

**Draft contract for aid and price guarantee for electricity generated at  
[insert technology]**

(in the following referred to as "the 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]*

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

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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 amending appendices (see however clause 12.4) in accordance with the terms of the Contract.
- 1.2.** No later than three months after the conclusion of the Contract, the Beneficiary shall submit a timetable for the construction of the installation(s) (see clause 1.1) to the Danish Energy Agency. The time schedule shall as a minimum, contain information on when the Beneficiary expects to commence construction and grid connect the installation(s) specified in Appendix 1 and 2 or any subsequent amending appendices. An installation with one connection to the Danish collective electricity supply grid, shall be considered as 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 any subsequent amending appendices (see clause 12.4) have been connected to the grid, the Beneficiary shall at any time submit an updated timetable containing the same information as that mentioned in clause 1.2 if requested by the Danish Energy Agency.
- 1.4.** Not later than [two/four] years after the conclusion of the Contract (see however clause 5) the Beneficiary shall connect the installation(s) specified in Appendix 1 and 2 or in any subsequent amending appendices (see however clause 12.4) to the collective electricity supply grid in Denmark.

If 85 % (per cent) of the capacity specified in section A.2 in Appendix 1 or in any subsequent appendices amending Appendix 1 has been connected to the grid within [two/four] years from the conclusion of the Contract (see clause 5), the obligation in clause 1.1 shall be considered met and the demand guarantee in clause 4.1 shall lapse as stated in clause 4.2 (see however clause 12.4-12.5). For solar PV installations the AC-capacity (kW) specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.

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

- 1.5.** It is a condition for receiving price premiums (see clause 6) that the installation(s), which are specified in Appendix 1 and 2 or in any subsequent amending appendices, are connected to the grid according to the at any time current rules in the Executive Order on grid connection of wind turbines, solar PV Installations, wave power plants, and hydroelectric power plants (see clause 8.1).
- 1.6.** The time of connection to the grid is defined in accordance with section 5, subsection 1, 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 recorded in the register of master data.<sup>1</sup>

- 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 amending appendices (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 amending appendices (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) specified in 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 Contract. The capacity of the installation(s) specified in section A.2 in Appendix 1 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 the installation(s) covered by Appendix 1 and 2 or any subsequent amending appendices are not subject to the requirement of planning documentation pursuant to the Danish Planning Act and the Danish Act on Environmental Impact Assessment.

*[For installations where there is no requirement of planning documentation and where coordinates are stated instead, the tenderer should be aware that it will not later be possible to change the location of the installation in a way that places the installation outside the area, which the coordinates encompass.]*

- 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) specified in 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, equal treatment, transparency, proportionality and prohibition of discrimination on the basis of nationality.

## **3. Division of the Contract**

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<sup>1</sup> Section 85 a, subsection 2, no. 2 in the Act of Electricity Supply, cf. Act no. 119 of 6. February 2020.

- 3.1.** The Beneficiary may request the Danish Energy Agency's written consent to divide the Contract after the demand guarantee in clause 4 lapses. The division of the Contract occurs on unchanged terms (see however clause 3.6) in up to one contract per installation specified in Appendix 1 and 2 or in any subsequent amending appendices. .
- 3.2.** The Danish Energy Agency may refuse its consent to a division of the Contract if objectively justified.
- 3.3.** The Danish Energy Agency shall be entitled to refuse its consent to a division of the 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 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 contracts may not be merged into one contract.
- 3.6.** The division of the Contract cannot occur, if an installation covered by the Contract previously has been the subject of any approved request to divide a contract.
- 3.7.** If the Danish Energy Agency consents to a division of the Contract, then payment on the basis of the new divided contracts will take effect from the following month-end settlement date (see clause 6.8), hereafter referred to as the settlement date.
- 3.8.** If the Danish Energy Agency consents to a division of the Contract, then at the settlement date the Danish Energy Agency will calculate the remaining cap on the total payments to the Danish Energy Agency from the Beneficiary (see clause 6.18) and the remaining cap on the total aid paid out by the Danish Energy Agency to the Beneficiary (see clause 6.19).

