

## SUPPLEMENTARY GAZETTE



THE SOUTH AUSTRALIAN  
GOVERNMENT GAZETTE

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PUBLISHED BY AUTHORITY

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ALL PUBLIC ACTS appearing in this GAZETTE are to be considered official, and obeyed as such

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ADELAIDE, FRIDAY, 24 JANUARY 2003

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AQUACULTURE ACT 2001  
AQUACULTURE LEASE PL00020  
*Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

SCHEDULE

Lessee:

Prisman Pty Ltd (29921)  
Unit 5/10 South Point Drive  
Port Lincoln, S.A. 5606

Leased Area:

GDA 94—Zone 53  
594975E 6162895N  
595978E 6163016N  
596038E 6162515N  
595036E 6162393N

Permitted Class of Aquaculture:

Tuna Aquaculture

Term of the Lease:

Twelve months

Initial Rental:

\$350.00

Licensed  
Hectares

51

Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

Amount of Public Liability Insurance:

\$10 million

Amount of Guarantee or contribution to indemnity fund:

\$10 000

Extent of Leased Area that must be developed:

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

1. *Term and Renewal*

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

## 2. Rental

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.
- 2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

## 3. GST

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.
- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

## 4. Cancellation

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee

fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

## 5. Dealing with Lease

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

## 6. Marking-off

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

## 7. Lessee's Use of Leased Area

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

## 8. Development Requirement

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

## 9. Consents and Approvals

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and
- 9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

## 10. Public Liability Insurance

- 10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:
  - 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
  - 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

### 11. *Statutory Requirements*

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

### 12. *No Nuisance*

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):
  - 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
  - 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

### 13. *Indemnities*

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;
- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and
- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

### 15. *Minister's Entry on Leased Area*

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.

- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:

- 15.2.1 it is not practicable to do so, or;
- 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;
- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

### 16. *Contamination and Contaminating Substances*

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).
- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:

- 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
- 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and

- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.
- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:
- 16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and
- 16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

#### 17. Lease Expiry

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

- 17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;
- 17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and
- 17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

#### 18. Occupation

The lessee has the rights of occupation provided in the Act.

#### 19. Default Costs

- 19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:
- 19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and
- 19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.
- 19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

#### 20. Default Interest

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and

payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

#### 21. Minister may remedy Default

- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

#### 22. Waiver

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

#### 23. Joint Lessees

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and
- 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

#### 24. Guarantee or Indemnity

- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:
- 24.1.1 provide a guarantee from its bankers; or
- 24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

- 24.1.3 the lessee shall either:
- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on

the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

(b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

#### 25. Disclaimer

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

#### 26. Delegation

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

#### 27. Special Conditions

Incorporated in this lease are any special conditions set out in the Schedule.

#### 28. Notices

28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.

28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

#### 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

'business days' means Monday to Friday (inclusive) excluding any public holiday;

'corresponding licence' has the meaning attributed in the Act;

'GST' means the tax imposed by the GST Law;

'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;

'Insolvency Administration' means, if the lessee is a corporation:

- an administrator is appointed to the lessee or action is taken to make such an appointment;
- the lessee resolves to be wound up;
- an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
- the lessee ceases to carry on business;
- a receiver or a receiver and manager of property of the lessee is appointed whether by a court or otherwise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'Insolvency Administration' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or

- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'Lessee' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'Minister' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'Permitted Use' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'Leased Area' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'Taxable Supply' has the meaning attributed in the GST Act;

'Tax Invoice' has the meaning attributed in the GST Act;

'Term of this Lease' or the 'Term' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

### 30. Interpretation

- 30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.
- 30.2 Any reference to a person shall include a corporate body and *vice versa*.
- 30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.
- 30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

#### AQUACULTURE ACT 2001

#### AQUACULTURE LEASE PL00021

#### *Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

#### SCHEDULE

Lessee:

M G Kailis Pty Ltd (13229)  
6/7 South Quay Boulevard  
Port Lincoln, S.A. 5606

Leased Area:

GDA 94—Zone 53  
587312E 6161630N  
587528E 6161757N  
587731E 6161412N  
587515E 6161285N

Licensed  
Hectares

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Permitted Class of Aquaculture:

Tuna Aquaculture

Term of the Lease:

Twelve months

Initial Rental:

\$350.00

Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

Amount of Public Liability Insurance:

\$10 million

Amount of Guarantee or contribution to indemnity fund:

\$10 000

Extent of Leased Area that must be developed:

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

#### 1. Term and Renewal

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

#### 2. Rental

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.

2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

### 3. GST

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.
- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

### 4. Cancellation

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

### 5. Dealing with Lease

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

### 6. Marking-off

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

### 7. Lessee's Use of Leased Area

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

### 8. Development Requirement

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

### 9. Consents and Approvals

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and
- 9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

### 10. Public Liability Insurance

- 10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:
  - 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
  - 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

### 11. Statutory Requirements

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

### 12. No Nuisance

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):

- 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
- 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

### 13. *Indemnities*

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;
- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and
- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

### 15. *Minister's Entry on Leased Area*

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.
- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:
- 15.2.1 it is not practicable to do so, or;
- 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;

- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

### 16. *Contamination and Contaminating Substances*

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).
- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:
- 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
- 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and
- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.
- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:



16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and

16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

#### 17. Lease Expiry

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;

17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and

17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

#### 18. Occupation

The lessee has the rights of occupation provided in the Act.

#### 19. Default Costs

19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:

19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and

19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.

19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

#### 20. Default Interest

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

#### 21. Minister may remedy Default

21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default

or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

#### 22. Waiver

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

#### 23. Joint Lessees

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and

23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

#### 24. Guarantee or Indemnity

24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:

24.1.1 provide a guarantee from its bankers; or

24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

24.1.3 the lessee shall either:

(a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or con-tigent obligations

under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

#### 25. Disclaimer

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

#### 26. Delegation

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

#### 27. Special Conditions

Incorporated in this lease are any special conditions set out in the Schedule.

