

FISH FARMING (LAKE ARGYLE) DEVELOPMENT AGREEMENT.

No. 102 of 1976.

AN ACT to ratify an Agreement between the State of Western Australia and Fish Farms International Ltd. with respect to the breeding, rearing and farming of Barramundi for commercial purposes.

[Assented to 17th November, 1976.]

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Fish Farming (Lake Argyle) Development Agreement Act, 1976.* Short title.

2. In this Act "the Agreement" means the Agreement a copy of which is set out in the Schedule to this Act and, if that Agreement is altered in Interpre-
tation.

accordance with the provisions thereof, includes that Agreement as so altered from time to time.

Ratification,
etc.

3. The Agreement is hereby ratified and approved and all acts and things done pursuant thereto are hereby specifically authorized and approved.

SCHEDULE.

THIS AGREEMENT made this 7th day of October, 1976 Between THE HONOURABLE SIR CHARLES WALTER MICHAEL COURT, O.B.E., M.L.A. Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the one part and FISH FARMS INTERNATIONAL LTD. a company incorporated under the Companies Act of the State of Western Australia and having its registered office at 1187 Hay Street, East Perth (hereinafter called "the Company" in which term shall be included the Company and its successors and permitted assigns and appointees) of the other part.

WHEREAS:

- A. Barramundi spawn in salt water and do not breed in fresh water. They start migrating to fresh water at an early age. At the present time there are few barramundi in Lake Argyle (part of the Ord River Project Area as hereinafter defined) and they will not breed there.
- B. The Company has carried out certain investigation into the breeding, rearing and farming of barramundi for commercial purposes.
- C. The Company desires:
 - (a) to establish near Kununurra and/or Wyndham in the said State salt water hatcheries and nurseries for the breeding and early rearing of barramundi and to regularly stock the Ord River Project Area with young barramundi from these hatcheries and nurseries;
 - (b) to utilize from time to time certain areas of the Ord River Project Area for the rearing, farming and harvesting of barramundi;
 - (c) to establish processing establishments; and
 - (d) to market barramundi thus produced from the Ord River Project Area.
- D. The Company acknowledges that its proposed use of the Ord River Project Area is subject to the primary use (as hereinafter defined).

NOW THIS AGREEMENT WITNESSETH—

1. In this Agreement subject to the context—

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, “require” or “submit” means advise, apply, approve, approval, consent, certify, direct, notify, request, require or submit in writing as the case may be;

“amateur fisherman” means any person who holds any license to fish issued under the Fisheries Act other than a professional fisherman’s license;

“area” includes any area of land and/or any area of water;

“associated company” means—

(a) any company or corporation providing for the purpose of this Agreement capital of not less than \$1 000 000 which is incorporated or formed within the United Kingdom the United States of America or Australia or such other country as the Minister may approve and which—

(i) is promoted by the Company for all or any of the purposes of this Agreement and in which the Company or some other company or corporation acceptable to the Minister has not less than a 25% interest or some lesser interest acceptable to the Minister; or

(ii) is related within the meaning of that term as used in section 6 of the Companies Act, 1961, to any company or corporation in which the Company or some other company or corporation acceptable to the Minister holds not less than 25% of the issued ordinary share capital; and

(iii) is notified to the Minister by the Company as being such a company;

(b) any company or corporation approved in writing by the Minister;

“barramundi” means the species of fish having the uniform common name of Giant Perch and the scientific name of *Lates calcarifer*;

“boat lock” means that section of the fish barrier so constructed pursuant to a detailed proposal approved by the Minister under Clause 13 hereof as to enable the passage of boats through the fish barrier while restricting the numbers of barramundi able to escape;

“Clause” means a clause of this Agreement;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“date of ratification” means the date upon which the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act;

“fillet” means that part of a fish remaining after the head, backbone, scales, tail and viscera have been removed;

“fish” includes barramundi;

“fish barrier” means the fish barrier to be constructed for the purpose of the capture of barramundi and placed in the Ord River adjacent to King Location 5713 (or at such other Location as the Minister shall approve), pursuant to a detailed proposal approved by the Minister under Clause 13;

“Fisheries Act” means the Fisheries Act 1905;

“hatchery” means an establishment for the artificial spawning, hatching and early rearing of barramundi to be constructed by the Company pursuant to a detailed proposal approved by the Minister under Clause 8;

“Land Act” means the Land Act, 1933;

“licensed professional fisherman” means a person licensed as a professional fisherman under the Fisheries Act;

“Minister” means the Minister in the Government of the State for the time being responsible (under whatsoever title) for the administration of the ratifying Act and pending the passing of the Act means the Minister for the time being designated in a notice from the State to the Company and includes the successors in office of the Minister;

“month” means calendar month;

“notice” means notice in writing;

“nursery” means an artificial pond or confined space in which young barramundi are reared, to be constructed by the Company pursuant to a detailed proposal approved by the Minister under Clause 8;

“Ord River Project Area” means the waters of the Ord River in the vicinity of the Ord River Dam, the waters of Lake Argyle and Lake Kununurra, the waters connecting those lakes and all the several other rivers, creeks, streams, lakes and water-courses of every description in the State of Western Australia that contribute to the existing irrigation scheme;

“period of this Agreement” means the period referred to in Clause 11;

“person” or “persons” includes bodies corporate;

“primary use” means the supply of water from the Ord River Project Area for industrial, domestic and irrigation purposes and for the generation of hydro-electric power;

“private road” means a road (not being a public road) which is either constructed by the Company in accordance with its proposals as approved by the Minister pursuant to Clause 8 and/or Clause 13 or agreed by the parties to be a private road for the purpose of this Agreement;

“project commencement date” means the date upon which the detailed proposals of the Company are approved by the Minister pursuant to Clause 8;

“public road” means a road as defined by the Road Traffic Act, 1974;

“Public Works Act” means the Public Works Act, 1902;

“ratifying Act” means the Act to ratify this Agreement and referred to in Clause 4;

“said State” means the State of Western Australia;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“young barramundi” means a barramundi the age of which is not greater than 12 months old.

