



Government of the Netherlands

4 September 2019

LEASE FOR CABLES, PIPELINES, PIPE SLEEVES AND/OR ADDITIONAL WORK

Hollandse Kust (noord) Wind Farm Zone, Site V

This document was drawn up by the Central Government Real Estate Agency (Rijksvastgoedbedrijf) in collaboration with the Netherlands Enterprise Agency (Rijksdienst voor Ondernemend Nederland, RVO). No rights may be derived from this document.

LEASE FOR CABLES, PIPELINES, PIPE SLEEVES AND/OR ADDITIONAL WORK FOR SITE V OF THE HOLLANDSE KUST (NOORD) WIND FARM ZONE

The undersigned:

1. Mr [**], Head [**] of the Lettings & Valuations Department of the Central Government Real Estate Agency, with its business address in [**], (P.O. Box 16700, 2500 BS The Hague), 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 2018 (Government Gazette, 8 November 2018, No 62761), 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 Lessee**”,

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

Whereas:

- a. On [date], the parties entered into an Agreement (**Appendix 1**) in which they expressed their mutual intention to conclude this Lease;
- b. This Lease is in line with the Permit irrevocably obtained by the Lessee, [details], for the operation of Hollandse Kust (noord) Wind Farm Site V;
- c. This Lease is necessary for the performance of this operation;

Have agreed as follows:

The State shall let to the Lessee, which shall lease: a strip of seabed recorded in the Land Register as [**], section [**], number or numbers [**], within which the Lessee, for the purpose of implementing the Permit, may install cables and pipelines between the wind turbines installed by or for the Lessee and the connections to Tennet's electricity grid intended for that purpose, hereinafter referred to as “**the Leased Property**”, as roughly highlighted in the drawing attached to this Lease (**Appendix 2**),

The following provisions and conditions apply to the Lease:

Article 1. General Terms and Conditions

1. In so far as not provided otherwise below, this Lease is subject to the State Property Service's General Lease Conditions for Unbuilt Immovable Property 2008, hereinafter referred to as “**the General Terms and Conditions**”. The General Terms and Conditions were lodged with the court registry of the District Court of Utrecht on 5 March 2008 under number 86/2008, are deemed to be included verbatim in this Lease and to form part of the Lease, and are attached as an appendix to this Lease. The Lessee declares it has received a copy of these General Terms and Conditions prior to entering into this Lease, and it is entirely familiar with the content thereof. The General Terms and Conditions have been attached to this Lease as **Appendix 3**.

2. The following articles of the General Terms and Conditions shall not apply to this Lease:
 - a) Article 2(3) and (4), in so far as the payment of rent is concerned;
 - b) Article 3;
 - c) Article 4(3);
 - d) Article 5(5);
 - e) Article 6(5);
 - f) Article 11(b);
 - g) Article 13(1);
 - h) Article 14(b);
 - i) Article 15(1)(a);
 - j) Article 16(2) and (3);
 - k) Article 17.
3. The text of Article 15(1)(b) of the General Terms and Conditions shall cease to apply and shall be replaced by the following provision:
 - b) the Lessee fails seriously in the performance of obligations that do not relate to the payment of rent;
4. Notwithstanding the provisions of Article 15(2) of the General Terms and Conditions, a notice period of at least six months shall apply.
5. The text of Article 19(3) of the General Terms and Conditions shall cease to apply and shall be replaced by the following provision:
 3. The individuals designated by the State for this purpose shall have free access to the Leased Property.
6. The following definitions are added to Article 1 of the General Terms and Conditions:

Restricted Strip:

The area of land 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 strip is 0.15 metres on each side, measured from the centre line of the pipe.

Documentation:

All the information provided by the State in relation to the Leased Property, which information was provided to the Lessee during the preceding open procedure [tender details], including the Tender Scheme, the Lessee'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 Lessee from the information referred to herein. The purpose of this information is to enable the Lessee to conduct further research.

Electrical works:

The cables, pipes, and/or pipe sleeves installed or to be installed with the necessary associated works located in, on or above, the Leased Property.

