

MEMORANDUM OF AGREEMENT
UNILATERAL AGREEMENT TO RESERVE LAND
AT THE PORT OF CHERBOURG

Between

The **SYNDICAT MIXTE DES PORTS DE CAEN OUISTREHAM CHERBOURG ET DIEPPE**, with registered office at 3 rue René CASSIN, F-14 280 Saint-Contest, France, represented by its serving Chairperson by virtue of decision No. XXX of XXXXX

Hereinafter "**Ports of Normandy**"

And XXXXXX, XXXX company with capital of XXXX euros with registered office at XXX, registered with the Trade and Companies of under the no. XXXXX, represented by XXXXX in his/her capacity as XXXXX,

Hereinafter the "**Beneficiary**"

Which, in their official capacity, prior to signing the promise of an occupancy agreement contained herein, have set out the following:

PREAMBLE

1. XXXX.

2. XXX

3. XXXX

4. XXX

5. XXX

Following the Call for Expressions of Interest (CEI) published by Ports of Normandy on XXX, the Beneficiary has applied to occupy a plot of land at the port.

PORTS OF NORMANDY wishing to develop its public domain land and considering that the requirements relating to the uses of public domain land are met, has decided, on the basis of Articles L.2122-2 et seq of the French Public Property Code (*Code général de la propriété des personnes publiques*, CGPPP) to finalise a memorandum of agreement with the Beneficiary, with a view to eventually authorising the Beneficiary to set up and operate its facilities.

The location, description and technical characteristics of the facilities are set out in the plans (préciser éventuellement d'autres documents - A compléter) attached hereto after approval by the Parties.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1. DEFINITIONS

- **"Memorandum of Agreement"**: refers to this Agreement whereby Ports of Normandy unilaterally promises to reserve land at the port for the Beneficiary.
- **"Public Domain 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.
- **"Plot"**: refers to the plot of land/stretch of water covering xx hectares
- **"Beneficiary"**: Signatory of this agreement
- **"Site(s)"**: refers to the Zones, as defined in XXX's Invitation to Tender, and **Project(s)** refers to the projects developed by the Beneficiary on these sites.

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PART I – TERMS OF THE MEMORANDUM OF AGREEMENT

1. Object of the Memorandum of Agreement

This Memorandum of Agreement sets out the terms and conditions under which PORTS OF NORMANDY promises to grant the Beneficiary, a Public Domain Occupancy Agreement concerning the Plot.

2. Right of substitution

Given that this agreement is entered into by PORTS OF NORMANDY in consideration of the person of the Beneficiary, the Beneficiary may not substitute another party for the benefit thereof without the express prior consent of PORTS OF NORMANDY.

However, PORTS OF NORMANDY agrees as of now that the Beneficiary may be substituted in the performance of the Memorandum of Agreement and/or the Public Domain Occupancy Agreement by any project company set up or designated by the Beneficiary to file the offer or any industrial partner interested by the project and in particular XXXX, as long as, firstly, any substitute undertakes to comply fully with the terms and conditions of this Memorandum of Agreement and, secondly, PORTS OF NORMANDY is informed of the substitution in advance.

3. Term and termination of the Memorandum of Agreement

This Memorandum of Agreement will come into effect as of its signature and remain in force until the earliest of the following three events.

- Signing of the Temporary Occupancy Agreement.
- A letter sent by the Beneficiary stating that it is unable to fulfil or waives the conditions precedent mentioned in §4.
- [Date]

During this period covered by the Memorandum of Agreement, PORTS OF NORMANDY and the Beneficiary shall confer as often as necessary to clarify as precisely as possible the needs of the Beneficiary's reservation.

If the Beneficiary is granted occupancy of the Site(s), this Memorandum of Agreement will remain in force and the rest of the provisions below will apply.

PART II - CONDITIONS OF THE MEMORANDUM OF AGREEMENT RELATING TO THE PLOT

4. Conditions precedent, method of fulfilment and signing the public domain occupancy agreement for the plot

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

- XXX
- XXX

The Beneficiary shall notify PORTS OF NORMANDY, by registered letter with acknowledgement of receipt, of the fulfilment or impossibility of fulfilling the conditions precedent, or of its waiver of one or more of them.

A declaration of intention to sign the agreement, or not, will also be sent to PORTS OF NORMANDY. It will be enclosed with the letter mentioned above or sent separately by registered letter with acknowledgement of receipt or delivered in person to PORTS OF NORMANDY against a receipt.

On receipt of the above-mentioned notification and the declaration of intent to sign, PORTS OF NORMANDY irrevocably undertakes to make the Plot available to the Beneficiary and to confirm its commitment by signing the Public Domain 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 Domain Occupancy Agreement cannot be signed promptly, as expressly requested by the Beneficiary, PORTS OF NORMANDY 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.

5. Lapse of the memorandum of agreement

PORTS OF NORMANDY undertakes to sign the Public Domain Occupancy Agreement within **xxx** months of receiving the notifications mentioned in Article **xxx**.

