



Park Services Agreement

Parks Victoria

and

Service Provider

ACN #



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1. Definitions

1.1 In this Agreement, the following words or phrases have the following meaning:

Accounting Period means the period specified in Item 11.

Agreement Period means the period set out in Item 9.

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) (as amended).

Guarantor means the party named in Item 3.

Input Tax Credit in relation to a Taxable Supply, means a credit under the GST Act for the GST payable by the recipient in respect of the Taxable Supply.

Insolvency Event means any of the following events:

- (a) a judgment or order for \$10,000.00 or more is enforced or becomes enforceable or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition, against a party;
- (b) a resolution is passed, or taken to have been passed under the provisions of part 5.3A of the *Corporations Act 2001* (Cth), that a party be wound up;
- (c) proceedings are commenced for either the voluntary or compulsory winding up of a party;
- (d) a liquidator or provisional liquidator is appointed to a party whether or not under an order;
- (e) a controller within the meaning of section 9 of the *Corporations Act 2001* (Cth) is appointed over any property of a party;
- (f) an administrator is appointed in respect of a party under part 5.3A of the *Corporations Act 2001* (Cth), or the directors of a party pass a resolution or implement procedures to pass a resolution to appoint an administrator;
- (g) a party is deregistered by the Australian Securities and Investments Commission;
- (h) proceedings are commenced either for the voluntary or compulsory bankruptcy of a party;
- (i) a party commits an act of bankruptcy as specified in section 40 of the *Bankruptcy Act 1966* (Cth); or

- (j) a party enters into a formal scheme of arrangement or composition with, or assignment for the benefit of any of its creditors.

Item means an item in Schedule 1.

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.

Major Event means an event that is occurring in or about the Park(s) which Parks Victoria, acting reasonably, determines is a major event.

Minister means the Minister of the Crown for the time being with responsibility for the Relevant Legislation 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 Agreement 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 2004 (Vic);*
- (b) *Occupational Health and Safety Regulations 2017 (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).*

Park(s) means the park(s) named in Item 4 within which the Site(s) is located.

Parks Victoria means the public authority established under Part 2 of the *Parks Victoria Act 2018 (Vic)* and includes, where the context so admits, its authorised officers.

Park Services means the services set out in Item 6.

Personal Information means personal information as defined in the *Privacy and Data Protection Act 2014 (Vic)*.

Relevant Legislation means any legislation that makes provision for the preservation, protection and management of the Park(s).

Secretary means the Secretary to the Department of Environment, Land, Water and Planning a body corporate established under section 6 of the *Conservation, Forests and Lands Act 1987 (Vic)* and includes its successors and assigns.

Security Deposit means the amount (if any) set out in Item 12.

Service Provider means the person or persons named in Item 2.

Service Provider's Members and Agents means any one or more of the members, officers, employees, agents, contractors and subcontractors.

Services Fee means the fee specified in Item 10.

Site(s) means the area(s) described in Item 5.

Site Facilities means the facilities provided to the relevant Site as specified in Item 7.

Site Revenue means the all the revenue attributable to the provision of the Park Services from the Site(s).

Site Expenses means the all the expenses attributable to the provision of the Park Services from the Site(s) that have been approved by Parks Victoria in accordance with clause 4.3.1 but does not include wage or staff costs or the cost of providing all necessary equipment in accordance with clause 12.1.

Taxable Supply has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Tax Invoice in relation to a Taxable Supply means an invoice for the Taxable Supply required by the GST Act to support a claim by the recipient for an Input Tax Credit for the GST on the Taxable Supply.

Times of Access means the times of access set out in Item 13.

2. Interpretation

2.1 In this Agreement, unless the contrary intention appears:

2.1.1 a reference to a Law includes amendments re-enactments or replacements occurring at any time before or after the date of this Agreement;

2.1.2 a word or expression in the singular includes the plural and vice versa;

2.1.3 the word 'person' includes an individual and a corporation.

2.2 If this Agreement prohibits the Service Provider from doing a thing, the Service Provider must:

2.2.1 ensure the Service Provider's Members and Agents not do that thing; and

2.2.2 not allow or cause any person to do that thing;

2.3 If this Agreement requires the Service Provider to do a thing, the Service Provider must ensure that, if applicable, the Service Provider's Members and Agents do that thing.

2.4 If the Service Provider or Guarantor includes two or more persons, each such person is liable to perform the obligations imposed by this Agreement individually and jointly with each other such Service Provider or Guarantor.

2.5 If there is an inconsistency between a special condition in Schedule 1 and another provision of this Agreement, the special condition prevails.

3. Minister and Secretary

Without limiting any other provision of this Agreement, any requirement upon the Service Provider to indemnify or release Parks Victoria, or note the interests of Parks Victoria on its public liability policy, shall extend to include the Minister, the Secretary and their officers, employees and agents, as if a reference to Parks Victoria were a reference to the Minister and/or the Secretary as the case may be.

