

 **NORTON ROSE FULBRIGHT**

## **Bruny Island Ferry Service Contract – Amendment Deed No. 1**

**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

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**KEY DETAILS**

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1    **Date**                      12    October 2018

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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 selected the Operator to provide the Ferry Service and to carry out the other Operator Activities.
- C The Operator 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 agreed to carry out its obligations on the terms set out in the Project Documents to which it is a party.
- E On 28 June 2018 the parties entered into the applicable Project Documents.
- F The parties have agreed to amend the Ferry Service Contract on the terms set out in this deed.

## TERMS

### 1 Definitions and Interpretation

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#### 1.1 Definitions

The following definitions apply in this deed:

**Effective Date** means the date of this deed or, if this deed is undated, the date that the Commission executes this deed.

**Ferry Service Contract** means the document titled "Bruny Island Ferry Service Contract" between the Commission, Operator and Initial Back-up Vessel Owner dated 28 June 2018.

In addition, and unless the context otherwise requires, capitalised terms used in this deed have the meanings given to them in the Ferry Service Contract.

#### 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) a reference to \$ is a reference to Australian currency; and
- (d) a reference to the words 'include', 'includes' and 'including' means 'including without limitation'.

## **2 Effect of this deed**

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### **2.1 Amendments to the Ferry Service Contract**

On and from the Effective Date, the parties agree that the Ferry Service Contract is amended as set out in schedule 1 to this deed and otherwise continues in full force and effect.

## **3 General**

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### **3.1 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.

### **3.2 Entire agreement**

This deed and the Ferry Service Contract as varied by this deed contain the entire agreement between the parties with respect to their subject matter and supersede any prior agreements or understandings made between the parties in relation to it, including:

- (a) the Operator's proposal to the Commission dated 17 August 2018; and
- (b) the Commission's letter to SeaLink Travel Group Ltd dated 29 August 2018.

### **3.3 Costs**

Each party must pay its own costs of negotiation, preparation and execution of this deed.

### **3.4 Counterparts**

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

**EXECUTION**

**Executed** as a deed

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



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

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

Released under RTI

**Schedule 1 – Amendments to the Ferry Service Contract**

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1 **Clause 1.1**

In clause 1.1, a new definition is included in the appropriate alphabetical order as follows:

**Booking Commencement Date** means the date which is 30 days from the date of the issue of a notice from the Commission's Representative to the Operator notifying that a Ticket booking system must be fully operational for the purposes of the Contract.

2 **Clause 5.2(g)(ii)(B)**

Clause 5.2(g)(ii)(B) is deleted and replaced with the following:

(B) updating the Operator's website and facebook page;

3 **Clause 13.2(a)**

Clause 13.2(a) is deleted and replaced with the following:

(a) Clause 13.2(b) only applies in respect of the first 12 months from the Booking Commencement Date (**Incentive Period**).

4 **Schedule 10, Item 3**

Item 3 of Schedule 10 is amended by deleting the content in the column titled "Description" and replacing it with the following:

For the first 12 month period of the Initial Term, the aggregate of the following:

(a) **s37** (exclusive of GST) per annum; and

(b) **s37** (exclusive of GST) per month but only to apply for the first 9 months of the Initial Term.

For each subsequent 12 month period of the Initial Term, **s37** (exclusive of GST) per annum.

5 **Schedule 10, Item 15**

Item 15 of Schedule 10 is amended by deleting the content in the column titled "Description" and replacing it with the following:

**Address:** Level 3, 26 Flinders Street, Adelaide, South Australia, 5000

6 **Schedule 12, Clause 1(a)**

Clause 1(a) of Schedule 12 is amended by deleting the entirety of the content of that clause 1(a) (including the tables) and replacing them with the following:

- (a) As at the Service Commencement Date, the Ferry Timetable is as set out below:

<b>Off Peak Season Timetable</b>		
<b>Depart Kettering Terminal</b>		<b>Depart Roberts Point Terminal</b>
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

<b>Peak Season Timetable</b>				
<b>Depart Kettering Terminal (Primary Vessel)</b>	<b>Depart Kettering Terminal (Back-up Vessel)</b>		<b>Depart Roberts Point Terminal (Primary Vessel)</b>	<b>Depart Roberts Point Terminal (Back-up Vessel)</b>
6.30am		Mon - Sat	7.00am	
	7.00am	Mon - Sat		7.30am
		Sun (but only on demand)		
7.30am		Daily	8.00am	
	8.00am	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	On demand		12.30pm
1.00pm		Daily	1.30pm	
	1.30pm	On demand		2.00pm
2.00pm		Daily	2.30pm	
	2.30pm	On demand		3.00pm

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)
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
6.00pm		Daily	6.30pm	
	6.30pm	Daily		7.00pm
7.00pm		Daily	7.15pm	

For the purposes of the above table, a reference to **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.

7 **Schedule 13, paragraphs (a)(v), (a)(vi) and (a)(vii) and table**

Paragraphs (a)(v), (a)(vi) and (a)(vii), and the table appearing at the end of paragraph (a)(vii), in Schedule 13 are deleted and replaced with the following new paragraphs and three new tables:

- (v) unless otherwise approved by the Commission:
  - (A) the Operator must not implement any on-line or other Ticket booking system until the Booking Commencement Date other than any trials of the booking system approved by the Commission; and
  - (B) on and from the Booking Commencement Date until the expiry of the Term the Operator must at all times allow for standby/unbooked Tickets of not less than 20% of the total number of possible vehicle Tickets that may be purchased for any Trip;
- (vi) subject to clause (a)(vii), in respect of Trips during each day of the period from 1 November 2018 up to but not including the Booking Commencement Date there must be a reasonable combination of Fares available/offered for a "light return vehicle" and "standard return vehicle" in Table 2 below, it being acknowledged that the combination will be dependent on the time of day and level of bookings by Bruny Island Residents;
- (vii) for each Quarter during the period from 1 November 2018 up to but not including the Booking Commencement Date 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 Table 2 below; and
  - (B) at least 75% of Tickets are made available for sale for all Trips during the Quarter in relation to the category of “standard return vehicle” in Table 2 below;
- (viii) subject to clause (a)(ix), in respect of Trips during each day of the period from the Booking Commencement Date until the expiry 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 Table 3 below, it being acknowledged that the combination will be dependent on the time of day and level of bookings by Bruny Island Residents; and
- (ix) for each Quarter during the period from the Booking Commencement Date until the expiry of 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 Table 3 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 Table 3 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 Table 3 below.

**Table 1: Fares from Service Commencement Date up to and including 31 October 2018**

Subject to clause 8.2, the Fares that are to apply from the Service Commencement Date up to and including 31 October 2018 (or such other period as may be agreed in writing between the Commission and the Operator) are set out in the table below:

Category	Peak, being 25 October 2018	Off Peak, being every day from the Service Commencement Date up to and including 31 October 2018 – other than 25 October 2018
<b>Residents and Landowners</b>		
Bruny Island Resident (vehicle <6m)	\$16.00	\$16.00
Bruny Island Resident Concession (vehicle <6m)	\$9.00	\$9.00
Bruny Island Resident Student (vehicle <6m)	\$9.00	\$9.00
Bruny Islander not-permanent resident (vehicle <6m)	\$16.00	\$16.00
Bruny Islander not-permanent resident concession (vehicle <6m)	\$9.00	\$9.00
<b>Visitors</b>		
Visitor (vehicle <6m)	\$38.00	\$33.00
Visitor towing boat or van	\$85.00	\$70.00
Visitor pensioner (vehicle <6m)	\$28.00	\$23.00
Visitor pensioner towing boat or van	\$75.00	\$65.00
Visitor senior (vehicle <6m)	\$33.00	\$28.00
Visitor senior towing boat or van	\$75.00	\$65.00
Motorcycle	\$6.00	\$6.00
Bicycle	\$6.00	\$6.00
All vehicles 6m to 10m (including motorhome, coach and truck)	\$65.00	\$54.00
All vehicles >10m to 15m (including motorhome coach and truck)	\$90.00	\$75.00
All vehicles >15m (including motorhome, coach and truck)	\$110.00	\$95.00

**Table 2: Fares from 1 November 2018 up to but not including the Booking Commencement Date**

Subject to clause 8.2, the Fares that are to apply from 1 November 2018 up to but not including the Booking Commencement Date (or such other period as may be agreed in writing between the Commission and the Operator) are set out in the table below:

<b>Fare Category</b>	<b>Standard return vehicle (inclusive of GST)</b>	<b>Light return vehicle (inclusive of GST)</b>
<b>Bruny Island Resident Concession vehicle &lt;6m</b>	\$9.00	\$9.00
<b>Bruny Island Resident Student vehicle &lt;6m</b>	\$9.00	\$9.00
<b>Bruny Island Resident vehicle &lt;6m</b>	\$16.00	\$16.00
<b>Bruny Island Resident vehicle &lt;6m + Tow</b>	\$32.00	\$32.00
<b>Bruny Island Resident Concession vehicle &lt;6m + Tow</b>	\$18.00	\$18.00
<b>Bruny Island Resident + Motorbike with Side Car or Tow</b>	\$16.00	\$16.00
<b>Bruny Island Resident Concession + Motorbike with Side Car or Tow</b>	\$9.00	\$9.00
<b>Visitor vehicle &lt;6m</b>	\$38.00	\$32.20
<b>Visitor Concession vehicle &lt;6m</b>	\$28.00	\$23.70
<b>Vehicle + Tow (other than a Vehicle + Tow by a person holding a Concession)</b>	\$85.00	\$69.80
<b>Vehicle + Tow by a person holding a Concession</b>	\$75.00	\$63.70
<b>Vehicle 6m to 10m (e.g. motorhome, coach or truck)</b>	\$65.00	\$53.80
<b>Vehicle &gt;10m to 15m (e.g. motorhome, coach or truck)</b>	\$90.00	\$74.50
<b>Vehicle &gt;15m (e.g. motorhome, coach or truck)</b>	\$110.00	\$93.50
<b>Visitor Motorbike + Side Car or Tow</b>	\$38.00	\$32.20
<b>Visitor Concession Motorbike + Side Car or Tow</b>	\$28.00	\$23.70
<b>Motorcycle</b>	\$6.00	\$6.00
<b>Bicycle</b>	\$6.00	\$6.00

**Table 3: Fares from the Booking Commencement Date until the expiry of the Term**

Subject to clause 8.2, the Fares that are to apply from the Booking Commencement Date until the expiry of the Term (or such other period as may be agreed in writing between the Commission and the Operator) are set out in the table below:

<b>Fare Category</b>	<b>Premium return vehicle (inclusive of GST)</b>	<b>Standard return vehicle (inclusive of GST)</b>	<b>Light return vehicle (inclusive of GST)</b>
<b>Bruny Island Resident Concession vehicle &lt;6m</b>	\$9.00	\$9.00	\$9.00
<b>Bruny Island Resident Student vehicle &lt;6m</b>	\$9.00	\$9.00	\$9.00
<b>Bruny Island Resident vehicle &lt;6m</b>	\$16.00	\$16.00	\$16.00
<b>Bruny Island Resident vehicle &lt;6m + Tow</b>	\$32.00	\$32.00	\$32.00
<b>Bruny Island Resident Concession vehicle &lt;6m + Tow</b>	\$18.00	\$18.00	\$18.00
<b>Bruny Island Resident + Motorbike with Side Car or Tow</b>	\$16.00	\$16.00	\$16.00
<b>Bruny Island Resident Concession + Motorbike with Side Car or Tow</b>	\$9.00	\$9.00	\$9.00
<b>Visitor vehicle &lt;6m</b>	\$43.70	\$38.00	\$32.20
<b>Visitor Concession vehicle &lt;6m</b>	\$32.20	\$28.00	\$23.70
<b>Vehicle + Tow (other than a Vehicle + Tow by a person holding a Concession)</b>	\$97.70	\$85.00	\$69.80
<b>Vehicle + Tow by a person holding a Concession</b>	\$86.20	\$75.00	\$63.70
<b>Vehicle 6m to 10m (e.g. motorhome, coach or truck)</b>	\$74.70	\$65.00	\$53.80
<b>Vehicle &gt;10m to 15m (e.g. motorhome, coach or truck)</b>	\$103.50	\$90.00	\$74.50
<b>Vehicle &gt;15m (e.g. motorhome, coach or truck)</b>	\$126.50	\$110.00	\$93.50
<b>Visitor Motorbike + Side Car or Tow</b>	\$43.70	\$38.00	\$32.20
<b>Visitor Concession Motorbike + Side Car or Tow</b>	\$32.20	\$28.00	\$23.70
<b>Motorcycle</b>	\$6.00	\$6.00	\$6.00
<b>Bicycle</b>	\$6.00	\$6.00	\$6.00

8 **Schedule 14, clause 2(a)**

In clause 2(a) of Schedule 14, "30 November 2018" is deleted and replaced with "30 June 2019".

**Bruny Island Ferry Service Contract –  
Amendment Deed No. 2**

**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

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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 selected the Operator to provide the Ferry Service and to carry out the other Operator Activities.
- C The Operator 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 agreed to carry out its obligations on the terms set out in the Project Documents to which it is a party.
- E On 28 June 2018 the parties entered into the applicable Project Documents.
- F In or about October 2018 the parties entered into Amendment Deed No. 1 to amend the Ferry Service Contract in certain respects.
- G The parties have agreed to further amend the Ferry Service Contract on the terms set out in this deed.

## TERMS

### 1 Definitions and Interpretation

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#### 1.1 Definitions

The following definitions apply in this deed:

**Effective Date** means the date of this deed or, if this deed is undated, the date that the Commission executes this deed.

**Ferry Service Contract** means the document titled "Bruny Island Ferry Service Contract" between the Commission, Operator and Initial Back-up Vessel Owner dated 28 June 2018 as amended by Amendment Deed No. 1 between the Commission, Operator and Initial Back-up Vessel Owner dated October 2018.

In addition, and unless the context otherwise requires, capitalised terms used in this deed have the meanings given to them in the Ferry Service Contract.

#### 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) a reference to \$ is a reference to Australian currency; and
- (d) a reference to the words 'include', 'includes' and 'including' means 'including without limitation'.

## **2 Effect of this deed**

---

### **2.1 Amendments to the Ferry Service Contract**

On and from the Effective Date, the parties agree that the Ferry Service Contract is amended as set out in schedule 1 to this deed and otherwise continues in full force and effect.

## **3 General**

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### **3.1 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.

### **3.2 Entire agreement**

This deed and the Ferry Service Contract as varied by this deed contain the entire agreement between the parties with respect to their subject matter and supersede any prior agreements or understandings made between the parties in relation to it, including any email exchanges between the Department of State Growth, Tasmania and SeaLink.

### **3.3 Costs**

Each party must pay its own costs of negotiation, preparation and execution of this deed.

### **3.4 Counterparts**

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

**EXECUTION**

**Executed as a deed**

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



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

Executed by **Stradbroke Ferries Pty Ltd**  
**(ABN 63 009 725 713)** 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

**EXECUTION**

**Executed** as a deed

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

Signature \_\_\_\_\_

Print name \_\_\_\_\_

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

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

Released under RTI

**Schedule 1 – Amendments to the Ferry Service Contract**

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1 **Clause 1.1**

In clause 1.1, the definition of **Back-up Vessel** is deleted and replaced with the following:

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

- (a) as at the Date of the Contract, the Back-up Vessel described in section 3(a) of Schedule 11;
- (b) as at the date of the document titled “Bruny Island Ferry Service Contract - Amendment Deed No. 2” between the parties or, if that document is undated, the date that the Commission executes that document, and in addition to paragraph (a) above, the Additional Back-up Vessel; or
- (c) such other vessel that is substituted as the “Back-up Vessel” in accordance with the Contract.

2 **Clause 1.1**

In clause 1.1, the definition of **Contract Ferry** is deleted and replaced with the following:

**Contract Ferry** means those vessels used, or which may be used, by the Operator to provide the Ferry Service, being a vessel that is a Primary Vessel or a Back-up Vessel for so long as it is required to operate as a Contract Ferry.

