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MEMORANDUM OF UNDERSTANDING dated

2021

BETWEEN

CITY OF WHYALLA ABN 44 753 313 064 of Civic Building, Darling Terrace, Whyalla SA
5600

(Council)

AND:

CLEAN SEAS AQUACULTURE GROWOUT PTY LTD ABN 61 094 380 499 of 7 Frederick Road,
Royal Park, SA, 5014

(Clean Seas)

INTRODUCTION

- A. The Council is a council constituted under the *Local Government Act 1999*.
- B. Pursuant to section 15 of the *Harbors and Navigation Act 1993* the Minister for Transport and Infrastructure (**Minister**) is vested with portions of the adjacent and sub-adjacent land abutting Crown Record Volume 5970 Folio 776 situated at Port Lowly (**Port Lowly Marina**).
- C. Pursuant to an agreement dated January 2014 the Minister has granted to the Council a non-exclusive licence (**Council Licence**) to use portions of the Point Lowly Marina (**Licensed Area**).
- D. Clean Seas has requested and, subject to the terms of this document, the Council intends to grant Clean Seas a non-exclusive sub-licence to use the Licensed Area for the Permitted Use (**Licence**).
- E. The parties have agreed to enter this Memorandum of Understanding (**MOU**) to evidence their negotiations in relation to reaching an agreement on the terms of the Licence and their intentions to continue negotiating the terms of the Licence in good faith and cooperation.

IT IS AGREED

1. BACKGROUND

The background is accurate and forms part of this MOU.

2. ARRANGEMENT

- 2.1 This MOU is a statement of understanding and is not binding on either party and neither party intends to be contractually bound by signing this MOU.
- 2.2 The grant of the Licence is subject to:
 - 2.2.1 the consent of the Minister;
 - 2.2.2 any subsequent advice by the parties legal representatives; and
 - 2.2.3 the negotiation and execution of a formal document recording the licence agreement between the Council and Clean Seas.
- 2.3 This MOU does not grant Clean Seas any right, estate or interest in the Licensed Area; and
- 2.4 The making or performance of this MOU does not fetter the exercise of any regulatory function or power or discretion the Council has now or in the future.

3. LICENCE

- 3.1 The parties will cooperate and negotiate in good faith to agree to the terms of and sign the Licence.
- 3.2 The terms of the Licence will be based on the outline of terms attached at Annexure A.

4. GENERAL

- 4.1 Nothing in this MOU constitutes any relationship of employment, partnership, joint venture or agency between the parties.
- 4.2 This MOU may be executed in any number of counterparts.

Signed for City of Whyalla by its authorised delegate pursuant to the *Local Government Act 1999* in the presence of:

.....
Signature of witness

.....
Signature of authorised delegate

.....
Name of witness (print)

.....
Name of authorised delegate

.....
Address of witness

.....
Position held by authorised delegate

.....
Business Hours Telephone Number.....

Executed by Clean Seas Seafood Ltd pursuant to section 127 of the *Corporations Act 2001*

.....
Signature of Director

.....
Signature of Director/Company Secretary
(Delete as applicable)

.....
Name of Director (print)

.....
Name of Director/Company Secretary (print)