4. Appointment

4.1 Parks Victoria appoints the Service Provider to provide the Park Services at the Site(s) for and on behalf of Parks Victoria for the Agreement Period subject to:

4.1.1 the terms contained in this Agreement;

4.1.2 any reservations in this Agreement;

4.1.3 the right of Parks Victoria to:

- (a) determine all areas of access to and egress from the Site(s); and
- (b) close access to the Site(s) and the Park(s) in an emergency as may be necessary for Parks Victoria to carry out its statutory functions;
- (c) restrict or prevent access to the Park(s) or the Site(s) for such time as Parks Victoria considers necessary in connection with a Major Event;
- (d) conduct, or authorise any other person to conduct works in or about the Site(s) or Park, which may be of a temporary or permanent nature carry out;

4.1.4 the rights of the public in relation to the Park(s) and areas adjacent to the Site(s);

4.1.5 the condition precedent that the Service Provider complies with the obligations under clauses 9.1, 18.1, 18.2 and 18.3; and

4.1.6 the provisions of the Relevant Legislation.

4.2 Subject to the Service Provider acting in accordance with this Agreement and clause 4.3, Parks Victoria authorises the Service Provider to do anything that is reasonably necessary for the Service Provider to provide the Park Services.

4.3 The Service Provider must not:

4.3.1 incur on behalf of Parks Victoria any expenditure without written approval;

4.3.2 commit Parks Victoria to any contract without written approval;

4.3.3 contact the media or respond to any media queries without written approval;

4.3.4 start, defend or settle any court, arbitration, tribunal or similar proceedings on the Parks Victoria's behalf; or

- 4.3.5 do anything that Parks Victoria instructs the Service Provider, by notice in writing, not to do.
- 4.4 The Service Provider will be responsible for the employment of all personnel required for the provision of the Park Services. The Service Provider and the Service Provider's Members and Agents will not by virtue of this Agreement be or for any purpose be deemed to be an employee of Parks Victoria.
- 4.5 Parks Victoria grants the Service Provider the right to use in common with Parks Victoria and other persons from time to time permitted by Parks Victoria, those parts of the Park(s) reasonably required by the Service Provider for access to the Site(s) and the provision of the Park Services.
- 4.6 This Agreement is personal to the Service Provider and may not be assigned. Where the Service Provider is a corporation, the Service Provider 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 Parks Victoria.
- 4.7 The Service Provider must not subcontract the performance of any of its obligations under this Agreement without the prior written consent of Parks Victoria, which consent Parks Victoria may withhold or grant subject to any conditions in its absolute discretion.

5. Services Fee

- 5.1 In consideration of the Service Provider providing the Park Services, Parks Victoria will pay the Service Provider the Services Fee in accordance with clause 5.2.
- 5.2 Subject to the Service Provider having provided the Statement as required under clause 6.4, paid the balance of Site Revenue in accordance with clause 6.6 and provided a Tax Invoice to Parks Victoria in respect of the Services Fee, Parks Victoria authorises the Service Provider to transfer the Services Fee from the Park Services Account to the Service Provider's nominated bank account at the end of each Accounting Period.

6. Site Revenue and Site Expenses

- 6.1 The Service Provider must keep true records and books of account for all Site Revenue and Site Expenses in which full, true and correct entries are made of all dealings or transactions concerning the Park Services using generally accepted accounting principles in accordance with Approved Australian accounting standards and relevant Laws.
- 6.2 The Service Provider must ensure that all Site Revenue is collected on behalf of Parks Victoria and is paid into a dedicated bank account that is used solely for Site Revenue and the payment of Site Expenses (**Park Services Account**). The Service Provider acknowledges and agrees that the Site Revenue is held on trust for Parks Victoria and may only be used for the payment of Site Expenses, the payment of the Services Fee in accordance with clause 5.2 and must otherwise be transferred to Parks Victoria in accordance with clause 6.6.

- 6.3 The Service Provider must within 7 days of the end of each Accounting Period, provide an itemised statement of Site Revenue and Site Expenses (**Statement**) for the relevant Accounting Period.
- 6.4 The Service Provider must within 14 days of the end of the Agreement Period, provide an itemised statement of Site Revenue and Site Expenses (**Audited Statement**) for the period since the commencement of the Agreement Period, accompanied by an audit report prepared by an independent accountant stating that in his or her opinion the Statement fairly presents the Site Revenue and Site Expenses during the relevant period.
- 6.5 The Site Revenue and Site Expenses must be itemised within such categories as are reasonably requested by Parks Victoria from time to time.
- 6.6 The Service Provider must transfer the balance of Site Revenue (i.e. after deduction of Site Expenses) less the Services Fee from the Park Services Account to Parks Victoria within 7 days of the end of the each Accounting Period.
- 6.7 If at the end of the Agreement Period the Audited Statement indicates an overpayment or an underpayment to Parks Victoria or the Services Provider then the parties must promptly make the necessary adjustment.

