



Energistyrelsen

Concession Agreement for Kriegers Flak II Offshore Wind Farm

between

Energistyrelsen (The Danish Energy Agency)
Business registration no. 59778714
Carsten Niebuhrs Gade 43
DK-1577 Copenhagen V
Denmark

(in the following referred to as the “DEA”)

and

[Company name]

[Business registration no.]

[Address]

[Postal code + city]

[Country]

(in the following referred to as the “Concessionaire”)

(the DEA and Concessionaire are further referred to collectively as the “Parties” and individually as a “Party”)



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1 BACKGROUND AND PURPOSE

- 1.1 This Agreement has been concluded between the Parties following an EU procurement procedure pursuant to the Directive on the Award of Concession Contracts.
- 1.2 Unless the Concessionaire is an already existing SPV which has been awarded the Agreement as the Successful Tenderer, before entering into this Agreement, the Concessionaire has been established or provided by the Successful Tenderer in accordance with the requirements stated in the procurement specifications. As stated in Sub-Clause 29.3.3, the shareholders of the SPV or as the case may be the Successful Tenderer is obligated to enter into the Irrevocable Undertaking in favour of State Holding at the latest on the Signing Date, with the purpose of selling and transferring to State Holding the number of shares in the Concessionaire (fully diluted and in each share class, if any) which equals to 20% of the share capital of the Concessionaire. Terms and conditions in this relation is regulated in the Irrevocable Undertaking.
- 1.3 The purpose of this Agreement is to regulate certain specific rights and obligations of the Concessionaire in relation to the establishment of the Offshore Wind Farm in the Concession Area, which are in addition to the Concessionaire's general obligation to comply with the Laws (current as well as future) of the Country in connection with the establishment, operation and decommissioning of the Offshore Wind Farm.
- 1.4 This Agreement also sets out the conditions for payment for the right to exploit the Concession Area and regulates the penalties linked to the failure of the Concessionaire to comply with the obligations set out in this Agreement.
- 1.5 This Agreement constitutes a concession contract pursuant to the Directive on the Award of Concession Contracts. This entails that the Concessionaire is subject to the operating risk associated with the establishment, operation and dismantling of the Offshore Wind Farm, including the risk of any potential changes to the Project.
- 1.6 The Concessionaire shall, at the Concessionaire's own risk and expense, obtain a number of relevant approvals, licenses and permits, pursuant to applicable legislation, in order to establish the Offshore Wind Farm. These approvals, licenses and permits will set out the specific nature of the exclusive rights and obligations for the Concessionaire's exploitation of the natural wind resources in connection with the Offshore Wind Farm. Any duties, obligations or responsibilities imposed upon the Concessionaire by such approvals, licenses and permits, shall be the sole responsibility of the Concessionaire and shall



not affect the terms of this Agreement and the relation between the Parties under this Agreement, unless explicitly stated in this Agreement.

- 1.7 The Concessionaire is hence solely responsible for obtaining all necessary approvals, licenses and permits, and to comply with any and all applicable Laws (current as well as future) regulating the establishment, operation and dismantling of the Offshore Wind Farm. The Concessionaire shall pay any costs and expenses to obtain such approvals, licenses and permits and to fulfil the terms thereof, and shall not be entitled to bring claims against the DEA for any limitations in the use of the Concession Area following from such approval, licenses and permits.
- 1.8 A Concessionaire who chooses to connect the Offshore Wind Farm to the Grid shall enter into a Grid Connection Agreement with Energinet as further set out in Sub-Clauses 7.1.4 and 7.1.5.
- 1.9 If the Concessionaire chooses to connect the Offshore Wind Farm to the Grid, Energinet will pursuant to section 4 of the Act on Energinet (in Danish: "*Bekendtgørelse af lov om Energinet, nr. 271 af 09/03/2023*") be required to establish the necessary installations for connection to the Grid, including but not limited to the POC, and the Concessionaire shall be obligated to refund certain costs incurred by Energinet, as further regulated in the Grid Connection Agreement.
- 1.10 The Grid Connection Agreement is an independent agreement and not an integral part of this Agreement. Any costs and expenses incurred by the Concessionaire under or in connection with the Grid Connection Agreement, including but not limited to, in regard to any Overplanting Capacity, fulfilment of terms in permits issued by Energinet, applicable legislation, rules, regulations and/or technical regulations, shall be the sole responsibility of the Concessionaire.

2 DEFINITIONS

In this Agreement the following words and expressions shall have the meanings stated, except where the context requires otherwise:

- 2.1 "**Activities**" means any type of action, task, performance, delivery, etc. or series of actions, tasks, performances, deliveries, etc. that are to be executed by the Concessionaire under the Agreement.
- 2.2 "**Agreement**" means this Concession Agreement, including the Appendices.



- 2.3 **"Appendix"** means an appendix to this Agreement as attached to this Agreement, including any further annexures and documents attached to each such Appendix.
- 2.4 **"Balance of Plant"** means all the components of the Offshore Wind Farm (except the Turbines), including the foundations of the Turbine and the Inter-Array Cable Network, the Export Cable Network and, if relevant, the Onshore Cable Network.
- 2.5 **"Concessionaire"** means [name], business registration no. [XX], [address], [postal code + city], [country].
- 2.6 **"Concession Agreement"** means this Concession Agreement, excluded any appendices.
- 2.7 **"Concession Area"** means the area in which the Offshore Wind Farm will be located, as specified in Appendix 2, (Location of the Concession Area).
- 2.8 **"Construction License"** means the license, that has been duly approved and issued by the DEA and is required pursuant to the RE Act section 25 for the construction of the Offshore Wind Farm.
- 2.9 **"Construction Start-Up"** means the point in time where the Concessionaire has commenced the offshore part of the Activities, e.g. preparation of foundations and scour protection around the foundations of the Turbines and, if relevant, substations of the Inter-Array Cable Network, preparation of pre-excavated trenches for the Inter-Array Cable Network and Export Cable Network or similar activities. It will not suffice that the preliminary site surveys or investigations have been commenced or completed.
- 2.10 **"Construction Start-Up Overplanting"** means the point in time where the Concessionaire has commenced the offshore part of the Activities regarding Overplanting Capacity, e.g. preparation of foundations and scour protection around foundations of the Turbines and substations of the Inter-Array Cable Network, preparation of pre-excavated trenches for the Inter-Array Cable Network and Export Cable Network or similar activities. It will not suffice that the preliminary site surveys or investigations have been commenced or completed.
- 2.11 **"Control"** means:
- (a) the ownership of more than fifty (50) per cent of the voting rights in; or
 - (b) the ability to elect or remove a majority of the directors of; or
 - (c) the exercise of management control over or the control over the majority of voting rights in,
- a legal person, whether through contract, constitutional documents or otherwise, and "Controlled" and "Change of Control" shall be construed accordingly.



- 2.12 **“Country”** means the Kingdom of Denmark, including the marine waters of Denmark and the Danish exclusive economic zone.
- 2.13 **“Danish Energy Agency”** or **“DEA”** means the Danish Energy Agency (*in Danish: Energistyrelsen*), business registration no. 59778714, Carsten Niebuhrs Gade 43, DK-1577 Copenhagen V, Denmark.
- 2.14 **“Directive on the Award of Concession Contracts”** refers to the Directive (EU) 2014/23/EU, as implemented into Danish law by the executive order no. 1080 of 29 June 2022 on award of concession contracts, as amended from time to time.
- 2.15 **“Days”** means, unless otherwise defined or limited, calendar days (i.e. not workdays).
- 2.16 **“Delay Damages Liability Caps”** means the 01-02 Time Period LD Cap or the 03-06 Time Period LD Cap (as applicable), as set out in Sub-Clause 14.1.
- 2.17 **“Delay Damages Liability Caps Overplanting Capacity”** means the 07-09 Time Period LD Cap (as applicable), as set out in Sub-Clause 14.2.
- 2.18 **“Electricity Production License”** means the license that has been duly approved and issued by the DEA and is required pursuant to the RE Act section 29 for the operation of the Offshore Wind Farm.
- 2.19 **“Energinet”** means the Danish Transmission System Operator (TSO), owned by the Danish Ministry of Climate, Energy and Utilities (in Danish: *Klima-, Energi og Forsyningsministeriet*), appointed to own,



operate and develop the transmission systems for electricity and gas in Denmark at the time of the execution of this Agreement and the legal successors in title to Energinet.

- 2.20 **“Environmental Assessment Act”** (in Danish: *Miljøvurderingsloven*) means statutory order no. 4 of 3 January 2023 on environmental assessments of plans and programmes and of specific projects (VVM), as amended from time to time.
- 2.21 **“Environmental Impact Assessment” or “EIA”** means environmental impact assessment in accordance with the Environmental Assessment Act.
- 2.22 **“Export Cable Network”** means any cabling from the Inter-Array Cable Network to the landing point of the Onshore Cable Network or to a consumption- or energy production facility (e.g. PtX). Attention is drawn to Clause 9 regarding consumption- or energy production facility (e.g. PtX) and direct lines.
- 2.23 **“First Time Period”** means the period defined in Sub-Clause 19.2.3.1.
- 2.24 **“Force Majeure”** means an event or circumstance which: (i) is beyond a Party's control; (ii) the Party could not reasonably have provided against before entering into the Agreement; (iii) having arisen, such Party could not reasonably have avoided or overcome; and (iv) is not substantially attributable to the



other Party. Such event or circumstance may include war, invasion, rebellion, terrorism, strike, lock-out, vandalism, epidemic or pandemic, if the conditions in items (i) to (iv) above are satisfied.

- 2.25 **“Grid”** means the collective electricity transmission grid in Denmark.
- 2.26 **“Grid Connection Agreement”** means the grid connection agreement to be entered into between the Concessionaire and Energinet, if the Offshore Wind Farm is to be connected to the Grid.
- 2.27 **“Group of Entities”** means e.g., a consortium, joint venture, association, partnership, or other unincorporated grouping of two or more persons, whether in the form of a partnership or otherwise.
- 2.28 **“Inter-Array Cable Network”** means the offshore substation(s) (if any) and the cables that connect the Turbines to any such offshore substation(s) and/or to the Export Cable Network.
- 2.29 **“Irrevocable Undertaking”** means the undertaking entered into by the Successful Tenderer or as the case may be the shareholder(s) of the Successful Tenderer, where the Successful Tenderer is an existing SPV, and State Holding at the latest on the Signing Date and as further set out in Sub-Clause 1.2.
- 2.30 **“Laws”** means all national (or state or provincial) legislation, statutes, acts, decrees, rules, ordinances, orders, treaties, international law and other laws, and regulations and by-laws of any legally constituted public authority.
- 2.31 **“Minimum Capacity”** means the minimum required production capacity of electricity from the Offshore Wind Farm, measured in gigawatts (GW) and as stated in Sub-Clause 7.1.1.
- 2.32 **“Offshore Wind Farm”** means the Turbines and the Balance of Plant.
- 2.33 **“Onshore Cable Network”** means the cabling from and including the landing point on the coast and including, if relevant, onshore substations, and, if relevant to the Point of Connection of the Grid, or, if relevant, to a consumption- or energy production facility (e.g. PtX) onshore. Attention is drawn to Clause 9 regarding consumption- or energy production facility (e.g. PtX) and direct lines.
- 2.34 **“Operational Capability Minimum Capacity”** means the point in time where the Offshore Wind Farm is commissioned, operational and capable of delivering the Minimum Capacity to the Grid and/or to any consumption- or energy production facilities (if relevant). For the avoidance of doubt, if the Offshore Wind Farm is connected to the Grid, this means that all steps and processes necessary in order to connect the Offshore Wind Farm to the Grid have been completed.
- 2.35 **“Operational Capability Overplanting Capacity”** means the point in time where the Offshore Wind Farm is commissioned, operational and capable of delivering the Overplanting Capacity to the Grid



and/or to any consuming facilities (if relevant). For the avoidance of doubt, if the Offshore Wind Farm is connected to the Grid, this means that all steps and processes necessary in order to connect the Offshore Wind Farm to the Grid have been completed.

- 2.36 **“Overplanting Capacity”** means the production capacity of electricity from the Offshore Wind Farm in the amount notified to the DEA in accordance with Sub-Clause 7.2 and in addition to the Minimum Capacity. For the sake of legal certainty this does not apply to the definition of overplanting capacity in the Grid Connection Agreement.
- 2.37 **“Parent Company Guarantee”** means the parent company guarantee appended to this Concession Agreement as Appendix 6, (Parent Company Guarantee).
- 2.38 **“Performance Guarantee”** means the performance guarantee appended to this Concession Agreement as Appendix 4, (Performance Guarantee).
- 2.39 **“Point of Connection”** or **“POC”** means the point where the Onshore Cable Network is connected to the Grid as specified in the Grid Connection Agreement (if any).
- 2.40 **“Preliminary Investigation License”** means the license that has been issued by the DEA and is required pursuant to the RE Act section 22 for the preliminary investigations performed by the Concessionaire prior to the commencing of the construction of the Offshore Wind Farm.
- 2.41 **“Project”** means the Kriegers Flak II Offshore Wind Farm.
- 2.42 **“RE Act”** means the renewable energy act (in Danish: *Lov om fremme af vedvarende energi*), statutory order no. 132 of 6 February 2024, as amended from time to time.
- 2.43 **“Signing Date”** means the execution date of this Concession Agreement.
- 2.44 **“Special Purpose Vehicle”** or **“SPV”** means as defined in Sub-Clause 20.3.1.
- 2.45 **“State Holding”** means the company established by the State of Denmark as a wholly owned public limited liability company (in Danish: *aktieselskab* or *“A/S”*) prior to the Signing Date. The Danish legal name is [Statslig Vind Holding] A/S.
- 2.46 **“Strategic Environmental Assessment”** or **“SEA”** means strategic environmental assessment in accordance with the Executive Order of the Act no. 4 of 3 January 2023 on Environmental Assessment of Plans and Programmes and of Specific Projects (EIA) (in Danish: *Bekendtgørelse af lov om miljøvurdering af planer og programmer og af konkrete projekter (VVM)*), which is a process and a tool for evaluating



the effects of proposed policies, plans and programmes on natural, social, cultural conditions and the institutional environment in which decisions are made.

2.47 “**Subcontractor**” means any person named in this Agreement as a subcontractor of or sub-supplier to the Concessionaire, or any person appointed by the Concessionaire as a subcontractor, supplier or designer, for a part of the Project; and the legal successors in title to each of these persons.

