

ERNE DRAINAGE AND DEVELOPMENT ACT 1950

LONG TITLE

An Act to authorise the making of and the giving of effect to certain agreements with respect to a scheme for the drainage of lands around upper and lower lough Erne and the river Erne and for the development for the purpose of generating electricity of water power derived therefrom, to provide for the dissolution of the lough and river Erne Drainage and Navigation Board and to provide for other matters connected with the matters aforesaid. [13th June, 1950.]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:—

1 Interpretation.

SECT 1.—In this Act— the expression "the Board" means the Electricity Supply Board; the expression "the draft agreement" means the draft agreement set out in the Schedule to this Act; the expression "the Drainage Board" means the Lough and River Erne Drainage and Navigation Board; the expression "the Loughs" means both Upper and Lower Lough Erne; the expression "the Minister" means the Minister for Industry and Commerce; the expression "the Ministry" means the Ministry of Finance for Northern Ireland; the expression "the principal agreement" has the meaning assigned to it in subsection (2) of section 2 of this Act.

2 Power to enter into agreement in terms of scheduled draft.

SECT 2.—(1) The Board are hereby authorised and empowered to enter into an agreement with the Ministry in the terms of the draft agreement. (2) In this Act, the expression "the principal agreement" means primarily the agreement made pursuant to this section, but, where any agreement has been made pursuant to the next following section, the expression means the agreement made pursuant to this section as supplemented or modified by the agreement made pursuant to the next following section.

3 Power to enter into supplemental agreements.

SECT 3.—(1) Subject to subsection (2) of this section, the Board may, at any time after the making of the principal agreement, enter into further agreements with the Ministry for supplementing or modifying the principal agreement. (2) A further agreement such as aforesaid shall not be entered into unless— (a) it has been laid before Dáil Éireann and has remained so laid for the next ten days on which Dáil Éireann has sat after it was so laid, (b) during the said ten days, Dáil Éireann has not passed a resolution that it shall not be entered into, (c) it has been laid before Seanad Éireann and has remained so laid for the next ten days on which Seanad Éireann has sat after it was so laid, and (d) during the said ten days, Seanad Éireann has not passed a resolution that it shall not be entered into.

4 Power to carry out principal agreement.

SECT 4.—For the purposes of carrying the principal agreement into effect, the Board shall have and may exercise all such powers as may be necessary for or incidental to the due performance of their obligations under the principal agreement.

5 Defrayment of expense incurred by the board.

SECT 5.—All expenses incurred by the Board in discharging any liability arising out of the principal agreement shall be defrayed as part of their general expenses.

6 Dissolution of the Drainage Board.

SECT 6.—As from such day as the Minister shall by order appoint, the Drainage Board shall, by virtue of this section, be dissolved.

7 Disposal of property of Drainage Board.

SECT 7.—(1) Subject to the provisions of section 9 of this Act, all property which immediately before the dissolution of the Drainage Board was the property of the Drainage Board shall, by virtue of this section and without the necessity of any conveyance, assignment, deed of transfer or other instrument, vest in the persons acting as the Finance Solicitor and the Solicitor to the Ministry and their respective successors in office as trustees (in this section referred to as the Trustees) upon trust to sell at the discretion of the Trustees such property and to apply the rents and profits (if any) arising therefrom prior to sale and the proceeds of sale, so far as the same shall extend, in discharging first any liability incurred in connection with such sale and secondly any outstanding liability of the Drainage Board, and in paying any balance remaining after the discharge of those liabilities to the Ministry. (2) In carrying out the trust for sale imposed by this section, the Trustees shall have full power by deed to convey, assign, release or otherwise transfer any property vested in them under this section and any such deed shall to the extent and in the manner to and in which it is expressed or intended to operate be effectual to pass all the estate, right, title and interest held by the Drainage Board immediately before its dissolution in the property specified therein. (3) The receipt of the Trustees or either of them for the purchase money payable on the sale of any property pursuant to subsection (1) of this section (whether the said receipt shall be incorporated in a deed or otherwise) shall operate as a valid discharge to the purchaser who shall not be concerned with the trusts imposed by that subsection or with the future application by the Trustees of the purchase money in accordance therewith. (4) Notwithstanding anything to the contrary in any of the enactments relating to stamp duty, stamp duty shall not be chargeable on any document executed by the Trustees for the purposes of this section.

8 Arrangements in respect of other matters arising out of the dissolution of the Drainage Board.

SECT 8.—The Minister may make and carry out such administrative arrangements as he thinks proper for the purposes of providing for matters arising out of the dissolution of the Drainage Board and, in particular, may make and carry out arrangements for the temporary operation of the existing sluice gates at Belleek in such manner as may be specified in the arrangements for the purposes of controlling the water levels of the Loughs pending and until such time as the Board have agreed with the Ministry pursuant to the provisions of the principal agreement that the said water levels can and should be controlled in accordance with those provisions.

