

FEDERATED STATES OF MICRONESIA
FOREIGN FISHING AGREEMENT

between

THE NATIONAL OCEANIC RESOURCE MANAGEMENT AUTHORITY

and

The National Oceanic Resource Management Authority (“Authority”), on behalf of the Federated States of Micronesia (“FSM”), and _____, (“Company”) desirous of establishing terms and conditions pertaining to the Company’s utilization of fisheries resources within the Exclusive Economic Zone of the Federated States of Micronesia (“EEZ”), have agreed as follows:

I. GENERAL PROVISIONS

1. The Company acknowledges and accepts that:

(a) The sovereignty of the Federated States of Micronesia extends to its internal waters and Territorial Sea, including sovereign rights over the living and non-living resources in the Territorial Sea and internal waters and in the airspace above the Territorial Sea and internal waters as well as its bed and subsoil;

(b) Within the EEZ the National Government of the Federated States of Micronesia has sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone; and that

(c) The FSM has exclusive fishery management authority within the EEZ.

2. The Company agrees to comply with the Harmonized Minimum Terms and Conditions for Foreign Fishing Vessel Access as set forth in Attachment 1, attached hereto and by reference incorporated herein.

3. The Authority agrees to permit fishing within the EEZ by the Company’s purse seine fishing vessel in good standing on the South Pacific Forum Fisheries Agency Regional Register of Foreign Fishing Vessels (“Regional Register”) up to a maximum of ___ purse seine fishing vessels. In the event that the Authority determines that there is a

serious threat to the fish stocks in the fishery waters of the FSM, the Authority will provide sufficient advance notice to the Company that the Authority may need to take preventive conservation management steps to preserve the stocks. If the Authority then decides that it is necessary for the preservation of the stocks to limit or close access to the FSM EEZ, or portions thereof, the Company agrees to comply immediately with instructions provided by the Authority. In such an event, appropriate access fees shall be refunded to the Company on a pro rata basis for the time remaining on the Agreement.

II. PERMITS FOR AUTHORIZED VESSELS

4. The Company's purse seine fishing vessel authorized to fish in the EEZ pursuant to this Agreement shall hereinafter be referred to as "Authorized Vessel." Where applicable, the term "Authorized Vessel" also includes the "operator" of the vessel as defined in Title 24 of the FSM Code. The Authorized Vessels may engage in fishing in the EEZ only as permitted under the terms of this Agreement. During all such times as the Authorized Vessel is within the EEZ, the vessel shall have on board and prominently displayed in the wheelhouse of the Authorized Vessel, the original permit issued by the Authority. For a reasonable period of time after issuance of the permit by the Authority, not to exceed forty-five (45) days, and pending receipt by the Authorized Vessel of the original permit, a facsimile, or other documentation as approved in the Authority's regulation, of the actual and valid original permit issued by the Authority shall constitute sufficient evidence of a valid permit for purpose of surveillance, monitoring and enforcement of this Agreement.

5. A permit will only be issued by the Authority upon receipt and approval of a completed application in the form set forth in Attachment-2, and upon payment of all fees required, including without limitation, the fees described in Paragraph 7 of this Agreement. Documentation establishing ownership of the vessel and verification of insurance as required by Paragraph 25 of this Agreement shall accompany the application. The Authorized Vessel shall pay an application fee of US \$_____, which fee is not refundable and shall accompany the application.

6. Each Authorized Vessel shall be required to have an original permit issued by the Authority, except as provided in Paragraph 4. Permits may not be transferred among or between vessels or owners of vessels.

7. A list of the ____ purse seine fishing vessels for which the Company is seeking permit is attached and incorporated by reference to this Agreement as Attachment-3. The Company may amend the list of purse seine fishing vessels by providing written notification to the Authority, in a manner acceptable to the Authority, as long as, the amended list of vessels does not exceed the limits set forth in this Agreement regarding the number and capacity of the vessels. The Company shall pay an access fee of US \$_____ for the right of the ____ purse seine fishing vessels listed in Attachment 3 to engage in fishing operations in the EEZ during the term of the Agreement. The Company warrants that at the time of execution of this Agreement, each one of the ____ vessels listed in Attachment 3 is in good standing on the Regional

Register. This Agreement and the fee set forth herein are based upon the size and capacity of the ____ purse seine fishing vessels listed in Attachment 3. The Company shall not significantly increase the size or capacity of any of the ____ purse seine fishing vessels during the term of this Agreement without the written consent of the Authority.

