

English translation of

tender specifications for

350 MW offshore wind capacity

in nearshore areas

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Danish version applies

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1. The Contracting Authority

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2. The Contract Notice and the tender material

This invitation to tender is conducted as a negotiated procedure pursuant to the rules regarding public works concessions in Title III of Directive 2004/18/EC on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts.

The Contract Notice has been published in the Supplement to the Official Journal of the European Union, cf. Contract Notice no. 2015/S 039-065965 of 25 February 2015 and on the website of the Danish Energy Agency.

This invitation to tender is a multi-site tender in which a total of up to 350 MW are put up for tender in two or more areas. Tenderers can submit tenders for six predefined areas, each of which can be developed with up to 200 MW, except for the area offshore Bornholm, which can be developed with up to 50 MW. One concession will be awarded for each area, including the relevant licences and authorisation. Therefore, it is expected that concessions will be awarded for two or more offshore wind farms as a result of this invitation to tender. The tendering procedure can have one or several successful tenderers. For example, the result can be that tenderer A is awarded site X with 200 MW, while tenderer B is awarded site Y with 150 MW. In the following, however, we generally refer to 'successful tenderer', 'Concession', 'Concession Agreement', 'the plant', 'authorisation' and similar expressions in the singular form. This is merely for the purpose of simplicity. If the tendering procedure results in two or more successful tenderers, these expressions in the singular should be disregarded and instead understood in the plural.

3. Main content of the Concession

The following is a description of the overall contents of the Concession. The Concession consists of a Concession Agreement as well as the licences and authorisation mentioned below.

In the event of any discrepancy between these tender specifications, on the one hand, and the Concession Agreement, the model licences and the model authorisation, on the other hand, the latter takes precedence.

The Concession grants a licence to conduct preliminary surveys and to construct an offshore wind farm with collection grid in a specified area of Danish territorial waters under the framework terms and conditions stipulated in the invitation to tender, as well as a licence to exploit the wind resources in this area for the production of electricity on the financial terms laid down in connection with the invitation to tender.

The size of the offshore wind farm and of the area within which the project can be developed will be fixed at the time of the award of the licence. The offshore wind farm can have a capacity of no more than 200 MW, however at Bornholm the farm can have a capacity of no more than 50 MW. The Concessionaire is not expected to have finalised its contracts with subcontractors prior to submission of the final tender. Therefore, after the award of the Concession, the Concessionaire may choose to adjust the number of offered MW downwards or upwards by up to 5 MW compared to the tender submitted. It is not permitted, however, to establish more than 200 MW in each area (at Bornholm, max. 50 MW).

The Concessionaire will be entitled to a price supplement pursuant to the Concession Agreement, as defined by law.

The final number of MW to be established in the individual areas must be determined by no later than at the time of submission of the detailed project plan, cf. clause 2.2 of the construction licence (Appendix 6).

A subsidy will be granted for the first 50,000 full load hours (FLH). This means that a subsidy will be granted for X number of TWh calculated as follows:

$$\text{the number of tendered MW} * 50,000 \text{ FLH} / 1,000,000$$

The number of TWh will be fixed in the RE Act (cf. Consolidating Act no. 122 of 6 February 2015 with later amendments) and will not be changed as a result of a possible subsequent adjustment of the number of MW.

The electricity will be routed onshore to the Danish electricity supply grid. The grid from the farm to the connection point onshore will be financed, established and operated by the Concessionaire. Additional conditions concerning grid connection are described in Appendix 9.

The Concessionaire must meet its obligations under the option-to-purchase scheme to offer 20% of the project for sale to local residents. The main points of this scheme are described in more detail in clause 3.8 below.

The Concessionaire must meet its obligations to ensure compensation for any loss of value to local homes caused by the offshore wind farm. The main points of this scheme are described in more detail in clause 3.9 below.

This Concession does not prevent the Danish Energy Agency from otherwise exploiting the concession area whenever compatible with the exploitation of the wind resources. Nor does the Concession prevent that Concessions be granted for the construction of offshore wind turbines in the vicinity of the

concession area. However, a buffer zone of six km around the farm will be kept clear as described in the model licence for construction enclosed, cf. Appendix 6.

If the Concession Agreement is entered into with a consortium, all members of the consortium will assume joint and several liability with respect to all obligations of the Concession Agreement and the associated licences and authorisation.

Furthermore, companies supporting the tenderer financially, and thereby contributing to the tenderer's compliance with the financial minimum requirements in the prequalification stage, will assume joint and several liability with the successful tenderer with respect to all obligations of the Concession Agreement and the associated licences and authorisation.

Where the tenderer is a not yet established company, the founding companies will be required to undertake joint and several liability with the tenderer when the Concession Agreement is entered into.

The requirements regarding joint and several liability are further described in section 8 of the Concession Agreement.

3.1 Licences and authorisation

The Danish Energy Agency is the authority responsible for the offshore part of the project, while the Danish Nature Agency (*Naturstyrelsen*) is the authority for the onshore part of the project, cf. below.

The Danish Energy Agency will issue the following licences and authorisation pursuant to the Promotion of Renewable Energy Act, cf. Consolidating Act no. 122 of 6 February 2015 (the RE Act) with later amendments, and the Electricity Supply Act, cf. Consolidating Act no. 1329 of 25 November 2013 (the Electricity Supply Act) with later amendments:

- Licence to conduct preliminary surveys, cf. section 22 of the RE Act (see the draft licence in Appendix 5)
- Licence for construction of an electric power generating plant with the related offshore grid, cf. section 25 of the RE Act and section 22a of the Electricity Supply Act (see the draft licence in Appendix 6)
- Licence to exploit the energy from the electric power generating plant, cf. section 29 of the RE Act (see the draft licence in Appendix 7)
- Authorisation to produce electricity, cf. section 10 of the Electricity Supply Act (see the draft authorisation in Appendix 8)

After signing of the Concession Agreement, the successful tenderer will be granted a licence to conduct preliminary surveys and will be granted a licence for the construction of an electric power generating plant with an associated electricity supply grid in Danish territorial waters, cf. Appendices 5 and 6.

The internal collection grid means both the cables connecting the turbines and the cables routing onshore up to the grid connection point, cf. Executive Order no. 1115 of 18 September 2015 on grid connection of wind turbines and price supplement for electricity produced on wind turbines etc.

The successful tenderer is subsequently to submit a detailed project plan and timetable to the Danish Energy Agency for approval as well as a collaboration agreement between the Concessionaire and the grid company as information for the Danish Energy Agency, see clause 4. The detailed project plan must be approved prior to commencement of construction work.

Finally, a licence will be granted to exploit the wind power and authorisation will be granted to produce electricity, cf. Appendices 7 and 8, before the plant is connected to the grid.

The Danish Nature Agency is the authority in charge of the onshore part of the project. The Danish Nature Agency will issue a supplement to the municipal development plan for the relevant municipality and will subsequently grant an EIA approval according to the Executive Order on environmental impact assessment (EIA) of certain public and private works pursuant to the Planning Act, cf. Executive Order no. 1184 of 6 November 2014, which allows for the establishment of the physical installations onshore.

The relevant municipality is the planning authority responsible for determining whether the onshore installations can be constructed on the basis of a rural zone permit or whether the onshore installations require a local development plan pursuant to the Planning Act.

3.2 The Concession Agreement and its terms and conditions - reservation for legislative amendments, approval by the European Commission and appeals

The Concession, and thereby the Concessionaire's obligation to construct and connect to the grid the electric power generating plant with collection grid, is, on the part of the Danish Energy Agency, conditional upon the Danish Parliament adopting, by no later than 1 January 2017, the required amendments to the RE Act to entitle the Concessionaire to the price supplement and related terms of settlement contained in the Concessionaire's best and final offer.

Hence, the Concession Agreement will be concluded with one successful tenderer for each area on the condition that a bill is adopted regarding the subsidy amount (price supplement) included in the price offered with the associated terms. This, however, cannot take place until one or more successful tenderers have been selected.

The Concession is also conditional upon the European Commission approving the tender terms and conditions for the nearshore wind turbine tender as compatible with the EU state aid regulations. If there is no decision by the European Commission on the matter of state aid before the conclusion of the Concession Agreement, the Concession Agreement will be conditional upon the European Commission, by no later than 1 January 2017, approving the tender terms and conditions for the nearshore wind turbine tender as compatible with the EU state aid regulations.

The Concession is moreover conditional upon an agreement being reached by a majority of the Danish Parliament on Treaty-compatible financing of the price supplement for the nearshore wind farms by no later than 1 January 2017, and upon the European Commission accepting this financing solution.

The Concession is also conditional upon no appeals against the licence for construction and/or EIA approval or the supplement to the municipal development plan, respectively, giving rise to significant changes in the licence for construction or the EIA approval and supplement to the municipal development plan such that the project cannot be implemented as originally described in the licence for construction granted.

Finally, the Concession is conditional upon the Danish Safety Technology Authority authorising expropriation up to the grid connection point.

In the event that 1) the required amendments to the RE Act are not adopted by the Danish Parliament, or 2) the terms of the tender are not approved by the European Commission as compatible with EU state aid regulations, or 3) a Treaty-compatible agreement on financing of the price supplement has not been reached, or 4) the project - contrary to expectations - is blocked by complaints, or, finally, 5) the Danish Safety Technology Authority does not authorise expropriation up to the grid connection point, the Concession Agreement will be cancelled (i.e. the Concession Agreement will cease without notice), unless conclusion of another agreement between the Danish Energy Agency and the Concessionaire is possible under existing procurement rules, cf. clause 2 of the Concession Agreement (Appendix 1).

In the event of cancellation of the Concession Agreement due to the above reservations (i.e. that one or more of the five conditions above are not complied with), the Concessionaire will only be able to pursue claims as specified in the second clause of the Concession Agreement, cf. Appendix 1. The Concessionaire is not entitled to any further financial compensation, damages, reimbursement, etc., in the event of cancellation of the Concession.

3.3 Preliminary surveys and EIA process

For each of the original six areas, Energinet.dk has prepared an EIA report, preliminary geotechnical and geophysical surveys and provided MetOcean data (wind, wave, tide, current conditions, ice, etc.). The results of these surveys are published and downloadable from www.ens.dk/kystnaere.

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All draft EIA reports have been published and public meetings have been held regarding all 6 areas. Furthermore, a summary report has been prepared for each project. Concurrently with the second public consultation phase, an ESPOO consultation has been conducted (hearing of neighbouring countries) for the areas at North Sea (South), Sæby and Bornholm. For the other areas, an ESPOO consultation is not required. Municipal development plans have been prepared for each site. These plans are described in the summary report.

EIA process for the offshore part

Due to the protection of the common scoter cf. provisions of the Habitat Directive, it has been necessary to remove the site of Sejerø Bugt from the tender. Thus, it will not be possible to place at bid

for an offshore wind farm in Sejerø Bugt as part of this tender. The EIA report for the offshore installations is approved by the Danish Energy Agency when the licence for construction is issued to the Concessionaire.

Decisions on a licence for construction by the Danish Energy Agency can be appealed to the Energy Board of Appeal (the time limit for appeal is four weeks). Appeals will not have suspensory effect, unless the Energy Board of Appeal decides otherwise.

EIA process for the onshore part

The Danish Nature Agency has prepared a supplement to the municipal development plan and will grant an EIA approval for the onshore part of the project, while the relevant municipality will be responsible for the specific onshore planning process through rural zone permits or local development plans.

The summary report was submitted for consultation with the relevant municipalities, which were able to make a statement about the report.

The Danish Nature Agency will issue the relevant municipal development plan supplements soon after the signing of the Concession Agreement. The terms and conditions for the onshore installations will be notified to the Concessionaire in the EIA approval.

The supplement to the municipal development plan and the Danish Nature Agency's EIA approval can be appealed to the Environmental Board of Appeal within a four-week time limit for appeal.

The decision by the municipality on a rural zone permit or a local development plan can also be appealed to the Environmental Board of Appeal within a four-week time limit for appeal. This means that such decisions cannot be realised before the appeal has been settled, unless the Environmental Board of Appeal decides otherwise.

Under normal circumstances, other appeals will not have suspensory effect, however proceeding in accordance with a decision is at the Concessionaire's own risk, as the Environmental Board of Appeal may reverse the decision.

3.4 Costs of preliminary surveys

The successful tenderer must pay Energinet.dk's costs of preliminary surveys and EIA reports, however only for the area(s) for which a licence for construction has been granted pursuant to section 25 of the RE Act, cf. section 23(3) of the RE Act. The costs will not exceed the amounts below stated in DKK, exclusive of VAT and per area.

North Sea (south)	North Sea (north)	Bornholm	Sæby		Smålandsfarvandet
23,800,000	26,100,000	23,300,000	23,300,000		25,600,000

At the expiry of the time limits for filing appeals (cf. clause 3.3), or after the final administrative decision on an appeal against the licence for construction or the EIA approval, the Concessionaire

must transfer an amount to cover costs incurred by Energinet.dk to carry out the preliminary surveys. For example, if a tenderer wins the Concession for Bornholm, said tenderer must pay Energinet.dk's costs for Bornholm (read: maximum DKK 23.3 million exclusive of VAT). Sites for which a Concession is not granted will not have to be paid for by the successful tenderer(s).

3.5 Retention penalty

If the Concessionaire announces that, after all, it will not construct the electric power generating plant and connect it to the grid, regardless of the reason, or if circumstances show that this is so, a retention penalty (an agreed penalty) will become immediately payable upon demand. Furthermore, the retention penalty will be immediately payable upon demand if construction work on the offshore wind farm is not commenced by 31 December 2019. The penalty will be DKK 100 million per Concession awarded.

The demand for payment of a retention penalty will lapse when the first kWh from the first turbine has been supplied to the collective grid. Exemption from this demand for payment of a retention penalty can be allowed in the event of accidental delays such as delays in grid connection not due to circumstances for which the Concessionaire is responsible. The retention penalty and possibilities for exemption are described in more detail in clauses 1.1 and 1.3 (in Appendix 1) of the draft Concession Agreement.

Upon conclusion of the Concession Agreement for construction and connection to the grid of the electric power generating plant, the tenderer must provide a guarantee of DKK 100 million as guarantee for payment of the above retention penalty. One guarantee is to be provided for each Concession. The guarantee must be provided either by a financial institution, an insurance company or similar and on the terms set out in Appendix 1.1 (model demand guarantee), or in the form of a parent-company guarantee on the terms set out in Appendix 1.2. The guarantee can also be provided as a combination of the two types of guarantee mentioned above.

The Danish Energy Agency can claim payment under the guarantee if the Concessionaire breaches the Concession Agreement regarding construction and connection to the grid, cf. Appendix 1 (draft Concession Agreement). The guarantee will be released when the Concessionaire has documented payment of expenses, after the award of the Concession, of at least DKK 300,000,000 (three hundred million Danish Kroner) incl. VAT for planning, design and construction of the electric power generating plant, or when the first kWh from the first turbine has been supplied to the collective grid, or in the event that the Concession lapses for reasons described in clauses 2.1-2.4 (i.e. when the demand for payment of a retention penalty lapses).

Refer to clauses 1.1 and 1.2 of Appendix 1 for the more detailed terms and requirements for the retention penalty and associated guarantee.

3.6 Delay

If less than 95% of the capacity of the wind farm is connected to the grid on 1 January 2021, the production eligible for price supplement will be reduced by 0.1 TWh. For each subsequent six-month period in which at least 95% of the capacity has still not been connected to the grid, the production

eligible for price supplement will be reduced by an additional 0.1 TWh. For more about this, see clause 4 of the Concession Agreement, i.e. Appendix 1.

