

# **Marginal da Corimba Project**

## **CONSORTIUM AGREEMENT**

Between

Urbinveste - Promoção e Projectos Imobiliários, S.A. and

Van Oord Dredging and Marine Contractors BV



This **EXTERNAL CONSORTIUM AGREEMENT** is made and entered into this ..... day of April 2016,

**BETWEEN**

**Urbinveste - Promoção e Projectos Imobiliários, S.A.** a company duly incorporated under the laws of Angola and having its address at Condomínio Alpha, Edifício 1, Piso 1, Talatona, Luanda, Angola, registered with the Commercial Registry Office of Luanda under number 242/2007, tax entity number 5403099328, with the share capital of AKZ 1,600,000 (hereinafter referred to as "Urbinveste") of the one part,

**AND**

**Van Oord Dredging and Marine Contractors B.V.**, a private limited liability company duly incorporated under the laws of the Netherlands and having its address at Schaarwijk 211, Rotterdam, corporate entity number 001194082 registered under number 24193233 with the Netherlands Chamber of Commerce Commercial Register and with the share capital of EUR 10,000,000 (hereinafter referred to as "Van Oord") of the other part.

Hereinafter collectively referred to as "Parties" and individually as "Party" as the case may be.

**WHEREAS:**

- A. The Parties have submitted a bid (hereinafter referred to as the "Bid") to the Gabinete de Gestão do Polo de Desenvolvimento do Futuro de Belas e Mussulo (hereinafter referred to as the "Employer") in respect of certain works and services to be provided by the Consortium in respect of the Marginal da Corimba Project, substantially on the terms set out in the draft contract annexed as Annex 1 ("Contract").
- B. The Parties have agreed to form an external consortium (hereinafter referred to as the "Consortium") for the purpose of executing the awarded Contract as hereinafter provided.
- C. Van Oord is in the process of establishing a local Angolan subsidiary owned by the Van Oord group of companies ("Van Oord Angola"), which shall, once incorporated, accede to the Consortium Agreement and the Contract.
- D. Once incorporated and licensed, Van Oord Angola will perform part of Van Oord's Portion and for such effect it will become a party to this Consortium Agreement jointly and severally with Van Oord. Van Oord and Van Oord Angola shall be considered, for all purposes, as one party (namely for voting purposes within the context of this Consortium Agreement).
- E. The Parties wish to set forth by this Consortium Agreement their respective rights and obligations towards each other, the Employer and Third Parties in connection with the Bid presented, the Contract and the Project to be developed.

**NOW THEREFORE IT IS HEREBY AGREED AS FOLLOWS:**



## Article 1. DEFINITIONS

1.1. In this Consortium Agreement, the following terms shall have the following meanings:

- 1.1.1. "Applicable Taxes" means the taxes and duties levied by the Republic of Angola on the Consortium and/or its constituent entities and shall have the same meaning in the Consortium Agreement as provided in the Contract.
- 1.1.2. "Affiliate" means any company which is controlled by the ultimate parent company of a Party or any company which is controlled by a Party (through the ownership of the majority of the share capital or otherwise as foreseen in Angolan Companies Law, regardless of the registered address of each of such companies).
- 1.1.3. "Anti-Corruption Undertaking" has the meaning given thereto in Schedule 4.
- 1.1.4. "Change" shall mean the order placed by the Employer or on its behalf for works and/or services additional to the Scope of Work or for cancellation of non-performed works and/or services or for any other modification of the Scope of Work which causes an impact on the Price and/or on the Time for Completion.
- 1.1.5. "Consortium" shall mean the association through an external consortium established by and between the Parties as evidenced by and defined in this Consortium Agreement.
- 1.1.6. "Consortium Agreement" shall mean this external consortium agreement, including any attachments and annexes thereto which shall form an integral part thereof.
- 1.1.7. "Contract" shall mean the contract finally entered into by and between the Consortium and the Employer, which shall be substantially in the same terms and conditions as those of the draft attached hereto as Annex 1 or as otherwise agreed between the Parties and the Employer.
- 1.1.8. "ECA" means the Dutch Export Credit Agency Atradius Dutch State Business N.V.
- 1.1.9. "ECA-Bank" means ING or ING and a pool of banks, as the case may be, providing financing for the Phases 1, 3 and 4 of the reclamation works for the Project and which financing is covered by a guarantee from the ECA, and will foresee direct disbursement to an account of Van Oord in the Netherlands of part of the payments to be made under the Contract ("ECA Financing").
- 1.1.10. "Force Majeure" shall have the same meaning in the Consortium Agreement as provided in the Contract.
- 1.1.11. "Governmental Authority" means any domestic, foreign or international government, governmental authority, court, arbitral tribunal, agency or other regulatory, administrative or judicial agency, commission or organization, and any subdivision, branch or department of any of the foregoing.
- 1.1.12. "Internal Change" shall mean a deviation from the basis of design, the project execution philosophy or the schedule within the Scope of Work that is not or will not result in a Change.
- 1.1.13. "Law" means any constitutional provision, law, statute, rule, regulation, ordinance, decree, administrative plans, treaty, convention, approvals, authorizations, registrations, privileges, consents, waivers, exceptions, variances, orders, judgments, written interpretations, court decrees, licenses, exemptions, publications, filings, notices to,



declarations of or with or similar requirement of such Governmental Authority along with any interpretation thereof having the force of law by any Governmental Authority, including any amendments, supplements, replacements or other modifications thereto.

- 1.1.14. "Leader" shall mean Urbinveste.
  - 1.1.15. "Portion" shall mean the each Party's individual share of the Scope of Work as listed in detail in the Contract and summarily referred to in Annex 2 hereto, as may be amended from time to time by Change, Internal Change or agreement between the Parties.
  - 1.1.16. "Project" shall mean dredging and land reclamation works along the Luanda coastline for development of the Marginal da Corimba, including shore protection (waterfront structures) but excluding the construction of structures such as buildings, roads, concrete valas and quay walls.
  - 1.1.17. "Project Director" has the meaning given thereto in Article 9.3 and as described in more detail in annex 3.1.
  - 1.1.18. "Project Manager" has the meaning given to it in Article 9.1 and as described in more detail in annex 3.2.
  - 1.1.19. "Project Schedule" shall mean the schedule for the joint execution of the Works, as approved by the Employer.
  - 1.1.20. "Proportionate Share" shall mean, for each Party, the percentage or fraction represented by the ratio of the prices of that Party's Portion to the sum of the prices of both Parties' Portions under the Contract.
  - 1.1.21. "Scope of Work" means the whole of the works to be executed by the members of the Consortium pursuant to the Contract.
  - 1.1.22. "Social and Environmental Undertaking" has the meaning given thereto in Schedule 4.
  - 1.1.23. "Steering Committee" shall mean the committee organised according to Article 9 below.
  - 1.1.24. "Third Party" shall mean an individual, partnership, corporation, association or other entity (including any governmental authority or department, agency or subdivision thereof) other than the Employer, Van Oord Group and Urbinveste Group.
  - 1.1.25. "Van Oord Group" shall mean Van Oord, its subcontractors of any tier in respect of the scope of the Contract, its and their Affiliates and its and their respective officers and employees (including agency personnel).
  - 1.1.26. "Urbinveste Group" shall mean Urbinveste, its subcontractors of any tier in respect of the scope of the Contract, its and their Affiliates and its and their respective officers and employees (including agency personnel).
- 1.2. In this Consortium Agreement unless there is something in the context or subject matter inconsistent therewith:
- 1.2.1. Words importing the masculine gender only shall include the feminine gender and the neuter and vice versa.
  - 1.2.2. Words importing the singular number only shall include the plural number and vice versa.

1.2.3. Words importing persons shall include natural persons, firms, companies, bodies corporate and any entity or group of persons capable of recognition as a legal entity.

- 1.3. Reference to Articles and Annexures are to Articles and Annexures of this Consortium Agreement.
- 1.4. The several documents forming this Consortium Agreement are to be taken as mutually explanatory of one another but in the event of ambiguities or discrepancies the terms of the Articles shall prevail over the Annexures.
- 1.5. Article headings and table of contents are inserted for convenience of reference only and shall be ignored in interpretation of this Consortium Agreement.

## Article 2. **OBJECT AND COLLABORATION**

- 2.1 The object of this Consortium Agreement is to define the principles and main provisions ruling the co-operation between the Parties and, once the Contract has starts producing its effects, towards the Employer and Third Parties in relation to the Project, in particular to, execute its Portion of the Scope of Works in accordance with this Consortium Agreement and the Contract, including any Changes.
- 2.2 The Parties agree that the Bid is binding on them and has been prepared by each of them with the aim of being complete, accurate, adequate and coordinated for the purposes of the development of Project.
- 2.3 This Consortium Agreement shall supersede and prevail over all previous agreements either oral or in writing in respect of the association between the Parties. However, the Consortium Agreement shall not prevail over the Contract in what regards, solely, the relation between Van Oord and Urbinveste. In what refers to the Employer, the Contract shall prevail over this Consortium Agreement.
- 2.4 The Parties shall be jointly (but not jointly and severally) liable to the Employer for the execution and completion of each Party's Portion and remedying of any defects therein. The Parties confirm, for the avoidance of doubt, that it is their intention to enter into the Contract with the Employer on the basis that each Party is liable to the Employer for its own Portion only.
- 2.5 Nothing in this Agreement shall be construed as a limitation of the powers or rights of any Party to carry on its separate business for its sole benefit, except however that the Parties hereto shall co-operate with each other according to the terms and conditions hereof in the performance of the Scope of Works.
- 2.6 The relationship of the Parties shall be that of a non-integrated unincorporated association with no joint and several liability to the Employer or any third party. Each Party expressly agrees that it is not their intention through the Consortium to carry on business in common with the other Party and that it intends to utilise the Consortium solely for the better coordination of their relationships towards the Employer and the division of the Scope of Work and gross income arising under the Contract. Nothing in this Consortium Agreement shall be deemed to give rise to a partnership between the Parties, any joint and several liability or to any contract for services between the Parties and each Party undertakes to use all reasonable endeavours not to do anything which would cause such a relationship to arise.
- 2.7 Each Party shall respect the individual interests of the other Party.