Interpre-
tation.

2. In this Agreement—

- (1) monetary references are references to Australian currency unless otherwise specifically expressed;

- (2) power given under any clause other than Clause 39 to extend any period or date shall be without prejudice to the power of the Minister under Clause 39;
- (3) marginal notes do not affect the interpretation or construction; and
- (4) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and the regulations for the time being in force thereunder.

3. The State shall—

- (1) introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to the 31st December, 1976; and
- (2) to the extent reasonably necessary for the purposes of this Agreement allow the Company to enter upon Crown lands.

Initial obligations of the State.

4. (1) The provisions of this Agreement other than this Clause and Clauses 1 and 3 shall not come into operation until the Bill referred to in Clause 3 has been passed by the Parliament of Western Australia and comes into operation as an Act.

Ratification and operation.

(2) If before 31st December, 1976 the said Bill is not passed then unless the parties hereto otherwise agree this Agreement shall then cease and determine and neither of the parties hereto shall have any claim against the other of them with respect to any matter or thing arising out of, done, performed or omitted to be done or performed under this Agreement.

(3) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

5. The Company shall carry out at its expense using qualified and competent consultants where necessary (for the purpose, *inter alia*, of preparing the preliminary plans and specifications, preliminary reports and the detailed proposals hereinafter referred to)—

Initial obligations of the Company.

- (a) preliminary ecological, biological and limnological investigation of Lake Argyle to determine, *inter alia*, the availability of the natural food for

barramundi in the quantities that would be required for the viability of the Company's proposed undertaking pursuant to this Agreement;

- (b) investigation of:
 - (i) the design of the hatcheries and the nurseries and also procedures for harvesting barramundi;
 - (ii) the artificial spawning, hatching and procedures for the early rearing of barramundi;
 - (iii) the design of the fish barrier, the boat lock, and of a processing establishment and ancillary facilities; and
 - (iv) the availability of markets for barramundi in Australia and in other countries; and
- (c) investigation into the funding of the Company's undertaking pursuant to this Agreement including details as to—
 - (i) capital expenditure;
 - (ii) working capital; and
 - (iii) the method of financing the Company's said undertaking.

Preliminary plans and specifications and preliminary reports.

6. Without prejudice to the obligations of the Company to submit to the Minister detailed proposals in respect of the matters referred to in Clause 7 and in paragraph (b) of subclause (1) of Clause 13 the Company shall, within 3 months of the date of ratification, submit to the Minister:

- (a) preliminary plans and specifications in respect of—
 - (i) the design of the hatcheries and the nurseries;
 - (ii) the design of the fish barrier and boat lock; and
 - (iii) the design of a processing establishment;
- (b) preliminary advice (including plans where necessary) as to the method of artificial spawning, hatching, early rearing and capture of barramundi; and
- (c) details of the funding of the Company's undertaking pursuant to this Agreement.

7. (1) Within 6 months of the date of ratification the Company shall submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) for a hatchery and a nursery having a capacity upon completion to produce not less than 200 000 young barramundi per year for release into Lake Argyle and including the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters; namely—

Company
to submit
proposals.

- (a) any other works, services or facilities desired by the Company, (not otherwise provided for in this Agreement);
- (b) any leases, licenses or other tenures of land required from the State (not otherwise provided for in this Agreement); and
- (c) measures to be taken for the protection and management of the environment including the rehabilitation and/or restoration of any areas that may be adversely affected or damaged by reason of the Company's activities, the prevention of the discharge of pollutants into the surrounding country, water courses, lakes or underground water supplies and to the extent that the Company is responsible for implementing the matters referred to in paragraphs (a) and (b) of this subclause, consideration of the environmental effects relating thereto.

(2) The proposals may with the approval of the Minister and shall if so required by the State be submitted separately and in any order as to the matters mentioned in subclause (1) of this Clause.

Order of
proposals.

(3) The proposals relating to any of the matters mentioned in subclause (1) of this Clause may with the approval of the Minister and that of any third parties concerned instead of providing for the construction of new facilities of the kind therein mentioned provide for the use by the Company upon reasonable terms and conditions of any existing facilities of such kind.

Use of
existing
facilities.

8. (1) On receipt of the said proposals the Minister shall—

- (a) approve of the said proposals either wholly or in part without qualification or reservation; or
- (b) defer consideration of or decision upon the same until such time as the Company submits a further proposal or proposals in respect of

Consideration
of
proposals.

some other of the matters mentioned in subclause (1) of Clause 7 not covered by the said proposals or

- (c) require as a condition precedent to the giving of his approval to the said proposals that the Company make such alteration thereto or complies with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Company of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions.

Advice of
Minister's
decision.

(2) The Minister shall within 2 months after receipt of the said proposals give notice to the Company of his decision in respect to the same.

Consulta-
tion with
Minister.

(3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) of this Clause the Minister shall afford the Company full opportunity to consult with him and should it so desire to submit new proposals either generally or in respect to some particular matter.

Minister's
decision
subject to
arbitration.

(4) If the decision of the Minister is as mentioned in the said paragraph (c) and the Company considers that the condition precedent is unreasonable the Company may within 2 months after receipt of the notice mentioned in subclause (2) of this Clause elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the condition precedent.

Arbitration
award.

(5) An award made on an arbitration pursuant to subclause (4) of this Clause shall have force and effect as follows—

- (a) if by the award the dispute is decided against the Company then unless the Company within 3 months after delivery of the award gives notice to the Minister of its acceptance of the award this Agreement shall on the expiration of that period of 3 months cease and determine; or
- (b) if by the award the dispute is decided in favour of the Company the decision shall take effect as a notice by the Minister that he is so satisfied with and approves the matter or matters the subject of the arbitration.

(6) Notwithstanding that under subclause (1) of this Clause any detailed proposals of the Company are approved by the Minister or determined by arbitration award, unless each and every such proposal and matter is so approved or determined within 12 months of the date of ratification or such additional period (if any) as the Company shall be granted pursuant to the provisions of this Agreement then the Minister may give to the Company 12 months notice of intention to determine this Agreement and unless before the expiration of the said 12 months period all the detailed proposals and matters are so approved or determined this Agreement shall cease and determine subject however to the provisions of Clause 40.

