

AGREEMENT regarding the obligation to construct and connect to the grid an offshore electric power generating plant with internal collection grid, Vesterhav Syd Offshore Wind Farm, in the North Sea

(Concession Agreement)

22 December 2016

Agreement

between

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

and

Vattenfall Vindkraft Vesterhav Syd P/S
Exnersgade 2
6700 Esbjerg
Denmark
CVR no. (business reg. no.): 38275550

(in the following referred to as the Concessionaire)

This is an informal translation of the concession agreement. In the event of any discrepancy between the Danish version and the English translation, the Danish version shall prevail.

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1. Obligation to construct and connect to the grid an offshore electric power generating plant with internal collection grid

- 1.1. The Concessionaire shall construct and connect to the grid an electric power generating plant with internal collection grid of 170 MW, Vesterhav Syd Offshore Wind Farm, in the North Sea in accordance with the terms of the licence for the construction of an electric power generating plant, (in the following referred to as the licence for construction).
- 1.2. The internal collection grid is to be understood as the cables connecting the turbines as well as the cables routing the power onshore up until the grid connection point, cf Executive Order nr. 1115 of 18 September 2015 on grid connection of wind turbines and price supplement for electricity produced on wind turbines etc.
- 1.3. The Concessionaire can adjust the number of offered MW downwards or upwards by up to 5 MW. It is not permitted, however, to establish more than 200 MW in each area (at Bornholm, max. 50 MW). The final number of MW must be determined by no later than at the time of the detailed project plan.
- 1.4. By no later than 1 March 2017, the Concessionaire shall present a detailed timetable to the Danish Energy Agency as stated in the licence for construction. Furthermore, the Concessionaire shall in accordance with the aforementioned timetable present a detailed project plan to the Danish Energy Agency as stated in the license for construction.
- 1.5. Before 31 December 2019, the Concessionaire shall commence the construction work regarding construction of the offshore wind farm.
- 1.6. Before 31 December 2020 the Concessionaire shall connect the entire offshore wind farm to the collective grid, cf. clause 4. The entire wind farm shall be deemed to be connected when at least 95% of the capacity of the offshore wind farm has been connected to the collective grid. If the entire offshore wind farm is not connected to the grid by 31 December 2020, the production subject to price supplement shall be reduced as stated in clause 8.3 below.
- 1.7. Soon after signing of the Concession Agreement, the Danish Energy Agency grants the Concessionaire a licence to conduct preliminary surveys and a licence for construction.

2. Retention penalty

- 2.1 If, despite the above obligations, cf. clause 1.1, the Concessionaire reports that, regardless of the reason, the Concessionaire will not after all construct and connect to the grid the electric power generating plant with the associated internal collection grid, or if circumstances show that this is so, or if the construction work is not commenced by 31 December 2019, a retention penalty shall become immediately payable upon demand.

- 2.2 By 'commencement of construction work' is to be understood that offshore activities have been commenced which are directly linked to the actual establishment of the wind farm, e.g. establishment of scour protection. Preliminary surveys are not covered by this definition. It will suffice if construction work has commenced for the neighbouring wind farm Vesterhav Nord.
- 2.3 This retention penalty is an agreed penalty, and after conclusion of this Concession Agreement it shall amount to DKK 100 million.
- 2.4 The retention penalty shall cover, in full settlement, any claim that the Danish Energy Agency may have against the Concessionaire pursuant to the Concession Agreement and its associated licences and authorisation in the event that the Concessionaire fails to construct and connect to the grid the electric power generating plant in accordance with the terms and conditions of this Concession Agreement.
- 2.5 The retention penalty will cover e.g. the Concessionaire's expenditures on preliminary surveys conducted by Energinet.dk, as in the case of failure to comply with the labour clause.
- 2.6 The Danish Energy Agency cannot make a claim for payment to the Concessionaire that exceeds the amount of the retention penalty.
- 2.7 If the wind farm is connected to the grid via the transmission grid the retention penalty may also cover Energinet.dk's costs for expansion and upgrading the collective grid after deduction of the cost of preliminary surveys, if necessary, to the extent that Energinet.dk's costs do not exceed the size of the retention penalty.
- 2.8 The retention penalty will in full fall due in accordance with clause 2.1. and shall be payable by the Concessionaire upon written demand from the Danish Energy Agency. The retention penalty shall be paid to the Danish Energy Agency, which to the extent necessary will manage the allocation hereof between Energinet.dk and the Danish Energy Agency, cf. clause 1.1.2.

If the demand for payment is not met, irrespective of the reason, the Concessionaire shall be liable to pay default interest 20 days from the date the demand for payment was made until payment takes place.

The Danish Energy Agency determines the size of the default interest pursuant to section 5 of the Interest on Overdue Payments Act.

