Department of Conservation
Te Papa Atawhai

Concession Document
(Easement)

Concession Number: T.B.C

THIS CONCESSION is made this [Date] day of [Month] 202[x]

PARTIES:

Minister of Conservation (the Grantor)

~HOLDER NAME~ (Fulton Hogan Land Development 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 the public conservation land 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.

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, including its Schedules.

_____ SIGNED on behalf of the Minister of Conservation by [insert name and title of delegate] acting under delegated authority in the presence of:	_____ SIGNED for Fulton Hogan Land Development Limited by: General Manager Fulton Hogan Land Development Greg Dewe in the presence of:

_____	_____
Witness Signature	Witness Signature
Witness Name: _____	Witness Name: _____
Witness Occupation:_____	Witness Occupation:_____
Witness Address: _____	Witness Address: _____
A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.	

SCHEDULE 1

1.	**Easement Land** (burdened land - the land where the easement activity occurs) (Schedule 4)	As marked on the attached plan or map in Schedule 4 being: Physical Description/Common Name: Land Status: Marginal Strip Area: 4414m² Legal Description: Crown Land Block IV Wakefield Survey District. Map Reference: Western boundary of Marginal Strip: NZTM E 1304817.3, N 5014471.3 Refer to **Appendix [A]** page 2 for a map illustrating the coordinates.
2.	**Land** (benefited land - the land that benefits from the easement) (If none then select "in gross") (Schedule 4)	Is the easement in gross? Yes
3.	**Concession Activity** (clause 2)	(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: The western approach to the proposed bridge crosses the marginal strip and will require earthworks to bring the ground level up to the required height. It is noted the marginal strip is no longer aligned with the actual channel of the Park Burn. Further services are proposed within the road reserve and will also form part of the easement. These services include: water, wastewater, right of way (road) electricity and telecommunications. Refer to **Attachment [A]** for a long section plan illustrating the bridge, abutments, road approach and GPS coordinates on the second page of the attachment.
4.	**Term**	30 years [XXX] months commencing on XXXX

	(clause 3)	
5.	**Final Expiry Date** (clause 3)	TBD.
6.	**Concession Fee** (clause 4)	**Activity Fee:** $[xxx] per annum plus GST **Management Fee:** $[xxx] per annum plus GST **Environmental Monitoring Fee:** $[xxx] per annum plus GST / Not required
7.	**Concession Fee Payment Date** (clause 4)	[Date] TBD
8.	**Penalty Interest Rate** (clause 4)	Double the current Official Cash Rate (OCR). See Reserve Bank of New Zealand website
9.	**Concession Fee Review Date(s)** (clause 5)	3 yearly on the anniversary (and for the duration) of this Concession;
10.	**Insurance** (To be obtained by Concessionaire) (clause 11)	Types and amounts: Public Liability Insurance for: (a) General indemnity for an amount no less than $1,000,000.00; and (b) Third party vehicle liability for an amount no less than $500,000.00. (c) Subject to review on each Concession Fee Review Date
11.	**Addresses for Notices** (clause 20)	The Grantor's address is: Physical Address: Department of Conservation 265 Princes Street Dunedin 9016 Postal Address: Department of Conservation Att: National Transaction Centre PO Box 5244 Dunedin 9054

		Email: transactioncentre@doc.govt.nz
		The Concessionaire's address in New Zealand is: Fulton Hogan Land Development Limited [redacted]e [redacted] Phone: [redacted] Email: [redacted]
12.	**Special Conditions** (clause 25)	See Schedule 3
13.	**Processing Fee** (clause 4)	$2,065.00 plus GST

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

SCHEDULE 2

STANDARD TERMS AND 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 the Processing Fee (Item 13 of Schedule 1) to the Grantor in the manner directed by the Grantor. Except where the Grantor's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.

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

4.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 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 Date in Item 9 of Schedule 1 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.

(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 in accordance with clause 5.2 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 in accordance with 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 the valuers 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) 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 the following applies:

(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 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

(ii) 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 The Concessionaire must not transfer, sublease, 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 under clause 7.1:

(a) decline any application for consent; or

(b) grant consent subject to such conditions as the Grantor thinks fit.

7.3 Sections 17S to 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, without the prior consent of the Grantor:

(a) cut down or damage any vegetation; or

(b) damage any natural feature or historic resource on the Easement Land; or

(c) light any fire on the Easement Land.

8.2 The Concessionaire must, at its cost:

(a) keep the easement facility (as defined in Schedule 5) now or hereafter upon the Easement Land, in good order, condition and repair; and

(b) must keep the Easement Land in a clean and tidy condition.