3.7 Guarantee to dismantle and decommission the plant

Irrespective of when the electric power generating plant is decommissioned, the Concessionaire will be obliged, at its own expense, to restore the area to its former condition, including to dismantle the plant and carry out the necessary decommissioning, both offshore and onshore, including the internal collection grid up to the grid connection point, pursuant to a decommissioning plan approved by the Danish Energy Agency.

The Concessionaire must provide a guarantee that it will decommission the plant. This guarantee must be established by no later than 15 years after grid connection of the first turbine. By no later than six months prior to this time, the Concessionaire must present a plan to the Danish Energy Agency for approval, with details of how the guarantee will be provided.

The amount guaranteed will initially be DKK 200 million. The Danish Energy Agency can approve a guarantee for a lower amount against documentation that the costs of decommissioning will be lower. If the actual cost for dismantling and decommissioning exceeds the amount guaranteed, the Concessionaire is still reliable for the full amount. Reference is also made to the more detailed terms and conditions for decommissioning and guarantee set out in Appendix 6 (licence for the construction of an electric power generating plant with the related offshore grid in Danish territorial waters) and Appendix 8 (authorisation to produce electricity).

3.8 The option-to-purchase scheme

The option-to-purchase scheme is set out in sections 13-17 of the RE Act. The option-to-purchase scheme obligates the Concessionaire to offer for sale 20% of ownership shares in the wind turbine project to local residents at cost price. The Concessionaire is not obliged to realise the sale of 20% but only to offer a total of 20 % of the ownership shares in the project for sale. The offer for sale of ownership shares under the option-to-purchase scheme cannot take place until after the issue of a licence for construction and must have been completed *before* connection to the grid of the offshore wind turbines (understood as the date on which the electric power generating plant supplies electricity to the collective grid for the first time). The date of connection to the grid is thus related to the first turbine in the overall project.

Pursuant to section 13(5) of the RE Act, the offshore wind farm must be operated by an independent legal entity which is independent of the company's other activities. The Danish Energy Agency therefore considers it possible for the successful tenderer to transfer a Concession Agreement it has been awarded to a newly established company (SPV), both in the period between award of the Concession Agreement and the date of signature of the Concession Agreement, cf. clause 15, and after the completion of the tendering procedure, to the extent that such transfer is motivated solely by the need to comply with the option-to-purchase scheme under the RE Act. In the event of a transfer, the successful tenderer will assume joint and several liability with the newly established company. Where the transfer takes place after conclusion of the Concession Agreement, the transfer will be in accordance with clause 9.1.3 of the Concession Agreement.

Ownership shares sold through the offer for sale under the option-to-purchase scheme may not be ranked lower than other shares in the company. The local ownership shares cannot be compulsorily redeemed and must not be divested in an independent company which solely comprises ownership shares.

In principle, ownership shares are to be offered at a price calculated on the basis of production of 1,000 kWh per share per year. The proceeds of the sale are to cover a proportionate share of the Concessionaire's project costs, so that the Concessionaire and the buyer pay the same amount per share.

The tenderer is responsible for consulting the regulations of the option-to-purchase scheme and for ensuring compliance with these regulations. If the Concessionaire fails to comply with the rules of the option-to-purchase scheme, Energinet.dk, which manages the scheme, can withhold the price supplement.

The provisions on the option-to-purchase scheme (sections 13-17) with explanatory notes are available in English, see www.ens.dk/nearshorewind under "Relevant legislation".

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3.9. Loss-of-value scheme

The loss-of-value scheme is set out in sections 6-12 of the RE Act. The loss-of-value scheme obliges the Concessionaire to pay compensation for any loss of value to residential properties as a consequence of erecting the wind turbines. This obligation to pay compensation lapses if the loss of value does not exceed 1% of the value of the residential property.

The Concessionaire must host a public meeting at which the public is informed about the upcoming project and the loss-of-value scheme. Energinet.dk, which manages the scheme, will also take part at this meeting.

An independent valuation authority will decide the size of the loss of value on the basis of an individual assessment. The Concessionaire and the owner of the residential property can, however, instead choose to enter into an agreement about the amount to be paid. The valuation authority can order the Concessionaire to procure the necessary visualisations and calculations of shadow length and noise for use in the assessment.

Loss-of-value compensation must be paid when the first tower in the wind turbine project is erected.

If the Concessionaire fails to comply with the rules of the loss-of-value scheme, Energinet.dk, which manages the scheme, can withhold the price supplement.

The provisions of the loss-of-value scheme (sections 6-12 of the RE Act) with explanatory notes are available in English, see www.ens.dk/nearshorewind under "Relevant legislation".

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3.10 Labour clause

The Concession Agreement contains a standard ILO (International Labour Organization) labour clause, which entails that the Concessionaire is obliged to ensure that the pay and employment conditions of employees are not less favourable than those established by collective agreement entered into by the most representative social partners in Denmark within the trade or industry concerned and which apply to the entire territory of Denmark for work of the same character. Reference is otherwise made to clause 6 of the Concession Agreement, i.e. Appendix 1.

3.11 Social clause (creation of apprenticeships)

The Concession Agreement contains a social clause, which obliges the Concessionaire to contribute to ensuring that, as far as at all possible, a certain number of positions that are relevant to the establishment and subsequent on site operation and maintenance of the offshore wind farm (both onshore and offshore) can be filled with apprentices. An apprentice means an employee with whom the Concessionaire or the Concessionaire's subcontractors etc. conclude, or have concluded, a training contract. Reference is otherwise made to clause 7 of the Concession Agreement, i.e. Appendix 1.

3.12 Routing onshore and grid connection

The Concessionaire is to supply the total output produced by the offshore wind farm at one electrical point onshore and at a voltage agreed with the grid company or transmission company. The Concessionaire is to operate and maintain the internal collection grid up to the connection point, and bear all the costs, risks and losses associated with this grid. Possible connection points and cable corridors will be defined in the EIA reports.

If the Concessionaire fails to construct the wind farm as prescribed in the Concession Agreement, and if this leads to a loss for the grid company or the transmission company, then the general rules on damages will apply. If the wind farm is connected to the grid through the local distribution grid, the Concessionaire must therefore provide a bank guarantee corresponding to the total expenditures of the local grid company. If the wind farm is connected to the grid through the transmission grid, the Concessionaire must provide Energinet.dk with a guarantee to be paid in the event that the project is not constructed in accordance with the Concession Agreement. For further information reference is made to Appendix 9 and the Concession Agreement.

If routing onshore is realised at transmission level, as soon as the Concession Agreement has been signed, Energinet.dk will be ordered to establish the transmission part of the installations for transmission of power to shore as well as the required grid reinforcements. See Appendix 9.

3.13 Joint and several liability

If the Concession Agreement is entered into with a consortium, all members of the consortium will be jointly and severally liable for all obligations of the Concession Agreement and the associated licences and authorisation.

Furthermore, companies supporting the tenderer financially and thereby contributing to the tenderer's compliance with the economic and financial minimum requirements in the prequalification stage will be jointly and severally liable with the successful tenderer for all obligations of the Concession Agreement and the related licences and authorisation. Supporting companies must therefore co-sign the Concession Agreement.

Where the tenderer is a not yet established company, the company must be established not later than in connection with the signature of the Concession Agreement, and the founding companies will in this connection be required to undertake joint and several liability with the tenderer by co-signing the Concession Agreement.

Any claim arising under the Concession or the related licences and authorisation can thus be raised against (1) any of the participants of the consortium, (2) any company relied on by the tenderer to fulfil the minimum requirements for economic and financial capacity, and (3) any founding company if the tenderer is a not yet established company.

Liability under the joint and several liability will only occur to the extent that the Concessionaire is in breach of the Concession Agreement or the related licences or authorisation, and to the extent that such breach has not been remedied by the Concessionaire after notice to this effect from the Danish Energy Agency. See also clause 8 of the concession Agreement, cf. Appendix 1.

Companies relied on by the tenderer in respect of technical capacity and which have thus contributed to the tenderer's fulfilment of the technical minimum requirements for its prequalification, are not jointly and severally liable with the tenderer. Pursuant to section III.1.3 N of the Contract Notice, however, it is a requirement that the tenderer, not later than at the time of signature of the Concession Agreement, submit to the Danish Energy Agency written and non-terminable contracts with the undertaking relied on by the tenderer in the prequalification stage for compliance with the technical minimum requirements.

The following overall requirements are laid down for duration and right of termination of the contract with a supporting company regarding technical capacity:

- The contract must be validly entered into prior to the tenderer's signing of the Concession agreement, but it needs not be in place before the deadline for submission of best and final offer.
- The contract must be mutually non-terminable for the parties in the contract period, however with a right of termination in the event of material breach and bankruptcy.
- The supporting company must be obliged under the contract to contribute to the performance of the project planning and project management, construction and risk management, procurement and contract management by, to the extent necessary, providing the expertise in the planning and construction phase that the tenderer has relied on in the prequalification stage.

The contract may not be terminated until the time of completion and handover of the parts of the project that the supporting company is to carry out.

4. Description of the procedure and the most important requirements on the Concessionaire

The following is a further description of the procedure in connection with establishment of the offshore wind farm and the most important requirements on the Concessionaire. Reference is also made to the detailed provisions of the Concession Agreement, the licences, and the authorisation.

The procedure and the most important requirements include:

- A) Licence to conduct preliminary surveys
- B) Licence for construction of the offshore installations, supplement to the municipal development plan, and EIA approval for the onshore installations.
- C) The Concessionaire's timetable
- D) Detailed project plan
- E) Electricity production licence and electricity production authorisation

A) Licence to conduct preliminary surveys

The licence to conduct preliminary surveys will be granted to the Concessionaire so as to provide the opportunity of carrying out supplementary geotechnical and geophysical surveys as well as MetOcean and UXO surveys. The licence to conduct preliminary surveys pursuant to section 22 of the RE Act, cf. Appendix 5, will be granted to the successful tenderer upon conclusion of the Concession Agreement.

B) Licence for construction of the offshore installations and the supplement to the municipal development plan with the associated EIA approval for the onshore installations

Upon conclusion of the Concession Agreement with the successful tenderer, a licence to construct the electric power generating plant with an associated electricity supply grid in Danish territorial waters will be granted pursuant to section 25 of the RE Act and section 22a of the Electricity Supply Act, cf. Appendix 6 (licence for construction). The licence for construction will be granted on the basis of the EIA report.

The Danish Nature Agency will issue a supplement to the municipal development plan with an associated EIA report in the relevant municipalities and will, at the same time, grant an EIA approval (for the onshore installations) according to the Executive Order on environmental impact assessment (EIA) of certain public and private works pursuant to the Planning Act, cf. Executive Order no. 1184 of 6 November 2014, (pursuant to the Executive Order on EIA current at that time, Executive Order no. 1510 of 15 December 2010). The onshore construction work can commence once the EIA approval has been granted.

Granting of the licence to the Concessionaire for the construction of the electric power generating plant with the related offshore grid, and the Danish Nature Agency's supplement to the municipal development plan with associated EIA report, must be announced to the public and appeals against the licence may be brought before the Energy Board of Appeal and the Environmental Board of Appeal. There is a four-week time limit for appeal against the licences. The licence for construction may not be exploited until expiry of the four-week appeals period. Decisions by the boards of appeal cannot be appealed to another administrative authority. The Danish Energy Agency refers to the website of the Energy Board of Appeal <http://www.ekn.dk> and to the decision portal of the Environmental Board of Appeal: <http://www.nmknafgoerelser.dk/>

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C) The Concessionaire's timetable

As one of the terms of the licence for construction, the Concessionaire must prepare a detailed timetable for implementation of the project. This timetable must be presented to the Danish Energy Agency by no later than in October 2016.

The timetable must describe how the Concessionaire will organise work in order to ensure connection to the collective grid of the entire offshore wind farm (at least 95% of the wind farm's capacity, cf. the draft Concession Agreement, Appendix 1) by no later than 31 December 2020.

The timetable must include proposed dates for status meetings and other status reporting, etc., as well as milestones for collaboration with the grid company and/or Energinet.dk with respect to the onshore part of the onshore-routing project. Furthermore, the timetable must, as a minimum, contain information about when the Concessionaire expects to:

- Submit an underwater noise forecast as well as a measuring programme and plan for any noise-reducing measures.
- Present a detailed project plan for the construction work (see below).
- Commence construction work.
- Pull cables up to the onshore connection point.
- Commence negotiations with relevant land owners.
- Apply for a licence to exploit the wind energy (electricity production licence, cf. Appendix 7) and a electricity production authorisation (cf. Appendix 8).
- Deliver the first kWh from the first turbine to the grid.
- Connect the last turbine to the collective grid.
- Conduct an offer for sale of shares pursuant to the option-to-purchase scheme and host a public information meeting regarding the loss of value scheme, cf. sections 6-17 of the RE Act.

Once the timetable has been approved, any changes to the timetable will have to be negotiated with the Danish Energy Agency.

Along with the timetable, the Concessionaire must submit a signed coupling agreement and collaboration agreement between the Concessionaire and Energinet.dk and/or the local grid company, regulating the main elements in the collaboration between the parties during the construction and operation phases (see Appendix 9.1).

D) Detailed project plan

As one of the terms in the licence to construct the electric power generating plant with related offshore grid, and as a condition for exploiting the licence for construction work, the Concessionaire must prepare a detailed project plan for the construction work. The detailed project plan must be available by no later than two months before the planned commencement of construction work. Furthermore, it must provide detailed documentation that the terms and conditions in the licence for construction granted are being, or will be met, in due time. The detailed project plan must also contain information about:

- The choice of turbines.
- The choice of foundations.
- Underwater noise management (underwater noise forecast as well as a measuring programme and plan for any noise-reducing measures).
- Voltage.
- The farm array and the final siting of turbines within the area.
- Buoying and marking.
- Location of cable route.

It is expected that the Danish Energy Agency will be able to authorise commencement of the construction work on the offshore wind farm by at the latest two months after the Danish Energy Agency has received sufficient documentation for the detailed project plan.

E) Licence to exploit the wind energy (electricity production licence) and electricity production authorisation

The licence to exploit the wind power pursuant to section 29 of the RE Act and the electricity production authorisation can be applied for, at the earliest, when construction work commences and by no later than two months prior to connection to the grid of the first turbine.

Production of electricity for the collective electricity supply grid must not be carried out until the licence has been obtained. A condition for obtaining the electricity production licence is that the Concessionaire can document that all terms of the construction licence have been complied with or will be complied with.

Pursuant to section 10 of the Electricity Supply Act, electricity production from plants with a capacity of more than 25 MW can only be carried out by undertakings that have obtained an authorisation from the Danish Energy Agency. There are requirements with respect to technical and financial capacity in connection with applications for authorisation to produce electricity. A Concessionaire which has been prequalified in this tendering procedure and which has thereby satisfied the minimum requirements for economic/financial capacity, and which has not changed its corporate structure since the prequalification, is assumed also to satisfy the requirements for financial capacity with regard to an authorisation to produce electricity. There will be requirements for documentation of technical capacity in the operating phase in connection with granting an authorisation. The assessment of whether the Concessionaire satisfies the requirements for technical capacity for this will be on the basis of what is considered necessary to operate, maintain and dismantle the offshore wind farm. Material for use by the Danish Energy Agency in its assessment of the applicant's technical capacity must be submitted with the application.

