



Department of Conservation
Te Papa Atawhai

MINISTER OF CONSERVATION'S

STANDARD TERMS AND CONDITONS

OF LICENCE

KAIKOURA LICENCE VERSION

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1.0 Definitions

1.1 In this Document, unless the context otherwise requires:

"**Activity**" has the same meaning as "Activity" in section 2 of the Conservation Act 1987.

“Administering Body” means the Motu Kaikoura Trust which has been appointed to control and manage the reserve pursuant to the Heads of Agreement between the Minister of Conservation and the Motu Kaikoura Trust dated 2007.

"**Concession**" means a concession as defined in section 2 of the Conservation Act 1987.

"**Concession Activity**" means the use of the Land for purposes of the Activity carried out by the Concessionaire and specified in Schedule 1.

"**Concession Fee**" means the amount specified in Item 6 of Schedule I and charged by the Grantor acting through the Administering Body for the Concessionaire's right to carry out the Concession Activity on the Land. It includes any variation in that amount following a Concession Fee Review.

"**Concession Fee Payment Date**" means the date specified in Item 8 of Schedule I on which each instalment of the Concession Fee falls due for payment.

"**Concession Fee Review**" means a review of the Concession Fee determined in accordance with clause 7 of this Document.

"**Concession Fee Review Date**" means the date specified in Item 10 of Schedule I on which the Concession Fee Review occurs.

"**Conservation**" has the same meaning as "Conservation" in section 2 of the Conservation Act 1987.

"**Conservation Area**" has the same meaning as "Conservation area" in section 2 of the Conservation Act 1987.

"**Co-Site**" means the use of the Concessionaire's structures or facilities on the Land by a third party for an activity, and "Co-Sitee" and "Co-Siting" have corresponding meanings.

"**Department**" means the Department of Conservation established by section 5 of the Conservation Act 1987.

"**Director-General**" means the Director-General of Conservation or delegates or any person authorised in writing by the Director General.

"**Document**" means the document headed "Concession Document (Licence)", and its schedules, annexures and plans and the document headed "Minister of Conservation's Standard Terms and Conditions of Licence, Version 1".

"**Final Expiry Date**" means the date specified in Item 5 of Schedule 1.

"**Guarantor**", where relevant, means the person guaranteeing this Document under clause 29 and named in Item 16 of Schedule 1.

"Land" means a Conservation Area, a Park, or a Reserve, whichever is relevant in the context of this Document, and is the area more particularly described in Item I of Schedule 1.

"Licence" means the Licence granted under this Document by the Grantor to the Concessionaire under either section 17Q of the Conservation Act 1987, section 59A of the Reserves Act 1977, section 49 of the National Parks Act 1980, or section 14AA of the Wildlife Act 1953 and includes any subsequent amendments or variations.

"Park" means a national park constituted under the National Parks Act 1980.

"Penalty Interest Rate" means the rate specified in Item 9 of Schedule 1.

"Reserve" means a reserve vested in the Grantor under the Reserves Act 1977.

"Schedule" means a schedule attached to the document headed "Concession Document (Licence)."

"Term" means the period of time specified in Item 3 of Schedule 1 during which this Document operates. It includes, where relevant, any period of renewal of the Term.

"Working Day" means the period between any one midnight and the next excluding Saturdays, Sundays and Statutory Holidays in the place where the Concession Activity is being carried out.

2.0 Interpretation

2.1 In this Document unless the context otherwise requires:

- (a) a reference to a party is a reference to a party to this Document and includes that party's administrator or executor;
- (b) words appearing in this Document which also appear in Schedule 1 mean and include the details appearing after them in that Schedule;
- (c) a provision of this Document to be performed by two or more persons binds those persons jointly and severally;
- (d) a reference to a person includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, or an agency of State or of the Crown (in each case whether or not having separate legal personality);
- (e) words in a singular number include the plural and vice versa;
- (f) words importing a gender include all other genders;
- (g) references to a statute or statutory provision, or order or regulation made under it, include that statute, provision, or regulation as amended, modified, re-enacted or replaced from time to time whether before or after the date of this Document;
- (h) where the Grantor's consent or approval is expressly required under a provision of this Document, the Concessionaire must seek the consent or approval of the Grantor for each separate occasion it is required notwithstanding that the Grantor has granted consent or approval for a like purpose on a prior occasion.

