



Bruny Island Ferry Service Contract

Transport Commission
ABN 95 420 520 014

SeaLink Tasmania Pty Ltd
ABN 38 626 709 993

Stradbroke Ferries Pty Ltd
ABN 63 009 725 713

CONTENTS

KEY DETAILS	1
BACKGROUND	2
TERMS	2
1 Definitions and Interpretation	2
1.1 Definitions	2
1.2 Interpretation	15
1.3 Consents or approvals	16
1.4 Commission's Representative	17
1.5 No fetter on the Commission's or the Crown's powers	17
2 Contract risks	17
3 Requirements to be satisfied on or before the Date of the Contract	18
4 Contract period	18
4.1 Transition In Period	18
4.2 Initial Term	18
4.3 Extension by the Commission	18
5 Operator Activities and performance standards	19
5.1 Obligation to provide	19
5.2 Minimum service requirements	19
5.3 Authorisations and Legislative Requirements	21
5.4 Crew and Staff	22
5.5 Scheduling and priority access	24
5.6 Marketing and promotion	25
5.7 Changes to Ferry Timetable	26
5.8 Subcontracting	27
5.9 KPIs	28
5.10 Zero tolerance towards violence	29
5.11 No exclusivity	29
5.12 Material increase to Ferry Service demand	29
5.13 Opportunity to discuss potential involvement in a New Bruny Island Ferry Service Contract	30
6 Landside Infrastructure	31
6.1 Licence of Landside Infrastructure	31
6.2 Upgrade, replacement or alteration of Landside Infrastructure	32
6.3 Operation, maintenance and repair of Landside Infrastructure	32
6.4 Environmental and Contamination matters	33
6.5 Principal Contractor	34
7 Contract Ferries	35
7.1 Charter of Initial Primary Vessel	35

7.2	New Vessel	38
7.3	Requirements for Contract Ferries	40
7.4	Safety Management System	41
7.5	Non-compliant Contract Ferries	42
7.6	Other use	42
8	Fares	42
8.1	Fares and ticketing	42
8.2	Changes to Fares	43
8.3	Fare Revenue	44
9	Reporting and governance	44
9.1	Reporting during the Transition In Period	44
9.2	Monthly reporting during the Term	44
9.3	Quarterly reporting during the Term	44
9.4	Annual operational reporting during the Term	46
9.5	Reporting requirements	46
9.6	Transition In Period meetings	46
9.7	Quarterly meetings	47
9.8	Annual meetings	47
9.9	Right of audit, survey or inspection	48
9.10	Immediate notification	49
9.11	Further information	49
9.12	Compatibility of information systems	50
10	Customer management system	50
10.1	Establishment	50
10.2	Operation	50
11	Plans	51
11.1	Operator to prepare Plans	51
11.2	Update of the Plans	51
11.3	Review of Plans	51
11.4	Compliance with the Plans	51
11.5	No Commission responsibility for the Plans	52
12	Security	52
12.1	Guarantee and indemnity	52
12.2	Unconditional undertaking or cash security deposit	52
12.3	General security deed	53
13	Payments	53
13.1	Subsidy	53
13.2	Incentive payment for specified pre-bookings	54
13.3	Manner of payments	55
13.4	Set off	55
13.5	GST	55
13.6	Interest	56
14	Force Majeure	56
14.1	Force Majeure Events	56
14.2	Claims for relief	57

14.3	Suspension of obligations	57
14.4	Mitigation	58
15	Representations and warranties	58
15.1	Representations and warranties by the Operator Related Companies	58
15.2	Acknowledgments	60
15.3	Warranties and acknowledgements correct	62
15.4	Updating of warranties and acknowledgements	62
15.5	Notification of change	62
15.6	Reliance on representations, warranties and acknowledgements	62
15.7	Commission's warranties	62
16	Intellectual Property	63
16.1	Ownership	63
16.2	Licence of Intellectual Property	63
16.3	Commission Marks	63
16.4	IP Claims	64
17	Insurance	64
17.1	Insurance policies	64
17.2	Insurance policies	65
17.3	Compliance with insurances	66
17.4	Provision of documents and assistance to the Commission and the Crown	66
17.5	Proof of insurance	66
17.6	Notification	67
17.7	The policies	67
17.8	Settlement of Claims	67
18	Indemnity, proportionate liability and exclusion of specified Loss	68
18.1	Indemnity by the Operator	68
18.2	Proportionate liability	69
18.3	Exclusion of specified Loss	69
19	Suspension	69
19.1	Right of suspension	69
19.2	Notice of suspension	70
19.3	Duty to mitigate	70
19.4	Lifting of suspension	70
19.5	Effect of suspension	70
20	Step-in	70
20.1	Step-in	70
20.2	Step-In Rights	71
20.3	Operator Related Companies' obligations during any Step-In Event	71
20.4	Treatment of Fare Revenue during step-in	72
20.5	No liability	73
20.6	Step-out	73
21	Default and termination	73
21.1	Notice of breach which is capable of remedy	73

21.2	Contents of notice	74
21.3	Right to terminate	74
21.4	Commission's right to terminate on a Termination Event	75
21.5	Termination due to a Force Majeure Event	75
21.6	Termination of this Contract due to termination of the Licence	76
21.7	Other rights upon termination	76
21.8	Clauses which survive termination or expiry of this Contract	76
22	Rights following a Termination Event	76
22.1	Consequences of a Termination Event	76
22.2	Right to purchase	77
22.3	Right to lease	78
22.4	Use of Staff	78
23	Dispute resolution	78
23.1	Dispute notice and negotiation	78
23.2	Court proceedings and other relief	79
23.3	Operator Related Companies to continue performing obligations	79
24	Confidentiality	80
24.1	Parties may disclose contract provisions	80
24.2	Limited confidentiality for Confidential Provisions	80
24.3	Operator Related Companies must not disclose other material	80
24.4	Employees to comply	81
24.5	Privacy obligations preserved	81
25	Privacy	81
25.1	Application of clause	81
25.2	Personal Information Custodian	81
25.3	Breach of PIP Act	82
25.4	Terms defined in PIP Act	82
26	Advertising	82
26.1	General restrictions on disposal of Advertising Rights	82
26.2	Permitted Advertising Contracts	82
26.3	Government Advertising	83
26.4	Advertising – general	83
27	Transition out	84
28	Notices	85
29	General	86
29.1	Governing law and jurisdiction	86
29.2	Entire agreement	86
29.3	Costs and stamp duty	86
29.4	No assignment or dealing	87
29.5	Change in control	87
29.6	Rights held on trust	87
29.7	Further assurances	87
29.8	PPS Law	87
29.9	No interference with executive duties or powers	89

29.10	Power of attorney	89
29.11	Counterparts	90
EXECUTION		91
Schedule 1 - KPIs		92
Schedule 2 - Reporting		96
Schedule 3 - Plans		98
Schedule 4 - Form of Subcontractor Direct Deed		103
Schedule 5 - Form of Licence		117
Schedule 6 - Form of Deed of Guarantee and Indemnity		145
Schedule 7 - Form of Unconditional Undertaking		153
Schedule 8 - Form of General Security Deed		157
Schedule 9 - Form of Vessel Lease		199
Schedule 10 - Contract particulars		211
Schedule 11 - Contract Ferries		213
Schedule 12 - Ferry Timetable		217
Schedule 13 - Fares and Ticketing Arrangements		221
Schedule 14 - Landside Infrastructure Upgrade Works by the Commission		225

KEY DETAILS

1	Date	June 2018
---	-------------	-----------

2	Parties	
---	----------------	--

Commission
Name

Transport Commission
ABN 95 420 520 014

Operator
Name

SeaLink Tasmania Pty Ltd
ABN 38 626 709 993

**Initial Back-up
Vessel Owner**
Name

Stradbroke Ferries Pty Ltd
ABN 63 009 725 713

Released under RTI

BACKGROUND

- A The Commission is the corporate name of the Commissioner for Transport who is, by subsection 4(1) of the Transport Act 1981 (Tas), incorporated as a corporation sole.
- B The Commission has selected the Operator to provide the Ferry Service and to carry out the other Operator Activities.
- C The Operator has agreed to provide the Ferry Service and carry out the other Operator Activities on the terms set out in the Project Documents to which it is a party.
- D The Initial Back-up Vessel Owner has agreed to carry out its obligations on the terms set out in the Project Documents to which it is a party.

TERMS

1 Definitions and Interpretation

1.1 Definitions

The following definitions apply in this Contract.

Accreditation means any accreditation or certification of competency to be obtained in accordance with the requirements of any Legislative Requirement.

Act Outside of the Reasonable Control of the Operator means:

- (a) any event where the Master reasonably determines it would be unsafe or unreasonable to operate the Ferry Service provided the Operator has complied with its obligations set out in clause 5.9(f);
- (b) any event arising from any priority arrangement contemplated by clause 5.5; or
- (c) any event resulting from a breach of a Service Document by the Commission or the Licensor (as applicable),

other than an event to the extent caused or contributed to by any Operator Related Company or its respective Staff.

Adjusted Fair Value means the Fair Value as determined in accordance with clause 22.2(a)(i), less an amount equal to the aggregate of:

- (a) the Tender Costs; and
- (b) any other amounts that the Commission is entitled to set off or deduct under this Contract.

Advertising Right means any right (whether or not legally enforceable) to display, or to have displayed, any sign, image, logo, text, advertisement or colour on the exterior of, either or both:

- (a) a Contract Ferry; or
- (b) any part of the Landside Infrastructure.

Assets means all items referred to in clause 5.1(b) or otherwise required for the carrying out of the Operator Activities.

Authorisation includes any Accreditation, consent, authorisation, registration, filing, lodgement, permit, franchise, agreement, notarisation, certificate, permission, licence, approval, direction, declaration, authority or exemption from, by or with a Government Body.

Back-up Vessel means (as the context requires):

- (a) as at the Date of the Contract, the Back-up Vessel described in Schedule 11; or
- (b) such other vessel that is substituted as the "Back-up Vessel" in accordance with this Contract.

Bruny Island Resident means, subject to the operation of clause 8.2, any of the following:

- (a) a permanent Bruny Island resident living in a home on Bruny Island as evidenced by:
 - (i) a current Kingborough Council rates notice;
 - (ii) a current land tax assessment if the resident owns more than one property in Tasmania; and
 - (iii) a current driver's licence, electoral roll confirmation of Bruny Island residency and vehicle registration papers,or such information as otherwise agreed in writing between the Commission and the Operator;
- (b) a permanent Bruny Island resident living in a rented home on Bruny Island as evidenced by:
 - (i) a certified lease agreement;
 - (ii) a current driver's licence and vehicle registration papers; and
 - (iii) an electoral roll confirmation of Bruny Island residency,or such information as otherwise agreed in writing between the Commission and the Operator;
- (c) a Bruny Island property owner not living on Bruny Island as evidenced by:

- (i) a current Kingborough Council rates notice; and
- (ii) a current driver's licence and vehicle registration papers,

or such information as otherwise agreed in writing between the Commission and the Operator.

Bruny Island Resident Concession means a person who is a Bruny Island Resident and also holds a Concession.

Business Day means a day that is not a Saturday, a Sunday, Easter Tuesday or a statutory holiday (as defined in the Statutory Holidays Act 2000 (Tas)) generally observed in Hobart, Tasmania.

Certificate of Competency has the meaning given to it in the MS Act.

Certificate of Operation has the meaning given to it in the MS Act.

Certificate of Survey has the meaning given to it in the MS Act.

Claim includes any claim, action, suit, demand or proceeding howsoever arising:

- (a) under, arising out of, or in any way in relation to the Project Documents; or
- (b) under, arising out of, or in any way in relation to the Operator Activities or a party's conduct prior to the Date of the Contract.

CMS has the meaning given in clause 10.1.

Commission IP means:

- (a) all Intellectual Property owned by the Commission, including the Commission Marks; and
- (b) all Intellectual Property licensed to the Commission, other than by or on behalf of the Operator.

Commission Marks means the trade marks, logos, indicia and images notified by the Commission to the Operator in writing from time to time.

Commission's Associates means:

- (a) the Crown, the Licensor and any other Minister; and
- (b) any employee, agent, representative, contractor (other than any Operator Related Company and its respective contractors), consultant, delegate or adviser of, or to, the Commission or those entities or persons referred to in paragraph (a).

Commission's Representative means the person in the position of "Director Infrastructure Review & Evaluation, Infrastructure Tasmania, Department of State Growth" or such other person or position from time to time nominated by the Commission to be the "Commission's Representative" for the purposes of this Contract and notified to the Operator.

Concession means the concession given to a primary card holder (first name listed on card) of any of the following original Australian only cards:

- (a) a Pensioner Concession Card;
- (b) a Veteran's Affairs Primary Health Card;
- (c) a TPI (totally and permanently incapacitated) card;
- (d) a State or Territory Companion Card;
- (e) a Commonwealth Seniors Health card; and
- (f) a Repatriation Health Card,

provided however that the card holder:

- (g) is the driver of the applicable vehicle that is intending to travel on the Ferry Service; and
- (h) has their current card and driver's licence available at the time of their purchase of a Ticket.

Contamination means the presence in, on or under land or water of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land or water, being a presence that presents significant risk of harm to human health or any other aspect of the environment.

Contract means this document including all Schedules to it (and all attachments and appendices to those Schedules).

Contract Ferry means those vessels used, or which may be used, by the Operator to provide the Ferry Service, being each of the Primary Vessel and Back-up Vessel.

Contract Material means all Material created, developed, collected, generated, reported or provided under or in relation to this Contract by or on behalf of the Operator whether such Material came into existence before, on or after the Date of the Contract.

Corporations Act means the Corporations Act 2001 (Cth).

Crew means individuals employed or engaged by the Operator in any capacity on board a Contract Ferry but excluding a Master.

Crown means the Crown in Right of Tasmania.

Date of the Contract means the date which appears on page 1 of this Contract or, if this Contract is undated, the date on which the last party executes this Contract.

Dispute has the meaning given to it in clause 23.1.

Election Date means the date on which the Commission makes an election under clause 22.1(a).

Emergency Services means any or all of the police, fire, ambulance, State emergency service and other authorities as directed or advised by the Commission or the Crown.

Excused Performance Incident means an incident resulting in the Operator's inability to meet a KPI which is caused directly by either:

- (a) a Force Majeure Event;
- (b) a suspension under clause 19.1(b) or clause 19.1(c), other than to the extent caused or contributed to by an act or omission of any Operator Related Company or its Staff; or
- (c) an Act Outside of the Reasonable Control of the Operator.

Fair Value means the amount at which an asset or liability could be exchanged in an arm's length transaction between informed and willing parties, other than in a forced or liquidation sale.

Fare means the price payable for a Ticket as set out in Schedule 13, as may be varied in accordance with clause 8.

Fare Revenue means the sum of the value of the Fares received by the Operator.

Ferry Operations and Management Plan means the Plan described as the "Ferry Operations and Management Plan", as may be updated in accordance with clause 11.

Ferry Service means the ferry service using the Contract Ferries along the Route.

Ferry Timetable means (as the context requires):

- (a) as at the Date of the Contract, the timetable for the operation of the Ferry Service set out in section 1 of Schedule 12;
- (b) following the commencement of the second New Vessel providing the Ferry Service, the timetable for the operation of the Ferry Service set out in section 2 of Schedule 12; or
- (c) such other timetable for the operation of the Ferry Service as may be substituted in accordance with clause 5.7.

Financial Records means proper books of account and all other financial planning records of any Operator Related Company relating to the Operator Activities kept by or on behalf of the Operator or other Operator Related Company, required by Legislative Requirements or Authorisations or that would ordinarily be maintained as a matter of Industry Best Practice and includes:

- (a) cash flow reports;
- (b) profit and loss statements;
- (c) balance sheets; and

- (d) notes, documents and data supporting the records contemplated above including ledgers, spreadsheets, payroll registers, customer invoices, vendor bills, bank statements, tax returns, insurance policies and ASIC lodgements.

Financial Year means a period from 1 July to 30 June.

Force Majeure Event has the meaning given to it in clause 14.1.

GAP Notice has the meaning in clause 26.3(a).

Government Advertising means non-political advertising:

- (a) promoting any activity or function of government;
- (b) promoting any public information or safety message; or
- (c) promoting Tasmania (including tourism and national parks).

Government Advertising Period means a period specified in a GAP Notice.

Government Body means any federal, state or local government, semi government, quasi-government, administrative, fiscal, judicial or quasi-judicial, department, commission, authority, tribunal, agency, entity (wherever created or located) or statutory authority.

GST has the meaning given to it in the GST Act.

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Hobart CPI means the Consumer Price Index (All Groups Hobart) released by the Australian Bureau of Statistics, provided however that if the Australian Bureau of Statistics ceases to publish the Index, there must be substituted an index agreed upon by the parties or, in default of agreement, an index (as reasonably determined by the Commission) which most closely reflects changes in the cost of living in Australia.

Industry Best Practice means the industry practices, methods, specifications, standards of safety, procurement and performance and acts which are generally engaged in or observed by skilled and experienced persons in the ferry industry with respect to services that are similar to the Ferry Service, which may reasonably and ordinarily be expected to accomplish the outcome or activity in a manner consistent with Legislative Requirements, Authorisations, reliability, safety, environmental protection and continuity of service.

Infringement Claim means any Claim that the Operator Activities or the Contract Material, or use of any of them, infringes the rights, including the Intellectual Property or Moral Rights of, or duties owed to, any person, whether arising under contract, statute, common law or otherwise.

Initial Primary Vessel means the vessel described in section 1 of Schedule 11.

Initial Term has the meaning given in clause 4.2.

Insolvency Event means when any Operator Related Company:

- (a) stops or suspends payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the Corporations Act;
- (c) must be presumed by a court to be insolvent by reason of section 459C(2) of the Corporations Act;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act);
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the Corporations Act or similar officer appointed to all or any of its assets or undertaking;
- (g) has an application or order made or a resolution passed for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;
- (h) has any step taken to enforce security over or a distress, execution or other similar process levied or served out against the whole or any of its assets or undertakings and that enforcement, distress, execution or similar process is not set aside within 10 Business Days; or
- (i) any event occurs which, under the laws of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above.

Intellectual Property means all present and future rights conferred by law in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and confidential information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, whether or not registrable, registered or patentable. These rights include:

- (a) all rights in all applications to register these rights;
- (b) all renewals and extensions of these rights; and
- (c) all rights in the nature of these rights, excluding Moral Rights.

IPV Cap means the amount specified in Item 1 of Schedule 10 (as may be increased in accordance with clause 7.1(l)), that separately and independently applies in respect of:

- (a) the 12 month period from the Service Commencement Date; and
- (b) each subsequent 12 month period,

until such time as contemplated by 7.1(l)(iii).

Kettering Terminal means that part of the Licensed Area utilised for the purpose of the Ferry Service at Kettering.

KPI means a KPI specified in Schedule 1.

KPI Default means, in respect of a KPI, a failure by the Operator to achieve the KPI over the applicable period of calculation specified in Schedule 1.

KPI Relief means, in respect of a KPI, the Operator is excused from the non-performance of the KPI as a result of an Excused Performance Incident in accordance with clause 5.9.

KPI Table means the KPI tables set out in section 2 of Schedule 1, which are to be interpreted in accordance with the table set out in section 1 of Schedule 1.

Landside Infrastructure means the "Landside Infrastructure" described in the Licence, as may be upgraded during the Term.

Landside Infrastructure Upgrade Works means the Landside Infrastructure upgrade works described in Schedule 14.

Legislative Requirements means any Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth, State or local government applicable to any or all aspects of the Operator Activities.

Licence has the meaning given in clause 6.1(a).

Licensed Area has the meaning given to that term in the Licence.

Licensor has the meaning given to that term in the Licence.

Loss includes:

- (a) any cost, expense, loss, damage or liability of any nature whether direct, indirect or consequential (including pure economic loss), present or future, fixed or unascertained, actual or contingent, and whether arising under any statute, contract, tort, equity or restitution; and
- (b) without limiting paragraph (a) and to the extent permitted by law, any fine or penalty.

Master means the person who has command or charge of a Contract Ferry.

Material means material in any form (whether visible or not) including documents, databases, records, recordings, reports, products, equipment, systems (including the CMS), information, data, software, source code, software tools and software development methodologies, and includes all releases, updates and amendments to the original material.

Minister means a Minister of the Government of Tasmania.

Moral Rights means:

- (a) the right of attribution of authorship or performership;

- (b) the right not to have authorship or performership falsely attributed; and
- (c) the right of integrity of authorship or performership,

conferred by the Copyright Act 1968 (Cth) and rights of a similar nature anywhere in the world, that exist now or that may come to exist in the future.

MS Act means the Marine Safety (Domestic Commercial Vessel National Law Application) Act 2013 (Tas), and the Marine Safety (Domestic Commercial Vessel) National Law that applies in Tasmania as a consequence of that Act.

New Vessel means the new vessels described in Schedule 11.

New Vessel Contract means the contract or contracts to be entered into by the Operator in accordance with the requirements of this Contract for the design, construction and delivery of the New Vessel.

O&M Best Practices means Industry Best Practice for operating, maintaining and repairing the Contract Ferries and Landside Infrastructure and operating the Ferry Service that are required to achieve a result consistent with Legislative Requirements, Authorisations, reliability, continuity of service, safety, protection of the environment and the requirements of the Project Documents, including everything reasonably necessary to ensure that:

- (a) the Contract Ferries, Landside Infrastructure and the Ferry Service are operated, maintained and repaired in a manner safe to people and the environment;
- (b) the Contract Ferries, Landside Infrastructure and Ferry Service are functioning as the Project Documents require them to function;
- (c) operation, maintenance and repairs are performed to ensure reliable long term, safe, efficient and continuous operation of the Contract Ferries, Landside Infrastructure and the Ferry Service by trained and experienced personnel, licensed when so required by Legislative Requirements and Authorisations, using proper equipment, tools and procedures;
- (d) sufficiently trained and experienced operation, maintenance and repair personnel, licensed when so required by Legislative Requirements and Authorisations, are available; and
- (e) adequate materials, resources and supplies are available to ensure compliance with the requirements of the Project Documents.

Off Peak Season means the period from the start of May to the end of September or such other period that is agreed in writing between the Commission and the Operator to be the "Off Peak Season" for the purposes of this Contract.

Operator Activities means all things and tasks which each Operator Related Company is, or may be, required to carry out or do to comply with its respective obligations under the Project Documents to which it is a party, including in respect of the Operator providing the Ferry Service.

Operator Contamination means Contamination caused or contributed by any Operator Related Company or its Staff, whether before, on or after the Date of the Contract.

Operator-owned Contract Material means the Contract Material specified in Item 2 of Schedule 10.

Operator Premises means any premises leased, licensed or occupied by any Operator Related Company for use in relation to the Operator Activities.

Operator Records means the Financial Records, any reports, documents or other information relating to the operation and performance of the Ferry Service and the other Operator Activities, and all other plans and documentation kept in whatever form relating to the Operator Activities.

Operator Related Companies means, as the context requires, either or both of the Operator and the Initial Back-up Vessel Owner.

Peak Season means the period from the beginning of October to the end of April or such other period that is agreed in writing between the Commission and the Operator to be the "Peak Season" for the purposes of this Contract.

Permitted Advertising Contract has the meaning in clause 26.2.

Permitted Security Interest means:

- (a) a Security Interest created or outstanding with the prior written consent of the Commission; or
- (b) a lien or charge which arises by operation of law or which is in favour of a repairman, workman, storeman or contractor and which arises in the ordinary course of business.

Personal Property means all personal property provided by the Commission or the Crown (as applicable) to any Operator Related Company for the purposes of performing, or in relation to, the Operator Activities, including the Initial Primary Vessel.

PIP Act means the Personal Information Protection Act 2004 (Tas).

Plans means the Operator's:

- (a) "Transition In Plan" which, at the Date of the Contract, is set out in Attachment A to Schedule 3;
- (b) "Ferry Operations Management Plan" which, at the Date of the Contract, is set out in Attachment A to Schedule 3; and
- (c) "Transition Out Plan",

each of which must address the applicable minimum requirements set out in Schedule 3 (and any other matters reasonably required by the Commission).

Pollution means water, air, noise or land pollution.

PPS Law means:

- (a) the PPSA and any regulation made at any time under the PPSA, including the Personal Property Securities Regulations 2010 (Cth); and
- (b) any amendment made at any time to any other legislation as a consequence of a law or regulation referred to in paragraph (a).

PPSA means the Personal Property Securities Act 2009 (Cth).

Primary Vessel means (as the context requires):

- (a) as at the Date of the Contract, the Initial Primary Vessel;
- (b) a vessel which is substituted for the Initial Primary Vessel in accordance with clause 7.2; or
- (c) such other vessel as is substituted for the "Primary Vessel" in accordance with this Contract.

Privacy Act means the Privacy Act 1988 (Cth).

Project Documents means:

- (a) the Service Documents;
- (b) each subcontractor direct deed entered into pursuant to clause 5.8(d);
- (c) the executed deed of guarantee and indemnity provided to the Commission in accordance with clause 12.1;
- (d) the unconditional undertaking provided to the Commission in accordance with clause 12.2;
- (e) the executed general security deed provided to the Commission in accordance with clause 12.3;
- (f) the Vessel Lease executed in accordance with clause 22.3 (or if applicable clause 29.10); and
- (g) any other document the parties agree is a "Project Document" for the purposes of this Contract.

PT Act means the Passenger Transport Services Act 2011 (Tas).

Quarter means any calendar quarter (or part of a calendar quarter) commencing on 1 January, 1 April, 1 July or 1 October in any year.

Roberts Point Terminal means that part of the Licensed Area utilised for the purpose of the Ferry Service at Roberts Point.

Route means the uninterrupted ferry service route with no scheduled stops over water between:

- (a) Kettering Terminal and Roberts Point Terminal; and

- (b) Roberts Point Terminal and Kettering Terminal.

Safety Authority includes WorkSafe Tasmania, the Australian Maritime Safety Authority, the Australian Transport Safety Bureau, any other relevant authority under a safety-related law, and any person appointed by those entities authorised to exercise powers under a safety-related law or otherwise.

Safety Management System means a safety management system required to be implemented and maintained in accordance with the MS Act.

Security Interest means any:

- (a) 'security interest' as defined in the PPS Law;
- (b) security for payment of money, performance of obligations or protection against default (including a mortgage, bill of sale, charge (whether fixed or floating), lien, pledge, hypothecation, encumbrance, trust, power or title retention arrangement, finance lease, right of set-off, assignment of income, garnishee order or monetary claim and flawed deposit arrangements); and
- (c) thing or preferential interest or arrangement of any kind giving a person priority or preference over claims of other persons or creditors with respect to any property or asset,

and includes any agreement to create any of them or allow them to exist.

Service Commencement Date means 23 September 2018.

Service Documents means this Contract and the Licence.

Spares means parts and components that are required as part of, or for the purpose of carrying out of any of, the Operator Activities.

Staff means all:

- (a) officers, employees and agents of any Operator Related Company, including the Master and the Crew;
- (b) contractors and subcontractors (whether engaged directly by an Operator Related Company or otherwise) and their officers, employees and agents; and
- (c) persons seconded to the Operator,

to the extent that they are engaged in relation to the carrying out of the Operator Activities.

Standards means all Australian Standards published by, or on behalf of, Standards Australia, from time to time, applicable to either, or both of, the Ferry Service or the Contract Ferries.

Step-In Event means each and any of the following:

- (a) a Termination Event;

- (b) an event preventing the carrying out of the Ferry Service as contemplated by this Contract;
- (c) an event which causes or will cause any Operator Related Company, the Commission or a Commission's Associate to be in breach of any Legislative Requirement and which requires an immediate response;
- (d) an event which requires the Commission or a Commission's Associate to take immediate action to discharge or exercise a statutory duty or power; and
- (e) an event or circumstance which arises out of or in relation to the Operator Activities that poses a serious threat to, or causes or will cause damage or disruption to:
 - (i) the health or safety of persons;
 - (ii) the environment;
 - (iii) any property; or
 - (iv) the safe and secure performance of the Operator Activities.

Step-In Party means any agent, attorney or nominee of the Commission notified in accordance with clause 20.1, and may be more than one person appointed to act jointly.

Step-In Rights means the rights set out in clause 20.2, exercisable by the Commission pursuant to clause 20.1(a).

Subsidy Amount means the applicable amount specified in Item 3 of Schedule 10.

Successor Operator means a service provider succeeding the Operator in the provision of activities in the nature of the Operator Activities after the date of termination of this Contract or the expiry of the Term, whichever is applicable, but does not include any Operator Related Company.

Tender Costs means the internal and external costs reasonably incurred or reasonably expected to be incurred by the Commission in carrying out a retendering process for all or part of the Ferry Service and/or in connection with any calculation of the Fair Value of any Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner (as applicable), including the cost of any independent expert appointed pursuant to clause 22.2(a).

Term means the Initial Term as may be extended in accordance with clause 4.3, unless this Contract is earlier terminated in accordance with its terms.

Terminal means, as the context requires, one or both of the:

- (a) Kettering Terminal; and
- (b) Roberts Point Terminal.

Termination Event means any of the events listed in clause 21.3.

Ticket means any entitlement to travel on the Ferry Service, as evidenced by a paper, electronic or magnetic ticket, coupon, card or other instrument.

Transfer Date means the date on which a Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner (as applicable) is to be acquired by, or leased to, the Commission or its nominee (as the case may be).

Transfer Time means 4.00pm on the Transfer Date.

Transition In Period means the period commencing on the Date of the Contract and ending at 11.59pm on the day before the Service Commencement Date.

Transition In Plan means the Plan described as the "Transition In Plan", as may be updated in accordance with clause 11.

Transition In Services means the activities contemplated in:

- (a) clause 10.1; and
- (b) the Transition In Plan.

Transition Out Plan means the Plan described as the "Transition Out Plan", as may be updated in accordance with clause 11.

Trip means each scheduled Contract Ferry journey between the Terminals required under the Ferry Timetable.

Trip On Time means a Trip where a Contract Ferry departs a Terminal within 5 minutes of the scheduled start time for that Trip as set out in the Ferry Timetable.

Vessel Lease means a vessel lease to be entered into between the Operator or the Initial Back-up Vessel Owner (as applicable) and the Commission or its nominee on the terms set out in Schedule 9 or on such other terms as may be reasonably required by the Commission.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body, a Government Body or other entity includes any of them;
- (e) a reference to a clause or Schedule is a reference to a clause of, or a Schedule to, this Contract and a reference to this Contract includes all Schedules to it, in each case unless expressly stated otherwise;

- (f) a reference to an agreement or document (including a reference to this Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to any Government Body or professional body includes the successors of that body;
- (i) a reference to dollars or \$ is a reference to Australian currency;
- (j) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (k) nothing in this Contract is to be interpreted against a party solely on the ground that the party put forward this Contract or any part of it;
- (l) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (m) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';
- (n) if any amount under this Contract is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day;
- (o) a reference to a **day** is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (p) a reference to a **month** is to be interpreted as a calendar month;
- (q) reference to a time or date in relation to the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere; and
- (r) to the extent of any inconsistency, ambiguity or discrepancy between:
 - (i) subject to paragraph (r)(ii), a Plan and any other part of this Contract, the other part of this Contract will prevail; and
 - (ii) any one or more provisions forming this Contract, then the higher or more onerous requirement will apply.

1.3 Consents or approvals

If the doing of any act, matter or thing under this Contract is dependent on the consent or approval of the Commission or is within the discretion of the Commission, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Commission in its sole and absolute discretion and without regard to the interests of any Operator Related Company (unless an express provision to the contrary has been made).

1.4 Commission's Representative

- (a) The Commission's Representative will act as the agent of the Commission in discharging each of the functions and exercising each of the rights of the Commission's Representative or the Commission under this Contract.
- (b) Any direction of the Commission's Representative under this Contract or purported to be given under this Contract may, unless this Contract expressly provides otherwise, be given either orally or in writing.
- (c) The Commission's Representative may, from time to time, appoint an individual to exercise functions on behalf of the Commission's Representative, provided that:
 - (i) at any one time there will be no more than one Commission's Representative representative for any one function;
 - (ii) the appointment will not prevent the Commission's Representative exercising any function; and
 - (iii) the Commission's Representative must promptly give the Operator written notice of:
 - (A) the name and the functions of the Commission's Representative representative; and
 - (B) the termination of the appointment of any given representative.

1.5 No fetter on the Commission's or the Crown's powers

- (a) Subject to clause 1.5(b), nothing in this Contract unlawfully restricts or otherwise affects the Commission's or the Crown's unfettered discretion to use or exercise any of their respective statutory powers, functions or discretions.
- (b) The Commission acknowledges and agrees that clause 1.5(a) does not operate to relieve the Commission from any liability for damages arising from breach by the Commission of its obligations under this Contract.

2 Contract risks

Except to the extent that the Project Documents expressly provide otherwise, as between the Commission and the Licensor on the one hand, and each Operator Related Company on the other hand, each of the Operator Related Companies must bear all risks and costs of carrying out the Operator Activities (including in relation to Staff, fuel, taxes and fees) and otherwise complying with its obligations under the Project Documents to which the Operator Related Company is a party.

3 Requirements to be satisfied on or before the Date of the Contract

Without limiting any other clause of this Contract, each Operator Related Company acknowledges and agrees that it must satisfy the following requirements for which it is responsible, on or before the Date of the Contract:

Requirement	Contract reference
1. The Operator must provide the Commission with the Licence duly executed by the Operator and stamped (if required by law) in accordance with clause 6.1(a).	Clause 6.1(a)
2. The Operator must provide the Commission with a duly executed deed of guarantee and indemnity in accordance with clause 12.1.	Clause 12.1
3. The Operator must provide the Commission with an unconditional undertaking or cash security deposit in accordance with clause 12.2(a).	Clause 12.2(a)
4. Each of the Operator and the Initial Back-up Vessel Owner must provide the Commission with a duly executed general security deed in accordance with clause 12.3.	Clause 12.3
5. The Operator must provide evidence to the satisfaction of the Commission that the Operator has in place those insurances required to be effected and maintained from the Date of the Contract in accordance with clause 17.	Clause 17

4 Contract period

4.1 Transition In Period

During the Transition In Period, the Operator must carry out and complete the Transition In Services in accordance with the Transition In Plan and the other requirements of the Project Documents to which it is a party.

4.2 Initial Term

The Operator Activities other than the Transition In Services commence on the Service Commencement Date and continue for a period of 10 years (**Initial Term**).

4.3 Extension by the Commission

- (a) The Commission may, without limiting clause 1.3 and clause 21, in its absolute discretion (and without being under any obligation to do so), elect to extend:
 - (i) the Initial Term by a period of 5 years by giving the Operator a notice at least 24 months before the expiry of the Initial Term (**First Extension Period**); and

- (ii) the First Extension Period by a period of 5 years by giving the Operator a notice at least 24 months before the expiry of the First Extension Period (**Second Extension Period**).
- (b) If the Commission gives a notice under:
 - (i) clause 4.3(a)(i), each party must continue to comply with its obligations during the First Extension Period on the same terms as set out in this Contract, unless the context requires otherwise and except that there will be no further option under clause 4.3(a)(i); and
 - (ii) under clause 4.3(a)(ii), each party must continue to comply with its obligations during the Second Extension Period on the same terms as set out in this Contract, unless the context requires otherwise and except that there will be no further option under clause 4.3(a)(ii).
- (c) Nothing in this clause 4.3 shall be construed as affording any Operator Related Company a right or expectation of extension of this Contract.

5 Operator Activities and performance standards

5.1 Obligation to provide

Each of the Operator Related Companies must (to the extent relevant to its obligations under the Project Documents to which it is a party):

- (a) commence providing the Ferry Service on and from the Service Commencement Date and thereafter continue to carry out the Operator Activities for the Term, in each case in accordance with, and subject to, the terms of the Project Documents to which it is a party; and
- (b) except as otherwise expressly provided in the Project Documents to which it is a party, provide the Contract Ferries and all facilities, items of equipment, tools, Spares, utilities (including power and water), consumables and all other things required for the carrying out of the Operator Activities.

5.2 Minimum service requirements

The Operator must:

- (a) perform its obligations under the Project Documents to which it is a party:
 - (i) in accordance with Industry Best Practice;
 - (ii) so as to prevent injury to or death of persons and damage to property of any person; and
 - (iii) in a proper, competent, courteous, safe and reliable manner;

- (b) operate the Ferry Service on the Route each and every day of the Term in accordance with the Ferry Timetable;
- (c) subject to clause 14, ensure the Back-up Vessel is available to deliver the Ferry Service within 12 hours of the Primary Vessel being unable to be operated so as to meet the Ferry Timetable;
- (d) notwithstanding any other term of this Contract, operate the Ferry Service past the last scheduled daily sailing from each Terminal as contemplated by the Ferry Timetable to clear any remaining backlog of passengers existing at the scheduled time of that sailing such that no passenger remains at either Terminal at the conclusion of the day when queued on time for the last scheduled sailing from the relevant Terminal;
- (e) manage vehicle queuing within available queuing areas along Ferry Road at Kettering and Lennon Road at Roberts Point;
- (f) ensure Contract Ferry capacity can be effectively managed and queueing issues that arise (including during Peak Season) reduced, as well as meeting the reasonable needs of Bruny Island Residents; and
- (g) satisfy the following additional requirements:
 - (i) publish a current and accurate Ferry Timetable, with route maps, on the Operator's website;
 - (ii) if there is an amendment to a Ferry Timetable in accordance with clause 5.7, provide at least 4 weeks prior written notice to the public of any amendments to the Ferry Timetable (or such shorter period as may be reasonable in the circumstances to the extent that the amendment is pursuant to clause 5.7(c)(vi)(A) or is an urgent change as contemplated by clause 5.7(b)(ii)) by:
 - (A) displaying signs prominently in each Contract Ferry;
 - (B) updating the Operator's website;
 - (C) displaying signs at the Terminals, subject to any required consents or approvals; and
 - (D) any other appropriate means;
 - (iii) if the Commission consents to any changes to the Fares in accordance with clause 8.2, provide at least 4 weeks prior written notice to the public of such change by:
 - (A) displaying the change prominently in each Contract Ferry;
 - (B) updating the Operator's website;
 - (C) displaying the change at the Terminals, subject to any required consents or approvals; and
 - (D) any other appropriate means;

- (iv) ensure that any information to be displayed on Contract Ferries, in Ferry Timetables, on the Operator's website, on the Terminals and in any other publicly-accessible location complies with the requirements in clause 26.4;
- (v) other than in relation to any Government Advertising contemplated in clause 26.3, approve all information to be displayed to customers, to ensure it complies with any Commission standards or guidelines, from time to time;
- (vi) provide Ticket selling services via the Operator's website, ticket selling agents and at the Terminals in accordance with the Ferry Operations and Management Plan;
- (vii) promptly inform passengers and pre-booked customers on a Contract Ferry and at the Terminals of any relevant Ferry Service delays;
- (viii) promptly inform the Commission of delays to the Ferry Service and work with the Commission as required from time to time to minimise the impact of delays on passengers;
- (ix) promptly advise the Commission of any damage to the Landside Infrastructure or the Contract Ferries;
- (x) ensure that a publicly available phone contact number is available and staffed during the operating hours of the Ferry Service for public enquiries and complaints; and
- (xi) distribute or make available to passengers of the Ferry Service, notices, documents or other information provided to the Operator by the Commission (including road and safety pamphlets and notices of road closures on Bruny Island).

5.3 Authorisations and Legislative Requirements

(a) The Operator must:

- (i) at all times hold, and comply with, all applicable Authorisations which are required to be held or complied with in carrying out the Operator Activities, including Certificates of Operation and Certificates of Survey;
- (ii) carry out the Operator Activities in accordance with all applicable:
 - (A) Authorisations and Legislative Requirements, including safety and environmental-related law;
 - (B) requirements of relevant Government Authorities, including the Commission and the Crown; and
 - (C) manufacturers' and suppliers' specifications, recommendations and service and operating standards; and

- (iii) on or before the Service Commencement Date and whenever reasonably requested in writing by the Commission, provide evidence to the satisfaction of the Commission that the Operator and its Staff hold all Authorisations necessary for the provision of the Ferry Service.
- (b) Without limiting clause 5.3(a), the Operator must ensure that the Ferry Service is provided and operated in accordance with all applicable Legislative Requirements, Standards and codes, including:
 - (i) the MS Act;
 - (ii) the Industrial Relations Act 1984 (Tas);
 - (iii) the Work Health and Safety Act 2012 (Tas);
 - (iv) other than in respect of the Initial Primary Vessel, the Anti-Discrimination Act 1998 (Tas) and Disability Discrimination Act 1992 (Cth) including the Disability Standards for Accessible Public Transport 2002 (Cth) and accompanying guidelines under the Disability Discrimination Act 1992 (Cth);
 - (v) Legislative Requirements relating to industrial relations and occupational health and safety;
 - (vi) AMSA/MAST National Standard for Commercial Vessels (NSCV);
 - (vii) Marine and Safety (Pilotage and Navigation) Regulation 2007 (Tas);
 - (viii) Marine and Safety (Collision) Regulations 2007 (Tas);
 - (ix) International Regulations for Prevention of Collisions at Sea (COLREGS 1972); and
 - (x) relevant classification society requirements (including the Lloyd's Register – Rules and Regulations for Classification of Vessels), as applicable.
- (c) The Operator must notify the Commission's Representative immediately if the Operator becomes aware of a breach, or possible breach, of clauses 5.3(a) and 5.3(b).
- (d) The Operator must ensure the appropriate supervision of the embarking and disembarking of passengers at the Terminals including by assisting with mobility ramps as required.

5.4 Crew and Staff

- (a) The Operator must ensure:
 - (i) each Master of a Contract Ferry complies with the MS Act, including that each such Master:

- (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after from 1 July 2013; or
 - (B) if a Master does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013; and
 - (C) is conversant with and knowledgeable of the Route, the Ferry Timetable and the Terminals;
- (ii) each member of the Crew of a Contract Ferry complies with the MS Act, including that each such member:
 - (A) holds a current Certificate of Competency issued pursuant to the MS Act on or after 1 July 2013; or
 - (B) if a member of the Crew does not hold such a certificate, holds an unexpired Certificate of Competency issued pursuant to the MS Act prior to 1 July 2013.
- (b) Without limiting clause 5.4(a), the Operator must ensure that:
 - (i) all Staff are properly authorised, qualified, accredited, trained and experienced and have the proper competency and Authorisations, including, where applicable, as required by Legislative Requirements, in order to discharge their duties;
 - (ii) all Staff comply with applicable Legislative Requirements and Authorisations;
 - (iii) all Staff are of good character and fit to carry out the Operator Activities;
 - (iv) all Staff comply with any requirements or directions made by a Safety Authority;
 - (v) all customer facing Staff at all times:
 - (A) are courteous and polite to customers;
 - (B) are attired in a clean, well maintained uniform or as otherwise required by the Commission;
 - (C) possess a thorough knowledge of the Tickets, Fares and the Ferry Timetable; and
 - (D) possess a thorough and up to date knowledge of safety procedures in respect of the Terminals and the Contract Ferries;
 - (vi) at all times during the Term there is adequate and sufficient Staff to be able to perform the Operator Activities in accordance with the Project Documents to which the Operator is a party;

- (vii) it monitors and manages the safety and security of all Staff at the Terminals and any other place where the Operator carries out the Operator Activities; and
 - (viii) Staff are subject to regular security checks and that all new Staff undergo a police criminal history check prior to commencing employment.
- (c) The Operator must, where required, provide all Staff with a formal induction and staff handbooks, which are to include appropriate policies dealing with equal employment, discrimination, harassment and marine and work health and safety issues.
- (d) Without limiting the Operator's obligation to have sufficient Staff necessary to carry out the Operator's Activities, the Operator must:
 - (i) ensure that each person named in Item 4 of Schedule 10 undertakes the role specified in Item 4 of Schedule 10;
 - (ii) not permit a person named in Item 4 of Schedule 10 to undertake any other role or assignment which would conflict with any of the obligations of the Operator Related Companies under the Service Documents or the Commission's interests generally;
 - (iii) subject to clause 5.4(d)(iv), not replace a person named in Item 4 of Schedule 10 without the Commission's prior written approval (which approval shall not be unreasonably withheld); and
 - (iv) if any person referred to in Item 4 of Schedule 10 dies, become seriously ill or resigns from the employment of the Operator, replace them with persons approved by the Commission and, in any event, of at least equivalent experience, ability and expertise.
- (e) Without limiting the Commission's rights under clause 5.10, the Commission may direct the Operator to have removed from the carrying out of the Operator Activities any member of Staff who, in the Commission's reasonable opinion, is negligent or guilty of misconduct.
- (f) Without limiting clauses 5.4(d), 5.4(e) or 5.10, if the Commission reasonably believes that a member of Staff may cause, or has caused, damage or harm to the Commission's reputation:
 - (i) the Commission may advise the Operator of its belief (providing adequate reasons for such belief); and
 - (ii) the Operator must take such disciplinary action as is warranted in the circumstances.