5. Award criterion

The Danish Energy Agency will award Concession(s) to the tenderer(s) which submit tenders that will enable establishment of the largest total capacity within the framework of 350 MW at the lowest total price. In the event of two (or more) mutually exclusive tenders of the same price, the tenderer having offered the largest development will be awarded the Concession.

Tenders submitted must state a DKK øre price per kWh for 50.000 full-load hours, including a specification of the number of MW the tenderer wants to establish and in which area.

A tenderer can submit several independent and mutually exclusive tenders for different areas and farm sizes. Furthermore, tenderers can submit conditional tenders for the establishment of up to 350 MW in two different areas on the condition that the tenderer is awarded a Concession for the total offered development. In the event of a conditional tender, the individual farm can be priced differently.

Thus, there can be more than one successful tenderer.

There is a price cap for the nearshore wind turbines, so that only tenders which lead to a total average price of no more than DKK øre 70 per kWh will be accepted. If there are not enough tenders for the establishment of 350 MW at an average price of no more than DKK øre 70 per kWh, tenders which entail an average price of more than DKK øre 70 per kWh can only be accepted in the event of agreement among all of the parties to the Energy Agreement of March 2012, cf. examples set out in Appendix 10.

The tender price will be a fixed amount given in DKK (constant in current prices) and will not be indexed. The price is to be stated in DKK øre to max. 1 decimal places.

Using the formula below, the Danish Energy Agency will calculate all possible combinations of tenders which in total add up to 350 MW nearshore wind turbines at the lowest average price. The combination of tenders that provides the lowest price per kWh will win the tendering procedure.

The formula expresses the total average price per kWh for a given combination of tenders that provides a total development of ≤ 350 MW.

$$\text{average price per kWh} = \frac{\sum_{x=1}^{x=y} (B_x * K_x)}{MW_{\text{total}}}$$

Where:

MW_{total} = the total capacity for the calculated combination that is ≤ 350 MW

B_x = the tender price in DKK per kWh offered by tenderer x

K_x = the capacity in MW that tenderer x wants to construct at price B_x

Y = the number of tenderers in the combination being calculated

See Appendix 10 with examples of different outcomes of this award model.

If several incompatible best and final offers are submitted with the same lowest average price for the total development, the tenderers in question will be invited to submit a new offer with a lower DKK price for the same development. The new tender must be available five calendar days after the call for new tenders.

6. Timetable up to the award of the Concession agreement

The tendering procedure is expected to follow the timetable below.

Date	Activity
Until 16 August 2016	Questions can be submitted during this period. All questions must be in writing in English. Questions received later than 16 August 2016 will not be answered. Pls. note that the DEA will not be answering questions during the weeks 28-31 due to holidays.
Thursday 1 September 2016 at 2 pm	Deadline for best and final, binding offers.
Autumn 2016	Expected decision on the successful tender(s). After a ten-day stand-still period, the Concession Agreement will be signed and the licence to conduct preliminary surveys and the construction licence will be awarded to the Concessionaire.

7. Deadline for tenders, reservations and formal requirements

Best and final offer

Tenders can be submitted for different areas and farm sizes. Furthermore, conditional tenders can be submitted as described in clause 5.

In the best and final offer, the tenderer will not be entitled to make reservations on the final tender material.

With the submission of the best and final offer, the tenderer must declare its commitment to constructing the electric power generating plant with related offshore grid and connecting it to the grid in the event that the tenderer is awarded the Concession.

A template for an offer letter which the tenderer can use when submitting the best and final offer and the declaration to undertake to construct the electric power generating plant and connect it to the grid is attached as Appendix 4.

In the event that the tenderer is a company that has not yet been established, the founding companies must independently co-sign the best and final offer, cf. Appendix 4. It should also be noted that if a company that has not yet been established is awarded a Concession, then said company will have to be established before conclusion of the Concession Agreement.

The tenderer will bear the full commercial risk for the kWh-price offered.

Best and final offers must be handed in to the Danish Energy Agency by **no later than Thursday 1 September 2016 at 14.00** at the address stated in section 1.

Tenders received after this date and time will not be considered.

The best and final offer is to be submitted as 1 original, 1 paper copy and 1 electronic copy on USB. In the event of any discrepancy between the hardcopy of the tender and the electronic version, the hardcopy version will prevail. If one or more documents are missing in the hardcopy version, but are found in the electronic version, the Danish Energy Agency reserves the right to rely on the electronic version in respect of the document(s) concerned.

The best and final offer must be marked "BEST AND FINAL OFFER – Nearshore Wind Tender".

Tenders **cannot** be submitted via email.

Language

The Danish Energy Agency has prepared the tender material in Danish. In the event of any discrepancy between the Danish version and the English translation, the Danish version takes precedence.

There is a presumption that the Danish authorities can require that processing of the project is to be conducted in Danish.

8. Conditions for participation in the tendering procedure

Solemn Declaration

With the first indicative offer, the tenderer submitted a solemn declaration stating whether the tenderer has unpaid due debt to public authorities.

Reference is made to Consolidating Act no. 336 of 13 May 1997 on the limitation of debtors' possibilities for participation in public tendering procedures. As a general rule, a contracting body may not accept tenders from a tenderer which has not signed a solemn declaration, or which has unpaid debt due to public authorities exceeding DKK 100,000.

Debt due to public authorities means

- unpaid income and corporation taxes
- other unpaid taxes and duties, including consumption taxes
- unpaid social security contributions.

This is debt to public authorities in Denmark as well as in the country in which the tenderer has its business headquarters.

If, in the period from submitting the declaration in connection with the first indicative offer until the time of submission of the best and final offer, the tenderer, including founding companies in the event that the tenderer is a not yet established company as well as supporting companies (economic capacity), has run up unpaid due debt to public authorities that exceeds DKK 100,000 (one hundred thousand Danish Kroner) or an equivalent amount in another currency, it is the tenderer's responsibility to submit a revised declaration in connection with its best and final offer. If such unpaid debt has not been run up, the tenderer need not enclose the declaration when submitting its best and final offer. If the tenderer does not enclose the declaration with its best and final offer, the Danish

Energy Agency will consider this as evidence that the tenderer still does not have unpaid due debt to public authorities that exceeds DKK 100,000 (one hundred thousand Danish Kroner).

In the event of later amendments to the composition of a prequalified tenderer, cf. clause 15, a solemn declaration must be enclosed for all new legal entities.

9. Changes to the tender material, request for additional material

Questions before submission of tenders

The tenderer can submit written questions regarding the tender material until and including 16 August 2016, cf. clause 6 above. The Danish Energy Agency will strive to provide a written response to all relevant questions before the 22 August 2016. Tenderers are requested to submit their questions in good time before this date.

It is important to the Danish Energy Agency that all potential tenderers be given the opportunity to submit relevant tenders within the framework of the tender specifications, i.e. without reservations for elements in the final tender material. All potential tenderers are therefore encouraged to use the opportunity to submit written questions on the tender material.

Questions must be submitted by e-mail to mcb@ens.dk and ccl@ens.dk.

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Questions and replies will be published on the Danish Energy Agency's website anonymously.

10. Best and final offer

The tenderers must submit their best and final offer on the basis of the final tender material issued by the Danish Energy Agency.

If the Danish Energy Agency identifies one or more reservations on the tender material in the best and final offer, the Danish Energy Agency can reject the tender or ask the tenderer to retract the reservations. The tenderer will not be given the opportunity to quote a new price.

11. Award

Once the Danish Energy Agency has assessed which tender(s) has/have the (total) lowest price, the Agency will decide on the award of Concession(s). This will be presented to the parties to the Energy Agreement for approval.

The Danish Energy Agency will then notify all tenderers about the decision of the parties to the Energy Agreement as well as when the stand-still period will expire (10 days from notification of the award decision).

The Danish Energy Agency reserves the right to cancel the invitation to tender if there are objective reasons for so doing. This may be relevant if the tender prices (the kWh prices) are deemed too high.

Notification of the award decision to the tenderers does not mean that the Concession Agreement has been concluded. The Concession Agreement will not be considered concluded (and the tendering procedure finally completed) until the Concession Agreement has been signed. The Concession Agreement cannot be signed until the expiry of the stand-still period. This period must be at least 10 calendar days calculated from the day after the day when the Danish Energy Agency has submitted notification of the award decision by email to all tenderers. It is expected that the Concession Agreement will be signed by the Danish Energy Agency and the Concessionaire within 50 days of the award decision.

The Concession agreement will be subject to the Danish Parliament (Folketinget) adopting the necessary amendments to the RE Act to allow for the approval of the kWh-price offered, that the project is not obstructed by appeals, and that the Danish Safety Technology Authority authorises expropriation, if necessary, up to the grid connection point. The Concession Agreement will also contain an EU reservation if clarification hereof has not been achieved before conclusion of the Concession Agreement. For a more detailed description of the reservations, see clause 3.2 above and clause 2 of the Concession Agreement, cf. Appendix 1.

Provision of the guarantee of DKK 100 million (one hundred million Danish kroner) for the retention penalty, cf. clause 3.5, is a precondition for the Danish Energy Agency signing the Concession agreement.

Where the successful tenderer has relied on other companies in order to fulfil the technical minimum requirements in connection with the prequalification, it is furthermore a precondition for the Danish Energy Agency's signature of the Concession Agreement, that the successful tenderer submits signed and non-terminable contracts with the undertaking(s) relied on by the tenderer in the prequalification stage for compliance with the technical minimum requirements.

When the Concession Agreement has been signed, the Danish Energy Agency will grant the Concessionaire licences for preliminary surveys and for construction of the electric power generating plant with an associated electricity supply grid in Danish territorial waters, cf. Appendix 5 (licence for preliminary surveys) and Appendix 6 (licence for construction).

12. Processing of tenders

Tenderers are not permitted to attend the opening of the tenders. The Danish Energy Agency will treat the tenders confidentially. However, the Danish Energy Agency is required to publish information on the contents of the successful tender. The Danish Energy Agency is required to give access to documents pursuant to the rules on access to documents in the Danish Public Information Act, the Danish Public Administration Act and the Act on Environmental Information.

The Danish Energy Agency is not obliged to return the tender to the tenderer.

The tenderer must observe absolute confidentiality to third parties concerning matters which might come to the tenderer's knowledge in connection with the tendering procedure.

The Danish Energy Agency reserves the right to make use of external assistance when assessing tenders and other documentation, if this should be required.

The Danish Energy Agency considers it essential that the invitation to tender provides effective competition among the applicants, and that tenderers are treated on equal terms.

13. Costs of participation and period of validity of tenders

The tenderer is bound by its best and final offer until the Danish Energy Agency has established the Concession Agreement with the successful tenderer(s) and/or the procurement process has been completed. However, the tenderer will not be bound by its final and best offer for longer than ~~six~~four months.

The tenderer's costs in connection with the tendering procedure are of no concern to the Danish Energy Agency. In this connection, note that the Danish Energy Agency assumes no liability in the event that the necessary legislation is not adopted, if the necessary legislation cannot be implemented due to lack of compatibility with the EU state aid rules, if complaints prevent the project from being implemented, or if the Danish Safety Technology Authority does not authorise expropriation, if required, up to the grid connection point, cf. clause 3.2.

However, in the event of cancellation of a Concession, Energinet.dk will reimburse the amount paid by the Concessionaire to cover the costs of preliminary surveys.

14. Changes to the composition and identity of the tenderer during the tendering procedure

As a general rule, there should not be changes to the composition of the tenderer during the tendering procedure. As stated above in clause 3.8, the Danish Energy Agency will, however, accept that the successful tenderer(s) assign an awarded Concession Agreement to a newly established company in the period between award of the Concession Agreement and signature of the Concession Agreement, to the extent that the assignment is solely justified in the need for compliance with the option-to-purchase scheme under section 13(5) of the RE Act. In the event of such assignment, the successful tenderer(s) must undertake joint and several liability with the newly established company.

If a tenderer which has relied on the economic/financial capacity or technical capacity of other legal entities (e.g. a partner, a parent company or one or more affiliated companies) requires replacement of such legal entity on which it has relied with another legal entity in the course of the tendering procedure, this can only take place with the prior written consent from the Danish Energy Agency. When deciding whether to allow a change, the Danish Energy Agency will assess applicable law at the time of the request and the general nature and extent of the change, including whether the tenderer would have been prequalified with the relevant change.

As a main rule, a tenderer cannot be replaced or supplemented during the tender procedure by one or more economic operator(s) in order to form, for example, a consortium. If a tenderer should nevertheless wish to do so, this will also require the prior written consent of the Danish Energy Agency. The Danish Energy Agency will in its evaluation in this respect attach weight to the above issues.

Where the tenderer consists of a group of economic operators, it will also be subject to a case-by-case evaluation whether a tenderer will maintain the same identity if one of the economic operators wishes to withdraw from the consortium. If the other economic operator(s) still wish(es) to submit tender, this can only take place with the prior written consent of the Danish Energy Agency. The Danish Energy Agency will in its evaluation in this respect attach weight to the above issues.

15. Further information

Reference is made to:

- All information about the invitation to tender, including replies to questions and changes to the tender material will be published on the website of the Danish Energy Agency:
www.ens.dk/nearshorewind
- All information about preliminary survey material can be access via
<http://www.ens.dk/en/supply/renewable-energy/wind-power/offshore-wind-power/nearshore-wind-tenders/preliminary-surveys>

Feltkode ændret

Appendix 1

Draft AGREEMENT regarding the obligation to construct and connect to the grid an offshore electric power generating plant with internal collection grid, [Name] Offshore Wind Farm, in [Area] (Concession Agreement)

Agreement

between

The Danish Energy Agency (*Energistyrelsen*)

Amaliegade 44

DK-1256 Copenhagen K

and

.....

.....

.....

CVR no. (business reg. no.)

(in the following referred to as the Concessionaire)

Formateret: Engelsk (USA)

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

- 1.0.1 The Concessionaire shall construct and connect to the grid an electric power generating plant with internal collection grid of [XX] MW, [Name] Offshore Wind Farm, in [Area] 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), cf. Appendix 6. 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. 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.
- 1.0.2 By no later than ~~10 October 2016~~ January 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 licence for construction.
- 1.0.3 By 31 December 2019, the Concessionaire shall commence the construction work regarding construction of the offshore wind farm.
- 1.0.4 By 31 December 2020 the Concessionaire shall connect the entire offshore wind farm to the collective grid, cf. clause 1.3. 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 1 January 2021, the production subject to price supplement shall be reduced as stated in clause 4.3 below.
- 1.0.5 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.
- 1.0.6 The Concessionaire shall at its own expense dismantle and decommission [Name] Offshore Wind Farm, in [Area], in accordance with the terms and conditions of the licence to construct the offshore wind farm, cf. Appendix 6, the licence to exploit the energy (the electricity production licence), cf. Appendix 7, the authorisation to produce electricity (the electricity production authorisation), cf. Appendix 8, as well as the EIA approval issued by the Danish Nature Agency. 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. 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.

1.1 Retention penalty

- 1.1.1 If, despite the above obligations, cf. clause 1.0.1, 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. This retention penalty is an agreed penalty, and after conclusion of this Concession Agreement it shall amount to DKK 100 million. 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. *[If a Concessionaire has been licenced to construct two neighbouring wind farms under this tendering procedure, it will suffice if construction work has commenced for one of the wind farms.]*
- 1.1.2 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. 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. The Danish Energy Agency cannot make a claim for payment to the Concessionaire that exceeds the amount of the retention penalty. 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.
- 1.1.3 The retention penalty will in full fall due in accordance with clause 1.1.1. and shall be payable by the Concessionaire upon written demand from the Danish Energy Agency ~~to the Concessionaire~~. 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.
- 1.1.4 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 1.2.4.

