

INVESTMENT AGREEMENT

relating to the acquisition of shares in [CONCESSIONAIRE]

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INTRODUCTION

This investment agreement (the “**Agreement**”) is entered into on the Signature Date between

- (1) [NAME] business registration no. [●], [ADDRESS], [POSTAL NO. AND CITY], [COUNTRY] (“**Private Party**”)¹; and
- (2) [Statslig Vind Holding A/S], business registration no. [●], [ADDRESS], [POSTAL NO. AND CITY], Denmark (“**State Holding**”);

(Private Party and State Holding are individually referred to as a “**Party**” and collectively the “**Parties**”)

concerning Private Party’s project company [NAME] business registration no. [●], [ADDRESS], [POSTAL NO. AND CITY], Denmark (“**Concessionaire**”), being the sole concession holder of the Concession and owner of the Offshore Wind Farm within the Concession Area pursuant to the concession agreement dated [DATE] (the “**Concession Agreement**”) between Concessionaire and the Danish Energy Agency (in Danish: *Energistyrelsen*), business registration no. 59778714, Carsten Niebuhrs Gade 43, DK-1577 Copenhagen V, Denmark (“**DEA**”).

RECITALS

WHEREAS;

- (A) On 30 May 2023, the Danish Government and several political parties of the Danish Parliament concluded a political agreement on tenders of six (6) concessions for offshore wind farms with a combined minimum wind power capacity of 6 GW within the geographical areas Hesselø, Kriegers Flak II, Kattégat, Nordsø I(A), Nordsø I(B), and Nordsø I(C) expected to be conducted by DEA in 2024 and 2025 (individually referred to as a “**Tender**” and collectively the “**Tenders**”);
- (B) According to the political agreement, a prerequisite for the Tenders is that the Danish State will acquire an indirect 20% ownership interest in each of the concession holders within an expected six-month period after the signing of each concession agreement under the respective Tenders;
- (C) On [DATE OF PUBLICATION], DEA published the procurement documentation for the Tender of the concession for an offshore wind farm with a minimum wind power capacity of [0.8/1.0] GW,

¹ **Drafting note.** To be adjusted if more than one private owner of Concessionaire.

including an opportunity for the Board of Directors, subject to applicable Law and the Concession Agreement, including appendices, to decide to establish overplanting, within the geographical area [Hesselø / Kriegers Flak II / Kattegat / Nordsø I(A) / Nordsø I(B) / Nordsø I(C)]² as further detailed in the Concession Agreement (the geographical area referred to as the “**Concession Area**”, the offshore wind farm, including any overplanting, within the Concession Area referred to as the “**Offshore Wind Farm**”, and the concession for the Offshore Wind Farm under the Concession Agreement referred to as the “**Concession**”);

- (D) According to the procurement specification of the Concession, the award of the Concession entails an obligation on Private Party to sell and transfer to State Holding the number of shares in Concessionaire (on a fully diluted basis and in each share class, if any) which equals a 20% ownership interest in Concessionaire;
- (E) On [DATE OF AWARD], DEA awarded the Tender referenced in Recital (C) to the successful tenderer, who won the Tender by quoting the highest concession payment to DEA (the sole award criterion);
- (F) Private Party is [...] ³ and will sell and transfer to State Holding 20% of the share capital of Concessionaire;
- (G) State Holding is a holding company established, fully owned, and controlled by the Danish State, represented by [Ministry] (the “**Ministry**”), with the purpose to acquire and hold (long-term) a 20% shareholding in Concessionaire. State Holding is and will continue to be managed and operated in accordance with the state ownership policy (in Danish: *Statens ejerskabspolitik*), as amended from time to time, separately and on arm’s length from any government entity or authority;
- (H) Concessionaire is a special purpose vehicle, which has been established and is fully owned and controlled by Private Party before the Investment for the purpose of being the sole concession holder of the Concession in accordance with the Concession Agreement. Concessionaire shall manage and operate the Offshore Wind Farm, including any overplanting, with the aim of producing and selling energy on the best possible terms in the Interest of Concessionaire. This may involve selling energy to one or more offtakers under various pricing schemes, such as fixed pricing, variable pricing, and/or revenue-based pricing (revenue sharing). These decisions shall

² **Drafting note.** Specific Concession to be added before signing.

³ **Drafting note.** Description of Private Party to be added before signing.

be made by the Board of Directors in the Interest of Concessionaire, taking into consideration the Board of Directors' liabilities toward the shareholders of Concessionaire;

- (I) The purpose of this Agreement is to set out the terms and conditions pursuant to which Private Party shall sell and transfer, and State Holding shall acquire from Private Party, a number of Shares which equals to 20% of the share capital of Concessionaire (on a fully diluted basis and in each share class, if any) to State Holding.

