

## Berthing Agreement

THIS BERTHING AGREEMENT (Agreement) is made and entered into as of 7 JUNE, 2023, by and among the Municipality of Skagway Borough, a borough organized under the laws of the State of Alaska (Skagway) and ALASKAN DREAM CRUISE (Cruise Company). Skagway and Cruise Company are hereinafter sometimes collectively referred to as Parties and each a Party.

### I. RECITALS

1. Skagway is the owner of two large-vessel cruise berths and one small-vessel cruise berth located at its waterfront in Skagway, Alaska (Broadway Dock, Ore Dock, and Ferry Float, respectively) (Port of Skagway Terminal); and
2. Cruise Company, for itself, and its Affiliated Lines (defined below), wishes to secure, and Skagway is willing to grant, the right to operate from and berth their vessels at the Port of Skagway Terminal as provided herein.

NOW THEREFORE for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

### II. AGREEMENT

1. **Term.** This Agreement shall be effective for the 2023 and 2024 cruise seasons, unless terminated earlier pursuant to any provision hereof (Term). The typical cruise season for the Port of Skagway Terminal runs from early-to-mid April through mid-to-late October of each calendar year.
2. **Berthing Rights.**

2.1 Scheduling. Scheduling of cruise berth days at the Port of Skagway Terminal's Ferry Float facility for the 2023 and 2024 cruise season is to be completed by the Skagway Small Boat Harbor's Harbor Master. Scheduling of cruise berth days at the Port of Skagway Terminal Ore and Broadway docks for the 2023 cruise season has been completed by agreement between Cruise Line Agencies of Alaska (CLAA) on behalf of Cruise Company and Skagway. Skagway and Cruise Company agree that CLAA may schedule Cruise Company's 2024 cruise berth days at the Port of Skagway Terminal subject to Skagway's approval of the schedule proposed by CLAA.

2.2 Cruise Berth Days. Each of Skagway's three cruise berths are generally available for use Sunday through Saturday, April 15 through October 15, unless previously scheduled for use. Unless otherwise specifically agreed, only one cruise vessel may utilize each berth on any day. As used herein, each day of the week during the cruise season for each cruise berth at the Port of Skagway Terminal is referred to as a "cruise berth day". For example, each Sunday during the cruise season for a particular berth

is considered a cruise berth day; each Monday during the cruise season for a particular berth is considered a cruise berth day, etc.

### **3. Operation and Maintenance of Port of Skagway Terminal By Skagway**

3.1 General Standard. Subject to the terms of this Agreement, Skagway shall, throughout the Term of this Agreement, ensure that the Port of Skagway Terminal and ancillary Skagway facilities are maintained and operated consistent with good maritime practices and industry standards for a functional cruise vessel terminal and otherwise as necessary to ensure the Port of Skagway Terminal is able to be utilized by the Cruise Company for its intended purpose.

3.2 Port of Skagway Tariff No. 3. To ensure safe and efficient use of the Port of Skagway Terminal and facilities, and to establish the rates, terms, and conditions provided through the Port of Skagway for public broadcast to Port users, Skagway has adopted, and through the terms of this Agreement, will maintain Tariff No. 3. Skagway reserves the right to periodically update or amend Tariff No. 3 for the safe and efficient operations of the Port. Tariff No. 3 is hereby incorporated by reference into this Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of Tariff No. 3, the terms and conditions of this Agreement shall control.

3.3 Reservation of Secondary Use. Cruise Company's berthing rights set forth under Section 2 of this Agreement are nonexclusive, and Skagway reserves the right of secondary use of all or any part of the Port of Skagway Terminal for any purpose, including without limitation for berthing of vessels operated by companies, other than Cruise Company, for embarking and disembarking passengers, loading and discharging cargoes of such vessels, for transporting cargo, and for cargo storage and operations incidental thereto, provided that such secondary use of the Port of Skagway Terminal by Skagway shall not unreasonably interfere with Cruise Company's operations as authorized in this Agreement. In the event of such secondary use by Skagway, all applicable charges shall accrue to the benefit of and shall be billed and retained by Skagway.

### **4. Responsibilities of Cruise Company**

4.1 General Rule. Subject to the terms of this Agreement, Cruise Company shall, throughout the Term of this Agreement, operate in a manner consistent with good maritime practices and industry standards and to be a good steward to the Port.

