

Date / /

Berthing Licence
Licence Area: ##

Minister for Energy, Environment and Climate Change

and

##
and

Parks Victoria

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Berthing Licence

Dated / /

Parties

Name	Minister for Energy, Environment and Climate Change
Address	Level 22, 50 Lonsdale Street, Melbourne, Vic 3000
Short name	Licensor

Name	The party set out in item 1 of Schedule 1
Short name	Licensee

Name	The party set out in item 2 of Schedule 1
Short name	Guarantor

Name	Parks Victoria
Address	Level 10, 535 Bourke Street, Melbourne, Vic 3000
Short name	Manager

Background

- A. The Licensor has power to grant a licence under section 135A (1) of the *Water Industry Act 1994 (Vic)*.
- B. Parks Victoria manages the Waterway pursuant to a direction from the Minister for Environment and Climate Change dated 6 August 2013 and an agreement between the Secretary to the Department of Environment and Primary Industries and Parks Victoria dated 6 August 2013.
- C. The Licensor has agreed to grant to the Licensee a licence to use the Licence Area on the terms and conditions set out in this licence.

The Parties Agree

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Commencement Date means the date upon which this licence commences as set out in item 3 of Schedule 1.

Exclusive Berth means where the Times of Use as set out in item 9 of Schedule 1 is 24 hours 7 days a week.

Expiry Date means the date upon which this licence expires as set out in item 4 of Schedule 1.

GST means the goods and services tax levied under the GST Act or any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time.

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

Guarantor means the person or persons set out in item 2 of Schedule 1.

Input Tax Credit has the meaning ascribed to it by the GST Act.

Law includes any act, regulation, ordinance or statutory instrument, present or future, and the conditions of any licence or permit or similar instrument issued under a Law.

Licence Area means the licence area as set out in item 6 of Schedule 1.

Licence Fee means the amount set out in item 10 of Schedule 1.

Licensee means the person or persons set out in item 1 of Schedule 1.

Licensee's Business means the business operated by the Licensee from the Licence Area.

Licensee's Members and Agents means any one or more of the members, officers, employees, agents, contractors, subcontractors, guests and invitees of the Licensee and patrons of facilities at the Licence Area.

Licensee's Operators means the person or persons set out in item 12 of Schedule 1.

Licensor means the Minister.

Manager means Parks Victoria or such other party as the Minister and the Secretary may from time to time appoint as manager of the Waterway.

Minister means the Minister of the Crown for the time being with responsibility for the *Water Industry Act 1994* (Vic) or his or her authorised delegate and includes his or her successor in Law or such other Minister of the Crown or Government authority to whom responsibility for this licence may at any time be given.

Occupational Health and Safety Laws means all laws, requirements and regulations concerning the health, safety and welfare of people at work, including (without limitation):

- (a) *Occupational Health and Safety Act 2004* (Vic);
- (b) *Occupational Health and Safety Regulations 2007* (Vic);
- (c) *Dangerous Goods Act 1985* (Vic);

- (d) *Dangerous Goods (Storage and Handling) Interim Regulations 2011* (Vic); and
- (e) *Work Health and Safety Act 2011* (Cth).

Parks Victoria means the public authority established under Part 2 of the *Parks Victoria Act 1998* (Vic) and includes, where the context so admits, its authorised officers.

Personal Information means personal information as defined in the *Information Privacy Act 2000* (Vic).

Principal means the Licensor and the Manager and includes their respective officers, employees and agents and their successors and assigns.

Purpose means the purpose set out in item 8 of Schedule 1.

Relation means:

- (a) in relation to an individual:
 - (i) a Relative;
 - (ii) a Relative of a spouse;
 - (iii) a corporation of which that individual, or a Relation of that individual, is a director or shareholder; or
 - (iv) a corporation which is trustee of trust of which that individual, or a Relation of that individual, is a beneficiary.
- (b) in relation to a corporation:
 - (i) a Related Body Corporate;
 - (ii) a Related Entity;
 - (iii) a Relation of a director or shareholder;
 - (iv) a Relation of a director or shareholder of a Related Body Corporate; or
 - (v) a beneficiary, or a Relation of a beneficiary, of a trust of which that corporation is trustee.

Related Body Corporate has the same meaning given to that term in the *Corporations Act 2001* (Cth).

Related Entity has the same meaning given to that term in the *Corporations Act 2001* (Cth).

Relative has the same meaning given to that term in the *Corporations Act 2001* (Cth).