1.2 Guarantee for retention penalty

- 1.2.1 As security for payment of the above-mentioned retention penalty, at the same time as conclusion of this Concession Agreement a demand guarantee of DKK 100 million shall be provided. The guarantee shall be provided as a demand guarantee in accordance with Appendix 1.1 or as a parent-company guarantee, cf. Appendix 1.2. 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
- 1.2.2 If the guarantee is provided as a demand guarantee, the Guarantor shall be a recognised financial institution, insurance company, or similar, which has been approved by the Danish Energy Agency in advance. The Guarantor shall have a long-term credit rating of at least A- (Standard & Poor's and Fitch) or A3 (Moody's) or equivalent rating from another recognised international rating agency.
- 1.2.3 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.
- 1.2.4 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, [Name] 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 2.

1.3 Extension of the time limit

1.3.1 The Concessionaire ~~may request~~ ~~has the right to~~ ~~shall be entitled 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 ~~or similar~~ 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.

1.3.2 Extensions of the time limit are to correspond to the actual delay caused by the relevant circumstances mentioned in clause 1.3.1(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 shall approve the extension of the time limit.~~ The Danish Energy Agency will assess the relevant circumstances and the actual delay on the basis of documentation from the Concessionaire.

1.3.3 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. ~~Upon request,~~ 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.

Terms and conditions of the Concession Agreement

- 2.1 The Concession Agreement, and thereby the Concessionaire's obligation to construct and connect to the grid the electric power generating plant with internal collection grid, shall, on the part of the Danish Energy Agency, be conditional upon the Danish Parliament adopting the required amendments to the Promotion of Renewable Energy Act which entitle the Concessionaire to the price supplement and related terms contained in the Concessionaire's final tender. If the Danish Parliament fails to adopt the required amendments to the RE Act before 1 January 2017, this Concession Agreement shall lapse, unless another agreement can be concluded between the Danish Energy Agency and the Concessionaire within the framework of the current procurement regulations.
- 2.2 The Concession is conditional upon the European Commission approving by no later than 1 January 2017 that the terms of the tendering procedure for the nearshore wind farm are compatible with EU state aid regulations. In the event that the European Commission considers that the tendering procedure is not compatible with EU state aid regulations, the Concession shall lapse as it will not be possible for the legislation to be put into force unless conclusion of another agreement between the Danish Energy Agency and the Concessionaire is possible under existing procurement regulations.
- 2.3 The Concession is furthermore conditional upon a majority of the Danish Parliament agreeing on a treaty-compatible financing of the price supplement for the nearshore wind farms by no later than 1 January 2017, and upon the European Commission accepting this financing solution. If no treaty-compatible agreement on financing of the price supplement has been reached by no later than 1 January 2017, the Concession will lapse as it will not be possible for the legislation to be put into force, unless conclusion of another agreement between the Danish Energy Agency and the Concessionaire is possible under existing procurement rules.
- 2.4 The Concession shall also 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.
- 2.5 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 3.1 and 3.2 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 3.1 and 3.2 plus interest from the date of payment calculated as the discount rate plus 1 per cent to the Concessionaire.

- 2.6 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 2.1-2.4.](#)

Responsibility and payment of costs of various preliminary surveys

- 3.1 Energinet.dk has 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 which relate to *[the area covered by the Concession]*, cf. section 23(3) of the Promotion of Renewable Energy Act, Consolidating Act no. 122 of 6 February 2015, referred to hereafter as the RE Act.

- 3.2 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.

- 3.3 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.

- 3.4 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.

Terms of settlement

The main principles of the financial terms and conditions regarding settlement are set out below (clauses 4.1-4.15). Reference is furthermore made to the provisions of the RE Act

- 4.1 For electricity produced at the electric power generating plant, [Name] Offshore Wind Farm, in [Area], a price supplement for [x] 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 [x] øre per kWh .
- 4.2 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 or 2) stated by the Nordic electricity exchange, Nordpool. The number of TWh eligible for subsidy will be fixed on the basis of the successful tender(s) in connection with the award of the Concession (the number of MW*50,000 FLH/1,000,000¹). 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.
- 4.3 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 [YY] TWh [YY = number of TWh eligible for subsidy] 50,000 full-load hours. 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 1.3.
- 4.4 The offered kWh-price by the Concessionaire will not be indexed.
- 4.5 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
- 4.6 Payment shall be made on a monthly basis, and payment will be made by Energinet.dk.
- 4.7 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

¹ Divide by 1,000,000 to convert to TWh.

granted for electricity production corresponding to 50,000 full-load hours 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 4.3 above.

- 4.8 If the market price (the hourly rate on the spot market) of electricity produced at the plant exceeds DKK *øre* [*the tender price*] 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.
- 4.9 The Concessionaire itself shall ensure the sale of the production in the electricity market and pay costs in this connection.
- 4.10 Balancing costs for the electricity from the wind turbines shall not be reimbursed.
- 4.11 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.
- 4.12 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.
- 4.13 The Concessionaire may not receive any other state aid in connection with the establishment and grid connection of the electrical power generating plant [Name] Offshore Wind Farm, in [Area] than the price supplement without approval from the Danish Energy Agency.
- 4.14 The price supplement shall be subject to the electricity from the offshore wind farm being supplied to the collective electricity supply grid.
- 4.15 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.

5. Compensation for reductions

- 5.1 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.

5.2 The payment is not limited to a specific amount.

5.3 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.

5.4 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.

5.5 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 50,000 full-load hours 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.

5.6 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.

5.7 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.

5.8 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.

5.9 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

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can be informed of by contacting Energinet.dk.

<http://energinet.dk/SiteCollectionDocuments/Danske%20dokumenter/EI/Kompensation%20til%20havvindm%C3%B8lleparker%20ved%20p%C3%A5budt%20nedregulering.pdf>

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- 5.10 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..
- 5.11 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.

6. Labour clause

- 6.1 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.
- 6.2 The Concessionaire and any subcontractors shall ensure that the workers are informed of the provisions of the labour clause.
- 6.3 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.
- 6.4 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.
- 6.5 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.
- 6.6 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.

- 6.7 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.
- 6.8 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.

7. Social clause regarding apprenticeships and placements

- 7.1 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.

- 7.2 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.
- 7.3 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.

[Insert this heading if the paragraphs below are relevant]

8. Joint and several liability

[Insert the following text prior to signature of this Concession Agreement if the Concessionaire is a consortium]

"8.1. "Consortia"

8.1.1. *The Concessionaire is a consortium comprising:*

[Insert names of participants in the consortium]

8.1.2. *The above participant(s) in the consortium has/have assumed joint and several liability 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 the participants in the consortium shall assume liability in respect of all obligations arising out of this Concession Agreement and related licences and authorisation which have been granted or might be granted in future to the Concessionaire. Any claims put forward by a third party, e.g. due to pollution/contamination or personal injury, are not covered by the requirement for joint and several liability.*

Therefore, the Danish Energy Agency may direct the full claim against any participant in the consortium in the event that the Concessionaire breaches this Concession Agreement and/or the terms and conditions of the mentioned licences and authorisation."

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

8.2.1. *The Concessionaire is a newly established company, and tender for this concession agreement is thus submitted by the economic operator(s) below on behalf of the Concessionaire:*

[The details of the relevant parties must be provided in accordance with the application]

8.2.2. *The above economic operator(s) has/have 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/these other economic operator(s) 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/these other economic operator(s) which the Danish Energy Agency does not have towards the Concessionaire at any given time.*

8.2.3. *In order for the joint and several liability of this/these other economic operator(s) 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/these other economic operator(s) according to **this** provision this/these other economic operator(s) have/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.*

8.2.4. Where the Danish Energy Agency's claim against the Concessionaire is covered by a guarantee according to clause 1.2.1. 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/these other economic operator(s) 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/these other economic operator(s) 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/these other economic operator(s), clause no. 15 below regarding disputes shall apply. This/these other economic operators have by its/their signature to this Concession Agreement accepted these terms and conditions.”]

[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on the economic or financial capacity of other entities:]

"8.3. Economic operators on which the Concessionaire has relied in respect of its financial or economic capacity

8.3.1. *In the application to participate in the tendering procedure, the Concessionaire has relied on one or more economic operators which are not a part of the Concessionaire in respect of its economic and financial capacity. This/these other economic operator(s) is/are the following:*

[The details of the relevant parties must be provided in accordance with the application]

8.3.2. *The above economic operator(s) has/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 this/these other economic operator(s) 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 this/these other economic operator(s) which the Danish Energy Agency does not hold with regard to the Concessionaire at any given time.*

8.3.3. *In order for the joint and several liability of this/these other economic operator(s) 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 breach within a reasonable deadline set by the DEA. If the DEA make claims against this / these other economic operator(s) according to this provision, this/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.

8.3.4. Whereas the Danish Energy Agency's claim against the Concessionaire is covered by a guarantee according to clause 1.2.1 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/these other economic operator(s) 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/these other economic operator(s) 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/these other economic operator(s), the dispute clause 151 below shall apply. This/these other economic operators have by its/their signature to this Concession Agreement accepted these terms and conditions."

9. Transfer of the Concession by the Danish Energy Agency

9.1 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).

10. Transfer of the Concessionaire to a third party

10.1 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.

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

10.3 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.

10.4 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.

10.5 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.

[The following text is to be inserted prior to signature of this Concession Agreement if the Concessionaire is a capital company]

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

11.1. *At the time of conclusion of the Concession Agreement, the Concessionaire is owned by the following parties [name and ownership share]. The parties have control of the Concessionaire with their respective ownership shares and no party has been given a veto right relative to significant decisions or right to appoint the majority of the board of directors, or similar [otherwise, the veto rights, etc., must be stated, and the text above must be adjusted].*

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

11.3. *"Change of control" shall mean the transfer of a majority of shares in the Concessionaire and/or changes to the rights stated in clause 11.1.*

11.4. *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.*

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

11.6. *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.*

11.7. *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.*

11.8. *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.*

11.9 *If a shareholder which initially assumed joint and several liability pursuant to the Concession Agreement as a founding company pursuant to clause 8.2 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.*

[The following text is to be inserted prior to signature of this Concession Agreement if the Concessionaire is a consortium]

12. Exit, replacement and admission of consortium members (changes)

12.1 *Replacement, exit or admission of members in a consortium is generally not permitted and, at all events, requires prior written consent from the Danish Energy Agency.*

12.2 *Consent to replacement, exit or admission is only granted if:*

- *the Concessionaire is still assessed to have the required economic, financial and technical capacity to establish, operate, maintain and decommission the offshore wind farm after the change. This assessment of whether the Concessionaire still 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 change.*
- *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.*

12.3 *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 change.*

12.4 *However, regardless of the above, the Concessionaire is entitled to remove, replace or admit new members of the consortium as stipulated in clauses 12.5-12.7 following a written consent from the Danish Energy Agency.*

12.5 *Allowed changes (exit or replacement):*

a) exit of consortium members from the consortium

The Concessionaire is entitled to allow consortium members to exit the consortium if the role of the relevant consortium member in the best and final offer was limited to a specific phase of the project (e.g. the construction phase).

The consent from the Danish Energy Agency to the exit of a consortium member requires that all obligations of the Concessionaire in relation to this phase be fulfilled in accordance with the Concession Agreement (for example, a consortium member whose participation only relates to the construction phase will not be able to exit the consortium until the offshore wind farm has been established and connected to the grid in accordance with this Concession Agreement).

b) replacement of consortium members

The Concessionaire is entitled to replace a consortium member (an original member) if the replacement is part of a total or partial succession as a consequence of reorganisation of the original member (e.g. a merger).

To the extent that an original member does not exit as part of the reorganisation, such replacement shall not influence the liabilities and obligations of the original member to the Danish Energy Agency according to this Concession Agreement. Thus the original member shall still have joint and several liability to the Danish Energy Agency for any requirement arising from conditions originating from before the date of the replacement.

In the event of partial succession (e.g. demerger, in which the Concession Agreement is transferred to another legal entity without the original member exiting the consortium) the new consortium member shall assume joint and several liability with the original member to the Danish Energy Agency for all requirements arising from conditions originating from before the date of the replacement.

If the replacement takes place as a consequence of bankruptcy of the original member, depending on the specific circumstances, cf. also below about significant changes, the Danish Energy Agency may consent to that the new member is not jointly and severally liable with the original member for requirements arising from conditions originating from before the exit of the original member from the consortium.

Moreover, the Concessionaire is entitled to replace a consortium member, where this takes place as part of an internal reorganisation (e.g. establishment of a 100% owned and controlled subsidiary company by a consortium member, which enters the consortium instead of the original consortium member). Such replacement requires both consortium members (the original as well as the new member) to assume

joint and several liability for all requirements and obligations according to the Concession Agreement. Subsequent transfer of ownership to or control of the new member to a third party shall generally be deemed a significant change, cf. below, which cannot be accepted unless the specific circumstances associated with the transfer fall under one of the changes allowed according to this provision.

12.6 *The Concessionaire is only entitled to allow a consortium member to exit or be replaced pursuant to clause 12.5 above if:*

- *After the change, where this is desired to be implemented before grid connection of the offshore wind farm, the Concessionaire still fulfils the original criteria for the qualitative selection during the tendering procedure for this Concession Agreement, and the change does not otherwise lead to significant changes of the Concession Agreement.*
- *After the change, where this is desired to be implemented after grid connection of the offshore wind farm, the Concessionaire still has the required economic, financial and technical capacity to operate, maintain and dismantle the offshore wind farm. The assessment of what constitutes the required economic, financial and technical capacity will be decided by the Danish Energy Agency following a concrete assessment at the time the Concessionaire requests a change.*
- *To the extent necessary, the Danish Energy Agency will consent 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.*

12.7. *The Concessionaire is entitled to admit new consortium members (without the exit of an original member) if the new member submits a solemn declaration concerning debt to public authorities, cf. the principles in section 135(3) of Consolidating Act no. 1564 of 15 December 2015 on the Act on Tender Procedures.*

12.8. *The Danish Energy Agency is entitled to reject a request to exit, replace and admit consortium members if, according to an assessment by the Danish Energy Agency, the relevant change:*

a) does not fall under one or more of the changes allowed in clauses 12.5-12.7 above,

b) cannot be allowed under the relevant tendering and procurement regulations and / or under the regulations for the relevant licenses and authorisation to construct and / or operate an offshore wind farm in Denmark.

12.9. *If the Concessionaire requests exit, replacement or admission of a consortium member pursuant to clauses 12.5-12.7 above, the Danish Energy Agency shall not unduly withhold its consent and a refusal shall be justified in writing.*

12.10. *For the Danish Energy Agency's assessment of a request for exit, replacement or addition of a new consortium member, the Concessionaire shall enclose with the request documentation for the economic, financial and technical capacity of the new consortium member.*

12.11. *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.*

[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on the economic or financial capacity of others.]

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

13.1. *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.*

13.2. *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 and financial 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.

13.3. *The Danish Energy Agency may only refuse consent to a transfer if there are objective reasons for doing so.*

13.4. *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.*

13.5. *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.*

13.6. *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.