2.48 “**Successful Tenderer**” means the tenderer awarded the Agreement in the procurement procedure for [Project name] under the Concession Notice [insert no.]. The Successful Tenderer is the following entity/Group of Entities:

- [Company name]
- [Business registration no.]
- [Address]
- [Postal code + city]
- [Country]

To the extent that the Successful Tenderer is a Group of Entities, the members of the Group of Entities are listed in Appendix 8, (Consortia Declaration).

2.49 “**Supporting Economic Operator**” means the economic operator(s), on which the Concessionaire has relied on in respect of its economic or financial capacity under the preceding procurement procedure, including the following:

- [Upon conclusion of the Concession Agreement, insert a description of the economic and financial capacity provided by the Supporting Economic Operator under the preceding procurement procedure].

2.50 “**Supporting Technical Operator**” means the technical operator(s), on which the Successful Tenderer has relied on in respect of its technical and professional capacity under the preceding procurement procedure, including the following:

- [Upon conclusion of the Concession Agreement, insert a description of the technical and professional capacity provided by the Supporting Technical Operator under the preceding procurement procedure]

2.51 “**Turbine**” means the wind turbine generator(s) to form part of the Offshore Wind Farm and of the type and model as stated in the turbine type certificate and including any part or system of the wind turbine



generator and its associated main components, which includes the tower, blades, rotor, nacelle with drivetrain and control system.

2.52 “**Turbine Size**” means the nameplate capacity, i.e., on the basis of the nominal MW capacity or rated power, as stated in the turbine type certificate of the Turbine.

3 INTERPRETATION

3.1 In this Agreement, except where the context requires otherwise:

- (a) words indicating one gender include all genders;
- (b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- (c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing;
- (d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record;
- (e) "including" and "include" shall mean “including/include, but not limited to”;
- (f) words referring to persons or parties shall include any natural and legal persons (including corporations and any other legal entities);
- (g) if a period of time is stated to begin from a specific day, or from the day of an act or event, it shall be calculated exclusive of that day;
- (h) a reference to a specific time of the day shall be understood as the time in the Country;
- (i) a reference to a document shall include any parts of such document and any attachments thereto;
- (j) a reference to an Appendix shall be a reference to such Appendix as may have been amended, varied or otherwise modified in accordance with this Agreement; and



- (k) no rule of construction, including the “contra proferentem” rule, shall apply to the interpretation of this Agreement.

3.2 In any list in this Agreement, where the second-last item of the list is followed by "and" or "or" or "and/or" then all of the list items going before this item shall also be read as if they are followed by "and" or "or" or "and/or" (as the case may be). The marginal words and other headings shall not be taken into consideration in the interpretation of this Agreement.

4 COMMUNICATIONS

4.1 All notices, approvals, consents or any other type of communication to be given in accordance with the provisions of this Agreement shall be:

- a) in writing and delivered by hand (against receipt), sent by mail or courier (against receipt), or transmitted as a PDF file attached to an e-mail, except that notices of (i) the Agreement being null and void under Clause 6 or (ii) termination under Clause 19.3, may not solely be given by a PDF attached to an e-mail but must also be delivered by hand (against receipt) or sent by mail or courier (against receipt); and
- b) delivered, sent or transmitted to the relevant Party's representative. However, if the recipient gives notice of another address, communications shall thereafter be delivered accordingly, and if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

4.2 All notices, approvals, consents, or any other type of communication shall not be unreasonably withheld or delayed and shall have effect when it is received (or deemed to have been received). Communications given by e-mail in accordance with Sub-Clause 4.1 is deemed to have been received on the day after transmission, provided no non-delivery notification was received by the sender. Communication delivered by hand, or registered mail or courier, in accordance with Sub-Clause 4.1 is deemed to have been received upon delivery.

4.3 The Parties' representatives are the following:

The DEA's representative:

[Insert name and title]

[Insert address of DEA]



E-mail: [Insert e-mail address]

The Concessionaire's representative:

[Insert name and title]

[Insert address of Concessionaire]

E-mail: [Insert e-mail address]

5 PRIORITY OF DOCUMENTS

5.1 The documents forming the Agreement are to be taken as mutually explanatory of one another. If there is any conflict, ambiguity or discrepancy, the priority of the documents shall be in accordance with the following sequence:

1. this Concession Agreement, and
2. the Appendices,

provided that for documents belonging to the same level of priority, specific terms shall take precedence over general statements.

6 CONDITIONS SUBSEQUENT FOR THE AGREEMENT

6.1 This Agreement shall be effective and binding on the Parties on the Signing Date.

6.2 The DEA may notify the Concessionaire that the Agreement is null and void, if there are appeals against the final approval of the design for the Offshore Wind Farm based on:

- the SEA,
- the Preliminary Investigation License,
- the basis for the planning, or
- the EIA approval for the Onshore Cable Network,

which necessitates substantial changes of the conditions upon which this Agreement is based and if such changes in the DEA's discretionary judgement are incompatible with the procurement rules in force at the time.



- 6.3 In addition, the DEA may notify the Concessionaire that the Agreement is null and void, if the application for and/or issuance of the Construction License due to other circumstances necessitates substantial changes of the conditions upon which this Agreement is based and if such changes in the DEA's discretionary judgement are incompatible with the procurement rules in force at the time.
- 6.4 Further, the DEA may notify the Concessionaire that the Agreement is null and void, if there are substantial changes to the Preliminary Investigation License, the planning basis or the EIA approval for the Onshore Cable Network and/or the Construction License, preventing the Project from being concluded as described in this Agreement, unless another agreement is entered into between the DEA and the Concessionaire within the framework of the procurement rules in force at any time.
- 6.5 Lastly, if the Danish Safety Technology Authority (in Danish: *Sikkerhedsstyrelsen*) and the Ministry of Transport (in Danish: *Transportministeriet*) does not grant permission for expropriation of land in accordance with the Electrical Safety Act (in Danish: *Bekendtgørelse af lov om sikkerhed ved elektriske anlæg, elektriske installationer og elektrisk materiel*), cf. statutory order no. 26 of 10 January 2019, on the basis of the Concessionaire's application, and the Concessionaire has not, within a reasonable deadline set by the DEA, succeeded in identifying an alternative solution enabling the Concessionaire to connect to the POC or other facilities onshore as the case may be, the DEA may by notice inform the Concessionaire that the Agreement is null and void.
- 6.6 If this Agreement is rendered null and void as a consequence of one or several of the reasons above and this is not due to reasons for which the Concessionaire is responsible, the Concessionaire will get reimbursed for the expenses which has been paid by the Concessionaire to cover Energinet's costs for the offshore preliminary investigations (i) pursuant to Sub-Clause 10.2.2, where the Offshore Wind Farm is not to be connection to the Grid, or (ii) pursuant to, the Grid Connection Agreement entered into between the Concessionaire and Energinet, where the Offshore Wind Farm is to be connected to the Grid. Furthermore, if relevant, the Concessionaire will get reimbursed for the expenses which have been paid by the Concessionaire to cover Energinet's expenses for construction of Energinet's part of the Onshore Cable Network. The Concessionaire shall look solely towards Energinet for the reimbursement of such costs and shall have no right of recourse for such expenses against the DEA.
- 6.7 In case of the Agreement being considered null and void in accordance with this Clause 6, and save for the costs set out in Sub-Clause 6.6, any other costs of any nature or any claims arising out of or in connection with the Concessionaires fulfilment of the Agreement, and/or any of the associated approvals, licences, and permits, pursuant to applicable legislation, will not be compensated, and the Concessionaire hereby irrevocably waives the right to any such claims and confirms to indemnify and hold the Danish State harmless of any claim of such nature, including any claims for financial compensation, loss of profit, damages, or reimbursement of costs.



7 GENERAL OBLIGATIONS OF THE CONCESSIONAIRE

7.1 Obligation to establish an Offshore Wind Farm

- 7.1.1 The Concessionaire shall, within the Concession Area, establish the Offshore Wind Farm with a minimum capacity of one (1) GW (the “**Minimum Capacity**”) based on the Turbine Size of the installed Turbines, in accordance with this Agreement, hereunder the completion milestones stated in Sub-Clause 7.3.
- 7.1.2 The Concessionaire is allowed to establish production capacity of electricity corresponding to the nearest Turbine with which the Minimum Capacity is exceeded, calculated as the production capacity of electricity divided by the Turbine Size and rounded up to the nearest Turbine. A similar downward adjustment to the nearest Turbine under the Minimum Capacity is also within the requirements stated in Sub-Clause 7.1.1. If the Turbine Size is determined as a range, the production capacity of electricity may be calculated using the lowest level of the range.
- 7.1.3 The Concessionaire shall at its own risk and cost carry out all necessary preparations and seek relevant approvals, licenses, and permits needed to comply with its obligations under this Agreement and the Laws of the Country.
- 7.1.4 If the Concessionaire chooses to connect the Offshore Wind Farm to the Grid, and hence enters into a Grid Connection Agreement with Energinet, the Grid Connection Agreement will inter alia regulate the liability of Energinet and the Concessionaire pursuant to section 31 of the RE Act, and the duty of Energinet to establish the necessary installations for connection to the Grid, where the Concessionaire is guaranteed connection to the POC no later than the 31 December 2029. With regards to the liability pursuant to section 31 of the RE Act, the liability of Energinet is subject to a cap of DKK 1,540,000,000.00, which is also stated in the Grid Connection Agreement. Reference is further made to Appendix 1, (Project Specifications), section 2.2 for additional information regarding connection to the Grid.
- 7.1.5 If the Concessionaire chooses to connect the Offshore Wind Farm to the Grid, this should be notified to Energinet. If such notification is made at the latest one (1) month after Signing Date, Energinet will provide the Grid Connection Agreement to the Concessionaire at the latest four (4) months after the Signing Date. The Concessionaire shall at the latest one (1) month after having received the Grid Connection Agreement enter into the Grid Connection Agreement. If the Grid Connection Agreement is not concluded within five (5) months from the Signing Date, unless for reasons not attributable to



the Concessionaire, the Concessionaire is no longer guaranteed connection to the POC as set out above in Sub-Section 7.1.4.

7.2 Overplanting

- 7.2.1 The Concessionaire may choose to establish Overplanting Capacity in the Concession Area. Reference is further made to the specifications stated in Appendix 1, (Project Specifications), section 2.3.
- 7.2.2 The Concessionaire shall within six (6) months after the Signing Date notify the DEA whether or not the Concessionaire intends to establish Overplanting Capacity.
- 7.2.3 The notification pursuant to the preceding Sub-Clause shall include the amount of Overplanting Capacity that the Concessionaire intends to establish. When notifying the amount of Overplanting Capacity to establish, the Concessionaire shall take into account the limitations stated in Sub-Clause 8.2. Reference is further made to the specifications stated in Appendix 1, (Project Specifications), section 2.3. The notified intention is binding on the Concessionaire, however see Sub-Clause 19.3.
- 7.2.4 If notification regarding Overplanting Capacity is not delivered within the notification period specified in Sub-Clause 7.2.2, the Concessionaire forfeits its rights to establish Overplanting Capacity.
- 7.2.5 The Concessionaire shall, within the Concession Area, establish an Offshore Wind Farm with the Overplanting Capacity corresponding to the size notified to the DEA, pursuant to Sub-Clause 7.2.2, based on the Turbine Size of the installed Turbines, in accordance with this Agreement, hereunder the completion milestones stated in Sub-Clause 7.3.1. Sub-Clause 7.1.2 is equally applicable to the establishment of Overplanting Capacity.
- 7.2.6 The Concessionaire shall at its own risk and cost carry out all necessary preparations and seek relevant approvals, licenses and permits needed to comply with its obligations under this Agreement and the Laws of the Country in connection with the establishment of the Overplanting Capacity.

7.3 Completion milestones

- 7.3.1 The Concessionaire shall achieve the following completion milestones:
- Construction Start-Up no later than 31 December 2029 (the “**Construction Start-Up Date**”), and



- Operational Capability Minimum Capacity no later than 31 December 2030 (**the “Operational Capability Minimum Capacity Date”**)
- If relevant, Operational Capability Overplanting Capacity no later than 31 December 2032 (**the “Operational Capability Overplanting Capacity Date”**)

- 7.3.2 Attainment of and compliance with relevant approvals, licenses, and permits, pursuant to applicable Laws, are prerequisites for achieving the relevant completion milestones, meaning that for instance the Construction License will need to be obtained before achieving the Construction Start-Up milestone, and the Electricity Production License will need to be obtained before achieving the Operational Capability Minimum Capacity milestone and, if relevant, the Operational Capability Overplanting Capacity milestone. In addition, the Concessionaire’s compliance with Sub-Clause 7.5.4, including the DEA’s verification of the Concessionaire’s submission of sufficient documentation confirming compliance with the requirements stated in Sub-Clause 7.5.4.2, is a prerequisite to achieve Construction Start-Up.
- 7.3.3 Achievement of the completion milestones stated in Sub-Clause 7.3.1 shall be verified by the DEA based on relevant documentation submitted by the Concessionaire in accordance with the proceeding Sub-Clauses 7.3.4 and 7.3.5. Reference is furthermore made to Sub-Section 7.5.4.2.
- 7.3.4 The Concessionaire shall no later than at Construction Start-Up Date submit relevant documentation that confirms the achievement of Construction Start-Up.
- 7.3.5 The Concessionaire shall no later than at the Operational Capability Minimum Capacity Date and, if relevant, at the Operational Capability Overplanting Capacity Date, submit the relevant documentation that confirms the achievement of Operational Capability Minimum Capacity and, if relevant, the Operational Capability Overplanting Capacity. Reference is made to Sub-Clause 7.1.2 and 7.2.5 regarding calculation of the production capacity of electricity based on the Turbine Size.
- 7.3.6 The DEA reserves the right to have a third party evaluation carried out as to whether the completion milestones stated in Sub-Clause 7.3.1 have been achieved.
- 7.3.7 The Concessionaire shall notify the DEA in writing as soon as the Concessionaire becomes aware of a Project delay, unless the delay constitutes a circumstance eligible for a claim of extension of time in accordance with Sub-Clause 14.7, in which case the process in Sub-Clauses 14.7.3 and 14.7.4 shall be adhered to.



7.4 Programme preparations

- 7.4.1 The Concessionaire shall as soon as possible, and no later than three (3) months after the Signing Date, submit to the DEA a detailed programme describing the order in which the Concessionaire intends to carry out its work in order to achieve the completion milestones set in Sub-Clause 7.3.1.
- 7.4.2 The programme shall be in accordance with the requirements set out in Appendix 1, (Project Specifications) section 3.1.
- 7.4.3 The DEA may request a meeting between the Parties, if the DEA finds it necessary to clarify aspects of the programme.
- 7.4.4 The DEA must be kept continuously informed about any significant deviations from the submitted programme.