Effect of non-approval of proposals.

(7) The Company shall implement the approved proposals in accordance with the terms thereof.

Implementation of proposals.

9. If the Company at any time during the continuance of this Agreement desires to significantly modify expand or otherwise vary its activities carried on pursuant to this Agreement beyond those specified in any approved proposals it shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (c) of subclause (1) of Clause 7 as the Minister may require. The provisions of Clauses 7 and 8 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this subclause. The Company shall implement the approved proposals in accordance with the terms thereof.

Additional proposals.

10. (1) The Company shall in respect of the matters referred to in paragraph (c) of subclause (1) of Clause 7 and in paragraph (b) of subclause (1) of Clause 13 and which are the subject of approved proposals under this Agreement, carry out a continuous programme of investigation and research including monitoring and the study of sample areas to ascertain the effectiveness of the measures it is taking pursuant to its approved proposals for the protection and management of the environment.

Additional proposals for the protection and management of the environment.

(2) The Company shall during the currency of this Agreement at yearly intervals commencing from the date when the Company's proposals are approved submit an interim report to the Minister concerning investigations and research carried out pursuant to subclause (1) of this Clause and at 3 yearly intervals commencing from such date submit a detailed report to the Minister on the result of the investigations and research during the previous 3 years.

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(3) The Minister may within 2 months of the receipt of the detailed report pursuant to subclause (2) of this Clause notify the Company that he requires additional detailed proposals to be submitted in respect of all or any of the matters the subject of the detailed report.

(4) The Company shall within 2 months of the receipt of a notice given pursuant to subclause (3) of this Clause submit to the Minister additional detailed proposals as required and the provisions of Clauses 7 and 8 where applicable shall *mutatis mutandis* apply in respect of such proposals.

Period of
agree-
ment.

11. The period of this Agreement shall be 21 years from the project commencement date unless otherwise determined pursuant to this Agreement.

Construc-
tion of
works.

12. The Company shall in accordance with its proposals as finally approved under Clause 8, within 6 months next following the project commencement date, commence the construction of the works referred to in such proposals, and shall complete all such works to the satisfaction of the Minister and have the hatchery and nursery in operation within 2 years of the project commencement date except as otherwise specified in the proposals.

Production
and
release of
young
barramundi.

13. (1) The Company shall during the period of 12 months immediately following the date of completion of the hatchery and nursery as provided in Clause 12—

(a) (i) release from the hatchery or the nursery into Lake Argyle not less than 200 000 young barramundi; and

(ii) produce evidence satisfactory to the Minister that it has the capacity and the capability to release into Lake Argyle 200 000 young barramundi per year for any 2 years in a continuous three yearly cycle to commence at the end of that 12 month period; and

Detailed
proposals
for fish
barrier
methods of
capture
and
processing
establish-
ment.

(b) submit to the Minister to the fullest extent reasonably practicable its detailed proposals (which proposals shall include plans where practicable and specifications where reasonably required by the Minister) for:

(i) the fish barrier;

(ii) the boat lock;

- (iii) the methods of capture of fish both at the fish barrier and in Lake Argyle;
- (iv) the provision of transport of fish to a processing establishment at Nigger Hill and/or such other place or places of which the Minister shall approve; and
- (v) the construction and operation of a processing establishment having a capacity upon completion to process not less than 500 000 kilogrammes of barramundi fillets per annum.

(2) The provisions of Clauses 7 and 8 shall, *mutatis mutandis*, apply to detailed proposals submitted pursuant to paragraph (b) of subclause (1) of this Clause.

(3) The works referred to in sub-paragraphs (i), (ii) and (v) of paragraph (b) of subclause (1) of this Clause shall be completed to the satisfaction of the Minister not later than 3 years after the date of completion of the hatchery and nursery as provided in Clause 12 except as otherwise specified in the proposals.

(4) The Company shall implement proposals approved by the Minister pursuant to subclause (2) of this Clause in accordance with the terms thereof.

14. (1) The Company shall for the purposes of this Agreement as far as it is reasonable and economically practicable—

- (a) use the services of scientists, engineers, surveyors, architects and other professional consultants resident and available within the said State;
- (b) use labour available within the said State;
- (c) when calling for tenders and letting contracts for works materials plant equipment and supplies ensure that Western Australian suppliers manufacturers and contractors are given reasonable opportunity to tender or quote; and
- (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works materials plant equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.

Use of
local
professional
services
labour and
materials.

(2) The Company shall from time to time during the currency of this Agreement when requested by the Minister submit a report concerning its implementation of the provisions of subclause (1) of this Clause.

Roads.

15. (1) The Company shall—

- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in its operations hereunder;
- (b) at its own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Company's operations and its invitees and licensees) are excluded from the use of any such private roads; and
- (c) at any place where such private roads are constructed by the Company so as to cross any railways or public roads provide such reasonable protection as may be required to the Commissioner of Main Roads or the Railways Commission as the case may be.

Liability.

(2) The parties hereto further covenant and agree with each other that—

- (a) for the purposes of determining whether and the extent to which—
 - (i) the Company is liable to any person or body corporate (other than the State); or
 - (ii) an action is maintainable by any such person or body corporate in respect of the death or injury of any person or damage to any property arising out of the use of any of the roads for the maintenance of which the Company is responsible hereunder and for no other purpose the Company shall be deemed to be a municipality and the said roads shall be deemed to be streets under the care control and management of the Company; and
- (b) for the purposes of this Clause the terms "municipality" "street" and "care control and management" shall have the meanings which they respectively have in the Local Government Act, 1960.

16. Upon the request of the Company the State shall grant to the Company a license to draw from the sea, its requirements of sea water in accordance with the relevant approved proposal hereunder and shall assist the Company in acquiring rights of way for any pipeline involved.

Sea water
license.