NOW, THEREFORE, in consideration of the foregoing, the Parties hereby agree and undertake as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Terms and expressions defined in this Agreement shall be interpreted and construed consistently and have the same meaning throughout this Agreement. The terms and expressions used in this Agreement shall have the meaning assigned to them as follows:
- 1.1.1 **"Affiliated Company"** means with respect to any Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person. For the purposes of this definition "control" when used in respect of any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.
- 1.1.2 **"Anti-Bribery and Anti-Corruption Laws"** means any applicable anti-bribery and anti-corruption legislation of the European Union, as adopted, and made applicable by its individual member states and Denmark, and any similar applicable legislation, including the UK Bribery Act and the US Foreign Corrupt Practices Act, as amended, supplemented, or substituted from time to time.
- 1.1.3 **"Anti-Money Laundering and Counter-Terrorism Financing Laws"** means any applicable anti-money laundering and counter-terrorism financing legislation of the European Union, as adopted, and made applicable by its individual member states and Denmark, and any similar applicable legislation, as amended, supplemented, or substituted from time to time, including predicate offence to money laundering and counter-terrorism financing.
- 1.1.4 **"Arm's Length"** means terms and conditions that would have been agreed if the transaction was concluded between two unrelated parties who are both acting in their own self-interest

unless such deviating terms and conditions are in favour of Concessionaire in which case they shall also be regarded as being on “Arm’s Length”.

- 1.1.5 “**Authorised Recipient**” has the meaning specified in Clause 9.1.2.
- 1.1.6 “**Board of Directors**” means the board of directors of Concessionaire from time to time.
- 1.1.7 “**Business Day**” means any day (other than a Saturday, Sunday, or a public holiday in Denmark) on which the commercial banks in Denmark are generally open for business.
- 1.1.8 “**Cap**” has the meaning specified in Clause 8.3.4.1.
- 1.1.9 “**CAPEX Budget**” means the financial plan for Concessionaire, setting out the anticipated expenditures for the construction of the Offshore Wind Farm prepared in good faith by the Private Party and based on reasonable and relevant assumptions.
- 1.1.10 “**Claim**” means a claim for damages and/or indemnification asserted by State Holding against Private Party, arising out of or resulting from any breach of this Agreement, including any breach of the Warranties.
- 1.1.11 “**Clause**” means a clause of this Agreement.
- 1.1.12 “**Communication**” has the meaning specified in Clause 12.2.
- 1.1.13 “**Concession**” has the meaning specified in the Recitals.
- 1.1.14 “**Concession Agreement**” has the meaning specified in the Introduction.
- 1.1.15 “**Concession Area**” has the meaning specified in the Recitals.
- 1.1.16 “**Concession Term**” means the duration throughout which the Concession Agreement is in force and effect.
- 1.1.17 “**Concessionaire**” has the meaning specified in the Introduction.
- 1.1.18 “**Confidential Information**” means the ongoing discussions between the Parties, and any and all information, documentation and data regarding or relating to a Party and/or Concessionaire, which information is obtained by or provided to the other Party and/or its
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Authorised Recipients by or on behalf of the former Party and/or Concessionaire, whether verbally, visually or in writing, including by electronic transfer or by any media. Additionally, Confidential Information shall include any documents, notes, analysis, compilation etc. prepared by a Party and/or its Authorised Recipients to the extent containing or otherwise referring to the aforementioned information. Confidential Information shall not include information which (i) at the time of supply is in the public domain; (ii) after the time of disclosure becomes generally available to the public, other than as a result of or through breach of Clause 9; (iii) is independently developed by a Party and/or its Authorised Recipients without using or referring to the aforementioned information, or (iv) the Parties have agreed in writing is not Confidential Information.

