

**Draft contract for a price premium for electricity generated at
[insert technology]**

(in the following referred to as the "Price Premium Contract")

Contract

between

The Danish Energy Agency (*Energistyrelsen*)
Carsten Niebuhrs Gade 43
DK-1577 Copenhagen V

(in the following referred to as the "Danish Energy Agency")

and

*[*Name of Beneficiary
registration number/CVR no. (business reg. no.) if the Beneficiary is an undertaking/
identification number/CPR no. if the Beneficiary is a natural person
address]*

[if the Beneficiary is a consortium, see clauses 7.1-7.3]

(in the following referred to as the "Beneficiary")

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[Appendix 2.[*]:	Description of installation(s) covered by the bid – IF A BID INCLUDES SEVERAL INSTALLATIONS APPENDIX 1 AND 2 IS TO BE COMPLETED FOR EACH INSTLLATION]
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1. Obligation to establish installation(s) and connect it/them to the grid

- 1.1.** The Beneficiary is obliged to construct and connect to the grid the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 (see however clause 12.4) in accordance with the terms of the Price Premium Contract.
- 1.2.** Not later than three months after the conclusion of the Price Premium Contract, the Beneficiary shall submit a timetable for the construction of the installation(s) cf. clause 1.1 to the Danish Energy Agency. The time schedule shall as a minimum contain information on when the Beneficiary expects to commence the construction work and connect the installation cf. Appendix 1 and 2 to the grid. Installations with one connection to the collective electricity supply grid in Denmark shall be considered to be one installation.
- 1.3.** After submitting the timetable in accordance with clause 1.2 and until all installations covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2, cf. clause 12.4 have been connected to the grid, the Beneficiary shall every six months submit an updated timetable containing the same information as that mentioned in clause 1.2 to the Danish Energy Agency.
- 1.4.** Not later than [two/four] years after the conclusion of the Price Premium Contract (see however clause 5) the Beneficiary shall connect the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 (see however clause 12.4) to the collective electricity supply grid in Denmark.

If 85 % (per cent) of the total installed capacity as stated in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 has been connected to the grid within [two/four] years from the conclusion of the Price Premium Contract (see clause 5 below), the obligation in clause 1.1 shall be considered met and the guarantee in clause 4.1 shall lapse as stated in clause 4.2, see however clause 12.4-12.5 below.

The right to price premiums will lapse and a retention penalty must be paid corresponding to an amount calculated in accordance with Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 (see clause 12.2) if an installation covered by the Price Premium Contract is not connected to the grid or is connected to the grid later than [two/four] years from the date of concluding the Price Premium Contract, see however clauses 5 and 12.4 below

- 1.5.** It is a condition for receiving price premiums cf. clause 6 that the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 is/are to be connected to the grid according to the rules applicable at any time laid down in the Order on Grid Connection of Wind Turbines and PV Installations, which became effective on 1 July 2018, see clause 8.1 below.

- 1.6.** The time of connection to the grid is defined in accordance with section 5, no. 4 of the Act on the Promotion of Renewable Energy as the time when the installation delivers electricity to the collective electricity supply grid in Denmark for the first time, as this is the time which is subsequently to be recorded in the Master Data Register.¹
- 1.7.** The Beneficiary is responsible for obtaining all necessary permits, etc., for grid connection and operation of the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2, see however clause 12.4. Failure to obtain such permits, etc., is of no concern to the Danish Energy Agency. The Beneficiary is also responsible for registering the installation(s) covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 (see however clause 12.4) in compliance with relevant regulations in force at any time.
- 2. Change of the location of the installation(s)**
- 2.1.** Up until grid connection of one or more installation(s) covered by Appendix 1 and 2, the Beneficiary is entitled to change the location of the installation(s) by requesting the Danish Energy Agency's written consent to add an amending appendix to Appendix 2 of the Price Premium Contract. The total capacity of the installation(s) covered by Appendix 1 and 2 may not be changed (see however clause 12.4) and the location(s) shall be kept within the scope of the approved local development plan to which Appendix 2 relates or within the stated coordinates if there is no requirement of planning documentation pursuant to the Danish Planning Act and Danish Act on Environmental Impact Assessment.
- [For installations where there is no requirement of planning documentation and where there are instead are stated coordinates, the tenderer should be aware that it will not be possible at a later state to change the location of the installation in a way that the installation will be placed outside of the coordinates.]*
- 2.2.** The Danish Energy Agency may refuse its consent to a change of location if objectively justified.
- 2.3.** The Danish Energy Agency may refuse a request for consent to a change of location of installation(s) cf. Appendix 2, if the change, according to the Danish Energy Agency's assessment would have had a significant impact on the outcome of the evaluation pursuant to the tender.
- 2.4.** Consent to a change of location of installation(s) will only be granted if compatible with the general principles of EU law of the TFEU regarding, inter alia,

¹ Order no. 1601 of 17 December 2018 on the Master Data Register for Electric Power Generating Plant etc..

equal treatment, transparency, proportionality and prohibition of discrimination on the basis of nationality.