7. Variation to Park Services

- 7.1 Parks Victoria, acting reasonably, may direct the Service Provider in writing to:
- 7.1.1 alter the extent of the Park Services;
 - 7.1.2 alter the character, quality or mode of performance of the Park Services;
 - 7.1.3 carry out any work of a character similar to the Park Services; or
 - 7.1.4 make any other change that Parks Victoria reasonably deems is necessary,
- and the Service Provider must comply with that direction.
- 7.2 A direction by Parks Victoria under this clause will not in any way vitiate or invalidate this Agreement.
- 7.3 The Service Provider will not be entitled to any increase in the Fixed Services Fee resulting from any direction given by Parks Victoria under this clause, unless:
- 7.3.1 the Service Provider can demonstrate in writing to Parks Victoria's reasonable satisfaction that the direction results in a significant and unreasonable additional cost for the Service Provider, which is not otherwise recoverable under this Agreement, in which case Parks Victoria will determine the appropriate additional payment or payments to be made to the Service Provider; or
 - 7.3.2 otherwise notified in writing by Parks Victoria.

8. End of Season Report

The Service Provider must within 14 days of the end of the Agreement Period, provide Parks Victoria with a report (**End of Season Report**) identifying during the Agreement Period:

- 8.1 services provided including the number of transactions; and
- 8.2 any other details reasonably requested by Parks Victoria from time to time.

9. Security Deposit

- 9.1 As security for the use of the Site(s) and performance of the Service Provider's obligations under this Agreement, the Service Provider must pay the Security Deposit to Parks Victoria before the commencement of the Agreement Period.
- 9.2 Parks Victoria may use the Security Deposit to make good the cost of remedying breaches of the Service Provider's obligations under this Agreement or to recover any loss that Parks Victoria suffers from the Service Provider's default.
- 9.3 If the Security Deposit, or any part of it, is used by Parks Victoria under this clause then the Service Provider must, within 14 days of written request, replace the Security Deposit, or that portion of it used.
- 9.4 Parks Victoria will refund the unused part of the Security Deposit (if any) to the Service Provider within 30 days of the expiry or earlier termination of this Agreement.

10. Interest

The Service Provider must pay interest on any overdue monies payable to Parks Victoria, at a daily rate equivalent to the rate for the time being fixed under Section 2 of the *Penalty Interest Rates Act 1983* from the time when such monies first become payable until paid in full.

11. Use of Site and Provision of Park Services

- 11.1 The Service Provider must only use the Site(s) for the provision of the Park Services.
- 11.2 The Service Provider must maintain and observe and ensure that the Service Provider's staff maintain and observe the highest standards of professionalism, hygiene, courtesy and efficiency in the provision of the Park Services and act so as to maintain and promote the Park Services, and must comply with and observe Parks Victoria's reasonable directions with a view to achieving those standards.
- 11.3 The Service Provider shall have access to the Site(s) during the Times of Access throughout the Agreement Period unless otherwise expressly provided in this Agreement.
- 11.4 The Service Provider must immediately notify Parks Victoria if an accident or incident occurs on the Site(s) which results in injury or death of persons or environmental damage or pollution or damage to property.

- 11.5 The Service Provider must not:
- 11.5.1 except in quantities necessary for the Park Services, bring on to the Site(s) any flammable, volatile or explosive oil or dangerous substance without the consent of Parks Victoria;
 - 11.5.2 bring on to the Site(s) any alcoholic or intoxicating beverage or liquor (unless otherwise agreed in writing by Parks Victoria);
 - 11.5.3 sell or provide in the Site(s) any goods or services which Parks Victoria notifies the Service Provider are considered inappropriate or unsuitable in Parks Victoria's absolute discretion;
 - 11.5.4 play music or make any other sound or broadcast using sound equipment including radio and television that can be heard outside of any vehicle within the Site(s) or Park(s) (unless otherwise agreed in writing by Parks Victoria);
 - 11.5.5 do anything that is or may be dangerous, annoying or offensive or that may interfere with or be a nuisance to other persons using the Park;
 - 11.5.6 do anything which might affect any insurance policy relating to the Site(s) by causing it to become void or voidable or having any claim on it being rejected or by causing any premium payable by Parks Victoria to be increased;
 - 11.5.7 make any structural or other alterations to, or otherwise interfere with or move, any services, fixtures, fittings or other improvements at the Site(s) (excluding the Service Provider's own property) without the consent in writing of Parks Victoria;
 - 11.5.8 display any marketing or advertising material without first obtaining the approval of Parks Victoria and any advertising material must relate to the Park Services; or
 - 11.5.9 drive, move or park any vehicle on anything other than a roadways or designated parking area without the prior written consent of Parks Victoria.
- 11.6 The Service Provider must ensure that all the Service Provider's Members and Agents are competent and suitably qualified to perform their functions and roles.
- 11.7 Parks Victoria may, in its absolute discretion acting in good faith, by notice to the Service Provider require that any the Service Provider's Members and Agents are replaced and immediately removed from any further involvement in the Park Services.
- 11.8 The Service Provider must keep Parks Victoria informed of all matters of which it ought reasonably be made aware in relation to the provisions of the Park Services, including by providing prompt written notice of any complaint or negative customer feedback received in connection with the provision of the Park Services and the actions taken or proposed to be taken in response.
- 11.9 The Service Provider must take every reasonable precaution to prevent aboriginal cultural heritage items in the Park(s) being damaged and immediately notify Parks Victoria of the discovery of any aboriginal cultural heritage item.