- 2.8 The Parties shall act in the utmost good faith towards each other so as to achieve the best possible financial result in the best interests of both Parties.
- 2.9 The Parties herein agree that Van Oord Angola shall be admitted to the Consortium upon its incorporation, shall undertake part of the responsibilities and obligations assumed by Van Oord and shall be treated as one party together with Van Oord. Van Oord Angola shall also accede to the Contract simultaneously with acceding to this Consortium Agreement. No other additional parties shall be admitted to the Consortium without the prior written consent of both Parties.
- 2.10 If Van Oord Angola is not incorporated before the signing of the Contract, then Urbinveste shall provide reasonable endeavours to identify a suitable licensed local company to enable work on the Project to be commenced, after consultation with and subject to Van Oord's approval of such suitable licensed local company. Any costs arising from making available such licensed local company shall be borne by Van Oord, which shall be treated as a Van Oord sub-contractor.
- 2.11 Each Party shall enter into and shall comply with the Social and Environmental Undertaking and the Anti-Corruption Undertaking included in Annex 4. Each Party must notify the other Party as soon as reasonably practicable if it becomes aware of any material non-compliance with the Social and Environmental Undertaking and/or the Anti-Corruption Undertaking.

### Article 3. LEADERSHIP OF THE CONSORTIUM

- 3.1 To achieve the objectives of the Consortium Agreement and subject always to the overall authority of the Steering Committee, the Leader shall be responsible for all contacts with the Employer and the co-ordination of the Consortium's business, including the following matters:
- 3.1.1 co-ordination of the activities of the Consortium (including but not limited to decision making in overall project management), but expressly excluding any changes to the Contract, unless otherwise instructed by the Steering Committee;
  - 3.1.2 acting as chairman of the Steering Committee;
  - 3.1.3 execute the decisions of the Steering Committee;
  - 3.1.4 liaison with financing institutions (if any) regarding the financing for the Project;
  - 3.1.5 liaison with agents (if any) appointed by the Consortium;
  - 3.1.6 liaison with all Governmental Authorities in Angola;
  - 3.1.7 timely submission of the combined invoices to the Employer;



3.1.8 co-ordination of circulation of reports from the Project Director and Project Managers to the Steering Committee together with timely distribution of copies of any correspondence and/or minutes of meetings held within and on behalf of the Consortium members; and,

3.1.9 provision of secretarial services to the Steering Committee.

3.2 The Leader shall furthermore be responsible for the exchange of all correspondence with the Employer, and the other Party shall receive a copy of all such correspondence.

3.3 The Consortium shall have its principal office in Luanda, Angola at a place to be further determined by the Parties.

3.4 Any reasonable costs incurred in performing the role of Leader shall be deemed to be included in the price for that Party's Portion.

3.5 Copies of all correspondence between the Employer and its representatives and the Consortium in connection with the Project shall be forwarded, upon receipt, to the Parties.

#### Article 4. **EXCLUSIVITY**

4.1 The Parties have worked and shall work together on an exclusive basis to present the Bid and negotiate and execute the Contract.

4.2 Subject to the provisions of Article 4.4 below, none of the Parties including their Affiliates, will participate in or assist with any proposal, tender or bid, or shall directly or indirectly, alone or together with Third Parties, prepare, submit or participate in the preparation or submission of any pre-qualification documents, tender, offer or proposal for the Project, nor give rates, prices, estimates, offers or quotations in relation to the Project other than in accordance with this Consortium Agreement whilst this Consortium Agreement remains in force.

4.3 Subject to the provisions of Article 4.4 below, none of the Parties, including their Affiliates, shall enter into any similar relationship (to that of the consortium) with any person or firm other than the other Party to this Consortium Agreement, for any purpose in connection with the Project without prior written agreement of the other Party.

4.4 It is expressly agreed between the Parties that the obligation of exclusivity described herein is strictly limited to the Project, as developed through the Contract, and it is herein acknowledged by Van Oord that Urbinveste and its Affiliates will develop other activities in respect of the Marginal da Corimba project, and that the development of such activities shall not encompass a breach of this exclusivity obligation.

#### Article 5. **STRUCTURE OF THE CO-OPERATION**

5.1 Each Party has provided technical and commercial quotes for its Portion which were included in the Bid that was presented by the Consortium members to the Employer. The Parties shall perform with all reasonable skill, care and diligence, their respective functions as defined herein or allotted by the Steering Committee.

- 5.2 The preparation of the Bid and negotiations of the final version of the Contract have been undertaken jointly by the Parties. The Leader has co-ordinated the preparation of the Bid and its submission to the Employer. Both Parties have cooperated with the Leader and deliver all items required in due time during the Bid stage and further undertake to do so while the Contract is being performed.
- 5.3 Following signature of the Contract, each Party shall be responsible for tendering and executing its Portion as shown in the Contract and in Annex 2 attached hereto or as may be modified by mutual agreement.
- 5.4 Responsibility for a Portion means that the Party concerned shall:
- 5.4.1 have full control over the performance of its Portion;
  - 5.4.2 nominate the Project Manager for its Portion,
  - 5.4.3 have commercial responsibility for the pricing of its Portion and for performing such work as provided for in the Contract;
  - 5.4.4 enter into and administer sub-contracts pertaining to its Portion to the extent allowed by the Contract or otherwise approved by the Employer. Each Party shall remain fully responsible for its Portion. Each Party shall be solely responsible for the performance, work, obligations and liabilities of the subcontractors that are to carry out its Portion. The Parties shall provide notice to the other Party prior to execution of any subcontract, and shall comply with the requirements of the Contract in relation to all subcontracting activities; and
  - 5.4.5 bear all of the costs of any Internal Changes if made for the convenience of that Party or if the Internal Change is caused by any act of that Party.
- 5.5 Both Parties shall have the obligation to attend all meetings with the Employer. No agreement with the Employer shall take place without prior written agreement of both Parties.
- 5.6 Each Party shall schedule, plan, perform, execute and complete its respective Portion in accordance with the Contract and the contractual schedule to be agreed upon between the Parties and the Employer in a manner that allows all Parties to fulfil their obligations to the Employer under the Contract in a timely and cost effective manner. Each Party shall timely provide on request and to the best of its abilities, completely and correctly, all documents and information concerning its Portion which another party may require for the planning, production, performance or installation of its works under the Marginal da Corimba project. Each Party shall comply with all applicable Laws and good industry practice, having regard to all applicable codes of practice, to which such person engaged in the same type of undertaking with the same or similar circumstances and conditions would reasonably and ordinarily be expected to have regard, and shall use materials which are new and of satisfactory quality, in accordance with the requirements of the Contract.
- 5.7 If a Party expects any of its activities in its Portion, including the delivery of engineering documents and/or delivery of goods, to be delayed in relation to the Project Schedule, such Party shall notify the other Party of such delay and provide relevant information about such delay as reasonably requested by the other Party. Upon such notice, the



Parties shall endeavour to find a solution to mitigate the effects of such delayed activity on the Project Schedule. Costs arising herefrom shall be treated as established in Article 6.2.3.

- 5.8 Unless otherwise specified herein (regarding joint expenditure or cost risk transfer), each Party shall bear and be solely responsible for its own costs and expenses incurred in connection with the Project, including, without limitation, in connection with the implementation of its respective Portion pursuant to this Consortium Agreement and the Contract.
- 5.9 The costs and expenses arising from the Consortium Agreement or in connection with the Project or the Contract that are to be borne jointly by the Parties, as well as the costs and expenses that may not be individually allocated to one of the Parties, shall be shared between the Parties in the accordance of the Proportionate Share.

#### Article 6. LIABILITY AND INDEMNIFICATION

- 6.1 Subject to the limitations contained in this article 6, each Party hereby undertakes to indemnify the other Party against any loss, damage or liability attributable to the failure or default in the performance of its respective obligations under this Consortium Agreement.
- 6.2 Liabilities in case of claims by the Employer:
- 6.2.1 Each Party shall, save as otherwise provided in Clause 6.2 hereof, be fully responsible for the good and timely performance of its Portion and shall indemnify and hold harmless the other Party in respect of any claim by Employer or any third parties arising out of or as a result of the first Party's performance of its Portion, provided that the other Party shall not, without the prior written consent of the first Party make any admission which may be prejudicial to the indemnifying Party.
- 6.2.2 If both Parties have caused or contributed to such a claim by the Employer or third party the extent of the individual liability of each Party vis à vis the other Party shall be determined by the degree to which such Party has caused or contributed to the total amount of the claim, as determined by the Steering Committee.
- 6.2.3 Should default of a Party (the "Defaulting Party") in the good and timely performance of its Portion involve the other Party (the "Non Defaulting Party") in additional works, reworks or additional costs falling under its Portion, the Non Defaulting Party will perform such additional work or reworks and the Defaulting Party shall compensate the Non Defaulting Party for all additional actual direct documented reasonable costs arising from or connected with such defective performance, it being understood that the Non Defaulting Party shall do its utmost best to mitigate such costs.
- 6.3 Mutual liability of the Parties
- 6.3.1 Van Oord shall be responsible for and shall save, indemnify, defend and hold harmless Urbinveste Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:


- 6.3.1.1 loss of or damage to property of the Van Oord Group whether owned, hired, leased or otherwise provided by the Van Oord Group;
  - 6.3.1.2 personal injury including death or disease to any person caused directly or indirectly by the Van Oord Group;
  - 6.3.1.3 pollution occurring on the premises of the Van Oord Group or emanating from the property and equipment of the Van Oord Group (including but not limited to marine vessels; and
  - 6.3.1.4 loss of or damage to the property of any third party or the Project caused by Van Oord Group.
- 6.3.2 Urbinveste shall be responsible for and shall save, indemnify, defend and hold harmless the Van Oord Group from and against all claims, losses, damages, costs (including legal costs) expenses and liabilities in respect of:
- 6.3.2.1 Loss of or damage to property of Urbinveste Group whether owned, hired, leased or otherwise provided by Urbinveste Group;
  - 6.3.2.2 personal injury including death or disease to any person caused directly or indirectly by Urbinveste Group;
  - 6.3.2.3 pollution occurring on the premises of the Urbinveste Group or emanating from the property and equipment of Urbinveste; and
  - 6.3.2.4 loss of or damage to the property of any third party or the Project caused by Urbinveste Group.
- 6.4 All exclusions of responsibility and indemnities given under Article 6.3 shall apply irrespective of cause and shall apply irrespective of any claim in tort, under contract or otherwise at law.
- 6.5 Except in what causes the termination of the Contract, neither Party shall be liable to the other Party for loss of use, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party or its Affiliates in connection with the Contract.
- 6.6 Nothing contained in this Consortium Agreement shall be construed or held to deprive any Party, as against any person or party of any right to claim limitation of liability provided by any applicable law, statute or convention and each Party shall seek to limit its liability accordingly.
- 6.7 Except as otherwise expressly provided in this Consortium Agreement, nothing in this Consortium Agreement shall cause any Party to be responsible for the actions, damages, costs, expenses or liability of another Party or its Affiliates. For the avoidance of doubt, each Party shall be responsible only for the obligations and liabilities of the other Party it specifically agrees to accept and the indemnities included in this Article 6 do not imply a joint and several liability.



## Article 7. LIQUIDATED DAMAGES

- 7.1 Each Party is responsible towards the Employer for its own Portion and for any liquidated damages resulting therefrom.
- 7.2 If both Parties are responsible for the failure to achieve timely completion of the Project, each responsible Party shall pay the liquidated damages and other damages to the Employer in proportion to its degree of responsibility.
- 7.3 In the event the Parties cannot agree who is responsible for the liquidated damages, or the Parties agree that both Parties are responsible but cannot agree on how to share the damages, then the amount of the liquidated damages shall be provisionally apportioned pro rata to their Proportionate Share between the Parties. The foregoing shall not act as a waiver of the right of either Party to refer such determination to arbitration pursuant to Article 20 hereinafter; however, in no event shall such arbitration proceedings interrupt or delay the performance of the Contract.

## Article 8. INVOICING AND PAYMENTS

- 8.1 The Contract provides for direct payment to each Party for its respective Portion, by reason of the joint venture structure adopted – that of a so called “External Consortium”. Each Party shall be responsible for submitting applications for payment in accordance with the Contract to the Project Director with respect to the performance of its Portion, and the Project Director shall then be responsible to submit in due course an overall application for payment for the progress achieved by the Parties to the Employer as per the Contract.
- 8.2 Following certification or other proper determination pursuant to Clause [...] of the Contract, the Parties shall submit their individual invoices for the amount certified or determined in respect of their Portion including the correspondent Applicable Taxes. The Parties invoices submitted under this Sub-Article will be a gross amount which shall include amounts for Applicable Taxes (although the amount of such Applicable Taxes is to be withheld by the Employer, to the extent applicable). Each of the Parties' invoices for payment shall be collated by the Project Director and forwarded together to the Employer in order for the Employer to make directions to the ECA-Bank and its own bankers to make payment.
- 8.3 Van Oord will open a separate bank account solely in its name in the Netherlands for receipt of Euro disbursements of the ECA Financing from the ECA-Bank or other sums received from the Employer outside of Angola in respect of monies due to Van Oord or Van Oord Angola.
- 8.4 Urbinveste and Van Oord Angola will identify to the Employer bank accounts for the receipt of the part of the Contract Price that is not covered by the ECA Financing in accordance with the applicable Laws.
- 8.5 Urbinveste undertakes to provide support to Van Oord in respect of any monies that are to be paid or costs that are to be incurred in Angola in excess of the amounts that Van Oord has received in local currency directly from the Employer and that has not been able to export to a bank account in the Netherlands, following approval from Banco Nacional de Angola. In such event, Van Oord undertakes to reimburse Urbinveste of the amounts so advanced by Urbinveste in the bank account indicated by the latter within [seven days of issuance of the relevant debit note by
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Urbinveste and based on the United States dollar buying exchange rate of Banco Nacional de Angola, on the date on which Urbinveste has performed such advance payments to Van Oord, to the extent applicable.

- 8.6 In the event single combined payments to the Parties are made to one of the Parties, and should such Party fail to authorise release of payment of any sum due under this Consortium Agreement and/or the Contract on the date such payment is due to the other Party, or if such payment does not have a defined date to be made, within seven (7) days of having received written notice to do so from the other Party, the Party in default shall be liable to pay interest to the other Party on the amount remaining unpaid. The rate of interest shall be at eight per cent (8%) per annum above the Euribor rate on a daily basis and compounded monthly from the day it is due or the day following the end of the period of notice (as applicable) until payment is received by the other Party.
- 8.6 If, in case of termination of the Contract, the Employer should pay any indemnity or any other amounts, such payment, shall be divided among the Parties pro rata their Proportionate Share (regardless of whether such amounts are sufficient to fully pay the outstanding amounts). If termination is due to a Defaulting Party, payment shall be done first to pay the costs and expenses of the Non Defaulting Party and only after shall be applied to pay for costs and expenses of the Defaulting Party.
- 8.8 Each Party shall be responsible for obtaining the necessary regulatory permits and licensing for exporting any amounts received by it and paid in Angola, should it wish to export such amounts.

#### Article 9. **MANAGEMENT OF THE CO-OPERATION**

- 9.1 Each Party shall appoint a Project Manager who shall be fully responsible for the carrying out and execution of their Portion.
- 9.2 The general affairs of the co-operation shall be managed by a Steering Committee, which will decide overall strategy and look into all matters and questions related to the co-operation but not each Party's individual responsibility for its Portion. The Steering Committee will decide on provision of resources by the Parties and the pursuit of claims in excess of Euros 100,000.
- 9.3 The Steering Committee shall appoint the Project Director. This Project Director shall be an employee of Urbinveste or one of its Affiliates. The Project Director shall be fully authorised to coordinate the day to day management of the Scope of Work and be the contact person towards the Employer and any third parties, whilst under the obligation to consult with each Party's Project Manager and to pursue, properly and diligently, all the claims and entitlements of both Parties under or in connection with the Contract. He will report to the Steering Committee on a monthly basis and will not have any authority to bind the Consortium unless instructed by the Steering Committee.
- 9.4 If the Project Director has a role within a related consortium for another part of the overall development of the Marginal da Corimba project, then he shall delegate his powers to the Project Manager for the Portion affected for the purposes of resolving any dispute.
- 9.5 The Steering Committee will consist of two representatives from each Party (for these purposes, Van Oord and Van Oord Angola shall be understood as being one sole party). Each Party shall appoint its members within 30 days of

signature of the Consortium Agreement and if a Party may change its members by serving a written notice on the other Party.

- 9.6 The Chairman shall prepare the agenda, which he shall send to the members before the meetings. The Chairman shall set the venue of the meeting and shall prepare the minutes thereof which he shall distribute within 7 (seven) days of the meeting. Approval of the minutes shall be the first item on the agenda of the next meeting. The Steering Committee shall meet at least once in every month. The Chairman is obliged to call a meeting when any member of the Steering Committee so requests by written notice, stating the reasons therein. Meetings shall be called with a minimum of 7 (seven) calendar days notice, except in the case of urgent matters, when at least 2 (two) working days' notice is required.

The decisions of the Steering Committee shall be taken unanimously. No decision by the Steering Committee shall be valid unless both Parties are represented in the relevant meeting.


In the event that unanimity is not achieved or that one of the Parties fails to appear in a regularly convened meeting, the subject decision(s) shall be referred to a subsequent meeting of the Steering Committee which shall be convened at least 72 (seventy-two) hours after the first meeting. In the event that unanimity is not achieved at such subsequent meeting, the subject decision(s) shall immediately be referred to the Managing Directors of the Parties who shall meet within 7 (seven) days of any matter being referred to them, for discussion and agreement on the matters outstanding. Such action being without prejudice to any rights of any Party to refer the matter to arbitration for final decision pursuant to Article 20.

- 9.7 Each Party shall bear the costs and expenses of its Steering Committee' members including salaries and travelling and accomodation costs.

#### Article 10. EXECUTIVE AUTHORITY

- 10.1 Notwithstanding the Project Director's authority pursuant to Article 9.3, no Party shall have authority to bind or to make any commitment on behalf of the Consortium unless such authority is expressed in writing by the Parties jointly, or by a Party individually with regard to the (other) Party.