- 2.9 The retention penalty shall lapse when the first kWh from the first turbine has been supplied to the collective grid. This will also be the case irrespective of a possibly earlier release of the Demand Guarantee in accordance with clause 3.4.

3. Guarantee for retention penalty

- 3.1 As security for payment of the above-mentioned retention penalty, at the same time as conclusion of this Concession Agreement a guarantee of DKK 100 million shall be provided. The guarantee is provided as a parent-company guarantee.
- 3.2 If the wind farm is connected to the grid through the transmission grid, the Concessionaire must provide Energinet.dk with a guarantee to pay for Energinet.dk's costs in the event that the project is not constructed and connected to the grid. This guarantee may be covered by the retention penalty after deduction of the cost of preliminary surveys to the extent that Energinet.dk's costs do not exceed the size of the retention penalty.

This means that in the case that the total costs for expansion and upgrading the collective grid, after possible deduction of cost of preliminary surveys, exceeds the demand guarantee of DKK 100 million the Concessionaire must in addition provide a guarantee to Energinet.dk

- 3.3 If the guarantee is provided as a parent-company guarantee, the parent company shall have annual revenues of no less than DKK 4 bn. as well as a solvency ratio of no less than 20% and/or a credit rating of at least BBB- (Standard & Poor's and Fitch) or Baa3 (Moody's) or equivalent rating from another recognised rating agency. Documentation of the guarantee shall be received by the Danish Energy Agency by no later than at the conclusion of this Concession Agreement.
- 3.4 The Danish Energy Agency shall release the guarantee on one of the following three dates, whichever comes first:
- No later than one month after the Concessionaire's state-authorized public accountant or registered public accountant has submitted a statement documenting that the Concessionaire, after award of the Concession, has paid expenses of at least DKK 300,000,000 including VAT for planning, design and construction of the electric power generating plant, Vesterhav Syd Offshore Wind Farm.
It shall not suffice that the expenses have been incurred; they shall also have been paid. The Danish Energy Agency shall be entitled to demand further documentation for expenses paid as a condition for releasing the demand guarantee. These expenses cover both documented internal and external expenses.
 - When the first kWh from the first turbine has been supplied to the collective grid.
 - If the concession lapses for reasons described in clause 6.

4. Extension of the time limit

- 4.1 The Concessionaire has the right to an extension of the time limit for commencement of the construction work and the time limit for connection of the entire offshore wind farm in the event of delay caused by one or several of the following circumstances:
- a) Amendments to the licence for construction and/or EIA approval which lead to a delay and which are required by the Danish Energy Agency and/or the Danish Nature Agency.
 - b) If the Concessionaire, for reasons that cannot be attributed to the Concessionaire itself, is not granted all of the required licences and authorisation required for the Concessionaire to be able to meet the above time limits, including any licences and authorisations from other public bodies than the Danish Energy Agency and the Danish Nature Agency.
 - c) Circumstances which are not the fault of the Concessionaire or which are beyond the Concessionaire's control, for example war, acts of God, fire, strike, lock-out, or vandalism.
 - d) Delays in grid connection for which the Concessionaire is not at fault, e.g. including the situation in which, despite having taken all reasonable measures, the Concessionaire has not been able to establish the necessary agreements with relevant landowners up to the grid connection point onshore.
 - e) Precipitation, low temperatures, strong winds or other meteorological conditions preventing or delaying the work, where such weather meteorological occur to a significantly greater extent than usual for the season and area in question.
 - f) Public orders or bans which are not caused by circumstances attributable to the Concessionaire.
 - g) If the Danish Energy Appeals Authority in connection with appeals against the licence for construction, and/or if the Nature Protection and Environmental Board of Appeal in connection with appeals against the Danish Nature Agency's supplements to the municipal development plan with associated EIA approvals, finds an appellant entitled to appeals and launches an appeal case in the relevant board.
 - h) The required removal of more than 1 UXO by Defence Command Denmark.
- 4.2 Extensions of the time limit are to correspond to the actual delay caused by the relevant circumstances mentioned in clause 4.1 (a) – (h). The Concessionaire shall, however, seek to avoid or mitigate the delay by taking such measures as may reasonably be required. The Danish Energy Agency will assess the relevant circumstances and the actual delay on the basis of documentation from the Concessionaire.
- 4.3 If the Concessionaire considers that it is entitled to an extension of a time-limit, the Danish Energy Agency shall be notified thereof in writing as soon as possible. The Concessionaire shall submit documentation that document that the delay is caused by the circumstances claimed, and that the delay cannot reasonably be avoided or mitigated.