3. Division of the Price Premium Contract

- 3.1. The Beneficiary may at any time request the Danish Energy Agency's written consent to divide the Price Premium Contract on unchanged terms in up to one Price Premium Contract per installation with one grid connection covered by Appendix 2 or by any subsequent appendices amending Appendix 1 and 2.
- 3.2. The Danish Energy Agency may refuse its consent to a division of the Price Premium Contract if objectively justified.
- 3.3. The Danish Energy Agency shall be entitled to refuse its consent to a division of the Price Premium Contract if the division, according to the Danish Energy Agency's assessment, is not compatible with the principles in the amendments to the public procurement rules applicable at any time.
- 3.4. Consent to divide the Price Premium Contract will only be granted if it can be done in accordance with the general principles of EU law of the TFEU regarding, inter alia, equal treatment, transparency, proportionality and prohibition of discrimination on the basis of nationality.
- 3.5. Several price premium contracts may not be merged into one price premium contract.

4. Guarantee for retention penalty

- 4.1. As security for payment of the retention penalty in clause 12, a first demand guarantee is provided by a financial institution of DKK [*amount corresponding to capacity * FLH * DKK 170 DKK per kW, cf. clause 5.11.3 in the tender conditions*], see Appendix 3.
- 4.2. The Danish Energy Agency shall release the demand guarantee no later than one month after the Beneficiary has documented grid connection of 85 % (per cent) of the total installed capacity covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2, see however clause 12.4 regarding grid connection of a capacity of less than 85 % (per cent). In situations covered by clause 12.4 the Danish Energy Agency will release the demand guarantee when payment of the retention penalty has happened covering the part of the 85 % (per cent) of the capacity cf. Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 which has not been connected to the grid before the deadline of grid connection cf. clause 1 and clause 5 above. The time of connection to the grid shall be defined as set out in clause 1.6.
- 4.3. The Danish Energy Agency shall be entitled to request any further documentation from the Beneficiary that 85 % (per cent) of the total installed capacity

covered by the Price Premium Contract has been connected to the grid, but see clause 12.4.

- 4.4.** If, in accordance with clause 4.3, the Danish Energy Agency has requested further documentation for 85 % (per cent) grid connection of the installed capacity covered by the Price Premium Contract, but see clause 12.4, the Danish Energy Agency shall not be obliged to release the demand guarantee until one month after the additional documentation has been received.

5. Extension of time-limit

- 5.1.** The Beneficiary has the right to extension of the the time-limit specified in clause 1.4 for grid connection of the installation covered by Appendix 2 or any subsequent appendices amending Appendix 2 after obtaining the Danish Energy Agency's written consent if the delay is caused by one or more of the following circumstances:

1. Circumstances relating to the Danish Energy Agency.
2. Circumstances arising for which the Beneficiary is without fault and over which the Beneficiary has no control, for example war, extraordinary natural events, fire, strikes, lockout or malicious damage.
3. Precipitation, low temperatures, strong winds or other weather conditions preventing or delaying work where such weather conditions occur to a significantly greater extent than usual for the season and area in question.
4. Public orders or bans which are not caused by circumstances attributable to the Beneficiary.
5. A requirement for a stay of execution following directly from legislation or from a decision of execution by an appeals board or a court of law.
6. If the Beneficiary does not obtain the necessary licenses, exemptions and approvals etc. besides the ones which in relation to the requirement of late bidding which was required at the time of submitting bid in relation to this Price Premium Contract, from authorities despite the Beneficiary having applied with the relevant authorities more than one year before the deadline of the grid connection cf. clause 1.4.
7. If the grid company or transmission company is not ready to connect the installation to the collective electricity supply grid in Denmark with at least 85 % (per cent) of the installed capacity covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 before the deadline of grid connection, see clause 1.4 above, because the Beneficiary has failed to obtain the necessary licenses, exemptions and ap-

provals, which are not covered by the late bidding requirement, from the authorities despite the Beneficiary having applied for licenses, exemptions or approvals etc. with the relevant authorities more than one year before expiry of the grid connection obligation, see clause 2.4.

