

Trade Permit

Minister for Energy, Environment and Climate Change

and

Parks Victoria

and

Permittee

ACN #

Contents

- 1. **Definitions**3
- 2. **Interpretation**5
- 3. **Manager**5
- 4. **Minister**.....6
- 5. **Permit**6
- 6. **Permit Fee**7
- 7. **Security Deposit**.....7
- 8. **Interest**.....7
- 9. **Use of Permit Area**8
- 10. **Equipment**9
- 11. **Waste management, cleaning and repair**9
- 12. **Compliance with Laws and directions**..... 10
- 13. **Responsible Authority's rights** 10
- 14. **Insurance**..... 11
- 15. **Release**..... 12
- 16. **Indemnity** 12
- 17. **Breach of Permittee's obligations**..... 13
- 18. **Immediate Termination of Permit**..... 13
- 19. **Occupational health and safety and emergency evacuation** 13
- 20. **Goods and Services Tax** 15
- 21. **Miscellaneous provisions**..... 15
 - 21.1 Notices 15
 - 21.2 Waiver or variation..... 15
 - 21.3 Remedies cumulative..... 16
- 22. **Guarantor** 16
- 23. **Native Title Act 1993 (Cth)** 16
- 24. **Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)** 17
- 25. **Aboriginal Heritage Act 2006 (Vic)**..... 17

26.	Environment Protection and Biodiversity Conservation Act 1999 (Cth)	18
27.	Minister's Consent	18
28.	Melbourne Water	18
29.	Privacy Legislation.....	19
30.	Disclosure and Freedom of Information	19
31.	Prohibited Gifts.....	20
	Schedule 1.....	23
	Annexure A	27

1. Definitions

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

CPI means:

- (a) the Consumer Price Index All Groups Melbourne;
- (b) if that index is suspended or discontinued and another index is substituted by the Australian Statistician, that index; or
- (c) if there is no index under the preceding clause, the general inflation rate in Victoria as used by the Victorian Treasury for the relevant period;

GST means the goods and services tax levied under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) 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 4 of Schedule 1.

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.

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 which the Responsible Authority, acting reasonably, determines is a major event.

Manager means the representative of the Crown to whom responsibility for the management of the Park and the Permit Area may at any time be given which as at the date of this Permit is the party named in item 2 of Schedule 1 and where it is consistent with the context includes the Manager's employees and agents.

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 Permit 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):

- (d) *Occupational Health and Safety 2004* (Vic);
- (e) *Occupational Health and Safety Regulations 2017* (Vic);
- (f) *Dangerous Goods Act 1985* (Vic);
- (g) *Dangerous Goods (Storage and Handling) Interim Regulations 2011* (Vic); and

(h) *Work Health and Safety Act 2011 (Cth)*.

Park means the Park named in item 7 of Schedule 1 within which the Permit Area 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.

Period of Trade means the each period of time during the Permit Period and Times of Access that the Permittee's Business is open or trading.

Permit means this permit granted by the Responsible Authority to the Permittee.

Permit Area means the area described in item 8 of Schedule 1.

Permit Fee means the amount set out in item 12 of Schedule 1.

Permit Period means the period set out in item 11 of Schedule 1.

Permitted Purpose means the purpose set out in item 9 of Schedule 1.

Permittee means the person or persons named in item 3 of Schedule 1.

Permittee's Business means the business which the Permittee operates from or at the Permit Area.

Permittee's Members and Agents means any one or more of the members, officers, employees, agents, contractors, subcontractors, guests, patrons and invitees of the Permittee.

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

Relevant Legislation means the legislation specified in item 5 of Schedule 1.

Responsible Authority means the party named in item 1 of Schedule 1 and includes the Responsible Authority's successors and assigns and where it is consistent with the context includes the Responsible Authority's employees and agents.

Review Date means the date(s) if any specified in item 13 of Schedule 1.

Security Deposit means the amount (if any) set out in item 14 of Schedule 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 15 of Schedule 1.

2. Interpretation

2.1 In this Permit, 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 Permit;

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 Permit prohibits the Permittee from doing a thing, the Permittee must:

2.2.1 ensure the Permittee'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 Permit requires the Permittee to do a thing, the Permittee must ensure that, if applicable, the Permittee's Members and Agents do that thing.

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

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

3. Manager

Without limiting any other provision of this Permit, the Permittee covenants and agrees that where the Manager is not the Responsible Authority:

3.1 any right, power or authority vested in the Responsible Authority under this Permit shall be treated by the Permittee as a right, power and authority of the Manager; and

3.2 any lawful direction of the Manager must be complied with or otherwise treated as a direction of the Responsible Authority;

3.3 any requirement to comply with the Responsible Authority's emergency plan(s) for the Permit Area and the Park, shall extend to include the Manager's emergency plan(s) for the Permit Area and the Park; and

3.4 any requirement upon the Permittee to indemnify or release the Responsible Authority, or note the interests of the Responsible Authority on its public liability policy, shall extend to include the Manager and the Manager's officers, employees and agents, as if a reference to the Responsible Authority were a reference to the Manager.