3 **Clause 1.1**

In clause 1.1, a new definition of the following term is included in the appropriate alphabetical order as follows:

**Additional Back-up Vessel** means the vessel described in section 3(ab) of Schedule 11.

4 **Clause 7.1(l)(ii)**

Clause 7.1(l)(ii) is amended by inserting a new paragraph (AB) after paragraph (A) and before paragraph (B) as follows:

- (AB) value of spares used in the maintenance or repair of the Initial Primary Vessel to the extent they are spares described in clause 13.2A(a)(ii);

5 **Clause 7.2(f)**

Clause 7.2(f) is deleted and replaced with the following:

- (f) Subject to clause 7.2(g), the Operator must:

- (i) replace the Initial Primary Vessel with the first of the New Vessels (as 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 (such that that New Vessel becomes the Primary Vessel);
- (ii) immediately following the replacement referred to in clause 7.2(f)(i), replace the Back-up Vessel (as described in clause 3(a) of Schedule 11) with the Initial Primary Vessel so that:
  - (A) the Initial Primary Vessel becomes the new primary Back-up Vessel; and
  - (B) the Back-up Vessel described in clause 3(a) of Schedule 11 is no longer required to be a Contract Ferry for purposes of this Contract;
- (iii) replace the Initial Primary Vessel with the second of the New Vessels (as 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:
  - (A) the second of the New Vessels becomes the new primary Back-up Vessel; and
  - (B) the Initial Primary Vessel at that time is no longer required to be a Contract Ferry for the purposes of this Contract; and
- (iv) use the Additional Back-up Vessel as a Contract Ferry on the following basis:
  - (A) where there is a reasonable expectation of sufficient passenger demand to warrant a Contract Ferry journey between the Terminals over and above the Trips contemplated in the Ferry Timetable on a non-permanent basis, use reasonable endeavours to utilise the Additional Back-up Vessel to provide a Ferry Service to address or cater for that demand;
  - (B) at all times the Operator represents and warrants that any Ferry Service contemplated in clause 7.2(f)(iv)(A) will not in any way affect the Operator's compliance with the Ferry Timetable;
  - (C) the Operator must include as part of each Quarterly report provided under clause 9.3 (for the purposes of clause 9.3(n)), details of any Ferry Service contemplated by clause 7.2(f)(iv)(A);
  - (D) the operation of this clause does not apply to any change to the Ferry Timetable as contemplated by clause 5.7(c)(vi)(A); and

- (E) the Operator must not use the Additional Back-up Vessel for a Trip without the prior written consent of the Commission unless, pursuant to clause 7.5, that Back-up Vessel is needed to allow the Operator to comply with the Operator Activities, including pursuant to clause 5.2(c).

6 **Clause 13**

A new clause 13.2A is inserted after the end of clause 13.2 and before the start of clause 13.3 as follows:

**13.2A Contribution payment**

- (a) To provide extra service delivery security for the Ferry Service, the parties acknowledge and agree that, after the Date of the Contract, the Operator has purchased:
  - (i) the Additional Back-up Vessel; and
  - (ii) certain spares for the Initial Primary Vessel as described in section 4 of Schedule 11.
- (b) The Commission has agreed to contribute to the purchases described in clause 13.2A(a) by way of payment to the Operator of a total aggregate amount of \$ s37 (exclusive of GST) (**Contribution Amount**) in two separate instalments subject to, and in accordance with, this clause 13.2A.
- (c) On each of:
  - (i) the first Business Day of November 2018; and
  - (ii) the first Business Day of September 2019,the Operator must submit to the Commission a payment claim for s37 (exclusive of GST) together with a tax invoice for that amount as well as, in regard to the payment claim referred to in clause 13.2A(c)(i), evidence which substantiates (to the satisfaction of the Commission) that the Operator is the sole beneficial owner of both the Back-up Vessel and the spares referred to in clause 13.2A(a), and that in each case they are free of all Security Interests.
- (d) The Commission must pay the Operator the amount of the applicable payment claim referred to in clause 13.2A(c) with 20 Business Days of receipt of the documentation required to be submitted in accordance with clause 13.2A(c).
- (e) The Operator represents and warrants to the Commission that in regard to the spares referred to in clause 13.2A(a)(ii):
  - (i) the spares are, and will at all times while the Initial Primary Vessel is being used as a Contract Ferry for the purposes of this Contract be,

fit for purpose for use as spares in regard to the Initial Primary Vessel;

- (ii) it would be Industry Best Practice that all, or a substantial number of, those spares would need to be used as part of, or for the purpose of carrying out of any of, the Operator Activities prior to the time that the Initial Primary Vessel is replaced as a Contract Ferry in accordance with clause 7.2(f), and the Operator also has that view; and
- (iii) the Operator will make use of them for the purposes of this Contract at its sole cost and risk;

**7 Schedule 10, item 6**

Item 6 of Schedule 10 is amended by deleting the content in the column titled "Description" and replacing it with "15 November 2018".

**8 Schedule 10, item 7**

Item 7 of Schedule 10 is amended by deleting the content in the column titled "Description" and replacing it with the following:

"In respect of the first New Vessel described in Schedule 11, the date for delivery is 1 December 2019.

In respect of the second New Vessel described in Schedule 11, the date for delivery is 1 July 2021."

**9 Schedule 11, section 3**

Section 3 of Schedule 11 is amended by inserting a new paragraph (ab) after the end of the table in section 3(a) and before the start of section 3(b) as follows:

(ab) A Back-up Vessel to be known as the Additional Back-up Vessel is as set out below:

<b>Feature</b>	<b>MV Bowen</b>
Date Built	2014
Vessel Type Operation Type	Passenger [and Vehicle] Ferry Vehicle and Passenger Transport/General work
Australian Maritime Safety Authority Official Number (6 digits)	426259
Capacity	130 passengers within sheltered waters (1D) 200 passengers within smooth water (1E)
Measured Length	34.9m
Breadth	15.1m
Hull Construction	Steel
Loaded Draft	2.14
Engines	2 x 300 kw

<b>Feature</b>	<b>MV Bowen</b>
Propulsion	2 x 360 degrees thrusters
Cargo Capacity	164 lane metres or up to 247.5 tonnes
Operating Speed	8 to 9 knots
Survey	NSCV 1D/1F/2D
Ramps	2 = 1 each end
Decks	1
Other	The vessel is diesel electric

10 **Schedule 11, section 4**

A new section 4 is inserted in Schedule 11 as follows:

4. **Spares for Initial Primary Vessel**

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	Units	Price/Unit	Value (for the purposes of clause 7.1(i)(ii)(AB))
<b>GENERAL</b>			
Fire fighting pump to drive foam monitors.			s37
Supplied K2 1400w Karcher pressure cleaner.			
Supplied Makita 4" angle grinder			
Supplied AEG cordless drill			
Supplied set vernier callipers 200mm			
Supplied AMPRO ratchet wrench set.			
Supplied Versa lead light			
Supplied hole punch set			
Supplied VHF radio and antenna for shore base			
General Terminal Fencing			
Supplied Fax machine.			
CO2 system			
bilge stripping pump			
Chain keeper			
life raft ejector covers			
spare clutch plate installation & supply pump			
alloy hatches			
1 off Transal 140 amp CIG welder			
Set Oxy Aset Ganges hoses			
1 off 150 x 300 mm micrometer			
1 off 0 x 2" micrometer			
1 off Imperial Dial Indicator and stand			
1 off 2 speed Bosch 240v drill			
5 off 1/2 set Twist Drills			
1 off set screw extractor 5pc			
1 off Ryobi Jigsaw			
1 off small soldering iron			
Box spring washers			
Box flat washers			
1 off 3/4 DR socket set			
1 off 9" Angle Grinder			
Set 6mm-19mm Ring O/end spanner set	together x 1		
Set 1/4" - 7/8" Ring O/end spanner set	together x 2		
20,21,22,24, 27 Ring O/end spanners	together x 5		
1 off port sea inlet pipe			
1 off starboard sea inlet pipe			
1 off 24" Banco adjustable wrench			
1 off 18" Banco adjustable wrench			
40, 36, 42, 50mm ring o-end spanners			
1 off set 24" bolt cutters			
1 off dabco water pump 24v			
3 off 1 1/4 rubber bellow joints			
3 off 50mm rubber bellow joints			

