

Unilateral promise to reserve land at the Port of Cherbourg

Memorandum of Agreement

Between

THE SYNDICAT MIXTE DES PORTS DE CAEN OUISTREHAM, CHERBOURG ET DIEPPE (also known as PDN or Ports of Normandy), having its registered office at 3 rue René Cassin, 14280 Saint-Contest, France

Hereinafter referred to as “**PDN**”

And:..... acompany, with capital of euros, having its registered office at, registered in the French Trade and Companies Register under number 500 851 233, and represented by, its Chairman,

Hereinafter referred to as “**the Beneficiary**”

Who in their official capacity, prior to signing the promise of a public land occupancy agreement, subject matter hereof, have set out the following:

PREAMBLE

XXXX with CEI reference

In this context, the Beneficiary has asked PDN if it would be possible to occupy the plot of land and have privileged access to the quays designated below, for the purpose of...

PDN would like to put its publicly-owned property to good use and, judging that the requirements relating to the uses of publicly-owned property are met, has decided, based on articles L.2122-2 et seq. of the French Public Property Code, to draw up a memorandum of agreement with the Beneficiary, with the ultimate aim of authorising the Beneficiary to set up and operate these facilities. The location, description and technical characteristics of the facilities are set out in the plans annexed to this agreement after approval by the Parties.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

DEFINITIONS

- **“Memorandum of Agreement”**: refers to this Agreement whereby PDN unilaterally agrees to reserve land at the port for the Beneficiary.
- **“Public Land Occupancy Agreement”**: refers to the agreement for provision of the land which will be signed under the terms and conditions set out in this Memorandum of Agreement.

PART I – TERMS AND CONDITIONS OF THE MEMORANDUM OF AGREEMENT

Purpose of the Memorandum of Agreement

This Memorandum of Agreement sets out the terms and conditions under which PDN agrees to grant the Beneficiary a Public Land Occupancy Agreement concerning...

The land concerned will be made available to the Beneficiary according to the following timetable:

Right of substitution

Given that the present agreement is entered into by PDN in consideration of the person of the Beneficiary, the Beneficiary may not substitute another party for the benefit thereof without express prior consent from PDN.

Term and termination of the Memorandum of Agreement

This Memorandum of Agreement will come into effect as of its signature.

As from the signature of the Memorandum of Agreement, PDN will refrain from engaging in any act that may be detrimental to the condition, size and characteristics of the existing Plot as set out in the plan appended in **Annex 1**, and from granting any real or personal rights whatsoever that may undermine the conditions of enjoyment promised to the Beneficiary.

Conditions precedent and fulfilment of conditions precedent

This agreement is entered into subject to the following cumulative conditions precedent:

Method of fulfilment of conditions precedent and signing the Public Land Occupancy Agreement for the existing Plot

6.1 The Beneficiary will notify PDN by registered letter with acknowledgement of receipt of the fulfilment or otherwise of the conditions precedent, or of the waiver of one or more of them by the Beneficiary (*hereinafter referred to as "date T0": date of fulfilment of the conditions precedent or waiver of one or more of them*).

The Beneficiary will also provide PDN with a declaration of intent to sign, or not, the Public Land Occupancy Agreement. The declaration will be enclosed with the letter mentioned above, or sent separately by registered letter with acknowledgement of receipt, or handed over in written form to PDN against a receipt.

6.2 On receipt of the above-mentioned notification and the declaration of intent to sign, PDN irrevocably undertakes to make the existing Plot available to the Beneficiary and confirm its commitment by signing the Public Land Occupancy Agreement with the Beneficiary or any other person substituted for the Beneficiary.

On receipt of the above-mentioned letters and in the event that, for whatever reason, the Public Land Occupancy Agreement cannot be signed promptly, as expressly requested by the Beneficiary, PDN will make every effort to enable the Beneficiary, or any other person substituted for the Beneficiary, to occupy the Plot before the signature takes place.

PDN undertakes to sign the Public Land Occupancy Agreement within 3 (three) months of receiving the notifications mentioned in paragraph 6.1.

This Public Land Occupancy Agreement will constitute real rights to set up, on behalf of PDN, a public interest operation which falls within the Beneficiary's scope of business, as set out above. The Beneficiary will have a real right over the immovable constructions and facilities built to conduct its business activities. This real right grants the Beneficiary the privileges and obligations of the owner for the duration of the Public Land Occupancy Agreement.

Earnest money

The Parties agree that the Beneficiary will pay an earnest money deposit with regard to the commitments made herein.