#### 28. Notices

28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.

28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

#### 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

'business days' means Monday to Friday (inclusive) excluding any public holiday;

'corresponding licence' has the meaning attributed in the Act;

'GST' means the tax imposed by the GST Law;

'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;

'Insolvency Administration' means, if the lessee is a corporation:

- an administrator is appointed to the lessee or action is taken to make such an appointment;
- the lessee resolves to be wound up;
- an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
- the lessee ceases to carry on business;
- a receiver or a receiver and manager of property of the lessee is appointed whether by a court or otherwise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'Insolvency Administration' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'Lessee' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'Minister' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'Permitted Use' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'Leased Area' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'Taxable Supply' has the meaning attributed in the GST Act;

'Tax Invoice' has the meaning attributed in the GST Act;

'Term of this Lease' or the 'Term' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

### 30. Interpretation

- 30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.
- 30.2 Any reference to a person shall include a corporate body and *vice versa*.
- 30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.
- 30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbours and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

## AQUACULTURE ACT 2001

### AQUACULTURE LEASE PL00022

#### *Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

#### SCHEDULE

##### Lessee:

S. & Z. Lukin Pty Ltd (19697)  
62 Lincoln Highway  
Port Lincoln, S.A. 5606

##### Leased Area:

GDA 94—Zone 53  
592157E 6163470N  
592557E 6163466N  
592547E 6162516N  
592148E 6162520N

##### Licensed Hectares

38

##### Permitted Class of Aquaculture:

Tuna Aquaculture

##### Term of the Lease:

Twelve months

##### Initial Rental:

\$350.00

##### Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

##### Amount of Public Liability Insurance:

\$10 million

##### Amount of Guarantee or contribution to indemnity fund:

\$10 000

##### Extent of Leased Area that must be developed:

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

### 1. Term and Renewal

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

### 2. Rental

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.
- 2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

### 3. GST

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.

- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

#### 4. Cancellation

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

#### 5. Dealing with Lease

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

#### 6. Marking-off

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

#### 7. Lessee's Use of Leased Area

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

#### 8. Development Requirement

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

#### 9. Consents and Approvals

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and
- 9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

#### 10. Public Liability Insurance

- 10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first

approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:

- 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
- 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

#### 11. Statutory Requirements

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

#### 12. No Nuisance

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):
  - 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
  - 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

#### 13. Indemnities

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;
- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other

person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and

- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 15. *Minister's Entry on Leased Area*

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.
- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:
- 15.2.1 it is not practicable to do so, or;
- 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;
- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

#### 16. *Contamination and Contaminating Substances*

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).
- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any

pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:

- 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
- 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and
- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.
- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:
- 16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and
- 16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

#### 17. *Lease Expiry*

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

- 17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;
- 17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and

- 17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

#### 18. Occupation

The lessee has the rights of occupation provided in the Act.

#### 19. Default Costs

- 19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:
- 19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and
- 19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.
- 19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

#### 20. Default Interest

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

#### 21. Minister may remedy Default

- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

#### 22. Waiver

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

#### 23. Joint Lessees

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and
- 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

#### 24. Guarantee or Indemnity

- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:
- 24.1.1 provide a guarantee from its bankers; or
- 24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

24.1.3 the lessee shall either:

- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or con-tingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such

transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

- 24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

#### 25. Disclaimer

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

#### 26. Delegation

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

#### 27. Special Conditions

Incorporated in this lease are any special conditions set out in the Schedule.

#### 28. Notices

- 28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.
- 28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

#### 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

- 'business days' means Monday to Friday (inclusive) excluding any public holiday;
- 'corresponding licence' has the meaning attributed in the Act;
- 'GST' means the tax imposed by the GST Law;
- 'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;
- 'Insolvency Administration' means, if the lessee is a corporation:
- an administrator is appointed to the lessee or action is taken to make such an appointment;
  - the lessee resolves to be wound up;
  - an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
  - the lessee ceases to carry on business;
  - a receiver or a receiver and manager of property of the lessee is appointed whether by a court or other-wise;
  - an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
  - the lessee enters into a compromise or arrangement with its creditors or a class of them; or

- the lessee is or states that it is unable to pay its debts when they fall due;

'Insolvency Administration' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'Lessee' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'Minister' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'Permitted Use' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'Leased Area' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'Taxable Supply' has the meaning attributed in the GST Act;

'Tax Invoice' has the meaning attributed in the GST Act;

'Term of this Lease' or the 'Term' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

#### 30. Interpretation

- 30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.
- 30.2 Any reference to a person shall include a corporate body and *vice versa*.
- 30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.
- 30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

AQUACULTURE ACT 2001  
AQUACULTURE LEASE PL00023  
*Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

SCHEDULE

Lessee:

Australian Fishing Enterprises Pty Ltd (13227)  
Billy Lights Point  
Port Lincoln, S.A. 5606

Leased Area:

GDA 94—Zone 53  
593959E 6162128N  
595259E 6162128N  
595259E 6161359N  
593959E 6161359N

Licensed  
Hectares

100

Permitted Class of Aquaculture:

Tuna Aquaculture

Term of the Lease:

Twelve months

Initial Rental:

\$350.00

Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

Amount of Public Liability Insurance:

\$10 million

Amount of Guarantee or contribution to indemnity fund:

\$10 000

Extent of Leased Area that must be developed:

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

1. *Term and Renewal*

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

2. *Rental*

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.
- 2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

3. *GST*

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.
- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

4. *Cancellation*

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the



lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

#### 5. *Dealing with Lease*

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

#### 6. *Marking-off*

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

#### 7. *Lessee's Use of Leased Area*

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

#### 8. *Development Requirement*

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

#### 9. *Consents and Approvals*

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and
- 9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

#### 10. *Public Liability Insurance*

- 10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:
- 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
- 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein

and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

#### 11. *Statutory Requirements*

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

#### 12. *No Nuisance*

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):
- 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
- 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

#### 13. *Indemnities*

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;
- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and
- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

### 15. Minister's Entry on Leased Area

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.
- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:
- 15.2.1 it is not practicable to do so, or;
- 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;
- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

### 16. Contamination and Contaminating Substances

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).
- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:
- 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
- 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased

area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and

- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.
- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:
- 16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and
- 16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

### 17. Lease Expiry

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

- 17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;
- 17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and
- 17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

### 18. Occupation

The lessee has the rights of occupation provided in the Act.