#### Article 11. DOCUMENTS

- 11.1 All documents produced by a Party or the Parties in connection with the Project (either in respect of the Bid or the performance of the Contract) which are made available to persons other than the Parties shall bear the name of the Consortium (i.e., U Urbinveste - Promoção e Projectos Imobiliários, S.A. and Van Oord Dredging and Marine Contractors BV em consórcio).
- 11.2 All documents prepared by a Party in connection with the performance of Work under the Contract, and which are submitted to the Employer or are to be made available to third parties, shall be signed by the Project Director, unless they concern to the interpretation of the Contract or alteration to its terms or services to be performed, in which case they will need to be signed by a representative of each Party.
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- 11.3 Each Party shall have unrestricted access to any work carried out by the other Party in connection with the Project.
- 11.4 Copies of all documents submitted to the Employer by or on behalf of the Consortium by the Project Director or a Party shall be circulated to the Parties as soon as reasonably practicable following such submission.

Article 12. **CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Each Party agrees to limit its use of documents, drawings, computer systems and programs and all other information of the other Parties ("Information") solely for the execution of the Scope of Work (including but not limited for making available information for the purposes of the other companies engaged by the Employer). Each Party undertakes not to divulge Information acquired directly or indirectly to any third party without the prior written consent of the Party to whom the Information in question belongs save for Information in the public domain (other than by breach of law) or unless required by law or mandatory order (by a supervisory authority or court).
- 12.2 The Parties agree not to disclose the terms of this Consortium Agreement or any matter related therewith to any third party without prior approval of the other Party, which shall not be unreasonably withheld, or unless required by law or mandatory order (by a supervisory authority or court).
- 12.3 This obligation shall continue for two years after expiry or termination of this Consortium Agreement and each Party undertake to extend it to its respective Affiliates.
- 12.4 No announcement in connection with the Project or any matter incidental to it shall be made without the prior consent of both Parties.
- 12.5 Each Party shall keep full ownership of intellectual property rights or know-how owned by it prior to the effective date of this Consortium Agreement, or developed during the duration of this Consortium Agreement without the use of information or technology of the other Party. However the other Party shall be granted a royalty-free license for the use of such intellectual property or know-how for the sole purpose of the performance of the Project. Each Member shall indemnify the other Party against all claims, liabilities, damages, costs and expenses sustained as a result of re-using the designs, drawings and other documents produced for the Project on other projects (other than for the purposes of continuing to implement the Marginal da Corimba project, in the terms laid down in Article 4.4 above).
- 12.6 Any know-how or patentable development arising from the activities of the Parties for the performance of the Contract, based on specific essential know-how and/or intellectual property of both Parties, shall be jointly owned by the Parties who shall discuss in good faith appropriate steps to be undertaken to efficiently protect such patentable development and the conditions of use of such developments by each Party.
- 12.7 Unless otherwise agreed, copyright in any documents produced by either Party, as part of the co-operation, shall be the property of the producing Party. However, the other Party shall have the right to use free of charge any such document for the purposes of the co-operation and performance of the works under the Contract.
- 



Article 13. **COSTS, BONDS AND GUARANTEES**

- 13.1 During the preparation, submission of the Bid and negotiation of the Contract, each Party shall bear its own costs.
- 13.2 Any bond or bank guarantee required by the Employer during the Project execution stage shall be issued individually by each Party in respect of its Portion and through a bank acceptable to the Employer. Each Party shall individually bear the costs and expenses related thereto. For the avoidance of doubt, in the event that any Bond is withdrawn, taken or called by the Employer due to the failure of or reasons solely or partially attributable to one Party, such responsible Party shall immediately indemnify the other Party, against all losses relating to the Bonds pro rata to its participation in the breach, as the case may be, including the amount of the Bonds made available by such other Party, provided, however, that where such loss is caused by more than one Party (including a Party who is claiming to be indemnified in respect of such loss), each Party's liability under this Article 13.2 shall be adjusted to an amount which is proportionate to its degree of responsibility for such loss, as determined by agreement of the Parties (following the provisions of Article 7.3) or failing such agreement, by dispute resolution in accordance with Article 20.

Article 14. **INSURANCE**

- 14.1 Construction all risks insurance shall be contracted by Van Oord on behalf of the Parties in their joint names and that of the Employer and costs shall be borne pro-rata to their Proportionate Share. All other insurances required (namely, transportation insurances, labor insurances) shall be contracted and borne by each Party within its Proportionate Share of the Works. Each Party shall demonstrate to the other Party and the Employer its compliance with the insurance requirements set out in the Contract and Angolan law as a condition for the effectiveness of the Contract.
- 14.2 . In as far as acceptable to underwriters, the Parties' insurers shall waive rights of subrogation consistent with the indemnity structure agreed between the Parties in Article 6 above.
- 14.3 Each Party shall obtain and maintain at its own expense employer's liability or workmen's compensation insurance, in respect of its employees on site and shall require its subcontractors performing work to do the same in respect of their employees.
- 14.4 Each Party shall obtain and maintain at its own cost vehicle liability insurance.
- 14.5 Notwithstanding the here above, the Parties may decide to subscribe jointly certain insurances to cover the activities of the Parties under the Consortium Agreement.
- 14.6 Van Oord shall at its cost obtain credit insurance from the ECA to cover the value of its respective part of the Works against non-payment and political risks.

The Parties shall at all times defend both parties' interests under the Contract with the Employer and shall not, as long as there are no conflicting interests, undertake independent actions towards the Employer which can negatively influence the other party's position in case of the occurrence of covered risks under the ECA credit insurance.

In case of political risks and/or non-payment by the Employer or any other dispute with the Employer related to the Project,

- Both parties shall inform one another of all negotiations related to any claim settlement with the Employer;
- In this respect, Urbinveste acknowledges to cooperate and use its best endeavours to satisfy the reasonable request of the ECA in its attempts to recover debt, provided the documented costs of such co-operation shall be compensated by Van Oord within 8 days of request for payment;
- In any claim presented to the Employer, both Parties shall incorporate the portion related to the other Party, as long as there are no conflicting interests and provided that this does not cause duplicated claims;
- Any recovery procedure towards the Employer for amounts outstanding in respect of Van Oord's Portion will only be effected after due consultation with the ECA and in accordance with the proper directions of the ECA.

Urbinveste shall provide a declaration to the ECA and Van Oord detailing their cooperation with the requirements of the ECA in a format as detailed in Annex 5 - ECA Declaration

Article 15. **FORCE MAJEURE**

15.1 No Party shall be liable to the other for failure to perform hereunder when such failure is due to Force Majeure.

15.2 Force Majeure shall be understood, until signature of the Contract as an event which is (i) beyond a party's control, (ii) which the affected party could not reasonably have provided against before entering into this Consortium Agreement (iii) which having arisen, such affected party could not reasonably have avoided or overcome, and (iv) that is not substantially attributable to the other party. Force Majeure shall include:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war;
- (c) riot, commotion, disorder, strike or lockout by persons other than a Party' personnel and other employees of a Party and its sub-contractors;
- (d) munitions of war, explosive materials, ionizing radiation or contamination by radio-activity, except as may be attributable to a Party's use of such munitions, explosives, radiation or radio-activity; and
- (e) natural catastrophes such as earthquakes, hurricane, typhoon or volcanic activity.

15.3 The criteria as to what constitutes Force Majeure shall be the same under the Consortium Agreement as under the Contract after the Contract has been signed by the Consortium and any determination made under the Contract as to what constitutes Force Majeure will be binding on the Parties hereto. Once the Contract has been signed, in no case shall a Party claim the occurrence of a Force Majeure event in relation to its obligations to the other Party unless the Employer has accepted the existence of said Force Majeure event as per the Contract provisions.



Article 16. **TAXES AND DUTIES**

16.1 The Parties undertake to make such necessary fiscal and financial arrangements between them as to meet the needs of the Parties with respect to consolidation and other purposes. The Parties intend to minimise the tax burden of both Parties as a whole - to the extent legally admissible - and mutually undertake in this connection to make such arrangements having a maximum benefit for both Parties.

Each Party shall have full and sole responsibility for the payment of any corporate taxes, duties, fees, levies, social security charges, employment income tax and industrial tax and any assessments of any nature whatsoever levied in connection with its Portion and any subcontracts and/or purchase orders entered into by it, inside and outside of Angola and in this regard shall indemnify and hold the other Party harmless for any taxes, assessment or levy imposed by any Governmental Authority.

16.2 Each Party shall have full and sole responsibility for the withholding of any pay-roll taxes on the income of its employees.

16.3 The Parties acknowledge that the taxes, fees, duties and levies associated with the importation of equipment and materials for the Project by Van Oord has been assumed to be of USD 20 million ("Foreseen Amount"). The Parties further acknowledge that, as provided for in Article 16.1, the structure contemplated in the Contract may be improvable in terms of its implementation and that Urbinveste, as an Angolan company, is the entity better prepared within the Consortium for such purposes. Should an improvement in the cost structure for importation procedures be achieved, the Parties further agree that the positive difference between the Foreseen Amount and the amount effectively incurred in that respect shall be due to be paid to Urbinveste (after having been paid to Van Oord).

16.4 The Contract foresees that the security for temporary imports shall be provided by Van Oord by means of a bank guarantee. In case the Angolan customs authorities do not accept the relevant bank guarantee, the Parties further agree on the following: (i) Urbinveste will provide – on behalf of Van Oord and to its benefit - the amount of the security required in local currency to the customs authorities, and (ii) within 10 days of the re-export of the temporary imported equipment, Van Oord shall assign - to Urbinveste or to one of its Affiliates -the customs credit (arising from the repayment of security obligations impending over the customs authorities).

Article 17. **CHANGE ORDERS**

17.1 In the event of a Change placed by the Employer for additional works and/or services or for cancellation of non-performed works and/or services or for any other modification of the balance of the works and/or services between the Parties, such additional works and/or services or such cancelled works and/or services or such modification of the balance as is accessory or related to an identified Party's Portion shall be assigned to it at the cost and risk of such identified Party. This principle shall apply without prejudice to Article 5.6 and the right of the identified Party to request compensation from the Employer in accordance with the Contract.