- 1.1.19 “**Contractual Framework**” means this Agreement and the Shareholders’ Agreement.
- 1.1.20 “**Data Room**” means a virtual data room which (i) contains the Due Diligence Material, (ii) is accessible to State Holding and its advisors and updated regularly until completion of the Investment, (iii) is organised in a professional manner customary for transactions in the Nordic region, and (iv) is hosted by a generally recognised and acknowledged virtual data room service provider.
- 1.1.21 “**DEA**” has the meaning specified in the Introduction.
- 1.1.22 “**Due Diligence Material**” means available information, data and documentation about Concessionaire uploaded to the Data Room as requested by State Holding prior to the completion of the Investment.
- 1.1.23 “**Executive Board**” means the executive board of Concessionaire from time to time.
- 1.1.24 “**Independent Accountant**” means a well-reputed international accounting firm with offices in Denmark either agreed upon by the Parties, or failing such agreement, within 10 Business Days after receipt of notification of the said non-acceptance, to be appointed by FSR – Danish Accountants (in Danish: *FSR – Danske Revisorer*).
- 1.1.25 “**Interest of Concessionaire**” means the commercial interest of Concessionaire in combination with the interest of the shareholders of Concessionaire for the creation of shareholder value in favour of the shareholders on a collective basis.
- 1.1.26 “**Investment**” has the meaning specified in Clause 2.1.
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- 1.1.27 “**Investment Shares**” has the meaning specified in Clause 2.1.
- 1.1.28 “**Law**” means all national (or state or provincial) legislation, statutes, acts, decrees, rules, ordinances, orders, judgments, treaties, international law and other laws, and regulations and by-laws of any legally constituted public authority in jurisdiction(s) in which the Parties are present.
- 1.1.29 “**Leakage**” means (i) any dividend or distribution declared, paid or made by Concessionaire to Private Party or any Related Party of Private Party or reduction of share capital of Concessionaire, (ii) any payments made, future benefits granted, or assets transferred to Private Party or any Related Party of Private Party by Concessionaire, (iii) any liabilities or obligations incurred or assumed by Concessionaire for the benefit of Private Party or any Related Party of Private Party, (iv) the waiver by Concessionaire of any amount owed to it by Private Party or any Related Party of Private Party, (v) any payment, including in-kind payments, effected by Concessionaire on behalf of, as well as any loans and/or cash advances to, Private Party or any Related Party of Private Party, and (vi) any tax liability of Concessionaire arising as a result of (i) to (v), except Permitted Leakage.
- 1.1.30 “**Loss**” means any and all losses, claims, deficits, interests, liabilities, damages, costs, or expenses recoverable under applicable Law, including reasonably foreseeable indirect losses, reasonable legal fees, investigation costs and/or similar.
- 1.1.31 “**Ministry**” has the meaning specified in the Recitals.
- 1.1.32 “**Notification of Claim**” has the meaning specified in Clause 8.2.1.
- 1.1.33 “**Notification of Disagreement**” has the meaning specified in Clause 3.2.2.
- 1.1.34 “**Notification Period**” has the meaning specified in Clause 3.2.2.
- 1.1.35 “**Offshore Wind Farm**” has the meaning specified in the Recitals.
- 1.1.36 “**Other Recipients**” has the meaning specified in Clause 199.2.1.
- 1.1.37 “**Party**” or “**Parties**” have the meaning specified in the Introduction.
- 1.1.38 “**Permitted Leakage**” means any Leakage which has been pre-approved by State Holding, or any Leakage as specified under (ii) – (v) of Clause 1.1.29 to the extent that such Leakage is
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made on Arm's Length and in the Interest of Concessionaire, it being understood that any deviation from Arm's Length in relation to (ii) – (v) of Clause 1.1.29 of the General Terms to the benefit of Concessionaire shall not constitute Leakage.

- 1.1.39 **“Person”** means any (i) natural person, (ii) incorporated or unincorporated legal entity or organisation and (iii) public authority.
- 1.1.40 **“Private Party”** has the meaning specified in the Introduction.
- 1.1.41 **“Purchase Price”** has the meaning specified in Clause 3.1.1.
- 1.1.42 **“Purchase Price Statement”** means a written statement prepared by State Holding containing a calculation of the Purchase Price.
- 1.1.43 **“Related Party”** has the meaning ascribed to such term (in Danish: *nærtstående*) in the Danish Insolvency Act (in Danish: *konkursloven*) as in effect from time to time.
- 1.1.44 **“Shareholders’ Agreement”** means the shareholders’ agreement attached as Appendix 1.1.44.
- 1.1.45 **“Shares”** means the shares in Concessionaire as in existence from time to time.
- 1.1.46 **“Signature Date”** means the date of last signature of this Agreement.
- 1.1.47 **“State Holding”** has the meaning specified in the Introduction.
- 1.1.48 **“State Holding Director”** means a board member appointed by State Holding in accordance with the Shareholders’ Agreement.
- 1.1.49 **“Tender”** or **“Tenders”** have the meaning specified in the Recitals.
- 1.1.50 **“Warranty”** or **“Warranties”** has the meaning specified in Clause 7.1.
- 1.2 In this Agreement, unless the context requires otherwise:
- 1.2.1 A reference to a “document” or an “agreement” is a reference to such document or agreement as modified, amended, or replaced from time to time.
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- 1.2.2 A reference to the singular shall include the plural and vice versa.
- 1.2.3 A reference to this Agreement shall include this Agreement as validly amended or varied in accordance with its terms.
- 1.2.4 A reference to “transfer” of securities, Shares or any similar expression shall include any sale, barter arrangement, donation, assignment, or transfer, including any sale, merger or transfer by gift or applicable Law, or any other transfer of an economic interest or voting rights in any equity security, which shall also include the direct or indirect enforcement or foreclosure of any lien, whether by applicable Law or otherwise.
- 1.2.5 Words introduced by “other” or “otherwise” shall not be given a restrictive meaning because they are preceded by words referring to a particular class of acts, matters or things.
- 1.2.6 General words shall not be given a restrictive meaning because they are followed by words which are particular examples of the acts, matters or things covered by the general words and the words “includes” and “including” shall be construed without limitation.
- 1.3 The headings and sub-headings in this Agreement are inserted for convenience only and shall not affect the construction of this Agreement.
- 1.4 Whenever in this Agreement a Party shall “procure”, “cause”, “ensure” or “undertake” a similar activity to do something, such Party shall be obligated to exercise any right to direct or cause the direction of a Person and use all powers vested in it from time to time as a shareholder, member of the Board of Directors or the Executive Board.
- 1.5 Every obligation contained in this Agreement shall be deemed to be a legally binding and an absolute obligation, and where the fulfilment of such obligation is not within the power or control of the relevant Party, the obligation of such Party shall be to use all of its rights, powers, and authority to procure compliance with that obligation in accordance with the foregoing.
- 1.6 Wherever an English term is used after which, either in the same provision or elsewhere in this Agreement, a Danish term has been inserted in brackets and *italics*, the Danish terms alone and not the English terms shall be authoritative for the interpretation of the respective provisions.
- 1.7 In the event of any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties, and no presumption or burden of proof
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shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