4. Minister

Without limiting any other provision of this Permit, where the Minister is not the Responsible Authority, any requirement upon the Permittee to indemnify or release the Responsible Authority, or note the interests of the Responsible Authority on its public liability policy, shall extend to include the Minister and the Minister's officers, employees and agents, as if a reference to the Responsible Authority were a reference to the Minister.

5. Permit

5.1 The Responsible Authority grants the Permittee the right to use the Permit Area subject to:

- 5.1.1 the terms and conditions contained in this Permit;
- 5.1.2 all encumbrances affecting the Permit Area;
- 5.1.3 any reservations in this Permit;
- 5.1.4 the right of the Responsible Authority to:
 - (a) determine all areas of access to and egress from the Permit Area; and
 - (b) close access to the Permit Area and the Park in an emergency as may be necessary for the Responsible Authority to carry out its statutory functions;
 - (c) restrict or prevent access to the Park or the Permit Area for such time as the Responsible Authority considers necessary in connection with a Major Event;
 - (d) conduct, or authorise any other person to conduct works in or about the Permit Area or Park, which may be of a temporary or permanent nature carry out;
- 5.1.5 the rights of the public in relation to the Park and areas adjacent to the Permit Area;
- 5.1.6 the condition precedent that the Permittee complies with the obligations under clauses 6.1, 7.1, 14.1, 14.2 and 14.3; and
- 5.1.7 the provisions of the Relevant Legislation.

5.2 The Responsible Authority grants the Permittee the right to use in common with the Responsible Authority and other persons from time to time permitted by the Responsible Authority, those parts of the Park reasonably required by the Permittee for access to the Permit Area.

5.3 The Permittee acknowledges that power, water, sewerage and gas services are not provided or available at the Permit Area unless the Responsible Authority expressly confirms in writing that a specified service is available.

5.4 This Permit is personal to the Permittee and may not be assigned. Where the Permittee is a corporation, the Permittee 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 Responsible Authority.

6. Permit Fee

6.1 If the Permit Period:

6.1.1 is 1 year or less, the Permit Fee is payable by the Permittee in full before the commencement of the Permit Period; and

6.1.2 is more than 1 year the Permit Fee is payable annually in advance before the commencement of the Permit Period and each anniversary of the commencement of the Permit Period.

6.2 The Permit Fee is subject to a review on each Review Date in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

A is the Permit Fee payable from the relevant Review Date;

B is the Permit Fee payable immediately prior to the relevant Review Date;

C is the CPI last published for the quarter immediately before the relevant Review Date; and

D is the CPI last published the quarter immediately before the preceding Review Date, or where there has not been a Review Date, the quarter immediately preceding the commencement of the Permit Period.

7. Security Deposit

7.1 As security for the use of the Permit Area and performance of the Permittee's obligations under this Permit, the Permittee must pay the Security Deposit to the Responsible Authority before the commencement of the Permit Period.

7.2 The Responsible Authority may use the Security Deposit to make good the cost of remedying breaches of the Permittee's obligations under this Permit or to recover any loss that the Responsible Authority suffers from the Permittee's default.

7.3 If the Security Deposit, or any part of it, is used by the Responsible Authority under this clause then the Permittee must, within 14 days of written request, replace the Security Deposit, or that portion of it used.

7.4 The Responsible Authority will refund the unused part of the Security Deposit (if any) to the Permittee within 30 days of the expiry or earlier termination of this Permit.

8. Interest

The Permittee must pay interest on any overdue monies payable to the Responsible Authority, 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.