Award:

The decision of the State to award the Agreement, pursuant to which decision the Agreement was drawn up in accordance with the provisions of Article [***] of the Terms and Conditions.

Agreement:

The Agreement drawn up pursuant to the Award to enter into the Lease, which is laid down in the private agreement referred to above in the "Whereas" section.

Permit:

[Details of the permit], as well as the requirements set for it in the preceding Wind Farm Site Decision V ([Government Gazette 2019, 24545](#)) and the Offshore Wind Energy Act (Wet Windenergie op Zee) ([Government Gazette 2015, 261](#));

Terms and Conditions:

The conditions and provisions applicable to the Open Tendering Procedure/Tender Scheme, included in the Documentation.

Work area:

That part or those parts of the Leased Property made available by the State to the Lessee's contractor for the installation of Electrical Works and/or the performance of maintenance and/or the preparation for work on the Electrical Works.

Article 2. Term and start date

1. This Lease has been entered into for a fixed period as referred to in subclause 3 of this Article and/or until notice of termination, starting or deemed to have started on [**] (hereinafter referred to as “**the start date**”).
2. This Lease may be terminated early only with due observance of the provisions of Article 15 of the General Terms and Conditions.
3. This Lease shall end by operation of law if the Lessee, for whatever reason, no longer holds the Permit referred to in Article 1. The provisions relating to cleaning up, removing, or otherwise restoring the Leased Property to its original state as on commencement of this Lease shall remain in full force until the Lessee has met all of its obligations.

Article 3. Fees

1. The fee for the use of the Leased Property is a one-off sum of €32,950 for the cabling within and for Site V.
2. The amount to be paid by the Lessee does not include compensation for:
 - a. damage or destruction of State property in so far as this cannot be repaired by the Lessee;
 - b. uninterrupted use, other than that stated in Article 5, of an area of State land, if the State is of the opinion that this use is of any significance;
 - c. any extension of the Leased Property pursuant to this Lease.
3. In case of one of the situations referred to in subclause 2(a) to (c), the Lessee must pay the State a separate fee at the State’s first request. The provisions of Article 2(2) to (5) of the General Terms and Conditions shall apply in that case.

Article 4. Method of payment for the fee

The fee referred to in Article 3.1 must be paid via an invoice issued to the Lessee by the State and/or by payment or transfer to account number NL34INGB0705002683 in the name of the Ministry of the Interior and Kingdom Relations, stating [**].

Article 5. Designated use and actual use

1. The Lessee may use the Leased Property only for the installation, possession, use, inspection, maintenance, repair, renewal, extension, replacement, retention or removal of cables, pipelines and pipe sleeves, hereinafter referred to as the “Works”.
2. The renewal, extension or replacement of the Works may involve a change in the number or bundles of conductors within the number of circuits specified in this Lease, where applicable.
3. The Parties explicitly exclude the applicability of the provisions on the leasing of living accommodation (Sections 232 et seq. of Book 7 of the Dutch Civil Code (Burgerlijk Wetboek, BW)), business premises (Sections 290 et seq. of Book 7 of the Dutch Civil Code), and “other” built immovable property (Section 230a of Book 7 of the Dutch Civil Code), as this matter concerns the leasing and letting of an unbuilt immovable property, and the Parties explicitly and unambiguously intend the Leased Property to be used for this purpose.
4. The aforementioned cables, pipelines, and pipe sleeves are considered the Lessee’s property according to the provisions of Section 20(2) of Book 5 of the Dutch Civil Code.

Article 6. Abstention by the State

When granting rights to third parties, the State shall refrain from any action that could place the Works referred to in Article 5 at risk.

Article 7. Acceptance

1. The Lessee accepts the Leased Property as found on the start date.
2. If the size of the Leased Property and/or any other description of the Parcels that appears in this Lease is incorrect or incomplete, neither the Lessee nor the State may derive any rights from such errors or omissions.