4.2 Port of Skagway Tariff No. 3. For the Term of this Agreement, Cruise Company agrees to comply with the current terms, unless a revision is necessary for the safe or efficient operation of the Port, and conditions set forth in the Port of Skagway Tariff No. 3 (Tariff No. 3).

**4.3 Shoreside and Passenger Services.** For the Term of this Agreement, Cruise Company may utilize Port of Skagway Terminal facilities, but it is the responsibility and liability of Cruise Company to arrange stevedoring, tugboat, passenger loading and unloading, security and any other services necessary for the safe docking of ships and movement of passengers to and from the ships. When needed, the Small Boat Harbor may provide security services to vessels docked at the Port of Skagway Terminal's Ferry Float, in compliance with municipal code and Port of Skagway Tariff No. 3.

**4.4 3<sup>rd</sup> Party Contracts/ Port Agents.** For the Term of this Agreement, in the event Cruise Company requires the services of a 3<sup>rd</sup> party entity for necessary services identified in section 4.3, Cruise Company is responsible for the contracting of these services and may be held liable for the actions and/ or negligence of any 3<sup>rd</sup> Party contractor or Port Agent providing services within the Port of Skagway on behalf of the Cruise Company.

**4.5 Safety and Environmental Stewardship.** For the Term of this Agreement, Cruise Company agrees to comply with Municipality of Skagway and Port of Skagway codes, rules, and standards applicable to passenger cruise operators including, without limitation, those established to ensure the Port of Skagway Terminal is operated in a safe, efficient, and environmentally-sound manner. For the Term of this Agreement, the Cruise Company shall not, while in the Port of Skagway, clean its hulls, discharge grey or black water, rinse vessel scrubbers, or discharge any harmful chemicals or materials.

## **5. Skagway Fees and Assessments.**

**5.1 General Rule.** For the Term of this Agreement, Cruise Company shall pay the Port of Skagway fees and assessments set forth in this Agreement and in Tariff No. 3. without protest, complaint, set off, or participation in any legal action challenging the legality of such fees. Such fees and assessments to include, without limitation, the following fees: (1) Vessel Impact Fee in accordance with Item 220 of Tariff No. 3; (2) Dockage Fee in accordance with Item 230 of Tariff No. 3; (3) Baseline Security Fee in accordance with Item 270 of Tariff No. 3; (4) Freshwater Service in accordance with Item 280 of Tariff No. 3; (5) Refuse Collection, as may be requested and approved, in accordance with Item 290C of Tariff No. 3; (6) Small Boat Harbor Commercial User Fee in accordance with Item 410 of Tariff No. 3; (7) any future fees that may not yet be listed within Tariff No. 3; and (8) any interest and penalty fees incurred by Cruise Company on fees listed previously.

**5.2 No New Fees or Assessments.** For the Term of this Agreement, Skagway shall not charge any new Port of Skagway fees or assessments other than: (1) those fees and assessments described above in Section 4.1; (2) those already existing, mandated, or collected by federal or state entities including, without limitation, the excise tax set forth under AS 43.52.200-.295; (3) those that may be added to or amended in Tariff

No. 3; and (4) reimbursable costs associated with new or additional services requested by the Cruise Company (the "Port Fees"). Notwithstanding the foregoing, Skagway may at any time (and without the consent of the Cruise Company) elect to discontinue its assessment and/or collection of any of the fees described in this Agreement.

**5.3 Recommendations for Future Capital Projects.** For the Term of this Agreement, Cruise Company may recommend, and Skagway may consider, future capital projects for municipal and private docks in use within the Port, in or for the benefit of the Port of Skagway including, without limitation, capital projects (1) to improve the Port of Skagway infrastructure, (2) to provide improved or additional services to vessels and their passengers, or (3) to improve the safety and efficiency of interstate and foreign commerce.