9. Use of Permit Area

- 9.1 The Permittee must only use the Permit Area for the Permitted Purpose.
- 9.2 The Permittee must maintain and observe and ensure that the Permittee's staff maintain and observe the highest standards of professionalism, hygiene, courtesy and efficiency in the conduct of the Permittee's Business and act so as to maintain and promote the Permittee's Business, and must comply with and observe the Responsible Authority's reasonable directions with a view to achieving those standards.
- 9.3 The Permittee shall have access to the Permit Area during the Times of Access throughout the Permit Period unless otherwise expressly provided in this Permit.
- 9.4 The Permittee must immediately notify the Responsible Authority if an accident or incident occurs on the Permit Area which results in injury or death of persons or environmental damage or pollution or damage to property.
- 9.5 The Permittee must not:
- 9.5.1 except in quantities necessary for the Permitted Purpose, bring on to the Permit Area any flammable, volatile or explosive oil or dangerous substance without the consent of the Responsible Authority;
 - 9.5.2 bring on to the Permit Area any alcoholic or intoxicating beverage or liquor;
 - 9.5.3 sell or provide in the Permit Area any goods or services which the Responsible Authority notifies the Permittee are considered inappropriate or unsuitable in the Responsible Authority's absolute discretion;
 - 9.5.4 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 Permit Area or Park (unless otherwise agreed in writing by the Responsible Authority);
 - 9.5.5 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;
 - 9.5.6 do anything which might affect any insurance policy relating to the Permit Area by causing it to become void or voidable or having any claim on it being rejected or by causing any premium payable by the Responsible Authority to be increased;
 - 9.5.7 make any structural or other alterations to, or otherwise interfere with or move, any services, fixtures, fittings or other improvements at the Permit Area (excluding the Permittee's own property) without the consent in writing of the Responsible Authority; or
 - 9.5.8 drive, move or park any vehicle on anything other than a roadways or designated parking area without the prior written consent of the Responsible Authority.
- 9.6 The Permittee must ensure that all employees, staff, agents, and contractors of the Permittee are competent and suitably qualified to perform their functions and roles.
- 9.7 The Permittee must take every reasonable precaution to prevent aboriginal cultural heritage items in the Park being damaged and immediately notify the Responsible Authority of the discovery of any aboriginal cultural heritage item.

10. Equipment

- 10.1 The Permittee must not bring any equipment on to the Permit Area apart from the equipment specified at item 10 of Schedule 1 without the prior written consent of the Responsible Authority.
- 10.2 Any approved equipment must only be placed in the location within the Permit Area approved by the Responsible Authority from time to time.
- 10.3 Any approved equipment and other materials brought into the Permit Area or Park by the Permittee must be removed from the Permit Area and Park after each Period of Trade (unless otherwise agreed in writing by the Responsible Authority).
- 10.4 The Permittee must erect, operate and dismantle any equipment required for the Permitted Purpose at the Permit Area in a competent manner without negligence and without causing any nuisance.
- 10.5 The Permittee must ensure:
- 10.5.1 that all electrical equipment brought into the Park by the Permittee has been tested and certified as safe by a qualified electrician and tagged accordingly;
 - 10.5.2 subject to clause 10.5.3, 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
 - 10.5.3 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 10.5.2 as is necessary for safety and otherwise in accordance with Australian Standards, laws or regulations.

11. Waste management, cleaning and repair

- 11.1 The Permittee must keep the Permit Area and immediate surrounding parts of the Park tidy and free from rubbish that is caused by or incidental to the operation of the Permittee's Business.
- 11.2 The Permittee must provide an adequate number of appropriately designed rubbish bins at the Permit Area to service the needs of patrons of the Permittee's Business. The Permittee's bins and all collected rubbish must be removed from the Permit Area and Park after each Period of Trade. The Permittee must not dispose of refuse in any bins provided by the Responsible Authority within the Park for public use.
- 11.3 The Permittee 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.
- 11.4 The Permittee must promptly repair any damage to the Permit Area or to the Park to the extent caused or contributed to by the act, omission or default of the Permittee or the Permittee's Members and Agents.
- 11.5 The Permittee must carry out repairs within 14 days of being served with a written notice of any defect or lack of repair which the Permittee is obliged to make good under this Permit. If the Permittee does not comply with the notice, the Responsible Authority may carry out the repairs and the Permittee must repay the cost of such repairs to the Responsible Authority on demand.

12. Compliance with Laws and directions

- 12.1 The Permittee must comply with all Laws, including Occupational Health and Safety Laws, and codes of practice, concerning the Permit Area and the use of the Permit Area.
- 12.2 The Permittee must obtain the prior written consent of the Responsible Authority before applying for any licence, permit or consent (including liquor licences or BYO permits) for the Permit Area.
- 12.3 Subject to clause 12.2, the Permittee must obtain at its expense all necessary permits, licences, approvals, consents and authorities required for the Permitted Purpose 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. The Permittee must provide the Responsible Authority with a copy of any consent or permit upon request and must immediately notify the Responsible Authority of any suspension, cancellation or revocation of any consent or permit.
- 12.4 If the Responsible Authority consents to the Permittee's application for any licence, permit or consent under the *Liquor Control Reform Act 1998 (Vic)*, the Permittee must comply with all requirements of the Responsible Authority including signing any future agreement containing additional covenants on the part of the Permittee to be performed and observed.
- 12.5 The Permittee must promptly give the Responsible Authority a copy of any summons, conviction or notification given under any Law concerning the Permitted Purpose.
- 12.6 The Permittee must comply with all reasonable requests or directions given by the Responsible Authority in relation to the management, safety, care or cleanliness of the Permit Area or Park or users of the Permit Area or Park including the provision of any information or documentation reasonably requested and must meet with the Responsible Authority upon request including to discuss emergency management arrangements.