Secretary means the Secretary to the Department of Environment, Land, Water and Planning, a body corporate established under the *Conservations, Forests and Lands Act 1987* (Vic).

Schedule means a schedule to this licence.

Security Deposit means the amount set out in item 11 of Schedule 1.

Taxable Supply has the meaning ascribed to it by the GST Act.

Tax Invoice has the meaning ascribed to it by the GST Act.

Term means the term of this licence as set out in clause 6.

Times of Use means the times set out in item 9 of Schedule 1.

Vessel(s) means the vessel set out in item 7 of Schedule 1.

Waterway means the waterway set out in item 5 of Schedule 1.

2. Interpretation

- 2.1 When this licence requires anything not to be done, this includes not allowing or permitting the thing to be done.
- 2.2 A word or expression in the singular includes the plural, and the plural includes the singular.
- 2.3 A person includes an individual and a corporation.
- 2.4 A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them occurring at any time before or after the date of this licence.
- 2.5 A heading may be used to help interpretation, but is not legally binding.
- 2.6 Where the Licensee and/or the Guarantor comprises more than one person, the obligations imposed on the Licensee and/or the Guarantor shall be joint and several on each person who is a licensee or a guarantor.
- 2.7 In this licence, unless the contrary intention appears:
- 2.7.1 a reference to a person includes a reference to that person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
 - 2.7.2 an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally;
 - 2.7.3 an agreement, representation, warranty or liability on the part of two or more persons binds them jointly and severally;
 - 2.7.4 a reference to anything (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually; and
 - 2.7.5 a reference to a clause or item is to a clause or item in this licence.
- 2.8 If there is an inconsistency between a special condition in item 14 of Schedule 1 and another provision of this licence, the special condition prevails.

3. Licence

- 3.1 The Licensor grants and the Licensee takes a licence to use the Licence Area for the Purpose and at the Times of Use, on the conditions set out in this licence.

- 3.2 This licence is subject to:
- 3.2.1 the right of the Minister and the Secretary to:
 - (a) determine all areas of access to and from the Waterway; and
 - (b) the rights of the public in relation to the Waterway; and
 - 3.2.2 the provisions of the *Water Industry Act 1994 (Vic)* and any other relevant Law.

4. Licensee's Business

- 4.1 The Licensee must:
- 4.1.1 conduct the Licensee's Business with due diligence and efficiency and in a proper and businesslike manner;
 - 4.1.2 keep in force all licences and permits required for the carrying on of the Licensee's Business; and
 - 4.1.3 maintain at all times the highest standards of professionalism, courtesy and efficiency in the conduct of the Licensee's Business and act so as to maintain and promote the Licensee's Business.
- 4.2 The Licensee must comply with any Law or the requirement of any authority in relation to the use and operation of any Vessel(s) on the Waterway.
- 4.3 The Licensee acknowledges that:
- 4.3.1 the grant of this licence is conditional upon the grant and continued validity of any permits necessary for the operation and use of the Vessels (**Vessel Permit**); and
 - 4.3.2 it must display the current Vessel Permit(s) sticker(s) on the Vessel(s) at all times.

5. Acknowledgement

The Licensee acknowledges and agrees that the Licensor may from time to time appoint a party to act as manager of the Waterway. The party so appointed as at the date of this licence is Parks Victoria. The Licensee agrees that:

- 5.1 any right, power or authority of the Licensor under this licence must be treated by the Licensee as a right, power and authority of the Manager; and
- 5.2 any lawful direction of the Manager must be complied with or otherwise treated as a direction of the Licensor.

6. Term

This licence begins on the Commencement Date and ends at midnight on the Expiry Date unless terminated earlier under the terms of this licence.

7. The Licensee must pay the Licensor

The Licensee must pay the Licensor:

- 7.1 the Licence Fee on the Commencement Date;
- 7.2 turnover rent [## to be confirmed];
- 7.3 any other money the Licensee owes the Licensor or the Manager.

8. The Licensor may charge interest if payment is late

- 8.1 If the Licensee is late in paying the Licensor any money payable by it under this licence, the Licensee must pay interest on that money from the due date for payment until the money is paid in full.
- 8.2 The interest shall be calculated on daily balances and the rate of interest to be charged on each daily balance shall be at a rate two percent higher than the rate for the time being fixed under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
- 8.3 The Licensor's right to interest does not affect the Licensee's obligation to pay any money due to the Licensor on the date it becomes due for payment..