2.2 The Concessionaire is responsible for the acts and omissions of its employees, contractors, agents, clients and invitees. The Concessionaire is liable under this

Document for any breach of the terms of the Document by its employees, contractors, agents, clients and invitees, as if the breach had been committed by the Concessionaire.

- 2.3 Where this Document provides for approvals, directions, reports and consents to be given by one party to the other, those approvals, directions, reports and consents must be given by notice in writing and clause 24 shall apply.

3.0 Term

- 3.1 The Licence is for the Term specified in Item 3 of Schedule 1.
- 3.2 Subject to clause 3.3 the Grantor, at the Concessionaire's cost, will renew the Term for any further period specified in Item 4 of Schedule 1.
- 3.3 The renewal is to be on the same terms and conditions expressed or implied in this Document excluding a right of renewal provided the Concessionaire:
- (a) observes the terms and conditions contained in this Document; and
 - (b) has given to the Grantor notice of the Concessionaire's intention to renew this Document at least 3 months before the end of the Term which notice is to be irrevocable.
- 3.4 The Term and all renewals, if any, will end on the Final Expiry Date specified in Item 5 of Schedule 1.

4.0 Concession Activity

- 4.1 Subject to clause 30, the Concessionaire is not to use the Land for any purpose other than the Concession Activity.
- 4.2 The Concessionaire must exercise reasonable skill, care and diligence in carrying out the Concession Activity, in accordance with standards of skill, care and diligence normally practised by suitably qualified and experienced people in carrying out such activities.
- 4.3 The Concessionaire will act in a courteous and professional manner to all people present on the Land, including other Concessionaires and their clients, Departmental staff and the general public.
- 4.4 **The Concessionaire must provide the Administering Body with evidence of the competency and qualifications of its employees if the Administering Body so requests.**

5.0 Concession Fee

- 5.1 The Concessionaire must pay to the Administering Body in advance and in the manner directed by the Administering Body the Concession Fee plus GST in the installments and on the Concession Fee Payment Dates specified in Items 6, 7 and 8 of Schedule 1.

5.2 If the Concessionaire defaults in payment of the Concession Fee for 14 days after a Concession Fee Payment Date 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 9 of Schedule 1.

6.0 Other Charges

6.1 **In addition to the Concession Fee the Concessionaire must pay the following charges ("Other Charges") on demand and in the manner directed by the Administering Body:**

- (a) all rates, levies, taxes, duties, assessments, charges and other outgoings which may be charged, levied or reasonably assessed or which may become payable by virtue of the Concessionaire's use of the Land or carrying on of the Concession Activity;
- (b) all costs in relation to the supply of water, sewage, drainage and rubbish disposal which are not otherwise included in any charges or assessments made by any authority or by the Grantor.

6.2 **Where the Grantor, Administering Body or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor whatever contribution the Grantor or Administering Body specifies in item 11 of Schedule 1.**

6.3 The Concessionaire must pay all charges for electric power, water supply, geothermal energy, telephone rental and other utilities supplied to the Land. Grantor will not be liable for any cost incurred in re-establishing the supply of any of these utilities in the event of any of them becoming unavailable for any reason.

7.0 Concession Fee Review

7.1 **The Grantor in consultation with the Administering Body will review the Concession Fee on the Concession Fee Review Dates in the following manner:**

- (a) the Grantor will 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 7.1(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 7.2(a) or (b).
- (d) if the Concessionaire does not give notice to the Grantor under clause 7.1(c) the Concessionaire will be deemed to have accepted the Concession Fee specified in the Grantor's notice.

- (e) notwithstanding clause 7.1(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 will 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.