17.2 If the additional works and/or services or such cancelled works and/or services are not clearly attributable to one Party, such additional works and/or services or such cancelled works and/or services shall be preliminarily allocated



by the Steering Committee to the Scope of Work of one of or both of the Parties and the associated costs thereof shall be preliminarily shared by the Parties pro rata each Party's Proportionate Shares, until the final allocation of such additional works and/or services or such cancelled works and/or services to one or more of the Parties by the Steering Committee pursuant either the ratification of such preliminary allocation or re-allocation by the Steering Committee distributed by unanimous decision of the Steering Committee always with a view to maintaining the Proportionate Shares. Should the Steering Committee fail to reach an unanimous decision in this respect within 90 days, the matter will be addressed to arbitration.

- 17.3 Whenever a Party finds it necessary and appropriate to file a request for a Change to the Employer, such Party shall prepare the required documents and other submittals and shall submit the same to Steering Committee. Should the Steering Committee upon its review of the documents and other submittals find it necessary to clarify or amend the request in some respect, the Steering Committee shall consult first with the Party initiating such request for a Change. The Steering Committee shall determine whether such request for a Change will be submitted to the Employer, as well as the timing and manner of such submission. The Steering Committee shall only withhold its approval to the requested submission of a request for Change if such request is vexatious or has no reasonable prospect of success. If the request for Change has been submitted to the Employer, the Leader shall then carry out the required procedure for presentation of such request to the Employer and follow up the same with the Employer, with the presence and support of the Party initiating such request for Change. The Parties shall cooperate in good faith with each other and provide each other with the relevant information in their possession as reasonably required for such submission and follow up, and shall strive to agree the impact on cost and schedule of a Change as soon as possible. If the Parties each find it necessary and appropriate to submit a request for Change on a same or related matter, the Parties shall discuss and coordinate with each other to consolidate and submit a single request for a Change which incorporate the respective Change of the Parties.
- 17.4 Each Party is obliged to notify the other Party of their intention to request a Change or an Internal Change. As soon as reasonably possible and no later than 5 days after receipt of such notification and, in the case of an Internal Change, prior to executing such Internal Change, the Parties shall agree the impact on cost and schedule on the affected Portion.
- 17.5 The Leader shall process and forward all Change requests to the Employer.

Article 18. **DEFAULT**

18.1 In the event that a Party:

- 18.1.1 is in material breach or defaults in its performance under the Consortium Agreement, and such material breach or defaults is not cured or reasonable action to cure has not been initiated within ten (10) days after written notice thereof from the other Party or the Employer (or such lesser time as may be specified by the Contract); or
- 18.1.2 makes an assignment for the benefit of creditors, or petitions or applies for the appointment of a trustee, liquidator or receiver, or commences any proceeding relating to itself under any bankruptcy,

reorganisation, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction, now or hereafter in effect, or is declared bankrupt or insolvent; or

18.1.3 has any petition or application for appointment of a trustee, liquidator or receiver filed against it or any proceeding under any bankruptcy, reorganisation, arrangement, insolvency, readjustment of debt, dissolution or liquidation or similar law of any jurisdiction now or hereafter in effect is commenced against it and it indicates its approval thereof, consent thereto or acquiescence therein, any order is entered appointing a trustee, liquidator, custodian or receiver for it,

then such Party (herein "Defaulting Party") shall be deemed to be in default hereunder.

18.2 Subject to any mandatory legal provisions that may apply, the following provisions shall govern any situation in which a Party is deemed to be in default hereunder:

18.2.1 The Defaulting Party (and/or its receiver, trustee, liquidator or custodian) shall cease to have any further decision making authority or veto power under the Consortium Agreement and the other Party (the "Continuing Party") shall not require the vote, approval or authority of the Defaulting Party as otherwise may have been required under the Consortium Agreement.

18.2.2 The Continuing Party shall have the right to take over and complete the Defaulting Party's Portion and, in so doing, the Continuing Party shall be entitled to and shall have assigned to it (i) all of the Defaulting Party's accounts receivable or to be made in connection with the Contract, in order to cover all expenses incurred by the Continuing Party due to the default and to establish a contingency fund to cover any and all outstanding warranties or other obligations assumed by the Continuing Party in completing the Defaulting Party's Portion, and (ii) all contracts, goods, assets, equipment and materials provided or possessed by the Defaulting Party whether hired, purchased or acquired at the time of exclusion, as necessary until the fulfilment of its obligations under the Contract. The Defaulting Party shall execute and do all deeds, documents and things necessary or expedient to facilitate the exercise of such right and the completion of the Contract by the Continuing Party and shall hand over to the Continuing Party the audited books of account covering the Defaulting Party's Portion until the date of exclusion. Provided the Continuing Party notifies the Defaulting Party about its intend to take over and complete the Defaulting Party's Portion, the Defaulting Party hereby approves and authorises any such assignment.

Both Parties hereto undertake to include in all of the documentation relating to the Project, the Contract and this Consortium Agreement, language that enables the assignment of credits, rights and use of any assets (as provided for herein).

18.2.3 The Defaulting Party shall indemnify and hold the Continuing Party harmless from any and all liabilities (including, but not limited to, all costs and expenses associated with completing the Defaulting Party's Scope of Work) incurred by the Continuing Party as a result of such default, provided, however, that in no event will a Party be liable to the other Party for any indirect, special or consequential damages or losses. Notwithstanding anything to the contrary, the Defaulting Party shall remain bound by all guarantees, undertakings and securities given by it to third parties in connection with the Contract.



18.2.4 The remedies provided herein shall be in addition to any other rights and remedies available to the Continuing Party under the Consortium Agreement or applicable Law.

18.2.5 The joint liability of the Parties vis a vis the Employer shall in no case apply to the benefit of the Defaulting Party's creditors.

18.2.6 The Continuing Party is to account for costs at completion of the Scope of Work, acceptance by the Employer, close-out of the Contract and to pay any balance due to the Defaulting Party.

Article 19. **TERM**

19.1 This Consortium Agreement shall come into force at the date first above written and shall terminate upon any of the following events whichever occurs the first:

19.1.1 mutual agreement of the Parties;

19.1.2 if the Contract is not finally signed by the Consortium within 12 (twelve) months of the signature of this Consortium Agreement; or

19.1.3 on completion of all obligations of the Parties under the Contract, should it be signed by the Consortium.

19.2 If the Consortium Agreement is terminated as permitted under Article 19.1, each Party shall bear its own internal expenses and the Parties shall share Third Party expenses approved by the Steering Committee pro rata their Proportionate Share.

19.3 Termination of this Agreement shall not relieve the Parties of any obligation or liability arising prior to such termination or of any obligation or liability which by its terms or nature is to continue after or take effect upon termination.

19.4 Any provisions from this Consortium Agreement that, due to their nature, are intended to extend beyond the termination of this Consortium Agreement shall remain in effect after the termination of this Consortium Agreement.

Article 20. **GOVERNING LAW AND SETTLEMENT OF DISPUTES**

20.1 This Consortium Agreement shall be governed by the laws of the Republic of Angola.

20.2 Any dispute, disagreement or difference arising out of or in connection with the provisions of this Consortium Agreement including any question regarding its existence, validity, interpretation, breach or termination (a "Dispute") shall, unless it is amicably settled, be referred to the Steering Committee for resolution.

20.3 In case the Steering Committee fails to resolve the dispute within 30 days, the dispute shall be referred to the Chief Executive Officers of the respective Parties' for resolution.



- 20.4 Failing resolution by the Chief Executive Officers as described in Article 20.2 above within five business days (or such longer or shorter period as may be unanimously agreed) following notification, the dispute shall be referred to mediation by either Party giving the other notice in writing (the "Mediation Notice").
- 20.5 The mediation shall be conducted in accordance with the ICC Mediation rules or any amendment or modification thereof being in force at the time of the Mediation Notice.
- 20.6 If the Dispute is not resolved within 60 days of the Mediation Notice then either Party may give a written notice to the other Party referring the matter to arbitration (an "Arbitration Notice").
- 20.7 Any Dispute contained in an Arbitration Notice shall be referred to and finally settled by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference to this Article 20. The number of arbitrators shall be three. The decision of the arbitrator shall be final and binding. The place of arbitration shall be London. Arbitration shall be conducted in the English language, but supporting documentation may be made available in Portuguese language.
- 20.8 Neither Party shall be released from performing its obligations hereunder because mediation or arbitration proceedings have been initiated.
- 20.9 All correspondence and proceedings shall be in the English language.

Article 21. **MISCELLANEOUS**

- 21.1 No variation, modification or waiver of any provision of this Consortium Agreement or consent to any departure therefrom, shall be of any effect unless confirmed in writing and signed by the Parties and then such variation, modification, waiver or consent shall be effective only for the purpose and to the extent for which it was made or given.
- 21.2 The waiver (whether express or implied) by any Party of any breach of the terms or conditions of this Consortium Agreement shall not prejudice any remedy of that Party in respect of any continuing or other breach of the terms hereof.
- 21.3 No favour, delay, relaxation or indulgence by any Party in exercising any power of right conferred on that Party under the terms of this Consortium Agreement shall operate as a waiver of such power or right nor shall any single or partial exercise of any such power or right preclude any other or further exercise thereof or the exercise of any power or right under this Consortium Agreement.
- 21.4 No Party may suspend or fail to perform performance of its Portion in accordance with this Consortium Agreement due to the existence of and/or during settlement of disagreements between the Parties.
- 21.5 The expiry or termination of this Consortium Agreement shall not prejudice the rights of any Party in respect of any antecedent breach or non-performance by the other Party of any of the terms hereof.