5.5 Scheduling and priority access

- (a) Subject to clause 5.5(b) and unless otherwise directed by the Commission, the Ferry Service must allow for priority boarding for the Woodbridge District High school bus service at the following times (or such other times

as contemplated in the Ferry Timetable in section 2(a) of Schedule 12 or as notified in writing by the Commission from time to time):

- (i) 7.30 am – Depart Kettering Terminal – unloaded school bus;
 - (ii) 8.30 am – Depart Roberts Point Terminal – loaded school bus;
 - (iii) 3.30 pm – Depart Kettering Terminal – loaded school bus; and
 - (iv) 4.00 pm – Depart Roberts Point Terminal – unloaded school bus.
- (b) The Ferry Service must only depart in accordance with clause 5.5(a) once the school bus has been loaded onto the Contract Ferry, provided that the school bus arrives within 5 minutes of the applicable scheduled departure time on the Ferry Timetable (or such other later time as agreed between the Master and the school bus operator for a given Trip so long as the Ferry Timetable is maintained).
- (c) Emergency Services and other urgent medical matters must have priority, both during and outside of the scheduled Ferry Service and the Operator must fully comply with the directions of the Commission and any Emergency Service if there is an emergency.
- (d) The Operator must use reasonable endeavours to provide priority boarding for undertakers, livestock (where there is a risk to animal welfare caused by boarding delay), perishables and other time critical produce.
- (e) To the extent that there is any conflict between:
- (i) the priority contemplated in clauses 5.5(a), 5.5(c) and clause 5.5(d), the following order of priority will apply unless otherwise directed by the Commission:
 - (A) the priority in clause 5.5(c);
 - (B) the priority in clause 5.5(a); and
 - (C) the priority in clause 5.5(d); and
 - (ii) the priority contemplated within clause 5.5(d), the priority is at the discretion of the Master.

5.6 Marketing and promotion

The Operator must undertake marketing and promotion of the Ferry Service including:

- (a) developing and implementing a marketing, advertising and promotion strategy satisfactory to the Commission, which recognises the Bruny Island ferry gateway as the optimal means of promoting the wider Bruny Island visitor experience with distinctive service branding and livery;
- (b) use of cooperative promotional opportunities across the Tasmanian tourist, hospitality and transport sector; and

- (c) using innovative ways to improve the gateway experience for visitors to Bruny Island at each of the Terminals and the journey on the ferry and to handle proactively and effectively all customer feedback and complaints,

and which:

- (d) takes into account Tasmanian Government and Kingborough Council policies and strategies in respect of Bruny Island; and
- (e) reflects the commitments set out in the "Marketing, Advertising and Promotion Plan" which forms part of the Ferry Operations and Management Plan.

5.7 Changes to Ferry Timetable

- (a) Subject to clause 5.2(d) and this clause 5.7, the Ferry Timetable may only be changed with the prior written consent of the Commission.
- (b) Without limiting the operation of clause 5.12, the Commission may, at any time and from time to time during the Term, require the Operator to change the frequency of the Ferry Service if:
 - (i) the change does not result in a material increase to the total number of Trips contemplated by the Ferry Timetable; and
 - (ii) the Commission has given the Operator at least 6 weeks prior written notice of the required implementation date of the change to the Ferry Timetable, unless an urgent change is required in which case the Commission will give such advance notice as is reasonable in the circumstances.
- (c) Without limiting its other obligations under this Contract, the Operator must proactively consider and propose potential changes to the Ferry Timetable for consideration by the Commission having regard to the following factors:
 - (i) meeting changes in user demand;
 - (ii) easing and reducing vehicle queuing;
 - (iii) improving passenger service and experience; and
 - (iv) otherwise optimising provision of the Ferry Service,provided however that:
 - (v) any proposed change must not have the effect of reducing the level of Ferry Service reflected in the then current Ferry Timetable; and
 - (vi) the Operator has given:
 - (A) to the extent that the proposed change results in Trips in addition to those contemplated by the Ferry Timetable or is the result of a proposed special event, at least 14 days prior

written notice of the proposed change to the Ferry Timetable; or

- (B) otherwise, at least 8 weeks prior written notice of the proposed change to the Ferry Timetable for consideration by the Commission.
- (d) The Commission will notify the Operator of its decision (acting reasonably) as to whether or not it consents to a change proposed in accordance with clause 5.7(c) within a reasonable period following receipt of the notice referred to in clause 5.7(c)(vi)(B).

5.8 Subcontracting

- (a) Except as otherwise expressly contemplated by clause 7.2, each Operator Related Company must:
 - (i) not subcontract the performance of any of its obligations under a Service Document without the prior written consent of the Commission (which may not be unreasonably withheld or delayed); and
 - (ii) comply with the requirements of this clause 5.8 in seeking the consent referred to in clause 5.8(a)(i).
- (b) Each Operator Related Company must provide the Commission with not less than 20 Business Days' prior notice of its intention to enter into any subcontract in relation to its obligations under a Service Document, which notice must include:
 - (i) details of the proposed subcontractor;
 - (ii) the subcontract terms under which the applicable Operator Related Company proposes to engage the subcontractor (including the proposed scope of works or services relating to those subcontract terms); and
 - (iii) such other information as may be reasonably requested by the Commission.
- (c) The Commission may provide comments in relation to the proposed engagement of a subcontractor, in which case the applicable Operator Related Company must address any comments of the Commission before entering into the relevant subcontract.
- (d) If required by the Commission, the applicable Operator Related Company must, on or before the execution of a subcontract, procure that the relevant subcontractor and that Operator Related Company execute a subcontractor direct deed substantially in the form of Schedule 4 (or such other form as may be required by the Commission).
- (e) The applicable Operator Related Company must provide to the Commission a copy of any subcontract entered into in relation to its obligations under a

Service Document within 5 Business Days of the relevant subcontract being entered into.

- (f) The Operator Related Companies acknowledge that any consent given by the Commission under clause 5.8(a) does not affect, or release any Operator Related Company from, any of its obligations under this Contract and each Operator Related Company is entirely responsible for the acts or omissions of its subcontractors.

5.9 KPIs

- (a) The Commission will measure the Operator's performance of certain aspects of the Operator Activities against the KPIs.
- (b) The Operator must comply with its obligations relating to the measurement and reporting of KPIs and the remedy of breaches of the KPIs.
- (c) The Operator acknowledges:
 - (i) the emphasis of the KPI regime is on delivery of the Ferry Service to meet the Commission's business requirements and on performance improvement; and
 - (ii) KPIs will be measured during each month of the Term.
- (d) In the event of an Excused Performance Incident, the Operator:
 - (i) must notify the Commission of the Excused Performance Incident in the Quarterly report in respect of the month during which the Excused Performance Incident occurred; and
 - (ii) may seek KPI Relief from the Commission and the Commission will determine whether or not the Operator's claim for an Excused Performance Incident is valid.
- (e) In support of an application for KPI Relief, the Operator must provide the Commission supporting documentation detailing the circumstances of the Excused Performance Incident and the effect of the Excused Performance Incident on one or more of the KPIs.
- (f) The Operator acknowledges that, in the event of a KPI Default which is caused by an Excused Performance Incident and for which KPI Relief is granted, the Operator's obligations in relation to the performance of the Operator Activities and compliance with the KPIs which are not affected by the Excused Performance Incident continue and include:
 - (i) an obligation to use commercially reasonable efforts to reinstate the Operator Activities affected by the Excused Performance Incident and meet the KPIs affected by the Excused Performance Incident as soon as possible in the circumstances;
 - (ii) track and monitor the performance against the KPIs affected by the Excused Performance Incident; and

- (iii) continue to report Excused Performance Incidents as if they were any other incidents for the purposes of analysis and corrective action.
- (g) Events which are subject to an Excused Performance Incident will be removed entirely from the calculation of the relevant KPI.

5.10 **Zero tolerance towards violence**

- (a) Violence against women is defined by the United Nations as “any act of gender based violence that results in or is likely to result in physical, sexual or physiological harm or suffering to women”.
- (b) The Crown and the Commission uphold a zero tolerance policy towards violence against any person in the workplace. Each Operator Related Company acknowledges and undertakes to uphold a zero tolerance policy towards violence against any person in the workplace in its interaction with employees, agents and subcontractors of the Commission and in the performance of the Operator Activities.
- (c) Each Operator Related Company must, and will ensure that its employees, agents and subcontractors will, at all times in performing the Operator Activities act in a manner that is non-threatening, courteous and respectful.
- (d) If the Commission reasonably believes that any of the Operator Related Companies’ employees, agents or subcontractors are failing to comply with the behavioural standards specified in this clause then the Commission may:
 - (i) prohibit access by the relevant employees, agents or subcontractors to the Commission's or other Crown premises; and
 - (ii) direct the applicable Operator Related Company to withdraw the relevant employees, agents or subcontractors from performing the Operator Activities.

5.11 **No exclusivity**

Without limiting the operation of clause 1.5(a), the Project Documents do not establish the Operator as, or confer any right on the Operator to be, the sole or exclusive provider of a ferry service between the Tasmanian mainland and Bruny Island.

5.12 **Material increase to Ferry Service demand**

If, at any time during the Term, the Commission considers that there has been, or is likely to be, a material increase in demand for the Ferry Service as compared to the demand for the ferry service as at the Date of the Contract:

- (a) the Commission may notify the Operator that it wishes to explore the potential opportunity for an increase in the number of Contract Ferries to operate the Ferry and the terms upon which such arrangement may apply; and

- (b) following receipt of any such notice, the Commission and the Operator must meet with a view to exploring such opportunity as a variation to this Contract (including, at the Commission's sole discretion, the purchase by an Operator Related Company of a new Contract Ferry with amendments to be made to this Contract to reflect any agreed commercial arrangement between the parties regarding same).

5.13 Opportunity to discuss potential involvement in a New Bruny Island Ferry Service Contract

- (a) Subject to clause 5.13(b), if:
 - (i) at any time during the Term the Commission determines that it may seek to enter into a New Bruny Island Ferry Service Contract; and
 - (ii) there are no subsisting breaches by any Operator Related Company (that have not been cured to the satisfaction of the Commission or the Licensor (as the case may be)) under or in connection with any Service Document,

the Commission will use reasonable endeavours:

- (iii) to discuss the opportunity with the Operator; or
 - (iv) if the Commission proposes to conduct a procurement process for the purposes of the New Bruny Island Ferry Service Contract, to provide an opportunity to the Operator to elect to participate in that procurement process.
- (b) The parties acknowledge and agree that, without limiting clauses 1.5(a) and 29.9, the Commission retains absolute discretion to determine to its satisfaction:
 - (i) which of clause 5.13(a)(iii) or 5.13(a)(iv) it may elect to apply;
 - (ii) all matters in connection with the discussions or procurement process referred to in clause 5.13(a)(iii) or 5.13(a)(iv) (including, as applicable, the nature, extent and timing of the discussions or the nature, timing and terms of the procurement process);
 - (iii) the outcome of the discussions or procurement process referred to in clause 5.13(a)(iii) or 5.13(a)(iv); and
 - (iv) the manner, timing, terms and conditions of any related or other process or discussions with any third parties.
- (c) For the purposes of this clause 5.13, **New Bruny Island Ferry Service Contract** means a contract between the Commission and a ferry service provider to provide a vehicle ferry service along the Route in addition to the Ferry Service.

6 Landside Infrastructure

6.1 Licence of Landside Infrastructure

- (a) On or before the Date of the Contract, the Operator must provide the Commission with a licence in the form and on the terms set out in Schedule 5 (or otherwise which are acceptable to the Commission) (**Licence**), duly executed by the Operator and stamped (if required by law).
- (b) Subject to clause 6.2(c) and clause 6.3(d), each Operator Related Company acknowledges and agrees:
 - (i) that before the Date of the Contract it had sufficient opportunity to inspect the Landside Infrastructure;
 - (ii) it accepts the Landside Infrastructure on an "as is" basis, in whatever condition it is in on the Date of the Contract;
 - (iii) the Commission and the Commission's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the Landside Infrastructure for the purpose of undertaking the Operator Activities, and the Operator releases the Commission and the Commission's Associates from all Claims and Losses that arise in this regard;
 - (iv) no act, matter or thing arising out of or in relation to the condition of the Landside Infrastructure before, on or after the Date of the Contract will relieve any Operator Related Company from its obligation to perform the Operator Activities in accordance with the Project Documents to which it is a party or entitle an Operator Related Company to make any Claim against the Commission or the Licensor;
 - (v) to the extent that any Operator Related Company makes use of the Landside Infrastructure, it does so at its sole cost and risk; and
 - (vi) without limiting the foregoing, the Operator Related Companies assume all risk and liability for and in respect of all Loss, injury or death caused by any Operator Related Company to persons or property howsoever arising from the use of the Landside Infrastructure, Contract Ferries or the exercise of the rights of an Operator Related Company under the Project Documents to which it is a party.
- (c) The Operator must:
 - (i) only use the Landside Infrastructure for the permitted use described in the Licence;
 - (ii) use reasonable endeavours to contain marshalling and car parking within the areas as shown on survey plan CPR No. 9598 / FB No 9304 and CPR No.10558/ FB No. 9379; and

- (iii) at all times comply with any reasonable direction or requirement of the Commission and the Crown in relation to the Landside Infrastructure, including access to, or passenger movements within or around, the Landside Infrastructure.
- (d) Neither the Commission nor the Crown is required to procure any rights for the Operator to use any facilities outside of the Landside Infrastructure.
- (e) Nothing in the Project Documents confers on any Operator Related Company any proprietary right in the Landside Infrastructure.

6.2 Upgrade, replacement or alteration of Landside Infrastructure

- (a) Subject to clause 6.2(c) and clause 14.4(b), each Operator Related Company acknowledges and agrees that the Commission is under no obligation to upgrade, replace or alter the Landside Infrastructure.
- (b) To the extent that the Commission proposes to undertake any upgrade, replacement or alteration of the Landside Infrastructure, the Operator must cooperate with the Commission in relation to any such upgrade, replacement or alteration, including by:
 - (i) providing access to relevant areas;
 - (ii) making changes to its operations and procedures to accommodate the relevant work; and
 - (iii) providing advice and input in relation to the obtaining of any necessary Authorisations.
- (c) Subject to the satisfaction of the conditions precedent set out in Schedule 14, the Commission agrees to carry out the specified Landside Infrastructure Upgrade Works on the following basis:
 - (i) the Commission will use reasonable endeavours to complete the Landside Infrastructure Upgrade Works by the expiry of the period specified in Schedule 14;
 - (ii) the Commission will keep the Operator periodically informed of the progress of the Landside Infrastructure Upgrade Works; and
 - (iii) the Operator complies with its obligations in Schedule 14.

6.3 Operation, maintenance and repair of Landside Infrastructure

- (a) Subject to clause 6.3(d), the Operator must operate, maintain and repair the Landside Infrastructure and do all other things necessary so that the Landside Infrastructure is operated, maintained and repaired so that:
 - (i) each Operator Related Company complies with the Project Documents to which it is a party;
 - (ii) the Landside Infrastructure is operated, maintained and repaired in accordance with:

- (A) the Ferry Operations and Management Plan;
 - (B) all relevant Legislative Requirements and Authorisations;
 - (C) O&M Best Practices;
 - (D) manufacturers' specifications, recommendations and service standards; and
 - (E) the other requirements of the Project Documents to which the Operator is a party,
- fair wear and tear excepted.
- (b) Except as otherwise provided for in clause 6.3(a), each Operator Related Company must not:
 - (i) alter or modify the Landside Infrastructure; or
 - (ii) carry out, procure or allow the carrying out of, any works or services on the Landside Infrastructure,without the prior written consent of the Commission.
- (c) The Operator must obtain and comply with any planning or other approvals required to install signage, fixtures and fittings on the Landside Infrastructure.
- (d) The Operator's obligations under this Contract do not extend to:
 - (i) any repair of the Landside Infrastructure to the extent necessitated by any structural failure of the Landside Infrastructure not attributable to any act or omission of the Operator or its Staff; or
 - (ii) any structural modification to the Landside Infrastructure to the extent required as a result of a change in a Legislative Requirement that comes into effect after the Date of the Contract.

6.4 **Environmental and Contamination matters**

- (a) The Operator must at all times ensure that the Operator Activities are carried out in an environmentally responsible manner and, without limiting clause 5.3(a)(ii), must take all reasonably practicable steps to protect the environment.
- (b) The parties acknowledge and agree that the Operator is responsible for any Operator Contamination.
- (c) Each Operator Related Company must not do, or permit, any act which:
 - (i) causes any Contamination; or
 - (ii) exacerbates any Contamination or the risks presented by the Contamination,

in the carrying out of the Operator Activities.

- (d) Each Operator Related Company must take such measures as are necessary (including the expenditure of money) to prevent or reduce the likelihood of any:
 - (i) Contamination being caused; or
 - (ii) Contamination or the risks presented by it being exacerbated,where the Operator Activities are carried out.
- (e) The Operator must do whatever is necessary at the Operator's cost to:
 - (i) remediate (including manage, contain, remove and abate) any Contamination caused or contributed to by the carrying out of the Operator Activities;
 - (ii) remedy any breach of an environmental Legislative Requirement or Authorisation in the course of the carrying out of the Operator Activities as soon as it occurs; and
 - (iii) comply with every notice, order, declaration or requirement (including Authorisation) made under any environmental Legislative Requirement in respect of the carrying out of the Operator Activities.
- (f) The obligations in this clause 6.4 are separate and independent to the Operator's obligations under the Licence.

6.5 Principal Contractor

- (a) Where the Operator Activities constitute a construction project, to the extent permitted by the Safety Legislation, the Commission:
 - (i) appoints the Operator, and the Operator accepts its appointment, as the principal contractor for those Operator Activities; and
 - (ii) authorises the Operator to manage and control the workplace to the extent necessary to discharge the responsibilities and duties imposed on a principal contractor under the Safety Legislation.
- (b) Without limiting its obligations under clause 5.3 or elsewhere under this Contract, the Operator must ensure compliance with its responsibilities and duties as principal contractor under the Safety Legislation.
- (c) For the purposes of this clause 6.5:
 - (i) the terms **principal contractor**, **construction project** and **workplace** have the same meanings given to those terms under the Safety Legislation; and
 - (ii) **Safety Legislation** means the Work Health and Safety Act 2012 (Tas) and Work Health and Safety Regulations 2012 (Tas).

7 Contract Ferries

7.1 Charter of Initial Primary Vessel

- (a) On and from the Service Commencement Date, the Commission agrees to charter, and the Operator agrees to take on charter, the Initial Primary Vessel on the terms set out in this clause 7, and the other applicable requirements of this Contract.
- (b) The Operator must take delivery of the Initial Primary Vessel on charter on the Service Commencement Date at the time and place nominated by the Commission.
- (c) The charter of the Initial Primary Vessel includes:
 - (i) the use of everything on board the Initial Primary Vessel including radio installations and navigational equipment and all passenger equipment relating to the Initial Primary Vessel as delivered to the Operator; and
 - (ii) the right to use the Initial Primary Vessel for the provision of the Ferry Service in accordance with the terms of this Contract.
- (d) The term of the charter of the Initial Primary Vessel expires at the end of the applicable period referred to in clause 7.1(j)(i) or 7.1(j)(ii) (as the case may be).
- (e) Subject to clause 7.1(l), the Operator acknowledges and agrees:
 - (i) that before the Date of the Contract it had sufficient opportunity to inspect the Initial Primary Vessel;
 - (ii) it accepts the Initial Primary Vessel on an "as is" basis, in whatever condition it is in on the Date of the Contract;
 - (iii) the Commission and the Commission's Associates make no warranty, representation or guarantee with respect to the condition, functionality or adequacy of the Initial Primary Vessel for the purpose of undertaking the Operator Activities, and the Operator releases the Commission from all Claims and Losses that arise in this regard;
 - (iv) subject to clause 14, no act, matter or thing in relation to the condition of the Initial Primary Vessel before, on or after the Date of the Contract will relieve the Operator from its obligation to perform the Operator Activities in accordance with this Contract or entitle the Operator to make any Claim against the Commission; and
 - (v) to the extent that the Operator makes use of the Initial Primary Vessel, it does so at its sole cost and risk.
- (f) The Operator must pay the Commission for the hire of the Initial Primary Vessel at the rate set out in Item 5 of Schedule 10 (**Charter Rate**).

- (g) The Operator must make payment of the Charter Rate on the first Business Day of each month for the aggregate amount of the Charter Rate that has accrued during the previous month, without any set off whatsoever, and free and clear of any withholding or deduction for any present or future taxes, duties or other charges.
 - (h) Except for the carrying out of any maintenance or repair in accordance with this Contract, the Operator must not make any structural or other changes to the Initial Primary Vessel without the Commission's prior written consent.
 - (i) The Operator acknowledges and agrees that within 20 Business Days after the date of delivery into service of the last New Vessel:
 - (i) the Operator must undertake a survey of the Initial Primary Vessel for the purpose of determining whether the Initial Primary Vessel is at the standard it should be in had the Operator complied with its obligations in clause 7.3(a) and provide the Commission with:
 - (A) the timing and location of the proposed survey to allow the Commission or its nominee to attend the survey if the Commission so requires; and
 - (B) all Records relating to the result of the survey; and
 - (ii) if the survey contemplated by clause 7.1(i)(i) indicates that the Initial Primary Vessel is not at the standard it should have been in had the Operator complied with its obligations in clause 7.3(a), then the Operator must undertake and complete all remedial action required to restore the Initial Primary Vessel to the required standard.
 - (j) The Operator must no later than the earliest to occur of:
 - (i) 20 Business Days after the delivery into service of the last New Vessel; or
 - (ii) 1 Business Day after:
 - (A) the expiry of the 6 month period after the date for delivery of the last New Vessel as contemplated by clause 7.2(d) or such later date as may be approved in writing by the Commission; or
 - (B) the date of termination of this Contract,
- return the Initial Primary Vessel to the Commission:
- (iii) at Kettering Terminal or at such other readily accessible safe berth or mooring as the Commission may reasonably direct;
 - (iv) at the standard the Initial Primary Vessel should be in had the Operator complied with its obligations in clause 7.3(a); and

- (v) with all plans, drawings, manuals, maintenance records and Spares relevant to that Primary Vessel being on board and accessible to the Commission upon delivery.
- (k) If the Initial Primary Vessel is returned in any of the circumstances contemplated by clause 7.1(j), the Commission may (without being under any obligation to do so) undertake a survey of the Initial Primary Vessel for the purpose determining whether the Initial Primary Vessel is at the standard it should be in had the Operator complied with its obligations in clause 7.3(a). Without limiting the operation of clause 18.1, the cost of undertaking any such survey, will be a debt due and owing from the Operator to the Commission.
- (l) The Operator's obligations under this Contract for the maintenance and repair of the Initial Primary Vessel is limited to the value of work covered by the amount of the IPV Cap at the relevant time, provided however that:
 - (i) if:
 - (A) the IPV Cap for a particular 12 month period has not been expended, the IPV Cap for the next 12 month period is deemed to be increased by that unexpended amount; and
 - (B) the Commission, by notice in writing to the Operator, elects to fund any maintenance and repair work above the then current IPV Cap then the Operator must carry out the maintenance and repair work up to the total amount of funds that the Commission elects to provide. The Commission must pay the reasonable and necessarily incurred cost of any such maintenance and repair work within 20 Business Days of receipt of a payment claim together with a tax invoice and supporting documentation which substantiates the work undertaken;
 - (ii) in determining whether the IPV Cap has been reached, the parties shall disregard any:
 - (A) costs which are not direct costs reasonably and necessarily incurred in relation to such work;
 - (B) costs attributable to any act or omission of the Operator or its Staff; and
 - (C) payments received by the Operator under any policy of insurance required to be effected and maintained under this Contract or any payments that would have been received under any such policy but for the Operator's failure to comply with its obligations under clause 17; and
 - (iii) unless otherwise notified in writing by the Commission, this clause 7.1(l) will be deemed to no longer apply on and from the date specified in Item 7 of Schedule 10 (as may be extended by the Commission in accordance with clause 7.2) with the effect that there will no longer be any IPV Cap to apply after such date.

- (m) If the Initial Primary Vessel is unable to be used for the Ferry Service prior to the delivery of the New Vessel in accordance with this Contract:
 - (i) the Commission may, by notice in writing to the Operator, require the Operator to substitute the Initial Primary Vessel (or the Back-up Vessel) with an alternative vessel acceptable to the Commission as soon as reasonably practicable;
 - (ii) the Operator must liaise with the Commission to agree the applicable vessel, the proposed duration of the substitution and the basis upon which the Operator will be compensated for the reasonable costs incurred in effecting such procurement (provided however that the Operator will only be entitled to be compensated for such costs if and to the extent that the IPV Cap at the relevant time has been expended); and
 - (iii) the Commission will pay the Operator as agreed in accordance with clause 7.1(m)(ii).

7.2 New Vessel

- (a) The Operator must:
 - (i) within the period specified in Item 6 of Schedule 10, enter into all of the New Vessel Contracts on terms acceptable to the Commission, which, as a minimum, must include the following:
 - (A) the New Vessels must satisfy the requirements in Attachment A of Schedule 11, and will be fit for the purpose of providing the Ferry Service in accordance with the requirements of this Contract;
 - (B) the New Vessels must be delivered by the applicable date for delivery specified in Item 7 of Schedule 10;
 - (C) any entitlement to an extension of time is to be limited to such events or causes as may be agreed by the Commission (acting reasonably) to be included in the New Vessel Contract; and
 - (D) an obligation that each contractor under the New Vessel Contracts agrees to enter into a subcontractor direct deed substantially in the form of Schedule 4 (or on such other terms as may be acceptable to the Commission acting reasonably); and
 - (ii) consistent with the Operator's proposal to build the New Vessels in Tasmania, procure that the New Vessels are built in Tasmania unless the Operator can demonstrate, to the reasonable satisfaction of the Commission, that the price or other terms of doing so would be adversely materially different compared to the price and terms of procuring the New Vessels outside of Tasmania.

- (b) On or before the date that the Operator enters into each New Vessel Contract, the Operator must procure that the contractor under that New Vessel Contract enters into a subcontractor direct deed substantially in the form of Schedule 4 (or on such other terms as may be acceptable to the Commission acting reasonably).
- (c) The Operator must:
 - (i) procure that each New Vessel:
 - (A) is fit for the purpose of providing the Ferry Service in accordance with the requirements of this Contract; and
 - (B) otherwise meets the requirements set out in Schedule 11;
 - (ii) not vary the scope or terms of, suspend, or terminate, a New Vessel Contract without the prior written consent of the Commission (not to be unreasonably withheld);
 - (iii) not unilaterally extend any time obligation under a New Vessel Contract without the prior written consent of the Commission (not to be unreasonably withheld);
 - (iv) ensure that each New Vessel Contract is administered in accordance with its terms; and
 - (v) promptly provide the Commission with all applicable notices, claims and other information (including claims for extensions of time) that may be made by the parties to a New Vessel Contract.
- (d) By the applicable date specified in Item 7 of Schedule 10 (as may be extended in accordance with clause 7.2(i) or clause 7.2(j)), the Operator must deliver the New Vessels to the Kettering Terminal in a seaworthy condition, in every respect ready for service and otherwise in accordance with:
 - (i) the "Vessel Replacement Plan" which forms part of the Ferry Operations and Management Plan; and
 - (ii) the other requirements of this Contract.
- (e) The Operator must keep the Commission informed of the anticipated date of delivery of each New Vessel, including giving notice at least:
 - (i) 6 months;
 - (ii) 3 months;
 - (iii) 1 month; and
 - (iv) 10 Business Days,prior to the anticipated actual date of delivery into service.

- (f) Subject to clause 7.2(g), the Operator must:
 - (i) replace the Initial Primary Vessel with the New Vessel described in section 2 of Schedule 11 in the carrying out of the Ferry Service as soon as possible following the delivery pursuant to clause 7.2(d) of that New Vessel;
 - (ii) immediately following the replacement referred to in clause 7.2(f)(i), replace the Back-up Vessel described in clause 3(a) of Schedule 11 with the Initial Primary Vessel so that the Initial Primary Vessel becomes the Back-up Vessel; and
 - (iii) replace the Initial Primary Vessel with the New Vessel described in clause 3(b) of Schedule 11 in the carrying out of the Ferry Service as soon as possible following the delivery pursuant to clause 7.2(d) of that New Vessel (such that the New Vessel becomes the new Back-up Vessel).
- (g) The Operator must not commence carrying out the Ferry Service with a New Vessel until the Commission has provided its prior written consent to do so. The Commission may only withhold consent if the New Vessel does not comply with the requirements of this Contract.
- (h) Without limiting any other term of this Contract, the Operator represents and warrants that at all times from the date of the commencement of the Ferry Service by a New Vessel until the expiry of the Term the New Vessel will be fit for the purpose of providing the Ferry Service in accordance with the requirements of this Contract.
- (i) The Operator will be entitled to an extension of time to a date specified in Item 7 of Schedule 10 for a period corresponding to that which is granted in accordance with the terms of the applicable New Vessel Contract, other than where the grant relates to an act or omission of any Operator Related Company.
- (j) The Commission may at any time and from time to time, in its absolute discretion and without being under any obligation to do so extend the date contemplated by clause 7.2(d). The discretion given to the Commission by this clause 7.2(j) is for the benefit of the Commission and the Commission will not be required to exercise the discretion for the benefit of any Operator Related Company.

7.3 Requirements for Contract Ferries

- (a) Subject to clause 7.1(l), the Operator must ensure that each Contract Ferry:
 - (i) is operated, maintained and repaired in a safe manner and in accordance with:
 - (A) the Ferry Operations and Management Plan;
 - (B) all relevant Legislative Requirements and Authorisations
 - (C) O&M Best Practices;

- (D) the Contract Ferry manufacturer's specifications, recommendations and service standards; and
 - (E) the other requirements of the Project Documents to which the Operator is a party,
- fair wear and tear excepted;
- (ii) without limiting the foregoing, is maintained and operated in conformity with the MS Act, including:
 - (A) a current Certificate of Operation and Certificate of Survey issued pursuant to the MS Act on or after 1 July 2013; or
 - (B) if clause 7.3(a)(ii)(A) does not apply, an unexpired Certificate of Survey issued pursuant to the MS Act prior to 1 July 2013; and
 - (C) any standards, guidelines and codes of practice relating to marine safety and applicable to the Contract Ferry issued pursuant to the MS Act on or after 1 July 2013;
- (iii) includes uniform livery that meets the Commission's reasonable requirements from time to time during the Term; and
- (iv) is kept clean and tidy when the Ferry Service is being provided.
- (b) The Operator must:
 - (i) monitor and manage security and safety of Staff and passengers on the Contract Ferries; and
 - (ii) allow for inspection of the Contract Ferries and the Operator Records on reasonable notice by any Government Body for any purpose related to an Authorisation, or by the Commission or the Commission's Associates for the purpose of monitoring the Operator's performance of its obligations under this Contract.
- (c) Without in any way limiting the application of the other provisions of this Contract, the parties acknowledge and agree that, other than in relation to the Initial Primary Vessel, all costs of complying with the Disability Standards for Accessible Public Transport 2002 (Cth) and accompanying guidelines under the Disability Discrimination Act 1992 (Cth) will be borne by the Operator.
- (d) Except as expressly contemplated in clause 7.2, the Operator must not substitute a Contract Ferry for another vessel without the prior written consent of the Commission.

7.4 Safety Management System

Without limiting clause 7.3(b), the Operator must implement and maintain a Safety Management System that ensures each Contract Ferry and the operation of each

Contract Ferry complies with all applicable Legislative Requirements (including the MS Act) and Authorisations.

7.5 Non-compliant Contract Ferries

Without limiting the Commission's other rights under this Contract or at law, if a Contract Ferry:

- (a) is damaged or vandalised so as to affect the continuity of the Ferry Service;
- (b) is unable to be operated so as to meet the Ferry Timetable; or
- (c) does not meet the requirements set out in clause 7.3,

the Operator must, subject to the replacement requirements of this Contract, replace that Contract Ferry with a Contract Ferry that will allow the Operator to comply with the Operator Activities.

7.6 Other use

- (a) Each Operator Related Company must not use a Contract Ferry for a purpose other than the provision of the Ferry Service without the prior written consent of the Commission (which consent shall not be unreasonably withheld).
- (b) In considering whether to provide the consent referred to in clause 7.6(a), the Commission may have regard to the extent to which the other use of the Contract Ferry:
 - (i) adversely affects the continuity of the Ferry Service; and
 - (ii) adversely affects the Commission's rights under this Contract or the Crown's rights under the Licence.
- (c) No consent given by the Commission pursuant to this clause 7.6 will:
 - (i) relieve an Operator Related Company from, or alter or affect, an Operator Related Company's liabilities or responsibilities whether under this Contract or otherwise at law; or
 - (ii) prejudice the Commission's rights against any Operator Related Company, whether under this Contract or otherwise at law.

8 Fares

8.1 Fares and ticketing

- (a) Without limiting clause 5.2(g)(vi), the Operator must make arrangements for collection of Fares, including the sale and processing of Tickets. Except to the extent forming part of the Landside Infrastructure, the Commission is not required to provide any facilities for this purpose.

- (b) The Operator must only offer Fares in accordance with the categories and prices outlined in Schedule 13, as may be amended in accordance with clause 8.2.
- (c) The Operator must not offer any other Fare which is higher than the prices contemplated by this clause 8 without the Commission's prior written approval in accordance with the procedure set out in clause 8.2.
- (d) The Operator must allow for Tickets to be paid for by cash or EFTPOS.

8.2 Changes to Fares

- (a) Unless otherwise approved by the Commission or as otherwise contemplated by clause 8.2(ab), any changes to the Fares are subject to the following constraints:
 - (i) Bruny Island Resident and Bruny Island Resident Concession fare increases must not exceed Hobart CPI in any one Financial Year (or applicable part thereof);
 - (ii) the maximum allowable Fare increase in a given Financial Year (or applicable part thereof) for a non-Bruny Island Resident that the Operator may propose will be no more than 5% nominal; and
 - (iii) the Operator must not change any Fare classification.
- (ab) A Fare may be increased to reflect:
 - (i) any applicable change to the rate of GST that comes into effect after the Date of the Contract; and
 - (ii) the introduction of, or increase to, any levy that expressly and exclusively applies to Tickets or the Ferry Service.
- (b) Subject to this clause 8.2, the Fares may only be changed with the prior written consent of the Commission.
- (c) The Commission may, at any time and from time to time during the Term, require changes to the classification of Fares or the introduction of new Fare classifications if the Commission:
 - (i) acting reasonably, considers that such a change is necessary or desirable, provided in any event that the change does not cause any material disadvantage to the Operator; and
 - (ii) has given the Operator at least 6 weeks prior written notice of the required change, unless an urgent change is required in which case the Commission will give such advance notice as is reasonable in the circumstances.
- (d) Without limiting its other obligations under this Contract, the Operator must proactively consider and propose potential changes to the Fare classifications for consideration by the Commission having regard to the following factors:

- (i) meeting changes in user demand;
- (ii) enhance passenger service and experience: and
- (iii) otherwise optimising provision of the Ferry Service,

provided however that:

- (iv) any proposed change must not have the effect of reducing the level of Ferry Service reflected in the then current Ferry Timetable; and
 - (v) the Operator has given at least 12 weeks prior written notice of the proposed change for consideration by the Commission, together with the rationale for the proposed change, the likely number of users affected, a sensitivity analysis and an outline of the impact on revenue and overall sustainability of the Ferry Service.
- (e) The Commission will notify the Operator of its decision as to whether or not it consents to a change proposed in accordance with clause 8.2(d) within 4 weeks of receipt of the notice referred to in clause 8.2(d)(v).

8.3 Fare Revenue

All Fare Revenue received during the Term is owned by the Operator and the Operator bears all risk in relation to the sale of Tickets and the collection and protection of Fare Revenue.

9 Reporting and governance

9.1 Reporting during the Transition In Period

During the Transition In Period, the Operator must submit a weekly report to the Commission which must include:

- (a) a summary of the Operator's progress in carrying out the Transition In Services; and
- (b) such other information as is required by the Commission from time to time.

9.2 Monthly reporting during the Term

From the Service Commencement Date until the expiry of the Term, the Operator must submit a monthly report to the Commission within 10 Business Days after month end, which must include the information set out in Table 1 of Schedule 2.

9.3 Quarterly reporting during the Term

From the Service Commencement Date until the expiry of the Term, the Operator must submit a Quarterly report to the Commission within 10 Business Days after Quarter end, which must include:

- (a) an executive summary;

- (b) a summary of patronage and trip information for the applicable reporting period;
- (c) the financial information contemplated by Table 2 of Schedule 2 and any other financial information related to the Ferry Service including expenditure on a Contract Ferry or Landside Infrastructure;
- (d) KPI matters, including:
 - (i) numerical data setting out the performance achieved during the KPI reporting period against, where applicable, the data for the preceding 6 months and 12 months;
 - (ii) a graphical representation of those data highlighting the KPI, the actual performance during the KPI reporting period and the performance for the previous 6 months or 12 months (as applicable);
 - (iii) a summary table demonstrating performance for each KPI;
 - (iv) notification of any Excused Performance Incidents that have occurred during the reporting period;
 - (v) a commentary explaining any performance variations and performance trends;
 - (vi) where, for the KPI reporting period there is a KPI Default, an explanation of the causes of the KPI Default;
 - (vii) a proposed cure plan, developed by the Operator to address the causes of any KPI Default, including proposed actions for the Operator; and
 - (viii) where there has been a previous cure plan for the KPI, the status of the actions and an explanation of any relationship between the cure plans and current performance;
- (e) summary of progress against the "Vessel Replacement Plan" which forms part of the Ferry Operations and Management Plan;
- (f) key risk register (focussing on new risks or those that have an escalated in category from the previous reporting period);
- (g) safety and environmental information including any incidents during the period and any update on rectification of incidents (including any that occurred during the previous reporting period);
- (h) summary of maintenance activities undertaken in respect of each Contract Ferry and the Landside Infrastructure and upcoming planned maintenance activities, including any planned dry-docking;
- (i) summary of customer interactions including complaints (which must include total number for period, number responded to within 24 hours, number

resolved within 2 days and summary of nature/category of complaints) and initiatives;

- (j) summary of stakeholder engagement activities;
- (k) summary of undertaken and planned marketing/advertising activities;
- (l) employee numbers and summary of any human resource challenges and issues;
- (m) details of local (Tasmanian-based) expenditure and key local suppliers; and
- (n) such other information as is required by the Commission from time to time.

9.4 Annual operational reporting during the Term

From the Service Commencement Date until the expiry of the Term, the Operator must submit an annual report to the Commission prior to the end of October in each year following the Service Commencement Date, which must include:

- (a) a rolling 5 year financial forecast and full balance sheet;
- (b) a detailed annual summary of all matters the subject of the headings listed in clause 9.3;
- (c) any material variations between actual and forecast results over the reporting period including with respect to vehicle volumes, bookings, revenue and expenditure items; and
- (d) such other information as is reasonably required by the Commission from time to time.

9.5 Reporting requirements

- (a) As a requirement of the Quarterly and annual operational reports the Operator must submit certain financial information of the Operator. The format of the financial information must be as set out in Table 2 of Schedule 2 or such other format as may be reasonably required by the Commission.
- (b) Each report to be provided in accordance with this clause 9 must be in PDF or Word format with all operational, financial and KPI data to also be provided in Excel format or in such other form that can be manipulated.

9.6 Transition In Period meetings

- (a) During the Transition In Period the Operator must attend weekly meetings with the Commission (or at such other intervals during the Transition In Period as the Commission may reasonably require) at a time and place nominated by the Commission.
- (b) The meetings referred to in clause 9.6(a) will be attended by the following persons (or such other persons as may be approved by the Commission):

- (i) Commission attendees – Commission's Representative (Chairperson); and
 - (ii) Operator attendees – The persons specified in Item 8 of Schedule 10.
- (c) The issues to be considered at the meeting referred to in clause 9.6(a) will include:
 - (i) the matters the subject of the Operator's weekly report submitted pursuant to clause 9.1; and
 - (ii) such other matters as may be reasonably required by the Commission.

9.7 Quarterly meetings

- (a) The Operator must attend a meeting with the Commission during each Quarter from the Service Commencement Date until the expiry of the Term (or at such other intervals during the Term as the Commission may reasonably require) at a time and place nominated by the Commission.
- (b) The meeting referred to in clause 9.7(a) will be attended by the following persons (or such other persons as may be approved by the Commission):
 - (i) Commission attendees – Commission's Representative (Chairperson); and
 - (ii) Operator attendees – The persons specified in Item 8 of Schedule 10.
- (c) The issues to be considered at the meeting referred to in clause 9.7(a) will include:
 - (i) the matters the subject of the Operator's monthly and Quarterly reports submitted pursuant to clauses 9.2 and 9.3; and
 - (ii) such other matters as may be reasonably required by the Commission.

9.8 Annual meetings

- (a) The Operator must attend a meeting with the Commission annually from the first anniversary of the Service Commencement Date until the expiry of the Term at a time and place nominated by the Commission.
- (b) The meeting referred to in clause 9.8(a) will be attended by the following persons (or such other persons as may be approved by the Commission):
 - (i) Commission attendees – Commission's Representative (Chairperson) and the Commissioner, Deputy Secretary Transport Services; and

- (ii) Operator attendees - The persons specified in Item 9 of Schedule 10.
- (c) The issues to be considered at the at the meeting referred to in clause 9.8(a) will include:
 - (i) the matters the subject of the Operator's annual report submitted pursuant to clause 9.4; and
 - (ii) such other matters as may be reasonably required by the Commission.

9.9 **Right of audit, survey or inspection**

- (a) Without limiting the operation of clause 24, each Operator Related Company must permit the Commission and the Commission's Associates to conduct (as applicable) reasonable audits, surveys of passengers, surveillance, or to inspect at any reasonable time:
 - (i) any Operator Records;
 - (ii) the Contract Ferries;
 - (iii) any other place where the Operator Activities are being undertaken; and/or
 - (iv) any subcontractor of an Operator Related Company carrying out the Operator Activities,in order to:
 - (v) check, audit and/or obtain a copy of any information supplied to the Commission or the Licensor (as the case may be) under the Project Documents;
 - (vi) audit the financial viability of any Operator Related Company; or
 - (vii) monitor the performance or compliance by each Operator Related Company with its obligations under the Project Documents to which it is a party.
- (b) Each Operator Related Company must cooperate with the Commission and the Commission's Associates when conducting a survey or an inspection under this clause 9.9, including by permitting the Commission to access the Operator Premises.
- (c) Each Operator Related Company must implement the reasonable recommendations and comply with any audit findings of the Commission.
- (d) If the survey or inspection under this clause reveals that information previously supplied to the Commission by or on behalf of an Operator Related Company was in any material respect inaccurate, the costs of the inspection (including the copying of any information or data) must be borne by the applicable Operator Related Company.

- (e) Each Operator Related Company acknowledges and agrees that by exercising its rights under this clause 9.9, neither the Commission nor any Commission's Associates are assuming any management or control of the Ferry Service or the Operator Activities and are only exercising their rights of audit, survey or inspection to monitor the Operator Related Company's compliance with its obligations under this Contract and applicable Legislative Requirements and Authorisations.

9.10 Immediate notification

Without limiting its reporting obligations elsewhere under this Contract, each Operator Related Company must inform the Commission as soon as practicable (and in any event within 24 hours of becoming aware of the change or issue) of any change or issues (whether proposed, anticipated or that have occurred) affecting the Operator Activities for which it is responsible, including:

- (a) any issues relating to safety, including any notifications to any Safety Authority;
- (b) any issues relating to any environmental Legislative Requirement or Authorisation in respect of the carrying out of the Operator Activities;
- (c) any litigation or other dispute which may have a material effect on the Operator Activities;
- (d) any material change in, or restructuring of, the capitalisation or financing of the Operator, including any breach of clause 29.4(a);
- (e) any fact, matter or circumstance of which it becomes aware that may prejudice its ability to perform its obligations under this Contract or its ability to carry out the Operator Activities;
- (f) any actual or proposed investigation or inquiry by a Government Body or Safety Authority into any aspect of the Operator Activities; or
- (g) any breach, actual or proposed revocation of, or imposition of conditions on, the Operator's Authorisations,

and must provide sufficient details with that notice and outline any steps taken, or proposed to be taken, by the Operator Related Company to overcome or mitigate the impact of the applicable fact, matter or circumstance.

9.11 Further information

Each Operator Related Company must deliver to the Commission any other information, records or documents, and respond to any questions, relating to, or connected with:

- (a) the Operator Activities or the Project Documents;
- (b) the Plans;
- (c) the operational or financial performance of any Operator Related Company; or

- (d) the coordination of public transport in Tasmania or the strategic or operational planning of transport policy in Tasmania,

as reasonably requested, and within the period reasonably specified, by the Commission.

9.12 Compatibility of information systems

Any financial, operational or other information, data, records or reports required to be provided to the Commission must be provided in PDF, Word or excel format, or such other form as may be agreed in writing between the Commission and the Operator from time to time.

10 Customer management system

10.1 Establishment

During the Transition In Period, the Operator must establish an electronic customer management system (**CMS**) that:

- (a) enables ticket sales via electronic means (including website and mobile applications) and telephone;
- (b) provides a virtual customer interface, electronic access to information about the Operator and the Ferry Service (including, at a minimum, in relation to the Fares and the Ferry Timetable), and collection and storage of customer information;
- (c) meets the diversity of needs of Ferry Service patrons, manages the lengthy queues that can occur in Peak Season, and improves the Ferry Service experience for passengers;
- (d) caters for one way and return Fares for both passengers and vehicles by size and type;
- (e) eases and reduces vehicle queuing along:
 - (i) 'Ferry Road' and 'Channel Highway' on the Kettering Terminal side of the Route; and
 - (ii) 'Lennon Main Road' on the Roberts Point Terminal side of the Route; and
- (f) reflects the other requirements described in Item 10 of Schedule 10.

10.2 Operation

- (a) Following the establishment of the CMS, the Operator must maintain and update the CMS for the duration of the Term in accordance with the requirements of this Contract.

- (b) The Operator must ensure that, during a period contemplated by clause 20 or clause 22.1(a)(ii), it provides to the Commission all information from the CMS that may be requested by the Commission from time to time.

