to give a clear answer.

Creation of a right in rem of superficies and easement for wind turbines

No.	Art.	Question	Answer
1	Gen	The terms and calculation rules in the Right of Superficies do not match the definitions of the terms in the Wind Farm Site Decision and the Permit. How is this possible?	In the interest of simplicity, the terms and calculation rules in the Right of Superficies include flat-rate elements. Both commissioning and decommissioning will generally be spread over a longer period, for example. Strict adherence to these stages would lead to unnecessarily complicated calculation rules and procedures. For this reason, terms determined on a flat-rate basis are assumed in relation to commissioning as well as decommissioning which may differ from those in the Wind Farm Site Decision, the Ministerial Order or the Permit.
2	Gen	It is expected the sites will be open for passage and shared use. What protection does the lease provide against third parties who pass or fly over the site or who carry out other activities in the area (or intend to do so)? Will shipping and fishing vessels actively be notified about the location of the cables?	The Wind Farm Site Decisions and the Policy Rule implementing a safety zone for offshore wind farms shall apply in this regard. The routes of the cables and locations of the turbines will be shown on the nautical chart (WGS84).
3	Gen	Does the Superficiary have the option of giving notice to terminate the superficies agreement?	No, it does not have this option because no such right exists. Termination is only possible if the State consents to a reasoned request by the Superficiary. This is because the agreements end by operation of law on the expiry of the Permit. If the operator wishes to give notice to terminate, it must submit a request for the Permit to be revoked.
4	Gen	Does the State agree to entry rights for banks/financial institutions in the deed of superficies?	Yes, the procedure to be followed is the same as that for onshore wind farms.
5	A.A.1.	It is assumed that one permit will be issued for HKZWFS III and IV together. What if the sites are awarded to two different parties?	On the effective conclusion, a separate Agreement, Right of Superficies and Lease will be drawn up for each site.

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6	C.1	C.1 provides that an independent Right of Superficies will be created as referred to in Section 5:101(2) of the Dutch Civil Code. This is a necessary starting point in connection with securing financing for a wind farm, since a dependent Right of Superficies must be avoided as this is accessory and no mortgage can be created on it, for example. To exclude the possibility that the Right of Superficies can be deemed an accessory Right of Superficies, the Agreement needs to be improved. At the moment there is ambiguity, since article 4 provides that (i) the Right of Superficies is created so long as the superficiary holds the Permit, and (ii) the Right of Superficies will end by operation of law on the same day as the Permit expires.	It is correct to refer to an independent Right of Superficies in this matter. Pursuant to Section 5:101(2) of the Dutch Civil Code, in a substantive law sense a dependent right of superficies is dependent on either another right in rem or a right of enjoyment such as a lease or tenancy. These situations are not applicable. This is not affected by the fact that certain conditions are stipulated in the Permit, which apply mutatis mutandis to the Right of Superficies.
7	D14, para. 1	Article 14(1) concerning Turnover Tax/Real Estate Transfer Tax must begin with the statement that the State qualifies as an economic operator (<i>ondernemer</i>) and is registered for turnover tax within the meaning of Section 7 of the Turnover Tax Act 1968.	Article 14 was drafted in consultation with the inspector of taxes for large enterprises in Rotterdam and the civil-law notary. The State is of the opinion that the wording is correct. This article can be amended in the event the operator agrees other arrangements with the Tax and Customs Administration.
8	GC	The General Terms and Conditions lack any provision for the eventuality that the Right of Superficies is encumbered with a mortgage. Normally it is provided in that case that on the expiry of the Right of Superficies, the landowner is obliged to hold an auction within six months at which a Right of Superficies is auctioned equal to the expired Right of Superficies, as well as that the mortgage holder will be paid a sum from the auction proceeds, after deduction of the landowner's costs, equal to the amount that would have accrued to the mortgage holder if the mortgage holder had auctioned the Right of Superficies. This is an important point for mortgage lenders.	This is provided for by law in Section 5:91(1) in conjunction with Section 104(2) of the Dutch Civil Code.
9	GC 6.2	In addition to the Permit, separate consent must be obtained from the State, as the owner of the land, for the construction of works on the site. Why is this the case, and under which conditions will the State grant this consent?	The consent is obtained via the Right of Superficies, the Lease and the Permit.
10	GC 6.10	The operator must take soil samples for the site survey. Prior written consent entails legal uncertainty and procedural dependency on the State.	This article does not apply to the taking of soil samples and essential earth removal for the Works, since consent for this is granted by means of the Agreement, the Right of Superficies and the Lease.
11	GC 7.2	Not permitted without prior written consent in a (limited) partnership. Does this only apply after creation of the right, or does this mean that these legal forms are not	This only applies after the Right of Superficies has been created with another party and that Other Party contributes the Right of Superficies to another legal form. This is only possible with the

