



Department of Conservation  
*Te Papa Atawhai*

## Concession Document Variation of Concession Document

Concession Number: 35128-SKI

### **This Deed of Variation of a Concession Document**

is made this 16<sup>th</sup> day of November 2020

#### **PARTIES:**

**Minister of Conservation** (the Grantor)

**NZSki Limited** (the Concessionaire)

#### **BACKGROUND**

- A. By a Concession dated the 23<sup>rd</sup> day of December 2019 (the Concession) the Grantor granted a lease, licence and easement to the Concessionaire for the operation of the Mount Hutt ski area within Hakatere Conservation Park and Mount Hutt Forest Conservation Area upon the terms and conditions expressed and implied in the Concession.
- B. The Concessionaire has applied to replace the Exhibition Quad Chairlift with the Nor-west Express Chairlift.
- C. The parties have agreed to vary the Concession.

**NOW BY THIS DEED** the parties agree as follows:

#### **1. Variation**

As from the date of this Deed, the Concession is varied as follows:

- (a) The following heading and clauses 57 to 62 are inserted into Schedule 3:

**ESTABLISHMENT OF THE NOR'WEST EXPRESS CHAIRLIFT  
("CHAIRLIFT") TO REPLACE THE EXHIBITION QUAD CHAIRLIFT**

57. The Concessionaire must ensure that 20 working days before any establishment works are commenced that a timeline for establishment of the replacement chairlift is submitted to the Grantor.
58. Installation of the replacement chairlift is to be in accordance with the detailed Leitner ropeways installation and design documentation and construction plans included in the Concessionaire's application.
59. Earth disturbance must be kept to a minimum and no new tracks are to be formed.

60. Establishment of the replacement chairlift must be completed before 30 June 2022.
61. The Concessionaire must advise the Grantor when establishment of the replacement chairlift has been completed.
62. The replacement chairlift infrastructure will comprise, but not be limited to:
- (a) Nor'west Express Drive (Bottom) Station at approximately NZTM 2000 E1481958 N5183172, 1,438 metres above sea level 250.21m<sup>2</sup> [25.48m(l) x 9.82m(w)];
    - (i) Driving Room 7.35m<sup>2</sup> [3m(l) x 2.45m(w)];
    - (ii) Low Voltage Room 17.15m<sup>2</sup> [7m(l) x 2.45m(w)];
  - (b) Nor'west Express Chairlift Loading Conveyor;
  - (c) 8 Towers;
  - (d) Nor'west Express Return (Top) Station at approximately NZTM 2000 E1481729 N5183736, 1,780 metres above sea level 192.86m<sup>2</sup> [19.64m(l) x 9.82m(w)]; and
    - (i) Control Room 7.35m<sup>2</sup> [3m(l) x 2.45m(w)];
  - (e) Upgrading of utilities to support new infrastructure, for example, cable cellars.

(b) Schedule 4 table is amended in accordance with:



- (i) the description of label E Quad Return Station and Control Hut is amended to read "Nor'west Express Return (Top) Station 192.86m<sup>2</sup> and Control Room 7.35m<sup>2</sup>".
- (ii) the inclusion of label EE "Nor'west Express Chairlift Loading Conveyor" as an Easement Activity.
- (iii) the description of label K Quad Drive Station and Control/Storage Huts is amended to read "Nor'west Express Drive (Bottom) Station 250.21m<sup>2</sup>, Driving Room 7.35m<sup>2</sup> and Low Voltage Room 17.15m<sup>2</sup>".

2. **Confirmation of other Concession Covenants**

- (a) Except to the extent to which they are varied by this Deed the covenants, terms and conditions expressed and implied in the Concession continue to apply.

3. **Costs**

- (a) The Concessionaire will pay the costs of and incidental to the preparation and completion of this Deed.

	<p>Sec 9(2)(a)</p>
<p>SIGNED on behalf of the Minister of Conservation by <b>Nicola Toki, Director Operations, Eastern South Island</b> acting under delegated authority</p>	<p>SIGNED by <b>NZSki Limited</b> by <b>Sec 9(2)(a)</b> Chief Executive Officer, having authority to enter into contracts</p>
<p>in the presence of:</p>	<p>in the presence of:</p> <p>Sec 9(2)(a)</p>
	<p>Sec 9(2)(a)</p>
<p>Witness Signature</p> <p>Witness Name: Sam Robertson</p> <p>Witness Occupation: Personal Assistant</p> <p>Witness Address: 161 Cashel Street, Christchurch</p>	<p>Witness Signature: Sec 9(2)(a)</p> <p>Witness Name:</p> <p>Witness Occupation:</p> <p>Witness Address:</p>
<p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	



## Concession Document (Lease and Licence and Easement)

Concession Number: 35128-SKI

**THIS DOCUMENT** is made this 23<sup>rd</sup> day of December 2019

### **PARTIES:**

**Minister of Conservation** (the Grantor)

**NZSki Limited** (the Concessionaire)

### **BACKGROUND**

- A.** The Department of Conservation ("Department") *Te Papa Atawhai* is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B.** The Department is under the control of the Grantor.
- C.** The carrying out of these functions may result in the Grantor granting concessions to carry out activities on public conservation land.
- D.** The Grantor administers public conservation lands described in Schedule 1 as the Land.
- E.** The Conservation legislation applying to the Land authorises the Grantor to grant a concession over the Land.
- F.** The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- G.** The Concessionaire acknowledges that the land may be the subject of Treaty of Waitangi claims.
- H.** The parties wish to record the terms and conditions of this Concession and its Schedules.

### **OPERATIVE PARTS**

- I.** In exercise of the Grantor's powers under the Conservation legislation the Grantor **GRANTS** to the Concessionaire a **LEASE AND LICENCE AND EASEMENT** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Concession and its Schedules.



	<p>SIGNED by <b>NZSki Limited</b> by <b>Sec 9(2)(a)</b>  <b>Sec 9(2)(a)</b> Chief Executive Officer, having  authority to enter into contracts  <b>Sec 9(2)(a)</b></p>
<p>SIGNED on behalf of the Minister of Conservation by <b>Mike Slater, Deputy Director-General, Operations</b> acting under delegated authority</p>	
<p>in the presence of:</p>	<p>in the presence of:</p>
<p>Witness Signature: </p>	<p>Witness Signature: <b>Sec 9(2)(a)</b></p>
<p>Witness Name: Debby Drummond</p>	<p>Witness Name: <b>Sec 9(2)(a)</b></p>
<p>Witness Occupation: PA</p>	<p>Witness Occupation: <i>Office Manager</i>  <b>Sec 9(2)(a)</b></p>
<p>Witness Address: Manners Street, Wellington</p>	<p>Witness Address: <b>Sec 9(2)(a)</b></p>
<p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-32 Manners Street, Wellington.</p>	

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**SCHEDULE 1**

1.	<b>Land</b> (clause 1)	<p>Total area of lease land and licence land is approximately 820.70 hectares (area not defined by survey) as shown on the table and marked on the map in Schedule 4:</p> <p>Physical Description/Common Name: Hakatere Conservation Park (J35005)</p> <p>Land Status: Conservation park held under section 19 of the Conservation Act 1987</p> <p>Legal Description: Parts of Rural Section 42160, Parts of Part Reserve 4760, Part Reserve 3118, Parts of Reserve 3316 and Parts of Part Reserve 5200</p> <p>Map Reference: NaPALIS ID: 2806143</p> <p><b><u>Lease Land</u></b></p> <p>Those structures and facilities as shown on the table and marked on the map in Schedule 4:</p> <p>Area: Approximately 0.70 hectares to which clause 3.1 in Schedule 2 applies.</p> <p><b><u>Licence Land</u></b></p> <p>The skiable terrain as shown on the table and marked on the map in Schedule 4:</p> <p>Area: Approximately 820 hectares to which clause 3.1 in Schedule 2 does not apply.</p> <p><b><u>Easement Land (in gross)</u></b></p> <p>As shown on the table and marked on the map in Schedule 4, and diagram in Schedule 4A:</p> <p>Physical Description/Common Name:</p> <ul style="list-style-type: none"> <li>(i) Mount Hutt Forest Conservation Area (K35045)</li> <li>(ii) Hakatere Conservation Park (J35005)</li> </ul> <p>Land Status:</p> <ul style="list-style-type: none"> <li>(i) Stewardship area held under section 25 of the Conservation Act 1987</li> <li>(ii) Conservation park held under section 19 of the Conservation Act 1987</li> </ul> <p>Area: Approximately 40 hectares</p> <p>Legal Description:</p> <ul style="list-style-type: none"> <li>(i) Part Rural Section 38613, Part Lot 7 DP 23526, Part Rural Section 38629, Section 1 SO 20239.</li> <li>(ii) Parts of Part Reserve 4760</li> </ul> <p>Map Reference:</p> <ul style="list-style-type: none"> <li>(i) NaPALIS ID: 2808665</li> <li>(ii) NaPALIS ID: 2806143</li> </ul>
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<p>2.</p>	<p><b>Concession Activity</b> (clause 2)</p>	<p>Management and control of all activities related to the ownership, operation, repair and maintenance of a commercial ski field including, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) the provision of goods and services (sale, hire and services e.g. ski and snow sport instruction);</li> <li>(ii) the operation of snow making machines;</li> <li>(iii) helicopter operations for activities associated with the management of the activity such as health and safety (Search and Rescue (SAR) and medical emergencies) and avalanche management;</li> <li>(iv) the provision of an access road.</li> </ul> <p><b>Lease Land</b> As shown on the table and marked on the map in Schedule 4, being the footprint of structures and facilities:</p> <ul style="list-style-type: none"> <li>• base buildings;</li> <li>• equipment sheds and utility huts;</li> <li>• lift infrastructure (including chairlift structures and terminals);</li> <li>• fuel containment, pumps and other similar devices and apparatus.</li> </ul> <p><b>Licence Land</b> As shown on the table and marked on the map in Schedule 4, being the ski area comprising:</p> <ul style="list-style-type: none"> <li>• main ski field area/ski field terrain (slopes).</li> </ul> <p><b>Easement Land</b> As shown on the table and marked on the map in Schedule 4, and diagram in Schedule 4A, being:</p> <ul style="list-style-type: none"> <li>(a) a right to store and convey water:</li> <li>(b) a right to drain sewage:</li> <li>(c) a right of way:</li> <li>(d) a right to convey electricity:</li> <li>(e) a right to convey telecommunications and computer media:</li> </ul> <p>Associated with:</p> <ul style="list-style-type: none"> <li>• Mount Hutt ski field main access road;</li> <li>• main car-park and access road car-parks (3);</li> <li>• utilities and services (above and under the ground infrastructure) for water storage and reticulation (reservoir, dam, water tanks), sewage, electrical, telecommunication, and computer media;</li> <li>• ancillary equipment (above and under the ground infrastructure) such as snow making and pumping equipment (wands/snow guns), pylons, lift cables, ski lift chairs.</li> </ul>
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3.	<b>Term</b> (clause 4)	40 years commencing on 1 July 2018
4.	<b>Renewal(s)</b> (clause 4)	Nil
5.	<b>Final Expiry Date</b> (clause 4 )	30 June 2058
6.	<b>Concession Fee</b> (clause 5 and Schedule 6)	<p>Sec 9(2)(i)</p> <div style="background-color: #cccccc; height: 200px; width: 100%;"></div> <p>(iv) Pursuant to section 17ZB of the Conservation Act 1987, the Grantor may require the Concessionaire to provide a complete statement of audited financial accounts to be forwarded to the Minister not later than 3 months after the end of the financial year in respect of which they are required.</p> <p><b>(b) Concession Management Fee:</b></p> <p>\$ Sec 9(2)(i)</p> <p><b>(c) Concession Fee Review:</b></p> <p>(i) Concession Fees are subject to review in accordance with Item 13 in Schedule 1, clause 6 in Schedule 2 and clause 31 in Schedule 3.</p> <p>(ii) For the avoidance of doubt, the outcome of any Concession Activity Fee [Item 6(a)(iii)] review will take effect from the ensuing trading year commencement date. For example, concession fee review due on 1 July 2021 will take effect in the trading year commencing 1 December 2021.</p>