5. Obligation to dismantle and decommission the offshore wind farm

- 5.1. The Concessionaire shall at its own expense dismantle and decommission Vesterhav Syd Offshore Wind Farm, in the North Sea, in accordance with the terms and conditions of the licence to construct the offshore wind farm, the licence to exploit the energy (the electricity production licence), the authorisation to produce electricity (the electricity production authorisation), as well as the EIA approval issued by the Agency for Water and Nature Management. The Concessionaire shall also provide security for dismantling and decommissioning of the plant pursuant to the terms of the electricity production licence and the authorisation.
- 5.2. Irrespective of the guarantee, the responsibility of dismantling and decommissioning the offshore wind farm lies with the Concessionaire fully at its own expense. Thus, the Concessionaire's responsibility is not limited to the amount of the given guarantee.

6. Terms and conditions of the Concession Agreement

- 6.1. The Concession shall lapse if appeals against the licence for construction and/or the municipal development plan with associated EIA approval give rise to significant changes in the licence for construction or the EIA approval and municipal development plan such that the project cannot be implemented as originally described in the licence for construction granted, unless another agreement is entered into between the Danish Energy Agency and the Concessionaire. This will also be the case if the Danish Safety Technology Authority rejects the Concessionaire's application for permission to expropriate landowners.
- 6.2. If the Concession lapses for one of the reasons mentioned above, the Concessionaire will only be compensated for the expenses paid to the date on which the Concession lapses in accordance with clause 7.1 and 7.2 in the Concession Agreement, which covers the cost incurred by Energinet.dk for preliminary surveys. Any additional expenses paid by the Concessionaire for the compliance of the Concession Agreement and the related licences and authorisation are of no concern to the Danish Energy Agency and Energinet.dk and will not be reimbursed. The compensation of the Concessionaire's defrayed expenses will be reimbursed by Energinet.dk as stipulated in clause 7.1 and 7.2 plus interest from the date of payment calculated as the discount rate plus 1 per cent to the Concessionaire.
- 6.3. The Concessionaire shall not be entitled to any further financial compensation, damages, reimbursement, etc., in the event of lapse of the Concession according to section 6.1.

7. Responsibility and payment of costs of various preliminary surveys

- 7.1 Energinet.dk has for Vesterhav Syd Offshore Wind Farm prepared an environmental impact assessment (EIA), an assessment of impacts on designated international nature reserves, and an assessment of impacts on Annex IV species, it has had geotechnical and geophysical surveys completed, and it has obtained MetOcean data, etc. The Concessionaire shall pay for the costs incurred by Energinet.dk for preparation of these preliminary surveys, cf. section 23(3) of the

Promotion of Renewable Energy Act (hereinafter RE Act).

- 7.2 If, before expiry of the time limit for appeals with regard to the licence for construction or the EIA approval or no appeals have been lodged, Energinet.dk will submit a statement of the above-mentioned costs and issue an invoice for the amount to be paid.

If appeals are lodged before the expiry of the time limit, Energinet.dk will only submit a statement and issue an invoice as described above once there is a final decision on the last appeal. By final decision is meant a decision that cannot be appealed to a higher court of law.

- 7.3 Energinet.dk and the Danish Energy Agency shall not be liable for the correctness and/or completeness of the preliminary surveys. The Concessionaire shall thus have neither remedies of breach nor any other claims for financial compensation against Energinet.dk or the Danish Energy Agency if the preliminary surveys should turn out to be faulty or insufficient in fact or in law. If the preliminary surveys should turn out to be insufficient or faulty in fact or in law, to the extent possible Energinet.dk will assign its rights under the contract with the relevant adviser to the Concessionaire.
- 7.4 If further preliminary surveys are required, e.g. as part of rectification of defects in preliminary surveys already carried out, the Concessionaire shall also pay the costs of such further surveys. Such further preliminary surveys will be managed by the Concessionaire or the Concessionaire's own consultant. Costs paid in this regard or to possible consultants are of no concern to the Danish Energy Agency.

8. Terms of settlement

The main principles of the financial terms and conditions regarding settlement are set out below (clauses 8.1-8.15). Reference is furthermore made to the provisions of the RE Act.

- 8.1 For electricity produced at the electric power generating plant, Vesterhav Syd Offshore Wind Farm, in the North Sea, a price supplement for 8.5 TWh shall be granted, to be determined so that the price supplement and the market price fixed pursuant to section 51(2), no. 1, of the RE Act together amount to DKK 47.5 øre per kWh .
- 8.2 The price supplement shall be calculated per hour as the difference between the tender price per kWh and the spot price of electricity in the relevant area. The total price supplement in a given hour shall be the product of the price supplement and the output measured in that hour. The spot price of electricity shall mean the hourly rate per kWh on the spot market in the relevant electricity grid price area DK 1 stated by the Nordic electricity exchange, Nordpool. The number of TWh will be fixed in the RE Act and will not be changed as a result of a possible subsequent adjustment of the number of MW.
- 8.3 If at least 95% of the capacity covered by the Concession Agreement (the capacity of the wind farm) is connected to the grid prior to 31 December 2020, the said price supplement shall be granted for

electricity production corresponding to 8.5 TWh. If less than 95% of the capacity of the wind farm is connected to the grid at this time, the production eligible for price supplement shall be reduced by 0.1 TWh. For each six month-period thereafter in which at least 95% of the capacity of the wind farm is still not connected to the grid, the production eligible for price supplement shall be reduced by an additional 0.1 TWh. In the calculation of the amount of the capacity of the wind farm connected to the grid, the capacity of one turbine shall be included as connected to the grid from the time when it has supplied the first kWh to the collective electricity supply grid. This shall apply even if subsequent technical problems should temporarily render the turbine out of service. The Concessionaire shall be entitled to an extension of the time limit for grid connection of the entire offshore wind farm (by 31 December 2020) in the event of specific circumstances, cf. clause 4.