17. (1) The Company shall from time to time as the need arises apply for and do all things necessary to obtain all appropriate licenses and/or permits under the Fisheries Act, including the following licenses and/or permits:

Licenses,
Permits
(Fisheries
Act).

- (a) fishing boat licenses for boats used by the Company;
- (b) professional fishermen's licenses for the Company and such employees of the Company who are required to be licensed under the provisions of the Fisheries Act;
- (c) a fish farm license granted under Part V of the Fisheries Act;
- (d) a processor's license or licenses granted under Part IIIB of the Fisheries Act.

(2) Provided that the Company is not in default hereunder and subject to the provisions hereof, the State shall issue such licenses or permits under the Fisheries Act as the Company shall apply for modified where necessary to enable the Company to carry out its operations under this Agreement and the State in the exercise of the rights and powers contained in the Fisheries Act shall not derogate from the rights conferred by this Agreement.

18. (1) The Company shall apply for the appropriate license or licenses under the Rights in Water and Irrigation Act, 1914.

Rights in
Water and
Irrigation
Act, 1914.

(2) The State by virtue of the provisions of this Agreement shall cause the Company to be granted a permit or permits under the provisions of the Rights in Water and Irrigation Act, 1914 to draw water from the Ord River Project Area on such terms and conditions as the Minister approves during the period of this Agreement in such quantities (subject to its availability) as is sufficient to meet the Company's fresh water requirements.

(3) The Company shall pay to the State for water supplied pursuant to the provisions of subclause (2) of this Clause, such reasonable prices as the Minister for Water Supply shall from time to time determine having regard to the use to which such water is put by the Company, and in the case of fish farming the return of water by the Company to the Ord River Project Area.

Fishing
rights.

19. The State shall, subject to the provisions of this Agreement and to the due performance by the Company of its obligations hereunder and where applicable in accordance with the relevant approved proposal permit the Company—

- (a) to construct the fish barrier;
- (b) to fish for barramundi in:
 - (i) Lake Argyle;
 - (ii) the rivers and watercourses leading into Lake Argyle;
 - (iii) Lake Kununurra upstream from the fish barrier;
 - (iv) the rivers and watercourses leading into Lake Kununurra upstream from the fish barrier; and
 - (v) the waters connecting Lake Argyle and Lake Kununurra.

(The waters referred to in sub-paragraphs (i) to (v) inclusive of this paragraph are referred to in Clauses 20, 21, 22 and in subparagraph (B) of sub-paragraph (i) of paragraph (c) of Clause 24 of this Agreement as "the fishing waters".);

- (c) in the event of the accidental break through of the fish barrier, to fish for barramundi in Lake Kununurra downstream from the barrier to the Kununurra diversion dam for such period as the State may permit on the condition that the Company in a proper and workmanlike manner and with all possible despatch repairs the fish barrier;
- (d) subject to the Company obtaining the appropriate license, to take barramundi breeding stock;

- (e) subject to the consent of the Minister (who shall have regard *inter alia* to the Company's requirements to catch catfish as may be necessary for the good management of farming of barramundi), from time to time to fish for species of fish other than barramundi upstream from the fish barrier on terms and conditions and by methods approved by the Minister;
- (f) subject to the Company obtaining the appropriate license, to selectively introduce into Lake Argyle such indigenous species of fish as the Minister shall from time to time approve;
- (g) to use the existing boat launching ramp controlled by the Public Works Department on Lake Argyle (subject to the Company paying such proportion of the maintenance cost thereof as the Minister shall determine), during the hours of darkness and up to 1½ hours after sunrise for such period not exceeding 8 years from the project commencement date as the Minister shall determine (having regard to the use by others of the facility) for the launching, recovering loading and unloading of the Company's boats, PROVIDED THAT such use by the Company shall not preclude the use of the boat launching ramp by others during the times and period herein referred to; and
- (h) to locate moorings within one kilometre of the said boat launching ramp and other ramps constructed or used by the Company.

20. (1) The State shall, subject to the performance by the Company of its obligations hereunder by notice published in the *Government Gazette* from time to time, prohibit— Prohibitions.

- (a) all persons other than the Company from taking barramundi in such locations in the fishing waters and during such period or periods between 1st December of each year and 30th April of the year next following as the Minister shall determine after consultation with the Company so as to protect barramundi migrating out of Lake Argyle on their spawning run;

- (b) any licensed professional fisherman, other than the Company, (or any other person who catches or attempts to catch or assist in catching by any method whatsoever fish for sale)
 - (i) from taking barramundi in the fishing waters during the currency of this Agreement; and
 - (ii) from taking other species of fish in the fishing waters until the expiration of 6 years from the project commencement date, (or until the expiration of such further period or periods as may be determined pursuant to this Agreement);
- (c) all persons, other than the Company, from taking barramundi in the fishing waters having a length measured from the point of the snout to the end of the tail, of 58 centimetres or less; and
- (d) the taking of fish by any persons inside any boundary delineated by the Company's markers PROVIDED HOWEVER that the Company's markers shall be constructed to a size and standard approved by the Minister and shall not be installed more than 200 metres from such sites as are approved in accordance with proposals approved pursuant to this Agreement for the location of the Company's stationary nets or other approved catching devices.

(2) If the Company considers that its operations and the maximisation of its production and catching of barramundi would be unduly prejudiced by the removal of the prohibition referred to in sub-paragraph (ii) of paragraph (b) of subclause (1) of this Clause after the expiration of the period of 6 years referred to in the said sub-paragraph (ii), (in this subclause called "the prohibition period") or where the prohibition period has been extended pursuant to this Agreement, after the expiration of any period during which the prohibition period has been so extended, (in this subclause called "the extended period"), the Company may, upon giving notice to the Minister not later than 3 months before the expiration of the prohibition period, (or any extended period as the case may be), request that the prohibition period, (or any extended period as the case may be), be extended for such period not exceeding 3 years as the Company shall specify in such notice and if the Minister refuses such request and the Company considers

that such refusal is unreasonable, the Company may refer to arbitration the question of the reasonableness of the Minister's refusal and the provisions of Clause 46 shall apply, PROVIDED HOWEVER that the aggregate of the periods during which such prohibition may be imposed shall not extend beyond the period of this Agreement.