7.	<b>Environmental Monitoring Contribution</b> (clause 10)	Not required
8.	<b>Community Services Contribution</b> (clause 7)	Not required
9.	<b>Total payment to be made per annum</b> (clause 5)	<p>Sec 9(2)(i)</p> <p>AND</p> <p>Sec 9(2)(i)</p>
10.	<b>Total payment instalment(s)</b> (clause 5)	<p>Sec 9(2)(i)</p> <p>AND</p> <p>Sec 9(2)(i)</p>
11.	<b>Concession Fee Payment Date(s)</b> (clause 5)	<p><b>(a) Concession Management Fee</b> (Item 6(b)), <b>Environmental Monitoring Contribution</b> (Item 7), <b>Community Services Contribution</b> (Item 8): are payable in <u>advance</u> on each annual anniversary of the Commencement Date during the Term as detailed in Item 3 of Schedule 1. Payment to be made on or before the date specified on the invoice issued by the Grantor.</p> <p><b>(b) Concession Activity Fee</b> (Item 6(a)): The Concessionaire must ensure that a completed Annual Activity Return Form (Schedule 6) is returned to the Grantor by 31 December each year for the trading year ended 30 November for the life of this Concession. Payment to be made on or before the date specified on the invoice issued by the Grantor.</p>

12.	<b>Penalty Interest Rate</b> (clause 5)	Double the current Official Cash Rate (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
13.	<b>Concession Fee Review Date(s)</b> (clause 6)	1 July 2021, 1 July 2024, 1 July 2027, 1 July 2030, 1 July 2033, 1 July 2036, 1 July 2039, 1 July 2042, 1 July 2045, 1 July 2048, 1 July 2051, 1 July 2054, 1 July 2057
14.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 13)	Types and amounts: Public Liability Insurance for: (a) General indemnity for an amount no less than \$1,000,000.00; and (b) Third party vehicle liability for an amount no less than \$500,000.00. Subject to review on each Concession Fee Review Date.
15.	<b>Health and Safety</b> (clause 14)	Audited Safety Plan: Required. Concessionaire has provided safety plan to Grantor.
16.	<b>Concessionaire Identification</b> (clause 32)	Not required
17.	<b>Addresses for Notices</b> (clause 25)	The Grantor's address for notices:  Physical Address: Department of Conservation Level 1, John Wickliffe House 265 Prince Street Dunedin 9016 New Zealand  Postal Address: PO Box 5244 Moray Place Dunedin 9054 New Zealand  Phone: (03) 477 0677 Email: <a href="mailto:permissionsdunedin@doc.govt.nz">permissionsdunedin@doc.govt.nz</a>
		The Concessionaire's address in New Zealand is:  Physical Address: NZSki Limited Queenstown Snow Centre Ground Level, The Station Building 9 Duke Street Queenstown 9300  Postal Address: PO Box 359 Queenstown 9348  Phone: 0800 697 547 Email: <a href="#">Sec 9(2)(a)</a>

18.	<b>Guarantee</b> (clause 30)	Not required
19.	<b>Special Conditions</b> (clause 36)	See Schedule 3
20.	<b>Processing Fee</b> (clause 5)	Sec 9(2)(i)

Note: the clause references are to the Grantor's Standard Terms and Conditions of Lease and Licence and Easement set out in Schedule 2.

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**SCHEDULE 2****STANDARD TERMS AND CONDITIONS OF LEASE AND LICENCE AND EASEMENT****1. Interpretation**

1.1 In this Document, unless the context otherwise requires:

“**Land**” means the Lease Land, Licence Land and Easement Land described in Item 1 of Schedule 1.

“**Lease Land**” specifically means the Land described as Lease Land in Item 1 of Schedule 1.

“**Licence Land**” specifically means the Land described as Licence Land in Item 1 of Schedule 1.

“**Easement Land**” specifically means the Land described as Easement Land in Item 1 of Schedule 1.

1.2 Where the Grantor's consent or approval is expressly required under a provision of this Concession, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.

1.4 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

1.5 Where this Concession provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 25 is to apply.

1.6 The rights and powers implied in the relevant easements by Schedule 5 to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this Concession **EXCEPT** to the extent set out in Schedule 3 of this Concession.

1.7 The rights and powers implied by Schedule 5 to the Property Law Act 2007 do not apply to this Concession.

**2. What is being authorised?**

2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.

2.2 The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care



and diligence normally practised by suitably qualified and experienced people in carrying out such activities.

- 2.3 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees and contractors if the Grantor so requests.
- 2.4 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

### **3. What about quiet enjoyment?**

- 3.1 The Concessionaire, while paying the Concession Fee and performing and observing the terms and conditions of this Concession, is entitled peaceably to hold and enjoy the Lease Land and any structures and facilities of the Grantor without hindrance or interruption by Grantor or by any person or persons claiming under the Grantor until the expiration or earlier termination of this Concession.
- 3.2 Provided reasonable notice has been given to the Concessionaire the Grantor, its employees and contractors may enter the Land to inspect the Land and facilities, to carry out repairs and to monitor compliance with this Concession.

### **4. How long is the Concession for - the Term?**

- 4.1 This Concession commences on the date set out in Item 3 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.
- 4.2 If there is a right of renewal then the Grantor at the Concessionaire's cost must renew the Term for a further period as set out in Item 4 of Schedule 1 provided the Concessionaire:
  - (a) gives the Grantor at least three month's written notice before the end of the Term, which notice is to be irrevocable, of the Concessionaire's intention to renew this Concession; and
  - (b) at the time notice is given in accordance with this clause the Concessionaire is not in breach of this Concession.
- 4.3 The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further renewal terms is to expire on or before the Final Expiry Date.

### **5. What are the fees and when are they to be paid?**

- 5.1 The Concessionaire must pay the Processing Fee (Item 20 of Schedule 1) to the Grantor in the manner directed by the Grantor. Except where the Grantor's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.
- 5.2 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10, and 11 of Schedule 1.
- 5.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid

Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.

## 6. When can the fee be reviewed?

6.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:

- (a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.
- (b) Subject to clause 6.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
- (c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee, the new Concession Fee is to be determined in accordance with clause 6.2(a) or (b).
- (d) If the Concessionaire does not give notice to the Grantor under clause 6.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 6.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
- (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

6.2 Immediately the Concessionaire gives notice to the Grantor under clause 6.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 23) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
  - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
  - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
  - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.

- (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
  - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
  - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
- (d) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
- (i) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 6.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
  - (ii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 6.1.

**7. Are there any other charges?**

- 7.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 7.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 7.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.
- 7.4 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor the



amount specified in Item 8 of Schedule 1 as part of the Total Payment specified in Item 9 of Schedule 1 on the Concession Fee Payment Dates specified in Item 11 of Schedule 1.

**8. When can the Concession be assigned?**

- 8.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.
- 8.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 8.1.
- 8.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 8.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 8.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 8.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

**9. What are the obligations to protect the environment?**

- 9.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land; or light any fire on the Land without the prior consent of the Grantor.
- 9.2 The Concessionaire must at its cost keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.
- 9.3 The Concessionaire must not store hazardous materials on the Land nor store other materials on the Land where they may obstruct the public or create a nuisance
- 9.4 If directed by the Grantor, the Concessionaire must take all steps necessary to control, or, at the Grantor's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if directed by the Grantor, engage a pest exterminator approved by the Grantor.
- 9.5 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if directed by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.



- 9.6 The Concessionaire must keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably directed by the Grantor the Concessionaire must paint all structures and facilities in colours approved by the Grantor and with paints of a type approved by the Grantor.
- 9.7 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire must, unless the Grantor directs otherwise, repair and make good at its own expense all damage which may have been done by the removal and must leave the Land in a clean and tidy condition.
- 9.8 The Concessionaire must not bury:
- (a) any toilet waste within 50 metres of a water source on the Land; or
  - (b) any animal or fish or any part thereof within 50 metres of any water body, water source or public road or track.

**10. What about Environmental Monitoring?**

- 10.1 The Concessionaire must, during the Term, if the Grantor so directs, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.
- 10.2 If the Grantor does not issue a direction under clause 10.1 the Concessionaire must, during the Term, pay to the Grantor the annual Environmental Monitoring Contribution specified in Item 7 of Schedule 1 to enable the Grantor to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

**11. When can new structures be erected or land alterations occur?**

- 11.1 The Concessionaire must not erect, alter or bring on to the Land any structure not authorised in Schedule 3 nor alter the Land in any way without the prior approval of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before:
- (a) erecting new structure or altering any structure on the Land
  - (b) altering the Land in any way.
- 11.5 The Concessionaire must at all times where a building warrant of fitness under the Building Act 2004 is required display a copy of the relevant current certificate showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Land to which users of the building have ready access.

- 11.6 The Concessionaire must keep and maintain all building systems and any structure on the Land in accordance with the, requirements of any compliance schedule.
- 11.7 The Concessionaire must retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two year period.

**12. What about advertising?**

- 12.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 12.2 If directed by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 12.3 If directed by the Grantor, the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.
- 12.4 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

**13. What are the liabilities and who insures?**

- 13.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.
- 13.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 13.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 13.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 13.5 Despite anything else in clause 13 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Land , the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or

exposure to the elements except where, subject to clause 13.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.

- 13.7 Where the Grantor is found to be liable in accordance with clause 13.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 13.8 Despite anything else in clause 13 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.9 Without prejudice to or in any way limiting its liability under this clause 13 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 14 of Schedule 1 with a substantial and reputable insurer.
- 13.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 13.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 13.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
  - (b) a copy of the current certificate of such policies.

**14. What about Health and Safety?**

- 14.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 15 of Schedule 1), and with any safety directions of the Grantor.
- 14.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 15 of Schedule 1:
- (a) prepare a safety plan;
  - (b) have it audited by a suitably qualified person approved by the Grantor and forward to the Grantor a certificate from the auditor certifying that the safety plan is suitable for the Concession Activity; and
  - (c) the Concessionaire must obtain from the auditor details as to when the safety plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Grantor within 5 working days of the certificate being issued.
- 14.3 If clause 14.2 applies then if the Concessionaire amends or replaces the safety plan then before the amendment or replacement plan takes effect the Concessionaire must comply with 14.2(b) and (c).



- 14.4 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 14.5 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 14 and is not to be construed as implying any responsibility or liability on the part of the Grantor.
- 14.6 The Concessionaire must:
- (a) notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;
  - (b) take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
  - (c) take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;
  - (d) record and report to the Grantor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
  - (e) ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 14;
  - (f) be satisfied that facilities or equipment provided by the Grantor to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
  - (g) not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

**15. What are the compliance obligations of the Concessionaire?**

- 15.1 The Concessionaire must comply where relevant:
- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
  - (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and



- (c) with all notices and requisitions of any competent authority affecting or relating to the Land or affecting or relating to the conduct of the Concession Activity; and
  - (d) with all Department signs and notices placed on or affecting the Land; and
  - (e) with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land.
- 15.2 The Concessionaire must comply with this Concession.
- 15.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 15.1.(a) is deemed to be a breach of this Concession.
- 15.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.
- 15.5 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or land alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% per annum of the amount spent by the Grantor.
- 15.6 If the Legislation requires the Grantor to spend money on structures, facilities or land alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Concession and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 23.
- 16. What if the Grantor's structures or facilities are damaged or destroyed**
- 16.1 If the Grantor's structures or facilities or any portion of them are totally destroyed or so damaged:
- (a) as to render them untenable, the Concession is to terminate at once; or
  - (b) as, in the reasonable opinion of the Grantor, to require demolition or reconstruction, the Grantor may, within 3 months of the date of damage or destruction, give the Concessionaire 1 month's notice to terminate and a fair proportion of the Concession Fee and Other Charges is to cease to be payable according to the nature and extent of the damage.
- 16.2 Any termination under clause 16.1 is to be without prejudice to the rights of either party against the other.
- 16.3 If the Grantor's structures or facilities or any portion of them are damaged but not so as to render the premises untenable and:
- (a) the Grantor's policy or policies of insurance have not been invalidated or payment of the policy monies refused in consequence of some act or default of the Concessionaire; and
  - (b) all the necessary permits and consents are obtainable; and
  - (c) the Grantor has not exercised the right to terminate under clause 16.1,

the Grantor must, with all reasonable speed, apply all insurance money received by the Grantor in respect of the damage towards repairing the damage or reinstating the structures or facilities; but the Grantor is not liable to spend any sum of money greater than the amount of the insurance money received.