9 Award of 1891.

SECT 9.—As from the date of the dissolution of the Drainage Board, the Award of the Commissioners of Public Works in Ireland dated the 4th day of April, 1891, for the Lough and River Erne Drainage and Navigation District shall cease to have any force and effect and the liability of proprietors of land in the Counties of Cavan and Monaghan to pay rates or rent charges in respect of the said Drainage District (including any outstanding arrears of such rates or rent charges) shall cease.

10 Disputes between the Board and the Ministry.

SECT 10.—(1) An Arbitration Tribunal constituted in accordance with the provisions of the principal agreement shall have power to determine in accordance with those provisions any dispute or difference between the Board and the Ministry arising out of the principal agreement. (2) The Board shall, on the request of any Arbitration Tribunal constituted as aforesaid, produce for inspection by the Tribunal such documents, books, records or accounts in the possession of the Board as are relevant to the matter at issue before the Tribunal, but no document, book, record or account shall be so produced if, in the opinion of the Minister as certified by him to the Tribunal, it would be injurious to the public interest so to do. (3) Any Arbitration Tribunal constituted as aforesaid may, for the purpose of determining any such dispute or difference, by summons require any person to attend, at such time and place as is set forth in the summons, to give evidence or to produce any documents or articles in his custody or under his control which relate to any matter pending before the Tribunal, and may hear, receive and examine evidence on oath and for that purpose may administer oaths, or may, instead of administering an oath, require the person examined to make and subscribe a declaration of the truth of the matter respecting which he is examined. (4) Every person who refuses or wilfully neglects to attend when required so to do by any Arbitration Tribunal constituted as aforesaid, or to give evidence in the manner required by the Tribunal, or who wilfully gives false evidence before the Tribunal or wilfully alters, suppresses, cancels, destroys or refuses to produce any document or article which he may be required by the Tribunal to produce, shall be guilty of an offence under this section and shall be liable on summary conviction thereof to a fine not exceeding one hundred pounds or, at the discretion of the Court, to imprisonment for a term not exceeding six months or to both such fine and such imprisonment. (5) Counsel of the Bar of Northern Ireland or any solicitor entitled to practise in Northern Ireland may, notwithstanding any other enactment, practise in connection with any hearing in the State of any Arbitration Tribunal constituted as aforesaid and may appear and represent the Ministry at such hearing. (6) Any award of a Tribunal constituted as aforesaid may, by leave of the High Court, be entered as a judgment in terms of the award and shall thereupon have the same force and effect as a judgment or order of the High Court.

11 Belleek Bridge.

SECT 11.—(1) In this section, the expression "the Belleek bridge" means the bridge referred to in paragraph 2 of the First Schedule to the draft agreement. (2) Subsection (4) of section 33 of the Electricity (Supply) (Amendment) Act, 1945 (No. 12 of 1945) (which subsection requires roads and bridges restored, constructed or improved by the Board to be handed over to the appropriate local authority) shall not apply in relation to the Belleek bridge. (3) The Council of the county of Donegal may, subject to the sanction of the Minister for Local Government, do all such things as may be appropriate for them to do for the purposes of giving effect to any provisions of the principal agreement providing that the Belleek bridge may be handed over jointly to the council of the county of Donegal and the council of the county of Fermanagh.

12 Exemption of agreements from stamp duty.

SECT 12.—Notwithstanding anything to the contrary in any of the enactments relating to stamp duty, stamp duty shall not be chargeable in respect of any agreement entered into pursuant to this Act by the Board with the Ministry.

13 Repeal.

SECT 13.—(1) The Drainage and Improvement of Lands Supplemental Act (Ireland), 1880, is hereby repealed. (2) This section shall come into operation on the dissolution of the Drainage Board.

14 Short title.

SECT 14.—This Act may be cited as the Erne Drainage and Development Act, 1950.

SCHEDULE: DRAFT AGREEMENT.