21. Subject to the Minister being of the opinion after consultation with the Company that the catch of barramundi by amateur fishermen in any 12 month period commencing from 1st May in any year is likely to exceed 10 per centum of the Company's total catch of barramundi for that 12 month period or 100 000 kilogrammes (whichever is the greater), the Minister shall by notice published in the *Government Gazette* from time to time impose restrictions on the fishing of barramundi or on the mode of fishing barramundi by amateur fishermen in the fishing waters during such periods as the Minister shall determine with the view to containing the catch by amateur fishermen as far as practicable to 10 per centum of the Company's total catch during the period above referred to or to 100 000 kilogrammes whichever is the greater.

Restrictions.

22. The Minister may by notice published in the *Government Gazette* from time to time, prescribe the daily bag limits upon the catch of barramundi by any person other than the Company in the fishing waters and the periods during which such daily bag limit is to operate, so that such person shall not during any prescribed period take or bring on land any quantity of barramundi in excess of the bag limit for the time being prescribed, and the Minister shall have absolute discretion as to the number of barramundi that will constitute the daily bag limit.

Bag limits.

23. The State shall, by such means as it deems practicable request amateur fishermen to record with the State the number and size of barramundi caught by them but the State will not be liable for the failure by amateur fishermen to observe that request.

Recording of amateur catch.

24. For the purposes of this Agreement the Fisheries Act is deemed to be modified by:

Modifications of the Fisheries Act.

- (a) the inclusion of a proviso to section 23 to permit the Company to instal the fish barrier and such other nets and traps as the Minister shall from time to time approve hereunder;

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- (b) the inclusion of a proviso to regulation 3AA to permit the Company to take and sell barramundi in the circumstances referred to in paragraphs (b) and (c) of Clause 19;
- (c) the inclusion of a power in the Minister, by notice published in the *Government Gazette* from time to time—
 - (i) to prohibit—
 - (A) the taking of barramundi by all persons other than the Company in the circumstances referred to in paragraphs (a) and (c) of Clause 20;
 - (B) the taking of fish in the fishing waters (as defined in Clause 19 hereof) by any licensed professional fisherman (or by any other person who catches or attempts to catch or to assist in catching by any method whatsoever fish for sale), in the circumstances referred to in paragraph (b) of Clause 20;
 - (C) the taking of fish by any person in the circumstances referred to in paragraph (d) of Clause 20;
 - (ii) to impose restrictions on the fishing of barramundi by amateur fishermen in the circumstances referred to in Clause 21; and
 - (iii) to prescribe bag limits in the circumstances referred to in Clause 22; and
- (d) the inclusion of a power—
 - (i) to attach to any license or permit issued pursuant to this Agreement such conditions as the Minister deems appropriate for the purposes of this Agreement;
 - (ii) to enable the State to give effect to and to impose penalties for the breach of any of the prohibitions, restrictions and limitations referred to in Clauses 20, 21 and 22 not exceeding \$1 000;

- (iii) for the Governor to exclude the fishing waters from the operation of any regulation or proclamation;
- (iv) for the Minister to exclude the fishing waters from the operation of any notice issued by him; and
- (v) for the Governor or the Minister (as the case may be) to revoke any exclusion made pursuant to sub-paragraphs (iii) and (iv) of this paragraph.

The provisions of this Clause shall not operate so as to prejudice the rights of the State to determine any license, permit or other right in accordance with the other provisions of this Agreement.

25. Notwithstanding its obligations pursuant to Clause 5 of this Agreement the Company shall cause limnological surveys of Lake Argyle to be undertaken to determine salinity, temperature and oxygen content at 10 stations around that lake on the surface and at depths of 1 metre, 2 metres, 5 metres, 10 metres and every 5 metres thereafter to the lake bottom and submit to the State not later than 12 months after the project commencement date and thereafter annually an assessment of the data collected pursuant to such survey by a competent qualified limnologist approved by the State.

Lim-
nological
surveys.

26. (1) Where in the opinion of the State any activity of the Company in the performance of this Agreement materially interferes with or is likely to materially interfere with the primary use and such interference is of a temporary nature or can be avoided by the Company adopting an alternative course of action the State may after consultation with the Company give a notice to the Company (hereinafter in this Clause referred to as "the notice of suspension") to cease such activity at the expiration of not less than 1 month, either temporarily or during such period or periods as the notice of suspension specifies, and/or to observe and perform conditions which endeavour to procure the cessation of such interference.

Primary
use.

(2) Where conditions are imposed in the notice of suspension the Company shall within 21 days (or such longer period as the notice of suspension may provide) after

the service of the notice of suspension give notice to the State (hereinafter in this Clause referred to as "the Company's notice") that the Company—

- (a) is willing to comply with the conditions contained in the notice of suspension; or
 - (b) is unable or unwilling to comply with those conditions.
- (3) (a) Where the Company's notice provides that the Company is willing to comply with the conditions contained in the notice of suspension then subject to subclause (4) of this Clause the Company shall duly perform and observe those conditions.
- (b) Where the Company fails to give to the State the Company's notice within the time specified or the Company's notice provides that the Company is unable or unwilling to comply with the conditions contained in the notice of suspension then the State may after consultation with the Company, give to the Company a notice (hereinafter in this clause referred to as "the notice of cessation") requiring the Company at the expiration of not less than 1 month to cease such activity permanently.
- (4) Notwithstanding that—
- (a) the State may have served on the Company a notice or notices of suspension; and/or
 - (b) the Company has complied with or is complying with the conditions set out in any notice of suspension;

where, in the opinion of the State, any activity of the Company in the performance of this Agreement materially interferes with or is likely to materially interfere with the primary use and such interference is, or is likely to be (or in the case of an activity in respect of which a notice of suspension has been served on the Company has become) of a permanent nature, then the State may after consultation with the Company, give to the Company a notice of cessation in respect of such activity PROVIDED HOWEVER that when no notice of suspension has preceded the notice of cessation the Company shall not be required to permanently cease such activity until after the expiration of 3 months.