2. SALE AND PURCHASE OF SHARES

- 2.1 Pursuant to this Agreement, Private Party shall sell and transfer to State Holding, and State Holding shall acquire from Private Party, a number of Shares which equals to 20% of the share capital of Concessionaire (on a fully diluted basis and in each share class, if any) (the “**Investment Shares**”), free and clear from any and all third-party rights (the “**Investment**”).
- 2.2 All rights and benefits in and to the Investment Shares, including the ownership, the voting rights, and the right to dividends, shall pass from Private Party to State Holding on the date of Private Party’s receipt of the Purchase Price.

3. PURCHASE PRICE AND PAYMENT

3.1 The Purchase Price

- 3.1.1 State Holding shall pay to Private Party a cash consideration for the Investment Shares which equals to 20% of the total amount of equity capital contributions (share capital *plus* any share premium (in Danish: *overkurs*)), whether in cash or in kind, made by Private Party to Concessionaire and registered with the Danish Business Authority (in Danish: *Erhvervsstyrelsen*), adjusted downwards to neutralise any Leakage (the “**Purchase Price**”).

3.2 Determination of the Purchase Price

- 3.2.1 No later than 20 Business Days following the Signature Date, State Holding shall deliver the Purchase Price Statement to Private Party for its review and approval.
- 3.2.2 Upon Private Party’s receipt of the Purchase Price Statement and no later than 10 Business Days thereafter (the “**Notification Period**”), Private Party shall notify State Holding of any item(s) in the Purchase Price Statement it wishes to dispute (the “**Notification of Disagreement**”).
- 3.2.3 If Private Party fails to deliver a Notification of Disagreement within the Notification Period, the Purchase Price Statement as prepared and delivered by State Holding shall be deemed to have been agreed by the Parties, and thereby State Holding’s calculation of the Purchase Price shall become final and binding upon the Parties.

3.2.4 For a Notification of Disagreement to be valid under this Agreement, it shall:

- (1) specify the disputed item(s) in the Purchase Price Statement, provide a description of Private Party's material arguments in favour of its objections and, to the extent available, be accompanied by written documentation reasonably necessary to support Private Party's arguments and objections; and
- (2) include a specific proposal for adjustment of each disputed item in the Purchase Price Statement.

Objections of a general nature and objections that do not identify the disputed item(s) or the grounds (description and material arguments) on which they are based shall not be considered valid under this Agreement.

3.2.5 Private Party may deliver one or more Notifications of Disagreement to State Holding, but all Notifications of Disagreement shall be delivered to State Holding within the Notification Period.

3.2.6 Except for any disputed item(s) specified in any Notification of Disagreement duly prepared and delivered to State Holding, Private Party shall not be entitled to dispute the Purchase Price Statement as prepared and delivered by State Holding.

3.2.7 If the Parties are unable to reach agreement on any disputed item(s) within five (5) Business Days after State Holding's receipt of a Notification of Disagreement, either Party may within a subsequent period of 10 Business Days refer the disputed item(s) specified in such Notification of Disagreement to the Independent Accountant for the purpose of resolving the disputed item(s), provided that the subject matter of the disputed item(s) relates to the accounting aspects of the Purchase Price Statement. If a disputed item relates to a legal or contractual issue, including the legal interpretation of this Agreement, such dispute item shall be referred to arbitration within the same period of 10 Business Days in accordance with Clause 11. The Parties shall use all reasonable efforts to ensure that the Independent Accountant and/or the arbitration tribunal renders its decisions as swiftly as possible.