8. If the grid company or transmission company is not ready to connect the installation to the collective electricity supply grid in Denmark with at least 85 % (per cent) of the installed capacity covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 before the deadline of grid connection, see clause 1.4 above, and the Beneficiary has entered into an agreement on connection of the installation to the grid covered by the Price Premium Contract not later than one year before expiry of the time limit for grid connection, see clause 1.4.
9. If more than two UXOs are to be removed in connection with the establishment of open door offshore wind turbines.
10. If the project cannot be initiated due to a large preliminary study, see s.26(3) of the Danish Museum Act (*museumsloven*), cf. Consolidating Act no. 358 of 8 April 2014, or the project is suspended due to archaeological studies, see s.27 of the Danish Museum Act, cf. Consolidating Act no. 358 of 8 April 2014.
11. Processing by the Danish Safety Technology Authority (*Sikkerhedsstyrelsen*) of a case concerning compulsory acquisition of land for public purposes under s.27 of the Electricity Safety Act (*elsikkerhedsloven*).

5.2. The extension of the time-limit will correspond to the actual delay caused by the circumstance in items 1-11 above relied upon. If the Beneficiary considers that the Beneficiary is entitled to an extension of the time-limit, the Beneficiary shall immediately request written consent for such extension from the Danish Energy Agency. The Beneficiary shall in the request for consent demonstrate that the delay is caused by the circumstance relied upon and that the circumstance could not reasonably be avoided or mitigated.

5.3. Irrespective of the above, price premiums cannot be granted later than [23/25] years from signature of this Price Premium Contract. If an installation covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 is connected to the grid later than [three/five] years from conclusion of the price premium contract, whatever the cause, the period of price premium shall be reduced proportionately with the delay exceeding 3 years.

6. Payment of price premiums, etc.

6.1. A price premium of [the price offered] øre/kWh shall be granted for electricity generated at installation(s) covered by Appendix 1 and 2 or any subsequent ap-

pendices amending Appendix 2. The price premium is granted on top of the market price for electricity.

- 6.2.** The payment of a price premium is made on the basis of measurement of electricity calculated as delivered to the collective electricity supply grid in Denmark.
- 6.3.** The production shall be calculated on the basis of reports from the grid companies pursuant to the regulations in this respect in force at any time.
- 6.4.** The price premium shall be paid in Danish Kroner (DKK).
- 6.5.** If the price premium is to be paid to a foreign account, the Beneficiary shall pay any costs due to the price premiums under the Price Premium Contract having to be transferred to a bank outside Denmark. The Beneficiary accepts that any costs/fees in this respect are deducted from the payment of the price premium. There will not be an exchange of the price premium to another currency in connection with payment to a foreign account.

The Beneficiary also accepts that international payments may be delayed as compared to domestic transfers. The Beneficiary furthermore accepts that payment to foreign countries may be delayed due to the speed of processing in the foreign financial institution.

It is the responsibility of the Beneficiary that payments including payments in DKK can be made to a foreign account.
- 6.6.** The price premium, see clause 7.1, shall not be indexed.
- 6.7.** Price premium shall not be granted for electricity production in hours when the spot price of electricity is not positive. The spot price of electricity shall mean the hourly rate per kWh on the spot market in the relevant area stated by the Nordic electricity exchange, Nordpool. (DK1 or DK2).
- 6.8.** Payment of price premiums under the Price Premium Contract shall be made monthly by the Danish Energy Agency on the basis of the production for the previous month, see clause 6.3 and the payment is made to the Beneficiary's account.
- 6.9.** If for a particular month and irrespective of the reasons, a larger price premium is paid to the Beneficiary than that specified in clause 6.1, the excess amount paid shall be deducted from the payment(s) for the following month(s).
- 6.10.** If the excess price premium paid cannot be deducted from payment(s) for the following month(s) in accordance with clause 7.9, the Danish Energy Agency shall demand an amount to cover the excess price premium paid. The Beneficiary is obliged to pay interest if repayment has not been made within thirty

days after the Danish Energy Agency has sent a demand, see s.3(2) of the Danish Interest Act (*renteloven*).