The remaining cap on the total payments to the Danish Energy Agency from the Beneficiary is calculated as DKK [*DKK 5.6 million (2020 prices) per MW (on-shore wind equivalent)*] (2020 prices), adding all aid paid by the Danish Energy Agency to the Beneficiary up until the settlement date (assessed in 2020 prices), and subtracting all payments from the Beneficiary to the Danish Energy Agency up until the settlement date (assessed in 2020 prices). If the cap on the total payments to the Danish Energy Agency from the Beneficiary (see clause 6.18) is binding on the settlement date, then the remaining cap on the total payments to the Danish Energy Agency from the Beneficiary is set to DKK 0 (2020 prices).

The remaining cap on the total aid paid by the Danish Energy Agency to the Beneficiary is calculated as DKK [*DKK 2.8 million (2020 prices) per MW (on-shore wind equivalent)*] 2020 prices), adding all payments by the Beneficiary to

the Danish Energy Agency up until the settlement date (assessed in 2020 prices), and subtracting all aid paid by the Danish Energy Agency to the Beneficiary up until the settlement date (assessed in 2020 prices). If the cap on total aid paid by the Danish Energy Agency to the Beneficiary (see clause 6.19) is binding on the settlement date, then the remaining cap on total aid paid by the Danish Energy Agency to the Beneficiary is set to DKK 0 (2020 prices).

**3.9.** If the Danish Energy Agency consents to a division of the Contract, then both the remaining cap on the total payments to the Danish Energy Agency from the Beneficiary and the remaining cap on the total aid paid out by the Danish Energy Agency to the Beneficiary (see clause 3.8) will be divided proportionally with respect to the capacity covered by each new divided contract, and thereby state the cap on the total payments to the Danish Energy Agency from the Beneficiary and the cap on the total aid paid by the Danish Energy Agency to the Beneficiary applicable from the settlement date in the new divided contracts. If installation(s) specified in Appendix 1 and 2 or in any subsequent amending appendices includes multiple technologies, then onshore wind equivalent units are used for calculating the capacity (see clause 12.6). For solar PV installations the DC-capacity (kWp) covered by the new divided contracts is applied.

**3.10.** If the Danish Energy Agency consents to a division of the Contract and if the capacity connected to the grid is more than the capacity specified in section A.2 in Appendix 1 (see clause 12.4), then the price premium will only apply to a fraction of the electricity supplied to the Danish collective electricity supply grid and the fraction calculated in connection with the latest grid connection will apply for all installations covered by the new divided contracts.

#### **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 \* full load hours per year \* 0.17, 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 Danish Energy Agency has approved that it is adequately documented that the Beneficiary has connected 85 % (per cent) of the capacity specified in section A.2 in Appendix 1 or in any subsequent appendices amending Appendix 1 to the grid, see however clause 12.4 regarding connecting less capacity than 85 % (per cent). In situations covered by clause 12.4, the Danish Energy Agency will release the demand guarantee upon payment of the retention penalty covering the part of the 85 % (per cent) of the capacity specified in section A.2 in Appendix 1 or in any subsequent appendices amending Appendix 1 which has not been connected to the grid before the time limit for grid connection (see however clause 1 and clause 5). The time of connection to the grid shall be defined as set out in clause 1.6. For solar PV installations the AC-capacity (kW) specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1 is applied.

**4.3.** The Danish Energy Agency shall be entitled to request any further documentation from the Beneficiary that 85 % (per cent) of the capacity covered by the Contract has been connected to the grid (see however 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 capacity covered by the Contract (see however 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 an extension of the time limit specified in clause 1.4 for grid connection of the installation(s) specified in Appendix 1 and Appendix 2 or any subsequent amending appendices (see however clause 5.4) 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, pandemic, 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, was required at the time of bid submission, from authorities despite the Beneficiary having applied with the relevant authorities at least one year before the time limit for grid connection (see clause 1.4).
7. If after the time allowed for submission of bids, the permits, dispensations and approvals etc. that are required at the time of submitting the bids in accordance with the requirement concerning late bidding are declared void, which is not caused by circumstances attributable to the winning tenderer.