3.2.8 If neither of the Parties refers a dispute item to the Independent Accountant and/or to arbitration, as applicable, within the period of 10 Business Days, the Purchase Price Statement prepared and delivered by State Holding shall be deemed to have been agreed by the Parties, and thereby State Holding's calculation of the Purchase Price shall become final and binding upon the Parties.

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- 3.2.9 Notwithstanding any disputed item, the Parties shall complete the Investment based on the Purchase Price Statement prepared and delivered by State Holding without prejudice to any Party's legal position regarding any relevant adjustment of the Purchase Price in an underlying dispute between the Parties. Following completion of the Investment, and upon the decision of the Independent Accountant and/or the arbitration tribunal, as the case may be, each Party undertakes to observe such decision, and the non-prevailing Party shall settle entirely and exclusively in cash to the other Party any adjustments to the Purchase Price according to such decision.
- 3.2.10 Unless otherwise agreed by the Parties, the Independent Accountant shall establish the procedural rules in connection with its hearing of the Parties' respective positions on the disputed item(s). The decisions of the Independent Accountant on State Holding's calculation of the Purchase Price shall be final and binding upon the Parties and shall not be subject to any judicial or arbitrational review.
- 3.2.11 The Independent Accountant shall have unrestricted access to all books, records, statements and agreements related to Concessionaire as well as to the employees of the Parties and Concessionaire which, in the Independent Accountant's reasonable opinion, is necessary or appropriate for the Independent Accountant to reach an informed opinion and to decide on the disputed item(s). Any access and assistance pursuant to this Clause 3.2.11 shall be subject to the signing and delivery of a customary confidentiality undertaking.
- 3.2.12 The Parties shall make any deposit with and/or make any upfront payment to the Independent Accountant as well as provide relevant AML/KYC documentation as reasonably required by the Independent Accountant in order for it to accept the task of acting as the Independent Accountant in accordance with this Agreement. Any such deposit and/or upfront payment shall be divided equally (50/50) between the Parties.
- 3.2.13 The aggregate fees and expenses finally charged by the Independent Accountant shall be borne by the Party whom the Independent Accountant determines is least correct in the aggregate with respect to the disputed item(s) referred to the Independent Accountant for decision. The Independent Accountant's decision shall include a decision on the allocation of the fees and expenses finally charged by the Independent Accountant between the Parties in accordance with the aforementioned allocation principle.
- 3.2.14 If the Independent Accountant determines that the Parties are equally correct in the aggregate, the fees and expenses finally charged by the Independent Accountant shall be divided equally between the Parties (50/50). If one of the Parties shall bear the fees and
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expenses payable to the Independent Accountant, such Party shall indemnify the other Party from any deposit and/or upfront payment made by the other Party to the Independent Accountant.

3.3 Payment of the Purchase Price

- 3.3.1 No later than 30 Business Days following the Signature Date, the Purchase Price shall be paid by State Holding to Private Party by wire transfer to the following bank account of Private Party, unless otherwise notified by Private Party in accordance with Clause 12.2, on the Signature Date:

Bank: [●]

Registration number: [●]

Account number: [●]

Payment of the Purchase Price to the aforementioned bank account shall constitute the fulfilment and discharge of the payment obligation of State Holding, and State Holding shall have no liability for any further distribution of the Purchase Price.

4. SIGNING

- 4.1 The signing of the Contractual Framework, and the completion of the Investment, took place at the offices of [●] from [TIME] on the Signature Date.

5. POST-COMPLETION ACTIONS

- 5.1 Without undue delay following the Signature Date, the Parties, as applicable, shall procure that:
- (a) Concessionaire receives notice of the Investment and adequately registers State Holding as the sole owner of the Investment Shares in Concessionaire's register of shareholders, including that the Investment Shares are free and clear of any third-party rights, and that the ownership of Shares is subject to an agreement between shareholders;
 - (b) an extraordinary general meeting is held in Concessionaire with a purpose to appoint the State Holding Director; and

- (c) Concessionaire prepares and files for registration with the Danish Business Authority (in Danish: *Erhvervsstyrelsen*) of (i) the appointment of the State Holding Director, and (ii) the change in the ownership of Concessionaire.

5.2 If Private Party fails to comply with its obligation pursuant to Clause 5.1, Private Party appoints State Holding as its authorised attorney-in-fact and expressly grant an irrevocable power of attorney to complete the actions specified in Clause 5.1.