- 8.4 The offered kWh-price by the Concessionaire 47.5 øre per kWh will not be indexed.
- 8.5 Price supplements shall not be granted for production in hours when the spot price is not positive. In return, production will not be included as part of the production eligible for subsidy.
- 8.6 Payment shall be made on a monthly basis, and payment will be made by Energinet.dk.
- 8.7 If the Concessionaire is to pay a feed-in tariff for transmission of electricity to the main electricity supply grid, a price supplement shall be granted corresponding to this tariff. Said price supplement shall be granted for electricity production corresponding 8.5 TWh if the farm is connected to the grid on time. Otherwise the period for granting the price supplement for the feed-in tariff shall be reduced as described in clause 8.3 above.
- 8.8 If the market price (the hourly rate on the spot market) of electricity produced at the plant exceeds DKK øre 47.5 per kWh, Energinet.dk shall calculate a negative price supplement. Any negative price supplement shall not be charged but set off against the next positive price supplement. There is no limitation in the length of the period in which negative price supplements can be calculated.
- 8.9 The Concessionaire itself shall ensure the sale of the production in the electricity market and pay costs in this connection.
- 8.10 Balancing costs for the electricity from the wind turbines shall not be reimbursed.
- 8.11 By notifying Energinet.dk, the Concessionaire shall be entitled to opt out of the price supplement scheme. This opt-out shall be effective from the first day of a month and with prior notice of at least one month. Once the Concessionaire has opted out, the Concessionaire shall not be entitled to resume the price supplement scheme.
- 8.12 The price supplement scheme shall apply for a period of no more than 20 years from the connection of the wind turbines to the collective grid. The offshore wind farm shall be deemed to be connected to the grid when the first kWh from one or more of the turbines has been supplied to the collective

grid.

- 8.13 The Concessionaire may not receive any other state aid in connection with the establishment and grid connection of the electrical power generating plant Vesterhav Syd Offshore Wind Farm, in the North Seathan the price supplement without approval from the Danish Energy Agency.
- 8.14 The price supplement shall be subject to the electricity from the offshore wind farm being supplied to the Danish collective electricity supply grid, which the two transformer platforms are part of.
- 8.15 The Concessionaire shall bear the full commercial risk of the tender price per kWh, and the offshore wind farm shall be at the Concessionaire's own cost and risk. Hence, the Concessionaire shall not be entitled to bring claims against the Danish Energy Agency in this respect.

9. Compensation for reductions

- 9.1 Energinet.dk shall make payment for any loss that the Concessionaire might suffer due to Energinet.dk carrying out reductions in the electricity production from the wind farm after the Concessionaire has been granted an electricity production licence pursuant to section 29 of the RE Act, and at least one turbine or the entire offshore wind farm has been put into operation. Reference is made to section 35 of the RE Act, cf. section 34, which governs this payment. The following is merely for information about the provisions of section 35 of the RE Act, cf. section 34.
- 9.2 The payment is not limited to a specific amount.
- 9.3 Section 34(3) and (4) of the RE Act stipulate the circumstances in which Energinet.dk may order reductions. Such an order is conditional upon the reduction being necessary for security of supply or socio-economically optimum exploitation of the general electricity supply system, including ensuring efficient competition in the market.
- 9.4 The provision states that Energinet.dk may order a reduction or shut-down in the production of electricity if this is necessary due to faults or maintenance work on the transmission grid or other limitations in capacity in the general transmission grid which can be remediated by a reduction. For example, this may be in the event of:
- lack of physical capacity in the underlying transmission grid,
 - repair, maintenance and inspection of the transformer platform onshore, its installations and equipment not belonging to the Concessionaire, the transmission grid as well as high voltage switching equipment onshore,
 - breakdowns of the transformer, unless less serious breakdowns are due to the owner of the wind turbine's electrical installations, or
 - lightning damage to the transformer platform on land, its installations and equipment not belonging to the owner of the wind turbine, the cable routing onshore, and high voltage

switching equipment onshore.