Reverse termination fee

In the event that, after signing the Memorandum of Agreement, the Beneficiary withdraws its commitment by not signing the Public Land Occupancy Agreement, a reverse termination fee will be paid to PDN under the following conditions:

PART III – TERMS AND CONDITIONS OF THE PUBLIC LAND OCCUPANCY AGREEMENT

In accordance with Articles L.1311-5 of the General Local Authorities Code (CGCT), PDN promises to make the plots of land described hereinafter available to the Beneficiary, which accepts them, subject to the charges and conditions agreed to hereinafter. PDN promises to amend the port of Cherbourg's operating rules to grant the Beneficiary priority access to the quay.

It is agreed that “priority access to the public quay” means:

It is expressly agreed by the Parties that the Beneficiary, as occupier of the publicly-owned land, may under no circumstances invoke the benefit of the provisions of Articles L.145-1 et seq. of the French Commercial Code relating to commercial leases.

Description

Reservation of the land concerned: PDN agrees to reserve, for the Beneficiary, a plot of land, in a specific area defined in Annex 1, an area of

PDN undertakes to ensure that the land mentioned in this article is entirely free of human or material occupancy by the date of signing the Public Land Occupancy Agreement at the earliest.

Intended use – Agreed use

10.1 The space and the real estate property and rights, which are the subject of this Public Land Occupancy Agreement, will be exclusively used for...

10.2 It is expressly agreed between the Parties that PDN is not and will not be the contracting authority, main contractor, assistant or delegatee for any works carried out by the Beneficiary.

Term

11.1 In accordance with the provisions of Article L 1311-5 of the CGCT, the term of the Public Land Occupancy Agreement will be set when it is signed, considering the nature of the Beneficiary's business and the facilities authorised.

Charges and conditions

The occupancy agreement will be granted and accepted subject to the following charges and conditions, which both Parties undertake to perform and fulfil, namely:

XXX

Conditions for the use of the facilities

13.1

The Beneficiary undertakes to use the above-mentioned facilities and the equipment required to operate them correctly under normal conditions and according to their intended use, taking care not to impede the management and operation of the port domain.

The Beneficiary will make use of the land for which the concession is granted in a proper manner, conducting no other business activity than that described above on the land, and will fulfil all the obligations, administrative or other, that regulate, where applicable, said business activity to ensure that PDN is free from all concern and liability of any kind in this respect.

The Beneficiary will comply with all legal and regulatory requirements concerning the works it undertakes as a contracting authority, particularly in terms of health and safety, and will carry out and bear the cost, without any recourse whatsoever against PDN, of all works that may be necessary in this respect.

Lastly, in all cases, the Beneficiary shall ensure that the works carried out do not impinge upon any adjacent facilities.

13.2 PDN guarantee

PDN will guarantee the Beneficiary peaceful enjoyment of the assets by making every effort to ensure that the occupation and operation of the port domain does not impede the smooth functioning of the facilities and the Beneficiary's business activity.

13.3 Upkeep of facilities

For the entire duration of the Public Land Occupancy Agreement, the Beneficiary undertakes to maintain in good working condition the constructions and structures built, which the Beneficiary will continue to enjoy, and any changes that may have been made to them by the Beneficiary.

The Beneficiary will be liable for any damage to the structures built; in the event of damage leading to an insurance payout, the Beneficiary will be obliged to repair the damaged parts.

13.4 Contributions – taxes and charges

The Beneficiary will pay all taxes, contributions and charges for which it is liable in respect of the Plot, with the understanding that this commitment currently relates to the land registration taxes for the Plot.

The fee set below will be collected net of these taxes, contributions and charges, with the sole exception of taxes that may be levied on the rental income, which are and will remain payable by PDN.

The Beneficiary will remain liable for the consequences of any errors, shortcomings or omissions attributable to the Beneficiary in the declarations which would be detrimental to PDN.

13.5 Real rights – Assignment – Subleasing

As the Public Land Occupancy Agreement constitutes real rights, the Beneficiary will be entitled, for the immovable constructions, structures and facilities built by the Beneficiary to conduct business, to grant mortgage security and real rights to third parties.

However, given the specific nature of the Public Land Occupancy Agreement, the Beneficiary may only assign all or part of the right it possesses hereunder, carry out operations similar in nature to assignments, sublease or simply make premises available with the express written consent of PDN, failing which the assignments, subleases or availability of premises granted in disregard of this clause will be null and void and may even lead to the termination of this Agreement.

PDN shall justify any refusal to grant authorisation.

Fate of constructions and structures

14.1 For the entire duration of the Public Land Occupancy Agreement, the Beneficiary will be the owner of the constructions and structures built by it, along with all the works undertaken and alterations made by it.

14.2 When the Public Land Occupancy Agreement expires, or if it is terminated amicably or by court order for any reason whatsoever, the Beneficiary shall return the land to the condition it was in prior to the effective date of the Occupancy Agreement granted to it.