- 21.6 Neither Party may assign, sell, mortgage, pledge, transfer or in any way dispose of any rights or interests, in whole or in part, under this Consortium Agreement, to any third party without the prior written consent of the other Party which shall not be unreasonably withheld. However, either Party may assign, transfer or in any way dispose of any rights or interests, in whole or in part, under this Consortium Agreement, to any of its Affiliates, provided always that such Affiliate shall be bound by these obligations, subject to a 15 days' prior written notice to the other Party. Assignment of credits arising hereunder in favour of the financing banks of a Party is also permitted.
- 21.7 If any provision of this Consortium Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, the remaining provisions of this Consortium Agreement shall remain fully effective. Notwithstanding the foregoing, the Parties shall thereupon negotiate in good faith in order to agree the terms of a mutually satisfactory provision to be substituted for the part of the provision found to be void or unenforceable.

Article 22. **NOTICES**

- 22.1 Notices or communications under the Consortium Agreement shall be deemed to have been adequately and properly served if sent by registered mail or delivered by hand (against written acknowledgement of receipt) or by email to the following respective addresses:

22.2.1 Van Oord:

A/C Eng.º Ido Dillisse

Address: Rua Massano Amorim 35, em Chicala

Luanda, Angola

Email: [ido.dillisse@vanoord.com](mailto:ido.dillisse@vanoord.com)

Tel.: +244 925505893

22.2.2 Urbinveste: at

To the attention of Mr Nuno Frutuoso/ Mr. Nuno Cunha

Condominio Alpha, Edificio 1, Piso 1

Talatona, Luanda

Emails: [Nuno.frutuoso@urbinveste.co.ao](mailto:Nuno.frutuoso@urbinveste.co.ao) / [nuno.cunha@urbinveste.co.ao](mailto:nuno.cunha@urbinveste.co.ao)

Tel.: +244 938880998

or to such other addresses as the Parties may hereafter notify to each other.

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Consortium Agreement in two (2) original documents as

of the day and year first above written.

For Van Oord

For Urbinveste

Name: RONALDUS A. M. SCHIMMEL  
Title: DIRECTOR  
Signature: 



MUNHO FRUTOSO  
DIRECTOR GERAL



**Urbinveste - Promoções e Projectos Imobiliários, SA**  
Condominio Alfa Edifício nº 1, 1º andar Talatona  
LUANDA  
Contribuinte Nº 5403099328  
Reg. Cons. de Luanda sob o nº 242-07/070323



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Annex 1 –Contract

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## Annex 2 –Portions

### General Description

The Contract contains the Outline Design which comprises the preliminary design (and constitutes Annex 14 to the Contract), the Scope of Works and Technical Specifications (which constitutes Annex 5 to the Contract) and the Master Plan (which constitutes Annex 13 to the Contract). The Employer shall provide the Consortium the revised Master Plan.

The Consortium shall review the lay-out of the Outline Design according to the revised Master Plan and to the Scope of Works and Technical Specifications, in order to obtain a Revised Outline Design. The Consortium shall submit the Revised Outline Design to the Employer for approval.

The Employer shall approve the Revised Outline Design within 10 days of its submission for approval. After being approved by the Employer, the Revised Outline Design shall be referred to as Basic Design.

The Revised Outline Design shall be subcontracted by the Consortium to Royal HaskoningDHV ("RHDHV").

The Consortium shall perform, directly or through subcontractors, the verification of the Revised Outline Design by means of the:

- Execution of a Geotechnical Site Investigation;
- Execution of a Sand Search Campaign;
- Execution of modelling to assess the overall (large-scale) conditions in which the waterfront developments will be designed and constructed.

in order to develop and deliver the Final Design, in accordance with the Scope of Works and Technical Specifications (Annex 5).

The Consortium shall submit the Final Design for the Employer's approval. The Employer shall approve the Final Design within 21 days from the date of its submission for approval.

Within the context of Stage 1, there will be a verification by the Consortium of the Price considering above mentioned Geotechnical Site Investigation, Sand Search Campaign and modelling tests.

Stage 2 is the construction (dredging, reclamation and shore protection) according to the Final Design approved by the Employer, including the preparation of Detailed Execution Drawings ("Desenhos de Pormenor") and works shall only start after the Employer has approved the review of the Price of the Contract (due to the non-verification of the assumptions included, only) and the Final Design.

The division of each Party's Portion is listed in the Contract. The following responsibility matrix provides more detail as to what is to be done. Each Party's Portion has been priced in accordance with the priced Bill of Quantities in the Contract. This Bill of Quantities will be updated in accordance with clause 10 of the Contract when the Final Design is approved.

## Responsibility Matrix

R = Responsible

S= Support

TASK	RESPONSIBILITY			Subcontractor/ Input	REMARKS
	Urbinveste	Van Oord	Jointly		
Preparation of the Revised Outline Design	R	S		RHDHV	
<i>Verification/assessment of the Revised Outline Design</i>	-	-	Yes	RHDHV	Payment to sub-contractor to be made by Urbinveste
Execution of a Geotechnical Site Investigation	-	-	Yes		Costs to be shared pro rata Proportionate Share (through an assignment of part by Urbinveste in the relevant subcontract (including applicable taxes) with the sub-contractor, after which Van Oord will invoice the cost of its share incurred directly to the Employer)
Execution of a Sand Search Campaign	-	-	Yes		Costs to be shared pro rata Proportionate Share (through an assignment of part by Urbinveste in the relevant subcontract (including applicable taxes) with the sub-contractor, after which Van Oord will invoice the cost of its share incurred directly to the Employer)
Basic modelling to assess the overall (large-scale) conditions in which the waterfront developments will be designed and constructed.	-	-	Yes	RHDHV / Deltares	Costs to be shared pro rata Proportionate Share (through an assignment of part by Urbinveste in the relevant subcontract (including applicable taxes) with the sub-contractor, after which Van Oord will invoice the cost of its share incurred directly to the Employer)
Preparation of revised Bill of Quantities (as included in the Contract), based on data that derived from the Geotechnical Site Investigation, Sand Search Campaign and Basic modelling.	R	R		N/A	If applicable
Preparation of the Final Design	-	-	Yes	RHDHV	Payment to sub-contractor to be made by Urbinveste
Detailed mathematical modelling to confirm / amend / adjust (if required) the design	-	-	Yes	RHDHV / Deltares	Costs to be shared pro rata Proportionate Share (through an assignment of part by Urbinveste in the relevant subcontract (including applicable taxes) with the sub-contractor, after which Van Oord will invoice the cost of its share incurred directly to the Employer)



TASK	RESPONSIBILITY			Subcontractor/ Input	REMARKS
	Urbinveste	Van Oord	Jointly		
Preparation of the Revised Outline Design	R	S		RHDHV	
Assessment of the Final Design	-	-	Yes	RHDHV / Deltares	
Supply of Detailed Execution Drawings and engineering documents	-	-		Yes	
Mobilization of equipment and (expatriate) staff		R		N/A	
Dredging of suitable material (Sand) from offshore borrow areas		R		N/A	
Reclamation of dredged material inside the project boundaries		R		N/A	
Procurement of Rocks at 3rd Party quarry (in Caxito)		R			
Transportation of Rocks from quarry to Project Site		R			
Installation of Rocks as protection of the newly reclaimed land by means of breakwaters, revetments and groynes		R			
Installation of rocks on the seaward ends of the storm water outlets		R			
Carry out the survey works required to monitor the progress of the Works		R		N/A	
Co-ordination with 3 <sup>rd</sup> party Contractors on site	R	S		N/A	Urbinveste takes lead in the co-ordination with 3 <sup>rd</sup> Party Contractor on site unless direct "conflict" with VO Works. VO schedule prevails, provided that the version approved by the Employer is not amended.
Supply of Project Director	R			N/A	
Supply of Project Manager	R	R		N/A	Each Party supplies a PM for its portion. PM will have all powers and necessary means to execute its portion of the Works.
Preparation Method Statements		R		N/A	
Co-ordination with Employer re. Project related matters	R	S		N/A	

TASK	RESPONSIBILITY			Subcontractor/ Input	REMARKS
	Urbinveste	Van Oord	Jointly		
Preparation of the Revised Outline Design	R	S		RHDHV	
Arranging Work Permits	R	R		N/A	Each Party to arrange for own staff
Access Control and Security on site	R	R		TBC	Each party shall be responsible for security regarding its Portion of the works.
Importation procedures for equipment and vessels		R		TBC	Each Party to arrange for own equipment and vessels. Agency required
Arranging local permits and licences as required	R	R		N/A	Each Party to arrange for own permits and licences in respect of its Portion of the Works
Insurances	R	R		N/A	Each Party to arrange for own insurances, other than CAR insurance, to be taken by VO (and cost to be borne by the Parties in accordance with Proportionate Share)
Obtain quotes from 3rd party suppliers / contractors / etc.	R	R		N/A	Each Party to arrange for quotes in its Portion
Manage Bank Accounts	R	R		N/A	Each Party to manage own banking account
Invoicing	R	R		N/A	Each Party invoices directly to the Employer. As provided for in the Consortium Agreement, all invoices will be submitted to the Consortium Project Director and then on sent to the Employer
Payments to 3rd party suppliers / contractors / etc.	R	R		Yes	Subject always to the provisions of the Consortium Agreement on payments being made in Angola, each Party to pay its Portion's subcontractors, and, when the relevant 3 <sup>rd</sup> party suppliers and contractors are within the scope of the joint portion, payment shall be done pro-rata the Proportionate Share.
Supply of Project Controller / Accountant	R	R		N/A	
Hiring Local Staff / Payroll	R	R		TBC	Each Party responsible for own employees
HSE Statutory Provisions	R	R		N/A	