**5.4 Accounts, Billing and Returns.** Skagway will direct bill to Cruise Company fees, charges, penalties, and interest incurred by the Cruise Company for services received from Skagway with the terms outline in Tariff No. 3. The Cruise Company is responsible for remitting a complete Vessel Impact Fee, and if applicable Sales Tax and/or Commercial User Fee return form(s) to Skagway with applicable fees, interest, penalties and discounts included by the end of the month following the month in which the visit ended. The Cruise Company must provide preferred, specific billing contact information and addresses to Skagway for each of its affiliate lines and ships, as applicable. Skagway is not responsible for the billing to the Cruise Company of services rendered by third-party entities to the Cruise Company. Cruise Company will work directly with third-party entities to establish their billing process.

**6. No Minimum Passenger Guarantees.** For the Term of this Agreement, the Parties agree that there shall be no minimum passenger guarantees given by Cruise Company or any of its Affiliated Lines.

**7. Other Benefited Parties.**

**7.1 Affiliated Lines.** The Parties specifically agree that the Cruise Company may satisfy their obligations under this Agreement through vessels owned or operated by: (i) \_\_\_\_\_ and/or (ii) any other operating line(s) which are direct or indirect affiliates of \_\_\_\_\_ (the Affiliated Lines). Likewise, the Affiliated Lines shall, when making use of the Port of Skagway Terminal, be entitled to all benefits of Cruise Company hereunder.

**7.2 No Other Assignment.** The benefits provided under this Agreement are personal to the Cruise Company and its Affiliated Lines and shall not, in whole or in part, be assigned, licensed, or otherwise transferred. The prohibition against assignment, license, or transfer specifically includes a prohibition against any assignment, license, or transfer by operation of law.

## **8. Insurance and Indemnification**

8.1 Insurance. The Cruise Company shall provide Skagway evidence of commercial general liability insurance against claims for bodily injury, personal injury, and property damage arising out of the use, occupancy, or maintenance of the Port of Skagway Terminal and all areas appurtenant thereto as defined in this Agreement. Coverage shall be for no less than TEN MILLION AND 00/100 DOLLARS (\$10,000,000.00) per occurrence, provided that such limits may be obtained using a combination of primary and excess coverage.

8.1.1 The Cruise Company shall provide Skagway evidence of protection and indemnity (P&I) insurance against claims for loss of life, injury, illness, property damage including from watercrafts, as well as coverage for marine pollution, wreck removal, and legal expenses that arise out of the use, occupancy, or maintenance of the Port of Skagway Terminal and all areas appurtenant thereto as defined in this Agreement. The policy shall be written on Marine Form SP 38, SP 23, or its equivalent for no less than TEN MILLION AND 00/100 DOLLARS (\$10,000,000.00) per occurrence, per vessel. Skagway shall be added as an Additional Insured on this policy. Company shall defend and indemnify the Port of Skagway in accordance with the provisions of Clause 8.2.

8.1.2 Waiver of Subrogation. Cruise Company hereby grants to Skagway a waiver of any right to subrogation which any insurer of Cruise Company may acquire against Skagway by virtue of the payment of any loss under such insurance. Cruise Company agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not Skagway has received a waiver of subrogation endorsement from the insurer.

8.1.3 The Cruise Company is responsible for ensuring that it meets any and all applicable insurance requirements contained within the laws and regulations of the State of Alaska and, if applicable, the insurance requirements that pertain to the United States Longshore and Harbor Worker's Compensation Act and the Jones Act.

8.1.4 The Cruise Company shall furnish Skagway with an insurance certificate that shows evidence of all required insurance, including any deductibles or self-insured retention. The Cruise Company shall furnish Skagway with evidence of renewals or insurance binders evidencing renewal thereof as soon as practicable. In the event that Cruise Company does not renew its required insurance for General Liability and Protection & Indemnity and provides evidence of renewal in a reasonable time after renewal or within 14 days of a request by Skagway for evidence of renewal, Skagway may order such insurance and charge the cost thereof to the Cruise Company, which amount shall be payable by the Cruise Company to Skagway upon demand.

8.2 Indemnification. The Cruise Company shall indemnify, defend and hold harmless Skagway from liability, damages, and actions, of any kind and any nature, including

death, and including any and all environmental spill events or contamination events, and including all reasonable attorneys' fees, costs and expenses related to litigation, caused directly by Cruise Company's or its Affiliated Lines' use of the Port of Skagway. Neither of the Parties shall be liable to the other (whether under this indemnity provision or otherwise) for any consequential damages, special damages, or for any claims of lost business, loss of revenue, loss of income, or loss of business opportunities, under any circumstances in any way related to the subject matter of this Agreement.