- 9.5 The calculation of the payment for loss of income of the Concessionaire shall be based on the guaranteed tender price. The production for which the producer receives compensation shall be included in the total production of 8.5 TWh for which subsidies are paid. The payment shall be based on the guaranteed tender price as long as a price supplement is paid for the production from the offshore wind turbines.
- 9.6 When the production eligible for subsidy has run out, or if the Concessionaire opts out of the price supplement scheme, the payment shall be based on the hourly spot price for the area.
- 9.7 Payments for loss of income shall not be made for more than a 25-year period corresponding to the duration of the licence to produce electricity.
- 9.8 Payments for loss of production shall not be made for production losses due to limits on production for hours when the spot price is not positive, cf. section 35 of the RE Act.
- 9.9 It should be noted that Energinet.dk has issued regulations for methods of calculating the amount of lost electricity production and loss of earnings. Reference is made to www.energinet.dk, Regulation E with appendix. The regulations are available by the following link. If the link is outdated, the regulations can be informed of by contacting Energinet.dk.
<http://energinet.dk/EN/EI/Forskrifter/Markedsforskrifter/Sider/default.aspx>
- 9.10 Furthermore, compensation shall not be payable in the event of force majeure, cf. section 35(3), 1st clause of the RE Act. Force majeure includes circumstances which are not the fault of Energinet.dk and which are beyond the control of Energinet.dk, e.g. war, sabotage, earthquake, extreme meteorological conditions and similar.
- 9.11 Disagreements and entitlement to compensation as well as the amount of compensation shall be decided by a court of law, cf. section 35(4) of the RE Act.

10. Labour clause

- 10.1 The Concessionaire, and any subcontractors who contribute to the performance of the contract, shall ensure that workers in Denmark are secured pay, including special allowances, hours of work and other working conditions which are not less favourable than those established for work of the same character under a collective agreement entered into by the most representative organisations of workers and employers in Denmark in the trade or industry concerned being in force throughout the territory of Denmark. "Contribute to the performance of the contract", cf. above, shall mean work performed in Denmark for the performance of the Contract.
- 10.2 The Concessionaire and any subcontractors shall ensure that the workers are informed of the provisions of the labour clause.

- 10.3 The Danish Energy Agency shall be entitled at any time to request relevant documentation for compliance with the conditions of pay and labour for workers, as stipulated in this labour clause.
- 10.4 The Danish Energy Agency may stipulate by written notice that, within 10 working days, the Concessionaire is to provide relevant documentation, such as payslips, time sheets, payroll accounts, employment contracts etc. in respect of both its own workers and those of its subcontractors, if any, as well as declaration of compliance with labour clause.
- 10.5 The Concessionaire shall ensure that any information in the material about the workers' racial or ethnic origin, political opinions, religious or philosophical beliefs, information about health or sex life, significant social problems and other strictly private matters are deleted before the material is surrendered to the Danish Energy Agency.
- 10.6 If the Concessionaire neglects its duty to provide the documentation required by the Danish Energy Agency, the Danish Energy Agency shall be entitled, at the expiry of the time-limit set out above, to impose a penalty of DKK 1,000, per day on the Concessionaire until the documentation required has duly been provided to the Danish Energy Agency.
- 10.7 For its assessment of whether the Concessionaire or the Concessionaire's subcontractors have complied with the labour clause, the Danish Energy Agency may seek advice from relevant employer organisations and/or labour organisations.
- 10.8 If the Concessionaire fails to comply with its obligations pursuant to the labour clause, and if such non-compliance results in a justified claim for further pay from the workers, the Danish Energy Agency shall be entitled to impose a penalty on the Concessionaire corresponding to twice the amount of any such claim.

11. Social clause regarding apprenticeships and placements

- 11.1 The Concessionaire shall contribute to ensuring that, as far as at all possible, a certain number of positions that are relevant to the construction work and subsequent on-site operation and maintenance of the offshore wind farm (both onshore and offshore) can be filled with apprentices.

An apprentice shall mean an employee with whom the Concessionaire or the Concessionaire's contractors etc. conclude, or have concluded, a training contract. The training contract shall be entered into as a part of a training course followed by the apprentice and aimed at providing the apprentice with personal, social and professional qualifications to support the apprentice in his/her training and which provides a basis for employment in the labour market.

Training courses pursuant to Consolidating Act no. 987 of 16 August 2010 on Vocational Basic Training etc. and pursuant to Consolidating Act no. 439 of 29 April 2013 on Vocational Training are deemed to meet the above requirements for a training course.

- 11.2 The Concessionaire or the Concessionaire's contractors may enter into training contracts for training courses pursuant to other similar training schemes in the EU/EEA, including with apprentices from other EU/EEA Member States, which comply with the above requirements for a training course.
- 11.3 If no other agreement is made with the Danish Energy Agency, no later than 12 months after signature of this Concession Agreement, the Concessionaire and the Danish Energy Agency shall enter into an agreement on the number of apprenticeship places to be secured in connection with construction and subsequent operation and maintenance of the offshore wind farm. The Concessionaire and the Danish Energy Agency shall initiate a process for concluding such agreement by no later than 6 months after signature of the concession agreement.