11 Plans

11.1 Operator to prepare Plans

- (a) On or before the Date of the Contract, the Operator prepared the Plans (other than the Transition Out Plan) which are included in Attachment A to Schedule 3.
- (b) No later than 6 months after the Date of the Contract, the Operator must prepare and submit to the Commission the Transition Out Plan that will apply if this Contract is terminated prior to the delivery of the New Vessel.

11.2 Update of the Plans

The Operator:

- (a) must update (and resubmit to the Commission) the applicable Plan:
 - (i) whenever there is a replacement of a Contract Ferry or an upgrade to the Landside Infrastructure; and
 - (ii) otherwise from time to time as and when either the Operator or the Commission reasonably considers it is necessary to do so to comply with this Contract (including the requirements set out in Schedule 3); and
- (b) warrants that each Plan will be fit for its intended purpose and will otherwise comply with the requirements of this Contract.

11.3 Review of Plans

- (a) The Commission may (but without being under any obligation to do so):
 - (i) review any Plan prepared and submitted by the Operator; and
 - (ii) within 10 Business Days of the submission by the Operator of the Plan, reject the relevant Plan (acting reasonably) and provide written reasons for the rejection.
- (b) If a Plan is rejected by the Commission under clause 11.3(a)(ii) the Operator must submit to the Commission within 10 Business Days a revised Plan which takes into account the comments and requirements of the Commission and clauses 11.3(a) and 11.3(b) will reapply.

11.4 Compliance with the Plans

- (a) The Operator must:

- (i) carry out the Operator Activities in accordance with, and otherwise implement, the Plans; and
 - (ii) record its compliance with the Plans in such a format and in such detail as is reasonably required by the Commission.
- (b) The Operator agrees that its compliance with the Plans will not:
 - (i) relieve the Operator from, or alter or affect, the Operator's liabilities or responsibilities whether under this Contract or otherwise at law; or
 - (ii) prejudice the Commission's rights against the Operator whether under this Contract or otherwise at law.

11.5 No Commission responsibility for the Plans

- (a) The Commission does not assume or owe any duty of care to any Operator Related Company to review, or when reviewing, to assess the Plans submitted by the Operator for errors, omissions or compliance with this Contract.
- (b) No review of, comments upon, or failure to comment upon, or rejection of (including the reasons for rejection) or failure to reject, the Plans prepared by the Operator or any other direction by the Commission about such document will:
 - (i) relieve any Operator Related Company from, or alter or affect, the Operator Related Company's liabilities or responsibilities whether under this Contract or otherwise at law; or
 - (ii) prejudice the Commission's rights against any Operator Related Company whether under this Contract or otherwise at law.

12 Security

12.1 Guarantee and indemnity

On or before the Date of the Contract, the Operator must provide the Commission with a deed of guarantee and indemnity in the form and on the terms set out in Schedule 6 (or otherwise which are acceptable to the Commission) duly executed by the guarantor entity specified in Item 11 of Schedule 10 and stamped (if required by law).

12.2 Unconditional undertaking or cash security deposit

- (a) On or before the Date of the Contract, the Operator must provide the Commission with:
 - (i) an unconditional undertaking in favour of the Commission:
 - (A) for the amount of \$500,000;

- (B) issued by a financial institution that is the holder of a current licence issued by the Australian Prudential Regulation Authority and has a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc; and
 - (C) in the form and on the terms set out in Schedule 7 or otherwise which are acceptable to the Commission; or
- (ii) cash security deposit for the amount of \$500,000,

in either case as security for the performance of the obligations of each Operator Related Company under the Service Documents.
- (b) The Commission may have recourse to the unconditional undertaking or cash security deposit (together with any interest that has accumulated in relation to that deposit) provided in accordance with clause 12.2(a) where the Commission considers that:
 - (i) any Operator Related Company is in breach of any of its obligations under any Service Document or otherwise has a claim against an Operator Related Company in relation to any Service Document; or
 - (ii) it is entitled to terminate this Contract either at law or under this Contract,notwithstanding the existence of any dispute between the Commission and any Operator Related Company or between the Licensor and the Operator.
- (c) The Commission must, within 10 Business Days of the expiry of the Term, return to the Operator the balance of the unconditional undertaking or cash security deposit (together with any interest that has accumulated in relation to that deposit), as the case may be, then held.
- (d) The parties agree that the Commission does not hold any cash security deposit provided under this clause 12.2 on trust for any Operator Related Company.

12.3 General security deed

On or before the Date of the Contract, each of the Operator and the Initial Back-up Vessel Owner must provide the Commission with a separate general security deed in the form and on the terms set out in Schedule 8 (or otherwise which are acceptable to the Commission) duly executed by the Operator and the Initial Back-up Vessel Owner (as applicable) and stamped (if required by law).

13 Payments

13.1 Subsidy

- (a) The Commission must procure the payment to the Operator of the Subsidy Amount during only the Initial Term in accordance with this clause 13.1.

- (b) On the first Business Day of each month during the Initial Term, the Operator must submit to the Commission a payment claim together with a tax invoice for the previous monthly pro rata amount of the Subsidy Amount.
- (c) Subject to clause 13.1(d), the Commission must pay the Operator the applicable monthly proportion of the relevant Subsidy Amount within 20 Business Days of the later of:
 - (i) receipt of the documentation required to be submitted in accordance with clause 13.1(b); and
 - (ii) receipt of the monthly report in accordance with clause 9.2 in respect of the month to which the relevant Subsidy Amount relates.
- (d) The Operator will only be entitled to claim, and the Commission will only be liable to pay, the pro rata portion of the Subsidy Amount (or such lesser amount reflecting the actual costs incurred by the Operator) relating to any period of suspension contemplated by clauses 14.3, 19.1 or 20, except to the extent that such suspension or non-performance (as the case may be) is caused or contributed to by an act or omission of the Operator or its Staff.

13.2 Incentive payment for specified pre-bookings

- (a) Clause 13.2(b) only applies in respect of the first 12 months from the Service Commencement Date (**Incentive Period**).
- (b) In respect of each pre-booked Ticket purchased by a Bruny Island Resident or a Bruny Island Resident Concession during the Incentive Period (and not refunded), the Commission will pay the Operator:
 - (i) (inclusive of GST) for each such Ticket purchased by a Bruny Island Resident; and
 - (ii) (inclusive of GST) for each such Ticket purchased by a Bruny Island Resident Concession,(together, the **Incentive Amounts**).
- (c) On the first Business Day of each month beginning in the second month of the Incentive Period and ending on the first month after the expiry of the Incentive Period, the Operator must submit to the Commission a payment claim together with a tax invoice for any Incentive Amounts that have accrued during the previous month of the Incentive Period.
- (d) The Commission must pay the Operator the applicable Incentive Amounts within 20 Business Days of the later of:
 - (i) receipt of the documentation required to be submitted in accordance with clause 13.2(c); and
 - (ii) receipt of information which substantiates any Incentive Amounts claimed.

13.3 Manner of payments

All payments under this Contract must be made by transfer of immediately available funds to the account specified by the Commission or the Operator, as the case requires, by 11.00 am (Hobart time) on the date that payment is payable.

13.4 Set off

Without limiting the Commission's other rights under this Contract or at law, if the Commission or the Licensor has a bona fide claim to money against any Operator Related Company, whether for damages or otherwise, arising out of or in any way in connection with a Project Document or on any other legal, contractual or equitable basis then the Commission may withhold, deduct or set-off the moneys due or claim against any sum which the Operator is or may be entitled to arising out of or in any way in connection with the Project Document.

13.5 GST

- (a) Capitalised terms used in this clause 13.5 which are not defined in this Contract but which are defined in the GST Act, have the same meanings given in the GST Act.
- (b) Any Consideration to be paid or provided for a supply made under or in relation to this Contract, unless specifically described as 'GST inclusive', does not include an amount on account of GST.
- (c) If GST is payable on a Taxable Supply made under, by reference to or in relation to this Contract, the party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly stated to be GST inclusive.
- (d) In the calculation of a cost, expense or other liability incurred by a party, the amount of any Input Tax Credit entitlement in relation to the relevant cost, expense or other liability must be excluded. A party will be assumed to have an entitlement to a full Input Tax Credit unless it demonstrates otherwise prior to the date on which the Consideration must be provided.
- (e) Subject to clause 13.5(f), the GST Amount, or an appropriate component of it, is payable on the earlier of:
 - (i) the first date on which all or any part of the Consideration for the Taxable Supply, or a component of it that is treated as a separate supply, is provided; and
 - (ii) the date five Business Days after the date on which a Tax Invoice is issued in relation to the Taxable Supply, or a component of it that is treated as a separate supply.
- (f) Despite clause 13.5(e), the GST Amount will only become payable if the supplier has issued a Tax Invoice that complies with the requirements of the GST Act.

- (g) If an amount is paid by a party for GST, and that amount differs from the GST Amount in accordance with the GST Act (**Adjustment**), the supplier within 14 days of becoming aware of the Adjustment must notify the recipient of the Adjustment and:
 - (i) may recover from the recipient the difference between the amount paid and the GST Amount, provided the supplier first issues the recipient an adjustment note (except where the recipient is required to issue the adjustment note); or
 - (ii) must refund to the recipient the difference between the amount paid and the GST Amount within 14 days of becoming aware of the Adjustment.

13.6 Interest

If any moneys owing by any Operator Related Company to the Commission, or by the Commission to any Operator Related Company, under this Contract (as the case may be) are not paid on the due date for payment then the amount attracts and bears interest, calculated and payable daily, from the due date for payment until the date of actual payment at the greater of:

- (a) \$50.00; and
- (b) the small business "small overdraft" rate published by the Reserve Bank of Australia in its "Indicator Lending Rates series" provided however that if the Reserve Bank of Australia ceases to publish such rate, there must be substituted a rate agreed upon between the Commission and the Operator or, in default of agreement, a rate (as reasonably determined by the Commission) which most closely reflects that type of rate.

14 Force Majeure

14.1 Force Majeure Events

The following events constitute Force Majeure Events:

- (a) compliance with any order, demand, requirement, recommendation or request of any international, national, port, transportation, local or other authority or court which prevents the Crown or the Commission from providing access to any Landside Infrastructure or prevents the operation of a Contract Ferry;
- (b) fire, earthquake, explosion, lightning, storm, high seas, flood or extreme weather;
- (c) a war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, blockade or civil commotion;

- (d) any damage to any Landside Infrastructure, including by the impact of vehicles or vessels, caused by a third party that renders the Landside Infrastructure unavailable or inaccessible;
- (e) any damage to any Contract Ferry resulting from the impact of vehicles or other vessels caused by a third party that renders the Contract Ferry unavailable;
- (f) the occurrence of any of the matters contemplated by clause 6.3(d);
- (g) any event where the Master reasonably determines it would be unsafe to operate the Ferry Service provided the Operator has complied with its obligations set out in clause 5.9(f);
- (h) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel; or
- (i) an epidemic or quarantine restriction,

other than to the extent caused or contributed to by the affected party or its officers, employees, agents or subcontractors.

14.2 **Claims for relief**

- (a) If, by reason of a Force Majeure Event occurring, any party is wholly or partially unable to carry out its obligations under a Service Document that party must, as soon as it becomes aware of the Force Majeure Event, give to the other parties prompt written notice of the Force Majeure Event together with full particulars of all relevant matters including:
 - (i) details of the Force Majeure Event;
 - (ii) details of the obligations affected;
 - (iii) details of the action that the party has taken to remedy the situation and details of the action that the party proposes to take to remedy the situation; and
 - (iv) an estimate of the time during which the party will be unable to carry out its obligations due to the Force Majeure Event.
- (b) The parties must promptly meet and endeavour to identify an alternative viable means of carrying out the applicable obligations affected by the Force Majeure Event described in the notice given under this clause.
- (c) The party giving the notice must provide the other party with all further relevant information pertaining to the Force Majeure Event as may reasonably be requested by the other party.

14.3 **Suspension of obligations**

Following a notice of a Force Majeure Event under clause 14.2, and while the Force Majeure Event continues but subject to clause 13.1(d), the obligations which cannot be performed because of the Force Majeure Event will be suspended.

14.4 Mitigation

- (a) Subject to clause 14.4(b), if an Operator Related Company is prevented from carrying on its obligations under this Contract, because of the impact of a Force Majeure Event, it must:
 - (i) remedy or minimise the effects of the Force Majeure Event to the extent reasonably practicable; and
 - (ii) take all action reasonably practicable to mitigate any Loss suffered by the Commission or any passengers as a result of the Operator Related Company's failure to carry out its obligations under this Contract.
- (b) If a Force Majeure Event of the type referred to in clause 14.1(f) occurs, the Commission must use reasonable endeavours to remedy or minimise the effects of that Force Majeure Event.
- (c) The Term will not be extended by the period of a Force Majeure Event.

15 Representations and warranties

15.1 Representations and warranties by the Operator Related Companies

Each Operator Related Company represents and warrants to the Commission and the Licensor the following:

- (a) **(Information)** all of the information, representations and other matters of fact communicated in writing to the Commission or the Commission's Associates by the Operator Related Company and its respective directors, officers, employees, servants, agents or related entities, in relation to the entering into of the Project Documents were (at the dates submitted to the Commission or the Commission's Associates) and remain, in all material respects, true, accurate and not misleading;
- (b) **(No representations or warranties by the Commission)** before the Date of the Contract, it made all enquiries that it wanted to make in relation to the subject matter of the Project Documents, and did not rely on any representation or warranty by the Commission or the Commission's Associates;
- (c) **(Status)** it is a corporation duly incorporated and validly existing under the laws of Australia;
- (d) **(Power)** it has the power to enter into and perform its obligations under the Project Documents to which it is a party, to carry out the transactions contemplated by the Project Documents to which it is a party and to carry on its business as now conducted or contemplated;
- (e) **(Corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of the Project Documents to which

it is a party and to carry out the transactions contemplated by the Project Documents to which it is a party;

- (f) **(Document binding)** each of the Project Documents to which it is a party creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity;
- (g) **(Transactions permitted)** the execution and performance of the Project Documents to which it is a party and each transaction contemplated under them does not and will not violate in any respect a provision of:
 - (i) any law or treaty or a judgment, ruling, order or decree binding on it;
 - (ii) its constitution or other constituent documents; or
 - (iii) any other document or agreement that is binding on it or its assets.
- (h) **(Legal proceedings)**
 - (i) no suit, cause of action, proceeding, application, claim or investigation is current, pending, threatened or in prospect against it including that there is no outstanding product liability or workers' compensation claim;
 - (ii) no resolution has been passed for its winding up;
 - (iii) no resolution has been passed for the appointment of an administrator to it;
 - (iv) there is no unsatisfied judgment against it; and
 - (v) there are no facts, matters or circumstances that give any person the right to apply to wind it up or to appoint a controller within the meaning of section 9 of the Corporations Act or an administrator or an inspector under the Corporations Act in respect of it or any part of its undertaking or assets or income;
- (i) **(Authorisations)** each Authorisation that is required in relation to, or for the purpose of performing the Ferry Service and the Operator Activities, has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them. To the extent this warranty applies to Authorisations that are only required (and can only be obtained) from the Service Commencement Date, it is only given as at the Service Commencement Date;
- (j) **(Ownership of non-Commission owned Contract Ferries)** each Contract Ferry used by the Operator in the carrying out of the Operator Activities is solely owned by the Operator, other than:
 - (i) in respect of the Back-up Vessel as at the Date of the Contract, which is solely owned by the Initial Back-up Vessel Owner; and

- (ii) a Contract Ferry owned by, or provided to the Operator by, the Commission;
- (k) **(No Security Interests)** none of its property (including any Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner) is subject to any Security Interest (other than a Permitted Security Interest);
- (l) **(No trust)** it does not hold any assets as the trustee of any trust;
- (m) **(Own investigations)** it has relied entirely on its own assessments and investigations in relation to deciding to enter into the Project Documents to which it is a party and has not relied on any information, statement, document or representation by the Commission or the Commission's Associates in relation to such matters;
- (n) **(Intellectual Property)** the Operator represents and warrants that:
 - (i) it is the sole legal and beneficial owner of, or has a lawful right to use and to grant the licence of all Intellectual Property necessary to carry out the Operator Activities and comply with its obligations in accordance with the terms of this Contract;
 - (ii) there have not been and there will not be any assignments, licences, options or other dealings with any Intellectual Property that would conflict with the rights of the Commission under this Contract; and
 - (iii) none of the Operator Activities nor the Contract Material or use of any of them, infringes the rights, including the Intellectual Property or Moral Rights, of or duties owed to any person, whether arising under contract, statute, common law or otherwise; and
- (o) **(Funding of New Vessels)** each Operator Related Company represents and warrants that it does not require any external debt financing for the procurement of the New Vessels in accordance with this Contract.

15.2 Acknowledgments

- (a) In this clause 15.2, the term **Disclosed Information** means all information of whatever nature that is obtained by or on behalf of any Operator Related Company from the Commission, the Commission's Associates or any Government Body including:
 - (i) the request for information and request for proposal documents for the Ferry Service and any information issued or disclosed in relation to the request for information and/or request for proposal processes;
 - (ii) all discussions and negotiations between the Commission and the Commission's Associates on the one hand, and any Operator Related Company and the Operator's Associates, on the other hand, relating directly or indirectly to this Contract; and
 - (iii) any other information disclosed to any Operator Related Company or any person acting on their behalf by the Commission or the

Commission's Associate or any person acting on their behalf or which is otherwise acquired by, or comes to the knowledge of, the Commission or any person acting on their behalf directly or indirectly from any of them, in relation to the contracting of the Ferry Service, whether the information is in oral, visual or written form or is recorded in any other medium.

- (b) Each Operator Related Company acknowledges to the Commission the following:
 - (i) the Operator Related Company acknowledges that, except as expressly set out in the Project Documents, none of the Commission nor any of the Commission's Associates has made any representation, given any advice or given any warranty or undertaking of any kind in respect to:
 - (A) any of the Landside Infrastructure, the Ferry Service or any matter in relation to the Project Documents;
 - (B) any transaction or arrangement contemplated under the Project Documents; or
 - (C) any other matter relevant to the Operator Related Company's decision to enter into the Project Documents to which it is a party.
 - (ii) Without limiting the generality of clause 15.2(b)(i), each Operator Related Company acknowledges the following:
 - (A) none of the Commission or the Commission's Associates, nor any other person acting on behalf of or associated with any of them, has verified the accuracy, reliability or completeness of the Disclosed Information;
 - (B) none of the Commission or the Commission's Associates, nor any other person acting on behalf of or associated with any of them, has made any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
 - (C) the Operator Related Company has not relied in any way on the skill or judgment of the Commission or the Commission's Associates or any person acting on behalf of or associated with any of them and has relied absolutely on its own opinion and professional advice based upon its own independent analysis, assessment, investigation and appraisal in deciding to enter into this Contract; and
 - (D) the Operator Related Company has carried out all relevant investigations and has examined and acquainted itself concerning:
 - I. the contents, correctness and sufficiency of the Disclosed Information;

- II. all information which is relevant to the risks, contingencies and other circumstances which could affect its decision to enter into this Contract; and
- III. all amounts payable between the parties to this Contract.

15.3 Warranties and acknowledgements correct

- (a) Each Operator Related Company represents and warrants to the Commission that, except as disclosed in writing to the Commission, the statements in clauses 15.1 and 15.2 are true and correct and not misleading on the Date of the Contract.
- (b) Each Operator Related Company makes each of the acknowledgements in clause 15.2 as at the Date of the Contract.

15.4 Updating of warranties and acknowledgements

Subject to clause 15.5, each Operator Related Company undertakes that each of the statements in clauses 15.1 and 15.2 (including the warranties and acknowledgements) will be true and correct and not misleading:

- (a) on the Date of the Contract; and
- (b) on each and every day after the Date of the Contract to the expiry of the Term,

as if they had been made on that date.

15.5 Notification of change

Each Operator Related Company must immediately notify the Commission upon becoming aware that a representation, warranty or acknowledgement it has given pursuant to this clause has become untrue or misleading.

15.6 Reliance on representations, warranties and acknowledgements

Each Operator Related Company acknowledges that the Commission has entered, or will enter, into this Contract in reliance on the representations, warranties and acknowledgements in this clause 15.

15.7 Commission's warranties

The Commission represents and warrants to each Operator Related Company that:

- (a) it has the power to enter into and perform its obligations under this Contract and to carry out the transactions contemplated by this Contract; and
- (b) this Contract constitutes a valid and binding obligation of the Commission, subject to any necessary stamping and registration.

16 Intellectual Property

16.1 Ownership

- (a) Nothing in this Contract confers any right in the Commission IP to the Operator other than as licensee as expressly set out in clause 16.2(b).
- (b) The Operator retains ownership of the Operator-owned Contract Material and nothing in this Contract confers any right in the Operator-owned Contract Material to the Commission other than as licensee as expressly set out in clause 16.2(a).
- (c) The Operator assigns to the Commission all of its right, title and interest, including all Intellectual Property Rights, in the Contract Material (other than the Operator-owned Contract Material) absolutely and irrevocably:
 - (i) on the Date of the Contract, in respect of such Contract Material created prior to that date; and
 - (ii) on creation in respect of such Contract Material created on and from the Date of the Contract.

16.2 Licence of Intellectual Property

- (a) The Operator grants to the Commission a non-exclusive, royalty free, perpetual, irrevocable licence, with the right to sub-licence, of the Operator-owned Contract Material for the purposes of the Commission:
 - (i) performing its obligations or exercising its rights under the Project Documents; and
 - (ii) granting any concession or similar right to manage or operate a ferry service similar to the Ferry Service including in relation to any procurement process for such concession or similar right. Without limiting the foregoing, this purpose includes providing tenderers of such ferry service with access on a confidential basis to the Operator-owned Contract Material.
- (b) The Commission grants to the Operator a non-exclusive, royalty free licence during the Term with the right to sub-licence subject to clause 16.2(c), to use the Intellectual Property assigned to the Commission pursuant to clause 16.1(c) and the Commission IP for the sole and limited purpose of, and only to the extent necessary for, performing its obligations under this Contract.
- (c) The Operator may only grant a sub-licence of the rights granted to it under clause 16.2(b) to a subcontractor under and in accordance with this Contract and then only to the extent necessary for the subcontractor to perform its obligations under the relevant subcontract.

16.3 Commission Marks

The Operator must not use any Commission Marks without the prior written consent of the Commission.

16.4 IP Claims

- (a) The Operator must notify the Commission immediately if it becomes aware of:
 - (i) any infringement or threatened infringement of any Contract Material, Operator-owned Contract Material or Commission IP by any third party;
 - (ii) any Claim by any third party that the Contract Material, Operator-owned Contract Material or Commission IP infringes the rights of a third party;
 - (iii) any unauthorised use of Contract Material, Operator-owned Contract Material or Commission IP by any third party; or
 - (iv) any threatened challenge of the validity of the licence granted under clause 16.2.
- (b) Without limiting the Commission's rights under this Contract or otherwise, if an Infringement Claim is made or threatened:
 - (i) the party against whom the Infringement Claim is made must notify the other party as soon as is practicable;
 - (ii) upon request from the Commission, the Operator must at its own cost conduct the defence of the Infringement Claim, but may not settle it without the Commission's prior written consent; and
 - (iii) if the Infringement Claim is successful, or if it is agreed that there is an infringement of the Intellectual Property of the relevant person, the Operator must at the option of the Commission:
 - (A) modify the Operator Activities, Contract Material or the licence granted under clause 16.2 (as the case may be) to render the use non-infringing; or
 - (B) at no cost to the Commission, render the relevant activity non-infringing by procuring for the Operator or the Commission (as the case requires) the right to exercise the Intellectual Property of the person making the Infringement Claim.

17 Insurance

17.1 Insurance policies

- (a) The Operator must effect and maintain, or cause to be effected and maintained, the following insurances in accordance with this clause 17:

- (i) a public liability policy of insurance covering the Commission, the Crown, the Licensor, each Operator Related Company and their Staff, for an amount in respect of any one occurrence of \$50 million;
 - (ii) a policy of insurance for property damage covering any capital improvements to the Landside Infrastructure by the Operator which are not otherwise insured by the Crown for their full replacement value;
 - (iii) workers compensation insurance as required by Legislative Requirements (including common law liability, if applicable) in respect of the Operator Related Company's employees involved in carrying out the Operator's Activities. Each Operator Related Company must ensure that any and all subcontractors performing or assisting with the Operator Activities have similar insurance;
 - (iv) marine liability (protection and indemnity or similar) insurance in relation to the use, charter or licence of vessels (including the Contract Ferries) or moorings, pontoons and similar equipment undertaken in relation to the Operator Activities (including the use of the Landside Infrastructure) and the removal of wreck or port blockages for not less than \$100 million for any one claim;
 - (v) environmental impairment liability and clean up policy, or an equivalent form of cover under an alternate policy as approved by the Commission and the Crown for \$25 million for any one claim and period of insurance;
 - (vi) hull and machinery insurance (including war risks) in respect of each Contract Ferry for the full replacement value of each Contract Ferry;
 - (vii) any other insurance required by any Legislative Requirement or Authorisation; and
 - (viii) any other insurance policy or level of coverage that the Commission, the Licensor or the Crown may reasonably require. The Commission will meet the Operator's reasonable and substantiated costs associated with compliance with this clause 17.1(a)(viii).
- (b) Each Operator Related Company must not do any act or thing which might invalidate or prejudice any of the insurances referred to in this clause 17 or the Commission's or Crown's interest in such insurances.

17.2 Insurance policies

- (a) The insurances referred to in clauses 17.1(a)(i), 17.1(a)(ii), 17.1(a)(iv), 17.1(a)(v) or 17.1(a)(vi) must:
 - (i) name the Crown, the Commission and the Operator as contracting insureds for their respective rights and interests, including their own acts or omissions;

- (ii) be effected with a reputable insurer based in Australia with proven experience in the area of cover required by the Commission and the Crown and which has a credit rating of at least A- by Standard and Poor's (Australia) Pty Limited or A3 by Moody's Investors Service, Inc;
 - (iii) be for the relevant amounts set out in clause 17.1; and
 - (iv) be on such terms and with such excesses exclusions, endorsements or alterations as may be approved in writing by the Commission and the Crown (such approval not to be unreasonably withheld).
- (b) The insurances referred to in:
 - (i) clause 17.1(a) other than 17.1(a)(iv), must be maintained for the period from the Date of the Contract until the expiry of the Term or the earlier termination of this Contract; and
 - (ii) clause 17.1(a)(iv), must be maintained for the period from the Service Commencement Date until the expiry of the Term or the earlier termination of this Contract.
- (c) The effecting of insurance does not limit any liability or obligations of any Operator Related Company under any Project Document to which it is a party.

17.3 Compliance with insurances

The Operator:

- (a) must comply with and abide by the terms and conditions of the insurances required to be taken out under this clause 17; and
- (b) is responsible for the payment of all excesses and premiums which may be contained or payable, as the case may be, within or by the terms of such insurances arranged by the Operator.

17.4 Provision of documents and assistance to the Commission and the Crown

Each Operator Related Company must promptly provide such documentation, information and assistance as may be reasonably required by the Commission or the Crown in this regard.

17.5 Proof of insurance

- (a) On or before the Date of the Contract, whenever any policy of insurance referred to in this clause 17 is renewed and whenever reasonably requested in writing by the Commission or the Crown, the Operator must provide evidence to the satisfaction of the Commission or the Crown (as applicable) that the Operator has in place the insurance required to be effected and maintained under this clause 17.

- (b) The rights given to the Commission and the Crown by clause 17.5(a) are in addition to any other right of the Commission and the Crown.

17.6 Notification

The Operator must:

- (a) ensure that unless the Commission otherwise agrees, the insurances referred to in clauses 17.1(a)(i), 17.1(a)(ii), 17.1(a)(iv), 17.1(a)(v) and 17.1(a)(vi) contain a provision that requires the insurer/s to give no less than 30 Business Days' notice to the Commission and the Crown of any proposed cancellation or material change to the terms of the insurance cover; and
- (b) as soon as practicable but in any event no later than 2 Business Days after the occurrence of any event that may give rise to a Claim under the insurances referred to in clause 17.1(a)(i), 17.1(a)(ii), 17.1(a)(iv), 17.1(a)(v) or 17.1(a)(vi):
 - (i) inform the Commission and the Crown in writing of the occurrence;
 - (ii) keep the Commission and the Crown informed of subsequent developments concerning any Claim; and
 - (iii) comply with all instructions of the Commission and the Crown in relation to any Claim.

17.7 The policies

Any insurance policy in which the Commission or the Crown is named as a contracting insured under this clause 17 must, unless the Commission or the Crown (as applicable) otherwise agrees:

- (a) include a cross liability clause noting that each of the parties comprising the "insured" will be considered as a separate entity, and the insurance applies as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased as a result);
- (b) waive all express or implied rights of subrogation against the Commission and the Crown (as applicable) arising out of the occupation and use of the Landside Infrastructure (including any improvements) by the Operator; and
- (c) include a clause that provides that any non-disclosure or breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

17.8 Settlement of Claims

- (a) Upon settlement of a Claim under any insurance required under this clause 17 covering damage to the Landside Infrastructure or any other property, to the extent that the Commission or the Crown directs that the affected property:

- (i) is not to be reinstated, the Operator must ensure that any moneys received by them are paid to the Commission or the Crown (as applicable); and
 - (ii) is to be reinstated, then the Operator will reimburse the Commission or the Crown (as applicable) for the moneys paid or for any allowance made to the Operator in respect of the reinstatement.
- (b) The Operator must immediately notify the Commission and the Crown in writing of any event that leads or might lead to a rejection of a claim for compensation or payment under any insurance policy and must comply with all instructions of the Commission and the Crown in relation to its claim.

18 Indemnity, proportionate liability and exclusion of specified Loss

18.1 Indemnity by the Operator

- (a) The Operator indemnifies, and must keep indemnified, the Commission, the Commission's Associates and any Step-In Party (**Indemnified Persons**) from and against all Losses or Claims that may be incurred or sustained by any or all of the Indemnified Persons in relation to:
 - (i) the carrying out of the Operator's Activities;
 - (ii) without limiting clause 18.1(a)(i):
 - (A) death or personal injury (including disease) of any person in relation to the carrying out of the Operator's Activities;
 - (B) Contamination of any part of the environment in relation to the carrying out of the Operator's Activities;
 - (C) loss of, or damage to, the property of any person including the Commission, any Commission's Associates or any third party in relation to the carrying out of the Operator's Activities; or
 - (D) the possession, use or operation by the Operator, its Staff or any Step-In Party of any Contract Ferry;
 - (iii) any Termination Event; or
 - (iv) any breach by any Operator Related Company of its obligations under this Contract.
- (b) This indemnity will not apply to the extent that the Loss is caused or contributed to by any:
 - (i) breach of the Service Documents by the Commission or the Licensor (as applicable); or

- (ii) fraudulent or negligent act or omission, or wilful misconduct, on the part of the Indemnified Persons.
- (c) This indemnity will not exclude any other right of the Commission or the Commission's Associates to be indemnified by any Operator Related Company.
- (d) Unless expressly provided otherwise, each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties.
- (e) An Indemnified Person may recover a payment under an indemnity in this Contract before it makes the payment in respect of which the indemnity is given.

18.2 Proportionate liability

The parties agree that:

- (a) Part 9A of the Civil Liability Act 2002 (Tas) does not apply to this Contract; and
- (b) the rights, obligations and liabilities (whether such rights, obligations or liabilities are sought to be enforced as a Claim in contract, in tort or otherwise) of the parties in relation to this Contract are those that would exist if Part 9A of the Civil Liability Act 2002 (Tas) did not apply.

18.3 Exclusion of specified Loss

Notwithstanding any other provision of this Contract to the contrary, the Operator shall not be liable to the Commission under this Contract (including under clause 18.1) for loss arising from a claim made by a Ticket holder for pure economic loss against the Commission due to a missed or delayed Trip, to the extent that such loss is solely attributable to the wrongful (including negligent) act or omission of the Commission.

19 Suspension

19.1 Right of suspension

Without limiting the operation of clauses 14.3 or 20, the Commission may suspend all or some of the Operator Activities:

- (a) if there is a default by any Operator Related Company as contemplated in clause 21.1 or a Termination Event;
- (b) for the protection or safety of any person or property; or
- (c) if maintenance, upgrade or repair works are required to the Initial Primary Vessel or all or any of the Landside Infrastructure during the Term and the Ferry Service cannot be safely performed, or may be adversely impacted, as a consequence.

19.2 Notice of suspension

The Commission must serve written notice on the Operator as soon as practicable of a suspension and the relevant details of the suspension including:

- (a) the reasons for the suspension;
- (b) the Landside Infrastructure affected;
- (c) the access rights granted under clause 6.1 which are affected;
- (d) the proposed or likely period of suspension; and
- (e) the actions the Operator must take to have the suspension lifted.

19.3 Duty to mitigate

Each Operator Related Company must use its best endeavours to mitigate and/or remedy the effects of a suspension where the suspension arises from the requirements for the protection or safety of any person or property.

19.4 Lifting of suspension

As soon as practicable after the reasons for the suspension have ceased, the Commission must lift any suspension imposed and notify the Operator of the lifting of any rights suspended under this clause 19.

19.5 Effect of suspension

To the extent that the suspension is as a result of the wrongful act, default or omission of any Operator Related Company, its Staff or passengers:

- (a) the Operator is liable for all Losses incurred by the Commission and the Commission's Associates as a result of the suspension;
- (b) the suspension does not affect or suspend any other obligation of the parties under this Contract; and
- (c) the suspension shall be without prejudice to the parties' rights in respect of any breach of this Contract.

20 Step-in

20.1 Step-in

- (a) If a Step-In Event occurs, subject to the Commission providing a notice to the Operator in accordance with clause 20.1(b), the Step-In Party may exercise the Step-In Rights.
- (b) The notice referred to in clause 20.1(a) must be in writing and must specify:
 - (i) the Step-In Event which has triggered the Step-In Right;

- (ii) the Operator Activities which the Commission proposes the Step-In Party will perform;
- (iii) the identity of the Step-In Party;
- (iv) the date on which the relevant Step-In Party proposes to commence performing the relevant Operator Activities; and
- (v) the date on which, if any, the relevant Step-In Party proposes to cease exercising the relevant Operator Activities.

20.2 Step-In Rights

If a Step-In Event occurs and the Commission has provided a notice to the Operator in accordance with clause 20.1, a Step-In Party may, in performing the Operator Activities referred to in that notice, do anything in respect of those activities that the applicable Operator Related Company could do including:

- (a) enter into and remain in possession of all or any of the Assets;
- (b) operate and manage all of any of the Assets;
- (c) exercise all or any of the Operator Related Company's rights, and perform all or any of the Operator Related Company's obligations in relation to the performance of the Operator Activities under or in relation to a Service Document or any other document to which the Operator Related Company is a party in relation to the Operator Activities and as if it were the Operator Related Company, to the exclusion of the Operator Related Company;
- (d) do anything the Step-In Party considers necessary or desirable to remedy the Step-In Event or overcome the risk or mitigate any consequences resulting from the Step-In Event; and
- (e) do anything incidental to the matters listed in clauses 20.2(a) to 20.2(d).

20.3 Operator Related Companies' obligations during any Step-In Event

- (a) Each Operator Related Company must:
 - (i) cooperate, and ensure that its Staff cooperate, with the Step-In Party in the exercise of the Step-In Rights;
 - (ii) assist the Step-In Party to perform all or any of the Operator Related Company's obligations under or in relation to any Accreditation or other Authorisation held by the Operator Related Company;
 - (iii) take any step which the Step-In Party considers necessary or desirable to remedy the Step-In Event or overcome the risk or mitigate any consequences resulting from the Step-In Event; and
 - (iv) ensure that all of the Staff do likewise,
- to enable the Step-In Party to exercise the Step-In Rights.

- (b) Without limiting clause 20.3(a), each Operator Related Company must:
 - (i) allow the Step-In Party to access and use:
 - (A) all or any of the land and assets used in the performance of Operator Activities;
 - (B) its Staff; and
 - (C) any information the Step-In Party reasonably requires;
 - (ii) to the extent necessary, procure any consents to disclose Personal Information (as that term is defined in clause 25.4) to the Step-In Party;
 - (iii) assist the Step-In Party in dealing with any Accreditation issues;
 - (iv) comply with all reasonable directions given by the Step-In Party; and
 - (v) ensure that all of the Staff do likewise,to enable the Step-In Party to exercise its Step-In Rights.
- (c) Each Operator Related Company irrevocably appoints the Commission as its attorney with full power to exercise the Step-In Rights (or to delegate the exercise of the Step-In Rights to another Step-In Party).
- (d) The Operator's obligations to undertake the Ferry Service will be suspended to the extent and for such period as is necessary to permit the Commission to exercise the Step-In Rights.
- (e) Each Operator Related Company acknowledges that a Step-In Party is not under any obligation to remedy the Step-In Event nor to overcome the risk or mitigate any consequences resulting from the Step-In Event.

20.4 Treatment of Fare Revenue during step-in

- (a) Subject to clause 20.4(b), during the period when the Commission is exercising its Step-In Rights, the Commission must account to the Operator for any Fare Revenue collected by the Commission or another Step-In Party in performing the Operator Activities (**Step-In Revenues**).
- (b) The Commission will be entitled to deduct from any Step-In Revenues during any month the reasonable costs incurred by the Commission in exercising the Step-In Rights during that month, including all reasonable costs incurred by a Step-In Party in performing the Operator Activities during that month.
- (c) If the aggregate amount to be deducted under clause 20.4(b) is greater than the Step-In Revenues for the relevant month, the difference may be recovered during any subsequent month and, to the extent not recovered, will be a debt due and payable by the Operator to the Commission.

20.5 No liability

Each Operator Related Company acknowledges that the Commission will have no liability to any Operator Related Company, and an Operator Related Company will not be entitled to make any Claim against the Commission in relation to:

- (a) any conduct, delay, negligence or breach of duty in the exercise or non-exercise by a Step-In Party of its Step-In Rights; nor
- (b) for any Loss which results,

except where it arises from fraud, wilful default or gross negligence on the part of the Step-In Party.

20.6 Step-out

- (a) A Step-In Party must cease to exercise its Step-In Rights as soon as reasonable practicable and, in any event, upon the earlier of:
 - (i) the relevant Step-In Event being remedied (or the risk or consequences resulting from the Step-In Event being overcome) to the satisfaction of the Commission; and
 - (ii) the Commission notifying the Operator in writing that the Step-In Party will no longer exercise its Step-In Rights.
- (b) The Commission must give written notice to the Operator of the date on which the Step-In Party will cease to exercise its Step-In Rights (which notice must be given by the Commission to the Operator at least 5 Business Days prior to the date the Step-In Party proposes to cease to exercise its Step-In Rights).
- (c) The Commission and the Operator must consult with each other with the intention of ensuring that the transition from the Step-In Party ceasing to exercise its Step-In Rights to the Operator resuming the performance of the relevant Operator Activities is effected without interruption to the Operator Activities.
- (d) Upon the Step-In Party ceasing to exercise its Step-In Rights, the applicable Operator Related Company must resume the performance of relevant Operator Activities in accordance with this Contract (unless this Contract has been terminated).

21 Default and termination

21.1 Notice of breach which is capable of remedy

If an Operator Related Company commits a breach of this Contract which is capable of remedy, the Commission may give a written notice to the applicable Operator Related Company in accordance with clause 21.2.

21.2 Contents of notice

The notice under clause 21.1 must state:

- (a) that it is a notice under clause 21.1;
- (b) the relevant breach relied upon; and
- (c) that the applicable Operator Related Company must rectify the breach within 5 Business Days of receipt of the notice issued in accordance with clause 21.1 (or such longer period as the applicable Operator Related Company can demonstrate to the satisfaction of the Commission is reasonable having regard to the nature of the breach). If a longer period is agreed, and if required by the Commission, the applicable Operator Related Company must prepare a rectification plan for the approval of the Commission (such approval not to be unreasonably withheld)

21.3 Right to terminate

The following are Termination Events:

- (a) **(Breach capable of remedy)** an Operator Related Company fails to rectify a breach of this Contract within the applicable period contemplated in clause 21.2(c) or, if applicable, the rectification plan contemplated in clause 21.2(c) is not approved by the Commission;
- (b) **(Breach incapable of remedy)** an Operator Related Company commits a breach of this Contract which, in the Commission's reasonable opinion, is incapable of remedy;
- (c) **(Non-performance of KPI)** there are more than 5 KPI Defaults within any Financial Year (or part thereof) during the Term;
- (d) **(Insolvency)** an Insolvency Event occurs;
- (e) **(Unlawful)** except where clause 21.3(k) applies, it becomes unlawful for any Operator Related Company to perform any of the Operator Activities;
- (f) **(Abandonment)** any Operator Related Company abandons, ceases or suspends (except as otherwise permitted under this Contract) the conduct of all or a substantial part of the Operator Activities or it threatens or expresses an intention to do so;
- (g) **(Assignment)** any Operator Related Company breaches clause 29.4;
- (h) **(Change in Control)** any Operator Related Company breaches clause 29.5;
- (i) **(Subcontracting)** any Operator Related Company breaches clause 5.8;
- (j) **(Ownership)** the Operator or the Initial Back-up Vessel Owner breaches clause 15.1(j) or clause 15.1(k);

- (k) **(Revocation of Authorisation)** an Authorisation that is material to the performance by any Operator Related Company of this Contract, or to the validity and enforceability of this Contract or for the performance of the Operator Activities or the continuity of the Operator Activities, is repealed, revoked or terminated or expires, or is modified or amended or conditions are attached to it in a manner unacceptable to the Commission, and is not replaced by another Authorisation acceptable to the Commission;
- (l) **(New Vessel Contract)** the Operator fails to enter into all of the New Vessel Contracts within 6 months after the expiry of the period specified in clause 7.2(a);
- (m) **(No reasonable prospect of delivery)** prior to the applicable date for delivery of a New Vessel contemplated in clause 7.2(d), the Commission reasonably forms the view that there is no reasonable prospect that the Operator will deliver the New Vessel by that date for delivery;
- (n) **(Breach of the PIP Act)** the Operator breaches the PIP Act; and
- (o) **(Fraud)** any Operator Related Company has acted fraudulently or dishonestly in relation to the provision of the Operator Activities or the performance of any of its obligations under the Project Documents to which it is a party.

21.4 **Commission's right to terminate on a Termination Event**

- (a) On the occurrence of a Termination Event, the Commission may by written notice to the Operator Related Companies terminate this Contract effective on the date specified in the notice.
- (b) No failure to exercise, nor any delay in exercising the Commission's rights under this clause will operate as a waiver or cause the rights of the Commission under this clause to lapse or be otherwise diminished.
- (c) This termination right is without prejudice to the Commission's right to exercise all legal and equitable rights and remedies available to the Commission in respect of the Termination Event (whether under this Contract or not).
- (d) Where the Commission terminates under clause 21.3 then the Commission will have the same remedies (including damages) against the Operator Related Companies as the Commission would have had if this Contract had been repudiated by an Operator Related Company and the Commission had terminated this Contract.

21.5 **Termination due to a Force Majeure Event**

If, by reason of a Force Majeure Event occurring, an Operator Related Company is unable to carry out its obligations under a Service Document for a continuing period of 180 days, then the Commission may terminate each Service Document by notice to the Operator.

21.6 Termination of this Contract due to termination of the Licence

If the Licence is terminated then:

- (a) this Contract will automatically terminate on the date of such termination and without the necessity for notice; and
- (b) where the termination of the Licence was due to the default of, or repudiation by, the Operator, then the Commission will have the same remedies (including damages) against the Operator as the Commission would have had if this Contract had been repudiated by the Operator and the Commission had terminated this Contract.

21.7 Other rights upon termination

Notwithstanding termination of this Contract, any party may be entitled to recover any payments due from any other party under this Contract up to and including the date of termination.

21.8 Clauses which survive termination or expiry of this Contract

This clause 21.8 and clauses 1, 9.9, 12.2(c), 16, 17 (to the extent applicable), 18, 21 (to the extent applicable), 22, 23, 24, 25, 26.4(c), 27, 28 and 29 survive termination or expiry of this Contract.

22 Rights following a Termination Event

22.1 Consequences of a Termination Event

- (a) If a Termination Event occurs, the Commission may, in its absolute discretion and at any time thereafter, elect by written notice to the Operator or the Initial Back-up Vessel Owner to require that party to do either or both of the following:
 - (i) undertake the process contemplated in clause 22.2 to allow the Commission to determine (but being under no obligation to do so) whether to purchase any Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner (as applicable); or
 - (ii) lease any Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner (as applicable) to the Commission or its nominee in accordance with clause 22.3,

and in each case the relevant Operator Related Company must comply with this clause 22.

- (b) Each Operator Related Company acknowledges and agrees that the Commission may require the Operator or the Initial Back-up Vessel Owner (as applicable) to enter into a Vessel Lease with the Commission or its nominee on an interim basis until such time as the Commission either:
 - (i) acquires a Contract Ferry in accordance with clause 22.2; or

- (ii) notifies the applicable Operator Related Company under and in accordance with the terms of the Vessel Lease that it no longer requires that Vessel Lease.