7.5 Sustainability

7.5.1 Environmental monitoring

- 7.5.1.1 The Concessionaire shall develop and maintain an environmental impact monitoring programme for the Offshore Wind Farm pursuant to requirements set out in the relevant approvals, licenses, and permits, pursuant to relevant legislation.

7.5.2 Life cycle assessment

- 7.5.2.1 The Concessionaire shall prepare a life cycle analysis ("LCA") of electricity produced from the Offshore Wind Farm in relation to the Minimum Capacity and in accordance with the requirements stated in Appendix 1, (Project Specifications), section 3.2. The LCA and the documentation pertaining thereto as set out in Appendix 1, (Project Specifications), section 3.2, requirement no. 3.2.1.-3.2.3, shall be submitted to the DEA no later than on the Construction Start-Up Date.
- 7.5.2.2 Upon request from the DEA, the Concessionaire shall prepare a LCA of electricity produced from the Offshore Wind Farm in relation to the Overplanting Capacity and in accordance with the requirements stated in Appendix 1, (Project Specifications), section 3.2. The LCA and the documentation pertaining thereto as set out in Appendix 1, (Project Specifications), section 3.2, requirement no.



3.2.1.-3.2.3, shall be submitted to the DEA shall be submitted to the DEA within a reasonable deadline set by the DEA.

7.5.2.3 Upon request from the DEA and within a reasonable deadline set by the DEA, the Concessionaire shall submit a new LCA of electricity produced from the Offshore Wind Farm, in accordance with the requirements stated in Appendix 1, (Project Specifications), requirement no. 3.2.3.

7.5.3 Environmental product declarations

7.5.3.1 The Concessionaire shall document the environmental performance of central components of the Offshore Wind Farm, as specified in Appendix 1, (Project Specifications) by developing environmental product declarations ("EPD") for these components in accordance with the requirements stated in Appendix 1, (Project Specifications), section 3.3.

7.5.3.2 The EPDs and the documentation pertaining thereto as set out in Appendix 1, (Project Specifications) section 3.3, requirement no. 3.3.3, shall be submitted to the DEA no later than on the Construction Start-Up Date.

7.5.3.3 Upon request from the DEA and within a reasonable deadline set by the DEA, the Concessionaire shall submit reviewed and verified EPD's and/or new EPD's for the central components covered by the Offshore Wind Farm in accordance with the requirements stated in Appendix 1, (Project Specifications), section 3.3, requirement no. 3.3.4.

7.5.4 Recyclable blades of the Turbines

7.5.4.1 The Concessionaire shall use blades of the Turbines (the "Turbine Blades") that are compliant with the requirements stated in Appendix 1, (Project Specifications), section 3.4 regarding the recyclability of the Turbine Blades.

7.5.4.2 The Concessionaire shall submit documentation to the DEA for the environmental technology verification ("ETV"), pursuant to requirement no. 3.4.4 of section 3.4 of Appendix 1, (Project Specifications) at the latest at the Construction Start-Up Date in order for the DEA to verify compliance with the requirements stated in Appendix 1, (Project Specifications), section 3.4, requirement no. 3.4.2 and 3.4.3.

7.5.4.3 If the Concessionaire fails to submit documentation pursuant to Sub-Clause 7.5.4.2 no later than at the Construction Start-Up Date, the Concessionaire shall pay delay damages to the DEA for this default pursuant to Sub-Clause 14.1.2 and 14.1.3. If the DEA cannot verify compliance with the requirements stated in Appendix 1, (Project Specifications) section 3.4, requirement no. 3.4.2 and



3.4.3, based on documentation submitted by the Concessionaire pursuant to Sub-Clause 7.5.4.2 no later than at the Construction Start-Up Date, the DEA will notify the Concessionaire hereof, and the Concessionaire will be liable to pay delay damages pursuant to Sub-Clause 14.1.2 and 14.1.3 for the period beginning at the date of such notification and until the DEA has verified compliance with the abovementioned requirements and has notified the Concessionaire hereof.

- 7.5.4.4 Upon request from the DEA, the Concessionaire shall submit necessary and relevant documentation to the DEA that confirms that the Turbine Blades used are compliant with the requirements stated in Appendix 1, (Project Specifications) section 3.4, requirement no. 3.4.1, and correspond to the type of turbine blade covered by the documentation pursuant to Sub-Clause 7.5.4.2. Such documentation shall be submitted to the DEA within a reasonable deadline set by the DEA.
- 7.5.4.5 If the Concessionaire cannot provide necessary documentation, pursuant to Sub-Clause 7.5.4.4, the DEA reserves the right to have a third party evaluation carried out as to whether the Turbine Blades used comply with the requirements set out in Sub-Clause 7.5.4.4. The Concessionaire shall pay the costs and expenses for such third party evaluation.
- 7.5.4.6 The Concessionaire shall, as soon as possible and within a reasonable deadline set by the DEA, submit relevant documentation to the DEA in accordance with Appendix 1, (Project Specifications) section 3.4, requirement no. 3.4.5, if the Concessionaire during the course of the Agreement should choose to use a different type of Turbine Blades than notified to the DEA. For the avoidance of doubt, any Turbine Blades shall comply with the requirements set out in the preceding Sub-Clauses of Sub-Clause 7.5.4.

7.6 Subcontractors

- 7.6.1 The Concessionaire shall on the Signing Date - or no later than five (5) Days after the Subcontractors are known - provide the name, contact details and legal representative of the Subcontractors that the Concessionaire will use for the fulfilment of this Agreement.
- 7.6.2 The Concessionaire shall without undue delay inform the DEA of any changes to the appointed Subcontractors as well as any changes to the name, contact details and legal representative of the appointed Subcontractors.



7.7 Social responsibility (CSR)

- 7.7.1 The Concessionaire shall adhere to the requirements set out in Appendix 3, (Social Responsibility (CSR)), for the duration of the Agreement at all times and for all parts of the establishment and operation of the Offshore Wind Farm.

7.8 Compliance with regulation on cybersecurity

- 7.8.1 The Concessionaire shall comply with NIS2 (Directive (EU) 2022/2555) and CER (Directive (EU) 2022/2557), and the rules incorporated from the directives into Danish national Laws.

8 CONCESSION AREA

- 8.1 The Concession Area covers the area set out by the coordinates stated in Appendix 2, (Location of the Concession Area).

8.2 Adjustment of the Concession Area

- 8.2.1 The Concessionaire shall establish production capacity of electricity of the Offshore Wind Farm of at least 250 MW in each of the two (2) areas constituting the Concession Area, cf. Appendix 2, (Location of the Concession Area).
- 8.2.2 If the Concessionaire fails to adhere to the requirement stated in Sub-Clause 8.2.1, the DEA shall adjust the Concession Area by reclaiming the area in which the production capacity of electricity of the Offshore Wind Farm is below 250 MW. In such case new coordinates constituting the Concession Area shall be added to this Agreement, as an addendum to Appendix 2, (Location of the Concession Area) and in accordance with the provisions stated in Clause 21.

9 POWER-TO-X AND DIRECT LINES

- 9.1. This Agreement does not prevent the Concessionaire from exploiting the production capacity of the Offshore Wind Farm for energy production, such as but not limited to innovative energy production (e.g. "Power-to-X"), if this is otherwise possible within the applicable Laws. For further information, reference is made to section 2.4 of Appendix 1, (Project Specifications).
- 9.1.1. The Concessionaire may choose to establish consuming- or energy production facilities (e.g. off-shore Power-to-X) provided it takes place within the Concession Area, to the extent this is done in



accordance with relevant legislation and the Concessionaire obtains all relevant approvals, licenses and permits, pursuant to applicable legislation.

- 9.1.2. The Concessionaire may choose to establish a direct line, with which to connect the Offshore Wind Farm with consuming- or energy production facilities, to the extent this is done in accordance with relevant legislation and the Concessionaire obtains all relevant approvals, licenses and permits, pursuant to applicable legislation.
- 9.1.3. It is solely the responsibility of the Concessionaire that any activity in the Concession Area is permitted under applicable Laws. The DEA is not responsible for any loss or damages suffered by the Concessionaire in a scenario where the Concessionaire must abandon an activity engaged in relation to Sub-Clause 9.1, due to lack of lawfulness.

10 PAYMENTS AND COSTS

10.1 Payments

- 10.1.1 The Concessionaire shall pay a concession payment as stated in Appendix 7, (Tender Submission Letter – [name of the Successful Tenderer]), for the right to exploit the Concession Area in accordance with this Agreement.
- 10.1.2 Upon request from the DEA, the Concessionaire shall make the concession payment as a fixed annual payment of DKK [Insert tender price divided by 30 years], the first time after the appeal period for the Electricity Production License has expired pursuant to section 67 of the RE Act, unless the Concessionaire satisfactory documents to the DEA that the conditions for the terms of the Electricity Production License to be initiated are not met at the time of the DEA's request for payment. Subsequent payment of the concession payment shall take place at the same time annually as the due date of the first concession payment. The annual concession payments will not be indexed. The annual concession payments are not subject to VAT (Value Added Tax).
- 10.1.3 The Concessionaire is obliged to pay the concession payment, pursuant to Sub-Clause 10.1.2, for a period of 30 years, beginning with the first concession payment being made as set out in Clause 10.1.2 and ending with the 30th concessions payment. If the duration of the Agreement is extended



pursuant to Sub-Clause 18.2, the concession payment shall continue to be paid by the Concessionaire as a fixed annual payment pursuant to Sub-Clause 10.1.2 and on unchanged terms for the duration of the extension period (i.e. still not indexed).

- 10.1.4 The Concessionaire shall make the fixed annual concession payments electronically in accordance with the conditions set out by the DEA on the invoice. Withdrawal of the amount from the Concessionaire's account on the last timely payment day is considered timely payment.
- 10.1.5 If the Concessionaire's failure to make electronic payment is due to impossibility deriving from the DEA's circumstances, the Concessionaire is not held responsible for the delay.
- 10.1.6 If the Concessionaire does not make the due payments in timely order as set out in Sub-Clause 10.1.3, the Concessionaire is obliged to pay interest in accordance with the Danish Interest Act (Legislative Order no 459 of 13th of May 2014).

10.2 Costs

- 10.2.1 The Concessionaire shall bear the full commercial risk of the concession, and the establishment, operation and decommissioning of the Offshore Wind Farm is at the Concessionaire's own cost and risk. Hence, the Concessionaire is not entitled to bring claims against the DEA in this respect, and hereby irrevocably waives any rights hereto and confirms to indemnify the DEA for any claim in contradiction with this waiver.
- 10.2.2 Attention is drawn to the obligation for the Concessionaire to bear the full cost of the offshore preliminary investigations performed by Energinet, pursuant to section 23 (3) of the RE Act, regardless of whether the Concessionaire enters into a Grid Connection Agreement with Energinet and regardless of the size of the Final Project Area. The cost of the offshore preliminary investigations is estimated at DKK 376,000,000.00, including interest calculated up to and including 31 December 2028. Attention is drawn to the fact that the estimated cost and the specified date for calculation of the final amount may be subject to change up until the time of the DEA's issuance of the Construction License. Furthermore, the interest rate will be adjusted on an ongoing basis, which will result in the costs, including interest, being adjusted accordingly. Where a Grid Connection Agreement is entered into between the Concessionaire and Energinet, the Concessionaire's obligation to refund Energinet the costs for offshore preliminary investigations is regulated in Grid Connection Agreement.
- 10.2.3 Attention is drawn to the requirement, stipulated in the Construction License, cf. section 25 of the RE Act, for the Concessionaire to bear the actual costs for the temporary and permanent preventive measures implemented so as to prevent deteriorations in the quality of the current military radio communication and radar surveillance caused by the Offshore Wind Farm. The costs for the aforementioned temporary and permanent preventive measures will be finally determined by the Danish



Defence (in Danish: *Forsvaret*). Regardless of the actual total cost of the temporary and permanent preventive measures once determined by the Danish Defence being higher, the total costs to be born by the Concessionaire is maximized at DKK 200 million. Should the actual total cost of the temporary and permanent preventive measures be determined by the Danish Defence to be lower than DKK 200 million, the Concessionaire shall only be obligated to pay such lower amount. Attention is drawn to the Construction License, cf. section 25 of the RE Act, where requirements related to the temporary and permanent preventive measures and payment of costs related thereto are further specified.

- 10.2.4 Attention is drawn to the requirement for the Concessionaire to bear the full costs of the Danish Naval Command (in Danish: *Søværnskommandoen*) and the full cost of personnel and material made available by the Naval Diving Service (in Danish: *Søværnets Dykkertjeneste*) related to the removal and neutralization of any unexploded ordnance (UXO) found in the Concession Area and where the Activities are performed, as stipulated in relevant approvals, licenses and permits, issued by relevant authorities, pursuant to applicable Laws. Reference is further made to relevant legislation regarding the removal and neutralization of any UXO.
- 10.2.5 Attention is drawn to the requirement, stipulated in the Construction License, cf. section 25 of the RE Act, for the Concessionaire to bear the full cost related to the Danish Geodata Agency's (in Danish: *Geodatastyrelsen*) updating of the navigational charts, when the update is related to the establishment of the Offshore Wind Farm. The costs are estimated to DKK 700,000.00, based on the best available estimate, however the total and actual costs is determined by the Danish Geodata Agency. Hence, the actual costs might be higher or lower than the estimated amount, and no matter what the actual costs are fully and solely born by the Concessionaire. Attention is drawn to the Construction License, cf. section 25 of the RE Act, where requirements related to payment of costs related to the updating of the navigational charts is regulated further.
- 10.2.6 The Concessionaire shall bear any costs of ensuring the sale of the electricity production to the electricity market and balancing costs for the electricity from the Turbines will not be reimbursed by the DEA.
- 10.2.7 The Concessionaire shall bear the full costs and risks associated with any requirements to dismantle and decommission the Offshore Wind Farm in accordance with any requirements stated in the relevant approvals, licenses, and permits, pursuant to applicable legislation. Furthermore, the Concessionaire shall provide a sufficient guarantee for the dismantling and decommissioning of the Offshore



Wind Farm in accordance with the requirements stated in the aforementioned relevant approvals, licenses and permits.