8.3 The Concessionaire 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, agents and contractors) 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 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 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, Climate Change Response Act 2002 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 cannot 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 cannot 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, by pre-paid post or email to the receiving party at the address, 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 post, on the 6th working day after posting;

(c) in the case of email,

(i) if sent between the hours of 9am and 5pm on a working day, at the time of transmission; or

(ii) if subclause (i) does not apply, at 9am on the working day most immediately after the time of sending.

Provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

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 Schedule 5 to the Land Transfer Regulations 2018 (as set out in Schedule 5 of this Concession) apply to this Concession **EXCEPT** to the extent set out in Schedule 3 of this Concession.

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

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 this 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 this 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. Jointly and severally liable

24.1 In the event that this Concession is held by multiple Concessionaire's, they will be jointly and severally liable.

25. Are there any Special Conditions?

25.1 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.

26. The Law

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

SCHEDULE 3

SPECIAL CONDITIONS

1. The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018, apply as is relevant to the class of easement provided for in this Concession. Schedule 5 of the Regulations (excluding clauses 13 and 14) is set out in Schedule 5 of this Concession and the clauses are varied as follows:

   (a) Clause 1 is amended by adding the words "in Schedule 4" after the words "on a plan" in paragraph (a) of the interpretation of "**easement area**"

   (b) Clause 1 is amended by deleting the words "grantee and" from the interpretation of "**grantee** and **grantor**"

   (c) Schedule 5 is amended by adding a new clause 1A: "Any reference to "grantee" in this Schedule is to be read as "Concessionaire" and includes the Concessionaire's agents, employees, contractors, tenants, licensees and invitees."

   (d) Clause 11(2) is deleted and clause 11(4) is amended by deleting the reference to (2).

   (e) Clauses 13 and 14 are deleted.

If the easement is for rights of way then you will need to consider whether clause 6(2) should be amended. It provides for passing with or without "vehicle, machinery or implement" and "domestic animal or (if the burdened land is rural land) farm animal". If you do not wish some or all of these to be used, it is recommended that clause 6(2) is deleted and replaced with wording that only allows for foot passage or allows for vehicles but no animals etc.

If the easement does include a driveway then need to consider if the provisions of Schedule 5 to the Property Law Act 2007 should be included. If so, what is relevant should be included as special conditions, instead of implying and attempting to modify.

If the Concessionaire wishes to have the easement registered (and the Grantor agrees to this) then a special condition should be included along the lines of:

If the Concessionaire wishes the easement to be registered, the Concessionaire must at its own expense:

(a) prepare an easement instrument in accordance with the Land Transfer Act 2017 and the rights and powers provided in the easement as set out in this Concession; and

(b) arrange for any necessary survey; and

(c) register the easement.

The Grantor, if satisfied the easement instrument implements this Concession, must sign the easement instrument to enable registration.

On the very rare occasions when the rights and powers implied by Schedule 5 to the Land Transfer Regulations 2018 **DO NOT APPLY** as these are set out in the Special Conditions contained in Schedule 3 you must:

DELETE clause 1 in Schedule 3 i.e. "The rights and powers implied in easements under Schedule 5 of the Land Transfer Regulations 2018…"

ADD the following two clauses to Schedule 3 (remember to number both clauses as denoted by x. below):

x. Clause 8.2(a) is deleted and amended to read:

(a) keep the easement facility (as defined in clause 1 of the Land Transfer Regulations 2018) now or hereafter upon the Easement Land, in good order, condition and repair; and

x. Clause 22.1 in Schedule 2 is deleted and replaced with:

22.1 The rights and powers implied in the relevant easements by Schedule 5 to the Land Transfer Regulations 2018 DO NOT APPLY to this Concession. The rights and powers relating to this Concession are set out in the Special Conditions contained in this Schedule 3.

DELETE Schedule 5 in its entirety.

Remember to delete this box from this Schedule once you have either (1) confirmed that the contents of this box do not apply OR (2) the contents of this box do apply and you have made the necessary amendments.

Some other typical special clauses you may wish to include

Right of renewal

2. The Grantor at the Concessionaire's cost must renew the Term for a further period of ***xyz*** years provided the Concessionaire:

   (a) gives the Grantor at least three month's written notice before the end of the Term, which notice is to be irrevocable, of the Concessionaire's intention to renew this Concession; and

   (b) at the time notice is given in accordance with this clause the Concessionaire is not in breach of this Concession.