This work must be carried out within two months of the expiry date of the Public Land Occupancy Agreement or of its termination, failing which it will be carried out without any further formalities and at the Beneficiary's expense.

In the event that, with the consent of PDN, the Beneficiary chooses not to dismantle the facilities built on the land covered by this Public Land Occupancy Agreement within the set time period, PDN will become owner of the facilities, thus incorporating them into its publicly-owned property with no obligation to compensate the Beneficiary.

In the event that the Beneficiary needs to carry out reinforcement works on the dredged berths, the Parties hereby agree that the structure may be left as is.

Obligations of the Parties

PDN's responsibilities with regard to the soil and subsoil on the Plot will be set out by the Parties at the time of signing the Public Land Occupancy Agreement.

Fee

PDN will be paid an occupancy fee for the Plot:

payable in advance as provided for in Article L2125-4- of the General Public Property Code.

Termination clause

17.1 Failure to pay any fee by the due date or to fulfil, even partially, any one of the charges and conditions stipulated in the Public Land Occupancy Agreement or any one of the legal or regulatory obligations applicable to the Beneficiary, PDN will be entitled to terminate the Public Land Occupancy Agreement 3 (three) months after an order to pay or to perform served by a bailiff, either in person or to the address for service, and stating PDN's intention to invoke this clause, which has gone unheeded, or sent by registered letter with acknowledgement of receipt and which has received no reply.

Moreover, the Beneficiary agrees to regularly inform PDN of progress made on the offshore project and particularly of any delay in its execution that would lead to the Plot not being occupied or regularly used.

If the Plot is not used by the Beneficiary, without the latter having informed PDN of the objective reasons for this lack of use, PDN will be legally entitled to terminate the Public Land Occupancy Agreement 6 (six) months after an order to pay or to perform served by a bailiff, either in person or to the address for service, and stating PDN's intention to invoke this clause, which has gone unheeded, or sent by registered letter with acknowledgement of receipt which has received no reply.

17.2 It should be noted that in accordance with the general principles governing publicly-owned property, PDN may unilaterally terminate the Public Land Occupancy Agreement for reasons of general public interest, by giving 12 (twelve) months' notice by registered letter with acknowledgement of receipt, an eventuality of which the Beneficiary declares that it is fully aware. In this case, and whatever the reason for termination, the Beneficiary will be compensated for any loss resulting from early dispossession. This compensation will correspond to the direct, material and certain loss incurred.

If an amicable settlement cannot be reached, either party may refer the matter to the competent court.

The Beneficiary will not be entitled to this compensation in the event of termination for a breach such as that described in Article 17.1 of the Public Land Occupancy Agreement.

Costs

All the costs, duties, taxes and fees pertaining to the executed Public Land Occupancy Agreement, as well as those pertaining hereto, will be borne solely by the consortium, which undertakes to do so.

Address for service

For the performance of this Agreement, the Parties take as their address for service their respective registered offices.

Language and Applicable Law

The language which governs this Agreement is French. The Agreement is governed by French law exclusively.

Severability

If any clause in this Agreement is declared void, unlawful or inapplicable by a court of arbitration, a court of justice or any other competent authority, it will be deemed null and void and the other clauses of this Agreement will continue to have full effect.

Nevertheless, the Parties will negotiate in good faith to agree on the terms of a new mutually

satisfactory clause to replace the clause declared void, unlawful or inapplicable.

Disputes

If a dispute arises between the Parties, the interested Party will draw up statement of case setting out the reasons for and the administrative, technical and/or financial consequences resulting from the dispute, from its point of view. This statement of case will be sent by registered letter with acknowledgement of receipt to the other Party.

The Party concerned will notify the other of its proposal for the settlement of the dispute within 30 (thirty) calendar days of the date the statement of case was received.

If the Party concerned does not submit a proposal within this time period, the complaint will be deemed rejected.

If the proposal does not satisfy the interested Party or a proposal is not submitted, said Party may refer the dispute to a conciliation committee composed of three people. To this end, the Parties will have 30 (thirty) calendar days to each appoint a conciliator. The two conciliators thus appointed will in turn, by mutual agreement and within eight (8) calendar days, appoint for a third person to preside the conciliation committee.

Failure to appoint some or all of the conciliators within the above-mentioned time periods, or if the committee has been formed and after a period of 30 calendar days from the date it was formed has not submitted a solution to the Parties to amicably settle their dispute, or if the solution does not satisfy one Party or the other, the dispute will subsequently be referred to the administrative court of Caen at the request of either party.

Signed in _____, on _____ 2020, in two original identical counterparts.

For PdN For THE BENEFICIARY

[Name of signatory]

[Position of signatory]