

Appendix 1

Contract for a price premium for electricity generated at solar photovoltaic installation(s)

(hereinafter referred to as the “Price-Premium Contract”)

Contract

between

The Danish Energy Agency (*Energistyrelsen*)
Amaliegade 44
1256 Copenhagen K, Denmark

and

.....
.....
.....

[Name of Beneficiary, company identification no. if the Beneficiary is a company, national identification no. if the Beneficiary is a natural person]
(in the following referred to as the “Beneficiary”)

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1. Definitions

For the purposes of the Price-Premium Contract, the expressions below shall mean as stated:

Agreement with Germany:

Agreement between the Government of the Kingdom of Denmark and the Government of the Federal Republic of Germany on the Establishment of a Framework for the Partial Opening of National Support Schemes to Support the Generation of Energy from Solar Photovoltaic Projects and for the Cross-border Administration of such Projects in the context of a Single Pilot Run in 2016

TFEU Treaty:

Treaty on the Functioning of the European Union (2012/C 326/01)

EEAG:

Communication from the Commission - Guidelines on State Aid for environmental protection and energy 2014-2020 (2014/C 200/01)

EEG:	Erneuerbare-Energien-Gesetz vom 21. Juli 2014 (BGBl. I S. 1066), das zuletzt durch Artikel 2 Absatz 10 des Gesetzes vom 21. Dezember 2015 (BGBl. I S. 2498) geändert worden ist
PV installation:	A solar photovoltaic installation
Installed capacity:	The active capacity that a PV installation can deliver to the electricity grid
Nominal capacity:	The nominal capacity of the panels in a PV installation as calculated pursuant to the EEG
StromNEV:	Stromnetzentgeltverordnung vom 25. Juli 2005 (BGBl. I S. 2225), die zuletzt durch Artikel 2 Absatz 4 des Gesetzes vom 21. Dezember 2015 (BGBl. I S. 2498) geändert worden ist
GEEV:	Verordnung zur grenzüberschreitenden Ausschreibung der Förderung für Strom aus erneuerbaren Energien sowie zur Änderung weiterer Verordnungen zur Förderung der erneuerbaren Energien

2. Obligation to establish specified PV installation(s) and connect it/them to the grid

2.1. The Beneficiary is obligated to construct and connect to the grid the PV installation(s) specified in Appendix 1.2 in accordance with the terms of the Price-Premium Contract.

2.2. By no later than three months after the conclusion of the Price-Premium Contract, the Beneficiary shall submit a timetable for the construction of the PV installation(s) to the Danish Energy Agency. As a minimum, the timetable shall contain information for each PV installation covered by the Price-Premium Contract on when the Beneficiary expects to have obtained all necessary permits, commence construction work and connect the PV installation to the grid.

2.3. After submitting the timetable in accordance with point 2.2 and until all PV installations covered by the Price-Premium Contract have been connected to the grid, every six months the Beneficiary shall submit to the Danish Energy Agency an updated timetable containing the same information as mentioned in point 2.2.

2.4. By no later than two years after the conclusion of the Price-Premium Contract, the Beneficiary shall connect the PV installation(s) specified in Appendix 1.2 to the transmission grid or to a distribution grid in Denmark or, if the relevant

PV installation(s) are located in Germany, to an electricity grid in Germany that is electrically connected to the transmission grid in Denmark (grid connection). If 95 % (percent) of the total installed capacity as stated in Appendix 1.2 has been connected to the grid within two years from the conclusion of the Price-Premium Contract, the obligation in point 2.1 shall be considered met and the guarantee in point 3.1 shall lapse as stated in point 3.5.

