

**PARTICIPATION AGREEMENT  
ACE TRADING & VALUE OPTIMISATION SYSTEM**

**DATE:** 01/10/2007

**PARTIES**

<b>Name</b>	Fishtech Ltd ( <i>Fishtech</i> )	<b>Name</b>	
<b>Address</b>	1 Maui Street Kaikoura 8280	<b>Address</b>	
<b>Contact Person</b>	Ted Howard	<b>Contact Person</b>	
<b>Phone</b>	027 442 4281	<b>Phone</b>	
<b>Fax</b>	08 326 7732	<b>Fax</b>	
<b>e-mail</b>	fishtech@fishnet.co.nz	<b>e-mail</b>	
<b>FishServe ACE holding a/c</b>	9790930	<b>FishServe account</b>	
<b>Fishtech trust account</b>	02 0856 0001465 02	<b>Bank account</b>	
<b>GST no.</b>	21-534-382	<b>GST no.</b>	

**AGREEMENT**

**Agreement to participate**

- 1 Fishtech operates an annual catch entitlement (*ACE*) trading and value optimisation system (the *System*) to enable fishers/*ACE* holders to reduce the annual deemed value collectively payable by them, and to share the benefit of those savings between them.
- 2 Fishtech agrees that you may use, and you agree to use, the *System* in respect of each participating stock for the 2006/2007 fishing year on the terms set out in this agreement.

**What you must do**

- 3 For each participating stock:
  - Notify ACE and catch*
  - 3.1 you must notify Fishtech of your total *ACE*, reported catch for the 2006/2007 fishing year and any requirement to carry forward *ACE* by **11am on 12 October 2007**. The notification must be by e-mail



attachment in the format supplied by Fishtech. Fishtech will supply you with software for this purpose.

*Not trade*

- 3.2 you must not buy, sell or otherwise vary your ACE from that notified to Fishtech under clause 3.1, except in accordance with this agreement.

*Make provisional payment*

- 3.3 you must pay the amount notified by Fishtech under clause 6.3(a) in cleared funds (either by bank cheque or telegraphic transfer) into the following trust account by **4pm** on **12 October 2007**.

Fishtech Limited trust a/c  
020856 0001465 02

If you pay by bank cheque, you must fax to Fishtech a copy of the bank cheque and stamped deposit slip by **4pm** on **12 October 2007** to confirm payment.

*Authorise Fishtech to transfer ACE or transfer ACE as directed*

- 3.4 if you have indicated in the schedule that you will authorise Fishtech to transfer ACE from your FishServe account, you must complete the form from FishServe v.2C AOS (*Application to register for Online Services*) in favour of Fishtech Limited and deliver it to Fishtech with this agreement before **9 October 2007**. This form appoints Fishtech as your agent for transferring ACE (for the 2006/2007 and 2007/2008 fishing years) on the ACE register operated by FishServe during the period **13 October** to **16 October 2007** (inclusive). You must also to complete the form from FishServe v.1F PPE (*Application for Pre-payment Exemption*) if you have not already done so.

- 3.5 if you have **not** indicated in the schedule that you would like Fishtech to transfer ACE for you, you must by **10am** on **15 October 2007** transfer to Fishtech's ACE holding account – 9790930 – the amount of ACE notified by Fishtech under clause 6.3(b). If Fishtech notifies you that it has sold any of your ACE relating to the 2007/2008 fishing year (as part of optimising carry forward rights), you must also transfer to Fishtech's ACE holding account that ACE by **10am** on **15 October 2007**.

*Fishtech may trade with you to reallocate ACE*

- 3.6 Fishtech will buy and sell ACE between participating ACE holders in order to reallocate ACE in accordance with the System. You authorise Fishtech as your agent to sell your ACE to Fishtech and/or to buy ACE from Fishtech as required by Fishtech in accordance with this agreement.