3. The renewal is to be on the same terms and conditions expressed or implied in this Concession except that the Term of this Concession plus all further renewal terms is to expire on or before the Final Expiry Date.

Construction conditions (pipeline)

4. The pipeline must be no greater than xxmm with a maximum carrying capacity of x.x litres per second and to supply no more than xxx litres per day as per approval of xyz.

5. The pipeline intake must be suitably disguised so as to blend in with the surroundings.

6. The trench for the pipeline must be hand dug with a maximum width of xxmm.

7. The pipeline must be laid at a minimum of xxmm below the surface of the ground.

Construction conditions (general)

8. Any vegetation removal and soil disturbance necessary to install and undertake the activity must be kept to a minimum. No native vegetation is to be disturbed without obtaining prior consent from the Grantor.

9. The surface of the ground must be reinstated in a tidy manner following the installation of the easement facility.

10. No alterations to the easement facility requiring earth disturbance must be undertaken without prior consent in writing of the Grantor.

11. The Concessionaire must ensure that all machinery, tools and equipment used in undertaking the Concession Activity is steamed cleaned and weed free prior to being taken onto the Easement Land.

12. The Concessionaire must ensure that all gravel and other materials used in undertaking the Concession Activity are from a weed free source.

13. The Concessionaire must not use any mechanised machinery when constructing and maintaining the Easement Land.

14. That, prior to construction, the Concessionaire must:

    (a) Mark the centre line of the easement with tape on the ground, for the approval of the Grantor; and the Concessionaire must use best endeavours to conform to that approved route. Any deviation or variance from the approved route requires the prior written consent from the Grantor. For the avoidance of doubt, at any point the easement width must not exceed a width greater than ***abc*** metres.

    (b) Provide to the Grantor for approval, a work plan detailing the contractors to be used, commencement dates, timelines, construction methods and standards.

    (c) Prepare an annual maintenance programme for the approval of the Grantor.

(d) The Concessionaire must implement an on-going weed control programme to the satisfaction of the Grantor, to keep the Easement Land free from all introduced weeds, resulting from the Concessionaire's use of the Easement Land.

Fuels, hazardous materials, chemicals and waste

15. Any waste or rubbish must be disposed of in an approved manner off the Easement Land at a Council approved site. Waste held on the Easement Land prior to its removal must be stored in a manner so as to ensure it does not become a contaminant or is not blown by wind or present a potential hazard to wildlife.

16. In the event of any hazardous substance spill the Concessionaire must:

(a) Take all practicable measures to stop the flow of the substances and prevent further contamination onto the Easement Land or water;

(b) Immediately contain, collect and remove the hazardous substances and any contaminated material, and dispose of all such material in an appropriate manner / authorised facility;

(c) Notify the Grantor as soon as practicable;

(d) Undertake any remedial action to restore any damage to the soil; and

(e) Take all measures to prevent any reoccurrence.

Accidental Discovery Protocol

17. The Concessionaire must take all reasonable care to avoid any archaeological values on the Land which includes (but is not limited to) historic sites and protected New Zealand objects on the Easement Land. In the event that archaeological sites or other features with heritage values are found during any approved earth disturbance work on the Easement Land:

(a) Work must cease immediately until further notice and advice must be sought from the Grantor;

(b) If it is an archaeological site as defined by the Heritage New Zealand Pouhere Taonga Act 2014 then Heritage New Zealand must be contacted and its advice sought;

(c) If it is an archaeological site relating to Māori activity then local iwi must be contacted and their advice sought;

(d) If it is an artefact as defined by the Protected Objects Act 1975 then the Ministry for Culture and Heritage must be notified within 28 days;

(e) If it is human remains the New Zealand Police should also be notified;

(f) In the event of cessation of approved work because of discovery of potential historical artefact or archaeological site the Concessionaire must not recommence work until permitted to do so by the Grantor.

18. The Concessionaire must take reasonable and proper care not to damage any property of the Grantor and must promptly repair any such damage.

19. If the Concessionaire opens up the surface of the Easement Land the Concessionaire must immediately upon completion of any works restore the surface of the Easement Land as nearly as possible to its former condition to the satisfaction of the Grantor.

20. Nothing contained or implied in this Concession requires the Grantor or the Concessionaire to supply services on or under the Easement Land or entitles the Concessionaire to interfere with the services of any other user of the Easement Land.

Freshwater Pests / Didymo

21. The Concessionaire must comply and ensure its clients comply with the Ministry for Primary Industry (MPI)'s "Check, Clean, Dry" cleaning methods to prevent the spread of freshwater pests (like didymo *Didymosphenia geminata*) when moving between waterways. "Check, Clean, Dry" cleaning methods can be found at Ministry for Primary Industries | NZ Government by searching Freshwater pests and diseases. The Concessionaire must regularly check this website and update their precautions accordingly.

Kauri Dieback *delete if definitely not at a kauri location*

If the concession activity is in the district or region of any of the following:

- Northland Regional Council
- Waikato Regional Council
- Auckland Council
- Bay of Plenty Regional Council

You must apply DOC's Kauri Dieback conditions to this concession; copy and paste from DOC-6511068 into this concession contract.

22. [Insert Kauri Dieback conditions if required – if not, delete this section]

Myrtle Rust Protocols

23. The Concessionaire must know the plants that are affected by myrtle rust and what the rust symptoms look like. This serious fungal disease only affects plants in the Myrtle (Myrtaceae) Family which includes pohutukawa, manuka, kanuka, and ramarama. See https://myrtlerust.org.nz/.

24. If the Concessionaire encounters suspected symptoms of myrtle rust, the Concessionaire must not touch it and must take the following steps:

(a) Call the MPI Exotic Pest and Disease Hotline immediately on 0800 80 99 66;

(b) Take clear photos, including the whole plant, the whole affected leaf, and a close-up of the spores/affected areas of the plant;

(c) Don't touch or try to collect samples as this may increase the spread of the disease;

(d) If accidental contact with the affected plant or rust occurs, bag clothing and wash clothes, bags and shoes as soon as possible.

Aircraft Use *delete if there is no aircraft involved*

25. Please choose one of the following for any concession for aircraft:

If the activity is undertaken in any of the locations listed as needing noise abatement:

The Concessionaire must hold accreditation with a recognised noise abatement and disputes resolution programme. The Concessionaire must provide proof that such accreditation has been completed, if so required by the Grantor, and must keep their participation in that programme or training current until the Final Expiry Date.

OR if the activity is in a location not listed as currently needing noise abatement:

During the term of the Concession, where Grantor believes that the effects of aircraft noise should be further reduced, the Grantor may, by notice, require the Concessionaire to either undertake measures to minimise the effects of noise on conservation values or become accredited to a recognised noise abatement and disputes resolution programme. If such notice is given by the Grantor, the Concessionaire must:

(i) if required to undertake measures to minimise the effects of noise on conservation values within 3 months from receiving the notice undertake those measures to the satisfaction of the Grantor until the Final Expiry Date.

(ii) if required to become accredited to a recognised noise abatement and disputes resolution programme within 3 months from receiving the notice provide proof to the Grantor that such accreditation has been completed and must keep their participation in that programme or training current until the Final Expiry Date.

The Grantor may, at any time, issue a subsequent notice(s) requiring the Concessionaire to implement the other option.

OR if the Concessionaire requires the use of a third party helicopter for access:

Access to the Easement Land for maintenance and servicing of the easement facility is authorised by helicopter using an existing Departmental Concessionaire and is limited to **xyz (x)** scheduled routine maintenance inspections per annum. Helicopters are to land as close as is practicably possible to the Site.

Monitoring and compliance

26. If the Grantor determines that compliance with the conditions of this Document or the effects of Concession Activity should be monitored, the Concessionaire shall meet, either:

(a) the full costs of any monitoring programme that is implemented; or,

(b) if the Grantor determines that the costs should be apportioned among several Concessionaires who use the same locations, part of the costs of the monitoring programme.

These costs will include the Department's standard charge-out rates for staff time and the mileage rates for vehicle use associated with the monitoring programme.

Bond

27. To ensure compliance with this Concession the Concessionaire must provide the Grantor with a bond as contained in Schedule ***xyz*** issued by a surety approved by the Grantor.

Telecommunication site specific conditions

28. All conducting links to antennae, aerials, power sources and transmitting equipment are to be by way of cables directly fastened to the structures or buried in the ground. No power cables, or other wires or lines are to be strung through the air.

29. The Concessionaire must ensure that the facility is installed and operated to professionally accepted Telecommunications standards.

30. The Concessionaire must ensure that the operation of its equipment on the Easement Land, does not interfere with any other similar operation authorised by the Grantor. If technical/operational interference does occur and it is attributable to the operation of the Concessionaire's equipment, then the Concessionaire must correct the problem, at no expense to the Grantor.

31. The Concessionaire must remove from the Easement Land any batteries that are not in service or good condition.

32. The Concessionaire may be required to update or relocate the easement facilities as a result of developments in technology, if in the Grantor's opinion, this enables the existing impacts or effects on the environment to be reduced, or eliminated.

Grantor's use of the Easement Land

33. The Concessionaire, if so requested in writing by the Grantor, must make available, where practicable, with no adjustment to the Concession Fee or to other money payable under this Concession, space on its easement facilities for the Grantor to establish and operate telecommunication equipment for the Grantor's emergency use provided that the Grantor's equipment does not adversely interfere with the Concessionaire's existing equipment. Clause 42 will apply.

34. Should the Grantor require it, the Concessionaire agrees to provide space on or in the easement facilities to enable the Grantor to conduct its own telecommunication

activity for any purpose on the Easement Land for such period (up to one day less than the Term or, if appropriate, Final Expiry Date) as the Grantor requires.

35. If at a later date the easement facilities is not required by the Concessionaire for its own purposes and the Grantor wishes to continue with the operation of its telecommunication equipment, the Grantor must adjust the Concession Fee, provided that such adjustment must reflect that the easement facilities (such as the mast or building) is no longer required by the Concessionaire.

36. The Grantor's telecommunication equipment must be installed in the positions on the Easement Land and easement facilities which,

(a) have been agreed;

(b) in such other positions as the Concessionaire may reasonably require; or

(c) in such other positions as the Grantor may request the Concessionaire to agree to, such consent not to be unreasonably withheld.

37. The Grantor must only use such equipment for the purpose of operating the Grantor's own telecommunication activity on the frequency or frequency bands agreed.

38. The Grantor must adjust the Concession Fee to take into account the Grantor's use. If the Concessionaire disputes the Grantor's adjustment then the adjustment is to be determined in accordance with clause 19 of Schedule 2.

39. The adjusted fee is to be reviewed at each Concession Fee Review Date.

40. The Grantor must keep and maintain its equipment in good repair.

41. The Concessionaire must advise the Grantor if it believes the Grantor's equipment is causing any interference and the parties are to use their best endeavours to confirm and eliminate the cause of the interference. The costs of remedying the interference are to be the responsibility of the party who installed the most recent equipment on the Land and that equipment has caused or has suffered from such interference.

If you add further special conditions, ensure they are included in your 'Report to Decision Maker' and that they do not conflict with other special conditions or other matters in Schedule 2.

SCHEDULE 4

Plan or map

SCHEDULE 5

RIGHTS AND POWERS IMPLIED IN EASEMENTS

LAND TRANSFER REGULATIONS 2018

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

1 Interpretation

In this schedule, unless the context otherwise requires,—

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

burdened land, in relation to an easement,—

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

(b) includes the easement area

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

(a) is shown on a plan; and

(b) is referred to in the relevant easement instrument, transfer instrument, or deposit document as the area to which the easement applies

easement facility,—

(a) for a right to convey water, means pipes, pumps, pump sheds, storage tanks, water purifying equipment, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

(b) for a right to convey electricity or a right to convey telecommunications, means wires, cables (containing wire or other media conducting materials), ducts, surface boxes, towers, poles, transformers, switching gear, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

(c) for a right of way, means the surface of the land described as the easement area, including any driveway:

(d) for a right to drain water, means pipes, conduits, open drains, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

(e) for a right to drain sewage, means pipes, conduits, pumps, tanks (with or without headwalls), manholes, valves, surface boxes, other equipment suitable for that purpose (whether above or under the ground), and anything in replacement or substitution:

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

grantee and **grantor**—

(a) have the meanings given by section 107 of the Act; and

(b) in clauses 3 to 9 and 12(1), include those persons' agents, employees, contractors, tenants, licensees, and invitees

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

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

2 Classes of easements

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

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

Rights and powers implied in easements granting certain rights

3 Right to convey water

(1) A right to convey water includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to take and convey water in free and unimpeded flow from the source of supply or point of entry through the easement facility and over the easement area and (for an easement that benefits land) to the benefited land.

(2) The right to take and convey water in free and unimpeded flow is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

(4) The grantor must not do and must not allow to be done anything on the burdened land that may cause the purity or flow of water in the water supply system to be polluted or diminished.

4 Right to drain water

(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, at all times, to convey water (whether sourced from rain, springs, soakage, or seepage) in any quantity—

(a) from the benefited land through the easement facility and over the easement area; or

(b) for an easement in gross, through the easement facility and over the easement area.

(2) The right to drain 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 for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

5 Right to drain sewage

(1) A right to drain sewage includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to drain, discharge, and convey sewage and other waste material and waste fluids in any quantity—

(a) from the benefited land through the easement facility and over the easement area; or

(b) for an easement in gross, through the easement facility and over the easement area.

(2) The right to drain, discharge, and convey sewage and other waste material and waste fluids is limited to the extent required by any period of necessary cleansing, renewal, modification, or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

6 Rights of way

(1) A right of way includes the right for the grantee, in common with the grantor and other persons to whom the grantor may grant similar rights, at all times, to go over and along the easement facility.

(2) The right to go over and along the easement facility includes the right to go over and along the easement facility with or without any kind of—

(a) vehicle, machinery, or implement; or

(b) domestic animal or (if the burdened land is rural land) farm animal.

(3) A right of way includes the right to have the easement facility kept clear at all times of obstructions (whether caused by parked vehicles, deposits of materials, or unreasonable impediment) to the use and enjoyment of the easement facility.

(4) The right to go over and along the easement facility, and to have the easement facility kept clear, is limited to the extent by any period of necessary repair or maintenance of the easement facility.

(5) The easement facility for the relevant easement is the surface of the land described as the easement area, including any easement facility laid or to be laid along the easement area in accordance with clause 10(1).

7 Right to convey electricity

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

(2) The right to convey electricity without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

8 Right to convey telecommunications

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

(2) The right to convey telecommunications without interruption or impediment is limited to the extent required by any period of necessary renewal or repair of the easement facility.

(3) The easement facility for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

9 Right to convey gas

(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 easement area and (for an easement that benefits land) to the benefited 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 for the relevant easement is the easement facility laid or to be laid along the easement area in accordance with clause 10(1).

10 General rights

(1) All the easements referred to in this schedule include—

(a) the right to use any easement facility already situated in the easement area for the purpose of the easement granted; and

(b) if no suitable easement facility exists in the easement area, the right to lay, install, and construct in the easement area (including the right to excavate land for the purpose of that construction) an easement facility that the grantee reasonably requires and for which the grantor has given prior consent; and

(c) the right to repair and maintain the easement facility.

(2) The grantor must not unreasonably withhold consent under subclause (1)(b).

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

(4) The grantee must not do and must not allow to be done on the benefited land (if any) or the burdened land anything that may interfere with or restrict the rights of any other party or interfere with the efficient operation of the easement facility.

(5) To avoid doubt, all the easements referred to in this schedule (other than for a right to convey electricity) include the right to convey electricity necessary to operate a pump or other equipment that is part of the easement facility.

11 Repair, maintenance, and costs

(1) If the 1 or more grantees have exclusive use of the easement facility, each grantee is responsible for arranging the repair and maintenance of the easement facility, and for the associated costs, so as to keep the facility in good order and to prevent it from becoming a danger or nuisance.

(2) If the 1 or more grantees 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 burdened land.

(4) The parties responsible for maintenance under subclause (1), (2), or (5) (as the case may be) must meet any associated requirements of the relevant local authority.

(5) Any repair or maintenance of the easement facility that is attributable solely to an act or omission by the grantor or the grantee must be promptly carried out by that grantor or grantee at their sole cost.

(6) However, if the repair and maintenance of the easement facility is only partly attributable to an act or omission by the grantor or grantee,—

(a) that party must pay the portion of the costs of the repair and maintenance that is attributable to that act or omission; and

(b) the balance of those costs is payable in accordance with subclause (2).

(7) The costs of any electricity used for the conveyance of water must be apportioned between users of the water in proportion to their usage of the water.

12 Rights of entry

(1) The grantee may, for the purpose of exercising any right or power, or performing any related duty, implied in an easement by these regulations,—

(a) enter upon the burdened land by a reasonable route and with all necessary tools, vehicles, and equipment; and

(b) remain on the burdened land for a reasonable time for the sole purpose of completing the necessary work; and

(c) leave any vehicles or equipment on the burdened land for a reasonable time if work is proceeding.

(2) However, the grantee must first give reasonable notice to the grantor.

(3) The grantee must ensure that as little damage or disturbance as possible is caused to the burdened land or to the grantor.

(4) The grantee must ensure that all work is performed properly.

(5) The grantee must ensure that all work is completed promptly.

(6) The grantee must immediately make good any damage done to the burdened land by restoring the surface of the land as nearly as possible to its former condition.

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

13 Default

Deleted.

14 Disputes

Deleted.