- 6.11. The Danish Energy Agency shall pay out any amount to the Beneficiary to correct underpayment of price premiums.
- 6.12. The Danish Energy Agency is at any time entitled to appoint another operator to pay price premiums and/or otherwise administrate price premiums under the Price Premium Contract, and shall in such case notify the Beneficiary of the identity of that operator.
- 6.13. The Beneficiary is responsible for selling the production from installation(s) covered by Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 see clause 12.4, in the electricity market and shall bear all costs in this regard.
- 6.14. Balancing costs for the electricity from the installation(s) covered by Appendix 1 and 2 or by any subsequent appendices amending Appendix 2 shall not be reimbursed.
- 6.15. Price premiums will be paid for twenty years from the connection to the grid of the installation(s) covered by Appendix 1 and 2 or by any subsequent appendices amending Appendix 2 see however clause 12.4. The time of connection to the grid is defined in accordance with clause 3.6.
- 6.16. Price premiums, however, shall not be paid after [23/25] years from the conclusion of the Price Premium Contract, but see clause 5.3.
- 6.17. The Beneficiary shall bear the full commercial risk of the kWh price offered, and the installation(s) in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 shall remain in all respects at the cost and risk of the Beneficiary. Hence, the Beneficiary is not entitled to make any claims against the Danish Energy Agency in this respect.

[Clause 7 is inserted if one or more of the paragraphs below are relevant]

7. Joint and several liability

[The following text is inserted prior to signature of this Price Premium Contract, if the Beneficiary is a consortium]

- 7.1. *If the Danish Energy Agency enters into a Price Premium Contract with a consortium, all members of the consortium will be jointly and severally liable for all obligations under the Price Premium Contract.*
- 7.2. *The Beneficiary is a consortium consisting of:*

[Insert names and registration numbers/CVR numbers/identification numbers/CPR numbers of the members of the consortium]

[insert name] has been appointed to act on behalf of the consortium with binding effect on all the members of the consortium.

- 7.3.** *The above consortium members have undertaken joint and several liability in connection with this Price Premium Contract.*

Any claims arising under the Price Premium Contract may thus be made to any of the members of the consortium.

Joint and several liability will only occur to the extent that the Beneficiary is in breach of the Price Premium Contract and such breach has not been remedied by the Beneficiary after formal notice to this effect from the Danish Energy Agency. Joint and several liability only relates to claims from the Danish Energy Agency.

[The following text is inserted prior to signature of this Price Premium Contract, if the Beneficiary is a newly established company and tender has been submitted on behalf of a not yet established company]

- 7.4.** *The Beneficiary is a newly established company and tender has thus been submitted by the founding company/companies/person(s) below on behalf of the Beneficiary:*

[Insert names and registration numbers/CVR numbers/identification numbers/CPR numbers of the relevant parties, i.e. the founders]

Where the Beneficiary is a company under formation, the founders are jointly and severally liable for the Beneficiary's obligations under this Price Premium Contract until the company has been registered, see s.41(3) of the Danish Companies Act (selskabsloven).

Any claims arising under the Price Premium Contract may thus be made to the founders if the Beneficiary is a company under formation.

Joint and several liability will only occur to the extent that the Beneficiary is in breach of the Price Premium Contract and such breach has not been remedied by the Beneficiary after formal notice to this effect from the Danish Energy Agency. Joint and several liability only relates to claims from the Danish Energy Agency.

Hence, the Danish Energy Agency shall acquire no rights in relation to the founders which the Danish Energy Agency does not have in relation to the Beneficiary at any given time.

If the Danish Energy Agency raises a claim against the founders under the Price Premium Contract, the founders shall have the same right as the Beneficiary to object to the Danish Energy Agency to an alleged breach of the Price Premium Contract.

Where the Danish Energy Agency's claim against the Beneficiary is covered by a demand guarantee under clause 5 of this Price Premium Contract, the joint and several liability of the founders shall only apply to the extent that payment on demand does not take place to the Danish Energy Agency, whatever the reason, under the demand guarantee(s) in question, or where the demand guarantee is released at the time when the Danish Energy Agency makes its claim.

The joint and several liability of the founders shall remain in force until the expiry of the obligations under the Price Premium Contract.

In the event of a dispute between the Danish Energy Agency and the founders, clause 19 on applicable law and venue shall apply. The founders shall co-sign this Price Premium Contract and have by their signature to the Price Premium Contract accepted these terms.