AGREEMENT made the day of 19 between THE MINISTRY OF FINANCE FOR NORTHERN IRELAND of Stormont in the County of Down (hereinafter called "the Ministry") of the one part, and THE ELECTRICITY SUPPLY BOARD having its principal office at 27 Lower Fitzwilliam Street, Dublin (hereinafter called "the Board") of the other part. WHEREAS:— (1) the Board for the purposes of generating electricity are developing water power from the River Erne by means of works carried out or to be carried out in the County of Donegal in accordance with the partial development scheme set out in the Schedule to an Order (No. 86 of 1945) entitled "The River Erne Hydro-Electric Scheme Approval Order, 1945" and made pursuant to an Act of the Oireachtas entitled "The Electricity (Supply) (Amendment) Act, 1945" (No. 12 of 1945); (2) for the better development of such water power for the purposes aforesaid it is expedient to carry out a full development scheme by executing further works including certain works as hereinafter mentioned in the County of Fermanagh; (3) the carrying out of such works in the County of Fermanagh would include the improvement of the channel by which the River Erne flows out of Lower Lough Erne and would reduce or prevent the flooding of lands in the County of Fermanagh by the waters of Upper and Lower Lough Erne and it is therefore expedient that the Ministry, as the Department of the Government of Northern Ireland concerned with the drainage of those waters, should facilitate the execution of the full development scheme, and, subject to the payment by the Board to the Ministry in accordance with the provisions in that behalf hereinafter contained of the expenditure thereby incurred by the Ministry, should, in accordance with the provisions hereinafter contained, carry out such works and perform, execute and do such duties, matters and things as are hereinafter mentioned; (4) it is also expedient both for the better development of water power for the purposes of generating electricity and for the improvement of the drainage of the waters aforesaid to make such provision as hereinafter appears for the control and regulation of the levels of the waters aforesaid. NOW, THEREFORE, IT IS HEREBY AGREED by and between the Ministry and the Board as follows:—

Definitions. I. IN this Agreement, except where the contrary intention appears, the following abbreviations and expressions have the meaning hereby assigned to them, that is to say:— "O.D." means Ordnance Datum; "scheduled works" means the works specified in the First Schedule; "property" includes any estate or interest in land (including land covered by water), buildings of any kind, and any easement or right in, to or over land or water, or land covered by water; "public authority" means any local or other public authority deriving its powers, functions or duties from any enactment (whether public, general, local or private), charter or from any order or regulation having effect under or by virtue of any enactment; "Upper Lough" means Upper Lough Erne; "Lower Lough" means Lower Lough Erne; "The Loughs" means Upper Lough Erne and Lower Lough Erne; "inter-Lough channel" means the channel or channels leading from the Upper Lough to the Lower Lough and passing through Enniskillen; "Enniskillen Sluices" means the barrage and sluices to be constructed near Enniskillen as part of the scheduled works; "dam at Cliff" means the dam constructed by the Board at Cliff in the Townlands of Corlea and Clohore in the County of Donegal as part of the Board's full development scheme; "outfall channel" means the channel, when deepened and improved, of the River Erne from the Lower Lough to the dam at Cliff; "the water level of the Upper Lough" means the water level of the Upper Lough as recorded and measured at any time on the apparatus to be installed in the Townland of Belleisle in the County of Fermanagh under the provisions of paragraph IV hereof; "the water level of the Lower Lough" means the water level of the Lower Lough as recorded and measured at any time on the apparatus to be installed in the Townland of Rosscor (or thereabouts) in the County of Fermanagh under the provisions of paragraph IV hereof; "the water level at Cliff" means the water level immediately upstream of the dam at Cliff; "Ministry's Engineer" means the person for the time being nominated by the Ministry to act as its engineer for the purposes of this Agreement; "Board's Engineer" means the person for the time being nominated by the Board to act as its engineer for the purposes of this Agreement. Works in Co. Fermanagh. II. (1) As soon as practicable after the execution of this Agreement by both parties hereto the Ministry shall carry out to the satisfaction of the Board so much of the scheduled works as are situate wholly within the County of Fermanagh. Works partly in Co. Donegal and partly in Co. Fermanagh. (2) Where there are any of the scheduled works part of which is to be or has been carried out in the County of