- 13.7. *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 8.3 of this Concession Agreement originating from before the relevant exit.*

[Insert the following text prior to signature of this Concession Agreement if the Concessionaire has relied on the technical capacity of others.]

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

- 14.1. *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.*
- 14.2. *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.*
- 14.3. *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."*
- 14.4. *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.*

15. Disputes and choice of law

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

16. Duration of the Agreement

16.1. This Agreement shall become effective upon its signature.

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

17. Language

17.1. 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.

18. 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 8]. These economic operators shall receive a copy of the Agreement in each language version.

Date:

Date:

For the Danish Energy Agency

For the Concessionaire

[Add here the signatures of additional parties, if any, to sign the Concession Agreement, cf. clause 8 about joint and several liability]

Appendix 1.1

Model Demand Guarantee

1. Principal/Guarantee amount

At the request and expense of *[insert the name of the Concessionaire, CVR no. (business reg. no.), address, etc.]* (the Concessionaire), *[recognised financial institution, insurance company, or similar]* (the Guarantor) hereby confirms to provide an irrevocable and unconditional guarantee to the Danish Energy Agency in the amount of DKK [100,000,000] (one hundred million Danish Kroner).

2. Background for the Guarantee

The amount shall serve as full security for the payment of a retention penalty which the Concessionaire might become liable to pay pursuant to the Concession Agreement of [Date], with any subsequent amendments, regarding the obligation to construct and connect to the grid an electric power generating plant offshore with internal collection grid, [Name] Offshore Wind Farm in [Area].

3. Effective date of the Guarantee

This Guarantee shall apply from today's date.

4. Payment under the Guarantee

The Guarantee amount shall be paid to the Danish Energy Agency upon the first written demand for payment to the Guarantor stating that the Danish Energy Agency is entitled to the amount demanded pursuant to the agreement mentioned in clause 2 above (the Concession Agreement).

The Guarantee shall be paid on demand without examination or other documentation of the legitimacy of the demand. Payment shall take place no later than seven calendar days after receipt of the demand for payment from the Danish Energy Agency.

If the demand for payment is not met, irrespective of the reason, the Guarantor shall be liable to pay default interest from 20 days from the demand for payment was made until payment takes place. The size of the default interest will be determined pursuant to section 5 of the Danish Interest on Overdue Payments Act.

5. Expiry (release) of the Guarantee

This Guarantee shall be valid until the Danish Energy Agency informs the Guarantor in writing that the Guarantee has been released. If the Guarantee is partially released, the Guarantee shall remain valid to cover the amount which has not been released.

The Danish Energy Agency shall release the Guarantee no later than one month after the Concessionaire's state-authorised public accountant or registered public accountant has submitted a statement documenting that the Concessionaire, after having been awarded the Concession, has paid

expenses (i.e. paid expenses) of DKK 300,000,000 (three hundred million Danish Kroner) including VAT for the planning, projecting and construction of the electric power generating plant, [Name] Offshore Wind Farm; or when the first kWh from the first turbine has been supplied to the collective grid; or if the Concession lapses for reasons described in clause 2 of the Concession Agreement. Expenses include both internal and external substantiated expenses.

If the Danish Energy Agency has requested further documentation for expenses paid of DKK 300,000,000 as a condition for releasing the Demand Guarantee, the Danish Energy Agency shall not be obliged to release the Guarantee until one month after the additional documentation has been received.

The Guarantee shall be returned to the Guarantor with an endorsement of release as soon as the Guarantee has been released in full.

6. Rating

By its signature to this Guarantee, the Guarantor declares that it has a long-term credit rating of at least A- (Standard & Poor's and Fitch) or A3 (Moody's) or equivalent rating from another recognised international rating agency.

7. Transfer

The Guarantor accepts the right of the Danish Energy Agency pursuant to the agreement mentioned in clause 9.1 in the Concession Agreement 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 the Concession Agreement are transferred, in whole or in part, to any of the mentioned parties.

8. Choice of law and venue

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

Date

.....

Signature of Guarantor

Appendix 1.2

Model Parent Company Guarantee

1. Principal/Guarantee amount

At the request and expense of *[insert the name of the Concessionaire, CVR no. (business reg. no.), address, etc.]* (the Concessionaire), *[insert the name of the parent company, CVR no. (business reg. no.), address, etc.]* (the Guarantor), hereby confirms to provide an irrevocable and unconditional guarantee to the Danish Energy Agency (*Energistyrelsen*) in the amount of DKK [x] (*[complete in letters]* Danish Kroner).

2. Background for the Guarantee

The amount shall serve as full security for the payment of a retention penalty which the Concessionaire might become liable to pay pursuant to the Concession Agreement of [date] with any subsequent amendments regarding the obligation to construct and connect to the grid an electric power generating plant offshore with internal collection grid, [Name] Offshore Wind Farm in [Area].

3. Effective date of the Guarantee

This Guarantee shall apply from today's date.

4. Payment under the Guarantee

The Guarantee amount shall be paid to the Danish Energy Agency upon the first written demand for payment to the Guarantor stating that the Danish Energy Agency is entitled to the amount demanded pursuant to the agreement mentioned in clause 1.1 (the Concession Agreement).

The Guarantee shall be paid on demand without examination or other documentation of the legitimacy of the demand. Payment shall take place no later than seven calendar days after receipt of the demand for payment from the Danish Energy Agency.

If the demand for payment is not met, irrespective of the reason, the Guarantor shall be liable to pay default interest from 20 days from the demand was made until payment takes place. The size of the default interest will be determined pursuant to section 5 of the Danish Interest on Overdue Payments Act.

5. Expiry (release) of the Guarantee

This Guarantee shall be valid until the Danish Energy Agency informs the Guarantor in writing that the Guarantee has been released. If the Guarantee is partially released, the Guarantee shall remain valid to cover the amount which has not been released.

The Danish Energy Agency shall release the Guarantee no later than one month after the Concessionaire's state-authorised public accountant or registered public accountant has submitted a

statement documenting that the Concessionaire, after having been awarded the Concession, has paid expenses (i.e. paid expenses) of DKK 300,000,000 (three hundred million Danish Kroner) including VAT for the planning, design and construction of the electric power generating plant, [Name] Offshore Wind Farm; or when the first kWh from the first turbine has been supplied to the collective grid; or if the Concession lapses for reasons described in clause 2 of the Concession Agreement. Expenses include both internal and external substantiated expenses.

If the Danish Energy Agency has requested further documentation for expenses paid of DKK 300,000,000 as a condition for releasing the Demand Guarantee, the Danish Energy Agency shall not be obliged to release the Guarantee until one month after the additional documentation has been received.

The Guarantee shall be returned to the Guarantor with an endorsement of release as soon as the Guarantee has been released in full.

6. Transfer

The Guarantor accepts that the Danish Energy Agency pursuant to clause 9.1 in the Concession Agreement can transfer its rights and obligations under the 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 the Concession Agreement are transferred, in whole or in part, to any of the mentioned parties.

7. Choice of law and venue

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

Date

.....

Signature of Guarantor

Appendix 4

Template for best and final offer letter and declaration on obligation to establish and connect an offshore electric power generating plant with internal collection grid, [Name] Offshore Wind Farm, in [Area]

[A tenderer can submit several independent and mutually exclusive tenders for different areas and farm sizes. "Mutually exclusive" tenders means tenders which, in combination, exceed the maximum development of 350 MW.

Furthermore, tenderers can submit conditional tenders for the establishment of up to a total of 350 MW in two different areas on the condition that the tenderer is awarded a concession for the total offered development. In the event of a conditional tender, the individual farm can be priced differently. Each independent tender must be submitted in a separate appendix.]

1. Best and final offer

The undersigned tenderer hereby submits its best and final offer of the following kWh price:

DKK_øre _____ per kWh for 50,000 full-load hours.

[The price is to be stated in DKK to max. 1 decimal places.]

The tender (offer) concerns electricity produced at [Name] Offshore Wind Farm in [Area] at [XX] MW.

For electricity produced at the [Name] Offshore Wind Farm in [Area] of [XX] MW, a price supplement will be granted which is fixed so that the supplement and the market price fixed pursuant to section 51(2), no. 1 of the RE Act in combination make up the price per kWh stated above.

The tender price is a fixed amount given in DKK øre (constant in current prices) and will not be indexed.

The tenderer will bear the full commercial risk for the kWh-price offered.

[In the event of a conditional tender, the following text should be added: This tender is conditional upon the undersigned being awarded a concession for establishment and connection to the grid of an electric power generating plant with collection grid for [Name] Offshore Wind Farm in [Area] pursuant to the undersigned's separate tender of [date].

2. Declaration

The undersigned tenderer hereby undertakes to construct and connect to the grid an electric power generating plant with routing onshore grid for [Name] Offshore Wind Farm in [Area] if the concession is awarded in accordance with the timetable in the tender specifications.

The obligation to construct the electric power generating plant with collection grid and connect it to the grid applies on the terms and conditions set out in the tender material, including Appendix 1 - draft agreement regarding the construction and connection to the grid of an electric power generating plant with collection grid, [Name] Offshore Wind Farm, in [Area], and in this offer.

The undersigned furthermore declares that the undersigned has complied with all requirements, if any, for repayment of subsidy which the undersigned may have received and which the European Commission in a previous decision has declared illegal and incompatible with the EU single market.

3. Details about the tenderer

Name of the tenderer/grouping of economic operators:

[State the exact name of the tenderer, and for groupings/consortia, the name of all members of the grouping/the consortium].

The exact names and CVR numbers (business reg. numbers), or similar, of the tenderer/the grouping/the consortium and all members:

[State the relevant name(s) and identification number(s) of the tenderer/the grouping.]

4. Signature

_____ on _____
place date

Signature of the tenderer

Name:

Title:

[In the event that the tenderer is a company that has not yet been established, the founding companies must co-sign the offer, cf. clause 7 of the tender specifications. If so, the text below should be inserted in the best and final offer].

[The above tenderer is a company that has not yet been established. The current offer has therefore been co-signed independently by the companies below as founding companies pursuant to clause 7 of the tender specifications.

By signing below, the companies listed guarantee the validity of the offer and they guarantee the establishment of the tenderer if the tenderer is awarded a concession under this tendering procedure. If the tenderer has not been established before conclusion of the Concession Agreement, the signing companies moreover guarantee fulfilment of the Concession Agreement.

On behalf of [name of founding company]

_____ on _____
place date

[signed on behalf of founder]
Name:
Title:

On behalf of [name of founding company]

_____ on _____
place date

[signed on behalf of founder]
Name:
Title:

Appendix 5

Draft licence for preliminary surveys of [Name] Offshore Wind Farm with internal collection grid in [Area]

("Licence to conduct preliminary surveys"):

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It should be emphasised that a number of the terms and conditions in this licence refer to acts and regulations issued pursuant to specific legislation under the auspices of other authorities than the Danish Ministry of Energy, Utilities and Climate. The Danish Energy Agency cannot guarantee that all relevant regulations etc. that the Concessionaire is obligated to follow have been mentioned in this licence. In this context it should be noted that amendments to current regulation may take place at any time and that the Concessionaire should therefore be aware that current legislation in force is to be complied with.

Costs incurred as a result of terms and conditions imposed on the basis of current legislation are of no concern to the Danish Energy Agency.

The licence pursuant to section 22 of the Promotion of Renewable Energy Act (the RE Act), cf. Consolidating Act no. 1330 of 25 November 2013, is granted on the following terms and conditions:

1. General terms and conditions

- 1.1 A licence to conduct preliminary surveys is granted to the Concessionaire based on the tender (offer) submitted on *[date September]* 2016, cf. section 22 of the RE Act.

- 1.2 The licence to conduct preliminary surveys will be valid until the Danish Energy Agency has approved the detailed project plan, cf. the construction licence in Appendix 6. Otherwise the time limits stated in the Agreement regarding the obligation to construct and connect to the grid an electric power generating plant with internal collection grid, [Name] Offshore Wind Farm in [Area] (the Concession Agreement), apply.
- 1.3 If the area covered by the licence (or areas within this area) is not subject to – or is exempt from – Danish sovereignty pursuant to international law (including by international agreement), the Concessionaire must respect any resulting reduction of the area without the right to make claims against the Danish Energy Agency or the Danish State in general.
- 1.4 The licence does not entail any restrictions on the sovereignty of the Danish State over Danish territorial waters or the exclusive right of the Danish State to the exclusive economic zone. The licence does not therefore, within the area covered by the licence, preclude other operators than the Concessionaire from being granted a licence to conduct other forms of activity than the activities covered by this licence. In this connection the Danish Energy Agency will ensure that any such activities are not of major inconvenience to activities covered by this licence.

2. Area covered by the licence

- 2.1 The Concessionaire is entitled to carry out preliminary surveys in an area of [xx] km². The coordinates of the preliminary-survey area and for the two possible corridors for routing onshore of the internal collection grid are provided in the table below.
[Table with coordinates stated in UTM.]
[Map of the offshore wind turbine area with coordinates.]
- 2.2 Surveys may be carried out in the entire [xx] km² area. However, the planned wind turbines may only cover an area of [xx] km², excluding the corridors for routing onshore of the internal collection grid. [An offshore wind farm of 200 MW may cover a maximum of 44 km² within the area, excluding the corridors for routing onshore of the internal collection grid. The area permitted will be scaled down if the desired farm size is smaller, for example, a 100 MW park may cover no more than 22 km². For Bornholm, the farm must be no more than 50 MW and therefore the area covered may be no more than 11 km²]. See the licence for construction for a more detailed description of the calculation of the [xx] km².

3. Procedure and requirements in connection with preliminary surveys

- 3.1 It should be noted that, prior to the preliminary surveys already carried out, Energinet.dk prepared an impact assessment for these surveys. However, it may be necessary to carry out other surveys than those carried out by Energinet.dk, and if such surveys are not within the same framework as the

preliminary surveys carried out by Energinet.dk, a new impact assessment may need to be prepared.

- 3.2 Prior to commencement of physical preliminary surveys, the Concessionaire must inform the Danish Energy Agency of the surveys it will undertake as well as declare whether these surveys will be within the framework of the aspects examined in the EIA report and the impact assessment. At the same time, the Concessionaire must also submit a survey plan indicating the method and timetable for the preliminary surveys.
- 3.3 If the Concessionaire intends to carry out preliminary surveys which are not within the framework of the aspects examined in the EIA report and the impact assessment, the Concessionaire must also submit a preliminary assessment of the possible impacts of these preliminary surveys. The assessment should cover possible impacts in designated international nature reserves (habitat sites, special bird protection sites and Ramsar areas) as well as possible impacts on protected species (Annex IV species), cf. Executive Order no. 1476 of 13 December 2010 on impact assessments concerning international nature conservation sites and protection of certain species in connection with projects on establishment etc. of offshore electric power generating plants and offshore electricity supply grids. On the basis of the documentation submitted, the Danish Energy Agency will decide whether an impact assessment of these other preliminary surveys is required. If so, the Concessionaire must prepare an impact assessment and submit this to the Danish Energy Agency for approval.
- 3.4 The Concessionaire must carry out the preliminary surveys in an appropriate manner and so that activities exercised by rights holders/licensees pursuant to the provisions of the Subsoil Act, fishing activities, navigation and other commercial activities are not unreasonably impeded.
- 3.5 Preliminary survey activities may cause underwater noise, including in connection with geo-technical surveys and, in particular, blasting of unexploded UXOs (UXO, Unexploded Ordnance) on the seabed, such as mines, gas or ammunition etc. If necessary, underwater noise should be reduced to an acceptable level to accommodate Denmark's obligations to protect certain species and to maintain a favourable conservation status in the designated habitat sites. Contact the Naval Staff of the Joint Defence Command Denmark if UXOs are identified in the survey area to ensure they are made safe and removed legally.
- 3.6 The Concessionaire must take out insurance to cover any damage caused by the Concessionaire – or other persons on operating on behalf of the Concessionaire – during these surveys. Proof of this insurance must be submitted to the Danish Energy Agency for information prior to surveys in territorial waters.