10.2.8 No tariffs paid to Energinet will be reimbursed by the DEA.

11 UNBUNDLING

- 11.1.1 This Clause 11 only apply if the Concessionaire decides to connect the Offshore Wind Farm to the Grid and thereby enter into a Grid Connection Agreement with Energinet.
- 11.1.2 If the DEA considers it necessary in order to comply with the EU regulations on equal and non-discriminatory third party access to the Grid, the DEA is entitled, at any time prior to issuance of an approval for dismantling the Offshore Wind Farm, to appoint a transmissions system operator (Energinet) to assume ownership of the Export Cable Network and the Onshore Cable Network without payment or compensation to the Concessionaire apart from that mentioned in Sub-Clause 11.1.4.
- 11.1.3 If the DEA utilizes its right pursuant to Sub-Clause 11.1.2, the DEA must notify the Concessionaire in writing with no less than six months' prior notice.
- 11.1.4 The Concessionaire shall contribute to full and unlimited transfer of ownership of the Export Cable Network and the Onshore Cable Network, and such transfer of ownership shall take place by separate written agreement between the Concessionaire and Energinet and without payment to the Concessionaire. Notwithstanding the foregoing, the Concessionaire will be compensated for all direct costs incurred by the Concessionaire in connection with the transfer of ownership, including costs of technical changes to existing facilities (transfer of the POC to the offshore substation) caused by the transfer of ownership to Energinet, as well as documented costs related to early termination of contracts for operations and maintenance of the Export Cable Network and Onshore Cable Network.
- 11.1.5 Unless the Parties agree otherwise, the date of transfer of ownership will be the date stated in the separate transfer agreement to be entered into between the Concessionaire and Energinet as set out in the preceding Sub-Clause.
- 11.1.6 From the date of the transfer of ownership of the Export Cable Network and the Onshore Cable Network, Energinet will assume full responsibility for maintaining and operating the Export Cable



Network and the Onshore Cable Network, and take over all risks and costs of maintaining and operating the Export Cable Network and the Onshore Cable Network.

- 11.1.7 Transfer of ownership of the Export Cable Network and the Onshore Cable Network will also convey the duty to dismantle the offshore part of the cables routing onshore from the Concessionaire to Energinet. However, the Concessionaire remains obligated to dismantle the remaining offshore parts of the Offshore Wind Farm.
- 11.1.8 Energinet will not be entitled to collect separate tariffs, in addition to the general tariffs, for transmission by the Concessionaire of electricity from the Offshore Wind Farm to the Grid following Energinet's acquisition of ownership of the Export Cable Network and the Onshore Cable Network.
- 11.1.9 If the DEA exercises its right to appoint Energinet to assume ownership of the Export Cable Network and the Onshore Cable Network as set out in Sub-Clause 11.1.2, the obligation to compensate the Concessionaire for production losses as a consequence of reductions is regulated in section 35 of the RE act, and will enter into force on the date of transfer.
- 11.1.10 The right of the DEA to require the transfer of ownership of the Export Cable Network and the Onshore Cable Network pursuant to this Clause 11 does not comprise any energy storage facilities, which the Concessionaire may have established. Transmission of electricity from such energy storage facilities that, after the date of the transfer of ownership of the Export Cable Network and the Onshore Cable Network have not been connected to the Inter-Array Cable Network of the Offshore Wind Farm, is to be managed in accordance with the regulations in force at any time for installations connected to the Grid on the date of transmission of such electricity.

12 THE ROLE OF THE AUTHORITIES

12.1 Compliance with the Laws of the Country

- 12.1.1 Nothing in this Agreement shall release the Concessionaire from its obligation to always comply with the Laws of the Country.



13 REPRESENTATION AND WARRANTIES

13.1 The Concessionaire hereby represents and warrants to the DEA that:

- a) it is a [insert entity type], duly incorporated and validly existing under the Laws of the Country;
- b) the obligations expressed to be assumed by it in the Agreement are valid, legal and binding; and
- c) it has the power to enter into and perform under the Agreement and has taken all necessary action to authorise its entering into and performance under the Agreement.

14 NON-PERFORMANCE AND DELAY BY THE CONCESSIONAIRE

14.1 Delay in achieving completion milestones regarding Minimum Capacity

14.1.1 The Concessionaire shall achieve the Construction Start-Up as set out in Sub-Clause 7.3.1 and 7.3.4, as well as submit documentation to the DEA, pursuant to Sub-Clause 7.5.4.2.

14.1.2 The Concessionaire shall pay delay damages to the DEA, if:

- a) the Concessionaire fails to achieve the Construction Start-Up at the latest on Construction Start-Up Date, cf. 7.3.1, hereunder if the Concessionaire fails to provide the relevant documentation, pursuant to Sub-Clause 7.3.4, or if the aforementioned documentation is deemed insufficient by the DEA so as to verify the achievement of the Construction Start-Up, cf. Sub-clause 7.3.3, or
- b) the Concessionaire, at the latest on the Construction Start-Up Date, cf. Sub-Clause 7.3.1, fails to provide documentation regarding recyclable Turbines Blades, pursuant to Sub-Clause 7.5.4.2, or if the aforementioned documentation is deemed insufficient by the DEA so as to verify the compliance with the requirements stated in Appendix 1, (Project Specifications) section 3.4, requirement no. 3.4.2 and 3.4.3, however cf. Sub-Clause 7.5.4.3.

14.1.3 The DEA shall be entitled to delay damages in accordance with the preceding Sub-Clause in an amount of:

- i) DKK 5,000,000.00 ("**01 Time Period LD**") for each commenced month of delay the first 24 months which elapse between the Construction Start-Up Date and (a) the date that the Concessionaire actually achieves the Construction Start-Up, including having received the DEA's verification of the documentation confirming the achievement of Construction Start-Up, cf.



Sub-Clause 7.3.4 and the compliance with the requirements stated in Appendix 1, (Project Specifications), section 3.4, requirement no. 3.4.2 and 3.4.3, cf. Sub-Clause 7.5.4.2 as modified by Sub-Clause 7.5.4.3 or (b) the date upon which this Agreement is terminated by the DEA, and

- ii) DKK 12,000,000.00 ("**02 Time Period LD**") for each commenced month of delay which elapse after the first 24 months of delay of the Construction Start-Up Date and (a) the date that the Concessionaire actually achieves the Construction Start-Up, including having received the DEA's verification of the documentation confirming the achievement of Construction Start-Up, cf. Sub-Clause 7.3.4 and the compliance with the requirements stated in Appendix 1, (Project Specifications), section 3.4, requirement no. 3.4.2 and 3.4.3, cf. Sub-Clause 7.5.4.2 as modified by Sub-Clause 7.5.4.3 or (b) the date upon which this Agreement is terminated by the DEA.

14.1.4 The total amount due under Sub-Clause 14.1.3 shall not exceed DKK 264,000,000.00 (the "**01-02 Time Period LD Cap**"), which is equivalent to a delay of 36 months in total. If the total amount due towards the DEA has reached the 01-02 Time Period LD Cap, the DEA shall be entitled to terminate the Agreement in accordance with sub-paragraph (d) of Sub-Clause 19.1.1.

14.1.5 The Concessionaire shall achieve the Operational Capability Minimum Capacity, pursuant to Sub-Clause 7.3.1 and 7.3.5.

14.1.6 The Concessionaire, subject to and after having achieved Construction Start-Up, shall pay delay damages to the DEA, if the Concessionaire fails to achieve the Operational Capability Minimum Capacity at the latest on Operational Capability Minimum Capacity Date, cf. 7.3.1, hereunder if the Concessionaire fails to provide the relevant documentation, pursuant to Sub-Clause 7.3.5, or if the aforementioned documentation is deemed insufficient by the DEA so as to verify the achievement of the Operational Capability Minimum Capacity, cf. Sub-clause 7.3.3.

14.1.7 The DEA shall be entitled to delay damages in accordance with the preceding Sub-Clause in an amount of:

- i) DKK 5,000,000.00 ("**03 Time Period LD**") for each commenced month of delay the first 12 months which elapse between the Operational Capability Minimum Capacity Date and (a) the date that the Concessionaire actually achieves the Operational Capability Minimum Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Minimum Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA, and



- ii) DKK 12,000,000.00 ("**04 Time Period LD**") for each commenced month of delay the next 12 months which elapse after the first 12 months of delay of the Operational Capability Minimum Capacity Date and until (a) the date that the Concessionaire actually achieves the Operational Capability Minimum Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Minimum Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA.
- iii) DKK 35,000,000.00 ("**05 Time Period LD**") for each commenced month of delay the next 12 months which elapse after the first 24 months of delay of the Operational Capability Minimum Capacity Date and until (a) the date that the Concessionaire actually achieves the Operational Capability Minimum Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Minimum Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA, and
- iv) DKK 45,000,000.00 ("**06 Time Period LD**") for each commenced month of delay the next 12 months which elapse after the first 36 months of delay of the Operational Capability Minimum Capacity Date and until (a) the date that the Concessionaire actually achieves the Operational Capability Minimum Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Minimum Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA.

14.1.8 The total amount due under Sub-Clause 14.1.7 shall not exceed DKK 1,164,000,000.00 (the "**03-06 Time Period LD Cap**"), which is equivalent to a delay of 48 months in total. If the total amount due towards the DEA has reached the 03-06 Time Period LD Cap, the DEA shall be entitled to terminate the Agreement in accordance with sub-paragraph (d) of Sub-Clause 19.1.1.

14.2 Delay in achieving completion milestones regarding Overplanting Capacity

- 14.2.1 If the Concessionaire chooses to establish Overplanting Capacity pursuant to Sub-Clause 7.2, the Concessionaire shall achieve the Operational Capability Overplanting Capacity as set out in Sub-Clause 7.3.1.
- 14.2.2 The Concessionaire shall, pay delay damages to the DEA if the Concessionaire fails to achieve the Operational Capability Overplanting Capacity at the latest on Operational Capability Overplanting Capacity Date, cf. 7.3.1, hereunder if the Concessionaire fails to provide the relevant documentation, pursuant to Sub-Clause 7.3.5, or if the aforementioned documentation is deemed insufficient by the



DEA so as to verify the achievement of the Operational Capability Overplanting Capacity, cf. Sub-clause 7.3.3.

14.2.3 DEA shall be entitled to delay damages in accordance with the preceding Sub-Clause in an amount of:

- i) [Formula for calculation: *DKK 5,000.00 times amount of MW* notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2.) ("**07 Time Period LD**") for each commenced month of delay the first 24 months which elapse between the Operational Capability Overplanting Capacity Date, cf. Sub-Clause 7.3.1, and (a) the date that the Concessionaire actually achieves the Operational Capability Overplanting Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Overplanting Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA.
- ii) [Formula for calculation: *DKK 10,000.00 times amount of MW* notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2.] ("**08 Time Period LD**") for each commenced month of delay the next 12 months which elapse after the first 24 months of delay of the Operational Capability Overplanting Capacity Date and until (a) the date that the Concessionaire actually achieves the Operational Capability Overplanting Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Overplanted Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA.
- iii) [Formula for calculation: *DKK 25,000.00 times amount of MW* notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2.] ("**09 Time Period LD**") for each commenced month of delay the next 12 months which elapse after the first 36 months of delay of the Operational Capability Overplanting Capacity Date and until (a) the date that the Concessionaire actually achieves the Operational Capability Overplanting Capacity, including having received the DEA's verification of the documentation confirming the achievement of the Operational Capability Overplanted Capacity, cf. Sub-Clause 7.3.5 or (b) the date upon which this Agreement is terminated by the DEA.

14.2.4 The total amount due under Sub-Clause 14.2.3 shall not exceed the total sum of 07-09 Time Period LD [Formula for calculation: *DKK 540,000.00 times amount of MW* notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2], which is equivalent to a delay of 48 months in total (the "**07-09 Time Period LD Cap**"). If the total amount due towards the DEA has reached the 07-09 Time



Period LD Cap, the DEA shall be entitled to terminate the Agreement in accordance with sub-paragraph (d) of Sub-Clause 19.1.1.

14.3 Payment of delay damages

14.3.1 Delay damages pursuant to Sub-Clause 14.1 are due for payment on the earlier of a) the date upon which the Concessionaire achieves the Operational Capability Minimum Capacity milestone or b) the date upon which this Agreement is terminated. The DEA forfeits any requirement to receive payment of any delay damages pending due to a delay in achieving the Construction Start-Up milestone, if the Concessionaire achieves the Operational Capability Minimum Capacity milestone at the latest on the Operational Capability Minimum Capacity Date.

14.3.2 The delay damages due in accordance with the preceding Sub-Clauses shall be paid upon the DEA's request.

14.4 Delay Remedies

14.4.1 The delay damages under Sub-Clauses 14.1 and, if relevant, 14.2 shall be the only damages due from the Concessionaire for such delays towards the DEA, except in the event of termination of the Agreement by the DEA, cf. Sub-Clause 19.1.1. These damages shall not relieve the Concessionaire of the obligation to achieve the completion milestones, cf. Sub-Clause 7.3.1, or from any other duties, obligations, or responsibilities which the Concessionaire may have under the Agreement.

14.5 Non-performance

14.5.1 If the Concessionaire fails to comply with its duties, obligations or responsibilities under the Agreement, including but not limited to the requirements stated in Appendix 1, (Project Specifications), section 3, the Concessionaire shall immediately notify the DEA in writing stating the reason for the default and the expected time for remedying the default.

14.5.2 If the Concessionaire fails to comply with its duties, obligations or responsibilities under the Agreement, including but not limited to the requirements stated in Appendix 1, (Project Specifications), section 3, the DEA is entitled to request the Concessionaire to remedy the matter without undue



delay and at the risk and cost of the Concessionaire, unless such remedy is impossible or would be unreasonably burdensome.

- 14.5.3 The Concessionaire shall at all times take necessary measures so as to limit the loss or inconvenience caused to the DEA due to the Concessionaire's failure to comply with any of its duties, obligations or responsibilities under the Agreement, including but not limited to the requirements stated in Appendix 1, (Project Specifications), section 3.

14.6 Other remedies

- 14.6.1 If the Concessionaire fails to comply with its duties, obligations or responsibilities under the Agreement, and the default is not remedied in accordance with the process set out in Sub-Clause 14.5, the DEA may seek the default resolved and settled through the following default resolution measures:

- i) The default must be sought resolved and settled amicably between duly authorized representatives of each Party, no later than five (5) Days after the request of the DEA to resolve the default in accordance with this provision, so as to ensure fulfillment of the Concessionaire's duties, obligations or responsibilities under the Agreement;
- ii) Unless settled amicably under i), the default must be sought clarified and settled amicably between representatives of management of each Party no later than five (5) Days after expiry of the deadline pursuant to i), so as to ensure fulfillment of the Concessionaire's duties, obligations or responsibilities under the Agreement;
- iii) Unless settled amicably under ii), the default must be sought clarified and settled amicably between chief executive officers or equivalent of each Party no later than five (5) Days after expiry of the deadline pursuant to ii), so as to ensure fulfillment of the Concessionaire's duties, obligations or responsibilities w under the Agreement.