12. Joint and several liability

- 12.1. Founding companies where the Concessionaire is a newly established company and where a tender is submitted on behalf of a not yet established company.

- 12.1.1. The Concessionaire is a newly established company. The established company is:

Vattenfall Vindkraft Vesterhav Syd Holding A/S
Exnersgade 2
6700 Esbjerg
Denmark
CVR no.: 38272403

- 12.1.2. The above funding company has undertaken joint and several liability with the Concessionaire in respect of this Concession Agreement and related licences and authority which have been granted or may be granted in future to the Concessionaire. This means that this other funding company must undertake liability, on an equal basis with the Concessionaire, in respect of all obligations from the Danish Energy Agency arising out of this Concession Agreement and related licences and authorisation which have been granted or may be granted in future to the Concessionaire. Hence, the Danish Energy Agency shall acquire no rights towards this other funding company which the Danish Energy Agency does not have towards the Concessionaire at any given time.
- 12.1.3. In order for the joint and several liability of this other economic operator to apply, the Concessionaire must have breached this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation. Concessionaire must in addition have failed to rectify the stated breach within a deadline stipulated by the Danish Energy Agency. If The Danish Energy Agency make claims against this other funding company according to this provision this other economic operator has the same right as the Concessionaire to make claims against an alleged breach of this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation.
- 12.1.4. Where the Danish Energy Agency's claim against the Concessionaire is covered by a guarantee according to clause 3.1. in the Concession Agreement or guarantees provided according to the licences and authorisation linked to the Concession Agreement, the joint and several liability of this other funding company will only apply to the extent, regardless of the reason, if the demand of

payment is not made to the Danish Energy Agency under the guarantee in question or the guarantee is released at the time where the Danish Energy Agency makes its claim.

The joint and several liability of this other funding company shall remain in force until the expiry of the obligations under this Concession Agreement and/or the mentioned licences and authorisation. In the event of a dispute between the Danish Energy Agency and this other economic operator, clause no. 18.1 below regarding disputes shall apply. This other economic operators have by its signature to this Concession Agreement accepted these terms and conditions.

12.2. Economic entities on which the Concessionaire has relied in respect of its financial or economic capacity

12.2.1. In the application to participate in the tendering procedure, the Concessionaire has relied on one or more economic entities which are not a part of the Concessionaire in respect of its economic and financial capacity. These other economic entities are the following:

Vattenfall AB
169 92 Stockholm
Sverige
Reg. nr. SE 556036-2138

Vattenfall Vindkraft A/S
Exnersgade 2
6700 Esbjerg
Denmark
CVR no. 31597544

12.2.2. The above economic operators have assumed joint and several liability together with the Concessionaire in respect of this Concession Agreement and related licences and authorisation which have been granted or might be granted in future to the Concessionaire. This means that these other economic operators shall assume liability, on an equal basis with the Concessionaire, in respect of all obligations from the Danish Energy Agency arising out of this Concession Agreement and related licences and authorisation which have been granted or might be granted in future to the Concessionaire. Hence, the Danish Energy Agency shall not acquire any rights with regard to these other economic operators which the Danish Energy Agency does not hold with regard to the Concessionaire at any given time.

12.2.3. In order for the joint and several liability of these other economic entities to apply, the Concessionaire must therefore have breached this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation. The Concessionaire must also have failed to remedy the infringement within a reasonable deadline set by the DEA. If the DEA make claims against these other economic entities according to this provision, these other economic operators shall have the same rights as the Concessionaire to make objections against alleged breaches of this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation.

12.2.4. Whereas the Danish Energy Agency's claim against the Concessionaire is covered by a guarantee according to clause 3.1 in the Concession Agreement or guarantees provided according to the licences and authorisation linked to the Concession Agreement, the joint and several liability of

these other economic operators will only apply to the extent, regardless of the reason, if the demand of payment is not made to the Danish Energy Agency under the guarantee in question or the guarantee is released at the time where the Danish Energy Agency makes its claim.

The joint and several liability of these other economic operators shall remain in force until the expiry of the obligations under this Concession Agreement and/or the mentioned licences and authorisation. In the event of a dispute between the Danish Energy Agency and these other economic operators, the dispute clause 18.1 below shall apply. These other economic operators have by their signature to this Concession Agreement accepted these terms and conditions.