22.2 Right to purchase

If the Commission provides notice in accordance with clause 22.1(a)(i), the following provisions will apply:

- (a) the parties will:
 - (i) procure the services of an independent expert, who must be suitably qualified and experienced, to determine the Fair Value of the Contract Ferry (including any stock of Spares available to any Operator Related Company), which Fair Value as determined by the independent expert will be final and binding;
 - (ii) seek to agree the identity of the independent expert contemplated in clause 22.2(a)(i) or, failing such agreement, the expert will be nominated by the Commission (acting reasonably); and
 - (iii) instruct the independent expert to determine the Fair Value of the Contract Ferry (including any stock of Spares available to any Operator Related Company) by no later than 20 Business Days after the date of appointment of the independent expert;
- (b) the costs of the independent expert will be borne by the Operator;
- (c) following receipt of independent expert's determination of the Fair Value contemplated in clause 22.2(a)(iii), the Commission will notify the applicable Operator Related Company as to whether it:
 - (i) wishes to proceed with the purchase of the Contract Ferry, in which case the Commission will nominate in that notice a Transfer Date and clauses 22.2(d) and 22.2(e) will apply; or
 - (ii) does not wish to proceed with the purchase of the Contract Ferry;
- (d) if clause 22.2(c)(i) applies, the applicable Operator Related Company must transfer or procure the transfer of all title, interest and rights in and to the Contract Ferry (including any stock of Spares available to the Operator Related Company) to the Commission or its nominee:
 - (i) with effect from the Transfer Time;
 - (ii) free of any Security Interest or any claim by any person;
 - (iii) operational and free from damage (subject to fair wear and tear); and
 - (iv) for a purchase consideration of the Adjusted Fair Value; and
- (e) if clause 22.2(c)(i) applies, the applicable Operator Related Company must deliver to the Commission (or its nominee) possession of the Contract Ferry

and all Spares, documents of title, books of account, accounts, records and all other documents relating to the Contract Ferry purchased by the Commission or its nominee by the Transfer Time at Kettering Terminal (or such other location as may be notified to the applicable Operator Related Company by the Commission).

22.3 Right to lease

- (a) If the Commission elects to lease a Contract Ferry owned by the Operator or the Initial Back-up Vessel Owner (as applicable) in accordance with clause 22.1(a)(ii), the applicable Operator Related Company must grant to the Commission a lease on the terms of the Vessel Lease in relation to that Contract Ferry which lease will have a commencement date as contemplated by the Commission's notice of election.
- (b) The Commission is entitled to complete the form of Vessel Lease by filling in blanks in accordance with this Contract and otherwise in order to give effect to the intention of the parties, including:
 - (i) the identity of the Contract Ferry for the purposes of Schedule 1 of the Vessel Lease; and
 - (ii) the date of the "Contract" for the purposes of clause 1.1 of the Vessel Lease.
- (c) Within 5 Business Days of receipt of the completed Vessel Lease contemplated by clause 22.3(b), the Operator or the Initial Back-up Vessel Owner (as applicable) must execute the completed Vessel Lease and return an executed version to the Commission.
- (d) Promptly after receiving the executed Vessel Lease from the Operator or the Initial Back-up Vessel Owner (as applicable) pursuant to clause 22.3(c), the Commission must sign and date the Vessel Lease and provide a copy to the Operator or the Initial Back-up Vessel Owner (as applicable).

22.4 Use of Staff

The Operator must ensure that an appropriate number of Staff, having sufficient skills, qualifications and experience (having regard to the number, skills, qualifications and experience of employees required by the Operator to conduct the Ferry Services) are available to be utilised by the Commission (or a nominee of the Commission) to enable the Commission or its nominee (as the case may be) to conduct the Ferry Services after the Transfer Date.

23 Dispute resolution

23.1 Dispute notice and negotiation

- (a) If a dispute arises between the parties in relation to this Contract (**Dispute**), a party to the Dispute (**Referring Party**) may by giving notice to the other parties to the Dispute (**Dispute Notice**) refer the Dispute to the following persons:

- (i) in respect of the Commission, the person occupying the position of "Manager Contract Services" (or equivalent) at the Tasmanian Department of State Growth or that person's delegate; and
 - (ii) in respect of any Operator Related Company, the person occupying the position specified in Item 12 of Schedule 10.
- (b) The Dispute Notice must:
 - (i) be in writing;
 - (ii) state that it is given pursuant to this clause 23.1; and
 - (iii) include or be accompanied by reasonable particulars of the Dispute.
- (c) Within 10 Business Days of the Referring Party giving the Dispute Notice (or such longer period as the parties to the Dispute agree in writing) the persons referred to in clause 23.1(a) must meet at least once to attempt to resolve the Dispute.
- (d) Where a Dispute is not resolved within the period contemplated in clause 23.1(c), the Dispute must be referred to the following persons:
 - (i) in respect of the Commission, the person occupying the position of Departmental Secretary reporting to the Minister responsible for administration of the Transport Act 1981 (Tas) or that person's delegate; and
 - (ii) in respect of any Operator Related Company, the person occupying the position specified in Item 13 of Schedule 10.

23.2 Court proceedings and other relief

- (a) Where the Dispute is not resolved within 20 Business Days of the Referring Party giving the Dispute Notice (or such longer period as the parties agree in writing), then any party to the Dispute may commence proceedings.
- (b) A party may not commence court proceedings in relation to a Dispute, until it has complied with the obligations under this clause 23.
- (c) Nothing in this clause 23 prevents any party from applying to a court at any stage for injunctive or other urgent relief.

23.3 Operator Related Companies to continue performing obligations

Despite the existence of any Dispute as contemplated by this clause 23, each of the Operator Related Companies must continue to perform its other obligations under the Project Documents to which it is a party.

24 Confidentiality

24.1 Parties may disclose contract provisions

Despite any confidentiality or Intellectual Property right subsisting in this Contract or either, or both, an expression of interest or proposal giving rise to it, any party may publish, without reference to the other, all or any part of a Project Document, except those parts identified in Item 14 of Schedule 10 (**Confidential Provisions**).

24.2 Limited confidentiality for Confidential Provisions

- (a) The Head of Agency (as that term is defined in the State Service Act 2000 (Tas)) has determined that the Confidential Provisions must remain confidential.
- (b) The parties must maintain confidentiality of the Confidential Provisions for the period determined and approved by the Head of Agency, so far as the law allows, except to the extent that:
 - (i) the Confidential Provisions are available to the public generally, other than by breach of this Contract;
 - (ii) a law or an applicable regulatory body requires a party to file, record or register something that includes the Confidential Provisions;
 - (iii) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
 - (iv) it is necessary or advisable to disclose the Confidential Provisions to a taxation or fiscal authority;
 - (v) it is necessary to disclose the Confidential Provisions in answer to a question asked of a Minister in the Parliament of Tasmania or otherwise to comply with a Minister's obligations to the Parliament of Tasmania;
 - (vi) the Confidential Provisions are disclosed confidentially to a party's professional advisers:
 - (A) to get professional advice about this Contract; or
 - (B) to enforce this Contract; or
 - (vii) the parties agree otherwise in writing.

24.3 Operator Related Companies must not disclose other material

Subject to clause 24.5, each Operator Related Company must not publicly disclose, or use for a purpose other than this Contract, any information or material acquired or produced in relation to this Contract, including Contract Material (**Confidential Material**), without the Commission's Representative's prior written consent, except to the extent that:

- (a) the Confidential Material is available to the public generally, other than by breach of this Contract;
- (b) a law or an applicable regulatory body requires the Operator to disclose, file, record or register something that includes Confidential Material;
- (c) disclosure is necessary or advisable to get a consent, authorisation, approval or licence from a governmental or public body or authority;
- (d) it is necessary or advisable to disclose the Confidential Material to a taxation or fiscal authority;
- (e) the Confidential Material is disclosed confidentially to professional advisers:
 - (i) to get professional advice about this Contract; or
 - (ii) to enforce this Contract; or
- (f) the parties agree otherwise in writing.

24.4 Employees to comply

The parties must ensure that their respective employees who have access to the Confidential Provisions, Confidential Material, or both, are aware of, and comply with, all confidentiality obligations affecting it.

24.5 Privacy obligations preserved

Nothing in this clause derogates from a party's obligations under the PIP Act or the Privacy Act.

25 Privacy

25.1 Application of clause

This clause 25 applies only if the Operator deals with Personal Information in the course of providing the Operator Activities.

25.2 Personal Information Custodian

If an Operator Related Company is a Personal Information Custodian then the applicable Operator Related Company must:

- (a) notify the Commission's Representative immediately if the Operator Related Company becomes aware of a breach, or possible breach, of the PIP Act; and
- (b) ensure that the Operator Related Company's employees, agents or subcontractors who are required to deal with Personal Information in the course of performing the Operator Activities are aware of, and comply with, the Operator Related Company's obligations under this clause.

25.3 Breach of PIP Act

A breach of the PIP Act by an Operator Related Company is a breach of this Contract that entitles the Commission to terminate this Contract under clause 21.3(n).

25.4 Terms defined in PIP Act

In this clause **Personal Information** and **Personal Information Custodian** have the same meanings as in the PIP Act.

26 Advertising

26.1 General restrictions on disposal of Advertising Rights

Each Operator Related Company must not:

- (a) subject to clause 26.2, enter into any agreement, contract, arrangement or understanding giving, or agreeing to give, any person any Advertising Right;
- (b) grant an option to another person which may require an Operator Related Company to grant, at a later time, any Advertising Right; or
- (c) remove, damage or obscure any Government Advertising installed by the Commission, in accordance with clause 26.3, on the exterior of a Contract Ferry or any part of the Landside Infrastructure.

26.2 Permitted Advertising Contracts

The Operator may enter into a contract (**Permitted Advertising Contract**) granting an Advertising Right in relation to a Contract Ferry and/or a part of the Landside Infrastructure if, and only if, all of the following requirements are satisfied:

- (a) the Advertising Right to which the contract relates, ends, or will end, by the expiration of time no later than the earlier of 12 months after the date the contract is made, and the termination of this Contract;
- (b) at the time the contract is made:
 - (i) the unexpired term of any existing contract giving an Advertising Right in relation to the applicable Contract Ferry or part of the Landside Infrastructure is less than two months; and
 - (ii) except for a contract referred to in clause 26.2(b)(i), no other contract exists granting an Advertising Right in relation to the applicable Contract Ferry or the applicable part of the Landside Infrastructure;
- (c) the Advertising Right, to be granted by the contract, does not conflict with any Government Advertising Period in respect of the applicable Contract Ferry or the Landside Infrastructure as the case may be;

- (d) the Advertising Right automatically lapses if it is unused for a period of more than three consecutive months; and
- (e) before entering into the contract, the Operator has given at least 20 Business Days' notice, in writing, to the Commission of the following matters:
 - (i) the Operator's intention to enter into the proposed contract;
 - (ii) the proposed term of the contract;
 - (iii) the identity of the other party to the proposed contract; and
 - (iv) any other particulars the Commission requires.

26.3 Government Advertising

- (a) Subject to clause 26.3(b), the Commission may by notice in writing to the Operator (**GAP Notice**) specify a period as a Government Advertising Period in respect of either, or both, a Contract Ferry, or all or any part of the Landside Infrastructure.
- (b) The Government Advertising Period specified in a GAP Notice must not:
 - (i) conflict with an Advertising Right previously granted by the Operator in accordance with a Permitted Advertising Contract; or
 - (ii) be for a period greater than 12 months.
- (c) The Commission will not be liable to any Operator Related Company for any costs or expenses whatsoever if the Commission exercises its rights under clause 26.3(a).
- (d) The Commission must remove any Government Advertising from a Contract Ferry or applicable part of the Landside Infrastructure within 20 Business Days after the expiry of a Government Advertising Period, caused by that removal.
- (e) Each Operator Related Company must comply with any reasonable directions, in writing, given by the Commission to the Operator Related Company in relation to the installation, maintenance or removal, by the Commission, of any Government Advertising on the exterior of the Contract Ferry and any applicable part of the Landside Infrastructure.
- (f) The Commission is responsible for installing, maintaining, and removing, Government Advertising on the exterior of the Contract Ferry and any applicable part of the Landside Infrastructure in accordance with this clause 26.3.

26.4 Advertising – general

- (a) Any advertising to be displayed by any Operator Related Company on a Contract Ferry or any part of the Landside Infrastructure must:

- (i) comply with all applicable Legislative Requirements and Authorisations;
 - (ii) comply with any directions issued, from time to time, by the Commission;
 - (iii) comply with any relevant codes of advertising for the advertising industry of general application to the advertising industry;
 - (iv) not depict political, religious or other similar subject matter;
 - (v) not be offensive; and
 - (vi) not obscure the route number and destination details, if any, on the vehicle.
- (b) If, in the Commission's reasonable opinion, advertising on a Contract Ferry or any part of the Landside Infrastructure does not comply with clause 26.4(a), the Commission may require the Operator, at the Operator's cost, to remove the advertising from the Contract Ferry or any part of the Landside Infrastructure.
- (c) The Operator must remove any advertising that forms part of an Advertising Right from a Contract Ferry or any part of the Landside Infrastructure prior to the expiry of the Term or otherwise within 5 Business Days of the termination of this Contract.
- (d) The Operator is entitled to retain any revenue received from entering into any Permitted Advertising Contract.
- (e) Clause 26.4(b) does not apply to Government Advertising.

27 Transition out

- (a) For the purposes of this clause 27, a reference to a "successor service provider" includes a reference to any party tendering to provide services similar to some or all of the Operator Activities performed by the Operator under this Contract.
- (b) Each Operator Related Company must provide all reasonable assistance and information requested by the Commission for the purposes of facilitating a smooth transition out of the Operator Activities, including assisting the Commission preparing for the appointment of a successor service provider to operate all or part of the Operator Activities. This includes:
- (i) providing all reasonable assistance requested by the Commission;
 - (ii) providing the Commission with reasonable access to the Staff and the Operator Records;

- (iii) making available to the Commission any information regarding the Ferry Service and assist in the verification of any such information;
 - (iv) collation and handover of all maintenance data relevant to the Operator Activities carried out in relation to the Landside Infrastructure;
 - (v) making the Contract Ferry, the Spares and the Ferry Service available for inspection by a potential successor service provider or other person nominated by the Commission, as the Commission reasonably requires;
 - (vi) allowing a potential successor service provider or other person nominated by the Commission access to the Staff, as the Commission reasonably requires;
 - (vii) providing a potential successor service provider or other person nominated by the Commission with such information regarding the Ferry Service, and access to the Operator Records, as the Commission reasonably requires; and
 - (viii) providing suitable, experienced and dedicated person(s) to act as the primary interface between the Operator and the Commission and/or its nominees throughout the carrying out of the activities contemplated by this clause 27(b).
- (c) All assistance provided by an Operator Related Company under clause 27(b) must be provided in accordance with the Transition Out Plan and within any timeframe specified by the Commission or, where no timeframe is specified, within a reasonable time.
- (d) Each Operator Related Company warrants to the Commission that to the best of its belief all information provided under this clause 27 will be, at the time it is provided, true and correct in all material respects and will not be misleading, by omission or otherwise.
- (e) An Operator Related Company's obligations in this clause 27 continue for a period of 20 Business Days from the expiry of the Term or the earlier termination of this Contract.

28 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) subject to clause 28(d), must be delivered to the intended recipient by prepaid post or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:
 - (i) to the Commission at:

Address: Parliament Square, 4 Salamanca Place, Hobart, Tasmania

Attention: Commissioner for Transport

Email: transportcommission@stategrowth.tas.gov.au; and

- (ii) to any Operator Related Company in accordance with the details specified in Item 15 of Schedule 10. A notice issued by the Commission to the Operator under this clause 28 is deemed to be a notice also issued to the other Operator Related Companies (where such notice is applicable to another Operator Related Company);
- (c) can only be given by email if the Notice relates to the reports contemplated by clause 9; and
- (d) will be taken to be duly given or made:
 - (i) in the case of delivery in person, when delivered;
 - (ii) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country); and
 - (iii) in the case of email, at the time sent, unless the sender is notified by a system or person involved in the delivery of the email that the email was not successfully sent,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

29 General

29.1 Governing law and jurisdiction

- (a) This Contract is governed by the laws of Tasmania.
- (b) Each party submits to the exclusive jurisdiction of courts exercising jurisdiction in Tasmania in relation to matters concerning this Contract.

29.2 Entire agreement

The Project Documents contain the entire agreement between the parties with respect to their subject matter and supersede all prior agreements and understandings between the parties in relation to it.

29.3 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of each Project Document to which it is a party.

- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in relation to the Project Documents and any instrument executed under the Project Documents must be borne by the Operator. The Operator must indemnify the Commission on demand against any liability for that stamp duty.

29.4 No assignment or dealing

- (a) Each Operator Related Company must not:
 - (i) assign, transfer, encumber or otherwise deal with its interest under any Project Documents to which it is a party;
 - (ii) create or allow to be created, a Security Interest in respect of a Contract Ferry or Spares; or
 - (iii) sell or otherwise dispose of, or part with possession of, a Contract Ferry or any of its constituent parts,except with the prior written consent of the Commission.
- (b) The Commission may assign or transfer its rights or obligations under this Contract to another Government Body.

29.5 Change in control

Each Operator Related Company must not without the Commission's prior written consent allow a person to control (as that term is defined in section 50AA of the Corporations Act) an Operator Related Company where that person was not able to do so at the Date of the Contract.

29.6 Rights held on trust

The Commission holds for itself and on trust for each of the Commission's Associates and each Step-In Party the benefit of each representation, warranty, acknowledgment, indemnity, release and other entitlement in this Contract expressed to be for the benefit of a Commission's Associate or Step-In Party. The trust created under this clause does not prevent or in any other way restrict:

- (a) the parties' ability to amend this Contract;
- (b) any party's ability to terminate this Contract; or
- (c) the exercise of any other right of the parties under this Contract or at law.

29.7 Further assurances

Each party must execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Contract.

29.8 PPS Law

- (a) In this clause 29.8, any term used that is defined in the PPSA, will have the same meaning as given to that term in the PPSA.

- (b) Each Operator Related Company acknowledges that this Contract may give the Commission or the Crown (as applicable) a Security Interest in all Personal Property, including in relation to their proceeds. To the extent that such a Security Interest is created in favour of the Commission or the Crown, each Operator Related Company acknowledges that the Commission or the Crown may register a financing statement in relation to its Security Interest.
- (c) Where there is a Security Interest created under this Contract, the Commission or the Crown need not give any notice under the PPSA to any Operator Related Company (including a notice of a verification statement relating to the registration of any financing statement or any financing change statement), and each Operator Related Company waives the right to receive any such notice, unless the notice is required by the PPSA and cannot be excluded.
- (d) Each Operator Related Company must promptly do anything the Commission or the Crown requires it to do to for the purposes of ensuring that any Security Interest in the Personal Property created under this Contract is enforceable, perfected and otherwise effective:
 - (i) enabling the Commission or the Crown to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by the Commission or the Crown; or
 - (ii) enabling the Commission or the Crown to exercise any rights in connection with the Security Interest or the property subject to the Security Interest.
- (e) Each Operator Related Company must comply with the requirements of a notice given by the Commission or the Crown under clause 29.8(d) within the time stipulated in the notice.
- (f) For the avoidance of doubt, in an event of any conflict or inconsistency, the Commission or the Crown's rights and interests in relation to the Personal Property, including in relation to their proceeds, take precedence over any of the Operator Related Company's rights and interest (now or in the future) in relation to the Personal Property.
- (g) Each Operator Related Company undertakes not to change any of its details that may be recorded in a financing statement registered by the Commission or the Crown (including changing its name, ACN or any ABN allocated to a trust of which it is a trustee or becoming the trustee of a trust) without giving 10 Business Days' prior notice to the Commission or the Crown.
- (h) Each Operator Related Company, the Commission and the Crown agree that in respect of any Security Interest held by the Commission or the Crown created under this Contract, to the extent permitted by law:
 - (i) sections 142 and 143 of the PPSA are excluded;

- (ii) the Commission and the Crown need not comply with the following provisions (and the Operator waives its rights under):
 - (A) sections 95, 121(4), 125, 130, 132(3)(d) or 132(4) of the PPSA; and
 - (B) any other provision of the PPSA notified to the Operator by the Commission or the Crown after the date of this Contract; and
 - (iii) for the purposes of section 115(7) of the PPSA, the Commission and the Crown need not comply with sections 132 and 137(3).
- (i) Where the Commission or the Crown, as the case may be, has powers in addition to, or existing separately from, those in Chapter 4 of the PPSA, those powers will continue to apply and are not limited or excluded (or otherwise adversely affected) by the PPSA. This is despite any other provision of this Contract.
- (j) The Commission, the Crown and each Operator Related Company agree that they will not disclose any of the information set out in section 275(1) of the PPSA in relation to this Contract, any Security Interest created under this Contract or any related document between the parties to any person who may request that information in the circumstances contemplated by section 275(1) (except that an Operator Related Company may do so where required due to the operation of section 275(7) of the PPSA or in accordance with another provision of this Contract or any related document between the parties).
- (k) To the extent that the PPS Law allows them to be excluded, the enforcement provisions in Chapter 4 of the PPSA do not apply to any enforcement of the Commission's rights in respect of any Security Interest in the Personal Property or to the exercise of the Commission's rights in respect of the Personal Property.

29.9 No interference with executive duties or powers

Nothing in this Contract is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor of Tasmania, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Contract that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

29.10 Power of attorney

If the Operator or the Initial Back-up Vessel Owner (as applicable) does not execute the Vessel Lease in accordance with clause 22.3, then the Operator or the Initial Back-up Vessel Owner (as applicable) hereby irrevocably appoints the Commission to be that party's attorney with authority to execute such document and to bind the Operator or the Initial Back-up Vessel Owner accordingly.

29.11 **Counterparts**

This Contract may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Released under RTI

EXECUTION

Executed as a deed

Executed for and on behalf of **Transport
Commission**

Print name

Executed by **SeaLink Tasmania Pty Ltd**
(ABN 38 626 709 993) in accordance with
section 127(1) of the Corporations Act:

Print name

Print name

Executed by **Stradbroke Ferries Pty Ltd**
(ABN 63 009 725 713) in accordance with
section 127(1) of the Corporations Act:

Print name

Print name

Schedule 1 - KPIs

1 Interpretation

The following table sets out how the KPI Tables are to be interpreted:

Name	The name of the KPI
Description	A description of what the KPI does and, at a high level, how it is measured and calculated.
Hours measured	The hours during which the KPI calculation is applied.
KPI	The level which the delivery performance of the Operator (calculation) must equal or exceed.
Measurement methodology	
Calculation	The algorithm for calculation of the level of performance of the KPI for the relevant month.
Period of calculation	The period over which the performance of the KPI must be calculated in each report.
Measurement unit	The granularity with which the KPI performance must be measured and reported against.
Data source	Without limiting the Commission's audit rights under this Contract, the data sources the Commission will consider in order to provide an accurate measurement.
Measurement responsibility	Whether it is the responsibility of the Operator, the Commission or a third party to measure (or collect the measurement of) and then calculate the KPI.
Reporting frequency	How frequently performance against this KPI should be reported.

2 KPIs

KPI	Table 1
Name	Trips on Time
Description	<p>This KPI aims to ensure that the Ferry Service runs to the Ferry Timetable.</p> <p>For the purposes of this KPI, and to avoid any overlap with KPI Table 2, a reference to a Trip in this KPI Table 1 does not include a missed Trip.</p>
Hours measured	All hours of operation of the Ferry Service
KPI	At least 98% of Trips are Trips On Time
Measurement methodology	
Calculation	Subject to clause 5.9(g), $100 \times (\text{Number of Trips On Time} / \text{Total number of Trips measured in the period})\%$
Period of calculation	Monthly

KPI	Table 1
Name	Trips on Time
Measurement unit	At each Terminal for each Trip
Data source	Data made available by the Operator in accordance with this Contract
Measurement responsibility	The Operator, with selected audit by the Commission
Reporting frequency	Monthly

KPI	Table 2
Name	Missed Trips
Description	This KPI aims to ensure that the Ferry Service runs to the Ferry Timetable
Hours measured	All hours of operation of the Ferry Service
KPI	<p>No more than 0.3% of Trips are missed Trips subject to the following:</p> <ul style="list-style-type: none"> if a single event occurs within a Quarter which results in the need for a Back-up Vessel to be delivered within 12 hours as contemplated by clause 5.2(c) then, during that time in which the Back-up Vessel is being delivered, there will be deemed to be only one missed Trip as a result of that event for the purposes of this KPI; and the relief as contemplated above only applies once in any given Quarter notwithstanding that there may be more than a single event within the Quarter which necessitates the need for a Back-up Vessel under clause 5.2(c).
Measurement methodology	
Calculation	Subject to clause 5.9(g), $100\% - [100 \times (\text{Number of Trips carried out} / \text{Total number of Trips measured in the period})]\%$
Period of calculation	Monthly
Measurement unit	At each Terminal for each Trip
Data source	Data made available by the Operator in accordance with this Contract
Measurement responsibility	The Operator, with selected audit by the Commission
Reporting frequency	Monthly

KPI	Table 3
Name	Customer Response
Description	Customer Response means the time from which a complaint is received by the Operator (whether directly or via the Commission who passes on to the Operator the complaint which it receives) until the time that the customer is contacted in relation to that complaint.
KPI	95% of all complaints are responded to within 2 Business Days
Measurement methodology	
Calculation	$100 \times (\text{Complaints responded to within 2 Business Days} / \text{Total complaints received for the month})\%$
Period of calculation	Monthly
Measurement unit	Complaints
Data source	Data made available by the Operator in accordance with this Contract
Measurement responsibility	The Operator, with selected audit by the Commission
Reporting frequency	Monthly

KPI	Table 4
Name	Provision of Information
Description	<p>This KPI aims to ensure that responses by the Operator to requests for information from the Commission about the Operator Activities are provided in the required timeframe. Such requests for information could arise from varying sources, including information required by the Commission to provide Ministerial responses, answering customer enquiries, providing information required by legislation or providing information to support transport planning.</p> <p>Any report which has material errors will be deemed not to have been received until a correct version is available.</p>
KPI	<p>100% of requests for information are responded to by the Operator:</p> <ul style="list-style-type: none"> • in respect of requests relating to Ministerial responses or other requests for information marked as “urgent” by the Commission, within 2 Business Days of receipt of the request by the Operator or such longer period as may be specified by the Commission; or • in respect of any other request for information, within 5 Business Days of receipt of the request by the Operator or such longer period as may be specified by the Commission.
Measurement methodology	
Calculation	<p>100 x (Total number of information requests responded to within the required timeframe during the month / total number of information requests during the month)%</p>
Period of calculation	<p>Monthly</p>
Measurement unit	<p>Requests for information</p>
Data source	<p>Data made available by the Operator in accordance with this Contract</p>
Measurement responsibility	<p>The Operator, with selected audit by the Commission</p>
Reporting frequency	<p>Monthly</p>

Schedule 2 - Reporting**Table 1 - Monthly report format**

Item	Actual	Budget	% Variance
Tickets sold by Type (including free or charge)			
Total Tickets Sold			
Tickets sold by source (e.g. online, at terminal, agents and phone)			
Average bookings for Trip (%)			
% bookings for the reporting period			
Fare revenue by Type			
Total Fare Revenue			
Trips by Contract Ferry			
Total Trips			
Average Utilisation per Trip (%)			
Contract Ferry utilisation for the reporting period (% and by Contract Ferry)			

Table 2 - Quarterly report format for financial information

Item	Prior Year	Period Actual	Period Budget	% Variance	Comments
Revenue					
Revenue by fare type					
Other Revenue by type (including Government subsidy)					
Total Revenue					
Direct Operating Expenses					
Wages and on-costs					
Diesel Fuel					
Lubricants					

Item	Prior Year	Period Actual	Period Budget	% Variance	Comments
Repairs and maintenance (by Contract Ferry)					
Ferry Insurance					
Depreciation/lease					
Landside Infrastructure repairs and maintenance					
Total Direct Operating Expenses					
Indirect Expenses					
Wages and on-costs					
Sales / Marketing / Promotion					
Advertising					
Commissions					
Communications					
IT					
Rent					
Electricity					
Depreciation					
Insurance					
Legal Fees					
Other					
Total Indirect Expenses					
Interest on borrowings					
Pre Tax Profit					
Tax					
After Tax Profit					

Schedule 3 - Plans

1 Minimum requirements for inclusion in the Transition In Plan

The Transition In Plan must detail the Operator's approach to implementing the Transition In Services and, as a minimum, must:

- (a) include a step by step programme for each element of the Transition In Services with a critical path and key milestone events for each week of the Transition In Period;
- (b) identify key personnel responsible for each step listed under paragraph (a);
- (c) detail how the Operator will ensure the Contract Ferries will be ready to operate on the Route from the Service Commencement Date, including:
 - (i) achieving compliance with all Legislative Requirements and Authorisations;
 - (ii) branding; and
 - (iii) training of key Staff;
- (d) detail the form and timing of engagement with the current operator and staff of the current operator;
- (e) include a detailed communications and stakeholder engagement plan for the Transition In Period that addresses the timing and form of all communication and engagement activities, including engagement with the Commission in relation to media announcements and communication regarding the transition of the service to the Operator;
- (f) detail marketing, sales and promotion activities relating to the Ferry Service, including those to be conducted during the Transition In Period;
- (g) detail the establishment of finance, administrative and support systems and arrangements in respect of the Operator's Activities;
- (h) detail the establishment of physical ticket sales locations on-island at the Terminals and via agents;
- (i) detail the planning for operation and maintenance of the Contract Ferries and Landside Infrastructure, including establishment of electronic asset management and safety management systems and the obtaining of all required Authorisations;
- (j) detail the establishment of the CMS and related technology and platforms in accordance with clause 10.1;
- (k) identify all known risks for the Transition In Period and propose mitigation strategies and actions for each identified risk;
- (l) outline the Operator's contingency plan/s should any critical path element of the Transition In Services not progress according to the programme specified under paragraph (a); and

- (m) provide for weekly reporting to, and meetings with, the Commission's Representative during the Transition In Period.

2 **Minimum requirements for inclusion in the Ferry Operations Management Plan**

The Ferry Operations Management Plan as a minimum must:

- (a) address the management, operation and maintenance of the Contract Ferries;
- (b) include a New Vessel plan which details:
 - (i) the specifications of the New Vessel;
 - (ii) full costings and financing arrangements for the New Vessel;
 - (iii) the location and timing of construction (or purchase) of the New Vessel;
 - (iv) other suppliers involved in the construction (or purchase) of the New Vessel;
 - (v) timelines and key milestones for the construction (or purchase) and commissioning of the New Vessel;
 - (vi) the Operator's approach to ensuring all Contract Ferries comply with all Legislative Requirements and Authorisations and how this will be demonstrated to the Commission in accordance with clause 7.2(c); and
 - (vii) the transition arrangements for the New Vessel coming onto the service and the Operator's approach to seamless continuity;
- (c) include a plan for handback of the Initial Primary Vessel which addresses the requirements in clause 7.1(i) including:
 - (i) the timing of an out-of-water inspection and condition assessment of the Initial Primary Vessel;
 - (ii) an inventory of all plant and equipment associated with the Initial Primary Vessel;
 - (iii) the timing and process for submission of all records regarding operation and maintenance and survey records of the Initial Primary Vessel; and
 - (iv) details which demonstrate that the Initial Primary Vessel is at the standard it should be in had the Operator complied with its obligations in clause 7.3(a);
- (d) address the management, operation and maintenance of Landside Infrastructure;

- (e) address the management of landside logistics, including vehicle traffic management, vehicle queuing and priority access;
- (f) provide details of annual traffic, revenue, cost and funding forecasts for the Term;
- (g) provide details of key personnel and staff, organisation structure, staff rostering, training plans and approach to ensuring the currency of qualifications, and succession planning;
- (h) details of any actual and proposed subcontractor arrangements;
- (i) include a Safety Management Plan that details safe operation of the Ferry Service in accordance with relevant Legislative Requirements (including maritime legislation);
- (j) include a Risk Management Plan which identifies key risks associated with operation of the Ferry Service and mitigation strategies for each identified risk, including how the Operator will ensure continuity of service should the Contract Ferries be unavailable for any reason and how each Operator Related Company will respond to a Force Majeure Event;
- (k) include an Environmental Management Plan that identifies the Operator's approach to addressing obligations under any environmental Legislative Requirements;
- (l) include a customer management strategy which details the Operator's approach to engaging with customers, including:
 - (i) the location of all ticket sales outlets;
 - (ii) the provision of, and access to, information relating to the Ferry Service and the Operator;
 - (iii) customer focussed initiatives;
 - (iv) the operation and availability of the CMS;
 - (v) the process for receiving and responding to customer complaints; and
 - (vi) obtaining and addressing customer feedback;
- (m) include a Communications and Stakeholder Engagement Plan that details the timing and form of engagement;
- (n) include a Marketing, Advertising and Promotion Plan that details how and when the Operator's annual marketing budget will be spent in each Financial Year (or part thereof);
- (o) address the Operator's approach to fulfilling contractual reporting requirements; and
- (p) address the Operator's approach to fulfilling performance benchmarking requirements including collection and analysis of data and regular auditing.

3 **Minimum requirements for inclusion in the Transition Out Plan**

The Transition Out Plan must detail the Operator's approach to fulfilling the transition out requirements specified in clause 27 and as a minimum must:

- (a) detail the Operator's approach to providing assistance, information and records to the Commission;
- (b) specify how the Operator will cooperate and provide reasonable access to Contract Ferries, Landside Infrastructure, staff, information and records to any potential successor operator/s; and
- (c) detail the Operator's approach to ensuring that the Landside Infrastructure is operational, free from damage and at a standard it should be in had the Operator complied with its obligations in clause 6.3(a), at the end of the Term.

Released under RIA

Attachment A to Schedule 3 - Plans (other than the Transition Out Plan)

Released under RTI

Schedule 4 - Form of Subcontractor Direct Deed



Subcontractor Direct Deed

Transport Commission
ABN 95 420 520 014

[insert]
ABN **[#Insert]**

[#Insert name of Subcontractor]
ABN **[#Insert]**

Released under RTI

Date

201#

Parties

Commission

Name

Transport Commission
ABN 95 420 520 014

Company

Name

[Insert]
ABN [Insert]

Subcontractor

Name

[Insert]
ABN [Insert]

Released under RTI

BACKGROUND

- A The Commission and the Company (among other parties) have entered into the Contract for, amongst other things, the provision of the Ferry Service and the other Operator Activities.
- B The Company and the Subcontractor have entered, or will enter, into the Subcontract for, amongst other things, the **[#Insert purpose of subcontract]**.
- C The Commission is entering into this deed so that it may exercise certain rights on a default occurring under the Contract or under the Subcontract (as applicable).

TERMS

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this deed.

Appointed Representative means a Representative that has assumed the Company's rights under the Subcontract under clause 2.3(a).

Contract means the document titled "Bruny Island Ferry Service Contract" between the Commission, the Company and **[insert remaining party details depending on which party is the Company]** dated on or about 28 June 2018.

Contract Breach means a breach by the Company of any of its obligations under the Contract.

Contract Termination Event means a Termination Event under the Contract.

Controller means, in relation to a person's property:

- (a) a receiver or receiver and manager of that property; or
- (b) anyone else who (whether or not as agent for the person) is in possession, or has control, of that property to enforce a Security Interest.

Permitted Variation means a variation to the Subcontract permitted or required to facilitate the Company's compliance with the provisions of the Contract.

Relevant Authority means any court or tribunal with the relevant jurisdiction, any local, state or national government, council, agency, authority, inspectorate, department, ministry, official or public or statutory person (excluding the Commission).

Representative means each of:

- (a) the Commission; and

- (b) any agent or nominee appointed by the Commission.

Required Period means the period starting on the date of a Subcontract Termination Notice and ending 60 days later.

Step In Date means the date on which the Commission takes any action under clause 2.3(a).

Step In Period means the period from the Step In Date up to and including the earlier of the following:

- (a) the Step Out Date;
- (b) the date of any novation under clause 2.5;
- (c) the date of any termination for breach under clause 2.4(b);
- (d) the date of expiry of the Subcontract.

Step Out Date means the date nominated as such in the notice given under clause 2.6(a).

Subcontract means the document entitled [#Insert name of Subcontract] dated on or about the date of this document between the Company and the Subcontractor.

Subcontract Document means each of the Subcontract, Subcontract Security and this deed.

Subcontract Event of Default means a breach or default by the Company under the Subcontract.

Subcontract Security means any bank guarantee, insurance bond or other bonding or security issued in favour of the Company to secure the Subcontractor's obligations under the Subcontract.

Subcontract Termination Notice means a notice given by the Subcontractor to the Commission under clause 2.1.

Suitable Substitute Company means a person nominated by the Commission and approved by the Subcontractor (such approval not to be unreasonably withheld or delayed) as:

- (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Company under the Subcontract; and
- (b) employing persons having the appropriate qualifications, experience and technical competence and having the resources available to it (including committed financial resources and sub contracts) which are sufficient to enable it to perform the obligations of the Company under the Subcontract.

1.2 Contract definitions

Terms which are defined in the Contract but not otherwise defined in clause 1.1 have the same meanings in this deed.

1.3 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to an agreement or document (including a reference to the Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (f) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (g) a reference to any Government Body or professional body includes the successors of that body;
- (h) a reference to dollars or \$ is a reference to Australian currency;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or any part of it;
- (k) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (l) a reference to the words 'include', 'includes' and 'including' means 'including without limitation'; and
- (m) if any amount under this deed is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day.

1.4 Consents or approvals

If the doing of any act, matter or thing under this deed is dependent on the consent or approval of the Commission or is within the discretion of the Commission, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Commission in its sole and absolute discretion and without regard to the interests of the Company (unless an express provision to the contrary has been made).

1.5 No fetter on the Commission's or the Crown's powers

- (a) Subject to clause 1.5(b), nothing in this deed unlawfully restricts or otherwise affects the Commission's or the Crown's unfettered discretion to use or exercise any of their respective statutory powers, functions or discretions.
- (b) The Commission acknowledges and agrees that clause 1.5(a) does not operate to relieve the Commission from any liability for damages arising from breach by the Commission of its obligations under this deed.

1.6 Contract

The Subcontractor acknowledges that it has received a copy of the Contract.

1.7 Exclusion of Civil Liability Act 2002 (Tas)

To the extent permitted by law, the operation of Part 9A of the Civil Liability Act 2002 (Tas) is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this deed howsoever such rights, obligations or liabilities are sought to be enforced.

2 Subcontract Default and Step In Rights

2.1 Notice of Subcontract Event of Default

The Subcontractor must not terminate or give notice terminating the Subcontract without giving to the Commission at least 45 days' prior written notice stating:

- (a) the proposed termination date;
- (b) the grounds for termination in reasonable detail; and
- (c) details of any amount owed by the Company to the Subcontractor:
 - (i) at the time of the Subcontract Termination Notice; and/or
 - (ii) which will fall due on or prior to the end of the Required Period, under the Subcontract.

2.2 Remedy of default

- (a) The Subcontractor undertakes, despite any provision of the Subcontract, to provide to the Commission, no less frequently than once a week, full details as to whether a Subcontract Event of Default which is the subject of a notice under clause 2.1 has been remedied.
- (b) If a Subcontract Event of Default has not been remedied, the Commission may (in its sole discretion) at any time during the Required Period make arrangements to remedy the breach. If it elects to make such arrangements, it must notify the Subcontractor within a reasonable period of that election. If notified, the Subcontractor agrees:

- (i) to use its best endeavours to reach an agreement with the Commission in respect of the arrangements to remedy the breach; and
 - (ii) not to exercise any of its rights in relation to the Subcontract Event of Default, including any right to terminate the Subcontract, except, if an agreement is not reached within 60 days of the issue of the notice under this clause 2.2(b), the Subcontractor may exercise such rights subject to clause 2.3 and clause 2.4.
- (c) The Subcontractor acknowledges and agrees that any action taken by the Commission under this clause 2.2 will not be construed as an assumption by the Commission of the liabilities or obligations of the Company under the Subcontract.

2.3 Assumption by Representative

- (a) Subject to clause 2.1(a), at any time:
 - (i) when the Commission may exercise its Step In Rights under the Contract;
 - (ii) during which a Contract Breach is subsisting (whether or not a Subcontract Termination Notice has been served); or
 - (iii) during the Required Period,the Commission may procure that a Representative assumes, or steps in to, all of the Operator's rights under the Subcontract.
- (b) The Commission must give the Subcontractor 2 days' prior written notice of any action to be taken by it referred to in this clause 2.3, including, where relevant, reasonable details of the event which gave rise to the Step In Rights or the Contract Breach.

2.4 Step In Period

- (a) Without prejudice to clause 2.1, but subject to clause 2.4(b), the Subcontractor must not terminate the Subcontract during the Step In Period on grounds:
 - (i) that the Commission has taken any action referred to in clause 2.3; or
 - (ii) arising prior to the Step In Date.
- (b) The Subcontractor is entitled to terminate the Subcontract by written notice to the Operator and the Appointed Representative:
 - (i) if any amount:
 - (A) referred to in clause 2.1(c)(i) has not been paid to the Subcontractor on or before the Step In Date;

- (B) referred to in clause 2.1(c)(ii) arising after the Step In Date has not been paid on or before the date falling 30 days after the date on which the liability for these amounts is notified to the Commission; and
- (C) of which the Subcontractor was not aware (having made proper enquiry) at the time of the Subcontract Termination Notice, subsequently becomes payable and is not discharged on or before the date falling 30 days after the date on which the liability for the amount is notified to the Commission,

provided that such amounts have been independently certified to the reasonable satisfaction of the Commission and the Appointed Representative; or

- (ii) on grounds arising after the Step In Date in accordance with the terms of the Subcontract.
- (c) The Subcontractor must deal with the Appointed Representative in place of the Company during the Step In Period.
 - (d) During the Step In Period, the Subcontract must remain in full force and effect and the Subcontractor must continue diligently to perform all of its obligations in accordance with the Subcontract as though the Commission was directly party to the Subcontract in place of the Company.
 - (e) During the Step In Period, the Commission is entitled to enforce all of the rights of the Company under the Subcontract in place of the Company.

2.5 Novation

- (a) The Commission may require a novation of the Subcontract upon the termination of the Contract, by giving a notice to the Company and the Subcontractor (such novation to be on terms reasonably required by the Commission). The notice must specify the person to whom the Commission intends to novate the Subcontract whether this be the Commission or a Suitable Substitute Company.
- (b) The Subcontractor must notify the Commission as to whether any person to whom the Commission proposes to novate the Company's rights and liabilities under the Subcontract is a Suitable Substitute Company, on or before the date falling 7 days after the date of receipt of all information reasonably required by the Subcontractor to decide whether the proposed operator is a Suitable Substitute Company.
- (c) The Subcontractor must not unreasonably withhold or delay its decision on whether the proposed operator is a Suitable Substitute Company.
- (d) On any novation referred to in clause 2.5(a) becoming effective the Subcontractor must enter into a side deed with the Commission and the Suitable Substitute Company on substantially the same terms as this deed.

2.6 Step out

- (a) The Appointed Representative may, at any time during the Step In Period, with at least 30 days' prior written notice to the Subcontractor, terminate the Step In Period with effect from the date specified in that notice.
- (b) With effect from the Step Out Date nominated in the notice referred to in clause 2.6(a), the Commission and any Appointed Representative will be released from any and all obligations and liabilities to the Subcontractor:
 - (i) under the Subcontract; and
 - (ii) under this deed,other than any obligations or liabilities accrued during the Step-In Period.
- (c) The release under clause 2.6(b) will not affect or prejudice the continuation of the Company's obligations to the Subcontractor under the Subcontract.

2.7 Subcontractor

- (a) Except in accordance with the terms of this deed, the Subcontractor acknowledges and agrees that:
 - (i) the Commission and (if applicable) the Appointed Representative are not responsible for, and have no liability (actual or contingent); and
 - (ii) the Subcontractor has no cause of action against the Commission or (if applicable) the Appointed Representative,in relation to a Subcontract Event of Default, or any other event, act or omission of the Company or any other party, in relation to the Subcontract.
- (b) The Subcontractor must, at the Company's expense, take whatever action the Commission, an Appointed Representative or a Suitable Substitute Company taking a novation in accordance with clause 2.5(a) may require for perfecting any step in, novation or release under clauses 2.3, 2.5 or 2.6, including the execution of any novation or assignment, the transfer of any Subcontract Security and the giving of any notice, order or direction and the making of any registration which, in each case, the Commission, Appointed Representative, Representative or Suitable Substitute Company reasonably requires.
- (c) The Subcontractor undertakes that it must not take any action to wind up, appoint an administrator or sanction a voluntary arrangement (or similar) in relation to the Company during any Required Period or Step In Period.
- (d) The Company joins in this deed to acknowledge and consent to the arrangements set out and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this deed.

3 Representations and warranties

3.1 General representations and warranties

The Subcontractor represents and warrants to the Commission the following:

- (a) **(Status)** it is a corporation duly incorporated and validly existing under the laws of Australia;
- (b) **(Power)** it has the power to enter into and perform its obligations under the Subcontract Documents, to carry out the transactions contemplated by the Subcontract Documents and to carry on its business as now conducted or contemplated;
- (c) **(Corporate authorisations)** it has taken all necessary corporate action to authorise the entry into and performance of the Subcontract Documents and to carry out the transactions contemplated by the Subcontract Documents;
- (d) **(Authorisations)** each Authorisation that is required in relation to, or for the purpose of performing its obligations under the Subcontract Documents, has been obtained or effected. Each is in full force and effect. It has complied with each of them. It has paid all applicable fees for each of them;
- (e) **(Document binding)** the Subcontract Documents creates valid and binding obligations and is enforceable in accordance with its terms, subject to any necessary stamping and registration, laws generally affecting creditors' rights and general principles of equity;
- (f) **(Information)** all of the information, representations and other matters of fact communicated in writing to the Commission or the Commission's Associates by the Subcontractor and its directors, officers, employees, servants, agents or related entities, in relation to the entering into of the Subcontract Documents were (at the dates submitted to the Commission or the Commission's Associates) and remain, in all material respects, true, accurate and not misleading; and
- (g) **(No trust)** it does not hold any assets as the trustee of any trust.