1 off 24" rigid pipe wrench
7/16BS, 1/2BS, 9/16BS, 5/8 BS ring o-end spanners
2 off 24mm ring o-end spanners
1 off 15/16"ring o/end spanners
1 off 3/4 oil pump 240v
5 off small steel water pipe main engine
4 off 31/2 " fire hoses
2 off 2" fire hoses
4 off 3-phase leads
9 chairs for passenger lounge
<b>GENERAL SUB TOTAL</b>
<b>Auxiliary Engines</b>
2 off Spare Jacket cooling Water pumps.
1 off Salt Water circulating pump
1 Box various gaskets and seals. est
<b>Callesen Main Engines</b>
1 off Main Engine cylinder head.
<b>Piston Pump Parts</b>
1 off second hand piston pump body
2 off Gland Part # 18586
2 off Bush Part # 18570
1 off Piston Pin Part # 18568
1 off Gasket Part # 19520
1 off Bush Part # 16514
2 off Distance Piece Part # 17509
6 off Valve Seat Part # 16515
2 off Lubric Part # 18588
2 off Packing Sets Part #WZ2-675
4 off Piston and rod assembly
<b>SUB - TOTAL&gt;&gt;&gt;&gt;&gt;&gt;&gt;</b>
<b>Main Gearbox</b>
1 off Main Gearbox s37
1 off Spare Oil Pump s37
<b>Callensen Parts</b>
6 off s37 Lubricator ring together x 6
2 off s37 Intake seat together x 2
1 complete piston pump together x 1
1 off std set main bearing
8 off main engine injector nozzles
23 off valve guides
1 off main engine valve - new
1 off main engine valve - second hand
2 off pump rockers s37
2 off pump rockers s37
4 off s37 bush
3 off s37 nut
24 off o rings

s37

6 off 16515 ball seal
18 off 18583 seal
1 off 17514 distance piece
1 complete Valkan coupling and bolts
1 main engine cylinder head
2 off piston pump bodies- second hand
9 off LF 3893 main engine oil filters
22 off 16740 rocker cover joint
2 off piston pump greasa hose
1 off main engine injector
8 off NF 6520 oil filter genset
17 off PF 1585 fuel filter main engine
13 off PF950 fuel filter genset
3 off HF 30714 gear box filter
3 off main engine head gasket ring
1 off main engine exhaust bellows + liner
2 off main engine manifold bellows
4 off D140-0240 circlips
60 off 20 x 30 x 1/16 Aluminium washer
36 off 17 x 26 x 1/16 Aluminium washer
10 off 3/4 x 1 x 1/8 aluminium washer
11 off D1400 -0190 circlip
67 off No.1 anode zinc
74 off No.2 anode zinc
17 off No.5 anode steel
19 off No.6 anode steel
160 off No.3 anode zinc
16 off No.4 anode steel
13 off 16045 gasket
11 off 40029 gasket
5 off 40030 gasket
2 off 597498 gasket
13 off exhaust bellow gasket
34 off 16029 gasket
2 off 19518 gasket
5 off 19579 gasket
1 off 12571 gasket
11 off 17579 gasket
7 off 17578 gasket
1 off 17581 gasket
3 off 17528 gasket
2 off 17580 O ring cooler
2 off 154 x 3.5 O ring
16 off O Ring 20x8x560 v1020
12 off 305x5x560n4305
4 off 64 x 4 O ring
11 off 1020 O ring
20 off 30 x 2 O ring
10 off 34 x 4 O ring

s37

10 off 15 x 1.6 O ring
21 off 75 x 4 O ring
3 off 42 x 4 O ring
8 off 63 x 4 O ring
2 off 135 x 5 O ring
8 off 180 x 4 O ring
12 off 9966 O ring
4 off 180 x 4 O ring
Sponson linths 1x2400 & 1 x 900
8 Ball valves 54502161(kugles)
SUB - TOTAL>>>>>>>>
<b>s37</b>
2 off O Rings <b>s37</b>
2 off Rings (shim) <b>s37</b>
8 off Wear rings ceramic <b>s37</b>
2 off Gland Ring Main <b>s37</b>
1 off box assorted O rings
12 off 1216 O ring
12 off 1217 O ring
8 off 1227 O ring
2 off 1577 O ring
1 off 1743 O ring
3 off 1222 O ring
8 off 1209 seal
2 off 1336 ring
4 off 1525 O ring
4 off 1513 O ring
4 off 9180 O ring
8 off 1412 seal ring
4 off 1407 gasket seal
2 off H01024083 O ring
6 off H01057061 O ring
4 off H01064078 O ring
4 off H01157062 O ring
4 off H82012246 seal
4 off H0108232 shaft seal
3 off 200 x 230 x 15 oil seal
2 off 1712 gland ring main
16 off 1209 blade seal
1 box various O rings and seals
6 off 1209 gland ring blade seal
1 off SNC520-671 main shaft plumer block
1 complete set Kumera clutch plates and spring
SUB - TOTAL>>>>>>>>
<b>s37</b>
5 off Main Bearing shr <b>s37</b>
4 off Bolts <b>s37</b>
4 off Valve Seats <b>s37</b>
4 off Valve Seats <b>s37</b>
8 off Washers <b>s37</b>
4 off Valve Guides <b>s37</b>
4 off Valve Guides <b>s37</b>
6 off Washers <b>s37</b>

s37

Released under

6 off Screw	\$37	s37
1 off O Ring	\$37	
4 off Inlet Valve	\$37	
4 off Exhaust Valves	\$37	
4 off Gasket Kit	\$37	
4 off Piston Liner Ring	\$37	
	SUB - TOTAL>>>>>>>	
	GRAND TOTAL>>>>>>>	
		INCL GST

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## **Subcontractor Direct Deed**

**Transport Commission**  
ABN 95 420 520 014

**SeaLink Tasmania Pty Ltd**  
ABN 38 626 709 993

**Richardson Devine Marine Constructions Pty Ltd**  
ABN 70 009 578 394

Released under RTI

Date *27 November* 2018

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**Parties**

**Commission**

Name Transport Commission  
ABN 95 420 520 014

**Company**

Name SeaLink Tasmania Pty Ltd  
ABN 38 626 709 993

**Subcontractor**

Name Richardson Devine Marine Constructions Pty Ltd  
ABN 70 009 578 394

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 construction of a vessel for the Company to be used by the Company to provide ferry services to and from Bruny Island under the Contract.
- 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

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#### 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 Stradbroke Ferries Pty Ltd 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 Agreement to Construct Vessels 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**

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**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

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### 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,

- (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**

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### **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.

**Executed** as a deed

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



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)

Executed by **Richardson Devine Marine Constructions Pty Ltd** (ABN 70 009 578 394) in accordance with section 127(1) of the Corporations Act:

---

Signature of director

---

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

Released under RTI

**Executed as a deed**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

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

Executed by **Richardson Devine Marine  
Constructions Pty Ltd** (ABN 70 009 578  
394) in accordance with section 127(1) of  
the Corporations Act:

\_\_\_\_\_  
Signature of director

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

Released under RTI

**Bruny Island Ferry Service Contract –  
Amendment Deed No. 3**

**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

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## KEY DETAILS

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<b>1</b>	<b>Date</b>	November 2018
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<b>2</b>	<b>Parties</b>	
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	<b>Commission Name</b>	
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		<b>Transport Commission</b> ABN 95 420 520 014
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	<b>Operator Name</b>	
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		<b>SeaLink Tasmania Pty Ltd</b> ABN 38 626 709 993
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	<b>Initial Back-up Vessel Owner Name</b>	
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		<b>Stradbroke Ferries Pty Ltd</b> ABN 63 009 725 713
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## 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 selected the Operator to provide the Ferry Service and to carry out the other Operator Activities.
- C The Operator 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 agreed to carry out its obligations on the terms set out in the Project Documents to which it is a party.
- E On 28 June 2018 the parties entered into the applicable Project Documents.
- F On 12 October 2018 the parties entered into "Amendment Deed No. 1" to amend the Ferry Service Contract in certain respects.
- G On 22 October 2018 the parties entered into "Amendment Deed No. 2" to further amend the Ferry Service Contract in certain respects.
- H The parties have agreed to further amend the Ferry Service Contract on the terms set out in this deed.

## TERMS

### 1 Definitions and Interpretation

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#### 1.1 Definitions

The following definitions apply in this deed:

**Effective Date** means the date of this deed or, if this deed is undated, the date that the Commission executes this deed.