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 capacity, which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, before the time limit for grid connection (see clause 1.4) because the Beneficiary has failed to obtain the necessary licenses, exemptions and approvals etc., which are not covered by the late bidding requirement, from the authorities despite the Beneficiary having applied for the necessary licenses, exemptions or approvals etc. with the relevant authorities at least one year before the time limit for grid connection (see clause 2.4). This also applies if after the time allowed for submission of bids, the permits, dispensations and approvals etc. that are required at the time of submitting the bid in accordance with the requirement concerning late bidding are declared void, which is not caused by circumstances attributable to the winning tenderer. For solar PV installations the AC-capacity (kW), which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.
9. If the grid company or transmission company is not ready to connect the installation(s) to the collective electricity supply grid in Denmark with at least 85 % (per cent) of the capacity, which is specified in Appendix 1 or any subsequent appendices amending Appendix 1, before the time limit for grid connection (see clause 1.4) and the Beneficiary has entered into an agreement on grid connection of the installation(s) covered by the Contract at least one year before the time limit for grid connection (see clause 1.4). For solar PV installations the AC-capacity (kW), which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.
10. If more than two UXOs are to be removed in connection with the establishment of open door offshore wind turbines.
11. If the installation(s) covered by the Contract cannot be initiated due to a large preliminary study, see section 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 section 27 of the Danish Museum Act, cf. Consolidating Act no. 358 of 8 April 2014.
12. Processing by the Danish Safety Technology Authority (*Sikkerhedsstyrelsen*) of a case concerning compulsory acquisition of land for public purposes under section 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 1-12 above. If the Beneficiary considers that the Beneficiary is entitled to an extension of the time limit, the Beneficiary shall immediately, and before the time limit for grid connection, 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 particular circumstance mentioned in the request and that the circumstance could not reasonably have been avoided or mitigated.

**5.3.** Irrespective of the above, price premiums will not be paid by the Danish Energy Agency to the Beneficiary, and shall not be paid by the Beneficiary to the Danish Energy Agency later than [23/25] years from signing the Contract. If an installation specified in Appendix 1 and 2 or in any subsequent amending appendices is connected to the grid later than [three/five] years from conclusion of the Contract, whatever the cause, the period of price premium shall be reduced proportionately with the delay exceeding 3 years.

**5.4.** The right of the Beneficiary to an extension of the time limit in clause 1.4 lapses when at least 85 % (per cent) of the capacity, which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, has been connected to the grid. For solar PV installations the AC-capacity (kW), which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.

## **6. Payment of price premiums, etc.**

**6.1.** For electricity generated at installation(s) specified in Appendix 1 and 2 or any subsequent amending appendices, a price premium applies (see however clause 6.18-6.19), which is calculated as the difference between the bid price and an annual reference price.

The bid price is *[the offered bid price]* øre per kWh.

The reference price is fixed for a 12-month period and is calculated as the average spot price of electricity in the preceding calendar year. The spot price for electricity is the hourly price that the electricity exchange, NordPool, states in øre per kWh on the spot market for the bidding area (DK1 or DK2) corresponding to the location of an installation specified in Appendix 1 and 2 or in any subsequent amending appendices.

The Danish Energy Agency pays the price premium to the Beneficiary in any year where the bid price exceeds the reference price, while the Beneficiary pays the price premium to the Danish Energy Agency in any year where the reference price exceeds the bid price (see however clause 6.18-6.19).

**6.2.** The payment of a price premium is made on the basis of the measured electricity delivered to the Danish collective electricity supply grid.

**6.3.** The electricity production shall be determined on the reports from the grid companies pursuant to the relevant regulations 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 by the Danish Energy Agency, the Beneficiary shall pay any costs due to the price premiums under the 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.

If the price premium is to be paid from a foreign account by the Beneficiary to the Danish Energy Agency, the Beneficiary shall pay any costs due to the price premiums under the contract having to be transferred from a bank outside Denmark.

- 6.6.** The bid price (see clause 6.1) shall not be indexed.