(a) There shall be no refund or proration of the access fee described in this paragraph once the Agreement goes into effect except as provided in Paragraph 3 and 7. Provided the vessels listed in Attachment 3 meet the requirements of this Agreement and are in good standing on the Regional Register and the regional Vessel Monitoring System (VMS) at the time the Agreement goes into effect, the Authority agrees to issue permits to such fishing vessels; provided however, during the term of this Agreement, should any of the Authorized Vessels be removed from good standing on the Regional Register, the Authority may revoke or suspend the permit of such vessel forthwith.

(b) Payment of all fees described in this Agreement shall be made to the FSM National Government General Fund Account No. 77407-01904 at the Bank of the Federated States of Micronesia (BFSM) in Pohnpei or any of its branches in the FSM or directly to the FSM Treasury at Palikir, Pohnpei. Payments made by wire transfer or other forms of electronic transfer shall be made to the Bank of FSM, Micronesia in Honolulu, Hawaii with the following instructions:

Bank of FSM, Micronesia in Honolulu, Hawaii
ABA Number 1213-02373
Credit to Bank of FSM account number 08-18-5018
Further Credit to FSM National Government General Fund
Account Number 77407-01904

Copies of payments or wire transfers shall be forwarded to the Authority as evidence of payments made. If the Account is moved to another banking institution, the Authority shall notify the Company of this action and all payments of fees thereafter shall be made to the Account at the new banking institution.

(c) Each Vessel named in Attachment 3 shall not engage in fishing until the Authority has issued a permit and all other requirements of this Agreement have been met.

III. AUTHORIZED VESSELS – GENERAL PROVISIONS

8. The Authorized Vessels shall display identification marks (in English) in accordance with the FAO approved Standard Specifications for the Marking and Identification of Fishing Vessels as set forth in Annex 3 of Attachment 1 hereto.

(a) The name of the Authorized Vessel and the radio call sign or the country registration number shall be displayed in a prominent position on both sides of the vessel where such can readily be identified from the air or sea.

(b) The size of the letters and numbers constituting the name of the Authorized Vessel and radio call sign or country registration number of the Authorized Vessel shall be in accordance with Section 3.2 of Annex 3 of Attachment 1. The identification marks shall be clear and distinct and colored black on white, white on black, or similar contrasting colors.

9. The Authorized Vessels shall continuously monitor the international distress radio frequency 2182 KHz (HF) or the international safety and calling frequency 156.8 Mhz (Channel 16, VHF-FM) for the purpose of facilitating communication between such vessels and air and sea authorities of the FSM.

IV. REPORTING REQUIREMENTS

10. Authorized Vessel's captains or masters shall maintain accurate ship's logs detailing the daily activities, location of the ship, and the exact location and time of each set made in fishing operations.

11. For the Agreed Reporting Area, the Authorized Vessel shall duly complete in the English language, daily Catch Reports on the prescribed form set forth in Attachment 4 hereto. The Authorized Vessel shall certify that such information is true, complete and accurate. Bi-lingual forms may be used if approved by the Authority. Catch Reports must be maintained on board the Authorized Vessel until completion of a trip. Catch Reports must be completed by midnight local time of the day fish are harvested.

- (a) The Agreed Reporting Area shall be defined as and shall include:
 - i. the EEZ;
 - ii. the High seas adjacent to the EEZ;
 - iii. the exclusive economic or fisheries zones of other parties to the "Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest of 1982" and the high seas adjacent to such zones, where any fishing was conducted within the FSM EEZ during that voyage.

(b) The Catch Reports shall be transmitted to the Authority by the Company within 45 days of the completion of a voyage by the Authorized Vessel.