3.3 Representations and warranties regarding the Subcontract

Each of the Subcontractor and the Company represents and warrants that:

- (a) **(termination)** it has no right to:
 - (i) terminate, rescind, repudiate or vary the Subcontract; or
 - (ii) refuse to perform or observe any of its obligations under the Subcontract;
- (b) **(entire agreement)** the Subcontract Documents set out all of the agreements, arrangements and understandings between the Company and the Subcontractor relating to the Operator Activities;
- (c) **(Subcontract Event of Default)** no Subcontract Event of Default has occurred; and
- (d) **(skill of Subcontractor)** the Subcontractor has the necessary skill and expertise to fulfil its obligations under the Subcontract.

3.4 Updating of warranties and acknowledgments

The Subcontractor and the Company undertake that the representations and warranties respectively made by them in this clause 3 will be true and correct and not misleading:

- (a) on the date of execution of this deed by the parties; and
- (b) on each and every day after the date of execution of this deed by the parties to the expiry of the Term,

as if they had been made on that date.

3.5 Reliance on representations, warranties and acknowledgements

The Subcontractor and the Company acknowledge that the Commission has entered into this deed in reliance on the representations and warranties respectively made by each of them in this clause 3.

4 Indemnity

The Company must indemnify the Commission against, and must pay the Commission on demand the amount of, all costs, losses, liabilities, claims, expenses and taxes incurred in connection with the administration, and any actual or attempted preservation or enforcement, of any rights under this deed.

5 Notices

Any notice, demand, consent or other communication (**Notice**) given or made under this Contract:

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be delivered to the intended recipient by prepaid post or by hand or email to the address or email address below or the address or email address last notified by the intended recipient to the sender:

- (i) to the Commission: Parliament Square, 4 Salamanca Place,
Hobart, Tasmania

Attention: Commissioner for Transport

Email: transportcommission@stategrowth.tas.gov.au;

- (ii) to the Company: Level 2, 431 King William Street, Adelaide,
South Australia, 5000

Attention: General Counsel and
Company Secretary

Email:

(iii) to the Subcontractor: [#Insert]

Attention: [#Insert]

Email: [#Insert]; and

(c) will be taken to be duly given or made:

- (i) in the case of delivery in person, when delivered;
- (ii) in the case of delivery by post, 5 Business Days after the date of posting (if posted to an address in the same country); and
- (iii) in the case of email, at the time sent, unless the sender is notified by a system or person involved in the delivery of the email that the email was not successfully sent,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

6 General

6.1 Governing law and jurisdiction

- (a) This deed is governed by the laws of Tasmania.
- (b) Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Tasmania in relation to matters concerning this deed.

6.2 Entire agreement

This deed contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in relation to it.

6.3 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in relation to this deed and any instrument executed under this deed must be borne by the Company. The Company must indemnify the Commission on demand against any liability for that stamp duty.

6.4 No assignment or dealing

- (a) The Subcontractor and the Company must not assign, transfer, encumber or otherwise deal with their respective interests under this deed, or grant a Security Interest in respect of this deed, without the consent in writing of the Commission's prior written consent.
- (b) The Commission may assign or transfer its rights or obligations under this Contract to another Government Body.

6.6 Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Released under RTI

Executed as a deed

Executed for and on behalf of **Transport
Commission**

Signature

Print name

Executed by **[#Insert name of Company]**
(ABN **[#Insert]**) in accordance with section
127(1) of the Corporations Act:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Executed by **[#Insert name of
Subcontractor]** (ABN **[#Insert]**) in
accordance with section 127(1) of the
Corporations Act:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Schedule 5 - Form of Licence



Licence

The Honourable Jeremy Page Rockliff

(being and as the Minister for Infrastructure and, for the purposes of the *Crown Lands Act 1976* (Tas), the Portfolio Minister in relation to the Licensed Area)
(Licensor)

and

SeaLink Tasmania Pty Ltd ABN 38 626 709 993
(Licensee)

THE CROWN SOLICITOR OF TASMANIA
Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6165 3650
Facsimile: (03) 6173 0265
Doc Ref: Licence | DSG | 3664-17

Licence

Details and recitals

Date: June 2018

Parties:

Name	The Honourable Jeremy Page Rockliff MP (being and as the Minister for Infrastructure and, for the purposes of the <i>Crown Lands Act 1976</i> (Tas), the Portfolio Minister in relation to the Licensed Area)
Short form name	Licensor
Notice details	C/- Department of State Growth, Parliament Square, 4 Salamanca Place, Hobart, Tasmania 7001 Email: transportcommission@stategrowth.tas.gov.au Attention: Commissioner for Transport

Name	SeaLink Tasmania Pty Ltd
ABN	38 626 709 993
Short form name	Licensee
Notice details	Level 2, 431 King William Street, Adelaide, SA, 5000 Email: Attention:

Recitals:

- A. Pursuant to the provisions of the Act, the Licensor as Portfolio Minister may licence Crown land to any person on such terms as the Licensor thinks fit.
- B. The Licensor acting under the powers conferred by the Act (and in particular the Section of the Act) has agreed to grant the Licensee a licence of the Licensed Area in accordance with this Licence and the Act.
- C. The Licensee has agreed to accept a licence of the Licensed Area in accordance with this Licence and the Act.

Information Table

Item 1	Not used
Item 2 (clause 1.1):	Licensed Area
All that area of Crown land, being portfolio land, located within:	
(a) Lot 1 on survey plan CPR No. 10451 at Kettering; and	
(b) the red shaded area (but excluding the blue shaded area, being the paved carriageway) of Lot 1 on survey plan CPR No. 10588 at Roberts Point,	
a copy of each survey plan being included at Attachment A to this Licence.	
Item 3 (clause 1.1):	Landside Infrastructure
All buildings, structures, facilities (including loading facilities), ramps, roads, parking and marshalling areas and other improvements situated within the Licensed Area.	
Item 4 (clause 1.1):	Commencement Date
The Service Commencement Date (as defined in the Contract).	
Item 5 (clause 1.1):	Expiry Date
The expiry of the Term (as defined in the Contract).	
Item 6	Not used
Item 7 (clause 3):	Licence Fee
\$1.00	
Item 8	Not used
Item 9	Not used
Item 10	Not used

Item 11 (clause 1.1): Interest Rate

The rate prescribed by the *Crown Lands Regulations 2011* (Tas) for the purposes of section 36(a)(ii) of the Act

Item 12 (clause 1.1): Section of Act

Section 40(1A)

Item 13 (clause 1.1): Permitted Use

Access to and use of the Licensed Area for the purposes of the carrying out of the Operator Activities.

Item 14 (clause 14): Special terms and conditions

The following Special terms and conditions apply to this Licence:

- 14.1 The Licensee acknowledges the Licensor may undertake improvements to the Licensed Area, entirely at the Licensor's discretion, in accordance with clause 6.2 of the Contract.
- 14.2 If there is any inconsistency between the terms of the Contract and this Licence, then:
 - (a) the higher or more onerous requirement will apply to the extent of that inconsistency; and
 - (b) to the extent that clause 14.2(a) does not resolve the inconsistency, the terms of the Contract prevail to the extent of that inconsistency.
- 14.3 If the Commission terminates the Contract in accordance with clause 21 of the Contract then:
 - (a) the Licensor will be taken to have also terminated this Licence with immediate effect as at the date of termination of the Contract;
 - (b) a termination notice under clause 21 of the Contract will be deemed to be notice of cancellation of this Licence effectively and validly issued by the Licensor and without the need for the Licensor to issue any other notice under clause 8.1(j) of this Licence.
- 14.4 The Licensee must comply with the Contract, including the Licensee's obligations under clauses 12.1, 17 and 18.1 of the Contract.

Operative provisions

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

In this Licence, unless the context otherwise requires:

Act means the *Crown Lands Act 1976* (Tas).

Approval or Approvals includes:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from by or with a Government Body;
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Government Body intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiration of that period without intervention or action;
- (c) all necessary development approvals, licences, permits and approvals as may be required from time to time by a Government Body for or in respect of the Permitted Use; and
- (d) to avoid doubt, any planning and environment approvals.

Business Day has the meaning given to that term in the Contract.

Commencement Date means the date set out in Item 4.

Commission means the Transport Commission incorporated as a corporation sole under section 4(1) of the *Transport Act 1981* (Tas).

Contamination has the meaning given to that term in the Contract.

Contract means the document titled "Bruny Island Ferry Service Contract" between the Commission, the Licensee and the Initial Back-up Vessel Owner (as those terms are defined in the Contract) dated on or about the date of this Licence.

Crown means the Crown in Right of Tasmania.

Details means the details and recitals set out above.

Expiry Date means the date set out in Item 5.

Ferry Service has the meaning given to that term in the Contract.

Government Body has the meaning given to that term in the Contract.

GST has the meaning given to that term in the Contract.

GST Laws means applicable Laws relating to GST.

Information Table means the table titled 'Information Table' (if any) included in this Licence.

Insolvency Event has the meaning given to that term in the Contract.

Interest Rate means the rate set out in Item 11.

Item means an item in the Information Table.

Landside Infrastructure means the landside infrastructure set out in Item 3.

Law means:

- (a) principles of law or equity established by decisions of courts;

- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Licence or **this Licence** means this deed and includes all its annexures, appendices, attachments and schedules (if any).

Licence Fee means the amount set out in Item 7.

Licensed Area means that area of Crown land set out in Item 2.

Licensee means the person or entity set out in the Details and where the context permits includes the Licensee's employees, authorised contractors, sub-contractors, agents, licensees and invitees and any other person claiming through or under the Licensee.

month means calendar month.

Operator Activities has the meaning given to that term in the Contract.

Permitted Use means the right to use the Licensed Area for the purpose set out in Item 13 and for all reasonably necessary ancillary purposes.

Plan means the plan of the Licensed Area which is attached to this Licence as 'Attachment: Plan' which is attached for illustration purposes only.

Right includes a right, a power, a remedy, a discretion or an authority.

Roads and Jetties Act means the *Roads and Jetties Act 1935* (Tas).

Section of Act means the section of the Act set out in Item 12.

Special terms and conditions means the special terms and conditions, if any, set out in Item 14.

Term means the period commencing on the Commencement Date and ending on the Expiry Date (inclusive of those dates).

Valuer means:

- (a) a person who is qualified to practice as a land valuer under section 4 of the *Land Valuers Act 2001* (Tas); or
- (b) the person appointed as the Valuer-General under the *Valuation of Land Act 2001* (Tas) or his or her nominees.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body, a Government Body or other entity includes any of them;

- (e) a reference to a clause or Attachment is a reference to a clause of, or an Attachment to, this Licence and a reference to this Licence includes all Attachments to it, in each case unless expressly stated otherwise;
- (f) a reference to an agreement or document (including a reference to this Licence) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to dollars or \$ is a reference to Australian currency;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) nothing in this Licence is to be interpreted against a party solely on the ground that the party put forward this Licence or any part of it;
- (k) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (l) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';
- (m) if any amount under this Licence is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day;
- (n) to the extent of any inconsistency, ambiguity or discrepancy between any one or more provisions forming this Licence, then the higher or more onerous requirement will apply;
- (o) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (p) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (q) a reference to a document includes:
 - (i) any thing on which there is writing;
 - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of anything else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or
 - (iv) a map, plan, drawing or photograph;
- (r) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (s) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;

- (t) a reference to a Minister (including the Licensor) includes, as applicable, that Minister's (including the Licensor's) predecessors and successors in office;
- (u) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (v) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (w) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later; and
- (x) reference to a time or date in relation to the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere.

2 Grant of Licence

2.1 Grant of Licence

The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive licence under the Section of the Act, to use the Licensed Area for the Permitted Use for the Term in accordance with this Licence and subject to the Act.

2.2 No estate or interest

This Licence does not confer upon the Licensee any estate or interest in the Licensed Area.

2.3 Licensor has access to the Licensed Area

The Licensor retains the right to full and free access to the Licensed Area throughout the Term.

2.4 Access to the Licensed Area

For the purposes of carrying out the Ferry Service, the Licensee is granted the right to use the Licensed Area in priority to other vehicle ferry service operators (if any) which are granted a right to use some or all of the Licensed Area, but only to the extent that the Commission determines (acting reasonably) that such priority use is necessary to enable the Licensee to conduct the Ferry Service in compliance with the Contract.

2.5 Consent under Roads and Jetties Act

If any part of the Licensed Area forms part of a State highway or subsidiary road as defined in the Roads and Jetties Act, the Licensor provides the Licensee with consent pursuant to section 16 of the Roads and Jetties Act to enable the

Licensee to carry out any works on that part of the Licensed Area to the extent necessary for the purposes of carrying out the Operator Activities in accordance with this Licence and the Contract.

3 Licence Fee

- (a) In consideration of this Licence, the Licensee must pay the Licence Fee to the Licensor in advance on the Commencement Date without set-off or deduction.
- (b) The Licence Fee is the only licence fee payable during the Term of this Licence.

4 Conditions of Licence

4.1 Conditions

This Licence is granted subject to the conditions that the Licensee must:

- (a) pay the Licence Fee as required under this Licence;
- (b) pay all land tax (on a single holding basis), rates, water, sewerage, and other charges levied against the Licensed Area and payable by an owner. For the avoidance of doubt, the Licensee acknowledges that if any such charges are demanded directly of the Licensee then the Licensee must pay that amount punctually to the Government Body or if demanded of the Licensor then the Licensee must pay to the Licensor on demand a fair proportion (as assessed by the Licensor) of those charges;
- (c) pay the costs of delivery of all services used by the Licensee at the Licensed Area including electricity, telephone, telecommunication service and ad valorem charges for water and sewerage;
- (d) comply with the terms of this Licence, including the Special terms and conditions;
- (e) comply with the Licensor's directions about use of the Licensed Area;
- (f) comply punctually with all notices received from the Licensor or any Government Body concerning:
 - (i) the Licensed Area;
 - (ii) the Permitted Use;
 - (iii) any Contamination of the Licensed Area, land, or waters adjacent to the Licensed Area (if any); and
 - (iv) any remediation of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (g) punctually comply with:
 - (i) all notices received from the Licensor or the Licensor's duly authorised agents relating to the Licensee's obligations under this Licence;

- (ii) all notices received from any Government Body with respect to the Licensed Area or Permitted Use or both;
 - (iii) all Laws, Approvals and other requirements of a Government Body that affect the Licensed Area or Permitted Use or both in any way; and
 - (iv) any management plans that are approved under the Act at any time that in any way affect the Licensed Area;
- (h) obtain, keep current and comply with, for the Term all necessary Approvals as may be required from time to time by all Laws or any Government Body or both, for or in respect of the Permitted Use and occupation of the Licensed Area (including for the avoidance of doubt all necessary Approvals and permits as may be required under the *Land Use Planning and Approvals Act 1993* (Tas) in respect of any works undertaken by the Licensee in accordance with this Licence);
- (i) give immediate written notice to the Licensor of:
 - (i) receipt of any notice referred to in clauses 4.1(f) and 4.1(g) (unless such notice was provided through the Licensor); and
 - (ii) any damage or defect in the Licensed Area caused by, or arising in relation to, the exercising of any of the rights conferred under this Licence;
- (j) ensure that the right of the general public to access any adjoining Crown land is not hindered or prevented by the Licensee's use of the Licensed Area;
- (k) use the Licensed Area solely for the Permitted Use;
- (l) not do anything in relation to or on the Licensed Area that in the Licensor's opinion, will or may result, in Contamination of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (m) remove any Contamination from the Licensed Area, land or waters adjacent to the Licensed Area and make good any Contamination of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (n) cease exercising the rights conferred under this Licence immediately, as the Licensor directs, in an emergency;
- (o) except as may be incidental to the Permitted Use, or provided for in the Special terms and conditions, not, on the Licensed Area:
 - (i) sell or hire out, offer or expose for sale or hiring out, or have in the Licensee's possession for selling or hiring out, any article, material or other thing; or
 - (ii) provide, offer to provide or hold the Licensee out as willing to provide, any service or facility for any monetary or other consideration;
- (p) except as may be:
 - (i) incidental to the Permitted Use; or
 - (ii) provided for in the Special terms and conditions,

not remove any living or dead native vegetation, or disturb ground soil, on the Licensed Area without the Licensor's prior written approval;

- (q) not light a fire on the Licensed Area without the Licensor's prior written approval;
- (r) keep and leave the Licensed Area and the Landside Infrastructure:
 - (i) in good repair and condition (which includes restoration of the surface of the Licensed Area);
 - (ii) free from vermin, noxious weeds and fire hazards;
 - (iii) in a safe state and condition for everyone who enters the Licensed Area or uses the Landside Infrastructure and the facilities on the Licensed Area or both; and
 - (iv) maintained and repaired, including with respect to all structural matters, in accordance with all Laws, Approvals and other requirements of any Government Body, good industry practice and any directions given by the Licensor;

it being acknowledged by the parties that the Licensee is responsible for maintenance and repair of the Landside Infrastructure in accordance with the Contract;

- (s) not:
 - (i) erect any building or structure; or
 - (ii) alter the Landside Infrastructure or any building or structure, on the Licensed Area without obtaining all responsible Government Bodies' consent and also the Licensor's prior written consent. When seeking the Licensor's consent the Licensee must provide detailed plans of the proposed works, including a development plan and construction management plan, wholly to the satisfaction of the Licensor. The parties acknowledge that the Licensee may during the Term remove any or all of the Licensee's buildings, structures, facilities, fixtures, fittings, plant and equipment or other improvements on the Licensed Area with the Licensor's prior written consent provided that the Licensee makes good all damage caused as a result of such removal;
- (t) without limiting the operation of clause 29.4 of the Contract, not assign, sub-licence, share, transfer, grant any mortgage, charge or other security interests in or otherwise deal with all or any part of the Licensee's rights benefits or obligations under this Licence without the Licensor's prior written consent (it being acknowledged that should the Licensee wish to assign or transfer this Licence the Licensee must comply with the Act);
- (u) not do, or permit to be done, in relation to the Licensed Area or while exercising the rights conferred under this Licence, anything that, in the Licensor's opinion, is or may become, a nuisance or annoyance to an occupier of an adjoining property, it being acknowledged that the reasonable use of the Licensed Area for the Permitted Use in accordance with the terms of this Licence will not be a breach of this clause;
- (v) not permit any activity on the Licensed Area that is not authorised under this Licence without obtaining the Licensor's prior written consent;

- (w) not use or permit to be used or stored on the Licensed Area any radioactive, toxic or hazardous chemicals, wastes or substances unless required under this Licence and then only in concentrations and quantities:
 - (i) permitted by the relevant Government Body;
 - (ii) required by all Laws and Approvals; and
 - (iii) in accordance with any conditions imposed by the relevant Government Body;
- (x) not permit any petroleum product, oil, grease or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service on the Licensed Area or into any nearby marine waters, stream or river or into or under the soil and to discharge them only as:
 - (i) permitted by the relevant Government Body;
 - (ii) required by all Laws and Approvals; and
 - (iii) in accordance with any conditions imposed by the relevant Government Body;
- (y) control and restrict the emission of smoke, dust or odours from the Licensed Area in accordance with the applicable Laws and the requirements of the relevant Government Body; and
- (z) comply with all demands notices and requirements of the Licensor and any relevant Government Body in respect of Contamination of the Licensed Area caused by the Licensee or by occupiers of the Licensed Area (which may include the requirement for the carrying out all necessary rehabilitation works to the Licensed Area in accordance with the requirements of and to the satisfaction of the Licensor and any relevant Government Body at the Licensee's cost).

4.2 Determination of Licence

On the expiration or sooner determination of this Licence the Licensee must cease to exercise the rights conferred under this Licence and leave the Licensed Area in a condition consistent with the Licensee's obligations under this Licence, it being acknowledged by the parties that immediately before the expiration or sooner determination of this Licence the Licensee must:

- (a) remove all the Licensee's personal property from the Licensed Area;
- (b) remove all of the Licensee's buildings, structures, facilities, plant and equipment or other improvements from the Licensed Area unless otherwise notified in writing by the Licensor; and
- (c) make good all damage caused by removal in accordance with clauses 4.2(a) and 4.2(b) to the Licensor's satisfaction.

4.3 Things remaining on the Licensed Area

The Licensee acknowledges that any of the Licensee's personal property, buildings, structures, facilities, plant and equipment or other improvements remaining on the Licensed Area after the expiration or sooner determination of

this Licence without the Licensors consent may at the Licensors discretion either:

- (a) become the property of the Licensor without compensation to the Licensee (unless compensation is required to be paid under the Act); or
- (b) be removed from the Licensed Area at the Licensees cost and disposed of by the Licensor without reference or liability to the Licensee with all damage to the Licensed Area caused by such removal to be made good at the Licensees expense.

4.4 Notice to repair

Upon receipt of notice from the Licensor or any Government Body having jurisdiction, the Licensee must repair, remedy or otherwise make good all damage to the Licensed Area caused during the Term and any other defects and lack of repair that are the Licensees responsibility under this Licence. If the Licensee fails to comply with such a notice given under this sub-clause, then the Licensor, or the Licensors agents, may, but are not bound to, undertake the required repairs.

4.5 Licensor may recover costs

The Licensee must pay to the Licensor, on demand:

- (a) all money the Licensor expends to undertake work that is the Licensees responsibility under this Licence; and
- (b) all reasonable costs the Licensor incurs in doing so.

5 Licensors acknowledgements

5.1 Use of Licensed Area

Subject to the Act, the Licensor acknowledges that provided the Licensee pays the Licence Fee and observes and performs all of the Licensees obligations contained in this Licence the Licensor will permit the Licensee to have the non-exclusive use of the Licensed Area as set out in this Licence.

5.2 Licensor not responsible

The Licensor is not responsible:

- (a) to identify or locate the boundaries of the Licensed Area;
- (b) to construct, maintain or repair any gate, road, track, drain or bridge on the Licensed Area, including anything which may be used to gain access to the Licensed Area; or
- (c) for any erosion mitigation or other works associated with the Licensed Area or the protection or maintenance of the Licensees personal property, buildings, structures, facilities, plant, equipment and services or other improvements.

6 Licensee's waiver

6.1 Licensee's risk

The Licensee agrees to use and occupy the Licensed Area throughout the Term at the Licensee's risk including in relation to loss or damage to the Licensee and the Licensee's property.

6.2 Licensee's releases and discharges the Licensors in relation to Contamination

The Licensee releases and discharges the Licensors from all actions, suits, causes of action, claims and demands that the Licensee has at any time against the Licensors in relation to any Contamination including any existing or future Contamination or the rehabilitation of the Licensed Area and, if any, the surrounding area of land and or water or for or in respect of anything incidental to any of those issues.

6.3 Waiver of rights of recovery from the Licensors

The Licensee waives all present and future rights to claim against the Licensors for:

- (a) personal injury to, or death of, the Licensee;
- (b) either or both loss of, or damage to, the Licensee's property; and
- (c) financial loss to the Licensee,

in relation to, the Licensee's presence on, or use of the Licensed Area.

6.4 Nature of waiver

The waiver in this clause 6:

- (a) is a continuing obligation of the Licensee, separate and independent from any other obligation;
- (b) survives the expiration or sooner termination of this Licence; and
- (c) does not extend to liability caused by the Licensors' wrongful (including negligent) act or omission.

7 Not used

8 Termination of Licence

8.1 Licensors' right to terminate

Where:

- (a) any money (including Licence Fee) payable by the Licensee under this Licence remains unpaid for a period exceeding one month after it has become due and the money (and interest if relevant) remains unpaid at the end of the period specified in a notice served on the Licensee by the Licensors;

- (i) requesting the Licensee to pay the outstanding amount within the period specified in the notice; and
 - (ii) advising the Licensee that the Licence may be cancelled if the outstanding amount and interest thereon at the Interest Rate is not paid within the period so specified; or
- (b) the Licenser considers that the Licensee has committed a breach of any term of the Licence and upon notice served on the Licensee by the Licenser specifying the breach and requiring the Licensee to satisfy the Licenser within the period specified in the notice that the Licensee has not committed the breach the Licensee fails to so satisfy the Licenser (or if required by the said notice that the Licensee has rectified or commenced action to rectify the breach); or
- (c) the Licensee fails to comply with an essential term of this Licence; or
- (d) the Licensee repudiates this Licence; or
- (e) the Licensee fails to comply with the provisions of any Approvals or Laws, or the requirements of any Government Body; or
- (f) the Licensee suffers an Insolvency Event; or
- (g) the Licensee ceases or threatens to cease to use the Licensed Area for the Permitted Use; or
- (h) the Licensee is convicted of an offence in relation to the Permitted Use or if the Licensee's business or activity conducted on the Licensed Area is closed down by a Government Body; or
- (i) distress or execution is levied, or issued, against the Licensee's property and not paid out within 10 Business Days,

then the Licenser may either:

- (j) subject to and without limiting the operation of clause 14.3 of the Special terms and conditions, give five Business Days written notice to the Licensee that this Licence is cancelled, and this Licence automatically terminates when such notice period expires; or
 - (k) proceed by appropriate court action to enforce performance by the Licensee of the applicable term(s) of this Licence or to recover damages for breach.

8.2 Antecedent breach

A termination or cancellation of this Licence under clause 8 is without prejudice to the Licenser's rights or remedies for arrears of the Licence Fee, for any other moneys owing or for any other antecedent breach of this Licence.

8.3 No compensation payable on termination

Except as may be required for under the Act, no compensation is payable to the Licensee upon cancellation or termination of this Licence and the Licensee indemnifies and agrees to keep indemnified the Licenser against any such claim or demand.

9 Holding over

If the Licensee, with the Licensor's consent, continues to use the Licensed Area after the Term expires, then the Licensee will use the Licensed Area:

- (a) as a licensee on a three monthly licence, or such other period commensurate with any extension to the Contract;
- (b) at the Licence Fee that is payable immediately prior to the expiration of this Licence on a three monthly basis or any other Licence Fee which is agreed by the parties from time to time;
- (c) with the Licence Fee to be paid in advance; and
- (d) on the terms and conditions of this Licence so far as they are applicable to a three monthly licence, or such other period commensurate with any extension to the Contract.

Such licence may be determined by either party giving to the other not less than three months written notice expiring at any time.

10 Interest

If any moneys owing by the Licensee to the Licensor under this Licence are not paid on the due date for payment then the amount attracts and bears interest from the due date for payment until the date of actual payment at the Interest Rate.

11 Licensee's risk

If the Licensee is required to do anything or cause anything to be done under this Licence, then the doing of that act, matter or thing is at the Licensee's sole risk and expense unless otherwise expressly provided.

12 No representation or warranty

12.1 No representation about suitability

The Licensor does not represent or warrant:

- (a) that the Licensed Area is suitable to be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area;
- (b) that the fittings, accessories or services available on the Licensed Area are suitable to be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area; or
- (c) that the Licensed Area may lawfully be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area.

12.2 No representation about zoning

Without affecting the generality of clause 12.1 the Licensor does not represent or warrant that the zoning of the Licensed Area will permit it to be used for the Permitted Use whether with the approval or permission of the relevant planning authority or otherwise. It is the Licensee's responsibility to enquire about zoning

and the Licensee warrants that before executing this Licence the Licensee has done so to the Licensee's own satisfaction.

13 Not used

14 Special terms and conditions

- (a) The Special terms and conditions form part of this Licence.
- (b) If there is any inconsistency between the Special terms and conditions and another provision of this Licence, the Special terms and conditions override the other provision to the extent of the inconsistency.
- (c) A Special term and condition is taken not to be inconsistent with another provision of this Licence if the Special term or condition and the other provision of this Licence are both capable of being complied with.
- (d) To avoid doubt and without limiting the operation of clause 18.17, any Right contained in a Special term and condition is in addition to any other Rights provided for in this Licence or at Law.

15 GST

- (a) Unless otherwise stated in this Licence, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Licence, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Licence must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 15(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Licence is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Licence is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 15 as if it were an actual payment made pursuant to this Licence.

- (g) Unless the context otherwise requires, expressions used in this clause 15 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

16 Dispute resolution

16.1 Application

This clause 16 does not apply to any dispute or difference between the parties concerning the exercise by any party of any Right under legislation.

16.2 Negotiation

If a party gives written notice to the other party of a dispute or difference concerning this Licence, the parties must undertake negotiations with a view to resolving the dispute or difference.

16.3 Status of negotiations

- (a) Unless otherwise agreed in writing by the parties and subject to applicable Laws, other than the fact of occurrence, all aspects of negotiations for the purpose of clause 16.2 will be without prejudice and treated as confidential including:
 - (i) any settlement proposal made to, or considered by, a party;
 - (ii) the willingness of a party to consider a settlement proposal;
 - (iii) any statement made by, or on behalf of, a party during the negotiations; and
 - (iv) any document prepared for the purposes of the negotiations.
- (b) Nothing in clause 16.3(a):
 - (i) prevents a party from enforcing any signed settlement agreement made by the parties in relation to the dispute or difference;
 - (ii) prevents an agent or instrumentality of the Crown (that is a separate legal entity) from disclosing any matter to the Crown; or
 - (iii) prevents a Minister of the Crown from making a statement to Parliament or exercising any Right.

16.4 Further action

If, after 10 Business Days following receipt by a party of a notice under clause 16.2, the parties are unable to resolve the dispute or difference by negotiation, a party may take any lawful action as that party sees fit (including commencing legal proceedings) in relation to the dispute or difference.

16.5 Continuation of performance

Despite the existence of any dispute or difference, unless this Licence has been terminated, each party must continue to perform its obligations in accordance with this Licence.

16.6 Injunctive and other discretionary relief

Nothing in this clause 16 prevents a party from commencing legal proceedings to seek an injunction (whether interim or permanent), a writ of specific performance, declaratory relief, or any urgent or other interlocutory relief.

17 Notices

17.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Licence must be:
 - (i) in legible writing in the English language;
 - (ii) subject to clause 17.1(b), signed by or on behalf of the sender or by a lawyer for the sender;
 - (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 17.2.
- (b) A Notice sent by email is taken to have been signed by the sender.
- (c) A Notice must not be given orally.

17.2 Method and address for delivery

- (a) Subject to clause 17.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Details;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details; or
 - (iii) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or email address (as applicable) last notified by that intended recipient.

17.3 Time of receipt

- (a) Subject to clause 17.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the fifth Business Day after the day of posting; and
 - (iii) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided

that the sender has not received an automated message that the email has not been delivered.

- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 17.3(a) and 17.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

17.4 Other modes or places of service

Nothing in this Licence limits or excludes any other mode or place of service required by an applicable Law.

18 Miscellaneous

18.1 Governing law

This Licence is governed by the Laws applying in Tasmania.

18.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in relation to this Licence.

18.3 Entire agreements clause

Except as otherwise contemplated by clause 29.2 of the Contract:

- (a) this Licence forms the entire agreement of the parties in respect of its subject matter;
- (b) the only enforceable obligations of the parties in relation to the subject matter of this Licence are those that arise out of the provisions contained in this Licence; and
- (c) all prior agreements in relation to the subject matter of this Licence are merged in and superseded by this Licence unless expressly incorporated in this Licence as an annexure, an appendix, an attachment or by reference.

18.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Licence, binds them jointly and each of them severally.

18.5 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

18.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this Licence:
 - (i) comply with the provisions of this Licence related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of this Licence or that, if the conduct was undertaken by the party, would result in the party being in breach of this Licence.
- (b) If a party is prohibited from doing anything under this Licence, that party must not knowingly assist, authorise or allow any other person to do that thing.

18.7 Severance

If a provision of this Licence is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Licence and the remaining provisions of this Licence:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Licence.

18.8 Counterparts

- (a) This Licence may be entered into in any number of counterparts.
- (b) A party may execute this Licence by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.
- (d) This Licence is not to take effect against a party until it has been signed by all parties and delivered, unless it is a deed poll or is intended to take effect immediately when delivered by one or more parties.

18.9 Execution of Licence

If this Licence is not executed prior to or on the Commencement Date and the Licensee uses the Licensed Area from the Commencement Date, then the parties will, from the Commencement Date until this Licence is executed, be in all respects bound by the terms contained in this Licence as if this Licence had been duly and fully completed and executed by the Licensor and the Licensee prior to or on the Commencement Date.

18.10 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Licence.

18.11 Business Days

If the day on or by which an act, matter or thing is to be done under this Licence is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

18.12 No partnership or agency

Unless stated to the contrary in this Licence:

- (a) nothing contained or implied in this Licence will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
 - (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust; and
- (b) a party must not represent or hold itself out to be a partner, joint venturer, agent or representative of another party.

18.13 Legal costs

The Licensee must pay to the Licensor, on demand, all the Licensor's costs, on a full indemnity basis of and incidental to:

- (a) any consent, approval, waiver or amendment made under or to this Licence;
- (b) any assignment or sub-licensing made under this Licence;
- (c) any surrender or termination of this Licence otherwise than by effluxion of time; and
- (d) the actual or contemplated enforcement or exercise of any rights or powers of the Licensor following a default or breach of any covenant of this Licence.

18.14 Amendment

This Licence may only be amended or supplemented in writing signed by the parties.

18.15 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

18.16 Successors and assigns

This Licence is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

18.17 Rights cumulative

Each Right provided for in this Licence:

- (a) operates independently of any other Right provided for in this Licence; and
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document.

18.18 Set-off

The Licensor may set-off against any moneys payable by the Licensor to the Licensee under this Licence any debt or other moneys from time to time due and owing by the Licensee to the Licensor. This right of set-off does not limit or affect any other right of set-off available to the Licensor.

18.19 Disclosure

- (a) Despite any confidentiality or intellectual property right subsisting in this Licence, a party may publish all or any part of this Licence without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

18.20 Consent and approvals

- (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with this Licence. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this Licence is not effective unless given in writing.
- (d) Except as otherwise stated, a party whose consent or approval is required must not unreasonably withhold or delay that consent or approval.
- (e) A consent or approval may be given subject to reasonable conditions.
- (f) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of this Licence.

18.21 Doctrine of merger

The doctrine or principle of merger does not apply to this Licence or to anything done in relation to this Licence. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Licence.

18.22 Minister or State of Tasmania expressed to be party

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this Licence, then unless an applicable Law provides otherwise:
 - (i) the Minister enters into this Licence on behalf of the Crown;

- (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
 - (iii) each reference in this Licence to the Minister will be taken to include a reference to the Crown.
- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this Licence, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

18.23 No interference with executive duties or powers

Nothing in this Licence is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this Licence that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

18.24 Surviving provisions and termination

- (a) The termination of this Licence does not affect or limit the operation or effect of clauses or parts of this Licence:
 - (i) that are expressed to survive the termination of this Licence;
 - (ii) that, at Law, survive the termination of this Licence; or
 - (iii) that are necessary to survive the termination of this Licence:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this Licence;
 - (B) to enable a party to make, enforce or defend any claims related to this Licence; or
 - (C) to give full force and effect to the operation of clause 18.24(b) or clause 18.24(c).
- (b) The termination of this Licence does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this Licence before the date on which this Licence is terminated.
- (c) Nothing in this clause 18.24 affects or limits the operation of another provision of this Licence which gives a party Rights, or imposes obligations on a party, on or after the termination of this Licence.

Executed as a deed

Signing

Signing by Licenser

Executed as a deed by **The Honourable Jeremy Page Rockliff MP** (being and as the Minister for Infrastructure and, for the purposes of the *Crown Lands Act 1976* (Tas), the Portfolio Minister in relation to the Licensed Area) in the presence of the witness named below:

Minister's
signature:
→

Witness'
signature:
→

*Witness
print
name and
position:

*Witness
print address:

*Use BLOCK LETTERS

Released under RTI

Signing by Licensee

Executed by **SeaLink Tasmania Pty Ltd**
(ABN 38 626 709 993) in accordance with
section 127(1) of the Corporations Act:

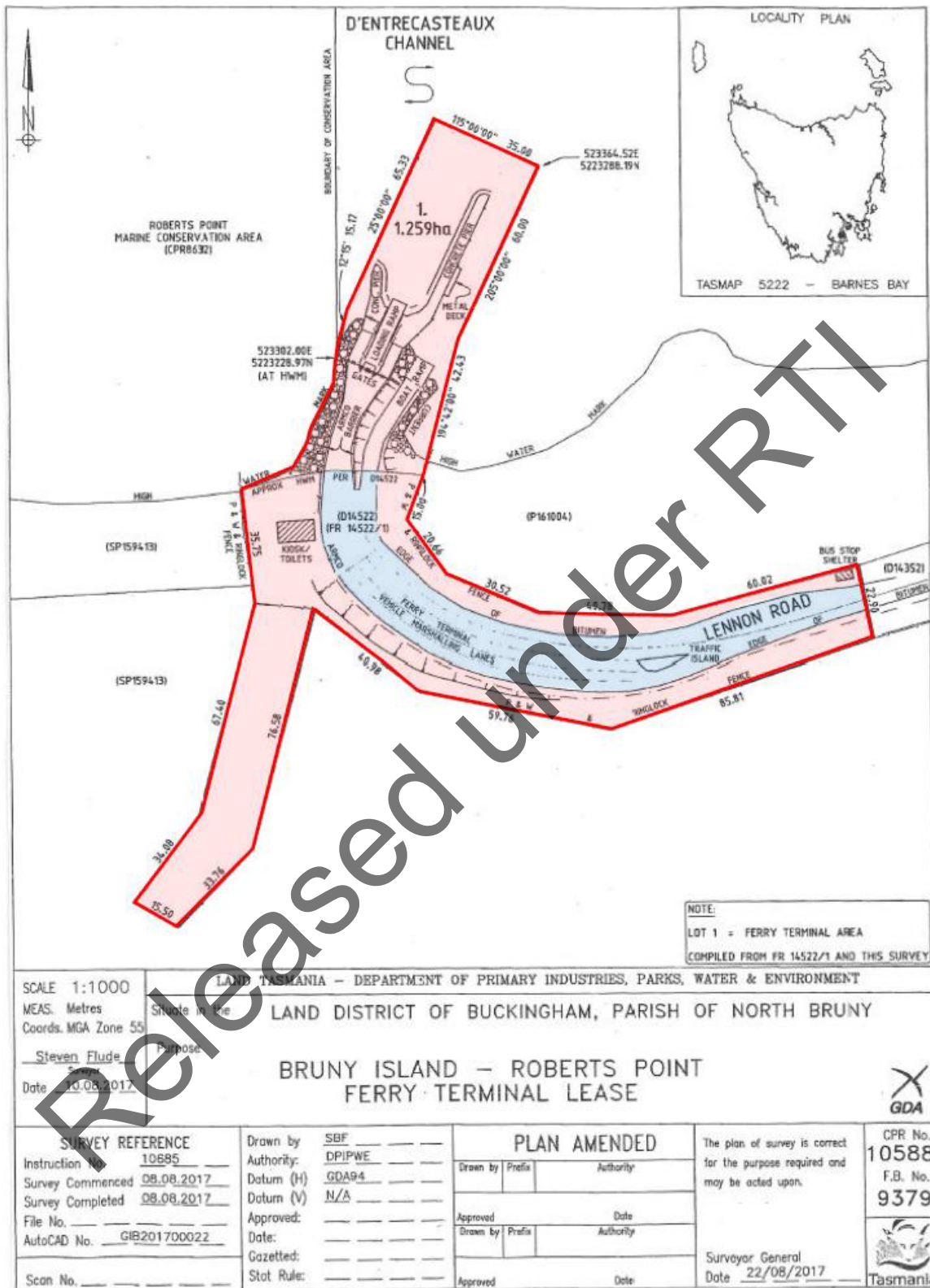
Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Released under RTI



Schedule 6 - Form of Deed of Guarantee and Indemnity



Deed of Guarantee and Indemnity

Transport Commission

ABN 95 420 520 014

The Honourable Jeremy Page Rockliff MP

(being and as the Minister for Infrastructure and, for the purposes of the *Crown Lands Act 1976* (Tas), the Portfolio Minister in relation to the Licensed Area)

SeaLink Travel Group Limited

ABN 49 109 078 257

Date	June 2018
-------------	-----------

Parties

Commission

Name	Transport Commission ABN 95 420 520 014
Address	Parliament Square, 4 Salamanca Place, Hobart, Tasmania
Attention	Commissioner for Transport
Email	transportcommission@stategrowth.tas.gov.au

Minister

Name	The Honourable Jeremy Page Rockliff MP (being and as the Minister for Infrastructure and, for the purposes of the <i>Crown Lands Act 1976</i> (Tas), the Portfolio Minister in relation to the Licensed Area)
Address	Parliament Square, 4 Salamanca Place Hobart Tasmania
Email	transportcommission@stategrowth.tas.gov.au

Guarantor

Name	SeaLink Travel Group Limited ABN 49 109 078 257
Address	Level 2, 431 King William Street, Adelaide, South Australia, 5000
Attention	
Email	

BACKGROUND

The Commission has entered, or may enter, into particular Project Documents with the Operator on the condition that the Guarantor enters into this deed.

TERMS

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this deed.

Beneficiaries means the Commission and the Minister.

Contract means the document titled "Bruny Island Ferry Service Contract" between the Commission, the Operator and the Initial Back-up Vessel Owner dated on or about the date of this deed.

Guaranteed Obligations means all of the obligations of each Operator Related Company under the Project Documents to which it is a party.

Operator means SeaLink Tasmania Pty Ltd ABN 38 626 709 993.

1.2 Contract definitions and interpretation

- (a) Terms which are defined in the Contract but not otherwise defined in clause 1.1 have the same meanings in this deed.
- (b) In this deed, a reference to the Minister includes, as applicable, that Minister's successors in office.

1.3 Benefit

An obligation, a representation or a warranty in favour of the Beneficiaries is for the benefit of them jointly and each of them severally.

2 Guarantee, indemnity and substitution

2.1 Guarantee

The Guarantor unconditionally and irrevocably guarantees to the Beneficiaries the due and punctual performance of the Guaranteed Obligations.

2.2 Indemnity

The Guarantor unconditionally and irrevocably indemnifies the Beneficiaries against all Loss suffered or incurred by the Beneficiaries directly or indirectly in relation to:

- (a) any failure by any Operator Related Company to perform any of the Guaranteed Obligations;
- (b) any Guaranteed Obligation (or anything which would have been a Guaranteed Obligation if it were not unenforceable, invalid or illegal) being or becoming unenforceable, invalid or illegal; or
- (c) the occurrence of an Insolvency Event in relation to any Operator Related Company.

2.3 Demand

The Guarantor must pay to the Beneficiaries on demand an amount equal to the amount of any Loss in respect of which it has given an indemnity under clause 2.2. Demand may be made under this clause 2.3 at any time and from time to time. Payments must be made in the currency in which the amounts are demanded.

2.4 Substitution

- (a) If, in the reasonable opinion of a Beneficiary, an Operator Related Company fails to perform an obligation under a Project Document to which that Beneficiary is a party in accordance with the relevant Project Document and that Beneficiary gives the Guarantor a written notice of that opinion and a request that the Guarantor remedy it under this clause 2.4, then the Guarantor must at its own cost and expense promptly perform, or cause to be performed, that obligation in accordance with the relevant Project Document as if the Guarantor had been (for the purpose of that obligation) the applicable Operator Related Company at the date of execution of the relevant Project Document.
- (b) If the Guarantor fails to comply with its undertaking in clause 2.4(a), the relevant Beneficiary may engage others to perform the obligation and the cost incurred by the Beneficiary will be a debt due from the Guarantor to the Beneficiary.
- (c) Nothing in this clause 2.4 affects the liability of any Operator Related Company under the Project Documents.

3 Nature of the Guarantor's obligations

3.1 Absolute obligations

The obligations of the Guarantor under this deed are absolute and are not subject to the performance of any condition precedent or condition subsequent.

3.2 Principal and separate obligations

Each obligation of the Guarantor under this deed is:

- (a) a principal obligation imposed on the Guarantor and not to be regarded as ancillary or collateral to any other right or obligation; and

- (b) a separate obligation of the Guarantor and no obligation limits the generality of any other obligation.

4 Payments

The Guarantor must make all payments to the Beneficiaries under this deed:

- (a) in immediately available funds;
- (b) to the relevant account specified by each of the Beneficiaries to the Guarantor or as each of the Beneficiaries otherwise directs from time to time; and
- (c) without any counterclaim, deduction, withholding or set-off unless a law compels the Guarantor to do so.

5 Preservation of the Beneficiaries' rights

The obligations of the Guarantor under this deed will not be affected by an act, omission, matter or thing which, but for this clause 5, would reduce, release or prejudice any of its obligations under this deed (without limitation and whether or not known to it or the Beneficiaries) including (without limitation) any variation to, or termination of, the Project Documents or the grant of any time, waiver or other indulgence in respect of any obligation under the Project Documents.

6 General

6.1 Confidentiality

To the extent applicable, clause 24 of the Contract governs this deed.

6.2 Governing law and jurisdiction

- (a) This deed is governed by the laws in force in Tasmania.
- (b) Each party submits to the exclusive jurisdiction of courts exercising jurisdiction of Tasmania in relation to matters concerning this deed and the Contract.

6.3 Minister expressed to be party

If a Minister of the Crown (acting in that capacity) is expressed to be a party to this deed, then unless an applicable law provides otherwise:

- (a) the Minister enters into this deed on behalf of the Crown in Right of Tasmania;
- (b) the rights, obligations and liabilities expressed to be those of the Minister are rights, obligations and liabilities of the Crown in Right of Tasmania; and

- (c) each reference in this deed to the Minister will be taken to include a reference to the Crown in Right of Tasmania.

6.4 No interference with executive duties or powers

Nothing in this deed is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this deed that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

6.5 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one instrument.