- 14.6.2 In addition to remedies set out in Clause 14, the DEA shall be entitled to any rights and remedies available under applicable Laws.

14.7 Extension of time

- 14.7.1 The Concessionaire shall be entitled to an extension of time for achieving the completion milestones set out in Sub-Clause 7.3.1, if and to the extent that the Signing Date is delayed with more than two (2) months compared to the earliest expected signing date stipulated in the time schedule set out in



the procurement specifications under the preceding procurement procedure, at the time of publication of the concession notice, unless for reasons attributable to the Concessionaire's acts or omissions. The completion milestones set out in Sub-Clause 7.3.1, shall all be postponed with the number of days for which such delay exceeds two (2) months. For the avoidance of doubt, the Concessionaire shall have no such entitlement to extension of time, if the Concessionaire by acts or omissions has caused the delay. Further, if the Concessionaire by acts or omissions has contributed to the delay, the Concessionaire shall merely have entitlement to an extension of time proportional to the duration of the part of delay for which the DEA and/or other public authority are liable.

14.7.2 The Concessionaire shall be entitled to an extension of time for achieving a completion milestone set out in Sub-Clause 7.3.1, if and to the extent that achieving the completion milestone, is or will be delayed by one or several of the following circumstances:

- a) if, unless for reasons that are attributable to the Concessionaire, the Concessionaire does not receive the relevant approvals, licenses and permits, pursuant to applicable Laws - including licences from other public authorities than the DEA and the Danish Environmental Protection Agency (in Danish: "*Miljøstyrelsen*") - required in order for the Concessionaire to be able to observe the completion milestones set out in Sub-Clause 7.3.1, and subject to the Concessionaire being able to document reasonable grounds for having assumed specific timeframes for receiving such approvals, licenses and permits in the planning by the Concessionaire;
- b) for reasons pertaining to Force Majeure;
- c) in case of delays in obtaining completion milestones cf. Sub-Clause 7.3.1, due to delays in obtaining grid connection (if relevant) which are not attributable to the Concessionaire, including in the situation where it has not been possible, using best commercial endeavours, for the Concessionaire to establish necessary agreements with necessary and relevant landowners in order to obtain grid connection and/or if the necessary expropriation cases are delayed.
- d) in case of unusually severe precipitation, high or low temperatures, strong winds or other weather conditions where the Activities are performed that are in excess of the norm for the location and time of year it occurred and sufficiently severe to prevent or delay the Activities;
- e) if public orders or bans, not caused by circumstances attributable to the Concessionaire, prevents the Concessionaire from performing the Activities;
- f) if the Concessionaire, for reasons that are not attributable to the Concessionaire, has not received from Energinet the EIA approval for the Onshore Cable Network, issued by the Danish Environmental Protection Agency before 1 July 2026;



- g) if respectively i) the Environment and Food Board of Appeal (in Danish: *Miljø- og Fødevareklagenævnet*) or ii) the Planning Appeals Board (in Danish: *Planklagenævnet*), in the case of appeals against respectively the planning basis or EIA approvals for the Onshore Cable Network, and/or iii) the Energy Board of Appeal (in Danish: *Energiklagenævnet*), in the case of appeals against the decision on the final approval of the plan for the Offshore Wind Farm, based on the SEA, the Preliminary Investigation License, the Construction License or the Electricity Production License, has/have assessed that there is a right of appeal and that the board of appeal will therefore process the appeal, and if such appeals entails that the Preliminary Investigation License, the Construction License or the Electricity Production License required in order for the Concessionaire to be able to observe the completion milestones set out in Sub-Clause 7.3.1 is not received, provided the Concessionaire is able to document reasonable grounds for having assumed specific timeframes for receiving the Preliminary Investigation License, the Construction License or the Electricity Production License in the planning by the Concessionaire;
- h) if respectively i) the Environment and Food Board of Appeal (in Danish: *Miljø- og Fødevareklagenævnet*) or ii) the Planning Appeals Board (in Danish: *Planklagenævnet*), in the case of appeals against respectively the planning basis or EIA approvals for the Onshore Cable Network, and/or iii) the Energy Board of Appeal, in the case of appeals against the decision on the final approval of the plan for the Offshore Wind Farm, cancel(s) the decision on final approval of the plan for the Offshore Wind Farm based on the SEA, the planning basis, the EIA approval of the Onshore Cable Network, the Preliminary Investigation License, the Construction License or the Electricity production License to the extent that this causes a delay;
- i) if there are changes to the planning basis or the EIA approval of Onshore Cable Network, the decision on final approval of the plan for the Offshore Wind Farm based on the SEA, the Preliminary Investigation License or the Construction License that cause a delay, and that are required by the DEA or the Danish Environmental Protection Agency;
- j) changes to the Project that do not fall within the approved planning basis, the EIA approval of the Onshore Cable Network and/or the Construction License, and that require a supplementary EIA, and where the change of the Project is not attributable to the Concessionaire and cannot be defined as the Concessionaire's responsibility cf. Clause 7 and is necessary due to unforeseen circumstances, including environmental considerations;
- k) subject to using reasonable planning and installation practices, the delay due to removal of more than four UXOs by Danish Defence Command (in Danish: *Forsvarskommandoen*); or



- l) delay resulting from preventive measures taken to protect and safeguard the Danish Defence Command's radar and radio communication, which is required in accordance with the instructions of the Danish Defence Command and as further set out in the Construction License, cf. RE Act section 25 (3).

14.7.3 For all circumstances under sub-paragraph a) to l) of Sub-Clause 14.7.2. The extension of time will only amount to the actual documented cumulated delay caused by the relevant circumstances, and subject to the Concessionaire having taken reasonable steps to mitigate the delay. Extension of time is the only available legal recourse of the Concessionaire in respect of circumstances under sub-paragraph a) to l) of Sub-Clause 14.7.2, hence the Concessionaire shall have no right to also claim for damages. For the avoidance of doubt, the Concessionaire shall have no entitlement to extension of time, cf. Sub-Clause 14.7.2 and if the Concessionaire has caused the delay. Further, if the Concessionaire has contributed to the delay, the Concessionaire shall merely have entitlement to an extension of time, cf. Sub-Clause 14.7.2 and proportional to the duration of the part of delay for which the DEA or other public authority are liable or bears the risk. The DEA will assess the circumstances and the actual delay on the basis of written documentation from the Concessionaire as set out in the proceeding Sub-Clause.

14.7.4 The Concessionaire shall notify the DEA in writing as soon as possible, and not later than thirty (30) days after the Concessionaire became aware of a circumstance covered by the Sub-Clause 14.7.2 and 14.7.3. If the Concessionaire fails to give such notice within such period of thirty (30) days, the Concessionaire shall not be entitled to any extension of time. Within ninety (90) days after the Concessionaire became aware of the circumstance given rise to the claim of extension of time, the Concessionaire is obliged to submit documentation that confirms that the delay has been caused by circumstances eligible to a claim for extension of time, cf. Sub-Clause 14.7.2 and with full supporting



particulars of the basis of the claim, and that the delay cannot reasonably be avoided or mitigated. If the circumstances giving rise to the claim has continuing effect, the Concessionaire shall:

- a) note that the initial claim with documentation (and any other interim claim) shall be considered interim,
- b) send further interim claims at monthly intervals, giving the accumulated delay claimed, and such further particulars as the DEA may reasonably require, and
- c) send a final claim within one (1) month after the end of the effects resulting from the circumstance.

15 LIABILITY

15.1 Joint and several liability

15.1.1 Where the SPV is established or provided by the Successful Tenderer after award of the Agreement, cf. Sub-Clause 1.2, the Successful Tenderer shall assume joint and several liability with the Concessionaire for the performance of this Agreement. The Successful Tenderer shall co-sign the Agreement in connection with the execution of the Agreement.

15.1.2 If the Successful Tenderer is a Group of Entities, the following shall be observed:

- a) the members of the Group of Entities shall be jointly and severally liable for the performance of the Agreement;
- b) the members of the Group of Entities shall notify the DEA about their appointed representative who has the authority to make binding decisions on behalf of the Concessionaire and the members of the Group of Entities; and
- c) neither the members nor the legal status of the Group of Entities shall be altered without the prior written consent from the DEA.

15.1.3 The Supporting Economic Operator(s) shall be jointly and severally liable with the Concessionaire for the performance of the Agreement. The Supporting Economic Operator(s) shall co-sign the Concession Agreement in connection with the execution of the Agreement. Nothing in the Agreement shall be construed as imposing greater obligations or liabilities upon the Supporting Economic Operator than those imposed on the Concessionaire. If any claim against the Concessionaire under the



Agreement is covered under the guarantees, pursuant to Clause 16, the Supporting Economic Operator(s) will only be liable towards the DEA, if the DEA does not receive payment of the (entire) claim under the guarantees pursuant to Clause 16 or if such guarantees are released at the time the DEA is making its claim.

15.2 The Concessionaire's indemnities

15.2.1 The Concessionaire shall be responsible for and shall defend, indemnify and hold harmless the DEA from and against all costs (including legal costs, e.g., fees for legal services necessary and fair to defend the DEA's position, court fees, fees to independent experts engaged by the DEA or appointed by the court, etc.), expenses, liabilities, claims, proceedings, damages, and/or losses, as incurred and on demand, in any way arising from or connected with:

- a) any loss of, recovery of or damage to property, real or personal, arising out of, as a consequence of or in connection with the Project;
- b) bodily injury, sickness, disease, or death of any person, arising out of, as a consequence of or in connection with the Project; and
- c) regulatory fines, penalties, sanctions, interest, or other regulatory monetary remedies incurred by the DEA as a consequence of the Concessionaire's non-compliance with applicable law.

15.2.2 If any third party makes a claim, or notifies an intention to make a claim, against the DEA/the Danish State that may reasonably be considered likely to give rise to liability as provided for under Sub-Clause 15.2.1, the DEA shall:

- a) as soon as practically possible give written notice of the claim to the Concessionaire, specifying the nature of the claim in reasonable detail;
- b) not make any admission of liability, agreement, or compromise in relation to the claim without the prior written consent of the Concessionaire (such consent not to be unreasonably conditioned, withheld or delayed), but the DEA may settle the claim without obtaining the Concessionaire's consent if the DEA reasonably believes that failure to settle the claim would be prejudicial to it in any material respect; and
- c) give the Concessionaire and its professional advisers access at reasonable times (on reasonable prior notice) to any relevant documents and records within the control of the DEA, so as to enable the Concessionaire and its professional advisers to examine them and to take copies (at the Concessionaire's expense) for the purpose of assessing the claim.



15.2.3 The DEA shall be entitled – but not obliged – to put an obligation on the Concessionaire to defend the DEA's position in the DEA's name during any litigation, arbitration and/or settlement negotiations concerning matters covered by the Concessionaire's indemnities under this Sub-Clause 15.2, in any case at the cost of the Concessionaire. If the DEA does not put an obligation on the Concessionaire to defend the DEA's position in such litigation, arbitration and/or settlement negotiations, the DEA will liaise with the Concessionaire in order to bring the best possible defence forward, at the discretion of the DEA.

15.3 Damages

15.3.1 Without prejudice to any other remedy stated in the Agreement and subject to the liability cap in Sub-Clause 15.4.1, the DEA shall be entitled to claim damages for any loss or damage suffered due to the Concessionaire's non-performance of its obligations under the Agreement. To the extent said loss or damage is subject to penalties paid by the Concessionaire to the DEA under the Agreement, the amount of such penalties received by the DEA shall be deducted.

15.3.2 To the extent not prohibited by the governing Laws of the Agreement, neither Party shall be liable to the other Party for (i) any loss of profit, loss of revenue, loss of production, loss of contract or (ii) for any indirect or consequential loss or damage, which may be suffered by the other Party under or in connection with the Agreement, except the Parties entitlements to claim interest charges on overdue payments, the Concessionaire's liability to pay damages in accordance with Clause 14, the DEA's entitlement to payment under Clause 19, the Concessionaire's entitlement to claim damages and losses under Clause 19.3, a Party's liability for losses or damages arising out of a breach of Clause 22 and for any indemnities provided under the Agreement.

15.4 Liability Cap

15.4.1 To the extent not prohibited by the governing Laws of the Agreement and subject to Sub-Clause 15.4.2, the total liability of each Party to the other Party under or in connection with this Agreement, shall be limited to the amount of DKK 1,450,000,000.00 plus, if relevant [Formula for calculation: *DKK 540,000.00 times amount of MW* notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2.].

15.4.2 The liability cap, cf. Sub-Clause 15.4.1, shall not apply:

- a) in case of fraudulent acts or omissions, gross negligence or wilful misconduct;
- b) in case of acts or omissions prohibited by or in violation of law, approvals or permits;



- c) to the DEA's right to claim payments of the concession payment, cf. Sub-Clause 10.1.1 under the Agreement;
- d) to the Concessionaire's indemnities provided for in Sub-Clause 15.2; and
- e) to, the avoidance of doubt, the Concessionaire's non-contractual liability (in Danish: "*erstatning uden for kontrakt*"), including such liability towards the DEA or any other Danish state body.

16 GUARANTEES

16.1 Concessionaire's guarantees

16.1.1 The Concessionaire shall, at its own cost, obtain the guarantees as set out in this Clause 16.

16.2 Performance guarantee

- 16.2.1 The Concessionaire shall, at the latest on the Signing Date, obtain and deliver to the DEA the duly executed, valid and binding Performance Guarantee covering the guaranteed amount as set out in Sub-Clause 16.2.2 and attached to this Concession Agreement as Appendix 4, (Performance Guarantee).
- 16.2.2 The Performance Guarantee shall be issued by an acceptable financial institution as set out in Sub-Clause 16.2.3 in favour of the DEA and shall guarantee the due and punctual payment by the Concessionaire of any claim under the Agreement in the guaranteed amount of at least 40 % of a total of DKK 1,428,000,000.00.
- 16.2.3 An acceptable financial institution is a bank or a financial institution domiciled in the EU / EEA and has a long-term debt credit rating of A- at Standards & Poor's and/or equivalent rating from another international rating agency.
- 16.2.4 If the Concessionaire chooses to establish Overplanting Capacity, the Concessionaire shall, in addition to the Performance Guarantee, at the latest six (6) months after the Signing Date, obtain and deliver to the DEA a duly executed, valid and binding performance guarantee in accordance with Sub-Clause 16.2.5 and in the same form as the Performance Guarantee (with applicable consequential amendments). The Concessionaire may choose to adhere to the obligation stated in this Sub-Clause by a) delivering a separate performance guarantee (the "**Performance Guarantee for**



Overplanting Capacity") or b) increase the Performance Guarantee with the amount stated Sub-Clause 16.2.5.