**9. Other Terms.**

9.1 Notice. All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, or by recognized overnight courier addressed as follows:

To Skagway:  
Port of Skagway  
Municipality of Skagway  
Borough  
Attention: Port Director  
P.O. Box 415  
Skagway, Alaska 99840  
[c.jennings@skagway.org](mailto:c.jennings@skagway.org)

and with a copy to:  
Robin O. Brena, Esq.  
Anthony S. Guerriero, Esq.  
Brena, Bell & Walker, P.C.  
810 N Street, Suite 100  
Anchorage, Alaska 99501  
[rbrena@brenalaw.com](mailto:rbrena@brenalaw.com)  
[aguerriero@brenalaw.com](mailto:aguerriero@brenalaw.com)

To \_\_\_\_\_ :  
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and with a copy to:  
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or to such other respective addresses as any Party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (i) when personally delivered; (ii) on the third day after mailing when sent by certified or registered mail, and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (iii) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient. Parties providing a notice hereunder shall also provide a courtesy copy of the notice via email to the email addresses indicated above.

9.2 No Joint and Several Liability. Cruise Company and each Affiliated Line shall only be liable under this Agreement for any amounts payable under this Agreement that were directly incurred by Cruise Company or that Affiliated Line, as the case may be. It is understood that Cruise Company and each Affiliated Line shall have all of the benefits hereunder and shall be entitled to exercise any of the rights hereunder.

9.3 Captions. The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

9.4 Governing Law; Venue. This Agreement shall be construed under the laws of the State of Alaska. Exclusive jurisdiction and venue for any action relating hereto shall be in the Alaska state courts located in Juneau, Alaska, or federal courts located in Juneau, Alaska.

9.5 Attorneys' Fees. In the event that either Party shall be required to bring any action to enforce any of the provisions of this Agreement or shall be required to defend any action brought by the other Party with respect to this Agreement, and in the further event that one Party shall substantially prevail in such action, the non-prevailing Party shall, in addition to all other payments required therein, pay all of the prevailing Party's actual reasonable fees and costs in connection with such action, including such sums as the court or courts may adjudge as reasonable actual attorneys' fees.

9.6 Invalidity of Particular Provisions. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or enforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

9.7 Amendments. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by the Parties.

9.8 Conflicts or Inconsistencies. In the event the provisions of this Agreement conflict with or are inconsistent with any other Skagway agreement or Skagway requirement regarding use of the Port of Skagway Terminal, the provisions of this Agreement shall control.

9.9 Ethical Standards and Anti-Corruption. The Parties shall abide by their respective ethical standards and practices.

9.10 Default. Each of the following events shall be deemed an event of default under this Agreement and a breach of the terms, covenants and conditions of this Agreement. In case of failure on part of either parties to fulfill any obligations or requirements under this Agreement, either party may suspend or revoke this agreement. In this event, Cruise Company may lose berthing priority established through this agreement.

(a) A default in the payment of the fees and assessments due under this Agreement, or any part thereof, for a period of ten (10) days from the due date for the payment of such fees and assessments or additional sums.


(b) Except as provided in Section 9.10(a) above, a default in the performance of any other term, covenant or condition to be kept, performed or observed for a period of thirty (30) days after a Party gives a Party in default a written notice specifying the particular default or defaults; provided, however, that if such breach cannot reasonably be cured within thirty (30) days, the Party receiving such notice shall not be in default if it commences to cure such breach within said thirty (30) day period, diligently prosecutes such cure to completion, and completes such cure within one hundred eighty (180) days.

9.11 Hold Harmless. The Cruise Company shall hold Skagway harmless from any and all costs and losses experienced due to a dock closure for reasons outside of Skagway's control such as closures due to a natural disaster or closure caused by significant damage to the docking facility.

Dated: \_\_\_\_\_  
Municipality of Skagway Borough

By \_\_\_\_\_  
\_\_\_\_\_  
(Print name and title)

Dated: 7 June 2023 \_\_\_\_\_ Cruise Company

By  \_\_\_\_\_  
TRAVIS NIWGO, VP OF OPERATIONS  
(Print name and title)  
ALASKAN DREAM CRUISES