**Ferry Service Contract** means the document titled "Bruny Island Ferry Service Contract" between the Commission, Operator and Initial Back-up Vessel Owner dated 28 June 2018 as amended by:

- (a) the document titled "Bruny Island Ferry Service Contract – Amendment Deed No. 1" between the Commission, Operator and Initial Back-up Vessel Owner dated 12 October 2018; and
- (b) the document titled "Bruny Island Ferry Service Contract – Amendment Deed No. 2" between the Commission, Operator and Initial Back-up Vessel Owner dated 22 October 2018.

In addition, and unless the context otherwise requires, capitalised terms used in this deed have the meanings given to them in the Ferry Service Contract.

## 1.2 Interpretation

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

- (c) the singular includes the plural and conversely;
- (d) a gender includes all genders;
- (e) a reference to \$ is a reference to Australian currency; and
- (f) a reference to the words 'include', 'includes' and 'including' means 'including without limitation'.

## 2 Effect of this deed

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### 2.1 Amendments to the Ferry Service Contract

On and from the Effective Date, the parties agree that the Ferry Service Contract is amended as set out in schedule 1 to this deed and otherwise continues in full force and effect.

## 3 General

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### 3.1 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.

### 3.2 Entire agreement

This deed and the Ferry Service Contract as varied by this deed contain the entire agreement between the parties with respect to their subject matter and supersede any prior agreements or understandings made between the parties in relation to it, including any email exchanges between the Department of State Growth, Tasmania and Sealink.

### 3.3 Costs

Each party must pay its own costs of negotiation, preparation and execution of this deed.

### 3.4 Counterparts

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

**EXECUTION**

**Executed** as a deed

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



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

Executed by **Stradbroke Ferries Pty Ltd**  
**(ABN 63 009 725 713)** 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

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**EXECUTION**

**Executed as a deed**

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print name

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

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

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## Schedule 1 – Amendments to the Ferry Service Contract

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1 **Clause 7.2(a)(i)(B)**

Clause 7.2(a)(i)(B) is amended by replacing the existing wording with the following:

- (B) the New Vessels must be delivered by the applicable date for delivery specified in Item 7 of Schedule 10, together with an additional obligation that the applicable contractor under the New Vessel Contract use reasonable endeavours to deliver the first New Vessel by 1 December 2019;

2 **Clause 7.2(ab)**

Clause 7.2 is amended by inserting a new paragraph (ab) after paragraph (a) and before paragraph (b) as follows:

- (ab) The Operator represents and warrants to the Commission the following in respect of the New Vessels:
  - (i) regarding the “Construction (hull and superstructure)” line item in the table in Attachment A to Schedule 11, the nomination of “Aluminium” as opposed to “Steel” will:
    - (A) provide increased cargo and freight capacity due to a lower build weight;
    - (B) provide improved efficiency and performance due to the vessel being of an equivalent strength with a material reduction in displacement (weight) allowing the timetable speeds to be achieved with less machinery load;
    - (C) provide improved reliability and through life performance through a reduction in machinery load with an expected reduction in the number of unplanned maintenance events; and
    - (E) not result in a lower level of passenger comfort than would be the case if “Steel” rather than “Aluminium” were nominated in that line item;
  - (ii) the New Vessels will have a propulsion system designed to deliver the required propulsion and manoeuvrability to ensure reliability and to assist in getting on and off fixed wharfs;
  - (iii) the New Vessels will be constructed locally in Tasmania by an established aluminium ship builder for better whole-of-life support; and

- (iv) if the New Vessels are designed and constructed in accordance with the requirements set out in Attachment A to Schedule 11, the New Vessels will be fit for the purpose of providing the Ferry Service in accordance with the requirements of this Contract.

**3 Clause 7.2(ca)**

Clause 7.2 is further amended by inserting a new paragraph (ca) after paragraph (c) and before paragraph (d) as follows:

- (ca) Without limiting the operation of clause 7.2(c) and in relation to the New Vessel Contract relating to the construction of the New Vessels, the Operator agrees the following:
  - (i) unless otherwise agreed in writing by the Commission, the Operator must exercise the option for the construction of the second New Vessel prior to the expiry of any applicable option exercise date specified in the New Vessel Contract;
  - (ii) unless otherwise agreed in writing by the Commission, the Operator must not propose any amendments to the specification for the second New Vessel set out in the New Vessel Contract to the extent that any such amendments may be inconsistent with this Contract; and
  - (iii) the Operator must keep the Commission updated in relation to the timing and circumstances as to when the Operator will exercise the option for the construction of the second New Vessel under the New Vessel Contract.

**4 Clause 7.2(da)**

Clause 7.2 is amended by inserting a new paragraph (da) after paragraph (d) and before paragraph (e) as follows:

Without limiting clause 7.2(d), the Operator must use reasonable endeavours to deliver the first New Vessel described in Schedule 11 by 1 December 2019 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.

**5 Schedule 10, item 6**

Item 6 of Schedule 10 is amended by deleting "15 November 2018" and replacing it with "29 November 2018".

**6 Schedule 10, item 7**

Item 7 of Schedule 10 is amended by deleting the content in the column titled “Description” and replacing it with the following:

In respect of the first New Vessel described in Schedule 11, the date for delivery is 17 December 2019.

In respect of the second New Vessel described in Schedule 11, the date for delivery is 1 July 2021.

**7 Attachment A to Schedule 11**

Attachment A to Schedule 11 is amended by deleting the content in Attachment A to Schedule 11 and replacing it with the following:

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 ( <a href="http://www.incatcrowther.com">www.incatcrowther.com</a> )
Hull form:	Hard chine catamaran
Passenger Capacity:	150
Vehicle Capacity:	36 Cars @ 5.0m spaces (180m)
Measured Length:	44.99m
Breadth:	13.4m
Engines:	4 x 300kW
Propulsion:	Z-drive
Operating Speed:	10-12 knots
Survey:	NSCV 1D / 1E
Construction (hull and superstructure):	Aluminum





## Grant deed

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The Crown in Right of Tasmania  
(represented by the Department of State Growth)  
**(Grantor)**

and

SeaLink Tasmania Pty Ltd  
**(Recipient)**

OCS NS PRECEDENTS  
Grant Docs-Grant deed (short form) template-3-2014  
(December, 2014)

#### REFERENCE AND CONTACT DETAILS

Department: State Growth  
Contact officer: Babette Moate  
Telephone: (03) 6166 3332  
Email: cis@stategrowth.tas.gov.au

Doc Ref: SeaLink Tasmania Pty Ltd \$218,181.81 081019

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# Grant deed

## Details and recitals

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**Date:**

27 NOVEMBER 2019

**Parties:**

Name

**The Crown in Right of Tasmania**

(represented by the Department of State Growth)

Short form name

**Grantor**

Notice details

C/- Department of State Growth, GPO Box 536 Hobart in Tasmania 7001

Facsimile: (03) 6173 0287

Email: cis@stategrowth.tas.gov.au

Attention: Secretary, Department of State Growth

Name

**SeaLink Tasmania Pty Ltd**

ACN/ARBN/ABN

38 626 709 993

Short form name

**Recipient**

Notice details

Level 3 26 Flinders Street Adelaide in South Australia 5000

Facsimile:

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**Recitals:**

- A. The Grantor has agreed to provide a monetary grant to the Recipient upon the terms and conditions set out in this Deed.
- B. The Recipient has agreed to accept the Grant on the terms and conditions set out in this Deed.

## Information Table

<b>Item 1 (clause 1.1):</b>	<b>Approved Purpose for which the Grant is provided</b>
To replace existing fendering on the southern side of the pier at Kettering Terminal and the northern side of the pier at Roberts Point Terminal in terms of the Contract.	
<b>Item 2 (clause 2.1):</b>	<b>Grant Amount</b>
Up to \$218,181.81 (exclusive of GST) is payable in Instalments in accordance with Item 3.	
<b>Item 3 (clause 3.1):</b>	<b>Payment method for the Grant</b>
Instalment 1 – \$90,909.09 is payable upon satisfaction of the Condition precedent by no later than 30 November 2019;	
Instalment 2 – \$63,636.36 is payable upon satisfaction of the Condition precedent by no later than 4 January 2020; and	
Instalment 3 – \$63,636.36 is payable upon satisfaction of the Condition precedent by no later than 29 February 2020.	
<b>Item 4 (clause 3.2(a)):</b>	<b>Conditions precedent to payment of the Grant</b>
With respect to;	
Instalment 1 - the provision of evidence of the purchase and the delivery of materials for the works stated in the Approved Purpose by no later than 15 November 2019;	
Instalment 2 - the provision of evidence that the works stated in the Approved Purpose are 50 per cent complete by no later than 21 December 2019; and	
Instalment 3 - the provision of a Progress Report by no later than 31 January 2020.	
<b>Item 5 (clause 4.2):</b>	<b>Date for commencement of the Approved Purpose</b>
1 October 2019	
<b>Item 6 (clause 4.3):</b>	<b>Date for completion of the Approved Purpose</b>
24 September 2020	
<b>Item 7 (clause 7.2):</b>	<b>Reporting requirements</b>
The Recipient must provide;	
<ul style="list-style-type: none"><li>• a Progress Report; and</li><li>• a Post Completion Report.</li></ul>	
All reports or other information requested by the Grantor of the Recipient must be provided within 15 Business Days of the end of each reporting period. All information and reports must be satisfactory to the Grantor and be in a form acceptable to the Grantor.	