- 16.4 Any repair or reinstatement may be carried out by the Grantor using such materials and form of construction and according to such plan as the Grantor thinks fit and is to be sufficient so long as it is reasonably adequate for the Concessionaire's use of the Land for the Concession Activity.
- 16.5 Until the completion of the repairs or reinstatement a fair proportion of the Concession Fee and other charges is to cease to be payable according to the nature and extent of the damage.
- 16.6 If any necessary permit or consent is not obtainable or the insurance money received by the Grantor is inadequate for the repair or reinstatement, the Term is at once to terminate but without prejudice to the rights of either party against the other.

**17. What are the Grantor's rights to remedy defaults?**

- 17.1 The Grantor may elect to remedy at any time, after giving notice, if practicable, any default by the Concessionaire under this Concession. Before electing to so remedy in accordance with this clause, the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.
- 17.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 14 days of the Grantor's demand from the date of the demand until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1

**18. When can the Concession be suspended?**

- 18.1 If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.
- 18.2 If, in the Grantor's opinion, the activities of the Concessionaire are having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.
- 18.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.
- 18.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 18.1 and 18.2 and also while the Grantor investigates any potential breach or possible offence by the

Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act.

- 18.5 The word "investigates" in clause 18.4 includes the laying of charges and awaiting the decision of the Court.
- 18.6 During any period of temporary suspension arising under clauses 18.1 or 18.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 18.7 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under this clause 18 including loss of profits.

**19. When can the Concession be terminated?**

- 19.1 The Grantor may terminate this Concession either in whole or in part:
  - (a) by 14 days notice to the Concessionaire if the Concession Fee or any other money payable to the Grantor under this Concession is in arrears and unpaid for 10 working days after any of the days appointed for payment whether it has been lawfully demanded or not; or
  - (b) by 14 days notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Grantor if.
    - (i) the Concessionaire breaches any terms of this Concession and in the Grantor's sole opinion the breach is able to be rectified; and
    - (ii) the Grantor has notified the Concessionaire of the breach; and
    - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or such earlier time as specified by the Grantor; or
  - (c) by notice in writing to the Concessionaire where the Concessionaire breaches any terms of this Concession and in the sole opinion of the Grantor the breach is not capable of being rectified; or
  - (d) immediately by notice in writing to the Concessionaire where the Concessionaire breaches clauses 13.9 and 14; or
  - (e) by notice in writing to the Concessionaire if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the conduct of the Concession Activity is manifestly inadequate; or
  - (f) by notice in writing to the Concessionaire if the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act or any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Grantor's sole opinion affects or relates to the Concession Activity; or
  - (g) by notice in writing to the Concessionaire if the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject



to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or

- (h) immediately if there is, in the opinion of the Grantor, a permanent risk to public safety or to the natural and historic resources of the Land whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire.

19.2 The Grantor may exercise its power to terminate under 19.1(h) without giving notice.

19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

19.4 Termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

**20. What happens on termination or expiry of the Concession?**

20.1 If the Grantor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, (which permission may be oral or in writing), the occupation is to be on the basis:

- (a) of a monthly tenancy only, terminable by 1 month's notice by either party; and
- (b) at the Concession Fee then payable; and
- (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.

20.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.

20.3 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.

20.4 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.



**21. When is the Grantor's consent required?**

21.1 Where the Grantor's consent or approval is expressly required under this Concession then the Concessionaire must seek that approval or consent for each separate time it is required even though the Grantor may have given approval or consent for a like purpose on a prior occasion. Any such consent or approval may be made on such conditions as the Grantor considers appropriate.

**22. What about other concessions?**

22.1 Nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions, whether similar or not, to other persons provided that the Grantor must not grant another concession that would derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

**23. How will disputes be resolved?**

23.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

23.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.

23.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.

23.4 The arbitrator must include in the arbitration award reasons for the determination.

23.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

**24. What about prosecution for offences?**

24.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Resource Management Act 1991, the Conservation Act 1987, or any of the Acts listed in the First Schedule to that Act:

- (a) no waiver or failure to act by the Grantor under this Concession is to preclude the Grantor from prosecuting the Concessionaire; and
- (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Concession; and
- (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Concession.

**25. How are notices sent and when are they received?**

25.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 17 or 18 of Schedule 1. Any such notice is to be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of fax, on the date of dispatch;
- (c) in the case of post, on the 3rd working day after posting;
- (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.

25.2 If any party's details specified in Item 17 or 18 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

**26. What is the scope of the Concession?**

26.1 Except as provided by legislation, this Concession and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Concession and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Concession.

**27. Can provisions be severed?**

27.1 Any illegality, or invalidity or unenforceability of any provision in this Concession is not to affect the legality, validity or enforceability of any other provisions.

**28. What about the payment of costs?**

28.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.

28.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**29. What is the relationship of parties?**

29.1 Nothing expressed or implied in this Concession is to be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Licence Land and Easement Land;
- (c) granting any exclusive estate or interest in the Licence Land and Easement Land to the Concessionaire;
- (d) affecting the rights of the Grantor and the public to have access across the Licence Land and Easement Land.

**30. What about a Guarantee?**

- 30.1 Where the Grantor has in Item 18 of Schedule 1 required this Concession to be guaranteed by a third party the following clauses are to apply.
- 30.2 In consideration of the Grantor entering into this Concession at the Guarantor's request the Guarantor:
- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Concession; and
  - (b) indemnifies the Grantor against any loss the Grantor might suffer should the Concession be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.
- 30.3 The Guarantor covenants with the Grantor that:
- (a) no release, delay, or other indulgence given by the Grantor to the Concessionaire, to the Concessionaire's successors or assigns, or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
  - (b) as between the Guarantor and Grantor the Guarantor may, for all purposes, be treated as the Concessionaire and the Grantor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
  - (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
  - (d) any assignment of this Concession and any Concession Fee Review in accordance with this Concession are not to release the Guarantor from liability;
  - (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

**31. What about Co-Siting?**

- 31.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 31.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Grantor.
- 31.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.
- 31.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Land; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Land.
- 31.5 Subject to clause 31.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Land.

- 31.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Land; or
  - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
  - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Land; or
  - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 31.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 31.6.
- 31.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.
- 31.8 Where the Concessionaire is required under clause 31.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 31.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:
- (a) any written comments or submissions of the Concessionaire and third party;
  - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 31.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.
- 31.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.
- 31.11 The Grantor must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

**32. What about Identification cards?**



- 32.1 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor in Item 16 of Schedule 1, obtain Concessionaire Identification cards from the Grantor. The Grantor is to supply such cards to the Concessionaire on a cost recovery basis.
- 32.2 The Concessionaire and any person acting under the authority of the Concession must carry and display a Concession Identification card when carrying out the Concession Activity.
- 32.3 The Concessionaire must obtain sufficient cards to ensure all people acting under the authority of the Concession can carry and display such cards when undertaking the Concession Activity.

**33. What about registering the Concession?**

- 33.1 The Grantor is not required to do any act or thing to enable this Concession to be registered and the Concessionaire must not register a caveat in respect of the Concessionaire's interest under the Concession.
- 33.2 Nevertheless, if the Concessionaire wishes to register this Concession under the Land Transfer Act 2017, the Grantor must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which the Concession may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Grantor in enabling such an issue of title and in having this Concession re-executed by the parties in a form suitable for registration.

**34. Are there limitations on public access and closure?**

- 34.1 The Concessionaire acknowledges that the Licence Land and Easement Land is open to the public for access and that the Grantor may close public access during periods of high fire hazard for reasons of public safety or emergency.

**35. Which clauses survive termination?**

- 35.1 Clauses 13 and 25 survive the termination of this Concession.

**36. Are there any Special Conditions?**

- 36.1 Special conditions are specified in Schedule 3. If there is a conflict between this Schedule 2 and the Special Conditions in Schedule 3, the Special Conditions shall prevail.

**37. The Law**

- 37.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

## SCHEDULE 3

### SPECIAL CONDITIONS

#### General Special Conditions

##### In respect to Ngāi Tahu

1. The Concessionaire is requested to consult the relevant Papatipu Rūnanga (as set out below) if they wish to use Ngāi Tahu cultural information. If the Concessionaire wishes to use the Tōpuni or statutory acknowledgement information contained in schedules 14-108 of the Ngāi Tahu Claims Settlement Act 1998, or any Department produced interpretative material in respect to Ngāi Tahu cultural information, they are requested to notify the relevant Papatipu Rūnanga, as a matter of courtesy.
2. The Concessionaire must, as far as practicable, attend any workshops held by the Department for the purpose of providing information to Concessionaires, which is to include the Ngāi Tahu values associated with Tōpuni areas.
3. The Concessionaire must ensure any persons employed by the Concessionaire are requested to recognise and provide for Ngāi Tahu values in the conduct of their activities.

##### Interpretation Materials and Cultural Values

4. If the Concessionaire intends to undertake any written interpretation materials (panels, brochures etc) that include Māori/iwi values of the area, then this shall be done in partnership with Ngāi Tahu. The Concessionaire shall contact the Papatipu Rūnanga (as set out above) and Te Rūnanga o Ngāi Tahu.

Te Ngāi Tūāhuriri Rūnanga  
219 Tuahiwi Road  
Tuahiwi, RD 1  
Kaiapoi 7691  
Phone: (03) 313 5543  
email: [Tuahiwi.Marae@ngaitahu.iwi.nz](mailto:Tuahiwi.Marae@ngaitahu.iwi.nz)

Te Taumutu Rūnanga Society Incorporated  
PO Box 3214  
Christchurch 8140  
Phone: (03) 371 2660  
email: [taumutu@ngaitahu.iwi.nz](mailto:taumutu@ngaitahu.iwi.nz)

Office of Te Rūnanga o Ngāi Tahu  
PO Box 13 046  
Christchurch 8141  
Phone: 0800 524 8248  
email: [info@ngaitahu.iwi.nz](mailto:info@ngaitahu.iwi.nz)

### Accidental Discovery Protocol

5. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Land:
- (a) Work must cease immediately until further notice and advice must be sought from the Grantor;
  - (b) If it is an archaeological site as defined by the Heritage New Zealand Pouhere Taonga Act 2014 then Heritage New Zealand must be contacted and their advice also sought;
  - (c) If it is an archaeological site relating to Māori activity, then the Papatipu Rūnanga must be contacted and their advice sought;
  - (d) If it is an artefact as defined by the Protected Objects Act 1975 then the Ministry for Culture and Heritage must be notified within 28 days;
  - (e) If it is human remains the New Zealand Police should also be notified;
  - (f) In the event of cessation of approved work because of discovery of potential historical artefact or archaeological site the Concessionaire must not recommence work until permitted to do so by the Grantor.

### Works

6. The Concessionaire must provide an annual summer work programme to the Grantor for written approval (no later than 3 months following the end of the previous ski season). The Grantor may request plans, drawings, diagrams and/or specifications, scope of work and an assessment of its potential effects (and any other information required) for consideration for approval and the Grantor (at its entire discretion) may require changes to be made to any submitted material. The information to be provided is to include, but is not limited to:
- (a) any building or asset modifications requested by the Concessionaire;
  - (b) proposed terrain modification or other earth disturbance activities;
  - (c) appropriate restoration or preventative maintenance the Concessionaire may require;
  - (d) any works proposed as part of any 10 year development plan subject to concession conditions;
  - (e) any revegetation, remediation or reinstatement measures to be performed by the Concessionaire and required by the Grantor to the Land;
  - (f) expected commencement and completion dates of any such works.