(c) On the Catch Report form the Authorized Vessel shall be required to report the date, time and position of the vessel for each set made by the vessel as well as full and complete information as to the catch for each set. If no sets are made by the Authorized Vessel for a particular day, or if a set is made and no fish are caught, the Authorized Vessel shall be required to report this information on the daily Catch Report. On days when no fishing operations are conducted, before midnight local time of that day, the Authorized Vessel must record on the approved Catch Report form the fact that no operations were conducted.

(d) The Authorized Vessel shall make the daily Catch Reports immediately available for inspection by enforcement officers and other individuals and entities authorized by the Authority.

(e) For incidental by-catch of species other than tuna, the Authorized Vessel shall report the species of fish taken and the size and quantity of each species by weight or number, as specified by the Authority, and whether the catch is kept on board the Authorized vessel or was returned to the sea.

(f) If an Authorized Vessel does not operate in the Agreed Reporting Area during a voyage, a Statement of Non-Operation as set forth in Attachment-5 shall be submitted to the Authority within 45 days of the completion of the voyage. When an Authorized Vessel resumes operations, a Statement of Resumption of Operation as set forth in Attachment-5 shall be submitted within 10 days of the date operation has resumed.

12. The Authorized Vessel shall immediately report each entry into or departure from the EEZ (including those made only for transit) in the form set forth in Attachment-6 hereof. In cases where an entry or departure is made during a weekend or holiday, a report shall be forwarded to the Authority within 72 hours by facsimile or by other mode of communication as approved by the Authority, including but not limited to, electronic mail. A weekly report each Wednesday as set forth in Attachment-6 shall also be required.

V. AUTOMATIC LOCATION COMMUNICATOR REQUIRED

13. Each Authorized Vessel shall have installed, maintained, and fully operational at all times on board an automatic location communicator (“ALC”) of a kind approved by the Authority. The Authorized Vessels and the Company agree not to tamper with, remove or have removed any ALC from the Authorized Vessel after installation, except for the purposes of maintenance and repair as required. The Company and each Authorized Vessel shall be responsible for the purchase, maintenance and operational costs of the ALC, and shall cooperate fully with the Authority in its utilization.

14. The Company shall ensure that appropriate position fixing and identification equipment are installed and are maintained in working order on the Authorized Vessel operating within the EEZ pursuant to this Agreement.

VI. FISHING ACTIVITIES OF AUTHORIZED VESSELS

15. During the term of this Agreement:

(a) Only fishing for tuna shall be permitted and any incidental by-catch of a species of fish other than tuna shall be reported to the Authority.

(b) No fishing is permitted within the Territorial Sea.

(c) No bottom fishing or coral fishing is permitted within the EEZ.

(d) No fishing is permitted within a 2 mile radius of any fish aggregating device of the Government of the Federated States of Micronesia, or any other FSM citizen or entity, or within 1 mile from submerged reefs within the EEZ.

(e) The Authorized Vessel shall be required to stow all fishing gear whenever such vessels are within the internal waters of each state, the Territorial Sea or within 1 mile of submerged reefs.

(f) The Authorized Vessel shall conduct all fishing activities in a manner which will not disrupt traditional, local-based fisheries, and shall release all turtles, marine mammals and reef fish in a manner which will provide this miscellaneous catch with the greatest chance of survival.

(g) The Authorized Vessel, its master and operator shall conduct all fishing activities in a manner, which will not disrupt the fishing operations of other fishing vessels and shall not interfere with the fishing gear of other fishing vessels.

16. The Authorized Vessel shall not transship any catch at sea, or outside of designated ports. Transshipment of fish caught in the EEZ is authorized by the Authority for ports within the FSM, provided however, the Authorized Vessel may transship any catch harvested in the EEZ at designated ports outside of the FSM upon 72 hours prior written notification to the Authority for each transshipment. Written notice shall include the name of the Authorized Vessel, its international radio call sign, position of the vessel, the catch on board by species, and the time and port where the transshipment is requested to occur.