7.2 Immediately the Concessionaire gives notice to the Grantor under clause 7.1(c) the parties will 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 Dispute Resolution and Arbitration clause (clause 19) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) each party will 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 will be binding on both parties.
 - (iii) before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) the valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) in determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
 - (vi) each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) the valuers or the umpire must have regard to any such representations but will not be 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 will establish the market value for the Concession Activity as at that date instead of the date fixed under clause 7.1 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 will take place in accordance with the procedure fixed in clause 7.1.

8.0 Health and Safety

- 8.1 The Concessionaire is to carry out the Concession Activity on the Land in a safe and reliable manner. The Concessionaire must comply with its safety plan (if one is required in Item 12 of Schedule 1), and with any safety directions of the Grantor in consultation with the Administering Body.
- 8.2 Before commencing the Concession Activity the Concessionaire must, if required by Item 12 of Schedule 1
 - (a) prepare a safety plan;
 - (b) have it audited by a suitably qualified person approved by the Grantor; and
 - (c) supply the Grantor and the Administering Body with a copy of the safety plan or where the safety plan has been audited a copy of the safety plan certified by the auditor that the safety plan is suitable for the Concession Activity.
- 8.3 If a safety plan is required it must, as a minimum, (unless otherwise directed by the Grantor) include details of the following:
 - (a) hazard management including methods and processes for hazard identification, assessment and control;
 - (b) procedures for investigating, notifying and recording accidents and incidents as well as procedures for preserving accident scenes. Provision must also be made for reporting all accidents and incidents to the Administering Body within 24 hours of their occurrence;
 - (c) procedures for dealing with emergencies that enable the minimalisation of harm and damage by identifying possible emergencies, developing plans and providing emergency training for employees;
 - (d) procedures for supplying information to the Concessionaire's employees, and contractors on hazard identification, monitoring and control;

- (e) supervision and regular training (including safety training) for employees after assessing their competence, knowledge and experience.
- 8.4 If the Concessionaire amends or replaces the safety plan then within 5 working days of the amendment or replacement plan taking effect the Concessionaire must supply the Grantor and Administering Body with a copy of any amendment to the safety plan or any replacement safety plan and where the safety plan was required to be audited then the provisions of clause 8.2 (b) and (c) apply to the amendment or replacement safety plan.
- 8.5 Receipt of the certified safety plan by the Grantor and Administering Body is not in any way to limit the obligations of the Concessionaire under clause 8 and is not to be construed as implying any responsibility or liability on the part of the Grantor or Administering body.
- 8.6 The Concessionaire must:
- (a) notify the Administering Body of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;
 - (b) take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the public of any dangers they may encounter as a result of the Concessionaire's operations;
 - (c) take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;
 - (d) record and report to the Administering Body and the Grantor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
 - (e) ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 8;
 - (f) be satisfied that facilities or equipment provided by the Administering Body to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
 - (g) not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.
- 8.7 The Grantor in consultation with the Administering Body may immediately suspend or terminate this Document if the Concessionaire breaches clause 8.

9.0 Notification of Hazards

- 9.1 The Grantor must specify in Item 12 of Schedule 1 any hazards that are known to exist on the Land, the significant hazards the Concessionaire is required to control,

any other people present in the vicinity of the Land, or any other services being carried out in the vicinity of the Land that may affect the Concession Activity.

10.0 Grantor's Directions

10.1 The Concessionaire is to comply with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land.

11.0 Indemnities and Insurance

11.1 Interpretation

11.1.1 For purposes of this clause ("Indemnities and Insurance"), "Concessionaire" includes, unless the context otherwise requires, the Concessionaire's employees, agents, contractors, clients and invitees.

11.2 Liability of the Concessionaire

11.2.1 The Concessionaire is to indemnify and keep indemnified the Grantor from and against all actions, claims, demands, losses, damages, costs, expenses and liabilities which the Grantor may suffer or incur, or for which the Grantor may become liable in respect of or arising from:

- (a) negligent carrying out by the Concessionaire of the Concession Activity;
- (b) loss, damage, or injury from any cause to property or persons caused by or contributed to by any act, omission, neglect, breach or default on the part of the Concessionaire in carrying out the Concession Activity;
- (c) any failure by the concessionaire to comply with any obligation imposed on the Concessionaire under this Document or by law.