8. Conditions for price premiums

8.1. It is a *condition* for payment of price premiums under the Price Premium Contract from the time of grid connection (see clause 1.6) that:

- 1) the first time that the actual constructed installation(s) covered by Appendix 1 and 2 or by any subsequent appendices amending Appendix 2 (see however clause 12.4) deliver(s) electricity to the collective electricity supply grid in Denmark,
- 2) the actual constructed installation(s) covered by Appendix 1 and 2 or by any subsequent appendices amending Appendix 2 is/are covered by an agreement on grid connection pursuant to the rules in force at any time in Order on Grid Connection of Wind Turbines and PV Installations, which applies for agreement on grid connection concluded on 1 July 2018 or later,
- 3) all electricity generated at the installation(s) covered by Appendix 1 and 2 or by any subsequent appendices amending Appendix 2 see clause 12.4 is delivered to the collective electricity supply grid in Denmark.
- 4) installations covered by the Price Premium Contract is located within the approved local development plan or within the stated coordinates, cf. Appendix 2 or by any subsequent appendices amending Appendix 2 or Appendix 6.c if relevant,

- 5) the loss-of-value scheme and the option-to-purchase scheme has been completed pursuant of the rules in sections 6-12, 13-17 and 54 in the Danish Promotion of Renewable Energy Act.

8.2. It is furthermore during the entire period a condition for of aid for receiving price premiums under the Price Premium Contract cf. clauses 6.15-6.16 that:

- 1) the Beneficiary has complied with any requirements for repayment of aid which, in a previous decision, the European Commission has declared illegal and incompatible with the EU single market;
- 2) that the Beneficiary is not an undertaking in difficulty. An undertaking is considered to be in difficulty when, without intervention by the State, it will almost certainly be condemned to going out of business in the short or medium term, as defined in the Commission Communication on Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty (2014/C 249/01);
- 3) that the Beneficiary does not receive other aid than price premiums under the Price Premium Contract. If this prerequisite is no longer present the granted price premiums pursuant to the Price Premium Contract must be paid back to the Danish Energy Agency with interests. A guarantee in accordance with the provisions applicable at any time on the guarantee fund in Act on the Promotion of Renewable energy shall not be considered aid in this context;
- 4) that the Beneficiary has not unpaid overdue debt of DKK 100,000 or more to public authorities in relation to taxes, duties or social security contributions under Danish law or under the law of the country in which the Beneficiary is established.²

8.3. As a condition for the payment of price premiums under the Price Premium Contract, the Danish Energy Agency may at any time request to submit all necessary information for the purpose of the Danish Energy Agency's granting of price premiums, including but not limited to technical information, such as production data concerning an installation covered by Appendix 1 and 2 or any subsequent appendices amending Appendix 2, cf. however clause 12.4.

8.4. Price premiums are conditional upon the Beneficiary notifying the Danish Energy Agency of all circumstances of importance for the entitlement to receive price premiums under the Price Premium Contract, including but not limited to circumstances concerning the conditions in clauses 8.1 and 8.2 concerning, among other things, whether the actually established installation exceeds the installed capacity that follows from Appendix 1 and 2 or any subsequent appendices amending Appendix 2, or if other support is received. Notification

² Reference is made to the principles of s.135(3) of the Danish Public Procurement Act.

shall be sent immediately when the circumstances concerned arise, or at the time when the Beneficiary becomes aware that the circumstances have arisen or will arise.

8.5. The Danish Energy Agency will cease the payment of the price premium in the price premium period, see clauses 6.15-6.16, if the Beneficiary notifies the Danish Energy Agency:

1. that the Beneficiary has received any claim for repayment of aid which, in a previous decision, the European Commission has declared illegal and incompatible with the EU single market and the Beneficiary has not yet complied with such requirement in full, see clause 8.2.1;
2. that the Beneficiary is in difficulty, see clause 8.2.2;
3. that the Beneficiary receives other aid than price premiums under the Price Premium Contract.

9. Transfer of the Price Premium Contract by the Danish Energy Agency

The Danish Energy Agency shall be entitled to transfer its rights and obligations under this Price Premium Contract to another public institution or any institution or private entity ultimately controlled ("controlled" is defined in accordance with the International Accounting Standard (IAS 27) of the International Accounting Standards Board (IASB)) by the Danish State or another Danish public authority or mainly financed by public funds, if the public tasks so far performed by the Danish Energy Agency, or if the public tasks covered by the Price Premium Contract, are assigned, in whole or in part, to any of the mentioned parties (change of remit).

10. Transfer of the Price Premium Contract by the Beneficiary to a third party

10.1. The Beneficiary is not entitled to transfer its rights and obligations under the Price Premium Contract to a third party in the period from conclusion of the Price Premium Contract until the guarantee obligation in clause 4 lapses.

10.2. Irrespective of clause 10.1 above the Beneficiary may complete the option-to-purchase scheme pursuant to s. 13-17 in the Danish Promotion of Renewable Energy Act.