Released under RTI

Executed as a deed

Executed for and on behalf of the
Transport Commission

Signature

Print name

Executed as a deed by **The Honourable Jeremy Page Rockliff MP** (being and as the Minister for Infrastructure and, for the purposes of the Crown Lands Act 1976 (Tas), the Portfolio Minister in relation to the Licensed Area) in the presence of the witness named below:

Minister's
Signature:

Witness'
signature:

Witness
print
name and
position:

Witness
print address:

Executed by **SeaLink Travel Group Limited ABN 49 109 078 257** in accordance with section 127(1) of the Corporations Act:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Released under RTI

Schedule 7 - Form of Unconditional Undertaking

UNCONDITIONAL UNDERTAKING

DEED POLL DATED:

IN FAVOUR OF: **Transport Commission**

ABN 95 420 520 014 of Parliament Square, 4 Salamanca Place,
Hobart, Tasmania (**Commission**); and

The Honourable Jeremy Page Rockliff MP (being and as the Minister
for Infrastructure and, for the purposes of the *Crown Lands Act 1976*
(Tas), the Portfolio Minister in relation to the "Licensed Area" as
described in the licence contemplated in Background A(b) below)
(**Minister**)

GIVEN BY:

[insert name of financial institution]
ABN [insert number] of [insert street address of financial
institution within Australia] (**Financial Institution**)

BACKGROUND

- A SeaLink Tasmania Pty Ltd ABN 38 626 709 993 (**Operator**) has entered into, or will enter into:
- (a) together with Stradbroke Ferries Pty Ltd ABN 63 009 725 713 (collectively, the **Operator Related Companies**), a contract with the Commission dated on or about the date of this document to carry out ferry services and related operator activities in respect of the ferry operating between Kettering and Roberts Point, Bruny Island in Tasmania; and
 - (b) a licence with the Minister dated on or about the date of this document of certain landside infrastructure to facilitate the Operator carrying out its activities under the abovementioned contract,
- (together, the **Service Documents**).
- B The Service Documents require the Operator to deliver to the Commission an unconditional undertaking on terms and conditions acceptable to the Commission.
- C The Commission agrees to accept the unconditional undertaking contained in this document in satisfaction of the Operator's obligation referred to in Background B.

TERMS

1. Agreement

The Financial Institution, subject to the terms of this document but otherwise unconditionally, agrees to pay to the Commission on demand any sum from time to

time demanded in writing by the Commission up to but not exceeding a maximum aggregate amount of five hundred thousand dollars (\$500,000) (**Aggregate Sum**). The Commission may make more than one demand provided that the Financial Institution is not liable to pay more than the Aggregate Sum under this document.

2. **Payment**

The Financial Institution must pay the Aggregate Sum (or any part of it):

- (a) immediately on delivery to the Financial Institution of a written demand signed by a representative of the Commission;
- (b) without reference to any Operator Related Company and despite any notice by any Operator Related Company to the Financial Institution not to pay; and
- (c) without regard to the performance or non-performance by any Operator Related Company or the Commission of the terms of any Service Document.

3. **Liability**

The liability of the Financial Institution under this document is not impaired or discharged by any reason, including:

- (a) any amendment to a Service Document; or
- (b) any forbearance on the part of the Commission or an Operator Related Company to any other party.

4. **Operation of document**

The provisions of this document continue to operate until the earlier of the date:

- (a) the Commission returns this document to the Financial Institution or gives written notice to the Financial Institution that this document is no longer required by the Commission; or
- (b) the Financial Institution has paid the Commission the whole of the Aggregate Sum; or
- (c) 22 March 2039.

5. **Termination**

Despite anything stated in this document, the Financial Institution has the right at any time to pay the Commission the Aggregate Sum or, if applicable, the balance

outstanding of the Aggregate Sum, at which time the Financial Institution's liability under this document will immediately cease and this document will be automatically terminated.

6. Notices

All notices and demands given by the Commission under this document are deemed to be properly given if:

- (a) given in writing, signed on behalf of the Commission; and
- (b) delivered to the office of the Financial Institution at the above address.

7. General

7.1 Governing law

This document is governed by the law in force in Tasmania.

7.2 Assignment

The Commission may not assign, transfer, charge or otherwise deal with any of its rights or obligations under this document unless the Commission obtains the prior written consent of the Financial Institution.

7.3 Attorneys

Each person who executes this document on behalf of a party under a power of attorney declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney.

7.4 Interpretation

In this document, a reference to the Minister includes, as applicable, that Minister's successors in office.

EXECUTION

Executed as a deed

[insert appropriate execution block for Financial Institution]

Released under RTI

Schedule 8 - Form of General Security Deed



General Security Deed

[insert]
ABN **[#insert]**

Transport Commission
ABN 95 420 520 014

Released under RTI

Date

June 2018

Parties

Grantor
Name

[#insert]
ABN **[#insert]**

Secured Party
Name

Transport Commission
ABN 95 420 520 014

Released under RTI

TERMS

1 Definitions and interpretation

1.1 Definitions

In this document the following definitions apply unless the context indicates otherwise:

Affiliate means, in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company.

Attorney means an attorney (including any delegate) appointed under this document.

Authorised Signatory means:

- (a) in respect of the Grantor, any director, or any person from time to time nominated as an Authorised Signatory by the Grantor by a notice to the Secured Party accompanied by certified copies of signatures of all new persons so appointed; and
- (b) in respect of the Secured Party, Jeffrey Ellison, director or any person from time to time nominated as an Authorised Signatory by the Secured Party by a notice to the Grantor accompanied by certified copies of signatures of all new persons so appointed.

Chattel Paper has the meaning given to that expression in the PPSA.

Collateral means all the Grantor's present and after-acquired property. It includes anything in respect of which the Grantor has at any time a sufficient right, interest or power to grant a Security Interest (including the Vessels).

Collateral Security means any document that grants a Security Interest to the Secured Party, any guarantee in favour of the Secured Party or other document or agreement at any time created or entered into in connection with or as security for any Secured Money.

Compensation Event means any confiscation, resumption, appropriation, forfeiture, repurchase, redemption or compulsory acquisition of property by any person under a law or otherwise.

Compensation Proceeds means any payment or other proceeds resulting from a Compensation Event.

Contract means the agreement between the Secured Party, the Grantor and [insert] titled "Bruny Island Ferry Service Contract" dated on or about 28 June 2018.

Control means:

- (a) "control" as defined in section 50AA of the Corporations Act; or
- (b) the power to direct the management and policies of an entity, whether through the ownership of voting capital, by contract or otherwise;

Control Event means:

- (a) in respect of any Collateral that is, or would have been, a Revolving Asset:
 - (i) the Grantor breaches, or attempts to breach clause 4.1 in respect of the Collateral or takes any step which would result in it doing so;
 - (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this document;
 - (iii) distress is levied or a judgment, order or Security Interest is enforced or becomes enforceable over the Collateral; or
 - (iv) the Secured Party gives a notice to the Grantor that the Collateral is not a Revolving Asset. (However, the Secured Party may only give a notice if the Secured Party reasonably considers that it is necessary to do so to protect its rights under this document or if an Enforcement Event is continuing); or
- (b) in respect of all Collateral that is or would have been Revolving Assets, an Insolvency Event occurs in relation to the Grantor;

Deposit Account means any account that the Secured Party requires the Grantor to open and maintain under clause 7.

Document of Title means any document evidencing the Grantor's title to any Collateral, whether an original, duplicate or counterpart and includes a share certificate, a unit certificate, a real property certificate of title and a 'document of title' (as defined in the PPSA).

Earnings means, in relation to a Vessel and a person, all money at any time payable to that person for or in relation to the use or operation of such Vessel including freight, hire and passage moneys, money payable to that person for the provision of services by or from such Vessel or under any charter commitment, requisition for hire compensation, remuneration for salvage and towage services, demurrage and detention moneys and damages for breach and payments for termination or variation of any charter commitment.

Enforcement Event means the occurrence of any of the following events:

- (a) a Termination Event;
- (b) any other Step-In Event; or
- (c) a failure by the Grantor to pay any Secured Money in accordance with the Project Documents.

Holding Company means, in relation to a company or corporation, any other company or corporation in respect of which it is a Subsidiary.

Marketable Securities means:

- (a) 'intermediated securities' and 'investment instruments' (each as defined in the PPSA);

- (b) an undertaking referred to in the exceptions in paragraphs (a), (b) and (c) of the definition of 'debenture' in the Corporations Act;
- (c) a unit or other interest in a trust or partnership; and
- (d) a right or an option in relation to any of the above, whether issued or unissued.

Material Adverse Effect means a material adverse effect on:

- (a) the business, operation, property, condition (financial or otherwise) or prospects of any Obligor;
- (b) the ability of an Obligor to perform its obligations under the Project Documents;
- (c) the validity or enforceability of the whole or any material part of any Project Documents or any material rights or remedies of the Secured Party under the Project Documents; or
- (d) the realisable value of any Collateral.

Obligor means:

- (a) the Grantor;
- (b) the Holding Company of the Grantor;
- (c) each other person who provides Collateral Security, at any time, to the Secured Party; and
- (d) each other person the Parties agree in writing is an Obligor for the purposes of this document.

Part means any constituent part of a Vessel or an accessory, component, furnishings, furniture, fittings or similar thing installed in or attached to a Vessel.

Party means a party to this document.

Power means a power, right, authority, discretion or remedy which is conferred on a person:

- (a) under any Project Document; or
- (b) by law in relation to any Project Document.

PPSR has the meaning given to the term 'register' in the PPSA.

Receiver means a receiver or receiver and manager.

Remedy Proceeds means money received by the Secured Party, Receiver or Attorney from the exercise of any right, including enforcement, against the Collateral.

Revolving Asset means any Collateral:

- (a) which is:

- (i) a negotiable instrument;
 - (ii) machinery, plant, or equipment which is not inventory and has a value of less than \$100,000 or its equivalent;
 - (iii) money (including money withdrawn or transferred from an account with a bank or other financial institution); and
- (b) in relation to which no Control Event has occurred, subject to clause 4.3.

Secured Money means all money which an Obligor (whether alone or not) is or at any time may become actually or contingently liable to pay to or for the account of the Secured Party (whether alone or not) for any reason whatever under or in connection with a Project Document (as amended, novated, supplemented, extended, replaced or restated) whether or not currently contemplated.

It includes money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages under or in connection with a Project Document, or as a result of a breach of or default under or in connection with a Project Document.

Where an Obligor would have been liable but for its deregistration, or a compromise, deed of arrangement, amalgamation, administration, reconstruction, winding up, dissolution, assignment for the benefit of creditors, arrangement or compromise with creditors or bankruptcy or a set-off claimed by it, it will be taken still to be liable.

Security means each Security Interest created by this document.

Serial Numbered Collateral means:

- (a) each Vessel;
- (b) any Collateral that must be described by serial number in a registration on the PPSR; and
- (c) any Collateral that may be described by serial number in a registration on the PPSR.

Subsidiary means a subsidiary within the meaning of Part 1.2 Division 6 of the Corporations Act.

Tax means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

Vessel means:

- (a) each Contract Ferry which is or becomes the property of the Grantor and which the Grantor is required to supply under the Contract;
- (b) each Part and each constituent item of a Vessel which is capable of being reconditioned or repaired including its engines, machinery, boats, tackle, outfit, equipment, ropes, spare gear, spare anchors and propellers, belongings and appurtenances (whether on board or ashore) which is or becomes the property of the Grantor; and

- (c) any additions, improvements and replacements made in or to a Vessel or item in paragraphs (a) or (b).

Vessel Insurance means:

- (a) all policies and contracts of insurance held in connection with the ownership of the Vessels; and
- (b) all entries in a protection and indemnity or war risks or other mutual insurance association,

held in the name of the Grantor.

Vessel Security means:

- (a) this document; and
- (b) any time after the date of this document:
 - (i) each Security Interest created in relation to a Vessel in favour of the Secured Party (whether as initial party or assignee);
 - (ii) each assignment over the Vessel Insurances that relate to a Vessel held by the Secured Party (whether as initial party or assignee); and
 - (iii) each assignment of the benefit of any Project Document or Compensation Proceeds (or any combination of the above) that relate to a Vessel held by the Secured Party (whether as initial party or assignee).

1.2 Definitions in the Contract

Subject to clause 1.1, terms used in this document that are defined in the Contract have the same meaning in this document.

1.3 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body, a Government Body or other entity includes any of them;
- (e) a reference to a clause is a reference to a clause of this document;
- (f) a reference to an agreement or document (including a reference to this document) is to the agreement or document as amended, varied, supplemented, novated or replaced;

- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to any Government Body or professional body includes the successors of that body;
- (i) a reference to dollars or \$ is a reference to Australian currency;
- (j) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (k) nothing in this document is to be interpreted against a party solely on the ground that the party put forward this document or any part of it;
- (l) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (m) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';
- (n) if any amount under this document is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day; and
- (o) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (p) reference to a time or date in relation to the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere
- (q) to the extent of any inconsistency, ambiguity or discrepancy between any one or more provisions forming this document, then the higher or more onerous requirement will apply;
- (r) any Obligor or any Party will be construed so as to include its executors, administrators, successors, substitutes (including by novation) and assigns to, or of, its rights and/or obligations under this document;
- (s) an amendment includes a supplement, novation, extension (whether of maturity or otherwise), restatement, re-enactment or replacement (however fundamental and whether or not more onerous), and amended will be construed accordingly;
- (t) assets and property includes present and future properties, revenues and rights of every description;
- (u) disposal means a sale, transfer, assignment, grant, lease, licence, declaration of trust or other disposal, whether voluntary or involuntary and whether in a single transaction or a series of transactions, and dispose will be construed accordingly;
- (v) guarantee means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any

person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness or to assure any creditor against loss;

- (w) indebtedness includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (x) law includes any law or legal requirement, including at common law, in equity, under any statute, rule, regulation, proclamation, order in council, ordinance, by-law, interim development order, planning scheme or environmental planning scheme whether commonwealth, state, territorial or local, any condition of an Authorisation, and any decision, ruling, interpretative decision, directive, guidance or requirement of any Governmental Agency;
- (y) a person or entity includes any individual, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or 2 or more of them and any reference to a particular person or entity (as so defined) includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;
- (z) a reference to a thing (including the Collateral) is a reference to the whole or any part of it;
- (aa) an Enforcement Event is continuing or subsisting if it has not been remedied to the satisfaction of the Secured Party as evidenced in writing, or waived in writing; and
- (bb) unless the contrary intention appears, where the Grantor holds any Collateral as trustee for any trust (including where the trust has not been disclosed to the Secured Party), this document is binding on the Grantor in its personal capacity and in its capacity as trustee of the relevant trust and references to the Grantor's assets, liabilities, acts or omissions include any assets, liabilities, acts or omissions of the Grantor as trustee of the relevant trust.

2 The Security

2.1 Grant of security

- (a) The Grantor grants a security interest in the Collateral to the Secured Party to secure payment of the Secured Money.
- (b) This security interest is:
 - (i) a transfer by way of security of:
 - (A) Collateral consisting of accounts as defined in the PPSA and Chattel Paper; and
 - (B) each Project Document; and

- (ii) a charge over all other Collateral, which for the avoidance of doubt, includes each Vessel. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over Revolving Assets and a fixed charge over all other Collateral.

2.2 Mandatory requirement

If a law requires that something must be done before the Grantor may validly grant a Security Interest over any of the Collateral, to the extent required, the Security only takes effect in relation to that Collateral when the thing required is done.

2.3 Priority

The Grantor acknowledges that:

- (a) the Security is intended to take priority over all other Security Interests over the Collateral except:
 - (i) for those Security Interests which are mandatorily required by any applicable law to have priority; and
 - (ii) as otherwise agreed in writing by the Secured Party; and
- (b) nothing in this document is intended as an agreement by the Secured Party to subordinate the Security to any other Security Interest in the Collateral.

2.4 Security continues

- (a) Any dealing with any Collateral on the terms permitted by clause 4.2 will not release or extinguish the Security unless the dealing is the absolute transfer of all of the Grantor's right, title and interest in the relevant Collateral.
- (b) If the Grantor disposes of or otherwise deals or agrees to deal with the Collateral in breach of any Project Document, the Grantor acknowledges that:
 - (i) the Secured Party has not:
 - (A) authorised any disposal or dealing or agreement to deal; or
 - (B) agreed that any disposal or dealing or agreement to deal will extinguish the Security; and
 - (ii) the Security continues in the Collateral despite the disposal or dealing or agreement to deal.

3 Grantor must pay Secured Money

3.1 Payment of Secured Money

The Grantor must pay the Secured Money in accordance with the Project Documents.

4 Dealing with Collateral

4.1 Restricted dealings

The Grantor must not do, or agree to do, any of the following unless it is permitted to do so by another provision in this document or another Project Document to which it is expressed to be a party:

- (a) create or allow another interest in the Collateral other than a Permitted Security Interest; or
- (b) dispose, or part with possession, of any Collateral.

4.2 Permitted dealings

The Grantor may do any of the following in the ordinary course of the Grantor's ordinary business unless it is prohibited from doing so by another provision in a Project Document to which it is expressed to be a party:

- (a) create or allow any interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; and
- (b) withdraw or transfer money from an account with a bank or other financial institution.

4.3 Revolving Assets

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge;
- (c) any Collateral consisting of accounts as defined in the PPSA and Chattel Paper is transferred to the Secured Party by way of security; and
- (d) the Grantor may no longer deal with the Collateral under clause 4.2.

4.4 Conversion to Revolving Assets

If any Collateral is not, or ceases to be, a Revolving Asset, the Secured Party may give the Grantor a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Grantor. This may occur any number of times.

4.5 Inventory

Any inventory which is not a Revolving Asset is specifically appropriated to the Security. The Grantor may not remove it without obtaining the specific and express authority of the Secured Party to do so.

4.6 **Creation of other Security Interest without consent**

- (a) If a law entitles the Grantor to create or allow another Security Interest (other than a Permitted Security Interest) in connection with the Collateral without the consent of the Secured Party, the Grantor must, before creating or allowing any such Security Interest:
 - (i) notify the Secured Party of its proposal to grant the Security Interest; and
 - (ii) if requested by the Secured Party, enter into a priority agreement with the Secured Party and the proposed recipient of the other Security Interest (**Recipient**), granting the Security a first ranking position in respect of the relevant Collateral in a form acceptable to the Secured Party and procure entry by the Recipient into the priority agreement.
- (b) If the Grantor does not comply with clause 4.6(a), further financial accommodation which would form part of the Secured Money may not, at the discretion of the Secured Party be made available under any Project Document.
- (c) The Secured Party's rights under this clause 4.6 are in addition and without prejudice to the other rights of the Secured Party under the Project Documents.

4.7 **Notice may be given not to deal**

The Secured Party may at any time give a notice to the Grantor to the effect that the Grantor may not deal in the Collateral described in the notice where it reasonably believes that an Enforcement Event has occurred and the Collateral is at risk of being lost, surrendered, forfeited or detained.

5 **Representations**

5.1 **Representations**

The Grantor makes the representations and warranties set out in this clause 5 to the Secured Party on the date of this document and on each other date set out in clause 5.7.

5.2 **Ranking**

The Security has or will have the ranking in priority which it is expressed to have in this document and it is not subject to any prior ranking or pari passu ranking Security Interest, other than Permitted Security Interests.

5.3 **Good title to assets**

It has a good and marketable title to, or valid leases or licences of, and all appropriate Authorisations to use, the assets necessary to carry on its business as presently conducted.

5.4 Status of Collateral

The Grantor represents and warrants that:

- (a) it is the sole legal and beneficial owner of, or otherwise has or will have sufficient right, interest or power to grant a Security Interest in the Collateral;
- (b) no Security Interest exists over all or any of the Collateral and no person (other than the Secured Party) has any other interest in or claim to any Collateral, in each case, other than as expressly permitted by a Project Document.

5.5 Vessel

Notwithstanding any other provision in this clause 5, the Grantor represents and warrants in respect of a Vessel that:

- (a) **Vessel details:** the details of the Vessel provided to the Secured Party are true and accurate and the Vessel is:
 - (i) registered in the name of the Grantor and on the relevant register of ships as the owner of the Vessel; and
 - (ii) registered and classified by the relevant classification society which is acceptable to the Secured Party, free of recommendations and reservations; and
- (b) **execution and registration:** the execution and registration of the Vessel Security which is a Security Interest over the Vessel creates in favour of the Secured Party all rights of a first preferred naval mortgagee of the Vessel to secure payment and discharge of the Secured Money.

5.6 Future property

When the Grantor acquires any Collateral or the Collateral comes into existence after the date of this document, the Grantor is deemed to have given the representations and warranties set out in this clause 5 in relation to that Collateral.

5.7 Repetition

The representations and warranties in this clause are taken to be repeated on each date that any representation or warranty in the Contract is given or repeated on the basis of the facts and circumstances as at that date.

5.8 Reliance

- (a) The Grantor acknowledges that it has not entered in to this document or any other Project Document in reliance on any representation, warranty, promise or statement made by or on behalf of the Secured Party.
- (b) The Grantor acknowledges that the Secured Party has entered into each Project Document to which the Grantor is a party in reliance on the representations and warranties given by the Grantor under this document.

5.9 Survival

All representations and warranties by the Grantor in any Project Document survive the execution and delivery of the Project Documents and the provision of advances and accommodation.

6 Undertakings

The obligations and undertakings in this clause 6 remain in full force from the date of this document for so long as the Secured Money or any other amounts are outstanding under any Project Document.

6.1 Change of details

The Grantor must notify the Secured Party:

- (a) on becoming aware that it has received, or is likely to receive, an ACN, ABN, ARBN or ARSN, (in its own capacity or as trustee) under which it holds any Collateral; and
- (b) at least 14 days before applying for such a new number.

6.2 PPSA policies and steps

If:

- (a) the Grantor holds any security interests as defined in the PPSA (**PPSA Security Interests**) including in respect of the Vessel, and the Secured Party requests; or
- (b) a failure by the Grantor to perfect any of the PPSA Security Interests referred to in paragraph (a) would or would be likely to have a Material Adverse Effect,

the Grantor must (at its own cost):

- (i) provide evidence to the Secured Party that the Grantor has in place procedures for the perfection of those PPSA Security Interests, being procedures which ensure that the Grantor takes all reasonable steps to obtain the highest ranking priority possible under the PPSA in respect of those PPSA Security Interests (**Procedures**);
- (ii) keep the Procedures up to date and comply with the Procedures; and
- (iii) perfect its PPSA Security Interest so that the Grantor obtains a first ranking priority under the PPSA in respect of the PPSA Security Interest (or such other priority as the Secured Party may otherwise agree in writing).

6.3 Preservation of assets

The Grantor must:

- (a) maintain in good working order and condition (ordinary wear and tear excepted) all of its assets necessary or desirable in the conduct of its business; and
- (b) do everything necessary to preserve and protect the realisable value of the Collateral and its interest (and the interest of the Secured Party) in the Collateral and not do anything which may result in a reduction of the realisable value of any Collateral.

6.4 Access to Collateral and records

Without limiting clause 9.8 of the Contract, the Grantor must ensure that the Secured Party and each accountant, valuer and other consultant or expert engaged by the Secured Party in connection with the Project Documents is given access to:

- (a) all premises forming part of the Collateral or on which Collateral is located; and
- (b) records of the Grantor which form part of or are relevant to the Collateral or to the Grantor's obligations under the Project Documents,

as necessary to allow any of those persons to exercise rights or carry out obligations to the Secured Party or otherwise pursuant to a Project Document or to confirm compliance with the Project Documents.

6.5 Documents of Title

Subject to clause 6.6, the Grantor must deliver all Documents of Title to the Secured Party:

- (a) on or prior to the date of this document; or
- (b) in the case of Collateral which is acquired or comes into existence after the date of this document, immediately upon acquisition or creation of that Collateral.

6.6 Control and possession

If the Collateral includes Marketable Securities or other property which can be subject to 'control' or 'possession' (each as defined in the PPSA) by a secured party, the Grantor must promptly do anything that the Secured Party requires to enable it to perfect the Security over the relevant Collateral by control or by possession (and otherwise in the manner requested by the Secured Party) except where (and for so long as):

- (a) control has been given to the holder of a Permitted Security Interest;
- (b) it is not possible for more than one party to effect control over the Collateral; and
- (c) the Secured Party has expressly agreed in writing to subordinate the Security to that Permitted Security Interest.

6.7 **Marketable Securities**

If the Collateral includes Marketable Securities, the Grantor must:

- (a) notify the Secured Party as soon as it becomes aware of:
 - (i) any right or entitlement it may take up or exercise arising directly or indirectly at any time from or in relation to the Marketable Securities and exercise all such rights and entitlements in accordance with any instructions from the Secured Party;
 - (ii) any proposal or action taken to convert any Collateral comprising certificated Marketable Securities into uncertificated Marketable Securities and immediately take any steps necessary to comply with its obligations under clause 6.6;
- (b) not do anything (including by exercising its voting rights) or fail to do anything which could entitle any person to a lien or other Security Interest over any of the Marketable Securities or which could result in the forfeiture of the Marketable Securities; and
- (c) pay all returns of capital in respect of the Marketable Securities to or at the direction of the Secured Party.

6.8 **Serial Numbered Collateral**

The Grantor must:

- (a) at the request of the Secured Party, promptly provide details (in writing) of any Serial Numbered Collateral to the Secured Party, including all information necessary for the Secured Party to make an effective registration on all applicable registers in respect of Serial Numbered Collateral;
- (b) ensure that all serial numbers and other information provided to the Secured Party in connection with any Serial Numbered Collateral is and remains accurate in all respects; and
- (c) not change or remove the serial number of any Serial Numbered Collateral after the Grantor has disclosed the serial number to the Secured Party.

6.9 **Chattel Paper**

The Grantor must, at the request of the Secured Party, promptly give possession of any Chattel Paper to the Secured Party.

6.10 **Collect accounts**

Unless the Secured Party directs otherwise, the Grantor must procure prompt collection of the Grantor's trade debts or other debts and accounts receivable and the Secured Party appoints the Grantor as its agent for that purpose.

7 Deposit Account

7.1 Open and maintain Deposit Account

The Secured Party may, at any time, require the Grantor to open and maintain a Deposit Account with the Secured Party or, if the Secured Party permits, with an authorised deposit taking institution nominated by the Secured Party.

7.2 Deposit proceeds in the Deposit Account

- (a) While an Enforcement Event is continuing, the Grantor must deposit in the Deposit Account:
 - (i) any proceeds that the Grantor receives under any insurance policy in relation to the Collateral;
 - (ii) any proceeds of any actual or contingent debt or monetary obligation owed to the Grantor which forms part of the Collateral;
 - (iii) any proceeds of sale, disposal or other dealing with any Collateral; and
 - (iv) any other proceeds that the Secured Party may designate for this purpose.
- (b) Clause 7.2(a) does not apply to proceeds received from any workers' compensation or public liability policy or reinstatement policy to the extent that the proceeds are paid to a person:
 - (i) entitled to be compensated under the workers' compensation or public liability policy; or
 - (ii) under a contract for the reinstatement of the Collateral (being a contract which has been approved by the Secured Party).

7.3 Operation of the Deposit Account

Withdrawals may only be made from the Deposit Account with the prior written consent of the Secured Party.

7.4 Deposit Account with nominated authorised deposit taking institution

Where the Grantor is permitted to open the Deposit Account with an authorised deposit taking institution (**Account Bank**) which is not the Secured Party, the Grantor must obtain an agreement from the Account Bank in form and substance satisfactory to the Secured Party which allows the Secured Party to direct disposition of the funds from the Deposit Account without reference to or consent from the Grantor and includes agreement by the Account Bank that it:

- (a) will not repay any money in the Deposit Account to the Grantor or any other person without the prior written consent of the Secured Party;
- (b) agrees to postpone the priority of any Security Interest held by it at any time in respect of the Deposit Account to the Security and will not exercise its rights under any such Security Interest without the prior written consent of the Secured Party; and

- (c) waives all rights of set-off and combination in respect of the Deposit Account.

8 Collection and transfer of Collateral

8.1 Exercise of rights by Secured Party

The Secured Party may exercise its rights under this clause 8 at any time after an Enforcement Event has occurred.

8.2 Accounts receivable

The Secured Party may notify the Grantor that:

- (a) the Grantor is prohibited from collecting the Grantor's trade debts or other debts and accounts receivable including all Earnings; and
- (b) the Secured Party will collect those trade debts or other debts and accounts receivable and the Earnings, in which case the Grantor:
 - (i) must notify its debtors of the Secured Party's interest;
 - (ii) agrees that the Secured Party may prepare and send invoices in relation to the Grantor's trade debts or other debts and accounts receivable; and
 - (iii) must use its best endeavours to do everything in its power to assist the Secured Party in collecting the Grantor's trade debts or other debts and accounts receivable.

8.3 Authorisations

The Secured Party may request that any Authorisation that is required in relation to any business activity carried on by the Grantor, the Collateral or any of the Grantor's property or that of its Subsidiaries is transferred to the Secured Party or its nominee and the Grantor must do everything in its power to ensure that transfer is completed.

8.4 Marketable Securities

The Secured Party may do any one or more of the following:

- (a) require the Grantor to pay all cash dividends, charges, fees or other amounts distributed, declared or paid on or in connection with Collateral which comprises Marketable Securities to the Secured Party or as it may direct;
- (b) direct the Grantor how to exercise its voting rights in respect of Collateral comprising Marketable Securities and the Grantor must comply with any such requirement or direction; and
- (c) procure itself or its nominee to be registered as the holder of any Collateral which comprises Marketable Securities and the Grantor irrevocably authorises the Secured Party to do all things necessary for that purpose.

9 Enforcement

9.1 Rights of Secured Party following default

In addition to any other rights provided by law or under this document or any other Project Document, at any time after an Enforcement Event has occurred:

- (a) each Security Interest arising under this document or any Collateral Security becomes immediately enforceable;
- (b) the Secured Party may at any time, by notice to the Grantor, declare all or any part of the Secured Money to be due and payable immediately, on demand or at a later date as the Secured Party may specify in the notice; and
- (c) the Secured Party:
 - (i) may, in the name of the Grantor or otherwise, at any time, do anything that the Grantor, or if the Grantor is a corporation or a trust, its directors or trustee (as the case may be), could do in relation to the Collateral;
 - (ii) has all other rights conferred by law in relation to the Collateral; and
 - (iii) may do anything that a Receiver may do under clause 10.

9.2 Specific rights of Secured Party following default in respect of the Vessels

Without limiting any other powers provided to the Secured Party under this document or any other Project Document, at any time after an Enforcement Event has occurred, the Secured Party may do any one or more of the following things:

- (a) exercise all the rights and remedies in foreclosure or otherwise given to mortgagees or holder of a Security Interest by the Shipping Registration Act 1981 (Cth), the Admiralty Act 1988 (Cth), the PPSA and any other relevant laws of Australia;
- (b) access, recover, manage, take or give up possession or control of, and surrender or release, a Vessel as often as it chooses, with the master, officers and crew being obliged to comply with the instructions given from time to time by the Secured Party;
- (c) to discharge, compound, release or compromise claims and liens in respect of a Vessel which have given or may give rise to any charge or lien or other claim on all or part of a Vessel or which are or may be enforceable by proceedings against all or part of a Vessel;
- (d) to collect, recover, compromise and give a good discharge for all claims then outstanding or thereafter arising under the Vessel Insurances or any of them and to take over or institute (if necessary using the name of the Grantor) all such proceedings in connection therewith as the Secured Party in its absolute discretion thinks fit and to permit the brokers through whom collection or recovery is effected to charge the usual brokerage;
- (e) sell a Vessel or any share or interest in it (with or without prior notice to the Grantor and free from any claim by the Grantor (whether in admiralty, in

equity, at law or by statute)) by public auction or private contract, at such place and upon such terms as a prudent, diligent and reasonable person in the position of the Secured Party may determine, with power to postpone any such sale, and without being answerable for any loss occasioned by such sale or resulting from postponement of such sale and with power, where the Secured Party purchases the Vessel, to make payment of the sale price by making an equivalent reduction in the Secured Money;

- (f) manage, insure, maintain, survey and repair a Vessel, and to sail or lay up a Vessel in such manner and for such period as the Secured Party, in its absolute discretion, deems necessary or expedient;
- (g) to require that all policies, contracts and other records relating to the Vessel Insurances (including details of and correspondence concerning outstanding claims) be promptly delivered in accordance with the Secured Party's instructions;
- (h) to recover from the Grantor on demand any loss suffered, incurred or paid by the Secured Party in connection with the exercise of the powers (or any of them) referred to in this clause 9.2;
- (i) give a person an option to purchase or charter a Vessel on any terms; and
- (j) discharge masters, officers, crews, staff, professional advisers, consultants, contractors, agents and auctioneers for the purposes of this document, and at the remuneration that the Secured Party thinks fit, and to delegate to any person any of its powers (including this right of delegation).

9.3 Cessation of dealings

Despite any other provision of any Project Document (but without limiting the operation of clause 4.3), any right which the Grantor has under any Project Document to deal with any Collateral (other than by or through a receiver appointed by the Secured Party) ceases immediately if any of the following occur:

- (a) all of the Secured Money becomes immediately due and payable;
- (b) an Insolvency Event occurs in relation to the Grantor; or
- (c) the Secured Party takes any step to enforce the Security.

9.4 Independent accountant

- (a) Without limiting the rights of the Secured Party under this document, at any time after the occurrence of an Enforcement Event the Secured Party may, by notice to the Grantor appoint a firm of independent accountants or other experts to review and report to the Secured Party on the affairs, performance, financial condition and business of the Grantor and any other Obligor.
- (b) The Grantor must do everything in its power to ensure any review and report referred to in clause 9.4(a) can be carried out promptly, completely and accurately. Without limitation, it must co-operate fully with the review and ensure that the accountants and experts are given access to all premises and records of the Grantor and are given all information concerning the Grantor which they reasonably require.

10 Receivers

10.1 Appointment of Receiver

- (a) In addition to the powers under clause 9 and without prejudice to any of its other rights, the Secured Party may appoint any one or more persons as Receiver to any part of the Collateral at any time after an Enforcement Event has occurred.
- (b) In exercising the power to appoint a Receiver, the Secured Party may:
 - (i) appoint a different Receiver for different parts of the Collateral;
 - (ii) if more than one person is appointed as Receiver of any part of the Collateral, empower them to act jointly or jointly and separately;
 - (iii) remove the Receiver, appoint another in substitution if the Receiver is removed, retires or dies; and
 - (iv) fix the remuneration of the Receiver.

10.2 Receiver as agent

- (a) Subject to clauses 10.2(b) and 10.2(c), a Receiver will be the agent of the Grantor who alone will be responsible for the Receiver's acts and omissions and remuneration.
- (b) The Secured Party may appoint a Receiver or any other person as the agent of the Secured Party and delegate to a Receiver or any other person, any of the Secured Party's rights under this document.
- (c) To the extent that as a result of any order being made or a resolution being passed for the winding up of the Grantor, a Receiver ceases to be the agent of the Grantor, the Receiver will immediately become the agent of the Secured Party.

10.3 Powers - general

- (a) A Receiver has the right in relation to any property in respect of which the Receiver is appointed, to do everything that the Grantor may lawfully authorise an agent to do on behalf of the Grantor in relation to that property.
- (b) Without limitation, a Receiver may in relation to that property exercise:
 - (i) the rights capable of being conferred on receivers and receivers and managers by the Corporations Act and the law of any applicable jurisdiction;
 - (ii) the rights set out in clause 10.4;
 - (iii) the rights of the Grantor and, if the Grantor is a corporation, the directors of the Grantor;
 - (iv) if the Grantor is not a corporation to which the Corporations Act applies, the rights that the law would allow a Receiver to do if the

Grantor was a corporation incorporated under the Corporations Act;
and

- (v) any other rights the Secured Party may by notice to a Receiver lawfully give to a Receiver.
- (c) The Secured Party may by notice to a Receiver at the time of a Receiver's appointment or any subsequent times give any rights to a Receiver that the Secured Party determines.

10.4 Powers - specific

Without limiting clause 10.3, but subject to any restriction imposed by the Secured Party in the terms of the Receiver's appointment, the Receiver may do any one or more of the following things:

- (a) sell or otherwise dispose of any of the Collateral:
 - (i) by private treaty, auction, tender or otherwise;
 - (ii) for cash or on credit and with or without security (including over the property being sold); or
 - (iii) in one lot or separate parcels and by itself or together with other property regardless of ownership,and otherwise on terms determined by the Receiver;
- (b) enter, take possession of, take control of and get in the Collateral and give up possession or control of Collateral one or more times at its discretion;
- (c) receive rents and profits derived from the Collateral;
- (d) carry on any business or activity of the Grantor;
- (e) manage, develop, use, exploit, quietly enjoy and otherwise deal with the Collateral;
- (f) exercise the rights and remedies of the Grantor and comply with its obligations in respect of the Collateral and cause and permit any other person to comply with their obligations in respect of the Collateral;
- (g) vary, replace or release any right or interest of the Grantor in or in relation to the Collateral;
- (h) carry out or complete, in any form, the construction of any works;
- (i) lease, licence or hire out the Collateral;
- (j) surrender or accept the surrender of the Collateral;
- (k) exchange any part of the Collateral for any other property and, if there is a difference in value between the property exchanged, give or receive, as the case may be, any money or other consideration equal to the difference in value in order to give or receive equal value for the exchange;

- (l) acquire or grant easements, profits a prendre, covenants or other rights that benefit, burden or relate to the Collateral and dedicate for any public purpose any part of the Collateral;
- (m) subdivide or consolidate any land forming part of the Collateral;
- (n) grant options and rights of first refusal to acquire the Collateral;
- (o) insure, maintain, improve and protect the Collateral;
- (p) sever trees and improvements or fixtures from the balance of the Collateral and remove them or otherwise deal with them separately from the balance of the Collateral;
- (q) take on lease or on hire or otherwise acquire any property necessary or convenient in relation to the carrying on of a business or activity of the Grantor;
- (r) have access to and use the property and services of the Grantor and the services of its personnel in the exercise of any rights under this document;
- (s) carry out, vary, replace, rescind, repudiate, enforce or terminate any agreement to which the Grantor is a party and that relates to the Collateral;
- (t) give any guarantee for the protection or enhancement of the Collateral;
- (u) enter into any derivatives contract, forward rate agreement, hedging contract, currency exchange agreement or any other agreement or arrangement considered desirable for the purposes of protecting against or managing fluctuations in interest rates, exchange rates, currency prices or commodity prices in relation to or for the benefit or protection of any of the Collateral;
- (v) operate any bank account that forms part of the Collateral and open and operate any further bank accounts;
- (w) promote or cause the formation of companies including for the purpose of entering into contracts for the transfer to or acquisition by those companies of any of the Collateral or so that the companies assume the obligations of the Grantor, or both;
- (x) exercise any voting or other rights or powers in respect of any Collateral and do anything in relation to Marketable Securities;
- (y) surrender, make, enforce, compromise or settle any claim under or in connection with any insurances;
- (z) on any sale of the Collateral, apportion all costs, expenses and purchase money between the separate property sold;
- (aa) in the name of the Grantor make a call in respect of money unpaid on Marketable Securities in the Grantor;
- (bb) with the agreement of a liquidator of the Grantor, in the name of the liquidator, make a call in respect of money unpaid on account of the nominal value of Marketable Securities in the Grantor or by way of premium;

- (cc) enforce payment of any call that is due for payment and unpaid, whether the calls are made by the Secured Party or otherwise;
- (dd) where a debt or other monetary obligation is owed (whether actually or contingently) to the Grantor, prove the debt or obligation in an Insolvency, receive dividends and assent to any proposal for an arrangement (including a scheme of arrangement), composition or a compromise with, or an assignment for the benefit of, creditors;
- (ee) on any terms that the Receiver determines:
 - (i) borrow or otherwise raise money or obtain financial accommodation on the security of the Collateral;
 - (ii) create any Security Interest over the Collateral;
 - (iii) borrow on the security of the Collateral including any money required in relation to the exercise of any right by the Receiver;
 - (iv) deal with any Security Interest granted by it over the Collateral and enter into any agreement relating to the priority of that Security Interest and discharge it; and
 - (v) invest in any way authorised by the law of any applicable jurisdiction for the investment of trust money, any money the Receiver receives that is not required to be immediately applied in the exercise of any right or under clause 12, and vary or dispose of that investment;
- (ff) on behalf of the Grantor:
 - (i) draw, accept, make or endorse any bill of exchange or promissory note;
 - (ii) commence, defend, prosecute, settle, discontinue and compromise litigation, administrative or arbitral proceedings in relation to the Collateral;
 - (iii) enter into and execute and deliver any documents and agreements for the purposes of this document;
 - (iv) give receipts and releases, discharge or compromise any debt or other obligation owed to or by the Grantor and that is part of the Collateral;
 - (v) employ or engage any person (including professional advisers or consultants) for the purpose of exercising any of the Receiver's rights in respect of the Collateral and dismiss any employee or contractor of the Grantor;
 - (vi) make, enforce, settle and compromise all claims in respect of any Compensation Event;
- (gg) delegate to any person any right (including this right of delegation) under this document;
- (hh) do anything necessary to perform or observe any of the Grantor's obligations under this document;

- (ii) do or cause to be done anything to protect the priority of this document, to protect the Grantor's or the Receiver's right, title or interest in the Collateral, to enforce this document, to recover the Secured Money or to protect or enhance the Collateral;
- (jj) do anything incidental or conducive to the exercise of any of its other rights under this document;
- (kk) determine the allocation of Remedy Proceeds as between different kinds of collateral, including allocating between Collateral and other property, and within either of those kinds of property; and
- (ll) obtain registration of the Collateral in the Secured Party's name.

10.5 General

The interpretation of any right or power set out in this clause 10 is not restricted by reference to or inference from any other right or power.

11 Exercise of default rights

11.1 No hindrance

The Grantor must not cause or permit the Secured Party, a Receiver or an Attorney to be prevented or hindered from exercising its rights under this document.

11.2 Performance of obligations

The Secured Party or any person authorised by it may at the cost of the Grantor do anything that the Secured Party determines is necessary or expedient to make good or remedy any breach by the Grantor of any of the provisions of this document.

11.3 Secured Party in possession

- (a) If the Secured Party, a Receiver or an Attorney exercises its rights under this document or takes possession of the Collateral, it will not be liable to account as a mortgagee in possession.
- (b) If the Secured Party has taken possession of the Collateral it may give up possession of the Collateral at any time and may re-enter into possession.
- (c) The Grantor's obligations under this document relating to the Collateral will not be affected by the Secured Party, a Receiver or an Attorney taking possession of the Collateral.

11.4 Exclusion of laws

- (a) The provisions implied in Security Interests by any law will for the purposes of this document be negated or varied only so far as they are inconsistent with the provisions of this document and are otherwise varied so as to become consistent with this document.

- (b) Any statutory restrictions (other than mandatory restrictions that cannot be excluded) on any right of the Secured Party, a Receiver or an Attorney to lease or otherwise deal with the Collateral will not apply to the rights of those persons under this document.

11.5 Order of enforcement

The Secured Party is not:

- (a) under any obligation to marshal in favour of the Grantor any Security Interest held by the Secured Party or any of the funds or assets that the Secured Party may be entitled to receive or have a claim on; and
- (b) obliged to resort to any Collateral Security or enforce any rights against any other person before it resorts to enforcement of this document.

11.6 Location of Vessel

The Grantor undertakes, upon the occurrence of an Enforcement Event, at the request of the Secured Party, to instruct the master and crew of each Vessel or such persons having charge of a Vessel to sail to any port nominated by the Secured Party for the discharge of cargo and/or for change of crew appointed by the Secured Party and/or for purpose of enforcement of this document. The Grantor must provide full co-operation and will bear the responsibility of all costs with respect to such a voyage.

12 Application of money

12.1 Application

The Remedy Proceeds received under or arising out of this document or any Collateral Security granted by the Grantor will be applied towards paying the Secured Money subject to the repayment of any claims having priority over any claim of the Secured Party.

12.2 Order of payment

- (a) The Remedy Proceeds may be appropriated and applied towards paying the Secured Money, in any order that the Secured Party, Receiver, Attorney or other person acting on behalf of any of them determines in its absolute discretion, subject to any applicable law to the contrary, including section 140 of the PPSA; and
- (b) if the Secured Party does not make a determination under clause 12.2(a) the Remedy Proceeds are to be applied in the following order (subject to any applicable law to the contrary):
 - (i) first, towards the payment or reimbursement of all costs and expenses (other than remuneration of any Receiver or Attorney) incurred by the Secured Party, any Receiver or any Attorney in or incidental to the exercise or enforcement or attempted exercise or enforcement of its rights under this document or any Collateral Security;

- (ii) secondly, towards the remuneration of any Receiver or Attorney;
- (iii) thirdly, towards satisfaction of the Secured Money; and
- (iv) fourthly, as to any surplus to the Grantor or other person entitled to it or authorised to give receipts for it.

12.3 Creditor's certificate and disputes

- (a) The Secured Party may rely on a certificate issued by any person who claims to be entitled to receive any of the Remedy Proceeds to the effect that the Grantor owes money to it and stating the amount owing, without being obliged to make any further enquiry.
- (b) If there is any dispute between any persons as to who is entitled to receive the Remedy Proceeds, the Secured Party may pay that money into court and when that is done the Secured Party will have no further obligations in relation to that money.

12.4 No interest on Remedy Proceeds

The Secured Party is not obliged to pay interest on the Remedy Proceeds to any person.

12.5 Payment into bank account

If the Secured Party pays any money into a bank account in the name of any person to whom the Secured Party is obliged to pay money under this clause 12 and notifies that person of the particulars of the account the Secured Party will have no further obligations in relation to that money.

