

**THE BALTIC PIPE PROJECT**

**APPENDIX 3 - RULES APPLICABLE TO  
PARTICIPATION IN THE DANISH PART OF  
THE OS 2017**

**DRAFT FOR MARKET CONSULTATION**

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## 1. Introduction

This Appendix 3 contains rules applicable to participation in the Danish part of the OS 2017.

This Appendix 3 regulates who can participate in the Danish part of the OS 2017, including the rules applicable to Phase 1 and Phase 2 and rules on how Energinet.dk will assess the Bids submitted in Phase 1 and Phase 2.

## 2. Legal Frame

The legal basis of the Danish part of the OS 2017 consists of the OS 2017 Rules (including this Appendix 3 and the other Appendices thereto) and the applicable EU and Danish legislation.

The OS 2017 Rules respect the general provisions in Directive No. 2009/73/EC of the European Parliament and of the Council concerning common rules for the internal market in natural gas, Regulation 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks and Commission Regulation 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems and supplementing Regulation (EC) No 715/2009 of the European Parliament and of the Council (CAM NC). CAM NC is about to be amended. The OS 2017 Rules will also respect the applicable provisions in the amended CAM NC.

In addition, the OS 2017 Rules are based on the principles of the ERGEG Guidelines for Good Practice for Open Season Procedures of 21 May 2007.

Applicable Danish legislation includes the Act on Energinet.dk as amended from time to time (consolidated act no. 1097 of 2011-11-08 with later amendments) and the Act on natural gas supply as amended from time to time (consolidated act no. 1157 of 2016-09-06 with later amendments). The OS 2017 Rules are set out to ensure i.a. that the procedure under the OS 2017 is transparent and non-discriminatory.

In case of any discrepancy between this Appendix 3 and the OS 2017 Rules and the rest of the Appendices to the OS 2017 Rules, the provisions of this Appendix 3 shall prevail.

The OS 2017 Capacity Agreement attached as Appendix 3.C is a draft version only. The Conditions Precedent of the OS 2017 Capacity Agreement may be subject to changes and amendments if required by Energinet.dk based on information received during the Baltic Pipe Project.

Further, Energinet.dk's Rules for Gastransport (RfG) in the version applicable from time to time will apply to the OS 2017. The RfG i.a. contains provisions regarding tariffs. In case of any discrepancy between the OS 2017 Rules, including Appendices, and the RfG, the OS 2017 Rules, including Appendices will prevail, unless stated otherwise. For the avoidance of doubt, it is emphasized that once available, the tariffs for OS 2017 Capacity will be stipulated by the RfG and will be identical to the tariffs for existing Capacity allocated in accordance with the RfG applicable from time to time and subject to methodology approval by the Danish Energy Regulatory Authority.

## 3. Rules of Relevance to Gas Transmission in the Danish Natural Gas System

The following rules prepared by Energinet.dk regulate transactions in the Danish Transmission System:

- Energinet.dk's Rules for Gastransport ("RfG")
- Energinet.dk's Rules for the Capacity Transfer Facility ("CTF")
- Energinet.dk's Rules for the Gas Transfer Facility ("GTF")
- Energinet.dk's Rules for Exchange Transfer Facility ("ETF").

The rules are available on Energinet.dk's website: [www.Energinet.dk](http://www.Energinet.dk)

Furthermore, reference is made to Energinet.dk's OS 2017 website ([www.energinet.dk/openseason2017](http://www.energinet.dk/openseason2017)) with links to further rules, agreements and information relevant to the Danish Transmission System, the Danish gas storages, the Adjacent Systems and trading facilities as well as to the websites of the operators of the Adjacent Systems.

#### 4. Definitions

Unless otherwise indicated by the context, defined terms in this Appendix 3 shall have the meaning set out in the OS 2017 Rules, Rules for Gas Transport and below:

**"ABEX"** shall mean abandonment expenditure.

**"Bid"** shall mean either a Phase 1 Bid or a Phase 2 Bid.

**"CAPEX"** shall mean any capital expenditure by Energinet.dk used to acquire physical assets forming part of or related to the Project.

**"Control"** shall have the meaning defined in clause 5.2

**"Cost of Transportation"** shall mean the estimated costs of transportation of the OS 2017 Capacity based on a base case capacity and flow scenario and the ratio between the estimated total cost (OPEX, CAPEX and ABEX), including existing cost base and estimated total volume in the Danish Transmission System, including existing volumes, for a defined period of time, as stated in the Energinet.dk OS 2017 information packages and the Business Case.

**"Danish Energy Regulatory Authority"** or **"DERA"** is the appointed National Regulatory Authority (NRA) of Denmark.

**"Danish Points"** shall mean the Points in the Baltic Pipe Project, which will be owned and operated by Energinet.dk.

**"Economic Test"** shall mean the test applied to assess the economic viability of incremental capacity projects as stipulated in the proposed Commission Regulation amending Commission Regulation 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems.

**"Maximum OS 2017 Capacity Amount"** shall mean the maximum OS 2017 Capacity available at a Point included in the Baltic Pipe Project.

**Non-Secured Credit Line"** shall mean such credit line as a Participant is afforded without putting up any guarantee or security pursuant to the calculation formula, cf. clause 7.

**"Open Season 2017 Procedure"** shall mean the open season procedure conducted by Energinet.dk in co-operation with GAZ-SYSTEM S.A. regarding the Baltic Pipe Project as described in the OS 2017 Rules, including Appendices.

**"OPEX"** shall mean operating expenses.

## 5. Formal Requirements

### 5.1 Introduction

Any legal entity may participate in the Danish part of the OS 2017 on the terms and conditions set forth in the OS 2017 Rules, including this Appendix 3. A Participant not registered as a Shipper in Energinet.dk's Register of Players shall, prior to registration as a Participant for the OS 2017, request to become registered as a Shipper in accordance with chapters 3 and 4 of the RfG.

### 5.2 Prohibition against Bids from associated Participants

A Participant associated with another Participant, which has filed a Bid in the OS 2017, is prohibited from filing a Bid in the OS 2017. A Participant is associated with another Participant, if the Participant:

- (i) directly or indirectly Controls the other Participant;
- (ii) directly or indirectly is Controlled by the other Participant; or
- (iii) directly or indirectly is under the Control of the same third party.