If this deadline passes without PORTS OF NORMANDY receiving the declaration of intent to sign the Public Domain Occupancy Agreement from the Beneficiary, this Memorandum of Agreement will be considered as having lapsed 30 working days after the receipt of a formal demand to provide the declaration of intent to sign sent by PORTS OF NORMANDY to the Beneficiary, without any judicial formalities being required and without any compensation other than that which may be due under Article 7 below.

6. NO EARNEST MONEY

The Parties agree that the Beneficiary will not pay earnest money in respect of the undertakings made herein. In return for waiving the payment of earnest money, PORTS OF NORMANDY will be free to allocate spaces as long these do not compromise the performance of this memorandum of agreement.

7. Reverse termination fee

A) Failure of the Beneficiary to sign the Public Domain Occupancy Agreement

If the Beneficiary, after signing this memorandum of agreement to reserve a plot, fails to go ahead with signing the Public Domain Occupancy Agreement, a reverse termination fee will be payable to PORTS OF NORMANDY which will be equivalent to 50% of the amount of the provisional TOA, namely €XXXX

B) Failure of the Beneficiary to sign the Public Domain Occupancy Agreement

If Ports of Normandy, after signing this memorandum of agreement to reserve a plot, fails to go ahead with signing the Public Domain Occupancy Agreement, a termination fee will be payable to the Beneficiary by PORTS OF NORMANDY, which will be equivalent to 50% of the amount of the provisional TOA, namely €XXXX

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

8. TERMS AND CONDITIONS OF THE OCCUPANCY AGREEMENT CONCERNING THE PLOT

In accordance with Articles L.1311-5 of the French Local Authorities Code (*Code général des collectivités territoriales*, CGCT), PORTS OF NORMANDY promises to make the plots of land described below available to the Beneficiary, which accepts them, subject to the charges and conditions agreed below.

It is expressly agreed by the Parties that the Beneficiary, as an occupant of the public domain, 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.

On the other hand, this Public Domain Occupancy Agreement may confer rights in rem with a view to the carrying out, on behalf of PORTS OF NORMANDY, of an operation in the public interest, but which also serves the purposes of the Beneficiary's business, as stated above. The Beneficiary may possess a right in rem in the immovable structures, buildings and installations that it builds to carry on its business activities. This right in rem would grant the Beneficiary the privileges and obligations of the owner for the duration of the Agreement.

The Public Domain Occupancy Agreement **conferring rights in rem** will be recorded in the mortgage register.

9. Description

PORTS OF NORMANDY undertakes to reserve, for the Beneficiary, in a zone defined in **Annex**, a **XX-hectare** plot of land for the installation **of a XXX site**

PORTS OF NORMANDY undertakes to ensure that the plots mentioned in this article are entirely free of any human or material occupancy at the earliest by the day of signing the Occupancy Agreement and subject to a request being sent to PORTS OF NORMANDY by registered letter with acknowledgement of receipt **xxx** months beforehand.

10. Intended use – Commitment to use the land

The space and the real estate property and rights which are the subject of this Public Domain Occupancy Agreement shall be exclusively used for the operations necessary to the construction and operation of **XXX**

Under these conditions, the Beneficiary undertakes to build the following facilities:

- **(A compléter)**
- ...

It is expressly agreed by the Parties that PORTS OF NORMANDY is not and will not be the contracting authority, main contractor, assistant or delegatee for any works to be carried out by the Beneficiary.

11. Term

Under the provisions of Article L 1311-5 of the French Local Authorities Code (CGCT), the term of the authorisation will be determined at the time of signing the Public Domain Occupancy Agreement with regard to the nature of the activity and the facilities authorised.

However, the parties have already agreed to the following options:

- **XXXX**
- **XXXX**

It will take effect as of the signature of the public domain occupancy agreement.

12. Charges and conditions

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

- Clearance and cleaning of the plots by PORTS OF NORMANDY
- XXXX

13. Conditions of use of the facilities

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

The Beneficiary shall make use of the plot for which the concession is granted in a proper manner, carrying on the business activity specified above to the exclusion of any other and fulfil all the obligations, administrative or other, that regulate, where applicable, said business activity so as to ensure that PORTS OF NORMANDY is free from all concern and liability of any kind in this respect.

The Beneficiary shall comply with all legal and regulatory requirements concerning the structures it builds, in particular health and safety requirements, and shall carry out at its own expense and without any recourse against PORTS OF NORMANDY all works that may be required in this respect.

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

14. PORTS OF NORMANDY warranty

PORTS OF NORMANDY 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.

15. Maintenance of the facilities

The Beneficiary undertakes, for the entire duration of the Public Domain Occupancy Agreement, to maintain in good condition the buildings and structures erected, the enjoyment of which it will retain along with any improvements it makes to them.

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

16. Contributions – taxes and charges

The Beneficiary will pay all taxes, contributions and charges for which it is liable in respect of the Plot, it being understood that to date this commitment concerns the land registration duty 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 rental income, which are and will remain payable by PORTS OF NORMANDY.

The Beneficiary will furthermore remain liable for the consequences of any errors or omissions from declarations or non-submission of declarations attributable to the Beneficiary which would be detrimental to PORTS OF NORMANDY.