### 19. Default Costs

- 19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:
- 19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and
- 19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.
- 19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

### 20. *Default Interest*

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

### 21. *Minister may remedy Default*

- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

### 22. *Waiver*

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

### 23. *Joint Lessees*

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and  
 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

### 24. *Guarantee or Indemnity*

- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:

- 24.1.1 provide a guarantee from its bankers; or  
 24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

- 24.1.3 the lessee shall either:

- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such

payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

- 24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

### 25. *Disclaimer*

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

## 26. Delegation

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

## 27. Special Conditions

Incorporated in this lease are any special conditions set out in the Schedule.

## 28. Notices

- 28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.
- 28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

## 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

'business days' means Monday to Friday (inclusive) excluding any public holiday;

'corresponding licence' has the meaning attributed in the Act;

'GST' means the tax imposed by the GST Law;

'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;

'Insolvency Administration' means, if the lessee is a corporation:

- an administrator is appointed to the lessee or action is taken to make such an appointment;
- the lessee resolves to be wound up;
- an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
- the lessee ceases to carry on business;
- a receiver or a receiver and manager of property of the lessee is appointed whether by a court or other-wise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'Insolvency Administration' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;

- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'Lessee' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'Minister' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'Permitted Use' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'Leased Area' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'Taxable Supply' has the meaning attributed in the GST Act;

'Tax Invoice' has the meaning attributed in the GST Act;

'Term of this Lease' or the 'Term' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

## 30. Interpretation

30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.

30.2 Any reference to a person shall include a corporate body and *vice versa*.

30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.

30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.

30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

AQUACULTURE ACT 2001

AQUACULTURE LEASE PL00024

*Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

#### SCHEDULE

Lessee:

MG Kailis Pty Ltd (13229)  
6/7 South Quay Boulevard  
Port Lincoln, S.A. 5606

Leased Area:

GDA 94—Zone 53  
592089E 6161990N  
593559E 6161957N  
593546E 6161379N  
592077E 6161412N

Licensed  
Hectares

85

Permitted Class of Aquaculture:

Tuna Aquaculture

Term of the Lease:

Twelve months

Initial Rental:

\$350.00

Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

Amount of Public Liability Insurance:

\$10 million

Amount of Guarantee or contribution to indemnity fund:

\$10 000

Extent of Leased Area that must be developed:

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

#### 1. Term and Renewal

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

#### 2. Rental

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.

2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.

2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

#### 3. GST

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.
- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

#### 4. Cancellation

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

#### 5. Dealing with Lease

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

#### 6. *Marking-off*

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

#### 7. *Lessee's Use of Leased Area*

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

#### 8. *Development Requirement*

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

#### 9. *Consents and Approvals*

9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and

9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

#### 10. *Public Liability Insurance*

10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:

10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or

10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

#### 11. *Statutory Requirements*

11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.

11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

#### 12. *No Nuisance*

12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):

12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or

12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

#### 13. *Indemnities*

The lessee must indemnify and save harmless the Minister against:

13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;

13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and

13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 15. *Minister's Entry on Leased Area*

15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.

15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:

15.2.1 it is not practicable to do so, or;

15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the

leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;

- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

#### 16. Contamination and Contaminating Substances

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).

- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:

16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;

16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and

16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.

- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:

16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and

16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

#### 17. Lease Expiry

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;

17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and

17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

#### 18. Occupation

The lessee has the rights of occupation provided in the Act.

#### 19. Default Costs

19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:

19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and

19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.

19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

#### 20. Default Interest

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

### 21. *Minister may remedy Default*

- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

### 22. *Waiver*

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

### 23. *Joint Lessees*

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and
- 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

### 24. *Guarantee or Indemnity*

- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:

- 24.1.1 provide a guarantee from its bankers; or
- 24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

- 24.1.3 the lessee shall either:
- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee

for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

- 24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

### 25. *Disclaimer*

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

### 26. *Delegation*

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

### 27. *Special Conditions*

Incorporated in this lease are any special conditions set out in the Schedule.



## 28. Notices

- 28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.
- 28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

## 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

'business days' means Monday to Friday (inclusive) excluding any public holiday;

'corresponding licence' has the meaning attributed in the Act;

'GST' means the tax imposed by the GST Law;

'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;

'Insolvency Administration' means, if the lessee is a corporation:

- an administrator is appointed to the lessee or action is taken to make such an appointment;
- the lessee resolves to be wound up;
- an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
- the lessee ceases to carry on business;
- a receiver or a receiver and manager of property of the lessee is appointed whether by a court or other-wise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'Insolvency Administration' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'Lessee' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'Minister' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'Permitted Use' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'Leased Area' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'Taxable Supply' has the meaning attributed in the GST Act;

'Tax Invoice' has the meaning attributed in the GST Act;

'Term of this Lease' or the 'Term' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

## 30. Interpretation

30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.

30.2 Any reference to a person shall include a corporate body and *vice versa*.

30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.

30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.

30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

## AQUACULTURE ACT 2001

## AQUACULTURE LEASE PL00025

*Class of Aquaculture (Tuna)*

THIS Pilot Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbours and Navigation Act 1993.