9. Security Deposit or Bank Guarantee

- 9.1 The Licensee must pay the Security Deposit on or before the Commencement Date and must maintain the Security Deposit at that amount increased by the same percentage increase as any increase in the Licence Fee.
- 9.2 The Licensor may use the Security Deposit to make good the cost of remedying breaches of the Licensee's obligations under this licence or to recover any loss that the Licensor suffers from the Licensee's default.
- 9.3 After this licence has ended and the Licensee has vacated the Licence Area, the Licensor must refund the unused part of the Security Deposit within 14 days of the Licensee's demand.
- 9.4 If the Licensor requires, the Licensee must give the Licensor an unconditional and irrevocable bank guarantee (**Bank Guarantee**) in place of the Security Deposit for the amount stated in item 11 of Schedule 1. The Bank Guarantee must be issued by an authorised deposit taking institution as defined by the *Banking Act 1959* (Cth) with no expiry date and must be on such terms as the Licensor may require.
- 9.5 If the Licence Fee is increased following a Review Date, the Licensee must, if requested by the Licensor, provide a replacement Bank Guarantee and the amount guaranteed under the Bank Guarantee shall be increased by the same percentage increase.
- 9.6 The Licensor may call upon the Bank Guarantee to make good the cost of remedying breaches of the Licensee's obligations under this Licence or to recover any loss that the Licensor suffers from the Licensee's default.
- 9.7 If the Bank Guarantee, or any part of it, is called upon by the Licensor under this clause then the Licensee must, within 14 days of written request, replace that Bank Guarantee, or that portion of it called upon, with another Bank Guarantee complying with the requirements of clause 9.4.

10. GST

- 10.1 The consideration payable by any party under this licence is the GST exclusive amount of the Taxable Supply for which payment is to be made.
- 10.2 Subject to clause 10.4, if a party makes a Taxable Supply in connection with this licence for a consideration, then the party liable to pay for the Taxable Supply must also pay, at the same time and in the same manner as the consideration is otherwise payable, the amount of any GST payable in respect of the Taxable Supply.
- 10.3 Where this licence requires a party (**first party**) to pay, reimburse or contribute to an amount paid or payable by the other party (**other party**) in respect of an acquisition from, or a transaction with a third party for which the other party is entitled to claim an Input Tax Credit, the amount for payment, reimbursement or contribution will be the GST exclusive value of the acquisition by the other party plus any GST payable in respect of the other party's recovery from the first party.
- 10.4 A party's right to payment under 10.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

11. Use of the Licence Area

11.1 The Licensee must:

- 11.1.1 only use the Licence Area for the Purpose;
- 11.1.2 only use the Licence Area during the Times of Use;
- 11.1.3 berth all Vessel(s) so as not to obstruct traffic in the Waterway;
- 11.1.4 berth all Vessel(s) so as not to cause any injury to any person or endanger any life;
- 11.1.5 move any Vessel(s) if required by an authorised officer of the Licensor;
- 11.1.6 comply with any Law or the requirement of any authority in relation to the use of the Licence Area; and
- 11.1.7 comply with the reasonable direction of an authorised officer of the Licensor.

11.2 The Licensee must not:

- 11.2.1 moor anything other than the Vessel(s) at the Licence Area without the prior written consent of the Licensor;
- 11.2.2 do anything that is, or may be, dangerous, annoying or offensive or that may interfere with other users of the Waterway or members of the public;
- 11.2.3 use chemicals, inflammable fluids, acids or other hazardous things on the Licence Area or Waterway or create fire hazards;
- 11.2.4 refuel or pump out fuel from any Vessel(s) other than as directed by the Licensor;
- 11.2.5 remove any of the Licensor's or the Manager's property from the Licence Area or the Waterway;
- 11.2.6 interfere with any of the surfaces, services or equipment in or at the Licence Area or on the Waterway, except in an emergency;

- 11.2.7 modify the berthing infrastructure abutting the Licence Area without the Licensor's prior written approval;
- 11.2.8 permit any persons to reside on a permanent or semi-permanent basis on a Vessel(s) moored in the Licence Area unless with the prior written consent of the Licensor, which consent may be withheld at the Licensor's absolute discretion;
- 11.2.9 conduct any spruiking or soliciting on the Licence Area or Waterway; and
- 11.2.10 impede vehicular or pedestrian access in or around the Licence Area.