10.3. After the lapse of the guarantee obligation in clause 4 and having received written consent from the Danish Energy Agency, the Beneficiary may transfer its rights and obligations under the Price Premium Contract to a third party, see however clause 10.2.

10.4. The Beneficiary's written request to the Danish Energy Agency for consent to transfer the Price Premium Contract shall contain the same information on the

new contracting party as that submitted regarding the Beneficiary in the tender letter in connection with submitting bids.

- 10.5.** The Danish Energy Agency may refuse to consent to a transfer if objectively justified.
- 10.6.** It is a condition for the consent to the transfer of the Price Premium Contract to a third party that the new contracting party by an addendum to the Price Premium Contract declares that the new contracting party at the time of the transfer of the Price Premium Contract complied with the conditions stated in clause 8.2 nos. 1)-4).
- 10.7.** The Danish Energy Agency shall be entitled to refuse its consent to transfer the Price Premium Contract if the transfer, according to the Danish Energy Agency's assessment, is not in compliance with the principles in the amendments to the public procurement rules in force at any time.
- 10.8.** Consent to the transfer shall only be granted if compatible with the general principles of EU law of the TFEU regarding, inter alia, equal treatment, transparency, proportionality and prohibition of discrimination on the basis of nationality.
- 10.9.** The Danish Energy Agency shall be entitled to request from the Beneficiary any additional information or documentation as deemed relevant by the Danish Energy Agency for its assessment of whether to consent to the requested transfer of the Price Premium Contract.
- 11. Processing of personal data**
- 11.1.** The Beneficiary consents to the Danish Energy Agency publishing, in whole or in part, the bid from the Beneficiary including price premium, capacity and the name of the Beneficiary and/or the Price Premium Contract. National identification numbers of natural persons, however, will not be published unless the Danish Energy Agency is legally obliged to do so.
- 11.2.** The Beneficiary consents to the Danish Energy Agency publishing and if necessary obtaining from the Beneficiary any information necessary for the Danish Energy Agency's observance of the transparency obligation under EU State aid law in accordance with the rules and principles of EU State aid law in force at any time, i.e. at present - to the extent relevant - information on the form and amount of price premium granted, the type of undertaking (SME/large undertaking), the region in which the Beneficiary is located (at NUTS II level), and the principal economic sector in which the Beneficiary has its activities (at NACE group level), in accordance with Part 3.2.7 on transparency of the EEAG.
- 11.3.** The Danish Energy Agency's processing of any personal data takes place under Article 6(1), para e of the General Data Protection Regulation authorising the

processing of data that is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller.

The Danish Energy Agency will process, as data controller, the personal data until the data are filed or discarded pursuant to the rules of the Danish Archives Act (*arkivloven*)³, but at least for as long as the data are necessary for the payment of price premiums under the Contract.

The Danish Energy Agency may transfer the data received to the consultants of the Danish Energy Agency, e.g. in connection with legal assistance or to data processors, and the Danish Energy Agency may disclose the personal data as specified in these clauses 11.1 and 11.2.

12. Retention penalty

- 12.1.** If the Beneficiary informs the Danish Energy Agency in writing, regardless of the reason, that the Beneficiary after all will not or cannot construct and/or connect the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 to the grid in accordance with the terms of the Price Premium Contract, the right to price premiums shall lapse and the retention penalty (see clause 12.2 below) shall fall due for immediate payment on demand from the Danish Energy Agency.

The same shall apply if circumstances should show that the Beneficiary will not or cannot construct and/or connect to the grid the installation(s) specified in Appendix 2 or in any subsequent appendices amending Appendix 1 and 2 in accordance with the terms of the Price Premium Contract.

The same shall apply if the installation(s) specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 has/have not been connected to the grid within [two/four] years after conclusion of the Price Premium Contract, see however clauses 1 and 5.

- 12.2.** The retention penalty, which is an agreed penalty, amounts to DKK [*amount corresponding to capacity * FLH * DKK 170 DKK per kW, cf. clause 5.11.3 in the tender conditions*].
- 12.3.** If one or more of the above conditions in clause 12.1 exclusively relates to a part of the installed capacity covered by Appendix 1 and 2 or any subsequent appendices amending Appendix 2, the retention penalty and price premiums shall be calculated proportionally for the installed capacity which is not connected to the grid within the deadline of grid connection, see clauses 1 and 5. Accordingly the price premium is only granted regarding the part of the capaci-

³ Act no. 1201 of 28 September 2016 consolidating the Archives Act

ty covered by the Price Premium Contract which *is* connected to the grid within the deadline of grid connection, see clauses 1 and 5.