12. Equipment

- 12.1 The Service Provider will be responsible for the supply of all equipment required for the provision of the Park Services.
- 12.2 The Service Provider must not bring any equipment on to the Site(s) apart from the equipment specified at Item 8 without the prior written consent of Parks Victoria.
- 12.3 Any approved equipment must only be placed in the location within the Site(s) approved by Parks Victoria from time to time.
- 12.4 Any approved equipment and other materials brought into the Site(s) or Park(s) by the Service Provider must be removed from the Site(s) and Park(s) on or before the end of the Agreement Period (unless otherwise agreed in writing by Parks Victoria).
- 12.5 The Service Provider must erect, operate and dismantle any equipment required for the Park Services at the Site(s) in a competent manner without negligence and without causing any nuisance.
- 12.6 The Service Provider must ensure:
- 12.6.1 that all electrical equipment brought into the Park(s) by the Service Provider has been tested and certified as safe by a qualified electrician and tagged accordingly;
 - 12.6.2 subject to clause 12.6.3, all power cables are covered with matting or similar material to prevent tripping or interference by people, or mounted overhead at least 3 metres above the higher of ground or floor level; and
 - 12.6.3 power cables located in places set aside for heavy vehicle entry or exit are mounted overhead at such greater height than is specified in clause 12.6.2 as is necessary for safety and otherwise in accordance with Australian Standards, laws or regulations.

13. Site Facilities

- 13.1 Parks Victoria will use reasonable endeavours to ensure that the Site Facilities are available for use in conjunction with the Park Services for the Agreement Period.
- 13.2 The Service Provider acknowledges that power, water, sewerage or other facilities are not provided or available at the Site(s) unless expressly included within the Site Facilities.

14. Intellectual Property

- 14.1 The Service Provider:
- 14.1.1 must assign or, to the extent that the Service Provider is capable of doing so, secure assignment of, ownership of all intellectual property created in relation to the Park Services by or on behalf of the Service Provider during the term of this Agreement to Parks Victoria; and

- 14.1.2 must use reasonable endeavours to procure from the Service Provider's Members and Agents an effective waiver of moral rights.
- 14.2 Parks Victoria grants to the Service Provider a licence during the term of this Agreement to use any trade marks and other intellectual property associated with the Park(s) that are owned by Parks Victoria (**Trade Marks**) for the purposes of providing the Park Services.
- 14.3 Parks Victoria may from time to time prescribe reasonable quality standards for the use of the Trade Marks and the Service Provider must comply with those standards.
- 14.4 The Service Provider may not use any Trade Marks for any purpose not associated with the Park Services.

15. Waste management, cleaning and repair

- 15.1 The Service Provider must keep the Site(s) and immediate surrounding parts of the Park(s) tidy and free from rubbish that is caused by or incidental to the provision of the Park Services.
- 15.2 The Service Provider must provide an adequate number of appropriately designed rubbish bins at the Site(s) to service the needs of patrons of the Park Services. The Service Provider's bins and all collected rubbish must be removed from the Site(s) and Park(s) daily. The Service Provider must not dispose of refuse in any bins provided by Parks Victoria within the Park(s) for public use.
- 15.3 The Service Provider must not dispose or permit to be disposed any waste water or other liquid, grease, decomposed substance or any poisonous, noxious or offensive matter into any channel, gutter, drain or sewer or onto any surface within the Park.
- 15.4 The Service Provider must promptly repair any damage to the Site(s) or to the Park(s) to the extent caused or contributed to by the act, omission or default of the Service Provider or the Service Provider's Members and Agents.
- 15.5 The Service Provider must carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the Service Provider is obliged to make good under this Agreement. If the Service Provider does not comply with the notice, Parks Victoria may carry out the repairs and the Service Provider must repay the cost of such repairs to Parks Victoria on demand.

16. Compliance with Laws and directions

- 16.1 The Service Provider must comply with all Laws, including Occupational Health and Safety Laws, and codes of practice, concerning the Site(s) and the use of the Site(s).
- 16.2 The Service Provider must obtain the prior written consent of Parks Victoria before applying for any licence, permit or consent (including liquor licences or BYO permits) for the Site(s).
- 16.3 Subject to clause 16.2, the Service Provider must obtain at its expense all necessary permits, licences, approvals, consents and authorities required for the Park Services

including any necessary planning permit, and must at its own expense comply on time with any lawful conditions of such permits, licences, approvals, consents, authorities.

- 16.4 If Parks Victoria consents to the Service Provider's application for any licence, permit or consent under the *Liquor Control Reform Act 1998 (Vic)*, the Service Provider must comply with all requirements of Parks Victoria including signing any future agreement containing additional covenants on the part of the Service Provider to be performed and observed.
- 16.5 The Service Provider must comply with all reasonable requests or directions given by Parks Victoria in relation to the provision of the Park Services and the management, safety, care or cleanliness of the Site(s) or Park or users of the Site(s) or Park(s) including the provision of any information or documentation reasonably requested and must meet with Parks Victoria's authorised representative upon request including to discuss the delivery of the Park Services, customer feedback and emergency management arrangements.

