



Concession Document (Deed of Easement)

THIS EASEMENT is made this 6th day of September 2013

PARTIES:

1. **Minister of Conservation**, (the Grantor)
2. **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 Easement Land.
- E. The Conservation legislation applying to the Easement Land authorises the Grantor to grant a concession over the Easement Land.
- F. The Concessionaire wishes to carry out the Concession Activity on the Easement Land subject to the terms and conditions of this Concession.
- G. The Concessionaire acknowledges that the Easement 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 an **EASEMENT** to carry out the Concession Activity on the Easement Land subject to the terms and conditions contained in this Concession and its Schedules

SIGNED on behalf of the Minister of Conservation by



A copy of the Instrument of Delegation may be inspected at the Department of Conservation at 18-22 Manners Street, Wellington.


SIGNED by NZSki Limited by:

Director

Director

SCHEDULE 1

1.	Easement Land (Schedule 4)	Rastus Burn Recreation Reserve
2.	Land (Schedule 4)	Is the easement in gross? Yes
3.	Concession Activity (clause 2)	(a) a right to construct and operate snowmaking equipment: (b) a right to construct and operate a chairlift, called the Curvy Basin chairlift: (c) a right to construct and operate snow trails down the Curvy Basin:
4.	Term (clause 3)	30 years commencing on 1 May 2013
5.	Final Expiry Date (clause 3)	30 April 2043
6.	Concession Fee (clause 4)	For this concession, there will be no fees charged in addition to the rent that is required in accordance with the Deed of Lease dated 30 August 1993
7.	Concession Fee Payment Dates (clause 4)	Not applicable
8.	Penalty Interest Rate (clause 4)	Not applicable
9.	Concession Fee Review Date(s) (clause 5)	Not applicable
10.	Insurance (To be obtained by Concessionaire) (clause 11)	<u>Types and amounts:</u> In accord with the existing ski field lease
11.	Addresses for Notices (clause 20)	[REDACTED]

		The Concessionaire's address in New Zealand is: 
12.	Registration of Easement (Schedule 6)	Is the easement to be registered with LINZ? At the concessionaires discretion during the term of this easement If yes, then the following applies: When the Concessionaire wishes the Easement to be registered then the Concessionaire must at its expense prepare an Easement Instrument in the form attached as Schedule 6, arrange for any necessary survey and register the document. The Grantor, if satisfied the Easement Instrument implements this easement must sign the document.
13	Special Conditions (clause 24)	See Schedule 3

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

Note: Please initial each page of Schedule 1

SCHEDULE 2

STANDARD CONDITIONS

1. Interpretation

- 1.1 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 Easement 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 Easement Land), as if the breach had been committed by the Concessionaire.
- 1.2 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.

2. What is being authorised?

- 2.1 The Concessionaire is only allowed to use the Easement Land for the Concession Activity.
- 2.2 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 specified in Item 4 of Schedule 1 and ends on the Final Expiry Date specified in Item 5 of Schedule 1.

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

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 6, and 7 of Schedule 1.
- 4.2 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 8 of Schedule 1.

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 5.1(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 5.2(a) or (b).
- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(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 5.1(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 19) 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 Easement 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) (i) 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
- (ii) 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 5.1 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
- (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1

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 Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement 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 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 8 of Schedule 1.

7. When can the Concession be assigned?

- 7.1 If in Item 2 of Schedule 1 the easement is expressed as being in gross 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 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.
- 7.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 7.6 If the Concessionaire is not a publicly listed company 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.

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 Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.
- 8.2 The Concessionaire must at its cost keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Land, in good order, condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

9. When can structures be erected?

- 9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.

10. What if the Concessionaire wishes to surrender the Concession?

- 10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

11. What are the liabilities and who insures?

- 11.1 The Concessionaire agrees to use the Easement 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 Easement Land.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land, the Concession Activity, or to any structures, equipment or facilities on the Easement 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 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 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 10 of Schedule 1 with a substantial and reputable insurer.
- 11.10 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 11.9 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.
- 11.11 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.

12. What about Health and Safety?

12.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety 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 any safety directions of the Grantor.

13. What are the compliance obligations of the Concessionaire?

13.1 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 Easement 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 Easement 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 Easement 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 Easement Land

13.2 The Concessionaire must comply with this Concession.

13.3 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 13.1.(a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14. When can the Concession be terminated?

14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or

(b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. 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. What happens on termination or expiry of the Concession?

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

15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement 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 Easement Land and other public conservation land affected by the removal in a clean and tidy condition.

15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement 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 Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement 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 Easement 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.

16. When is the Grantor's consent required?

16.1 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.

17. Are there limitations on public access and closure?

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

18. What about other concessions?

18.1 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.

19. How will disputes be resolved?

19.1 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.

19.2 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.

19.3 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.

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

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

20. How are notices sent and when are they received?

20.1 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 11 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.

20.2 If either party's details specified in Item 11 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.

21. What about the payment of costs?

21.1 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.

21.2 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.

22. What about the powers implied by statute?

22.1 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 (as set out in Schedule 5 of this easement) apply to this easement **EXCEPT** to the extent set out in Schedule 3 of this easement.

23. What about Co-Siting?

23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.

23.3 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 Easement Land.

23.4 In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.

23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Easement Land.

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

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement 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 Easement 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 23.6. 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 23.6.

23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.

23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement 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.

23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Schedule 2.

23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement 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 Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.

23.11 The Grantor must not authorise the third party to commence work on the Easement 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.

24. Are there any Special Conditions?

24.1 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.

25. The Law

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

SCHEDULE 3

SPECIAL CONDITIONS

1. The rights implied in easements of vehicular right of way in the 5th Schedule of the Property Law Act 2007 as set out in Schedule 5 of this document are amended by:
 - (a) replacing the word, "grantee" with "Concessionaire"; and
 - (b) adding to Clause 2(a) the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement.

2. The Right and Powers implied in easements under the 4th Schedule of the Land Transfer Regulations 2002 as set out in Schedule 5 of this document are varied as follows, the rights and powers in:
 - (a) Regulation 1 is amended by replacing the word, "grantee" with "Concessionaire"
 - (b) Regulation 6(3)(a) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement."
 - (c) Regulation 10(1) (b) is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor as required in clauses 7 and 8 of Schedule 2 of this easement."
 - (d) Regulation 11(2) is deleted and sub clause (4) is amended by deleting the reference to sub clause (2).
 - (e) Regulations 13 and 14 are deleted.

Additional costs requirements

3. The Concessionaire is to be responsible for:
 - (a) the reasonable cost of and incidental to the Grantor's on site visits or monitoring prior to, during and after construction as required to confirm the Concessionaire's compliance with the conditions contained herein and;
 - (b) the reasonable costs of the Grantor's Quality Conservation Management (QCM) standards/safety inspections of the improvements to the Easement Land Area

Design plans for key facilities

Final design plans are to be approved by the Grantor prior to any works commencing. This includes detailed specifications for both lift terminals and their surrounds; the sites of the lift towers, the line of snowmaking piping, vehicle crossings and snowmaking lines across the Rastus Burn; the widening of the ford near the Sugar Basin lift and a final cut and fill survey of all earthworks.

Construction plans for sensitive sites

Construction plans for sensitive sites are to be approved by the Grantor prior to any works commencing. These sites are the length of the Rastus Burn, the top

lift terminal, the ford near Sugar Bowl lift and whenever snowmaking pipelines and new trails bisect natural drainage channels (surface or subsurface). The concessionaire must consult with the independent monitor prior to presenting plans to the Grantor for approval.

6. Other consents, approvals and assessments

This concession approval will not supersede any other lawfully required consents, approvals and assessments from other agencies. This includes (but is not limited to) geotechnical, engineering, district and regional resource consents, and building consents. Copies of these approvals are to be provided to the Grantor prior to works commencing.

7. Contractor selection

Only contractors with a demonstrated ability in alpine earthworks and restoration are to be used.

8. Vehicle access

- a. All machinery is to enter and exit work sites from the proposed trail or from existing roads, whichever is closer. Except for access to new lift tower sites, machinery is not to disturb terrain not part of this proposal, for example, by short-cutting across undisturbed terrain due to its proximity to the road.
- b. Vehicle crossings over surface and subsurface waterways are to be undertaken as per clause 1) and 2) above.

9. Fuel

Vehicle fuelling and storage is to take place only in designated areas established by the concessionaire's staff in consultation with DOC staff.

10. Avoidance of Wetlands

- a. Wetlands are to be avoided where possible. Where areas of surface or sub-surface drainage are unable to be avoided, suitable provision for maintaining their flow and quality is to be installed eg. coarse rock, geocloth, piping, silt traps.
- b. If construction debris falls into non target wetland areas this must be reported to the Grantor and immediately remediated.

11. Control of surface runoff and silt

Suitable drainage, cut-outs and silt traps are to be installed to control new surface flows into lower areas of vegetation, wetlands and watercourses.

12. Public Access and Safety

- a. The public is to be able to pass freely and safely through the area, particularly the walking track to Lake Alta, whenever possible.
- b. When this access is required to be temporarily restricted, it is to have prior agreement of the Grantor, is to be publicly advertised by the concessionaire at their expense, and suitable alternative access is to be provided.
- c. Signage advising the public as to the nature of the work is to be installed at the expense of the concessionaire.

13. Removal and storage of vegetation

- a. Vegetation is to be stripped and stored locally as construction progresses. It must be stripped with enough surrounding soil and humus to allow for successful storage and replanting survival.

- b. Stripping may be by machine or by hand, whichever will provide the best chance for success given the nature of the vegetation.
- c. Watering of this material may be required, at the direction of the Grantor or its nominated Monitor, to ensure its survival while stored.

14. Re-vegetation

- a. Vegetation is to be replanted as soon as possible following completion of works at individual sites ie. individual tower sites, trenches, access ways and batters. Re-vegetation planning must include follow up maintenance of re-vegetated areas prior to the end of the growing season.
- b. Where there is sufficient plant material and humus to allow survival, stripped material can be split. To supplement re-vegetation works split material may also be sourced from other areas in the Rastus Burn Recreation Reserve.
- c. Plant spacing is to be at a density as specified by the independent monitor on site.
- d. Geo-textile cloth is to be laid over any areas where there has been insufficient replanting by May 1st. This is to be removed in the following spring and revegetation works continued.
- e. To intensify re-vegetation of tussocks, nursery reared plants must be used where there is insufficient existing vegetation available for transplanting. The rearing and planting of any plants to be brought on site must be to the satisfaction of the Grantor.
- f. The seed of appropriate species should be broadcast to promote vegetation growth in the rock walls and between transplanted/planted tussocks.
- g. Completion of re-vegetation works will be at the discretion of the Grantor.

15. Re-vegetation Protocol

- a. The existing re-vegetation protocol must be updated to ensure it reflects both the extra requirements of this new project and the ongoing requirements of any concurrent re-vegetation actions.
- b. The protocol must set standards for re-vegetation actions, timeframes for achievement of goals and processes for remedying problems as they arise.
- c. The reviewed protocol must be approved by the Grantor prior to this project commencing.

16. Construction timeframes

- a. Prior to works commencing the concessionaire must submit an overall project plan to the Grantor and the independent monitor. This plan should provide a timeline of the key construction stages, the works to be completed in each stage, the equipment to be used for each stage and anticipated monitoring requirements.
- b. A briefing must be provided by the independent monitor to contractors and the concessionaire prior to each key construction stage.
- c. All works are to be completed by May 1st each year.

- d. Should the concessionaire desire construction be staged over two or more years the project plan is to account for remediation measures for unfinished works that may become redundant due to changing circumstances.

17. Monitoring

- a. Monitoring of silt control, disturbance of wetlands, revegetation and all works at sensitive sites is to occur by an independent monitor (agreed to by the Grantor and the concessionaire) at a frequency of an average of one site visit per week for the duration of works. All costs are to be at the expense of the concessionaire. Reports are to be provided to both parties.
- b. Any approved works to install a vehicle crossing over and for trenching of pipes across the Rastus Burn are to be conducted in the presence of both the concessionaire and the Grantor.
- c. Monitoring of other works may be conducted by Grantor as required by the Grantor. All costs are to be at the expense of the concessionaire.
- d. Geotechnical monitoring of works is to be conducted as per the Tonkin and Taylor Geotechnical Assessment of Effects as submitted as part of the application for this work. All costs are to be at the expense of the concessionaire.
- e. All works will be included in the annual monitoring conducted by the Grantor in conjunction with ongoing independent monitoring.

18. Remediation of works

Any remediation highlighted by monitoring will be carried out as specified by the Grantor at the cost to the concessionaire.

19. Suspension of works

The Grantor, at its sole discretion, may require all works to be suspended until suitable remediation is provided.

20. Satisfactory Completion of works

Final completion of revegetation and any other remedial works will be at the discretion of the Grantor.

21. Single Pass Lift Ticket

NZSki is to offer a fairly priced single use lift ticket to the top of the Curvy Lift.

SCHEDULE 4 - plan showing the location of the structure and works

SCHEDULE 5

RIGHTS AND POWERS IMPLIED IN EASEMENTS

A. FIFTH SCHEDULE PROPERTY LAW ACT 2007

Rights implied in easements of vehicular right of way

1. Right to pass and re-pass

- (1) The grantee and the grantor have (in common with one another) the right to go, pass, and re-pass over and along the land over which the right of way is granted.
- (2) That right to go, pass, and re-pass is exercisable at all times, by day and by night, and is exercisable with or without vehicles, machinery, and equipment of any kind.
- (3) In this clause, the grantee and the grantor include agents, contractors, employees, invitees, licensees, and tenants of the grantee or the grantor.

2. Right to establish and maintain driveway

The owners and occupiers of the land for the benefit of which, and the land over which, the right of way is granted have the following rights against one another:

- (a) the right to establish a driveway on the land over which the right of way is granted, and to make necessary repairs to any existing driveway on it, and to carry out any necessary maintenance or upkeep, altering if necessary the state of that land; and
- (b) any necessary rights of entry onto that land, with or without machinery, plant, and equipment; and
- (c) the right to have that land at all times kept clear of obstructions, whether caused by parked vehicles, deposit of materials, or unreasonable impediment to the use and enjoyment of the driveway; and
- (d) the right to a reasonable contribution towards the cost of establishment, maintenance, upkeep, and repair of the driveway to an appropriate standard; and
- (e) the right to recover the cost of repairing any damage to the driveway made necessary by any deliberate or negligent act of a person bound by these covenants or that person's agents, contractors, employees, invitees, licensees, or tenants.

3. Right to have land restored after completion of work

- (1) This clause applies to a person bound by these covenants (person A) if a person entitled to enforce these covenants (person B) has undertaken work, in accordance with the right conferred by clause 2(a) or with an order of a court, on the land over which a right of way is granted.
- (2) Person A has the right, after the completion of the work, to have the land restored as far as possible to its former condition (except for the existence of the driveway).
- (3) That right of person A is subject to person B's right, in accordance with clause 2(d), to receive a reasonable contribution towards the cost of the work.

B. LAND TRANSFER REGULATIONS 2002

1. Interpretation

In this schedule, unless the context requires otherwise,—

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

easement facility,—

- (a) in relation to 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) in relation to a right to convey electric power or a right to convey telecommunications and computer media, means wires, cables (containing wire or other media conducting materials), towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:
- (c) in relation to a right of way, means that part of the surface of the land described as the stipulated area:
- (d) in relation to 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) in relation to 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) in relation to 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

grantee, in relation to an easement,—

- (a) means—
 - (i) the registered proprietor of the dominant land; or
 - (ii) the person having the benefit of an easement in gross; andincludes the agents, employees, contractors, tenants, licensees, and other invitees of the grantee

grantor, in relation to an easement,—

- (a) means the registered proprietor of the servient land; and
- (b) includes the agents, employees, contractors, tenants, licensees, and other invitees of the grantor

servient land, in relation to an easement, means—

- (a) the parcel of land over which an easement is registered and that is described by reference to the register in a transfer instrument, easement instrument, or deposit document;
- (b) a stipulated course or stipulated area

stipulated course or stipulated area, in relation to any of the classes of easements referred to in these regulations, means the course that—

- (a) is shown on a plan prepared for the purpose of specifying the easement; and
- (b) is referred to in a transfer instrument, easement instrument, or deposit document.

2. Classes of easements

For the purposes of regulation 10(a), 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 and computer media;
- (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 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 servient land to the dominant 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 referred to in sub clause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.
4. The grantor must not do and must not allow to be done anything on the servient land that may cause the purity or flow of water in the water supply system to be diminished or polluted.

4. Right to drain water

1. A right to drain water includes the right for the grantee in common with the grantor and other persons to whom the grantor may grant similar rights to convey water (whether sourced from rain, springs, soakage, or seepage) in any quantity from the dominant land through the easement facility and over the servient land.

2. The right to drain water is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.
3. The easement facility referred to in sub clause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

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 to drain, discharge, and convey sewage and other waste material and waste fluids through the easement facility and over the servient land.
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 referred to in sub clause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

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 servient land is rural land) farm animal.
3. A right of way includes—
 - (a) the right to establish a driveway, to repair and maintain an existing driveway, and (if necessary for any of those purposes) to alter the state of the land over which the easement is granted; and
 - (b) the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposit of materials, or unreasonable impediment) to the use and enjoyment of the driveway.

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 electric impulses without interruption or impediment from the point of entry through the easement facility and over the servient 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 referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

8. Right to convey telecommunications and computer media

1. A right to convey telecommunications and computer media 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 and computer media without interruption or impediment from the point of entry through the easement facility and over the servient land.
2. The right to convey telecommunications and computer media 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 referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

9. Right to convey gas

1. A right to convey gas 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 gas without interruption or impediment from the point of entry through the easement facility and over the servient land.
2. The right to lead and convey gas 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 referred to in subclause (1) is the easement facility laid or to be laid along the stipulated course or stipulated area, as agreed by the grantor at the time of installation of the facility.

Rights and powers implied in all classes of easements

10. General rights

1. All the easements referred to in this schedule include—
 - (a) the right to use any easement facility already situated on the stipulated area or course for the purpose of the easement granted; and
 - (b) if no suitable easement facility exists, the right to lay, install, and construct an easement facility reasonably required by the grantee (including the right to excavate land for the purpose of that construction).

2. The grantor must not do and must not allow to be done on the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.
3. The grantee must not do and must not allow to be done on the dominant land or the servient land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

11. Repair, maintenance, and costs

1. If the grantee (or grantees, if more than 1) has (or 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. If the grantee (or grantees, if more than 1) and the grantor share the use of the easement facility, each of them is responsible equally for the repair and maintenance of the easement facility, and for the associated costs, for the purposes set out in subclause (1).
3. If the easement is in gross, the grantee bears the cost of all work done outside the servient land.
4. The parties responsible for maintenance under subclause (1) or subclause (2) (as the case may be) must meet any associated requirements of the relevant local authority.

12. Rights of entry

1. For the purpose of performing any duty or in the exercise of any rights conferred under these regulations or implied in any easement, the grantee may—
 - (a) enter upon the servient land by a reasonable route and with all necessary tools, vehicles, and equipment; and
 - (b) remain on the servient land for a reasonable time for the sole purpose of completing the necessary work; and
 - (c) leave any vehicles or equipment on the servient land for a reasonable time if work is proceeding.
2. The grantee must ensure that as little damage or disturbance as possible is caused to the servient land or to the grantor.
3. The grantee must ensure that all work is performed in a proper and workmanlike manner.
4. The grantee must ensure that all work is completed promptly.
5. The grantee must immediately make good any damage done to the servient land by restoring the surface of the land as nearly as possible to its former condition.

6. The grantee must compensate the grantor for all damages caused by the work to any crop (whether ready for harvest or not) or to any buildings, erections, or fences on the servient land.

13. Default

If the grantor or the grantee does not meet the obligations implied or specified in any easement,—

- (a) the party not in default may serve on the defaulting party written notice requiring the defaulting party to meet a specific obligation and stating that, after the expiration of 7 working days from service of the notice of default, the other party may meet the obligation:
- (b) if, at the expiry of the 7-working-day period, the party in default has not met the obligation, the other party may—
 - (i) meet the obligation; and
 - (ii) for that purpose, enter the servient land:
- (c) the party in default is liable to pay the other party the cost of preparing and serving the default notice and the costs incurred in meeting the obligation:
- (d) the other party may recover from the party in default, as a liquidated debt, any money payable under this clause.

14. Disputes

If a dispute in relation to an easement arises between parties who have a registered interest under the easement,—

- (a) the party initiating the dispute must provide full written particulars of the dispute to the other party; and
- (b) the parties must promptly meet and in good faith try to resolve the dispute using informal dispute resolution techniques, which may include negotiation, mediation, independent expert appraisal, or any other dispute resolution technique that may be agreed by the parties; and
- (c) if the dispute is not resolved within 14 working days of the written particulars being given (or any longer period agreed by the parties),—
 - (i) the dispute must be referred to arbitration in accordance with the Arbitration Act 1996; and
 - (ii) the arbitration must be conducted by a single arbitrator to be agreed on by the parties or, failing agreement, to be appointed by the President of the New Zealand Law Society.

SCHEDULE 6

EASEMENT INSTRUMENT TO GRANT EASEMENT

Sections 90A Land Transfer Act 1952

Land registration district
[]

BARCODE

Grantor *Surname must be underlined*

[Her Majesty the Queen (acting through the Minister of Conservation)]

Concessionaire (Grantee) *Surname must be underlined*

[]

Grant of easement

The Grantor, being the registered proprietor of the servient tenement(s) set out in Schedule A, **grants to the Grantee** (and, if so stated, in gross) the easement(s) set out in Schedule A, with the rights and powers or provisions set out in Annexure Schedule 2. for the period commencing on and including **(INSERT DATE)** and expiring on and including **(INSERT DATE)**

Schedule A Continue in additional Annexure Schedule if required

Purpose (nature and extent) of easement,	Shown (plan reference)	Servient tenement (Identifier/CT)	Dominant tenement (Identifier/CT or in gross)
<p>Select one or more of the following:</p> <p>(a) a right to convey water:</p> <p>(b) a right to drain water:</p> <p>(c) a right to drain sewage:</p> <p>(d) a right of way:</p> <p>(e) a right to convey electricity:</p> <p>(f) a right to convey telecommunications and computer media:</p> <p>(g) a right to convey gas.</p>			

Easements rights and powers (including terms, covenants, and conditions)

The implied rights and powers are [varied] by the provisions set out in Annexure Schedule 1

Unless otherwise provided below, the rights and powers implied in specific classes of easement are those prescribed by the Land Transfer Regulations 2002 and/or the Fifth Schedule of the Property Law Act 2007

Annexure Schedule 1

1. The rights to establish and maintain the driveway set out in Clause 2(a) of the Fifth Schedule to the Property Law Act 2007 is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor."
2. The right to establish and repair the driveway set out in Clause 6(3) (a) of Schedule 4 of the Land Transfer Regulations 2002 is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor."
3. The general right implied in all easements by Clause 10(1) (b) of Schedule 4 of the Land Transfer Regulations 2002 to install the easement facility is amended by adding at the end the words, "after first obtaining the prior consent of the Grantor."
4. The general right implied in all easements by Clause 11 of Schedule 4 of the Land Transfer Regulations 2002 to repair the easement facility is amended by deleting Regulation 11(2) and sub clause (4) is amended by deleting the reference to sub clause (2).
5. The general right implied in all easements by Clause 13 of Schedule 4 of the Land Transfer Regulations 2002 in relation to default is negated.
6. The general right implied in all easements by Clause 14 of Schedule 4 of the Land Transfer Regulations 2002 in relation to disputes is negated.
7. The within easement is also subject to the following terms and conditions set out in the Sub Schedules below

1.	Concession Activity <i>(clause 2)</i>	
2.	Term <i>(clause 3)</i>	years commencing on _____
3.	Final Expiry Date <i>(clause 3)</i>	
4.	Concession Fee <i>(clause 4)</i>	\$xxx plus GST
5.	Concession Fee Payment Date <i>(clause 4)</i>	
6.	Penalty Interest Rate <i>(clause 4)</i>	Double the current Official Cash Rate (OCR). <u>See Reserve Bank of New Zealand website</u>
7.	Insurance <i>(To be obtained</i>	A. <u>Types and amounts:</u> (i) Public Liability Insurance for:

Easement instrument	Dated		Page		of	
	<i>by Concessionaire) (clause 10)</i>	<p>(a) general indemnity for an amount no less than \$_____ and</p> <p>(b) Forest and Rural Fires Act extension for an amount no less than \$_____</p> <p>B. <u>Other Policies and amounts insert as appropriate</u></p> <p><i>Note if insurance is not required use Schedule 1 words</i></p> <p>Insurance amounts subject to review (clause 10)</p>				
8	Addresses for Notices <i>(clause 20)</i>	<p>The Grantor's address is:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Phone:</p> <p>Fax:</p> <p>Email:</p> <p>NB: Use street address only</p>				
		<p>The Concessionaire's address is:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>Phone:</p> <p>Fax:</p> <p>Email:</p> <p>NB: Use street address only</p>				
9.	Special Conditions <i>(clause 24)</i>	<p>See Schedule 3</p>				

Note: The clause references are to the Minister of Conservation's Standard Terms and Conditions set out below in Sub Schedule 2.

SUB SCHEDULE 2

STANDARD CONDITIONS

1. Interpretation

- 1.1 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 Easement 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 Easement Land), as if the breach had been committed by the Concessionaire.
- 1.2 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.

2. What is being authorised?

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

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

- 3.1 This Concession commences on the date specified in Item 2 of Schedule 1 and ends on the Final Expiry Date specified in Item 3 of Schedule 1.

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

- 4.1 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee plus GST on the Concession Fee Payment Dates specified in Items 4, and 5 of Schedule 1.
- 4.2 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 6 of Schedule 1.

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 5.1(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 5.2(a) or (b).
- (d) If the Concessionaire does not give notice to the Grantor under clause 5.1(c) the Concessionaire is to be deemed to have accepted the Concession Fee specified in the Grantor's notice.
- (e) Notwithstanding clause 5.1(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 5.1(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 19) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (ii) 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.
 - (iii) 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.
 - (iv) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (v) 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.

- (vi) 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 Easement Land.
 - (vii) 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.
 - (viii) 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) (i) 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
- (ii) 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 5.1 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
- (iii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 5.1

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 Easement Land or for the services provided to the Easement Land which relate to the Concessionaire's use of the Easement 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 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 6 of Schedule 1.

7. When can the Concession be assigned?

7.1 If in Schedule A the easement is expressed as being in gross 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 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.

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

7.6 If the Concessionaire is not a publicly listed company 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.

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 Easement Land; or light any fire on the Easement Land without the prior consent of the Grantor.

8.2 The Concessionaire must at its cost keep the easement facility (as defined in the Land Transfer Regulations 2002) now or hereafter upon the Easement Land, in good order, condition and repair and must keep the Easement Land in a clean and tidy condition and must not store hazardous materials on the Easement Land nor store other materials on the Easement Land where they may obstruct the public or create a nuisance.

9. When can structures be erected?

9.1 The Concessionaire must not erect, nor place any structures on, under or over the Easement Land without the prior consent of the Grantor.

10. What if the Concessionaire wishes to surrender the Concession?

10.1 If the Concessionaire wishes to surrender this Concession during the currency of the Term, then the Grantor may accept that surrender on such conditions as the Grantor considers appropriate.

11. What are the liabilities and who insures?

- 11.1 The Concessionaire agrees to use the Easement 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 Easement Land.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 Despite anything else in clause 11 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Easement Land, the Concession Activity, or to any structures, equipment or facilities on the Easement 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 11.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 11.7 Where the Grantor is found to be liable in accordance with clause 11.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.8 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 11.9 Without prejudice to or in any way limiting its liability under this clause 11 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 7 of Schedule 1 with a substantial and reputable insurer.
- 11.10 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 11.9 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.
- 11.11 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.

12. What about Health and Safety?

12.2 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 any safety directions of the Grantor.

13. What are the compliance obligations of the Concessionaire?

13.1 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 Easement 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 Easement 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 Easement 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 Easement Land

13.2 The Concessionaire must comply with this Concession.

13.3 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 13.1.(a) is deemed to be a breach of this Concession.

13.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Easement Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.

14. When can the Concession be terminated?

14.1 If the Concessionaire breaches any of the conditions of this Concession the Grantor may terminate this Concession at any time in respect of the whole or any part of the Easement Land. Before so terminating the Grantor must give the Concessionaire either:

- (a) one calendar month's notice in writing; or
- (b) such other time period which in the sole opinion of the Grantor appears reasonable and necessary;

of the Grantor's intention so to terminate this Concession. If this Concession is terminated then the Grantor, at the Grantor's sole discretion, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

14.2 The Grantor may choose to remedy at any time any default by the Concessionaire under this Concession. Where that occurs, the Concessionaire must pay forthwith on demand all reasonable costs incurred by the Grantor in remedying such default. 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. What happens on termination or expiry of the Concession?

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

15.2 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Easement 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 Easement Land and other public conservation land affected by the removal in a clean and tidy condition.

15.3 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Easement 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 Easement Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Easement 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 Easement 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.

16. When is the Grantor's consent required?

16.1 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.

17. Are there limitations on public access and closure?

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

18. What about other concessions?

18.1 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.

19. How will disputes be resolved?

19.1 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.

19.2 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.

19.3 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.

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

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

20. How are notices sent and when are they received?

20.1 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 8 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.

20.2 If either party's details specified in Item 8 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.

21. What about the payment of costs?

21.1 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.

21.2 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.

22. What about the powers implied by statute?

22.2 The rights and powers implied in the relevant easements by the 5th Schedule to the Property Law Act 2007 and the Fourth Schedule to the Land Transfer Regulations 2002 apply to this easement **EXCEPT** to the extent set out in Annexure Schedule 1 of this easement.

23. What about Co-Siting?

23.1 In this clause "Co-Site" means the use of the Concessionaire's structures or facilities on the Easement Land by a third party for an activity; and "Co-Sitee" and "Co-Siting" have corresponding meanings.

23.2 The Concessionaire must not allow Co-Siting on the Easement Land without the prior written consent of the Grantor.

23.3 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 Easement Land.

23.4 In addition, the Grantor must withhold consent if:

- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Easement Land; or
- (b) the Grantor considers the change to be detrimental to the environment of the Easement Land.

23.5 Subject to clause 23.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Easement Land.

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

- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Easement 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 Easement 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 23.6. 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 23.6.
- 23.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.
- 23.8 Where the Concessionaire is required under clause 23.5 to allow Co-Siting on the Easement Land, the Concessionaire is, subject to clause 23.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Easement Land and to receive a reasonable fee from them for any agreed activity they intend to carry out on the Easement 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.
- 23.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 19 of Sub Schedule 2.
- 23.10 For the avoidance of doubt, a Co-Sitee permitted on the Easement 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 Easement Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Easement Land.
- 23.11 The Grantor must not authorise the third party to commence work on the Easement 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.

24. Are there any Special Conditions?

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

25. The Law

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

SUB SCHEDULE 3
SPECIAL CONDITIONS
(insert any special conditions)