12.6 Contingent and prospective indebtedness

If at the time a distribution of Remedy Proceeds is being made under clause 12.2 any of the Secured Money is contingently owing, the Secured Party may:

- (a) retain any part of the Remedy Proceeds; and
- (b) pay that part of the Remedy Proceeds into an interest bearing deposit account to hold as security for the payment of the Secured Money on terms that the Secured Party determines with any person (including the Secured Party or any of its Affiliates) until that part of the Secured Money ceases to be contingently owing, at which time the relevant amount is to be applied in accordance with clause 12.2 and any amount remaining in the account will continue to be dealt with in accordance with this clause 12.6.

12.7 Payments during default notice period

If:

- (a) during the period from the service of a notice requiring the rectification of a default in the payment of money by the Grantor under this document or any Collateral Security; and
- (b) the expiration of that notice,

the Grantor pays any money towards satisfaction of the Secured Money, that money may be applied:

- (c) first, towards satisfaction of any Secured Money due for payment by the Grantor other than that which is the subject of the notice; and
- (d) secondly, towards satisfaction of the money that is the subject of the notice.

12.8 Accounting for Remedy Proceeds

The Secured Party, any Receiver or any Attorney is not obliged to account to the Grantor for any money relating to the exercise by any of them of any right until money is actually received in immediately available funds and, without limitation, if any of them sell the Collateral on terms by which:

- (a) any part of the purchase price remains unpaid (whether secured or unsecured) after transfer of the Collateral to the purchaser; or
- (b) the purchase price is payable in instalments on or before the transfer of the Collateral to the purchaser,

they are not obliged to account for the purchase price before it is actually received in immediately available funds.

13 Third party dealings

13.1 Secured Party's receipts and discharges

The Secured Party may give valid discharges and receipts for any money payable by any third party in respect of any exercise of a right by the Secured Party, any Receiver or any Attorney.

13.2 No challenge to disposal

The Grantor agrees that:

- (a) if the Secured Party, any Receiver or Attorney transfers or otherwise disposes of the Collateral the Grantor will not challenge the acquirer's right to acquire the Collateral; and
- (b) it will not seek to reclaim that Collateral.

13.3 No duty to enquire

Any person dealing with the Secured Party, any Receiver or any Attorney in relation to the exercise by any of them of a right under this document will not be concerned to enquire whether:

- (a) the right is exercisable or properly exercised;
- (b) the Receiver or Attorney is properly appointed; or
- (c) any money paid by that person to the Secured Party, Receiver or Attorney is properly applied,

and the title of that person to any property acquired by that person from the Secured Party, Receiver or Attorney will not be adversely affected by the right not being exercisable or any improper appointment, exercise of the right or application of money by the Secured Party, any Receiver or any Attorney of which that person does not have actual notice.

14 Statutory powers and notices

14.1 Exclusion of PPSA provisions

To the extent the law permits:

- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) the Secured Party need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPSA, the Secured Party need not comply with sections 132 and 137(3); and
- (c) if the PPSA is amended after the date of this document to permit the Grantor and the Secured Party to agree to exclude other provisions of the PPSA, the Secured Party may notify the Grantor that the Secured Party need not comply with any of those provisions as notified to the Grantor by the Secured Party.

14.2 Disclosure under section 275

- (a) The Parties agree not to disclose any information of the kind referred to in section 275(1) of the PPSA (in connection with any Project Document) under section 275(4) of the PPSA unless section 275(7) of the PPSA applies.
- (b) The Grantor agrees not to exercise its rights to make any request of the Secured Party under section 275 of the PPSA, or to authorise the disclosure of any information under that section or otherwise waive any duty of confidence that would otherwise permit non-disclosure under that section.

14.3 Exercise of rights by Secured Party

- (a) If the Secured Party exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Secured Party states otherwise at the time of exercise.
- (b) This clause does not apply to a right, power or remedy which can only be exercised under the PPSA.

14.4 No notice required unless mandatory

- (a) To the extent the law permits, the Grantor waives:

- (i) its rights to receive any notice that is required by:
 - (A) any provision of the PPSA (including a notice of a verification statement); or
 - (B) any other law before the Secured Party or a Receiver exercises a right, power or remedy; and
- (ii) any time period that must otherwise lapse under any law before the Secured Party or a Receiver exercises a right, power or remedy.
- (b) If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is 1 day or the minimum period the law allows to be agreed (whichever is the longer).
- (c) Nothing in this clause prohibits the Secured Party or a Receiver from giving a notice under the PPSA or any other law.

14.5 Appointment of nominee for PPSR registration

For the purposes of section 153 of the PPSA, the Secured Party (the **Affected Secured Party**) appoints the Grantor (the **Security Grantor**) as its nominee, and authorises the Security Grantor to act on its behalf, in connection with a registration on the PPSR of any Security Interest in favour of the Security Grantor which is:

- (a) evidenced or created by Chattel Paper;
- (b) perfected by registration on the PPSR; and
- (c) transferred to the Affected Secured Party under this document.

This authority ceases if and when the registration is transferred to the Affected Secured Party.

15 Preservation of rights

15.1 Primary obligations

The Grantor's obligation to pay the Secured Money is a primary obligation and the Secured Party is not obliged to proceed against or enforce any other right against any person or property or demand payment from any other person before making a demand for payment by the Grantor of the Secured Money.

15.2 Preservation of Grantor's obligations

The Grantor's obligations and the Secured Party's rights under this document will not be affected by anything that, but for this clause 15.2, might abrogate, prejudice or limit them or the effectiveness of this document including:

- (a) any amendment of a right or agreement (however material and whether or not more onerous) or the rescission, repudiation or other termination of any agreement;

- (b) the granting of any forbearance, time or other concession to any person;
- (c) an arrangement, composition or compromise with any person (including in respect of priority of interests), or absolute or partial discharge or release of any person;
- (d) any transaction or agreement or any obligation being void, voidable or otherwise unenforceable or any Obligor not being obliged to comply with its obligations;
- (e) the failure by any person to execute and deliver any document or to register or perfect any Security Interest;
- (f) a breach of any trust or any incapacity or lack of power, authority or legal personality of or dissolution or change in the members or status of an Obligor or any other person;
- (g) the insolvency of any person; and
- (h) any delay, laches, acquiescence, mistake, negligence or other act or omission of any person.

In this clause 15.2 a reference to 'any person' includes any Obligor.

15.3 Suspension of Grantor's rights

The Grantor:

- (a) waives any right to be subrogated to or otherwise have the benefit of this document until the Secured Money has been satisfied in full and in the reasonable opinion of the Secured Party any payment towards the satisfaction of the Secured Money is not void, voidable or otherwise unenforceable or refundable; and
- (b) must not exercise a right of set-off or counterclaim available to it or any other person liable to the Secured Party in relation to the Secured Money that reduces or extinguishes the obligation of the Grantor to pay the Secured Money.

15.4 Insolvency of Obligor

The Grantor must not in the insolvency of any Obligor:

- (a) directly or indirectly claim or receive the benefit of any distribution, dividend or payment; or
- (b) prove or claim for any distribution, dividend or payment in competition with the Secured Party,

so as to diminish any distribution, dividend or payment that but for that claim or proof the Secured Party would be entitled to receive, until the Secured Money has been paid in full and the Secured Party is of the opinion that no payment of that money is or is likely to become void, voidable or otherwise unenforceable or refundable.

15.5 No merger

This document is in addition to and is not in any way prejudiced by any judgment, order or other thing and the Secured Party's rights under this document will not be merged with any judgment, order or other thing.

15.6 Subsequent interests

- (a) If any subsequent Security Interest or other interest affects any Collateral:
 - (i) that is not personal property for the purposes of the PPSA, or
 - (ii) where the PPSA does not apply to the Security over that Collateral, the Secured Party may open a new account with the Grantor. If the Secured Party does not open a new account, it will be treated as if it had done so at the time it received or is taken to have received notice of the relevant interest.
- (b) From the date on which that new account is opened or regarded as opened, all payments made by the Grantor to the Secured Party and all advances and financial accommodation by the Secured Party to the Grantor, are or are regarded as credited and debited to the new account.
- (c) Payments by the Grantor under clause 15.6(b) must be applied:
 - (i) to reduce any debit balance in the new account; and
 - (ii) if there is no debit balance in the new account, to reduce the Secured Money which has not been debited or regarded as debited to the new account.

16 Costs and Expenses

16.1 Transaction expenses

The Grantor must promptly on demand pay the Secured Party the amount of all costs and expenses (including legal fees) reasonably incurred by the Secured Party in connection with:

- (a) the negotiation, preparation, printing and execution of any documents referred to in this document; and
- (b) any request by the Grantor for an amendment, discharge or replacement of or waiver or consent in connection with this document.

16.2 Enforcement costs

The Grantor must on demand, pay to the Secured Party the amount of all costs and expenses (including legal fees) incurred by the Secured Party in connection with:

- (a) the actual or contemplated enforcement of, or the preservation or consideration of any right or Power under this document; and

- (b) anything referred to in clause 17.

16.3 Stamp duty and taxes

The Grantor must:

- (a) pay, and
- (b) within 3 Business Days of demand, indemnify the Secured Party against any cost, expense, loss or liability the Secured Party incurs in relation to,

all stamp duty, registration and other similar Tax payable in respect of this document.

16.4 Indirect Tax

- (a) All payments to be made by the Grantor under or in connection with this document have been calculated without regard to any goods and services tax, consumption tax, value added tax or any tax of a similar nature (**Indirect Tax**). If all or part of any such payment is the consideration for a taxable supply or chargeable with Indirect Tax then, when the Grantor makes the payment:
 - (i) it must pay to the Secured Party an additional amount equal to that payment (or part) multiplied by the appropriate rate of Indirect Tax; and
 - (ii) the Secured Party will promptly provide to the Grantor a tax invoice complying with the relevant law relating to that Indirect Tax.
- (b) Where this document requires the Grantor to reimburse the Secured Party for any costs or expenses, the Grantor must also at the same time pay and indemnify the Secured Party against all Indirect Tax incurred by the Secured Party in respect of the costs or expenses save to the extent that the Secured Party is entitled to repayment or credit in respect of the Indirect Tax. The Secured Party will promptly provide to the Grantor a tax invoice complying with the relevant law relating to that Indirect Tax.

17 Indemnities

Without limiting clause 18.1 of the Contract, the Grantor must promptly on demand, indemnify the Secured Party, each Attorney and each Receiver (and each of their respective officers, agents or employees) against any cost, expense, loss or liability (including legal fees) incurred by any of them (directly or indirectly) as a result of:

- (a) the occurrence of any Enforcement Event;
- (b) any enquiry, investigation, subpoena (or similar order) or litigation with respect to the Grantor or the Collateral or with respect to the transactions contemplated or financed under a Project Document;
- (c) the exercise or attempted exercise of or the consideration of any Power or any failure to exercise any Power;

- (d) the Collateral or the existence of any interest in, or control or Power with respect to, the Collateral;
- (e) a failure by the Grantor to pay any amount due under a Project Document on its due date;
- (f) a payment being made by the Grantor in any currency other than the currency in which the payment was due to be made;
- (g) acting or relying on any notice, request or instruction which it reasonably believes to be genuine, correct and appropriately authorised;
- (h) investigating any event which it reasonably believes is a Enforcement Event; and
- (i) any obligation of an Obligor to pay the Secured Money being unenforceable, any Secured Money being or becoming irrecoverable from any Obligor for any reason or any payment, receipt or other transaction to or in favour of the Secured Party being the subject of a claim described in clause 21.3(c).

18 Assignments and transfers

18.1 Assignments and transfers by the Secured Party

The Secured Party may:

- (a) assign any of its rights; or
 - (b) transfer by novation any of its rights or obligations,
- under this document to any other entity.

18.2 Grantor authorises assignment or transfer

- (a) The Secured Party is not obliged to obtain the Grantor's consent to, or notify the Grantor of, any such assignment or transfer.
- (b) The Grantor irrevocably authorises the Secured Party to execute any document effecting a transfer by novation under clause 0 on its behalf, without any consultation with the Grantor.

18.3 Assignment and transfer by the Grantor

The Grantor must not assign or transfer any of its rights under this document without the prior written consent of the Secured Party.

19 Set-off

The Secured Party may, but need not, set off any obligation due from the Grantor under the Project Documents against any obligation owed by the Secured Party to the Grantor regardless of the place of payment, booking branch or currency of either obligation. If the obligations are in different currencies, the Secured Party

may convert either obligation at a market rate of exchange in its usual course of business for the purpose of the set-off.

20 Notices

20.1 Communications in writing

Communication to be made under or in connection with this document must be made in writing, in English and, unless otherwise stated, may be made by letter or by electronic transmission.

20.2 Addresses

The address and email address (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this document is:

(a) for the Secured Party:

address: Parliament Square, 4 Salamanca Place, Hobart, Tasmania
attention: Commissioner for Transport
email: transportcommission@stategrowth.tas.gov.au

(b) for the Grantor:

address: Level 2, 431 King William Street, Adelaide, South
Australia, 5000
attention:
email:

or any substitute address, email address (if applicable), or department or officer as the Party may notify to the Secured Party or Grantor (as applicable) by not less than five Business Days' notice.

20.3 Delivery

(a) Any communication or document made or delivered by one person to another under or in connection with this document will only be effective:

- (i) if by way of letter, when it has been left at the relevant address or, if sent by prepaid priority post, 3 Business Days after being deposited in the post in an envelope addressed to it at that address or, if sent by prepaid regular post, 7 Business Days after being deposited in the post, in an envelope addressed to it at that address; or
- (ii) if by way of electronic transmission (if the recipient has agreed to receive notices by electronic transmission) when received in legible form by the recipient,

and, if a particular department or officer is specified as part of its address details provided under clause 20.2 (*Addresses*), if addressed to that department or officer.

- (b) Subject to clause 20.4 (*Reliance*), all notices must be signed by an Authorised Signatory of the sender.

20.4 **Reliance**

Any notice sent under this clause 20 can be relied on by the recipient if the recipient reasonably believes the notice to be genuine and if it bears what appears to be the signature (original or facsimile) of an Authorised Signatory of the sender (without the need for further enquiry or confirmation). Each Party must take reasonable care to ensure that no forged, false or unauthorised notices are sent to another Party.

21 **Calculations and certificates**

21.1 **Accounts**

In any litigation or arbitration proceedings arising out of or in connection with this document, the entries made in the accounts maintained by the Secured Party are sufficient evidence of the matters to which they relate unless the contrary is proved.

21.2 **Certificates and determinations**

Any certification or determination by the Secured Party of an exchange rate, a rate of interest or amount payable under this document is conclusive evidence in the absence of manifest error of the matters to which it relates and any certification or determination by the Secured Party of any other matter is sufficient evidence of the matters to which it relates unless the contrary is proved.

21.3 **Reinstatement of rights of Secured Party**

If:

- (a) the Secured Party has at any time released or discharged:
 - (i) the Grantor from its obligations under this document; or
 - (ii) any assets of the Grantor from a Security,in either case in reliance on a payment, receipt or other transaction to or in favour of the Secured Party; or
- (b) any payment, receipt or other transaction to or in favour of the Secured Party has the effect of releasing or discharging:
 - (i) the Grantor from its obligations under this document; or
 - (ii) any assets of the Grantor from a Security; and
- (c) that payment, receipt or other transaction is subsequently claimed by any person to be void, voidable or capable of being set aside for any reason (including under any law relating to insolvency, sequestration, liquidation, winding up or bankruptcy and any provision of any agreement, arrangement or scheme, formal or informal, relating to the administration of any of the assets of any person); and

- (d) that claim is upheld or is conceded or compromised by the Secured Party, then:
- (e) the Secured Party will immediately become entitled against the Grantor to all rights (including under any Project Document) as it had immediately before that release or discharge;
- (f) the Grantor must, to the extent permitted by law:
 - (i) immediately do all things and execute all documents as the Secured Party may, acting reasonably, require to restore to the Secured Party all those rights; and
 - (ii) indemnify the Secured Party against all costs and losses suffered or incurred by it in or in connection with any negotiations or proceedings relating to the claim or as a result of the upholding, concession or compromise of the claim.

22 Attorney

22.1 Appointment

The Grantor irrevocably appoints the Secured Party and each Authorised Signatory of the Secured Party, its attorney with the right:

- (a) at any time to do any of the following:
 - (i) do everything that in the Attorney's reasonable opinion is necessary or expedient to enable the exercise of any right of the Secured Party in relation to this document or any Authorisation;
 - (ii) complete this document;
 - (iii) complete any document executed by or on behalf of the Grantor in blank and deposited with the Secured Party, including as a Collateral Security;
 - (iv) appoint substitutes and otherwise delegate its powers (including this power of delegation); and
 - (v) control any of the Collateral that is collateral within the meaning of section 21(2)(c) of the PPSA; and
- (b) after any Enforcement Event has occurred and is continuing, to comply with the obligations of the Grantor under this document and to do all other things that the Grantor may lawfully authorise an agent to do in relation to this document and the Collateral.

22.2 General

- (a) Any Attorney may exercise its rights despite that the exercise of the right constitutes a conflict of interest or duty.
- (b) The Grantor by this document ratifies any exercise of a right by an Attorney.

- (c) The power of attorney is granted:
 - (i) to secure the compliance by the Grantor with its obligations under this document and any proprietary interests of the Secured Party under this document; and
 - (ii) for valuable consideration (receipt of which is acknowledged), which includes the acceptance of this document by the Secured Party at the Grantor's request.

23 Release

At the request in writing of the Grantor and at the cost of the Grantor, the Secured Party will release the Collateral from the Security if the Grantor's obligation to pay the Secured Money and perform all of the Grantor's other obligations under the Project Documents are satisfied and in the Secured Party's reasonable opinion:

- (a) there is no prospect that money or damages will become owing (whether actually or contingently) by the Grantor to the Secured Party (alone or together with any other person); and
- (b) no payment towards the satisfaction of the Grantor's obligation to pay the Secured Money is likely to be the subject of a claim referred to in clause 21.3(c).

24 Further assurances

24.1 Notice to Grantor

The Secured Party may, by notice to the Grantor at any time, require the Grantor to do any or all of the following things:

- (a) take all steps, provide information (including serial numbers relating to any Collateral), produce documents and obtain consents;
- (b) execute any notice, consent, document or amendment to this document;
- (c) execute and deliver to the Secured Party, transfer forms in relation to any of the Collateral (undated and blank as to transferee and consideration); or
- (d) do any other thing,

that the Secured Party considers necessary or desirable to:

- (e) ensure that this document or any Security Interest arising under it, is enforceable;
- (f) reserve or create any type of Security Interest over any part of the Collateral in a manner not inconsistent with this document with any additional terms reasonably required by the Secured Party having regard to the nature of that part of the Collateral and the type of additional Security Interest being created, including a registrable Security Interest over any real property or

any other property not subject to the PPSA and an assignment of any Collateral;

- (g) stamp, protect, perfect, record, or better secure the position of the Secured Party under this document in any applicable jurisdiction;
- (h) obtain or preserve the priority position of the Secured Party contemplated by this document;
- (i) overcome any defect or adverse effect arising from the PPSA; or
- (j) aid the Secured Party in the exercise of any right or power under this document.

24.2 Compliance with notice

The Grantor must:

- (a) comply with the requirements of a notice under clause 24.1 within the time stated in the notice at the cost and expense of the Grantor;
- (b) reimburse the costs of the Secured Party in connection with anything the Grantor is required to do under this clause 24; and
- (c) promptly notify the Secured Party of any change to information that it provides to the Secured Party under this clause 24.

24.3 Project Document

Any new document that the Grantor is required to sign under clause 24.1 constitutes a Project Document.

24.4 Authority to complete blanks

The Grantor agrees that the Secured Party may complete and fill in any blanks in this document or any document connected with it (including assignments, transfers, financing statements, financing change statements, amendment demands or any Corporations Act or PPSA forms).

25 General

25.1 Governing law and jurisdiction

- (a) This document is governed by the laws of Tasmania.
- (b) Each party submits to the exclusive jurisdiction of courts exercising jurisdiction in Tasmania in relation to matters concerning this document.

25.2 Entire agreement

This document contains the entire agreement between the parties with respect to its subject matter and supersede all prior agreements and understandings between the parties in relation to it.

25.3 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this document.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in relation to this document and any instrument executed under this document must be borne by the Grantor. The Grantor must indemnify the Secured Party on demand against any liability for that stamp duty.

25.4 Further assurances

Each party must execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this document.

25.5 No interference with executive duties or powers

Nothing in this document is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor of Tasmania, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or her office. Any provision of this document that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

25.6 Waiver

- (a) A Party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (b) The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- (c) A waiver is not effective unless it is in writing.
- (d) Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

25.7 Cumulative rights

The rights, powers and remedies provided in this document are in addition to those provided by law independently of this document and each right, power and remedy provided in this document (including any right of indemnity) is additional to and not exclusive of every other right, power or remedy provided in this document.

25.8 Moratorium legislation

To the fullest extent permitted by law, all laws which at any time operate directly or indirectly to lessen, stay, reduce or otherwise affect in favour of the Grantor any obligation under this document, or to delay or otherwise prevent or prejudicially affect the exercise by the Secured Party of any power or right under this document or otherwise, are expressly waived by the Grantor.

25.9 Partial invalidity

If, at any time, any provision of this document is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or

enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

25.10 No liability

The Secured Party, its officers, employees, nominees, contractors and agents, will not be liable for any loss, liability, cost or expense of the Grantor caused or contributed to by the waiver of, exercise of, attempted exercise of, failure to exercise or delay in exercising a right of the Secured Party and the Secured Party holds the benefit of this clause 25.10 on trust for itself and its officers, employees, nominees, contractors and agents.

25.11 Indemnities and reimbursement

All indemnities and reimbursement obligations (and any other payment obligations of the Grantor) in this document are continuing and survive termination of this document and the release of any Collateral from the Security.

25.12 Acknowledgment

The Code of Banking Practice does not apply to the Project Documents and the transactions under them.

25.13 Waiver of immunity

The Grantor irrevocably and unconditionally:

- (a) agrees not to claim any immunity from proceedings brought by the Secured Party against it in relation to this document and to ensure that no such claim is made on its behalf;
- (b) consents generally to the giving of any relief or the issue of any process in connection with those proceedings; and
- (c) waives all rights of immunity in respect of it or its assets.

25.14 Counterparts

This document may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Executed as a deed

Executed for and on behalf of the **Transport
Commission**

Signature

Print name

Executed by **[#Insert]** in accordance with
section 127(1) of the Corporations Act:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Released under RTI

Schedule 9 - Form of Vessel Lease



Vessel Lease

[#Insert name of Transport Commission or its nominee]

ABN **[#Insert]**

[insert]

ABN **[#Insert]**

Released under RTI

1 **Date** 20##

2 **Parties**

Lessor
Name

[insert]
ABN [Insert]

Charterer
Name

[Insert name of Transport Commission or its nominee]
ABN [Insert]

Released under RTI

BACKGROUND

- A The Lessor entered into the Contract with the Charterer to provide the Ferry Service and to carry out the other Operator Activities. [insert] is also a party to the Contract.
- B The Charterer has notified the Lessor under the Contract of its intention to lease the Contract Ferry from the Lessor.
- C The Lessor has agreed to lease the Contract Ferry to the Charterer and the Charterer has agreed to accept the lease of the Contract Ferry from the Lessor on the terms and conditions set out in this deed.

TERMS

1 Defined terms and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise:

Commencement Date means the proposed commencement date specified in any notice issued by the Charterer to the Lessor under clause 22.1 of the Contract;

Contract means the deed between the Lessor, [insert] and the Charterer titled "Bruny Island Ferry Service Contract" dated on or about 28 June 2018 under which the Operator agrees to provide the Ferry Service and to carry out the other Operator Activities in Tasmania;

Contract Ferry that contract ferry identified in Schedule 1;

Lease Payment means the monthly payment of \$10.00;

Part means any constituent part of a Contract Ferry or an accessory, component, furnishings, furniture, fittings or similar thing installed in or attached to a Contract Ferry;

Payment Date means the last Business Day of each month;

Taxes means all taxes (including all State and Federal taxes), assessments, charges, duties, costs and expenses which may at any time be payable to any Government Body other than GST;

Term means the period:

- (a) commencing on the Commencement Date; and
- (b) ending on the earlier of:
 - (i) if a Contract Ferry is irretrievably lost or stolen or is damaged beyond economic repair, the date upon which that Contract Ferry is adjudged to be lost, stolen or damaged;
 - (ii) the termination of this deed; and

- (iii) the date that is 24 months from the Commencement Date; and

Use includes possession, leasing, use, operation, maintenance, repair, alteration, refurbishment, storage and transportation;

1.2 Contract definitions

Unless the context requires otherwise or the relevant term is defined in this deed, definitions in clauses 1.1 of the Contract apply to this deed.

1.3 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) a reference to an agreement or document (including a reference to the Contract) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (f) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (g) a reference to any Government Body or professional body includes the successors of that body;
- (h) a reference to dollars or \$ is a reference to Australian currency;
- (i) nothing in this deed is to be interpreted against a party solely on the ground that the party put forward this deed or any part of it;
- (j) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (k) a reference to the words 'include', 'includes' and 'including' means 'including without limitation'; and
- (l) if any amount under this deed is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day.

2 Lease

2.1 Grant of lease and delivery

- (a) The Lessor leases on bareboat charter to the Charterer, and the Charterer takes on bareboat charter from the Lessor, each Contract Ferry for its Term on the terms and conditions in this deed.
- (b) The Lessor must deliver the Contract Ferry on or prior to the Commencement Date:
 - (i) in a seaworthy condition and in every respect ready for service under this deed; and
 - (ii) at the port or place nominated by the Charterer to the Lessor prior to the Commencement Date.

2.2 Delivery on last day of Term

On the last day of the Term, the Charterer must deliver possession of the Contract Ferry, and all documents of title, books of account, accounts, records, data and all other documents relating to that Contract Ferry, to the Lessor at a time and location agreed by both Lessor and Charterer.

3 Provisions relating to the Contract Ferries

3.1 Lessor's title to the Contract Ferries

- (a) The Lessor represents and warrants to the Charterer on the date of this deed, on the Commencement Date and on each subsequent date during the Term that it:
 - (i) is the sole legal and beneficial owner of each Contract Ferry; and
 - (ii) has not granted a Security Interest in respect of a Contract Ferry other than a Permitted Security Interest.
- (b) The Lessor undertakes to the Charterer that it will not create or allow to exist a Security Interest over any Contract Ferry other than a Permitted Security Interest.
- (c) The Charterer acknowledges that each Contract Ferry is and remains at all times the property of the Lessor and the Lessor retains full title to each Contract Ferry notwithstanding that that Contract Ferry may be leased to, and in the possession of, the Charterer.
- (d) The rights of the Charterer under this deed are as charterer only. Nothing in this deed entitles the Charterer to any ownership or inconsistent proprietary right in or to any Contract Ferry at any time.

3.2 Protection of title to the Contract Ferries

The Charterer must not do or permit to be done any act, omission or thing which might jeopardise the property, title and rights of the Lessor in and to each Contract Ferry.

3.3 Notification on arrest of Contract Ferries

If any person arrests, seizes or attempts to seize or interfere with any Contract Ferry the Charterer must promptly upon becoming aware:

- (a) notify that person of the Lessor's title to and rights in relation to that Contract Ferry; and
- (b) inform the Lessor by notice of that seizure, attempted seizure or interference.

3.4 Parts and works

- (a) The Charterer acknowledges that any Part that is removed or detached from a Contract Ferry remains the property of the Lessor until that Part is replaced with a part, accessory, component or similar thing:
 - (i) title to which has vested in the Lessor or will, upon installation or incorporation into that Contract Ferry, vest in the Lessor;
 - (ii) that is free and clear of all Security Interests and rights of others; and
 - (iii) that has a utility and quality at least equal to the Part.

At that time title to the Part removed or detached vests in the Charterer.

- (b) Unless otherwise agreed by the Lessor (such agreement not to be unreasonably withheld), the Charterer acknowledges that any Part that is installed in or attached to a Contract Ferry becomes the property of the Lessor upon its installation or attachment and must be free and clear of all Security Interests and rights of others.
- (c) The Charterer acknowledges that upon completion of any works undertaken with respect to a Contract Ferry by or on behalf of the Charterer under the Contract (or, if the works are not completed by the expiry or termination of this deed, on that expiry or termination) property in the works will vest in and remain with the Lessor at no cost to the Lessor and the works will form part of that Contract Ferry.

3.5 Inspection regime

The Lessor may at its own cost, after giving reasonable notice (no less than 10 Business Days), inspect the Contract Ferry.

4 Lease Payment

4.1 Amount and method

The Charterer must pay the Lessor the Lease Payment on each Payment Date during the Term. Time will be of the essence in relation to the payment of the Lease Payment.

4.2 Taxes

Where Taxes are assessed in respect of any Contract Ferry, the Lessor must pay the relevant Government Body all such Taxes.

5 Quiet enjoyment

If the Charterer duly and punctually observes and performs this deed, the Charterer will and may peaceably possess and enjoy each Contract Ferry for its Term for any purpose it requires in its absolute discretion without any interruption or disturbance from the Lessor or any other person or persons lawfully claiming by, from or under the Lessor except where an interruption or disturbance results from the exercise by the Lessor of any right of the Lessor in this deed.

6 Termination

6.1 Termination of this deed

Notwithstanding any rule of law or equity to the contrary, this deed may not be terminated except as provided in this clause 6.

6.2 Lessor's default

Without prejudice to clause 6.4, the Charterer may terminate this deed by written notice to the Lessor under the following circumstances and to claim damages including for the remainder of this deed:

- (a) the Lessor is, by any act or omission, in breach of any of its obligations under this deed to the extent that the Charterer is deprived of the Use of the Contract Ferry and such breach continues for a period of 14 running days after written notice from the Charterer; or
- (b) the Lessor does not observe any obligation under this deed and, if the non-observance can be remedied, does not remedy the non-observance within 7 Business Days after written notice from the Lessor.

6.3 Termination by agreement

Subject to clause 6.2, this deed may be terminated by written agreement between the Lessor and the Charterer.

6.4 Termination for convenience

- (a) Notwithstanding anything expressly stated or implied in this deed to the contrary, the Charterer may, for its convenience and for any reason, terminate this deed by giving the Lessor not less than 5 Business Days' notice.
- (b) Termination of this deed for convenience will take effect upon the date specified in the notice given under clause 6.4(a).

6.5 Consequences of Termination

- (a) Upon the expiry or termination of this deed (whether through default or expiry or otherwise) the rights and obligations of the parties will cease except for:
 - (i) any outstanding obligations existing as at termination (including any obligation to pay money); and
 - (ii) any obligations that are expressed to continue in accordance with the terms of this deed.
- (b) The following clauses survive the expiration or termination of this deed and the expiry of the Term for a Contract Ferry: clauses 1 and 2.2, this clause 6 and clauses 7 and 9.

7 GST

7.1 Interpretation

Words or expressions used in this clause 7 which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the same meaning in this clause.

7.2 Consideration is GST exclusive

Any consideration to be paid or provided to the Lessor for a supply made by the Lessor under or in connection with this deed, unless specifically described in this deed as "GST inclusive", does not include an amount on account of GST.

7.3 Gross up of consideration

Despite any other provision in this deed, if the Lessor makes a supply under or in connection with this deed on which GST is imposed:

- (a) the consideration payable or to be provided for that supply under this deed but for the application of this clause (GST exclusive consideration) is increased by, and the Charterer must also pay to the Lessor, an amount equal to the GST payable by the Lessor or the representative member of a GST group of which the Lessor is a member on the supply (GST Amount); and
- (b) the GST Amount must be paid to the Lessor by the Charterer without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.

7.4 Reimbursements (net down)

If a payment to a party under this deed is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of the GST group of which that party is a member, is entitled for that loss, cost or expense.

7.5 Tax invoices

The Lessor will issue a tax invoice for any taxable supply that it makes to the Charterer under this deed.

8 Insurance

- (a) During the Term, the Lessor must keep the Contract Ferry insured at its expense against hull and machinery (including increased value) and war risks for the sum notified by the Charterer to the Lessor in writing prior to the Commencement Date and, thereafter, for such other sum as the parties may agree in writing from time to time. The Charterer shall progress claims for recovery against any third parties for the benefit of the Lessor's and the Charterer's respective interests.
- (b) The Lessor must obtain all insurance required under this deed on such terms and conditions and with such insurers as the Charterer shall approve in writing, which approval shall not be unreasonably withheld, and shall name the Charterer as co-assured.
- (c) Notwithstanding that the parties are co-assured, these insurance provisions do not exclude or discharge liability between the Lessor and the Charterer under this deed, but are intended to secure payment of the loss insurance proceeds as a first resort to make good the Charterer's loss. If such payment is made to the Charterer, it must be treated as satisfaction (but not exclusion or discharge) of the Lessor's liability towards the Charterer. For the avoidance of doubt, such payment is no bar to a claim by the Charterer and/or their insurers against the Lessor to seek indemnity by way of subrogation.
- (d) Nothing herein shall prejudice any rights of recovery of the Charterer or the Lessor (of their insurers) against third parties.

9 General

9.1 Notices

Unless expressly stated otherwise in this deed, any notice, demand, consent or other communication to or by a party to this deed must be given to or made in accordance with clause 28 of the Contract.

9.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of Tasmania.
- (b) Each party submits to the exclusive jurisdiction of courts exercising jurisdiction in Tasmania in relation to matters concerning this deed.

9.3 Costs and stamp duty

- (a) Each party must pay its own costs of negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) that may be payable on or in relation to this deed and any instrument executed under this deed must be borne by the Lessor. The Lessor must indemnify the Charterer on demand against any liability for that stamp duty.

9.4 Further assurances

Each party must execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this deed.

9.5 Counterparts

This deed may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument.

Released under RFI

Schedule 1
Contract Ferries

Name of Contract Ferry	Identifying Number
##	##
##	##

Released under RTI

Executed as a deed

Executed by **[insert]** (ABN **[#Insert]**) in accordance with section 127(1) of the Corporations Act:

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Print name

Print name

Executed for and on behalf of **Transport Commission**

Signature

Print name

Released under RTI

Schedule 10 - Contract particulars

Item	Clause	Description																		
1.	IPV Cap (Clause 1.1)	(exclusive of GST)																		
2.	Operator-owned Contract Material (Clause 1.1)	Material provided by the Operator in connection with this Contract: (a) that is in existence prior to the Date of the Contract; or (b) which is created by the Operator independently of this Contract after the Date of the Contract																		
3.	Subsidy Amount (Clause 1.1)	For the first 12 month period of the Initial Term, (exclusive of GST) per annum. For each subsequent 12 month period of the Initial Term, (exclusive of GST) per annum.																		
4.	Crew and Staff – Key people (Clause 5.4(d))	<table><tr><th>Role</th><th>Name</th></tr><tr><td>Operations Manager</td><td></td></tr><tr><td>Master</td><td></td></tr><tr><td>Engineer / Mate</td><td></td></tr><tr><td>Customer Support Officer 1</td><td></td></tr><tr><td>Customer Support Officer 2</td><td></td></tr><tr><td>Safety</td><td></td></tr><tr><td>Compliance</td><td></td></tr><tr><td>Reporting</td><td></td></tr></table>	Role	Name	Operations Manager		Master		Engineer / Mate		Customer Support Officer 1		Customer Support Officer 2		Safety		Compliance		Reporting	
Role	Name																			
Operations Manager																				
Master																				
Engineer / Mate																				
Customer Support Officer 1																				
Customer Support Officer 2																				
Safety																				
Compliance																				
Reporting																				
5.	Charter Rate (Clause 7.1(f))	(exclusive of GST)																		
6.	Period within which the Operator must enter into all of the New Vessel Contracts (Clause 7.2(a)(i))	120 days from the Date of the Contract																		
7.	Date for delivery of New Vessel (Clause 7.2)	In respect of the first New Vessel described in Schedule 11, the date for delivery is 1 July 2019. In respect of the second New Vessel described in Schedule 11, the date for delivery is 1 July 2021.																		

Item	Clause	Description
8.	Transition In Period meetings and Quarterly meetings – Operator attendees (Clauses 9.6(b)(ii) and 9.7(b)(ii))	
9.	Annual meetings – Operator attendees (Clause 9.8(b)(ii))	
10.	CMS - Requirements (Clause 10.1(f))	None stated
11.	Deed of guarantee and indemnity – Guarantor entity (Clause 12.1)	SeaLink Travel Group Limited ABN 49 109 078 257
12.	Dispute resolution – Operator's initial representative (Clause 23.1(a)(ii))	
13.	Dispute resolution – Operator's further representative (Clause 23.1(d)(ii))	
14.	Confidentiality – Exceptions (Clause 24.1))	All Plans
15.	Notices – Contact details for each Operator Related Company (Clause 28(b)(ii))	Address: Level 2, 431 King William Street, Adelaide, South Australia, 5000 Attention: Email:

Schedule 11 - Contract Ferries

1 Description of Initial Primary Vessel

As at the Date of the Contract, the Initial Primary Vessel is as set out below:

Feature	MV Mirambeena
Built:	1991
IMO number:	8912417
Deadweight:	350
LOA:	52m
Beam:	13.2m
Draft:	2.76m
Speed:	10kts
Ramps:	2 (either end of the vessel)
Decks:	2
Lane metres:	328m
Passengers:	400

2 Description of New Vessel which is to operate as the Primary Vessel

The requirements in relation to the New Vessel that is to operate as the Primary Vessel are set out in Attachment A to this Schedule.

3 Description of Back-up Vessel

(a) As at the Date of the Contract, the Back-up Vessel is as set out below:

Feature	MV Moongalba
Vessel Type	Passenger and vehicular ferry
Australian Maritime Safety Authority Official number:	355591
Capacity:	300 passengers and 28 cars
Measured Length:	45.9m
Breadth:	12.2m
Loaded Draft:	1.67m
Wheelhouse clearance:	4.4m
Cargo Capacity:	280t
Engines:	2 x Caterpillar 3406 B 273kw

Operating Speed:	10 knots
Survey:	NSCV 1D / 2D
Construction:	Steel
Built (refit):	1973 (2014)

- (b) The requirements in relation to the New Vessel which is to operate as the Back-up Vessel are also as set out in Attachment A to this Schedule.

Released under RTI

Attachment A to Schedule 11 – New Vessel Contract requirements

The requirements set out in this Attachment A apply separately to each of the two New Vessels which are to be delivered in accordance with this Contract.

Vessel Type:	Passenger and vehicular ferry
Designer:	Incat Crowther (www.incatcrowther.com)
Hull form:	Hard chine catamaran
Passenger Capacity:	150
Vehicle Capacity:	36 Cars @ 5.0m spaces (180m)
Measured Length:	44.99m
Breadth:	13.0m
Engines:	2 x 300kW or similar to suit
Propulsion:	Z-drive
Operating Speed:	10-12 knots
Electrical:	TBC
Survey:	NSCV 1D / 1E
Construction (hull and superstructure):	Steel

Released under RTI

Schedule 12 - Ferry Timetable**1. Ferry Timetable at the Date of the Contract**

- (a) As at the Service Commencement Date, the Ferry Timetable is as set out below:

Off Peak Season Timetable		
Depart Kettering Terminal		Depart Roberts Point Terminal
6.30am	Mon - Sat	7.00am
7.30am	Daily	8.30am
9.00am	Daily	9.30am
10.00am	Daily	10.30am
11.00am	Daily	11.30am
12.00pm	Daily	12.30pm
1.30pm	Daily	2.00pm
2.30pm	Daily	3.00pm
3.30pm	Daily	4.00pm
4.30pm	Daily	5.00pm
5.30pm	Daily	6.00pm
7.00pm	Daily	7.15pm

Peak Season Timetable				
Depart Kettering Terminal (Primary Vessel)	Depart Kettering Terminal (Back-up Vessel)		Depart Roberts Point Terminal (Primary Vessel)	Depart Roberts Point Terminal (Back-up Vessel)
6.30am		Mon - Sat	7.00am	
7.30am		Daily	8.30am	
	8.30am	Daily		9.00am
9.00am		Daily	9.30am	
	9.30am	Daily		10.00am
10.00am		Daily	10.30am	
	10.30am	Daily		11.00am
11.00am		Daily	11.30am	
	11.30am	Daily		12.00pm
12.00pm		Daily	12.30pm	
1.30pm		Daily	2.00pm	
2.30pm		Daily	3.00pm	
	3.00pm	Daily		3.30pm
3.30pm		Daily	4.00pm	
	4.00pm	Daily		4.30pm
4.30pm		Daily	5.00pm	
	5.00pm	Daily		5.30pm
5.30pm		Daily	6.00pm	
7.00pm		Daily	7.15pm	

- (b) Unless otherwise approved by the Commission, the Operator must use the applicable Contract Ferry as identified in the above table for the applicable Trip specified in the table.

2. **Ferry Timetable applicable to the commencement of the second New Vessel**

- (a) As at the date of the commencement of the Ferry Service by the second New Vessel, the applicable Ferry Timetable will be as follows:

Released under RTI

Depart Kettering Terminal		
Time	Vessel	Frequency
6:30:00 AM	Vessel A	Daily
6:50:00 AM	Vessel B	On Demand
7:10:00 AM	Vessel A	Daily
7:30:00 AM	Vessel B	On Demand
7:50:00 AM	Vessel A	Daily**
8:10:00 AM	Vessel B	Daily
8:30:00 AM	Vessel A	Daily
8:50:00 AM	Vessel B	Daily
9:10:00 AM	Vessel A	Daily
9:30:00 AM	Vessel B	Daily
9:50:00 AM	Vessel A	Daily
10:10:00 AM	Vessel B	Daily
10:30:00 AM	Vessel A	Daily
10:50:00 AM	Vessel B	Daily
11:10:00 AM	Vessel A	Daily
11:30:00 AM	Vessel B	Daily
11:50:00 AM	Vessel A	On Demand
12:10:00 PM	Vessel B	On Demand
12:30:00 PM	Vessel A	On Demand
12:50:00 PM	Vessel B	On Demand
1:10:00 PM	Vessel A	Daily
1:30:00 PM	Vessel B	On Demand
1:50:00 PM	Vessel A	Daily
2:10:00 PM	Vessel B	On Demand
2:30:00 PM	Vessel A	Daily
2:50:00 PM	Vessel B	On Demand
3:10:00 PM	Vessel A	Daily
3:30:00 PM	Vessel B	Daily**
3:50:00 PM	Vessel A	Daily
4:10:00 PM	Vessel B	Daily
4:30:00 PM	Vessel A	On Demand
4:50:00 PM	Vessel B	Daily
5:10:00 PM	Vessel A	On Demand
5:30:00 PM	Vessel B	Daily
5:50:00 PM	Vessel A	On Demand
6:10:00 PM	Vessel B	Daily
6:50:00 PM	Vessel B	On Demand
7:30:00 PM	Vessel B	On Demand

Depart Roberts Point Terminal		
Time	Vessel	Frequency
6:30:00 AM	Vessel B	On Demand
6:50:00 AM	Vessel A	Daily
7:10:00 AM	Vessel B	On Demand
7:30:00 AM	Vessel A	Daily
7:50:00 AM	Vessel B	On Demand
8:10:00 AM	Vessel A	Daily
8:30:00 AM	Vessel B	Daily**
8:50:00 AM	Vessel A	Daily
9:10:00 AM	Vessel B	Daily
9:30:00 AM	Vessel A	Daily
9:50:00 AM	Vessel B	Daily
10:10:00 AM	Vessel A	Daily
10:30:00 AM	Vessel B	Daily
10:50:00 AM	Vessel A	Daily
11:10:00 AM	Vessel B	Daily
11:30:00 AM	Vessel A	Daily
11:50:00 AM	Vessel B	Daily
12:10:00 PM	Vessel A	On Demand
12:30:00 PM	Vessel B	On Demand
12:50:00 PM	Vessel A	On Demand
1:10:00 PM	Vessel B	On Demand
1:30:00 PM	Vessel A	Daily
1:50:00 PM	Vessel B	On Demand
2:10:00 PM	Vessel A	Daily
2:30:00 PM	Vessel B	On Demand
2:50:00 PM	Vessel A	Daily
3:10:00 PM	Vessel B	On Demand
3:30:00 PM	Vessel A	Daily
3:50:00 PM	Vessel B	Daily
4:10:00 PM	Vessel A	Daily**
4:30:00 PM	Vessel B	Daily
4:50:00 PM	Vessel A	On Demand
5:10:00 PM	Vessel B	Daily
5:30:00 PM	Vessel A	On Demand
5:50:00 PM	Vessel B	Daily
6:10:00 PM	Vessel A	On Demand
6:30:00 PM	Vessel B	Daily
7:10:00 PM	Vessel B	On Demand
7:50:00 PM	Vessel B	On Demand

** denotes that the Trip will include school bus loading during the school term

- (b) Unless otherwise approved by the Commission, the Operator must use the applicable Contract Ferry as identified in the above table for the applicable Trip specified in the table. For the purposes of the above table, the following definitions apply:

On demand means the applicable Trip will be published in the Ferry Timetable and will operate when there is a reasonable expectation of sufficient passenger demand to warrant the Ferry Service for that Trip. For the purposes of this Contract, where there is such a reasonable expectation each such journey will be deemed to be scheduled under the Ferry Timetable.

Vessel A means one of the two New Vessels delivered in accordance with this Contract.

Vessel B means the other New Vessel delivered in accordance with this Contract which is not Vessel A.