6. DUE DILIGENCE REVIEW

6.1 Private Party has given State Holding access to the Due Diligence Material, and State Holding and its advisors have conducted a due diligence review of Concessionaire prior to the completion of the Investment. The purpose of the due diligence review is to identify (i) any actual or legal matter that may legally prevent State Holding from making the Investment, (ii) any Leakage prompting an adjustment to the Purchase Price, (iii) any breach of Warranties, and (iv) any information about matters that, had the Shareholders' Agreement been in effect at the time, would have required State Holding's approval in accordance with Clause 5.5 of the Shareholders' Agreement, explicitly noting that such information is for reference only and will not trigger any rights pursuant to clause 5.5 of the Shareholders' Agreement. For the avoidance of doubt, the purpose of the due diligence review is not to assess the commercial aspects of Concessionaire, including market strategy, competitive analysis, revenue projections etc.

6.2 Private Party declares that the Due Diligence Material contains genuine copies of original documents and discloses all material information about Concessionaire. The facts described in the Due Diligence Material are true and all statements of opinion contained therein provide, to Private Party's knowledge, as true and fair view of the situation of Concessionaire.

7. WARRANTIES

7.1 Subject to the terms and limitations specified in Clause 8, Private Party makes the warranties specified in Appendix 7.1 (individually a "**Warranty**" or collectively the "**Warranties**") to State Holding.

7.2 The Warranties are Private Party's complete and only warranties, and State Holding shall not rely on any other warranties, representations, assumptions, expectations, or agreements, whether express or implied, unless specifically specified in this Agreement.

7.3 Unless otherwise specified in the Warranties, the Warranties are made as of the Signature Date.

8. LIABILITY

8.1 General

8.1.1 Subject to the terms and limitation of this Agreement, Private Party shall be liable and shall indemnify State Holding from and against any Losses incurred by State Holding as a result of a breach of this Agreement, including any breach of the Warranties. State Holding shall have the right to demand specific performance from Private Party to rectify and eliminate any breach of contract, without waiving or limiting State Holding's entitlement to claim indemnification for any incurred Losses.

8.1.2 Save as otherwise specifically specified in this Agreement, the remedies provided for in this Clause 8 are the exclusive remedies of State Holding with respect to any and all breaches of this Agreement by Private Party, and State Holding waives and renounces any rights that it may have, or subsequently acquires, under Danish Law to terminate or rescind this Agreement, and/or to claim a reduction of the Purchase Price (in Danish: *forholdsmæssigt afslag*).

8.1.3 Any compensation for Claims paid by Private Party to State Holding under this Agreement shall, to the extent allowed under applicable Law for tax and accounting purposes, be treated as a reduction of the Purchase Price.

8.2 Notification of Claims

8.2.1 State Holding shall notify Private Party by written notification of any Claim. Such notification shall include (shall be referred to as a "**Notification of Claim**"):

- information on the specific grounds of the Claim;
- State Holding's estimate of the Loss claimed; and
- written documentation to reasonably support the Claim to the extent available.

8.2.2 State Holding must provide Private Party with a Notification of Claim within 60 Business Days after becoming aware of the facts giving rise to the Claim. Failure to do so shall not result

in State Holding having forfeited the Claim and/or any rights to claim Losses in relation thereto, but any further Losses in respect of such Claim caused by State Holding's failure to timely notify Private Party shall not be recoverable.

- 8.2.3 If Private Party disputes a Claim duly notified by State Holding, State Holding may request arbitration in accordance with Clause 11 and serve its written complaint to Private Party within 90 Business Days after State Holding has received a written and unambiguous notification that Private Party disputes the Claim. Failure by State Holding to do so shall result in the Claim being forfeited by State Holding.

8.3 **Limitations**

8.3.1 ***General limitations***

- 8.3.1.1 Private Party is not liable to indemnify and hold State Holding harmless from and against any Losses incurred by State Holding, arising out of, or resulting from any change to applicable Law with retrospective effect following the completion of the Investment, or by voluntary actions taken or omissions made by State Holding following the completion of the Investment in the knowledge that it would prejudice Private Party.

8.3.2 ***Disclosed information***

- 8.3.2.1 State Holding shall be entitled to make any Claim against Private Party in relation to any breach of the Warranties, regardless of whether the facts, events and/or circumstances giving rise to such Claim have been disclosed in the Data Room or such information is otherwise known to State Holding, its employees, or its representatives.