3.7 You agree that:

- (a) Fishtech may buy ACE from you and/or sell ACE to you as it considers appropriate, and without prior notification to you, to reallocate ACE between participating ACE holders in accordance with the System.
- (b) the price at which Fishtech will purchase ACE from you or sell ACE to you will be determined by the System.
- (c) in order to optimise carry forward rights, Fishtech's agency includes ACE for both the 2006/2007 and 2007/2008 fishing years.
- (d) when Fishtech buys ACE from you, Fishtech will hold the proceeds of that sale in its trust account on trust for you until that amount is paid to you in accordance with clause 6.7.
- (e) when Fishtech sells ACE to you, Fishtech may apply funds held on trust for you in Fishtech's trust account to pay for that ACE.

3.8 Fishtech's appointment as your agent under clause 3.6 expires at **4pm on 16 October 2007**, and is irrevocable. You acknowledge that the System is dependent on Fishtech holding on trust the ACE expected to be sold by you to Fishtech (for on-sale to other participating ACE holders) in accordance with this agreement. Accordingly, you irrevocably agree that you will not request Fishtech to return any ACE held on trust for you until the conclusion of trading in accordance with this agreement.

- 4 You promise that all information you provide under this agreement will be correct and accurate in all respects, and that no other person has any legal or beneficial interest in the ACE in your FishServe account.
- 5 You acknowledge the importance of fulfilling your obligations in a prompt and timely manner, and that time is strictly of the essence for all your obligations.

**What Fishtech will do**

- 6 For each participating stock:

*Treat everyone equally*

- 6.1 Fishtech will not intentionally favour any ACE holder using the System. The System is designed to treat each participating ACE holder consistently on the basis of their reported catch, ACE and other factors.



*Determine more efficient ACE allocation*

- 6.2 Fishtech will use the System to determine a more efficient ACE allocation among participating ACE holders.

*Notify provisional allocation*

- 6.3 Fishtech will notify you by **3pm on 12 October 2007** of:
- (a) the amount you must pay to Fishtech's trust account under clause 3.3. This amount will not be more than the annual deemed value that would be payable on your ACE and reported catch notified under clause 3.1 if that was your end of year position.
  - (b) the amount of ACE to be transferred to or by you. If you have not authorised Fishtech to transfer ACE from your FishServe account, the amount of ACE (if any) to be transferred by you is the amount you must transfer to Fishtech's ACE holding account under clause 3.5. If you have authorised Fishtech to transfer ACE from your FishServe account, Fishtech will transfer this amount from your FishServe account to Fishtech's ACE holding account.
- 6.4 You acknowledge that the ACE allocation notified by Fishtech under clause 6.3 is provisional and may be changed by Fishtech for any reason. In particular, these allocations will change if any participating ACE holder does not transfer the required amount of money to Fishtech's trust account or ACE to Fishtech's ACE holding account by the required time.

*Holding and trading ACE*

- 6.5 Fishtech will:
- (a) hold any ACE transferred from you to its ACE holding account on bare trust for you until Fishtech buys that ACE from you or returns that ACE to you.
  - (b) promptly notify you following any sale or purchase of ACE it has made with you in accordance with this agreement.
  - (c) when you sell ACE under this agreement, Fishtech will prepare a GST invoice on your behalf (and copy that invoice to you). When you buy ACE under this agreement, Fishtech will promptly provide you with a GST invoice for that purchase.

*ACE carry forward*

- 6.6 If you have not caught your full ACE notified under clause 3.1 and you have specified in the file supplied under clause 3.1 that you wish to carry forward ACE (and would otherwise have been able to carry



forward the amount of ACE specified) into the next fishing year, Fishtech will ensure that that amount of ACE specified in the file is transferred into your FishServe account as quickly as practicable.

*Handling money*

- 6.7 Fishtech will hold all money paid by you under clause 3.3 (together with any amount held for you following the sale of ACE on your behalf) in its trust account on bare trust for you. Fishtech will apply that money to:
- (a) pay for any ACE Fishtech sells to you under this agreement;
  - (b) pay itself the System User Charge in accordance with clause 7.
- 6.8 Following conclusion of trading in accordance with this agreement, Fishtech will return to you any amount still held on trust for you. This amount will be paid either by electronic transfer to your account specified on the front of this agreement or by cheque to be posted to the address stated at the front of this agreement, in each case, by **17 October 2007**.
- 6.9 You acknowledge that the System is dependent on Fishtech holding on trust the amount required to pay for any ACE that may be sold to you by Fishtech in accordance with this agreement. Accordingly, you irrevocably agree that you will not request Fishtech to return any money held on trust for you until the conclusion of trading in accordance with this agreement or the date specified in clause 6.8.