17. Parks Victoria's rights

- 17.1 The Service Provider acknowledges and agrees that Parks Victoria may at any time during the Agreement Period do any works or things at or on any part of the Park, including closing or restricting access to the Park(s) or Site(s), in connection with a Major Event or that it is required to do:

- 17.1.1 by law;
- 17.1.2 to ensure the Service Provider's obligations are performed or carried out, after due notice to the Service Provider as provided in this Agreement;
- 17.1.3 to protect the Park(s), or services, fixtures, fittings or other improvements within the Park(s) from damage or destruction or to protect the integrity of water supplies or water supply assets;
- 17.1.4 to protect public safety including by closing the Park(s) on a day of very high, severe, extreme or code red (catastrophic) fire danger rating; or
- 17.1.5 because of an emergency,

and the Service Provider shall not be entitled to any claim for compensation or damages for loss suffered as a result of any such closure, restriction of access or works.

- 17.2 Without limiting any other provision of this Agreement, the Service Provider acknowledges and agrees that Parks Victoria may enter the Site(s) at any time for the purpose of checking whether the Service Provider's obligations are being performed and to check the condition of the Site(s).

18. Insurance

- 18.1 The Service Provider must effect and maintain throughout the Agreement Period with an insurer approved by Parks Victoria, 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 the amount stated in Item 14 (or any greater amount required by Parks Victoria) **(Policy)** in respect of any single claim arising out of the activities of the Service Provider, 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
- 18.1.2 a workers' compensation policy (if required by law) which covers any damage, loss or liability suffered or incurred by any person engaged by the Service Provider arising:
- (a) by virtue of any statute relating to workers' or accident compensation or employers' liability; and/or
 - (b) at common law.
- 18.2 The Service Provider must effect and maintain the Policy noting the interests of Parks Victoria.
- 18.3 The Service Provider must provide Parks Victoria with:
- 18.3.1 a certificate of currency for the Policy which clearly confirms the requirements of clauses 18.1 and 18.2 have been complied with:
- (a) prior to the commencement of the Agreement Period;
 - (b) within 14 days of the renewal of the Policy throughout the Agreement Period; and
 - (c) at any other time upon request by Parks Victoria;
- 18.3.2 evidence of confirmation of registration with the Victorian WorkCover Authority upon request by Parks Victoria; and
- 18.3.3 a copy of the Policy upon request by Parks Victoria.
- 18.4 The Service Provider must promptly notify Parks Victoria if:
- 18.4.1 an event occurs at the Site(s) which may give rise to a claim under or prejudice the Policy; or
- 18.4.2 the Policy is cancelled.
- 18.5 The Service Provider must not do anything or allow anything to be done which may:
- 18.5.1 prejudice any insurance held in connection with the Site(s); or
- 18.5.2 increase the premium payable for any insurance held in connection with the Site(s).

18.6 The Service Provider 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 Agreement.

19. Release

19.1 The Service Provider agrees that it:

19.1.1 has not relied upon any representation by or on behalf of Parks Victoria concerning the Site(s) or its use;

19.1.2 is aware of all laws and legal requirements in relation to the Site(s) and the Park Services;

19.1.3 occupies and uses the Site(s) at its own risk; and

19.1.4 has inspected the Site(s) and is of the opinion that the Site(s) is safe and suitable for the Park Services.

19.2 The Service Provider releases Parks Victoria and Parks Victoria's officers, employees and agents from:

19.2.1 all claims and demands resulting from any accident, damage, death or injury occurring at the Site(s) or any other area used by the Service Provider or the Service Provider's Members and Agents in connection with this Agreement; and

19.2.2 all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Service Provider or the Service Provider's Members and Agents;

as a direct or indirect result of the Service Provider's or the Service Provider's Members and Agents occupation and use of the Site(s) or any other area used by the Service Provider or the Service Provider's Members and Agents in connection with this Agreement, except to the extent caused or contributed to by the negligence of Parks Victoria or Parks Victoria's officers, employees or agents.

20. Indemnity

20.1 The Service Provider indemnifies and agrees to keep indemnified Parks Victoria and Parks Victoria's officers, employees and agents against all actions, claims, demands, losses, damages, costs and expenses (whether direct or consequential) suffered or incurred by Parks Victoria and Parks Victoria's officers, employees and agents or for which Parks Victoria or Parks Victoria's officers, employees and agents are or may be or become liable concerning:

20.1.1 the default of the Service Provider or the Service Provider's Members and Agents under this Agreement;

20.1.2 the Service Provider's or the Service Provider's Members and Agents use of the Site(s) or any other area used by the Service Provider or the Service Provider's Members and Agents in connection with this Agreement; or

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

except to the extent caused or contributed to by the negligence of Parks Victoria or Parks Victoria's officers, employees or agents.

20.2 Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the Service Provider and survives expiry or termination of this Agreement.

21. Breach of Service Provider's obligations

21.1 The Service Provider breaches this Agreement if the Service Provider fails to fulfil any of the Service Provider's obligations as and when required, or if no time is prescribed, within a prompt and reasonable time.