- 16.2.5 The Performance Guarantee for Overplanting Capacity shall be issued by an acceptable financial institution as set out in Sub-Clause 16.2.3 in favour of the DEA and shall guarantee the due and punctual payment by the Concessionaire of any claim under the Agreement in the guaranteed amount of at least 40 % of a total of DKK [Formula for calculation: *DKK 540,000.00 times amount of MW notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2.*].
- 16.2.6 The Concessionaire shall ensure that the Performance Guarantee and, if relevant, the Performance Guarantee for Overplanting Capacity, remains in full force and effect from the delivery of the performance guarantee to the DEA and, regarding the Performance Guarantee until the DEA has verified the achievement of the Operational Capability Minimum Capacity and, if relevant, regarding the Performance Guarantee for Overplanting Capacity or the applicable part of the Performance Guarantee issued to cover the Overplanting Capacity until the DEA has verified the achievement of the Operational Capability Overplanting Capacity.
- 16.2.7 If the Performance Guarantee and, if relevant, the Performance Guarantee for Overplanting Capacity becomes void, invalid or unenforceable, prior to the expiry of the performance guarantee, cf. Sub-Clause 16.2.6 or the provider of the performance guarantee ceases to be an acceptable financial institution as set out in Sub-Clause 16.2.3, the Concessionaire shall immediately, and at the latest within 21 Days, obtain and deliver a replacement performance guarantee from an acceptable financial institution, cf. Sub-Clause 16.2.3, with the same coverage and in the form of the Performance Guarantee (with applicable consequential amendments) and, if relevant, the Performance Guarantee for Overplanting Capacity(with applicable consequential amendments), which is not void, invalid or unenforceable.
- 16.2.8 The DEA shall be entitled to terminate the Agreement in accordance with Sub-Clause 19.1, if the Concessionaire fails to comply with its obligations under this Sub-Clause 16.2.
- 16.2.9 The DEA shall return the Performance Guarantee and, if relevant, the Performance Guarantee for Overplanting Capacity, or replacement performance guarantee (as applicable) to the Concessionaire within 30 Days after (i) the performance guarantee expiry date, cf. Sub-Clause 16.2.6, or the expiry



of the replacement performance guarantee, or (ii) the DEA has received a replacement performance guarantee.

- 16.2.10 The Concessionaire shall bear all costs and expenses in connection with obtaining, delivering, maintaining and replacing the performance guarantee(s) pursuant to this Sub-Clause 16.2.

16.3 Parent Company Guarantee

- 16.3.1 The Concessionaire shall, at the latest on Signing Date, obtain and deliver to the DEA the duly executed, valid and binding Parent Company Guarantee covering the guaranteed amount as set out in Sub-Clause 16.3.2 and in the form as attached to this Concession Agreement as Appendix 5, (Parent Company Guarantee) (with applicable consequential amendments), however, subject to Sub-Clause 16.3.8.
- 16.3.2 The Parent Company Guarantee shall be issued by an eligible parent company as set out in Sub-Clause 16.3.3 in favour of the DEA and shall guarantee the due and punctual payment by the Concessionaire of any claim under the Agreement in the guaranteed amount of at least 60 % of a total of DKK 1,428,000,000.00.
- 16.3.3 An entity is an eligible parent company, if it is Controlling the Concessionaire, or if the Concessionaire is Controlled by a Group of Entities, is Controlling an economic operator participating in such Group of Entities, has an average annual revenue of no less than DKK 32 billion in the last three accounting years, and has a solvency ratio of no less than 20 % and/or a long-term debt credit rating of at least [BBB- (Standard & Poor's and Fitch) or Baa3 (Moody's)], and/or equivalent rating from another international rating agency.
- 16.3.4 If the Concessionaire chooses to establish Overplanting Capacity, the Concessionaire shall, in addition to the Parent Company Guarantee, at the latest six (6) months after the Signing Date, obtain and deliver to the DEA a duly executed, valid and binding parent company guarantee in accordance with Sub-Clause 16.3.5 and in the same form as the Parent Company Guarantee (with applicable consequential amendments). The Concessionaire may choose to adhere to the obligation stated in this Sub-Clause by a) delivering a separate parent company guarantee (the "Parent Company for Overplanting Capacity") or b) increase the Parent Company Guarantee, with the amount stated Sub-Clause 16.3.5.
- 16.3.5 The Parent Company Guarantee for Overplanting Capacity shall be issued by an eligible parent company as set out in Sub-Clause 16.3.3 in favour of the DEA and shall guarantee the due and punctual payment by the Concessionaire of any claim under the Agreement in the guaranteed



amount of at least 60 % of a total of DKK [Formula for calculation: *DKK 540,000.00 times amount of MW notified by the Concessionaire to the DEA pursuant to Sub-Clause 7.2*].

- 16.3.6 The Concessionaire shall ensure that the Parent Company Guarantee and, if relevant, the Parent Company Guarantee for Overplanting Capacity remains in full force and effect from the delivery of the parent company guarantee to the DEA and, regarding the Parent Company Guarantee until the Concessionaire has verified the achievement of the Operational Capability Minimum Capacity and, if relevant, regarding the Parent Company Guarantee for Overplanting Capacity or the applicable part of the Parent Company Guarantee issued to cover the Overplanting Capacity until the DEA has verified the achievement of the Operational Capability Overplanting Capacity.
- 16.3.7 If the Parent Company Guarantee and, if relevant, the Parent Company Guarantee for Overplanting Capacity becomes void, invalid or unenforceable, prior to the parent company guarantee expiry date, cf. Sub-Clause 16.3.6, or the provider of the parent company guarantee ceases to be an eligible parent company as set out in Sub-Clause 16.3.3, the Concessionaire shall immediately, and at the latest within 21 Days, obtain and deliver a replacement parent company guarantee from an eligible parent company, cf. Sub-Clause 16.3.3, with the same coverage and in the form of the Parent Company Guarantee (with applicable consequential amendments) and, if relevant, the Parent Company Guarantee for Overplanting Capacity (with applicable consequential amendments), which is not void, invalid or unenforceable.
- 16.3.8 The Concessionaire can choose not to provide the Parent Company Guarantee and, if relevant, the Parent Company Guarantee for Overplanting Capacity or such replacement parent company guarantee, if the amount covered under the Performance Guarantee and, if relevant, the Performance Guarantee for Overplanting Capacity or a replacement performance guarantee is increased to cover the guaranteed amount to be covered by the parent company guarantee(s).
- 16.3.9 The DEA shall be entitled to terminate the Agreement in accordance with Sub-Clause 19.1, if the Concessionaire fails to comply with its obligations under this Sub-Clause 16.3.
- 16.3.10 The Concessionaire shall bear all costs and expenses in connection with obtaining, delivering, maintaining, and replacing the parent company guarantee(s) pursuant to this Sub-Clause 16.3.1.
- 16.4 Guarantee for payment of the full cost of offshore preliminary investigations
- 16.4.1 If the Concessionaire chooses not to connect the Offshore Wind Farm to the Grid or if no Grid Connection Agreement is entered into between the Concessionaire and Energinet within five (5) months



from the Signing Date, cf. Sub-Clause 7.1.5, the Concessionaire shall obtain and deliver a duly executed, valid and binding on demand guarantee in accordance with Sub-Clause 16.4.2 and in the form contained in Appendix 6, (Form of On Demand Guarantee).

- 16.4.2 The on demand guarantee shall be issued by an acceptable financial institution as set out in Sub-Clause 16.2.3 in favour of the DEA, and shall guarantee the due and punctual payment by the Concessionaire of the full estimated amount of the cost of the offshore preliminary investigations set out in Sub-Clause 10.2.2.
- 16.4.3 The on demand guarantee must be provided no later than ten (10) Days after the expiry of the deadline of five (5) months from the Signing Date set out in the last sentence of Sub-Clause 7.1.5.
- 16.4.4 The Concessionaire shall ensure that the on demand guarantee remains in full force and effect until the Concessionaire has paid the cost of the offshore preliminary investigations in full pursuant to Sub-Clause 10.2.2.
- 16.4.5 If the on demand guarantee becomes void, invalid or unenforceable, prior to the expiry of the on demand guarantee as set out in Sub-Clause 16.4.4, or the provider of the on demand guarantee ceases to be an acceptable financial institution, cf. Sub-Clause 16.2.3, the Concessionaire shall immediately, and at the latest within 21 Days, obtain and deliver a replacement on demand guarantee from an acceptable financial institution, cf. Sub-Clause 16.2.3, with the same coverage and in the same form as the on demand guarantee (with applicable consequential amendments), which is not void, invalid or unenforceable.
- 16.4.6 The DEA shall be entitled to terminate the Agreement in accordance with Sub-Clause 19.1, if the Concessionaire fails to comply with its obligations under this Sub-Clause.
- 16.4.7 The DEA will return the on demand guarantee, or the replacement on demand guarantee (as applicable) to the Concessionaire within 30 Days after (i) the Concessionaire has paid the cost of the offshore preliminary investigations, cf. Sub-Clause 10.2.2, in full, or (ii) the DEA has received a replacement on demand guarantee, or (iii) the Concessionaire has entered into a Grid Connection Agreement with Energinet.
- 16.4.8 The Concessionaire shall bear all costs and expenses in connection with obtaining, delivering and maintaining the on demand guarantee and any replacement on demand guarantee in accordance with this Sub-Clause.



17 INSURANCE

- 17.1 The Concessionaire shall prior to planned Construction Start-Up, cf. Sub-Clause 7.4, but no later than one (1) month prior to actual Construction Start-Up if such date is earlier than planned Construction Start-Up and under no circumstances later than the Construction Start-Up Date be obliged to obtain and thereafter maintain for the duration of this Agreement (or, where relevant, ensure that the Concessionaire's Subcontractors obtain and maintain) the following insurances, to the extent that they are obtainable in the insurance market:
- a) Property insurance covering loss of or damage to assets required for the performance of the Agreement. The coverage and cover amount shall at all times adequately reflect the risk exposure related to the assets.
 - b) Liability insurance covering any liability of the Concessionaire and / or whoever acts on the Concessionaire's behalf for loss or damage (including, but not limited to, personal injury and property damage) arising out of the Concessionaire's obligation to plan, establish and operate the Offshore Wind Farm in accordance with the Agreement and the relevant approvals, licenses, and permits, and pursuant to applicable legislation. The coverage and cover amount shall at all times adequately reflect the risk exposure related to the Activities.
- 17.2 The Concessionaire shall furthermore, throughout the duration of the Agreement, assess on an ongoing basis whether the insurance coverage and cover amounts are deemed to be adequate and whether insurance not previously available on the insurance market becomes available. Where relevant, the Concessionaire shall amend its existing insurances or obtain new insurances.
- 17.3 In addition to the above, the Concessionaire shall obtain and maintain throughout the duration of the Agreement statutory workers' compensation insurance and hold employer's liability insurance in respect of the Concessionaire's personnel engaged in the performance of the Agreement in accordance with any legal requirement applicable at the relevant time. Where the Concessionaire's personnel are not employees of the Concessionaire, the Concessionaire shall ensure that the employer of such personnel holds the insurance. The Concessionaire is furthermore required to obtain any and all further relevant insurances with may be required under applicable Laws at any time in respect of the Activities under the Agreement.
- 17.4 The DEA shall at any time throughout the duration of the Agreement be entitled to receive evidence of the existence and terms of any of the insurances and of timely payment of premiums. The terms of any



of the insurances or the amount of cover provided under them shall not relieve the Concessionaire of any liabilities under the Agreement.

- 17.5 The Concessionaire shall ensure that all the insurance policies which the Concessionaire is required to obtain and maintain, pursuant this Clause 17, must provide that the insurers expressly waive all rights of subrogation (or the equivalent) against DEA/The Danish State.

18 DURATION

- 18.1 The Agreement shall take effect on the Signing Date and shall continue for the duration of the Electricity Production License and until the Concessionaire and the Supporting Economic Operator have fulfilled their obligations under the Agreement, including the obligations after end of operation to dismantle and decommission the Offshore Wind Farm, pursuant to relevant approvals, licenses and permits, cf. applicable Laws, unless terminated in accordance with the provisions of the Agreement.
- 18.2 The Electricity Production License is granted for 30 years and can be extended upon application, cf. RE Act section 29 (2). Before the expiry of the Electricity Production License, the Concessionaire shall be entitled to request the DEA for an extension of the duration of the Agreement on unchanged terms and conditions, including continued payment of the concession payment, cf. Sub-Clause 10.1. The DEA will consent to such extension of the Agreement provided:
- a) the Concessionaire is granted permission to extension of the Electricity Production License pursuant to the RE Act section 29 after application for a period not exceeding 10 years; and
 - b) the requested extension of the Agreement is considered by the DEA to be permissible under applicable Laws at the time, including but not limited to the relevant procurement rules, rules on state aid and any sanctions and embargoes.
- 18.3 If the DEA consent to an extension of the Agreement pursuant to Sub-Clause 18.2, the Agreement shall continue until the Concessionaire and the Supporting Economic Operator have fulfilled their obligations under the Agreement, including the obligations after end of operation to dismantle and decommission the Offshore Wind Farm, pursuant to relevant approvals, licenses and permits, cf. applicable Laws,



unless terminated in accordance with the provisions of the Agreement.

19 TERMINATION

19.1 The DEA's termination for cause

19.1.1 The DEA shall be entitled to terminate the Agreement in whole or in part by giving notice to the Concessionaire, if:

- a) the Concessionaire fails to comply with any obligation or warranty under the Agreement and such failure constitutes a material breach of the Concessionaire's obligations under the Agreement. Several failures to comply with any obligation under the Agreement, which do not constitute a material breach individually, may constitute a material breach to the DEA together;
- b) the Concessionaire abandons the Project or plainly demonstrates an intention not to continue the performance of the Concessionaire's obligations under the Agreement;
- c) the Concessionaire fails to achieve the Construction Start-Up Date in accordance with Sub-Clause 7.3.1;
- d) the total amount due towards the DEA has reached the liability cap, cf. Sub-Clause 15.4.1 or one of the Delay Damages Liability Caps or one of the Delay Damages Liability Caps Overplanting Capacity;
- e) the Concessionaire fails to provide or maintain the guarantees as set out in Clause 16 or insurance in accordance with Clause 17;
- f) the Concessionaire undergoes Change of Control or assigns, novates or transfers the Agreement in breach of Clause 20;
- g) the Concessionaire or the Supporting Economic Operator becomes bankrupt or insolvent; goes into liquidation, administration, reorganization, winding-up or dissolution; becomes subject to the appointment of a liquidator, receiver, administrator, manager or trustee; enters into a composition or arrangement with its creditors; or any act is done, or any event occurs which is analogous to or has a similar effect to any of these acts or events under applicable Laws;



- h) the Electricity Production License is revoked or expires, unless the Electricity Production License is immediately substituted with a new Electricity Production License; or
- i) the Concessionaire, the Supporting Economic Operator, the Supporting Technical Operator or subcontractors of the Concessionaire becomes subject to any international sanction which the Danish state or any of the aforesaid are bound by, e.g. Article 5k, section 1, of the Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine as later amended.