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2.1 Detailed priced Scope of Works (Bill of Quantities) Van Oord Portion

10



Bill of Quantity

All Amounts in EURO	Van Oord quantity	unit price	BoQ excl Tax	Van Oord Scope Including Taxes and Duties		
				Van Oord Angola Scope	Unit Rate	VODMC Scope (incl. CT 5%)
<b>Stage 1</b>						
General Cost and Studies						
- Quality Control Engineering						
- Contractors Engineering						
- PMC / Engineering Review						
- Project Management						
General Preparation						
	1	1,309,187	1,309,187	1,430,805	1,430,805	22,500,036
<b>Total Stage 1</b>			<b>1,309,187</b>	<b>1,430,805</b>		<b>17,899,970</b>
<b>Stage 2</b>						
General Cost and Studies						
- Quality Control Engineering						
- Contractors Engineering						
- PMC / Engineering Review						
- Project Management						
Mobilisation	1	20,587,533	20,587,533			22,500,036
Import/ Re-export duties	1					
Demobilisation	1	16,378,473	16,378,473			17,899,970
Dredging & Reclamation						
Phase 1&3	1,654,678	6.51	10,771,954	3.40	5,630,489	6,680,957
Additional groundworks/ excavation and dredging marina	1	2,442,093	2,442,093		2,668,954	
Phase 4	30,123,371	4.71	141,881,077	1.44	43,243,824	111,626,649
Additional groundworks/ excavation and dredging fishery port	1	14,495,958	14,495,958		15,842,377	
<b>Rockworks</b>						
Phase 1						
5-75mm	21,083	74.93	1,579,749	27.78	585,607	1,209,185
0.1-500kg	110,958	63.01	6,991,464	14.75	1,636,511	6,363,833
0.3-1.0 ton	25,370	60.74	1,540,974	12.27	311,240	1,455,059
Geotextile	10,000	21.16	211,600		232,307	
Phase 3						
5-75mm	16,965	74.93	1,271,187	27.78	471,224	973,003
0.1-500kg	77,757	63.01	4,899,469	14.75	1,146,832	4,459,639
0.3-1.0 ton	23,646	60.74	1,436,258	12.27	290,090	1,356,182
Phase 4						
5-75mm	183,765	74.93	13,769,511	27.78	5,104,302	10,539,572
50-150mm	129,460	62.67	8,113,258	14.38	1,861,291	7,424,989
10-60kg	26,958	75.82	2,043,956	28.75	775,034	1,546,137
50-300kg	121,622	60.74	7,387,320	12.27	1,492,065	6,875,452
0.1-500kg	666,071	63.01	41,969,134	14.75	9,823,832	38,201,576
0.3-1.0ton	110,961	60.74	6,739,771	12.27	1,361,275	6,364,005
1.0-2.0ton	28,005	68.48	1,917,782	20.73	580,462	1,606,186
Geotextile	135,657	21.16	2,870,502		3,151,405	
<b>Total Stage 2</b>			<b>309,299,024</b>		<b>118,657,082</b>	<b>257,182,379</b>
<b>Grand Total</b>			<b>310,608,211</b>		<b>120,287,887</b>	<b>257,182,379</b>
			<b>Total in EURO</b>		<b>120,287,887</b>	<b>257,182,379</b>
						<b>377,470,266</b>

in USD with exchange rate @ 1.13

135,925,313

290,616,088

426,541,400

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2.2 Detailed priced Scope of Works (Bill of Quantities) Urbinveste Portion

*[Handwritten signature]*

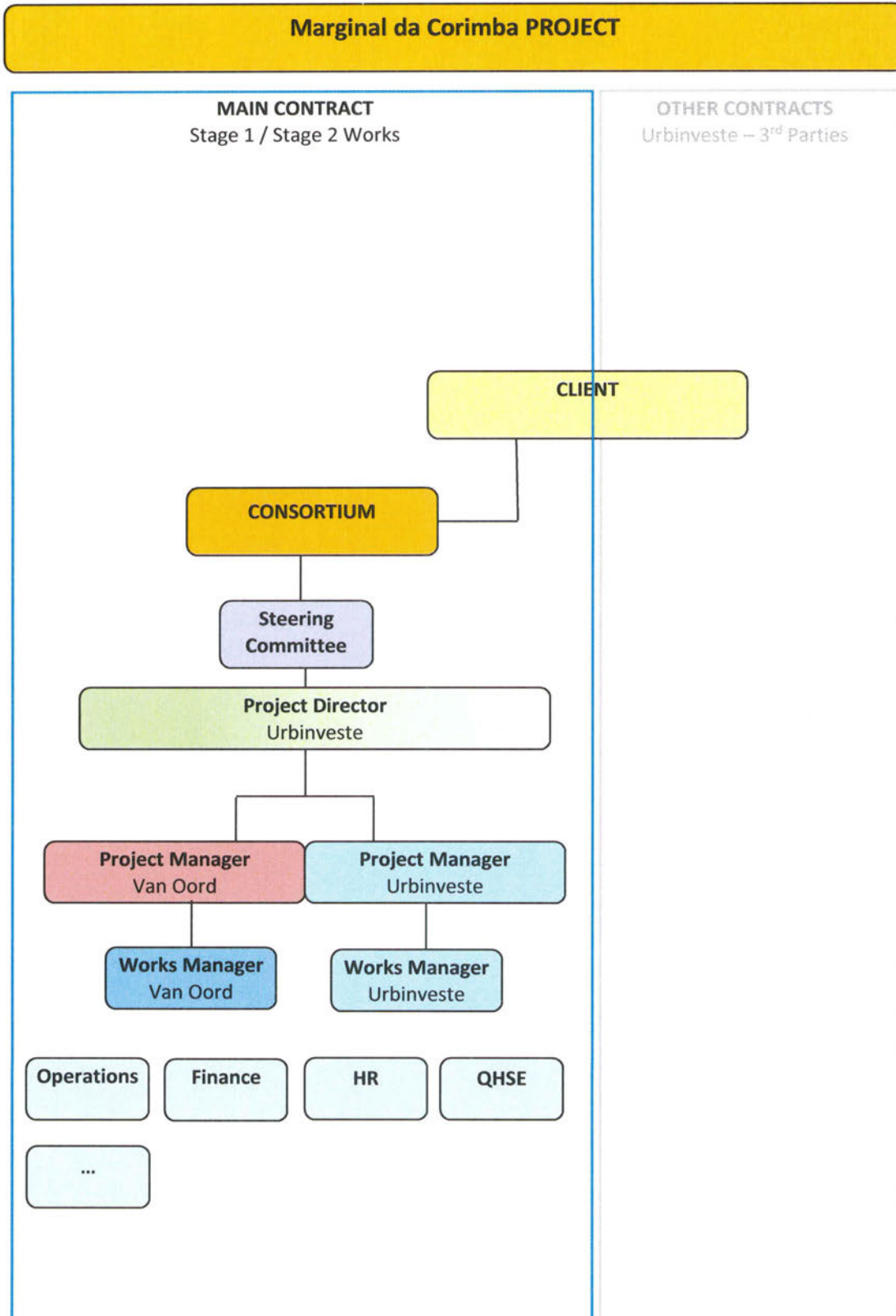
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Bill Ref.	Description of Works	Contract Amount (USD)
	GENERAL COSTS AND STUDIES	\$ 76 341 049,29
	QUALITY CONTROL ENGINEERING	\$ 16 046 627,55
	CONTRACTORS ENGINEERING	\$ 53 488 758,50
	PMC/ENGINEERING REVIEW	\$ 16 046 627,55
	PROJECT MANAGEMENT	\$ 26 744 379,26
		\$ 188 667 442,15
	TOTAL (INCL. TAXES)	\$ 188 667 442,15





Organogram



## ANNEX 3.1 - DUTIES AND POWERS OF THE PROJECT DIRECTOR

### 1. General

In exercising the duties hereby entrusted, the Project Director shall delegate appropriate duties to his assistant being the Urbinveste Project Manager or replacement and shall duly authorise all actions required to realise the delegated duties. The Project Director shall always duly and in a timely manner consult with the Project Manager and / or Works Manager or replacement.

The Urbinveste Project Manager shall replace the Project Director with full authority in those periods the Project Director is unavailable (travel, sickness, leave etc).

The Project Director shall act in accordance with the Consortium Agreement and with the instructions of the Steering Committee.

### 2. Policy

It is accepted by all Parties hereto that Urbinveste will execute within the Marginal da Corimba Project, other activities different from those attributed to it under the Consortium Agreement and the Contract, and that such additional activities will be carried out under other contractual agreements with the Employer. To safeguard all Urbinveste's activities under other contracts as well as this Contract, Urbinveste will appoint a Project Director.

The Project Director will have the leading role in communicating with the Employer during the development as well as the construction of the Works.

The Project Director will work in close consultation with the Project Manager appointed by Van Oord for Van Oord's portion of the Works.

The Project Director will make recommendations to the Steering Committee on matters of policy including funding of the Contract, procurement, subcontracting, and personnel.

### 3. Management

The Project Director will represent the Parties to the Consortium towards the Employer during the performance of the Works pursuant to the terms laid down in the Consortium Agreement.

The Project Director shall act in accordance with the Consortium Agreement and with the instructions of the Steering Committee.

The Project Director shall be granted such powers of authority as the Employer may require under the Contract which, inter alia, includes the power to receive instructions of the Employer on behalf of the members of the Consortium and to make decisions which are binding on the Consortium (to the extent permitted by the Consortium Agreement) and the instructions of the Steering Committee.

### 4. Organisation structure

The Project Director will report to the Steering Committee on a monthly basis or otherwise as required.

### 5. Finance

The Project Director will coordinate the monthly payment applications to be submitted in accordance with the Contract.