**Item 8 (clause 10): Special terms and conditions**

The Recipient;

- (a) must provide a Post Completion Report within 20 Business Days of the Date for completion of the Approved Purpose;
- (b) if requested by the Grantor, must provide additional reports on the Approved Purpose for a period of up to 18 months from the Date for completion of the Approved Purpose within 15 Business Days of such request;
- (c) acknowledges that any cost overruns are to be the responsibility of the Recipient;
- (d) agrees to acknowledge the funding contribution of the Department of State Growth in any publicity or promotion of activity that occurs as a result of the Approved Purpose;
- (e) agrees to participate in any funding/evaluation that may be undertaken by the Grantor;
- (f) agrees that if a significant outcome occurs as a result of the Approved Purpose, the Recipient agrees unconditionally to the Grantor publicising the outcome and the Recipient will cooperate in any joint media opportunity involving the appropriate Tasmanian Government Ministers that the Grantor may require; and
- (g) agrees that any interest received and/or accrued on the Grant is to be used for the Approved Purpose.

**GLOSSARY**

**“Contract”** means the Bruny Island Ferry Service Contract dated 28 June 2018 between the Commissioner for Transport – Tasmania (ABN 95 420 520 014), SeaLink Tasmania Pty Ltd (ABN 38 626 709 993) and Stradbroke Ferries Pty Ltd (ABN 63 009 725 713).

**“Post Completion Report”** means a report on the Approved Purpose which covers the period from the Date for commencement of the Approved Purpose to the Date for completion of the Approved Purpose which includes confirmation that the Approved Purpose has been completed, photographic evidence of completed works together with an acquittal.

**“Progress Report”** means a report on the Approved Purpose which covers the period from the Date for commencement of the Approved Purpose until 31 December 2019.

# Agreed terms and conditions

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The parties agree as follows:

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed, unless the context otherwise requires:

**Approved Purpose** means the purpose for which the Grant is provided as set out in Item 1.

**Authorised Officer** means:

- (a) if a party is the Crown or a Minister of the Crown, each of the Secretary of the department responsible for the administration of the Grant, an Acting Secretary of that department, a Deputy Secretary of that department, and a nominee of any of them; or
- (b) for any other party, a person authorised in writing by that party.

**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.

**Crown** means the Crown in Right of Tasmania.

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

**Default Event** means each of the events specified in clause 9.1.

**Details** means the details and recitals set out above.

**Government Body** includes a body politic, a government (federal, state or local), a governmental, judicial or administrative body, a tribunal, a commission, a department or agency of any government, and a statutory authority or instrumentality.

**Grant** means the grant paid, or to be paid, by the Grantor to the Recipient pursuant to clause 2.1.

**Grantor** means the person or entity named above as Grantor and, where the context requires, includes the employees, authorised contractors and agents of that person. If the Grantor is a Minister of the Crown, a reference to the Grantor includes that Minister's predecessors and successors in office (as applicable).

**GST** means any goods and services tax or similar tax imposed by the Commonwealth of Australia (but excluding any penalty, fine, interest or similar payment).

**GST Laws** means applicable Laws relating to GST.

**Information Table** means the table titled 'Information Table' set out above.

**Item** means an item in the Information Table.

**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.

**month** means calendar month.

**Recipient** means the person named above as the Recipient and, where the context requires, includes the officers and employees of the Recipient.

**Relevant Matter** means any matter or thing related to any of the following:

- (a) the performance by the Recipient of its obligations under this Deed;
- (b) the receipt, use or expenditure of the Grant;
- (c) the carrying out of the Approved Purpose (including the effectiveness of the Recipient's carrying out of the Approved Purpose);
- (d) any report provided, or to be provided, by the Recipient to the Grantor in accordance with this Deed;
- (e) any information provided by the Recipient to the Grantor in connection with any application for the Grant;
- (f) any breach of this Deed by the Recipient;
- (g) the occurrence, or possible occurrence, of any Default Event.

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

## 1.2 Interpretation

In this Deed, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include all genders;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this Deed have a corresponding meaning;
- (d) a reference to a thing (including property or an amount) is a reference to the whole and each part of that thing;
- (e) a reference to a group of persons includes a reference to any one or more of those persons;
- (f) a reference to an annexure, an appendix, an attachment, a schedule, a party, a clause or a part is a reference to an annexure, an appendix, an attachment, a schedule or a party to, or a clause or a part of, this Deed;
- (g) a reference to any legislation or legislative provision includes subordinate legislation made under it and any amendment to, or replacement for, any of them;
- (h) writing includes marks, figures, symbols, images or perforations having a meaning for persons qualified to interpret them;
- (i) 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 any thing else;
- (iii) an amendment or supplement to, or replacement or novation of, that document; or
- (iv) a map, plan, drawing or photograph;
- (j) a reference to an agreement includes an undertaking, deed, agreement or legally enforceable arrangement or understanding, whether or not in writing;
- (k) a reference to a 'person' includes a natural person, a partnership, a body corporate, a corporation sole, an association, a Government Body, or any other entity;
- (l) a reference to a party includes that party's executors, administrators, successors and permitted assigns and substitutes;
- (m) a reference to a Minister includes, as applicable, that Minister's predecessors and successors in office;
- (n) 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;
- (o) 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;
- (p) mentioning any thing after the words 'includes', 'included' or 'including' does not limit the meaning of any thing mentioned before those words;
- (q) a reference to a day is to be interpreted as the period of time in Tasmania commencing at midnight and ending 24 hours later;
- (r) reference to a time or date in connection with 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
- (s) references to '\$' and 'dollars' are to Australian dollars.

### **1.3 Headings**

Headings are included for convenience only and do not affect the interpretation of this Deed.

### **1.4 No rule of construction applies to disadvantage party**

In relation to the interpretation of this Deed, no rule of construction is to apply to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it.

### **1.5 Information Table**

- (a) An Item that has not been completed will be taken to be 'not applicable'.
- (b) Unless the context otherwise requires, expressions defined in the Information Table have the same meanings when used in other parts of this Deed.

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## 2 Grant

### 2.1 Agreement to provide Grant

Subject to the terms of this Deed, the Grantor will provide to the Recipient the monetary grant set out in Item 2 for use by the Recipient for the Approved Purpose in accordance with this Deed.

### 2.2 Acknowledgments

The Recipient acknowledges and agrees that:

- (a) the Grantor's financial assistance to the Recipient in respect of the Approved Purpose is limited to the Grant;
- (b) nothing in this Deed requires the Grantor to provide any further financial assistance to the Recipient in respect of the Approved Purpose; and
- (c) the Grantor is not responsible for any liabilities incurred by the Recipient, or any obligations entered into by the Recipient, as a result of or arising out of, the Recipient's obligations under this Deed or in respect of the Approved Purpose.

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## 3 Payment of Grant to Recipient

### 3.1 Method of Grant payment

Subject to clause 3.2, the Grantor will pay the Grant to the Recipient in the manner specified in Item 3. If no method of payment is specified in Item 3, the method of payment will be as determined by the Grantor.