ANNEXURE A – LICENCE TERMS

<p>1. Grant of Licence</p>	<p>The Licence will be non-exclusive and Clean Seas will have no exclusive right of occupation or proprietary interest in the Licensed Area.</p> <p>The granting of the initial 3 year licence will enable Clean Seas to farm a single cohort of Kingfish (Year Class 22) from juvenile stage to harvest weight.</p> <p>The juvenile fish of the Year Class 22 cohort will be placed on Clean Seas Fitzgerald Bay lease from September 2021 to January 2022 and are expected to be harvested from September 2022 until August 2023.</p> <p>An extension in the licence for a further two years will enable Clean Seas to farm an additional cohort of Kingfish (Year Class 24) from juvenile stage to harvest weight.</p> <p>The juvenile fish of the Year Class 24 cohort will be placed on Clean Seas Fitzgerald Bay lease from September 2023 to January 2024 and are expected to be harvested from September 2024 until August 2025.</p> <p>The maximum biomass at sea at this time is expected to be circa 75% of the capacity of Clean Seas Fitzgerald Bay leases.</p> <p>This period will allow Clean Seas, the Council and the local community to assess and refine the manner of Clean Seas operations before any longer term agreement is negotiated.</p> <p>The granting of this licence does not compel the Council to grant any further licence or extension upon expiry.</p> <p>Clean Seas will share possession of the Licensed Area with the Council, the Minister and any person authorised or permitted by either the Council or the Minister.</p> <p>Clean Seas will have priority access to the western lane of the boat ramp, the pontoon, wharf, marina basin, driveway, roadways, paths, loading and standing areas.</p> <p>Clean Seas must not obstruct the eastern lane of the boat ramp or eastern portion of the pontoon.</p> <p>The Department of Environment and Water will have access to the Licensed Area in priority to Clean Seas.</p>
<p>2. Term</p>	<p>The term of the Licence will be for a period of three (3) years with right of renewal of a further two (2) years subject to Clean Seas demonstrating intent to move operations to the Northern Landing. Clear intent is able to be evidenced by approvals to construct and/or construction having begun. The renewal can be triggered at any time of the initial 3 year period commencing on 1 September 2021 and expiring on 30 September 2023.</p>
<p>3. Renewal</p>	<p>No right of renewal beyond term in clause 2.</p> <p>Any renewal or extension will be subject to negotiation and agreement between Clean Seas and the Council.</p>
<p>4. Licence Fee</p>	<p>A licence fee payable annually in advance of \$10,000.00 per annum exclusive of GST.</p> <p>The licence fee will be subject to an annual increase in line with CPI.</p>
<p>5. Outgoings / Utilities / Services</p>	<p>Clean Seas to pay for the costs of any water or power services used, if there is no meter, on a 50/50 basis with the Council, or otherwise pursuant to Clean Seas own metered charges.</p>

<p>6. Costs</p>	<p>Each party shall bear their own costs in relation to the preparation, negotiation and execution of the Licence.</p> <p>Clean Seas will be required to pay:</p> <ul style="list-style-type: none"> (a) the Council's reasonable costs of obtaining any required consents and all costs associated with registration of the Lease (including preparation of a licence plan, if required); (b) any reasonable fees imposed by the Minister for consenting to the Licence or any dealing with the Licence.
<p>7. Permitted Use</p>	<p>The parties acknowledge that Clean Seas will only be able to use the Licensed Area for a specified permitted use which is to be agreed by the parties (Permitted Use).</p> <p>This will include the loading and unloading of commercial vessels, launching and retrieval of vessels and works to the Marina.</p> <p>Clean Seas will be expressly permitted to use the -</p> <ul style="list-style-type: none"> a) Western lane of the Ramp; b) Pontoon; c) Marina Basin; and d) driveway, roadways, paths, loading and standing areas <p>for the Permitted Use.</p> <p>Clean Seas intent is to load and unload crew, equipment and small quantities of feed under 25 ton. Point Lowly will not be used for large bulk transfers of feed or for the transfer of harvested fish or used nets.</p> <p>Clean Seas acknowledges that:</p> <ul style="list-style-type: none"> a) the Marina will be used by the Department of Environment and Water or its contractors from time to time. b) the activities, entry and passage to and through the Marina by the Department of Environment and Water or its Contractors shall be given priority by Clean Seas. c) Clean Seas shall be given notification prior to the commencement of the activities or work undertaken by the Department of Environment and Water. <p>It will be Clean Seas responsibility to:</p> <ul style="list-style-type: none"> (a) obtain any required consent, permit, approval or licence from any relevant authority required to lawfully conduct the permitted use from the Licensed Area. (b) satisfy itself that the Licensed Area is suitable for the permitted use (structurally or otherwise) and the Council makes no warranty or representation in respect of the suitability of the Premises.

8. Conditions Of Use

Clean Seas shall not without the prior written consent of the Council (which consent may not be unreasonably withheld) use the Marina for any purpose other than the Permitted Use.