The DEA's election to terminate the Agreement in whole or in part shall not prejudice any other rights of the DEA under the Agreement or otherwise.

- 19.1.2 In the case of sub-paragraph c), d), f) or g) of Sub-Clause 19.1.1, the DEA may immediately terminate the Agreement by giving the notice under Sub-Clause 19.1.1. The date of termination shall be the date the Concessionaire receives the notice.
- 19.1.3 However, in the case of sub-paragraphs a), b), e), h) and i) of Sub-Clause 19.1.1, the Concessionaire may remedy the matter within 30 Days of receiving the notice under Sub-Clause 19.1.1. If the matter is not remedied within the aforementioned 30 Days, the DEA may immediately terminate the Agreement by giving a second notice to the Concessionaire. The date of termination shall be the date the Concessionaire receives the second notice.

19.2 The DEA's termination for cause - Consequences

19.2.1 After termination

- 19.2.1.1 After termination in whole or in part of the Agreement under Sub-Clause 19.1, the Concessionaire shall, unless the DEA utilises its right pursuant to Sub-Clause 19.2.2 to take over the Project, undertake any decommissioning activities required pursuant to the relevant approvals, licenses, and permits, pursuant to applicable Laws issued at the time of termination. The Concessionaire shall immediately comply with any reasonable instructions included in a notice given by the DEA for the protection or safety of life or property.
- 19.2.1.2 After termination in whole or in part, cf. Sub-Clause 19.1, the Concessionaire shall leave the Concession Area or applicable part thereof, except and until the Concessionaire has complied with any instructions from the DEA that necessitates the Concessionaire's presence on the Concession Area. If the Concessionaire does not leave the Concession Area or applicable part thereof in accordance



with this Sub-Clause, the DEA shall have the right to expel the Concessionaire from the Concession Area or applicable part thereof.

19.2.2 Takeover and completion of the Offshore Wind Farm

19.2.2.1 After termination in whole in accordance with Sub-Clause 19.1, the DEA shall have the right to acquire, and the Concessionaire shall be obligated to sell, the Offshore Wind Farm, including any and all information, know-how, documentation, books and records concerning the Offshore Wind Farm, against payment by the DEA of a purchase price to be determined in accordance with the proceeding Sub-Clauses.

19.2.2.2 If the DEA at its sole discretion intends to take over the Offshore Wind Farm pursuant to Sub-Clause 19.2.2.1 the DEA informs the Concessionaire hereof by written notification no later than 30 Days after the date of termination, cf. Sub-Clauses 19.1.2. and 19.1.3, upon which the Parties shall loyally cooperate to agree on the appointment of two third parties, who shall be independent of the Parties as well as mutually independent (the “**Independent Assessors**”). The Independent Assessors shall within 60 Days from the date of appointment each determine the value of the Offshore Wind Farm at the time of termination. The value must be determined based on an assessment of what an independent professional market player at such time, after a standard due diligence, would pay for the Offshore Wind Farm as it is, taking due consideration of the estimated cost of future decommissioning of the Offshore Wind Farm. Furthermore, when determining the market value, the Independent Assessors must, when making their assessments, presume that the licences necessary for the continued establishment and/or operation of the Offshore Wind Farm after the takeover will be transferable and/or obtainable.

19.2.2.3 The purchase price to be paid by the DEA or a third party buyer to be designated by the DEA pursuant to Sub-Clause 19.2.2.4, shall be calculated as the average of the market value of the Offshore Wind Farm determined by each of the Independent Assessors reduced by 20% settled entirely in cash. The assessments by the Independent Assessors and the purchase price calculated on the basis hereof shall be binding upon the Parties.

19.2.2.4 No later than 30 Days after the Independent Assessors have delivered their assessment of the value of the Offshore Wind Farm; the DEA must notify the Concessionaire of its final and binding decision to take over the Offshore Wind Farm or not to take over the Offshore Wind Farm. The DEA may at its sole discretion choose to either acquire the Offshore Wind Farm itself or to designate a third party to whom the Concessionaire shall be obligated to sell.

19.2.2.5 If the DEA decides to take over the Offshore Wind Farm pursuant to this Sub-Clause 19.2.2, the Concessionaire shall contribute to full and unlimited transfer of ownership of the Offshore Wind Farm to the DEA – or any third party designated by the DEA - and such transfer of ownership shall take



place by separate written agreement between the Concessionaire and the DEA or the third party designated by the DEA. Furthermore, the Concessionaire shall take all necessary actions to ensure that ownership to the Offshore Wind Farm is transferred free of liens and other encumbrances, and make the necessary register entries in e.g. the land registry (in Danish: “*Tingbogen*”) of the DEA's or the designated third party's ownership of the Offshore Wind Farm. Finally, the Concessionaire shall contribute to the transfer of all licenses necessary for the continued establishment and/or operation of the Offshore Wind Park, cf. section 29(6) of the RE Act.

19.2.2.6 If the DEA or a third party designated by the DEA takes ownership of the Offshore Wind Farm the DEA or any third party designated by the DEA shall to the extent relevant be entitled to complete the Offshore Wind Farm or applicable parts thereof and/or arrange for any other entities to do so, including by initiating a new procurement process for the development of the Offshore Wind Farm or applicable parts thereof or completion of the Offshore Wind Farm in any other manner that the DEA or the third party designated by the DEA at its sole discretion deems appropriate.

19.2.2.7 The date of transfer of ownership shall be set out in the separate transfer agreement, cf. Sub-Clause and the DEA or the third party designated by the DEA shall from the date of transfer of ownership assume full responsibility for the Offshore Wind Farm and take over all risk and costs of completing, maintaining and operating the Offshore Wind Farm. The DEA's acquisition of the Offshore Wind Farm pursuant to this Sub-Clause 19.2.2 will also convey the duty to decommission the Offshore Wind Farm from the Concessionaire to the DEA or to the third party designated by the DEA.

19.2.2.8 The DEA's or a designated third party's acquisition of the Offshore Wind Farm pursuant to this Sub-Clause 19.2.2 shall not relieve the Concessionaire of its obligation to make payment of the lump sum amounts set out in Sub-Clause 19.2.3.

19.2.3 Payment after termination by the DEA

19.2.3.1 After termination of the Agreement in whole under Sub-Clause 19.1.1, the Concessionaire shall promptly pay a lump sum amount to the DEA in accordance with the following:

- (i) DKK 1,428,000,000.00, subtracted by any 01-02 Time Period LDs paid, if the Agreement was terminated prior to the Concessionaire having achieved Construction Start-Up (the “**First Time Period**”); or
- (ii) DKK 1,428,000,000.00, subtracted by any 01-02 Time Period LDs and 03-06 Time Period LDs paid, if the Agreement was terminated after the First Time Period, but



prior to the Concessionaire having achieved Operational Capability Minimum Capacity;

- 19.2.3.2 Damages due from the Concessionaire to the DEA in connection with a termination shall not cover any claim Energinet may have against the Concessionaire pursuant to section 31 (1) of the RE Act, or any potential losses incurred by Energinet due to termination of contracts as a result of the termination of the Agreement, which shall be solely regulated by the Grid Connection Agreement.
- 19.2.3.3 If the DEA does not receive payment of the lump sum amounts set out in this Sub-Clause 19.2.2.7, the DEA shall be entitled to receive interest payments from the Concessionaire in accordance with Sub-Clause 10.1.6.
- 19.3 If the Concessionaire as a result of the EIA and for reasons not attributable to the Concessionaire is not able to obtain the necessary Construction License for the full Overplanting Capacity notified to the DEA pursuant to Sub-Clause 7.2.2, the Concessionaire shall be entitled by giving notice to the DEA to immediately terminate the Agreement for the part of the Overplanting Capacity which exceeds the maximum capacity for which the Concessionaire can obtain a Construction License. For the avoidance of doubt this Sub-Clause does not entitle the Concessionaire to be relieved from its obligation to establish the notified Overplanting Capacity in its entirety, but only entitles the Concessionaire to reduce the notified Overplanting Capacity provided the Concessionaire documents to the satisfaction of the DEA that a Construction License due to the EIA is not obtainable for the full Overplanting Capacity.
- 19.4 If the part of the Agreement regarding Overplanting Capacity is terminated by the Concessionaire pursuant to Sub-Clause 19.3, the Concessionaire shall not pay the lump sum after termination pursuant to Sub-Clause 19.2.3.1 to the DEA.
- 19.4.1 If the part of the Agreement regarding Overplanting Capacity is terminated by the Concessionaire pursuant to Sub-Clause 19.3, the provisions stated in Sub-Clause 19.2.1 shall apply. The Concessionaire shall have no right to make any claims against the DEA in case of termination of the part of the Agreement regarding Overplanting Capacity in part or in whole (as applicable) as a result of the circumstances stated in Sub-Clause 19.3.
- 19.5 Termination due to breach of public procurement law
- 19.5.1 Agreement declared ineffective by the Danish Complaints Board for Public Procurement or the Courts
- 19.5.1.1 If the Danish Complaints Board for Public Procurement or the courts declare the Agreement ineffective (in Danish: "*uden virkning*") in accordance with the Danish Act no. 593 of 2 June 2016 (in Danish:



“*Lov om Klagenævnet for Udbud*”) enacting the EU Directive 2007/66/EC, the DEA shall be entitled to terminate the Agreement, in whole or in part, in accordance with the notice given in the decision by the Danish Complaints Board for Public Procurement or the courts.

- 19.5.1.2 If the decision from the Danish Complaints Board for Public Procurement or the courts contains further conditions or requirements, the DEA shall be entitled to impose such conditions and requirements on the Concessionaire, if reasonably justified.
- 19.5.1.3 If the Agreement ceases to have effect in accordance with Sub-Clause 19.5.1.1 above, the Concessionaire’s possible claim for damages or losses shall be settled in accordance with the Laws of the Country, however, with the limitations for claiming damages or losses as set out in the Agreement.
- 19.5.1.4 If the Concessionaire was aware or should have been aware of the grounds leading to the decision declaring the Agreement ineffective (in Danish: “*uden virkning*”), the Concessionaire shall not be entitled to claim the DEA for any damages or losses as a result of such termination of the Agreement or otherwise in relation to the Agreement.
- 19.5.2 Termination - section 185 of the Danish Public Procurement Act, cf. section 9 of executive order no. 1080 of 29 June 2022
 - 19.5.2.1 The DEA shall be entitled to terminate the Agreement if:
 - a) the Agreement has been subject to a change of fundamental elements which would have required a new procurement process pursuant under Article 43 of the Directive on the Award of Concession Contracts;
 - b) during the Agreement, the Concessionaire is the subject of a conviction by final judgment for one of the reasons in the Danish Public Procurement Act, section 135, and is not able to document its reliability;
 - c) the Concessionaire should have been excluded from the procurement process in accordance with the Danish Public Procurement Act, sections 135 – 137; or
 - d) the Agreement should not have been awarded to the Concessionaire due to a serious breach of the obligations under the Treaties and the Directive established by the European Court of Justice in connection with a procedure under Article 258 of the Treaty on the Functioning of the European Union.



- 19.5.2.2 If the DEA terminates the Agreement due to circumstances mentioned in sub-paragraphs a) and d) above, the Concessionaire's possible claim for damages or losses shall be settled in accordance with the Laws of the Country, however, with the limitations for claiming damages or losses as set out in the Agreement. Further, if the Concessionaire was aware or should have been aware of the grounds entitling the DEA to terminate the Agreement, the Concessionaire shall not be entitled to claim the DEA for any damages or losses as a result of such termination or otherwise in relation to the Agreement.
- 19.5.2.3 If the DEA terminates the Agreement due to circumstances mentioned in sub-paragraph b) and c) above, the Concessionaire shall not be entitled to claim the DEA for any damages or losses in relation to the Agreement or due to the termination hereof.

20 ASSIGNMENT AND CHANGE OF CONTROL

20.1 Assignment by the DEA

- 20.1.1 The DEA shall be entitled to assign, novate or transfer its rights and obligations under the Agreement, in whole or in part, to
- a) another public authority; or
 - b) any institution or entity
 - i) ultimately Controlled by the Danish state or another Danish public authority; or
 - ii) mainly financed by public funds,
- if the public tasks performed by the DEA or related to the Agreement, are assigned, novated or transferred, in whole or in part, to any of the parties mentioned in items a) and b).
- 20.1.2 The DEA shall notify the Concessionaire in writing if the DEA assigns, novates or transfers its rights and obligations pursuant to Sub-Clause 20.1.1. For the avoidance of doubt, the DEA's notification



to the Concessionaire shall be for information purposes only and the notification does not entail or give the Concessionaire any right to object to the DEA's assignment, novation or transfer.

20.2 Assignment by the Concessionaire

- 20.2.1 The Concessionaire shall not assign, novate, or otherwise transfer (in Danish: “*enhver form for overdragelse*”) the whole or any part of the Agreement or any rights or obligations under the Agreement to a third party, without the prior written consent from the DEA. The DEA's approval shall not be unreasonably withheld. Approval shall only be granted where such assignment, novation or transfer can take place without the risk of breaching the public procurement rules and where no material circumstances otherwise prevent such assignment, novation or transfer. Approval will furthermore only be granted, provided that the DEA can consent to the transfer of any relevant approvals, licenses, and permits, pursuant to applicable legislation, issued to the Concessionaire at the time of request for approval of assignment, novation or transfer.

20.3 Change of Control of the Concessionaire

- 20.3.1 The Concessionaire is a Special Purpose Vehicle, which is the Successful Tenderer or as the case may be has been established and is fully owned and Controlled by the Successful Tenderer. On the Signing Date, the shareholders of the Concessionaire and their respective shareholdings are as follows:

[If the Successful Tenderer is a Group of Entities, information of each member and its shareholding in the Concessionaire must be inserted. Veto rights, voting rights or rights to appoint members of the management etc. of the Concessionaire must, if relevant, also be inserted here and – if so – the Sub-Clause below in hard brackets should be deleted.]