### 3.2 Conditions affecting Grant payment

- (a) **(Conditions precedent):** If Item 4 includes any conditions precedent to the payment of the Grant, then the obligation of the Grantor to pay the Grant or part of the Grant is subject to the prior and continuing satisfaction of those conditions precedent (except for any of those conditions precedent waived in writing by the Grantor).
- (b) **(Default Events):** The Grantor is not required to pay the Grant (or if the Grant is payable by instalments, any instalment of the Grant) to the Recipient if a Default Event has occurred and has not been remedied to the satisfaction of the Grantor.
- (c) **(Requirement for tax invoice):** If the Grant, or any instalment of the Grant, is subject to GST, the Grantor is not required to pay the Grant (or the relevant instalment) until the Grantor has received from the Recipient a correctly rendered tax invoice in accordance with clause 11.

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## 4 Application of Grant and related matters

### 4.1 Application of Grant for Approved Purpose

- (a) The Recipient must only use the Grant to undertake the Approved Purpose.
- (b) The Recipient must not change the Approved Purpose without the prior written approval of the Grantor, which approval may be given or withheld in the Grantor's absolute discretion.

- (c) The Recipient must undertake the Approved Purpose exercising reasonable skill, care and attention.

#### **4.2 Commencement of Approved Purpose**

The Recipient must substantially commence (to the Grantor's satisfaction) the Approved Purpose by the date shown in Item 5 or such later date, if any, approved in writing by the Grantor.

#### **4.3 Completion of Approved Purpose**

The Recipient must complete the Approved Purpose by the date shown in Item 6 or such later date, if any, approved in writing by the Grantor.

#### **4.4 Compliance with Law**

The Recipient must comply with all applicable Laws in expending the Grant and in carrying out the Approved Purpose.

#### **4.5 Financial records**

- (a) The Recipient must keep and maintain proper accounts, records and financial statements showing, the receipt, use and expenditure of the Grant and the carrying out of the Approved Purpose.
- (b) The Recipient's financial statements must show, as separate items, the receipt, use and expenditure of the Grant.
- (c) The Recipient must allow the Auditor-General of Tasmania (or his or her nominee) to audit, inspect, and to take copies of, the Recipient's accounts, records and financial statements relating to the receipt, use and expenditure of the Grant.

#### **4.6 Notice by Recipient of adverse matters**

The Recipient must immediately notify the Grantor in writing of:

- (a) the occurrence of any matter, event or thing, occurring after the date of this Deed, that adversely affects or materially delays the Recipient carrying out the Approved Purpose in accordance with, or the performance by the Recipient of its obligations under, this Deed;
- (b) any breach of this Deed by the Recipient; or
- (c) the occurrence of any Default Event.

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### **5 Publicity concerning Grant and Approved Purpose**

The Recipient must include in any correspondence, promotional material, public (including media) announcement, advertising material, or other publication concerning the Approved Purpose, an acknowledgement that the Approved Purpose is assisted by a grant from the Grantor. The acknowledgement must be in a form and substance approved in writing by the Grantor.

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### **6 Repayment of Grant by Recipient**

#### **6.1 Repayment obligation**

The Recipient must repay to the Grantor on demand in writing by the Grantor:

- (a) any part of the Grant that is not required by the Recipient to carry out the Approved Purpose;
- (b) any part of the Grant that is used by the Recipient for a purpose that is not an Approved Purpose; and
- (c) the Grant (or such part of the Grant as may be determined by the Grantor in its absolute discretion) if:
  - (i) the Recipient does not complete the Approved Purpose by the date shown in Item 6 or such later date, if any, approved in writing by the Grantor;
  - (ii) this Deed is terminated by the Grantor in accordance with clause 9; or
  - (iii) a Default Event occurs.

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## **7 Review, monitoring, audit, reports and related matters**

### **7.1 Review, monitoring or audit of Relevant Matters**

The Grantor may from time to time review, monitor or audit any Relevant Matter. The Recipient must in connection with any such review, monitoring or audit by the Grantor comply with any reasonable directions of the Grantor.

### **7.2 Reporting**

- (a) The Recipient must provide to the Grantor the reports and other documents (if any) specified in Item 7.
- (b) The Recipient must provide to the Grantor such other reports and documents as required by the Grantor from time to time in connection with any Relevant Matter. Unless otherwise stated in Item 7, nothing in that Item limits the reports or frequency of reports that the Grantor may require under this clause 7.2(b).

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## **8 Representations and warranties**

### **8.1 Warranties**

The Recipient represents and warrants to the Grantor that all information given, and each statement made, to the Grantor by the Recipient or its agents concerning any application for the Grant, is true, correct and not misleading in any way.

### **8.2 No reliance by the Recipient**

The Recipient acknowledges that it has not entered into this Deed in reliance on any representation, warranty, promise, statement or undertaking made by the Grantor or any person on behalf of the Grantor.

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## **9 Default Events and termination**

### **9.1 Default Events**

Each of the following events is a Default Event for the purposes of this Deed:

- (a) **(Breach not capable of being remedied):** If the Recipient breaches any of its obligations under this Deed and the breach is not capable of being remedied.

- (b) **(Failure to remedy breach):** If:
- (i) the Recipient breaches any of its obligations under this Deed;
  - (ii) the breach is capable of being remedied; and
  - (iii) the Recipient fails to remedy the breach within the period (being a period of not less than five Business Days) specified by the Grantor in a notice given to the Recipient detailing the breach.
- (c) **(Repudiation):** If the Recipient repudiates this Deed.
- (d) **(Natural person):** If the Recipient is a natural person, at any time before the Recipient has performed all of its obligations under this Deed, the Recipient:
- (i) dies;
  - (ii) becomes an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cwlth)), or any action is taken which could result in that event; or
  - (iii) ceases to be of full legal capacity.
- (e) **(Body corporate related events):** If the Recipient is a body corporate, at any time before the Recipient has performed all of its obligations under this Deed:
- (i) the Recipient becomes an externally administered body corporate (as defined in section 9 of the *Corporations Act 2001* (Cwlth));
  - (ii) the Recipient is dissolved, wound-up or its registration is cancelled;
  - (iii) any process or action is commenced or taken which could lead to an event mentioned in clause 9.1(e)(ii); or
  - (iv) in the opinion of an Authorised Officer for the Grantor, the corporate governance or administration of the Recipient is materially deficient or unsatisfactory.
- (f) **(Representation):** If any representation or warranty by the Recipient in this Deed is untrue, false or misleading when made or repeated.

## 9.2 Termination - Default Events

In addition to any other Rights, if a Default Event occurs, the Grantor may terminate this Deed by notice in writing to the Recipient. The termination takes effect when the Grantor's notice is taken to have been received by the Recipient in accordance with clause 12.3 (or any later date specified in the notice).

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## 10 Special terms and conditions

- (a) The special terms and conditions (if any) in Item 8 form part of this Deed.
- (b) If there is any inconsistency between the special terms and conditions in Item 8 and another provision of this Deed, the special terms and conditions override the other provision to the extent of the inconsistency.
- (c) A special term or condition in Item 8 is taken not to be inconsistent with another provision of this Deed if the special term or condition and the other provision of this Deed are both capable of being complied with.

- (d) To avoid doubt and without limiting the operation of clause 13.14, any Right contained in Item 8 is in addition to any other Rights provided for in this Deed or at Law.

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## 11 GST

- (a) Unless otherwise stated in this Deed, 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 Deed, 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 Deed must provide a valid tax invoice to the recipient of the supply.
- (d) A party's right to payment under clause 11(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 Deed 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 Deed is paid by being set-off against another amount, each amount must be calculated in accordance with this clause 11 as if it were an actual payment made pursuant to this Deed.
- (g) Unless the context otherwise requires, expressions used in this clause 11 that are defined in the GST Laws have the meanings given to those expressions in the GST Laws.

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## 12 Notices

### 12.1 Notice requirements

- (a) A notice, certificate, consent, application, waiver or other communication (each a **Notice**) under this Deed must be:
- (i) in legible writing in the English language;
  - (ii) subject to clauses 12.1(b) and 12.1(c), 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 12.2.

- (b) A printed or copy signature is sufficient for the purposes of sending any Notice by facsimile.
- (c) A Notice sent by email is taken to have been signed by the sender.
- (d) A Notice must not be given orally.

## **12.2 Method and address for delivery**

- (a) Subject to clause 12.2(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;
  - (iii) sent by facsimile to the intended recipient's facsimile number (if any) set out in the Details; or
  - (iv) 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, facsimile number 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, facsimile number or email address (as applicable) last notified by that intended recipient.