All works of a structural kind including without limitation repairs and maintenance on a vessel are not to be undertaken with or in close proximity to the Marina except for minor maintenance which will not result in a vessel mooring in the Marina for more than 48 hours.

Clean Seas shall not permit any vessel to be used for accommodation purposes within the Marina.

Clean Seas shall not prevent the Council or the public from the use of and access to the Marina under the Council Licence.

Clean Seas shall seek to use the smallest vessel as possible within the Point Lowly Marina, including wherever possible a vessel of less than 6m for crew transfers to and from moored vessels.

Clean Seas shall not impede or restrict the use by the Council or the public of the -

- a) eastern lane of the Ramp; or
- b) the eastern portion of the Pontoon.

Clean Seas shall not

- a) store or leave any nets in or about the Marina; or
- b) use the Marina for the retrieval of soiled nets.
- c) use the Marina for vessels greater than 18.5m in length
- d) commence the use of larger (+6m) vessels, cranes, forklifts and heavy trucks before 9am on Sunday and Public Holidays and 6am on any other day.
- e) Operations to be concluded by 9pm at night
- f) conduct any vehicle or road based activities that are contrary to the conditions in the agreed Traffic Management Plan
- g) access the Marina more than four times per day for larger (+6m) vessels in, or allow such vessels to remain in the Marina for an unreasonable length of time while not being loaded or unloaded
- h) access the Marina with vessels whose draft is greater than the allowable depth of the Marina at any given tide time
- i) use the Marina for any operations that can safely be conducted from "The Landing" site once this development commences

Clean Seas will be exempt from these restrictions where there is a risk to employee or fish health. Clean Seas will advise the Council as soon as practical after such instances have been invoked

Clean Seas will be able to access the marina and boat ramp with vehicles and vessels equal to or smaller than those of recreational users (ie trailer-able sized boats and launching vehicles) at all times.

Without limiting the Clean Seas obligations, it shall, at its own expense obtain and maintain during the Licence Term all approvals necessary for the Permitted Use.

Notwithstanding any other provisions of the Licence, the Council may restrict the use of the Marina including refuelling or use of inflammable or explosive substances or liquids where such restriction is required by a restriction imposed on the Council by the Minister under the Council licence because such use is in the Minister's opinion likely to cause damage to the Marina or will prejudice or cause nuisance to or obstruction to other users of the Land except for refuelling of small vessels associated with aquaculture or other commercial activities.

<p>9. Assignment</p>	<p>Clean Seas shall not assign, transfer, sub-let or sub-licence or otherwise part with possession of the Marina to an entity outside the Clean Seas group without the prior written consent of the Minister and the Council (which consent may not be unreasonably withheld by the Council).</p>
<p>10. Repairs, Maintenance and Cleaning</p>	<p>Clean Seas shall remove all waste, litter, rubbish and seaweed deposited by Clean Seas or brought onto the Marina by Clean Seas.</p> <p>Clean Seas shall ensure that Clean Seas, its employees, agents, contractors or invitees do not cause or contribute to the pollution or contamination of the Marina or any land, seabed or water comprised in or in the vicinity of the Marina</p> <p>Clean Seas must make good any damage to any property that is owned by or is the responsibility of the Council, including the Marina Structures, by Clean Seas or its employees, agents, and contractors, or otherwise caused by any breach or default of Clean Seas under this Deed.</p> <p>Clean Seas shall permit the Council and any officer, employee, agent or contractor of the Council to enter upon the Marina or any part of it at all reasonable times to examine the condition of the Marina.</p> <p>The Council may require Clean Seas by notice in writing to undertake reasonable repairs to the Marina or other reasonable actions to ensure compliance with obligations contained in this Licence.</p> <p>Clean Seas must comply with any notice issued pursuant to this clause within the time specified in the notice (which period must be reasonable having regard to the nature of the works and the circumstances).</p> <p>Clean Seas shall repair the Marina or otherwise comply with any obligation imposed upon Clean Seas in accordance with the notice referred to in this clause within any reasonable time stated in the notice.</p> <p>If Clean Seas fails to comply with obligations under this clause, the Council may carry out the repairs or undertake other obligations of Clean Seas at the expense of Clean Seas.</p> <p>All monies expended by the Council in carrying out repairs and other obligations of Clean Seas will be owed by Clean Seas as a debt to the Council.</p> <p>Clean Seas shall support and participate in the annual Clean Up Australia Day activities in the vicinity of the Point Lowly Marina and it's Fitzgerald Bay farms</p>
<p>11. Alterations</p>	<p>Subject to Item 27, Clean Seas shall not undertake any construction works, including the construction and installation of mooring buoys, ladders, walkways, bollards, piles or additions to the Marina, including the erection of permanent signs, during the Licence Term without the prior written consent of the Minister (which consent may be given or withheld at the Minister's absolute discretion).</p>
<p>12. End of Licence</p>	<p>Upon expiration or termination of the Licence Clean Seas will at Council discretion be required to:</p> <ul style="list-style-type: none"> (a) remove all of its fixtures, fittings, plant, equipment and improvements from the Licensed Area; (b) deliver up the Licensed Area in good and substantial repair and condition consistent with its repair and maintenance obligations under the Licence; and (c) remove or remediate any contamination unless that contamination is pre-existing or caused by others. <p>Any fixtures and fittings remaining shall transfer to Council</p>