4. Notification and contact to relevant authorities

- 4.1 The Concessionaire must notify the relevant authorities, e.g. the Danish Maritime Authority, about physical offshore surveys. For example, the Danish Maritime Authority must be notified of physical surveys in territorial waters by no later than six weeks prior to commencement.
- 4.2 The authorities are entitled to be present at all surveys. All expenses incurred for travel and accommodation for these representatives must, if necessary, be borne by the Concessionaire.
- 4.3 If the Concessionaire makes surveys from a vessel, the Concessionaire must:
- Contact the Danish Fishermen's Association to discuss the planning of surveys to ensure necessary and optimum consideration of fisheries.
Danmarks Fiskeriforening, H.C. Andersens Boulevard 37, 1504 Copenhagen V, Denmark, telephone no. + 45 70 10 40 40
 - Send information on the planned surveys to "Fiskeri Tidende" (The Fishermen's Gazette), Nordensvej 3, Taulov, 7000 Fredericia, Denmark, tel.: +45 76 10 96 63, fax.: +45 75 45 20 65, e-mail: tl@dkfisk.dk.
- 4.4 The Concessionaire must itself obtain any other licences pursuant to other legislation. For example licences for hydrographic surveys are to be obtained by application to the Danish Geodata Agency and an application for cable-laying of buoying and measuring equipment is to be made to the Danish Maritime Authority.
- 4.5 If, in connection with the preliminary surveys, the Concessionaire discovers protected cultural relics – be it ancient monuments or historic ship wrecks – or if the Concessionaire is informed that within the site there are interests of this nature, any discoveries and information must immediately be reported to [relevant museum] or to the Danish Agency for Culture, att.: Torben Malm, Ancient Monuments, H.C. Andersens Boulevard 2, 1553 Copenhagen V, Denmark, tel. +45 3374 5100.
Cultural heritage interests in territorial waters are protected under the Museum Act.
- [
- 4.6 As part of the preliminary surveys, various degrees of risk have been documented for the occurrence of unexploded ordnance (UXO) in the preliminary survey areas. If UXO is to be removed, this will be at the expense of the Concessionaire.] Blasting is often used in connection with making safe any UXO on the seabed. This procedure is carried out by the Naval Staff of the Joint Defence Command Denmark.
- 4.7 Work on the seabed in restriction or prohibition areas where there may be UXO requires permission through a special procedure, cf. Danish Maritime Authority notice no. 135 of 4 March 2005 on bans on navigation, anchoring and fishing, etc. in certain parts of Danish waters:
- a. The corridor in the restriction or prohibition area which is to be used in connection with the preliminary surveys is initially to be surveyed and checked for mines and other explosive objects. A

Feltkode ændret

plan for this preliminary survey and work procedures is to be sent to the Naval Staff of the Joint Defence Command Denmark for approval with a copy to the Danish Maritime Authority. The coordinates for the corridor are to be given in datum WGS 84 and information about the vessel or craft used for the purpose is to be provided.

- b. Once the Naval Staff of the Joint Defence Command Denmark has approved the preliminary survey plan in writing, with a copy to the Danish Maritime Authority, the Danish Maritime Authority may grant permission for navigation in the corridor with the purpose of carrying out surveys for UXO. If any objects are found, guidelines from the Naval Staff of the Joint Defence Command Denmark must be followed. The preliminary survey is also to state in what depth beneath the seabed the survey was undertaken.
- c. The results of the preliminary survey must be submitted to the Naval Staff of the Joint Defence Command Denmark for approval of subsequent navigation with large vessels, more detailed surveys of the area as well as subsequent works in the seabed at the surveyed depth. The Danish Maritime Authority will then give permission in writing for navigation in the corridor in order to perform the planned works.

5. Reporting and processing of data

- 5.1 All raw data collected in any supplementary preliminary surveys relating to aspects of nature and the environment should, if possible, be made available free of cost to the public via the joint public databases (The Danish Natural Environment Portal as well as the specialist data centres of the Ministry of Environment and Food).
- 5.2 The Concessionaire is responsible for raw data being in the right formats and quality-assured so that it can be included in the joint public data bases (the Danish Natural Environment Portal and the specialist data centres of the Danish Ministry of Environment and Food). Issues regarding data reporting and formats must be coordinated with those responsible for the joint public databases (the Danish Natural Environment Portal and the specialist data centres of the Danish Ministry of Environment and Food).
- 5.3 Raw data from any supplementary geo-technical preliminary surveys must be submitted free of cost to GEUS (Geological Survey of Denmark and Greenland). Issues regarding data reporting and formats are to be coordinated with GEUS.
- 5.4 All data from hydrographic surveys are to be submitted free of charge to the Danish Geodata Agency.

6. Change of ownership

- 6.1 The Concessionaire must obtain consent from the Danish Energy Agency to transfer its rights and obligations under this licence to a third party. In this connection, the Danish Energy Agency will supervise that the required technical and financial capacity is in place. Moreover, consent will only be given if this is possible in accordance with the EU public procurement regulations and the current RE Act, the Concession Agreement, as well as all the terms and conditions set out in this licence.
- 6.2 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 transference.

7. Compliance with the terms and conditions of the licence

- 7.1 The Danish Energy Agency is entitled to demand a fee for work performed in connection with processing and supervision of this licence, cf. Executive Order no. 835 of 27 June 2013 on payment for authority processing under the Electricity Supply Act and the RE Act.
- 7.2 The Concessionaire is obliged to provide the Danish Energy Agency with such information as the Danish Energy Agency deems necessary for supervision, cf. section 59 of the RE Act. The Danish Energy Agency must keep commercially sensitive information confidential.
- 7.3 The Concessionaire must comply with current regulations in force at any time, including EU regulations which are immediately applicable.
- 7.4 This licence granted may be revoked if the terms and conditions of the licence are not fulfilled.
- 7.5 Fines may be imposed, cf. section 72 of the RE Act, in the event of:
- Breach of the terms and conditions of this licence,
 - Failure to provide the information dealt with in section 59,
 - Submission of incorrect or misleading information or failure to submit information upon request.

8. Appeals

- 8.1 Pursuant to section 66 of the RE Act, a party entitled to appeal may bring an appeal against this licence before the Danish Energy Board of Appeal, Frederiksborggade 15, 1360 Copenhagen K, Denmark. The appeal must be in writing and must be submitted within four weeks of the decision to grant a licence to conduct preliminary surveys. Appeals will not have suspensory effect, unless the Energy Board of Appeal decides otherwise. Decisions by the Danish Energy Board of Appeal cannot be appealed to another administrative authority.

Appendix 7

Draft licence to exploit the energy from [Name] Offshore Wind Farm in [Area] ("Electricity production licence")

[The Concessionaire must apply for a licence to obtain authorisation to produce electricity for the plant at the earliest, when construction work commences and no later than two months prior to connection to the grid of the first turbine.

Changes may be made to the terms and conditions of the final licence to produce electricity to account for circumstances which the Danish Energy Agency or other authorities are not aware of at present.]

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It should be emphasised that a number of the terms and conditions of this licence refer to legislation, and regulations issued pursuant to this legislation, which belong under the auspices of other authorities than the Danish Ministry of Energy, Utilities and Climate. The Danish Energy Agency cannot guarantee that all relevant regulations etc. that the Concessionaire is obligated to follow have been mentioned in this licence. In this context it should be noted that amendments to current regulation may take place at any time and that the Concessionaire should therefore be aware that current legislation in force is to be complied with.

Costs incurred as a result of terms and conditions imposed on the basis of current legislation are of no concern to the Danish Energy Agency.

Licence pursuant to section 29 of the Promotion of Renewable Energy Act (the RE Act), cf. Consolidating Act no. 122 of 6 February 2015, is granted on the following terms and conditions:

1. General terms and conditions

[Note that all terms and conditions in the licence for the construction of the plant (Appendix 6) which are relevant at the time of granting this licence will be transferred as terms and conditions to this licence when it is granted.]

- 1.1 The licence for exploitation of energy pursuant to section 29 of the RE Act is granted to the Concessionaire for a duration of 25 years from connection to the grid, which is the time when the first kWh is supplied to the collective grid from [NAME] Offshore Wind Farm.
- 1.2 It will be possible to apply for an extension of the period of 25 years and in this connection adjustments of the terms and conditions of continued operation of the existing plant after expiry of the 25 years might be necessary, provided that this is possible under the regulations in force at any time.
- 1.3 The licence granted by the Danish Energy Agency does not exempt the Concessionaire from obtaining licences, if any, pursuant to other legislation.
- 1.4 The Concessionaire must, at any given time, have at its disposal the required technical and financial capacity to operate the offshore wind farm as well as the connecting grid and routing onshore. A Concessionaire that complies with the technical and financial requirements for an authorisation pursuant to section 10 of the Electricity Supply Act, is presumed to also satisfy the requirements pursuant to this licence.
- 1.5 All offshore wind turbines must be connected to the grid in compliance with the grid connection provisions laid down by Energinet.dk at any time. [At the time of submitting this tender material, the following apply: "Technical Regulation 3.2.5 on grid connection of wind power plants greater than 11 kW", "Technical Regulation 5.8.1 Systems services" and "Technical Regulation 5.9.1 Measurement regulation for systems operating purposes"].
- 1.6 Three months after commissioning of the first turbine, the Concessionaire must document to the Danish Energy Agency compliance with the regulations on grid connection from Energinet.dk (Compliance Test).
- 1.7 The Concessionaire must comply with regulations in force at any time, including EU regulations.
- 1.8 If the area covered by the licence (or areas within this area) is not subject to – or is exempt from – Danish sovereignty pursuant to international law (including by international agreement), the Concessionaire must respect any resulting reduction of the area without the right to make claims against the Danish Energy Agency or the Danish State in general.
- 1.9 The licence does not entail any restrictions on the sovereignty of the Danish State over Danish territorial waters or the exclusive right of the Danish State to the Exclusive Economic Zone. The licence does not

therefore, within the area covered by the licence, preclude other operators than the Concessionaire from being granted a licence to conduct other forms of activity than the activities covered by this licence. In this connection the Danish Energy Agency will ensure that any such activities are not of major inconvenience to activities covered by this licence.

- 1.10 The Concessionaire must take out insurance to cover any damage which the Concessionaire – or other persons on behalf of the Concessionaire – causes in connection with the activities performed under the licence. Documentation in this respect is to be submitted to the Danish Energy Agency prior to commencement of electricity production.
- 1.11 The Concessionaire must at any time grant the Danish Energy Agency access to inspect the entire plant (Offshore wind farm with associated grid and onshore routing), as well as to review compliance with the terms and conditions in this licence, cf. section 29(3) of the RE Act.
- 1.12 Any planned maintenance of the offshore wind farm causing a reduction in the production potential must be reported to Energinet.dk by no later than three months prior to removing plant installations for maintenance etc. so as to allow Energinet.dk to organise maintenance, etc. of other installations during such period. Non-planned maintenance of the wind turbine owner's plant and any related reduction in production potential is to be notified to Energinet.dk without delay. Energinet.dk will receive online information on production potential depending on current wind conditions and operational wind turbines, cf. "Technical Regulation 3.2.5 Wind power plant connected to grids with a power output greater than 100 kW" from Energinet.dk.
- 1.13 The Concessionaire may request that Energinet.dk issue a certificate of origin for the power generated from the offshore wind farm. Reference is made to Executive Order no. 1323 of 20 November 2010 on certificate of origin for RE electricity, as amended by Executive Order no. 138 of 10 February 2012, which provides further details on terms and conditions.

2. Publication and storage of raw data on production, MetOcean data etc.

2.1 Publication of raw digital MetOcean data

- 2.1.1 The Concessionaire must publish, free of charge, raw digital data for monitored MetOcean parameters so as to allow the information to be included in work on preparing the wind resource models in Denmark.
- 2.1.2 As a minimum, raw digital data includes:
 - Monitored meteorological and oceanographic data (wind, waves, current, ice etc.), including measurements from met masts, lidar, wind scanners and other measuring instruments, if any, in, or in the vicinity of, the plant.

- 2.1.3 Complete metadata with description of the measuring equipment used, measuring heights and depths as well as calibration documentation and units, etc., must be enclosed with publication of all raw digital data types where relevant.
- 2.1.4 The specific publication requirements for raw digital data, including frequency, location of data, formats and levels of detail (e.g. temporal resolution) and the database in which the information is stored, will be laid down by the Danish Energy Agency.
- 2.1.5 The Concessionaire is not liable for the quality of the data from the time of data transmission for storage, including comprehensive meta-data. In case of error the Concessionaire must as soon as possible report possible data error to the Danish Energy Agency or to the assigned third party. In addition the Concessionaire must free of charge correct the error and transmit rectified data to the Danish Energy Agency or the assigned third party.
- 2.1.6 This obligation only applies to all the measurements of wind and waves, etc. (MetOcean data) which the Concessionaire, or a third party on behalf of the Concessionaire, might voluntarily carry out after award of the concession. The obligation applies from the time when the first kWh from one or more of the turbines is supplied to the collective grid and, thereafter, for the duration of the life of the offshore wind farm until the electric power generating plant is permanently decommissioned.

2.2 Storage of raw digital production data

- 2.2.1 The Concessionaire must, free of charge, store raw digital data on energy production and associated data for the duration of the life of the wind farm. The raw digital data will subsequently be used to develop and expand renewable energy in Denmark in connection with new concessions put out to tender. The Danish Energy Agency reserves the right to require data free of charge as needed. The Danish Energy Agency also has the option to order that such raw digital data instead be transferred on a regular basis, free of charge, to a database for storage. In this connection, the Danish Energy Agency will indicate the frequency of such transfer and the format in which the transfer should be made.
- 2.2.2 As a minimum, raw digital data includes:
- Data on energy production from the wind farm and for each turbine,
 - Data on out-of-service time for each turbine.
- 2.2.3 Data on energy production and related matters will be used by the Danish Energy Agency and Energinet.dk in connection with their work on validating and certifying wind resource models for invitations to tender for new concessions, for example.
- 2.2.4 The Danish Energy Agency and Energinet.dk must keep commercially sensitive information confidential.

3. Other financial information

- 3.1 The Danish Energy Agency is entitled to collect other financial information free of charge in relation to the construction of the plant, including information about actual construction costs and information about operation and maintenance costs. The information is to be included in the development and expansion of renewable energy in Denmark, including assessments of the wind potential in Denmark.
- 3.2 The Danish Energy Agency must keep commercially sensitive information confidential.

4. Reporting on technical matters etc.

- 4.1 At the request of the Danish Energy Agency, the Concessionaire must submit, free of charge, an annual report with information about technical experience with the plant. The Danish Energy Agency will notify the Concessionaire of the date when the Concessionaire is to submit the report for the first time after the offshore wind farm has been connected to the grid. The report must contain at least the following information:
- Experience with turbine and foundation technology, including measurements regarding wind conditions, shading effects, production as well as turbine and foundation loads,
 - Experience with collection of electricity from the turbines, including adjusting the wind farm to suit the electricity grid.
 - Experience with maritime transport of personnel, and
 - Experience in relation to safety-related operational incidents.
- 4.2 The Danish Energy Agency reserves the right to publish the annual reports in whole or in part.