12. Cleaning

The Licensee must:

- 12.1 keep the Licence Area and the surrounds free from rubbish and remove all rubbish generated by the use of the Vessel(s), off site, and in an appropriate manner. If the Licensee fails to remove any rubbish the Licensee must pay the Licensor the cost of removal of the rubbish;
- 12.2 not permit or cause the Licence Area or the land or waters surrounding the Licence Area to become polluted or contaminated; and
- 12.3 not bring onto the Licence Area any substances which may damage, pollute or contaminate the Licence Area or the surrounding waters (including chemicals, pollutants, contaminants, waste or other environmental hazards), however, subject to compliance with clause 12.2, the Licensee may bring cleaning products onto the Vessel(s) for the purpose of cleaning internal areas of the Vessel(s).

13. Maintaining the Licence Area

The Licensee must:

- 13.1 maintain and keep any structure within the Licence Area in good condition, including carrying out any repairs required to the Licence Area;
- 13.2 comply with the Licensor's reasonable directions concerning cleaning and disposal of refuse from the Licence Area and Waterway;
- 13.3 not undertake any maintenance work to the Vessel(s) at the Licence Area without the prior written consent of the Licensor, which consent the Licensor can withhold in its sole and absolute discretion;
- 13.4 not carry out any alterations or additions to the Licence Area, other than those otherwise permitted under this licence, without the prior written consent of the Licensor, which consent the Licensor can withhold in its sole and absolute discretion;
- 13.5 conduct regular inspections if requested by the Licensor;
- 13.6 immediately notify the Licensor if there is any change to the condition of the infrastructure of the Licence Area; and
- 13.7 during the course of each operating day and at the end of each day ensure that the Licence Area is in a clean and tidy condition and if not undertake reasonable steps to keep the Licence Area and the surrounding area in a clean and tidy condition.

14. Occupational health and safety and emergency evacuation

- 14.1 The Licensee acknowledges that occupational health and safety of the Licence Area is the responsibility of the Licensee (other than to the extent the Licensor cannot at law contract out of its obligations with respect to occupational health and safety).
- 14.2 The Licensee must, in relation to the Licence Area and any works carried out in the Licence Area:
- 14.2.1 comply with, all Occupational Health and Safety Laws and any applicable Australian Standards;
 - 14.2.2 ensure that there is no risk to the environment or the health, safety and welfare of the Licensee and the Licensee's Members and Agents;
 - 14.2.3 without limiting clauses 14.2.1 and 14.2.2, ensure that no person is exposed to a risk to his or her safety or health arising out of or in connection with the carrying out of the Licensee's use of the Licence Area and any works in, at, or about the Licence Area;
 - 14.2.4 ensure that a complete copy of the occupational health and safety plan referred to in clause 14.3 is available for inspection by every person to whom such plan is relevant; and
 - 14.2.5 as soon as practicable notify the Licensor of any incident or dangerous occurrence at the Licence Area which is notifiable to the Victorian WorkCover Authority pursuant to the provisions of any Occupational Health and Safety Laws, including without limitation, the *Occupational Health and Safety Act 2004 (Vic)* and the *Work Health and Safety Act 2011 (Cth)*.
- 14.3 Before the Commencement Date, the Licensee must:
- 14.3.1 develop and implement an occupational health and safety plan and supply the same to the Licensor upon request; and
 - 14.3.2 develop and implement an emergency evacuation and management plan for the operation of the Licensee's Business.
- 14.4 The Licensee must ensure that at all times its occupational health and safety plan:
- 14.4.1 complies with Australian Standard AS/NZ 4804-2001 (or other similar substitute standard);
 - 14.4.2 includes the Licensee's occupational health and safety policy;
 - 14.4.3 identifies the obligations of the Licensee under the Occupational Health and Safety Laws;
 - 14.4.4 describes the practices that will be employed to secure the health, safety and welfare of persons at work; and
 - 14.4.5 identifies measures to eliminate risks to the health, safety and welfare of persons at work.
- 14.5 The Licensee acknowledges that referral of, and any subsequent approval by, the Licensor of the plans referred to in clause 14.3 does not amount to a warranty by the Licensor or the Manager of the suitability of the content of the plans and does not create any liability on behalf of the Licensor or the Manager or their respective officers, employees and agents for loss or damage incurred as a result of complying with those plans.
- 14.6 The Licensee acknowledges that it is bound to comply with the Manager's emergency plans for the Licence Area and the Waterway and that the Licensee's emergency evacuation and management plan and occupational health and safety plan cannot conflict with the Manager's plan. The Licensee is required to

comply with all directions of the Licensor in an emergency, even if such direction contradicts the Licensee's emergency evacuation and management plan.