Article 8. Aquatic soil contamination

The Lessee and the State have agreed the following with regard to the risk of aquatic soil contamination in the Leased Property:

1. The State and the Lessee have not had an analysis carried out to establish the existence, if any, of aquatic soil contamination for the purpose of the present Lease.
2. The discovery of aquatic soil contamination during the term of the present Lease shall not constitute a defect.
3. The State shall not be liable for any loss suffered by the Lessee as a result of the existence of aquatic soil contamination in the Leased Property.
4. The Lessee shall report all existing aquatic soil contamination discovered during the operation of the Leased Property and during the term of the present Agreement to the State without delay.
5. The Lessee shall make every effort to prevent contamination of the ground belonging to the Leased Property during the operation of the Leased Property and during the term of the present Lease.
6. The Lessee shall always report any aquatic soil contamination attributable to it and that occurs during the term of this Lease and any aquatic soil contamination discovered during the term of the present Lease directly to the State and the manager of the waters, comply with any resultant orders issued by the manager as referred to in Section 5:16 of the Dutch Water Act (Waterwet), regardless of the party on which they have been imposed, directly and at its own expense, and also submit reports transmitted to the manager and decisions received from the manager in this context to the State directly. The aforementioned obligation for the Lessee to comply with orders directly and at its own expense shall not apply if the Lessee can prove the contamination cannot reasonably be attributed to it.
7. The Lessee shall be liable towards the State for the costs of remedying any new contamination of the aquatic soil belonging to the Leased Property caused by it during the term of the present Lease and for all other loss (including any decrease in value of the Leased Property) and costs with which the State is faced as a result of that contamination, unless it can prove the contamination cannot reasonably be attributed to it.
8. The Lease shall be deemed to continue until any orders to be implemented by the Lessee, 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 Lessee 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 9. Security

1. The State shall not do the following within the Leased Property without the written consent of the Lessee, which shall not be refused without reasonable grounds.
 - I. In the case of one or more high-voltage lines with one or more underground connections:
 - (a) install any underground cables, pipes, or pipelines;
 - (b) carry out any excavations or drive objects into the ground, notwithstanding the provisions under (f) below;
 - (c) extend or change the purpose of any items that were located within the Leased Property at the time of the Lease and that were not to be removed, or that were installed or placed there later with the written consent of the Lessee;
 - (d) grant rights to third parties that could prejudice the undisturbed exercise of the rights granted to the Lessee, or that could be relevant to the Electrical Works in any way;
 - (e) install any works that could obstruct access to the Leased Property, or connect such works to the Electrical Works;
 - (f) grant its consent to third parties in order to carry out one or more of the activities referred to in this subclause, or allow such activities.

The consent of the Lessee required above in (d) and (f) of this subclause shall not apply if the third parties have received written consent from the Lessee for one or more activities referred to in this subclause.
2. If the State persists in failing to meet its obligations described in the first subclause of this Article, the Lessee shall be entitled, immediately and without any notice of default being required, to take

any measures it considers necessary in order to ensure the safety and continuity of the electricity supply as well as for the purpose of telecommunications.

3. The State or another legitimate user shall only be liable for damage to the Leased Property if an intentional act or wilful recklessness can be attributed to them.
4. The State shall equally be responsible and liable if an act, omission, or damage as described in this Article is carried out by employees or auxiliary persons of the State or other individuals for whom it is liable.

Article 10. Obligations of the Lessee

1. When using the Leased Property, the Lessee shall take into account wherever possible the interests and wishes of the State or user of the Restricted Strip of land, and in general cause as little obstruction, inconvenience, and damage as possible.
2. The Lessee shall be obliged, in consultation with the State, following excavation and other works, to restore the surface of the Restricted Strip of land and the Work Area to the greatest extent possible and as soon as possible – given the existing use at that time – to an entirely comparable, unbuilt state.
3. Prior to carrying out work, the Lessee shall notify the State in a manner appropriate to the circumstances. Such notification may be omitted if the need to carry out work immediately in connection with the continuity and/or safety of the work or use of the work so requires.
4. Following excavation and other works, the Lessee shall be obliged to restore the Restricted Strip to its previous state to the greatest extent possible and as soon as possible and to take any necessary measures in relation to the removal of excess soil, at the discretion of the State.