- 6.7.** If the reference price exceeds the bid price, the Beneficiary will not have to pay the price premium to the Danish Energy Agency in hours where the price premium (in absolute terms) is greater than the spot price for electricity.

The Danish Energy Agency will not pay the price premium to the Beneficiary in hours when the spot price of electricity is not positive.

The spot price for electricity is the hourly price that the electricity exchange, NordPool, states in øre per kWh on the spot market for the bidding area (DK1 or DK2) corresponding to the location of an installation covered by Appendix 1 and 2 or in any subsequent amending appendices.

- 6.8.** Payment of price premiums under the Contract shall be made monthly on the basis of the production for the previous month (see clause 6.3). The payment of the price premium by the Danish Energy Agency is made to the account of the Beneficiary. The payment of the price premium by the Beneficiary is made to the account of the Danish Energy Agency.

The Beneficiary is obliged to pay interest, if the Beneficiary has not paid the price premium within thirty days of the Danish Energy Agency's dispatched demand, see section 3(2) of the Danish Interest Act (*renteloven*).

The amount due shall be deducted from the payment(s) of the following month(s).

If the amount due cannot be deducted from the payment(s) if the following month(s), the Danish Energy Agency shall demand the amount due directly from the Beneficiary. If the Danish Energy Agency does receive the amount due within the deadline set in the dispatched demand, the Danish Energy Agency will halt the payment of any further price premiums by the Danish Energy Agency, until the payment of the amount due has been made by the Beneficiary.

- 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 6.9, 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 of Danish Energy Agency's dispatched demand, see section 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 Contract, and shall in such case notify the Beneficiary of the identity of that operator.
- 6.13.** The Beneficiary is responsible for selling the electricity production from installation(s) covered by Appendix 1 and 2 or in any subsequent amending appendices (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) specified in Appendix 1 and 2 or by any subsequent amending appendices shall not be reimbursed.
- 6.15.** For each installation specified in Appendix 1 and 2 or by any subsequent amending appendices (see however clause 12.4), price premiums will apply for twenty years from the time of grid connection. 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 Contract (see clause 5.3).
- 6.17.** The Beneficiary shall bear the full commercial risk of the bid price, and the installation(s) specified in Appendix 1 and 2 or in any subsequent amending appendices 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.

- 6.18.** There is a cap of DKK [DKK 5.6 million (2020-prices) per MW (onshore wind equivalent)] on the total payments to the Danish Energy Agency from the Beneficiary over the entire aid period. The cap is net of any aid paid out by the Danish Energy Agency to the Beneficiary meaning that aid paid out from the Danish Energy Agency to the Beneficiary is added to the cap. The cap is binding if the payments net of any aid from the Danish Energy Agency to the Beneficiary has reached DKK [DKK 5.6 million (2020-prices) per MW (onshore wind equivalent)]. Any payments forewent by the Danish Energy Agency due to a binding cap, cannot later be claimed by the Danish Energy Agency, including in periods where the cap ceases to bind.
- 6.19.** There is a cap of DKK [DKK 2.8 million (2020-prices) per MW (onshore wind equivalent)] on the total aid paid out by the Danish Energy Agency to the Beneficiary over the entire aid period. The cap is net of any payments from the Beneficiary to the Danish Energy Agency meaning that payments from the Beneficiary to the Danish Energy Agency is added to the cap. The cap is binding if the aid paid out net of any payments from the Beneficiary to the Danish Energy Agency has reached DKK [DKK 2.8 million (2020-prices) per MW (onshore wind equivalent)]. Any aid forewent by the Beneficiary due to a binding cap, cannot later be claimed by the Beneficiary, including in periods where the cap ceases to bind.