13. Responsible Authority's rights

- 13.1 The Permittee acknowledges and agrees that the Responsible Authority may at any time during the Permit Period do any works or things at or on any part of the Park, including closing or restricting access to the Park or Permit Area, in connection with a Major Event or that it is required to do:

13.1.1 by law;

13.1.2 to ensure the Permittee's obligations are performed or carried out, after due notice to the Permittee as provided in this Permit;

13.1.3 to protect the Park, or services, fixtures, fittings or other improvements within the Park from damage or destruction or to protect the integrity of water supplies or water supply assets;

13.1.4 to protect public safety including by closing the Park on a day of very high, severe, extreme or code red (catastrophic) fire danger rating; or

13.1.5 because of an emergency,

and the Permittee 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.

13.2 Without limiting any other provision of this Permit, the Permittee acknowledges and agrees that the Responsible Authority may enter the Permit Area at any time for the purpose of checking whether the Permittee's obligations are being performed and to check the condition of the Permit Area.

14. Insurance

14.1 The Permittee must effect and maintain throughout the Permit Period with an insurer approved by the Responsible Authority, 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:

14.1.1 a public, and if relevant, products liability insurance policy for not less than the amount stated in item 16 of Schedule 1 (or any greater amount required by the Responsible Authority) (**Policy**) in respect of any single claim arising out of the activities of the Permittee, 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

14.1.2 a workers' compensation policy (if required by law) which covers any damage, loss or liability suffered or incurred by any person engaged by the Permittee arising:

- (a) by virtue of any statute relating to workers' or accident compensation or employers' liability; and/or
- (b) at common law.

14.2 The Permittee must effect and maintain the Policy noting the interests of the Responsible Authority.

14.3 The Permittee must provide the Responsible Authority with:

14.3.1 a certificate of currency for the Policy which clearly confirms the requirements of clauses 14.1 and 14.2 have been complied with:

- (a) prior to the commencement of the Permit Period;
- (b) within 14 days of the renewal of the Policy throughout the Permit Period; and
- (c) at any other time upon request by the Responsible Authority;

14.3.2 evidence of confirmation of registration with the Victorian WorkCover Authority upon request by the Responsible Authority; and

14.3.3 a copy of the Policy upon request by the Responsible Authority.

14.4 The Permittee must promptly notify the Responsible Authority if:

14.4.1 an event occurs at the Permit Area which may give rise to a claim under or prejudice the Policy; or

14.4.2 the Policy is cancelled.

14.5 The Permittee must not do anything or allow anything to be done which may:

14.5.1 prejudice any insurance held in connection with the Permit Area; or

14.5.2 increase the premium payable for any insurance held in connection with the Permit Area.

14.6 The Permittee 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 Permit.

15. Release

15.1 The Permittee agrees that it:

15.1.1 has not relied upon any representation by or on behalf of the Responsible Authority concerning the Permit Area or its use;

15.1.2 is aware of all laws and legal requirements in relation to the Permit Area and the Permitted Purpose;

15.1.3 occupies and uses the Permit Area at its own risk; and

15.1.4 has inspected the Permit Area and is of the opinion that the Permit Area is safe and suitable for the activities of the Permittee.

15.2 The Permittee releases the Responsible Authority and the Responsible Authority's officers, employees and agents from:

15.2.1 all claims and demands resulting from any accident, damage, death or injury occurring at the Permit Area or any other area used by the Permittee or the Permittee's Members and Agents in connection with this Permit; and

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

as a direct or indirect result of the Permittee's or the Permittee's Members and Agents occupation and use of the Permit Area or any other area used by the Permittee or the Permittee's Members and Agents in connection with this Permit, except to the extent caused or contributed to by the negligence of the Responsible Authority or the Responsible Authority's officers, employees or agents.

16. Indemnity

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

- 16.1.1 the default of the Permittee or the Permittee's Members and Agents under this Permit;
 - 16.1.2 the Permittee's or the Permittee's Members and Agents use of the Permit Area or any other area used by the Permittee or the Permittee's Members and Agents in connection with this Permit; or
 - 16.1.3 loss, damage or injury to property or persons caused or contributed to by the act, omission, default or negligence of the Permittee or the Permittee's Members and Agents,
- except to the extent caused or contributed to by the negligence of the Responsible Authority or the Responsible Authority's officers, employees or agents.