## **12.3 Time of receipt**

- (a) Subject to clause 12.3(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 third Business Day after the day of posting, or if sent by prepaid airmail from one country to another country, on the tenth Business Day after the day of posting;
  - (iii) if sent by facsimile, at the time shown in the transmission report as the time when the whole Notice was sent; and
  - (iv) 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 12.3(a) and 12.3(b) (unless a later time is specified in the Notice, in which case the notice takes effect from that time).

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## **13 Miscellaneous**

### **13.1 Governing law**

This Deed is governed by the Laws applying in Tasmania.

### **13.2 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 connection with this Deed.

### **13.3 Entire agreement clause**

- (a) This Deed forms the entire agreement of the parties in respect of its subject matter. The only enforceable obligations of the parties in relation to the subject matter of this Deed are those that arise out of the provisions contained in this Deed. All prior agreements in relation to the subject matter of this Deed are merged in and superseded by this Deed unless expressly incorporated in this Deed as an annexure, an appendix, an attachment or by reference.
- (b) Nothing in clause 13.3(a) affects the Grantor's Rights in connection with this Deed in relation to any information given, or statement made, to the Grantor by the Recipient, its employees or agents concerning any application for the Grant.

### **13.4 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 Deed, binds them jointly and each of them severally.

### **13.5 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.

### **13.6 Severance**

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

- (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 Deed.

### **13.7 Counterparts**

- (a) This Deed may be entered into in any number of counterparts.
- (b) A party may execute this Deed by signing any counterpart.
- (c) All counterparts, taken together, constitute one instrument.

### **13.8 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 Deed.

### **13.9 No partnership or agency**

- (a) Nothing contained or implied in this Deed 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.
- (b) The Recipient must not represent or hold itself out to be a partner, joint venturer, agent or representative of the Grantor.

#### **13.10 Legal costs**

Each party must bear their own costs in preparing and negotiating this Deed.

#### **13.11 Amendment**

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

#### **13.12 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.

#### **13.13 Successors and assigns**

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

#### **13.14 Rights cumulative**

Each Right of the Grantor provided for in this Deed:

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

#### **13.15 Set-off**

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

#### **13.16 No assignment**

The Recipient must not assign any of its Rights and obligations under this Deed except with the prior written consent of the Grantor.

#### **13.17 Disclosure**

- (a) Despite any confidentiality or intellectual property right subsisting in this Deed, a party may publish all or any part of this Deed 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).

### 13.18 Determination

Where the Grantor is required or entitled to form or hold an opinion or view under or in relation to this Deed, that opinion or view may be formed or held by an Authorised Officer for the Grantor. This clause does not limit any other way in which the Grantor may otherwise form or hold an opinion or view under or in relation to this Deed.

### 13.19 Consent and approvals

- (a) This clause applies to any consent or approval which the Recipient must obtain from the Grantor in accordance with this Deed. 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 Deed is not effective unless given in writing.
- (d) A consent or approval may be given subject to reasonable conditions.
- (e) A Recipient must comply with any conditions subject to which the consent or approval is given. To the extent that the Recipient fails to comply with the condition, that failure is taken to be a breach of this Deed.

### 13.20 Doctrine of merger

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

### 13.21 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.

### 13.22 Surviving provisions and termination

- (a) The termination of this Deed does not affect or limit the operation or effect of clauses or parts of this Deed:
  - (i) that are expressed to survive the termination of this Deed;
  - (ii) that, at Law, survive the termination of this Deed; or
  - (iii) that are necessary to survive the termination of this Deed:
    - (A) to give full force and effect to the parties' respective Rights, obligations and liabilities on or after the termination of this Deed;
    - (B) to enable a party to make, enforce or defend any claims related to this Deed; or
    - (C) to give full force and effect to the operation of clause 13.22(b) or clause 13.22(c).
- (b) The termination of this Deed does not affect any claims related to, or any Rights, releases, obligations or liabilities accrued or incurred under, this Deed before the date on which this Deed is terminated.

- (c) Nothing in this clause 13.22 affects or limits the operation of another provision of this Deed which gives a party Rights, or imposes obligations on a party, on or after the termination of this Deed.

**Executed as a deed**

Released under RTI

# Signing

## Execution by the Grantor

Executed as a deed on behalf of **The Crown in Right of Tasmania** by the person named below in the presence of the witness named below: 

Signature:  
→

\*Print  
name and  
position:

Witness'  
signature:  
→

\*Witness  
print  
name and  
position:

\*Use BLOCK LETTERS

\*Witness  
print address:

4 Salamanca Place  
Hobart Tasmania 7000

## Execution by the Recipient

Executed as a deed by **SeaLink Tasmania Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cwlth).

Signature:  
→

\*Print  
name and  
office  
held:

Signature:  
→

\*Print  
name and  
office  
held:

\*Use BLOCK LETTERS

Note: In the case of a company that has only one director and one secretary, show the office held as 'SOLE DIRECTOR AND SOLE COMPANY SECRETARY'



## Deed of Variation

Dated

3 APRIL

2020

**The Crown in Right of Tasmania ("Grantor")**

and

**SeaLink Tasmania Pty Ltd ("Recipient")**

Released under RTI

## Details

<b>Parties</b>	<b>Grantor, Recipient</b>	
<b>Grantor</b>	Name	<b>The Crown in Right of Tasmania represented by the Department of State Growth (“Grantor”)</b>
	Address	4 Salamanca Place, Hobart, Tasmania
	Telephone/Email	cis@stategrowth.tas.gov.au
	Fax	(03) 6173 0287
	Attention	The Secretary
<b>Recipient</b>	Name	<b>SeaLink Tasmania Pty Ltd (Recipient)</b>
	Incorporated in	Tasmania
	Registration Number	ABN 38 626 709 993
	Address	Level 3, 26 Flinders Street Adelaide in South Australia 5000
<b>Recitals</b>	A	The Grantor and Recipient entered into a Deed dated 27 November 2019 (“the Deed”) in respect of the provision of a Grant to the Recipient for the Approved Purpose;
	B	The parties have agreed to vary the Deed in accordance with this Deed of Variation (“Deed of Variation”).
<b>Date of Deed</b>	See Front page	

# General terms

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## 1 Interpretation

### 1.1 Deed of Variation supplemental to the Deed

This Deed of Variation is supplemental to the Deed and shall be interpreted with and having regard to the provisions of the Deed.

### 1.2 Intention of Deed of Variation

The provisions of this Deed of Variation are intended to bind and to ensure in favour of the Grantor, the Recipient, and their respective successors and assigns.

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## 2 Confidentiality

### 2.1 Parties may disclose contract provisions

Despite any confidentiality or intellectual property right subsisting in this Deed of Variation or a schedule, appendix, annexure or attachment to it, either party may publish all or any part of it without reference to the other.

### 2.2 Privacy obligations preserved

Nothing in this clause derogates from a party's obligations under the *Personal Information Protection Act 2004* (Tas) or the *Privacy Act 1988*.

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## 3 Variation of the Deed

The provisions of the Deed are varied by;

- (a) amending the date "4 January 2020" in **Item 3 Instalment 2 – Payment method for the Grant** with the date "31 March 2020";
- (b) amending the date "29 February 2020" in **Item 3 Instalment 3 – Payment method for the Grant** with the date "31 May 2020";
- (c) amending the date "21 December 2019" in **Item 4 Instalment 2 – Conditions precedent to payment of the Grant** with the date "17 March 2020"; and
- (d) amending the date "31 January 2020" **Item 4 Instalment 3 – Conditions precedent to payment of the Grant** with the date "30 April 2020".

Executed as a Deed.

## Signing page

### Execution by the Grantor

Executed as a deed on behalf of **The Crown in Right of Tasmania** by the person named below in the presence of the witness named below:

Signature:  
→

Being a person who has authority to sign  
this Deed on behalf of the Grantor

\*Print  
name and  
position:

Witness'  
signature:  
→

\*Witness  
print  
name and  
position:

\*Use BLOCK LETTERS

\*Witness  
print address:

4 Salamanca Place  
Hobart Tas 7000

### Execution by the Recipient

Executed as a deed by **SeaLink Tasmania Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cwth):

Signature:  
→

Signature:  
→

\*Print  
name and  
office  
held:

\*Print  
name and  
office  
held:

\*Use BLOCK LETTERS

Note: In the case of a company that has only one director and one secretary, show the office held as 'SOLE DIRECTOR AND SOLE COMPANY SECRETARY'