## SCHEDULE

## Lessee:

Marnikol Fisheries Pty Ltd (13228)  
P.O. Box 10  
Port Lincoln, S.A. 5606

## Leased Area:

GDA 94—Zone 53  
590271E 6161430N  
591463E 6162045N  
591681E 6161621N  
590490E 6161006N

Licensed  
Hectares

64

## Permitted Class of Aquaculture:

Tuna Aquaculture

**Term of the Lease:**

Twelve months

**Initial Rental:**

\$350.00

**Marking-off requirements:**

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

**Amount of Public Liability Insurance:**

\$10 million

**Amount of Guarantee or contribution to indemnity fund:**

\$10 000

**Extent of Leased Area that must be developed:**

During the term of this lease at least one cage of at least 20 m diameter must be installed on the site.

**1. Term and Renewal**

- 1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').
- 1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.
- 1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').
- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

**2. Rental**

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.
- 2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

**3. GST**

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.

3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.

3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.

3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

**4. Cancellation**

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;
- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

**5. Dealing with Lease**

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

**6. Marking-off**

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

**7. Lessee's Use of Leased Area**

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

**8. Development Requirement**

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

**9. Consents and Approvals**

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and

9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

#### 10. Public Liability Insurance

10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:

- 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
- 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

#### 11. Statutory Requirements

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

#### 12. No Nuisance

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):
  - 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
  - 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

#### 13. Indemnities

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any

occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;

- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and

- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 14. Exclusion of Liability

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 15. Minister's Entry on Leased Area

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.

- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:

- 15.2.1 it is not practicable to do so, or;
- 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;
- 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

#### 16. Contamination and Contaminating Substances

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).

- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:
- 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
- 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage is in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and
- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.
- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:
- 16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and
- 16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').
- 17. Lease Expiry**
- The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:
- 17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;
- 17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and
- 17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.
- 18. Occupation**
- The lessee has the rights of occupation provided in the Act.
- 19. Default Costs**
- 19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:
- 19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and
- 19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.
- 19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.
- 20. Default Interest**
- Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.
- 21. Minister may remedy Default**
- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.
- 22. Waiver**
- No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.
- 23. Joint Lessees**
- If the lessee constitutes more than one natural person or bodies corporate or a partnership:
- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and
- 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.
- 24. Guarantee or Indemnity**
- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:
- 24.1.1 provide a guarantee from its bankers; or

24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

24.1.3 the lessee shall either:

- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

#### 25. Disclaimer

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

#### 26. Delegation

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

#### 27. Special Conditions

Incorporated in this lease are any special conditions set out in the Schedule.

#### 28. Notices

- 28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.
- 28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

#### 29. Definitions and Interpretation

In this lease unless inconsistent with the context:

- 'business days' means Monday to Friday (inclusive) excluding any public holiday;
- 'corresponding licence' has the meaning attributed in the Act;
- 'GST' means the tax imposed by the GST Law;
- 'GST Law' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;
- 'Insolvency Administration' means, if the lessee is a corporation:
- an administrator is appointed to the lessee or action is taken to make such an appointment;
  - the lessee resolves to be wound up;
  - an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
  - the lessee ceases to carry on business;
  - a receiver or a receiver and manager of property of the lessee is appointed whether by a court or otherwise;

- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'*Insolvency Administration*' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;
- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'*Lessee*' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'*Minister*' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'*Permitted Use*' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'*Leased Area*' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'*Taxable Supply*' has the meaning attributed in the GST Act;

'*Tax Invoice*' has the meaning attributed in the GST Act;

'*Term of this Lease*' or the '*Term*' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

### 30. Interpretation

- 30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.
- 30.2 Any reference to a person shall include a corporate body and *vice versa*.
- 30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.
- 30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 23 December 2002.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

## AQUACULTURE ACT 2001

### AQUACULTURE LEASE AL00334

#### *Class of Aquaculture (Intertidal Shellfish)*

THIS Production Lease is granted under the Aquaculture Act 2001 ('the Act') pursuant to section 3 (2) of the Schedule to the Act and Division 4 of Part 6 of the Act.

This lease is granted to the lessee for the term of one year, by the Minister for Agriculture, Food and Fisheries ('the Minister') for the purpose of conducting the Class of Aquaculture nominated in the Schedule ('the permitted use'), subject to the conditions set out in this document.

This lease is granted with the concurrence of the Minister for Transport as required in section 20 of the Aquaculture Act 2001 and section 15 of the Harbors and Navigation Act 1993.

#### SCHEDULE

##### Lessee:

Oyster Cove Shellfish Pty Ltd (19863)  
27/5 Mount Barker Road  
Urrbrae, S.A. 5064

##### Leased Area:

GDA 94—Zone 53  
752173E 6038107N  
752380E 6038313N  
752626E 6038075N  
752419E 6037869N

##### Licensed Hectares

10

Permitted Class of Aquaculture:  
Intertidal Shellfish Aquaculture

##### Term of the Lease:

Twelve months

##### Initial Rental:

\$350.00

##### Marking-off requirements:

The marked-off area must be marked with 30 cm diameter white buoys spaced at 50 m intervals and positioned no more than 50 m from structures located on the site.

##### Amount of Public Liability Insurance:

\$10 million

##### Amount of Guarantee or contribution to indemnity fund:

\$10 000

##### Extent of Leased Area that must be developed:

Ten per cent of the Leased Area developed with 3 km of longline or 1 km of racks per hectare.

#### 1. Term and Renewal

1.1 The term of this lease is the term of one year commencing on 1 July 2002 and ending on 30 June 2003 ('the initial term').

1.2 The term is renewable in accordance with section 38 of the Act for successive terms, by the lessee giving the Minister notice no earlier than two months before the expiry of the term, and no later than one month before the expiry of the term, unless there is at the expiry of the lease a default under the lease or any corresponding licence.