13. Transfer of the Concession by the Danish Energy Agency

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

14. Transfer of the Concessionaire to a third party

14.1. The Concessionaire may not, without written consent from the Danish Energy Agency, transfer to a third party its rights and obligations pursuant to this Concession Agreement. The Danish Energy Agency will grant its consent to a transfer if:

- the third party in question is assessed to possess the required economic, financial and technical capacity to establish, operate, maintain and decommission the offshore wind farm. This assessment of whether the third party has the required economic, financial and technical capacity will be based on a specific assessment carried out at the time of the Concessionaire's request for a consent to transfer the Concession.
- to the extent necessary, the Danish Energy Agency consents to the transfer of the electricity production authorisation pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production authorisation has been issued at the time of the request for change

14.2. The Danish Energy Agency may only refuse consent to a transfer if there are objective reasons.

14.3. The Danish Energy Agency is entitled to reject the request for consent to transfer, if the Danish Energy Agency deems that the transfer cannot be allowed under the relevant procurement and tendering regulations or under the relevant licences and authorisation to construct and/or operate an offshore wind farm in Denmark.

14.4. If the transfer pursuant to this provision is to a newly established company as part of the Concessionaire's fulfilment of its obligations under the option-to-purchase scheme, cf. sections 13-17 of the RE Act, the Concessionaire shall assume joint and several liability with the newly established

company for all of the obligations under this Concession Agreement and related licences and authorisation in order to obtain consent from the Danish Energy Agency.

14.5. The Danish Energy Agency is entitled to request of the Concessionaire any other documentation which the Danish Energy Agency finds relevant for its assessment of the requested transfer.

15. Changes in the control of the Concessionaire (indirect transfer)

15.1 At the time of conclusion of the Concession Agreement, the Concessionaire is owned 100% by the following parties Vattenfall Vindkraft Vesterhav Syd Holding A/S.

15.2 Any change of control in the Concessionaire shall require the prior written consent of the Danish Energy Agency.

15.3 "Change of control" shall mean the transfer of a majority of shares in the Concessionaire and/or changes to the rights stated in clause 12.1.

15.4 Consent to change of control will only be given if:

- The Concessionaire, after the change, is still assessed to have the required economic, financial and technical capacity to establish, operate, maintain and decommission the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided by the Danish Energy Agency according to a case-by-case assessment at the time when the Concessionaire requests the change.
- The Danish Energy Agency to the extent required gives its consent to the transfer of the electricity production licence pursuant to section 10 of the Electricity Supply Act, cf. section 53 of the Electricity Supply Act, if the electricity production licence has been issued at the time of the change request.

15.5 The Danish Energy Agency may only reject a request for consent to transfer if there are objective reasons for doing so.

15.6 The Danish Energy Agency is entitled to reject a request for consent for a change of control if the Danish Energy Agency deems that the change in question cannot be allowed under the relevant procurement and tendering regulations or under the relevant licences and authorisation to construct and/or operate an offshore wind farm in Denmark.

15.7 For the Danish Energy Agency's assessment of a request for change of control of the Concessionaire, the request shall include documentation of the economic, financial and technical capacity of the new shareholder or controlling entity. The Danish Energy Agency is entitled to request the Concessionaire to provide any further documents that the Danish Energy Agency may find relevant to its assessment of the requested change.

15.8 As a general rule, a new shareholder which joins the Concessionaire pursuant to this provision is not obliged to assume joint and several liability together with the Concessionaire. However, the Danish

Energy Agency reserves the right to demand this at a later stage if the Danish Energy Agency finds there are objective reasons for doing so on the basis of a specific assessment.

- 15.9 If a shareholder which initially assumed joint and several liability pursuant to the Concession Agreement as a founding company pursuant to clause 12.1 transfers its ownership share of the Concessionaire in full, then the Danish Energy Agency may, upon request, grant its consent that the resigning shareholder is released from its joint and several liability with regard to obligations that have arisen after the date at which the shareholder transferred all of its shares in the Concessionaire. The Danish Energy Agency may only refuse to grant its consent for this if there are objective reasons for doing so.

16. Replacement or exit of economic operators on which the Concessionaire has relied in respect of its economic or financial capacity

- 16.1 Replacement or exit of economic operators on which the Concessionaire has relied in respect of its economic or financial capacity in connection with the prequalification round shall generally not be permitted and shall at all events be subject to prior written consent from the Danish Energy Agency.
- 16.2 Consent to replacement or exit will only be granted if:
- after replacement or exit of the supporting economic operator, where this is desired to be implemented before grid connection of all turbines in the offshore wind farm, the Concessionaire still fulfils the original criteria for qualitative selection under the tendering procedure for this Concession Agreement, and the change does not otherwise lead to significant changes of the Concession Agreement,
 - after replacement or exit of the supporting economic operator, where this is desired to be implemented after grid connection of all turbines in the offshore wind farm, the Concessionaire still has the required economic, financial and technical capacity to operate, maintain and decommission the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided on the basis of specific assessment by the Danish Energy Agency at the time of the Concessionaire's change request.
- 16.3 The Danish Energy Agency may only refuse consent to a transfer if there are objective reasons for doing so.
- 16.4 The Danish Energy Agency is entitled to reject a request for consent to exit or replacement of the supporting economic operator if, according to an assessment by the Danish Energy Agency, said replacement or exit cannot be allowed under the relevant tendering and procurement regulations or under the regulations for the relevant licences and authorisation to construct and / or operate an offshore wind farm in Denmark.
- 16.5 The Danish Energy Agency is entitled to request from the Concessionaire any additional documentation deemed relevant by the Danish Energy Agency for assessment of the desired change.