11.2.2 This indemnity is to continue after the expiry or other determination of this Document in respect of those acts or omissions occurring or arising before its expiry or determination.

11.3 Limitation of Concessionaire's Liability

11.3.1 The Concessionaire is to have 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.

11.4 Liability of Grantor

11.4.1 The Grantor will not be liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause

11.5, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.

11.5 Limitation of Grantor's Liability

- 11.5.1 Where the Grantor is found to be liable due to a wilful act or omission, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 11.5.2 Despite anything else in clause 11 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.

11.6 Insurance

11.6.1 Without prejudice to or in any way limiting its liability under clause 11 the Concessionaire must, if required in Item 13 of Schedule 1, take out and keep in force during the Term:

- (a) a policy of full replacement value insurance for all structures and facilities and land alterations in the joint names of the Grantor and Concessionaire for their respective interests, which policy must include insurance for the cost of demolition, removal of debris, and clearance of the Land; and
- (b) of public liability insurance against liability for loss, damage or injury from any one single accident or event arising out of the Concessionaire's use of the Land or its conduct of the Concession Activity on the Land and covering:
 - (i) general indemnity for a sum not less than the amount specified in Schedule 1; and
 - (ii) Forest and Rural Fires Act 1977 extension for a sum not less than the amount specified in Schedule 1; and
- (c) third party vehicle liability for the amount specified in Schedule 1; and
- (d) such other policy or policies of insurance against any other liability and for such other sums which the Grantor specifies in Schedule 1.

11.6.2 A breach by the Contractor of any of the provisions of clause 11.6 will entitle the Grantor immediately to terminate this Document.

11.6.3 With respect to clause 11.6 the Concessionaire must, before commencing the Concession Activity, provide to the Grantor a certificate of insurance from the Concessionaire's insurer as specified in Item 13 of Schedule I confirming:

- (a) the type of cover held
- (b) the amount of cover held
- (c) the date of expiry of the cover

11.6.4 The Concessionaire must provide to the Grantor the same information required under clause 11.6.3 on a renewal of any policy of insurance if that renewal occurs during the Term.

12.0 Protection of the Environment

12.1 Except as specified in Schedule 2 or otherwise approved by the Grantor, the Concessionaire will not, whether by act or omission:

- (a) interfere with, remove, damage, or endanger the natural features, animals, plants, or historic resources on the Land; or
- (b) bring any plants, animals, or firearms on to the Land; or
- (c) deposit on the Land debris, rubbish or other dangerous or unsightly matter, or contaminate any water body on the Land; or
- (d) pile or store materials in any place on the Land where it may obstruct the public or create a nuisance; or
- (e) conduct any noxious, noisome, dangerous or offensive activity on the Land.

12.2 The Concessionaire will keep the Land in a clean and tidy condition and free of weeds and all organisms specified as pests in a relevant pest management strategy.

12.3 If directed by the Administering Body, the Concessionaire will take all steps necessary to control, or, at the Administering Body's option, contribute to the cost of controlling any pest, insect or rodent infestation occurring in or emanating from the Land or any structure or facility on the Land, and if directed by the Administering Body, engage a pest exterminator approved by the Administering Body.

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

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

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

12.7 The Concessionaire must:

- (a) not light or permit to be lit any fire on the Land unless fires are permitted under Item 14 of Schedule 1, or, if not, are specifically approved by the Grantor. If fires are permitted under Schedule 1 or approved by the Grantor, the following provisions apply:

- (i) the Concessionaire may light or use at a campsite a fire in the open air if the fire is an approved camp fire and is fuelled by dead wood only;
- (ii) an approved camp fire is any fire lit for the purpose of camping, cooking, comfort or warmth;
- (iii) an approved camp fire may not be lit:
 - (aa) within 3 metres of a tree or place underneath overhanging vegetation;
 - (bb) within 3 metres of a log or dry vegetation;
 - (cc) unless the Concessionaire clears all combustible material away from around the base of the approved camp fire before lighting it;
 - (dd) where there are notices or other advertising limiting the lighting of fires to a particular receptacle or to a particular place;
 - (ee) during a prohibited fire season.
- (iv) for the purpose of this paragraph "open air" has the same meaning ascribed to it in the Forest and Rural Fires Act 1977;
- (b) not store or permit to be stored fuels or other combustible materials on the Land without the approval of the Grantor;
- (c) comply with the Grantor's directions for fire warning and safety equipment and for fire fighting equipment to be kept on the Land at all times.