*[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 Contract, if the Beneficiary is a consortium]*

- 7.1.** *If the Danish Energy Agency enters into a Contract with a consortium, all members of the consortium will be jointly and severally liable for all obligations under the 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 Contract.*

*Any claims arising under the 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 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 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 Contract until the company has been registered, see section 41(3) of the Danish Companies Act (selskabsloven).*

*Any claims arising under the 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 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 Contract, the founders shall have the same right as the Beneficiary to object to the Danish Energy Agency to an alleged breach of the Contract.*

*Where the Danish Energy Agency's claim against the Beneficiary is covered by a demand guarantee under clause 4 of this 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 Contract.*

*In the event of a dispute between the Danish Energy Agency and the founders, clause 15 on applicable law and venue shall apply. The founders shall co-sign this Contract and have by their signature to the Contract accepted these terms.*

## **8. Conditions for price premiums**

**8.1.** It is from the time of grid connection (see clause 1.6) a *condition* for payment of price premiums by the Energy Agency to the Beneficiary under the Contract that:

- 1) the first time that the actual constructed installation(s) covered by Appendix 1 and 2 or by any subsequent amending appendices (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 amending appendices 2 is/are covered by an agreement on grid connection pursuant to the rules in force at any time in the Executive Order on grid connection of wind turbines, solar PV installations, wave power plants and hydroelectric power plants,
- 3) all electricity generated at the installation(s) covered by Appendix 1 and 2 or by any subsequent amending appendices (see however clause 12.4) is delivered to the collective electricity supply grid in Denmark,
- 4) installations covered by the Contract is located within the approved local development plan or within the stated coordinates, cf. Appendix 2 or by any subsequent amending appendices, and
- 5) the loss-of-value scheme, the option to sell scheme, the RE bonus scheme, payment to green fund has been completed pursuant of the rules in the Danish Promotion of Renewable Energy Act.

**8.2.** It is furthermore during the entire aid period (see clause 6.15-6.16) a condition for the payment of price premiums by the Energy Agency to the Beneficiary under the Contract that:

- 1) that the Beneficiary does not receive other aid than the price premiums under the Contract. If this prerequisite is no longer present the granted price premiums pursuant to the 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;

- 2) 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.<sup>2</sup>

**8.3.** The Danish Energy Agency may at any time from the Beneficiary request all necessary information needed by the Energy Agency to determine the 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 amending appendices (see 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 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 capacity specified in section A.2 in Appendix 1 and 2 or any subsequent amending appendices (see however clause 12.4), or if other aid is received. Notification 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 receives other aid than price premiums under the Contract.

**8.6.** The Danish Energy Agency may on the basis of a specific assessment suspend the price supplement in the support period if an administrative authority, a complaints board or a court of law should make a decision that sets aside, in whole or in part, the necessary basis, including but not limited to the planning basis and/or the EIA report pursuant to the Planning Act, the Environmental Impact Assessment Act (EIA), and/or other relevant legislation, including but not limited to the setting aside of all relevant adoptions, permits, approvals, exemptions, if any, etc., that are required for the legal establishment of installations covered by the Contract. A suspension of the price supplement will take place from the time of the decision and apply until the necessary basis required for the lawful establishment of the installation has been restored. The support period will not be extended because of the suspension, see also clauses 6.15 and 6.16. The suspension shall apply to both the Danish Energy Agency's payment of a price supplement to the beneficiary and to the beneficiary's payment of a price supplement to the Danish Energy Agency. The suspended price supplement will not be retroactively disbursed when the basis has been restored.

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<sup>2</sup> Reference is made to the principles of s.135(3) and s.135(4) of the Danish Public Procurement Act.

- 8.7.** Further to clause 8.6, the Danish Energy Agency may terminate the contract at a notice of 12 months, if the Danish Energy Agency should assess that there are no reasonable prospects of the required basis being restored, or if the beneficiary fails to take reasonable measures, within a reasonable period of time, to have the basis restored. If the beneficiary takes reasonable measures before the expiry of the notice period, or if the basis is restored, the Danish Energy Agency must withdraw its termination with the effect that the price supplement will only be deemed to have been suspended, see clause 8.6.

**9. Transfer of the Contract by the Danish Energy Agency**

The Danish Energy Agency shall be entitled to transfer its rights and obligations under this 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 Contract, are assigned, in whole or in part, to any of the mentioned parties (change of remit).