Donegal and another part in the County of Fermanagh, and the Board and the Ministry agree that for such scheduled works or the maintenance or repair thereof a contractor or contractors should be employed, the contract or contracts shall be entered into and made with the contractor or contractors by the Ministry and the Board as joint principals, and where any such scheduled works or the maintenance or repair thereof are to be carried out by contract, or by direct labour, or otherwise, either the Board or the Ministry (as the case may be) may consent to the nomination of one or more of its officers by the other for the supervision and direction of any part of those works which may be situate in the area of the other, or of any preliminary investigation or exploration made for the purposes thereof. Preliminary surveys, etc., and Contract documents. (3) For the purpose of performing its obligations under this Agreement the Ministry shall conduct and carry out all necessary preliminary surveys, investigations and explorations and shall devise and prepare all necessary lay-out plans, contract drawings, working drawings, specifications, bills of quantities, conditions of contract, and any other plans, documents, calculations and estimates which may be necessary for the carrying out of the scheduled works, and upon request shall submit to the Board for its approval all or any of the foregoing plans, drawings or documents, and furnish such further information from time to time as shall enable the Board to satisfy itself that the design of the scheduled works or of any part thereof is suitable and the methods of carrying out the scheduled works or any part thereof are reasonably efficient and economical having regard to all the circumstances. Duties to be performed by Ministry. III. THE MINISTRY shall also perform, execute and do or procure to be performed, executed or done the following duties, matters and things, that is to say:— Acquisition of land, etc. (1) where the Ministry considers it necessary for the performance of its obligations under this Agreement, take possession of temporarily, or acquire permanently, either by agreement or under any compulsory powers conferred on it in that behalf, any property in Northern Ireland, and likewise acquire or interfere with any rights, easements or wayleaves; Claims for damage or interference. (2) make all arrangements necessary for and in connection with the settlement of claims (including the investigation thereof, and where necessary the assessment and payment of compensation and references to and representation at arbitration proceedings in respect thereof, and including the carrying out of remedial works in settlement or partial settlement thereof and the securing in advance of releases from claims) arising or likely to arise out of— (i) any interference with, injury or damage to public or private property in Northern Ireland, and (ii) any interference with, injury or damage to, or the alteration or reconstruction of public roads, bridges, navigation rights or interests, water supplies, drainage, sewerage or other public services or works in Northern Ireland; as a consequence or by reason of— (a) the carrying out of the scheduled works or of any matter or thing incidental thereto or the repair, maintenance, renewal or replacement of the scheduled works or any part thereof; or (b) the operation of the scheduled works, when completed, including the control and regulation of the levels of the Loughs for the purpose of such operation or otherwise for the purposes of this Agreement; or (c) the operation of the existing sluice gates at Belleek under temporary arrangements, made pursuant to the statutory provisions in that behalf, between the Ministry and the appropriate department or departments of the Republic of Ireland, or (d) the carrying out of any work or the doing of any matter or thing by the Board in the County of Donegal, or the neglect or default of the Board in the doing of any such matter or thing; or (e) any combination of the causes aforesaid; PROVIDED that— (a) the Ministry shall not, without the prior consent of the Board, finally settle by agreement any claim for compensation or procure any release thereof for a sum in excess of £500, or such other sum as may from time to time be notified by the Board in writing to the Ministry or carry out without such consent any agreed remedial works estimated by the Ministry to cost more than such sum; (b) upon failure to settle a claim for compensation by agreement the Ministry shall not invite the claimant to initiate arbitration proceedings upon such claim without the prior consent of the Board, which consent shall not be unreasonably withheld; (3) subject to the provisions of this Agreement as to repayment by the Board to the Ministry and to the indemnity hereinafter given by the Board to the Ministry, make all necessary payments and discharge all liabilities which may be incurred by the Ministry from time to time in respect of the scheduled works, including the preliminary surveys, investigations and explorations therefor, and also in respect of any matters or things which may arise out of or in connection with the performance of its obligations under this Agreement; (4) all other (if any) duties, matters and things which the Ministry may consider necessary, incidental or ancillary to the implementation in Northern Ireland of the provisions of this Agreement; PROVIDED that where the doing of any act which the Ministry is bound to do by virtue of the foregoing provisions of this paragraph is in the opinion of the Ministry a matter of major importance or involves a major question of principle the Ministry shall first submit proposals in respect thereof to the Board for approval. Recording apparatus in Co. Fermanagh. IV.