- 2.5.** The Beneficiary is responsible for obtaining all necessary permits for the construction, grid connection and operation of the PV installation(s) specified in Appendix 1.2 or in any subsequent amending appendices to Appendix 1.2. Failure to obtain licences, permits, etc. is of no concern to the Danish Energy Agency. The Beneficiary is also responsible for registering the PV installation(s) in compliance with relevant regulations.
- 2.6.** Up until grid connection of one or several PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2, the Beneficiary can change the placement of the PV installation(s) by requesting written consent from the Danish Energy Agency to add an amending appendix to Appendix 1.2 of the Price-Premium Contract. The total capacity of the PV installation(s) covered by Appendix 1.2 cannot be changed, just as the location(s) shall be kept within the country that Appendix 1.2 concerns.
- 2.7.** The Danish Energy Agency can refuse to give consent to a change of placement if there is an objective reason.
- 3. Division of the Price-Premium Contract**
- 3.1.** The Beneficiary can at any time request written consent from the Danish Energy Agency to divide the Price-Premium Contract on unchanged terms to until one Price-Premium Contract per PV installation covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2.
- 3.2.** The Danish Energy Agency can refuse to give consent to a division of the Price-Premium Contract if there is an objective reason.
- 3.3.** The Danish Energy Agency is entitled to reject a request for consent to divide the Price-Premium Contract if - according to an assessment made by the Danish Energy Agency – the division cannot be allowed under the relevant public procurement rules.
- 3.4.** Furthermore, consent to a division of the Price-Premium Contract will only be given if it is in accordance with the general principles of EU law in the TFEU Treaty regarding, among others, equal treatment, transparency, proportionality and the prohibition of discrimination on grounds of nationality.
- 3.5.** Several Price-Premium Contracts cannot be merged into one contract.

4. Retention penalty

- 4.1.** If the Beneficiary states, regardless of the reason, that the Beneficiary shall not or cannot construct and/or connect the PV installation(s) specified in Appendix 1.2 or in any subsequent amending appendices to Appendix 1.2, to the grid, in accordance with the terms of the Price-Premium Contract, a retention penalty falls due for immediate payment on demand.

The same applies if circumstances show that the Beneficiary shall not or cannot construct and/or connect to the grid, in accordance with the terms of the Price-Premium Contract, a PV installation specified in Appendix 1.2 or in any subsequent amending appendices to Appendix 1.2.

- 4.2.** The retention penalty, that is an agreed penalty, amounts to DKK [*amount corresponding to DKK 180 per kW*].
- 4.3.** If one of the above conditions in point 4.1 exclusively relates to a part of the agreed installed capacity, the retention penalty shall be calculated proportionally.
- 4.4.** The retention penalty shall be payable in full according to point 4.1 and, if relevant, point 4.3 and shall be payable upon written demand from the Danish Energy Agency to the guarantor. The retention penalty shall be paid to the Danish Energy Agency.

Payment of the retention penalty does not require the Danish Energy Agency to document a loss.

If the demand for payment is not met, irrespective of the reason, the Beneficiary shall be liable 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 clause 5 of the Interest on Overdue Payments Act.

- 4.5.** The retention penalty ceases to apply when 95 % (percent) of the total installed capacity covered by the Price-Premium Contract has been connected to the grid.

5. Guarantee for retention penalty

- 5.1.** As security for payment of the retention penalty in point 4 a demand guarantee of DKK [*amount corresponding to DKK 180 per kW*] shall be provided by no later than immediately before the conclusion of the Price-Premium Contract. The guarantee shall be prepared in accordance with Appendix 1.1.
- 5.2.** The guarantee in point 5.1 shall be provided by a financial institution.

- 5.3.** The Danish Energy Agency shall release the guarantee by no later than one month after the Beneficiary has documented grid connection of 95 % (percent) of the installed capacity covered by the Price-Premium Contract.
- 5.4.** The Danish Energy Agency can request any further documentation from the Beneficiary that the 95 % (percent) of the installed capacity covered by the Price Premium Contract has been connected to the grid.
- 5.5.** If, in accordance with point 5.4, the Danish Energy Agency has requested further documentation for 95 % (percent) grid connection of the installed capacity covered by the Price-Premium Contract, the Danish Energy Agency shall not in such case be obliged to release the guarantee until one month after the additional documentation has been received.

6. Extension of the time limit

- 6.1.** The time limit for the grid connection of the PV installation in point 2.4 can be extended after obtaining written consent from the Danish Energy Agency, in the event of delay caused by one or several of the following circumstances:
- a) Circumstances relating to the Danish Energy Agency.
 - b) 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.
 - c) Public orders or bans which are not caused by circumstances attributable to the Beneficiary.
 - d) Decision by a complaints board with suspensory effect on account of a complaint regarding rules concerning the planning of land use.
 - e) The grid company is not ready to connect the PV installation to the electricity grid with its full capacity within the time limit for grid connection in point 2.4 and the Beneficiary has entered into an agreement on grid connection of the PV installation with the grid company by no later than six months before expiry of the time limit for grid connection in point 2.4.
- 6.2.** The Beneficiary shall, however, seek to avoid or mitigate the delay by taking such measures as may reasonably be required.
- 6.3.** If the Beneficiary considers that the Beneficiary is entitled to an extension of the time limit for grid connection pursuant to point 6.1, the Beneficiary shall immediately request written consent for such extension from the Danish Energy Agency. In the request for consent, the Beneficiary shall demonstrate that the delay is caused by one or several of the circumstances claimed from point 6.1, and that the delay cannot reasonably be avoided or mitigated.