16.2 Each indemnity in this Permit is a continuing obligation, separate and independent from the other obligations of the Permittee and survives expiry or termination of this Permit.

17. Breach of Permittee's obligations

- 17.1 The Permittee breaches this Permit if the Permittee fails to fulfil any of the Permittee's obligations as and when required, or if no time is prescribed, within a prompt and reasonable time.
- 17.2 The Permittee must pay or reimburse the Responsible Authority on request all reasonable costs incurred or payable by the Responsible Authority as a result of any breach of this Permit by the Permittee.
- 17.3 In the event of any breach of the Permittee's obligations, except in an emergency, the Responsible Authority must give the Permittee notice requiring the Permittee to remedy the breach within a reasonable time. If the Permittee fails to remedy or rectify the breach, the Responsible Authority may do any one or more of the following:
 - 17.3.1 exclude the Permittee from the Permit Area;
 - 17.3.2 end this Permit and any Permit Fee paid by the Permittee will be forfeited;
 - 17.3.3 recover from the Permittee any loss the Responsible Authority suffers due to the Permittee's breach; or
 - 17.3.4 exercise any of the Responsible Authority's other legal rights.

18. Immediate Termination of Permit

Where there is evidence of unruly behaviour, an emergency or a risk to any persons in or about the Permit Area associated with the Permittee's Business, or if the Permittee is in breach of clause 14, the Responsible Authority may terminate the Permit immediately by written notice to the Permittee and any Permit Fee paid by the Permittee will be forfeited.

19. Occupational health and safety and emergency evacuation

- 19.1 The Permittee acknowledges that occupational health and safety in relation to the Permit Area is the responsibility of the Permittee (other than to the extent the Responsible Authority cannot at law contract out of its obligations with respect to occupational health and safety).

- 19.2 The Permittee must, in relation to the Permit Area:
- 19.2.1 comply with, all Occupational Health and Safety Laws and any applicable Australian Standards;
 - 19.2.2 ensure that there is no risk to the environment or the health, safety and welfare of the Permittee and the Permittee's Members and Agents;
 - 19.2.3 without limiting clause 19.2.1, 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 Permitted Purpose;
 - 19.2.4 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;
 - 19.2.5 develop and implement an emergency evacuation and management plan for the operation of the Permitted Purpose; and
 - 19.2.6 as soon as practicable notify the Responsible Authority of any incident or dangerous occurrence at the Permit 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)*.
- 19.3 The Permittee must ensure that at all times its occupational health and safety plan:
- 19.3.1 complies with Australian Standard AS/NZ 4804-2001 (or other similar substitute standard);
 - 19.3.2 includes the Permittee's occupational health and safety policy;
 - 19.3.3 identifies the obligations of the Permittee's under the Occupational Health and Safety Laws;
 - 19.3.4 describes the practices that will be employed to secure the health, safety and welfare of persons at work; and
 - 19.3.5 identifies measures to eliminate risks to the health, safety and welfare of persons at work.
- 19.4 The Permittee must comply with the Responsible Authority's emergency plan(s) for the Permit Area and the Park and ensure that the Permittee's emergency evacuation and management plan and occupational health and safety plan does not conflict with the Responsible Authority's plan.
- 19.5 The Permittee must comply with all directions of the Responsible Authority in an emergency, even if such direction contradicts the Permittee's emergency evacuation and management plan.
- 19.6 The Permittee must on a day of very high, severe, extreme or code red (catastrophic) fire danger rating applicable to the Park or otherwise as directed by the Responsible Authority immediately leave the Permit Area and Park without delay.

20. Goods and Services Tax

- 20.1 The consideration payable by any party under this Permit is the GST exclusive amount of the Taxable Supply for which payment is to be made.
- 20.2 Subject to clause 20.4, if a party makes a Taxable Supply in connection with this Permit 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.
- 20.3 Where this Permit 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.
- 20.4 A party's right to payment under clause 20.2 is subject to a Tax Invoice being delivered to the party liable to pay for the Taxable Supply.

21. Miscellaneous provisions

21.1 Notices

21.1.1 Any notice, approval or consent required to be served or given under this Permit:

- (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 Permit or such other address as is notified in writing by that party to the other party from time to time.

21.1.2 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.

21.2 Waiver or variation

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

21.3 Remedies cumulative

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

22. Guarantor

22.1 In consideration of the Responsible Authority entering into this Permit with the Permittee at the Guarantor's request, the Guarantor:

22.1.1 guarantees that the Permittee will perform all its obligations under this Permit;

22.1.2 must pay the Responsible Authority on demand any money owing to the Responsible Authority by the Permittee; and

22.1.3 indemnifies the Responsible Authority against all loss resulting from the Responsible Authority having entered into this Permit, whether from the Permittee's breach of any provision of this Permit, or from this Permit being or becoming unenforceable against the Permittee.