State Holding shall not be entitled to make any Claim against Private Party in relation to any breach of the Warranties if the facts, events, and/or circumstances giving rise to such Claim are a result of any requirement or obligation of Concessionaire according to the procurement documentation prepared by DEA for the Concession

8.3.3 ***Limitation in time***

- 8.3.3.1 Private Party shall not be liable for any Claim asserted by State Holding against Private Party pertaining to a breach of the Warranties, unless State Holding has given Notification of Claim to Private Party no later than 24 months from and including the Signature Date, except with respect to;

- (a) any Claim asserted by State Holding against Private Party pertaining to a breach of a Warranty under Clauses 1 (*Private Party*), 2 (*Concessionaire*) and 3 (*Leakage*) of the Warranties, where no limitation in time shall apply; and
- (b) any Claim asserted by State Holding against Private Party pertaining to a breach arising out of or as a result of gross negligence, wilful misconduct, intent, or fraud on the part of Private Party, where no limitation in time shall apply.

8.3.4 ***Limitation of amount***

8.3.4.1 The total and maximum aggregate liability of Private Party in respect of any Claim asserted by State Holding against Private Party pertaining to a breach of the Warranties shall in no event exceed the higher of (i) an aggregate amount equal to 20% of CAPEX Budget or (ii) an aggregate amount equal to 100% of the Purchase Price (the “**Cap**”).

8.3.4.2 The Cap shall not apply in respect of any Claim asserted by State Holding against Private Party for breach arising out of or as a result of gross negligence, wilful misconduct, intent, or fraud on the part of Private Party.

8.3.5 ***Calculation of Losses***

8.3.5.1 No Loss shall be deemed to have been incurred by State Holding if State Holding has been explicitly compensated for the impact of such Loss through the determination of the Purchase Price.

8.3.6 ***Mitigation of Losses***

8.3.6.1 State Holding shall take reasonable steps to mitigate any Loss for which a Notification of Claim has been given to Private Party.

9. **CONFIDENTIALITY**

9.1 **Handling of Confidential Information**

9.1.1 Each Party shall use the Confidential Information solely for furtherance of legitimate purposes, performance of duties or discharge of legal obligations and shall, subject to Clause 9.2, not use, disclose, disseminate or distribute the Confidential Information for any other purpose without the prior written approval of the other Party and/or Concessionaire depending on the

nature and source of the Confidential Information, unless otherwise explicitly specified in this Agreement.

- 9.1.2 Each Party shall hold the Confidential Information in strict confidence and safe custody and shall not disclose, neither in whole nor in part, the Confidential Information to any Person other than those of the Parties', and with respect to Private Party only, also Private Party's Affiliated Companies, respective (i) direct and indirect owners, directors, officer, employees and other personnel, (ii) professional advisers or consultants engaged to advise in connection with this Agreement and Concessionaire, who need access to the Confidential Information in furtherance of legitimate purposes, performance of duties or discharge of legal obligations (such Person who accesses Confidential Information, an "**Authorised Recipient**").
- 9.1.3 Each Party undertakes to inform all of their Authorised Recipients that the Confidential Information is confidential and about the content of this Clause 9, and each Party shall procure that each of their Authorised Recipients agree to comply with this Clause 9, or terms similar to those set out herein, as if such Person was a party hereto.
- 9.1.4 Each Party shall use customary procedures to ensure that the Confidential Information is protected against theft and unauthorised access, and each Party shall, to the extent it is legally permissible under applicable Law, promptly notify the other Party in writing upon becoming aware that an unauthorised Person has gained access to Confidential Information.

9.2 Disclosure of Confidential Information

- 9.2.1 Notwithstanding Clause 9.1, a Party or its Authorised Recipients are entitled to disclose the Confidential Information, if the Party or its Authorised Recipients are legally required or requested to do so by applicable Law; governmental, supervisory or regulatory regulation; rules of stock exchange or recognised market place; any order of court of competent jurisdiction or arbitral tribunal; or any lawful and compelling enquiry by any governmental, or regulatory authority, including the Ministry, the Danish Parliament, the Finance Committee of the Danish Parliament (in Danish: *Finansudvalget*), and the National Audit Office (in Danish: *Rigsrevisionen*).

The Ministry is entitled to re-disclose Confidential Information in a summarized format restricted to a need-to-know basis, which includes (i) information on Concessionaire's financial development and performance, (ii) information on the status in relation to the applicable strategy and business plan, (iii) information on the status in relation to agreed-upon goals, if any, and (iv) general information on Concessionaire's budgets as well as significant risks

associated with these as outlined in the state ownership policy (in Danish: *Statens ejerskabspolitik*), to the members of the Danish Parliament (“**Other Recipients**”) or as otherwise required by applicable Law, including the Danish Ministerial Accountability Act. The Ministry undertakes to ensure that any Other Recipient who gains access to Confidential Information is made aware in writing of the confidential nature of the Confidential Information and that any further disclosure may cause irreparable harm to Concessionaire (and the Parties) if made public.

If compliant with the foregoing, the Ministry shall have no liability towards Concessionaire or the Parties for any treatment of the Confidential Information by an Other Recipient. This provision does not prejudice Concessionaire’s and/or the Parties’ legal position towards such Other Recipient.