1.3 Any renewal of the term shall be subject to conditions in accordance with standard conditions under aquaculture policies developed under Part 4 of the Act, and such other conditions as are determined by the Minister ('the reviewed conditions').

- 1.4 Upon renewal the Minister may issue either a certificate of renewal, or a new lease, incorporating the reviewed conditions.
- 1.5 The Minister may, at the time of renewal of a term, vary the term subject to the maximum term for a production lease permitted by the Act.

## 2. Rental

- 2.1 The lessee must pay to the Minister the annual rental, free from exchange, deduction or abatement.
- 2.2 At the commencement of the initial term the annual rental payable under this lease is the initial rental stipulated in the Schedule.
- 2.3 The initial rental payable in respect of the initial term is subject to adjustment during the initial term, as determined by the Minister in accordance with aquaculture policy developed under Part 4 of the Act. The adjusted rental shall be applicable in respect of the entire initial term.
- 2.4 Rental in respect of renewed terms shall be as notified by the Minister before the expiry of the initial term, and adjustments of rental in renewed terms of the lease will be applicable in accordance with the reviewed conditions.
- 2.5 Rental is payable in full within one month of commencement of the lease by direct bank transfer to the credit of a bank account nominated by the Minister, or by cheque payable to the Department for Primary Industry and Resources SA, delivered to the address stipulated by the Minister.

## 3. GST

- 3.1 The rental payable under this lease is exclusive of GST.
- 3.2 The lease is a taxable supply under GST Law.
- 3.3 Department of Primary Industries and Resources (ABN 53 763 159 658) is the government entity administering this lease on behalf of the Minister and is registered pursuant to the GST Law.
- 3.4 Department of Primary Industries and Resources is entitled to be treated as the maker of any taxable supply and the recipient of any taxable supply pursuant to this lease instead of the Minister for the purposes only of the GST Law.
- 3.5 The lessee must pay to the Minister, together with any payment of rental under this lease, an additional amount in respect of GST (the 'GST payment'). The GST payment is ten per cent of the rental, subject only to any change in the rate of GST under GST Law.
- 3.6 The Minister must issue to the lessee a tax invoice within 10 business days after the lessee has delivered payment of rental and the GST payment.

## 4. Cancellation

The Minister may cancel this lease by immediate written notice to the lessee:

- 4.1 if the lessee enters into any form of Insolvency Administration;
- 4.2 if the lessee assigns or purports to assign the lease without giving the Minister prior written notice as required by section 39 of the Act;
- 4.3 if any rent or other moneys payable by the lessee are in arrears for more than 14 days whether or not any formal demand has been made for the rent or other moneys;
- 4.4 if the lessee (being a natural person) is convicted of any indictable offence;
- 4.5 if there is any breach of any condition of a corresponding licence in respect of this lease;
- 4.6 if there is a breach of any obligation under the Act by the lessee or a licensee under a corresponding licence;

- 4.7 if a corresponding licence is cancelled; or
- 4.8 if in the opinion of the Minister the use of the leased area by or on behalf of the lessee reveals, indicates or provides reasonable grounds for the Minister to form the view or opinion that degradation or damage of an unacceptable level of coastal land or the surrounding marine environment has or is being caused by the lessee's use of the leased area or the use of the leased area by a licensee under a corresponding licence, or any activity associated with their activities and the lessee fails to comply with a notice requiring the lessee to remedy the degradation or damage, and/or cease or prevent the relevant activity within 30 days after the date the notice is served upon the lessee by or on behalf of the Minister.

## 5. Dealing with Lease

- 5.1 This lease is transferable in accordance with the Act (see section 39).
- 5.2 Subletting under this lease is not permitted except with the prior written consent of the Minister.

## 6. Marking-off

The lessee must mark-off the leased area in the manner stipulated in the Schedule.

## 7. Lessee's Use of Leased Area

The lessee must not use the leased area or permit it to be used for any purpose other than the Permitted Class of Aquaculture.

## 8. Development Requirement

The lessee must ensure that the leased area is developed and used for the Permitted Class of Aquaculture to the extent stipulated in the Schedule.

## 9. Consents and Approvals

- 9.1 If the lessee's use of the leased area is permissible only with the consent or approval of any authority under or in pursuance of any law enactment or order of Court the lessee must obtain such consent or approval at its own expense and the lessee shall at no time during the term of this lease do or permit or fail to do or suffer to be done any act, matter or thing whereby such consent or approval shall lapse or be revoked; and
- 9.2 The lessee must keep current during the term of this lease all consents and approvals required under the Development Act 1993 and any other law applicable to the leased area or the permitted use or the lessee's use of the leased area.

## 10. Public Liability Insurance

- 10.1 The lessee shall forthwith effect and keep current during the term of this lease in the joint names of the Minister and the lessee for their respective rights and interests with a reputable and solvent insurer first approved by the Minister (which approval shall not be unreasonably withheld) a policy of public risk insurance in respect of the leased area for an amount not less than the amount stipulated in the Schedule in respect of any single claim, accident or event (or such greater amount as the Minister shall from time to time reasonably require) and upon request from or on behalf of the Minister to produce a copy of such policy and a copy of a certificate of currency in respect thereof such policy to indemnify the lessee and the Minister against any and all actions, suits, claims, demands, cost, proceedings, expenses, harm and loss of any kind including arising out of or in connection with:
  - 10.1.1 the use of the leased area by the lessee or a licensee under a corresponding licence or its servants, agents and invitees; and/or
  - 10.1.2 any death, illness or bodily injury sustained by any person upon the leased area or any damage to property occurring upon the leased area.