- 14.7 To the extent permitted by the law, the Licensee indemnifies and agrees to keep indemnified the Licensor and the Manager and their respective officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses which the Licensor or the Manager or their respective officers, employees and agents may suffer or incur, arising out of or in connection with a breach by the Licensee or the Licensee's Members and Agents of any of the obligations under this clause 14.

15. Meeting

The Licensee must meet with the Manager at the end of the Term to discuss the Licensee's compliance with the conditions of this licence, reporting and data, or more frequently if the Manager deems necessary to resolve any outstanding issues.

16. Licence personal

This licence is personal to the Licensee and may not be assigned. Where the Licensee is a corporation, the Licensee must not effect a change in the control of the corporation, or a change in the holding of more than one-half of its issued share capital (either beneficially or otherwise) without the prior written consent of the Licensor.

17. Licensee's Operators

- 17.1 The Licensee acknowledges that the Licensor entered into this licence on the basis that the Licensee's Operators for the Term will be the persons named in item 12 of Schedule 1.
- 17.2 As soon as the Licensee becomes aware that any of the Licensee's Operators as named in item 12 of Schedule 1 no longer operate or intends to continue operating the Vessel(s) at the Licence Area the Licensee must immediately inform the Licensor in writing.

18. Insurance

- 18.1 The Licensee must effect and maintain throughout the Term, with an insurer approved by the Licensor, which approval shall not be unreasonably withheld provided the insurer is authorised by the Australian Prudential Regulation Authority to conduct new or renewal insurance business in Australia:

18.1.1 a public, and if relevant, products liability insurance policy for not less than \$20 million (or any greater amount required by the Licensor) in respect of any single claim arising out of the activities of the Licensee, including any marine activities conducted by the Licensee on the Waterway, covering all third party claims arising out of:

- (a) loss, including financial loss, destruction or damage to real or personal property and ensuing loss of use of that property; and
- (b) death, injury to, or disease of persons; and

(Policy)

- 18.1.2 an employers' liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Licensee arising:
- (a) by virtue of any statute relating to workers' or accident compensation or employers' liability; or
 - (b) at common law.
- 18.2 The Licensee must effect and maintain the Policy noting the interests of the Principal.
- 18.3 The Licensee must provide the Licensor with:
- 18.3.1 a certificate of currency for the Policy which clearly confirms the requirements of clause 18.2:
- (a) prior to the Commencement Date;
 - (b) within 14 days of the renewal of the Policy throughout the Term; and
 - (c) at any other time upon request by the Licensor; and
- 18.3.2 evidence of confirmation of registration with the Victorian WorkCover Authority prior to the Commencement Date and at any other time upon request by the Licensor.
- 18.3.3 a copy of the Policy upon request by the Licensor or the Manager.
- 18.4 The Licensee must promptly notify the Licensor if:
- 18.4.1 an event occurs at the Licence Area which may give rise to a claim under or prejudice the Policy; or
- 18.4.2 the Policy is cancelled.
- 18.5 The Licensee must not do anything or allow anything to be done, which may:
- 18.5.1 prejudice any insurance held in connection with the Licensed Area; or
- 18.5.2 increase the premium payable for any insurance held in connection with the Licensed Area.
- 18.6 The Licensee must effect and maintain all other insurances in a manner and to such extent which is reasonable and customary for an organisation engaging in activities of the kind referred to and permitted by this licence.
- 18.7 The Licensee must not do anything which might affect any insurance policy relating to the Licence Area or the Waterway by causing it to become void or voidable or any claim on it being rejected or a premium being increased.

19. Access to Licence Area

If to gain access to the Licence Area the Licensee or the Licensee's Members and Agents must cross other land or Waterways under the possession or control of the Licensor, Manager, Minister or Secretary, then:

- 19.1 the Licensee must comply with the directions of the Licensor, Manager, Minister or Secretary in relation to using that land or Waterway to gain access to the Licence Area; and

19.2 the Licensee must ensure there is no interference by the Licensee, or the Licensee's Members and Agents, with any other person using the land or Waterway over which access is gained.