THE BOARD shall provide and the Ministry shall erect and maintain at the Board's expense apparatus of a type to be approved by the Ministry for the recording and measuring of the water levels at each of the following places, namely: one in the Townland of Belleisle aforesaid on the Upper Lough, one immediately upstream of the Enniskillen sluices, and one in the Townland of Rosscor aforesaid or thereabouts in the County of Fermanagh on the Lower Lough. The apparatus at the foregoing three places in so far as competent manufacturers of the said apparatus can provide, shall be constructed so as to transmit to and record at the dam at Cliff the water levels recorded at those places respectively, and the apparatus at Belleisle shall be constructed so as to transmit to and record at the Enniskillen sluices the water level recorded at Belleisle. Recording apparatus in Co. Donegal. V. THE BOARD shall provide, erect and maintain apparatus for the recording and measuring of the water level immediately upstream of the dam at Cliff. Removal of sluices at Belleek. VI. AS soon as the Enniskillen Sluices (specified and numbered 3 in the First Schedule hereto) are completed and the Ministry and the Board agree that, subject only to the removal of the existing barrage and sluices at Belleek (specified and numbered 4 in the First Schedule hereto) the water level of the Lower Lough can and should be controlled and regulated within the limits prescribed by sub-paragraph (1) of paragraph VII hereof, the work of removing the said barrage and sluices at Belleek shall be undertaken. Control and regulation of water levels. VII. UPON such removal of the barrage and sluices at Belleek the discharge of water from the Lower Lough through the outfall channel, and the respective water levels of the Loughs shall be controlled and regulated in accordance with the provisions following, that is to say:— (1) the Board shall control and regulate, by means of sluices or other machinery incorporated in the dam at Cliff, the water level of the Lower Lough, so that the water level of the Lower Lough shall not at any time exceed a level of 152.0 feet or thereabouts above O. D., nor at any time fall below a level of 147.0 feet above O. D., and, subject to the provisions of this Agreement as to the respective water levels of the Loughs, the Board may without let or hindrance on the part of the Ministry or any person deriving title from or under the Ministry to the bed and soil of the Loughs utilise for the generation of electricity the flow through the out-fall channel of water from the Loughs, PROVIDED HOWEVER that the Board shall not at any time be required to draw down the water level at the dam at Cliff below 143.0 feet above O. D. (2) the Ministry shall control and regulate the water level of the Upper Lough by means of the Enniskillen Sluices having due regard to the water level of the Lower Lough as controlled and regulated under the provisions of this paragraph and to the capacity of the inter-Lough channel so however that— (a) during the period from April to September inclusive the water level of the Upper Lough shall not, as far as reasonably preventable, exceed a level of 154.0 feet above O. D., and when and as often during that period it has risen to 153.0 feet above O. D., is rising, and is in the opinion of the Ministry's Engineer or the Board's Engineer likely to rise above 154.0 feet above O. D., the water level of the Lower Lough, if above 151.5 feet above O. D., shall as rapidly as reasonably practicable be reduced by the Board to such level not lower than 151.5 feet above O. D., as may be required by the Ministry's Engineer for the purpose of ensuring that the water level of the Upper Lough may be prevented from rising above, or be brought down to, 154.0 feet above O. D., PROVIDED THAT when the water level of the Upper Lough has reached its maximum and has fallen to 154.0 feet above O. D., or has reached a maximum not in excess of 154.0 feet above O. D., and is falling, the water level of the Lower Lough shall be permitted to rise to such level not exceeding 152.0 feet above O. D., as shall, in the opinion of the Ministry's Engineer, be reasonable; (b) during the period from October to March inclusive the water level of the Upper Lough shall not, as far as reasonably preventable, exceed a level of 155.0 feet above O. D., and when and as often as during that period it has risen to 154.0 feet above O. D., is rising, and is in the opinion of the Ministry's Engineer or the Board's Engineer likely to rise above 155.0 feet above O. D., the water level of the Lower Lough, if above 151.5 feet above O. D., shall as rapidly as reasonably practicable be reduced by the Board to such level not lower than 151.5 feet above O. D., as may be required by the Ministry's Engineer for the purpose of ensuring that the water level of the Upper Lough may be prevented from rising above or be brought down to 155.0 feet above O. D. (c) the water level of the inter-Lough channel immediately upstream of the Enniskillen Sluices shall not, except for purposes of maintenance and repair, be drawn down to a level of less than 150.0 feet above O. D. Check of discharge capacities of outfall and inter-Lough channels. VIII. THE BOARD and the Ministry shall from time to time jointly or separately as shall be agreed, compute and check accurately the capacities of the outfall channel, and of the inter-Lough channel, for the discharge of water, and upon such computation or check being made by either party, the figures, information or data taken or compiled shall forthwith be furnished by that party to the other, together with the conclusions deduced therefrom. Exchange of records of water levels. IX. (1) The Board shall also at its own expense and to the