VII. ENVIRONMENTAL RESPONSIBILITY

17. The Company recognizes the need to preserve the fragile (marine) environmental conditions of the lagoons and atolls of the FSM and the Authorized Vessel shall not dump raw sewage or discard fish, by-catch, rubbish, garbage, fuel, fuel wastes, fuel wastes by-products and/or other waste materials in the lagoons and atolls or within 12 miles of the baseline of any island, and shall not discharge any substance that is likely to cause damage to, or deterioration in, the quality of marine resources within the EEZ.

18. Authorized Vessels shall not discharge fish or by-catch into any port or give away fish or by-catch to any persons or entities without prior written authorization by the appropriate authority in the affected State and prior written approval from the Authority.

VIII. OBTAINING PROVISIONS

19. Authorized Vessels shall be required to obtain provisioning from local FSM sources; provided however, when provisions are unavailable in the FSM or when the Company can demonstrate that such provisions are unreasonably priced, Authorized Vessels may obtain such provisions from other sources.

20. The Company and each Authorized Vessel shall use their best efforts to utilize the services of FSM and local agents, stevedores and stevedoring services.

IX. AUTHORIZED OFFICERS AND OBSERVERS

21. The Authorized Vessel shall allow FSM authorized enforcement officials to board and inspect such vessels at any time within the EEZ or the Territorial Sea or internal waters of each State of the FSM.

(a) Enforcement officials shall have full access to the Authorized Vessel's records, including its logs, Catch Reports, documentation and any electronic device used for recording or storing data, and the captain or master of the Authorized Vessel shall permit such authorized officials to make notation on any permit issued by the Authority or other documentation required under this Agreement.

(b) The captain or master shall immediately comply with all reasonable instructions given by the authorized officials, and shall facilitate safe boarding, and facilitate the inspection of the vessel, gear, equipment, records, fish and fish products;

(c) The Authorized Vessel's captain, master or crew shall not assault, obstruct, resist, delay, refuse boarding, intimidate, or interfere with an authorized official or authorized observer in the performance of duties.

22. Authorized Vessel's captains or masters shall permit authorized observers of the Federated States of Micronesia to board the Authorized Vessel operating within the EEZ:

(a) The captain or master shall allow and assist such authorized observer to board the Authorized Vessel for scientific, monitoring, compliance and other functions;

(b) Observers shall have full access to and use of facilities and equipment on board the Authorized Vessel, which the authorized observer may determine necessary to carry out the observer's duties;

(c) Observers shall have access to the bridge, fish on board and areas, which may be used to hold, process, weigh and store fish;

(d) Observers may remove a reasonable number of samples and shall have full access to the vessel's records, including its logs, Catch Reports, and documentation for the purpose of inspection and copying;

(e) Observers shall be allowed to gather any other information relating to fisheries in the EEZ;

(f) Placement of observers will be made after consultation with the Company;

(g) Observers will not interfere in the lawful operation of the Authorized Vessel;

(h) Normal food and accommodations equal to that provided to officers of the Authorized Vessel shall be provided for observers on board the Authorized Vessel;

(i) Each Authorized Vessel shall contribute an annual fee of US \$_____ for the expenses incurred by the Authority in placing observers on the Authorized Vessel.

X. TRAINING MICRONESIANS

23. At the request of the Authority and upon reasonable notice to the Company, the Company shall accept citizens of the Federated States of Micronesia on board the Company's Authorized Vessels for the purpose of training the trainees in the techniques and skills of the purse seine fishing method and related operations. The terms and conditions of such technical training shall be determined by a separate agreement between the parties.

XI. COMPANY LIABILITY

24. The Company shall ensure that the Authorized Vessel is seaworthy and contains adequate life safety equipment and survival gear for each passenger and member of the crew.