### Trading Year

7. For the purposes of this Concession, the annual trading year for the Concessionaire is 1 December to 30 November in each year.



**Operation of plant, machinery and equipment**

8. The Concessionaire must operate all plant, machinery (including snow tows) and equipment on the Land to required standards, codes of practice and legislative requirements. The Concessionaire shall at the Grantor's request, provide the Grantor with documentary evidence of compliance with the said requirements.
9. Plant, machinery and equipment used in conducting the Concession Activity must be maintained at all times to prevent leakage of oil and other contaminants onto the Land.

**Fuels, hazardous materials, chemicals and waste**

10. Any waste or rubbish must be disposed of in an approved manner off the Land at a Council approved site. Waste held on the Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or present a potential hazard to wildlife.
11. At the completion of any approved works programme, the Concessionaire must remove all construction related waste and fill from the Land and dispose at a resource recovery centre, Council landfill or other authorised facility.
12. The Concessionaire must ensure that all site personnel are trained in hazardous material, waste and fuel handling and spill contingency and emergency procedures.
13. The Concessionaire must ensure that all vehicles, machinery, and hazardous materials including paints, fuels and other chemicals are stored in a secure enclosed facility onsite, including the provision of any spill cleanup kits used to contain and/or absorb all hazardous substances used in the concession activity.
14. The Concessionaire must use clean fuels in preference to fossil fuels wherever possible.
15. In the event of any hazardous substance spill the Concessionaire must:
  - (a) Take all practicable measures to stop the flow of the substances and prevent further contamination onto the Land or water;
  - (b) Immediately contain, collect and remove the hazardous substances and any contaminated material, and dispose of all such material in an appropriate manner / authorised facility;
  - (c) Notify the Grantor as soon as practicable;
  - (d) Undertake any remedial action to restore any damage to the land; and
  - (e) Take all measures to prevent any reoccurrence.

**Freshwater pests**

16. The Concessionaire must comply and ensure its clients comply with the Ministry for Primary Industry (MPI)'s "Check, Clean, Dry" cleaning methods to prevent the spread of didymo (*Didymosphenia geminata*) and other freshwater pests when moving between waterways. "Check, Clean, Dry" cleaning methods can be found at - <http://www.biosecurity.govt.nz/cleaning>. The Concessionaire must regularly check this website and update their precautions accordingly.



### Other Concessionaires'

17. The Grantor and Concessionaire acknowledge that:
- (a) Mount Hutt Helicopters (2013) Limited own and occupy a structure (hut) and utilise a helicopter landing site on the Licence Land, shown as Label "P" at Schedule 4;
  - (b) Mount Hutt Ski Club own and occupy a club ski hut on the Licence Land, shown as Label "Q" at Schedule 4;
  - (c) The activities referred to in clauses 17(a) and 17(b) in Schedule 3 do not derogate in any material way from the Concessionaire's ability to carry out the Concession Activity.

### Monitoring and compliance

18. If the Grantor determines that the conditions of this Document or the effects of Concession Activity should be monitored, the Concessionaire shall meet: either the full costs of any monitoring programme that is implemented; or, if the Grantor determines that the costs should be apportioned among several Concessionaires who use the same locations, part of the costs of the monitoring programme. These costs will include the Department's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.
19. The Concessionaire must commission and perform a comprehensive biological survey of Pudding Hill stream biannually at its cost, to determine the extent of any adverse effects of the Concession Activity on water quality, and provide this report to the Grantor on request.
20. Where the Concessionaire has been required by the Grantor to provide documentary evidence of compliance the Concessionaire must provide such documentation to the Grantor within thirty (30) days of the date of any written notice requesting the documentation, or such timeframe mutually agreed between the Grantor and Concessionaire.

### Signage

21. Clause 12.1 in Schedule 2 is amended to read:

*"12.1 The Concessionaire may erect or display any signs or advertising on the Lease Land and may erect or display any signs that relate to the safe and efficient operation of the activity on the Licence Land and Easement Land without the prior approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal."*

### Public access, safety and education

22. The Concessionaire must clearly define, mark and control areas deemed unsafe for the public on the Land, and educate paying visitors about the danger of skiing or going outside these areas.
23. The Concessionaire must take reasonable care to manage any approved works, structures or landscaping on the Land to ensure that users of conservation land are not adversely impeded.

24. The Concessionaire must allow access to members of the public through the Land who are passing through the Land to conduct their own, not-for-profit recreational activities, but without guns and animals.
25. Clause 14.6(d) in Schedule 2 is replaced with the following:
- “The Concessionaire must:*
- (a) Report to the Grantor all accidents involving serious harm that are reportable to WorkSafe in accordance with the Concessionaire’s health and safety plan and applicable legislation;*
  - (b) Provide the report within 3 days of providing a report to WorkSafe;*
  - (c) Provide to the Grantor at the Grantor’s request any weekly or monthly reports generated by the Concessionaire and derived from the Concessionaire’s accident reporting database.”*
26. In order to comply with its obligations under the Health and Safety at Work Act 2015 to eliminate or minimise risks to health and safety so far as is reasonably practicable, the Concessionaire may, when undertaking activities such as slope safety, road safety, snow grooming and avalanche control work, control, limit or restrict public access to the specific area of the Land where the activity is to be carried out for a period not exceeding 2 days.
27. If the particular activity in clause 26 in Schedule 3 will require more than 2 days or if the Concessionaire considers an extension beyond the period of 2 days is necessary, the Concessionaire must advise the Grantor of the time sought and the reasons for it and comply with any directions the Grantor may give concerning the matter.

**Other**

28. The Concessionaire and its agents must take reasonable and proper care not to damage any property of the Grantor or other authorised Concessionaires. Should any damage occur which is attributable to the actions of the Concessionaire or its agents, the Concessionaire must promptly repair any such damage at its cost.
29. The Concessionaire must reinstate the Land to the same or better condition it was before any approved works commenced and generally maintain the Land in a tidy condition to the satisfaction of the Grantor.
30. The Concessionaire may operate the two consented lodge fires (open fire and log burner) in the Base Lodge Building shown as label “L” on the table and map in Schedule 4.

**Fee Review**

31. Clause 6.1(e) in Schedule 2 is amended to read:
- “(e) Notwithstanding clause 6.1(b) the new Concession Fee percentage so determined or accepted must not be less than the Concession Fee percentage applied during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee percentage payable by the Concessionaire from the Concession Fee Review Date.”*

**LEASE SPECIFIC CONDITIONS****Lease area**

32. The lease area land under this Concession is described in the table and shown on the map in Schedule 4.

**Structures and facilities**

33. The Concessionaire must (at its cost) operate, maintain and repair buildings, equipment sheds, utility huts, lift infrastructure, fuel containment, pumps and other similar devices and apparatus on the Land to required standards, codes of practice and legislative requirements. The Concessionaire must at the Grantor's request, provide the Grantor with documentary evidence of compliance with the said requirements.

**Maintenance**

34. The Concessionaire is authorised to perform the following maintenance work under this Concession on the Land:
- (a) Ongoing interior maintenance and modification of any building;
  - (b) The exterior maintenance of any building, stationary plant item or structure on the Land where such maintenance does not alter the external appearance of that building or structure, and where consent from the Grantor is not otherwise required under this Concession.

**Bungy platform and hut**

35. With respect to the existing bungy infrastructure located within the lease area of the Land (bungy platform and associated hut, "the facility"):
- (a) In case of any doubt, ownership of the facility is vested in the Concessionaire;
  - (b) The facility is included in the Concessionaire's Concession lease area; and
  - (c) The Concessionaire assumes all responsibility for the facility and the parties agree to treat the facility as a structure owned by the Concessionaire under this Concession. The Concessionaire will maintain and operate the facility to all statutory requirements, entirely at its own cost and risk.
36. The Concessionaire will include details regarding the operation of the facility in its annual summer work programme in clause 6 of Schedule 3.
37. The Grantor requires the Concessionaire to obtain (at its cost) a structural engineering report confirming the safety of the facility. This report is to be provided to the Grantor within six (6) months of Concession commencement. The Grantor may require further engineering and other reports from the Concessionaire during the Term of the Concession.

**LICENCE SPECIFIC CONDITIONS****Licence area**

38. The licence area land under this Concession is shown on the map in Schedule 4.

**Main ski field area (skiable terrain)**

39. The Concessionaire must (at its cost) operate and maintain the main ski field area (skiable terrain) on the Land to required standards, codes of practice and legislative requirements. The Concessionaire must at the Grantor's request, provide the Grantor with documentary evidence of compliance with the said requirements.

**Snow-making and grooming**

40. The Concessionaire is permitted to use Snomax® for snow-making purposes and may undertake snow grooming activities, provided that this causes minimal adverse effects to natural values on the Land.

**Use of explosives**

41. The Concessionaire may use explosives for the purposes of operational snow area safety management.
42. The Concessionaire may only use explosives for approved terrain modification activities on written approval from the Grantor, which may be subject to conditions.
43. The Concessionaire's safety plan must address risks associated with all explosives activities and include means to avoid, remedy or minimise adverse effects. The Concessionaire must ensure that explosive charges are placed so there is minimal potential for adverse effects to be caused to natural features and wildlife present on the Land.

**Weed and pest management**

44. The Concessionaire must maintain all creeks, drains, ditches and water courses and keep them clean and clear of weeds and obstructions, while ensuring that fish passage (if relevant) is maintained.
45. To minimise the introduction of weed species, the Concessionaire must ensure that all machinery, tools and equipment used on the Land is cleaned and weed free prior to being brought onto the Land. Any gravel, other materials and construction material used for any approved works must be sourced from an approved weed free source.

**Terrain modification**

46. All terrain modification is to be set out in the approved works programme in clause 6 of Schedule 3. No other terrain modification works may occur.
47. The Concessionaire may perform the maintenance of any water table, culvert or other runoff water control device on the Land.



48. Any vegetation removal and soil disturbance necessary to undertake any approved terrain modification described in the approved works programme in clause 6 of Schedule 3 must be kept to a minimum.

Released under the Official Information Act

## EASEMENT SPECIFIC CONDITIONS

### Interpretation of right of way

49. In this section, unless otherwise stated, the right of way is defined as the Mount Hutt ski field road and car-parks as shown on the map in Schedule 4.

### Management of right of way

50. The Concessionaire must (at its cost) form, maintain and repair the said right of way and erect, build or form and maintain and repair such bridges, culverts, channels, drains, fences, gates (including toll gates), safety barriers, stops and other like works as may be necessary, subject to the prior written approval of the Grantor being received in each case (however, this shall not apply to routine maintenance). All approved works and routine maintenance must be performed to the satisfaction of the Grantor.

### Road access

51. The Concessionaire may install and operate a toll gate controlling entrance to the right of way at a position on the right of way approved by the Grantor.
52. The Concessionaire may lock the gate on the Mount Hutt ski field road for reasons of security and public safety to deny public pedestrian and vehicle access. A key to the gate must be provided to the Grantor. In particular:
- (a) The Concessionaire may refuse access to vehicles for any of the reasons set out at clause 53 below;
  - (b) The Concessionaire may refuse pedestrian access to any member of the public, only where safety is of a concern; and
  - (c) Prior to refusing such pedestrian access, the Concessionaire shall take all practicable steps to consult with the Grantor.
53. The Concessionaire may refuse vehicle entry (except to vehicles operated by the Grantor) where in the opinion of the Concessionaire:
- (a) The weather or road conditions or visibility of the right of way are hazardous; or
  - (b) The vehicle does not appear to be roadworthy or adequately equipped with appropriate safety equipment required for the conditions; or
  - (c) The driver appears to be impaired and not capable of proper control of the vehicle.

### Toll gate fees

54. The Concessionaire may charge a reasonable road toll to each user or vehicle for use of the road. The Concessionaire may charge fees at the toll gate for access to the road by all vehicles except those vehicles used by the Grantor carrying out management functions in accordance with clause 3.2 of Schedule 2.