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

22.2.1 the Responsible Authority granting the Permittee or any Guarantor any time or other indulgence;

22.2.2 the Responsible Authority agreeing not to sue the Permittee or any Guarantor; and

22.2.3 any variation of this Permit.

22.3 The Guarantor agrees:

22.3.1 not to seek to recover any money from the Permittee by way of reimbursement for payments made by the Guarantor to the Responsible Authority until the Responsible Authority has been paid in full;

22.3.2 not to prove in the bankruptcy or winding up of the Permittee for any amount which the Responsible Authority has demanded from the Guarantor until the Responsible Authority has been paid in full; and

22.3.3 to pay the Responsible Authority any money which the Responsible Authority is required to refund to the Permittee's liquidator or trustee in bankruptcy as preferential payments received from the Permittee.

23. Native Title Act 1993 (Cth)

23.1 If the Permittee proposes to carry out an act which is a 'future act' within the meaning of the *Native Title Act 1993* (Cth) (NTA) then the Permittee must immediately notify the Responsible Authority and shall not carry out any such action until those persons as are required to be notified under the NTA of the intention to carry out the future act have been notified and any response considered.

23.2 If the Permittee fails to comply with clause 23.1, the Responsible Authority shall not in any way be deemed to have authorised such failure to comply and the Permittee shall indemnify the Responsible Authority against any claim made against or compensation sought from the Responsible Authority as a result of the Permittee's failure to comply.

23.3 In the event that those persons as are required to be notified under the NTA of the intention to carry out the future act have been notified or a native title claim is made in relation to the Park or the Permit Area or any part thereof the Responsible Authority shall not be liable for the consequences of the notification or subsequent processes nor to pay the Permittee any compensation if the Permittee's use of the Permit Area or any other right or interest of the Permittee under this licence is affected or prejudiced as a result of that notification or claim.

24. *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*

24.1 The Permittee must comply with any declaration, and any conditions made in or pursuant to such declaration, under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)* (**ATSIHPA**) in relation to the Park or the Permit Area or any part thereof.

24.2 In the event that a declaration is made under the ATSIHPA, the Responsible Authority shall not be liable to pay the Permittee any compensation if the Permittee's use of the Permit Area or any other right or interest of the Permittee under this licence is affected or prejudiced as a result of that declaration.

24.3 If the Permittee proposes to carry out any act which requires the consent of the local Aboriginal community, within the meaning of the ATSIHPA, or the Minister, under section 21U of the ATSIHPA, the Permittee must, prior to carrying out such act, contact the Responsible Authority who must use its reasonable endeavours to obtain the necessary consent or permit pursuant to section 21U of the ATSIHPA. The Permittee must not carry out any such act until the necessary consent or permit has been obtained.

24.4 If the Permittee fails to comply with any requirement under the ATSIHPA in relation to the Permit Area or the Park, the Responsible Authority shall not in any way be deemed to have authorised such failure to comply and the Permittee shall indemnify the Responsible Authority against any action taken or claim made against the Responsible Authority as a result of the Permittee's failure to comply.

25. *Aboriginal Heritage Act 2006 (Vic)*

25.1 If the Park or the Permit Area or any part thereof is an Aboriginal place within the meaning of the *Aboriginal Heritage Act 2006 (Vic)* (**AHA**) the Permittee must not enter that Aboriginal place until the Permittee has obtained the necessary permit pursuant to section 40 of the AHA and provided a copy of the permit to the Responsible Authority.

25.2 If the Permittee proposes to carry out any act which requires a cultural heritage permit or a cultural heritage management plan (as those terms are defined in the AHA), the Permittee must, prior to carrying out such act, contact the Responsible Authority and must obtain the necessary cultural heritage permit or approved cultural heritage management plan. The Permittee must not carry out any such act until the necessary cultural heritage permit or approved cultural heritage management plan has been obtained.

25.3 If the Permittee identifies or discovers an Aboriginal object, an Aboriginal place or Aboriginal human remains (as those terms are defined in the AHA), the Permittee must report the discovery to the Responsible Authority and to such persons as are required under sections 17 and 24 of the AHA as soon as the identification or discovery is made.

26. Environment Protection and Biodiversity Conservation Act 1999 (Cth)

26.1 If the Permittee proposes to take an action, which is an 'action' within the meaning of Part 3 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBCA)*, then the Permittee must immediately notify the Responsible Authority in writing and must not carry out any such action until any necessary approvals are obtained by the Permittee under Part 9 of the EPBCA, at the Permittee's expense.