20. Release and indemnity

20.1 The Licensee agrees that it:

20.1.1 has not relied upon any representation by or on behalf of the Licensor concerning the Licence Area or its use;

20.1.2 is aware of all Laws and legal requirements in relation to the Licence Area and the Purpose;

20.1.3 occupies and uses the Licence Area at its own risk; and

20.1.4 has inspected the Licence Area and is of the opinion that the Licence Area is safe and suitable for the activities of the Licensee.

20.2 The Licensee releases the Licensor and the Manager from:

20.2.1 all claims and demands resulting from any accident, damage, death or injury occurring at the Licence Area or any other area used by the Licensee in connection with this licence; and

20.2.2 all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Licensee or the Licensee's Members and Agents,

as a direct or indirect result of the Licensee's or the Licensee's Members and Agents occupation and use of the Licence Area or any other area used by the Licensee or the Licensee's Members and Agents in connection with this licence, except to the extent caused or contributed to by the negligence of the Licensor or the Manager or their respective officers, employees or agents.

20.3 To the extent permitted by Law the Licensee indemnifies and agrees to keep indemnified the Licensor and the Manager and their respective officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) suffered or incurred by the Licensor or the Manager or their respective officers, employees or agents or for which the Licensor or the Manager or their respective officers, employees and agents is or may be or become liable concerning:

20.3.1 the default of the Licensee or the Licensee's Members and Agents under this licence;

20.3.2 the Licensee's or the Licensee's Members and Agents use of the Licence Area or any other area used by the Licensee or the Licensee's Members and Agents in connection with this licence; or

20.3.3 loss, damage or injury to property or persons caused or contributed to by the act, omission, default or negligence of the Licensee or the Licensee's Members and Agents,

except to the extent caused or contributed to by the negligence of the Licensor or the Manager or their respective officers, employees and agents.

21. Licensor's rights

The Licensor:

21.1 may enter onto and examine the condition of the Licence Area at any reasonable time;

- 21.2 may by written notice given to the Licensee require the Licensee to carry out such repairs to the Licence Area within such time as is specified in the notice;
- 21.3 may if the Licensee fails to carry out any repairs required under this licence enter upon the Licence Area and carry out such repairs at the cost of the Licensee; and
- 21.4 may in the event of an emergency, require the Licensee to immediately vacate the Licence Area and remove all Vessel(s) at the Licence Area. The Licensee must comply with all such directions of the Licensor.

22. Closure

- 22.1 The Licensee acknowledges that Melbourne has a number of events, which take place on the Waterway. This necessitates the occasional closure of the Waterway and/or access to berths on the Waterway.
- 22.2 The Licensor may for any purpose close the whole or any section of the Licence Area or the Waterway to the operation of any vessel or the activities otherwise permitted by this licence. The Licensor will provide reasonable notice, where possible, in the relevant circumstances, of such closure.
- 22.3 No compensation is payable by the Licensor as a result of any closure referred to in this clause 22.

23. Guarantor

- 23.1 The Guarantor agrees that the Guarantor is liable to the Licensor in respect of each and every obligation of the Licensee under this licence if the Licensee is in breach of this licence. The Guarantor agrees to pay the Licensor any money for the loss of any of them due to the breach.
- 23.2 In consideration of the Licensor entering into this licence with the Licensee at the Guarantor's request, the Guarantor:
 - 23.2.1 guarantees that the Licensee will perform all its obligations under this licence and during any period of overholding;
 - 23.2.2 must pay the Licensor on demand any money owing to the Licensor by the Licensee; and
 - 23.2.3 indemnifies the Licensor and the Manager against all loss resulting from the Licensor having entered into this licence, whether from the Licensee's breach of any provision of this licence, or from this licence being or becoming unenforceable against the Licensee.
- 23.3 The Guarantor's liability will not be affected by:
 - 23.3.1 the Licensor granting the Licensee or any Guarantor any time or other indulgence;
 - 23.3.2 the Licensor agreeing not to sue the Licensee or any Guarantor;
 - 23.3.3 any variation of this licence;
 - 23.3.4 any provision of this licence being or being found to be unenforceable; or
 - 23.3.5 this agreement not being signed by any one Guarantor.