**Other easement facilities**

55. The Concessionaire must (at its cost) operate, maintain and repair the water storage and reticulation infrastructure (reservoir, dam and water tanks), snow making and pumping equipment (wands/snow guns), pylons, lift cables, ski lift chairs and utilities (water, sewage, electricity, telecommunication and computer media) on the Land to required standards, codes of practice and legislative requirements. The Concessionaire must at the Grantor's request, provide the Grantor with documentary evidence of compliance with the said requirements.

**General**

56. The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018, apply as is relevant to the class of easement provided for in this Concession. Schedule 5 of the Regulations (excluding clauses 13 and 14) is set out in Schedule 5 of this Concession and the clauses are varied as follows:
- (a) Clause 1 is amended by adding the words "in Schedule 4" after the words "on a plan" in paragraph (a) of the interpretation of "**easement area**"
  - (b) Clause 1 is amended by deleting the words "grantee and" from the interpretation of "**grantee and grantor**"
  - (c) Schedule 5 is amended by adding a new clause 1A: "Any reference to "grantee" in this Schedule is to be read as "Concessionaire" and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees."
  - (d) Clause 11(2) is deleted and clause 11(4) is amended by deleting the reference to (2).
  - (e) Clauses 13 and 14 are deleted.

## SCHEDULE 4 – Table and Map

The following table also includes reference to some, but not all, of the Concessionaire's non-lease related activities, denoted as Easement and Licence in Activity column below.

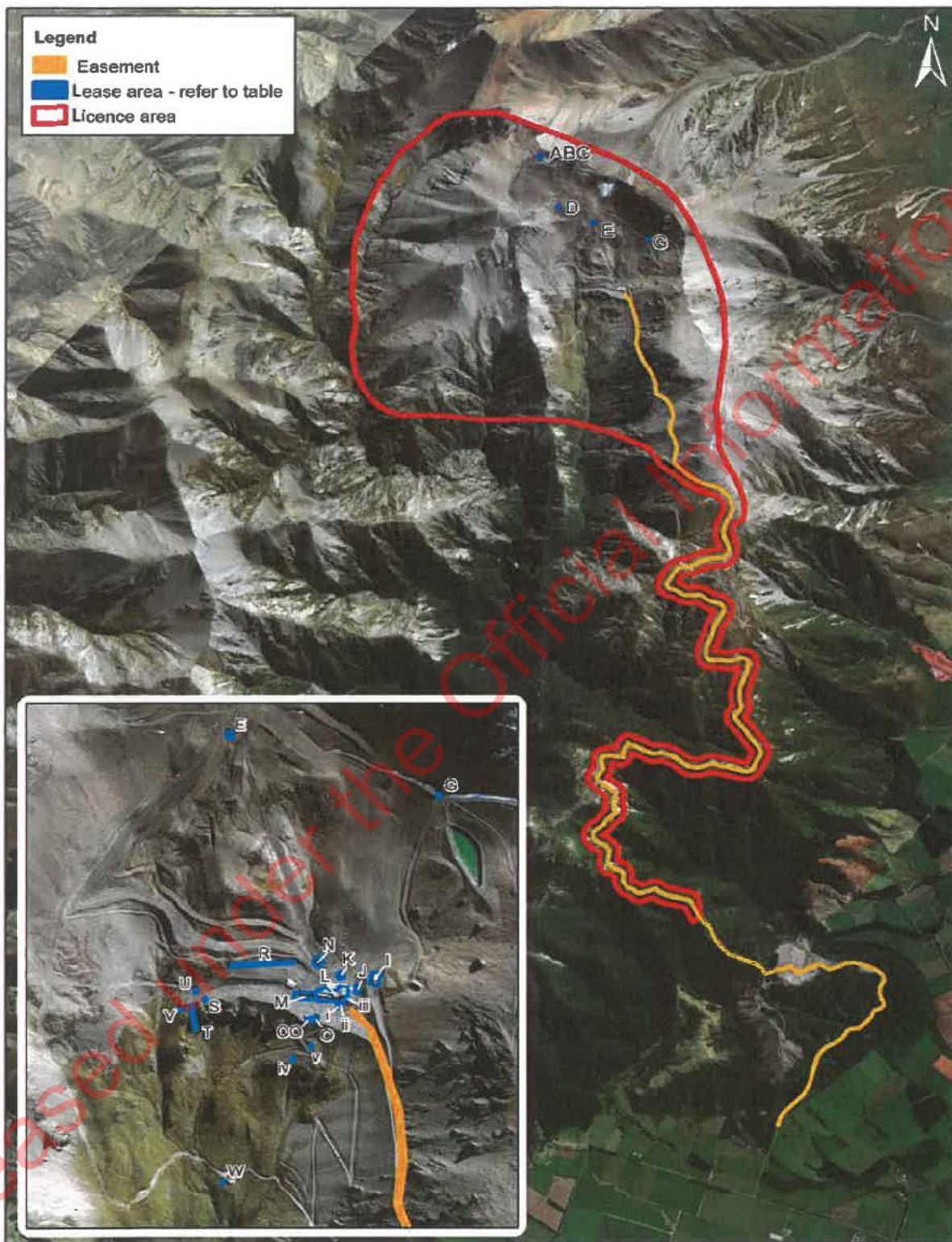
Description	Label	Activity	Access
Summit Six Return Station and Control Hut	A	Lease	✂
Patrol Dispatch Hut	B	Lease	🚔
Weather System and Repeater Equipment Hut	C	Lease	✂
Philip Wareing Limited	CC		⊙
Triple Drive Station and Control Hut	D	Lease	✂
Quad Return Station and Control Hut	E	Lease	✂
Snowmaking Reservoir	F	Easement	⚙
Well Building	G	Lease	⚙
Snowmaking Bore	GG	Easement	⚙
11kV Underground Power Cable Service Road	H	Easement	🏠
Snowmaking Pump Station Building	I	Lease	⚙
Patrol/Race Staff Building	J	Lease	🚔
Quad Drive Station and Control/Storage Huts	K	Lease	✂
Base Lodge Building	L	Lease	🏠
Ski School/Creche Building	M	Lease	
Summit Drive Station and Control/Storage Huts	N	Lease	✂
Sewerage Treatment Building (SBR)	O	Lease	✂
Compactor Screen Hut	OO	Lease	✂
Mount Hutt Helicopters 2013 Limited's Building	P		⊙
Mount Hutt Ski Club Building	Q		⊙
Conveyor Lift Enclosure	R	Lease	🏠
Sunkid Conveyor Lifts (2)	RR	Easement	🏠
Bungy Hut	S	Lease	🏠
Bungy Platform	T	Lease	🏠
Triple Mid-station Control Hut	U	Lease	✂
Avalauncher Container	V	Lease	🚔
Triple Return Station and Control Hut	W	Lease	✂
Snowmaking Stream Dam	Z	Easement	⚙
70,000 litre underground diesel tank	i	Lease	✂
1,100 litre above ground unleaded petrol tank	ii	Lease	✂
LPG storage cupboard	iii	Lease	✂
Explosives magazine	iv	Lease	🚔
Detonator magazine	v	Lease	🚔
General ski area (skiable terrain) as defined by red outline on map		Licence	🏠

Table 1: Label and figure index of permanent assets at Mt Hutt Ski Area. Key to personnel access is as follows:

🚔 Patrol, ✂ Maintenance, ⚙ Snowmaking/Maintenance, 🏠 General Staff/Public, ⊙ Private operators



# Map



Date: 17/10/2018

## Mt Hutt Skifield Area



Department of Conservation  
*Te Papa Atawhai*  
NZGD\_2000\_New Zealand Transverse Mercator  
Crown Copyright Reserved

Path: Q:\GIS\_Analysts\Projects\2018\_2019\SouthIsland\146965\_Mt\_Hutt\_permission\_map\_CS\Wt\_Hutt.mxd

### SCHEDULE 4A- Diagram

Showing approximate location of underground services: air/water pipe lines (blue line) and 11kv power cables (red line).





## SCHEDULE 5

### RIGHTS AND POWERS IMPLIED IN EASEMENTS

#### LAND TRANSFER REGULATIONS 2018

The following are the rights and powers implied in easements as set out in Schedule 5 of the Land Transfer Regulations 2018. The Regulation Schedule applies to all classes of easement and so it is only the specific provisions which relate to the class of easement dealt with in this Concession which apply, along with those that apply to all forms of easement. This Schedule does not include clauses 13 and 14 of Schedule 5 of the Regulations as they are deleted and replaced by the specific default and dispute provisions of the Concession. Refer to Schedule 3 of the Concession for changes to these implied rights and powers.

#### 1 Interpretation

In this schedule, unless the context otherwise requires,—

**benefited land**, in relation to an easement that benefits land, means the land that takes the benefit of the easement and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document

**burdened land**, in relation to an easement,—

- (a) means the land over which the easement is registered and that is described by reference to the register in the relevant easement instrument, transfer instrument, or deposit document; and
- (b) includes the easement area

**easement area**, in relation to an easement, means an area that—

- (a) is shown on a plan in Schedule 4; and
- (b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

**easement facility**,—

- (a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (c) for a right of way, means the surface of the land described as the easement area, including any driveway:
- (d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other

equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

- (f) for a right to convey gas, means pipes, conduits, valves, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution

**grantor—**

- (a) have the meanings given by section 107 of the Act; and
- (b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

**repair and maintenance**, in relation to an easement facility, includes the replacement of the easement facility

**telecommunication** means the conveyance by electromagnetic means from one device to another of any encrypted or non-encrypted sign, signal, impulse, writing, image, sound, instruction, information, or intelligence of any nature, whether for the information of any person using the device or not.

- 1A** Any reference to “grantee” in this Schedule is to be read as “Concessionaire” and includes the Concessionaire’s agents, employees, contractors, tenants, licensees and invitees.

**2 Classes of easements**

For the purposes of regulation 21, easements are classified by reference to the following rights:

- (a) a right to convey water:
- (b) a right to drain water:
- (c) a right to drain sewage:
- (d) a right of way:
- (e) a right to convey electricity:
- (f) a right to convey telecommunications:
- (g) a right to convey gas.

*Rights and powers implied in easements granting certain rights*

**3 Right to convey water**

- (1) A right to convey water includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.
- (2) The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- (3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).
- (4) The grantor must not do and must not allow to be done anything on the burdened land that may cause the purity or flow of water in the water supply system to be polluted or diminished.



**4 Right to drain water**

4(1) to 4(3) deleted as not relevant.

**5 Right to drain sewage**

- (1) A right to drain sewage includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to drain, discharge, and convey sewage and other waste material and waste fluids in any quantity—
  - (a) from the benefited land through the easement facility and over the easement area; or
  - (b) for an easement in gross, through the easement facility and over the easement area.
- (2) The right to drain, discharge, and convey sewage and other waste material and waste fluids is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
- (3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

**6 Rights of way**

- (1) A right of way includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.
- (2) The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—
  - (a) vehicle, machinery, or implement; or
  - (b) domestic animal or (if the burdened land is rural land) farm animal.
- (3) A right of way includes the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposits of materials, or unreasonable impediment) to the use and enjoyment of the easement facility.
- (4) The right to go over and along the easement facility, and to have the easement facility kept clear, is limited to the extent by any period of necessary repair or maintenance of the easement facility.
- (5) The easement facility for the relevant easement is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with clause 10(1).

**7 Right to convey electricity**

- (1) A right to convey electricity includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to lead and convey electricity and electrical impulses without interruption or impediment from the point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.

- (2) The right to convey electricity without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.
- (3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

## **8 Right to convey telecommunications**

- (1) A right to convey telecommunications includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to lead and convey telecommunications without interruption or impediment through the easement facility and over the easement area and (for an easement that benefits land) to and from the benefited land.
- (2) The right to convey telecommunications without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.
- (3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

## **9 Right to convey gas**

9(1) to 9(3) deleted as not relevant.

### *Rights and powers implied in all classes of easement*

## **10 General rights**

- (1) All the easements referred to in this schedule include—
  - (a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and
  - (b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and
  - (c) the right to repair and maintain the easement facility.
- (2) The grantor must not unreasonably withhold consent under subclause (1)(b).
- (3) The grantor must not do and must not allow to be done on the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
- (5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

## **11 Repair, maintenance, and costs**

- (1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.
- (2) Deleted.
- (3) If the easement is in gross, the grantee bears the cost of all work done outside the burdened land.
- (4) The parties responsible for maintenance under subclause (1), or (5) (as the case may be) must meet any associated requirements of the relevant local authority.
- (5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.
- (6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—
  - (a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and
  - (b) the balance of those costs is payable in accordance with subclause (2).
- (7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

## **12 Rights of entry**

- (1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—
  - (a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and
  - (b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and
  - (c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.
- (2) However, the grantee must first give reasonable notice to the grantor.
- (3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.
- (4) The grantee must ensure that all work is performed properly.
- (5) The grantee must ensure that all work is completed promptly.
- (6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.
- (7) The grantee must compensate the grantor for all damage caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the burdened land.

**13 Default**

Deleted.

**14 Disputes**

Deleted.

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# SCHEDULE 6

## ANNUAL ACTIVITY RETURN FORM CONCESSION ACTIVITY FEE

**NZSki Limited  
Mount Hutt Ski Area**

**Lease and Licence and Easement**

Concession Number: 35128-SKI

**TRADING YEAR: 01/12/\_\_\_\_\_ to 30/11/\_\_\_\_\_**

Description	Amount
<b>Concession Activity Fee:</b>	
<b>GROSS REVENUE</b> derived from all activities authorised under this Concession during the previous trading year as defined in Item 6(a) of Schedule 1.	\$
<b>% of Gross Revenue</b>	\$
<b>Plus GST</b>	\$
<b>Total Concession Activity Fee to be paid:</b>	\$

**I certify that the above figures are a true and accurate copy of records held by the company/business.**

**Signed by:** \_\_\_\_\_ **Date:** / /

**Name:**

**Title:**

for NZSki Limited

Please return form to: Department of Conservation  
PO Box 5244  
Moray Place  
Dunedin 9054  
email: [permissionsdunedin@doc.govt.nz](mailto:permissionsdunedin@doc.govt.nz)

**Concession Document  
(Licence to Occupy Land to Conduct a Skifield on Land)**

Concession Number: 40011-SKI

**THIS DOCUMENT** is made this      day of

**PARTIES:**

**Minister of Conservation** (the Grantor)

**Ruapehu Alpine Lifts Limited** (the Concessionaire)

**BACKGROUND**

- A. The Department of Conservation ("Department") *Te Papa Atawhai* is responsible for managing and promoting conservation of the natural and historic heritage of New Zealand on behalf of, and for the benefit of, present and future New Zealanders.
- B. The Department is under the control of the Grantor.
- C. The carrying out of these functions may result in the Grantor granting concessions to carry out activities on public conservation land.
- D. The Grantor administers public conservation lands described in Schedule 1 as the Land.
- E. The Conservation legislation applying to the Land authorises the Grantor to grant a concession over the Land.
- F. The Concessionaire wishes to carry out the Concession Activity on the Land subject to the terms and conditions of this Concession.
- G. The Concessionaire acknowledges that the land may be the subject of Treaty of Waitangi claims.
- H. The Concessionaire and Ngati Tuwharetoa have entered into a Relationship Agreement in which they agree (a) to base their future relationship on shared principles; (b) to establish Te Pae Maunga to provide a joint approach respecting the intention of the tuku; and (c) the purpose and functions of Te Pae Maunga.
- I. The Concessionaire's adherence to the functions of Te Pae Maunga will be a principal factor in the Grantor's decision on whether to grant each 5 year extension to the Concessionaire's licence.
- J. The parties wish to record the terms and conditions of this Concession and its Schedules.

**OPERATIVE PARTS**

In exercise of the Grantor's powers under the Conservation legislation the Grantor **GRANTS** to the Concessionaire a **LICENCE** to carry out the Concession Activity on the Land subject to the terms and conditions contained in this Concession and its Schedules.

*Kay Booth*

SIGNED on behalf of the Minister of Conservation by Kay Booth - Deputy Director General Partnerships acting under delegated authority

in the presence of:

*Deidre Ewart*

Witness Signature

Witness Name: *Deidre Ewart*

Witness Occupation: *Public servant*

Witness Address: *Tauranga*

Sec 9(2)(a)

SIGNED for Ruapehu Alpine Lifts Limited by:  
Sec 9(2)(a) Chairman

Sec 9(2)(a)

SIGNED for Ruapehu Alpine Lifts Limited by:  
Sec 9(2)(a) Director

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**SCHEDULE 1**

1.	<b>Land</b> (clause 1)	<p><u>Land within the Licence to Occupy Land</u></p> <p>As marked on the attached plans in Schedule 4 being part of Tongariro National Park excluding those buildings and structures held under licence in accordance with section 50 of the National Parks Act 1980</p> <p><u>Land within the Licence to conduct a skifield on Land</u></p> <p>As marked on the attached plan or map in Schedule 4 being part of Tongariro National Park and more particularly described as:</p> <p>All that portion of Tongariro National Park bounded to the</p> <p><u>East</u> by the summit of Pinnacle Ridge extending northwards to Skippers Bluff and then the summit of Te Herenga Ridge</p> <p><u>North</u> by the contour on the northern face of Mount Ruapehu at an altitude of 1500m above mean sea level</p> <p><u>West</u> by the eastern ridge of the main Whakapapaiti Stream</p> <p><u>South</u> by the contour on the northern face of Mount Ruapehu at an altitude of 2300m above mean sea level</p>
2.	<b>Concession Activity</b> (clause 2)	See schedule 3, clause 1
3.	<b>Term</b> (clause 3)	Thirty (30) years commencing on 1 May 2016 and expiring on 30 April 2046 (subject to Item 4 below and to clause 3 of Schedule 2
4.	<b>Rights of Extension</b> (clause 3)	Six rights of extension of 5 years each, with each extension to commence on 1 May in the relevant year and to expire 5 years later on 30 April in the relevant year subject to the operation of clause 3 of Schedule 2
5.	<b>Concession Fee</b> (clause 1 and 4)	<p><b>Annual Activity Fee</b> Sec 9(2)(i)</p> <div style="background-color: black; width: 100%; height: 100%;"></div> <p><b>Annual Management Fee</b> Sec 9(2)(i) per annum plus GST</p>
6.	<b>Community Services Contribution</b> (clause 6)	As advised to the concessionaire on an annual basis



7.	<b>Total payments to be made per annum</b> (clause 4)	a) As detailed in the relevant invoice (comprising: Concession Fee (Item 5); and b) As detailed in the relevant invoice/s (comprising Community Services Contribution (Item 6))
8.	<b>Total payment instalment(s)</b> (clause 4)	As detailed in the relevant invoices
9.	<b>Concession Fee Payment Date(s)</b> (clause 4)	On the 31 <sup>st</sup> of October in each year
10.	<b>Penalty Interest Rate</b> (clause 4)	Double the current Official Cash Rate from time to time (OCR). <a href="#">See Reserve Bank of New Zealand website</a>
11.	<b>Concession Fee Review Date(s)</b> (clause 5)	On every third anniversary of the Term commencement date.
12.	<b>Insurance</b> (To be obtained by Concessionaire) (clause 12)	Types and amounts: Public Liability Insurance for: a) General indemnity for an amount no less than \$5,000,000.00; and b) Forest and Rural Fires Act extension for an amount no less than \$5,000,000.00; and Third party vehicle liability for an amount no less than \$10,000,000.00. Subject to review in accordance with clause 12.9 on each Concession Fee Review Date
13.	<b>Addresses for Notices</b> (clause 23)	The Grantor's address is: 73 Rostrevor Street Hamilton 3204 07 858 1000 <a href="mailto:permissionshamilton@doc.govt.nz">permissionshamilton@doc.govt.nz</a>
15.		The Concessionaire's address in New Zealand is: Iwikau Village Mount Ruapehu New Zealand Phone: <span style="background-color: black; color: black;">Sec 9(2)(a)</span> <a href="mailto:info@mtruapehu.com">info@mtruapehu.com</a>

		<p>Registered Office:</p> <p>C/ Deloitte</p> <p>Level 16</p> <p>10 Brandon Street</p> <p>Wellington</p> <p>New Zealand</p>
16.	<b>Special Conditions</b> (clause 30)	See Schedule 3

Note: the clause references are to the Terms and Conditions of Licence set out in Schedule 2.

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## SCHEDULE 2

### TERMS AND CONDITIONS OF LICENCE

#### 1. Interpretation

1.1 In this Document, unless the context otherwise requires:

“**Gross revenue**” means revenue for all services provided by the Licensee of whatever description, but excluding the provision of a medical centre and any revenue received from the sale of lift passes, plus the provision of lift passes, plus the provision of rental equipment and lessons, to primary and secondary students while they are undertaking activities organised by their school and undertaken during school hours, generated by the Licensee in carrying out its business under the Licence during a 12 month period.

“**Licence to Occupy Land**” means the Land described as Licence to Occupy Land described in Item 1 of Schedule 1.

“**Licence Land**” means the Land described as Licence Land in Item 1 of Schedule 1.

“**Working day**” means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's birthday, and Labour Day; and

(b) if Waitangi Day or Anzac Day falls on a Saturday or a Sunday, the following Monday; and

(c) a day in the period commencing on 25 December in any year and ending with 15 January in the following year

1.2 Where the Grantor's consent or approval is expressly required under a provision of this Concession, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

1.3 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land). The Concessionaire is liable under this Concession for any breach of the terms of the Concession by its employees, contractors, agents, clients and invitees (excluding other members of the public accessing the Land), as if the breach had been committed by the Concessionaire.

1.4 Where this Concession requires the Grantor to exercise a discretion or give any approval or provides for any other actions by the Grantor, then the Grantor must act reasonably and within a reasonable time. When a consent is required under this Concession such consent must not be unreasonably withheld.

1.5 Where this Concession provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 23 is to apply.

**2. What is being authorised?**

- 2.1 The Concessionaire is only allowed to use the Land for the Concession Activity.
- 2.2 The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care and diligence normally practised by suitably qualified and experienced people in carrying out such activities in New Zealand.
- 2.3 The Concessionaire must provide the Grantor with evidence of the competency and qualifications of its employees and contractors if the Grantor so requests.
- 2.4 The Concessionaire must not commence the Concession Activity until the Concessionaire has signed the Concession Document and returned one copy of this Document to the Grantor, as if it were a notice to be given under this Concession.

**3. How long is the Concession for - the Term?**

- 3.1 This Concession commences on the date set out in Item 3 of Schedule 1 and is for a term of 30 years together with (subject to clause 3.2) 6 rights of extension of 5 years each, making a total term of 60 years.
- 3.2 The Concessionaire has rights of extension which are exercisable as set out in this clause 3 provided that:
  - (a) the Concessionaire gives the Grantor at least three months' written notice before the relevant Exercise Date (defined in clause 3.3), which notice will be irrevocable, of the Concessionaire's wish to take up the relevant Extension Period(s); and
  - (b) at the time notice is given in accordance with clause 3.2(a) there is not a subsisting material breach of this Concession for which the Grantor has previously advised the Concessionaire in writing that it will terminate the Concession; and
  - (c) at the time notice is given the Concessionaire meets the following criteria to the satisfaction of the Grantor:
    - (i) demonstrating the extent to which the Concessionaire has recognized and shown respect for Ngati Tuwharetoa's tikanga and values over the Whakapapa Ski Area (including its impact on Ruapehu);
    - (ii) demonstrating the extent to which the Concessionaire has appropriately protected and conserved the Whakapapa Ski Area; and



- (iii) demonstrating the extent to which the Concessionaire has protected and satisfied the people and communities that use the Whakapapa Ski Area,

and for the purposes of this clause 3.2(c), the Grantor will consult with and seek cultural advice (at the cost of the Concessionaire) from Ngati Tuwharetoa at least 12 months before each Exercise Date on its assessment of the extent to which the Concessionaire has met the criteria for the first and each succeeding 5 year Extension Period and shall advise the Concessionaire at least 6 months before each Exercise Date if it believes that the Concessionaire has failed to meet any of the criteria set out in this clause 3.2(c) in order to provide the Concessionaire with an opportunity to remedy that failure.

- 3.3 Each of the following dates shall be an "Exercise Date" for the purposes of clause 3.2: 1 May 2021, 1 May 2026, 1 May 2031, 1 May 2036, 1 May 2041, and 1 May 2046.
- 3.4 Subject to compliance with clause 3.2 and without limiting anything in clause 3.5, the Concessionaire may take:
  - (a) the first Extension Period on the 1 May 2021 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5) and, having done so, the Term shall not expire prior to 30 April 2051;
  - (b) the second Extension Period on the 1 May 2026 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5), and, having done so, the Term shall not expire prior to 30 April 2056;
  - (c) the third Extension Period on the 1 May 2031 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5), and, having done so, the Term shall not expire prior to 30 May 2061;
  - (d) the fourth Extension Period on the 1 May 2036 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5), and, having done so, the Term shall not expire prior to 30 April 2066;
  - (e) the fifth Extension Period on the 1 May 2041 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5), and, having done so, the Term shall not expire prior to 30 April 2071; and
  - (f) the sixth Extension Period on the 1 May 2046 Exercise Date (or such later date as may apply by virtue of the operation of clause 3.5), and, having done so, the Term shall not expire prior to 30 April 2076.

3.5 If:

- (a) in relation to a particular Exercise Date, the requirement specified in clause 3.2(c) in respect of the Extension Period for that Exercise Date is not satisfied by the time notice is required to be given under clause 3.2(a), then the Concessionaire may at any time before the next Exercise Date (and outside the time frame specified under clause 3.2(a)) give a notice under clause 3.2(a) and demonstrate to the Grantors satisfaction that it has at that time complied with the requirement specified in clause 3.2(c), in which case the relevant

Extension Period may be taken by the Concessionaire at that time (as if it had been taken on its allocated Exercise Date);

- (b) in relation to a particular Exercise Date, the requirement specified in clause 3.2(c) remains unsatisfied for the two immediately preceding Exercise Dates, then the Concessionaire will cease to be able to take the last Extension Period it is then entitled to provided that on the next Exercise Date on which the Concessionaire is permitted to take an Extension Period that Extension Period shall be the next available and untaken Extension Period in order to maintain a continuous Term (for example: if the Concessionaire takes the first Extension Period but then is not entitled to take the Extension Periods referable to the two following Exercise Dates but the Concessionaire is again entitled to take a further Extension Period in respect of the next following Exercise Date, then that further extension will be second Extension Period and the Expiry Date will thereafter become 30 April 2071 (instead of 30 April 2076)).

**4. What are the fees and when are they to be paid?**

- 4.1 The Concessionaire must pay the Processing Fee (Item 20 of Schedule 1) to the Grantor in the manner directed by the Grantor. Except where the Grantor's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.
- 4.2 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10, and 11 of Schedule 1.
- 4.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.
- 4.4 For the purpose of assisting in the determination of the Concession Fee in accordance with clause 5, the Concessionaire will:
- (a) in each year within six (6) months of its annual balance date deliver to the Grantor a copy of its annual accounts of the businesses (including a profit and loss account and a balance sheet) in respect of its last preceding financial year (such accounts to show the gross revenue derived by the Concessionaire from its operations in the Licence Area during that preceding year);
  - (b) record in its accounts gross revenue from lift and tow ticket sales, ski instruction, cafeteria sales, and other revenue, and provide that information to the Grantor; and
  - (c) appoint an auditor in accordance with the terms of the Companies Act 1993.

## 5 When can the fee be reviewed?

- 5.1 The Grantor is to review the Concession Fee on the Concession Fee Review Dates in the following manner:
- (a) The Grantor must commence the review not earlier than 3 months before a Concession Fee Review Date and no later than 9 months following the Concession Fee Review Date by giving notice to the Concessionaire.
  - (b) Subject to clause 6.1(e) the notice must specify the Concession Fee which the Grantor considers to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987.
  - (c) If, within 28 days of receipt of the Grantor's notice, the Concessionaire gives notice to the Grantor that the Concessionaire disputes the proposed new Concession Fee, the new Concession Fee is to be determined in accordance with clause 6.2(a) or (b).
  - (d) If the Concessionaire does not give notice to the Grantor under clause 6.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
  - (e) Notwithstanding clause 6.1(b) the new Concession Fee so determined or accepted must not be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date and is to be the Concession Fee payable by the Concessionaire from the Concession Fee Review Date.
  - (f) Until determination of the new Concession Fee, the Concession Fee payable by the Concessionaire from the Concession Fee Review Date is to be the Concession Fee specified in the Grantor's notice. On determination of the new Concession Fee an adjustment is to be made and paid, either by the Grantor or by the Concessionaire, whichever is applicable.
- 5.2 Immediately the Concessionaire gives notice to the Grantor under clause 6.1(c) the parties are to endeavour to agree on a new Concession Fee. If the parties are unable to reach agreement within 28 days the new Concession Fee is to be determined either:
- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 23) or, if the parties agree,
  - (b) by registered valuers acting as experts and not as arbitrators as follows:
    - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
    - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other

- party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
- (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
  - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
  - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
  - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
  - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.
  - (d) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
    - (i) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 6.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
    - (ii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 6.1.

5-3

The parties agree that the Concession Fee review methodology and process set out in clause 5.1 and clause 5.2 shall be reviewed and may be replaced with new provisions (*New Provisions*) if agreement can be reached. If agreement is reached between them this will be recorded in a deed of variation of this Concession Document (*Deed of Variation*) before the first Concession Fee Review Date with the intent that the New Provisions will apply on the first and all subsequent Concession Fee Review Dates. The parties agree to actively and with good faith negotiate the New Provisions and may enter into the Deed of Variation within the first two years of the Term.



5.4 If the parties are unable to reach agreement clauses 5.1 and 5.2 shall continue in force for the term.

**6. Are there any other charges?**

6.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.

6.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.

6.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor on the 20<sup>th</sup> day of the month following receipt of the invoice. If payment is not made within that time then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 10 of Schedule 1.

6.4 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor the amount specified in Item 7 of Schedule 1 as part of the Total Payment specified in Item 8 of Schedule 1 on the Concession Fee Payment Dates specified in Item 9 of Schedule 1.

**7. When can the Concession be assigned?**

7.1 The Concessionaire must not transfer, sub licence, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Concession or any part of it (which includes the Concessionaire entering into a contract or any other arrangement whatsoever whereby the Concession Activity would be carried out by a person (called the assignee) other than the Concessionaire) without the prior written consent of the Grantor.

7.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 7.1.

7.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.

7.4 In exercising the discretions in clause 7 the Grantor is ascertaining if the Concessionaire's interest in the Concession is being disposed of to an entity with experience, ability, resources and good standing to be able to carry out the part of the Concessionaire's interest being so disposed.

7.5 If the Grantor gives consent under clause 7.1 then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.

7.6 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.

7.7 If the Concessionaire is not a publicly listed company then any change in beneficial ownership of more than 50% of the ordinary voting shares in the Concessionaire is deemed to be an assignment and requires the consent of the Grantor.

**8. What are the obligations to protect the environment?**

8.1 The Concessionaire must not cut down or damage any vegetation; or damage any natural feature or historic resource on the Land, or light any fire on the Land, without the prior consent of the Grantor.

8.2 The Concessionaire must at its cost keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy excluding any rubbish, weeds or organisms emanating from the use of the Land or any adjoining land by the Grantor or any other organisation operating under a separate approval, licence or permit within the Land or any adjoining land.

8.3 The Concessionaire must not without the prior consent of the Grantor store hazardous materials on the Land nor store other materials on the Land where they may obstruct the public or create a nuisance.

8.4 If directed by the Grantor, the Concessionaire must take all steps necessary to control, or, at the Grantor's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land (but excluding any pest, insect or rodent infestation emanating from any adjoining land or any other organisation operating under a separate approval, licence or permit within the Land or any adjoining land), and if directed by the Grantor, engage a pest exterminator approved by the Grantor.

8.5 The Concessionaire must make adequate provision for suitable sanitary facilities for the Land if directed by the Grantor and for the disposal of all refuse material and is to comply with the reasonable directions of the Grantor in regard to these matters.

8.6 The Concessionaire must keep all structures, facilities and land alterations and their surroundings in a clean and tidy condition. If reasonably directed by the Grantor the Concessionaire must paint all structures and facilities in colours approved by the Grantor and with paints of a type approved by the Grantor.

8.7 If, during the Term, the Concessionaire removes a structure or facility from the Land the Concessionaire must, unless the Grantor directs otherwise, repair and make good at its own expense all damage which may have been done by the removal and must leave the Land in a clean and tidy condition.

**9. What about Environmental Monitoring?**

- 9.1 The Concessionaire must, during the Term, if the Grantor so directs, design in consultation with the Grantor and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity. Such a programme may include the Grantor recovering the costs of reviewing the Concessionaire's reports and undertake site inspections, if required

**10. When can new structures be erected or land alterations occur?**

- 10.1 The Concessionaire must not erect, make alterations (other than minor alterations) to the exterior of any Structure, or bring on to the Land any structure not authorised in Schedule 4 nor alter the Land in any way without the prior approval of the Grantor.
- 10.2 In giving approval under clause 10.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 10.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 10.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting a new structure or altering any structure on the Land
  - (b) altering the Land in any way.

**11. What about advertising?**

- 11.1 The Concessionaire must not erect or display any new signs or advertising on the Land without the prior approval of the Grantor. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 11.2 If directed by the Grantor, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the Concession Activity under a Concession granted by the Grantor on land administered by the Department.
- 11.3 If directed by the Grantor, the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the Land and the surrounding area.
- 11.4 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

**12. What are the liabilities and who insures?**

- 12.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.
- 12.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.
- 12.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 12.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 12.5 Despite anything else in clause 12 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 12.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 12.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 12.7 Where the Grantor is found to be liable in accordance with clause 12.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 12.8 Without prejudice to or in any way limiting its liability under this clause 12 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 12 of Schedule 1 with a substantial and reputable insurer.
- 12.9 After every three year period of the Term the Grantor may, on giving notice to the Concessionaire, alter the amounts of insurance required under Item 12 in Schedule 1. On receiving such notice the Concessionaire must as soon as reasonably practicable take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 12.10 The Concessionaire must provide to the Grantor within 10 working days of the Grantor so requesting:
- (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;



- (b) a copy of the current certificate of such policies.

**13. What about Health and Safety?**

The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety in Employment Act 1992 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety management system (Safety Management System) and with any reasonable safety directions of the Grantor.

**13.1 The Concessionaire must:**

- a) maintain its Safety Management System;
- b) have it audited on an agreed cyclical basis by a suitably qualified person and forward to the Grantor a copy of any such audit upon request.

**13.2 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current Safety Management System in which case the Concessionaire must provide the copy within 10 working days of receiving the request.**

**13.3 Receipt of the copy Safety Management System by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 13 and is not to be construed as implying any responsibility or liability on the part of the Grantor.**

**13.4 The Concessionaire must:**

- (a) maintain a register (and provide a copy to the Grantor immediately upon request) of all accidents involving serious harm;
- (b) ensure that all contracts between the Concessionaire and any contractors working on the Land contain, at a minimum, the same requirements as clause 13;
- (c) be satisfied that facilities or equipment provided by the Grantor to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
- (d) not bring onto the Land any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

**14. What are the compliance obligations of the Concessionaire?**

**14.1 The Concessionaire must comply where relevant:**

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate

to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and

- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
  - (c) with the provisions of the Building Act 2004; and
  - (d) with all notices and requisitions of any competent authority affecting or relating to the Land or to the conduct of the Concession Activity; and
  - (e) with all Department signs and notices placed on or affecting the Land; and
  - (f) with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land.
- 14.2 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 14.1.(a) is deemed to be a breach of this Concession.
- 14.3 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

#### **15. What are the Grantor's rights to remedy defaults?**

- 15.1 The Grantor may elect to remedy at any time, after giving notice, if practicable, any default by the Concessionaire under this Concession. Before electing to so remedy in accordance with this clause, the Grantor must, if practicable, first give the Concessionaire notice of the default and a reasonable opportunity to remedy the default.
- 15.2 The Concessionaire must pay to the Grantor forthwith on demand all reasonable costs and expenses incurred by the Grantor, including legal costs and expenses as between solicitor and client, in remedying such default. The Concessionaire is to pay interest on such costs and expenses if payment is not made within 10 working days of the Grantor's demand from the date of the demand until the date of payment at the Penalty Interest Rate specified in Item 10 of Schedule 1.

## 16. Closure of skifield

- 16.1 The Concessionaire may shut down all or any part of the lift facilities for reasons of public safety, unsatisfactory patronage, poor weather conditions, or lack of snow, or other reason approved by the Grantor.
- 16.2 After consultation with the Concessionaire, the Grantor may require the Concessionaire to shut all or any part of the facilities for all or part of any day, or stop uphill transport at any time if in the opinion of the Grantor it is necessary in the interests of public safety to do so. The Grantor may require for reasons of public safety and welfare that the Licensee cease selling tickets and that any lift be closed for uphill transport and operated for downhill transport only, at any time.
- 16.3 The Concessionaire must immediately proceed to evacuate all persons from lifts and thereafter close the lifts if danger arises from weather or other mountain conditions.
- 16.4 During any period of temporary shutdown arising under clause 16.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.

## 17. Suspension of Concession Activity

- 17.1 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession and such breach results in adverse effects which are more than minor.
- 17.2 The Grantor may suspend this Concession while the Grantor investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act and the Grantor considers:
- a. the potential breach has caused or is likely to cause adverse effects which are more than minor; and
  - b. the possible offence would be likely to adversely affect (in a more than minor way) the Concessionaire's ability to carry on the Concession Activity on the Land.
- 17.3 During any period of temporary suspension arising under clause 17.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 17.4 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of a valid exercise by the Grantor of the right to suspend the Concession pursuant to clause 17.2.

**18. When can the Concession be terminated?**

18.1 If:

- (a) an order is made or an effective resolution is passed for the winding up of the Concessionaire (other than as part of a voluntary solvent corporate reorganisation approved by the Grantor) or a receiver of substantially all of the assets of the Concessionaire is appointed; or
- (b) after 20 working days notice to the Concessionaire the Concession Fee or any other money payable to the Grantor under this Concession is in arrears and unpaid; or
- (c) the Concessionaire is in breach which results in adverse affects with are more than minor or has failed to observe or perform any of the conditions, covenants and restrictions contained in this Concession and on the Concessionaire's part to be observed and performed which results in adverse affects with are more than minor and the Concessionaire fails to remedy (where such breach or failure is capable of being remedied) such breach or failure within a reasonable time of being notified in writing to do so by Grantor; or
- (d) the Concessionaire is convicted of an offence under any statute, ordinance, regulation, bylaw, or other enactment relating to the Concession Activity conducted by Concessionaire on the Land and the Grantor considers the conviction is likely to adversely affect (in a more than minor way) the Concessionaire's ability to carry on the Concession Activity on the Land, or
- (e) the Concessionaire ceases to conduct the Concession Activity on the Land or, in the opinion of the Grantor, the conduct of the Concession Activity is manifestly inadequate,

then and in every such case it is lawful for the Grantor to by notice in writing (in the form prescribed by section 245 or section 246 (as appropriate) of the Property Law Act 2007) terminate this Concession.

- 18.2 Termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

**19. What happens on termination or expiry of the Concession?**

19.1 If the Grantor permits the Concessionaire to remain in occupation of the Land after the expiry or earlier termination of the Term, (which permission may be oral or in writing), the occupation is to be on the basis:

- (a) of a monthly tenancy only, terminable by 1 month's notice by either party; and
- (b) at the Concession Fee then payable; and
- (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.



- 19.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.
- 19.3 In the event that the Grantor grants a Concession for the Concession Activity to a new party, the Concessionaire may with the consent of the Grantor within nine (9) months from the date of expiry or termination of this Concession, either remove the Concessionaire's structures or facilities, leaving the Land in a clean and tidy condition, or transfer by way of leasing, sale or assignment the Concessionaire's structures or facilities to the new party.
- 19.4 Subject to clause 19.2, on expiry or termination of this Concession, the Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

**20. What about other concessions?**

- 20.1 Subject to clause 20.2, nothing expressed or implied in this Concession is to be construed as preventing the Grantor from granting other concessions (Other Concession) to other persons provided that the Grantor must not grant another concession that would derogate in any way from the Concessionaire's right or ability to carry out the Concession Activity and/or any other rights granted by this Concession.
- 20.2 The Grantor must not grant an Other Concession permitting, nor allow to be provided or undertaken for remuneration, any trade, business, occupation or activity on the Land or any other land adjacent to the Land, unless:
- (a) the Other Concession is consistent with the Tongariro National Park Management Plan;
  - (b) the Grantor has fully consulted with the Concessionaire and allowed the Concessionaire a reasonable opportunity to make representations regarding the proposed grant of the Other Concession; and
  - (c) the concessionaire under the Other Concession agrees to pay to the Concessionaire a contribution towards the cost of common facilities and services provided by the Concessionaire on the Land on terms and conditions to be reasonably agreed between the Grantor, the Concessionaire and the concessionaire under the Other Concession.

**21. How will disputes be resolved?**

- 21.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.

- 21.2 If the dispute cannot be resolved by agreement within 20 working days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 21.3 If the parties do not agree on an arbitrator within 20 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 21.4 The arbitrator must include in the arbitration award reasons for the determination.
- 21.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

## **22. What about prosecution for offences?**

- 22.1 Where any breach of this Concession by the Concessionaire also constitutes an offence under the Resource Management Act 1991, the Conservation Act 1987, or any of the Acts listed in the First Schedule to that Act:
- (a) no waiver or failure to act by the Grantor under this Concession is to preclude the Grantor from prosecuting the Concessionaire; and
  - (b) no failure by the Grantor to prosecute the Concessionaire is to preclude the Grantor from exercising the Grantor's remedies under this Concession; and
  - (c) any action of the Grantor in prosecuting the Concessionaire is not to preclude the Grantor from exercising the Grantor's remedies under this Concession.

## **23. How are notices sent and when are they received?**

- 23.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 13 or 14 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
  - (b) in the case of fax, on the date of dispatch;
  - (c) in the case of post, on the 3rd working day after posting;
  - (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 23.2 If any party's details specified in Item 13 or 14 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

**24. What is the scope of the Concession?**

24.1 Except as provided by legislation, this Concession and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Concession and there is no other agreement, representation or warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Concession.

**25. Can provisions be severed?**

25.1 Any illegality, or invalidity or unenforceability of any provision in this Concession is not to affect the legality, validity or enforceability of any other provisions.

**26. What about the payment of costs?**

26.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and signing this Concession or any extension or variation of it.

26.2 The Concessionaire must pay in full immediately and on demand all costs and fees (including solicitor's costs and fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor to enforce or attempt to enforce the Grantor's rights and powers under this Concession including the right to recover outstanding money owed to the Grantor.

**27. What is the relationship of parties?**

- 27.1 Nothing expressed or implied in this Concession is to be construed as:
- (a) constituting the parties as partners or joint venturers;
  - (b) conferring on the Concessionaire any right of exclusive occupation or use of the Licence Land (although the Concessionaire may exclude or limit access by the general public to those parts of the Licence Land actually occupied by the Concessionaire's structures and facilities);
  - (c) granting any exclusive estate or interest in the Licence Land to the Concessionaire;
  - (d) affecting the rights of the Grantor and the public to have access across the Licence Land.

**28. What about Co-Siting?**

- 28.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.
- 28.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Grantor.
- 28.3 The Grantor's consent must not be unreasonably withheld but is subject to such reasonable terms and conditions as the Grantor thinks fit including a

requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.

- 28.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Land; or
  - (b) the Grantor considers the change to be detrimental to the environment of the Land.

28.5 Subject to clause 28.6 the Concessionaire must, if required by the Grantor, allow Co-Siting on the Land.

28.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Land; or
- (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
- (c) obstruct or impair the Concessionaire's ability effectively to operate from the Land; or
- (d) interfere with or prevent future forecast works or operations of the Concessionaire,

the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 28.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 28.6.

28.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 21.

28.8 Where the Concessionaire is required under clause 28.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 28.10 entitled to require (as a precondition to allowing such Co-Siting) such third parties to enter into arms' length commercial agreements with the Concessionaire for them to conduct an activity on the Land, including for the Concessionaire and to receive a reasonable fee (which may be determined by reference to the broader market for the provision of comparable services or entitlements) from them for any agreed activity they intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:

- (a) any written comments or submissions of the Concessionaire and third party;



- (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
  - (c) any other matters the Grantor considers relevant.
- 28.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 21.
- 28.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.
- 28.11 The Grantor must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

**29. Which clauses survive termination?**

- 29.1 Clauses 12, 19, 21 and 23 survive the termination of this Concession.

**30. Are there any Special Conditions?**

- 30.1 Special conditions are specified in Schedule 3.

**31. The Law**

- 31.1 This Concession is to be governed by, and interpreted in accordance with the laws of New Zealand.

### **SCHEDULE 3**

#### **SPECIAL CONDITIONS**

##### **1. Concession Activity**

- 1.1 The Concession Activity is defined as alpine tourism and recreation activities and any other business or trade or service and infrastructure on or utilising the Land that may from time to time be undertaken in similar operations (both in New Zealand and abroad) to that undertaken by the Concessionaire on the Land.

In order to enable the Concessionaire to undertake the Concession Activity the Concessionaire is permitted:

- (a) To erect, maintain, replace and operate the lifts, tows and facilities for a maximum carrying capacity of 5500 skiers per day on the Land for the use of the public.
- (b) To sell or hire all goods and services and any other activities (including commercial activities) normally available at a skifield (including for example the sale of food and beverages, the sale or provision of medical services or supplies).
- (c) To carry out such trade, businesses, occupations or activities which are in accordance with the operative Management Plan and to which the Grantor has given its consent, or to provide such services as the Concessionaire requires in order to carry out or benefit from such trade, businesses, occupations or activities.
- (d) To provide ski instruction for members of the public on the Land
- (e) To provide, maintain, develop and operate carparking facilities for members of the public, whether customers of the Concessionaire or not, and to regulate traffic movement in the areas designated for carparking, including as reasonably required by the Grantor.

##### **2. Surrender of Previous Concession**

- 2.1 The Concessionaire surrenders, and the Grantor accepts the surrender, on the date of (and immediately prior to the grant of) this Concession, the licence dated 1 January 1990 (as subsequently varied) made between the Grantor and the Concessionaire (Licence), to the intent that all the Concessionaire's existing rights under the Licence cease, and no obligations on the parties under the Licence arise from the date of this Concession, but without releasing either party from any obligation arising under the Licence before the surrender of the Licence. The Grantor acknowledges that the Concessionaire's use of the Land to carry on its business operations are intended to continue on an uninterrupted basis despite such surrender and the grant of this Concession.

##### **3. Public Access**

- 3.1. The Concessionaire must not attempt to restrain or interfere with the right of the public to enter and remain on the Land, provided that they conduct themselves in an orderly manner and do not attempt to avail themselves of the privileges of a paying client without the payment of the Concessionaire's application charge.

**4. Services provided by the Concessionaire**

4.1 The Concessionaire must:

(a) provide such facilities as cafeterias, shelters, toilets and such other facilities as the Grantor considers necessary for the welfare and safety of the public;

(b) make such toilets and shelters available to the public free of charge, clearly identified, maintained and serviced to the Grantor's satisfaction.

4.2 The Concessionaire may refuse service, entry or access to the Concessionaire's facilities to any person where the Concessionaire reasonably considers the actions or condition of that person would be prejudicial to that person's or public safety

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