



**Australian Government**

**Department of Transport and Regional Services**

## **Deed of Guarantee and Indemnity**

By

**Clive Phillip Keenan**

Legal Office  
Department of Transport & Regional Services  
111 Alinga Street, Canberra, ACT 2601.  
Tel: 62747811  
Fax: 62746803  
LG0504 3763

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**Guarantee and Indemnity** made the                      day of                      2004

Between

**Commonwealth of Australia** represented by its Department of Transport and Regional Services having its offices at 111 Alinga Street, Canberra City in the Australian Capital Territory, 2601 (in this deed called the 'Commonwealth') of the first part,

And

**Clive Phillip Keenan**, director, of Coral Coast Mariculture Pty Ltd, having its offices at 106 Rowlands Road, Burnett Heads, Queensland 4670 (in this deed called the 'Guarantor') of the other part.

**Recitals;**

1. The Department of Transport and Regional Services operates the Commonwealth Sustainable Regions funding program which is designed to identify and support specific activities to promote sustainable development and to provide services that lead to ongoing regional benefit to identified communities.
2. The Commonwealth has received an application for funding under Sustainable Regions Program from an eligible body, *Coral Coast Mariculture*.
3. The Guarantor is a director of *Coral Coast Mariculture* and acknowledges that the Commonwealth is willing to enter into a funding agreement under Sustainable Regions Program with *Coral Coast Mariculture* in reliance on the undertakings given in this deed.

**Operative provisions:**

**1 Definitions**

- 1.1 In this deed:  
*Coral Coast Mariculture* means Coral Coast Mariculture Pty Ltd (ABN 14 113 675 228) a company incorporated under the *Corporations Act 2001 (Cth)* having its registered office at 106 Rowlands Road, Burnett Heads, Queensland 4670.

*Department* means the Department of Transport and Regional Services or any other Department administering this deed on behalf of the Commonwealth;

*Funding Agreement* means the *Funding Agreement* between the Commonwealth and *Coral Coast Mariculture* for grant of funding under the Sustainable Regions Program;

*Obligations* means the due and punctual observance and performance by *Coral Coast Mariculture* of all of its liabilities, obligations and agreements (whether contingent, prospective or actual) to the Commonwealth and to complete the *Project* under the *Funding Agreement*; and

*Project* means the Project as defined in the *Funding Agreement* as the construction of the first stage of aquaculture infrastructure, including buildings, ponds and technical facilities, on a site at Bundaberg Port, to be completed prior to the end of the SR program in 30 June 2006. The total cost of stage one is approximately \$1.4m of which CCM is to contribute \$900,000.

1.2 In this deed:

Words denoting the singular number include the plural and vice versa;

Words denoting individuals include corporations and vice versa;

Words denoting a particular gender includes all genders;

Headings are for convenience only and will not affect interpretation;

References to clauses and schedules are references to clauses and schedules of or to this deed; and

References to any agreement or document include that agreement or document as amended, novated, supplemented or replaced from time to time.

## 2 Guarantee

2.1 In consideration of the Commonwealth entering into a *Funding Agreement* with *Coral Coast Mariculture* under the Sustainable Regions Program:

- (a) the Guarantor unconditionally guarantees due and proper performance of the *Obligations*; and
- (b) agrees to indemnify the Commonwealth from all loss, damage or expense (including any legal expenses) arising from a breach of the *Funding Agreement*, non-completion of the *Project* or any debt of *Coral Coast Mariculture*, or any liability to pay or refund monies or funds to the Commonwealth by *Coral Coast Mariculture* under the *Funding Agreement*.

## 3 Nature of the Guarantee

3.1 The guarantee and indemnity provided under the preceding clause:

- (a) is a principal obligation and will not to be treated as ancillary or collateral to *Coral Coast Mariculture* undertakings to the Commonwealth under the *Funding Agreement*;
- (b) may be enforced against the Guarantor without the Commonwealth first being required to exhaust any remedy it may have against *Coral Coast Mariculture* or to enforce any security it may hold with respect to *Coral Coast Mariculture* completion of the *Project*; and
- (c) is a continuing guarantee and indemnity for the whole of the *Obligations* and is irrevocable and will remain in full force and effect until discharged.