- 23.4 The Guarantor agrees:
- 23.4.1 not to seek to recover any money from the Licensee by way of reimbursement for payments made by the Guarantor to the Licensor until they have all been paid in full;
 - 23.4.2 not to prove in the bankruptcy or winding up of the Licensee for any amount which the Licensor has demanded from the Guarantor until they have all been paid in full; and
 - 23.4.3 to pay the Licensor any money which any of them is required to refund to the Licensee's liquidator or trustee in bankruptcy as preferential payments received from the Licensee.
- 23.5 If control of the Licence Area is transferred from the Licensor to any other entity, such transfer shall automatically assign the benefit of all the Guarantor's obligations in this clause unless the Licensor decides to the contrary.

24. Termination of licence

24.1 Termination in emergency

If the Licensee has, in the opinion of the Licensor, acted in a reckless, negligent or dangerous manner so as to put the safety of any person in significant danger this licence may be immediately terminated without written notice. Written notice confirming such termination will be given by the Licensor within 72 hours of such termination.

24.2 Termination upon immediate notice

The Licensor may immediately terminate this licence by notice to the Licensee if the Licensee:

- 24.2.1 stops or suspends or threatens to stop or suspend payment of all or a class of its debts, including the Licence Fees or any monies due under this licence;
- 24.2.2 is insolvent within the meaning of the Corporations Act 2001 (Cth);
- 24.2.3 has an administrator appointed over any or all of its assets or undertaking or any step preliminary to the appointment is undertaken;
- 24.2.4 has a controller within the meaning of the Corporations Act 2001 (Cth), or similar officer, appointed to all or any of its assets or undertaking;
- 24.2.5 has an order made or a resolution passed for its winding up or dissolution, or enters an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them; or
- 24.2.6 has any distress, execution or other process of any court or authority issued against or levied or enforced upon any of the assets or the property of the Licensee.

24.3 Termination upon notice

Subject to clauses 24.1 and 24.2, if:

- 24.3.1 the Licensee is in breach of this licence;

24.3.2 the Licensor gives the Licensee notice in writing requiring the Licensee to remedy the breach within 14 days; and

24.3.3 the Licensee fails to remedy or rectify the breach within the period set out in the notice,

the Licensor may terminate this licence by giving to the Licensee 14 days written notice of termination.

The provisions of this clause are subject to the requirements of the *Water Industry Act 1994*.

25. Damage to Licence Area

25.1 If the whole or any part of the Licence Area or its surrounds is destroyed or damaged by fire, explosion, storm, tempest or flood so that the Licence Area cannot be accessed or used for the Purpose:

25.1.1 in the case of total or substantial destruction, the Licensor or the Licensee may within 90 days from the date of such destruction by notice in writing to the other determine this licence as from the date of such destruction; or

25.1.2 in the case of the Licence Area being capable of reinstatement or repair, the Licensor may reinstate or repair the Licence Area at its sole discretion from the funds received from its insurer unless the destruction or damage resulted from any act or omission of the Licensee or the Licensee's Members and Agents.

25.2 A fair portion of the Licence Fee is to be suspended until the Licence Area, are again fit and accessible by the Licensee for the Purpose unless the destruction or damage resulted from any act or omission of the Licensee or the Licensee's Members and Agents.

25.3 The Licensor shall not be liable to pay the Licensee any compensation if the Licence Area or any part of the Licence Area is destroyed or damaged, or if this licence is ended pursuant to this clause.

26. When this Licence ends

When this licence ends:

26.1 the Licensee must vacate the Licence Area and leave the Licence Area in the same condition as it was in at the Commencement Date, except for fair wear and tear;

26.2 the Licensee must:

26.2.1 immediately remove any structures or improvements, fixtures or fittings owned by the Licensee; and

26.2.2 make good any damage caused by their removal at the Licensee's cost; and

26.3 any structure or improvement not so removed shall be dealt with by the Licensor in accordance with the *Water Industry Act 1994 (Vic)* and any relevant regulations, at the Licensee's cost.

27. Notices

27.1 A notice required by this licence must be in writing.

- 27.2 The Licensor may serve a notice on the Licensee by:
- 27.2.1 giving it to the Licensee personally;
 - 27.2.2 leaving it attached to the Licensee's Vessel located at the Licence Area; or
 - 27.2.3 leaving it at or posting it to, or faxing it to the Licensee's address as set out in item 13 of Schedule 1.
- 27.3 The Licensee may serve a notice on the Licensor by leaving it at, or posting it to, or faxing it to:
- 27.3.1 the Licensor's address as set out in item 13 of Schedule 1; or
 - 27.3.2 any other address that the Licensor nominates.
- 27.4 the Licensor may serve a notice on the Guarantor by:
- 27.4.1 giving it to the Guarantor personally; or
 - 27.4.2 leaving it at, or posting it to, or faxing it to the Guarantor's last known name or business address.