"Control" shall mean if a Participant, directly or indirectly

- (i) holds or is entitled to acquire 50 per cent or more of the ownership interest in the other Participant;
- (ii) holds or is entitled to exercise 50 per cent or more of the voting rights in the other Participant;
- (iii) is entitled to appoint or dismiss 50 per cent or more of the other Participant's top management;
- (iv) is entitled to exercise a controlling influence over the other Participant on the basis of the articles of association or any other agreement; or
- (v) can otherwise exercise a controlling influence over the other Participant.

Energinet.dk may derogate from the above, if it has been substantiated vis-à-vis Energinet.dk that:

- (i) the Control is temporary;
- (ii) the Control has not been established for the purpose of the OS 2017;
- (iii) none of the Participants, or if relevant their common owner, can influence any decisions in respect of the other Participant, be it as a shareholder, part of the management or by any other arrangement or agreement; and
- (iv) no Participant has received or will receive confidential information concerning other Participants.

For the purpose of ensuring compliance with this prohibition, the Participant shall in connection with the registration for participation in the OS 2017, cf. clause 6, inform Energinet.dk of the ownership structure of the Participant and confirm its compliance with this clause 5.2.

Upon submission of the registration form, cf. clause 6.2, and until the date when the OS 2017 has been completed, the Participant shall notify Energinet.dk immediately if Control in the sense of clause 5.2 is established. The notification must be signed by the persons authorised to bind the Participant or otherwise authorised to bind the relevant Participants.

If a Participant establishes Control of, comes under the Control of another Participant or under common Control with another Participant during the OS 2017, Energinet.dk may at its sole discretion revoke the registration of the Participant and disregard any Bids received from the Participant.

## **6. Registration Procedure**

### **6.1 Deadline for registration**

Any eligible Participant wishing to participate in the OS 2017 must register as Participant in the OS 2017.

To participate in Phase 1 of the OS 2017, the eligible Participant must complete the registration form attached as Appendix 3.A and submit this to Energinet.dk before [*date to be inserted*] in accordance with clause 6.2.

Any eligible Participant, which is not already registered in Phase 1, wishing to participate in Phase 2 of the OS 2017 must complete the registration form attached as Appendix 3.A and submit this to Energinet.dk before [*date to be inserted*] in accordance with clause 6.2.

Any interested Participants are encouraged to submit the registration form as soon as possible in order for such registration to be completed prior to the submission of Bids. If the Participant is to provide security according to clause 7, and the Participant suggests an alternative to the first demand bank guarantee, it is the Participant's responsibility that the security is provided before the Phase 2 Registration Deadline. Energinet.dk encourages that the Participant initiates an early dialogue with Energinet.dk in such case.

### **6.2 Submission of registration form**

The registration form must be submitted to Energinet.dk in accordance with clause 6.3.

The registration form must be completed in English and signed by the persons authorised to bind the Participant.

Prior to [*date to be inserted*], the Participant may alter the Phase 1 registration by submitting a new registration form. The new registration form replaces the entire content of the Participant's former registration form, and all information contained in the former registration form will be disregarded. Thus, a new registration form must be completed in full.

Prior to [*date to be inserted*], the Participant may alter the Phase 2 registration by submitting a new registration form. The new registration form replaces the entire content of the Participant's former registration form, and all information contained in the former registration form will be disregarded. Thus, a new registration form must be completed in full.

After submission of the registration form, Energinet.dk will assess whether the registration is complete, see clause 6.4.

### **6.3 Content of registration**

The registration must contain the following:

- (i) Name of the Participant, address, official company registration number, telephone number, contact person, telephone number and e-mail address (section 1.1 of the registration form).
- (ii) Whether the Participant is registered as a Shipper in the Register of Players (section 1.2 of the registration form).
- (iii) Names, occupation and signatures of minimum three persons authorised to bind the Participant, whether separately or jointly, in any respect in relation to the registration and the OS 2017 (section 1.3 of the registration form).
- (iv) Names of the current board of directors and management of the Participant (section 1.4 of the registration form).
- (v) Confirmation that the Participant is not associated with any other Participant, see clause 5.2 (section 2.1 of the registration form).
- (vi) Confirmation that the Participant has not suspended its payments and is not in liquidation, bankruptcy or winding-up proceedings (section 2.2 of the registration form).
- (vii) Confirmation that the Participant is duly established under the laws of the country in which the Participant's registered office is situated (section 2.3 of the registration form).
- (viii) Confirmation that the Participant is not involved in, and is not expected to become involved in, any disputes which may in any material and adverse manner affect the Participant's possibility of complying with the OS 2017 Capacity Agreement if the Participant is allocated the OS 2017 Capacity (section 2.4 of the registration form).
- (ix) Transcript from the official register of companies in the country of the Participant or the like documentation proving the legal existence of the Participant as well as the provision regarding the identity of the persons authorised to bind the Participant (section 3.1 of the registration form).
- (x) Documentation of the persons authorised to bind the Participant if such authorisation does not appear from the normal provisions regarding powers to bind the Participant (section 3.2 of the registration form).
- (xi) A detailed, clear and exhaustive description of the ownership structure for the Participant, including the ultimate owner(s) of the Participant (section 3.3 of the registration form).
- (xii) Certified copy of the valid Articles of Association of the Participant (section 3.4 of the registration form).
- (xiii) Documentation proving the equity capital of the Participant (section 3.5 of the registration form).
- (xiv) Documentation proving all current ratings of the Participant's creditworthiness (section 3.6 of the registration form).
- (xv) Confirmation that the Participant has read and acknowledges to be bound by (i) the OS 2017 Rules, including Appendix 3, and the other Appendices to the OS 2017 Rules and (ii) the RfG (section 4 of the registration form).



All information, declarations and documentation included in and attached to the registration must be correct and accurate. Energinet.dk will use this information and documents solely with regard to the Baltic Pipe Project in accordance with the OS 2017 Rules, including Appendix 3, and the other appendices to the OS 2017 Rules.

Energinet.dk may request further information from the Participant deemed necessary by Energinet.dk in order to register the Participant and/or to establish a Non-Secured Credit Line.

#### **6.4 Approval of registration**

Energinet.dk will determine whether a registration as Participant in the OS 2017 is in accordance with the provisions of clauses 5, 6.1, 6.2 and 6.3.

The Participant will be notified within 5 Business Days from submission of the registration form of the decision made by Energinet.dk regarding approval of the registration. If the information, confirmations and documentation submitted by the Participant are complete and correct, Energinet.dk shall include the Participant in Energinet.dk's internal list of Participants to the OS 2017 and notify the Participant thereof. The Participant will then be able to participate in the Danish Part of the OS 2017.

If the registration is not approved, the Participant will not be entitled to participate in the Danish part of the OS 2017, and any Phase 1 Bids submitted by the Participant will be disregarded. Notwithstanding the latter, Energinet.dk may request the relevant Participant to supplement, correct or specify the registration, including appendices, or to provide relevant documentation within a time limit of 5 Business Days, but with respect to the deadline specified in clause 6.1. The Participant is therefore encouraged to submit its registration more than 5 Business Days prior to the deadlines set out in clause 6.1, if the Participant wishes to have the possibility to supplement, correct or specify the registration if requested by Energinet.dk.

#### **6.5 Subsequent events**

During the OS 2017, the Participant shall at all times meet the conditions for registration. The Participant shall notify Energinet.dk immediately in accordance with clause 15 in case of any change affecting the registration.

If Energinet.dk after approval of the Participant's registration in any way discovers or is notified by the Participant that the conditions for obtaining registration are no longer met, e.g. the Participant establishes Control of another Participant, cf. clause 5.2, Energinet.dk will grant the Participant a time limit within which the Participant shall cause the conditions to be fulfilled again. Failure to fulfil the conditions for registration within said time limit may result in the Participant's registration being revoked. In case the Participant has willfully or with gross negligence failed to inform Energinet.dk of subsequent events of importance to the registration, see clause 6.3, Energinet.dk may revoke the Participant's registration without notice.

If the registration is revoked by Energinet.dk, the Participant may not participate in the Danish part of the OS 2017, and any Bids submitted by the Participant will be disregarded.

### **7. Creditworthiness verification procedure (Non-Secured Credit Line)**

#### **7.1 Introduction**

Following receipt of the registration form and the documents submitted by the Participant in accordance with clause 6 and credit approval in accordance with the RfG in order for a Participant to be registered as a Shipper in the Register of Players, Energinet.dk will determine the Non-Secured Credit Line of the Par-

participant. The Non-Secured Credit Line will be used to determine whether the Participant shall provide security in connection with its Phase 2 Bid, see clause 7.1.

Within 5 Business Days from the date of the approval of the Participant's registration, the Participant will be notified of the decision made by Energinet.dk regarding the size of the Non-Secured Credit Line.

The Non-Secured Credit Line will be based on Energinet.dk's assessment of the equity capital of the Participant as determined by Energinet.dk and the Participant's credit rating from Moody's, Standard & Poor's or Finch as set forth below. In the event that the Participant has received ratings from more than one rating agency, the lowest rating will be used to determine the Non-Secured Credit Line.

In the event that the Participant's equity is comprised wholly or partly of financial instruments or intra-group debt or its credit situation seems otherwise uncertain, Energinet.dk will adjust the Participant's equity capital for the purpose of verifying the Participant's creditworthiness.

## **7.2 Definition of the Participant's Non-Secured Credit Limit**

The Participant's Non-Secured Credit Limit will be determined as follows:

10 per cent of the Participant's equity capital provided a credit rating of AAA or similar (highest rating from the relevant rating agency).

7.5 per cent of the Participant's equity capital provided a credit rating of AA or similar (second highest rating from the relevant rating agency).

5 per cent of the Participant's equity capital provided a credit rating of A or similar (third highest rating from the relevant rating agency).

2.5 per cent of the Participant's equity capital provided a credit rating of BBB+ or similar (fourth highest rating from the relevant rating agency).

None for Participants with lower or no credit rating.

A Participant's parent company or majority shareholder may improve a Participant's Non-Secured Credit Limit by providing a first demand shareholder guarantee in favor of Energinet.dk guaranteeing all the Participant's obligations towards Energinet.dk in which case the Non-Secured Credit Limit of the parent or majority shareholder will be added to that of the Participant.

The equity capital of a Participant shall be calculated in accordance with Danish Generally Accepted Accounting Principles (Danish GAAP).

If the (ultimate) majority shareholder of a Participant is a sovereign entity that wishes to help improve a Participant's Non-Secured Credit Limit by providing a first demand guarantee in favor of Energinet.dk guaranteeing all the Participant's obligations towards Energinet.dk, the sovereign guarantee must provide the Participant with an unlimited Non-Secured Credit Limit provided that the rating of the sovereign is BBB+ or better.

The Participant is obliged to inform Energinet.dk of any new credit rating. Such new rating may cause Energinet.dk to revise the Non-Secured Credit Line.

In addition to the above, the Participant shall at all-time meet the creditworthiness requirements set forth in the RfG in order to be registered as a Shipper in the Register of Players.

## 7.1 Security

In case the expected amount payable for the OS 2017 Capacity during the first year of gas transportation in which the Participant has requested the highest amount of the OS 2017 Capacity exceeds the Participant's Non-Secured Credit Line, the Participant shall provide a security in the form of an irrevocable, unconditional guarantee payable on first demand issued by a bank. The first demand bank guarantee must be based on the form set out in Appendix 3.B. The Participant must submit the first demand bank guarantee together with its Phase 2 Bid. If the first demand bank guarantee is not submitted together with the Phase 2 Bid, when required by Energinet.dk according to this clause, the Phase 2 Bid is not complete and will be disregarded.

The amount of the security to be provided by the Participant must be equal to the difference between (i) the fee expected to be paid by the Participant for the OS 2017 Capacity during the first year of gas transportation, in which the Participant has requested the highest amount of Capacity, and (ii) the Participant's Non-Secured Credit Line. The fee for the OS 2017 Capacity during the first year will be calculated on the basis of Energinet.dk's tariff scenario as implemented in the final form of the bidding form for Phase 2. A first demand bank guarantee or other security provided by the Participant under the RfG in order to be approved as Shipper, must be disregarded for the purpose of finding the size of guarantee in this respect.

The face value of the first demand guarantee issued by the bank may not exceed:

- 10 per cent of the bank's equity capital provided the bank has obtained a credit rating of AAA or similar (highest rating from the relevant rating agency) from rating agencies such as Moody's, Standard & Poor's or Fitch.
- 7.5 per cent of the bank's equity capital provided the bank has obtained a credit rating of AA or similar (second highest rating from the relevant rating agency) from rating agencies such as Moody's, Standard & Poor's or Fitch.
- 5 per cent of the bank's equity capital provided the bank has obtained a credit rating of A or similar (third highest rating from the relevant rating agency) from rating agencies such as Moody's, Standard & Poor's or Fitch.
- 2.5 per cent of the bank's equity capital provided the bank has obtained a credit rating of BBB+ or similar (fourth highest rating from the relevant rating agency) from rating agencies such as Moody's, Standard & Poor's or Fitch.

For purposes of the above calculation of equity, the equity of a bank shall be as stated in the bank's most recent audited annual accounts.

In the event that the relevant bank has received ratings from more than one rating agency, the lowest rating will be used to determine the Non-Secured Credit Line.

In case the Participant's credit rating or equity capital changes or the general tariffs for transportation of natural gas in the Danish upstream or Transmission System increase prior to the delivery of the OS 2017 Capacity covered by an OS 2017 Capacity Agreement, the relevant Participant is obliged to provide an additional first demand bank guarantee covering any shortfall created by the change.

Subject to an annual review of the Non-Secured Credit test as described above (which review cannot lead to an increase in the required guarantee size, but only to a hold on any reduction) and any adjustments in the requirement for a first demand bank guarantee, a first demand bank guarantee placed in accordance with clause 7.2 will be reduced by 50 per cent at the end of the first full year of receiving the OS 2017 Capacity and by a further 10 percentage points at the end of each of the following five years of receiving the OS 2017 Capacity until being finally released.

As an alternative to a first demand bank guarantee, Energinet.dk may take under consideration proposals from a Participant or its parent or majority shareholder to provide security in physical assets or shares provided that Energinet.dk agrees with the proposed valuation and the proposed terms of the security (representations & warranties, undertakings etc.) and provided that the validity and perfection of such proposed security can be documented by a legal opinion satisfactory to Energinet.dk.

## **8. Tariffs**

### **8.1 Tariffs and costs related to the OS 2017 Capacity**

The tariffs related to the OS 2017 Capacity that will be allocated to Participants will be governed by the provisions in the RfG applicable from time to time. The tariffs for the OS 2017 Capacity will therefore be identical to the tariffs related to existing Capacity allocated by Energinet.dk in accordance with the RfG. In case of any discrepancy between the RfG and clause 8, the RfG shall prevail.

The Participant is made expressly aware of the fact that the tariffs for the OS 2017 Capacity are subject to changes, and the final tariffs will not be determined until the OS 2017 Capacity is made available to the Participant. The tariffs may change during the term of the OS 2017 Capacity Agreement.

### **8.2 Future tariffs**

In general, Energinet.dk seeks to announce tariff adjustments as early as possible. Further, Energinet.dk will strive to ensure a high level of information and uphold an on-going dialogue with the shippers.

In relation to the OS 2017 specifically, where significant investments will be added to the Transmission System, the result of the OS 2017 may have a substantial impact on tariffs. Energinet.dk has therefore engaged in an active dialogue with the Danish Energy Regulatory Authority to clarify the impact of investments in relation to the Baltic Pipe Project on the future tariffs and market design. The Supervisory Board of the DERA is expected to have a discussion regarding future tariff principles and market design at the end of January 2017, based on i.a. proposals from Energinet.dk concerning revised tariff principles and market design. The proposed changes are indeed considered to be of a principle nature and material to the future design of the Danish gas transmission system. The proposals have been subject to public consultation among registered shippers in the Danish Transmission System and other stakeholders to the gas market in November 2016.

In addition, Energinet.dk has already planned that all shippers should be closely consulted and involved in the design of the Danish tariff methodology and the general market model as part of ensuring that the tariff methodology is compliant with the coming regulation on Harmonised Transmission Tariff Structure for Gas (TAR NC). Any changes to the tariff methodology is subject to approval by the Danish Energy Regulatory Agency (DERA) and the planned process for changes in the tariff methodology as a consequence of the coming regulation on Harmonised Transmission Tariff Structure for Gas will be conducted with a foreseen approval process in 2018.

### **8.3 Information packages**

The tariffs payable for the OS 2017 Capacity will be set according to the RfG and be equivalent to the tariffs applicable for transport of existing capacity in the upstream and Transmission System at the time of the gas transportation (floating payable price approach). Energinet.dk will therefore not use the fixed payable price approach for the OS 2017 Capacity.

During the OS 2017, Energinet.dk plans to publish two information packages. These publications aim at sharing information with the Participants to support the decision-making and will allow for a more thorough analysis of transportation costs, construction costs and risk on different parties to the Transmission System.

The first information package will be published before the Rules for the OS 2017. The second information package will be published before the beginning of Phase 2.

The information packages will contain the following information:

First information package – to be published before February 2017:

- Scenario-based Costs of Transportation on the proposed route:
  - Capacity and flow scenarios
  - Average transportation costs under different CAPEX/OPEX/ABEX assumptions inclusive on cost-allocation of new infrastructure
  - Tariff forecast (expressed in EUR/MWh) under different individual load factor assumptions for the period 2022 to 2040
- Spreadsheet-based economic model, which allows Participants to conduct their own calculations.

Second information package – to be published mid-May 2017

- Based on the technical design, CAPEX, OPEX and ABEX are estimated within reduced ranges
- Definition of a base case capacity and flow scenario by Energinet.dk
- Cost of Transportation on the proposed route for the defined base case
- Detailed information on the implementation of the coming regulation on Harmonised Transmission Tariff Structure for Gas in the Transmission System tariff methodology
- Scenario-based tariff forecast expressed in EUR/MWh and/or DKK/kWh/h/year
- Improved spreadsheet-based economic model to support participation in the Open Season
- A status on the development of the project's time schedule.

Energinet.dk will publish indicative transportation costs related to the expansion of the Transmission System on Energinet.dk's OS 2017 website as a part of the economic analyses leading to the OS 2017. The transportation costs are chosen as a more meaningful indicator than tariff forecasts.

The indicative transportation costs are provided as signals to the market, but carry considerable uncertainty. Energinet.dk maintains the right to design and publish tariffs independently from the figures stated as indicative transportation costs.

## **9. Phase 1:**

### **9.1 Introduction**

Phase 1 will begin on 1 February 2017 when the OS 2017 Rules, including Appendices, are published, and marks the beginning of the OS 2017. In Phase 1, the Participants can submit a Phase 1 Bid in the form of an Order to Proceed. The Order to Proceed is an early commitment from the Participants for the OS 2017 Capacity allowing Energinet.dk to initiate further studies at an earlier point in time, than if sufficient Orders to Proceed were not received. Energinet.dk can thereby begin the Fast Track Project in order to deliver gas transportation as of 1 October 2022.

### **9.2 Order to Proceed**

The Phase 1 Bid has the form of an Order to Proceed, which is a binding offer from a Participant to enter into an OS 2017 Capacity Agreement on the basis of the terms and conditions of the Order to Proceed and to accept the terms and conditions of the draft OS 2017 Capacity Agreement as attached as Appendix 3.C to the OS 2017 Rules before the final version hereof is available.

Energinet.dk will assess, whether the requested OS 2017 Capacity is sufficient in order to continue the Fast Track Project based on the submitted Phase 1 Bids.

The main elements in the Fast Track Project are the following:

- Start dialogue with the main Danish authorities providing approvals during the Expansion of the Transmission System and the establishment of the Norwegian Tie-in by mid-April 2017.
- Send draft time schedule for the approval processes to the main Danish authorities providing approvals during the expansion of the Transmission System and the establishment of the Norwegian Tie-in before 1 May 2017.
- Organize and carry out a concept study, which is a first design of the possible technical solutions for the Project.

In the Phase 1 Bid, the Participant shall state the amount of the OS 2017 Capacity requested at each Point included in the Baltic Pipe Project. If nothing is stated in relation to a Point, it is assumed that the OS 2107 Capacity is not requested at that Point.

A Participant shall only place a Phase 1 Bid, if the Participant wants Energinet.dk to commence the Expansion of the Transmission System and the Norwegian Tie-in. However, Energinet.dk is not obliged to commence the expansion, if the total amount of the requested OS 2017 Capacity in the Orders to Proceed from the Participants does not exceed 10,058,250 kWh<sub>g</sub>/hour at both the North Sea Point and the Interconnection Point Baltic Pipe for a period of 15 years.

In Phase 1, the total amount of offered OS 2017 Capacity is stated below. The OS 2017 Capacity is offered for 15 years, beginning on 1 October 2022 (in a Fast Track Project) to 30 September 2037.

<b>Point</b>	<b>OS 2017 Capacity</b>
The North Sea Point	12,780,900 kWh/h
The Interconnector Point Baltic Pipe	12,069,900 kWh/h

If Energinet.dk commences the Baltic Pipe Project, the Participant is bound by its Phase 1 Bid, whether the total amount of the requested OS 2017 Capacity exceeds the Maximum OS 2017 Capacity Amount or not.

As the Order to Proceed is binding, the Participant is obliged to submit an offer for minimum the same amount of OS 2017 Capacity in a Phase 2 Bid as requested in the Order to Proceed.

The Participant may, notwithstanding the above, request more OS 2017 Capacity in its Phase 2 Bid than requested in the Order to Proceed.

If the Participant does not place a Bid in Phase 2, if the Phase 2 Bid is not complete, or if the Phase 2 Bid contains less OS 2017 Capacity than requested in the Order to Proceed, and the Fast Track Project has been initiated, the Participant has materially breached its obligations under the Order to Proceed and will be liable to pay liquidated damages to Energinet.dk in the amount of DKK 30,000,000.

A Participant that has submitted a Phase 1 Bid will not have a preferred status among the Phase 2 Bids compared to Participants only submitting Phase 2 Bids for the OS 2017 Capacity.

A Participant submitting a Phase 1 Bid and thereby an Order to Proceed accepts to be bound by the OS 2017 Capacity Agreement (enclosed as Appendix 3.C) in its final form determined by Energinet.dk during Phase 2. The Participant thereby acknowledges and accepts that the draft OS 2017 Capacity Agreement may be subject to changes and amendments and that the Participant is bound by such changes and amendments.

The OS 2017 Capacity Agreement will be identical to the OS 2017 Capacity Agreement potentially entered into by other Participants, and only the conditions precedent contained in the draft version of the OS 2017 Capacity Agreement attached as Appendix 3.C will be amended in accordance with the above.

### 9.3 Guidelines for Energinet.dk's assessment of Orders to Proceed

Based on the below guidelines, Energinet.dk will assess whether sufficient Orders to Proceed have been submitted in order to continue with the Fast Track Project.

Amount of requested OS 2017 Capacity	Points	Energinet.dk assessment of Fast Track Project
From 0 to 10,058,249 kWh <sub>g</sub> /hour for up to 15 years	North Sea Entry Point and Interconnection Exit Point Baltic Pipe	Yellow: Unsure if Energinet.dk will continue with the Fast Track Project.
From 10,058,250 kWh <sub>g</sub> /hour to Maximum OS 2017 Capacity Amount for 15 years	North Sea Entry Point and Interconnection Exit Point Baltic Pipe	Green: Energinet.dk will continue with the Fast Track Project.

**Yellow:** If the total requested OS 2017 Capacity in the Phase 1 Bid is below 10,728,800 kWh<sub>g</sub>/hour at the North Sea Point and the Interconnector Point Baltic Pipe for a period of up to 15 years, it is unsure whether the requested OS 2017 Capacity is sufficient in order to continue with the Fast Track Project. In that case, Energinet.dk will have to make further assessments of the Baltic Pipe Project's feasibility. After such further assessment and dialogue with GAZ-SYSTEM S.A., Energinet.dk will at its sole discretion determine whether the Fast Track Project can be continued, whether the Project is continued, but not as fast track, or whether to discontinue the Baltic Pipe Project.

**Green:** If minimum 10,058,250 kWh<sub>g</sub>/hour of the OS 2017 Capacity is requested at both the North Sea Point and the Interconnection Point Baltic Pipe for 15 years, Energinet.dk will continue with the Fast Track Project.

The Maximum OS 2017 Capacity Amount described in the guidelines above is based on requests received in the Orders to Proceed for 15 years. If the same amount of OS 2017 Capacity is not requested at the two Points, it is the Point with the lowest requested amount of OS 2017 Capacity, which is decisive for the Baltic Pipe Projects Status as yellow or green.

As soon as possible after the Phase 1 Deadline, Energinet.dk will announce whether the Baltic Pipe Project will continue as a Fast Track Project, but not the amount of the requested OS 2017 Capacity in the Orders to Proceed. Notwithstanding whether the Project is continued as Fast Track or not, it will be announced how much OS 2017 Capacity will be offered in Phase 2.

### 9.4 Submission of Phase 1 Bid

The Participant may place a maximum of one Phase 1 Bid for the OS 2017 Capacity. The Phase 1 Bid may include Bids for all Points included in the Baltic Pipe Project. The content of the Phase 1 Bid is set forth in clause 9.5 below.

The Participant must submit the Phase 1 Bids by using the bidding form attached as Appendix 1 in Excel format. This bidding form must bear the original signatures of the persons authorised to bind the Participant. No modifications or additions may be made to the bidding form or the algorithms contained therein.

The bidding form must be completed and returned to Energinet.dk no later than on the Phase 1 Deadline.

**The Phase 1 Deadline is [DATE TO BE INSERTED], 4 p.m. (CET).**

The bidding form must be sent to the address below. In addition, the Participant shall send an electronic version of the Phase 1 Bid by e-mail to the e-mail address below.

Ordinary mail:

Energinet.dk  
Pederstrupvej 76  
2750 Ballerup  
Denmark  
"OPEN SEASON 2017"

E-mail:

Openseason2017@energinet.dk

Until 4 p.m. (CET) on [date to be inserted], the Participant may alter or withdraw its Phase 1 Bid by submitting a new bidding form in accordance with the provisions above. The new bidding form will replace the older version, which will be disregarded. All Bids that the Participant wishes to place must therefore be stated in the new bidding form, and the new bidding form must be completed in full.

The submission of Phase 1 Bids is conditional on the Participant being registered as Participant in the OS 2017 in accordance with clause 6. The Phase 1 Bid can be submitted in connection with the submission of the registration form. In case registration is not obtained, the relevant Participant's Phase 1 Bid will be disregarded.

All Bids submitted in Phase 1 are binding. Phase 2 Bids must be for at least the same amount of OS 2017 Capacity as bid for by the Participant in the Phase 1 Bid for each Point included in the OS 2017, see clause 9.2. The Bids may not exceed the total amount of the OS 2017 Capacity available at each Point. The smallest amount of the OS 2017 Capacity that a Participant can submit a Bid for is 1 kWh<sub>g</sub>/hour for a period of 1 year.

**9.5 Content of Phase 1 Bids**

The bidding form attached as Appendix 1 contains a general guidance to the bidding form and reference is made thereto.

**9.6 Verification of Phase 1 Bids**

After the Phase 1 Deadline, Energinet.dk will verify the Phase 1 Bids and determine whether these are complete, have been submitted on the appropriate bidding form and are in compliance with clause 9.5. Any Phase 1 Bids received by Energinet.dk after [date to be inserted], 4 p.m. (CET) will not be taken into consideration in the OS 2017.

No later than 10 Business Days after submission of the Phase 1 Bid, Energinet.dk will notify the Participant whether the submitted Phase 1 Bid is in compliance with the formal requirements.

If a Phase 1 Bid is not approved, Energinet.dk may at its sole discretion request the relevant Participant to correct the bidding form, if Energinet.dk finds that the Participant can correct such bidding form, e.g. due to lacking information. Such correction must be made within a time limit of 5 Business Days. The Bid



size and duration are not subject to change. If the Phase 1 Bid cannot be approved prior to expiration of said time limit, the Phase 1 Bid will be disregarded.

## **10. Phase 2: Final Bid**

### **10.1 Submission of Phase 2 Bids**

Each Participant may place maximum one Phase 2 Bid for the OS 2017 Capacity. The Phase 2 Bid may include bids for all Points included in the Baltic Pipe Project. The content to be provided as part of the Phase 2 Bid is set forth in clause 10.2 below.

The Participant must submit its Phase 2 Bid by using the bidding form attached as Appendix 2 in Excel format. Such bidding form must bear the original signatures of the persons authorised to bind the Participant. No modifications or additions may be made to the bidding form or the algorithms contained therein.

The bidding form must be completed and returned to Energinet.dk no later than at the expiry of the Phase 2 Deadline.

**The Phase 2 Deadline is [date to be inserted], 4 p.m. (CET).**

The bidding form must be sent to the address below and by e-mail to the email address below.

Ordinary mail:

Energinet.dk  
Pederstrupvej 76  
DK-2750 Ballerup  
Denmark  
"OPEN SEASON 2017"

E-mail:

Openseason2017@energinet.dk

Until 4 p.m. (CET) on [date to be inserted], the Participant may alter or withdraw its Phase 2 Bid by submitting a new bidding form in accordance with the provisions above. The new bidding form will replace the older version hereof and the older version of the Phase 2 Bid will be disregarded. All bids that the Participant wishes to place must therefore be stated in the new bidding form, and the new bidding form must be completed in full.

Submission of Phase 2 Bids is conditional on the Participant being registered as Participant in the OS 2017 in accordance with clause 6. However, the Participant may submit the Phase 2 Bid in connection with the submission of the registration form. In case registration is not obtained, the relevant Participant's Phase 2 Bid will be disregarded.

If the Participant has submitted a Phase 1 Bid, the Participant is obliged to submit a Phase 2 Bid for at least the same amount of the OS 2017 Capacity as the Phase 1 Bid for each Point included in the OS 2017, see clause 9.2. The Bids may not exceed the total amount of the OS 2017 Capacity available at each Point. The smallest amount of the OS 2017 Capacity that a Participant can submit a Bid for is 1 kWh<sub>g</sub>/hour for a period of 1 year.

Upon submission of the Phase 2 Bid, the Participant must provide security in accordance with clause 7.

By submitting a Phase 2 Bid, the Participant is obliged to conclude the OS 2017 Capacity Agreements for each Point in the Baltic Pipe Project at which the Participant is allocated OS 2017 Capacity.

### **10.2 Content of Phase 2 Bids**

The bidding form attached as Appendix 2 contains a general guidance to the bidding form and reference is made thereto.

### **10.3 Security**

In case the expected amount payable for the OS 2017 Capacity during the first year of the gas transportation, in which the Participant has requested the highest amount of OS 2017 Capacity, exceeds the Participant's Non-Secured Credit Line, the Participant shall provide security in accordance with clause 7 above.

### **10.4 Verification of Phase 2 Bids**

After the Phase 2 Deadline, Energinet.dk will verify the Phase 2 Bids and determine whether these are complete, have been submitted on the appropriate bidding form and are in compliance with clause 9.5. Any Phase 2 Bid received by Energinet.dk after [date to be inserted], 4 p.m. (CET) will not be taken into consideration in the OS 2017.

No later than 10 Business Days after submission of the Phase 2 Bid, Energinet.dk will notify the Participant whether the submitted Phase 2 Bid is in compliance with the formal requirements.

If a Phase 2 Bid is not approved, Energinet.dk may at its sole discretion request the relevant Participant to correct the bidding form, if Energinet.dk finds that the Participant can correct such bidding form, e.g. due to lacking information. Such correction must be made within a time limit of 5 Business Days. The Bid size and duration are not subject to change. If the Phase 2 Bid cannot be approved prior to expiration of said time limit, the Phase 2 Bid will be disregarded and is not complete.

If the Participant no longer fulfills the requirements for being registered as a Participant to OS 2017, is no longer registered as a shipper in the Register of Players, has become associated with another Participant, does not provide the necessary guarantee according to clause 7, or in any other way fails to comply with the requirements for submission of a Phase 2 Bid, the Phase 2 Bid is not complete and will be disregarded. If the Participant has submitted a Phase 1 Bid, and the Phase 2 Bid is not complete or has been disregarded, the Participant is obliged to pay liquidated damages as stated in clause 9.2.

## **11. Economic Test**

### **11.1 Introduction**

The Economic Test will be conducted as set forth in the amended Commission Regulation 984/2013 establishing a Network Code on Capacity Allocation Mechanisms in Gas Transmission Systems (CAM NC), Articles 22 to 25, based on the submitted Phase 2 Bids. The outcome of the Economic Test will need to be positive in accordance with the requirements set out in the Network Code in order for OS 2017 Capacity to be allocated.

### **11.2 Economic Test**

To pass the combined Economic Test for the Interconnection Point Baltic Pipe in accordance with CAM NC Article 24, sufficient Long-Term bookings will have to be submitted in the Binding Phase in the OS 2017 towards the Interconnection Point Baltic Pipe. In combination with this, a corresponding level of sufficient Long-Term bookings will have to be submitted for the North Sea Entry Point.

The sufficient level of Long-Term bookings on the Danish side of the Interconnection Point Baltic Pipe and the North Sea Entry Point must be determined by Energinet.dk together with the DERA and in accordance with Article 22 of the CAM NC, where the present value of the expected revenue (the Long-Term booking times and the expected tariff level at both Points) is compared to the expected costs of the Expansion of the Danish Transmissions System and the Norwegian Tie-in. The calculation must also include the f-factor set by DERA in accordance with Article 23 of the CAM NC, where other economic benefits of the project than the Long-Term bookings may be taken into account. If the present value of the expected revenue, including the f-factor, exceeds the expected costs, the Economic Test is considered positive for the Danish part of the project.

If the Economic Test is also positive on the Polish side of the Baltic Pipe Interconnection Point, the combined Economic Test is considered positive, and the Baltic Pipe Project can continue.

## **12. Allocation of the OS 2017 Capacity**

### **12.1 Introduction**

Based on the submitted Phase 2 Bids, Energinet.dk will allocate the OS 2017 Capacity as set forth below.

Only the OS 2017 Capacity will be allocated to the Participants during the OS 2017. The existing capacity in the Transmission System is used by the present market and is offered in accordance with the RfG.

The OS 2017 Capacity becoming available after the expiry of the OS 2017 Capacity Agreements will be offered to the market on the same conditions as the existing capacity.

### **12.2 Maximum OS 2017 Capacity Amount is not exceeded**

If the Maximum OS 2017 Capacity Amount for a Point is not exceeded, Energinet.dk will forward a final OS 2017 Capacity Agreement to the relevant Participants based on their Phase 2 Bids. The OS 2017 Capacity Agreement will be final and binding, and the Participant is requested to acknowledge receipt by signing and returning it to Energinet.dk in accordance with clause 15.

### **12.3 Maximum OS 2017 Capacity Amount is exceeded**

If the Maximum OS 2017 Capacity Amount is exceeded (over-demand), Energinet.dk's OS 2017 Capacity allocation priority will be as follows:

- Priority 1: bids for maximum possible contract duration (15 years)
- Priority 2: bids for contract duration of 14 years
- Priority 3: bids for contract duration of 13 years
- Etc.

Thus, Phase 2 Bids for the maximum duration of 15 years will be allocated first. If Phase 2 Bids for a maximum duration exceed the Maximum OS 2017 Capacity Amount, these Bids are allocated pro-rata, and all Bids for shorter durations will be disregarded.

If Bids for the maximum duration do not exceed the Maximum OS 2017 Capacity Amount, the residual OS 2017 Capacity at the relevant Point will then be subject to allocation towards Bids for 14 years. If the Maximum OS 2017 Capacity Amount is then exceeded, Bids for 14 year contracts will be pro-rata allocated, and all other Bids will be disregarded.

If Bids for both 15 year and 14 year contracts do not exceed the Maximum OS 2017 Capacity Amount, the residual OS 2017 Capacity at the relevant Point is then moved further down the priority list, until the allocation equals the Maximum OS 2017 Capacity Amount.

Accordingly, the most secure way for a Participant to obtain a specific share of the OS 2017 Capacity in a given Point is to submit a Phase 2 Bid for the maximum duration.

A Participant, who has submitted a Phase 2 Bid for both the North Sea Entry Point and the Baltic Pipe Exit Point with the same bid size, shall, in case the allocation results in a discrepancy of allocated capacity at the two Points, be entitled to reduce its OS 2017 Capacity allocation at the Point with the highest amount of allocated OS 2017 Capacity to an amount equaling the allocated OS 2017 Capacity at the Point with the lowest allocation of the two Points. In case the Participant wishes to make use of such reduction, the Participant shall state in the Phase 2 Bid Form, that the Bid for the OS 2017 Capacity at the two Points is interdependent. In addition, the Participant shall inform Energinet.dk within 3 Business Days from the publication of the allocation results to the Participant that the Participant wishes to make use of reduction.

The OS 2017 Capacity Agreements will be forwarded to the Participants when the final allocation has taken place.

#### **12.4 Deadline for the OS 2017 Capacity Agreement**

Energinet.dk intends to forward the OS 2017 Capacity Agreements to the relevant Participants no later than 1 September 2017, and the Participant is bound by its Phase 2 Bid until 1 January 2018.

#### **12.5 Discontinuation of Phase 2**

Energinet.dk is not obliged to continue with the OS 2017, if the aggregate amount of the OS 2017 Capacity requested during Phase 2 results in a negative Economic Test due to the lack of Phase 2 Bids.

In case Energinet.dk decides to discontinue the OS 2017 in accordance with this clause, Energinet.dk cannot in any way be held liable vis-à-vis the Participants for any loss they may have suffered with respect to the OS 2017.

In the event of a discontinuation of Phase 2, and thereby the Open Season 2017, Energinet.dk will notify the Participants thereof immediately after the decision to discontinue Phase 2 has been made.

### **13. Business Case**

#### **13.1 Introduction**

The Capacity Agreement forwarded to the Participant, based on the allocation of the OS2017 Capacity, is conditional on a positive business case calculation for the Expansion in the Transmission System and the Norwegian Tie-in under The Baltic Pipe Project.

#### **13.2 Business Case Calculation**

The business case calculation is a socio-economic test of the impact of the Baltic Pipe Project expansion for the Danish society. The business case calculation is conducted by comparing the total costs of the Danish part of the Baltic Pipe Project, meaning the expansion of the Transmission System and the Norwegian Tie-in, with the socio-economic benefits of the Baltic Pipe Project in Denmark, such as (but not limited to):

- Producer and consumer surplus
- Impact on transportation costs
- Effects on security of supply
- Effects on competition.

The business case calculation is conducted by Energinet.dk.

### **13.3 Approval of Business Case Result**

The business case calculation is subject to approval by the board of Energinet.dk. If the business case calculation is positive and approved by the board, the Condition Precedent in the OS 2017 Capacity Agreement regarding board approval is fulfilled.

The board of Energinet.dk is expected to consider approval of the business case in November 2017.

## **14. Amendments and Changes**

Notwithstanding anything to the contrary in these OS 2017 Rules, Energinet.dk reserves the right to amend or change the OS 2017 and any Appendices, including extension of deadlines, in case of any (i) amendment to a relevant act, (ii) outstanding approval by a relevant minister, the Danish Energy Regulatory Authority or any other public authority or (iii) change of plans or objections or comments from Adjacent Systems, players, Participants or other stakeholders.

Appendix 3.C (OS 2017 Capacity Agreement) is a draft version only as of the date of the OS 2017 Rules and will be subject to change during the OS 2017.

Energinet.dk reserves the right to amend the Points, capacities, economic criteria etc. in case the technical/geological conditions, economics, business calculations or similar, on which the Baltic Pipe Project is based, are inaccurate or changed.

Such changes or amendments will be announced on Energinet.dk's OS 2017 website, and an e-mail regarding the announcement will be sent to the Participants. Notwithstanding the latter, it is the sole responsibility of the Participants to be updated by visiting Energinet.dk's OS 2017 website from time to time during the OS 2017.

Energinet.dk's OS 2017 website: [www.energinet.dk/openseason2017](http://www.energinet.dk/openseason2017)

Energinet.dk may at its sole discretion up to 24 hours prior to the expiration of any deadline under the OS 2017 Rules extend such deadlines. Energinet.dk must publish such new deadline without undue delay.

Notwithstanding the above, Energinet.dk may at any time prior to the deadline in force from time to time extend the deadline in the event of extraordinary circumstances such as power blackout, breakdown of Energinet.dk's website, strikes, etc. Energinet.dk shall publish the new deadline without undue delay.

Energinet.dk is entitled to make such changes and amendments as set forth in clause 14 until Energinet.dk has sent the final OS 2017 Capacity Agreements to the relevant Participants.

### **14.1 Conditions Precedent**

Energinet.dk foresees some uncertainty as to the expansion of the Transmission System and the Norwegian Tie-in. In addition, the Baltic Pipe Project also includes the establishment of the Baltic Pipe pipeline. Energinet.dk will therefore include conditions precedent in Energinet.dk's final version of the OS 2017 Capacity Agreement. A condition precedent may relieve or delay obligations for the Participant and/or Energinet.dk under an OS 2017 Capacity Agreement.

Preliminary conditions precedents have been included in the draft OS 2017 Capacity Agreement. The final conditions precedent will be drafted by Energinet.dk prior to Phase 2.

## **15. Communication**

Submission of the registration form (Appendix 3.A) and the bidding form (Appendices 1 and 2) and all other communication to Energinet.dk must be in writing and may be sent by mail or courier or delivered by hand to the reception of Energinet.dk, Pederstrupvej 76, 2750 Ballerup, Denmark, marked "Open season 2017" or by e-mail to [openseason2017@energinet.dk](mailto:openseason2017@energinet.dk), unless otherwise provided in the OS 2017 Rules.

Documents shall only be deemed to have been submitted in due time, if the complete documents are received within the deadlines stated in the OS 2017 Rules, as confirmed by the receipt stamp of Energinet.dk or the date of receipt in case of e-mails.

Registration forms, bidding forms and other documents received after any deadline set forth by Energinet.dk will not be taken into consideration by Energinet.dk.

Energinet.dk may at its sole discretion up to 24 hours prior to the expiration of the deadline in force from time to time extend such deadline. Energinet.dk shall publish such new deadline without undue delay.

Notwithstanding the above, Energinet.dk may at any time prior to the deadline in force from time to time extend the deadline in the event of extraordinary circumstances such as power blackout, breakdown of Energinet.dk's website, strikes, etc. Energinet.dk shall publish the new deadline without undue delay.

## **16. Liability**

Neither Energinet.dk nor the Participants shall be liable to each other, unless a Party has caused any loss or damage by a willful act or omission or by gross negligence.

Notwithstanding the above, any binding offers made (i) by the Participant either as an Order to Proceed or during Phase 2 shall be subject to the general rules of liability under Danish law.

### **16.1 Limitation**

The Participant renounces any rights to claim specific performance or to claim that the OS 2017 shall be redone.

### **16.2 Severability**

If any of the provisions of the OS 2017 Rules, including Appendices, are or become ineffective, void or inoperable, the other provisions of the OS 2017 Rules, including Appendices, will remain in full force and effect.

In such case, Energinet.dk will amend the OS 2017 in order to replace any such ineffective, void or inoperable provisions in an appropriate procedure by other provisions having as near as reasonably possible the same commercial and financial effect as the provision so re-placed. The same shall apply if it is found that any matter is not provided for.

## **17. Legal Venue and Choice of Law**

### **17.1 Venue**

The Parties shall seek to resolve by negotiation all disputes between the Parties regarding the Open Season 2017, including any claims raised as a consequence of disputes.

If the Parties are unable to resolve a dispute by negotiation within 20 Business Days of the date on which a request for negotiation was presented by a Party, the dispute must be finally settled by arbitration in

accordance with the Rules of Arbitration Procedure of the Danish Institute of Arbitration. The arbitration tribunal will consist of three arbitrators fulfilling the requirements for arbitrators under the Rules of Arbitration Procedure. Each Party will propose an arbitrator and must strive to propose an arbitrator who has knowledge of the natural gas industry. The chairman of the tribunal will be appointed by the Danish Institute of Arbitration.

Arbitration proceedings shall take place in Copenhagen, Denmark.

The arbitration proceedings shall be conducted in English.

**17.2 Applicable law**

The Open Season 2017 regarding the Danish Points shall be governed by Danish law.

DRAFT FOR MARKET CONSULTATION