25. For the protection of the Federated States of Micronesia, its States, and the citizens and residents thereof, the Company shall maintain adequate and complete insurance coverage on the Authorized Vessel through an internationally recognized insurance carrier acceptable to the Authority for all areas under the jurisdiction of the FSM, including areas within the lagoons and atolls, the Territorial Sea, submerged reefs, and the EEZ. The insurance shall include the following minimum conditions:

(a) Such insurance coverage shall be maintained throughout the period of this Agreement in an amount sufficient to cover any and all loss and damage, which

might occur as a result of any maritime accident or incident involving the Authorized Vessel or the Company.

(b) For each Authorized Vessel, the Company shall maintain third party liability insurance or protection and indemnity insurance coverage in an amount of not less than US \$1000 per gross registered ton covering: loss of life; personal injury; and, property damage, including without limitation, damage to ports, wharves and harbors, port fixtures, navigational aids, wreck removal, damage caused by the impeding of navigable channels, damage or degradation of the environment, damage to other vessels, and damages caused by the disposal of plastics, synthetic nets or other non-biodegradable substances.

(c) For each Authorized Vessel, the Company shall maintain marine pollution liability insurance coverage in an amount of not less than US \$1000 per gross registered ton, covering damage or loss caused by pollution of any type and kind, including without limitation oil, fuel and water pollution.

(d) Prior to the issuance of a fishing permit, for the Authorized Vessel the Company shall be required to file with the Authority a Certificate of Insurance (in English) evidencing an insurance policy and insurance coverage as set forth in this paragraph, valid for the duration of the Agreement.

26. In the event the Authorized Vessel is involved in a maritime accident or incident in FSM waters (including internal waters, the Territorial Sea and the EEZ), resulting in damages of any kind to the environment, to property or to any person, the Authorized Vessel and the Company shall immediately notify the Authority and the FSM Secretary of the Department of Transportation, Communications and Infrastructure:

(a) The Company, each Authorized Vessel and its operators shall immediately take all reasonable measures to abate, control, and clean up any damages arising out of such accident or incident, including without limitation, oil spills and other pollution occurring as a result thereof.

(b) The Company, each Authorized Vessel and its operators shall be jointly and severally liable for any damage to the environment caused in whole or in part by the negligent or intentional acts or omissions of the Authorized Vessel or its operators. Such damage may include without limitation, damage to the reefs, atolls, shoreline, water, and sea-bed in any way arising out of or in connection with fishing by the Company, or the Authorized Vessel.

(c) The Company, each Authorized Vessel and its operators shall be jointly and severally liable for any liabilities, damages, claims, recoveries, costs, and expenses arising out of loss of or damage to property, or injury to or deaths of persons caused in whole or in part by the negligent or intentional acts or omissions of the Authorized Vessel or its operators.

(d) The Company, each Authorized Vessel and its operators shall be jointly and severally liable for, and shall reimburse the relevant State and the FSM National Government for all costs incurred by either or both in association with any rescue operations of the Authorized Vessel or its crew.

27. As against third parties, the Company shall indemnify and defend the Authority and the National Government of the Federated States of Micronesia against any and all liabilities, damages, claims, recoveries, costs, and expenses incurred because of loss of or damage to property or the environment, or injury to or deaths of persons in any way arising out of the actions or omissions of the Authorized Vessel or the Company in connection with this Agreement. The Company agrees to defend the Authority, the Federated States of Micronesia, its officers, employees and agents against any third-party claims brought or actions filed against them in any third-party claims arising out of the actions or omissions of the Authorized Vessel or the Company in connection with this Agreement whether such claims or actions are rightfully or wrongfully brought or filed.

28. The Company and each Authorized Vessel fully understand that fishing is a dangerous activity, and that there are hazards to vessels in the waters of the FSM such as submerged reefs and corals. Notwithstanding the dangers and hazards of fishing in the waters of the FSM, as against the FSM, the Authority, and the States of the FSM, the Company and the Authorized Vessel voluntarily accept the risk of fishing in the FSM and assume all risk of loss, damage, or destruction to the Authorized Vessel, its gear or equipment, and any injury to or deaths of individuals associated with the Company or the Authorized Vessel, their employees, principals, or agents, arising out of or otherwise in connection with fishing by the Company and its Authorized Vessel. It is understood that the Company and its Authorized Vessel do not waive any claims they may have for wrongful acts of National Government officers and employees. It is also understood that there is no waiver of the immunity provided under Title 24.