- 9.2.2 If a Party or its Authorised Recipients become legally compelled to disclose Confidential Information about another Party or Concessionaire as part of any legal proceedings, the Party shall promptly and before such disclosure notify the other Party and/or Concessionaire thereof, thus permitting the other Party and/or Concessionaire to obtain an injunction or take other appropriate legal actions.

10. GOVERNING LAW

- 10.1 This Agreement and any dispute, controversy or claim arising out of or in relation to this Agreement shall be governed by and construed in accordance with Danish Law, without regard to its principles on choice of law.

11. ARBITRATION

- 11.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, including any disputes regarding the existence, validity, or termination thereof, shall be exclusively and finally settled by arbitration arranged by the Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by the Danish Institute of Arbitration and in force at the time when such proceedings are commenced.
- 11.2 The proceedings shall be conducted in the English language. Evidence, including (verbal or written) expert and witness statements, may be submitted in Danish or English.
- 11.3 The place of arbitration shall be in Copenhagen, Denmark.

11.4 The court of arbitration shall be composed of three (3) arbitrators. Each Party shall appoint one (1) arbitrator and the Danish Institute of Arbitration shall appoint one (1) arbitrator who shall be the chair of the court of arbitration. If a Party has not appointed an arbitrator within 20 Business Days of having requested or received notification of the arbitration, such arbitrator shall be appointed by the Danish Institute of Arbitration instead.

11.5 The arbitration proceedings and the arbitration award, but not the fact that arbitration proceedings are in process, shall be treated as Confidential Information in accordance with Clause 9, without any limitation in time.

12. MISCELLANEOUS

12.1 Entire understanding

12.1.1 This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior and contemporaneous, understandings, inducements, and conditions, express or implied, verbal or written, of any nature with respect to the subject matter hereof. This includes, *inter alia*, all negotiations conducted with relation to the public procurement process.

12.2 Communication

12.2.1 All notifications and other communications between the Parties in relation to this Agreement (the “**Communication**”) shall be by email in English or in Danish and shall be deemed to have been received by a Party upon receipt at the email address of the relevant Party.

12.2.2 Communication received on a day, which is not a Business Day, shall be deemed to have been received on the first Business Day following the actual date of receipt.

12.2.3 Communication shall be sent to the following email addresses, or such other email addresses as may be notified by a Party to the other Party in accordance with the provisions of this Clause 12.2:

If to State Holding:

*with a copy to
(for information purposes only):*

Poul Schmith/Kammeradvokaten

Attn.: [●]

[●]

Email address: [●]

Attn: [●]

Email address: [●]

If to Private Party:*with a copy to
(for information purposes only):*

[●]

[●]

Attn: [●]

Attn: [●]

Email address: [●]

Email address: [●]

12.3 Amendments

- 12.3.1 Any amendments to this Agreement shall be made in writing and shall only be made (i) by unanimous decision of the Parties, and (ii) in accordance with applicable Law, including the Directive on the award of concession contracts 2014/23/EU as implemented in Danish Law by the executive order no. 1080 of 29 June 2022. Unless explicitly agreed in writing, no amendment shall constitute a general waiver of any provision of this Agreement, nor shall it affect any rights or obligations under or pursuant to this Agreement which have already accrued up to the date of the amendment, and the rights and obligations under or pursuant to this Agreement shall remain in full force and effect, except and only to the extent they are amended.

12.4 Waiver

- 12.4.1 No waiver of any provision under this Agreement shall be effective, unless made in writing and signed by the waiving Party. The failure of any Party to require the performance of any term or obligation under this Agreement, or the waiver by any Party of any breach under this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

12.5 Costs and expenses

- 12.5.1 Each Party shall bear its own fees, costs and expenses incurred by it in connection with the implementation of the Investment, including all fees and expenses of its own legal, financial, and other advisers.

12.6 **Further assurance**

- 12.6.1 Subject to any limitation under applicable Law, Private Party shall (and shall procure that Concessionaire, their respective nominees, and representatives shall) execute and perform all such further deeds, documents, assurances, acts, actions, and omissions as may be reasonably required to give effect to the provisions of this Agreement.

12.7 **Severability**

- 12.7.1 If any provision of this Agreement is deemed to be invalid or unenforceable for any reason, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 12.7.2 Any provision of this Agreement, which is deemed to be invalid or unenforceable, shall, to the extent possible and permissible under applicable Law, be modified and shall apply with such content, as may be validly agreed, seeking to maintain as much of the original provision and the intention of it.

Signature page follows

Signature page to Investment Agreement:

For :

Name: 
Title: 
Date: 

Name: 
Title: 
Date: 

For :

Name: 
Title: 
Date: 

Name: 
Title: 
Date: 