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

- 10.1.** The Beneficiary is not entitled to transfer its rights and obligations under the Contract to a third party in the period from conclusion of the Contract until the demand guarantee in clause 4 lapses.
- 10.2.** Irrespective of clause 10.1 the Beneficiary may complete the option-to-purchase scheme pursuant to section 13-17 in the Danish Promotion of Renewable Energy Act<sup>3</sup>.
- 10.3.** After the lapse of the demand guarantee in clause 4 and having received written consent from the Danish Energy Agency, the Beneficiary may transfer its rights and obligations under the Contract to a third party, see however clause 10.2.
- 10.4.** The Beneficiary's written request to the Danish Energy Agency regarding consent to transfer the Contract shall contain the same information on the new contracting party as that submitted by the Beneficiary in connection with bid submission.
- 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 Contract to a third party that the new contracting party by an addendum to the Contract declares that the new contracting party at the time of the transfer of the Contract complied with the conditions stated in clause 8.2 no. 1 and 2.

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<sup>3</sup> Executive Order no. 125 of 7 February 2020, cf. section 5, subsection 6 in Act no. 738 of 30 May 2020.



- 10.7.** The Danish Energy Agency shall be entitled to refuse its consent to transfer the 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 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, location, technology and the name of the Beneficiary and/or the 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 aid 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*)<sup>4</sup>, but at least for as long as the data are necessary for the payment of price premiums under the Contract.

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<sup>4</sup> Act no. 1201 of 28 September 2016 consolidating the Archives Act

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 will not or cannot construct and/or connect the installation(s) specified in Appendix 1 and 2 or in any subsequent amending appendices to the grid in accordance with the terms of the Contract, the right to price premiums shall lapse and the retention penalty (see clause 12.2) 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 amending appendices in accordance with the terms of the Contract.

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

- 12.2.** The retention penalty, which is an agreed penalty, amounts to DKK [*amount corresponding to capacity \* full load hours per year \* 0.17, cf. clause 5.11.3 in the tender conditions*].

- 12.3.** If one or more of the above conditions in clause 12.1 relates to a fraction of the capacity specified in section A.2 in Appendix 1 and 2 or any subsequent amending appendices, the retention penalty and price premiums shall be calculated proportionally (see clause 12.4).

- 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 specified in section A.2 in Appendix 1 and 2 or in any subsequent amending appendices. Connecting additional capacity to the grid using the same grid connection as an installation covered by Appendix 1 and 2 or any subsequent amending appendices is not permitted after the time limit for grid connection (see clause 1 and 5).

If, at the time limit for grid connection (see clause 1 and 5) less than 85 % of the capacity, which is covered by section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is connected to the grid, a retention penalty will be payable. This retention penalty will be payable for the remaining capacity not connected to the grid up to 85 % of the capacity specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1.

If the capacity connected to the grid is less than the capacity, which is covered by section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, the price premium will only apply to the electricity supplied to the Danish collective electricity supply grid, i.e. the electricity supplied from the capacity connected to the grid

*If for example an installation of onshore wind turbines with a capacity of 90 MW is connected to the grid, while onshore wind turbines with a capacity of 100 MW appear in section A.2 in Appendix 1, then the price premium will only apply to the electricity produced by the grid connected installation of 90 MW.*

If the capacity connected to the grid is more than the capacity, which is covered by section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, the price premium will only apply to a fraction of the electricity supplied to the Danish collective electricity supply grid. This fraction will be inversely proportional to the capacity connected to the grid, i.e. calculated as the ratio between the capacity specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1 and the grid connected capacity. This fraction is calculated at the time of each grid connection and will otherwise remain constant for the entire aid period.

*If for example an installation of onshore wind turbines with a capacity of 100 MW is connected to the grid, while onshore wind turbines with a capacity of 80 MW appear in section A.2 in Appendix 1, then the price premium will only apply to eighty hundredths or 80 % (per cent) of the electricity produced from the entire installation.*

If the installation(s) specified in Appendix 1 and 2 or in any subsequent amending appendices include multiple technologies, onshore wind equivalent units will be used, see clause 12.6. For solar PV installations the AC-capacity (kW), which is covered by section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.

