



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

Concession Number: 48601-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. [Note: add here further Background reciting link between this Concession and the Relationship Agreements with Ngati Rangi and Uenuku and the purpose of those Relationship Agreements etc]
- I. 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.

--	--

<p>_____ SIGNED on behalf of the Minister of Conservation by Michael Slater - Deputy Director General Operations acting under delegated authority</p> <p>in the presence of:</p> <p>_____ Witness Signature</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p>	<p>_____ SIGNED for Ruapehu Alpine Lifts Limited by: Murray Gribben, Chairman</p> <p>_____ SIGNED for Ruapehu Alpine Lifts Limited by: Duncan Fraser, Director</p>
---	--

DRAFT

SCHEDULE 1

1.	Land (clause 1)	<u>Land within the Licence to Occupy Land</u> As marked on the attached plans in Schedule 4 being part of Tongariro National Park <u>Land within the Licence to conduct a ski field on Land</u> As marked on the attached plan or map in Schedule 4 being part of Tongariro National Park
2.	Concession Activity (clause 2)	See schedule 3, clause 1
3.	Term (clause 3)	Twenty-Five (25) years commencing on 1 May 2017 and expiring on 30 April 2042 (subject to Item 4 below and to clause 3 of Schedule 2
4.	Rights of Extension (clause 3)	One right of extension of 10 years and five rights of extension of 5 years each, with each extension to commence on 1 May in the relevant year and to firstly expire 10 years later and subsequently to expire 5 years later on 30 April in the relevant year subject to the operation of clause 3 of Schedule 2
5.	Concession Fee (clause 1 and 4)	Annual Activity Fee To be negotiated and Annual Management Fee To be negotiated
6.	Community Services Contribution (clause 6)	Not required
7.	Total payments to be made per annum (clause 4)	As detailed in the relevant invoice (comprising: Concession Fee (Item 5)
8.	Total payment instalment(s) (clause 4)	As detailed in the relevant invoices
9.	Concession Fee Payment Date(s) (clause 4)	On the 31 st of October in each year
10.	Penalty Interest Rate (clause 4)	Double the current Official Cash Rate from time to time (OCR). See Reserve Bank of New Zealand website

11.	Concession Fee Review Date(s) (clause 5)	On every third anniversary of the Term commencement date.
12.	Insurance (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.	Addresses for Notices (clause 23)	The Grantor's address is: 73 Rostrevor Street Hamilton 3204 07 858 1000 permissionshamilton@doc.govt.nz
14.		The Concessionaire's address in New Zealand is: Iwikau Village Mount Ruapehu New Zealand Phone: 07 892 4000 info@mtruapehu.com Registered Office: C/ Deloitte Level 16 10 Brandon Street Wellington New Zealand
15.	Special Conditions (clause 30)	See Schedule 3

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

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 25 years together with (subject to clause 3.2) 1 right of extension of 10 years and 5 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) This additional clause is currently under negotiation with Ngati Rangī, Uenuku and other iwi.
- 3.3 Each of the following dates shall be an "Exercise Date" for the purposes of clause 3.2: 1 May 2027, 1 May 2032, 1 May 2037, 1 May 2042, 1 May 2047 and 1 May 2052.
- 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 2027 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 2052;
- (b) the second Extension Period on the 1 May 2032 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 2057;
- (c) the third Extension Period on the 1 May 2037 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 2062;
- (d) the fourth Extension Period on the 1 May 2042 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 2067;
- (e) the fifth Extension Period on the 1 May 2047 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 2072; and
- (f) the sixth Extension Period on the 1 May 2052 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 2077.

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 2072 (instead of 30 April 2077)).

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.....T

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.....I

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 5.1.

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 20th 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 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 shall promote and acknowledge the cultural values of Mt Ruapehu, where appropriate and in conjunction with 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?

- 1.1 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 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 ski field

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 effects which 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 effects which 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 months' 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 any tourism or recreational activity able to be undertaken on the Land from time to time and associated with the operation of a commercial ski field (whether in NZ or abroad); and, without limiting the foregoing, includes skiing of any kind and snowboarding.

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 30th of April 2017 (and immediately prior to the grant of) this Concession, the licence dated 25 November 1977 (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:

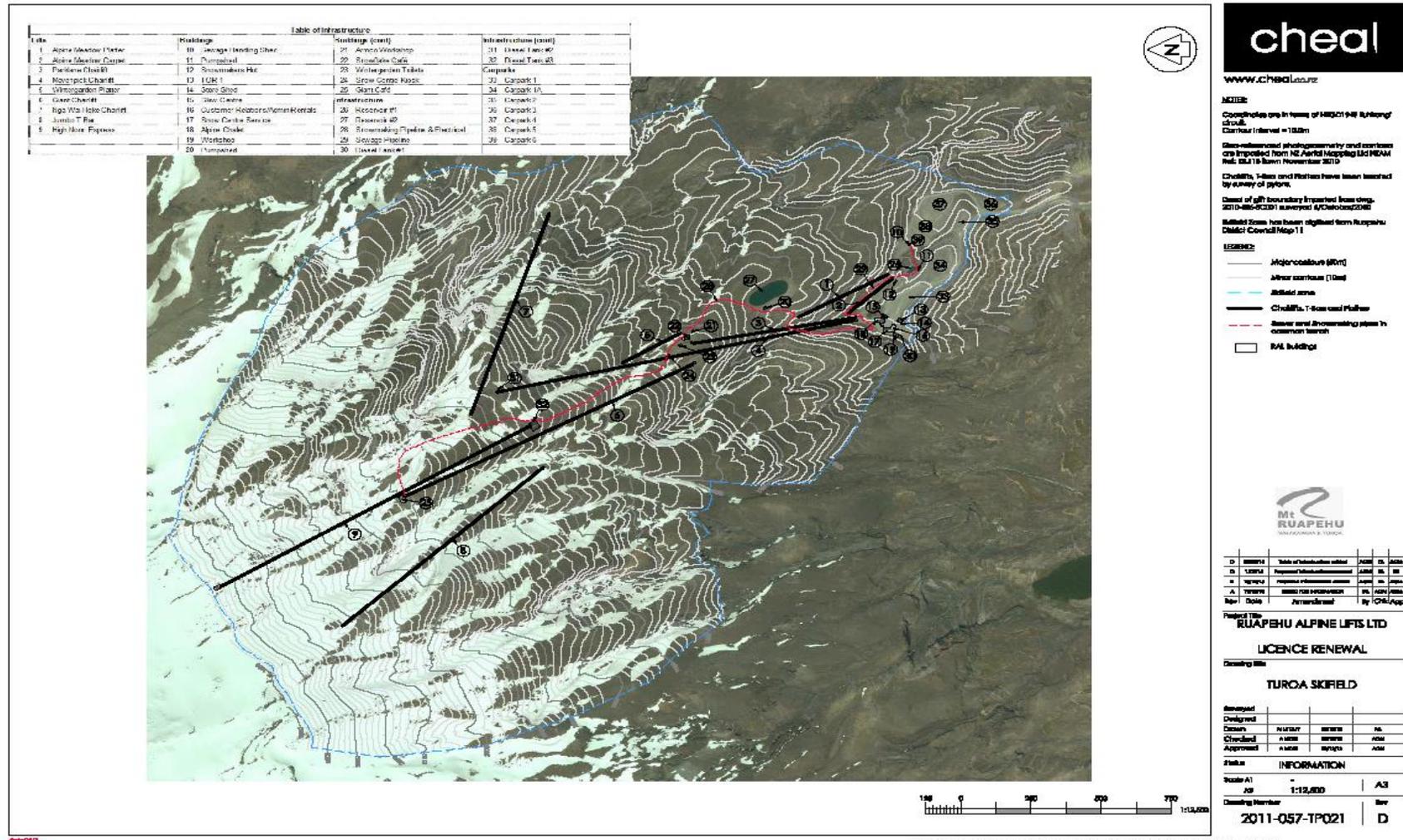
(a) provide such facilities as cafeterias, shelters, toilets and such other facilities as the Grantor considers necessary for the welfare and safety of the public;

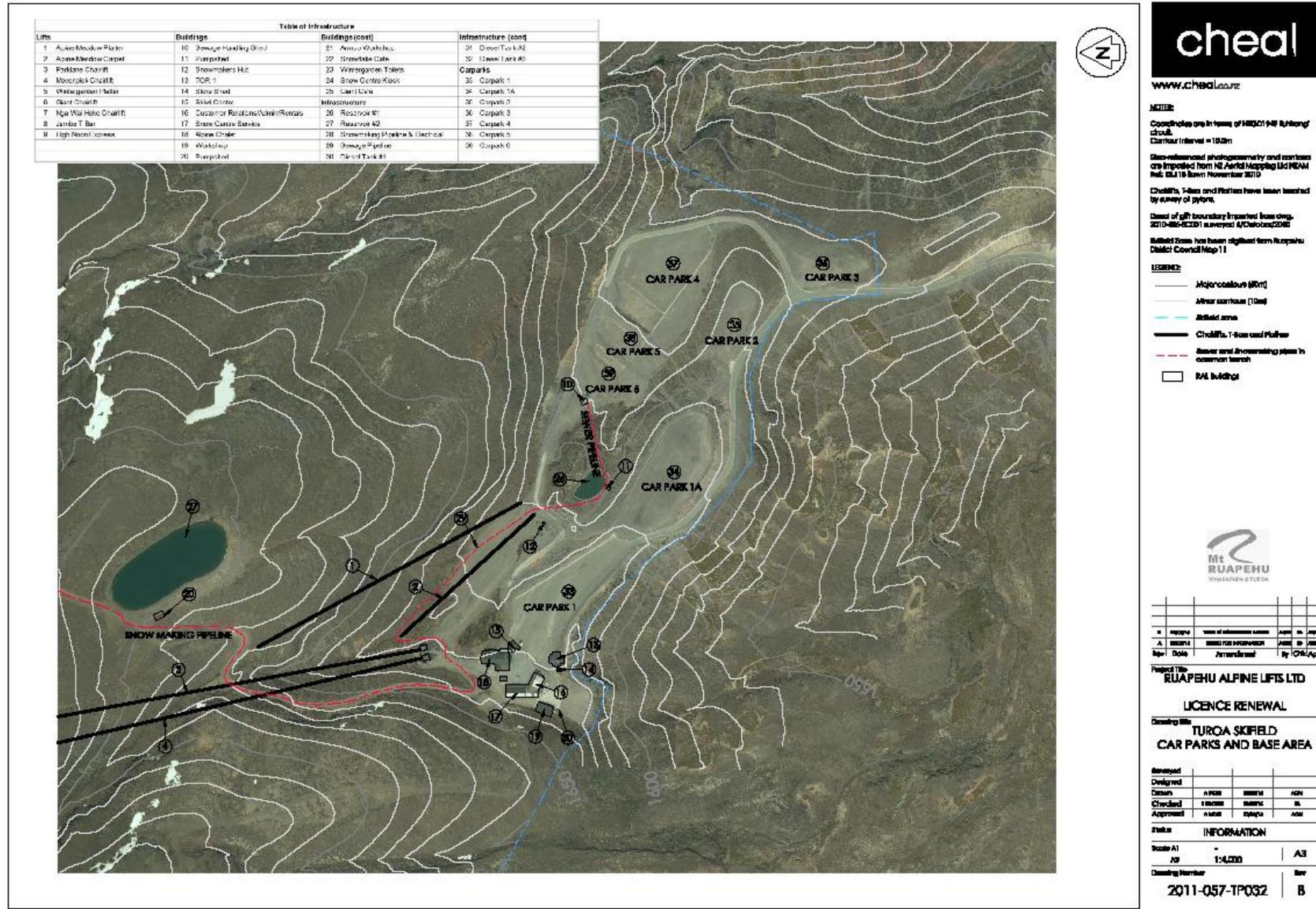
(b) make such toilets and shelters available to the public free of charge, clearly identified, maintained and serviced to the Grantor's satisfaction.

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

DRAFT

SCHEDULE 4





DRAFT