(5) If the State contemplates a change in the method of management of the Ord River Project Area for the primary use which will or is likely to materially affect the maintainance of food chains in the Ord River Project

Area or otherwise materially interfere with the Company's activities under this Agreement the State shall give reasonable notice to the Company of the proposed change and will confer with the Company and use reasonable endeavours to minimise the interference which will occur or is likely to occur to such food chain or to the activities of the Company under this Agreement if such change is implemented. Nothing in this subclause shall obligate the State to incur expense.

(6) The Company shall not by reason of any act of the State referred to in this Clause, be entitled to receive or claim compensation from the State.

(7) The provisions of this Clause shall apply notwithstanding anything to the contrary contained in this Agreement.

27. The Company shall (without prejudice to its obligations under any proposals approved pursuant to this Agreement)— Obligations
of the
Company.

- (a) keep the fish barrier, boat lock, jetties and other permanent facilities in good repair;
- (b) conform to the requirements of the Department of Fisheries and Wildlife and the Department of Public Health for the operation by the Company of any fish processing establishment, and the Department of Public Works and the Department of Harbour and Light as the case may be in respect of the design of loading ramps, jetties and slipways;
- (c) dispose of effluent arising from any fish processing establishment in a manner approved by the Minister;
- (d) use its best endeavours—
 - (i) to develop markets in Australia and other countries for barramundi filets and/or such other species of fish that the Company shall be permitted to take and process pursuant to this Agreement; and
 - (ii) to provide to Wyndham, Kununurra and such other communities in the vicinity of the Ord River Project Area as the Minister shall nominate such reasonable quantities of barramundi at reasonable prices as are from time to time required to meet both the domestic and commercial requirements of those communities;

- (e) obtain the best competitive price possible for barramundi and/or such other species of fish that the Company shall be permitted to take and process pursuant to this Agreement;
- (f) allow persons nominated by the Minister to inspect all facets of the Company's operation pursuant to this Agreement from time to time;
- (g) construct all pipelines and (notwithstanding Clause 15) roads to the fishing boat launching ramp necessary for the Company's operation and the Company's other facilities to a standard approved by the Minister; and
- (h) as far as is practicable transfer all research facilities to Western Australia.

Fees.

28. The Company shall pay to the State in addition to any fees otherwise payable under this Agreement—

- (a) for a period of 5 years commencing on the fifth anniversary of the project commencement date an annual fee of \$5 000 (payable at a rate of \$416 per month) or an annual fee calculated at the expiration of each period of 12 months, in accordance with the following formula—

$$F = \frac{1}{100} \times \frac{Q}{1} \times \frac{P}{1}$$

Where—

F = the annual amount payable by the Company,

Q = the net equivalent filleted weight in kilogrammes of barramundi shipped during the said 12 months period ex processing plant calculated for that 12 months period,

P = the weighted average monthly wholesale price of barramundi fillets obtained by the Queensland Fish Board ex its store at Colmslie in the State of Queensland during the said 12 months period,

whichever is the greater amount, and where the annual fee calculated in accordance with the formula exceeds \$5 000, the Company shall pay to the State the amount of the excess not later than 2 months after the expiration of the annual period in respect of which that annual fee so exceeding \$5 000 was calculated;

- (b) for the period commencing on the eleventh anniversary of the project commencement date until the expiration of this Agreement, an annual fee of \$10 000 (payable at the rate of \$833 per month) or an annual fee calculated at the expiration of each period of 12 months in accordance with the formula referred to in paragraph (a) of this Clause, (but with the substitution therein of the fraction $\frac{3}{200}$ for the fraction $\frac{1}{100}$) whichever is the greater amount, and where the annual fee calculated in accordance with the formula exceeds \$10 000, the Company shall pay to the State the amount of the excess not later than 2 months after the expiration of the annual period in respect of which that annual fee so exceeding \$10 000 was calculated.

29. (1) The State shall in accordance with the Company's proposals as finally approved grant the Company a special lease or special leases pursuant to the Land Act for a period of 21 years from the project commencement date, at such reasonable rental or rentals as the Minister for Lands shall determine in respect of—

Special
leases.

- (a) a suitable area of approximately 50 hectares in Lake Argyle for the growing out of young barramundi in cages;
- (b) certain land adjacent to Lake Argyle namely:
- (i) suitable areas up to 20 hectares in the aggregate for the construction of loading ramps, jetties, slipways, processing works and other necessary facilities for the Company's operations; and
 - (ii) 3 suitable areas the total of which shall not exceed 100 hectares for the construction of salt holding ponds;
- (c) a suitable area at Nigger Hill and/or such other area or areas of which the Minister shall approve for construction of fish processing plants, food pellet plants, workshop buildings, hatcheries and such other facilities necessary for the Company's operations; and
- (d) King Location 401, consisting of 299.437 hectares for the construction of ponds.

(2) In the granting of any lease to the Company pursuant to sub-paragraphs (i) and (ii) of paragraph (b) of subclause (1) of this Clause, the State shall ensure that the existing access to Lake Argyle by members of the public is not impeded.

(3) The Company shall have the right to purchase each of the areas referred to in paragraphs (c) and (d) of subclause (1) of this Clause at a price to be determined by the Minister for Lands upon the Company completing its obligations in respect of the land to be purchased pursuant to Clause 8 and/or Clause 13 as the case may be or upon the State being satisfied that the Company has established its undertaking with reasonable permanency, whichever event first occurs.

Modification
of Land
Act.

30. For the purpose of this Agreement in respect of any land sold or leased to the Company by the State the Land Act shall be deemed to be modified by—

(1) the substitution for subsection (2) of section 45A of the following subsection—

“(2) Upon the Governor signifying approval pursuant to subsection (1) of this section in respect of any such land the same may subject to this section be sold or leased;”

(2) the deletion of the proviso to section 116;

(3) the deletion of section 135;

(4) the deletion of section 143; and

(5) the inclusion of a power to offer for sale or grant leases or licenses for terms or periods and on such terms and conditions (including renewal rights) and in forms consistent with the provisions of this Agreement in lieu of the terms or periods, the terms and conditions and the forms referred to in the Land Act.