Notwithstanding any other provision of this clause the lessee shall satisfy the obligations to effect a policy of public risk insurance if the lessee notes the leased area and the Minister's rights and interests therein and under this lease upon any policy of public risk insurance effected by the lessee in respect of other land or premises within the Commonwealth of Australia provided such policy and such insurer otherwise satisfies the requirements of this clause and the lessee upon request from or on behalf of the Minister produces a copy of such policy and a copy of a Certificate of Currency in respect thereof.

#### 11. *Statutory Requirements*

- 11.1 The lessee must comply with the laws in force in South Australia in the course of any activity undertaken pursuant to this lease, or in relation to or on the leased area.
- 11.2 The lessee shall be liable to indemnify the Minister from and against all actions, proceedings, claims, demands, charges, penalties and expenses arising from any failure to comply with the laws in force in South Australia.

#### 12. *No Nuisance*

- 12.1 The lessee must not do or fail to do anything on or in respect of the leased area (and must ensure that its employees, agents, contractors and invitees and any licensee under a corresponding licence do not do or fail to do anything on or in respect of the leased area):
  - 12.1.1 whereby a nuisance (whether public or private) may arise or continue upon or in connection with the leased area; or
  - 12.1.2 whereby any nuisance or disturbance could arise to any users of land near the leased area or the waters around the leased area or which could interfere with the same.

#### 13. *Indemnities*

The lessee must indemnify and save harmless the Minister against:

- 13.1 all actions, claims, demands, proceedings, suits, costs, damages, expenses and losses which the Minister may suffer or incur as a result of the death of or injury to any person or loss of or damage to the property of any person arising from or out of any occurrence in, upon or about the leased area or any part of it or the use of the leased area by the lessee or a licensee under a corresponding licence or by any employee, agent, contractor or invitee of the lessee or licensee;
- 13.2 all loss or damage to the leased area, and any property on it caused by the lessee or licensee under a corresponding licence or by any employee, agent, contractor, or invitee of the lessee or licensee or other person having business with the lessee or licensee and in particular but without limiting in any way the generality of the foregoing by reason of the use, misuse, waste or abuse of the leased area; and
- 13.3 all fees, costs, liabilities and expenses incurred by the Minister in the exercise or attempted exercise of any of the rights, authorities, powers or remedies which are exercisable by the Minister pursuant to this lease,

except to the extent caused or contributed to by any wilful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 14. *Exclusion of Liability*

The Minister and its servants, employees, agents, contractors and invitees shall have no responsibility or liability to the lessee and the Minister and its employees, agents, contractors and invitees for any loss or injury suffered by the lessee or to the property of the lessee except to the extent caused or contributed to by any unlawful or negligent act or omission of the Minister or any employee, agent or contractor of the Minister.

#### 15. *Minister's Entry on Leased Area*

- 15.1 The Minister may, on giving reasonable notice, with or without the Minister's officers, employees and/or agents, enter upon and remain on the leased area for the purpose of inspecting the leased area including in respect of the performance of the lessee's obligations and/or for the purpose of remedying any breach of the lessee's obligations under this lease or the Act in respect of the leased area or any breach by any licensee under a corresponding licence of its obligations under and pursuant to the licence or the Act, although the Minister shall be under no obligation to so remedy any such breach.
- 15.2 The Minister shall not be required to give any prior notice to the lessee before exercising its rights under and pursuant to this clause in circumstances where, in the reasonable opinion of the Minister:
  - 15.2.1 it is not practicable to do so, or;
  - 15.2.2 the Minister or any responsible officer, employee or agent of the Minister believes on reasonable grounds that an offence has or is being or is about to be committed on the leased area or that a breach of the terms and conditions of this lease by the lessee or any breach by any licensee of its obligations under and pursuant to the licence, has occurred, is occurring or is about to occur;
  - 15.2.3 in exercising any of its rights under and pursuant to this clause the Minister shall use its reasonable endeavours not to interfere with the lawful and permitted conduct of the lessee's or a licensee's use of the leased area.

#### 16. *Contamination and Contaminating Substances*

- 16.1 The lessee must not bring or permit to be brought upon the leased area any matter in any form which the handling, storage, disposal, dealing with or the escape of which may in any manner result in, cause or contribute to pollution, contamination or degradation on or to the leased area or any land or water adjacent or near to the leased area or exacerbate, add to or compound any pre-existing pollution, contamination or degradation or the feasibility, practicality or cost of its control and/or removal, unless the lessee has obtained the prior written consent of the Minister, (which consent the Minister may grant or withhold or impose conditions on in its absolute unfettered discretion).
- 16.2 Irrespective of whether the Minister gave its consent in respect of such material, compounds or substances pursuant to this clause, if during the term of this lease, or during any subsequent period in which the lessee continues to occupy or control the leased area, any pollution, contamination or degradation occurs or any exacerbation, addition to or compounding of any pollution, contamination or degradation existing prior to the date of commencement of the term of this lease occurs (other than to the extent the result of any wilful or negligent act or omission of the Minister or any agent employee or contractor of the Minister) then:
  - 16.2.1 the lessee must forthwith notify the Minister in writing of the location, nature, extent and quantity of such substance or compound and the pollution, contamination and degradation it might cause and reasonable particulars of the long term effect of the same and likely cost of control, collection, removal and disposal;
  - 16.2.2 the lessee must permit the Minister and any employee, agent, inspector, contractor or invitee of the Minister at all times to enter upon the leased area and to inspect any suspected notified or known pollution, contamination or degradation or any substance



or compound capable of causing pollution, contamination and degradation to the leased area or the land or water adjacent to or near the leased area and to abate any actual or potential danger or hazard in or about the leased area and if such hazard or damage in the reasonable opinion of the Minister is caused by or results from the substance or compound the lessee shall pay to the Minister the costs and expenses incurred in carrying out such work; and

- 16.2.3 the lessee must at its own cost and expense if so required by the Minister remove any and all substances and compounds causing contributing or which could cause or contribute to pollution, contamination or degradation of the leased area (or exacerbate add to or compound any pre-existing similar condition) from all parts of the leased area.