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**6. Administration**

The Project Director in co-operation with the Project Managers and the Steering Committee will ensure that all legal and contractual requirements are complied with, that agreed procedures are implemented for timely and efficient administration of the Works.

**7. Employer's representative**

The Project Director will have authority to represent the members of the Consortium towards the Employer's representative under the Contract provided that he consults with the Project Managers of both parties with the right for either Project Manager to attend all meetings with the Employer's Representative. The Project Director will keep the Project Managers and the Steering Committee promptly informed of all significant matters.

**8. Planning control and reporting**

The Project Director will verify whether the planning of other works within the Project coincide with the planning of each Party's portion of the Works under the Contract and will duly notify the Consortium members thereof.



## ANNEX 3.2 - DUTIES AND POWERS OF EACH PROJECT MANAGER

### 1. General

In exercising the duties hereby entrusted, each Project Manager shall delegate appropriate duties to his assistant being the Deputy Project Manager or replacement and shall duly authorise all actions required to realise the delegated duties. Each Project Manager shall always duly and in a timely manner consult with the Deputy Project Manager or replacement.

Each Deputy Project Manager shall replace the relevant Project Manager with full authority in those periods the relevant Project Manager is unavailable (travel, sickness, leave, etc).

Each Project Manager shall act in accordance with the Consortium Agreement and with the instructions of the Steering Committee and/or the Project Director (if applicable).

### 2. Management

Each Project Manager will represent the relevant Party (in respect of such Party's Portion) towards the Employer during the performance of the Works in relation to operational matters.

### 3. Organisation structure

Each Project Manager will report to the Steering Committee and the Project Director on a monthly basis or otherwise as required.

### 4. Finance

Each Project Manager will:

- cause accountancy systems to be established to comply with all legal requirements in respect of the relevant Party's portion of Works;
- cause cost control and budget systems to be established in respect of the relevant Party's portion of Works;
- provide the Project Director and the Steering Committee with monthly financial statements;
- authorise expenditure (to the extent permitted by the Steering Committee);
- cause the necessary monthly payment applications to be submitted to the Project Director in accordance with the Contract in a timely manner;
- ensure that effective contractual administration procedures are established and maintained.

### 5. Administration

Both Project Managers in co-operation with the Project Director and the Steering Committee will ensure that all legal and contractual requirements are complied with, that agreed procedures are implemented for timely and efficient administration of the Works.

### 6. Planning control and reporting

Each Project Manager will ensure that the necessary planning and control documents are established, maintained and updated including but not limited to the following:

- 
- Work programme;
  - Progress charts; and

Each Project Manager will submit the following reports to the Steering Committee.

- On a weekly basis;
  - ◆ the progress weekly report; and
  - ◆ relevant important correspondence from/to the Employer
  - ◆ relevant important correspondence from/to 3<sup>rd</sup> party suppliers and / or contractors
- On a four weekly basis, the Project Period Report containing
  - ◆ the progress report
  - ◆ status report certificates
  - ◆ status report - Contract value and claims

#### **7. Labour**


Each Project Manager shall ensure that all labour regulations and policy requirements are complied with by the relevant Party and that an adequate system of controls over numbers and rates of labour is established and maintained.

#### **8. Health, safety and environment system**

Each Project Manager will ensure that the implementation of, maintenance of, and compliance to the health, safety and environment requirements on the Project in respect of the relevant Party's Portion.

#### **9. Quality assurance**

Each Project Manager will ensure that adequate quality assurance system is developed and implemented as an integral part of management.



## ANNEX 4 - Social and Environmental Undertaking

### 1. Social and Environmental Undertaking

Each Party undertakes to the other Party that in connection with its activities for and on behalf of the Consortium it will, and shall cause any of its staff, employees and subcontractors to comply with:

#### A. General

- the legal and regulatory provisions applicable in Angola; and
- high standards of excellence, based on international recognized standards for these type of projects.

#### B. Environmental and Social principles:

- (i) the environmental regulation composed of (the "**Environmental Regulation**"):
  - laws and regulations applicable in Angola in connection with environment; and
  - treaties and conventions, general principles, commitments and international standards signed and ratified by Angola or otherwise applicable and enforceable in Angola;
- (ii) the social regulation composed of (the "**Social Regulation**"):
  - laws and regulations applicable in Angola in connection with social issues;
  - International Labour Standards as set out by the International Labour Organisation, available at <http://www.ilo.org/global/standards/lang--en/index.htm>; and
  - treaties, general principles, commitments and international standards relating to social issues and Human Rights, signed and ratified by Angola or otherwise applicable and enforceable in Angola, including those signed or otherwise applicable under the aegis of the United Nations.

documents listed above from paragraph (i) to (ii) are hereafter referred to "**Environment and Social Standards**";
- (iii) any requirement for any license, agreement, permit or authorization required pursuant to the Environmental Regulation or the Social Regulation ("**Social and Environmental Authorization**"); and
- (xii) the terms and conditions of any Social and Environmental Authorization that would be granted to a Party in the context of the Project.

### 2. Anti-Corruption Undertaking

Each Party undertakes to the other Party that in connection with its activities for and on behalf of the Consortium it will, and shall cause any of its staff, employees and subcontractors to comply with:

- (i) the anti-bribery and anticorruption laws applicable in Angola, and the principles set out in them;
- (ii) it will not (and neither will any of its directors, officers or employees, nor any person acting on its behalf or with whom it is associated):
  - (1) offer or give any advantage (financial or otherwise), whether directly or through any person:



- (a) to another person with the intention of inducing that person (or any other person) to perform a function or activity (or any other person) to perform a function or activity improperly, or rewarding that person (or any other person) for the improper performance of that function or activity, or where it is known or believe that the acceptance of the advantage would itself constitute improper performance of the function or activity; or
  - (b) to any (i) any employee or officer of a government, including any regional or local department or agency or instrumentality thereof, (ii) any employee or officer of any enterprise owned or controlled by a government, (iii) any official of a political party in Angola, or (iv) any official or employee of a public international organization (a "**Public Official**"), or to another person with the consent or acquiescence of a Public Official, with the intention of influencing the Public Official so as to obtain or retain business or an advantage in the conduct of business, where that influence is neither permitted nor required by the law applicable to the Public Official; or
- (2) request or accept any advantage (financial or otherwise), whether directly or through any other person:
- (a) with the intention that a function or activity will, in consequence, be performed improperly (whether by itself or by any other person);
  - (b) where the request or acceptance itself constitutes improper performance of a function or activity or is a reward for the improper performance of a function or activity (whether by itself or any other person); or
  - (c) where, in anticipation of or in consequence of the request or acceptance, a function or activity is performed improperly (whether by itself or by another person);

### 3. General

Each Party undertakes to the other Party that in connection with its activities for and on behalf of the Consortium:

- (i) it has and will maintain in place adequate procedures designed to ensure compliance the Social and Environmental Undertaking and the Anti-Corruption Undertaking and agrees to provide support to the Consortium where reasonably practicable in order for the Consortium to put in place and implement equivalent policies and procedures; and
- (ii) from time to time, at the reasonable request of the other Party, it will confirm in writing that it has complied with the Social and Environmental Undertaking and the Anti-Corruption Undertaking and will provide any information reasonably requested by that other Party in support of that confirmation.

**ANNEX 5 - ECA Declaration**

DECLARATION

Dated .....

To: ECA Dutch State Business NV / Van Oord Dredging and Marine Contractors BV

from: Urbinveste - Promoção e Projectos Imobiliários, S.A.

Reference Consortium Agreement in respect of certain works and services to be provided by the Consortium in respect of the Marginal da Corimba Project/Angola dated .....

Whereas

- A CONSORTIUM comprising Urbinveste - Promoção e Projectos Imobiliários, S.A ("Urbinveste"). and Van Oord Dredging and Marine Contractors BV ("Van Oord") have jointly signed a Consortium Agreement for the above mentioned works to be executed under a contract concluded with the Gabinete de Gestão do Polo de Desenvolvimento Turístico do Futungo de Belas e do Mussulo ("Employer")
- Van Oord wishes the risks of non-payment and political risks related to this project be insured with Atradius Dutch State Business NV ("Atradius")

Therefore, we hereby confirm that

The Parties shall at all times defend both parties' interests under the Contract with the Employer and shall not, as long as there are no conflicting interests, undertake independent actions towards the Employer which can negatively influence the other party's position in case of the occurrence of covered risks under the ECA credit insurance.

In case of political risks and/or non-payment by the Employer or any other dispute with the Employer related to this project,

- o Urbinveste shall inform Van Oord of all negotiations related to any claim settlement with the Employer (as will Van Oord in the same manner);
- o In this respect, Urbinveste acknowledges to cooperate and use its best endeavours to satisfy the reasonable request of ECA in its attempts to recover debt, provided the reasonable costs of such co-operation shall be compensated by Van Oord;
- o Any recovery procedure towards the Employer for amounts outstanding in respect of the portion related to Van Oord will only be effected after due consultation with the ECA and in accordance with the proper directions of the ECA.
- o In any claim presented to the Employer, Urbinveste shall incorporate the portion related to Van Oord, as long as there are no conflicting interests and sufficient information has been provided by Van Oord;
- o Any recovery procedure towards the Employer will be conveyed to Van Oord;

This declaration shall form an integral part of the CONSORTIUM Agreement between Urbinveste and Van Oord.

IN WITNESS WHEREOF the Parties have caused this Declaration to be executed in two parts by their duly authorised representatives the day and year first above written.

SIGNED, SEALED and DELIVERED

for and on behalf of Urbinveste - Promoção e Projectos Imobiliários, S.A.

dated:

by:

In the presence of

witness.....