The provisions of this Clause shall not operate so as to prejudice the rights of the State to determine any lease license or other right or title in accordance with the other provisions of this Agreement.

Inspection.

31. The Company shall permit the Minister or his nominee to inspect at all reasonable times and to take copies of or extracts from all books of account and records of the Company as are relevant for the purpose of determining the amount of the fees payable under this Agreement and

if required by the State take reasonable steps to satisfy the State either by certificate of a competent independent party acceptable to the State or otherwise to the reasonable satisfaction of the Minister as to all relevant weights and sales figures and shall give due regard to any objection or representation made by the Minister or his nominee as to any particular weight or sales figure of the Company which may affect the amount of the fees payable hereunder.

32. The State shall ensure that any lands the subject of any Crown grant lease license or easement granted to the Company under this Agreement and all freehold and leasehold land occupied by the Company in accordance with or the subject of proposals approved hereunder shall be and remain zoned for use or otherwise protected during the currency of this Agreement so that the operations of the Company hereunder may be undertaken and carried out thereon without any interference or interruption by the State, by any State agency or instrumentality or by any local or other authority of the State on the ground that such operations are contrary to any zoning by-law regulation or order. Zoning.

33. The State shall ensure that notwithstanding the provisions of any Act or anything done or purported to be done under any Act the valuation of all lands (whether of a freehold or leasehold nature) the subject of this Agreement (except as to any part upon which a permanent residence shall be erected or which is occupied in connection with that residence and except as to any part upon which there stands any improvements that are used in connection with a commercial undertaking not directly related to the Company's operations under this Agreement) shall for rating purposes under the Local Government Act, 1960 be deemed to be on the unimproved value thereof and no such lands shall be subject to any discriminatory rate, PROVIDED THAT nothing in this Clause shall prevent the Company making the election provided for by section 533B of the Local Government Act, 1960. Rating.

34. Except as provided by this Agreement the State shall not impose or permit or suffer any instrumentality of the said State or any local or other authority to impose discriminatory taxes, rates or charges of any nature whatever on or in respect of the titles, property or other assets, products, materials or services used or produced by or through the operations of the Company hereunder and No discriminatory rates.

the State shall not take or permit any such instrumentality or any local or other authority to take any other discriminatory action that would deprive the Company of any rights granted or intended to be granted to it under this Agreement.

Resump-
tion for
the
purposes
of this
Agreement.

35. The State may as and for a public work under the Public Works Act, 1902 resume any land required for the purposes of this Agreement and notwithstanding any other provisions of that Act may sell lease or otherwise dispose of the land to the Company. The Company shall pay to the State on demand the costs of and incidental to any land resumed at the request of and on behalf of the Company pursuant to this Clause.

Assign-
ment.

36. (1) Subject to the provisions of this Clause the Company may at any time—

- (a) assign mortgage charge sublet or dispose of to an associated company as of right or to any other company or person with the consent of the Minister the whole or any part of the rights of the Company hereunder (including its rights to or as the holder of any lease license easement grant or other title) and of the obligations of the Company hereunder; and
- (b) appoint as of right an associated company or with the consent of the Minister any other company or person to exercise all or any of the powers functions and authorities that are or may be conferred on the Company hereunder;

subject however in the case of an assignment subletting or disposition to the assignee sublessee disponent or the appointee (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Company to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting disposition or appointment.

(2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) of this Clause the Company shall at all times during the currency of this Agreement be and remain liable for the due and punctual

performance and observance of all the covenants and agreements on its part contained herein and in any lease license easement grant or other title the subject of an assignment mortgage subletting or disposition or appointment under subclause (1) of this Clause PROVIDED THAT the Minister may agree to release the Company from such liability where he considers such release will not be contrary to the interests of the State.

(3) Notwithstanding the provisions of the Transfer of Land Act, 1893 and the Land Act, insofar as the same or any of them may apply—

- (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over any lease sublease license reserve or tenement granted hereunder or pursuant hereto by the Company or any assignee sublessee disponee or appointee who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
- (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge shall require any approval or consent other than such consent as may be necessary under this Clause and no equitable mortgage or charge shall be rendered ineffectual by the absence of any approval or consent (otherwise than as required by this Clause).

37. (1) The parties hereto may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of any lease license easement or right granted hereunder or pursuant hereto for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement. Variation.

(2) The Minister shall cause any agreement made pursuant to subclause (1) of this Clause in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.

(3) Either House may, within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement, but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

*Force
majeure.*

38. This Agreement is deemed to be made subject to any delays in the performance of the obligations hereunder and to the temporary suspension of the continuing obligations hereunder that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from Act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contractors and inability profitably to sell barramundi or barramundi fillets or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice to the other party of the event or events and shall minimise the effect of such causes as soon as possible after the occurrence.

*Power to
vary
periods.*

39. Notwithstanding any provision of this Agreement the Minister may at the request of the Company from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement for such period or to such other date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

*Determina-
tion of
Agreement.*

40. (1) In any of the following events namely if the Company makes default which the State considers material in the due performance or observance of any of the covenants or obligations to the State herein or in any lease

sublease license or other title or document granted or assigned under this Agreement on its part to be performed or observed or if the Company abandons or repudiates its operations under this Agreement and such default is not remedied or such operations resumed within a period of 60 days after notice as provided in subclause (2) of this Clause is given by the State (or—if the alleged default abandonment or repudiation is contested by the Company and within 30 days after such notice is submitted by the Company to arbitration—within a reasonable time fixed by the arbitration award but not less than 30 days after the making of the arbitration award where the question is decided against the Company the arbitrator finding that there was a *bona fide* dispute and that the Company had not been dilatory in pursuing the arbitration) or if the Company goes into liquidation (other than a voluntary liquidation for the purpose of reconstruction) then and in any of such events the State may by notice to the Company determine this Agreement and the rights of the Company hereunder and under any lease license easement or right granted hereunder and pursuant hereto shall thereupon determine.