21.2 The Service Provider must pay or reimburse Parks Victoria on request all reasonable costs incurred or payable by Parks Victoria as a result of any breach of this Agreement by the Service Provider.

21.3 In the event of any breach of the Service Provider's obligations, except in an emergency, Parks Victoria must give the Service Provider notice requiring the Service Provider to remedy the breach within a reasonable time. If the Service Provider fails to remedy or rectify the breach within the period specified in the notice, Parks Victoria may do any one or more of the following:

21.3.1 exclude the Service Provider from the Site(s);

21.3.2 end this Agreement immediately by written notice to the Service Provider;

21.3.3 recover from the Service Provider any loss Parks Victoria suffers due to the Service Provider's breach; or

21.3.4 exercise any of Parks Victoria's other legal rights.

22. Immediate Termination of Agreement

Parks Victoria may terminate the Agreement immediately by written notice to the Service Provider if:

22.1.1 the Service Provider, or any of Service Provider's Members and Agents, engage in any conduct that Parks Victoria determines, in its absolute discretion, causes or may cause imminent and serious risk to the health or safety of a person in or about the Site(s) associated with the Park Services, or to the reputation of Parks Victoria;

- 22.1.2 Parks Victoria considers in its absolute discretion that the Service Provider or any of Service Provider's Members and Agents have engaged in any type of misconduct or conduct which is dishonest, fraudulent, deceitful or abusive while carrying out the Park Services or any part of them;
- 22.1.3 the Service Provider is in breach of clause 18;
- 22.1.4 the Service Provider fails to remedy or rectify a breach of this Agreement in accordance with clause 21.3; or
- 22.1.5 an Insolvency Event occurs in relation to the Service Provider or its Guarantor (if any).

23. Occupational health and safety

- 23.1 The Service Provider acknowledges that occupational health and safety in relation to the Site(s) and the provision of the Park Services is the responsibility of the Service Provider (other than to the extent Parks Victoria cannot at law contract out of its obligations with respect to occupational health and safety).
- 23.2 The Service Provider must, in relation to the Site(s) and the provision of the Park Services:
 - 23.2.1 comply with, all Occupational Health and Safety Laws and any applicable Australian Standards;
 - 23.2.2 ensure that there is no risk to the environment or the health, safety and welfare of the Service Provider and the Service Provider's Members and Agents;
 - 23.2.3 without limiting clause 23.2.1, 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 Park Services;
 - 23.2.4 develop and implement an occupational health and safety plan and ensure that a copy is available for inspection by every person to whom such plan is relevant; and
 - 23.2.5 as soon as practicable notify Parks Victoria of any incident or dangerous occurrence at the Site(s) 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).
- 23.3 The Service Provider must ensure that at all times its occupational health and safety plan:
 - 23.3.1 complies with Australian Standard AS/NZ 4804-2001 (or other similar substitute standard);
 - 23.3.2 includes the Service Provider's occupational health and safety policy;
 - 23.3.3 identifies the obligations of the Service Provider's under the Occupational Health and Safety Laws;

- 23.3.4 describes the practices that will be employed to secure the health, safety and welfare of persons at work; and
- 23.3.5 identifies measures to eliminate risks to the health, safety and welfare of persons at work.

24. Fire and emergency evacuation

- 24.1 The Service Provider must comply with the Parks Victoria's emergency plan(s) for the Site(s) and the Park(s). The Service Provider must comply with all directions of Parks Victoria in an emergency even if such direction contradicts the Service Provider's emergency evacuation and management plan.
- 24.2 The Service Provider must on a day of very high, severe, extreme or code red (catastrophic) fire danger rating applicable to the Park(s) or as otherwise as directed by Parks Victoria, ensure that all persons within the Site(s) immediately leave the Park(s) without delay.
- 24.3 The Service Provider acknowledges that fires may only be lit outdoors in properly constructed fireplaces that have been approved by the Area Chief Ranger. **NO FIRES ARE TO BE LIT ON TOTAL FIRE BAN DAYS.**
- 24.4 The Service Provider must develop and implement an emergency evacuation and management plan for the Site(s) and the operation of the Park Services detailing the Service Provider's emergency contact details (including after-hours number), the location and capacity of water points within or near the Site(s), methods of communication (e.g. mobile phone reception, location of landlines, community radio emergency station) and evacuation or refuge procedures and must provide a copy to Parks Victoria upon request. The Service Provider must ensure that the Service Provider's emergency evacuation and management plan does not conflict with Parks Victoria's plan(s).
- 24.5 The Service Provider must ensure that emergency contact details and locations of emergency equipment, water points and assembly points etc. are shown on fire protection map(s) on display at the Site(s) in accordance with the requirements of the Service Provider's and/or Parks Victoria's emergency management plans.
- 24.6 The Service Provider must ensure that the Service Provider's Members and Agents are trained in emergency procedures and that they are familiar with the Service Provider's and Parks Victoria's emergency management plans for the Site(s) and Park(s), including any reviews and/or amendments of same.
- 24.7 In the event of fire being reported or detected at or near the Site(s), the Service Provider must notify the following:
 - 24.7.1 DELWP 24HR Fire Response number or in the alternative to the State Duty Officer on 1300 134444;
 - 24.7.2 Police 000; and
 - 24.7.3 Area Chief Ranger.