Article 11. Cables and Pipelines

If the works are carried out near to locations where other cables and pipelines and/or other works are present in or on the Leased Property, the Lessee must consult the relevant authorities in due time and follow any instructions by those authorities.

Article 12. Revision drawings

Within six months after the completion of the works or of any extension, change, or removal, the Lessee must provide the State with clearly legible and comprehensible revision drawings in duplicate, which accurately show the position of the Works present under this Lease in relation to objects present in their surroundings, in which, through which, under which or along which, the Works are located.

Article 13. Access to the Leased Property

1. The Lessee, its staff, third parties designated by the Lessee, as well as anyone carrying out work on the instructions of all of the aforementioned officers, shall have access to the Leased Property (including means of transport and/or goods).
2. The Lessee shall be entitled to make use of adjacent parcels, provided these parcels belong to the State and provided such use does not cause any unreasonable inconvenience or damage to the State.

Article 14. Disposal or agreement for use

In case of disposal or agreement for use by the State of the land on which the Works are situated, the State shall give the Lessee prior notice of its intention.

Article 15. Removal

1. The Lessee shall be responsible for removing all Electrical Works from the Leased Property. When doing so, the Lessee must comply with all requirements set by the Permit.
2. The Lessee shall be obliged to restore the seabed of the Restricted Strip to the greatest extent possible – given the existing use at that time – to an entirely comparable, unbuilt state. The Lessee shall be obliged to reimburse the State for any specifically determined loss of income and work damage the State suffers as a result of the work to remove the Electrical Works.

3. If the Lessee prefers to reimburse the losses (including any future losses) the State suffers as a result of not removing the Electrical Works and the State agrees to this process, the State shall no longer demand payment of any compensation from the Lessee afterwards.
4. At the end of this Lease, the State shall not owe the Lessee any remuneration, by whatever name, in connection with the termination of this Lease.

Article 16. Indemnification

1. The Lessee shall indemnify the State against all claims (of whatever kind) of third parties in respect of loss suffered that can be attributed to the use of the Restricted Strip of land in order to do everything in it, on it, and/or above it, relating to the installation, possession, use, inspection, maintenance, repair, renewal, extension, replacement, underground rerouting, or removal of the Works by the Lessee.
2. In case of loss, including consequential loss, which has a causal link to the use of the Restricted Strip of land in order to do everything in it, on it, and/or above it, relating to the [installation, possession, use, inspection, maintenance, repair], renewal, extension, replacement, underground rerouting, or removal of the Works, arisen with a State user or users of land immediately adjoining the Leased Property, the Lessee shall also be obliged to compensate that land user or those land users directly. The Lessee shall indemnify the State against claims relating to any such loss or consequential loss.

Article 17. Transferability

The Lessee may transfer the present 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 Lessee shall inform the State of the manner in which and the time at which the transfer takes place. The Lessee shall not be entitled to transfer the Permit to third parties without also transferring the present Lease.

Article 18. Appendices

1. The following appendices form part of this Lease:
2. 1) the Agreement to enter into a Lease;
2) the highlighted drawing;
3) the General Terms and Conditions;
3. The appendices specified in subclause 1 are an integral part of this Lease. In case of any conflict between the present Lease and any of the above appendices, this Lease shall take precedence.

Article 19. Dispute resolution

1. Disputes relating to this Lease 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 Mediation Institute (NMI) at Rotterdam 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.
4. This Lease is governed by Dutch law.

Article 20. Original version

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

Article 21. General Terms and Conditions

Where this Lease and the General Terms and Conditions that apply to it refer to "State Property or State Property Service", this name should be read as Central Government Real Estate Agency.

Drawn up in duplicate and signed in the Parties' respective places of business,

dated [**]

On behalf of the State of the Netherlands, [the Lessee]
For the State Secretary for the Interior and Kingdom Relations,

[**]
*Head [**]*

DRAFT