- 12.4.** It will be possible to connect a larger or smaller capacity within the time-limit for connection to the grid, see clauses 1 and 5, than that specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2.

If a smaller capacity is grid connected than 85 % (per cent) of that specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 before the deadline of grid connection cf. clauses 1 and 5, a retention penalty is payable for the part of the 85 % (per cent) not connected within the deadline of grid connection and price premium will only be granted for the electricity which is supplied to the collective electricity supply grid in Denmark for the part which is connected to the grid within the time-limit for grid connection. This is applicable regardless of that the remaining capacity stated in Appendix 1 and 2 or any subsequent appendices amending Appendix 1 and 2 is connected to the grid after the deadline of grid connection, see clauses 1 and 5.

If a larger capacity is connected to the grid within the deadline of grid connection (see clauses 1 and 5) than the capacity stated in Appendix 1 and 2 or any subsequent appendices amending Appendix 1 and 2 price premiums will only be granted for a proportional share of the electricity supplied to the collective electricity supply grid in Denmark. The share of the electricity production to which there will be granted price premiums is calculated as the ratio between the capacity connected to the grid and the capacity stated in Appendix 1 and 2 or any subsequent appendices amending Appendix 2. The share is constant in the aid period and is calculated separately for onshore wind turbines, open door offshore wind turbines and solar PV installations respectively at the time of grid connection. If for example an installation with onshore wind turbines with a capacity of 100 MW is connected to the grid and in Appendix 2 there appears onshore wind turbines with a capacity of 80 MW the price premiums will be granted for 80 % (per cent) of the electricity production from the installation in the entire aid period.

- 12.5.** The retention penalty shall be payable in accordance with clause 12.1, and if relevant, clauses 12.3 and/or 12.4, and shall be payable upon written demand from the Danish Energy Agency. The retention penalty shall be paid in full discharge to the Danish Energy Agency, see however clause 10.

Payment of the retention penalty shall not require that the Danish Energy Agency documents a loss.

If the demand for payment is not met, irrespective of the reason, not later than five working days after the Danish Energy Agency has sent written demand to the guarantor, the Beneficiary shall be obliged to pay default interest twenty days after the date when the demand for payment was made until payment takes place.

The Danish Energy Agency shall determine the size of the default interest in accordance with s.5 of the Danish Interest Act (*renteloven*).

The retention penalty shall cease to apply when 85 % (per cent) of the total installed capacity specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 has been connected to the grid, see however clause 12.4 regarding grid connection of a smaller capacity than 85 % (per cent). In situations covered by clause 12.4 the retention penalty will lapse when payment of penalty for the part of the 85 % (per cent) of the capacity specified in Appendix 1 and 2 or in any subsequent appendices amending Appendix 2 which is not connected to the grid before the deadline of grid connection cf. clauses 1 and 5 above.

13. Breach

13.1. In the event of the Beneficiary's breach of its obligations under the Price Premium Contract, including but not limited to circumstances that trigger the payment of a retention penalty, and obligations under clauses 1.4, [7] and 8.1-8.4, and if incorrect declaration(s) has been made in relation to clause 8, the Danish Energy Agency shall be entitled, with due observance of clause 13.3, to immediately terminate the Price Premium Contract, whereby the right of the Beneficiary to a price premium pursuant to the Price Premium Contract shall lapse.

13.2. In the event of the Beneficiary's withdrawal of its consent under clauses 11.1 or 11.2, the Danish Energy Agency shall be entitled, with due observance of clause 14.3, to immediately terminate the Price Premium Contract, whereby the Beneficiary's right to the price premium pursuant to the Price Premium Contract shall lapse.

13.3. Notwithstanding clauses 13.1 and 13.2, however, the Danish Energy Agency shall only terminate the Price Premium Contract after having given a written notice to the Beneficiary describing the breach and specifying a reasonable time-limit for remedying the breach claimed. The Danish Energy Agency shall agree that satisfactory remedy has taken place.

14. Termination of Price Premium Contract in connection with a decision of ineffectiveness or annulment of award decision

14.1. Pursuant to the Danish Act on the Complaints Board for Public Procurement etc. (*lov om Klagenævnet for Udbud*), the Complaints Board for Public Procurement may in specific cases of breach of the procurement rules, provided that the Board is competent, declare a contract awarded ineffective and order the contracting authority to terminate the contract within a time-limit specified by the Board. Correspondingly the Danish Energy Agency's decision regarding award of Price Premium Contract may be cancelled after which the Danish Energy Agency must terminate the Price Premium Contract after due warning unless special conditions promising the continuation of the contract are present.