- 16.6 In the event of replacement, the new supporting economic operator shall assume joint and several liability by entering into this Concession Agreement, unless, in connection with its consent, the Danish Energy Agency confirms in writing that this requirement should be ignored. The joint and several liability will enter into force from the date when the new supporting economic operator enters into the Concession Agreement.
- 16.7 A resigning economic operator on whom the Concessionaire has relied in relation to economic and financial capacity shall still have joint and several liability for any requirement according to point 12.2 of this Concession Agreement originating from before the relevant exit.

17. Replacement or exit of economic operators on which the Concessionaire has relied in respect of its technical capacity

- 17.1. The Concessionaire has in its application for public tender relied in respect of its technical capacity on several economic operators, not part of the Concessionaire. These economic operators are the following:

Vattenfall Europe Windkraft GmbH
Überseering 12
22297 Hamburg
Germany
Reg. no.: HRB 108603

Vattenfall Renewables Wind DK A/S
Jupitervej 6
6000 Kolding
Denmark
CVR. No: 36085460

Vattenfall Vindkraft A/S
Exnersgade 2
6700 Esbjerg
Denmark
CVR.no.: 31597544

- 17.2. According to the tender specifications, the tenderer is obligated to, not later than at the time of the signature of the Concession Agreement submit to the Danish Energy Agency written and non-terminable contract with the economic operators mentioned in clause 17.1. Termination of a non-terminable contract requires the prior written consent of the Danish Energy Agency.
- 17.3. Replacement or exit of economic operators on which the Concessionaire has relied in respect of its technical capacity shall generally not be permitted and shall at all events be subject to prior written consent from the Danish Energy Agency.
- 17.4. If the Concessionaire wants to replace, or allow to exit, an economic operator on whom the Concessionaire has relied in connection with the prequalification round in order to fulfil the technical suitability requirements, the Concessionaire's request for approval shall include documentation that a binding agreement has been established with the new technical supporter, whom will subsequently

be obligated to take part in project planning and management, construction and risk management, as well as procurement and contract management through making the same competences available in the planning and construction phases as the original technical supporter, to the extent that this is required.

17.5. Consent to replacement or exit will only be granted if this is possible in accordance with relevant procurement and tendering regulations and the regulations for the relevant licences and authorisation for construction and operation of an offshore wind farm in Denmark. In this connection the Danish Energy Agency will check that the required technical capacity is in place after the desired changes have been implemented.

17.6. The Danish Energy Agency is entitled to request from the Concessionaire any additional documentation deemed relevant by the Danish Energy Agency for assessment of the desired transfer.

18. Disputes and choice of law

18.1 This Agreement shall be governed by Danish law, and the ordinary courts of Copenhagen shall be proper venue.

19. Duration of the Agreement

19.1 This Agreement shall become effective upon its signature.

19.2 The Agreement shall expire when the electric power generating plant has been decommissioned.

20. Language

20.1. This Agreement has been drawn up in Danish and English. In the event of discrepancy between the Danish and the English language version, the Danish language version shall prevail.

21. Signatures

This Agreement shall be signed by the Danish Energy Agency and the Concessionaire 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 Agreement.

The Agreement shall also be signed by the economic operators subject to joint and several liability pursuant to clause 12. These economic operators shall receive a copy of the Agreement in each language version.

Date: 22 December 2016

For the Danish Energy Agency

Martin Hansen

Date: 22 December 2016

Minister of Energy, Supply and Climate

Lars Chr. Lilleholt

Date: 22 December 2016

For the Concessionaire

Vattenfall Vindkraft Vesterhav Syd P/S

Per Stenholt

Date: 22 December 2016

For the Concessionaire

Vattenfall Vindkraft Vesterhav Syd P/S

Ole Bigum Nielsen

Signatures of additional parties, to sign the Concession Agreement, cf. clause 12 about joint and several liability:

Date: 22 December 2016

Vattenfall Vindkraft Vesterhav Holding A/S

Per Stenholt

Date: 22 December 2016

Vattenfall Vindkraft Vesterhav Syd Holding A/S

Ole Bigum Nielsen

Date:

For Vattenfall AB

Magnus Hall

Date:

For Vattenfall AB

Kerstin Ahlfont

Date:

For Vattenfall Vindkraft A/S

Kerstin Ahlfont

Date:

For Vattenfall Vindkraft A/S

Peter Tornberg