24.8 In the event of a fire at or near the Site(s), the Service Provider must comply with the directions of Parks Victoria's authorised officer and assist Parks Victoria's authorised officer with the evacuation of people from the Site(s) to the "Fire Assembly Area" (including by providing information regarding locations within the Park(s) where visitors may be located).

25. Goods and Services Tax

25.1 The consideration payable by any party under this Agreement is the GST exclusive amount of the Taxable Supply for which payment is to be made.

25.2 Subject to clause 25.4, if a party makes a Taxable Supply in connection with this Agreement 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.

25.3 Where this Agreement 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.

25.4 A party's right to payment under clause 25.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

26. Miscellaneous provisions

26.1 Notices

26.1.1 Any notice, approval or consent required to be served or given under this Agreement:

- (a) may be signed by a party, one of its officers, its attorney, its solicitors or duly appointed agent;
- (b) must be in writing; and
- (c) must be sent by pre-paid post or by hand delivery,

to the party at the last known address of that party or to that party's address as set out in this Agreement or such other address as is notified in writing by that party to the other party from time to time.

26.1.2 A notice, approval or consent is taken to be received:

- (a) in the case of a posted notice, on the third business day after posting; and
- (b) if delivered personally, upon delivery or, if received after 6.00 pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

26.2 Waiver or variation

A provision of or a right created under this Agreement may not be waived or varied except in writing signed by the party to be bound.

26.3 Remedies cumulative

The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of the rights, powers or remedies provided by law independently of this Agreement.

27. Guarantor

27.1 In consideration of Parks Victoria entering into this Agreement with the Service Provider at the Guarantor's request, the Guarantor:

27.1.1 guarantees that the Service Provider will perform all its obligations under this Agreement;

27.1.2 must pay Parks Victoria on demand any money owing to Parks Victoria by the Service Provider; and

27.1.3 indemnifies Parks Victoria against all loss resulting from Parks Victoria having entered into this Agreement, whether from the Service Provider's breach of any provision of this Agreement, or from this Agreement being or becoming unenforceable against the Service Provider.

27.2 The Guarantor's liability will not be affected by:

27.2.1 Parks Victoria granting the Service Provider or any Guarantor any time or other indulgence;

27.2.2 Parks Victoria agreeing not to sue the Service Provider or any Guarantor; and

27.2.3 any variation of this Agreement.

27.3 The Guarantor agrees:

27.3.1 not to seek to recover any money from the Service Provider by way of reimbursement for payments made by the Guarantor to Parks Victoria until Parks Victoria has been paid in full;

27.3.2 not to prove in the bankruptcy or winding up of the Service Provider for any amount which Parks Victoria has demanded from the Guarantor until Parks Victoria has been paid in full; and

27.3.3 to pay Parks Victoria any money which Parks Victoria is required to refund to the Service Provider's liquidator or trustee in bankruptcy as preferential payments received from the Service Provider.

28. Privacy Legislation

The Service Provider acknowledges that the Personal Information (if any) of the Service Provider may be:

- 28.1 collected for the purposes of entering into and administering this Agreement; and
- 28.2 may be disclosed to the following:
 - 28.2.1 the Auditor-General if Parks Victoria is audited pursuant to any requirement of any Act of Parliament or regulation or authority;
 - 28.2.2 any local authority or other relevant authority in order to update their records as to occupation of the Site(s);
 - 28.2.3 Parks Victoria's legal advisors, financial consultants or consultants in relation to reviewing the Service Provider's performance under this Agreement or providing advice in relation to this Agreement;
 - 28.2.4 any third party as required by any Act of Parliament or regulation; and
 - 28.2.5 any other third party with the Service Provider's consent.

29. Disclosure and Freedom of Information

Despite any provision in this Agreement to the contrary, the Service Provider acknowledges and agrees that:

- 29.1 Parks Victoria retains the right to publish this Agreement (in whole or in part), subject to information deemed by Parks Victoria to be commercial-in-confidence, on its website or other online medium accessible by the general public; and
- 29.2 any information passed between the parties, may be required to be released by Parks Victoria under the *Freedom of Information Act 1982* (Vic) or to satisfy the disclosure requirements of the Victorian Auditor-General, the Victorian Government or the Commonwealth Government (Public Disclosure Obligations); and
- 29.3 it must, at its own cost and expense, use its best endeavours to assist Parks Victoria in meeting its Public Disclosure Obligations.

30. Prohibited Gifts

The Service Provider warrants that neither it nor the Service Provider's Members and Agents:

- 30.1 has offered an inducement, gift or other benefit (directly or indirectly) to any officer or employee of Parks Victoria; or
- 30.2 will offer an inducement, gift or other benefit (directly or indirectly) to any officer or employee of Parks Victoria.