13. Insurance	Clean Seas will be required to maintain a public liability insurance policy in respect of the Licensed Area for an amount of \$20,000,000.00 for any one claim and any other insurance reasonably required by the Council.
14. Indemnity	Clean Seas must indemnify and release the Council and the Minister for all loss arising out of its use of the Licensed Area, except to the extent it is caused by the negligence of the party seeking to rely on the indemnity or release.
15. Council's Reserved Rights	<p>Council will have the right to:</p> <ul style="list-style-type: none"> (a) grant concurrent rights to use the Licensed Area and to assign or otherwise deal with its interest in the Licensed Area; (b) enter upon and use the Licensed Area; (c) restrict access to and from the Licensed Area in the case of an emergency;
16. Default	Clean Seas must pay default interest at a rate of 4% per annum on any overdue payments.
17. Destruction	<p>The Minister nor the Council has no obligation to:</p> <ul style="list-style-type: none"> a) reinstate or restore any structure or property owned by the Minister or the Council adjacent to the Marina, if the structure or property is rendered unfit for occupation or use by Clean Seas; or b) to reinstate or restore any part of the Land adjacent to the Marina if access to the Marina is compromised by damage to, or destruction of, any part of the Land. <p>If part of any structure or property adjacent to the Marina is damaged or destroyed, the Minister may determine in the Minister's absolute discretion whether that structure or property has been rendered unfit for occupation or use by Clean Seas</p> <p>If the Minister determines that the structure or property is unfit for occupation or use by Clean Seas the Licence will terminate immediately as of the date of damage to or destruction of, the Marina without prejudice to any rights, remedies or actions which the Minister or the Council may have against Clean Seas in respect of any antecedent breach of the Licence by Clean Seas.</p>
18. Holding Over	Not applicable
19. Council Licence	<p>The Licence will be subject in all respects to the continuation of the Council Licence and the consent of the Minister pursuant to the Council Licence.</p> <p>The Licence will automatically terminate upon the termination of surrender of the Council Licence.</p> <p>The Council will give Clean Seas a minimum of 12 months notice if it intends to surrender its licence</p>