- 16.3 During the term of this lease, the lessee must indemnify and hold harmless the Minister and keep the Minister indemnified from and against all claims, demands, actions, proceedings, judgments, orders, costs, losses, damages and expenses of any nature whatsoever suffered or incurred by the Minister as a result whether directly or otherwise of:

16.3.1 any act or omission of the lessee its servants, agents, contractors, licensees or any other person acting with its authority which results in pollution, contamination or degradation on or to the leased area or any part thereof; and

16.3.2 any failure of the lessee to comply with observe and perform in respect of the leased area the requirements imposed on tenants or occupiers of the leased area by any laws, statutory enactments or regulations made pursuant thereto (whether Federal, State or municipal) relating to the contamination and/or degradation and/or pollution of the leased area or any part thereof (the 'relevant law').

#### 17. Lease Expiry

The lessee must, at the lessee's cost in all things immediately prior to the expiration or sooner determination of the term of this lease:

- 17.1 remove and carry away from the leased area all improvements, plant, equipment, chattels and property located or brought upon the leased area by or on behalf of the lessee and in such removal cause as little damage to the leased area as practicable;
- 17.2 upon completion of such removal, remove all debris, rubbish and waste from the leased area and rehabilitate the same in respect of any damage caused thereto by the location thereon of such waste and debris; and
- 17.3 reinstate and rehabilitate the leased area and any portions thereof affected by the conduct of the permitted use or the lessee's use of the same to the condition existing prior to commencement of the term of this lease. Such rehabilitation shall be performed by the lessee at its cost in all things to the reasonable satisfaction of the Minister.

#### 18. Occupation

The lessee has the rights of occupation provided in the Act.

#### 19. Default Costs

- 19.1 The lessee is liable to pay the Minister reasonable costs and expenses including but without limiting the generality thereof reasonable professional charges and workmen's wages:
- 19.1.1 of and incidental to the recovery of annual rent due and unpaid interest thereon; and
- 19.1.2 incurred by remedying or attempting to remedy any breach of the lessee's obligations under this lease.

- 19.2 Any amount payable by the lessee under this clause is payable on demand by the Minister.

#### 20. Default Interest

Without prejudice to the rights, powers and remedies of the Minister otherwise under this lease the lessee must pay to the Minister interest at the overdrawn rate charged from time to time by the Minister's Bankers on overdrafts not exceeding \$50 000 on any money due but unpaid after the same fell due and payable by the lessee to the Minister on any account whatsoever under this lease. Interest shall be computed from the due date for the payment of the money in respect of which the interest is chargeable until payment of such money is made in full and shall be recoverable in like manner as rent in arrears.

#### 21. Minister may remedy Default

- 21.1 If the lessee fails or neglects to perform any obligation or to observe any provision to be performed or observed by the lessee under this lease or if any licensee under the licence is in breach or default under the licence and if such failure or neglect shall continue for one month after the Minister has given to the lessee notice in writing requiring the lessee to perform such obligation or to observe such provision then the Minister may (but without being bound so to do and without prejudice to any other right or remedy) perform that obligation or observe that provision and all reasonable costs and expenses including overtime charges, fines, levies and penalties due to such default or incurred by the Minister in remedying the same shall be paid by the lessee to the Minister.

#### 22. Waiver

No forbearance by the Minister in respect of any breach of any obligation contained or implied in this lease shall operate as a waiver of another breach of the same or of any other obligation contained or implied in this lease.

#### 23. Joint Lessees

If the lessee constitutes more than one natural person or bodies corporate or a partnership:

- 23.1 the persons comprising the lessee are jointly and severally bound by the conditions of this lease; and
- 23.2 notice to one of the natural persons or bodies corporate comprising the lessee shall be notice to all persons comprising the lessee.

#### 24. Guarantee or Indemnity

- 24.1 The lessee must within five business days of receipt of this lease but with effect from the date of commencement of the term of this lease either:

- 24.1.1 provide a guarantee from its bankers; or
- 24.1.2 contribute to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry,

to and in favour of and for the benefit of the Minister by way of security for the due and punctual performance by the lessee of the terms and conditions of this lease and in particular the obligations of the lessee to rehabilitate the leased area immediately prior to the expiration or sooner determination of the term of this lease upon the following terms and conditions:

- 24.1.3 the lessee shall either:

- (a) arrange for the provision from a bank as defined in the Banking Act 1959 or established by an Act of the Parliament of South Australia of an irrevocable and continuing bank guarantee for an amount stipulated from time to time by the Minister (the 'Bank Guarantee'). The Bank Guarantee shall otherwise contain terms and conditions which are reasonably satisfactory to the Minister. The Bank Guarantee shall be continuously in existence until the Minister agrees to release the Bank Guarantee under this clause. The guarantee shall

entitle the Minister to make demand on the Bank Guarantee at any time if there has been a failure by the lessee to pay any money at the time specified for such payment or if there has been any other breach or default by the lessee for the due and punctual performance of the covenants, obligations and provisions on the part of the lessee under this lease. If the Minister makes a demand on the Bank Guarantee either in whole or in part and appropriate such funds then the lessee shall within five days of such demand by the Minister provide the Minister with a fresh Bank Guarantee for an amount equal to the amount so demanded and paid by the Bank to the Minister on the Bank Guarantee and on the same terms and conditions as specified in this clause. The lessee shall not be entitled to a release or a re-delivery nor to request a release or re-delivery of the Bank Guarantee until one month after the expiration of the term of this lease. Notwithstanding any other provisions of this clause the Minister shall be entitled to refuse to release or deliver up to the lessee the Bank Guarantee if the Minister reasonably considers that there may be unremedied breaches or contingent obligations under the lease yet to mature and to be performed by the lessee at the time of the request to the Minister to release or re-deliver the Bank Guarantee; or