26.2 The Permittee must comply with any requirements under the EPBCA in respect of the Permittee's use of the Permit Area at the Permittee's expense.

26.3 If the Permittee fails to comply with clauses 26.1 and 26.2, the Responsible Authority shall not in any way be deemed to have authorised or assisted such failure to comply regardless of any action taken by the Responsible Authority and the Permittee shall indemnify the Responsible Authority against any claim made against or compensation sought from the Responsible Authority as a result of the Permittee's failure to comply.

26.4 In the event that the Permittee is unable to obtain approval for a proposed action within the meaning of the EPBCA or is in breach of the EPBCA, the Responsible Authority shall not be liable to pay the Permittee any compensation if the Permittee's use of the Permit Area or any other right or interest of the Permittee under this licence is affected or prejudiced as a consequence.

27. Minister's Consent

27.1 This clause 27 will only apply where the Relevant Legislation is section 17B(1) of the *Crown Land (Reserves) Act 1978*.

27.2 The Permittee acknowledges and agrees that:

27.2.1 under the provisions of the Relevant Legislation the consent of the Minister to this Permit is required;

27.2.2 this Permit shall be conditional upon the consent of the Minister being obtained by the Responsible Authority; and

27.2.3 if the Minister's consent is not granted, the Responsible Authority may at any time before the Minister's consent is granted, immediately terminate this Permit by notice to the Permittee. In that event, the Permit Fee must be refunded.

28. Melbourne Water

28.1 In this clause Melbourne Water means Melbourne Water Corporation in its capacity as landlord under the lease between Parks Victoria and Melbourne Water Corporation dated 1 January 2009 (**Lease**) which expires on 31 December 2018, and where the context so admits, its authorised officers.

- 28.2 This clause 28 will only apply where the Permit Area is within the area leased or licensed by the Responsible Authority pursuant to the Lease.
- 28.3 Despite any other provision of this Permit, the Permittee must not install any signage without the prior approval of Melbourne Water, as this is a requirement of the Lease.
- 28.4 Melbourne Water shall be entitled to exercise the rights of the Responsible Authority set out in clause 13.
- 28.5 Without limiting any other provision of this Permit, any requirement upon the Permittee to indemnify or release the Responsible Authority, or note the interests of the Responsible Authority on its public liability policy, shall extend to include Melbourne Water and its officers, employees and agents, as if a reference to the Responsible Authority were a reference to Melbourne Water.

29. Privacy Legislation

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

- 29.1 collected for the purposes of entering into and administering this Permit; and
- 29.2 may be disclosed to the following:
- 29.2.1 the Auditor-General if the Responsible Authority is audited pursuant to any requirement of any Act of Parliament or regulation or authority;
 - 29.2.2 any local authority or other relevant authority in order to update their records as to occupation of the Permit Area;
 - 29.2.3 the Responsible Authority's legal advisors, financial consultants or consultants in relation to reviewing the Permittee's performance under this Permit or providing advice in relation to this Permit;
 - 29.2.4 any third party as required by any Act of Parliament or regulation; and
 - 29.2.5 any other third party with the Permittee's consent.

30. Disclosure and Freedom of Information

Despite any provision in this Permit to the contrary, the Permittee acknowledges and agrees that:

- 30.1 the Responsible Authority retains the right to publish this Permit (in whole or in part), subject to information deemed by the Responsible Authority to be commercial-in-confidence, on its website or other online medium accessible by the general public; and
- 30.2 any information passed between the parties, may be required to be released by the Responsible Authority 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
- 30.3 it must, at its own cost and expense, use its best endeavours to assist the Responsible Authority in meeting its Public Disclosure Obligations.

31. Prohibited Gifts

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

- 31.1 has offered an inducement, gift or other benefit (directly or indirectly) to any officer or employee of the Responsible Authority; or
- 31.2 will offer an inducement, gift or other benefit (directly or indirectly) to any officer or employee of the Responsible Authority.

Signing page

**delete this clause if Parks Victoria is the Responsible Authority or if Parks Victoria has been delegated the power to execute the Permit on behalf of the Minister

Signed by the Hon. Lily D'Ambrosio MP the Minister for)
Energy, Environment and Climate Change in the)
presence of:)

.....
Signature of witness

.....
Name of witness

**delete this clause if the Minister is executing the Permit or if Parks Victoria is the Responsible Authority

Signed under delegation from the Minister for)
Energy, Environment and Climate Change by the)
authorised officer for **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

Use when Execution clause where Permittee is a person

SIGNED by)
In the presence of:)