- 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 up until payment takes place.

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

The retention penalty shall cease to apply when 85 % (per cent) of the capacity, which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, 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, which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, and which is not connected to the grid before the time limit of grid connection (see clauses 1 and 5). For solar PV installations the AC-capacity (kW), which is specified in section A.2 in Appendix 1 or any subsequent appendices amending Appendix 1, is applied.

- 12.6.** Onshore wind equivalent is a unit of measurement for comparing capacity across different technologies, where capacity is adjusted for the estimated full-load hours per year for each technology. The onshore wind equivalent units will be calculated using the following formula:

$$\text{onshore wind equivalent capacity} = \text{capacity} * \frac{\text{full load hours per year}}{3,400}$$

When calculating onshore wind equivalent units the following estimated full-load hours per year are used:

Onshore wind turbines:	3,400 full load hours per year
Wave power plants:	2,500 full load hours per year
Hydroelectric power plants:	2,500 full load hours per year
Solar PV (DC-capacity in kWp):	1,075 full load hours per year
Solar PV (AC-capacity in kW):	1,343 full load hours per year
Offshore wind turbines:	4,500 full load hours per year

### **13. Breach**

- 13.1.** In the event of the Beneficiary's breach of its obligations under the Contract, including but not limited to circumstances that trigger the payment of a retention penalty, and obligations under clauses 1.4, 6, [7] and 8.1-8.4, or if incorrect information has been provided, the Beneficiary's right to receive price premiums pursuant to the Contract shall lapse with due observance of clause 13.4. The Danish Energy Agency shall additionally be entitled to immediately terminate the Contract with due observance of clause 13.3.
- 13.2.** In the event of the Beneficiary's withdrawal of its consent under clauses 11.1 or 11.2, the Beneficiary's right to receive price premiums pursuant to the Contract shall lapse. The Danish Energy Agency shall additionally be entitled to immediately terminate the Contract with due observance of clause 13.3.

- 13.3.** Notwithstanding clauses 13.1 and 13.2, however, the Danish Energy Agency shall only terminate the Contract after having given 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.
- 13.4.** Notwithstanding clause 13.1, however, the Beneficiary's right to receive price premiums pursuant to the Contract shall lapse only after the Danish Energy Agency has given 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.
- 13.5.** Regardless of the Beneficiary's breach the Contract (see clause 13.1 and 13.2), the Beneficiary will continue to be covered by the obligation to pay price premiums to the Danish Energy Agency (see clause 6.1) and other obligations that follow from the Contract, including but not limited to the obligations in clause 8.
- 14. Termination of 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 Contract may be cancelled after which the Danish Energy Agency must terminate the 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 Contract.
- 14.2.** The Danish Energy Agency is entitled to terminate the 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 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 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 Contract shall in no event exceed the costs documented by the Beneficiary for the performance of the Contract up until the time of termination of the 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 revenues from sale of electricity production and including price premiums already received from the Danish Energy Agency under the Contract, however subtracting price premiums already paid to the Danish Energy Agency under the Contract.

**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 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 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 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 Contract of the Danish Energy Agency that the Beneficiary has provided a demand guarantee (see clause 4.1).

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

Unless the Contract is terminated pursuant to clause 8.7, clause 13 or clause 14, the Contract shall cease automatically when the payment of the price premiums under clauses 6.15 and 6.16 of the Contract ceases or if a retention penalty is incurred pursuant to clause 12, except for retention penalties incurred pursuant to clause 12.3 and 12.4.

Hence, the Beneficiary can not denounce the Contract in the aid period.

**17. Language**

The 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**

Regardless of whether the Contract might be declared ineffective, the Parties agree that clause 14 shall constitute a separate and independent agreement which therefore will remain valid.

**19. Signatures**

This 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 Contract.]*

Date:  
For the Danish Energy Agency

Date:  
For the Beneficiary

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**The English version is a translation of the original in Danish for information purposes only.  
In case of a discrepancy, the Danish original will prevail.**

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

DRAFT