#### 4. Guarantor's liability unaffected

- 4.1 The liability of the Guarantor under this deed is not affected by any act, omission, matter or thing which but for this provision might operate to release or otherwise exonerate the Guarantor from its undertakings, including without limitation:
- (a) the grant to *Coral Coast Mariculture* or any other person of any time, waiver or other indulgence or concession under the *Funding Agreement* or any discharge or release of any Security held by the Commonwealth in respect of *Coral Coast Mariculture Obligations*;
  - (b) any transaction or arrangement between the Commonwealth and *Coral Coast Mariculture* or any other person;
  - (c) The Commonwealth exercising or refraining from exercising any right, power or remedies under the *Funding Agreement* or otherwise;
  - (d) any variation (including a variation increasing the *Obligations*), extinguishment, unenforceability, failure, loss, release, discharge, abandonment or transfer either in whole or in part of the *Funding Agreement*;
  - (e) any insolvency of *Coral Coast Mariculture*;
  - (f) performance of the *Obligations* under the *Funding Agreement* in a manner that is wholly or partially illegal, void, voidable or unenforceable;
  - (g) any failure of the Commonwealth to give the Guarantor notice of default by *Coral Coast Mariculture* under the *Funding Agreement*; or
  - (h) any legal limitation, disability, incapacity or other circumstance related to *Coral Coast Mariculture*.
- 4.2 The Commonwealth is under no obligation to marshal in favour of the Guarantor any security now or in the future held by the Commonwealth over any funds or assets that the Commonwealth may be entitled to receive or have a claim over.
- 4.3 The guarantee provided by this deed extends to cover the *Obligations* as amended, varied or replaced, either with or without the consent of the Guarantor.

#### 5 Limitation on Guarantor's rights

- 5.1 Until the *Obligations* have been discharged the Guarantor is not:
- (a) entitled to take any steps to enforce a right or claim against *Coral Coast Mariculture* in respect of any money paid by the Guarantor to the Commonwealth under this deed; or
  - (b) have or exercise any rights as surety in competition with the Commonwealth.

## **6 Insolvency of Coral Coast Mariculture**

- 6.1 Any settlement, discharge or release between the Commonwealth and the Guarantor will be conditional upon no payment to the Commonwealth by *Coral Coast Mariculture* or any other person being avoided or reduced under any law relating to insolvency.

## **7 Discharge**

- 7.1 This guarantee will terminate, and the Guarantor released and discharged from all liability under this deed on the date on which a formal notice of discharge is given by the Commonwealth to the Guarantor.
- 7.2 The Guarantor will be entitled to a notice of discharge under the preceding subclause when the *Obligations* have been fully performed.

## **8 Commonwealth's certification**

- 8.1 A certificate of Delegate appointed under the *Funding Agreement* as to the amount for the time being due from *Coral Coast Mariculture* to the Commonwealth and any interest from time to time payable will be conclusive evidence for all purposes against the Guarantor in the absence of manifest error.

## **9 Expenses**

- 9.1 The Guarantor shall reimburse the Commonwealth for any expenses incurred in the enforcement of, or the preservation of any rights under this deed including any legal costs.

## **10 Machinery Matters**

- 10.1 The rights and *Obligations* under this deed are not to be assigned without the prior written consent of the other party.
- 10.2 This deed is governed and construed in accordance with the laws of the State of Queensland and the courts of that State have jurisdiction to determine any matter between the parties arising under the deed.
- 10.3 If any provision of this deed is void or otherwise unenforceable in any jurisdiction:
- (a) then that provision will be severed and the remainder of the deed read as if the severable provision had never existed; and
  - (b) it will not affect the validity or enforceability of the deed in any other jurisdiction.

- 10.4 The rights and remedies provided to the Commonwealth under this deed are cumulative and not exclusive of any rights or remedies provided by law.
- 10.5 A failure to exercise or delay in exercising any right or remedy under this deed does not operate as a waiver, and no single exercise of any right or remedy will exhaust any other, or further exercise, of that right or remedy.
- 10.6 Any notice by a party under this deed is to be delivered by hand, sent by pre-paid post or electronic communication to:
- (a) The Commonwealth at  
The Department of Transport and Regional Services  
Southern Queensland Regional Office  
Level 1, 340 Adelaide Street, Brisbane QLD 4000  
PO Box 10024, Adelaide Street Brisbane QLD 4000;
  - (b) The Guarantor at 106 Rowlands Road, Burnett Heads, Queensland 4670.
- 10.7 If a notice is transmitted by electronic communication, delivery is not perfected unless a copy is sent by pre-paid ordinary post on the same day as the transmission.
- 10.8 A notice is taken to have been received:
- (a) if delivered by hand, upon delivery;
  - (b) if sent by pre-paid ordinary post, upon the expiration of five working days after the date on which it was posted; and
  - (c) If transmitted electronically, when it is received by the addressee.
- 10.9 For the purposes of this deed an “electronic communication” and “received” in relation to a notice have the same meaning as a communication under the *Electronic Transactions Act 1999* and a notice is taken to have been received in accordance with section 14 of the *Electronic Transactions Act 1999*.

**In execution whereof the parties hereto have appended their hand and seals on the day first hereinbefore mentioned.**

SIGNED SEALED and DELIVERED by )  
the **Commonwealth Of Australia** by, )  
 )  
Gary Eilersen, Area Manager North East )  
Department of Transport and Regional )  
Services, in the presence of : ) .....  
 ) [executing signature]  
 )  
..... )  
[name of witness] )  
 )  
..... )  
[signature of witness] )

SIGNED SEALED and DELIVERED by )  
**Clive Phillip Keenan** in the presence of )  
 )  
..... )  
[name of witness] ) .....  
 ) [executing signature]  
who hereto appends his signature )  
 )  
..... )  
[signature of witness] )