- (b) make such contributions to the indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industries as required by the Minister or the administrator of such scheme, and if required make such contributions on an annual or other basis and in such amounts as required by the Minister or the administrator of such scheme;

24.1.4 the provisions of this clause do not in any way limit, restrict or prejudice the rights of the Minister to exercise such additional rights, remedies and powers as the Minister may consider appropriate as a result of the lessee's default;

24.1.5 notwithstanding any other provision of this clause, if the lessee transfers or assigns its estate and interest in this lease, then upon and as and from the date ('the Date') such transferee or assignee providing to the Minister either a guarantee from its bankers as satisfies the requirements of this clause or evidence of having contributed to an indemnity scheme established and/or nominated by the Minister for the aquaculture and fisheries industry in such amount as required by this clause, the Minister shall from the date fully free release and discharge the lessee from any and all obligations under and pursuant to this clause and shall release and re-deliver to the lessee any bank.

24.2 If the lessee has already provided a guarantee or contributed to a fund in accordance with obligations under previous arrangements to the extent required under this lease, then the lessee is excused from the initial requirement to provide a guarantee or contribution, but not from subsequent obligations under this clause.

#### 25. *Disclaimer*

The Minister does not expressly or impliedly warrant that the leased area is now or will remain suitable or adequate for all or any of the purposes of the lessee and all warranties (if any) as to the suitability and adequateness of the leased area that might otherwise be implied are expressly negated.

#### 26. *Delegation*

Unless expressly excluded by any provision of this lease, any consent, any notice, any consultation or any other thing which pursuant to the terms of this lease is either required to be given, done or performed by the Minister or is permitted to be given, done or performed by the Minister may for the purposes of this lease be properly given, done or performed by a person authorised by the Minister to act on the Minister's behalf.

#### 27. *Special Conditions*

Incorporated in this lease are any special conditions set out in the Schedule.

#### 28. *Notices*

28.1 Notice to the lessee is valid if sent by post to the address for notices in the Schedule, or such other address as is notified by the lessee to the Minister in writing.

28.2 The lessee may give notice to the Minister by posting written notice addressed to PIRSA Aquaculture, G.P.O. Box 1625, Adelaide, S.A. 5001.

#### 29. *Definitions and Interpretation*

In this lease unless inconsistent with the context:

'*business days*' means Monday to Friday (inclusive) excluding any public holiday;

'*corresponding licence*' has the meaning attributed in the Act;

'*GST*' means the tax imposed by the GST Law;

'*GST Law*' has the meaning attributed in the A New Tax System (Goods and Services Tax) Act 1999;

'*Insolvency Administration*' means, if the lessee is a corporation:

- an administrator is appointed to the lessee or action is taken to make such an appointment;
- the lessee resolves to be wound up;
- an application is made to a court for an order or an order is made that the lessee be wound up (whether on grounds of insolvency or otherwise);
- the lessee ceases to carry on business;
- a receiver or a receiver and manager of property of the lessee is appointed whether by a court or otherwise;
- an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the lessee or one of them is appointed, whether or not under an order;
- the lessee enters into a compromise or arrangement with its creditors or a class of them; or
- the lessee is or states that it is unable to pay its debts when they fall due;

'*Insolvency Administration*' means if the lessee is a natural person:

- the lessee has committed an act of bankruptcy as contemplated by the Bankruptcy Act 1966;
- the lessee is unable to pay his or her debts as and when they become due and payable;
- the court has made a sequestration order against the lessee's estate;
- a creditors' petition has been presented against the lessee;

- the lessee has presented to the Official Receiver a declaration of intention to present a debtor's petition;
- the lessee becomes a bankrupt;
- a meeting of creditors of the lessee is convened; or
- the lessee lodges with his or her trustee a proposal to his or her creditors for a composition in satisfaction of his or her debts or a scheme of arrangement of his or her affairs;

'*Lessee*' means the party described in this lease and the heirs, executors, administrators and permitted assigns thereof and if a body corporate, its successors and permitted assigns;

'*Minister*' means the Minister for Agriculture, Food and Fisheries, a body corporate under the Administrative Arrangements Act 1994;

'*Permitted Use*' means the use of the leased area for such aquaculture purposes as are specified in the Schedule to this lease;

'*Leased Area*' means the area comprised of State waters or State waters and adjacent land within the meaning of the Harbors and Navigation Act 1993, described in the Schedule to this lease;

'*Taxable Supply*' has the meaning attributed in the GST Act;

'*Tax Invoice*' has the meaning attributed in the GST Act;

'*Term of this Lease*' or the '*Term*' means the initial term granted by the Minister (unless sooner determined) and any extension of such initial term.

### 30. Interpretation

- 30.1 Words importing the singular shall embrace the plural and words importing the masculine gender shall embrace the feminine and neuter genders and *vice versa* respectively.
- 30.2 Any reference to a person shall include a corporate body and *vice versa*.
- 30.3 Where two or more persons are included in the designation the 'lessee' the obligations on the part of the lessee contained in this lease shall bind such persons and any two or greater number of them jointly and each of them severally and the expression the 'lessee' shall include all or any one or more of such persons.
- 30.4 References to a statute include all amendments for the time being in force and any other statute enacted in substitution for it and the regulations, by-laws or other orders for the time being made under that statute.
- 30.5 Headings are for convenience of reference only and shall not affect the construction or interpretation of the covenants of this lease.

Dated 14 January 2003.

Signed by the General Manager, Aquaculture of the Department for Primary Industries and Resources as delegate of the Minister for Transport (as successor of) the Minister for Transport and Urban Planning, pursuant to a delegation made on 13 March 2000 under section 11 (1) of the Harbors and Navigation Act 1993.

I. NIGHTINGALE, General Manager, Aquaculture

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