Released under RTI

Schedule 13 - Fares and Ticketing Arrangements

- (a) The Fares listed in the table below apply for the Term, subject to the following:
- (i) the requirements set out in this Schedule must be satisfied at all times throughout the Term unless otherwise agreed by the Commission;
 - (ii) the Fares may only be adjusted in accordance with clause 8.2;
 - (iii) a Fare for a one-way Trip for a Fare category must not be more than one half of the return Fare for the applicable category of Fare listed in the table below or as may be adjusted in accordance with this Contract;
 - (iv) where a Concession relates to a person who holds a valid Companion Card, the holder of such card:
 - (A) is entitled to a free ticket for their companion carer; and
 - (B) must not be charged for passengers to travel on the Contract Ferries. However if the Companion Card holder is also the recipient of a Commonwealth Government Pension then that applicable discount will apply to the vehicle. The person whose photograph and details appear on the Companion Card must show their eligible pension card at time of travel to be entitled to the vehicle concession rate;
 - (v) unless otherwise approved by the Commission, the Operator must allow for standby/unbooked Tickets of not less than the following thresholds:
 - (A) in respect of any Trip during the period from the Service Commencement Date to and including 30 November 2018, 20% of the total number of possible vehicle Tickets that may be purchased for the Trip;
 - (B) in respect of any Trip during the period from the expiry of the period referred to in clause (a)(v)(A) up to the end of the 2018/2019 Peak Season, 14% of the total number of possible vehicle Tickets that may be purchased for the Trip;
 - (C) in respect of any Trip during the period from the expiry of the period referred to in clause (a)(v)(B) up to the first anniversary of the Service Commencement Date, 10% of the total number of possible vehicle Tickets that may be purchased for the Trip; and
 - (D) in respect of any Trip during the period from the expiry of the period referred to in clause (a)(v)(C) up to the third anniversary of the Service Commencement Date, 10% of

the total number of possible vehicle Tickets that may be purchased for the Trip;

- (vi) subject to clause (a)(vii), in respect of Trips during each day of the Term there must be a reasonable combination of Fares available/offered for a “light return vehicle”, “standard return vehicle” and “premium return vehicle” in the table below, it being acknowledged that the combination will be dependent on the time of day and level of bookings by Bruny Island Residents; and
- (vii) for each Quarter during the Term and unless otherwise approved by the Commission, the Operator must ensure that:
 - (A) at least 25% of Tickets are made available for sale for all Trips during the Quarter in relation to the category of “light return vehicle” in the table below;
 - (B) at least 25% of Tickets are made available for sale for all Trips during the Quarter in relation to the category of “standard return vehicle” in the table below; and
 - (C) no more than 50% of Tickets are made available for sale for all Trips during the Quarter in relation to the category of “premium return vehicle” in the table below.

Fare Category	Premium return vehicle (inclusive of GST)	Standard return vehicle (inclusive of GST)	Light return vehicle (inclusive of GST)
Bruny Island Resident Concession vehicle <6m	\$9.00	\$9.00	\$9.00
Bruny Island Resident Student vehicle <6m	\$9.00	\$9.00	\$9.00
Bruny Island Resident vehicle <6m	\$16.00	\$16.00	\$16.00
Visitor vehicle <6m	\$43.70	\$38.00	\$32.20
Visitor Concession vehicle <6m	\$32.20	\$28.00	\$23.70
Vehicle + Tow (other than a Vehicle + Tow by a person holding a Concession)	\$97.70	\$85.00	\$72.20

Fare Category	Premium return vehicle (inclusive of GST)	Standard return vehicle (inclusive of GST)	Light return vehicle (inclusive of GST)
Vehicle + Tow by a person holding a Concession	\$86.20	\$75.00	\$63.70
Vehicle 6m to 10m (e.g. motorhome, coach or truck)	\$74.70	\$65.00	\$55.20
Vehicle >10m to 15m (e.g. motorhome, coach or truck)	\$103.50	\$90.00	\$76.50
Vehicle >15m (e.g. motorhome, coach or truck)	\$126.50	\$110.00	\$93.50
Motorcycle	\$6.00	\$6.00	\$6.00
Bicycle	\$6.00	\$6.00	\$6.00

- (b) For the purposes of this Schedule, the following definitions apply:

Bruny Island Resident Student means a person who is, or lives with, a Bruny Island Resident and is also a student who satisfies all of the following:

- (i) the student is 16 years or above;
- (ii) the student is legally entitled to drive the applicable vehicle; and
- (iii) the student attends a secondary school, senior secondary college, TasTAFE, university or Tasmanian College of English,

provided however that the student:

- (iv) is the driver of the applicable vehicle that is intending to travel on the Ferry Service; and
- (v) has their current Australian student identification to validate the attendance contemplated by paragraph (iii) above, together with driver's licence, available at the time of their purchase of a Ticket. For the avoidance of doubt an international student card is not accepted as legitimate student identification. **Visitor** means a customer of the Ferry Service that is not a Bruny Island Resident.

Visitor Concession means a person who is a Visitor and also holds a Concession.

- (c) Emergency Services must have mandatory “free of charge” access to the Ferry Service at all times.
- (d) The Woodbridge District High school bus must have mandatory “free of charge” access to the Ferry Service on all school days throughout each year of the Term.
- (e) Bruny Island Resident Fares and Bruny Island Resident Concession Fares must continue for the Term.

Released under RTI

Schedule 14 - Landside Infrastructure Upgrade Works by the Commission

1. **Conditions Precedent to the carrying out of the Landside Infrastructure Upgrade Works**

For the purposes of clause 6.2(c) of the Contract, there are no conditions precedent to the carrying out of the Landside Infrastructure Upgrade Works by the Commission.

2. **Completion of the Landside Infrastructure Upgrade Works**

For the purposes of clause 6.2(c)(i), the applicable period:

- (a) in relation to the Landside Infrastructure Upgrade Works specified in section 3(a) of this Schedule, is the period ending on 30 November 2018; and
- (b) in relation to the Landside Infrastructure Upgrade Works specified in section 3(b) of this Schedule, is the period of 104 weeks from the Date of the Contract.

3. **Scope of the Landside Infrastructure Upgrade Works**

- (a) Provide new sealed access onto Ferry Road from Kettering marshalling area immediately east of ticket booth location. The new access will provide left turn access onto Ferry Road only (with right turn via U-turn at roundabout) and provide swept path capacity for vehicles up to 8.8 metres in length.
- (b) Replace existing fendering (as at the Date of the Contract) on the southern side of the pier at Kettering Terminal and the northern side of the pier at Roberts Point Terminal, to a maximum value of \$240,000 (including GST).

4. **Operator's obligations in relation to the Landside Infrastructure Upgrade Works**

The Operator must:

- (a) permit any person carrying out the Landside Infrastructure Upgrade Works to undertake such works on the Landside Infrastructure;
- (b) fully cooperate with any person carrying out the Landside Infrastructure Upgrade Works including providing information to coordinate such works and permitting reasonable temporary closure of parts of the Landside Infrastructure;
- (c) carefully coordinate and interface the Operator Activities with the Landside Infrastructure Upgrade Works;
- (d) carry out the Operator Activities so as to minimise interference, disruption or delay to the Landside Infrastructure Upgrade Works;
- (e) notify the Commission of any matter in relation to the undertaking or intended undertaking of the Landside Infrastructure Upgrade Works that

may have an adverse affect upon the carrying out of the Operator Activities or the safety of persons as soon as possible after becoming aware of such matter;

- (f) provide sufficient, safe access to the Landside Infrastructure to any person undertaking Landside Infrastructure Upgrade Works to enable such person to undertake the relevant part of the Landside Infrastructure Upgrade Works; and
- (g) where reasonable, attend any meetings called by a person undertaking Landside Infrastructure Upgrade Works that relate to such works.

Released under RTI



Licence

The Honourable Jeremy Page Rockliff

(being and as the Minister for Infrastructure and, for the purposes of the *Crown Lands Act 1976* (Tas), the Portfolio Minister in relation to the Licensed Area)

(Licensor)

and

SeaLink Tasmania Pty Ltd ABN 38 626 709 993

(Licensee)

THE CROWN SOLICITOR OF TASMANIA
Executive Building
15 Murray Street Hobart Tasmania 7000
GPO Box 825 Hobart Tasmania 7001
Telephone: (03) 6165 3650
Facsimile: (03) 6173 0265
Doc Ref: Licence | DSG | 3664-17

Licence

Details and recitals

Date: June 2018

Parties:

Name	The Honourable Jeremy Page Rockliff MP (being and as the Minister for Infrastructure and, for the purposes of the <i>Crown Lands Act 1976</i> (Tas), the Portfolio Minister in relation to the Licensed Area)
Short form name	Licensor
Notice details	C/- Department of State Growth, Parliament Square, 4 Salamanca Place, Hobart, Tasmania 7001 Email: transportcommission@stategrowth.tas.gov.au Attention: Commissioner for Transport

Name	SeaLink Tasmania Pty Ltd
ABN	38 626 709 993
Short form name	Licensee
Notice details	Level 2, 431 King William Street, Adelaide, SA, 5000 Email: Attention:

Recitals:

- A. Pursuant to the provisions of the Act, the Licensor as Portfolio Minister may licence Crown land to any person on such terms as the Licensor thinks fit.
- B. The Licensor acting under the powers conferred by the Act (and in particular the Section of the Act) has agreed to grant the Licensee a licence of the Licensed Area in accordance with this Licence and the Act.
- C. The Licensee has agreed to accept a licence of the Licensed Area in accordance with this Licence and the Act.

Information Table

Item 1	Not used
Item 2 (clause 1.1):	Licensed Area
All that area of Crown land, being portfolio land, located within: (a) Lot 1 on survey plan CPR No. 10451 at Kettering; and (b) the red shaded area (but excluding the blue shaded area, being the paved carriageway) of Lot 1 on survey plan CPR No. 10588 at Roberts Point, a copy of each survey plan being included at Attachment A to this Licence.	
Item 3 (clause 1.1):	Landside Infrastructure
All buildings, structures, facilities (including loading facilities), ramps, roads, parking and marshalling areas and other improvements situated within the Licensed Area.	
Item 4 (clause 1.1):	Commencement Date
The Service Commencement Date (as defined in the Contract).	
Item 5 (clause 1.1):	Expiry Date
The expiry of the Term (as defined in the Contract).	
Item 6	Not used
Item 7 (clause 3):	Licence Fee
\$1.00	
Item 8	Not used
Item 9	Not used

Item 10 Not used

Item 11 (clause 1.1): Interest Rate

The rate prescribed by the *Crown Lands Regulations 2011* (Tas) for the purposes of section 36(a)(ii) of the Act

Item 12 (clause 1.1): Section of Act

Section 40(1A)

Item 13 (clause 1.1): Permitted Use

Access to and use of the Licensed Area for the purposes of the carrying out of the Operator Activities.

Item 14 (clause 14): Special terms and conditions

The following Special terms and conditions apply to this Licence:

- 14.1 The Licensee acknowledges the Licensor may undertake improvements to the Licensed Area, entirely at the Licensor's discretion, in accordance with clause 6.2 of the Contract.
- 14.2 If there is any inconsistency between the terms of the Contract and this Licence, then:
 - (a) the higher or more onerous requirement will apply to the extent of that inconsistency; and
 - (b) to the extent that clause 14.2(a) does not resolve the inconsistency, the terms of the Contract prevail to the extent of that inconsistency.
- 14.3 If the Commission terminates the Contract in accordance with clause 21 of the Contract then:
 - (a) the Licensor will be taken to have also terminated this Licence with immediate effect as at the date of termination of the Contract;
 - (b) a termination notice under clause 21 of the Contract will be deemed to be notice of cancellation of this Licence effectively and validly issued by the Licensor and without the need for the Licensor to issue any other notice under clause 8.1(j) of this Licence.
- 14.4 The Licensee must comply with the Contract, including the Licensee's obligations under clauses 12.1, 17 and 18.1 of the Contract.

Operative provisions

The parties agree as follows:

1 Definitions and interpretation

1.1 Definitions

In this Licence, unless the context otherwise requires:

Act means the *Crown Lands Act 1976* (Tas).

Approval or **Approvals** includes:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from by or with a Government Body;
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Government Body intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiration of that period without intervention or action;
- (c) all necessary development approvals, licences, permits and approvals as may be required from time to time by a Government Body for or in respect of the Permitted Use; and
- (d) to avoid doubt, any planning and environment approvals.

Business Day has the meaning given to that term in the Contract.

Commencement Date means the date set out in Item 4.

Commission means the Transport Commission incorporated as a corporation sole under section 4(1) of the *Transport Act 1981* (Tas).

Contamination has the meaning given to that term in the Contract.

Contract means the document titled “Bruny Island Ferry Service Contract” between the Commission, the Licensee and the Initial Back-up Vessel Owner (as those terms are defined in the Contract) dated on or about the date of this Licence.

Crown means the Crown in Right of Tasmania.

Details means the details and recitals set out above.

Expiry Date means the date set out in Item 5.

Ferry Service has the meaning given to that term in the Contract.

Government Body has the meaning given to that term in the Contract.

GST has the meaning given to that term in the Contract.

GST Laws means applicable Laws relating to GST.

Information Table means the table titled 'Information Table' (if any) included in this Licence.

Insolvency Event has the meaning given to that term in the Contract.

Interest Rate means the rate set out in Item 11.

Item means an item in the Information Table.

Landside Infrastructure means the landside infrastructure set out in Item 3.

Law means:

- (a) principles of law or equity established by decisions of courts;
- (b) legislation and subordinate legislation; and
- (c) requirements, approvals (including conditions) and guidelines of any Government Body that have force of law.

Licence or **this Licence** means this deed and includes all its annexures, appendices, attachments and schedules (if any).

Licence Fee means the amount set out in Item 7.

Licensed Area means that area of Crown land set out in Item 2.

Licensee means the person or entity set out in the Details and where the context permits includes the Licensee's employees, authorised contractors, sub-contractors, agents, licensees and invitees and any other person claiming through or under the Licensee.

month means calendar month.

Operator Activities has the meaning given to that term in the Contract.

Permitted Use means the right to use the Licensed Area for the purpose set out in Item 13 and for all reasonably necessary ancillary purposes.

Plan means the plan of the Licensed Area which is attached to this Licence as 'Attachment: Plan' which is attached for illustration purposes only.

Right includes a right, a power, a remedy, a discretion or an authority.

Roads and Jetties Act means the *Roads and Jetties Act 1935* (Tas).

Section of Act means the section of the Act set out in Item 12.

Special terms and conditions means the special terms and conditions, if any, set out in Item 14.

Term means the period commencing on the Commencement Date and ending on the Expiry Date (inclusive of those dates).

Valuer means:

- (a) a person who is qualified to practice as a land valuer under section 4 of the *Land Valuers Act 2001* (Tas); or

- (b) the person appointed as the Valuer-General under the *Valuation of Land Act 2001* (Tas) or his or her nominees.

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body, a Government Body or other entity includes any of them;
- (e) a reference to a clause or Attachment is a reference to a clause of, or an Attachment to, this Licence and a reference to this Licence includes all Attachments to it, in each case unless expressly stated otherwise;
- (f) a reference to an agreement or document (including a reference to this Licence) is to the agreement or document as amended, varied, supplemented, novated or replaced;
- (g) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (h) a reference to dollars or \$ is a reference to Australian currency;
- (i) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally;
- (j) nothing in this Licence is to be interpreted against a party solely on the ground that the party put forward this Licence or any part of it;
- (k) the terms 'subsidiary', 'control', 'related entity', 'body corporate' and 'associate' have the meanings given to those terms in the Corporations Act;
- (l) a reference to the words 'include', 'includes' and 'including' means 'including without limitation';
- (m) if any amount under this Licence is payable on a day that is not a Business Day, it will instead be payable on the preceding Business Day;
- (n) to the extent of any inconsistency, ambiguity or discrepancy between any one or more provisions forming this Licence, then the higher or more onerous requirement will apply;
- (o) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (p) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;

- (q) a reference to a document includes:
 - (i) any thing on which there is writing;
 - (ii) any thing from which sounds, images or writings can be reproduced with or without the aid of anything else;
 - (iii) an amendment or supplement to, or replacement or novation of, that document; or
 - (iv) a map, plan, drawing or photograph;
- (r) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (s) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (t) a reference to a Minister (including the Licensor) includes, as applicable, that Minister's (including the Licensor's) predecessors and successors in office;
- (u) a reference to a Government Body or other body or organisation that has ceased to exist, or that has been renamed, reconstituted or replaced, or the powers or functions of which have been substantially transferred, is taken to refer respectively to the Government Body or other body or organisation as renamed or reconstituted, or established or formed in its place, or to which its powers or functions have been substantially transferred;
- (v) a reference to an office in a Government Body or other body or organisation includes any person acting in that office, and if the office is vacant, the person who for the time being is substantially responsible for the exercise of the duties, functions or powers of that office;
- (w) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later; and
- (x) reference to a time or date in relation to the performance of an obligation by a party is a reference to the time or date in Hobart, Tasmania, even if the obligation is to be performed elsewhere.

2 Grant of Licence

2.1 Grant of Licence

The Licensor grants to the Licensee, and the Licensee accepts, a non-exclusive licence under the Section of the Act, to use the Licensed Area for the Permitted Use for the Term in accordance with this Licence and subject to the Act.

2.2 No estate or interest

This Licence does not confer upon the Licensee any estate or interest in the Licensed Area.

2.3 Licensor has access to the Licensed Area

The Licensor retains the right to full and free access to the Licensed Area throughout the Term.

2.4 Access to the Licensed Area

For the purposes of carrying out the Ferry Service, the Licensee is granted the right to use the Licensed Area in priority to other vehicle ferry service operators (if any) which are granted a right to use some or all of the Licensed Area, but only to the extent that the Commission determines (acting reasonably) that such priority use is necessary to enable the Licensee to conduct the Ferry Service in compliance with the Contract.

2.5 Consent under Roads and Jetties Act

If any part of the Licensed Area forms part of a State highway or subsidiary road as defined in the Roads and Jetties Act, the Licensor provides the Licensee with consent pursuant to section 16 of the Roads and Jetties Act to enable the Licensee to carry out any works on that part of the Licensed Area to the extent necessary for the purposes of carrying out the Operator Activities in accordance with this Licence and the Contract.

3 Licence Fee

- (a) In consideration of this Licence, the Licensee must pay the Licence Fee to the Licensor in advance on the Commencement Date without set-off or deduction.
- (b) The Licence Fee is the only licence fee payable during the Term of this Licence.

4 Conditions of Licence

4.1 Conditions

This Licence is granted subject to the conditions that the Licensee must:

- (a) pay the Licence Fee as required under this Licence;
- (b) pay all land tax (on a single holding basis), rates, water, sewerage, and other charges levied against the Licensed Area and payable by an owner. For the avoidance of doubt, the Licensee acknowledges that if any such charges are demanded directly of the Licensee then the Licensee must pay that amount punctually to the Government Body or if demanded of the Licensor then the Licensee must pay to the Licensor on demand a fair proportion (as assessed by the Licensor) of those charges;
- (c) pay the costs of delivery of all services used by the Licensee at the Licensed Area including electricity, telephone, telecommunication service and ad valorem charges for water and sewerage;

- (d) comply with the terms of this Licence, including the Special terms and conditions;
- (e) comply with the Licensor's directions about use of the Licensed Area;
- (f) comply punctually with all notices received from the Licensor or any Government Body concerning:
 - (i) the Licensed Area;
 - (ii) the Permitted Use;
 - (iii) any Contamination of the Licensed Area, land, or waters adjacent to the Licensed Area (if any); and
 - (iv) any remediation of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (g) punctually comply with:
 - (i) all notices received from the Licensor or the Licensor's duly authorised agents relating to the Licensee's obligations under this Licence;
 - (ii) all notices received from any Government Body with respect to the Licensed Area or Permitted Use or both;
 - (iii) all Laws, Approvals and other requirements of a Government Body that affect the Licensed Area or Permitted Use or both in any way; and
 - (iv) any management plans that are approved under the Act at any time that in any way affect the Licensed Area;
- (h) obtain, keep current and comply with, for the Term all necessary Approvals as may be required from time to time by all Laws or any Government Body or both, for or in respect of the Permitted Use and occupation of the Licensed Area (including for the avoidance of doubt all necessary Approvals and permits as may be required under the *Land Use Planning and Approvals Act 1993* (Tas) in respect of any works undertaken by the Licensee in accordance with this Licence);
- (i) give immediate written notice to the Licensor of:
 - (i) receipt of any notice referred to in clauses 4.1(f) and 4.1(g) (unless such notice was provided through the Licensor); and
 - (ii) any damage or defect in the Licensed Area caused by, or arising in relation to, the exercising of any of the rights conferred under this Licence;
- (j) ensure that the right of the general public to access any adjoining Crown land is not hindered or prevented by the Licensee's use of the Licensed Area;
- (k) use the Licensed Area solely for the Permitted Use;

- (l) not do anything in relation to or on the Licensed Area that in the Licensor's opinion, will or may result, in Contamination of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (m) remove any Contamination from the Licensed Area, land or waters adjacent to the Licensed Area and make good any Contamination of the Licensed Area, land or waters adjacent to the Licensed Area (if any);
- (n) cease exercising the rights conferred under this Licence immediately, as the Licensor directs, in an emergency;
- (o) except as may be incidental to the Permitted Use, or provided for in the Special terms and conditions, not, on the Licensed Area:
 - (i) sell or hire out, offer or expose for sale or hiring out, or have in the Licensee's possession for selling or hiring out, any article, material or other thing; or
 - (ii) provide, offer to provide or hold the Licensee out as willing to provide, any service or facility for any monetary or other consideration;
- (p) except as may be:
 - (i) incidental to the Permitted Use; or
 - (ii) provided for in the Special terms and conditions,not remove any living or dead native vegetation, or disturb ground soil, on the Licensed Area without the Licensor's prior written approval;
- (q) not light a fire on the Licensed Area without the Licensor's prior written approval;
- (r) keep and leave the Licensed Area and the Landside Infrastructure:
 - (i) in good repair and condition (which includes restoration of the surface of the Licensed Area);
 - (ii) free from vermin, noxious weeds and fire hazards;
 - (iii) in a safe state and condition for everyone who enters the Licensed Area or uses the Landside Infrastructure and the facilities on the Licensed Area or both; and
 - (iv) maintained and repaired, including with respect to all structural matters, in accordance with all Laws, Approvals and other requirements of any Government Body, good industry practice and any directions given by the Licensor,it being acknowledged by the parties that the Licensee is responsible for maintenance and repair of the Landside Infrastructure in accordance with the Contract;
- (s) not:
 - (i) erect any building or structure; or
 - (ii) alter the Landside Infrastructure or any building or structure,

on the Licensed Area without obtaining all responsible Government Bodies' consent and also the Licensor's prior written consent. When seeking the Licensor's consent the Licensee must provide detailed plans of the proposed works, including a development plan and construction management plan, wholly to the satisfaction of the Licensor. The parties acknowledge that the Licensee may during the Term remove any or all of the Licensee's buildings, structures, facilities, fixtures, fittings, plant and equipment or other improvements on the Licensed Area with the Licensor's prior written consent provided that the Licensee makes good all damage caused as a result of such removal;

- (t) without limiting the operation of clause 29.4 of the Contract, not assign, sub-licence, share, transfer, grant any mortgage, charge or other security interests in or otherwise deal with all or any part of the Licensee's rights benefits or obligations under this Licence without the Licensor's prior written consent (it being acknowledged that should the Licensee wish to assign or transfer this Licence the Licensee must comply with the Act);
- (u) not do, or permit to be done, in relation to the Licensed Area or while exercising the rights conferred under this Licence, anything that, in the Licensor's opinion, is or may become, a nuisance or annoyance to an occupier of an adjoining property, it being acknowledged that the reasonable use of the Licensed Area for the Permitted Use in accordance with the terms of this Licence will not be a breach of this clause;
- (v) not permit any activity on the Licensed Area that is not authorised under this Licence without obtaining the Licensor's prior written consent;
- (w) not use or permit to be used or stored on the Licensed Area any radioactive, toxic or hazardous chemicals, wastes or substances unless required under this Licence and then only in concentrations and quantities:
 - (i) permitted by the relevant Government Body;
 - (ii) required by all Laws and Approvals; and
 - (iii) in accordance with any conditions imposed by the relevant Government Body;
- (x) not permit any petroleum product, oil, grease or any noxious, dangerous or poisonous chemical or substance to be discharged through the pipes of the water or sewerage service on the Licensed Area or into any nearby marine waters, stream or river or into or under the soil and to discharge them only as:
 - (i) permitted by the relevant Government Body;
 - (ii) required by all Laws and Approvals; and
 - (iii) in accordance with any conditions imposed by the relevant Government Body;
- (y) control and restrict the emission of smoke, dust or odours from the Licensed Area in accordance with the applicable Laws and the requirements of the relevant Government Body; and

- (z) comply with all demands notices and requirements of the Licensor and any relevant Government Body in respect of Contamination of the Licensed Area caused by the Licensee or by occupiers of the Licensed Area (which may include the requirement for the carrying out all necessary rehabilitation works to the Licensed Area in accordance with the requirements of and to the satisfaction of the Licensor and any relevant Government Body at the Licensee's cost).

4.2 Determination of Licence

On the expiration or sooner determination of this Licence the Licensee must cease to exercise the rights conferred under this Licence and leave the Licensed Area in a condition consistent with the Licensee's obligations under this Licence, it being acknowledged by the parties that immediately before the expiration or sooner determination of this Licence the Licensee must:

- (a) remove all the Licensee's personal property from the Licensed Area;
- (b) remove all of the Licensee's buildings, structures, facilities, plant and equipment or other improvements from the Licensed Area unless otherwise notified in writing by the Licensor; and
- (c) make good all damage caused by removal in accordance with clauses 4.2(a) and 4.2(b) to the Licensor's satisfaction.

4.3 Things remaining on the Licensed Area

The Licensee acknowledges that any of the Licensee's personal property, buildings, structures, facilities, plant and equipment or other improvements remaining on the Licensed Area after the expiration or sooner determination of this Licence without the Licensor's consent may at the Licensor's discretion either:

- (a) become the property of the Licensor without compensation to the Licensee (unless compensation is required to be paid under the Act); or
- (b) be removed from the Licensed Area at the Licensee's cost and disposed of by the Licensor without reference or liability to the Licensee with all damage to the Licensed Area caused by such removal to be made good at the Licensee's expense.

4.4 Notice to repair

Upon receipt of notice from the Licensor or any Government Body having jurisdiction, the Licensee must repair, remedy or otherwise make good all damage to the Licensed Area caused during the Term and any other defects and lack of repair that are the Licensee's responsibility under this Licence. If the Licensee fails to comply with such a notice given under this sub-clause, then the Licensor, or the Licensor's agents, may, but are not bound to, undertake the required repairs.

4.5 Licensor may recover costs

The Licensee must pay to the Licensor, on demand:

- (a) all money the Licensor expends to undertake work that is the Licensee's responsibility under this Licence; and

- (b) all reasonable costs the Licensor incurs in doing so.

5 Licensor's acknowledgements

5.1 Use of Licensed Area

Subject to the Act, the Licensor acknowledges that provided the Licensee pays the Licence Fee and observes and performs all of the Licensee's obligations contained in this Licence the Licensor will permit the Licensee to have the non-exclusive use of the Licensed Area as set out in this Licence.

5.2 Licensor not responsible

The Licensor is not responsible:

- (a) to identify or locate the boundaries of the Licensed Area;
- (b) to construct, maintain or repair any gate, road, track, drain or bridge on the Licensed Area, including anything which may be used to gain access to the Licensed Area; or
- (c) for any erosion mitigation or other works associated with the Licensed Area or the protection or maintenance of the Licensee's personal property, buildings, structures, facilities, plant, equipment and services or other improvements.

6 Licensee's waiver

6.1 Licensee's risk

The Licensee agrees to use and occupy the Licensed Area throughout the Term at the Licensee's risk including in relation to loss or damage to the Licensee and the Licensee's property.

6.2 Licensee's releases and discharges the Licensor in relation to Contamination

The Licensee releases and discharges the Licensor from all actions, suits, causes of action, claims and demands that the Licensee has at any time against the Licensor in relation to any Contamination including any existing or future Contamination or the rehabilitation of the Licensed Area and, if any, the surrounding area of land and or water or for or in respect of anything incidental to any of those issues.

6.3 Waiver of rights of recovery from the Licensor

The Licensee waives all present and future rights to claim against the Licensor for:

- (a) personal injury to, or death of, the Licensee;
- (b) either or both loss of, or damage to, the Licensee's property; and
- (c) financial loss to the Licensee,

in relation to, the Licensee's presence on, or use of the Licensed Area.

6.4 Nature of waiver

The waiver in this clause 6:

- (a) is a continuing obligation of the Licensee, separate and independent from any other obligation;
- (b) survives the expiration or sooner termination of this Licence; and
- (c) does not extend to liability caused by the Licensor's wrongful (including negligent) act or omission.

7 Not used

8 Termination of Licence

8.1 Licensor's right to terminate

Where:

- (a) any money (including Licence Fee) payable by the Licensee under this Licence remains unpaid for a period exceeding one month after it has become due and the money (and interest if relevant) remains unpaid at the end of the period specified in a notice served on the Licensee by the Licensor:
 - (i) requesting the Licensee to pay the outstanding amount within the period specified in the notice; and
 - (ii) advising the Licensee that the Licence may be cancelled if the outstanding amount and interest thereon at the Interest Rate is not paid within the period so specified; or
- (b) the Licensor considers that the Licensee has committed a breach of any term of the Licence and upon notice served on the Licensee by the Licensor specifying the breach and requiring the Licensee to satisfy the Licensor within the period specified in the notice that the Licensee has not committed the breach the Licensee fails to so satisfy the Licensor (or if required by the said notice that the Licensee has rectified or commenced action to rectify the breach); or
- (c) the Licensee fails to comply with an essential term of this Licence; or
- (d) the Licensee repudiates this Licence; or
- (e) the Licensee fails to comply with the provisions of any Approvals or Laws, or the requirements of any Government Body; or
- (f) the Licensee suffers an Insolvency Event; or
- (g) the Licensee ceases or threatens to cease to use the Licensed Area for the Permitted Use; or

- (h) the Licensee is convicted of an offence in relation to the Permitted Use or if the Licensee's business or activity conducted on the Licensed Area is closed down by a Government Body; or
- (i) distress or execution is levied, or issued, against the Licensee's property and not paid out within 10 Business Days,

then the Licensor may either:

- (j) subject to and without limiting the operation of clause 14.3 of the Special terms and conditions, give five Business Days written notice to the Licensee that this Licence is cancelled, and this Licence automatically terminates when such notice period expires; or
- (k) proceed by appropriate court action to enforce performance by the Licensee of the applicable term(s) of this Licence or to recover damages for breach.

8.2 Antecedent breach

A termination or cancellation of this Licence under clause 8 is without prejudice to the Licensor's rights or remedies for arrears of the Licence Fee, for any other moneys owing or for any other antecedent breach of this Licence.

8.3 No compensation payable on termination

Except as may be required for under the Act, no compensation is payable to the Licensee upon cancellation or termination of this Licence and the Licensee indemnifies and agrees to keep indemnified the Licensor against any such claim or demand.

9 Holding over

If the Licensee, with the Licensor's consent, continues to use the Licensed Area after the Term expires, then the Licensee will use the Licensed Area:

- (a) as a licensee on a three monthly licence, or such other period commensurate with any extension to the Contract;
- (b) at the Licence Fee that is payable immediately prior to the expiration of this Licence on a three monthly basis or any other Licence Fee which is agreed by the parties from time to time;
- (c) with the Licence Fee to be paid in advance; and
- (d) on the terms and conditions of this Licence so far as they are applicable to a three monthly licence, or such other period commensurate with any extension to the Contract.

Such licence may be determined by either party giving to the other not less than three months written notice expiring at any time.

10 Interest

If any moneys owing by the Licensee to the Licensor under this Licence are not paid on the due date for payment then the amount attracts and bears interest from the due date for payment until the date of actual payment at the Interest Rate.

11 Licensee's risk

If the Licensee is required to do anything or cause anything to be done under this Licence, then the doing of that act, matter or thing is at the Licensee's sole risk and expense unless otherwise expressly provided.

12 No representation or warranty

12.1 No representation about suitability

The Licensor does not represent or warrant:

- (a) that the Licensed Area is suitable to be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area;
- (b) that the fittings, accessories or services available on the Licensed Area are suitable to be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area; or
- (c) that the Licensed Area may lawfully be used for the Permitted Use or for any business or other activity undertaken on the Licensed Area.

12.2 No representation about zoning

Without affecting the generality of clause 12.1 the Licensor does not represent or warrant that the zoning of the Licensed Area will permit it to be used for the Permitted Use whether with the approval or permission of the relevant planning authority or otherwise. It is the Licensee's responsibility to enquire about zoning and the Licensee warrants that before executing this Licence the Licensee has done so to the Licensee's own satisfaction.

13 Not used

14 Special terms and conditions

- (a) The Special terms and conditions form part of this Licence.
- (b) If there is any inconsistency between the Special terms and conditions and another provision of this Licence, the Special terms and conditions override the other provision to the extent of the inconsistency.
- (c) A Special term and condition is taken not to be inconsistent with another provision of this Licence if the Special term or condition and the other provision of this Licence are both capable of being complied with.

- (d) To avoid doubt and without limiting the operation of clause 18.17, any Right contained in a Special term and condition is in addition to any other Rights provided for in this Licence or at Law.

15 GST

- (a) Unless otherwise stated in this Licence, all amounts payable by one party to another party are exclusive of GST.
- (b) If GST is imposed or payable on any supply made by a party under this Licence, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.
- (c) A party that makes a taxable supply under this Licence must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 15(b) is subject to a valid tax invoice being delivered to the party liable to pay for the taxable supply.
- (e) If the consideration for a supply under this Licence is a payment or reimbursement for, or contribution to, any expense or liability incurred by the supplier to a third party, the amount to be paid, reimbursed or contributed in respect of the expense or liability will be the amount of the expense or liability net of any input tax credit to which the supplier is entitled in respect of the expense or liability.
- (f) Where any amount payable under this Licence is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 15 as if it were an actual payment made pursuant to this Licence.
- (g) Unless the context otherwise requires, expressions used in this clause 15 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

16 Dispute resolution

16.1 Application

This clause 16 does not apply to any dispute or difference between the parties concerning the exercise by any party of any Right under legislation.

16.2 Negotiation

If a party gives written notice to the other party of a dispute or difference concerning this Licence, the parties must undertake negotiations with a view to resolving the dispute or difference.

16.3 Status of negotiations

- (a) Unless otherwise agreed in writing by the parties and subject to applicable Laws, other than the fact of occurrence, all aspects of negotiations for the purpose of clause 16.2 will be without prejudice and treated as confidential including:
 - (i) any settlement proposal made to, or considered by, a party;
 - (ii) the willingness of a party to consider a settlement proposal;
 - (iii) any statement made by, or on behalf of, a party during the negotiations; and
 - (iv) any document prepared for the purposes of the negotiations.
- (b) Nothing in clause 16.3(a):
 - (i) prevents a party from enforcing any signed settlement agreement made by the parties in relation to the dispute or difference;
 - (ii) prevents an agent or instrumentality of the Crown (that is a separate legal entity) from disclosing any matter to the Crown; or
 - (iii) prevents a Minister of the Crown from making a statement to Parliament or exercising any Right.

16.4 Further action

If, after 10 Business Days following receipt by a party of a notice under clause 16.2, the parties are unable to resolve the dispute or difference by negotiation, a party may take any lawful action as that party sees fit (including commencing legal proceedings) in relation to the dispute or difference.

16.5 Continuation of performance

Despite the existence of any dispute or difference, unless this Licence has been terminated, each party must continue to perform its obligations in accordance with this Licence.

16.6 Injunctive and other discretionary relief

Nothing in this clause 16 prevents a party from commencing legal proceedings to seek an injunction (whether interim or permanent), a writ of specific performance, declaratory relief, or any urgent or other interlocutory relief.

17 Notices

17.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Licence must be:
 - (i) in legible writing in the English language;
 - (ii) subject to clause 17.1(b), signed by or on behalf of the sender or by a lawyer for the sender;

- (iii) marked for the attention of the person or position (if any) specified in the Details applicable to the intended recipient of the Notice or, if the intended recipient has notified otherwise, marked for attention in the way last notified; and
 - (iv) left or sent in accordance with clause 17.2.
- (b) A Notice sent by email is taken to have been signed by the sender.
- (c) A Notice must not be given orally.

17.2 Method and address for delivery

- (a) Subject to clause 17.2(b), a Notice must be:
 - (i) left at the intended recipient's address set out in the Details;
 - (ii) sent by prepaid ordinary mail (or prepaid airmail, if from one country to another country) to the intended recipient's address set out in the Details; or
 - (iii) sent by email to the intended recipient's email address (if any) set out in the Details.
- (b) If the intended recipient of a Notice has notified the sender of another address or email address for the purposes of receiving Notices, then subsequent Notices to that intended recipient must be left at or sent to the address or email address (as applicable) last notified by that intended recipient.

17.3 Time of receipt

- (a) Subject to clause 17.3(b), a Notice is taken to have been received by the intended recipient:
 - (i) if left at the intended recipient's address, at the time of delivery;
 - (ii) if sent by prepaid ordinary mail, on the fifth Business Day after the day of posting; and
 - (iii) if sent by email, four hours after the time the email was sent (as recorded by the device from which the email was sent) provided that the sender has not received an automated message that the email has not been delivered.
- (b) If a Notice is received by a recipient on a day that is not a Business Day or after 4.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- (c) A Notice is effective from the time it is taken to have been received in accordance with clauses 17.3(a) and 17.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

17.4 Other modes or places of service

Nothing in this Licence limits or excludes any other mode or place of service required by an applicable Law.

18 Miscellaneous

18.1 Governing law

This Licence is governed by the Laws applying in Tasmania.

18.2 Dispute jurisdiction

The parties submit to the non-exclusive jurisdiction of courts with jurisdiction in Tasmania, and any courts that may hear appeals from those courts, in respect of any proceedings in relation to this Licence.

18.3 Entire agreements clause

Except as otherwise contemplated by clause 29.2 of the Contract:

- (a) this Licence forms the entire agreement of the parties in respect of its subject matter;
- (b) the only enforceable obligations of the parties in relation to the subject matter of this Licence are those that arise out of the provisions contained in this Licence; and
- (c) all prior agreements in relation to the subject matter of this Licence are merged in and superseded by this Licence unless expressly incorporated in this Licence as an annexure, an appendix, an attachment or by reference.

18.4 Liability

An obligation of, or a representation, a warranty or an indemnity by, two or more parties (including where two or more persons are included in the same defined term) under or in respect of this Licence, binds them jointly and each of them severally.

18.5 Benefit

An obligation, a representation, a warranty or an indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and each of them severally.

18.6 Compliance with obligations

- (a) A party must ensure that its officers, employees, volunteers, authorised contractors, agents and advisers involved in the performance by that party of its obligations under this Licence:
 - (i) comply with the provisions of this Licence related to that performance; and
 - (ii) do not conduct themselves in a way that would result in the party being in breach of this Licence or that, if the conduct was undertaken by the party, would result in the party being in breach of this Licence.
- (b) If a party is prohibited from doing anything under this Licence, that party must not knowingly assist, authorise or allow any other person to do that thing.

18.7 Severance

If a provision of this Licence is or at any time becomes illegal, prohibited, void or unenforceable for any reason, that provision is severed from this Licence and the remaining provisions of this Licence:

- (a) continue to be enforceable; and
- (b) are to be construed with such additions, deletions and modifications of language as are necessary to give effect to the remaining provisions of this Licence.

18.8 Counterparts

- (a) This Licence may be entered into in any number of counterparts.
- (b) A party may execute this Licence by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.
- (d) This Licence is not to take effect against a party until it has been signed by all parties and delivered, unless it is a deed poll or is intended to take effect immediately when delivered by one or more parties.

18.9 Execution of Licence

If this Licence is not executed prior to or on the Commencement Date and the Licensee uses the Licensed Area from the Commencement Date, then the parties will, from the Commencement Date until this Licence is executed, be in all respects bound by the terms contained in this Licence as if this Licence had been duly and fully completed and executed by the Licensor and the Licensee prior to or on the Commencement Date.

18.10 Further assurance

The parties agree to do or cause to be done all such acts, matters and things (including, as applicable, passing resolutions and executing documents) as are necessary or reasonably required to give full force and effect to this Licence.

18.11 Business Days

If the day on or by which an act, matter or thing is to be done under this Licence is not a Business Day, that act, matter or thing must be done by no later than the next Business Day.

18.12 No partnership or agency

Unless stated to the contrary in this Licence:

- (a) nothing contained or implied in this Licence will:
 - (i) constitute, or be taken to constitute, a party to be the partner, agent or legal representative of another party for any purpose;
 - (ii) create, or be taken to create, a partnership or joint venture; or
 - (iii) create, or be taken to create, an agency or trust; and
- (b) a party must not represent or hold itself out to be a partner, joint venturer, agent or representative of another party.

18.13 Legal costs

The Licensee must pay to the Licensor, on demand, all the Licensor's costs, on a full indemnity basis of and incidental to:

- (a) any consent, approval, waiver or amendment made under or to this Licence;
- (b) any assignment or sub-licensing made under this Licence;
- (c) any surrender or termination of this Licence otherwise than by effluxion of time; and
- (d) the actual or contemplated enforcement or exercise of any rights or powers of the Licensor following a default or breach of any covenant of this Licence.

18.14 Amendment

This Licence may only be amended or supplemented in writing signed by the parties.

18.15 Waiver

- (a) A failure or delay in exercising a Right does not operate as a waiver of that Right.
- (b) A single or partial exercise of a Right does not preclude any other exercise of that Right or the exercise of any other Right.
- (c) A Right may only be waived in writing, signed by the party to be bound by the waiver. Unless expressly stated otherwise, a waiver of a Right is effective only in the specific instance and for the specific purpose for which it was given.

18.16 Successors and assigns

This Licence is binding on and benefits each party and, unless repugnant to the sense or context, their respective administrators, personal representatives, successors and permitted assigns.

18.17 Rights cumulative

Each Right provided for in this Licence:

- (a) operates independently of any other Right provided for in this Licence; and
- (b) is cumulative with, and does not exclude or limit, any other Right, whether at Law or pursuant to any other agreement, deed or document.

18.18 Set-off

The Licensor may set-off against any moneys payable by the Licensor to the Licensee under this Licence any debt or other moneys from time to time due and owing by the Licensee to the Licensor. This right of set-off does not limit or affect any other right of set-off available to the Licensor.

18.19 Disclosure

- (a) Despite any confidentiality or intellectual property right subsisting in this Licence, a party may publish all or any part of this Licence without reference to another party.
- (b) Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988* (Cwlth).

18.20 Consent and approvals

- (a) This clause applies to any consent or approval which a party must obtain from another party in accordance with this Licence. For the avoidance of doubt, this clause does not apply to any consent or approval to be given under any legislation.
- (b) A request for consent or approval must be made in writing.
- (c) A consent or approval for the purposes of this Licence is not effective unless given in writing.
- (d) Except as otherwise stated, a party whose consent or approval is required must not unreasonably withhold or delay that consent or approval.
- (e) A consent or approval may be given subject to reasonable conditions.
- (f) A party receiving a consent or approval must comply with any conditions subject to which the consent or approval is given. To the extent that the party receiving the consent or approval fails to comply with the condition, that failure is taken to be a breach of this Licence.

18.21 Doctrine of merger

The doctrine or principle of merger does not apply to this Licence or to anything done in relation to this Licence. Accordingly, no Right or obligation of a party is merged in any thing done pursuant to this Licence.

18.22 Minister or State of Tasmania expressed to be party

- (a) If a Minister of the Crown (acting in that capacity) is expressed to be a party to this Licence, then unless an applicable Law provides otherwise:
 - (i) the Minister enters into this Licence on behalf of the Crown;
 - (ii) the Rights, obligations and liabilities expressed to be those of the Minister are Rights, obligations and liabilities of the Crown; and
 - (iii) each reference in this Licence to the Minister will be taken to include a reference to the Crown.
- (b) For the avoidance of doubt, if the State of Tasmania is expressed to be a party to this Licence, the Rights, obligations and liabilities of the State of Tasmania are Rights, obligations and liabilities of the Crown.

18.23 No interference with executive duties or powers

Nothing in this Licence is intended to prevent, is to be taken to prevent, or prevents, the free exercise by the Governor, by any member of the Executive Council, or by any Minister of the Crown, of any duties or authorities of his or

her office. Any provision of this Licence that is inconsistent with this clause is of no legal effect to the extent of the inconsistency.

18.24 Surviving provisions and termination

- (a) The termination of this Licence does not affect or limit the operation or effect of clauses or parts of this Licence:
 - (i) that are expressed to survive the termination of this Licence;
 - (ii) that, at Law, survive the termination of this Licence; or
 - (iii) that are necessary to survive the termination of this Licence:
 - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this Licence;
 - (B) to enable a party to make, enforce or defend any claims related to this Licence; or
 - (C) to give full force and effect to the operation of clause 18.24(b) or clause 18.24(c).
- (b) The termination of this Licence does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this Licence before the date on which this Licence is terminated.
- (c) Nothing in this clause 18.24 affects or limits the operation of another provision of this Licence which gives a party Rights, or imposes obligations on a party, on or after the termination of this Licence.

Executed as a deed

Licence

Signing

Signing by Licenser

Executed as a deed by **The Honourable Jeremy Page Rockliff MP** (being and as the Minister for Infrastructure and, for the purposes of the *Crown Lands Act 1976* (Tas), the Portfolio Minister in relation to the Licensed Area) in the presence of the witness named below:

Minister's
signature:

→

Witness'
signature:

→

*Witness
print
name and
position:

*Witness
print address:

4 SALAMANCA
PLACE, HOBART,
TAS 7000

*Use BLOCK LETTERS

Licence

Signing by Licensee

Executed by **SeaLink Tasmania Pty Ltd**
(ABN 38 626 709 993) in accordance with
section 127(1) of the Corporations Act:

Print name

Print name

Released under RTI

Attachment A to the Licence: Survey Plans