28. Victorian Law applies

This licence is governed by Victorian Law.

29. Privacy legislation

- 29.1 The Licensee acknowledges that the Personal Information (if any) of the Licensee is:
- 29.1.1 collected for the purposes of entering into and administering this licence; and
 - 29.1.2 may be disclosed to the following:
 - (a) the Auditor-General if the Licensor is audited pursuant to any requirement of any Act of Parliament or regulation or authority;
 - (b) any local authority or other relevant authority in order to update their records as to occupation of the Licence Area;
 - (c) the Licensor's legal advisors, financial consultants or consultants in relation to reviewing the Licensee's performance under this licence or providing advice in relation to this licence; and
 - (d) any third party as required by any Act of Parliament or regulation; or
 - (e) as agreed with the Licensee.
- 29.2 The Licensor agrees that:
- 29.2.1 the Personal Information will only be disclosed in the circumstances set out in clause 29.1.2;
 - 29.2.2 the Licensor will comply at all times with the Information Privacy Act 2000 (Vic) in relation to Personal Information; and

29.2.3 the Licensor must take all reasonable measures to ensure that the Personal Information is protected against loss and unauthorised access, use, modification and disclosure.

29.3 The Licensee must:

29.3.1 only use Personal Information obtained by or held by the Licensee in connection with this licence for the Permitted Use;

29.3.2 comply at all times with the *Information Privacy Act 2000 (Vic)* and all other legislation in force at any time throughout the Term, relating to the privacy of Personal Information; and

29.3.3 take all reasonable measures to ensure that the Personal Information in the possession or control of the Licensee held in connection with the Permitted Use is protected against loss and unauthorised access, use, modification and disclosure.

30. Amendment

This licence may only be amended by written agreement signed by all parties.

31. Waiver or variation

A provision of or a right created under this licence may not be:

31.1 waived except in writing signed by the party granting the waiver; or

31.2 varied except in writing signed by the parties.

32. Enforcement of indemnity

It is not necessary for a party to incur expenses or make payment before enforcing a right of indemnity confirmed by this licence.

33. Entire agreement

This licence constitutes the entire agreement between the parties in relation to this licence and supersedes all previous negotiations and agreements concerning this licence.

34. Special conditions

Each party agrees to comply with any additional obligations imposed on it as described in item 14 of Schedule 1.

35. Gifts benefits, hospitality and publication

The Licensee acknowledges and accepts that:

- 35.1 no offers of gifts, benefits and hospitality are to be made to any Parks Victoria employee at any time; and
- 35.2 the Manager retains the right to publish this licence in its entirety, subject to information deemed by the Manager to be commercial-in-confidence, on its website or other online medium accessible by the general public.

Signing Page

Executed by the parties

Signed under delegation from the **Minister for Energy, Environment and Climate Change** by the authorised officer of **Parks Victoria** in the presence of:)
)
)

Signature of Witness

Signature of authorised officer

Name of Witness

Name of authorised officer

Date

Position of authorised officer

Signed for and on behalf of **Parks Victoria** by its authorised officer in the presence of:)
)

Signature of Witness

Signature of authorised officer

Name of Witness

Name of authorised officer

Date

Position of authorised officer

##Insert Licensee's execution here as appropriate

Schedule 1

Particulars

1. Licensee: ##
2. Guarantor: ##
3. Commencement Date: 15 November 2017
4. Expiry Date: 26 February 2018
5. Waterway: Lower Yarra River
6. Licensed Area: ##insert description of Licence Area i.e. details of the berth.
7. Vessel(s): ##(list Vessel(s) or any such other vessel as may be approved in writing by the Manager
8. Purpose: ##The berthing of a Vessel(s) for commercial purposes]
9. Times of Use: ##insert times eg. 24 hours 7 days per week
10. Licence Fee: ##
11. Security Deposit: ##
12. Licensee's Operators: ##
13. Address and fax no. of parties: **The Minister for Energy, Environment and Climate Change**

Licensee

Address##

Ph: ##

Fax: ##

Manager

Authorised Officer ##

Address ##

Ph: ##

Fax ##

14. Special Conditions:

The following additional conditions shall also bind the parties:

See Schedule 2

Schedule 2

Special Conditions

To be included by the Manager.

Annexure A

Plan

Insert Plan of the Licence Area here **as required**