7. Payment of price premiums, etc.

- 7.1.** A price premium of [*the offered price*] øre/kWh shall be granted for electricity generated at PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2.
- 7.2.** The payment of a price premium is made on the basis of the measured electricity that is calculated as delivered to the transmission grid or to a distribution grid in Denmark, or, if the relevant PV installation is located in Germany, too an electricity grid in Germany that is electrically connected to the transmission grid in Denmark.
- 7.3.** The price premium shall be paid out in Danish kroner (DKK).
- 7.4.** The price premium shall not be indexed.
- 7.5.** Price premiums shall not be granted for production in hours when the spot price is not positive. The spot price of electricity shall mean the hourly rate per kWh on the spot market in the relevant area (DK1, DK2 or DE/AT) stated by the relevant electricity exchange - NordPool or EPEX SPOT - depending on whether the PV installation is located in Denmark or in Germany.
- 7.6.** Payment of price premiums shall be made monthly by Energinet.dk on the basis of the production for the previous month. However, the Danish Energy Agency is entitled to appoint another party to pay price premiums under the Price-Premium Contract, and in such case the Agency shall notify the Beneficiary of the identity of that party.
- 7.7.** With regard to PV installations located in Denmark, the production shall be calculated on the basis of reports from the grid companies pursuant to the relevant regulations.
- 7.8.** With regard to PV installations located in Germany, the production shall be calculated on the basis of reports from the German party appointed for such purpose pursuant to the Agreement with Germany. If Germany appoints a new German party in accordance with the Agreement with Germany, the Danish Energy Agency shall notify the Beneficiary on the identity of that new German party.
- 7.9.** If, for one month and irrespective of the reason, a larger price premium is paid than the described in point 7.1, the excess amount paid shall be deducted from the payment(s) for the following month(s).
- 7.10.** In case the excess price premium paid cannot be deducted from payments for the following month(s) in accordance with point 7.9, Energinet.dk shall demand an amount to cover the paid excess price premium. The Beneficiary is obligated to pay interest if repayment is not made within thirty days after Energinet.dk has sent a demand, as it is set out in subclause 2 of subclause 3 of the Interest on Overdue Payments Act.

- 7.11.** Energinet.dk shall pay out any missing amount in order to correct underpayment of price premiums.
- 7.12.** 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. Notification shall be sent immediately when the concerned circumstances arise, or at the time when the Beneficiary becomes aware that the circumstances have arisen or will arise.
- 7.13.** The Beneficiary is responsible for selling the production in the electricity market and pays all costs in this regard.
- 7.14.** Balancing costs for the electricity from the PV installation(s) shall not be reimbursed.
- 7.15.** A price premium shall be paid for twenty years from the connection to the grid of the PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2. A PV installation shall be considered as connected to the grid from the time when the installation delivers electricity to the transmission grid or a distribution grid for the first time or, if the installation is located in Germany, to an electricity grid in Germany that is electrically connected to the transmission grid in Denmark.
- 7.16.** However, price premiums shall not be paid after 23 years from the conclusion of the Price-Premium Contract. If the PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2 is/are connected to the grid later than three years after the conclusion of the Price-Premium Contract, irrespective of the reason, the period of price premiums shall be reduced proportionately with the delay exceeding the three years.
- 7.17.** It is a condition for receiving price premiums that the actually established PV installation does not exceed the installed capacity specified in Appendix 1.2.
- 7.18.** It is a condition for receiving price premiums under the Price-Premium Contract that:
- 1) the Beneficiary does not apply for or receive other state aid¹ with respect to the construction, grid connection and operation of the PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2 other than the price premium in point 7.1;
 - 2) the Beneficiary during the time-period in which price-premiums are received pursuant to the Price-Premium Contract, has complied with any requirements for repayment of aid which the undersigned has received and which, in a previous decision, the European Commission has declared illegal and incompatible with the EU single market;