5. Change of ownership

- 5.1 The Concessionaire may not, without the consent of the Danish Energy Agency, transfer its rights and obligations under this licence to a third party. The Danish Energy Agency may only refuse consent to a transfer if there are objective reasons. In this connection the Danish Energy Agency will ensure that the required technical and financial capacity is in place. Moreover, consent will only be given if this is possible in accordance with the EU public procurement regulations and current legislation, as well as all the terms and conditions set out in this licence.
- 5.2 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 transference.

6. Costs

- 6.1 The Danish Energy Agency is entitled to demand a fee for work performed in connection with processing and supervision of this licence, cf. Executive Order no. 835 of 27 June 2013 on payment for authority processing under the Electricity Supply Act and the RE Act.

7. Compliance with the terms and conditions of the licence

- 7.1 The Concessionaire is obliged to provide the Danish Energy Agency with such information as the Danish Energy Agency deems necessary for supervision, cf. section 59 of the RE Act. The Danish Energy Agency must keep commercially sensitive information confidential.
- 7.2 A licence granted may be revoked if any of the terms and conditions of the licence are not fulfilled.
- 7.3 Fines may be imposed, cf. section 72 of the RE Act, in the event of:
- a. Breach of the terms and conditions of this licence,
 - b. Failure to provide information pursuant to section 59, or
 - c. Submission of incorrect or misleading information or failure to submit information upon request.

8. Appeals

- 8.1 Pursuant to section 66 of the RE Act, a party entitled to appeal may bring an appeal against this licence before the Danish Energy Board of Appeal, Frederiksborggade 15, 1360 Copenhagen K, Denmark. The appeal must be in writing and must be submitted within four weeks of granting this licence. The licence may not be exercised prior to expiry of the deadline for appeals. Appeals will not have suspensory effect, unless the Energy Board of Appeal decides otherwise. Decisions by the Energy Board of Appeal cannot be appealed to another administrative authority.

Appendix 8

Draft Authorisation to produce electricity for [Name] Offshore Wind Farm in [Area] ("Authorisation to produce electricity")

[The Concessionaire must apply for a licence to obtain authorisation to produce electricity for the plant, at the earliest, when construction work commences and by no later than two months prior to connection to the grid of the first turbine.

Changes may be made to the terms and conditions of the final licence to produce electricity to account for circumstances of which the Danish Energy Agency or other authorities are not aware at present.

A Concessionaire which has been prequalified in this tendering procedure and which thereby has satisfied the requirements for economic/financial capacity, is assumed also to satisfy the requirements for financial capacity with regard to an authorisation to produce electricity. The text below is based on the assumption that the Concessionaire has not changed since the prequalification. In addition to ensuring that the farm has sufficient financial backing, including finances to ensure technically sound operation of the farm, the economic and financial capacity is also to ensure that there are sufficient resources to comply with the requirements of the authorisation on a regular basis, including requirement to clean up area when the wind farm is finally decommissioned.

When applying for this authorisation to produce electricity, the Concessionaire shall also apply for approval of its technical capacity to operate the wind farm. In the approval, the Danish Energy Agency will primarily focus on the proper discharge of day-to-day operation of the wind farm by competent personnel with technical knowledge. This may be ensured by the holder of the authorisation documenting through written agreements that it has the required technical capacity at its disposal.]

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1. The scope of the authorisation

- 1.1 Pursuant to section 10 of the Electricity Supply Act, cf. Consolidating Act no. 1329 of 25 November 2013, the Danish Energy Agency hereby grants the Concessionaire authorisation to produce electricity from [Name] Offshore Wind Farm with a capacity of [xx] MW on the terms and conditions stipulated in the Electricity Supply Act and the terms and conditions set out below. This authorisation does not grant the right to produce electricity at any other electric power generating plant.

2. The operator holding the authorisation

The Concessionaire [*possibly: which is X% owned by [] and X% owned by []*]. The Concessionaire is registered as: [insert name], (in the following referred to as the “the operator”) [Insert business reg. no] [insert address].

- 2.1 For evaluation of the operator’s financial capacity, cf. section 10(3) of the Electricity Supply Act, the Danish Energy Agency has taken into account that the operator has stated that it will at all times during the construction phase have a minimum turnover of DKK 4,000,000,000 and a solvency ratio of 20% or a rating of BBB- (or similar rating).
- 2.2 For evaluation of the operator’s technical capacity, cf. section 10(3) of the Electricity Supply Act, the Danish Energy Agency has applied the information stated in the application for authorisation with supporting documents. The application states that the level of technical capacity is ensured by the operator having technical capacity in relation to operation and maintenance of an offshore wind farm at its disposal.
- 2.3 The operator is therefore in possession of extensive technical capacity within the operation and maintenance of offshore wind farms. It has thus been stated that [...]
- 2.4 Based on this, the Danish Energy Agency has found that the operator meets the requirement of section 10(3) of the Electricity Supply Act to have the necessary technical and economic capacity.

3. The authorisation is granted subject to the following conditions

- 3.1 The Concessionaire will operate the offshore wind farm and the related routing onshore grid and will have sole responsibility in relation to the authorities. Operation must be in accordance with the electricity production licence of [xx].
- 3.2 This authorisation applies for 25 years from the date of grid connection, which is the time when the first kWh is supplied to the collective grid from the offshore wind farm. The Concessionaire is entitled to apply for an extension of the authorisation beyond this time.

- 3.3 During the period of authorisation, the Concessionaire is obligated to notify the Danish Energy Agency if the Concessionaire acquires or sells electricity production units exceeding 25 MW in Denmark. The holder of the authorisation is furthermore required under the provisions of the Electricity Supply Act to obtain a licence from Energinet.dk, as the transmission system operator, and notify the Danish Energy Agency if plants or parts of plants with a capacity above 25 MW are to be taken out of operation for a longer period of time.
- 3.4 This authorisation is granted provided that, at any given time, the Concessionaire has at its disposal the required technical and financial capacity to operate the offshore wind farm as well as the related grid routing onshore.
- 3.5 Significant changes, including scrapping electric power generating plants, may only take place with prior licence from the Danish Energy Agency, cf. section 11 of the Electricity Supply Act.
- 3.6 After five years from the date of this authorisation, and with prior notice of one year, the Danish Energy Agency may stipulate new terms and conditions for this authorisation, cf. section 52 of the Electricity Supply Act.

4. Dismantling and decommissioning

- 4.1 The Concessionaire is obliged, at its own expense, to restore the area to its former condition, including to carry out the decontamination and clean-up required for the area as well as to decommission and dispose of the electric power generating plant pursuant to a decommissioning plan approved by the Danish Energy Agency, if
- the electricity production licence expires;
 - the plant is not maintained or is wrecked;
 - the plant is no longer used as a wind farm; or
 - the terms and conditions of the licence are not fulfilled or complied with.

The Danish Energy Agency may set deadlines for the restoration of the area to its former condition and for the decommissioning of the plant.

- 4.2 The Concessionaire must submit a plan for decommissioning the wind turbines as well as the cable connections between the turbines (decommissioning plan) for the Danish Energy Agency's approval,
- by no later than two years prior to the expiry of the electricity production licence;
 - two years before the time when one or more installations etc. are expected to have come to the end of their useful lives;
 - if the plant is not maintained or is wrecked; or
 - if the terms and conditions of the electricity production licence are not fulfilled or complied with.

The decommissioning plan must include a report on removal of the installations, including a proposal for a time table for implementation of the removal. The Danish Energy Agency may lay down more detailed requirements for what the plan should contain.

In addition to a plan for physical decommissioning of the wind farm, pursuant to current EIA regulations, and together with the decommissioning plan, the Concessionaire must submit a detailed assessment of any environmental impacts entailed by the plan. This environmental assessment is to provide the Danish Energy Agency with a decision basis for whether an actual EIA report is to be prepared. If an EIA report is not required, the Danish Energy Agency will make this decision public at the same time as it grants authorisation to the applicant. The Danish Energy Agency will submit the plan and the environmental assessment for consultation with relevant authorities with a view to determining specific terms and conditions for decommissioning the offshore wind farm. For example, this includes terms and conditions pertaining to the safety of navigation, marking and buoys, or environmental protection.

If removal of only part of a plant is required, this may be supplemented by a further requirement that remaining parts of the foundations are not exposed in connection with natural, dynamic changes in the sediment. It may furthermore be expected that requirements will be made for use of the best available technology and the best environmental practice in connection with removal of the plant.

- 4.3 The Concessionaire must provide sufficient guarantee for dismantling and decommissioning the plant. The guarantee must be approved by the Danish Energy Agency. The guarantee must be provided when required by the Danish Energy Agency, but by no later than 15 years after supply of the first kWh to the collective grid from the first turbine. This applies even in the event of a partial obligation to decommission the plant, see above under 4.2. By no later than six months prior to this time, the Concessionaire must present a plan to the Danish Energy Agency, with details of how the guarantee will be provided. The amount guaranteed *[is fixed proportionally to the size of the wind farm, so that for a 50 MW farm the guarantee is DKK 50 million, for a 100 MW farm it is DKK 100 million, and for a 200 MW farm it is DKK 200 million]* must be at least DKK [xx] million, unless the Danish Energy Agency approves of a lower amount.
- 4.4 If the Concessionaire can document to the Danish Energy Agency no later than 14 years and 6 months after connection to the grid of the first turbine that the dismantling and decommissioning costs are expected to be less than DKK [xx] million, the Danish Energy Agency may decide to reduce this amount. The Danish Energy Agency reserves the right to order third-party verification of the assessment of the dismantling and decommissioning costs at the expense of the Concessionaire.
- 4.5 The guarantee may be provided in the form of a parent-company guarantee or a guarantee from a financial institution or insurance company or similar. The guarantee must cover all potential costs in connection with the clean-up obligation. In order for the Danish Energy Agency to accept a parent-company guarantee, the parent company must have the necessary financial capacity as assessed by the Danish Energy Agency. The financial institution or insurance company or similar which provides the guarantee must meet further requirements for rating, as laid down by the Danish Energy Agency in advance of the deadline for providing the guarantee. The parent company may also be asked every five

years to submit new documentation for the financial capacity of the company to the Danish Energy Agency so that the Agency may continuously ascertain that the financial capacity is in place.

- 4.6 Concessionaire is liable for all expenses connected to the decommissioning irrespective that this amount may exceed the guarantee.

5. Other terms and conditions

- 5.1 The Concessionaire must follow the regulations applicable at any time, including EU regulations that are immediately applicable.
- 5.2 Within a commercial framework, the Concessionaire must contribute to ensuring, as far as possible, optimum operation of the overall electricity supply grid in Denmark. In this connection, the Concessionaire must ensure that requirements and terms of authorisations granted for the construction and changes to electric power generating plants are complied with. The Concessionaire must also ensure that requirements stipulated by the Danish Energy Agency or by Energinet.dk, as system operator, for connection to and use of the collective electricity supply grid, are met.
- 5.3 Within the framework of the provisions of the Electricity Supply Act, the Concessionaire must provide Energinet.dk with the information necessary for Energinet.dk to carry out the tasks imposed on Energinet.dk under the Electricity Supply Act.
- 5.4 Energinet.dk must keep commercially sensitive information confidential, cf. section 84(8) of the Electricity Supply Act.
- 5.5 The Concessionaire must pay the costs relating to supervision by the Danish Energy Agency of compliance with the terms of this authorisation, cf. section 51 (1) and (2) of the Electricity Supply Act. The Concessionaire must provide the Danish Energy Agency with the information which the Danish Energy Agency deems necessary for its supervision, cf. section 84(1) of the Electricity Supply Act. The Danish Energy Agency must keep commercially sensitive information confidential.
- 5.6 This authorisation is exempt from prosecution and can neither directly nor indirectly be transferred to any other entity unless the Danish Energy Agency allows the transfer and approves the conditions, cf. section 53(1) of the Electricity Supply Act.
- 5.7 The Concessionaire must own the plant used for implementation of the activities requiring authorisation, cf. section 51(4) of the Electricity Supply Act.
- 5.8 Moreover, the licence is conditional upon that the direct and indirect transference takes place pursuant to the Concession Agreement's provisions of this as well as EU regulations on public procurement.

6. Compliance with the terms and conditions of the authorisation

- 6.1 Fines may be imposed, cf. section 87 of the Electricity Supply Act, in the event of
- a. breach of the terms and conditions of this authorisation;
 - b. failure to provide information pursuant to Part 12 of the Electricity Supply Act; or
 - c. submission of incorrect or misleading information or failure to submit information upon request.
- 6.2 Regulations issued pursuant to the Electricity Supply Act may impose a penalty for violation of the provisions in, or terms and orders issued pursuant to, these regulations.
- 6.3 In the event of repeated breach of the terms and conditions, the authorisation may be revoked, cf. section 54 of the Electricity Supply Act.

7. Acceptance of the authorisation and its terms and obligations

- 7.1 The Concessionaire hereby declares by its signatures to this authorisation:
- that the factual information contained in this authorisation is correct to the knowledge of the operator;
 - that it is willing to comply with the obligations and terms imposed on the Concessionaire pursuant to the provisions of the Electricity Supply Act, the RE Act and this authorisation.
- 7.2 This authorisation will not valid until it has been signed by both the Concessionaire and the Danish Energy Agency.

For the Concessionaire

For the Danish Energy Agency

Done

at.,

Appendix 9

Grid connection of nearshore wind turbines established by tendering procedure

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1. Grid connection of nearshore wind turbines established by tendering procedure

The rules on grid connection of the nearshore wind turbines are set out in the Grid Connection Order²

Below is a review of the provisions regarding grid connection, including the responsibilities and costs which in future the concessionaire, the grid company or the transmission company, respectively, are to bear in connection with grid connection.

2. Responsibility and costs allocation for grid connection

Section 6 of the Grid Connection Order contains an overall principle on clear segregation of ownership such that responsibility and costs for establishment, operation and maintenance belong together. Responsibility and costs separate at the grid connection point, i.e. at the transition from the concessionaire's internal collection grid and grid routing onshore to the collective electricity supply grid (hereafter called the "connection point"). The connection point is a physical point in the grid and can be located in a station, a cable collection well, or similar.

The concessionaire and the grid company or the transmission company may not impose unnecessary additional costs on each other, but they must work together to find the most economically optimal solution. The overall grid connection should therefore be established appropriately, in a socio-economic context, so that in setting cable routing, cable dimensions and voltages, account is taken for the total costs, subsequent grid losses and maintenance. The following describes how costs and responsibilities are allocated at grid connection.

3. Responsibility and costs borne by the concessionaire

The concessionaire is to supply the total output at one electrical point onshore and at a voltage agreed with the grid company or transmission company. This means that if the output is routed onshore through several cables, these are to be gathered, for example in a collection rail, before the output is supplied to the grid company. For the nearshore tendering procedures, possible onshore routing corridors and connection points will be defined in the EIA reports.

The concessionaire must operate and maintain the internal collection grid up to the connection point, and bear all the costs, risks and losses associated with this grid.

The concessionaire must also cover the costs of acquisition and site development of the area required for expansion of the collective grid at the connection point. The area required is determined by the grid company or transmission company on the basis of the output and voltage at the connection point. The concessionaire is also liable for any additional costs caused by specific landscape and environmental requirements at the connection point, for example camouflage requirements.