Signing page

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

Execution clause where Service Provider is a person

SIGNED by)
In the presence of:)

Signature of Service Provider

Witness

Dated

Execution clause where Service Provider is a corporation

EXECUTED by

[Name of Service Provider corporation] in
accordance with Section 127 of the *Corporations*
Act 2001 in the presence of

Signature of Director

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

Name of Director

Name of Director/company secretary

[## Insert Guarantor execution provision]

Schedule 1

Particulars

1. **Parks Victoria:** **Contact person:**

Address: Level 10, 535 Bourke Street, Melbourne, VIC 3000

Ph:
2. **Service Provider:** **Name:**

Contact person:

Address:

Ph:

Fax:
3. **Guarantor:**
4. **Park:** Grampians National Park
5. **Site(s):** The site within the Park shown [## insert how delineated] on the plan(s) attached in Schedule 2
6. **Park Services:** The provision of summer/peak season tourist information services and food and beverage provisions at Mackenzie Falls to Park visitors and associated services approved in writing by Parks Victoria from time to time.
7. **Site Facilities:** ## This item lists any site facilities e.g. public toilets, power and water - see clause 13
8. **Equipment:** ## This item lists any equipment that the Service Provider is permitted to bring onto the Site
9. **Agreement Period:**
10. **Services Fee:** ## % of the balance of Site Revenue after the deduction of Site Expenses [## See definition of Site Expenses as to what deductions occur before splitting Site Revenue between Service Provider and Parks Victoria]
11. **Accounting Period:** E.g. Weekly [## This period dictates how often the Service Provider draws down on the Park Services Account to pay the Services Fee and the balance to Parks Victoria – see clauses 5 and 6]
12. **Security Deposit:**
13. **Times of Access:** [## TBC]
14. **Public Liability Insurance:** Twenty million dollars (\$20,000,000)
15. **Special Conditions:** [## Special conditions should be inserted to reflect the successful proponent’s submission – these could include measurable KPIs etc]

1. Minimum Opening Hours

1.1 Without limiting any other provisions of this Agreement, including but not limited to clause 4.1.3, the Service Provider must provide the Park Services at the times set out below (**Minimum Opening Hours**) unless otherwise agreed in writing between the parties:

insert minimum opening requirements

1.2 Without limiting any other provisions of this Agreement, the Service Provider may at its discretion provide the Park Services outside the Minimum Opening Hours but within the Times of Access.

1.3 Without limiting clauses 21 and 22, if the Service Provider fails to provide the Park Services **## insert particulars of failure that would allow immediate termination** Parks Victoria may terminate this Agreement immediately by written notice to the Service Provider.

2. Tourist information services

2.1 Parks Victoria will provide the Service Provider with tourist information material that must be provided to Park visitors, upon request with the amount payable (if any) being as specified by Parks Victoria from time to time.

3. Food and Beverage Offering and Pricing

3.1 The food and beverages to be offered as part of the Park Services (**Food and Beverages Offering**) and associated pricing as at the commencement of the Agreement Period are as set out in the menu attached as **Annexure ##**.

3.2 Subject to the other provisions of this Special Condition, the Service Provider is entitled to vary the Food and Beverages Offering and/or the associated pricing.

3.3 The Service Provider must notify Parks Victoria of any proposed variation at least 10 Business Days before implementing the variation.

3.4 The Service Provider must ensure that the Food and Beverages Offering:

3.4.1 is consistent with the Victorian Government's Healthy Choices guidelines;

3.4.2 has a focus on nutritional and healthy foods;

3.4.3 incorporates and demonstrates good and sustainable practices that promote health and the environment

- 3.4.4 demonstrates awareness of the issues raised by customers with allergies and an approach which properly manages those issues, including the provision of food which is clearly and informatively labelled (e.g. gluten free, nut free, egg free);
 - 3.4.5 caters for FODMAP, vegetarians and vegans;
 - 3.4.6 offers variety;
 - 3.4.7 is of a high quality;
 - 3.4.8 includes a range of price points; and
 - 3.4.9 is offered at affordable prices.
- 3.5 The Service Provider must ensure that at all times the pricing for the Food and Beverages Offering is reasonable.
- 3.6 Upon receiving notice of a proposed variation under Special Condition 3.3, Parks Victoria may, within the 10 Business Days prior to implementation of the variation, notify the Service Provider that Parks Victoria believes, acting reasonably, that the proposed variation is (wholly or in part) unreasonable.
- 3.7 Where the Service Provider receives notice from Parks Victoria under Special Condition 3.6, the Service Provider must not implement the variation (or the part of the variation that Parks Victoria believes is unreasonable).
- 3.8 The Service Provider must not sell, or otherwise facilitate the sale or distribution of, cigarettes and tobacco products or liquor.
- 3.9 Subject to special condition 2.1, the Service Provider must at its own expense provide and maintain all equipment, consumables and other items necessary to provide the Park Services in accordance with this Agreement.

4. Food Service products

- 4.1 The Service Provider must only use food and beverage service products including but not limited to serviettes, straws (non-plastic), paper bags, disposable cutlery, drinking and food containers that have been approved by Parks Victoria.
- 4.2 Sale of single use plastics is prohibited.

Schedule 2 Site Plan(s)