17. Rights in rem – assignment – subletting

If the Public Domain Occupancy Agreement confers rights in rem, the Beneficiary may use the immovable structures, buildings and installations that it builds to carry on its business activity as mortgage collateral or grant other rights in rem to third parties.

Given the specific nature of the occupancy agreement, the Beneficiary may only assign the rights it holds hereunder either partially or totally, carry out any operations that may be assimilated with assignments, sublet or simply make the assets available to a third party with the explicit, written consent of PORTS OF NORMANDY, without which said assignments, subletting or making available will be null and void and may even lead to the termination hereof.

PORTS OF NORMANDY may, however, only refuse its permission on grounds based on the lack of technical capability or financial capacity of the intended assignee.

18. Fate of buildings and structures

For the entire duration of the Public Domain Occupancy Agreement, the buildings and structures erected and all the works undertaken and improvements made by the Beneficiary will remain its property.

When the Public Domain Occupancy Agreement expires, or if it is terminated amicably or by court order for any reason whatsoever, the Beneficiary shall, prior to the end date of the occupancy

agreement granted to it, return the plot to the condition it was in before : failing which this will be done as a matter of course and at the Beneficiary's expense.

In the event that, with the consent of PORTS OF NORMANDY, the Beneficiary chooses not to dismantle the facilities built on the land concerned by the Public Domain Occupancy Agreement within the set time period, they will become the property of PORTS OF NORMANDY, becoming part of its domain, with no obligation to compensate the Beneficiary.

19. Obligations of the Parties

PORTS OF NORMANDY's responsibilities with regard to the soil and subsoil on the Plot will be determined by the Parties at the time of signing the Public Domain Occupancy Agreement.

20. Occupancy fee

PORTS DE NORMANDIE will be paid an occupancy fee of x euros per year payable in advance before xxx each year.

The Beneficiary undertakes to pay this occupancy fee to PORTS OF NORMANDY, on presentation, at least fifteen days before the above-mentioned deadline for payment, of an invoice (*titre de recette*) issued in accordance with accounting rules applicable to public bodies.

21. Termination clause

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 Domain Occupancy Agreement or any one of the legal or regulatory obligations applicable to the Beneficiary, PORTS OF NORMANDY will be entitled to terminate the Public Domain Occupancy Agreement three months after an order to pay or a formal notice to perform served by a judicial officer, either in person or at the address for service, stating PORTS OF NORMANDY'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 for the same period.

Moreover, the Beneficiary undertakes to regularly inform PORTS OF NORMANDY of the progress of the Project and in particular of any delay in the performance of its project 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 PORTS OF NORMANDY of the objective reasons for this lack of use, PORTS OF NORMANDY will be entitled to terminate the Public Domain Occupancy Agreement as of right six months after a formal notice to perform served by a judicial officer, either in person or at the address for service, stating PORTS OF NORMANDY'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 for the same period.

It should be noted that in accordance with the general principles relating to the public domain, PORTS OF NORMANDY may unilaterally terminate the Public Domain Occupancy Agreement on public interest grounds, 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. The principles and method of calculation of such compensation will be agreed by the Parties so that they can be included in the Public Domain Occupancy Agreement to be signed by them, it being specified here that the following main principles are already being discussed by the Parties:

The compensation will take account of:

- The cost overrun relating to the implementation of the industrial project by the Beneficiary incurred as a result of termination;
- Any penalties that may be due to co-contractors;
- The loss of turnover due to the non-sale of electricity in the event of a delay in entry into service due to the delay in the construction of the planned offshore wind turbines.

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

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

PART IV - GENERAL PROVISIONS

22. Expenses

All the costs, duties, taxes and fees pertaining to the Public Domain Occupancy Agreement to be signed, as well as those pertaining hereto, will be payable solely by the Beneficiary, which hereby undertakes to do so.

23. Address for service

For the performance hereof, the Parties take as their addresses for service those of their respective registered offices.

24. Language and Applicable Law

The language of this Agreement is French. The Agreement is exclusively governed by French law.

25. Severability

If any clause in this Agreement is declared invalid, unlawful or inapplicable by an arbitral tribunal, a court or any other competent authority, it will be deemed unwritten, but the other clauses of this Agreement will remain in full force and 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 invalid, unlawful or inapplicable.

26. Disputes

If a dispute arises between the Parties, the Party that has an interest in doing so 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 calendar days of the date of receiving the statement of case.

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

If the proposal does not satisfy the interested Party or no proposal is submitted, the Party with an interest in doing so may refer the dispute to a conciliation committee made up of three members. The Parties will then have 30 calendar days in which to each appoint a conciliator. The two conciliators thus appointed will in turn, by mutual agreement and within eight (8) calendar days, appoint a third person to preside the conciliation committee.

Failure to appoint some or all of the conciliators within the above-mentioned timeframes, or if the committee has been formed and after a period of 30 calendar days after its formation it has not submitted a solution to the Parties to amicably settle their dispute, or if the solution proposed does not satisfy one or other of the Parties, the dispute may then be referred to the administrative court of Caen by either party.

Ports of Normandy	The Beneficiary