(2) The notice to be given by the State in terms of subclause (1) of this Clause shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Company and all such assignees mortgagees chargees and disponees for the time being of the Company's said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 36 whose name and address for service of notice has previously been notified in writing to the State by the Company or any such assignee mortgagee chargee or disponee.

(3) The abandonment or repudiation by or liquidation of the Company referred to in subclause (1) of this Clause means the abandonment or repudiation by or the liquidation of all of them the Company and all assignees and appointees who have executed and are for the time being bound by a deed of covenant in favour of the State as provided in Clause 36.

(4) If the default referred to in subclause (1) of this Clause shall not have been remedied after such notice or within the time fixed by arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power

to enter upon lands occupied by the Company and to make use of all plant machinery equipment and installations thereon) and the costs and expenses incurred by the State in remedying or causing to be remedied such default shall be a debt payable by the Company to the State on demand.

Effect of
cessation
and
determina-
tion of
agreement.

41. (1) Upon the cessation or determination of this Agreement—

- (a) except as otherwise agreed by the Minister the rights of the Company and those of any assignee or mortgagee of the Company under this Agreement or under any lease, license, easement or right granted hereunder or pursuant hereto and all the right title and interest of the Company and of any such assignee or mortgagee in and to any land wherever situated (other than freehold land) granted to the Company or to such assignee for any other of the purposes of this Agreement shall thereupon cease and determine, but without prejudice to the liability of either of the parties in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given hereunder; and
- (b) the Company shall forthwith pay to the State all moneys that may then have been payable or accrued due hereunder; and
- (c) except as provided in this Clause or otherwise provided in this Agreement neither of the parties shall have any claim against the other of them in respect to any matter or thing contained in or arising out of this Agreement.

(2) Subject to the provisions of subclause (3) of this Clause upon the cessation or determination of this Agreement all buildings erections and other improvements erected on any land (other than freehold land) then occupied by the Company under any lease, license, easement, right or grant made hereunder for the purpose hereof shall become and remain the absolute property of the State without the payment of any compensation or consideration to the Company or any other party and freed and discharged from all mortgages and other encumbrances and the Company shall do and execute all such deeds documents and other acts matters and things (including surrenders) as the State may reasonably require to give effect to the provisions of this subclause.

(3) In the event of the Company immediately prior to the cessation or determination of this Agreement or subsequently thereto desiring to remove any of its fixed or movable plant and equipment from any part of the land occupied by it at the date of such cessation or determination the Company shall give to the State notice of such desire and thereby shall grant to the State the right or option exercisable within 3 months thereafter to purchase *in situ* the said fixed or movable plant and equipment or any part thereof at a fair valuation to be agreed between the parties or failing agreement determined by arbitration hereunder.

42. Nothing in this Agreement shall be construed to exempt the Company from compliance with any requirement in connection with the protection of the environment arising out of or incidental to the operations of the Company hereunder that may be made by the State or any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act for the time being in force.

Environ-
mental
protection.

43. The Company shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by the Company pursuant to this Agreement or relating to its operations hereunder or arising out of or in connection with the construction maintenance or use by the Company or its servants agents contractors or assignees of the Company's works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith.

Indemnity.

44. The Company shall make all necessary applications from time to time to the proper authorities and the Commonwealth and the State for the grant to it of any licenses or consents required under Commonwealth or State law to permit it to enter into this Agreement and perform its obligations hereunder.

Licenses
and
consents.

45. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be chargeable on—

Stamp
duty
exemption.

(a) this Agreement;

(b) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Company or any permitted assignee of the

Company any lease license easement or right granted or demised hereunder or pursuant hereto; and

- (c) any assignment sublease or disposition (other than by way of mortgage or charge) and any appointment to or in favour of the Company or an associated company of any interest right obligation power function or authority made pursuant to the provisions of this Agreement.

PROVIDED THAT this Clause shall not apply to any instrument or other document executed or made more than 7 years from the date hereof.

(2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document referred to in subclause (1) of this Clause the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document to the person who paid the same.

Arbitration.

46. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to any matter to be agreed upon between the parties under this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to the arbitration of two arbitrators one to be appointed by each party the arbitrators to appoint their umpire before proceeding in the reference and every such arbitration shall be conducted in accordance with the provisions of the Arbitration Act, 1895.

(2) Except where proposals are pursuant to the provisions of this Agreement referred to arbitration and except in the case of any dispute under subclause (2) of Clause 20, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.

(3) The arbitrators or umpire (as the case may be) of any submission to arbitration hereunder are hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein

which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties hereunder and an award may in the name of the Minister grant any further extension or variation for that purpose.

47. Any notice consent or other writing authorised by or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the State acting by the direction of the Minister and forwarded by prepaid registered post to the Company at its registered office for the time being in the State and by the Company if signed on its behalf by a director manager or secretary of the Company or by any person or persons authorised by the Company in that behalf or by its solicitors (which solicitors have been notified to the State from time to time) and forwarded by prepaid post to the Minister and any such notice consent or writing shall be deemed to have been duly given or sent (unless the contrary be shown) on the day on which it would be delivered in the ordinary course of post. Notices.

48. This Agreement shall be interpreted according to the law for the time being in force in the said State. Applicable law.

IN WITNESS WHEREOF these presents have been executed the day and year first hereinbefore mentioned.

SIGNED by the said THE
HONOURABLE SIR CHARLES
WALTER MICHAEL COURT,
O.B.E., M.L.A., in the presence
of— } CHARLES COURT.

PETER JONES,
MINISTER FOR FISHERIES
AND WILDLIFE.

THE Common Seal of FISH
FARMS INTERNATIONAL
LTD. was hereunto affixed by
the authority of the Directors
in the presence of— } [C.S.]

ROY GROUNDS,
Director.

K. D. LIGHTBURN,
Director.