**System User Charge**

- 7 You agree to pay Fishtech the System User Charge. The System User Charge is:
- 7.1 10% of the value Fishtech considers you obtain from the System plus GST. Fishtech will calculate the amount of that value by: for sellers, deducting any deemed value payable from the amount paid for ACE; and for purchasers, deducting the amount paid for ACE from the deemed value that would have been payable (in each case adjusted as Fishtech considers appropriate in respect of any 'carry forward' arrangements). Fishtech's calculation of the value you obtain from the System will be final and binding unless it is manifestly wrong; and
  - 7.2 such share of the trading costs as Fishtech considers fair plus GST.
- 8 Fishtech will provide you with a GST invoice for the System User Charge payable by you.



### **Sharing benefits**

- 9 The financial benefits of using the System will be shared by the relevant ACE holders for each participating stock in a manner and proportion that Fishtech considers to be fair. Depending on your reported catch and ACE holding notified under clause 3.1, the reported catch and ACE holdings of all other participating ACE holders for that stock, and any carry forward preferences, you may realise these benefits through:
- (a) selling ACE (including 'carry forward' ACE for the 2007/2008 fishing year that you obtain through use of the System); or
  - (b) a reduction in the annual deemed value payable by you.

### **General**

#### *Guide to interpretation*

- 10 In this agreement:

- 10.1 *annual catch entitlement (ACE), annual deemed value, deemed value, fishing year, interim deemed value, quota management area, and stock* have the meanings given in section 2 of the Fisheries Act 1996.
- 10.2 *participating stock* means the fish species and quota management areas the subject of your notice under clause 3.1.
- 10.3 *reported catch* has the meaning in section 76 of the Fisheries Act 1996.
- 10.4 *carry forward rights* and *carry forward* has the same meaning as in section 67A of the Fisheries Act 1996.
- 10.5 *trading costs* means FishServe's charges for trading ACE under this agreement (excluding GST).

#### *Outcomes may vary*

- 11 You acknowledge that:

- 11.1 the level of savings that may be achieved for each participating stock will vary depending on the number of participating ACE holders for that participating stock and their respective ACE and catch. Fishtech represents that you will not be worse off than you would otherwise have been if you had not participated in the System (except in the situation where Fishtech does not apply the System to a participating stock, in which case you will incur either the cost of the ACE transfer to and from Fishtech or the time value of money in respect of the money held briefly by Fishtech on your behalf).



11.2 Fishtech does not make any representation as to the level of savings (if any) that will be achieved, except as set out in clause 11.1.

*Participation not assured*

12 Fishtech may at any time and for any reason end your participation in the System or not apply the System, in respect of some or all participating stocks, by e-mail or other notice to you in writing. If Fishtech gives you notice under this clause, Fishtech's only liability to you will be to promptly refund any amount paid by you under clause 3.3 and to transfer back any of your ACE transferred into Fishtech's holding account.

*Nature of legal relationship*

13 This agreement concerns the terms on which you may participate in the use of the System. It is not a partnership agreement or a joint venture agreement in the legal sense.

*Fishtech acting in various capacities*

14 Under this agreement Fishtech may hold ACE and funds as bare trustee for your benefit. You acknowledge that while acting as trustee, Fishtech may contract or otherwise deal with you (including with itself, as your agent) in Fishtech's personal capacity or in any other capacity as if Fishtech was not a trustee, without owing any other fiduciary or other obligation or duty to account. This right to continue to act as bare trustee shall apply regardless of any conflict of interest which Fishtech may have.

*Only agreement*

15 This is the only agreement between you and Fishtech concerning the System. It replaces all earlier agreements or understandings there may have been between you and us. No change to this agreement will be effective unless it is in writing and signed by both parties.

**Signed for**  
By

**Signed for Fishtech Limited**  
By

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Name*

Ted Howard  
*Name*

\_\_\_\_\_  
*Position*

Managing Director  
*Position*



## SCHEDULE

**Access to your ACE account:** You wish to authorise Fishtech to transfer ACE from your account in accordance with this agreement.

Yes  
No