¹ As defined in article 107(1) of the TFEU Treaty

- 3) the Beneficiary does not apply for or receive other support under a German support scheme pursuant to German legislation, including under the EEG with respect to the construction, grid connection and operation of the PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2;
- 4) the Beneficiary does not apply for or receive compensation under StromNEV or under other subsequent German legislation, including compensation for distributed feed in of electricity under clause 18 of StromNEV, with respect to the construction, grid connection and operation of the PV installation(s) covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2 and that the German party appointed for this purpose pursuant to the Agreement with Germany has notified the Danish Energy Agency that the Beneficiary has not applied for or received such compensation. The Danish Energy Agency receives monthly notifications concerning this circumstance from the German party;
- 5) electricity from the PV installation is delivered to the transmission grid or a distribution grid in Denmark or, if the PV installation is located in Germany, to an electricity grid in Germany which is electrically connected to the transmission grid in Denmark.

7.19. With regard to electricity generated at PV installation(s) located in Germany, there is also the condition for receiving price premiums under the Price-Premium Contract that:

- 1) the PV installation constitutes a ground-mounted PV installation such that it is not installed on or integrated into a building or any other edificial structure which has been primarily constructed for purposes other than the production of electricity from solar radiation energy, and that the PV installation meets the restrictions regarding eligible sites in compliance with paragraph 1 no. 2 lit. a) of clause 22 of the GEEV, and also that the German party appointed for this purpose pursuant to the Agreement with Germany has approved that the condition has been met;
- 2) no. 3 of clause 3 and paragraph 5 of clause 22 of the GEEV has been met and therefore, in accordance with this, the maximum rated capacity of the PV installation does not exceed 10 MW, multiple modules being treated as one installation irrespective of the ownership structure solely for the purpose of calculating the support level for the respective last generator put into operation if they are located on the same site, the same property or otherwise in direct proximity and have become operational within twelve successive calendar months or have been set up in the same municipality, and have become operational within 24 successive calendar months in a linear distance of up to 2 kilometres, measured from the outer edge of the respective PV installation, and also that the German party appointed for this purpose pursuant to the Agreement with Germany has approved that the condition has been met;

3) the PV installation is equipped with remote control that allows for remotely controlling the feed-in of the electricity produced as well as providing information on the real-time feed-in, as it is required by clause 36 of the EEG, and also that the German party appointed for this purpose pursuant to the Agreement with Germany has approved that the condition has been met.

7.20. It is a condition before the Danish Energy Agency can commence payment of price premiums under the Price-Premium Contract for electricity generated at PV installations located in Germany that the Danish Energy Agency has received from the Beneficiary the identification number of the PV installation as stated in the German register of PV installations. After this, the Danish Energy Agency shall request that the German party, appointed for this purpose pursuant to the Agreement with Germany, makes an assessment for the purpose of approving that the PV installation complies with the conditions regarding eligible sites etc. in points 7.18 and 7.19 and the Agency shall notify the Beneficiary of the assessment. The Danish Energy Agency must have received approval from the relevant German party that the conditions in no. 4 and 5 of point 7.18 and no. 1, 2 and 3 of point 7.19 have been met before price premiums can be paid to the Beneficiary.

7.21. The Beneficiary bears the full commercial risk for the offered kWh price, just like the PV installation(s) in Appendix 1.2, or PV installation(s) in any subsequent amending appendices to Appendix 1.2 remain in all respects at the cost and risk of the Beneficiary. Hence, the Beneficiary is not entitled to bring forward any claims against the Danish Energy Agency in this respect.

7.22. As a condition for the payment of price premiums under the Price-Premium Contract, the Danish Energy Agency can at any time request from the Beneficiary to submit necessary information directly to the Danish Energy Agency for the purpose of the Agency's granting of price premiums, including technical information such as production data concerning a PV installation covered by Appendix 1.2 or by any subsequent amending appendices to Appendix 1.2.

8. Transfer of the Price-Premium Contract by the Danish Energy Agency

8.20. The Danish Energy Agency shall be entitled to transfer its rights and obligations under the Price-Premium Contract to another public institution or any institution or private entity ultimately controlled (controlled in this provision 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 hitherto performed by the Danish Energy Agency, or if the public tasks covered by this Contract, are transferred, in whole or in part, to any of the mentioned parties (change of remit).