On this basis, the provisions below have been stipulated regarding the Danish Energy Agency's right in such cases to terminate the Price Premium Contract.

- 14.2.** The Danish Energy Agency is entitled to terminate the Price Premium Contract, in whole or in part, giving notice in accordance with the order issued by the Complaints Board for Public Procurement or a court of law. Thus, the Price Premium Contract shall terminate, in whole or in part, as stipulated in the order with effect from the effective date specified in the order.
- 14.3.** If the order issued contains additional terms and conditions or requirements, the Danish Energy Agency shall be entitled to pass on such terms and conditions or requirements to the Beneficiary in the notice of termination, provided that this is objectively justified, and the Beneficiary shall then comply with such terms and conditions.
- 14.4.** The Beneficiary's possible claim for damages or other compensation as a result of the Price Premium Contract being declared ineffective, the award decision is cancelled or an order to terminate having been issued, including, for example, any costs of complying with the additional terms and conditions or requirements that the Danish Energy Agency has passed on in the notice of termination, shall in principle be decided pursuant to the general rules of Danish law.

However, the Danish Energy Agency and the Beneficiary have agreed that indirect losses shall not be compensated.

In addition, the Danish Energy Agency liability in connection with the termination of the Price Premium Contract shall in no event exceed the costs documented by the Beneficiary for the performance of the Price Premium Contract up until the time of termination of the Price Premium Contract with a deduction of:

- 1) the value at which the installation or the installation as components (the highest of the two amounts is applied) is assessed by an expert third party to be sold at the time of termination if the installation has been established. The expert third party shall be appointed by the Beneficiary and approved by the Danish Energy Agency. The costs of the expert third party shall be borne by the Danish Energy Agency;
- 2) the value at which components for establishment of the installation, the partly established installation or the partly established installation as components (the highest of the two amounts is applied) is assessed by an expert third party if sold at the time of the termination. The expert third party shall be appointed by the Beneficiary and approved by the Danish Energy Agency. The costs of the expert third party shall be borne by the Danish Energy Agency;

- 3) any revenues generated from the installation, including but not limited to price premiums already received under the Price Premium Contract and for sale of electricity production.

14.5. If the Beneficiary, at the time of conclusion of the Contract, had or should have had knowledge of the circumstances, in fact or in law, causing the Price Premium Contract to be declared ineffective, the Beneficiary shall have no claim for damages or claim for any other kind of compensation as a result of the Price Premium Contract being declared ineffective or as a result of the issuance of an order for termination, including, for example, the costs of complying with additional terms and conditions or requirements passed on by the Danish Energy Agency in the notice of termination.

15. Applicable law and venue

This Price Premium Contract shall be governed by Danish law, and the ordinary courts of Copenhagen shall be proper venue.

16. Commencement and duration

It is a prerequisite for the signing of the Price Premium Contract of the Danish Energy Agency that the Beneficiary has provided a demand guarantee, cf. clause 4.1.

This Price Premium Contract shall become effective upon its signature by both Parties.

Unless the Price Premium Contract is terminated pursuant to clause 13 or clause 15, the Price Premium Contract shall cease automatically when the payment of the price premiums under clauses 6.15 and 6.16 of the Price Premium Contract ceases or if a retention penalty is incurred pursuant to clause 12, except for retention penalties incurred pursuant to clause 12.4.

17. Language

The Price Premium Contract has been drawn up in Danish, but is also translated into an English version. In the event of discrepancy between the Danish and the English language versions, the Danish language version shall prevail.

Notwithstanding the above, Appendix 3 (first demand guarantee) in English and Danish shall rank and apply equally.

18. Separate and independent contract

The Parties agree that clause 14 of this Price Premium Contract shall constitute a separate and independent agreement between the Parties which shall apply regardless of whether the Price Premium Contract might be declared ineffective.

19. Signatures

This Price Premium Contract shall be signed by the Danish Energy Agency and by the Beneficiary in two original copies of the Danish language version of which each Party shall receive one original copy.

[The Agreement is also signed by the economic operator(s) who have assumed joint and several liability pursuant to clause 7. These entities will receive a copy of the Price Premium Contract.]

Date:
For the Danish Energy Agency

Date:
For the Beneficiary

[Any additional parties signing the Price Premium Contract, see clause 7 on joint and several liability, are added here]