satisfaction of the Ministry furnish to the Ministry each day or at such periods as may be agreed upon a certified copy of the water levels as recorded and measured by the apparatus to be provided at the dam at Cliff under paragraph V hereof and also such further information and data from the operation of the sluices or other machinery incorporated in the dam at Cliff as shall enable the daily discharge through the outfall channel to be accurately computed, and the Ministry shall, if it so desires, be entitled at all reasonable times, but at its own expense, to check the accuracy of the said apparatus and the methods of recording and measuring thereby and to have the said apparatus calibrated. (2) The Ministry, if required by the Board, shall furnish to the Board each day or at such periods as may be agreed upon certified copies of the water levels as recorded and measured by the apparatus to be provided at Belleisle, Enniskillen Sluices, and at Rosscor respectively under paragraph IV hereof, and such further information and data from the operation of the Enniskillen Sluices as shall enable the daily discharge through the inter-Lough channel to be accurately computed, and if it so desires, the Board shall be entitled at all reasonable times, and at its own expense, to check the accuracy of all or any of the said apparatus and the methods of recording and measuring thereby and to have any of the said apparatus calibrated. Control and maintenance of completed works. X. (1) Save as provided by sub-paragraph (2) of this paragraph with respect to the new road bridge over the River Erne at Belleek the Ministry shall from and after the completion of any of the scheduled works in Northern Ireland retain and exercise control thereof subject to the provisions of this Agreement and of any supplemental Agreement and shall maintain and keep such works in reasonably good and sufficient order, repair and condition PROVIDED that where the Ministry is satisfied that adequate provision can and will be made for the future maintenance and repair of the said works or any part thereof, the same may be handed over in whole or in part to any public authority or Government Department, upon such terms and conditions as may after consultation with the Board be agreed between that authority or Department and the Ministry. (2) The Ministry and the Board shall from and after the completion of the new road bridge (referred to in paragraph 2 of the First Schedule hereto) each retain and exercise control of the parts thereof which lie in the Counties of Fermanagh and Donegal respectively and shall each maintain and keep their respective parts in good and sufficient order, repair and condition or where they so agree shall carry out the maintenance and repair work in accordance with the arrangements in that behalf for which provision is made in paragraph II (2) of this Agreement PROVIDED that if the Ministry and the Board are agreed that adequate provision can and will be made jointly by the Councils of the Counties of Donegal and Fermanagh for the future maintenance and repair of the said road bridge the same may be handed over jointly to those Councils. Indemnity by Board to Ministry. XI. SUBJECT to the terms of the proviso set out in paragraph XII hereof, the Board shall keep the Ministry and its officers, servants or agents indemnified and saved harmless from and against all actions, proceedings, costs, claims, and demands or damages, expenses or liabilities whatsoever, for which the Ministry or its officers, servants or agents shall incur liability or be called upon to pay by reason or on account of the scheduled works, or otherwise howsoever arising from or in connection with the carrying out of the provisions of this Agreement, or the performance of the obligations of the Ministry thereunder. Payment by Board to Ministry. XII SUBJECT as otherwise in this Agreement provided the Board shall, in the manner provided by paragraph XIII hereof, pay to the Ministry the amount of all expenditure incurred by the Ministry in respect of, or in connection with, all or any of the matters following together with interest on any amounts advanced by the Ministry for the purpose of meeting any such expenditure (such interest being calculated at the rate in force in Northern Ireland for short term Local Loans at the date of the advance) that is to say:— (a) the scheduled works or any part or parts thereof, or any other works carried out or supervised and directed by the Ministry pursuant to this Agreement, or pursuant to or in compliance with any statutory provision in force in Northern Ireland at the date of the making of this Agreement relating to or affecting such works or the carrying out, supervision or direction thereof; (b) any of the duties, matters or things set out in paragraph III hereof; (c) maintenance and repairs carried out by the Ministry under the provisions of paragraph X hereof; (d) any matters covered by the indemnity contained in paragraph XI hereof; (e) the carrying out by the Ministry of any other provisions of this Agreement (including provisions for controlling and regulating water levels prescribed by paragraph VII hereof); (f) administrative, technical, legal and other services in connection with, or for the purpose of, any of the foregoing matters, or otherwise arising from or in connection with the provisions of this Agreement provided however that in payment for the said services or any part thereof there may be paid such fee or fees as may from time to time be agreed; PROVIDED HOWEVER that the Board shall not be called upon to pay, or be responsible for, any expenditure or items of expenditure in respect of any of the foregoing matters which may arise from or be caused by the