4. Responsibility and costs borne by the grid company or transmission company

The grid company or transmission company must connect the concessionaire's grid to the collective electricity supply grid. The local licenced grid company is responsible for connection at voltages less than

²Executive Order no. 1115 of 18 September 2015 on grid connection of wind turbines and price supplement for electricity produced on wind turbines etc. and the amendment of 2nd of March 2015 of the Executive Order on grid connection of wind turbines and price supplement for electricity produced on wind turbines, etc.

100 kV, i.e. to the distribution grid, and the transmission company (Energinet.dk) is responsible for connection at voltages of more than 100 kV, i.e. to the transmission grid.

From the connection point, the collective electricity supply grid is established, owned and operated by the relevant grid company or transmission company. The grid company or transmission company is responsible for finding the optimal grid-technical solution in a socio-economic context, including transformation, and the costs necessary for this are covered by Energinet.dk through the so-called offset scheme.

The grid company or transmission company decides, establishes, operates and maintains the technical installations required at the connection point. The grid company or transmission company must also cover the costs necessary for expansion of the collective grid at the connection point, including a new transformer.

If the concessionaire has special requests to reduce further the risk of break-downs, in addition to the solution determined on the basis of socio-economic calculations, for example locating an extra transformer at the connection point, by agreement with the grid company or transmission company this may be realised at the expense of the concessionaire.

The grid company or transmission company must still pay the costs of expansion or reinforcement of the underlying electricity supply grid, see section 6(1) of the Grid Connection Executive Order (see illustration below).

5. Practical management of the grid connection

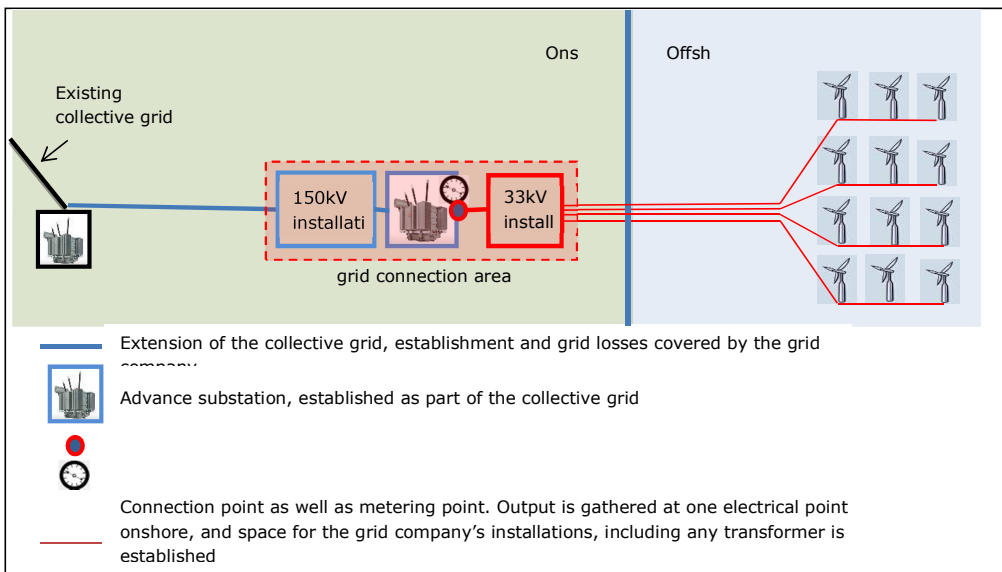
The output and voltage supplied at the connection point are crucial for the most efficient expansion of the collective grid. The voltage is agreed with the grid company or transmission company, which, among other things, is to offer 33 kV at the grid connection point. The grid company is responsible for any step-up at the grid connection point, although it may refuse to receive output at a higher voltage than justified by the total output in a socio-economic context. The optimal grid solution in a socio-economic context in the collective grid will be defined by the grid company or transmission company, when the size of the wind farm has been decided with the winning tender and establishment of the concession agreement.

There are primarily the following scenarios:

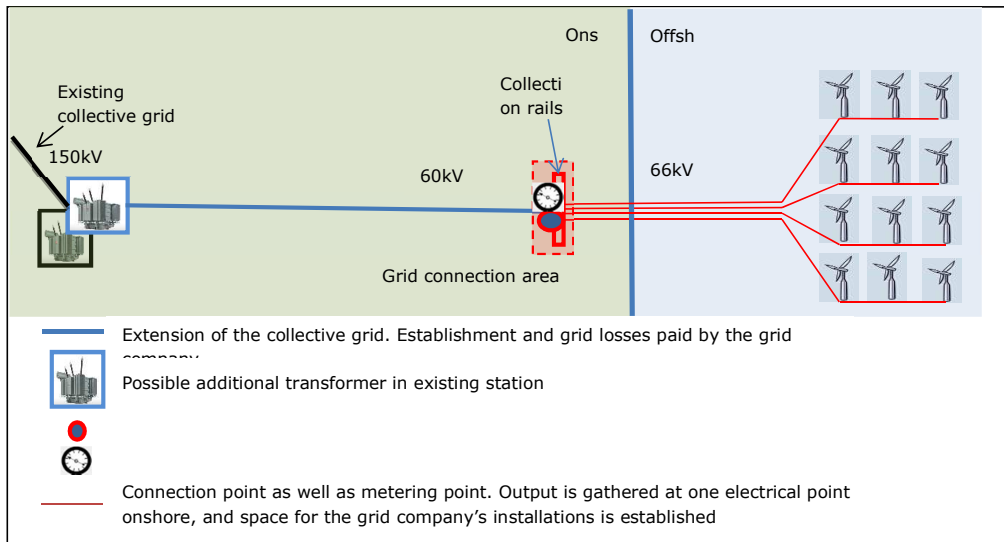
- If the output is supplied at a relatively low voltage in relation to the output and distance to the existing grid, it is likely that, due to the grid losses in the collective grid, an advance substation will have to be established at the connection point.
- If the output is supplied at an adequately high voltage in relation to the output and distance to the existing grid, there will be no need for transformation at the connection point. However, initially, the output will still have to be supplied at one electrical point, so that the grid company or transmission company can freely dimension the onshore cables in accordance with socio-economic principles.

The principle means that the partners are free to optimise their own grids. If situations should arise in which costs allocation is a barrier to the optimal solution, the partners are free to negotiate any compensation.

6. Possible grid connection at low and high voltages, respectively



Example for supply of total output of 33 kV, and where, because of grid losses in the collective grid, it is necessary to establish an advance 150/33 kV substation.



Example for supply of total output of 60 kV, and where it is optimal in a socio-economic context to transport the output at 60kV onwards to an existing station.

7. Location of metering point

The metering point for grid losses for production from the offshore wind farm is at the connection point.

8. Security and compensation factors in the distribution grid

Dimensioning of the collective grid is on the basis of a socio-economic perspective in which establishment, operation, maintenance, grid losses and risk of breakdown are taken into consideration. The grid company is not liable for financial losses imposed on the concessionaire because of delays in grid connection or breakdowns in the distribution grid. The grid company is, however, responsible for implementing the required grid reinforcement without undue delay and it is also responsible for rectifying any faults in the grid without undue delay.

9. Security and compensation factors in the transmission grid

The concessionaire can be compensated, see section 35, see section 34(3) of the Promotion of Renewable Energy Act for breakdowns in the transmission grid from the connection point and in the underlying transmission grid, i.e. breakdowns in the transformer(s), collective collection grid, and the underlying collective electricity supply grid.

10. Establishment of cable routing onshore and security

The concessionaire is to negotiate with and compensate local land owners, if the cable routing onshore is to run through their land. Up to and including the connection point, this is the responsibility of the

concessionaire. The concessionaire must pay any costs linked with the process or compensation for land owners.

The general law of damages will be applied if the concessionaire does not build the wind farm as required in the concession agreement and this causes a loss for the local grid company or transmission company. The concessionaire must provide a bank guarantee corresponding to the total costs of the local grid company in case the wind farm will be grid connected through the local transmission grid. If the wind farm is connected to the grid through the transmission grid, the concessionaire must provide Energinet.dk with a guarantee to be paid in the event that the project is not constructed in accordance with the concession agreement. This guarantee may be covered by the guarantee provided for the retention penalty to the extent that Energinet.dk's costs do not exceed the size of the retention penalty. The costs for which the Concessionaire will have to compensate Energinet.dk are the costs that Energinet.dk has incurred in connection with establishing grid connection.

Energinet.dk has estimated its costs of establishing grid connection installations and any required grid enforcements for the connection of a 200 MW offshore wind farm.

The costs shown below are solely Energinet.dk's costs of establishing the installations. Therefore, the costs of electricity losses and of maintenance and operation of the installations have not been included. The winner of the concessions' costs have also not been included.

With regard to grid enforcements, in particular, it should be noted that these are costs of carrying out construction works at an earlier stage than planned. In other words, the costs of establishing grid enforcements only include the *increase* in costs arising from having to advance investments.

The same installation design has been used as in the previously submitted report on possible grid connection solutions for grid connection of offshore wind turbines in nearshore areas. According to this solution, turbines in nearshore areas will be connected to the transmission grid through a transformer station. For connection of turbines in nearshore areas in Smålandsfarvandet, connection through the existing 132 kV transformer station at the Stignæsværket power plant is the best solution from a cost-benefit point of view. For the other relevante offshore turbines in nearshore areas, the best solution from a cost-benefit point of view is to establish a substation which is coupled to the existing transmission grid through a new transmission cable.

If the winner of the concession wants security in the grid connection in addition to what can be provided by a single substation, this will require yet another substation, including switchgear and busbars, etc. The cost of establishing an additional substation and the required switchgear etc. is shown in the 'Additional security' column below.

Wind farm	Connection point	Simple connection (in DKK)	Grid enforcement (in DKK)	Additional security (in DKK)
North Sea (south)	Søndervig	96.0 mill.	36.5 mill.	30.9 mill.
North Sea (north)	Klinkeby	144.9 mill.	25.8 mill.	30.9 mill.
North Sea (north)	Flansmose	115.0 mill.	25.8 mill.	30.9 mill.
Sæby	Solsbæk	77.5 mill.	2.0 mill.	30.9 mill.
Sæby	Klattrup	75.0 mill.	0.0 mill.	30.9 mill.

Smålandsfarvandet	Stignæs	27.4 mill.	0.0 mill.	30.9 mill.
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The costs vary somewhat due to the distance to the nearest suitable transmission grid and therefore depend on the price of cables for 132 kV and 150 kV.

Appendix 10

Examples of consequences of different tender groupings

Example 1:

Tenderer A submits a tender to construct 200 MW at DKK øre 69 /kWh in area X

Tenderer C submits a tender to construct 100 MW at DKK øre 68 /kWh in area Y

Tenderer B submits a conditional tender to construct 350 MW at DKK øre 70 /kWh in areas X and Y

Average price per kWh for total expansion of 300 MW for tenderers A and C =

$$\frac{(0.69 \times 200) + (0.68 \times 100)}{300} = \underline{0.687}$$

Average price per kWh for total expansion of 350 MW for tenderer B =

$$\frac{(0.7 \times 350)}{350} = \underline{0.700}$$

Consequence: *Tenderers A and C win and are each awarded a concession, as together they have tendered the lowest average price. Tenderer A is awarded a concession to construct 200 MW in area X at DKK øre 69 /kWh for 50,000 full-load hours; and tenderer C to establish 100 MW in area Y at DKK øre 68 /kWh for 50,000 full-load hours.*

Example 2:

Tenderer A submits a tender to construct 200 MW at DKK øre 69 /kWh in area X

Tenderer B submits a conditional tender to construct 150 MW in area X at DKK øre 70 /kWh and construct 200 MW in area Y at DKK øre 69 /kWh

Average price per kWh for expansion of 200 MW for tenderer A =

$$\frac{(0.69 \times 200)}{200} = \underline{0.690}$$

Average price per kWh for total expansion of 350 MW for tenderer B =

$$\frac{(0.70 \times 150) + (0.69 \times 200)}{350} = \underline{0.694}$$

Consequence: *Tenderer A wins and is awarded concession for area X.*

Example 3:

Tenderer A submits a tender to construct 200 MW at DKK øre 68 /kWh in area X

Tenderer B submits a tender to construct 150 MW at DKK øre 72 /kWh in area Y

Average price per kWh for total expansion of 350 MW for tenderers A and B =

$$\frac{(0.68 \cdot 200) + (0.72 \cdot 150)}{350} = \underline{0.697}$$

Consequence: *Tenderer A wins a concession for area X at a price of DKK øre 68 /kWh and tenderer B wins and is awarded the concession for area Y at a price of DKK øre 72 /kWh, as the average price for the total expansion is less than DKK øre 70 /kWh.*

Example 4:

Tenderer A submits a tender to construct 100 MW at DKK øre 65 /kWh in area X

Tenderer B submits a tender to construct 200 MW at DKK øre 73 /kWh in area Y

Average price per kWh for total expansion of 300 MW for tenderers A and B =

$$\frac{(0.65 \cdot 100) + (0.73 \cdot 200)}{300} = \underline{0.703}$$

Consequence: *Tenderer A wins the concession for area X. The tender from tenderer B is submitted to the parties to the Energy Agreement for possible approval, as the average price for the total expansion is more than DKK øre 70 /kWh.*

Example 5:

Tenderer A submits a tender to construct 200 MW at DKK øre 70 /kWh in area X

Tenderer B submits a tender to construct 200 MW at DKK øre 72 /kWh in area Y

Consequence: *Tenderer A wins and is awarded the concession for area X. Tenderer B is not awarded a concession as tenderer A has tendered a lower price and the total capacity if both tenders are accepted will exceed 350 MW.*

Example 6:

Tenderer A submits a conditional tender to construct a total of 350 MW at DKK øre 70 /kWh in areas X and Y

Tenderer B submits a conditional tender to construct a total of 350 MW at DKK øre 70 /kWh in areas Z and X

Consequence: *Tenderers A and B are invited to submit new, lower tenders within five days.*

Example 7:

Tenderer A submits a tender to construct 150 MW at DKK øre 69 /kWh in area X

Tenderer B submits a tender to construct 200 MW at DKK øre 68 /kWh in area Y

Tenderer C submits a tender to construct 200 MW at DKK øre 70 /kWh in area X
Tenderer D submits a tender to construct 100 MW at DKK øre 71 /kWh in area Z

$$\text{Average price per kWh for total expansion of 350 MW for tenderers A and B} = \frac{(0.69 \cdot 150) + (0.68 \cdot 200)}{350} = \underline{\underline{0.684}}$$

$$\text{Average price per kWh for total expansion of 250 MW for tenderers A and D} = \frac{(0.69 \cdot 150) + (0.71 \cdot 100)}{250} = \underline{\underline{0.698}}$$

$$\text{Average price per kWh for total expansion of 300 MW for tenderers D and B} = \frac{(0.68 \cdot 200) + (0.71 \cdot 100)}{300} = \underline{\underline{0.690}}$$

$$\text{Average price per kWh for total expansion of 300 MW for tenderers C and D} = \frac{(0.71 \cdot 100) + (0.7 \cdot 200)}{300} = \underline{\underline{0.703}}$$

Consequence: *Tenderer A wins a concession for area X at a price of DKK øre 69 /kWh and tenderer B wins a concession for area Y at a price of DKK øre 68 /kWh.*