.....
Signature of Permittee

.....
Witness

.....
Dated

Execution clause where Permittee is a corporation

EXECUTED by

.....
[Name of Permittee 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

1. **Responsible Authority:** **##EITHER** Minister for Energy, Environment and Climate Change of Level 17, 8 Nicholson Street, East Melbourne, VIC 3002
##OR Parks Victoria of Level 10, 535 Bourke Street, Melbourne, VIC 3000
delete as necessary]
2. **Manager:** **Contact person:** **## insert**
Address: Parks Victoria of Level 10, 535 Bourke Street, Melbourne, Vic, 3000
Ph: 13 19 63
3. **Permittee:** **Name:**
Contact person:
Address:
Ph:
Fax:
4. **Guarantor:**
5. **Relevant Legislation:** **## insert section and name of Act]**
6. **Purpose of Reservation:** **##EITHER** insert if CLRA e.g. "Reserved for the purpose of ## by an order in council dated ## and published in the Victorian Government Gazette on ##"
##OR (if not CLRA) Not applicable
delete as necessary]
7. **Park:**
8. **Permit Area:**
9. **Permitted Purpose:**
10. **Equipment:**
11. **Permit Period:**
12. **Permit Fee:** Inclusive of GST
13. **Review Date:** Each anniversary of the commencement of the Permit Period where the Permit Period is greater than one year

14. **Security Deposit:**

15. **Times of Access:**

16. **Public Liability Insurance:** Twenty million dollars (\$20,000,000.00)

17. **Special Conditions:**

17.1.

Menu

- 17.1.1. The Permittee's menu for the Permittee's Business (**Menu**) must be approved in writing by the Responsible Authority prior to the commencement of the Permit Period.
- 17.1.2. The Permittee must only sell the Menu items approved by us from time to time.
- 17.1.3. The Permittee may only vary the Menu with the prior written approval of the Responsible Authority. The Responsible Authority shall not unreasonably withhold its approval if the Menu as varied provides the same range, style and type of items as comprised the Menu prior to the variation. However, the Permittee must comply with any reasonable directions of the Responsible Authority in regard to the variation in the Menu.
- 17.1.4. The Permittee must provide a minimum of two (2) menu (food) items that meet the 'green' or 'amber' classification described in the Victorian Government's Healthy Choices: food and drink classification guide 2016.
- 17.1.5. The Permittee must ensure that at least 50% of the drinks displayed for sale meet the 'green' or 'amber' classification described in the Victorian Government's Healthy Choices: food and drink classification guide 2016 (**Healthy Choices Guide**).
- 17.1.6. The Permittee must have bottled water available for purchase at all times.

17.2.

Prohibited Items and advertising

- 17.2.1. Without limiting clause 9 or special condition 17.1.2, the Permittee is strictly prohibited from offering for sale alcohol or cigarettes at any time.
- 17.2.2. The Permittee is strictly prohibited from displaying any marketing or advertising material without first obtaining the approval of the Responsible Authority and any advertising material must relate to the permittee's Business or approved Menu items.

17.3.

Monthly Reports

The Permittee must provide the Responsible Authority with a monthly report identifying during the preceding month of operations:

- 17.3.1. gross revenue that the Permittee receives for the provisions of services or the sale of goods from within the Permit Area which must be itemised within the categories of 'green' or 'amber' or 'red' classification described in the Healthy Choices Guide (if applicable) or such other categories as are reasonably requested by the Responsible Authority from time to time;
- 17.3.2. expenses including stock, equipment, advertising, staff wages which if requested must be itemised within such categories as are reasonably requested by the Responsible Authority from time to time;
- 17.3.3. number of transactions;
- 17.3.4. postcode of patrons; and
- 17.3.5. any other details reasonably requested by the responsible Authority from time to time.

17.4.

Revenue

The Permittee must within 60 days of each anniversary of the commencement of the Permit Period, or (if earlier) within 60 days of the end of the Permit Period, provide a statement of revenue and expenditure attributable to the Permittee's Business (**Statement**) for the period since the last Statement or, where there has not been a previous Statement, since the commencement of the Permit Period, accompanied by an audit report prepared by an independent accountant stating that in his or her opinion the Statement fairly presents the revenue and expenditure attributable to the Permittee's Business during the relevant period.

Annexure A

Plan

See attached

MINISTER'S CONSENT

Under section 17B of the *Crown Land (Reserves) Act 1978*

I, _____ hereby:

- consent to the grant of this Permit.
- approve the covenants, exceptions, reservations and conditions contained herein.
- am satisfied that the purpose for which the Permit is being granted is not detrimental to the purpose for which the land is reserved.

Signature

Position

OR delete if not applicable

MINISTER'S DETERMINATION

Under section 21 of the *National Parks Act 1975*

I, _____ (full name) hereby:

- confirm I have determined and consented to the terms, conditions, fees and charges in relation to this Permit.

.....
Signature

.....
Position