<p>20. Compliance</p>	<p>Clean Seas must at all times comply with all relevant legislation including the Environment Protection Act 1993 and the Work Health And Safety Act 2012 and must take appropriate measures to prevent and manage contamination.</p> <p>Clean Seas shall at all times during the Licence Term comply with:</p> <ul style="list-style-type: none"> a) the requirements of all statutes, regulations, by-laws, ordinances, rules or other forms of statutory instruments or delegated legislation applicable to the Marina or to the use of the Marina by the Licensee; and b) the requirements of all notices, orders or requirements lawfully given or made by any authority or authorities in respect of the Marina or the use of the Marina by the Licensee. c) Clean Seas, at its own expense, will commission quantitative assessment of potential noise impacts on nearby residents and determine and implement necessary remedial action d) Clean Seas, at its own expense, will commission quantitative assessment of lighting levels required for safe operation by Clean Seas
<p>21. Rules</p>	<p>Clean Seas will take all reasonable precautions at all times not to do or permit to be done any act, matter or thing whatsoever at any time in or on the Land or any part of it which shall be an unreasonable annoyance, nuisance, inconvenience, grievance, damage or disturbance to the Minister, the Council, occupiers or owners of any adjacent land or government, municipal or other authorities and in particular taking into account the Permitted Use and any other legal requirements but without limitation will not hold or permit to be held in or in the vicinity of the Land any auction or sale.</p> <p>Activities contravening this plan will be subject to the provisions of the Stakeholder Communication and Dispute Resolution sections.</p>
<p>22. Redevelopment</p>	<p>If the Council has obtained approval from the Minister and the consent of the licensee and is redeveloping or substantially altering the licensed area, then following six months prior notice to the Licensee, the council may redevelop the licensed area and the term of the licence and any applicable fees payable by Clean Seas will be suspended during the redevelopment works.</p>
<p>23. Early Termination</p>	<p>Not applicable</p>
<p>24. Right To Remedy</p>	<p>If Clean Seas fails to rectify a defect in accordance with item 10 or fails to carry out an alteration or removal in accordance with item 11, the Council may (without being obliged to) rectify the defect or carry out the alteration or removal and claim the reasonable cost of doing so as a debt owed by Clean Seas to the Council.</p> <p>If Council fails to rectify a defect in accordance with it's Licence with the State Government, Clean Seas may (without being obliged to) rectify the defect and claim the reasonable cost of doing so as a debt owed by the Council to Clean Seas.</p>

<p>25. Termination</p>	<p>In addition to any other rights or termination granted by this Licence, the Council may terminate the licence immediately by notice in writing to Clean Seas and re-enter and take possession of the Marina if the Minister authorises the Council to take such action in writing and if:</p> <ul style="list-style-type: none"> a) Clean Seas fails to rectify a breach of an obligation under the licence within the time specified in a notice from the Council requiring such breach to be rectified: or b) Clean Seas commits or permits any further breach of an obligation imposed on Clean Seas by the licence for which the Council has previously given notice in writing, notwithstanding rectification of the previous breach. <p>Termination of the licence by the Council shall be without prejudice to any rights, remedies or actions that the Council may have or has against Clean Seas in respect of any antecedent breach by Clean Seas of the terms and conditions contained in this Licence.</p> <p>Notwithstanding any other provision of this Licence, the Minister may terminate the licence at any time by six (6) month's written notice to the Licensee</p> <p>Notwithstanding any other provision of this Licence, Clean Seas may terminate the licence at any time by twelve (12) month's written notice to the Council</p>
<p>26. Bank Guarantee</p>	<p>For the first 3 years of the Licence agreement, plus any potential renewal, Clean Seas will be required to provide the Council with an unconditional and irrevocable bank guarantee in the amount of \$50,000 to secure its obligations under item 24 "Right To Remedy" of the Licence. The bank guarantee will only be used to secure unpaid claims under the Council's Right To Remedy or for breeches under Conditions of Use, and any claims shall require the express approval of the Independent Mediator.</p>