[The above listed parties control the Concessionaire in accordance with their respective ownership interest, and no party holds any veto rights, special voting rights, or the right to appoint the majority of the board of directors or another management body.]



- 20.3.2 Any Change of Control in the Concessionaire is subject to Sub-Clause 20.3.3 and 20.3.4, and requires prior written consent from the DEA, unless such Change of Control is required by applicable mandatory law, and the Concessionaire has provided a prior written notification hereof to the DEA.
- 20.3.3 The DEA's consent to Change of Control that occurs because of a company restructuring, including takeover, merger, demerger, appropriation, or insolvency, will, at the DEA's sole discretion, be granted if:
- a) the conditions under Sub-Clause 20.3.4 are fulfilled;
 - b) Control is transferred to a company under the same group of companies as the Concessionaire (sister-, daughter or parent company); and
 - c) the Change of Control does not otherwise result in significant changes under the Agreement.
- 20.3.4 The DEA's consent to Change of Control will, at the DEA's sole discretion, be granted on the following conditions:
- a) in case the Change of Control is intended to be carried out prior to grid connecting or delivery of Operational Capability Minimum Capacity and if relevant also Operational Capability Overplanting Capacity, if the DEA assess that the Concessionaire after the Change of Control is deemed to have the required economic, financial, and technical capacity to construct, operate, maintain, and dismantle the Offshore Wind Farm; or
 - b) in case the Change of Control is intended to be carried out after grid connecting the Offshore Wind Farm or after delivery of Operational Capability Minimum Capacity and if relevant also Operational Capability Overplanting Capacity, if the DEA assess that the Concessionaire after the Change of Control is deemed to have the required economic, financial, and technical capacity to operate, maintain, and dismantle the Offshore Wind Farm; and
 - c) if the DEA consents to the transfer of the Electricity Production License, provided the Electricity Production License has been issued at the time of the request for the Change of Control; and
 - d) if the DEA assess that the Change of Control can be allowed under, inter alia, the relevant procurement rules, rules on state aid, rules for the relevant approvals, licenses, and permits, pursuant to applicable legislation, including the Construction License and/or the Electricity Production License, rules on foreign direct investments and any sanctions and embargoes; and



- e) if the DEA assess that the Change of Control will have no impact on the Concessionaire's obligations under the Agreement and not in any other way be detrimental to the proper performance of the Agreement. This also entails that the Concessionaire shall, if relevant, provide new guarantees on substantially the same terms as set out in Clause 16; and
- f) if there are no changes to the Supporting Economic Operator(s) or Supporting Technical Operator(s), which remain supportive of the Concessionaire on unchanged conditions or if the Supporting Economic Operator(s) and Supporting Technical Operator(s) are replaced in accordance with the requirements set out in Sub-Clause 20.4 and Sub-Clause 20.5; and
- g) the Concessionaire shall be obliged to provide any documentation that the DEA may reasonably require to verify that the terms in Sub-Clauses 20.3.3 and 20.3.4 are met.

20.4 Replacement of the Supporting Economic Operator(s)

20.4.1 The replacement of a Supporting Economic Operator is subject to Sub-Clause 20.4.2 and requires prior written consent from the DEA.

20.4.2 The DEA's consent to replacement of a Supporting Economic Operator will, at the DEA's sole discretion, be granted if:

- a) the DEA assess that the Concessionaire will continue to fulfil the minimum requirements for eligibility under the procurement procedure for the Agreement after the replacement and the change does not otherwise result in significant changes under the Agreement, if the replacement is intended to be carried out prior to grid connecting the Offshore Wind Farm or where no grid connection is intended, prior to delivery of operational capability of the total capacity of the Offshore Wind Farm; or
- b) the DEA assess that the Concessionaire still has the required economic and financial capacity to operate, maintain, and dismantle the Offshore Wind Farm after the replacement, if the replacement is intended to be carried out after connection to the Grid of the Offshore Wind Farm or where no connection to the Grid is intended, after delivery of Operational Capability Minimum Capacity and Operational Capability Overplanting Capacity (if relevant) of the Offshore Wind Farm; and
- c) the DEA assess that the replacement can be allowed under, inter alia, the relevant procurement rules, rules on state aid, rules for the relevant approvals, licenses, and permits, pursuant to applicable Laws, including the Construction License and/or the Electricity Production License (if issued), rules on foreign direct investments and any sanctions and embargoes.



- 20.4.3 The Concessionaire and the Supporting Economic Operator(s) shall be obliged to provide any documentation that the DEA may reasonably require to verify that the terms in Sub-Clause 20.4.2 are met.
- 20.4.4 If a Supporting Economic Operator is replaced, the new Supporting Economic Operator shall undertake joint and several liability with the Concessionaire under the Agreement by entering into the Agreement.
- 20.4.5 The replaced Supporting Economic Operator will remain liable for any claims originating from the period prior to its replacement in accordance with Clause 15.
- 20.5 Replacement of the Supporting Technical Operator(s)
- 20.5.1 Prior to the Signing Date, the Concessionaire has forwarded copies to the DEA of signed contracts with the Supporting Technical Operator(s) according to which the Supporting Technical Operator(s) undertake to perform specific parts of the Project.
- 20.5.2 The replacement of a Supporting Technical Operator requires prior written consent from the DEA.
- 20.5.3 If the Concessionaire requests to replace a Supporting Technical Operator, the Concessionaire shall in its request to the DEA document that the Concessionaire has entered into a binding agreement with a new technical operator, in which it has been agreed that the new technical operator is obliged to take on the same obligations as the previous Supporting Technical Operator in order for the Concessionaire to carry out the Project.
- 20.5.4 The Concessionaire shall be obliged to provide any other documentation deemed relevant by the DEA to assess the replacement of the Supporting Technical Operator.
- 20.5.5 The DEA's consent to replacement of the Supporting Technical Operator is conditional on that the replacement can be allowed under, inter alia, the relevant procurement rules, rules on state aid, rules for the relevant approvals, licenses, and permits, pursuant to applicable Laws, including the Construction License and/or the Electricity Production License, rules on foreign direct investments and any sanctions and embargoes.

21 AMENDMENTS

- 21.1.1 Any amendments to the Agreement shall be made in writing as an addendum to the Agreement signed by duly authorized representatives of each Party and shall be in accordance with applicable Laws, including applicable public procurement regulation. Unless explicitly agreed in writing, no



amendment shall constitute a general waiver of any provision of the Agreement, nor shall it affect any rights or obligations under or pursuant to the Agreement which have already accrued up to the date of the amendment.

22 CONFIDENTIALITY

- 22.1 Subject to the regulation included in this Clause, the Parties and the Parties' personnel shall observe unconditional confidentiality regarding the contents of the Agreement and all information that the Parties and the Parties' personnel acquire in connection with the performance of the Agreement. The Parties shall not use or disclose such information, except to the extent necessary for the Parties to carry out their rights and obligations under the Agreement. The Parties shall impose a similar obligation on Sub-contractors and others assisting the Parties in connection with the Agreement.
- 22.2 The DEA and the DEA's personnel are subject to rules applicable to personnel in the Danish public administration and regarding right of access to information and shall be entitled to disclose information to third parties if this follows from such rules. Consultants and any other persons assisting the DEA shall observe a duty, as far as information about the affairs of the Concessionaire is concerned, equivalent to the duties of the Parties set out in Sub-Clause 22.1.
- 22.3 A Party's obligation of confidentiality under this Sub-Clause shall not apply where the information:
- a) was already in that Party's possession without an obligation of confidentiality before receipt from the other Party;
 - b) becomes generally available to the public through no breach of the Agreement;
 - c) is lawfully obtained by the Party from a third party which is not bound by an obligation of confidentiality; or
 - d) is required to be disclosed under mandatory applicable law, in which case the disclosure shall be limited to the extent necessary to comply with such mandatory law.
- 22.4 The DEA shall decide how to publish the signing of the Agreement. If relevant, such announcement shall be coordinated with the Concessionaire in accordance with the market disclosure obligations under MAR ("market abuse regulation").
- 22.5 In case of the Concessionaire's default of a non-trivial nature, the DEA shall be entitled to release a press statement addressing the Concessionaire's default. The DEA shall consult the Concessionaire



before such a press statement is released and shall to a reasonable extent take into account the Concessionaire's position when issuing the press statement.

23 SEVERANCE

- 23.1 If any provision of this Agreement is rendered invalid, unenforceable, or illegal, such invalidity, unenforceability, or illegality shall not affect the validity or enforceability of any other provisions of the Agreement.
- 23.2 The Parties shall agree on new provisions to replace the ones being rendered invalid, unenforceable, or illegal, with due respect of the rules on public procurement and taking into consideration the intention and purpose of the provisions having been rendered invalid, unenforceable, or illegal.

24 SURVIVABILITY

- 24.1 The termination or expiry of the Agreement shall not affect any rights or obligations of the Parties accrued at the date of such termination or expiry, or the continuation in full force of Clauses 13 [Representation and Warranties], 15 [Liability], 20 [Assignment and Change of Control], 21 [Amendments], 22 [Confidentiality], 23 [Severance], 25 [Entire Agreement], 26 [Language], 27 [Governing Law], and 28 [Dispute Resolution], or any other provision in the Agreement which by its nature is intended to survive such termination or expiry.

25 ENTIRE AGREEMENT

- 25.1 The Agreement represents the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, inducements, and conditions, express or implied, oral or written, of any nature with respect to such subject matter. Any provisions in the procurement material, in the Concessionaire's or Successful Tenderer's tender, or in previous correspondence, etc., other than those that are expressly incorporated in the Agreement, shall not subsequently be relied upon as a basis for interpretation.

26 LANGUAGE

- 26.1 The language for communications shall be English, except if another language is required by authorities for the Parties' communications with such authorities.
- 26.2 If there are versions of any part of the Agreement which are written in more than one language, the version which is in English shall prevail, except (i) that Danish words included in this English version of



this Agreement shall prevail, and (ii) as otherwise expressly provided for in the Agreement or required by law.

27 GOVERNING LAW

27.1 The Agreement and any and all matters, disputes, or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the Laws of Denmark, excluding any conflict of law rules.

28 DISPUTE RESOLUTION

28.1 The Parties shall seek to resolve all disputes arising out of this Agreement through negotiations between the Parties, which shall be conducted constructively by each Party.

28.2 If the Parties are unable to resolve the dispute through negotiations as stated in Sub-Clause 28.1, the dispute shall be settled by the ordinary courts under the jurisdiction of the City Court of Copenhagen.



29 COUNTERPARTS AND SIGNATURE

29.1 Counterparts

29.1.1 The Agreement shall be signed in two (2) counterparts, both of which taken together shall constitute one single Agreement between the Parties.

29.2 Signatures of the Parties

For the DEA:

Name: [...]
Title: [...]
Date:

Name: [...]
Title: [...]
Date:

For the Concessionaire:

Name: [...]
Title: [...]
Date:

Name: [...]
Title: [...]
Date:



29.3 Signatures of the Successful Tenderer *[to be deleted if the Concessionaire is an already existing SPV which has been awarded the Agreement as the Successful Tenderer]*

- 29.3.1 To the extent that the Successful Tenderer shall assume joint and several liability with the Concessionaire for the performance of this Agreement pursuant to Sub-Clause 15.1.1, by co-signing this Agreement, the Successful Tenderer accepts this obligation and all other terms of this Agreement.
- 29.3.2 Where the Successful Tenderer is a Group of Entities each member of the Group of Entities shall be jointly and severally liable for the performance of the Agreement with the Concessionaire and shall adhere to the Agreement on the same terms as the Concessionaire. By co-signing this Agreement, each of the members of the Group of Entities accepts this obligation and all other terms of this Agreement.
- 29.3.3 The Successful Tenderer, and if relevant each of the members of a Group of Entities, shall hold the same right as the Concessionaire to raise objections if the Successful Tenderer or individual members of a Group of Entities consider an alleged breach of the Agreement to be unascertained. The liability of the Successful Tenderer or individual members of a Group of Entities shall remain in force until the expiry of the obligations included under the Agreement.
- 29.3.4 Furthermore, the Successful Tenderer accepts the obligation to sign the Irrevocable Undertaking in favour of State Holding no later than on the Signing Date with the purpose of selling and transferring to State Holding the number of shares in the Concessionaire (on a fully diluted basis and in each share class, if any) which equals to 20% of the share capital of the Concessionaire.

For the Successful Tenderer

Name: [...]

Title: [...]

Date:

Name: [...]

Title: [...]

Date:



29.4 Signatures of the Supporting Economic Operator(s)

29.4.1 Pursuant to Sub-Clause 15.1.3, the Supporting Economic Operator shall be jointly and severally liable with the Concessionaire for the performance of the Agreement.

29.4.2 Each Supporting Economic Operator shall assume joint and several liability with the Concessionaire with regard to the Agreement. This implies that the Supporting Economic Operator shall assume liability for all claims pursuant to the Agreement on equal terms with the Concessionaire. Thus, the DEA shall not acquire any rights against the Supporting Economic Operator that the DEA does not have against the Concessionaire at any given time. Accordingly, in order for the Supporting Economic Operator's liability for all claims to apply, the Concessionaire must be in breach of the Agreement. In this respect the Supporting Economic Operator shall hold the same right as the Concessionaire to raise objections if the Supporting Economic Operator considers an alleged breach of the Agreement to be unascertained. The liability of the Supporting Economic Operator shall remain in force until the expiry of the obligations under the Agreement. In the event of a dispute between the DEA and the Supporting Economic Operator, Clause 28 shall apply. The Supporting Economic Operator has by its signature to the Agreement accepted these terms.

For the Supporting Economic Operator:

Name: [...]
Title: [...]
Date:

Name: [...]
Title: [...]
Date:

29.5 Signatures of the shareholders of the Concessionaire *[to be deleted if the Concessionaire is not an already existing SPV which has been awarded the Agreement as the Successful Tenderer]*

29.5.1 The shareholders of the Concessionaire accepts the obligation to sign the Irrevocable Undertaking in favour of State Holding no later than on the Signing Date with the purpose of selling and transferring to State Holding the number of shares in the Concessionaire (on a fully diluted basis and in each share class, if any) which equals to 20% of the share capital of the Concessionaire.

For the shareholders of the Concessionaire:



Name: [...]

Title: [...]

Date:

Name: [...]

Title: [...]

Date: