

**DRAFT CONCESSION**  
**AGREEMENT**

for

**Design, Build, Finance, Operate, Maintain and  
Transfer**

**Multi-Species Hatchery and Allied  
Facilities**

**at Maanaagalaa, Gaafu Alif Atoll,  
Republic of Maldives**

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**Part I**  
**Preliminary**

# CONCESSION AGREEMENT

THIS AGREEMENT is entered into on this the ..... day of ....., 2020

## **BETWEEN**

1 The Government of Republic of Maldives represented by the Project Director of the Ministry of Fisheries, Marine Resources and Agriculture (MoFMRA), having its principal office at 7<sup>th</sup> Floor, Velaanage, Ameer Ahmed Magu, Malé (hereinafter referred to as the “**Authority**” which expression shall, unless repugnant to the context or meaning thereof, include its administrators, successors and assigns) of One Part,

## **AND**

2 {..... LIMITED}<sup>§</sup>, a company incorporated under the provisions of the Companies Act of the Republic of Maldives, 1996 and having its registered office at ....., (hereinafter referred to as the “**Concessionaire**” which expression shall, unless repugnant to the context or meaning thereof, include its successors and permitted assigns and substitutes) of the Other Part.

## **WHEREAS:**

- (A) The Authority is desirous to Design, Build, Finance, Operate, Maintain and Transfer Multi-Species Hatchery and Allied Facilities to be set up at Maanaagalaa, Gaafu Alif Atoll, Maldives referred to as “Project”.
- (B) The Authority had accordingly invited Proposals for the Project by issuance of Specific Procurement Notice for Request for Proposals vide RFP No. **MV-MOFA-59367-CW-RFP** dated **November 5, 2020** (the “**Request for Proposals**”) from prospective proposers for Multi-Species Hatchery and Allied Facilities on Design, Build, Finance Operate, Maintain and Transfer (“**DBFOT**”) basis.
- (C) The Authority had prescribed the technical and commercial terms and conditions in the “**Request for Proposals**” for undertaking the Project.
- (D) After evaluation of the proposals received, the Authority had accepted the Proposal of the {selected Proposer/ Joint Venture comprising ....., ....., and ....., collectively the “Joint Venture”, with .....as its “Lead Member”} and issued its Letter of Acceptance No. .... dated ..... (hereinafter called the “**LOA**”) to the {selected Proposer/Joint Venture} requiring, inter alia, the execution of this Concession Agreement within 45 (Forty-Five) days of the date of issue thereof.
- (E) {The selected Proposer/ Joint Venture} has since promoted and incorporated the Concessionaire as a limited liability company under the Companies Act of The Republic of Maldives, 1996, and has requested the Authority to accept the Concessionaire as the entity which shall undertake and perform the obligations and exercise the rights of the selected Proposer/ Joint Venture under the LOA, including the obligation to enter into this Concession Agreement pursuant to the LOA for executing the Project.

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<sup>§</sup> The provisions in curly parenthesis and the blank spaces shall be suitably modified/ filled after completion of the Proposal Process to reflect the particulars relating to the selected Proposer.

- (F) {By its letter dated .....,} the Concessionaire has also joined in the said request of the selected Proposer/ Joint Venture to the Authority to accept it as the entity which shall undertake and perform the obligations and exercise the rights of the selected Proposer/ Joint Venture including the obligation to enter into this Concession Agreement pursuant to the LOA. The Concessionaire has further represented to the effect that it has been promoted by the selected Proposer/ Joint Venture for the purposes hereof.
- (G) The Authority has agreed to the said request of the {selected Proposer/Consortium} and the Concessionaire and has accordingly agreed to enter into this Concession Agreement with the Concessionaire for execution of the Project on DBFOT basis, subject to and on the terms and conditions set forth hereinafter.

**NOW, THEREFORE,** in consideration of the foregoing and the respective covenants and agreements set forth in this Concession Agreement, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

**ARTICLE 1**  
**INTERPRETATION**

**1.1 General**

The words and expressions beginning with capital letters and defined in this Agreement shall, unless the context otherwise requires, have the meaning ascribed thereto herein, and the words and expressions defined in the Schedules and used therein shall have the meaning ascribed thereto in the Schedules.

**1.2 Interpretation**

1.2.1 In this Agreement, unless the context otherwise requires,

- (a) references to any legislation or any provision thereof shall include amendment or re-enactment or consolidation of such legislation or any provision thereof so far as such amendment or re-enactment or consolidation applies or is capable of applying to any transaction entered into hereunder;
- (b) references to laws of Maldives or Maldivian regulation having the force of law shall include the laws, acts, ordinances, rules, regulations, bye laws or notifications which have the force of law in the territory of the Republic of Maldives and as from time to time may be amended, modified, supplemented, extended or re-enacted;
- (c) references to a “**person**” and words denoting a natural person shall be construed as a reference to any individual, firm, company, corporation, society, trust, government, state or agency of a state or any association or partnership (whether or not having separate legal personality) of two or more of the above and shall include successors and assigns;
- (d) the table of contents, headings or sub-headings in this Agreement are for convenience of reference only and shall not be used in, and shall not affect, the construction or interpretation of this Agreement;
- (e) the words “**include**” and “**including**” are to be construed without limitation and shall be deemed to be followed by “**without limitation**” or “**but not limited to**” whether or not they are followed by such phrases;
- (f) references to “**construction**” or “**building**” include, unless the context otherwise requires, include survey and investigations, design, developing, engineering, procurement, delivery, transportation, installation, processing, fabrication, testing, commissioning and other activities incidental to the construction, and “**construct**” or “**build**” shall be construed accordingly;
- (g) references to “**development**” include, unless the context otherwise requires, construction, renovation, refurbishing, augmentation, upgradation and other activities incidental thereto, and “**develop**” shall be construed accordingly;
- (h) any reference to any period of time shall mean a reference to that according to Maldives Standard Time (MVT) 5 hours ahead of UCT;
- (i) any reference to “**day**” shall mean a reference to a calendar day;
- (j) references to a “**business day**” shall be construed as a reference to a day on which banks in Maldives are generally open for business;
- (k) any reference to month shall mean a reference to a calendar month as per the Gregorian calendar;

- (l) references to any date, period or Project Milestone shall mean and include such date, period or Project Milestone as may be extended pursuant to this Agreement;
- (m) any reference to any period commencing “**from**” a specified day or date and “**till**” or “**until**” a specified day or date shall include both such days or dates; provided that if the last day of any period computed under this Agreement is not a business day, then the period shall run until the end of the next business day;
- (n) the words importing singular shall include plural and vice versa;
- (o) references to any gender shall include the other and the neutral gender;
- (p) “**indebtedness**” shall be construed so as to include any obligation (whether incurred as principal or surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (q) references to the “**winding-up**”, “**dissolution**”, “**insolvency**”, or “**reorganisation**” of a company or corporation shall be construed so as to include any equivalent or analogous proceedings under the law of the jurisdiction in which such company or corporation is incorporated or any jurisdiction in which such company or corporation carries on business including the seeking of liquidation, winding-up, reorganisation, dissolution, arrangement, protection or relief of debtors;
- (r) save and except as otherwise provided in this Agreement, any reference, at any time, to any agreement, deed, instrument, licence or document of any description shall be construed as reference to that agreement, deed, instrument, licence or other document as amended, varied, supplemented, modified or suspended at the time of such reference; provided that this Sub-clause shall not operate so as to increase liabilities or obligations of the Authority hereunder or pursuant hereto in any manner whatsoever;
- (s) any agreement, consent, approval, authorisation, notice, communication, information or report required under or pursuant to this Agreement from or by any Party or the Independent Engineer shall be valid and effective only if it is in writing under the hand of a duly authorised representative of such Party or the Independent Engineer, as the case may be, in this behalf and not otherwise;
- (t) the Schedules and Recitals to this Agreement form an integral part of this Agreement and will be in full force and effect as though they were expressly set out in the body of this Agreement;
- (u) references to Recitals, Articles, Clauses, Sub-clauses or Schedules in this Agreement shall, except where the context otherwise requires, mean references to Recitals, Articles, Clauses, Sub-clauses and Schedules of or to this Agreement, and references to a Paragraph shall, subject to any contrary indication, be construed as a reference to a Paragraph of this Agreement or of the Schedule in which such reference appears;
- (v) the damages payable by either Party to the other of them, as set forth in this Agreement, whether on *per diem* basis or otherwise, are mutually agreed genuine pre-estimated loss and damage likely to be suffered and incurred by the Party entitled to receive the same and are not by way of penalty (the “**Damages**”); and
- (w) time shall be of the essence in the performance of the Parties’ respective obligations. If any time period specified herein is extended, such extended time shall also be of the essence.

- 1.2.2 Unless expressly provided otherwise in this Agreement, any Documentation required to be provided or furnished by the Concessionaire to the Authority and/or the Independent Engineer shall be provided free of cost and in three copies, and if the Authority and/or the Independent Engineer is required to return any such Documentation with their comments and/or approval, they shall be entitled to retain two copies thereof.
- 1.2.3 The rule of construction, if any, that a contract or concession agreement should be interpreted against the parties responsible for the drafting and preparation thereof, shall not apply.
- 1.2.4 Any word or expression used in this Agreement shall, unless otherwise defined or construed in this Agreement, bear its ordinary English meaning.

### **1.3 Measurements and arithmetic conventions**

All measurements and calculations shall be in the metric system and calculations done to 2 (two) decimal places, with the third digit of 5 (five) or above being rounded up and below 5 (five) being rounded down.

### **1.4 Priority of agreements, clauses and schedules**

- 1.4.1 This Agreement, and all other agreements and documents forming part of or referred to in this agreement are to be taken as mutually explanatory and, unless otherwise expressly provided elsewhere in this Agreement, the priority of this Agreement and other documents and agreements forming part hereof or referred to herein shall, in the event of any conflict between them, be in the following order:
- (a) this Agreement; and
  - (b) all other agreements and documents forming part hereof or referred to herein;
- i.e. the Agreement at (a) above shall prevail over the agreements and documents at (b) above.
- 1.4.2 Subject to the provisions of Clause 1.4.1, in case of ambiguities or discrepancies within this Agreement, the following shall apply:
- (a) between two or more Clauses of this Agreement, the provisions of a specific Clause relevant to the issue under consideration shall prevail over those in other Clauses;
  - (b) between the Clauses of this Agreement and the Schedules, the Clauses shall prevail and between Schedules and Annexes, the Schedules shall prevail;
  - (c) between any two Schedules, the Schedule relevant to the issue shall prevail;
  - (d) between the written description on the Drawings and the Specifications and Standards, the latter shall prevail;
  - (e) between the dimension scaled from the Drawing and its specific written dimension, the latter shall prevail; and
  - (f) between any value written in numerals and that in words, the latter shall prevail.

**Part II**  
**The Concession**

## ARTICLE 2

### SCOPE OF THE PROJECT

#### 2.1 Scope of the Project

The scope of the Project (the “**Scope of the Project**”) shall mean and include, during the Concession Period, the activities described in Sub-Clauses 2.2 to 2.4 and shall be collectively referred to as “**the Project**”.

2.2 The scope of work is to undertake Development (Design & Build), Finance, Operate, Maintain and Transfer a Multi-Species Hatchery and Allied Facilities with a Operation & Maintenance period of 20 (twenty) years. The Multi-Species Hatchery and Allied Facilities shall be established on the island of Maanaagalaa, Gaafu Alif Atoll, Maldives which is owned by the Authority. The entire area of the Ga. Maanaagalaa Island, including approximately 5 ha of land and 78 ha of lagoon and Ancillary Facilities built by the Authority (see Schedule-A), will be provided to the Concessionaire on a 21-year lease basis, which shall be rent-free for the first 5 years of the lease. Terms of Lease are specified in Clause 23 of this Agreement and Schedule-A.

2.3 Works to be undertaken by the Concessionaire are detailed in Schedule-C. While details given in the said Schedule shall be referred to for implementation of the Project, important works are summarised as under:

- (a) **Hatcheries, egg incubation systems and Nurseries** for groupers, Bait Species<sup>1</sup> (i.e., bait-sized fry of Milkfish - *Chanos chanos* - or any other species suitable as a bait for pole-and-line tuna fishery, grown to 5-10 centimeters in length) and sea cucumbers.
- (b) **Water and Air Circulation Systems complete with Power Distribution Systems** with capacities that would meet the water flow, aeration and power requirements of the entire facility. The system should be able to filter and treat influent as well as effluent seawater to an adequate level.
- (c) **Live Feed Production Facilities, with a small feed preparation area** including the phytoplankton and zooplankton stock culture areas, scaling up areas, and mass culture areas to produce the required amounts of live feed to meet the expected production targets.
- (d) **Laboratory** – basic laboratory building complete with equipment and facilities to be able to monitor the growth of the cultured animals, and live feeds, as well as basic diagnostic tests fulfilling all quality requirements specified in Clause 17.5.3 of this Agreement.
- (e) **Feed Storage and Chemical Storage** to meet the expected production targets for each species specified in Clause 17.4 of this Agreement. These may be in buildings attached to the warehouse and should be in proximity of the Live Feed Production Facilities.
- (f) **Sea Cages and/or Land-based Tanks** for the maintenance of brood stock and/or juveniles of target species.

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<sup>1</sup> The term “Bait Species” used in this document will mean “bait-sized fry of Milkfish - *Chanos chanos* - or any other local species suitable as a bait for pole-and-line tuna fishery grown to 5-10 centimeters in length”

## **2.4 Production Capacity of Multi-species Hatchery**

Multi-species Hatchery shall undertake production of Fingerlings and Fry of following species:

- (a) Brown Marble Grouper (*Epinephelus fuscoguttatus*);
- (b) Bait Species – grown to 5 to 10 centimeters in length; and
- (c) Juvenile Sea Cucumbers (*Holothuria scabra* or other potential local varieties)

2.4.1 Expected levels of production of above-mentioned species and their projected demands are given in Clause 17.4 of this Agreement. However, the Concessionaire shall conduct its own market research and analysis and perform due diligence for planning optimum production. While the Concessionaire will be free to set up production capacity beyond the minimum level specified in the said Schedule at its own cost and operate the Facility for optimum results, it shall target achieving at the minimum following levels of production.

2.4.2 At commencement of first year of operations

The Multi-Species Hatchery shall have minimum production capacity at the commencement of operation as under:

- (a) Brown Marble Grouper – 1 million fingerlings per year;
- (b) Bait Species – 150 tons per year; and
- (c) Sea Cucumber – 1.5 million juveniles per year.

2.4.3 At commencement of twentieth year of operation or earlier

The Concessionaire shall step up production capacity at appropriate stages during twenty years' operations so as meet the growing domestic demand as also the projected export potential, targeting achievement of minimum installed capacity indicated below on commencement of 20<sup>th</sup> (twentieth) year of operation or earlier:

- (a) Brown Marble Grouper – 10 million fingerlings per year;
- (b) Bait Species – 300 tons per year; and
- (c) Sea Cucumber – 4 million juveniles per year.

**ARTICLE 3**  
**GRANT OF CONCESSION**

**3.1 The Concession**

- 3.1.1 Subject to and in accordance with the provisions of this Agreement, the Applicable Laws and the Applicable Permits, the Authority hereby grants to the Concessionaire the concession set forth herein including the exclusive right, licence and authority to construct, operate and maintain the Project (the “**Concession**”) for a period of twenty one (21) years commencing from the Appointed Date, and the Concessionaire hereby accepts the Concession and agrees to implement the Project subject to and in accordance with the terms and conditions set forth herein:
- 3.1.2 Subject to and in accordance with the provisions of this Agreement, the Concession hereby granted shall oblige or entitle (as the case may be) the Concessionaire to:
- (a) access and licence to the Site for the purpose of and to the extent conferred by the provisions of this Agreement;
  - (b) finance and construct the Multi-Species Hatchery and Allied Facilities;
  - (c) manage, operate and maintain the Multi-Species Hatchery and Allied Facilities as well as the Ancillary Facilities provided by the Authority on the Project Site and regulate the use thereof by third parties;
  - (d) pay the agreed Commercial Lease Rent to the Authority for the Project Site given on 21-year lease basis from the sixth year of lease, and Profit Share in accordance with the provisions of Clause 23.4 and 23.5 respectively.
  - (e) perform and fulfil all of the Concessionaire’s obligations under and in accordance with this Agreement;
  - (f) bear and pay all costs, expenses and charges in connection with or incidental to the performance of the obligations of the Concessionaire under this Agreement; and
  - (g) neither sale, assign, transfer or sublet nor create any lien or encumbrance on this Agreement, or the Concession hereby granted or on the whole or any part of the Project nor sale, transfer, lease or part possession thereof, save and except as expressly permitted by Applicable Laws and this Agreement or the Substitution Agreement.
  - (h) to sub-contract any of the Works within the ceiling of 25% of the Project Cost with the prior approval of the Authority, excepting engagement of Nominated Sub-Contractor(s) whose experience and qualification were claimed by the Concessionaire during the Proposal Process for the Project, provided further that:
    - (a) the Nominated Sub-Contractor has the technical and financial capacity to discharge the obligations under this Agreement; and
    - (b) the Concessionaire shall not subcontract the Agreement as a whole.
  - (i) achieve Financial Closure of the Project financing within 45 (forty-five) days from the date of this Agreement in accordance with Clause 21.1.1;
  - (j) ensure that the construction of the Project Facilities is completed within the Construction Period.

**ARTICLE 4**  
**CONDITIONS PRECEDENT**

**4.1 Conditions Precedent**

- 4.1.1 Save and except as expressly provided in Articles 4, 9, 10, 21, 23, 34 and 36, or unless the context otherwise requires, the respective rights and obligations of the Parties under this Agreement shall be subject to the satisfaction in full of the conditions precedent specified in this Clause 4.1 (the “**Conditions Precedent**”).
- 4.1.2 The Concessionaire may, upon providing the Performance Security and the ESHS Security to the Authority in accordance with Article 9, at any time after 45 (forty five) days from the date of this Agreement or on an earlier day acceptable to the Authority, by notice require the Authority to satisfy any or all of the Conditions Precedent set forth in this Clause 4.1.2 within a period of 15 (fifteen) days of the notice, or such longer period not exceeding 30 (thirty) days as may be specified therein, and **the Conditions Precedent required to be satisfied by the Authority** shall be deemed to have been fulfilled when the Authority shall have:
- (a) provided to the Concessionaire, the complete and lawful right and uninterrupted possession of the Site to undertake the development of the Project Facilities in accordance with the provisions of Article 10 - Clause 10.3.1;
  - (b) ensured that all internal administrative approvals required by the Authority for enabling the commencement and implementation of the Project are available; and
  - (c) procured all Applicable Permits relating to environmental protection and conservation of the Site as provided in Schedule-E.
- 4.1.3 **The Conditions Precedent required to be satisfied by the Concessionaire** prior to the Appointed Date shall be deemed to have been fulfilled when the Concessionaire shall have:
- (a) provided Performance Security to the Authority;
  - (b) executed and procured execution of the Substitution Agreement;
  - (c) procured all the Applicable Permits specified in Schedule-E unconditionally or if subject to conditions, then all such conditions required to be fulfilled by the date specified therein shall have been satisfied in full and such Applicable Permits are in full force and effect;
  - (d) executed the Financing Agreements and delivered to the Authority 3 (three) true copies thereof, duly attested by a Director of the Concessionaire;
  - (e) delivered to the Authority 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders;
  - (f) delivered to the Authority from {the Joint Venture Partners/Consortium Members }, their respective confirmation, in original, of the correctness of their representations and warranties set forth in Sub clauses (k), (l) and (m) of clause 7.1 of this Agreement; and

- (g) delivered to the Authority a legal opinion from the legal counsel of the Concessionaire with respect to the authority of the Concessionaire to enter into this Agreement and the enforceability of the provisions thereof:

Provided that upon request in writing by the Concessionaire, the Authority may, in its discretion, waive any of the Conditions Precedent set forth in this Clause 4.1.3. For the avoidance of doubt, the Authority may, in its sole discretion, grant any waiver hereunder with such conditions as it may deem fit.

- 4.1.4 Each Party shall make all reasonable endeavours to satisfy the Conditions Precedent within the time stipulated and shall provide the other Party with such reasonable cooperation as may be required to assist that Party in satisfying the Conditions Precedent for which that Party is responsible.
- 4.1.5 The Parties shall notify each other in writing at least once a month on the progress made in satisfying the Conditions Precedent. Each Party shall promptly inform the other Party when any Condition Precedent for which it is responsible has been satisfied.
- 4.1.6 The Appointed Date shall be deemed to occur on the date following completion of 45 (forty-five) days from the date of this Agreement, which is the period specified for achieving the Financial Closure in terms of Clause 21.1.1. The Appointed Date thus determined shall remain unchanged, notwithstanding delays in fulfilling any of the conditions precedent which are specified in Clause 4.1.3, or any extension that may be allowed by the Authority to the Concessionaire for achieving the Financial Closure as per Clause 21.1.1.

#### **4.2 Damages for delay by the Authority**

In the event that (i) the Authority does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.2 within the period specified in respect thereof, and (ii) the delay has not occurred as a result of breach of this Agreement by the Concessionaire or due to Force Majeure, the Authority shall pay to the Concessionaire Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each week's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security.

#### **4.3 Damages for delay by the Concessionaire**

In the event that (i) the Concessionaire does not procure fulfilment of any or all of the Conditions Precedent set forth in Clause 4.1.3 within a period of 180 (one hundred and eighty) days from the date of this Agreement, and (ii) the delay has not occurred as a result of failure to fulfil the obligations under Clause 4.1.2 or other breach of this Agreement by the Authority, or due to Force Majeure, the Concessionaire shall pay to the Authority Damages in an amount calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day's delay until the fulfilment of such Conditions Precedent, subject to a maximum of 10% (ten percent) of the Performance Security.

## ARTICLE 5

### **OBLIGATIONS OF THE CONCESSIONAIRE**

#### **5.1 Obligations of the Concessionaire**

- 5.1.1 Subject to and on the terms and conditions of this Agreement, the Concessionaire shall, at its own cost and expense, procure finance for and undertake the design, engineering, procurement, construction, operation and maintenance of the Project and observe, fulfil, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 5.1.2 The Concessionaire shall comply with all Applicable Laws and Applicable Permits (including renewals as required) in the performance of its obligations under this Agreement.
- 5.1.3 Subject to the provisions of Clauses 5.1.1 and 5.1.2, the Concessionaire shall discharge its obligations in accordance with Good Industry Practice and as a reasonable and prudent person.
- 5.1.4 The Concessionaire shall, at its own cost and expense, in addition to and not in derogation of its obligations elsewhere set out in this Agreement:
- (a) make, or cause to be made, necessary applications to the relevant Government Instrumentalities with such particulars and details as may be required for obtaining Applicable Permits as stated in Schedule-E (other than those set forth in Clause 4.1.2), and obtain and keep in force and effect such Applicable Permits in conformity with the Applicable Laws;
  - (b) procure, as required, the appropriate proprietary rights, licences, agreements and permissions for materials, methods, processes and systems used or incorporated into the Project;
  - (c) perform and fulfil its obligations under the Financing Agreements;
  - (d) make reasonable efforts to maintain harmony and good industrial relations among the personnel employed by it or its Contractors in connection with the performance of its obligations under this Agreement;
  - (e) ensure and procure that its Contractors comply with all Applicable Permits and Applicable Laws in the performance by them of any of the Concessionaire's obligations under this Agreement;
  - (f) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (g) submit to the Authority or the Independent Engineer nominated by it, within the stipulated time, monthly reports on the progress of construction in accordance with Clause 13.1;
  - (h) schedule management meetings, site inspections in liaison with the Independent Engineer and notify those expected to attend and maintain and circulate minutes of such meetings and site inspection reports.
  - (i) receive the Grant within the stipulated time as set out in Article 22;
  - (j) provide assistance to the Independent Engineer or any officer or Agency nominated by the Authority and those inspecting the Site, pursuant to the Agreement and in accordance with Applicable Laws;

- (k) provide access and assistance to the Contractor and the sub-contractor(s), if any, which constructed Ancillary Facilities (as detailed in Schedule-A) on the Project Site, for attending to Defect Liability obligations or any other work on instructions from the Authority;
- (l) ensure that each Project Agreement with a Contractor enables the Authority or its nominee to substitute itself for the Concessionaire in the event of termination of this Agreement or of a Concessionaire's Event of Default under this Agreement, subject to the rights of the Lenders under the Substitution Agreement;
- (m) appoint officers to deal directly with the Authority and who shall be responsible for all exchanges of information in relation to this Agreement;
- (n) obtain (or cause to be obtained) and maintain (or cause to be maintained) the Project Insurances and to ensure that all Contractors do the same, as applicable, throughout the Concession Period;
- (o) keep the Site in neat and clean condition and in accordance with applicable Laws;
- (p) support, cooperate with and facilitate the Authority in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
- (p) transfer the Project to the Authority upon Termination of this Agreement, in accordance with the provisions thereof.

5.1.5 The Concessionaire shall ensure that none of its employees or subcontractors, who may be engaged in future, shall be engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under the "Anti-Corruption Guidelines" of the World Bank (i.e. "Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants" dated October 15, 2006 and Revised in January 2011 and as of July 1, 2016)

## **5.2 Obligations relating to Project Agreements**

- 5.2.1 It is expressly agreed that the Concessionaire shall, at all times, be responsible and liable for all its obligations under this Agreement notwithstanding anything contained in the Project Agreements or any other agreement, and no default under any Project Agreement or agreement shall excuse the Concessionaire from its obligations or liability hereunder.
- 5.2.2 The Concessionaire shall submit to the Authority the drafts of all Project Agreements, or any amendments or replacements thereto, for its review and comments, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, to the Concessionaire within 15 (fifteen) days of the receipt of such drafts. Within 7 (seven) days of execution of any Project Agreement or amendment thereto, the Concessionaire shall submit to the Authority a true copy thereof, duly attested by a Director of the Concessionaire, for its record. For the avoidance of doubt, it is agreed that the review and comments hereunder shall be limited to ensuring compliance with the terms of this Agreement. It is further agreed that no review and/or observation of the Authority and/or its failure to review and/or convey its observations on any document shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner whatsoever.
- 5.2.3 The Concessionaire shall not make any addition, replacement or amendments to any of the Financing Agreements without the prior written consent of the Authority if such addition, replacement or amendment has, or may have, the effect of imposing or increasing any financial liability or obligation on the Authority, and in the event that any replacement or amendment is made without such consent, the Concessionaire shall not enforce such replacement or amendment nor permit enforcement thereof against the

Authority. For the avoidance of doubt, the Authority acknowledges and agrees that it shall not unreasonably withhold its consent for restructuring or rescheduling of the Debt Due.

- 5.2.4 The Concessionaire shall procure that each of the Project Agreements contains provisions that entitle the Authority to step into such agreement, in its sole discretion, in substitution of the Concessionaire in the event of Termination or Suspension (the “Covenant”). For the avoidance of doubt, it is expressly agreed that in the event the Authority does not exercise such rights of substitution within a period not exceeding 90 (ninety) days from the Transfer Date, the Project Agreements shall be deemed to cease to be in force and effect on the Transfer Date without any liability whatsoever on the Authority and the Covenant shall expressly provide for such eventuality. The Concessionaire expressly agrees to include the Covenant in all its Project Agreements and undertakes that it shall, in respect of each of the Project Agreements, procure and deliver to the Authority an acknowledgment and undertaking, in a form acceptable to the Authority, from the counter party(ies) of each of the Project Agreements, whereunder such counter party(ies) shall acknowledge and accept the Covenant and undertake to be bound by the same and not to seek any relief or remedy whatsoever from the Authority in the event of Termination or Suspension.
- 5.2.5 Notwithstanding anything to the contrary contained in this Agreement, the Concessionaire agrees and acknowledges that if the Concessionaire wishes to subcontract performance of any part of its obligations for Operation and Maintenance of the Project, selection or replacement of an O&M Contractor and execution of the O&M Contract shall be subject to the prior approval of the Authority from national security and public interest perspective, the decision of the Authority in this behalf being final, conclusive and binding on the Concessionaire, and undertakes that it shall not give effect to initiating the process for any such selection or contract without prior approval of the Authority. For the avoidance of doubt, it is expressly agreed that approval of the Authority hereunder shall be limited to national security and public interest perspective, and the Authority shall endeavour to convey its decision thereon expeditiously. It is also agreed that the Authority shall not be liable in any manner on account of grant or otherwise of such approval and that such approval or denial thereof shall not in any manner absolve the Concessionaire or its Contractors from any liability or obligation under this Agreement.

### **5.3 Obligations relating to Change in Ownership**

*{Of the two Sections A and B below, only one Section will apply and the same shall be retained in the signed Concession Agreement. Text under Section A will apply and be retained in the signed Concession Agreement if the Selected Proposer is a Single Entity. However, if the Selected Proposer is a Joint Venture, text under Section B shall apply and be retained in the finally signed Concession Agreement}*

#### **A**

- 5.3.1 Subject to sub-clause (5.3.2), in the case of a Concessionaire that has been setup by the Selected Proposer, which is a Single Entity, shall until the end of Concession Period, maintain hundred percent of the subscribed and paid up equity of the Concessionaire.
- 5.3.2 The Selected Proposer, may, with the prior written approval of the Authority, which shall not be unreasonably withheld, reduce its shareholding to not below 51% (fifty one percent) of the subscribed and paid up equity share capital of the Concessionaire and 10% (ten percent) of the Total Project Cost, after the date falling two years after the Commercial Operation Date.

## **B**

- 5.3.1 Subject to sub-clause (5.3.2), in the case of a Concessionaire that has been setup by the Selected Proposer which is a Joint Venture, each Key Joint Venture Member, which is the Member whose experience and qualification were evaluated to meet the Qualification Criteria specified in the RFP (Request for Proposal), shall until the end of Concession Period, maintain an equity share capital not less than 26% (twenty six percent) of the subscribed and paid up equity of the Concessionaire and 5% (five percent) of the Total Project Cost.
- 5.3.2 Any Key Joint Venture Member, other than the Lead Member, may, with the prior written approval of the Authority, which shall not be unreasonably withheld, reduce its shareholding to below 26 % (twenty six percent) of the subscribed and paid up equity share capital of the Concessionaire and less than 5% (five percent) of the Total Project Cost, after the date falling two years after the Commercial Operation Date, subject to:
- (i) all Joint Venture Members continuing to collectively hold not less than 51% (fifty one percent) of the subscribed and paid-up equity of the Concessionaire, and not less than 10% (ten percent) of the Total Project Cost until the end of Concession Period; and
  - (ii) the Joint Venture Member who is to provide the O&M experience according to the Proposal submitted by the Joint Venture at the RFP (Request for Proposal) stage shall subscribe and continue to hold at least 10% (ten percent) of the subscribed and paid up equity of the Concessionaire until the end of Concession Period.

### **5.4 Employment of foreign nationals**

The Concessionaire acknowledges, agrees and undertakes that employment of foreign personnel by the Concessionaire and/or its Contractors and their sub-contractors shall be subject to grant of requisite regulatory permits and approvals including employment/residential visas and work permits, if any required, and the obligation to apply for and obtain the same shall and will always be of the Concessionaire and, notwithstanding anything to the contrary contained in this Agreement, refusal of or inability to obtain any such permits and approvals by the Concessionaire or any of its Contractors or sub-contractors shall not constitute Force Majeure Event, and shall not in any manner excuse the Concessionaire from the performance and discharge of its obligations and liabilities under this Agreement. The Concessionaire shall share the copies of requisite regulatory permits for all foreign personnel of the Concessionaire and/or its Contractors and their sub-contractors Authority for their entire duration of stay in Maldives.

### **5.5 Employment of trained personnel**

The Concessionaire shall ensure that the personnel engaged by it in the performance of its obligations under this Agreement are at all times properly trained for their respective functions.

### **5.6 Sole purpose of the Concessionaire**

The Concessionaire having been set up for the sole purpose of exercising the rights and observing and performing its obligations and liabilities under this Agreement, the Concessionaire or any of its subsidiaries shall not, except with the previous written consent of the Authority, be or become directly or indirectly engaged, concerned or interested in any business other than as envisaged herein.

## **5.7 Submission and Approval of Detailed Engineering Document (DED)**

- (a) The Concessionaire shall, at its cost and aligned with the Proposal submitted by the Concessionaire (or the Selected Proposer) and as per the terms and conditions of this Agreement, start preparation of the Detailed Engineering Document (DED) for the Project after the signing the Concession Agreement and submit the same to the Authority or the Independent Engineer, if nominated by the Authority, for approval of the Authority at the earliest but not later than thirty (30) days from the Appointed Date.
- (b) The DED shall comprise of including but not limited to the following:
  - (i) Detailed Site Development Plan,
  - (ii) Architectural Plans and Designs for the Permanent and Semi-Permanent Buildings or Built Structures to be constructed, including specifications of all items of work,
  - (iii) Installation Plans and Schedules for all equipment, tanks, cages and all other items of work and installations necessary to complete the “Design-Build Services” as specified in Schedule C,
  - (v) Engineering Designs for all constructions and installations including technical specifications of all materials, workmanship and processes to be used to complete the “Design-Build Services” as specified in Schedule C,
  - (v) Construction Plans and Schedules
  - (vi) Details in relation to Project Milestones (provided however, the Project Milestone as provided under Schedule-B of this Agreement shall not be deviated from by the Concessionaire)
  - (vii) Timelines for the development (design-build, test and commission),
  - (viii) The process of operation and maintenance,
  - (ix) Economic and financial analysis, and
  - (xii) Social Responsibility Plan and the Environmental Management Plan.
- (c) The Authority shall, within a period of ten (10) days from such submitted DED review and approve it, or shall communicate the changes, revisions and modifications in the DED. The Concessionaire shall make the changes, revisions and modifications within twenty (20) days from such receipt of the comments and shall resubmit the DED to the Authority (through the Independent Engineer, if nominated by it for its approval. The Authority shall revert on the re-submitted drawings within ten (10) days.
- (d) The Authority shall, during its evaluation of the re-submitted DED, ascertain whether the Concessionaire has carried out the changes, revisions and modifications and accordingly accord its approval to the DED by issuing a Work Order to the Concessionaire.

Authority’s approval of the Detailed Engineering Document (DED) notwithstanding, Concessionaire shall continue to have over-all responsibility for correctness of the DED and for ensuring proper discharge of their professional duties.

- (e) If the Concessionaire has further comments from the Authority, then the provision under sub clause (c) of this Clause shall be repeated twice. However, if the resubmitted DED does not incorporate the comments from the Authority, then the

Authority shall have the option to Terminate the Agreement in accordance with Clause 28.1.

#### **5.8 Construction Period and Milestones**

The Concessionaire shall within twelve (12) months from the Appointed Date (“Construction Period”) complete construction of the Project following the Project Milestones as detailed in Schedule-B, carry out all obligations satisfactorily, obtain the Completion Certificate in accordance with Clause 14.2 and commence operations on the schedule Commercial Operation Date (COD).

#### **5.9 Project Milestones**

The Concessionaire shall plan construction activities so as to achieve various Project Milestones stipulated in Schedule-B.

## ARTICLE 6

### **OBLIGATIONS OF THE AUTHORITY**

#### **6.1 Obligations of the Authority**

- 6.1.1 The Authority shall, at its own cost and expense undertake, comply with and perform all its obligations set out in this Agreement or arising hereunder.
- 6.1.2 The Authority agrees to provide support to the Concessionaire and undertakes to observe, comply with and perform, subject to and in accordance with the provisions of this Agreement and the Applicable Laws, the following:
- (a) upon written request from the Concessionaire, and subject to the Concessionaire complying with Applicable Laws, provide reasonable support and assistance to the Concessionaire in procuring Applicable Permits required (as per Schedule-E) from any Government Instrumentality for implementation and operation of the Project;
  - (b) not do or omit to do any act, deed or thing which may in any manner be violative of any of the provisions of this Agreement;
  - (c) support, cooperate with and facilitate the Concessionaire in the implementation and operation of the Project in accordance with the provisions of this Agreement; and
  - (d) upon written request from the Concessionaire and subject to the provisions of Clause 5.4, provide reasonable assistance which shall be limited to providing documents for visa purposes to the Concessionaire and any expatriate personnel of the Concessionaire or its Contractors to obtain applicable visas and work permits for the purposes of discharge by the Concessionaire or its Contractors their obligations under this Agreement and the Project Agreements.

#### **6.2 Benefits of Waiver of Customs Duty to Concessionaire**

The Concessionaire shall bear and pay all taxes (including income tax), Goods and Services Tax (GST), levies and charges (the “Taxes”) assessed on the Concessionaire, its Sub-contractors or their employees by all local authorities or government authorities in connection with the Agreement, with a proviso that Customs Duty on all materials, goods, and equipment imported into the Authority’s country will be waived until December 31, 2022 or as may be extended at the sole discretion of the Authority. However, import of live animals (including brood stock, juveniles or full-grown fish) is not allowed under this Agreement.

To enable Concessionaire to avail benefits of waiver of Customs duty, the Authority shall issue necessary certificates for the materials and inputs required for executing the Project, based on details submitted by the Selected Proposer with its Proposal.

#### **6.3 Assistance in Enabling Financing**

The Authority hereby agrees that the Lenders shall have a right in the event of a default by the Concessionaire, to undertake a substitution of the Concessionaire with a suitably qualified entity selected by the Lenders, and (after such selection) approved by the Authority. The Authority undertakes that in such circumstances it shall enter into a Substitution Agreement as per the format given in Schedule-M.

**ARTICLE 7**  
**REPRESENTATIONS AND WARRANTIES**

**7.1 Representations and warranties of the Concessionaire**

The Concessionaire represents and warrants to the Authority that:

- (a) it is duly organised and validly existing under the laws of Maldives, and has full power and authority to execute and perform its obligations under this Agreement and to carry out the transactions contemplated hereby;
- (b) it has taken all necessary corporate and other actions under Applicable Laws to authorise the execution and delivery of this Agreement and to validly exercise its rights and perform its obligations under this Agreement;
- (c) it has the financial standing and capacity to undertake the Project in accordance with the terms of this Agreement;
- (d) this Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms hereof, and its obligations under this Agreement will be legally valid, binding and enforceable obligations against it in accordance with the terms hereof;
- (e) it is subject to the laws of Maldives, and hereby expressly and irrevocably waives any immunity in any jurisdiction in respect of this Agreement or matters arising thereunder including any obligation, liability or responsibility hereunder;
- (f) the information furnished in the Proposal is true and accurate in all respects as on the date of this Agreement;
- (g) the execution, delivery and performance of this Agreement will not conflict with, result in the breach of, constitute a default under, or accelerate performance required by any of the terms of its Memorandum and Articles of Association {or those of any member of the Joint Venture} or any Applicable Laws or any covenant, contract, agreement, arrangement, understanding, decree or order to which it is a party or by which it or any of its properties or assets is bound or affected;
- (h) there are no actions, suits, proceedings, or investigations pending or, to its knowledge, threatened against it at law or in equity before any court or before any other judicial, quasi-judicial or other authority, the outcome of which may result in the breach of this Agreement or which individually or in the aggregate may result in any material impairment of its ability to perform any of its obligations under this Agreement;
- (i) it has no knowledge of any violation or default with respect to any order, writ, injunction or decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on its ability to perform its obligations under this Agreement and no fact or circumstance exists which may give rise to such proceedings that would adversely affect the performance of its obligations under this Agreement;
- (j) it has complied with Applicable Laws in all material respects and has not been subject to any fines, penalties, injunctive relief or any other civil or criminal liabilities which in the aggregate have or may have a material adverse effect on its ability to perform its obligations under this Agreement;
- (k) it shall at no time undertake or permit any Change in Ownership except in accordance with the provisions of Clause 5.3.

Provided further that any such request made under Article 7.1(k), at the option of the Authority, may be required to be accompanied by a suitable no objection letter from lenders.

- (l) {the selected Proposer/ Joint Venture Members} have the financial standing and resources to fund the required Equity and to raise the debt necessary for undertaking and implementing the Project in accordance with this Agreement;
- (m) {the selected Proposer/ each Joint Venture Member} is duly organised and validly existing under the laws of the jurisdiction of its incorporation, and has requested the Authority to enter into this Agreement with the Concessionaire pursuant to the Letter of Award, and has agreed to and unconditionally accepted the terms and conditions set forth in this Agreement;
- (n) all its rights and interests in the Project shall pass to and vest in the Authority on the Transfer Date free and clear of all liens, claims and Encumbrances, without any further act or deed on its part or that of the Authority, and that none of the Project Assets shall be acquired by it, subject to any agreement under which a security interest or other lien or Encumbrance is retained by any person, save and except as expressly provided in this Agreement;
- (o) no representation or warranty by it contained herein or in any other document furnished by it to the Authority or to any Government Instrumentality in relation to Applicable Permits contains or will contain any untrue or misleading statement of material fact or omits or will omit to state a material fact necessary to make such representation or warranty not misleading;
- (p) no sums, in cash or kind, have been paid or will be paid, by it or on its behalf, to any person by way of fees, commission or otherwise for securing the Concession or entering into this Agreement or for influencing or attempting to influence any officer or employee of the Authority in connection therewith; and
- (q) all information provided by the {selected Proposer/ Joint Venture Members} in response to the Request for Proposals or otherwise, is to the best of its knowledge and belief, true and accurate in all material respects.
- (r) none of the employees or sub-contractors of {selected Proposer/ Joint Venture Members}, as of this day, have been engaged in corrupt, fraudulent, collusive, coercive or obstructive practice, as defined under the “Anti-Corruption Guidelines” of the World Bank (i.e. “Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants” dated October 15, 2006 and Revised in January 2011 and as of July 1, 2016)

## **7.2 Representations and warranties of the Authority**

The Authority represents and warrants to the Concessionaire that:

- (a) it has full power and authority to execute, deliver and perform its obligations under this Agreement and to carry out the transactions contemplated herein and that it has taken all actions necessary to execute this Agreement, exercise its rights and perform its obligations, under this Agreement;
- (b) it has taken all necessary actions under the Applicable Laws to authorise the execution, delivery and performance of this Agreement;
- (c) it has the financial standing and capacity to perform its obligations under this Agreement;

- (d) this Agreement constitutes a legal, valid and binding obligation enforceable against it in accordance with the terms hereof;
- (e) it has no knowledge of any violation or default with respect to any order, writ, injunction or any decree of any court or any legally binding order of any Government Instrumentality which may result in any material adverse effect on the Authority's ability to perform its obligations under this Agreement;
- (f) it has complied with Applicable Laws in all material respects; and
- (g) it has good and valid right to the Site and has power and authority to grant a licence in respect thereto to the Concessionaire.

### **7.3 Disclosure**

In the event that any occurrence or circumstance comes to the attention of either Party that renders any of its aforesaid representations or warranties untrue or incorrect, such Party shall immediately notify the other Party of the same. Such notification shall not have the effect of remedying any breach of the representation or warranty that has been found to be untrue or incorrect nor shall it adversely affect or waive any right, remedy or obligation of either Party under this Agreement.

**ARTICLE 8**  
**DISCLAIMER**

**8.1 Disclaimer**

- 8.1.1 The Concessionaire acknowledges that prior to the execution of this Agreement, the Concessionaire has, after a complete and careful examination, made an independent evaluation of the Request for Proposal, Scope of the Project, Specifications and Standards, Site, existing structures, local conditions, physical qualities of ground, subsoil and geology and all information provided by the Authority or obtained, procured or gathered otherwise, and has determined to its satisfaction the accuracy or otherwise thereof and the nature and extent of difficulties, risks and hazards as are likely to arise or may be faced by it in the course of performance of its obligations hereunder. The Authority makes no representation whatsoever, express, implicit or otherwise, regarding the accuracy, adequacy, correctness, reliability and/or completeness of any assessment, assumptions, statement or information provided by it and the Concessionaire confirms that it shall have no claim whatsoever against the Authority in this regard.
- 8.1.2 The Concessionaire acknowledges and hereby accepts the risk of inadequacy, mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above and hereby acknowledges and agrees that the Authority shall not be liable for the same in any manner whatsoever to the Concessionaire, {the Joint Venture Members} or any person claiming through or under any of them.
- 8.1.3 The Parties agree that any mistake or error in or relating to any of the matters set forth in Clause 8.1.1 above shall not vitiate this Agreement or render it voidable.
- 8.1.4 In the event that either Party becomes aware of any mistake or error relating to any of the matters set forth in Clause 8.1.1 above, that Party shall immediately notify the other Party, specifying the mistake or error; provided, however, that a failure on part of the Authority to give any notice pursuant to this Clause 8.1.4 shall not prejudice the disclaimer of the Authority contained in Clause 8.1.1 and shall not in any manner shift to the Authority any risks assumed by the Concessionaire pursuant to this Agreement.
- 8.1.5 Except as otherwise provided in this Agreement, all risks relating to the Project shall be borne by the Concessionaire and the Authority shall not be liable in any manner for such risks or the consequences thereof.

# **Part III**

## **Development and Operations**

**ARTICLE 9**  
**PERFORMANCE SECURITY**

**9.1 Performance Security**

9.1.1 The Concessionaire shall, for the performance of its obligations hereunder during the Concession Period, provide to the Authority no later than 45 (forty-five) days from the date of this Agreement, irrevocable and unconditional guarantees from a Bank as under:

(a) Performance Security for a sum equivalent to MVR 4.3 million or US\$ 280,000 (Four Million and Three Hundred Thousand Maldivian Rufiya or Two Hundred and Eighty Thousand United States Dollars, respectively) in the form set forth in Schedule-F (the “**Performance Security**”); and

(b) Environmental, Social, Health and Safety (ESHS) Performance Security for a sum equivalent to MVR 1.1 million or US\$ 70,000 (One Million and One Hundred Thousand Maldivian Rufiya or Seventy Thousand United States Dollars, respectively) in the form set forth in Schedule-F (the “**Environmental, Social, Health and Safety (ESHS) Performance Security**”).

These bank guarantees shall be valid until 180 (one hundred eighty) days beyond the Concession Period. Until such time the Performance Securities are provided by the Concessionaire pursuant hereto and the same come into effect, the Proposal Security shall remain in force and effect, and upon such provision of the Performance Securities pursuant hereto, the Authority shall release the Proposal Security to the Concessionaire.

9.1.2 Notwithstanding anything to the contrary contained in this Agreement, in the event Performance Security is not provided by the Concessionaire within a period of 45 (forty-five) days from the date of this Agreement, the Authority may encash the Proposal Security and appropriate the proceeds thereof as Damages, and thereupon all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and this Agreement shall be deemed to have been terminated by mutual agreement of the Parties.

9.1.3 When the total payments under the Concession Agreement reach fifty (50) percent of the “Grant” amount, the Concessionaire shall provide the Authority Additional Performance Security of MVR 10.8 million or US\$ 700,000 (Ten Million and Eight Hundred Thousand Maldivian Rufiya or Seven Hundred Thousand United States Dollars, respectively) or 20% (twenty percent) of the total “Grant” amount, whichever is lesser in the form set forth in Schedule-F, before claiming further payments under the Concession Agreement. The said Additional Performance Security shall be valid up to 24 (twenty-four) months beyond the Commercial Operation Date (COD).

**9.2 Appropriation of Performance Security**

Upon occurrence of a Concessionaire Default or failure to meet any Condition Precedent, or breach of this Agreement during the Construction Period or the Operation Period, the Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the relevant amounts from the Performance Security(ies) as Damages for such Concessionaire Default or failure. Upon such encashment and appropriation from the Performance Security(ies), the Concessionaire shall, within 30 (thirty) days thereof, replenish, in case of partial appropriation, to its original level the Performance Security(ies) and in case of appropriation of the entire Performance Security(ies) provide a fresh Performance Security(ies), as the case may be, and the Concessionaire shall, within the time so granted, replenish or furnish fresh Performance

Security(ies) as aforesaid failing which the Authority shall be entitled to terminate this Agreement in accordance with Article 29. Upon replenishment or furnishing of fresh Performance Security(ies), as the case may be, as aforesaid, the Concessionaire shall be entitled to an additional Cure Period of 90 (ninety) days for remedying the Concessionaire Default or to meet any Condition Precedent, and in the event of the Concessionaire not curing its default or meeting such Condition Precedent within such Cure Period, the Authority shall be entitled to encash and appropriate such Performance Security(ies) as Damages, and to terminate this Agreement in accordance with Article 29.

### **9.3 Release of Performance Security**

The Performance Securities provided as per Clause 9.1.1 shall remain in force and effect for a period of 180 (one hundred and eighty) days beyond satisfactory completion of the Concession Period; provided, however, that the Performance Securities shall not be released if the Concessionaire is in breach of this Agreement. Upon request made by the Concessionaire for release of the Performance Securities along with the particulars which establish satisfaction of the requirements specified under this Clause 9.3, the Authority shall release the Performance Securities forthwith. This provision does not apply to Additional Performance Security provided under Clause 9.1.3 which shall remain in force and effect for a period of 24 (twenty-four) months beyond the Commercial Operation Date (COD); provided, however, that this Additional Performance Security shall not be released until the Authority is satisfied that the Multispecies Hatchery and the Allied Facilities are operated appropriately and the production performance of the Project is appropriate as per Clause 2.4.2.

**ARTICLE 10**  
**ACCESS TO PROJECT SITE**

**10.1 The Site**

The site of the Project shall comprise the real estate described in Schedule-A and in respect of which the access shall be provided and granted by the Authority to the Concessionaire as a licensee under and in accordance with this Agreement (the “**Project Site**” or the “**Site**”). For the avoidance of doubt, it is hereby acknowledged and agreed that references to the Site shall be construed as references to the real estate required for establishing the Multi-species Hatchery and Allied Facilities as set forth in Schedule-A.

**10.2 Protection of Site from encroachments**

During the Concession Period, the Concessionaire shall protect the Site from any and all occupations, encroachments or Encumbrances, and shall not place or create nor permit any Contractor or other person claiming through or under the Concessionaire to place or create any Encumbrance or security interest over all or any part of the Site or the Project Assets, or on any rights of the Concessionaire therein or under this Agreement, save and except as otherwise expressly set forth in this Agreement.

**10.3 Access to the Authority, Independent Engineer and Authority’s Contractor(s)**

The licence and access to the Site granted to the Concessionaire hereunder shall always be subject to the right of access of the Authority, the Independent Engineer and their employees and agents for inspection, viewing and exercise of their rights and performance of their obligations under this Agreement. Further, access to the Site granted to the Concessionaire is subject to access and assistance to be provided to the Contractor(s) and the sub-contractor(s), if any, which constructed Ancillary Facilities on the Project Site, as referred to in Clause 5.1.4 (k) for attending to Defect Liability obligations or any other work on instructions from the Authority.

**10.4 Geological and archaeological finds**

It is expressly agreed that mining, geological or archaeological rights do not form part of the licence granted to the Concessionaire under this Agreement and the Concessionaire hereby acknowledges that it shall not have any mining rights or interest in the underlying minerals, fossils, antiquities, structures or other remnants or things either of particular geological or archaeological interest and that such rights, interest and property on or under the Site shall vest in and belong to the Authority or the concerned Government Instrumentality. The Concessionaire shall take all reasonable precautions to prevent its workmen or any other person from removing or damaging such interest or property and shall inform the Authority forthwith of the discovery thereof and comply with such instructions as the concerned Government Instrumentality may reasonably give for the removal of such property. For the avoidance of doubt, it is agreed that any reasonable expenses incurred by the Concessionaire hereunder shall be reimbursed by the Authority. It is also agreed that the Authority shall ensure that the instructions hereunder are issued by the concerned Government Instrumentality within a reasonable period.

**ARTICLE 11**  
**UTILITIES AND TREES**

**11.1 Shifting of obstructing utilities**

The Concessionaire shall prepare Detailed Engineering Document (DED), referred to in Clause 5.7, for setting up the Multi-species Hatchery at the site, duly taking into account the lay-out of the Ancillary Facilities and related utilities built already by the Authority for the purpose of efficient functioning of the Multi-species Hatchery. The underlying objective shall be to avoid shifting any of the said facilities/utilities. However, the Concessionaire may propose shifting any item of the said facilities/utilities, only if such facility/utility causes or shall cause a material adverse effect on the construction, operation or maintenance of the Project. In such event, the Concessionaire shall submit to the Authority for its consideration, a proposal along with a proper justification and relevant layout drawings indicating the suggested changes/shifting.

If the Concessionaire's proposal for said shifting is agreed to by the Authority, the cost of such shifting shall be borne by the Authority or by the entity owning such utility, if the Authority so directs. In the event of any delay in shifting the facility/utility which has been agreed to by the Authority, the Concessionaire shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay on the part of the entity owning the utility.

**11.2 Felling of trees**

The Authority shall assist the Concessionaire in obtaining the Applicable Permits for felling of trees to be identified by the Authority for this purpose if and only if such trees cause a material adverse effect on the construction, operation or maintenance of the Project. The cost of such felling shall be borne by the Authority, and in the event of any delay in felling thereof for reasons beyond the control of the Concessionaire, it shall be excused for failure to perform any of its obligations hereunder if such failure is a direct consequence of delay in the felling of trees. For the avoidance of doubt, the Parties hereto agree that the felled trees shall be deemed to be owned by the Authority and shall be disposed in such manner and subject to such conditions as the Authority may in its sole discretion deem appropriate.

## ARTICLE 12

### **CONSTRUCTION OF THE PROJECT**

#### **12.1 Obligations prior to commencement of construction**

Prior to commencement of Construction Works, the Concessionaire shall:

- (a) submit to the Authority and the Independent Engineer its detailed design, construction methodology, quality assurance procedures, and the procurement, engineering and construction time schedule for completion of the Construction Works in accordance with the Project Completion Schedule as set forth in Schedule-B;
- (b) appoint its representative duly authorised to deal with the Authority in respect of all matters under or arising out of or relating to this Agreement; and
- (c) undertake, do and perform all such acts, deeds and things as may be necessary or required before commencement of construction under and in accordance with this Agreement, the Applicable Laws and Applicable Permits.

#### **12.2 Drawings**

In respect of the Concessionaire's obligations relating to the Drawings of the Construction Works, the following shall apply:

- (a) The Concessionaire shall prepare and submit, at least 15 (fifteen) days in advance of the schedule of start of construction (or any part of it) and in such sequence as is consistent with the Project Completion Schedule, three copies each of all Drawings to the Independent Engineer for review;
- (b) By submitting the Drawings for review to the Independent Engineer, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Construction Works and the Specifications and Standards. This shall not relieve the Concessionaire from its obligation to ensure that the system designed is able to achieve the production levels set forth in this Agreement;
- (c) Within 15 (fifteen) days of the receipt of the Drawings, the Independent Engineer shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Construction Works and the Specifications and Standards. The Concessionaire shall not be obliged to await the observations of the Independent Engineer on the Drawings submitted pursuant hereto beyond the said 15 (fifteen) days period and may begin or continue Construction Works at its own discretion and risk;
- (d) If the aforesaid observations of the Independent Engineer indicate that the Drawings are not in conformity with the Scope of the Construction Works or the Specifications and Standards, such Drawings shall be revised by the Concessionaire and resubmitted to the Independent Engineer for review. The Independent Engineer shall give its observations, if any, within 7 (seven) days of receipt of the revised Drawings;
- (e) No review and/or observation of the Independent Engineer and/or its failure to review and/or convey its observations on any Drawings shall relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Independent Engineer or the Authority be liable for the same in any manner;

- (f) Without prejudice to the foregoing provisions of this Clause 12.3, the Concessionaire shall submit to the Authority for review and comments, its Drawings, Design and layout of all Facilities, Equipment and Infrastructure, detailed in Schedule-C, which form part of the Construction Works, and the Authority shall have the right but not the obligation to undertake such review and provide its comments, if any, within 30 (thirty) days of the receipt of such Drawings and Designs. The provisions of this Clause 12.3 shall apply *mutatis mutandis* to the review and comments hereunder; and
- (g) Within 90 (ninety) days of the Project Completion Date, the Concessionaire shall furnish to the Authority and the Independent Engineer a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Construction Works as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Facilities.

### **12.3 Completion of Construction of the Construction Works**

- 12.3.1 On or after the Appointed Date, the Concessionaire shall undertake construction of Multi-species Hatchery and Allied Facilities as specified in Schedule-B and Schedule-C, and in conformity with the Specifications and Standards set forth in Schedule-D. The 365<sup>th</sup> (Three hundred sixty-fifth) day from the Appointed Date shall be the scheduled date for the completion of the construction of the Project, referred to as the “**Scheduled Project Completion Date**” and the Concessionaire agrees and undertakes that the Construction Works shall be completed on or before the Scheduled Project Completion Date.
- 12.3.2 The Concessionaire shall construct the Construction Works in accordance with the Project Completion Schedule set forth in Schedule-B. In the event that the Concessionaire fails to achieve any Project Milestone within a period of 60 (sixty) days from the date set forth for such Milestone in Schedule-B, unless such failure has occurred due to Force Majeure or for reasons solely attributable to the Authority, it shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until such Milestone is achieved; provided that if any or all Project Milestones are extended in accordance with the provisions of this Agreement, the dates set forth in Schedule-B shall be deemed to be modified accordingly and the provisions of this Agreement shall apply as if Schedule-B has been amended as above; provided further that in the event Project Completion Date is achieved on or before the Scheduled Project Completion Date, the Damages paid under this Clause 12.3.2 shall be refunded by the Authority to the Concessionaire, but without any interest thereon. For the avoidance of doubt, it is agreed that recovery of Damages under this Clause 12.3.2 shall be without prejudice to the rights of the Authority under this Agreement, including the right of Termination thereof.
- 12.3.3 In the event that the construction of Multi-species Hatchery and all Allied Facilities is not completed within 120 (one hundred twenty) days from the Scheduled Project Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Authority shall be entitled to terminate this Agreement.

## ARTICLE 13

### **MONITORING OF CONSTRUCTION**

#### **13.1 Monthly progress reports**

During the Construction Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority and the Independent Engineer a monthly report on progress of the Construction Works and shall promptly give such other relevant information as may be required by the Independent Engineer.

#### **13.2 Inspection**

During the Construction Period, the Independent Engineer shall inspect the Construction Works at least once a month and make a report of such inspection (the “**Inspection Report**”) stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Scope of the Construction Works and Specifications and Standards. It shall send a copy of the Inspection Report to the Authority and the Concessionaire within 7 (seven) days of such inspection and upon receipt thereof, the Concessionaire shall rectify and remedy the defects or deficiencies, if any, stated in the Inspection Report. Such inspection or submission of Inspection Report by the Independent Engineer shall not relieve or absolve the Concessionaire of its obligations and liabilities hereunder in any manner whatsoever.

#### **13.3 Tests**

13.3.1 For determining that the Construction Works conform to the Specifications and Standards, the Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests, at such time and frequency and in such manner as may be specified by the Independent Engineer/Authority from time to time, in accordance with Good Industry Practice for quality assurance. The Concessionaire shall, with due diligence, carry out or cause to be carried out all the tests in accordance with the instructions of the Independent Engineer and furnish the results thereof to the Independent Engineer. For the avoidance of doubt, the costs to be incurred on any Test which is undertaken for determining the rectification of any defect or deficiency in construction shall be borne solely by the Concessionaire.

13.3.2 In the event that results of any tests conducted under this Clause 13.3 establish any defects or deficiencies in the Construction Works, the Concessionaire shall carry out remedial measures and furnish a report to the Independent Engineer, in accordance with a timeline set by the Independent Engineer. The Independent Engineer shall require the Concessionaire to carry out or cause to be carried out tests to determine that such remedial measures have brought the Construction Works into compliance with the Specifications and Standards, and the procedure set forth in this Clause 13.3 shall be repeated until such Construction Works conform to the Specifications and Standards. For the avoidance of doubt, it is agreed that tests pursuant to this Clause 13.3 shall be undertaken in addition to and independent of the tests that shall be carried out by the Concessionaire for its own quality assurance in accordance with Good Industry Practice. It is also agreed that a copy of the results of such tests shall be sent by the Concessionaire to the Independent Engineer forthwith.

#### **13.4 Delays during construction**

Without prejudice to the provisions of Clause 12.3.2, if the Concessionaire does not achieve any of the Project Milestones or the Independent Engineer shall have reasonably determined that the rate of progress of Construction Works is such that completion of Construction Works is not likely to be achieved by the Scheduled Commercial Operation Date (COD), it

shall notify the Concessionaire to this effect, and the Concessionaire shall, within 15 (fifteen) days of such notice, by a communication inform the Independent Engineer in reasonable detail about the steps it proposes to take to expedite progress and the period within which it shall achieve the Project Completion Date.

### **13.5 Suspension of unsafe Construction Works**

- 13.5.1 Upon recommendation of the Independent Engineer to this effect, the Authority may by notice require the Concessionaire to suspend forthwith the whole or any part of the Construction Works if, in the reasonable opinion of the Authority, such work threatens the safety of the workers.
- 13.5.2 The Concessionaire shall, pursuant to the notice under Clause 13.5.1, suspend the Construction Works or any part thereof for such time and in such manner as may be specified by the Authority and thereupon carry out remedial measures to secure the safety of suspended works and the workers. The Concessionaire may by notice require the Independent Engineer to inspect such remedial measures forthwith and make a report to the Authority recommending whether or not the suspension hereunder may be revoked. Upon receiving the recommendations of the Independent Engineer, the Authority shall either revoke such suspension or instruct the Concessionaire to carry out such other and further remedial measures as may be necessary in the reasonable opinion of the Authority, and the procedure set forth in this Clause 13.5 shall be repeated until the suspension hereunder is revoked.
- 13.5.3 All reasonable costs incurred for maintaining and protecting the Construction Works or part thereof during the period of suspension (the “**Preservation Costs**”), shall be borne by the Concessionaire; provided that if the suspension has occurred as a result of any breach of this Agreement by the Authority, the Authority shall increase the Concession period by such an amount as deemed sufficient for the recovery of the Preservation Costs by the Concessionaire.
- 13.5.4 If suspension of Construction Works is for reasons not attributable to the Concessionaire, the Independent Engineer shall determine any extension of the dates set forth in the Project Completion Schedule to which the Concessionaire is reasonably entitled, and shall notify the Authority accordingly whereupon the Authority shall extend such Project Completion Schedule dates in accordance with the recommendations of the Independent Engineer. In the event that the Scheduled Commercial Operation Date (COD) is extended pursuant hereto, the Concession Period shall be deemed to be extended by a period equal in length to the period of extension of the Scheduled Commercial Operation Date (COD).

### **13.6 Video recording**

During the Construction Period, the Concessionaire shall provide to the Authority for every calendar quarter, a video recording, which will be compiled into a 3 (three)-hour compact disc or digital video disc, as the case may be, covering the status and progress of Construction Works in that quarter. The first such video recording shall be provided to the Authority within 7 (seven) days of the Appointed Date and thereafter, no later than 15 (fifteen) days after the close of each quarter.

**ARTICLE 14**  
**COMPLETION CERTIFICATE**

**14.1 Tests**

- 14.1.1 At least 30 (thirty) days prior to the likely completion of the Construction Works, the Concessionaire shall notify the Independent Engineer of its intent to subject the Construction Works to Tests. The date and time of each of the Tests shall be determined by the Independent Engineer in consultation with the Concessionaire and notified to the Authority who may designate its representative to witness the Tests. The Concessionaire shall provide such assistance as the Independent Engineer may reasonably require for conducting the Tests. In the event of the Concessionaire and the Independent Engineer failing to mutually agree on the dates for conducting the Tests, the Concessionaire shall fix the dates by not less than 10 (ten) days' notice to the Independent Engineer.
- 14.1.2 All Tests as necessary shall be conducted to determine compliance with the Specifications and Standards outlined in Schedule-D. The Independent Engineer shall observe, monitor and review the results of the Tests to determine compliance of the Construction Works with Specifications and Standards and if it is reasonably anticipated or determined by the Independent Engineer during the course of any Test that the performance of the Construction Works or any part thereof does not meet the Specifications and Standards outlined in Schedule-D, it shall have the right to suspend or delay such Test and require the Concessionaire to remedy and rectify the defects or deficiencies. Upon completion of each Test, the Independent Engineer shall provide to the Concessionaire and the Authority copies of all Test data including detailed Test results. For the avoidance of doubt, it is expressly agreed that the Independent Engineer may require the Concessionaire to carry out or cause to be carried out additional Tests, in accordance with Good Industry Practice, for determining the compliance of the Construction Works with Specifications and Standards outlined in Schedule-D.

**14.2 Completion Certificate**

Upon completion of Construction Works and the Independent Engineer determining the Tests to be successful, it shall forthwith issue to the Concessionaire and the Authority a certificate substantially in the form set forth in Schedule-H (the "**Completion Certificate**").

**14.3 Rescheduling of Tests**

If the Independent Engineer certifies to the Authority and the Concessionaire that it is unable to issue the Completion Certificate, because of events or circumstances on account of which the Tests could not be held or had to be suspended, the Concessionaire shall be entitled to re-schedule the Tests and hold the same as soon as reasonably practicable.

## ARTICLE 15

### **ENTRY INTO COMMERCIAL SERVICE**

#### **15.1 Commercial Operation Date (COD)**

The Construction Works shall be deemed to be complete when the Completion Certificate is issued under the provisions of Article 14, and accordingly the commercial operation date of the Project shall be the date on which such Completion Certificate is issued (the “**COD**”). The Project shall enter into commercial service on COD whereupon the Concessionaire shall be entitled to commence operation of the Multi-species Hatchery and Allied Facilities to meet the demand for supply of fingerlings of Grouper, juvenile Sea Cucumber and Bait Species.

#### **15.2 Damages for delay**

Subject to the provisions of Clause 12.3, if COD does not occur prior to the 61<sup>st</sup> day after the Scheduled Project Completion Date, unless the delay is on account of reasons solely attributable to the Authority or due to Force Majeure, the Concessionaire shall pay Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the amount of Performance Security for delay of each day until COD is achieved.

**ARTICLE 16**  
**EXPANSION OF PRODUCTION**

**16.1 Installed Capacity of Multi-species Hatchery**

The Concessionaire shall set up Multi-species Hatchery with production capacity of minimum following levels at the Commencement of Operation:

- (i) Brown Marble Grouper) – 1 million fingerlings per year;
- (ii) Bait Species – 150 tons per year; and
- (iii) Sea Cucumber – 1.5 million fingerlings per year

**16.2 Expected Production and Level of Services to be provided by the Concessionaire**

Expected levels of production in different years of the Operation Period are set out in Clause 17.4. Estimates given therein are indicative only. The Concessionaire shall conduct its own market research and analysis and undertake due diligence during the Operation Period to estimate the precise production levels at which the Multi-species Hatchery and Allied Facilities should operate during different years of the Operation Period for optimising sales and revenue therefrom.

**16.3 Concessionaire to finance expansion of capacity**

The Concessionaire shall finance progressive expansion of the capacity of the Multi-species Hatchery during the Operation Period, using its own resources and/or revenues generated from production in the Multi-species Hatchery and production, if any, from grow out area in the 78 ha of lagoon. The Concessionaire shall target achieving ‘installed capacity’ as early as could be reasonably expected based on its own market research and analysis or at least the following levels on commencement of twentieth (20<sup>th</sup>) year of operation.

- (i) Bait Species– 300 tons per year;
- (ii) Brown Marble Grouper– 10 million fingerlings per year; and
- (iii) Sea Cucumber – 4 million fingerlings per year.

**16.4 Concessionaire’s plan for expansion of capacity**

Concessionaire shall, provide to the Authority from time to time during the Operation Period when it plans expansion of capacity of the Multi-species Hatchery, an Expansion Plan including (a) substantive evidences and logic justifying the need for expansion, (b) an outline of a business plan to fully utilize the expanded production capacity, (c) reasonable details of works and services contemplated to achieve the desired production level(s), and (d) all drawings, specifications and schedules of construction and installation and cost estimates as may be relevant. The Concessionaire shall prepare and submit, three copies each of the Expansion Plan including specifically all drawings, specifications and schedules of construction and installation and cost estimates to the Authority for review;

- (a) By submitting the Expansion Plan for review to the Authority, the Concessionaire shall be deemed to have represented that it has determined and verified that the design and engineering, including field construction criteria related thereto, are in conformity with the Scope of the Project, best industry practices and the Specifications and Standards;
- (b) Within 60 (sixty) days of the receipt of the Expansion Plan, the Authority shall review the same and convey its observations to the Concessionaire with particular reference to their conformity or otherwise with the Scope of the Project and the Specifications

and Standards. Concessionaire shall have the opportunity to revise the Expansion Plan at least twice in the first year it proposes such Expansion, and at least once a year thereafter. The Authority shall give its observations, if any, within 60 (sixty) days of the receipt of revised or subsequent Expansion Plan.

- (c) Concessionaire shall not proceed to implement the Expansion Plan unless agreed with the Authority. Authority’s agreement shall not relieve the Concessionaire of its obligations and liabilities under this Agreement in any manner nor shall the Authority be liable for the same in any manner. The Concessionaire shall make any minor changes as may be necessary to ensure that the system designed is able to achieve the production levels during Operation Period set forth in this Agreement;
- (d) Within 90 (ninety) days of the completion of the expansion of capacity, the Concessionaire shall furnish to the Authority a complete set of as-built Drawings, in 2 (two) hard copies and in micro film form or in such other medium as may be acceptable to the Authority, reflecting the Project with expanded capacity as actually designed, engineered and constructed, including an as-built survey illustrating the layout of the Project Facilities.

**16.5 Specification for Construction, Installation and Tests for works as part of Expansion Plan**

The works undertaken in accordance with this Clause 16.4 shall conform to the Specifications and Standards provided in the Concession Agreement. The provisions of this Agreement, in so far as they relate to Construction Works, Installation of Equipment and Tests, shall apply *mutatis mutandis* to the works carried out under Clause 16.4.

**16.6 Ceiling Price**

The Concessionaire will limit the prices offered to the Maldivian nationals (whether individuals or companies) for any volume sold within Maldives up to the following ceiling prices (see Table 16.1 below). Ceiling prices may be revised by the Authority once in 3 years using average consumer inflation indices. It is to be noted that no ceiling price will apply for export by Concessionaire. However, the Concessionaire shall export only after meeting the domestic demand in Maldives.

**Table 16.1: Ceiling Pries**

| SN | Species              | Maximum/Ceiling Price (for Selling within Maldives)   |
|----|----------------------|---|
| 1  | Bait Species         | Grown to 5-10 cm length - MVR 60 per Kg   |
| 2  | Brown Marble Grouper | (a) fingerlings up to size of 6 cm – MVR 7 each<br>(b) juveniles’ size between 6-10 cm – MVR 10 each<br>(c) juveniles’ size above 10 cm – MVR 14 each |
| 3  | Sea Cucumber         | (a) juveniles weighing less than 20 g – MVR 2 each<br>(b) juveniles weighing more than 20 g – MVR 4 each  |

NOTE: The Authority reserves the right for additional upward revision of the ceiling prices at any time after 3 years of signing of the Agreement consistent with the public purpose of the Multispecies Hatchery solely at the discretion of the Authority.

**ARTICLE 17**  
**OPERATION AND MAINTENANCE**

**17.1 Operation Period and Operation Services**

- 17.1.1 The Concessionaire shall commence commercial operations of the Project following the issuance of the Completion Certificate in accordance with Article 14 for “Operation Period” of twenty (20) years. During this period, the Concessionaire shall conduct smooth operation of the Project and maintain all facilities, equipment and infrastructure constructed/erected or installed under the Concession Agreement as per the approved scope and schedule of routine, regular and periodic repair and maintenance. Any deviation from the scope and schedule will need prior approval of the Authority.
- 17.1.2 Ancillary Facilities provided by Authority at the site (detailed in Table 1 of Schedule-A) for use of the Concessionaire will need to be maintained by the Concessionaire at its cost ensuring routine and regular maintenance. After final handover of these facilities to the Concessionaire, the Concessionaire will prepare a schedule for periodic maintenance and submit it to Authority for approval. Approved periodic maintenance will be carried out by the Concessionaire at its cost as per schedule. However, before commencing such maintenance as and when due, the Concessionaire shall submit estimated cost of the periodic maintenance to the Authority and obtain approval of the same. Cost of such periodic maintenance will be paid by the Concessionaire.
- 17.1.3 Concessionaire will be responsible for repair, maintenance and replacement of internal furnishing, furniture, gadgets and residual fittings that may be required for the facilities provided by the Authority. Concessionaire will ensure that replacement of such furnishing, furniture, gadgets and residual fittings of brand, make and technical specifications are acceptable to the Authority throughout the Concession Period.
- 17.1.4 The Project Site covering the entire island of Maanaagalaa, lagoon area, and the surrounding water areas will be kept always in a clean state comparable to the current pristine environment. Cleaning and disposal of all wastes and pollution will be a regular, continuous responsibility of the Concessionaire and any costs incurred for such maintenance shall be borne by the Concessionaire.
- 17.1.5 Concessionaire shall provide to Authority a 6-monthly report on routine and regular maintenance; and specific reports on periodic maintenance, throughout the Operation Period.

**17.2 Operation Manual and Maintenance Manual**

No later than 120 (one hundred and twenty) days prior to the Scheduled Project Completion Date, the Concessionaire shall, in consultation with the Independent Engineer, evolve (i) an “Operation Manual” to guide the smooth operation of the Project during the Operation Period, and (ii) a repair and maintenance manual (the “Maintenance Manual”) for the regular and preventive maintenance of the Project in conformity with the Specifications and Standards set forth in Schedule-D, Maintenance Requirements, Safety Requirements and Good Industry Practice, and shall provide 5 (five) copies thereof to the Authority and 2 (two) copies to the Independent Engineer. The Operation Manual and the Maintenance Manual shall be revised and updated once every 3 (three) years and the provisions of this Clause 17.2 shall apply, mutatis mutandis, to such revision.

**17.3 Maintenance Programme**

- 17.3.1 On or before COD and no later than 45 (forty five) days prior to the beginning of each Accounting Year during the Operation Period, as the case may be, the Concessionaire

shall provide to the Authority and the Independent Engineer, its proposed annual programme of preventive, urgent and other scheduled maintenance (the “**Maintenance Programme**”) to comply with the Maintenance Requirements, Maintenance Manual and Safety Requirements. Such Maintenance Programme shall include:

- (a) preventive maintenance schedule;
- (b) arrangements and procedures for carrying out urgent repairs;
- (c) criteria to be adopted for deciding maintenance needs;
- (d) intervals and procedures for carrying out inspection of all elements of the Project;
- (e) intervals at which the Concessionaire shall carry out periodic maintenance;
- (f) arrangements and procedures for carrying out safety related measures; and
- (g) intervals for major maintenance works and the scope thereof.

17.3.2 Within 15 (fifteen) days of receipt of the Maintenance Programme, the Independent Engineer shall review the same and convey its comments to the Concessionaire with particular reference to its conformity with the Maintenance Requirements, Maintenance Manual and Safety Requirements.

17.3.3 The Concessionaire may modify the Maintenance Programme as may be reasonable in the circumstances, and the procedure specified in Clauses 17.3.1 and 17.3.2 shall apply *mutatis mutandis* to such modifications.

#### 17.4 Production Targets and Level of Services to be achieved by the Concessionaire

17.4.1 expected production targets as also the minimum production targets in different years of the Operation Period are set out in the Table 17.1 below. The Concessionaire shall follow the procedure specified in Clause 16.2 to Clause 16.5, while planning expansion of the production facilities to achieve the targets.

**Table 17.1: Expected and Minimum Production Targets**

| Operation Year | Bait Species (Tons)        |                           | Brown Marbled Grouper (Numbers) |                           | Sea cucumber (Numbers)     |                           |
|----------------|----------------------------|---------------------------|---------------------------------|---------------------------|----------------------------|---------------------------|
|                | Expected Target Production | Minimum Production Target | Expected Target Production      | Minimum Production Target | Expected Target Production | Minimum Production Target |
| 1              | 100                        | 50                        | 300,000                         | 300,000                   | 600,000                    | 600,000                   |
| 2              | 150                        | 70                        | 600,000                         | 600,000                   | 1,000,000                  | 1,000,000                 |
| 3              | 150                        | 100                       | 1,000,000                       | 1,000,000                 | 2,000,000                  | 1,500,000                 |
| 4              | 150                        | 150                       | 3,000,000                       | 3,000,000                 | 2,500,000                  | 2,000,000                 |
| 5              | 150                        | 150                       | 5,000,000                       | 5,000,000                 | 3,000,000                  | 2,500,000                 |
| 6              | 300                        | 200                       | 8,000,000                       | 5,500,000                 | 3,500,000                  | 3,000,000                 |
| 7              | 300                        | 200                       | 8,000,000                       | 6,000,000                 | 3,500,000                  | 3,000,000                 |
| 8              | 300                        | 200                       | 10,000,000                      | 6,500,000                 | 4,000,000                  | 3,500,000                 |
| 9              | 300                        | 300                       | 10,000,000                      | 7,000,000                 | 4,000,000                  | 3,500,000                 |
| 10-20          | 300                        | 300                       | 10,000,000                      | 8,000,000                 | 4,000,000                  | 3,500,000                 |

17.4.2 Minimum Production levels to be achieved in various years of Concession Period will be as per Table 17.1 (see Clause 17.4.1).

17.4.3 Authority will look for quickest operationalization. Authority will encourage the Concessionaire to start production and sale of: (a) Bait Species within 6-12 months; and (b) Grouper within 12 months of Appointed Date.

- 17.4.4 Starting from Year 2 of operation, Authority may, at Authority's discretion, designate 4 additional places of storage/sale of the fry/fingerlings at any other island of the country. The Concessionaire will ensure that the required sale quantities are available at these locations. The Concessionaire will prepare a schedule of availability of fry/fingerlings at these locations, and finalize it in agreement with the Authority, and publicize the schedule of availability. The particulars and details of the storage/sale infrastructure required at these locations will be proposed by the Concessionaire and approved by the Authority. The Concessionaire shall bear the cost of construction and maintenance of such storage/sale infrastructure. Transport of the agreed quantities to these locations from *Ga Maanaagalaa* will be organized by the Authority. Authority reserves the right to reimburse and ask the Concessionaire to organize the required transport to facilitate such sale at these additional locations.
- 17.4.5 Starting from Year 3 of operation, the Concessionaire will be expected to implement a detailed marketing strategy as part of their business plan to be able to maximise the production potential.

## **17.5 Quality of Production**

- 17.5.1 Authority expects highest quality products from this multispecies hatchery. It is important for Maldives to set a quality benchmark for the mariculture products from the country. As most products will eventually be exported, it should match the quality control, quality assurance standards met by the fishing and fish processing industry of Maldives in general, and all seafood standards that apply to mariculture products in specific.
- 17.5.2 For the above purpose of quality assurance (including maintenance of genetic quality), the Concessionaire shall: (a) maintain brood stock of native/endemic fish, (b) maintain the brood stock at highest standards of aquatic animal health management, (c) strictly avoid use or application of drugs, medicines, and chemicals which have not been licensed in the European Union for use in mariculture/aquaculture; and, (d) maintain the entire island of *Ga Maanaagalaa* and its surrounding in its near-pristine state; and for that purpose install, operate and maintain all requisite (liquid, solid and plastic) waste management facilities and implement all other required actions for complete treatment of 100 percent of the wastes that are generated in the entire operation including from the incoming and outgoing vessels. In addition, this Concession is under a project financed by the World Bank called the Maldives: Sustainable Fisheries Resources Development (SFRD) Project, and therefore, all construction/operation of the Multispecies Hatchery should conform and comply with the requirements of the World Bank Group Environment, Occupational Health and Safety Guidelines, as well as the Environmental Management Framework of the SFRD Project, in addition to the Environmental requirements of the Government of Maldives.
- 17.5.3 Specifically, within 2 years of start of the operation at the latest, the Concessionaire shall ensure that the multispecies hatchery involving all aspects of its operation and post-sales services should meet the following standards and certifications:
- General Quality Standards: ISO 9000 (Quality management Systems, QMS), ISO 14000 (for environmental management), Occupational Health and Safety Assessment Series (OHSAS) 18001 or ISO 45001 for Occupational Health and Safety Management Systems – to ensure occupational safety of the workforce.
  - Seafood safety standards: as per standards agreed with Authority, complying with the European Food Law, ISO 8402:1994 (for Quality Management and Quality Assurance), European Commission Regulation Number 178/2002 (for Traceability during Production).

## 17.6 Sale Price (Maximum/Ceiling Price)

- 17.6.1 The Concessionaire shall ensure that various species are sold by it in the Maldivian domestic market whether on the Project Site at *Ga Maanaagalaa*, or at additional locations specified by the Authority or at any other location within Maldives, subject to compliance with the maximum/ceiling sale prices indicated in Table 16.1 under Clause 16.6.
- 17.6.2 The ceiling prices shall be maintained by the Concessionaire irrespective of the nature and identity of any buyer being a Maldivian citizen, and irrespective of the end use (including export by the buyer).
- 17.6.3 The ceiling prices will, however, not apply to any direct export by the Concessionaire. The Concessionaire shall note that it will be allowed to export its production only after fully meeting the domestic demand. When domestic demand is high which cannot be easily estimated, the Concessionaire may export when the production level of a species in a particular year exceeds the corresponding figure indicated under “Low Estimate” in Table 17.1 above. However, when domestic demand is low, the Concessionaire may export when the production exceeds the sales with prior intimation to the Authority.
- 17.6.4. Ceiling Prices will be adjusted for inflation and exchange rate variation every 3 years after commencement of the Operation Period. However, Maldivian Rufiyaa has been stable for decades, and inflation is expected to remain very low.

## 17.7 Deployment of Key Staff and Replacement during Operation Period

- 17.7.1 At least eight (8) weeks prior to the expected commencement of Operations, the Concessionaire shall submit names and CVs of Key Staff to be deployed during Operation Period for Authority’s approval. The candidates proposed for the Key Positions shall meet the qualification requirements specified in Table 17.2 below.

**Table 17.2: Qualification Requirements of Key Staff of Concessionaire during Operations**

| SN | Key Positions   | No | Minimum Qualifications   |
|----|---|----|--|
| 1  | Hatchery Manager (Fulltime at Site)                               | 1  | Bachelors Degree in Aquaculture or equivalent with minimum 7 years of management experience in marine finfish rearing (experience with groupers and/or Bait Species would be an added advantage) |
| 2  | Lead Fish Biologists (Fulltime at Site/Project)                   | 2  | Masters Degree in Fishery or Aquaculture or equivalent with 4 years of experience in quality assurance of production, quality control of inputs in large aquaculture farms.                      |
| 3  | Finance/Accounts Manager (to be deputed to the Site periodically) | 1  | Diploma in Finance or Accountancy with 5 years of experience in private sector business enterprise in accounting, budgeting and auditing.  |
| 4  | Marketing Manager (to be deputed to the Site periodically)        | 1  | Bachelors Degree in marketing Management with 5 years of experience in sales and promotion in private sector enterprise.   |
| 5  | Lead Hatchery Technicians (Fulltime at Site)                      | 3  | Diploma in aquaculture or equivalent, with a minimum 3 years of experience working in marine finfish hatcheries.   |
| 6  | Live Feed technicians (Fulltime at Site)                          | 3  | Diploma in aquaculture or equivalent, with a minimum 2 years of experience in live feed production   |

| SN | Key Positions  | No | Minimum Qualifications   |
|----|--|----|--|
| 7  | Farm Hands<br>(Fulltime at Site)   | 4  | Certificate in Aquaculture or equivalent, with a minimum 1 year of experience working with marine finfish  |
| 8  | Operations and Maintenance Engineer (to be deputed to the Site periodically) | 1  | A Graduate Civil Engineer or equivalent with not less than 2 years' experience in construction including at least 1 year of experience in operation and maintenance of fish seed production facilities, preferably marine finfish hatcheries.                                      |
| 9  | Environmental Engineer (to be deputed to the Site periodically)              | 1  | Degree in Environmental Engineering/Science with minimum 3 years' experience or with minimum 1 years' experience in designing and operating pollution control including wastewater management, solid waste management, preferably in a large hatchery or a large aquaculture farm. |

17.7.2 If replacement of any of the approved Key Staff becomes necessary during Operation Period, the Concessionaire shall submit a proposal for Authority's approval, advising therein the name of the replacement staff of equivalent or higher qualifications duly supported by his CV.

## 17.8 Environmental Practices & Standards

17.8.1 Import of live animals is not permissible under this Concession Agreement, unless specifically recommended by the Authority.

17.8.2 The Concessionaire will always comply with the Environmental Laws and Regulations of Maldives.

17.8.3 Authority has already obtained the required Environmental Clearances for establishing a milkfish hatchery at *Ga Maanaagalaa*. The Concessionaire shall comply with the applicable environmental regulations and conditions of Environmental clearance. When the Concessionaire submits complete detailed designs for all the facilities, equipment and infrastructure that would be constructed/erected or installed to the Authority, a renewed Environmental Clearance for the additional scope of works will be required from the Environment Protection Agency of the Government of Maldives. Authority, at its own cost will obtain the Environmental Clearance that would be required for the finally approved designs for the entire Multispecies Hatchery and Allied Facilities.

17.8.4 The Concessionaire shall submit the final layout of the Multi-species Hatchery and Allied Facilities to the Authority by ..... [date to be specified by the Authority at the time of signing the Agreement] which will be required for processing Environmental Clearance referred to in Clause 17.8.3.

## 17.9 Engagements with the Communities and Citizens

17.9.1 The Concessionaire shall allow access to all facilities on site, to students from nearby islands on field tours, free of cost upon arrival at the Jetty, and shall also provide them the background and operational information, free of charge.

17.9.2 The Concessionaire may carry out internship programs where interested interns could work on all aspects of an aquaculture operation.

17.9.3 The Concessionaire is encouraged to employ Maldivian citizens, specifically women, from the nearby islands (within the atoll) as workers on the Project Site.

- 17.9.4 The Concessionaire is required to ensure that its staff and workers maintain respectful relationship with the communities on nearby islands, especially adolescents and women. For this purpose, the Concessionaire shall impart regular training to its staff and workers for appropriate culturally responsible behaviour. The Concessionaire will establish a “no-tolerance” policy in this regard for its staff and workers throughout the Concession Period.

#### **17.10 Business Practices**

- 17.10.1 The Concessionaire will implement responsible, transparent, and socially appropriate business practices.
- 17.10.2 The Concessionaire will desist from any business practices that tarnish the brand image that “Maldivian Fish” enjoys worldwide (based on socially and environmentally responsible fishing industry practices in the Maldives).
- 17.10.3 The Concessionaire will ensure that it provides within 45 days of close of a calendar month, to Authority monthly species-wise data on (i) production, (ii) distribution or sale, (iii) export quantity and price FOB Malé, (iv) operating costs, (v) repair and maintenance costs for the entire Multispecies Hatchery for the following: (a) Bait Species, (b) grouper fingerlings, and (c) sea cucumber juveniles. Sharing data for production and sale from Concessionaire’s own grow-out cages is not mandatory.
- 17.10.4 Within 60 days from the close of a calendar year, the Concessionaire will provide Authority a copy of the Audit Report for the calendar year for its operations in Maldives including detailed statements of profit and loss.

#### **17.11 Trainings to be offered**

- 17.11.1 During the entire Operation Period under this Agreement, Authority will nominate Maldivian nationals to be trained in operation of the facility, Period of training in each case shall usually be for 2-3 months and normally not less than one month, unless otherwise agreed between the Concessionaire and the Authority. The training shall cover all aspects of critical technological parts as may be of interest to Authority, such that the trained personnel could be deputed in other similar facilities to be constructed in Maldives in near future. Authority will provide a notice of nomination of a maximum of 10 Maldivian nationals at any point of time 90 days prior to the date of arrival of the trainees.
- 17.11.2 Cost of such training including accommodation and food at the site will be borne by the Concessionaire. Cost of transport of the trainees to and from the site, and training allowances/scholarship, if any, will be paid by Authority.

#### **17.12 Expansion of Business Opportunities**

- 17.12.1 The Concessionaire will have the opportunity to expand the hatchery operations to cater to more local grow-out farmers, or international markets after fulfilling the local requirement. Authority will facilitate such expansion as and when mutually agreed.
- 17.12.2 The Concessionaire is encouraged to brand products from the Multispecies Hatchery to maximize revenues from exports. Authority will facilitate establishment and advertising the brand as might be within the ability of Authority to influence.
- 17.12.3 The Concessionaire will have opportunity to establish, at its own cost, hatcheries in other parts of the Maldives, upon demonstration of successful operation of the Multispecies Hatchery for at least three years. Successful operation means meeting the minimum production requirements set forth in Clause 17.4 of this Concession Agreement. Authority will allocate the Concessionaire, as may be agreed mutually, additional sites, permissible under relevant laws and regulations of Maldives. For the avoidance of doubt, it is clarified

that the ‘successful operation’ means meeting the minimum production targets set forth in Clause 17.4.2 of this Concession Agreement.

### **17.13 Export Opportunities and Quarantine and Testing Facilities**

- 17.13.1 The Concessionaire could export hatchery produce after fulfilling the minimum local requirements outlined in **Table 1** under Clause 17.4.1.
- 17.13.2 The Concessionaire will be free to export the Operator’s own grow-out production.
- 17.13.3 As and when required to fulfil the export requirements, the Authority will allow the Concessionaire to use the Quarantine and Testing Facility operated by Maldives Marine Research Institute located close to the Malé Airport. Cost of using the Quarantine Facility will be fixed by Authority on “no-profit” basis.

### **17.14 Research and Development Support**

- 17.14.1 The production of the specified quantities of the target species as mentioned in Table 17.1 under Clause 17.4.1 should be the Concessionaire’s primary focus. Any research required to achieve this target will be facilitated by the mariculture team of Maldives Marine Research Institute of Authority (MMRI). Any data collected, or publications produced through such research will be the joint property of the Concessionaire and the MMRI.

**ARTICLE 18**  
**SAFETY REQUIREMENTS**

**18.1 Safety Requirements**

The Concessionaire shall comply with the provisions of this Agreement, Applicable Laws and Applicable Permits and conform to Good Industry Practice for securing the safety of the Workers. In particular, the Concessionaire shall develop, implement and administer a surveillance and safety programme for providing a safe environment on or about the Project.

**18.2 Compliance with World Bank Group Environment, Occupational Health and Safety Guidelines**

As provided in Clause 17.3.2, the Concessionaire shall ensure that all construction/operation of the Multispecies Hatchery conforms to and complies with the requirements of the World Bank Group Environment, Occupational Health and Safety Guidelines. In addition, Occupational Health and Safety Assessment Series (OHSAS) 18001 or ISO 45001 for Occupational Health and Safety Management Systems to ensure occupational safety of the workforce.

**18.3 Expenditure on Safety Requirements**

All costs and expenses arising out of or relating to Safety Requirements shall be borne by the Concessionaire to the extent such costs and expenses form part of the works and services included in the Scope of the Project.

## ARTICLE 19

### **MONITORING OF OPERATION AND MAINTENANCE**

#### **19.1 Monthly status reports**

During Operation Period, the Concessionaire shall, no later than 7 (seven) days after the close of each month, furnish to the Authority a monthly report stating in reasonable detail the condition of the Project including its compliance or otherwise with the Maintenance Requirements, Maintenance Manual, Maintenance Programme and Safety Requirements. .

#### **19.2 Inspection**

The Independent Engineer or the Authority's representative shall inspect the Project at least once a month. It shall make a report of such inspection (the "**O&M Inspection Report**") stating in reasonable detail the defects or deficiencies, if any, with particular reference to the Maintenance Requirements, Maintenance Manual, the Maintenance Programme and Safety Requirements, and send a copy thereof to the Authority and the Concessionaire within 7 (seven) days of such inspection.

In addition to above inspection by Independent Engineer, the Authority may undertake periodic monitoring not more than once a year during the Operation Period. Each such monitoring will be over a maximum of 2 (two) days. The Authority will nominate at its discretion a maximum of 3 (three) experts to undertake such periodic monitoring. The Concessionaire will facilitate such monitoring in all respects including travel to and from Male, Maldives. The cost of such periodic monitoring carried out by the Authority shall be borne by the Concessionaire.

#### **19.3 Tests**

For determining that the Project conforms to the Maintenance Requirements, the Independent Engineer or the Authority's representative shall require the Concessionaire to carry out, or cause to be carried out, tests specified by it in accordance with Good Industry Practice. The Concessionaire shall, with due diligence, carry out or cause to be carried out all such tests and furnish the results of such tests forthwith to the Independent Engineer/Authority. All costs incurred on such tests shall be borne by the Concessionaire.

#### **19.4 Remedial measures**

The Concessionaire shall repair or rectify the defects or deficiencies, if any, set forth in the O&M Inspection Report or in the test results referred to in Clause 19.3 and furnish a report in respect thereof to the Independent Engineer and the Authority within 15 (fifteen) days of receiving the O&M Inspection Report or the test results, as the case may be; provided that where the remedying of such defects or deficiencies is likely to take more than 15 (fifteen) days, the Concessionaire shall submit progress reports of the repair works once every week until such works are completed in conformity with this Agreement.

#### **19.5 Audit Report of operations**

The Concessionaire shall, within 60 days of the close of each year's operation, furnish to the Authority, a copy of the Audit Report of its operations for the year in the Multi-species Hatchery and Allied Facilities including detailed statements of profit and loss.

Subject to the Authority being satisfied, the profit reflected in the Audit Report shall be the basis of profit-sharing. However, the Owner reserves the right to inspect directly or through an Auditor appointed by it, the Operator's books of accounts to establish the correctness of the profit amount. Final audited figures arrived at following the inspection shall form the basis of agreed profit sharing referred to in the Concession Fee.

## ARTICLE 20

### **INDEPENDENT ENGINEER**

#### **20.1 Appointment of Independent Engineer**

The Authority shall appoint a consultant under this Agreement (the “**Independent Engineer**”). The appointment shall be made no later than 30 (thirty) days from the date of this Agreement and shall be for a period of 3 (three) years. On expiry or termination of the aforesaid period, the Authority may in its discretion renew the appointment, or appoint another firm.

The Authority reserves the right to appoint its own Representative, at the time of signing of the Concession Agreement who will perform the same role as intended for the Independent Engineer.

#### **20.2 Duties and functions**

The Independent Engineer shall discharge its duties and functions substantially in accordance with the terms of reference set forth in Schedule-J.

**Part IV**  
**Financial Covenants**

**ARTICLE 21**  
**FINANCIAL CLOSURE**

**21.1 Financial Closure**

- 21.1.1 The Concessionaire hereby agrees and undertakes that it shall achieve Financial Closure within 45 (forty five) days from the date of this Agreement and in the event of delay, it shall be entitled to a further period not exceeding 30 (thirty) days, subject to payment of Damages to the Authority in a sum calculated at the rate of 0.1% (zero point one per cent) of the Performance Security for each day of delay. For the avoidance of doubt, the Damages payable hereunder by the Concessionaire shall be in addition to the Damages, if any, due and payable under the provisions of Clause 4.3.
- 21.1.2 The Concessionaire shall, upon occurrence of Financial Closure, notify the Authority forthwith, and shall have provided to the Authority, at least 2 (two) days prior to Financial Closure, 3 (three) true copies of the Financial Package and the Financial Model, duly attested by a Director of the Concessionaire, along with 3 (three) soft copies of the Financial Model in MS Excel version or any substitute thereof, which is acceptable to the Senior Lenders.

**21.2 Termination due to failure to achieve Financial Closure**

- 21.2.1 Notwithstanding anything to the contrary contained in this Agreement, but subject to Clause 26.6.1, in the event that Financial Closure does not occur, for any reason whatsoever, within the period set forth in Clause 21.1.1 or the extended period provided thereunder, all rights, privileges, claims and entitlements of the Concessionaire under or arising out of this Agreement shall be deemed to have been waived by, and to have ceased with the concurrence of the Concessionaire, and the Concession Agreement shall be deemed to have been terminated by mutual agreement of the Parties. For the avoidance of doubt, it is agreed that in the event the Parties hereto have, by mutual consent, determined the Appointed Date to precede the Financial Closure, the provisions of this Clause 21.2.1 shall not apply.
- 21.2.2 Upon Termination under Clause 21.2.1, the Authority shall be entitled to encash the Proposal Security and appropriate the proceeds thereof as Damages; provided, however, that if Financial Closure has not occurred solely as a result of the Authority being in default of any of its obligations under Clause 4.1.2, it shall, upon Termination, return the Proposal Security forthwith along with the Damages due and payable under Clause 4.2. For the avoidance of doubt, it is expressly agreed that if the Proposal Security shall have been substituted by Performance Security, the Authority shall be entitled to encash therefrom an amount equal to Proposal Security.

## ARTICLE 22

### **GRANT**

#### **22.1 Grant**

- 22.1.1 The Authority agrees to provide to the Concessionaire support by way of a grant equal to the sum set forth in the Proposal, namely, ..... {Currencies and amounts as per accepted Proposal to be inserted at the time of signing of the Concession Agreement} in accordance with the provisions of this Article 22 (the “Grant”).
- 22.1.2 The Grant shall be disbursed to the Concessionaire in accordance with the provisions of Clause 22.2.

#### **22.2 Disbursement of Grant**

- 22.2.1 Authority will disburse Grant amount to the Concessionaire in instalments as under, subject to deductions, if any, due on account of Liquidated Damages for delays in achieving respective milestones:
- (a) First Instalments of advance payment equal to 10% of the Grant amount shall be paid within 30 days of the following:
    - (i) After signing of the Concession Agreement and achieving Financial Closure;
    - (ii) Submission of Performance Security and a Bank Guarantee for an amount equal to the Advance Payment valid until 12 months from the date of issuance; and
    - (iii) Invoice for Advance Payment claimed.
  - (b) Second Instalment of 20% of the Grant amount shall be payable after the Concessionaire has completed 25% of the total scope of Work and Services described in Paragraph 4 of Schedule-B, as certified by the Independent Engineer.
  - (c) Third instalment of 20% of the Grant amount shall be payable on completion of 50% of total scope of Work and Services described in Paragraph 4 of Schedule-B, as certified by the Independent Engineer.
  - (d) Fourth instalment of 25% of the Grant amount shall be payable on completion of 75% of total scope of Work and Services described in Paragraph 4 of Schedule-B, as certified by the Independent Engineer.
  - (e) Fifth and final instalment of 25% of the Grant amount shall be payable on completion of 100% of total scope of Work and Services described in Paragraph 4 of Schedule-B, and issuance of Completion Certificate after satisfactory tests and commissioning.
- 22.2.2 Bank Guarantee for Advance Payment shall be released by the Authority after completion of 50% of total scope of Work and Services as described in Paragraph 4 of Schedule-B, and release of third instalment of Grant as per Clause 22.1 (c).

*{In the event that the Concessionaire does not seek any Grant from the Government and offers to pay a Premium instead, the provisions of Clauses 22.1, and 22.2 relating to Grant shall be substituted by the provisions of Clause 22.3 relating to Premium, which Clause shall be renumbered.}*

#### **22.3 Premium**

The Concessionaire acknowledges and agrees that as set forth in the Proposal, it shall pay to the Authority for each year of the Concession Period, a premium (the “Premium”) in the form of an additional Concession Fee, as set forth in Clause 23.2.1.

**ARTICLE 23**  
**CONCESSION FEE**

**23.1 Concession Fee**

In consideration of the grant of Concession, the Concessionaire shall pay to the Authority by way of concession fee (the “Concession Fee”) the amount(s) specified in the following Clauses, {and the Premium specified in Clause 23.2}.

**23.2 Additional Concession Fee<sup>\$</sup>**

23.2.1 Without prejudice to the provisions of Clause 23.1, the Concessionaire agrees to pay to the Authority, on the COD (Commercial Operation Date), a Premium in the form of an additional Concession Fee equal to MVR/US\$ ..... (in words) as due to the Authority during that year, due and payable for the period remaining in that year; and for each subsequent year of the Concession Period, the Premium shall be determined by increasing the amount of Premium in the respective year by an additional 5% (five per cent) as compared to the immediately preceding year. For the avoidance of doubt, the Premium for all subsequent years shall be determined by increasing the amount of Premium by 5% as compared to the immediately preceding year.

For avoidance of doubt, it is clarified that the term ‘Premium’ as referred in para above shall be as applicable for one financial year. In accordance with and in compliance with the terms of this agreement, If payment of such ‘Premium’ is due and payable only for part of such financial year, then only pro-rata payments @ 1/12<sup>th</sup> of such Premium shall be payable for each month of such part financial year for which such Premium payments is due as payable. For the purpose of assessing the amount due for payment on such payment of Premium, part of a month shall be deemed to be a full month. In such circumstances the subsequent year as referred to in para above, for the purpose of 5% annual escalation, shall fall to commence on 1st of April of the immediately succeeding financial year.

23.2.2 The Premium payable under Clause 23.2.1 shall be deemed to be part of the Concession Fee for the purposes of this Agreement.

**23.3 Payment of Concession Fee**

The Concession Fee payable under the provisions of this Article 23 shall comprise the payments specified in Clauses 23.4 to 23.6.

**23.4 Lease Rent**

23.4.1 Concessionaire shall pay Lease Rent for the land and lagoon areas of the Island Ga Maanaagalaa including all Ancillary Facilities built thereon by the Authority, as detailed in Schedule-A. The amount of Lease Rent shall be determined and paid as under:

- (a) The commercial lease rent per year will be applicable and payable by the Concessionaire to the Authority at the rate of MVR 0.2 per square foot of land area, and MVR 0.05 per square foot of water area provided by the Authority on lease as per the Concession Agreement. The lease rent covers all Ancillary Facilities built by

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<sup>\$</sup> In the event of the Concessionaire seeking a Grant under Clause 22.1 of this Agreement, Clause 23.2 shall be omitted.

the Authority as detailed in Schedule-A and shall be available for use of the Concessionaire under this Agreement.

- (b) The lease rent shall be paid for the entire land and water area leased to the Concessionaire. Leased area shall be verified jointly by the Independent Engineer or Authority's Representative and the Concessionaire's representative, for determining the exact amount of lease rent within 90 days of signing of this Agreement.
  - (c) The Lease Rent shall be payable in advance by 15<sup>th</sup> day of January of each calendar year determined as per sub-clause (b) above. Payment due for part of a year for the first as well as the last payment shall be arrived at on pro-rata basis.
- 23.4.2 The Lease Rent shall be payable from the Appointed Date for the Concession Period of 21 years, except that the Concessionaire will be exempted from such payment for the first 5 (five) years.
- 23.4.3 Authority reserves the right to offer extension or renewal of the Concession Agreement at the time of expiry of this Concession Agreement, based on the evaluation of performance of the Concessionaire. The lease rent payable during such period of extension will be at the rates as applicable at the time of the renewal.
- 23.4.4 The Concessionaire shall not use any land or water area outside the area leased to the Concessionaire under this Concession Agreement, unless specifically requested by the Concessionaire and specifically approved by the Authority. Lease Rent payable in case of additional areas brought under this Concession Agreement shall be at the rate as applicable at the time of the approval.

### **23.5 Profit Share**

- 23.5.1 The Concessionaire shall pay the Authority within 90 days of completion of each year of operation of the Multi-species Hatchery, 20% of the "profit before tax" earned by it through sales of the production from the Hatchery and allied/all other facilities set up on the Island Maanaagalaa, Gaafu Alif Atoll in accordance with the procedure stipulated in the following Clauses.
- 23.5.2 The Concessionaire shall, within 90 days of the close of each year's operations, furnish to the Authority, two copies Audited Financial Statements of its operations for the year including Profit and Loss Account, in accordance with Clause 25.1.1.
- 23.5.3. Subject to the Authority being satisfied, the "profit before tax" reflected in the Audited Financial Statements shall be the basis of profit-sharing. However, the Authority reserves the right to inspect directly or through an Auditor appointed by it (in accordance with Clause 25.2.3), the Concessionaire's books of accounts to verify/establish the correctness of the profit amount. Final audited and verified figures arrived at based on such inspection shall form the basis of profit sharing.
- 23.5.4 For the last year of the Operation Period, the amount of "profit before tax" shall be determined on the basis of provisional financial statement after completion of 9 months' operation, and 20% share of the provisional amount of "profit before tax" shall be paid before the end of the Operation Period. The amount of profit thus shared shall be subject to adjustment based on acceptance by the Authority of the final Audited Financial Statements covering operations of the complete year, which shall be submitted by the Concessionaire as soon as possible after close of the year.

### **23.6 Authority's right of remedy**

Any default on the part of the Concessionaire in meeting the obligations of payment of Concession Fee will amount to breach of Concession Agreement giving rise to a right to

the Authority for remedies available under the Concession Agreement including enforcement of the Performance Guarantee(s).

**ARTICLE 24**  
**INSURANCE**

**24.1 Insurance during Concession Period**

The Concessionaire shall effect and maintain at its own cost, during the Construction Period and the Operation Period, such insurances for such maximum sums as may be required under the Financing Agreements, and the Applicable Laws, and such insurances as may be necessary or prudent in accordance with Good Industry Practice. For the sake of guidance, insurance shall cover at least the risks listed at the end of this Article. The Concessionaire shall also effect and maintain such insurances as may be necessary for mitigating the risks that may devolve on the Authority as a consequence of any act or omission of the Concessionaire during the Concession Period. The Concessionaire shall procure that in each insurance policy, the Authority shall be a co-insured and that the insurer shall pay the proceeds of insurance in a manner advised by the Authority after consultation/agreement with the Concessionaire taking into account provisions of Clause 24.7. For the avoidance of doubt, the level of insurance to be maintained by the Concessionaire after repayment of Senior Lenders' dues in full shall be determined on the same principles as applicable for determining the level of insurance prior to such repayment of Senior Lenders' dues.

**24.2 Notice to the Authority**

No later than 45 (forty-five) days prior to commencement of the Construction Period or the Operation Period, as the case may be, the Concessionaire shall by notice furnish to the Authority, in reasonable detail, including the amount and the period insured, information in respect of the insurances covering at least the risks listed at the end of this Article that it proposes to effect and maintain in accordance with this Article 24. Within 30 (thirty) days of receipt of such notice, the Authority may require the Concessionaire to effect and maintain such other insurances as may be necessary pursuant hereto, and in the event of any difference or disagreement relating to any such insurance, the Dispute Resolution Procedure shall apply.

**24.3 Evidence of Insurance Cover**

All insurances obtained by the Concessionaire in accordance with this Article 24 shall be maintained with insurers on terms consistent with Good Industry Practice. Within 15 (fifteen) days of obtaining any insurance cover, the Concessionaire shall furnish to the Authority, notarised true copies of the certificate(s) of insurance, copies of insurance policies and premia payment receipts in respect of such insurance, and no such insurance shall be cancelled, modified, or allowed to expire or lapse until the expiration of at least 45 (forty five) days after notice of such proposed cancellation, modification or non-renewal has been delivered by the Concessionaire to the Authority.

**24.4 Remedy for failure to insure**

If the Concessionaire shall fail to effect and keep in force all insurances for which it is responsible pursuant hereto, the Authority shall have the option to either keep in force any such insurances, and pay such premia and recover the costs thereof from the Concessionaire, or in the event of computation of a Termination Payment, treat an amount equal to the Insurance Cover as deemed to have been received by the Concessionaire.

**24.5 Waiver of subrogation**

All insurance policies in respect of the insurance obtained by the Concessionaire pursuant to this Article 24 shall include a waiver of any and all rights of subrogation or recovery of the insurers thereunder against, inter alia, the Authority, and its assigns, successors, undertakings

and their subsidiaries, affiliates, employees, insurers and underwriters, and of any right of the insurers to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under any such policy or in any way connected with any loss, liability or obligation covered by such policies of insurance.

#### **24.6 Concessionaire's waiver**

The Concessionaire hereby further releases, assigns and waives any and all rights of subrogation or recovery against, inter alia, the Authority and its assigns, undertakings and their subsidiaries, affiliates, employees, successors, insurers and underwriters, which the Concessionaire may otherwise have or acquire in or from or in any way connected with any loss, liability or obligation covered by policies of insurance maintained or required to be maintained by the Concessionaire pursuant to this Agreement (other than third party liability insurance policies) or because of deductible clauses in or inadequacy of limits of any such policies of insurance.

#### **24.7 Application of insurance proceeds**

The proceeds from all insurance claims, except life and injury, shall be paid to the Concessionaire and it shall apply such proceeds for any necessary repair, reconstruction, reinstatement, replacement, improvement, delivery or installation of the Project, and the balance remaining, if any, shall be applied in accordance with the provisions contained in this behalf in the Financing Agreements.

#### **Lists of Risks (Reference: Clauses 24.1 and 24.2)**

The Concessionaire shall obtain insurance for all likely risks, which will include, but not be limited to the following:

- (a) **Insurance for Business Loss and Loss of Profit.**
- (b) **Consequent Loss Insurance** for all buildings, materials, plants and machinery, equipment including electronic equipment and computers, laboratory equipment, materials and all other assets to cover for the loss of gross profit due to reduction in turnover and additional expenses incurred in minimizing the loss of turnover due to an interruption due to any peril (including but not limited to riots or strike, malicious damage, fire, explosion, lightning) and disaster (including but not limited to flood, erosion, earthquake, cyclone or high wind).
- (c) **Machinery Breakdown Insurance** covering all plants, equipment including electronic equipment and computers, laboratory equipment to cover losses arising from delay or shutdown of work due to sudden and unforeseen damage to the insured machinery, plant or equipment whilst either at work or at rest and during cleaning, maintenance, overhauling, inspection or removal to another position within the premises.
- (d) **Professional Liability Insurance** to cover the legal liability of the Concessionaire arising out of the negligent fault, defect, error or omission of the Concessionaire or any person for whom the Concessionaire is responsible in the carrying out their professional duties. Such insurance shall contain an extension indemnifying the Concessionaire for his liability arising out of negligent fault, defect, error or omission in the carrying out his professional duties which result in the Works not being fit for the purpose specified in the Concession Agreement and resulting in any loss and/or damage to the Authority.

- (e) **Public Liability Insurance** to cover any obligation by law to compensate for causing injury, illness or disease or loss of or damage to property of third parties. This will include a cross liability clause such that the insurance shall apply to the Concessionaire and the Authority as separate insureds.
- (f) **Medical and Accident Insurance for Employees:** Insurance against liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death of any person employed by the Concessionaire or its sub-contractors. The Authority and the Authority's Representative shall also be indemnified under the policy of insurance, except that this insurance may exclude losses and claims to the extent that they arise from any act or neglect of the Authority or of the Authority's Personnel.
- (g) **Cargo/Marine Insurance** to cover the loss or damage of incoming or outgoing shipments by which property is transferred, acquired, or held between the points of origin and destination, transported by sea, air, or land.
- (h) **Other Insurances** as advised by Senior Lender and to cover risks during the Concession Period as per Clause 24.1.

**ARTICLE 25**  
**ACCOUNTS AND AUDIT**

**25.1 Audited accounts**

- 25.1.1 The Concessionaire shall maintain books of accounts recording all its receipts (including revenues derived/collected by it from sales of the Products of Multi-species Hatchery and Allied Facilities), income, expenditure, payments, assets and liabilities, in accordance with this Agreement, Good Industry Practice, Applicable Laws and Applicable Permits. The Concessionaire shall provide 2 (two) copies of its Balance Sheet, Cash Flow Statement and Profit and Loss Account, along with a report thereon by its Statutory Auditors, within 90 (ninety) days of the close of the Accounting Year to which they pertain and such audited accounts, save and except where expressly provided to the contrary, shall form the basis of payments by either Party under this Agreement. The Authority shall have the right to inspect the records of the Concessionaire during office hours and require copies of relevant extracts of books of accounts, duly certified by the Statutory Auditors, to be provided to the Authority for verification of basis of payments, and in the event of any discrepancy or error being found, the same shall be rectified and such rectified account shall form the basis of payments by either Party under this Agreement.
- 25.1.2 The Concessionaire shall, within 30 (thirty) days of the close of each quarter of an Accounting Year, furnish to the Authority its unaudited financial results in respect of the preceding quarter, in the manner and form prescribed by a Regulatory Authority or alternatively, as advised by the Authority.

**25.2 Appointment of auditors**

- 25.2.1 The Concessionaire shall appoint, and have during the subsistence of this Agreement as its Statutory Auditors, an audit firm chosen from the list of auditors approved by the Maldives Inland Revenue Authority, such list to be prepared substantially in accordance with the criteria set forth in Schedule-K. All fees and expenses of the Statutory Auditors shall be borne by the Concessionaire.
- 25.2.2 The Concessionaire may terminate the appointment of its Statutory Auditors after a notice of 45 (forty-five) days to the Authority, subject to the replacement Statutory Auditors being appointed from the Panel of Chartered Accountants.
- 25.2.3 Notwithstanding anything to the contrary contained in this Agreement, the Authority shall have the right, but not the obligation, to appoint at its cost from time to time and at any time, another firm (the “Additional Auditors”) from the Panel of Chartered Accountants to audit and verify all those matters, expenses, costs, realisations and things which the Statutory Auditors are required to do, undertake or certify pursuant to this Agreement.

**25.3 Certification of claims by Statutory Auditors**

Any claim or document provided by the Concessionaire to the Authority in connection with or relating to receipts, income, payments, costs, expenses, accounts or audit, and any matter incidental thereto shall be valid and effective only if certified by its Statutory Auditors. For the avoidance of doubt, such certification shall not be required for exchange of information in the normal course of business.

**25.4 Set-off**

In the event any amount is due and payable by the Authority to the Concessionaire, it may set-off any sum payable to it by the Concessionaire and pay the balance remaining. Any

exercise by the Authority of its rights under this Clause shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.

## **25.5 Dispute resolution**

In the event of there being any difference between the findings of the Additional Auditors or the Concurrent Auditors, as the case may be, and the certification provided by the Statutory Auditors, such Auditors shall meet to resolve the differences and if they are unable to resolve the same, such Dispute shall be resolved by the Authority by recourse to the Dispute Resolution Procedure.

**Part V**  
**Force Majeure and Termination**

**ARTICLE 26**  
**FORCE MAJEURE**

**26.1 Force Majeure**

As used in this Agreement, the expression “Force Majeure” or “Force Majeure Event” shall mean occurrence in Maldives of any or all of Non-Political Event, Indirect Political Event and Political Event, as defined in Clauses 26.2, 26.3 and 26.4 respectively, if it affects the performance by the Party claiming the benefit of Force Majeure (the “Affected Party”) of its obligations under this Agreement and which act or event (i) is beyond the reasonable control of the Affected Party, and (ii) the Affected Party could not have prevented or overcome by exercise of due diligence and following Good Industry Practice, and (iii) has Material Adverse Effect on the Affected Party.

**26.2 Non-Political Event**

A Non-Political Event shall mean one or more of the following acts or events:

- (a) act of God, epidemic, extremely adverse weather conditions, lightning, earthquake, landslide, cyclone, flood, volcanic eruption, chemical or radioactive contamination or ionising radiation, fire or explosion (to the extent of contamination or radiation or fire or explosion originating from a source external to the Site);
- (b) strikes or boycotts (other than those involving the Concessionaire, Contractors or their respective employees/representatives, or attributable to any act or omission of any of them) interrupting supplies and services to the Project for a continuous period of 24 (twenty four) hours and an aggregate period exceeding 7 (seven) days in an Accounting Year, and not being an Indirect Political Event set forth in Clause 26.3;
- (c) any failure or delay of a Contractor but only to the extent caused by another Non-Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any judgement or order of any court of competent jurisdiction or statutory authority made against the Concessionaire in any proceedings for reasons other than (i) failure of the Concessionaire to comply with any Applicable Law or Applicable Permit, or (ii) on account of breach of any Applicable Law or Applicable Permit or of any contract, or (iii) enforcement of this Agreement, or (iv) exercise of any of its rights under this Agreement by the Authority;
- (e) the discovery of geological conditions, toxic contamination or archaeological remains on the Site that could not reasonably have been expected to be discovered through a site inspection; or
- (f) any event or circumstances of a nature analogous to any of the foregoing.

**26.3 Indirect Political Event**

An Indirect Political Event shall mean one or more of the following acts or events:

- (a) an act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo, riot, insurrection, terrorist or military action, civil commotion or politically motivated sabotage;

- (b) industry-wide or State-wide strikes or industrial action for a continuous period of 24 (twenty-four) hours and exceeding an aggregate period of 7 (seven) days in an Accounting Year;
- (c) any failure or delay of a Contractor to the extent caused by any Indirect Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor;
- (d) any Indirect Political Event that causes a Non-Political Event; or
- (e) any event or circumstances of a nature analogous to any of the foregoing.

#### **26.4 Political Event**

A Political Event shall mean one or more of the following acts or events by or on account of any Government Instrumentality:

- (a) compulsory acquisition in national interest or expropriation of any Project Assets or rights of the Concessionaire or of the Contractors;
- (b) unlawful or unauthorised or without jurisdiction revocation of, or refusal to renew or grant without valid cause, any clearance, licence, permit, authorisation, no objection certificate, consent, approval or exemption required by the Concessionaire or any of the Contractors to perform their respective obligations under this Agreement and the Project Agreements; provided that such delay, modification, denial, refusal or revocation did not result from the Concessionaire's or any Contractor's inability or failure to comply with any condition relating to grant, maintenance or renewal of such clearance, licence, authorisation, no objection certificate, exemption, consent, approval or permit;
- (c) any failure or delay of a Contractor but only to the extent caused by another Political Event and which does not result in any offsetting compensation being payable to the Concessionaire by or on behalf of such Contractor; or
- (d) any event or circumstance of a nature analogous to any of the foregoing.

#### **26.5 Duty to report Force Majeure Event**

26.5.1 Upon occurrence of a Force Majeure Event, the Affected Party shall by notice report such occurrence to the other Party forthwith. Any notice pursuant hereto shall include full particulars of:

- (a) the nature and extent of each Force Majeure Event which is the subject of any claim for relief under this Article 26 with evidence in support thereof;
- (b) the estimated duration and the effect or probable effect which such Force Majeure Event is having or will have on the Affected Party's performance of its obligations under this Agreement;
- (c) the measures which the Affected Party is taking or proposes to take for alleviating the impact of such Force Majeure Event; and
- (d) any other information relevant to the Affected Party's claim.

26.5.2 The Affected Party shall not be entitled to any relief for or in respect of a Force Majeure Event unless it shall have notified the other Party of the occurrence of the Force Majeure Event as soon as reasonably practicable, and in any event no later than 7 (seven) days after the Affected Party knew, or ought reasonably to have known, of its occurrence, and

shall have given particulars of the probable material effect that the Force Majeure Event is likely to have on the performance of its obligations under this Agreement.

- 26.5.3 For so long as the Affected Party continues to claim to be materially affected by such Force Majeure Event, it shall provide the other Party with regular (and not less than weekly) reports containing information as required by Clause 26.5.1, and such other information as the other Party may reasonably request the Affected Party to provide.

## **26.6 Effect of Force Majeure Event on the Concession**

- 26.6.1 Upon the occurrence of any Force Majeure Event prior to the Appointed Date, the period set forth in Clause 21.1.1 for achieving Financial Closure shall be extended by a period equal in length to the duration of the Force Majeure Event.

- 26.6.2 At any time after the Appointed Date, if any Force Majeure Event occurs:

- (a) before COD, the Concession Period and the dates set forth in the Project Completion Schedule shall be extended by a period equal in length to the duration for which such Force Majeure Event subsists; or
- (b) after COD, whereupon the Concessionaire is unable to continue operation of the Multi-species Hatchery or maintain the existing levels of production in the Multi-species Hatchery despite making best efforts or it is directed by the Authority to suspend the operation of the Multi-species Hatchery during the subsistence of such Force Majeure Event, the Concession Period shall be extended by a period, equal in length to the period during which the Concessionaire was prevented from continuing operation of the Multi-species Hatchery or maintaining the existing levels of production.

## **26.7 Allocation of costs arising out of Force Majeure**

- 26.7.1 Upon occurrence of any Force Majeure Event prior to the Appointed Date, the Parties shall bear their respective costs and no Party shall be required to pay to the other Party any costs thereof.

- 26.7.2 Upon occurrence of a Force Majeure Event after the Appointed Date, the costs incurred and attributable to such event and directly relating to the Project (the "Force Majeure Costs") shall be allocated and paid as follows:

- (a) upon occurrence of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof;
- (b) upon occurrence of an Indirect Political Event, all Force Majeure Costs attributable to such Indirect Political Event, and not exceeding the Insurance Cover for such Indirect Political Event, shall be borne by the Concessionaire, and to the extent Force Majeure Costs exceed such Insurance Cover, one half of such excess amount shall be reimbursed by the Authority to the Concessionaire; and
- (c) upon occurrence of a Political Event, all Force Majeure Costs attributable to such Political Event shall be reimbursed by the Authority to the Concessionaire.

For the avoidance of doubt, Force Majeure Costs may include interest payments on debt, O&M Expenses, any increase in the cost of Construction Works on account of inflation and all other costs directly attributable to the Force Majeure Event, but shall not include debt repayment obligations, and for determining such costs, information

contained in the Financial Package may be relied upon to the extent that such information is relevant.

- 26.7.3 Save and except as expressly provided in this Article 26, neither Party shall be liable in any manner whatsoever to the other Party in respect of any loss, damage, cost, expense, claims, demands and proceedings relating to or arising out of occurrence or existence of any Force Majeure Event or exercise of any right pursuant hereto.

## **26.8 Termination Notice for Force Majeure Event**

If a Force Majeure Event subsists for a period of 180 (one hundred and eighty) days or more within a continuous period of 365 (three hundred and sixty five) days, either Party may in its discretion terminate this Agreement by issuing a Termination Notice to the other Party without being liable in any manner whatsoever, save as provided in this Article 26, and upon issue of such Termination Notice, this Agreement shall, notwithstanding anything to the contrary contained herein, stand terminated forthwith; provided that before issuing such Termination Notice, the Party intending to issue the Termination Notice shall inform the other Party of such intention and grant 15 (fifteen) days' time to make a representation, and may after the expiry of such 15 (fifteen) days period, whether or not it is in receipt of such representation, in its sole discretion issue the Termination Notice.

## **26.9 Termination Payment for Force Majeure Event**

- 26.9.1 If Termination for Force Majeure is on account of a Non-Political Event, the Parties shall bear their respective Force Majeure Costs and neither Party shall be required to pay to the other Party any costs thereof.
- 26.9.2 If Termination is on account of an Indirect Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount equal to:
- (a) Debt Due less Insurance Cover; provided that if any insurance claims forming part of the Insurance Cover are not admitted and paid, then 80% (eighty per cent) of such unpaid claims shall be included in the computation of Debt Due; and
  - (b) 110% (one hundred and ten per cent) of the Adjusted Equity.
- 26.9.3 If Termination is on account of a Political Event, the Authority shall make a Termination Payment to the Concessionaire in an amount that would be payable under Clause 29.3.2 as if it were an Authority Default.

## **26.10 Dispute resolution**

In the event that the Parties are unable to agree in good faith about the occurrence or existence of a Force Majeure Event, such Dispute shall be finally settled in accordance with the Dispute Resolution Procedure; provided that the burden of proof as to the occurrence or existence of such Force Majeure Event shall be upon the Party claiming relief and/or excuse on account of such Force Majeure Event.

## **26.11 Excuse from performance of obligations**

If the Affected Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, it shall be excused from performance of such of its obligations to the extent it is unable to perform on account of such Force Majeure Event; provided that:

- (a) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

- (b) the Affected Party shall make all reasonable efforts to mitigate or limit damage to the other Party arising out of or as a result of the existence or occurrence of such Force Majeure Event and to cure the same with due diligence; and
- (c) when the Affected Party is able to resume performance of its obligations under this Agreement, it shall give to the other Party notice to that effect and shall promptly resume performance of its obligations hereunder.

## ARTICLE 27

### **COMPENSATION FOR BREACH OF AGREEMENT**

#### **27.1 Compensation for default by the Concessionaire**

Subject to the provisions of Clause 27.5, in the event of the Concessionaire being in material default or breach of this Agreement, it shall pay to the Authority by way of compensation, all direct costs suffered or incurred by the Authority as a consequence of such material default or breach, within 30 (thirty) days of receipt of the demand supported by necessary particulars thereof; provided that no compensation shall be payable under this Clause 27.1 for any material breach or default in respect of which Damages are expressly specified and payable under this Agreement or for any consequential losses incurred by the Authority.

#### **27.2 Compensation for default by the Authority**

Subject to the provisions of Clause 27.5, in the event of the Authority being in material default or breach of this Agreement at any time after the Appointed Date, it shall pay to the Concessionaire by way of compensation, all direct costs suffered or incurred by the Concessionaire as a consequence of such material default or breach within 120 (one hundred and twenty) days of receipt of the demand supported by necessary particulars thereof; provided that no such compensation shall be payable for any material breach or default in respect of which Damages have been expressly specified in this Agreement. For the avoidance of doubt, compensation payable may include any increase in capital costs on account of inflation.

#### **27.3 Extension of Concession Period**

Subject to the provisions of Clause 27.5, in the event that a material default or breach of this Agreement set forth in Clause 27.2 causes delay in achieving COD the Authority shall, in addition to payment of compensation under Clause 27.2, extend the Concession Period, such extension being equal in duration to the period by which COD was delayed.

#### **27.4 Compensation to be in addition**

Compensation payable under this Article 27 shall be in addition to, and not in substitution for, or derogation of, Termination Payment, if any.

#### **27.5 Mitigation of costs and damage**

The Affected Party shall make all reasonable efforts to mitigate or limit the costs and damage arising out of or as a result of breach of Agreement by the other Party.

## ARTICLE 28

### **SUSPENSION OF CONCESSIONAIRE’S RIGHTS**

#### **28.1 Suspension upon Concessionaire Default**

Upon occurrence of a Concessionaire Default, the Authority shall be entitled, without prejudice to its other rights and remedies under this Agreement including its rights of Termination hereunder, to (i) suspend all rights of the Concessionaire under this Agreement, and (ii) exercise such rights itself and perform the obligations hereunder or authorise any other person to exercise or perform the same on its behalf during such suspension (the “**Suspension**”). Suspension hereunder shall be effective forthwith upon issue of notice by the Authority to the Concessionaire and may extend up to a period not exceeding 180 (one hundred and eighty) days from the date of issue of such notice; provided that upon written request from the Concessionaire and the Lenders’ Representative, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by a further period not exceeding 90 (ninety) days.

#### **28.2 Authority to act on behalf of Concessionaire**

28.2.1 During the period of Suspension hereunder, all rights and liabilities vested in the Concessionaire in accordance with the provisions of this Agreement shall continue to vest therein and all things done or actions taken, including expenditure incurred by the Authority for discharging the obligations of the Concessionaire under and in accordance with this Agreement and the Project Agreements, shall be deemed to have been done or taken for and on behalf of the Concessionaire and the Concessionaire undertakes to indemnify the Authority for all costs incurred during such period. The Concessionaire hereby licences and sub-licences respectively, the Authority or any other person authorised by it under Clause 28.1 to use during Suspension, all Intellectual Property belonging to or licenced to the Concessionaire with respect to the Project and its design, engineering, construction, operation and maintenance, and which is used or created by the Concessionaire in performing its obligations under the Agreement.

#### **28.3 Revocation of Suspension**

28.3.1 In the event that the Authority shall have rectified or removed the cause of Suspension within a period not exceeding 90 (ninety) days from the date of Suspension, it shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement. For the avoidance of doubt, the Parties expressly agree that the Authority may, in its discretion, revoke the Suspension at any time, whether or not the cause of Suspension has been rectified or removed hereunder.

28.3.2 Upon the Concessionaire having cured the Concessionaire Default within a period not exceeding 90 (ninety) days from the date of Suspension, the Authority shall revoke the Suspension forthwith and restore all rights of the Concessionaire under this Agreement.

#### **28.4 Substitution of Concessionaire**

At any time during the period of Suspension, the Lenders’ Representative, on behalf of Senior Lenders, shall be entitled to substitute the Concessionaire under and in accordance with the Substitution Agreement, and upon receipt of notice thereunder from the Lenders’ Representative, the Authority shall withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of Suspension, and any extension thereof under

Clause 28.1, for enabling the Lenders' Representative to exercise its rights of substitution on behalf of Senior Lenders.

## **28.5 Termination**

- 28.5.1 At any time during the period of Suspension under this Article 28, the Concessionaire may by notice require the Authority to revoke the Suspension and issue a Termination Notice. Subject to the rights of the Lenders' Representative to undertake substitution in accordance with the provisions of this Agreement and within the period specified in Clause 28.4, the Authority shall, within 15 (fifteen) days of receipt of such notice, terminate this Agreement under and in accordance with Article 29.
- 28.5.2 Notwithstanding anything to the contrary contained in this Agreement, in the event that Suspension is not revoked within 180 (one hundred and eighty) days from the date of Suspension hereunder or within the extended period, if any, set forth in Clause 28.1, the Concession Agreement shall, upon expiry of the aforesaid period, be deemed to have been terminated by mutual agreement of the Parties and all the provisions of this Agreement shall apply, *mutatis mutandis*, to such Termination as if a Termination Notice as per Clause 29.1.2 had been issued by the Authority upon occurrence of a Concessionaire Default.

**ARTICLE 29**  
**TERMINATION**

**29.1 Termination for Concessionaire Default**

29.1.1 Save as otherwise provided in this Agreement, in the event that any of the defaults specified below shall have occurred, and the Concessionaire fails to cure the default within the Cure Period set forth below, or where no Cure Period is specified, then within a Cure Period of 60 (sixty) days, the Concessionaire shall be deemed to be in default of this Agreement (the “Concessionaire Default”), unless the default has occurred solely as a result of any breach of this Agreement by the Authority or due to Force Majeure. The defaults referred to herein shall include:

- (a) the Performance Security has been encashed and appropriated in accordance with Clause 9.2 and the Concessionaire fails to replenish or provide fresh Performance Security within a Cure Period of 30 (thirty) days;
- (b) subsequent to the replenishment or furnishing of fresh Performance Security in accordance with Clause 9.2, the Concessionaire fails to cure, within a Cure Period of 90 (ninety) days, the Concessionaire Default for which whole or part of the Performance Security was appropriated;
- (c) the Concessionaire does not achieve the latest outstanding Project Milestone due in accordance with the provisions of Schedule-B and continues to be in default for 120 (one hundred and twenty) days;
- (d) the Concessionaire abandons or manifests intention to abandon the construction or operation of the Project without the prior written consent of the Authority;
- (e) Project Completion Date does not occur within the period specified in Clause 12.3.3;
- (f) the Concessionaire is in breach of the Maintenance Requirements or the Safety Requirements, as the case may be;
- (g) the Concessionaire has failed to make any payment to the Authority within the period specified in this Agreement;
- (h) upon occurrence of a Financial Default, the Lenders’ Representative has by notice required the Authority to undertake Suspension or Termination, as the case may be, in accordance with the Substitution Agreement and the Concessionaire fails to cure the default within the Cure Period specified hereinabove;
- (i) a breach of any of the Project Agreements by the Concessionaire has caused a Material Adverse Effect;
- (j) the Concessionaire creates any Encumbrance in breach of this Agreement;
- (k) the Concessionaire repudiates this Agreement or otherwise takes any action or evidences or conveys an intention not to be bound by the Agreement;
- (l) a Change in Ownership has occurred in breach of the provisions of Clause 5.3;
- (m) there is a transfer, pursuant to law either of (i) the rights and/or obligations of the Concessionaire under any of the Project Agreements, or of (ii) all or part of the assets or undertaking of the Concessionaire, and such transfer causes a Material Adverse Effect;

- (n) an execution levied on any of the assets of the Concessionaire has caused a Material Adverse Effect;
- (o) the Concessionaire is adjudged bankrupt or insolvent, or if a trustee or receiver is appointed for the Concessionaire or for the whole or material part of its assets that has a material bearing on the Project;
- (p) the Concessionaire has been, or is in the process of being liquidated, dissolved, wound-up, amalgamated or reconstituted in a manner that would cause, in the reasonable opinion of the Authority, a Material Adverse Effect;
- (q) a resolution for winding up of the Concessionaire is passed, or any petition for winding up of the Concessionaire is admitted by a court of competent jurisdiction and a provisional liquidator or receiver is appointed and such order has not been set aside within 90 (ninety) days of the date thereof or the Concessionaire is ordered to be wound up by Court except for the purpose of amalgamation or reconstruction; provided that, as part of such amalgamation or reconstruction, the entire property, assets and undertaking of the Concessionaire are transferred to the amalgamated or reconstructed entity and that the amalgamated or reconstructed entity has unconditionally assumed the obligations of the Concessionaire under this Agreement and the Project Agreements; and provided that:
  - (i) the amalgamated or reconstructed entity has the capability and operating experience necessary for the performance of its obligations under this Agreement and the Project Agreements;
  - (ii) the amalgamated or reconstructed entity has the financial standing to perform its obligations under this Agreement and the Project Agreements and has a credit worthiness at least as good as that of the Concessionaire as at the Appointed Date; and
  - (iii) each of the Project Agreements remains in full force and effect;
- (r) any representation or warranty of the Concessionaire herein contained which is, as of the date hereof, found to be materially false, incorrect or misleading or the Concessionaire is at any time hereafter found to be in breach thereof;
- (s) the Concessionaire submits to the Authority any statement, notice or other document, in written or electronic form, which has a material effect on the Authority's rights, obligations or interests and which is false in material particulars;
- (t) the Concessionaire has failed to fulfil any obligation, for which failure Termination has been specified in this Agreement; or
- (u) the Concessionaire commits a default in complying with any other provision of this Agreement if such a default causes a Material Adverse Effect on the Authority.

29.1.2 Without prejudice to any other rights or remedies which the Authority may have under this Agreement, upon occurrence of a Concessionaire Default, the Authority shall be entitled to terminate this Agreement by issuing a Termination Notice to the Concessionaire; provided that before issuing the Termination Notice, the Authority shall by a notice inform the Concessionaire of its intention to issue such Termination Notice and grant 15 (fifteen) days to the Concessionaire to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice, subject to the provisions of clause 29.1.3.

29.1.3 The Authority shall, if there be Senior Lenders, send a copy of its notice of intention to issue a Termination Notice referred to in Clause 29.1.2 to inform the Lenders' Representative and grant 15 (fifteen) days to the Lenders' Representative, for making a representation on behalf of the Senior Lenders stating the intention to substitute the Concessionaire in accordance with the Substitution Agreement. In the event the Authority receives such representation on behalf of Senior Lenders, it shall, in its discretion, either withhold Termination for a period not exceeding 180 (one hundred and eighty) days from the date of such representation or exercise its right of Suspension, as the case may be, for enabling the Lenders' Representative to exercise the Senior Lenders' right of substitution in accordance with the Substitution Agreement:

Provided that the Lenders' Representative may, instead of exercising the Senior Lenders' right of substitution, procure that the default specified in the notice is cured within the aforesaid period of 180 (one hundred and eighty) days, and upon such curing thereof, the Authority shall withdraw its notice referred to above and restore all the rights of the Concessionaire:

Provided further that upon written request from the Lenders' Representative and the Concessionaire, the Authority shall extend the aforesaid period of 180 (one hundred and eighty) days by such further period not exceeding 90 (ninety) days, as the Authority may deem appropriate.

## **29.2 Termination for Authority Default including Termination for Authority's Convenience**

29.2.1 In the event that any of the defaults specified below shall have occurred, and the Authority fails to cure such default within a Cure Period of 120 (one hundred and twenty days) days or such longer period as has been expressly provided in this Agreement, the Authority shall be deemed to be in default of this Agreement (the "Authority Default") unless the default has occurred as a result of any breach of this Agreement by the Concessionaire or due to Force Majeure. The defaults referred to herein shall include:

- (a) The Authority commits a material default in complying with any of the provisions of this Agreement and such default has a Material Adverse Effect on the Concessionaire. For purpose of this Article 29.2, events which could constitute a material default will include: (a) rescinding Concessionaire's access to and use of the Project Site; and, (b) inability to restore within a reasonable time unrestricted access to and use of Project Site if barrier for access to and use of the Project Site is caused, without any misdeed by the Concessionaire or its sub-contractors, by any third party subject to jurisdiction of the Government of Maldives.
- (b) the Authority repudiates this Agreement or otherwise takes any action that amounts to or manifests an irrevocable intention not to be bound by this Agreement or notifies or issues Notice of Termination for reasons of Authority's convenience.

29.2.2 Without prejudice to any other right or remedy which the Concessionaire may have under this Agreement, upon occurrence of an Authority Default, the Concessionaire shall, subject to the provisions of the Substitution Agreement, be entitled to terminate this Agreement by issuing a Termination Notice to the Authority; provided that before issuing the Termination Notice, the Concessionaire shall by a notice inform the Authority of its intention to issue the Termination Notice and grant 15 (fifteen) days to the Authority to make a representation, and may after the expiry of such 15 (fifteen) days, whether or not it is in receipt of such representation, issue the Termination Notice.

### **29.3 Termination Payment**

- 29.3.1 Upon Termination on account of a Concessionaire Default during the Construction Period no Termination Payment shall be due or payable.
- 29.3.2 Upon Termination on account of a Concessionaire Default during the Operation Period the Termination Payment shall be equal to the net present value of movable and immovable assets available at Project Site constructed and installed by the Concessionaire less the net present value of Grant already paid by Authority to the Concessionaire. For the avoidance of doubt, the net present value of movable and immovable assets will be estimated by a valuer registered in Maldives and appointed by the Authority. Similarly, for the avoidance of doubt, the net present value of Grant paid by the Authority to the Concessionaire shall be arrived at by compounding the actual Grant amount using the interest rates on the fixed deposits prevailing at the Bank of Maldives on the dates of stage payments of Grant.
- 29.3.3 Upon Termination on account of an Authority Default, the Authority shall pay to the Concessionaire, by way of Termination Payment, an amount equal to:
- (a) Debt Due; and
  - (b) 120% (one hundred and twenty per cent) of the Adjusted Equity.
- 29.3.4 Termination Payment shall become due and payable to the Concessionaire within 120 (one hundred and twenty) days of a demand being made by the Concessionaire to the Authority with the necessary particulars, and in the event of any delay, the Authority shall pay interest at a rate equal to 3% (three per cent) above the Bank Rate of Maldives Monetary Authority on the amount of Termination Payment remaining unpaid; provided that such delay shall not exceed 90 (ninety) days. For the avoidance of doubt, it is expressly agreed that Termination Payment shall constitute full discharge by the Authority of its payment obligations in respect thereof hereunder.
- 29.3.5 The Concessionaire expressly agrees that Termination Payment under this Article 29 shall constitute a full and final settlement of all claims of the Concessionaire on account of Termination of this Agreement for any reason whatsoever and that the Concessionaire or any shareholder thereof shall not have any further right or claim under any law, treaty, convention, contract or otherwise.

### **29.4 Other rights and obligations of the Authority**

Upon Termination for any reason whatsoever, the Authority shall:

- (a) be deemed to have taken possession and control of the Project forthwith;
- (b) take possession and control of all materials, stores, implements, construction plants and equipment on or about the Site;
- (c) be entitled to restrain the Concessionaire and any person claiming through or under the Concessionaire from entering upon the Site or any part of the Project;
- (d) require the Concessionaire to comply with the Divestment Requirements set forth in Clause 29.1; and
- (e) succeed upon election by the Authority, without the necessity of any further action by the Concessionaire, to the interests of the Concessionaire under such of the Project Agreements as the Authority may in its discretion deem appropriate, and shall upon such election be liable to the Contractors only for compensation accruing and becoming due and payable to them under the terms of their respective Project

Agreements from and after the date the Authority elects to succeed to the interests of the Concessionaire. For the avoidance of doubt, the Concessionaire acknowledges and agrees that all sums claimed by such Contractors as being due and owing for works and services performed or accruing on account of any act, omission or event prior to such date shall constitute debt between the Concessionaire and such Contractors, and the Authority shall not in any manner be liable for such sums. It is further agreed that in the event the Authority elects to cure any outstanding defaults under such Project Agreements, the amount expended by the Authority for this purpose shall be deducted from the Termination Payment.

## **29.5 Survival of rights**

Notwithstanding anything to the contrary contained in this Agreement, but subject to the provisions of Clause 29.3.4, any Termination pursuant to the provisions of this Agreement shall be without prejudice to the accrued rights of either Party including its right to claim and recover money damages, insurance proceeds, security deposits, and other rights and remedies, which it may have in law or contract. All rights and obligations of either Party under this Agreement, including Termination Payments and Divestment Requirements, shall survive the Termination to the extent such survival is necessary for giving effect to such rights and obligations.

## ARTICLE 30

### **DIVESTMENT OF RIGHTS AND INTEREST**

#### **30.1 Divestment Requirements**

30.1.1 Upon Termination, the Concessionaire shall comply with and conform to the following Divestment Requirements:

- (a) notify to the Authority forthwith the location and particulars of all Project Assets;
- (b) deliver forthwith the actual or constructive possession of the Project, free and clear of all Encumbrances, save and except to the extent set forth in the Substitution Agreement;
- (c) cure all Project Assets, including structures and equipment, of all defects and deficiencies so that the Project is compliant with the Maintenance Requirements; provided that in the event of Termination during the Construction Period, all Project Assets shall be handed over on 'as is where is' basis after bringing them to a safe condition;
- (d) deliver and transfer relevant records, reports, Intellectual Property and other licences pertaining to the Project and its design, engineering, construction, operation and maintenance, including all programmes and manuals pertaining thereto, and complete 'as built' Drawings as on the Transfer Date. For the avoidance of doubt, the Concessionaire represents and warrants that the Intellectual Property delivered hereunder shall be adequate and complete for the design, engineering, construction, operation and maintenance of the Project and shall be assigned to the Authority free of any encumbrance;
- (e) transfer and/or deliver all Applicable Permits to the extent permissible under Applicable Laws;
- (f) execute such deeds of conveyance, documents and other writings as the Authority may reasonably require for conveying, divesting and assigning all the rights, title and interest of the Concessionaire in the Project, including manufacturers' warranties in respect of any plant or equipment and the right to receive outstanding insurance claims to the extent due and payable to the Authority, absolutely unto the Authority or its nominee; and
- (g) comply with all other requirements as may be prescribed or required under Applicable Laws for completing the divestment and assignment of all rights, title and interest of the Concessionaire in the Project, free from all Encumbrances, absolutely unto the Authority or to its nominee.

30.1.2 Subject to the exercise by the Authority of its rights under this Agreement or under any of the Project Agreements to perform or procure the performance by a third party of any of the obligations of the Concessionaire, the Parties shall continue to perform their obligations under this Agreement, notwithstanding the giving of any Termination Notice, until the Termination of this Agreement becomes effective in accordance with its terms.

#### **30.2 Inspection and cure**

Not earlier than 90 (ninety) days prior to Termination but not later than 15 (fifteen) days prior to the effective date of such Termination, the Independent Engineer or the Authority's Representative shall verify, after giving due notice to the Concessionaire of the time, date

and venue of such verification, compliance by the Concessionaire with the Maintenance Requirements, and if required, cause appropriate tests to be carried out at the Concessionaire's cost for this purpose. Defaults, if any, in the Maintenance Requirements shall be cured by the Concessionaire at its cost and the provisions of Article 31 shall apply, mutatis mutandis, in relation to curing of defects or deficiencies under this Article 30.

### **30.3 Cooperation and assistance on transfer of Project**

- 30.3.1 The Parties shall cooperate on a best effort basis and take all necessary measures, in good faith, to achieve a smooth transfer of the Project in accordance with the provisions of this Agreement so as to protect the safety of and avoid undue delay or inconvenience to the Users, other members of the public or the lawful occupiers of any part of the Site.
- 30.3.2 The Parties shall provide to each other, 9 (nine) months prior to the Transfer Date in the event of Termination by efflux of time and immediately in the event of either Party conveying to the other Party its intent to issue a Termination Notice, as the case may be, as much information and advice as is reasonably practicable regarding the proposed arrangements for operation of the Project following the Transfer Date. The Concessionaire shall further provide such reasonable advice and assistance as the Authority, its concessionaire or agent may reasonably require for operation of the Project until the expiry of 6 (six) months after the Transfer Date.
- 30.3.3 The Authority shall have the option to purchase or hire from the Concessionaire at a fair market value and free from any encumbrance all or any part of the plant and machinery used in connection with the Project but which does not form part of the assets specified in Clause 30.1.1 and is reasonably required in connection with operation of the Project. For the avoidance of doubt, in the event of dispute or difference relating to fair market value, the Dispute Resolution Procedure shall apply.

### **30.4 Vesting Certificate**

The divestment of all rights, title and interest in the Project shall be deemed to be complete on the date when all of the Divestment Requirements have been fulfilled, and the Authority shall, without unreasonable delay, thereupon issue a certificate substantially in the form set forth in Schedule-L (the "Vesting Certificate"), which will have the effect of constituting evidence of divestment by the Concessionaire of all of its rights, title and interest in the Project, and their vesting in the Authority pursuant hereto. It is expressly agreed that any defect or deficiency in the Divestment Requirements shall not in any manner be construed or interpreted as restricting the exercise of any rights by the Authority or its nominee on, or in respect of, the Project on the footing that all Divestment Requirements have been complied with by the Concessionaire.

### **30.5 Divestment costs etc.**

- 30.5.1 The Concessionaire shall bear and pay all costs incidental to divestment of all of the rights, title and interest of the Concessionaire in the Project in favour of the Authority upon Termination, save and except that all stamp duties payable on any deeds or Documents executed by the Concessionaire in connection with such divestment shall be borne by the Authority.
- 30.5.2 In the event of any dispute relating to matters covered by and under this Article 30, the Dispute Resolution Procedure shall apply.

## ARTICLE 31

### **DEFECTS LIABILITY AFTER TERMINATION**

#### **31.1 Liability for defects after Termination**

The Concessionaire shall be responsible for all defects and deficiencies in the Project for a period of 120 (One hundred and twenty) days after Termination, and it shall have the obligation to repair or rectify, at its own cost, all defects and deficiencies observed by the Independent Engineer in the Project during the aforesaid period. In the event that the Concessionaire fails to repair or rectify such defect or deficiency within a period of 15 (fifteen) days from the date of notice issued by the Authority in this behalf, the Authority shall be entitled to get the same repaired or rectified at the Concessionaire's risk and cost so as to make the Project conform to the Maintenance Requirements. All costs incurred by the Authority hereunder shall be reimbursed by the Concessionaire to the Authority within 15 (fifteen) days of receipt of demand thereof, and in the event of default in reimbursing such costs, the Authority shall be entitled to encash and appropriate the relevant amount from the Performance Security.

#### **31.2 Enhancement in amount of Performance Security**

- 31.2.1 The Independent Engineer or the Authority's representative shall carry out an inspection of the Project in the presence of a representative of the Concessionaire at any time between 210 (two hundred and ten) and 180 (one hundred and eighty) days prior to the expiry of the Concession Agreement and if it recommends that the status of the Project is such that its repair and rectification would require a larger amount than the amount of Performance Security, it shall recommend suitable enhancement of Performance Security and also its extension.
- 31.2.2 The Authority shall, without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate the required amounts from the Performance Guarantee for undertaking the repairs or rectification at the Concessionaire's risk and cost in accordance with the provisions of this Article 31.

**Part VI**  
**Other Provisions**

## ARTICLE 32

### ASSIGNMENT AND CHARGES

#### **32.1 Restrictions on assignment and charges**

- 32.1.1 Subject to Clauses 32.2 and 32.3, this Agreement shall not be assigned by the Concessionaire to any person, save and except with the prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.
- 32.1.2 Subject to the provisions of Clause 32.2, the Concessionaire shall not create nor permit to subsist any Encumbrance, or otherwise transfer or dispose of all or any of its rights and benefits under this Agreement or any Project Agreement to which the Concessionaire is a party except with prior consent in writing of the Authority, which consent the Authority shall be entitled to decline without assigning any reason.

#### **32.2 Permitted assignment and charges**

The restraints set forth in Clause 32.1 shall not apply to:

- (a) liens arising by operation of law (or by an agreement evidencing the same) in the ordinary course of business of the Project;
- (b) mortgages/pledges/hypothecation of goods/assets other than Project Assets and their related documents of title, arising or created in the ordinary course of business of the Project, and as security only for indebtedness to the Senior Lenders under the Financing Agreements and/or for working capital arrangements for the Project;
- (c) assignment of rights, interest and obligations of the Concessionaire to or in favour of the Lenders' Representative as nominee and for the benefit of the Senior Lenders, to the extent covered by and in accordance with the Substitution Agreement as security for financing provided by Senior Lenders under the Financing Agreements; and
- (d) liens or encumbrances required by any Applicable Law.

#### **32.3 Substitution Agreement**

- 32.3.1 The Lenders' Representative, on behalf of Senior Lenders, may exercise the right to substitute the Concessionaire pursuant to the agreement for substitution of the Concessionaire (the "Substitution Agreement") to be entered into amongst the Concessionaire, the Authority and the Lenders' Representative, on behalf of Senior Lenders, substantially in the form set forth in Schedule-M.
- 32.3.2 Upon substitution of the Concessionaire under and in accordance with the Substitution Agreement, the Nominated Company substituting the Concessionaire shall be deemed to be the Concessionaire under this Agreement and shall enjoy all rights and be responsible for all obligations of the Concessionaire under this Agreement as if it were the Concessionaire; provided that where the Concessionaire is in breach of this Agreement on the date of such substitution, the Authority shall by notice grant a Cure Period of 120 (one hundred and twenty) days to the Concessionaire for curing such breach.

#### **32.4 Assignment by the Authority**

Notwithstanding anything to the contrary contained in this Agreement, the Authority may, after giving 60 (sixty) days' notice to the Concessionaire, assign and/ or transfer any of its

rights and benefits and/or obligations under this Agreement to an assignee who is, in the reasonable opinion of the Authority, capable of fulfilling all of the Authority's then outstanding obligations under this Agreement.

## ARTICLE 33

### **LIABILITY AND INDEMNITY**

#### **33.1 General indemnity**

- 33.1.1 The Concessionaire will indemnify, defend, save and hold harmless the Authority and its officers, servants, agents, Government Instrumentalities and Government owned and/or controlled entities/enterprises, (the “Authority Indemnified Persons”) against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature, whether arising out of any breach by the Concessionaire of any of its obligations under this Agreement or any related agreement or on account of any defect or deficiency in the provision of services by the Concessionaire to any user or from any negligence of the Concessionaire under contract or tort or on any other ground whatsoever, except to the extent that any such suits, proceedings, actions, demands and claims have arisen due to any negligent act or omission, or breach or default of this Agreement on the part of the Authority Indemnified Persons.
- 33.1.2 The Authority will indemnify, defend, save and hold harmless the Concessionaire against any and all suits, proceedings, actions, demands and claims from third parties for any loss, damage, cost and expense of whatever kind and nature arising out of (i) defect in title and/or the rights of the Authority in the land comprised in the Site, and/or (ii) breach by the Authority of any of its obligations under this Agreement or any related agreement, which materially and adversely affect the performance by the Concessionaire of its obligations under this Agreement, save and except that where any such claim, suit, proceeding, action, and/or demand has arisen due to a negligent act or omission, or breach of any of its obligations under any provision of this Agreement or any related agreement and/or breach of its statutory duty on the part of the Concessionaire, its subsidiaries, affiliates, contractors, servants or agents, the same shall be the liability of the Concessionaire.

#### **33.2 Indemnity by the Concessionaire**

- 33.2.1 Without limiting the generality of Clause 33.1, the Concessionaire shall fully indemnify, hold harmless and defend the Authority and the Authority Indemnified Persons from and against any and all loss and/or damages arising out of or with respect to:
- (a) failure of the Concessionaire to comply with Applicable Laws and Applicable Permits;
  - (b) payment of taxes required to be made by the Concessionaire in respect of the income or other taxes of the Concessionaire’s Contractors, suppliers and representatives; or
  - (c) non-payment of amounts due as a result of materials or services furnished to the Concessionaire or any of its Contractors which are payable by the Concessionaire or any of its Contractors.
- 33.2.2 Without limiting the generality of the provisions of this Article 33, the Concessionaire shall fully indemnify, hold harmless and defend the Authority Indemnified Persons from and against any and all suits, proceedings, actions, claims, demands, liabilities and damages which the Authority Indemnified Persons may hereafter suffer, or pay by reason of any demands, claims, suits or proceedings arising out of claims of infringement of any domestic or foreign patent rights, copyrights or other intellectual property, proprietary or confidentiality rights with respect to any materials, information,

design or process used by the Concessionaire or by the Concessionaire's Contractors in performing the Concessionaire's obligations or in any way incorporated in or related to the Project. If in any such suit, action, claim or proceedings, a temporary restraint order or preliminary injunction is granted, the Concessionaire shall make every reasonable effort, by giving a satisfactory bond or otherwise, to secure the revocation or suspension of the injunction or restraint order. If, in any such suit, action, claim or proceedings, the Project, or any part thereof or comprised therein, is held to constitute an infringement and its use is permanently enjoined, the Concessionaire shall promptly make every reasonable effort to secure for the Authority a licence, at no cost to the Authority, authorising continued use of the infringing work. If the Concessionaire is unable to secure such licence within a reasonable time, the Concessionaire shall, at its own expense, and without impairing the Specifications and Standards, either replace the affected work, or part, or process thereof with non-infringing work or part or process, or modify the same so that it becomes non-infringing.

### **33.3 Notice and contest of claims**

In the event that either Party receives a claim or demand from a third party in respect of which it is entitled to the benefit of an indemnity under this Article 33 (the "Indemnified Party") it shall notify the other Party (the "Indemnifying Party") within 15 (fifteen) days of receipt of the claim or demand and shall not settle or pay the claim without the prior approval of the Indemnifying Party, which approval shall not be unreasonably withheld or delayed. In the event that the Indemnifying Party wishes to contest or dispute the claim or demand, it may conduct the proceedings in the name of the Indemnified Party, subject to the Indemnified Party being secured against any costs involved, to its reasonable satisfaction.

### **33.4 Defence of claims**

- 33.4.1 The Indemnified Party shall have the right, but not the obligation, to contest, defend and litigate any claim, action, suit or proceeding by any third party alleged or asserted against such Party in respect of, resulting from, related to or arising out of any matter for which it is entitled to be indemnified hereunder, and reasonable costs and expenses thereof shall be indemnified by the Indemnifying Party. If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party in respect of loss to the full extent provided by this Article 33, the Indemnifying Party shall be entitled, at its option, to assume and control the defence of such claim, action, suit or proceeding, liabilities, payments and obligations at its expense and through the counsel of its choice; provided it gives prompt notice of its intention to do so to the Indemnified Party and reimburses the Indemnified Party for the reasonable cost and expenses incurred by the Indemnified Party prior to the assumption by the Indemnifying Party of such defence. The Indemnifying Party shall not be entitled to settle or compromise any claim, demand, action, suit or proceeding without the prior written consent of the Indemnified Party, unless the Indemnifying Party provides such security to the Indemnified Party as shall be reasonably required by the Indemnified Party to secure the loss to be indemnified hereunder to the extent so compromised or settled.
- 33.4.2 If the Indemnifying Party has exercised its rights under Clause 33.4, the Indemnified Party shall not be entitled to settle or compromise any claim, action, suit or proceeding without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld or delayed).
- 33.4.3 If the Indemnifying Party exercises its rights under Clause 33.4, the Indemnified Party shall nevertheless have the right to employ its own counsel, and such counsel may

participate in such action, but the fees and expenses of such counsel shall be at the expense of the Indemnified Party, when and as incurred, unless:

- (a) the employment of counsel by such party has been authorised in writing by the Indemnifying Party; or
- (b) the Indemnified Party shall have reasonably concluded that there may be a conflict of interest between the Indemnifying Party and the Indemnified Party in the conduct of the defence of such action; or
- (c) the Indemnifying Party shall not, in fact, have employed independent counsel reasonably satisfactory to the Indemnified Party, to assume the defence of such action and shall have been so notified by the Indemnified Party; or
- (d) the Indemnified Party shall have reasonably concluded and specifically notified the Indemnifying Party either:
  - (i) that there may be specific defences available to it which are different from or additional to those available to the Indemnifying Party; or
  - (ii) that such claim, action, suit or proceeding involves or could have a material adverse effect upon it beyond the scope of this Agreement:

Provided that if Sub-clauses (b), (c) or (d) of this Clause 33.4.3 shall be applicable, the counsel for the Indemnified Party shall have the right to direct the defence of such claim, demand, action, suit or proceeding on behalf of the Indemnified Party, and the reasonable fees and disbursements of such counsel shall constitute legal or other expenses hereunder.

### **33.5 No consequential claims**

Notwithstanding anything to the contrary contained in this Article 33, the indemnities herein provided shall not include any claim or recovery in respect of any cost, expense, loss or damage of an indirect, incidental or consequential nature, including loss of profit, except as expressly provided in this Agreement.

### **33.6 Survival on Termination**

The provisions of this Article 33 shall survive Termination.

## ARTICLE 34

### **RIGHTS AND TITLE OVER THE SITE**

#### **34.1 Licensee rights**

For the purpose of this Agreement, the Concessionaire shall have access to the site to undertake development of Project facilities on the Site and operation subject to and in accordance with this Agreement, and to this end, it may regulate the entry and use of the Project by third parties in accordance with and subject to the provisions of this Agreement.

#### **34.2 Access rights of the Authority and others**

The Concessionaire shall allow free access to the Site at all times for the authorised representatives and vehicles of the Authority, Senior Lenders, and the Independent Engineer, and for the persons and vehicles duly authorised by any Government Instrumentality to inspect the Project or to investigate any matter within their authority, and upon reasonable notice, the Concessionaire shall provide to such persons reasonable assistance necessary to carry out their respective duties and functions. Concessionaire shall also provide access and assistance, to (a) Contractor and the sub-contractor(s) which constructed Ancillary Facilities (detailed in Schedule-A) on the Project Site, as referred to in Clause 5.1.4 (k), and (b) students as referred to in Clause 17.7.1.

#### **34.3 Property taxes**

All property taxes on the Site shall be payable by the Authority as owner of the Site; provided, however, that any such taxes payable by the Concessionaire under Applicable Laws for use of the Site shall not be reimbursed or payable by the Authority.

#### **34.4 Restriction on sub-letting**

The Concessionaire shall not sublicense or sublet the whole or any part of the Site, save and except as may be expressly set forth in this Agreement; provided that nothing contained herein shall be construed or interpreted as restricting the right of the Concessionaire to appoint Contractors for the performance of its obligations hereunder including for operation and maintenance of all or any part of the Project.

## ARTICLE 35

### **DISPUTE RESOLUTION**

#### **35.1 Conciliation**

In the event of any Dispute between the Parties, either Party may call upon the Independent Engineer to mediate and assist the Parties in arriving at an amicable settlement thereof. Failing mediation by the Independent Engineer or without the intervention of the Independent Engineer, either Party may require such Dispute to be referred to the Project Director of Maldives Sustainable Fisheries Resources Development Project, or any other person specifically nominated by the Ministry of Fisheries, Marine Resources and Agriculture and the Chairman of the Board of Directors of the Concessionaire for amicable settlement, and upon such reference, the said persons shall meet no later than 7 (seven) days from the date of reference to discuss and attempt to amicably resolve the Dispute. If such meeting does not take place within the 7 (seven) day period or the Dispute is not amicably settled within 15 (fifteen) days of the meeting or the Dispute is not resolved as evidenced by the signing of written terms of settlement within 30 (thirty) days of the notice in writing referred to in Clause 35.2.1 or such longer period as may be mutually agreed by the Parties, either Party may refer the Dispute to arbitration in accordance with the provisions of Clause 35.5.

#### **35.2 Appointment of the Adjudicator**

- 35.2.1 The Adjudicator shall be appointed jointly by the Authority and the Concessionaire, at the time of the Authority's issuance of the Letter of Acceptance. If, in the Letter of Acceptance, the Authority does not agree on the appointment of the Adjudicator, the Authority will request the Appointing Authority designated in Clause 35.2.3, to appoint the Adjudicator within 14 days of receipt of such request.
- 35.2.2 Should the Adjudicator resign or die, or should the Authority and the Concessionaire agree that the Adjudicator is not functioning in accordance with the provisions of the Agreement, a new Adjudicator shall be jointly appointed by the Authority and the Concessionaire. In case of disagreement between the Authority and the Concessionaire, within 30 days, the Adjudicator shall be designated by the Appointing Authority designated in Clause 35.2.3 at the request of either party, within 14 days of receipt of such request.
- 35.2.3 Minister of Fisheries, Marine Resources and Agriculture, of the Republic of Maldives shall be the Appointing Authority for Adjudicator.

#### **35.3 Procedure for Disputes referred to Adjudicator**

- 35.3.1 If the Concessionaire believes that a decision was wrongly taken by the Authority, the decision shall be referred to the Adjudicator within 14 days of the notification of the decision.
- 35.3.2 The Adjudicator shall give a decision in writing within 28 days of receipt of a notification of a dispute.
- 35.3.3 The Adjudicator shall be paid at the rate specified in Clause 35.3.5, together with reimbursable expenses of the types specified therein, and the cost shall be divided equally between the Authority and the Concessionaire, whatever decision is reached by the Adjudicator.

- 35.3.4 Either party may refer a decision of the Adjudicator to an Arbitrator within 28 days of the Adjudicator's written decision. If neither party refers the dispute to arbitration within the above 28 days, the Adjudicator's decision shall be final and binding.
- 35.3.5 The fee for this proposed Adjudicator per day of effective hearing shall be: MVR4500.00. This is exclusive of reimbursable reasonable expenses towards boarding, lodging and travel as per actuals.

#### **35.4 Dispute resolution through Arbitration**

- 35.4.1 If either party refers a decision of the Adjudicator to Arbitration in accordance with Clause 35.3.4, the dispute shall, in the first instance, be attempted to be resolved amicably in accordance with the conciliation procedure set forth in Clause 35.1.
- 35.4.2 The Parties agree to use their best efforts for resolving all Disputes where either party refers a decision of the Adjudicator to an Arbitrator, promptly, equitably and in good faith, and further agree to provide each other with reasonable access during normal business hours to all non-privileged records, information and data pertaining to any Dispute.
- 35.4.3 Unless the Concession Agreement has already been abandoned, repudiated or terminated, the Concessionaire shall continue to proceed with the works/ perform its obligations in accordance with this Agreement during the resolution of the Dispute.

#### **35.5 Arbitration**

Any dispute arising out of or in connection with this Concession Agreement, including any question regarding its existence, validity or termination, which is not resolved amicably as provided in clause 35.1 and 35.3, shall be referred to and finally resolved by arbitration in Maldives administered by the Maldives International Arbitration Centre. The seat of the arbitration shall be Maldives. The Tribunal shall consist of one arbitrator. The language of the arbitration shall be English.

## ARTICLE 36

### **DISCLOSURE AND CONFIDENTIALITY**

#### **36.1 Disclosure of Specified Documents**

The Concessionaire shall make available for inspection by any person authorised by the Authority, copies of this Concession Agreement, the Maintenance Manual, the Maintenance Programme and the Maintenance Requirements (hereinafter collectively referred to as the “Specified Documents”), free of charge, during normal business hours on all working days at the Authority’s office and the Concessionaire’s Registered Office.

Concessionaire shall, on the Authority’s request, make available to the Authority any documents required during the Construction Period and the Operation Period, though not mentioned specifically in Schedule-B, Articles 17 or 23 or any other clauses of the Concession Agreement.

#### **36.2 Disclosure of Documents relating to safety**

The Concessionaire shall make available for inspection by Authority’s appointed representative copies of all Documents and data relating to safety of the Project, free of charge, during normal business hours on all working days, at the Concessionaire’s Registered Office.

#### **36.3 Confidentiality**

36.3.1 The Authority and the Concessionaire shall keep confidential and shall not, without the written consent of the other party to this Concession Agreement divulge to any third party any documents, data, or other information of a confidential nature (“Confidential Information”) connected with this Concession Agreement, and furnished directly or indirectly by either Party prior to or during performance, or following termination, of this Concession Agreement.

36.3.2 The Authority shall not, without the Concessionaire’s prior written consent, use any Confidential Information received from the Concessionaire for any purpose other than the operation, and maintenance of the Multispecies Hatchery. Similarly, the Concessionaire shall not, without the Authority’s prior written consent, use any Confidential Information received from the Authority for any purpose other than those that are required for the performance of the Concession Agreement.

36.3.3 The Concessionaire including its employees, Contractors, consultants and agents, shall hold confidence all documents and other information whether technical or commercial supplied to it by or on behalf of the Authority relating to this Agreement and shall not publish or otherwise disclose or use the same for its own purposes otherwise than as may be required under the Agreement or to perform its obligations under this Agreement. This shall not apply to information:

- (a) already in the public domain otherwise than by breach of this Agreement;
- (b) already in the possession of the receiving party before it was received from the Authority in the course of this Agreement and which was not obtained under the obligation of confidentiality; or
- (c) obtained from a third party who is free to divulge the same and which was not obtained under any obligation of confidentiality.

36.3.4 The above obligations shall survive even after the termination or expiration of this Agreement.

**ARTICLE 37**  
**MISCELLANEOUS**

**37.1 Governing law and jurisdiction**

This Agreement shall be construed and interpreted in accordance with and governed by the laws of Maldives, and the courts at Malé shall have exclusive jurisdiction over matters arising out of or relating to this Agreement.

**37.2 Waiver of immunity**

Each Party unconditionally and irrevocably:

- (a) agrees that the execution, delivery and performance by it of this Agreement constitute commercial acts done and performed for commercial purpose;
- (b) agrees that, should any proceedings be brought against it or its assets, property or revenues in any jurisdiction in relation to this Agreement or any transaction contemplated by this Agreement, no immunity (whether by reason of sovereignty or otherwise) from such proceedings shall be claimed by or on behalf of the Party with respect to its assets;
- (c) waives any right of immunity which it or its assets, property or revenues now has, may acquire in the future or which may be attributed to it in any jurisdiction; and
- (d) consents generally in respect of the enforcement of any judgement or award against it in any such proceedings to the giving of any relief or the issue of any process in any jurisdiction in connection with such proceedings (including the making, enforcement or execution against it or in respect of any assets, property or revenues whatsoever irrespective of their use or intended use of any order or judgement that may be made or given in connection therewith).

**37.3 Depreciation**

- 37.3.1 For the purposes of depreciation under the Applicable Laws, the property representing the capital investment made by the Concessionaire in the Project shall be deemed to be acquired and owned by the Concessionaire. For the avoidance of doubt, the Authority shall not in any manner be liable in respect of any claims for depreciation to be made by the Concessionaire under the Applicable Laws.

**37.4 Waiver**

- 37.4.1 Waiver, including partial or conditional waiver, by either Party of any default by the other Party in the observance and performance of any provision of or obligations under this Agreement:
- (a) shall not operate or be construed as a waiver of any other or subsequent default hereof or of other provisions of or obligations under this Agreement;
  - (b) shall not be effective unless it is in writing and executed by a duly authorised representative of the Party; and
  - (c) shall not affect the validity or enforceability of this Agreement in any manner.
- 37.4.2 Neither the failure by either Party to insist on any occasion upon the performance of the terms, conditions and provisions of this Agreement or any obligation thereunder nor time or other indulgence granted by a Party to the other Party shall be treated or deemed

as waiver of such breach or acceptance of any variation or the relinquishment of any such right hereunder.

### **37.5 Liability for review of Documents and Drawings**

Except to the extent expressly provided in this Agreement:

- (a) no review, comment or approval by the Authority or the Independent Engineer of any Project Agreement, Document or Drawing submitted by the Concessionaire nor any observation or inspection of the construction, operation or maintenance of the Project nor the failure to review, approve, comment, observe or inspect hereunder shall relieve or absolve the Concessionaire from its obligations, duties and liabilities under this Agreement, the Applicable Laws and Applicable Permits; and
- (b) the Authority shall not be liable to the Concessionaire by reason of any review, comment, approval, observation or inspection referred to in Sub-clause (a) above.

### **37.6 Exclusion of implied warranties etc.**

This Agreement expressly excludes any warranty, condition or other undertaking implied at law or by custom or otherwise arising out of any other agreement between the Parties or any representation by either Party not contained in a binding legal agreement executed by both Parties.

### **37.7 Survival**

37.7.1 Termination shall:

- (a) not relieve the Concessionaire or the Authority, as the case may be, of any obligations hereunder which expressly or by implication survive Termination hereof; and
- (b) except as otherwise provided in any provision of this Agreement expressly limiting the liability of either Party, not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of, or caused by, acts or omissions of such Party prior to the effectiveness of such Termination or arising out of such Termination.

37.7.2 All obligations surviving Termination shall only survive for a period of 1 (one) year or such period prescribed by Applicable Law, whichever is longer, following the date of such Termination.

### **37.8 Entire Agreement**

This Agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the Parties on the subject hereof, and no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the Parties and duly executed by persons especially empowered in this behalf by the respective Parties. All prior written or oral understanding or offers or other communications of every kind pertaining to this Agreement are abrogated and withdrawn. For the avoidance of doubt, the Parties hereto agree that any obligations of the Concessionaire arising from the Request for Proposals, shall be deemed to form part of this Agreement and treated as such.

### **37.9 Severability**

If for any reason whatever, any provision of this Agreement is or becomes invalid, illegal or unenforceable or is declared by any court of competent jurisdiction or any other instrumentality to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be affected in any manner, and the Parties will negotiate in good faith with a view to agreeing to one or more provisions which may be substituted for such invalid, unenforceable or illegal provisions, as nearly as is practicable to such invalid, illegal or unenforceable provision. Failure to agree upon any such provisions shall not be subject to the Dispute Resolution Procedure set forth under this Agreement or otherwise and the validity, legality or enforceability of the remaining provisions of this agreement shall not be affected in any manner.

### **37.10 No partnership**

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligation or liability upon either Party, and neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

### **37.11 Third parties**

This Agreement is intended solely for the benefit of the Parties, and their respective successors and permitted assigns, and nothing in this Agreement shall be construed to create any duty to, standard of care with reference to, or any liability to, any person not a Party to this Agreement.

### **37.12 Successors and assigns**

This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

### **37.13 Notices**

Any notice or other communication to be given by any Party to the other Party under or in connection with the matters contemplated by this Agreement shall be in writing and shall:

- (a) in the case of the Concessionaire, be given by facsimile, electronic mail and by letter delivered by hand to the address given and marked for attention of the person set out below or to such other person as the Concessionaire may from time to time designate by notice to the Authority; provided that notices or other communications to be given to an address outside Malé may, if they are subsequently confirmed by sending a copy thereof by registered acknowledgement due, air mail or by courier, be sent by facsimile to the number as the Concessionaire may from time to time designate by notice to the Authority;
- (b) in the case of the Authority, be given by facsimile and by letter delivered by hand and be addressed to the Project Director of the Authority with a copy delivered to the Authority Representative or such other person as the Authority may from time to time designate by notice to the Concessionaire; provided that if the Concessionaire does not have an office in Malé it may send such notice by facsimile or e-mail and by registered acknowledgement due, air mail or by courier; and
- (c) any notice or communication by a Party to the other Party, given in accordance herewith, shall be deemed to have been delivered when in the normal course of post it ought to have been delivered and in all other cases, it shall be deemed to have

been delivered on the actual date and time of delivery; provided that in the case of facsimile, it shall be deemed to have been delivered on the working day following the date of its delivery.

**37.14 Language**

All notices required to be given by one Party to the other Party and all other communications, Documentation and proceedings which are in any way relevant to this Agreement shall be in writing and in English language.

**37.15 Counterparts**

This Agreement may be executed in two counterparts, each of which, when executed and delivered, shall constitute an original of this Agreement.

**ARTICLE 38**  
**DEFINITIONS**

**38.1 Definitions**

In this Agreement, the following words and expressions shall, unless repugnant to the context or meaning thereof, have the meaning hereinafter respectively assigned to them:

**“Accounting Year”** means the financial year commencing from the first day of January of any calendar year and ending on the thirty-first day of December of the same calendar year;

**“Adjusted Equity”** means the Equity adjusted on the first day of the current month (the **“Reference Date”**), in the manner set forth below, to reflect the change in its value on account of depreciation and variations in Consumer Price Index (CPI) published by National Bureau of Statistics (under Ministry of National Planning and Infrastructure), and for any Reference Date occurring:

- (a) on or before COD, the Adjusted Equity shall be a sum equal to the Equity funded and expended on the Project, revised to the extent of one half of the variation in CPI occurring between the first day of the month of Appointed Date and the Reference Date;
- (b) from COD and until the 4th (fourth) anniversary thereof, an amount equal to the Adjusted Equity as on COD shall be deemed to be the base (the **“Base Adjusted Equity”**) and the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, revised at the commencement of each month following COD to the extent of variation in CPI occurring between COD and the Reference Date;
- (c) after the 4th (fourth) anniversary of COD, the Adjusted Equity hereunder shall be a sum equal to the Base Adjusted Equity, reduced by 0.31% (zero point three one per cent) thereof at the commencement of each month following the 4th (fourth) anniversary of COD and the amount so arrived at shall be revised to the extent of variation in CPI occurring between COD and the Reference Date;

For the avoidance of doubt, the Adjusted Equity shall, in the event of Termination, be computed as on the Reference Date immediately preceding the Transfer Date; provided that no reduction in the Adjusted Equity shall be made for a period equal to the duration, if any, for which the Concession Period is extended, but the revision on account of CPI shall continue to be made;

**“Affected Party”** shall have the meaning set forth in Clause 26.1;

**“Agreement”** or **“Concession Agreement”** means this Agreement, its Recitals, the Schedules hereto and any amendments thereto made in accordance with the provisions contained in this Agreement;

**“Ancillary Facilities”** shall mean all such facilities and utilities which have been provided by Authority at the site and which are detailed in Table 1 of Schedule-A, for the use of the Concessionaire and which shall be maintained by the Concessionaire at its own cost during the entire Concession Period, duly ensuring routine and regular maintenance.

**“Anti-Corruption Guidelines”** mean the **“Guidelines on Preventing and Combating Fraud and Corruption in Projects Financed by IBRD Loans and IDA Credits and Grants”** dated October 15, 2006 and Revised in January 2011 and as of July 1, 2016.

**“Appendix”** shall have the meaning set forth in Clause 10.3.1;

**“Applicable Laws”** means all laws, brought into force and effect by the Government of Maldives including rules, regulations and notifications made thereunder, and judgements, decrees, injunctions, writs and orders of any court of record, applicable to this Agreement and the exercise, performance and discharge of the respective rights and obligations of the Parties hereunder, as may be in force and effect during the subsistence of this Agreement;

**“Applicable Permits”** means all clearances, licences, permits, authorisations, no objection certificates, consents, approvals and exemptions required to be obtained or maintained under Applicable Laws in connection with the construction, operation and maintenance of the Project during the subsistence of this Agreement;

**“Appointed Date”** means the date on which Financial Closure is achieved or an earlier date that the Parties may by mutual consent determine and shall be deemed to be the date of commencement of the Concession Period. For the avoidance of doubt, every Condition Precedent shall have been satisfied or waived prior to the Appointed Date and in the event all Conditions Precedent are not satisfied or waived, as the case may be, the Appointed Date shall be deemed to occur as defined in clause 4.1.6;

**“Authority Default”** shall have the meaning set forth in Clause 29.2.1;

**“Authority Representative”** means such person or persons as may be authorised in writing by the Authority to act on its behalf under this Agreement and shall include any person or persons having authority to exercise any rights or perform and fulfil any obligations of the Authority under this Agreement;

**“Bait Species”** means bait-sized fry of Milkfish (*Chanos chanos*) or any other species suitable as a bait for pole-and-line tuna fishery, grown to 5-10 centimeters in length.

**“Bank”** means a bank incorporated in Maldives acceptable to Senior Lenders, but does not include a bank in which any Senior Lender has an interest;

**“Bank Rate”** means the rate of interest specified by the Maldives Monetary Authority (i.e. the interest rate at which it lends money to domestic banks);

**“COD”** or **“Commercial Operation Date”** shall have the meaning set forth in Clause 15.1;

**“Company”** means the company acting as the Concessionaire under this Agreement;

**“Completion Certificate”** shall have the meaning set forth in Clause 14.2;

**“Concession”** shall have the meaning set forth in Clause 3.1.1;

**“Concessionaire”** shall have the meaning attributed thereto in the array of Parties hereinabove as set forth in the Recitals;

**“Concession Fee”** shall have the meaning set forth in Clause 23.1;

**“Concession Period”** means the period starting on and from the Appointed Date and ending on the Transfer Date;

**“Concessionaire Default”** shall have the meaning set forth in Clause 29.1.1;

**“Conditions Precedent”** shall have the meaning set forth in Clause 4.1.1;

**“Construction Period”** means the period beginning from the Appointed Date and ending on the COD;

**“Construction Works”** means all works, things, installations, and performance of actions necessary to undertake the Works in accordance with this Agreement so as to achieve minimum production capacity of the Multispecies Hatchery at the level specified in Para 3 of Schedule-F;

**“Contractor”** means the person or persons, as the case may be, with whom the Concessionaire has entered into any of the EPC Contract, the O&M Contract, or any other material agreement or contract for construction, operation and/or maintenance of the Project or matters incidental thereto, but does not include a person who has entered into an agreement for providing financial assistance to the Concessionaire;

**“Cure Period”** means the period specified in this Agreement for curing any breach or default of any provision of this Agreement by the Party responsible for such breach or default and shall:

- (a) commence from the date on which a notice is delivered by one Party to the other Party asking the latter to cure the breach or default specified in such notice;
- (b) not relieve any Party from liability to pay Damages or compensation under the provisions of this Agreement; and
- (c) not in any way be extended by any period of Suspension under this Agreement; provided that if the cure of any breach by the Concessionaire requires any reasonable action by the Concessionaire that must be approved by the Authority or the Independent Engineer hereunder, the applicable Cure Period shall be extended by the period taken by the Authority or the Independent Engineer to accord their approval;

**“DBFOT”** or **“Design, Build, Finance, Operate, Maintain and Transfer”** shall have the meaning set forth in Recital (B);

**“Damages”** shall have the meaning set forth in Sub-clause (v) of Clause 1.2.1;

**“Debt Due”** means the aggregate of the following sums outstanding on the Transfer Date:

- (a) the principal amount of the debt provided by the Senior Lenders under the Financing Agreements for financing the Total Project Cost (the “principal”) but excluding any part of the principal that had fallen due for repayment two years prior to the Transfer Date;
- (b) all accrued interest, financing fees and charges payable under the Financing Agreements on, or in respect of, the debt referred to in Sub-clause (a) above until the Transfer Date but excluding (i) any interest, fees or charges that had fallen due one year prior to the Transfer Date, (ii) any penal interest or charges payable under the Financing Agreements to any Senior Lender, and (iii) any pre-payment charges in relation to accelerated repayment of debt except where such charges have arisen due to Authority Default; and
- (c) any Subordinated Debt which is included in the Financial Package and disbursed by lenders for financing the Total Project Cost;

provided that if all or any part of the Debt Due is convertible into Equity at the option of Senior Lenders and/or the Concessionaire, it shall for the purposes of this Agreement be deemed to be Debt Due even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

**“Debt Service”** means the sum of all payments on account of principal, interest, financing fees and charges due and payable in an Accounting Year to the Senior Lenders under the Financing Agreements;

**“Development Period”** means the period from the date of this Agreement until the Appointed Date;

**“Dispute”** shall have the meaning set forth in Clause 35.1.1;

**“Dispute Resolution Procedure”** means the procedure for resolution of Disputes set forth in Article 35;

**“Divestment Requirements”** means the obligations of the Concessionaire for and in respect of Termination as set forth in Clause 30.1;

**“Document”** or **“Documentation”** means documentation in printed or written form, or in tapes, discs, drawings, computer programmes, writings, reports, photographs, films, cassettes, or expressed in any other written, electronic, audio or visual form;

**“Drawings”** means all of the drawings, calculations and documents pertaining to the Project, and include ‘as built’ drawings of the Project;

**“EPC Contract”** means the engineering, procurement and construction contract or contracts entered into by the Concessionaire with one or more Contractors for, inter alia, engineering and construction of the Project in accordance with the provisions of this Agreement;

**“EPC Contractor”** means the person with whom the Concessionaire has entered into an EPC Contract;

**“Encumbrances”** means, in relation to the Project, any encumbrances such as mortgage, charge, pledge, lien, hypothecation, security interest, assignment, privilege or priority of any kind having the effect of security or other such obligations, and shall include any designation of loss payees or beneficiaries or any similar arrangement under any insurance policy pertaining to the Project, where applicable herein but excluding utilities referred to in Clause 11.1;

**“Equity”** means the sum representing the paid up equity share capital of the Concessionaire for meeting the equity component of the Total Project Cost, and shall for the purposes of this Agreement include convertible instruments or other similar forms of capital, which shall compulsorily convert into equity share capital of the Company, and any interest-free funds advanced by any shareholder of the Company for meeting such equity component;

**“Expansion Plan”** means documentation provided to the Authority by the Concessionaire when it plans expansion of capacity of the Multi-species Hatchery, from time to time during the Operation Period that includes at the minimum the following: (a) substantive evidences and logic justifying the need expansion, (b) an outline business plan to use the expanded production capacity, (c) reasonable details of works and services contemplated to achieve the desired production level(s), and (d) all drawings, specifications and schedules of construction and installation and cost estimates as may be relevant.

**“Financial Closure”** means the fulfilment of all Conditions Precedent to the initial availability of funds under the Financing Agreements;

**“Financial Model”** means the financial model adopted by Senior Lenders, setting forth the capital and operating costs of the Project and revenues therefrom on the basis of which financial viability of the Project has been determined by the Senior Lenders, and includes a description of the assumptions and parameters used for making calculations and projections therein;

**“Financial Package”** means the financing package indicating the total capital cost of Project and the means of financing thereof, as set forth in the Financial Model and approved by the Senior Lenders, and includes Equity, all financial assistance specified in the Financing Agreements, and Subordinated Debt;

**“Financing Agreements”** means the agreements executed by the Concessionaire in respect of financial assistance to be provided by the Senior Lenders by way of loans, guarantees, subscription to non-convertible debentures and other debt instruments including loan

agreements, guarantees, notes, debentures, bonds and other debt instruments, security agreements, and other documents relating to the financing (including refinancing) of the Total Project Cost, and includes amendments or modifications made in accordance with Clause 5.2.2;

**“Force Majeure”** or **“Force Majeure Event”** shall have the meaning ascribed to it in Clause 26.1;

**“Good Industry Practice”** means the practices, methods, techniques, designs, standards, skills, diligence, efficiency, reliability and prudence which are generally and reasonably expected from a reasonably skilled and experienced operator engaged in the same type of undertaking as envisaged under this Agreement and which would be expected to result in the performance of its obligations by the Concessionaire in accordance with this Agreement, Applicable Laws and Applicable Permits in reliable, safe, economical and efficient manner;

**“Government Instrumentality”** means any department, division or sub-division of the Government of Maldives and includes any commission, board, authority, agency or municipal and other local authority or statutory body under the control of the Government and having jurisdiction over any part of the performance of the services or obligations of the Concessionaire under or pursuant to this Agreement;

**“Grant”** shall have the meaning set forth in Clause 22.1.1;

**“Indemnified Party”** means the Party entitled to the benefit of an indemnity pursuant to Article 33;

**“Indemnifying Party”** means the Party obligated to indemnify the other Party pursuant to Article 33;

**“Independent Engineer”** shall have the meaning set forth in Clause 20.1;

**“Insurance Cover”** means the aggregate of the maximum sums insured under the insurances taken out by the Concessionaire pursuant to Article 24, and includes all insurances required to be taken out by the Concessionaire under Clause 24.1 but not actually taken, and when used in the context of any act or event, it shall mean the aggregate of the maximum sums insured and payable or deemed to be insured and payable in relation to such act or event;

**“Intellectual Property”** means all patents, trademarks, service marks, logos, get-up, trade names, internet domain names, rights in designs, blue prints, programmes and manuals, drawings, copyright (including rights in computer software), database rights, semiconductor, topography rights, utility models, rights in know-how and other intellectual property rights, in each case whether registered or unregistered and including applications for registration, and all rights or forms of protection having equivalent or similar effect anywhere in the world;

**“Joint Venture”** shall have the meaning set forth in Recital (D);

**“Joint Venture Member”** means a company specified in Recital (D) as a member of the Joint Venture;

**“LOA”** or **“Letter of Award”** means the letter of award referred to in Recital (D);

**“Lead Member”** shall have the meaning set forth in Recital (D);

**“Lenders’ Representative”** means the person duly authorised by the Senior Lender to act for and on behalf of the Senior Lenders with regard to matters arising out of or in relation to this Agreement, and includes his successors, assigns and substitutes;

**“Maintenance Manual”** shall have the meaning ascribed to it in Clause 17.2;

**“Maintenance Program”** shall have the meaning ascribed to it in Clause 17.3;

**“Material Adverse Effect”** means a material adverse effect of any act or event on the ability of either Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to either Party;

**“Material Default”** means a default on the part of either Party in complying with its obligations stipulated in the Concession Agreement, which causes Material Adverse Effect on the ability of the other Party to perform any of its obligations under and in accordance with the provisions of this Agreement and which act or event causes a material financial burden or loss to the other Party.

**“Nominated Company”** means a company selected by the Lenders’ Representative and proposed to the Authority for substituting the Concessionaire in accordance with the provisions of the Substitution Agreement;

**“Nominated Sub-Contractor”** or **“Nominated Sub-consultant”** means a person or entity nominated by the Concessionaire in the Technical Part of the Proposal submitted in response to the RFP, for carrying out an activity under the Concession Agreement and whose experience and qualifications can be/have been claimed by the Concessionaire in its Proposal for meeting the Qualification Criteria specified in Annexure A - Part H of the Proposal Document;

**“Non-Political Event”** shall have the meaning set forth in Clause 26.2;

**“O&M”** means the operation and maintenance of the Project and includes all matters connected with or incidental to such operation and maintenance, provision of services and facilities, and collection of Fee in accordance with the provisions of this Agreement;

**“O&M Contract”** means the operation and maintenance contract that may be entered into between the Concessionaire and the O&M Contractor for performance of all or any of the O&M obligations;

**“O&M Contractor”** means the person, if any, with whom the Concessionaire has entered into an O&M Contract for discharging O&M obligations for and on behalf of the Concessionaire;

**“O&M Expenses”** means expenses incurred by or on behalf of the Concessionaire or by the Authority, as the case may be, for all O&M including (a) cost of salaries and other compensation to employees, (b) cost of materials, supplies, utilities and other services, (c) premia for insurance, (d) all taxes, duties, cess and fees due and payable for O&M, (e) all repair, replacement, reconstruction, reinstatement, improvement and maintenance costs, (f) payments required to be made under the O&M Contract, or any other contract in connection with or incidental to O&M, and (g) all other expenditure required to be incurred under Applicable Laws, Applicable Permits or this Agreement;

**“O&M Inspection Report”** shall have the meaning set forth in Clause 19.2;

**“Operation Manual”** shall have the meaning ascribed to it in Clause 17.2;

**“Operation Period”** means the period commencing from COD and ending on the Transfer Date;

**“Panel of Chartered Accountants”** shall have the meaning set forth in Clause 25.2.1;

**“Parties”** means the parties to this Agreement collectively and **“Party”** shall mean any of the parties to this Agreement individually;

**“Performance Security”** shall have the meaning set forth in Clause 9.1;

{**“Premium”** shall have the meaning set forth in Clause 22.3;}

**“Preservation Costs”** means the costs incurred by the Concessionaire for maintaining and protecting the Construction Works or part thereof during the period of suspension of Construction Works, as provided in Clause 13.5.3;

**“Project”** means the construction, operation and maintenance of the Project in accordance with the provisions of this Agreement, and includes all works, services and equipment relating to or in respect of the Scope of the Project;

**“Project Agreements”** means this Agreement, the Financing Agreements, EPC Contract, O&M Contract, and/or any other material agreements or contracts that may be entered into by the Concessionaire with any person in connection with matters relating to, arising out of or incidental to the Project, Substitution Agreement;

**“Project Assets”** means all physical and other assets relating to and forming part of the Site including (a) rights over the Site in the form of licence, Access to the Site; (b) tangible assets such as civil works and equipment; (c) Project Facilities situated on the Site; (d) all rights of the Concessionaire under the Project Agreements; (e) financial assets, such as receivables, security deposits etc.; (f) insurance proceeds; and (g) Applicable Permits and authorisations relating to or in respect of the Project;

**“Project Completion Date”** means the date on which the Completion Certificate, is issued under the provisions of Article 14;

**“Project Completion Schedule”** means the progressive Project Milestones set forth in Schedule-B for completion of the Project on or before the Commercial Operations Date;

**“Project Facilities”** means all the amenities and facilities situated on the Site, as described in Schedule-C;

**“Project Milestones”** means the project milestones set forth in Schedule-B;

**“Proposal”** means the documents in their entirety comprised in the proposal submitted by the {selected Proposer/Consortium} in response to the Request for Proposals in accordance with the provisions thereof;

**“Proposal Security”** means the security provided by the Concessionaire to the Authority along with the Proposal in a sum of MVR 385,000 or US\$ 25,000 in accordance with the Request for Proposals, and which is to remain in force until substituted by the Performance Security;

**“Reference Exchange Rate”** means, in respect of any one currency that is to be converted into another currency in accordance with the provisions of this Agreement, the exchange rate as of 12.00 (twelve) noon on the relevant date quoted by Maldives Monetary Authority;

**“Request for Proposals”** or **“RFP”** shall have the meaning set forth in Recital (B);

**“Safety Requirements”** shall have the meaning set forth in Clause 18.1.1;

**“Scheduled Project Completion Date”** means the 365<sup>th</sup> day from the Appointed Date on which the construction of the Project Facilities, i.e. Multi-species Hatchery and Allied Facilities shall be completed by the Concessionaire, in accordance with the Standards and Specifications.

**“Scope of the Project”** shall have the meaning set forth in Clause 2.1;

**“Senior Lenders”** means the financial institutions, banks, multilateral lending agencies, trusts, funds and agents or trustees of debenture holders, including their successors and

assignees, who have agreed to guarantee or provide finance to the Concessionaire under any of the Financing Agreements for meeting all or any part of the Total Project Cost and who hold pari passu charge on the assets, rights, title and interests of the Concessionaire;

“**Site**” shall have the meaning set forth in Clause 10.1;

“**Specifications and Standards**” means the specifications and standards relating to the quality, quantity, capacity and other requirements for the Project, as set forth in Schedule-D, and any modifications thereof, or additions thereto, as included in the design and engineering for the Project submitted by the Concessionaire to, and expressly approved by, the Authority;

“**Statutory Auditors**” means a reputable firm of chartered accountants acting as the statutory auditors of the Concessionaire under the provisions of the Companies Act of the Republic of Maldives, 1996 including any statutory modification or re-enactment thereof, for the time being in force, and appointed in accordance with Clause 25.2.1;

“**Sub-contractor**” means any person or entity not named in the Concessionaire’s Proposal submitted in response to the RFP but who may be engaged by the Concessionaire for executing a specified work or service under the scope of the Project;

“**Subordinated Debt**” means the aggregate of the following sums expressed in the currency of debt, outstanding as on the Transfer Date:

- (a) the principal amount of debt provided by lenders or the Concessionaire’s shareholders for meeting the Total Project Cost and subordinated to the financial assistance provided by the Senior Lenders; and
- (b) all accrued interest on the debt referred to in Sub-clause (a) above but restricted to the lesser of actual interest rate and a rate equal to 5% (five per cent) above the Bank Rate in case of loans expressed in MVR and lesser of the actual interest rate and six-month LIBOR (London Inter Bank Offer Rate) plus 2% (two per cent) in case of loans expressed in foreign currency, but does not include any interest that had fallen due one year prior to the Transfer Date;

provided that if all or any part of the Subordinated Debt is convertible into Equity at the option of the lenders and/or the Concessionaire’s shareholders, it shall for the purposes of this Agreement be deemed to be Subordinated Debt even after such conversion and the principal thereof shall be dealt with as if such conversion had not been undertaken;

“**Substitution Agreement**” shall have the meaning set forth in Clause 32.3;

“**Taxes**” means any taxes payable in Maldives on the goods, materials, equipment and services incorporated in and forming part of the Project charged, levied or imposed by any Government Instrumentality, but excluding any interest, penalties and other sums in relation thereto imposed on any account whatsoever. For the avoidance of doubt, Taxes shall not include taxes on corporate income;

“**Termination**” means the expiry or termination of this Agreement and the Concession hereunder;

“**Termination Notice**” means the communication issued in accordance with this Agreement by one Party to the other Party terminating this Agreement;

“**Termination Payment**” means the amount payable by the Authority to the Concessionaire upon Termination and may consist of payments on account of and restricted to the Debt Due and Adjusted Equity, as the case may be, which form part of the Total Project Cost in accordance with the provisions of this Agreement; provided that the amount payable in respect of any Debt Due expressed in foreign currency shall be

computed at the Reference Exchange Rate for conversion into the relevant foreign currency as on the date of Termination Payment. For the avoidance of doubt, it is agreed that within a period of 60 (sixty) days from COD, the Concessionaire shall notify to the Authority, the Total Project Cost as on COD and its disaggregation between Debt Due and Equity, and only the amounts so conveyed shall form the basis of computing Termination Payment, and it is further agreed that in the event such disaggregation is not notified to the Authority, Equity shall be deemed to be the amount arrived at by subtracting Debt Due from Total Project Cost;

“**Tests**” means the tests required to be conducted to determine compliance with the Specifications and Standards.

“**Total Project Cost**” means the lowest of:

- (a) the capital cost of the Project, {less Equity Support} as set forth in the Financial Package;
- (b) the actual capital cost of the Project upon completion of the Project {less Equity Support}; and
- (c) a sum of USD 2.5 Million, less Equity Support;

provided that in the event of Termination, the Total Project Cost shall be deemed to be modified to the extent of variation in Consumer Price Index (CPI) published by National Bureau of Statistics (under Ministry of National Planning and Infrastructure) or Reference Exchange Rate occurring in respect of Adjusted Equity and Debt Due, as the case may be, in accordance with the provisions of this Agreement; provided further that in the event CPI increases, on an average, by more than 6% (six per cent) per annum for the period between the date hereof and COD, the Parties shall meet, as soon as reasonably practicable, and agree upon revision of the amount hereinbefore specified such that the effect of increase in CPI, in excess of such 6% (six per cent), is reflected in the Total Project Cost;

“**Transfer Date**” means the date on which this Agreement and the Concession hereunder expires pursuant to the provisions of this Agreement or is terminated by a Termination Notice;

“**Vesting Certificate**” shall have the meaning set forth in Clause 30.4.

**IN WITNESS WHEREOF THE PARTIES HAVE EXECUTED AND DELIVERED THIS AGREEMENT AS OF THE DAY, MONTH AND YEAR FIRST ABOVE WRITTEN.**

SIGNED, SEALED AND  
DELIVERED

For and on behalf of

THE AUTHORITY by:

(Signature)

(Name)

(Designation)

THE COMMON SEAL OF  
CONCESSIONAIRE has been affixed  
pursuant to the resolution passed by the  
Board of Directors of the Concessionaire  
at its meeting held on the ..... day of  
20..... hereunto affixed in the presence of  
....., Director, who has  
signed these presents in token thereof and  
....., company Secretary /  
Authorised Officer who has countersigned  
the same in token thereof \$:

In the presence of:

1.

\_\_\_\_\_

\$ To be affixed in accordance with the articles of association of the Concessionaire.