Creation of a right in rem of superficies and easement for wind turbines

		accepted as the Other Party?	consent of the State and the State will not refuse this consent on unreasonable grounds.
12	GC 9.4	These General Terms and Conditions are clearly only written for onshore wind turbines and not for offshore wind turbines. Article 9(4) sets out the compensation provided by the State for the value of the Right of Superficies upon termination. It needs to be stated more clearly that this does not concern the Right of Superficies on its own, but the value of the wind farm (see also above).	If termination pursuant to Article 9 of the General Terms and Conditions takes place when there are still wind turbines present, the value of the wind turbines will be inextricably linked to the value of the Right of Superficies, since the termination of the Agreement causes the ownership to pass from the operator to the State. So, Article 9(4) most certainly does provide for the value of everything relating to the Right of Superficies. The value is established in consultation between the State and the operator, and where necessary referred to the competent court.
13	GC 15.2	Article 15(2) provides that a breach of the provisions in Articles 2, 6, 7, 12, 18(3) and 19 shall be considered a serious failure as referred to in Section 5:87 of the Dutch Civil Code. Section 5:87(2) of the Dutch Civil Code provides that notice may be given to terminate the Right of Superficies if the Superficiary has failed to pay the fee for two consecutive years or has seriously failed in the performance of its other obligations. Pursuant to paragraph 3 of this Section, a stipulation that deviates from paragraph 2 to the detriment of the Superficiary is void. Article 2 refers to non-payment of the fee without stating any terms. Therefore, on the ground of Article 15(2) this could be deemed, within a shorter term of two years, a serious failure. The latter is contrary to the law and void.	See in the Deed creating the Right of Superficies under 'D: Terms and Condition' Article 1(2). The reference to Article 2 in Article 15(2) has been rendered inapplicable.
14 New	Gen	When does the fee for the Right of Superficies become payable?	The obligation to pay a fee for the Right of Superficies for the entire wind farm will start on the day on which four years have passed since the date the Permit became irrevocable, regardless of the date on which operation of the wind farm starts.
15 New	Gen	Is the amount of the first annual payment for the Right of Superficies a fixed amount or will it be indexed from 2019 onwards?	The first payment of the annual amount for the Right of Superficies is a fixed amount. In subsequent years, the payment amount will be indexed based on the CPI.

Lease for cables, pipelines, pipe sleeves and/or additional work

No.	Art.	Question	Answer
1	Gen	Does the Lessee have the option of giving notice of termination?	No, no such right exists and this termination is only possible if the State consents to a reasoned request by the Lessee. This is because the agreements end by operation of law on the expiry of the Permit. If the operator wishes to give notice to terminate, it

Lease for cables, pipelines, pipe sleeves and/or additional work			
			must submit a request for the Permit to be revoked.
2	2.2	What does Article 2(2) of the Lease provide?	It provides that notice of termination is only possible in the cases referred to in Article 15 of the General Terms and Conditions.
3	5	This article does not provide that what is leased must be suitable for the intended use (i.e. for laying cables on/in or underneath). Any obstacles on the seabed can impede the laying of cables. A 'suitability for intended use warranty' is customary in leases and we would therefore like to see such a warranty provided in the lease. What is the State's position on this?	The operator must accept the seabed in its condition 'as is'.
4	12.3	What is the relationship between Article 12(3) and Article 20(4) of the draft agreement preceding the creation of a Right of Superficies and the entering into of a Lease?	There is no relationship. The first article concerns the engagement of experts and the second article concerns compensation in case of premature termination. There is no correlation between them.
5	Gen	Does the State consent to the inclusion of entry rights for banks/financial institutions in the lease? (This in view of the (project) financing of the wind farm by means of external financing.)	Yes, the procedure to be followed is the same as that for onshore wind farms.
6 New	Gen	When does the winner of the tender have to conclude the lease and when must the rent be paid?	Whoever wins the tender will conclude the lease simultaneously with the execution of the superficies agreement no later than one year after the Permit becomes irrevocable. The rent is a one-off payment and must be made in a single sum when the lease is signed.