<p>27. Remedial Works</p>	<p>The parties acknowledge that certain construction works will need to be undertaken to make the Licensed Area suitable for use by Clean Seas. Clean Seas will be permitted to undertake the Works (at its cost) as set out below.</p> <p>Marina Basin</p> <ul style="list-style-type: none"> a) Install 4 new corner mooring posts; and b) Maintain the depth of the Marina to the extent required to support Clean Seas operations. <p>Boat Ramp</p> <ul style="list-style-type: none"> c) Remove loose material at the end of the Ramp; and d) Add high density concrete to the end of the Ramp to prevent any further erosion. <p>Pontoon</p> <ul style="list-style-type: none"> e) Replace the existing buffer material on the eastern side of the Pontoon; f) Place an aluminium guide to the end of the Pontoon to prevent damage to smaller craft; g) Re-secure the buffer on the western side of the Pontoon; h) Remove and replace any damaged bugel bolts; and i) Reinstall frames and rubber supports for the floating concrete segment. <p>Car Park/Boat Access</p> <ul style="list-style-type: none"> j) Extend the eastern edge of the turn-around area by approximately 10m at its widest point (to allow further room for recreational users to access the eastern lane of the Ramp and allow access to a personal access ramp). k) Construct a new roadway to link the carpark directly to Lighthouse Drive l) Clean Seas, at its own expense, will commission quantitative assessment of potential noise impacts on nearby residents and determine and implement necessary remedial action m) Clean Seas, at its own expense, will commission quantitative assessment of lighting levels required for safe operation by Clean Seas <p>Security</p> <ul style="list-style-type: none"> n) Install a closed circuit television security system to monitor the safety and security of the Marina, with the footage available to Clean Sea sand Council. <p>Council and Clean Seas aim to have the above remedial works completed by the 30th of September 2021.</p>
<p>28. Stakeholder Communication</p>	<p>Clean Seas must commit to engaging with Council plus any relevant local stakeholder in its operations in an open and responsive manner and to holding regular meetings with stakeholders.</p> <p>Clean Seas will host meetings for Council plus relevant local stakeholders, at least 2 in the first year, and then as agreed. These meetings will be for Clean Seas to communicate its plans and to engage with the community.</p> <p>Clean Seas will record all complaints and feedback received, who from Clean Seas had been assigned to respond, and what the resolution for each individual item was. This information will be retained by Clean Seas.</p>

29. Independent Mediator	The Licence shall detail an appropriate dispute resolution mechanism for any disputes between the Council and Clean Seas whereby both parties will agree to use best endeavours to resolve any disputes, and if necessary Clean Seas and Council will appoint a suitable Independent Mediator.
30. Goods and Services Tax	The Licence Fee is exclusive of GST. If any supply under the licence is a Taxable Supply then the Council will supply to Clean Seas a Tax Invoice in respect of the supply.
31. New Marina (“The Landing”)	<p>Clean Seas acknowledge that moving to a new, purpose built for industry marina, at a nearby location may be preferable for all stakeholders. While the terms of the licence will not be contingent on such a facility being funded and built, Clean Seas will work with the Council on planning and designing a new marina, and on securing funding.</p> <p>Clean Seas has completed the initial engineering work for the new marina, to be completed in phases, and has engaged a consultant to fast-track the approval process. Clean Seas has also set aside the \$500,000 of funding required to complete the first phase of construction and aims to have this completed no later than September 2022. This first phase will include a boat ramp, similar in specification to the existing ramp at Point Lowly, and will therefore allow operations to be diverted away from Point Lowly unless weather conditions deem this unsafe.</p> <p>The subsequent phase, which would include a rock wall and loading area would be expected to provide all weather access to the new facility, thus eliminating the need to use Point Lowly entirely. The target date for completing this phase is July 2024, subject to approvals and funding.</p>
32. Environmental Protections	Clean Seas will work with the EPA, PIRSA, SARDI and the FRDC to monitor any environmental impacts from its operations and publish any such impacts including any Kingfish escapes.
33. Job Creation	<p>As part of this licence agreement, Clean Seas commits to retain the employment of the current 15 staff who were employed to work at Whyalla but are currently commuting to Arno Bay.</p> <p>Clean Seas commits to employ an additional 10 employees over the term of this licence agreement and a further 25 jobs once at full capacity if the additional 2 year licence is granted.</p>
34. Education Pathways	<p>Clean Seas commits to work with the new Whyalla Secondary College to reinstate and develop the schools Aquaculture training program to provide a pathway for young people into the Aqua culture industry.</p> <p>Clean Seas will also work with the Whyalla Secondary College to develop work experience opportunities on its Whyalla farm and to create entry-level positions for graduates of the Whyalla Secondary College Aquaculture training program</p>
35. Traffic Management Plan	<p>Clean Seas will, at its expense, draft and agree with Council a Traffic Management Plan to ensure activities are conducted in accordance with the recommendations of the Robert Bird Independent Report.</p> <p>Activities contravening this plan will be subject to the provisions of the Stakeholder Communication and Dispute Resolution sections.</p>