neglect or default of the Ministry, its officers or servants or of any agents for whose acts the Ministry is in law responsible. Method of payment. XIII. PAYMENTS to be made by the Board to the Ministry under this Agreement shall at the option of the Ministry be made at any time or from time to time in any of the following ways, that is to say:— (a) by monthly or quarterly payments of the amount incurred by the Ministry; or (b) by advances made by the Board to the Ministry conveniently prior to the making of payments by the Ministry; or (c) partly in one way and partly in the other; or (d) in such other manner and at such times as may be agreed upon between the Ministry and the Board. Interference with public services. XIV. WHERE the scheduled works or anything done pursuant to this Agreement, necessitate interference with, or the alteration, or reconstruction of any public road, bridge, water supply or sewerage system, or other public service, the Ministry and the Board, after consultation with their appropriate and respective Government Departments concerned with such services, shall determine what provision for such interference, alteration or reconstruction should be made in respect of such matters in the County of Fermanagh or the County of Donegal respectively, and should any extra expenditure be incurred by reason of any addition to such provision which may be made pursuant to a request or requirement of any public authority, shall as far as possible ensure that such extra expenditure is borne by the public authority at whose request or upon whose requirement the same was incurred. Surplus or deficit of Drainage Board monies. XV. Should any sum remain of the balance received by the Ministry from the Trustees appointed to wind up the affairs of the Lough and River Erne Drainage and Navigation Board (hereinafter referred to as the "Drainage Board") after payment of compensation to former employees of the Drainage Board in accordance with the statutory provisions in that behalf the Ministry shall pay one-eighth part thereof to the Board and should the said balance have been insufficient to enable the said compensation to be paid therefrom the Board shall pay to the Ministry one-eighth part of any amount provided by the Ministry to enable the said compensation to be paid. Notices, etc. XVI. WHERE any provision of this Agreement prescribes the approval, consent or agreement, by either party to the doing, or omission, of any act or thing, by the other party, or the service of any notice by either party, such approval, consent, agreement or notice shall be such as shall be expressed under the hand of the Secretary or an Assistant Secretary of the Ministry, or the Secretary or an Assistant Secretary of the Board, as the case may be, and any notice shall be transmitted by registered post. Arbitration. XVII. IF any dispute or difference should at any time hereafter arise between the Ministry and the Board touching this Agreement or arising out of or in relation to any of the provisions thereof, or the doing, or the neglect or refusal to do, any work, duty, matter or thing under this Agreement, or the making of, or the refusal to make, any payment hereunder, such dispute or difference shall, in accordance with provisions in that behalf contained in the Second Schedule hereto, be referred to and heard and determined by a Tribunal (hereinafter referred to as an "Arbitration Tribunal") constituted in accordance with the provisions of the said Second Schedule, and the decision of an Arbitration Tribunal thereon shall in all respects be final and binding on the parties hereto and the amount of any sum (including any sum in respect of costs) awarded by an Arbitration Tribunal to one party together with interest thereon at the rate of four pounds per centum per annum, calculated from the date of the award shall be payable to it by the other as a civil debt due to it by that other and shall be recoverable accordingly and each party hereby covenants that it will in all respects well and faithfully abide by and give effect to the terms of any award made by an Arbitration Tribunal.

FIRST SCHEDULE TO THE FOREGOING AGREEMENT WORKS TO BE CARRIED OUT. 1.

Deepening the bed, and where required, removal and re-alignment of the banks of the River Erne between Rosscor and Belleek to such effect that the improved channel shall have a capacity of not less than 660,000 cubic feet per minute with the water level of the Lower Lough at 152.0 feet above O. D., and the water level at the dam at Cliff at 143.0 feet above O. D.— the work to extend from the Lower Lough to 500 feet or thereabouts in a north-westerly direction from the centre of the road bridge over the River Erne at the Town of Belleek; disposal of material excavated from the bed and banks of the River Erne and the underpinning of Rosscor Bridge. 2. Construction of a new road bridge and approaches over the River Erne at Belleek to replace the existing bridge, and the removal of the existing bridge and such portion of the existing approaches as may be agreed between the Ministry and the Board. 3. Construction of a barrage and sluices near Enniskillen with a crest level when closed of 150.0 feet above O. D., and a sill level of 136.0 feet above O. D., and a total clear water width of 172.0 feet, capable of passing a discharge of 660,000 cubic feet per minute with the Lower Lough at 152.0 feet above O. D. and a loss of head through the sluices not exceeding four inches with all gates lifted clear of the water, or such works of a like nature capable of passing the discharge aforesaid as may be agreed between the Ministry and the

Board, and all or any of the foregoing works shall include such provision as may be necessary for navigation, the passage of fish and the future control and maintenance of such works. 4. Removal of the existing barrage and sluices across the River Erne at Belleek, their operating mechanism, and any incidental works. 5. Any works necessary, incidental or ancillary to any of the foregoing works.

SECOND SCHEDULE TO THE FOREGOING AGREEMENT PROVISIONS AS TO ARBITRATION.