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

- 9.20.** The Beneficiary cannot transfer its rights and obligations under the Price-Premium Contract to a third party in the period from the conclusion of the Price-Premium Contract and until the guarantee obligation in point 5 lapses.
- 9.21.** After the lapse of the guarantee obligation in point 5 and having received written consent from the Danish Energy Agency, the Beneficiary can transfer its rights and obligations under the Price-Premium Contract to a third party.
- 9.22.** A written request from the Beneficiary to the Danish Energy Agency for consent to transfer the Price-Premium Contract shall contain the same information on the new contracting party as were submitted for tenderers in the template in Appendix 2 of the tender conditions as well as a completed solemn declaration from the new contracting party corresponding to the solemn declaration in Appendix 2 of the tender conditions, including concerning unpaid debt due to public authorities. The Danish Energy Agency can request that the Beneficiary submit any further necessary information for use by the Danish Energy Agency in its assessment of whether consent for the transfer shall be granted.
- 9.23.** The Danish Energy Agency can refuse to give consent to a transfer if there is an objective reason.
- 9.24.** The Danish Energy Agency is entitled to refuse a request for consent to transfer the Price-Premium Contract if the transfer – due to an assessment made by the Danish Energy Agency – cannot be allowed in accordance with the relevant public procurement rules.
- 9.25.** Furthermore, consent shall be given only if it is in accordance with the general principles of EU law in the TFEU Treaty concerning, among others, equal treatment, transparency, proportionality and prohibition of discrimination on grounds of nationality.
- 9.26.** 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 the desired transfer.

10. Termination

- 10.20.** In the event that the Beneficiary breaches its obligations under the Price-Premium Contract, the Danish Energy Agency is entitled to terminate the contract, at which time the right of the Beneficiary to a price premium ceases.
- 10.21.** Notwithstanding point 10.20, in case of non-material breaches, the Danish Energy Agency can terminate the Price-Premium Contract only after it has notified the Beneficiary describing the breach and giving the Beneficiary a reasonable deadline for rectification of the alleged breach.

10.22. The following condition is always considered to be a material breach that entitles the Danish Energy Agency to terminate the Price-Premium Contract with immediate effect:

- failure by the Beneficiary to comply with the conditions in points 7.18, no. 1, 3 and 4.

11. Applicable law and venue

The Price-Premium Contract shall be governed by Danish law, and the ordinary courts of Copenhagen shall be the exclusive venue. This applies notwithstanding whether the PV installation(s) specified in Appendix 1.2 or in any amending appendices to Appendix 1.2 is/are located in Denmark or in Germany.

12. Duration of the Price-Premium Contract

The Price-Premium Contract shall become effective upon its signature.

The Price-Premium Contract shall terminate when the payment of the price premiums pursuant to the Price-Premium Contract ceases or when the retention penalty in point 4.1 falls due.

13. Processing of personal data

13.20. The Beneficiary gives consent to the Danish Energy Agency to publish in part or in full the offer from the Beneficiary and/or the Price-Premium Contract. If the Beneficiary is a natural person, publication of national identification numbers shall only be made within the framework of the Access to Public Administration Files Act and the Public Administration Act.

13.21. The Beneficiary gives consent to the Danish Energy Agency to publish and if necessary to obtain from the Beneficiary and publish information necessary for the Danish Energy Agency to observe the transparency obligation under EU state aid law and such that, to the extent it is relevant, information on the form and amount of price premiums granted, the dates of granting, the type of undertaking (SME/large company), the region in which the Beneficiary is located (at NUTS level II), and the principal economic sector in which the Beneficiary has its activities (at NACE group level), in accordance with clause 3.2.7 on transparency of the EEAG.

13.22. With regard to PV installations located in Germany covered by Appendix 1.2 or any subsequent amending appendices to Appendix 1.2, the Beneficiary gives consent to the Danish Energy Agency or to another private or public party at the instruction of the Danish Energy Agency to:

- 1) forward information from the Beneficiary's offer to the relevant party in Germany appointed pursuant to the Agreement with Germany;
- 2) forward information from the Price-Premium Contract to the relevant party in Germany appointed pursuant to the Agreement with Germany;

- 3) forward relevant technical information about the PV installation, including production data, to the relevant party in Germany appointed pursuant to the Agreement with Germany.

14. Language

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

15. Signatures

The Price-Premium Contract shall be signed by the Danish Energy Agency and the Beneficiary in two original copies of the Danish language version, of which each party shall receive one copy each. Each party shall furthermore receive one copy of the English language version of the Price-Premium Contract.

Date:
For the Danish Energy Agency

Date:
For the Beneficiary

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