29. Should any provision of this Agreement be found to be null, void, voidable, unenforceable or contrary to applicable law, this shall have no effect on the remaining provisions, which shall continue to have full force and effect.

30. At the request of either the Company or the Authority, on reasonable notice, consultations shall be held with respect to any problems, which may arise in the course of the implementation of this Agreement.

XII. APPLICABLE LAWS, RULES AND REGULATIONS

31. The Company and the Authorized Vessel and its operators shall strictly comply with this Agreement and with the laws, rules, and regulations of the FSM and its States. Mention of certain FSM laws, rules and regulations, or portions thereof, within this Agreement shall not be construed to mean that the laws, rules and regulations, or portions thereof, not mentioned shall not apply to this Agreement.

32. The fishing which is allowed under this Agreement shall be conducted in accordance with all laws, rules and regulations of the FSM and its States, as those laws currently exist or as amended, during the term of this access agreement and with all applicable international treaties, conventions and fisheries management agreements to which the FSM is or becomes a signatory or to which the FSM is or becomes subject.

33. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the Federated States of Micronesia, and any action brought by either party arising out this Agreement shall be brought in the Federated States of Micronesia.

34. The Company shall ensure and guarantee strict compliance by the Authorized Vessel and its operators with the Agreement and all applicable laws, rules, and regulations of the FSM and its States. The Company warrants that it will fully and completely apprise the Authorized Vessel and its operators of the terms of the Agreement.

35. The Company shall appoint and maintain an agent in the FSM, and the Company hereby designates _____ as the Company's agent authorized to receive and respond to any legal process issued in the FSM. The Company's agent shall be required to reside in the FSM. The Company shall provide at least 10 days prior written notice to the Authority of any change in the designation of the agent appointed hereunder. Service of process upon the agent shall constitute proper and legal service of process upon the Company, the Authorized Vessel, its operators, and/or their officers, employees and agents.

36. The Authority may suspend, revoke or impose restrictions on any permit issued under this Agreement for the Authorized Vessel, which has been used in the commission of any act prohibited by law, or the Authorized Vessel, which has violated the Agreement. The remedies set forth in this sub-paragraph are not exclusive.

37. Failure to comply strictly with the Agreement and with the laws, rules, and regulations of the FSM and its States may result in substantial fines and other civil and criminal penalties.

38. In the case of seizure of the Authorized Vessel or the arrest of its crew, the Authority will notify the Company or its Agent of this action.

XIII. ENTIRE AGREEMENT

39. This Agreement shall constitute the entire agreement between the parties and any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this Agreement. All Attachments to this Agreement are incorporated in this Agreement by reference and made a part of the Agreement.

40. The Authority shall review this Agreement annually to determine whether the Agreement is in the best interests of the FSM and shall have the right to renegotiate should it determine that the Agreement does not serve the best interests of the FSM.

41. The Authority shall have the right to terminate this Agreement, according to its terms or upon substantial non-compliance by the Company with its terms.

42. Any modification of this Agreement or additional obligation assumed by any party in connection with this Agreement shall be valid and enforceable only if evidenced in writing signed by each party or an authorized representative of each party.

XIV. TERM OF AGREEMENT

43. The term of this Agreement shall be for a period of _____ year (s). The Agreement shall take effect upon execution by the parties or the date upon which the Congress of the Federated States of Micronesia approves this Agreement whichever date is later.

IN WITNESS WHEREOF, the undersigned, being duly authorized by their principals, have signed this Agreement on the dates and at the places shown.

**For the National Oceanic Resource
Management Authority:**

Executed at: _____

On _____, 20__.

By: _____
Lorin Robert
Chairman

For _____:

Executed at: _____

On _____, 20__.

By: _____

ACKNOWLEDGEMENT OF RECEIPT

The Company acknowledges receipt of a copy of the FSM Marine Resources Act of 2002.

For _____:

By: _____