1. (i) An Arbitration Tribunal shall consist of a single Arbitrator assisted by two Assessors. (ii) The Arbitrator shall be such person as the Board and the Ministry may agree to appoint from persons entitled to practise as Barristers-at-Law before a Superior Court in the United Kingdom of Great Britain and Northern Ireland or before the High Court of Justice of the Republic of Ireland and who shall have so practised for not less than ten years prior to the date of the Notice of dispute hereinafter mentioned. In default of such agreement the Arbitrator shall be such person possessing the foregoing qualifications as may upon the application of either party be nominated by the President for the time being of the Institution of Civil Engineers. (iii) The Assessors, one of whom shall, subject to the provisions of paragraph four of this Schedule, be appointed by the Board and one by the Ministry shall be practising members of not less than ten years' standing of the Institution of Civil Engineers or the Institution of Civil Engineers of Ireland. 2. Upon any dispute or difference arising, either of the parties may serve upon the other a Notice of Dispute specifying the matter or matters as to which such dispute or difference shall have arisen, and the reasons or grounds therefor. 3. Within twenty-eight days after the service of such Notice each party shall appoint its Assessor (who shall have expressed his willingness to act as such), and shall notify the other party of such appointment, and of the name, address and qualifications of the person appointed. 4. If either party makes default in appointing an Assessor within the period aforesaid then an Assessor to act in his stead shall be appointed by the Arbitrator who shall notify each party of the appointment and of the name, address and qualifications of the person appointed. 5. Within twenty-eight days after the service of the Notice of Dispute or within such extended time as may be agreed by the other party the party serving such Notice shall prepare and submit to the other party for approval a draft submission to Arbitration which shall state clearly the matter or matters in dispute, the facts relating thereto, and the questions at issue for the decision of an Arbitration Tribunal. When the form of the submission to Arbitration has been agreed by both parties the same shall be executed by both parties in triplicate and an executed part thereof sent to the Arbitrator and to each of the Assessors by the party who served the Notice of Dispute. In default of agreement as to the form of submission, the party serving the Notice of Dispute may execute the submission in such form as it thinks fit and send three executed parts thereof to the Arbitrator and a fourth executed part thereof to the other party and within fourteen days, of the other party's receiving the same or within such extended time as may be agreed the other party may prepare and execute a formal statement of its objections to such submission and send three executed parts thereof to the Arbitrator and a fourth to the other party. 6. Within twenty-eight days after the receipt by the Arbitration Tribunal of the submission to Arbitration the Arbitrator shall notify the Ministry and the Board of the venue and date where and upon which the Arbitration Tribunal shall sit for the purpose of hearing the matter or matters in dispute and such venue and date shall be fixed to suit, as far as possible, the convenience of the Arbitration Tribunal and the parties hereto. 7. The parties hereto will do all acts and things and take all steps, including, subject to any legal objection, the production of all evidence whether in the nature of books, records, accounts, documents or otherwise, relevant to the matters in dispute or the questions at issue, necessary to enable an Arbitration Tribunal to hear and determine those matters and questions and to make an award, or which may be required or called for by either party or an Arbitration Tribunal, and neither of the said parties will wilfully or wrongfully do, or cause to be done, any act or thing or neglect to do any act or thing or take any step which shall or may delay or prevent an Arbitration Tribunal from hearing and determining the said matters or questions or from making an award. 8. In order to facilitate a hearing before an Arbitration Tribunal each party shall be at liberty to serve on the other party a Notice or Notices to admit facts and upon the admission of any such fact or facts by the other party then, subject to the direction or requirement of the Arbitration Tribunal, formal proof of those facts may be dispensed with. 9. If either party shall refuse or fail after reasonable notice to attend either personally or by Counsel or by Solicitor before an Arbitration Tribunal at any meeting which the Tribunal may appoint, the Tribunal may proceed as effectually as if such party were present. 10. Subject as hereinbefore provided an Arbitration Tribunal may make its own rules of procedure so, however, that neither party shall be prejudiced by any rule of procedure not made available to it in time to enable it to comply therewith. 11. An Arbitration Tribunal shall make and publish its award within two

months after the termination of the hearing, or within such extended time as the Arbitration Tribunal shall, before the expiration of such period of two months, determine in writing signed by the Arbitrator. The award shall be in writing, and in duplicate, signed by the Arbitrator and a duplicate part thereof shall forthwith be transmitted to each party hereto. 12. An Arbitration Tribunal shall have power to award, to or against either or both parties hereto, costs and expenses incurred in connection with an Arbitration, or any part or issue thereof, including the procedure leading up to an Arbitration, to fix the amount of such costs and expenses, or to direct how the same are to be ascertained. IN WITNESS whereof the Official Seal of the Ministry of Finance for Northern Ireland and the Common Seal of the Electricity Supply Board have been hereunto affixed the day and year first herein written: THE OFFICIAL SEAL OF THE MINISTRY OF FINANCE FOR NORTHERN IRELAND was affixed hereto in presence of :} Assistant Secretary. THE COMMON SEAL OF THE ELECTRICITY SUPPLY BOARD was affixed hereto in presence of :}Chairman.....Secretary