12.8 The Concessionaire must immediately report to the Administering Body any act in contravention of clause 12 and wherever possible the names and addresses of any person carrying out such acts; and must provide the Administering Body with details of the circumstances surrounding such incidents.

13.0 Environmental Monitoring and Land Rehabilitation

13.1 The Concessionaire must, during the Term, if the Administering Body so directs, design in consultation with the Administering Body and undertake a programme to monitor and report on the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

13.2 If the Administering Body does not issue a direction under clause 13.1 the Concessionaire must, during the Term, pay to the Administering Body the annual Environmental Monitoring Contribution specified in Item 15 of Schedule 1 to enable the Administering Body to design and undertake a programme to monitor the environmental effects of the Concessionaire's use of the Land and conduct of the Concession Activity.

13.3 Subject to any conditions imposed by the Grantor and set out in Schedule 2, at the expiry or termination of this Document the Concessionaire must reinstate the Land to its condition at the commencement of the Term and replant the Land with

indigenous vegetation of a similar abundance and diversity as at the commencement of the Term.

14.0 Compliance

14.1 The Concessionaire will 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 1997, or any general policy statement made under the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1987 or the wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Document takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977 the National Parks Act 1980, Wildlife Act 1953 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Land or affecting or relating to the conduct of the Concession Activity.

14.2 The Concessionaire must comply with all conditions imposed by the Grantor in granting this Document.

14.3 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 14.1(a) will be deemed to be a breach of this Document.

14.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity will be deemed to be a breach of this Document.

14.5 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or land alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% of the amount spent by the Grantor.

14.6 If the Legislation requires the Grantor to spend money on structures, facilities or land alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Licence and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 19.

15.0 Concessionaire's Structures, Facilities and Land Alterations

- 15.1 The Concessionaire must not erect or bring on to the Land any structure, install any facility or alter the Land in any way without the prior approval of the Administering Body.
- 15.2 In giving approval under clause 15.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 15.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 15.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting or altering any structure on the Land
 - (b) bringing any structure on to the Land
 - (c) installing any facilities on the Land
 - (d) altering the Land in any way.
- 15.5 The Concessionaire is to keep and maintain its structures and facilities on, or alterations to, the Land in good repair.
- 15.6 The Concessionaire must at all times display a copy of the relevant current building warrant of fitness under the Building Act 2004 showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Land to which users of the building have ready access.
- 15.7 The Concessionaire must keep and maintain all building systems and any structure on the Land in accordance with the, requirements of any compliance schedule.
- 15.8 The Concessionaire must retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two year period.

16.0 Advertising

- 16.1 The Concessionaire must not erect or display any signs or advertising on the Land without the prior approval of the Administering Body. At the expiry or termination of this Concession the Concessionaire must remove all signs and advertising material and make good any damage caused by the removal.
- 16.2 Where directed by the Administering Body, the Concessionaire must ensure that all its advertising and promotional material specifies that it is carrying out the

Concession Activity under a Concession granted by the Grantor on land administered by the Department.

- 16.3 If directed by the Grantor the Concessionaire must include information in its advertising and promotional material which assists its clients to understand the features and values of the natural and historic resources of the land and the surrounding area.
- 16.4 The Concessionaire is encouraged to obtain information from and have regard to the views of tangata whenua.

17.0 Assignment

- 17.1 The Concessionaire is not to transfer, sublicense, assign, mortgage or otherwise dispose of the Concessionaire's interest under this Document 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 other than the Concessionaire) without the prior consent of the Grantor. The Grantor may in the Grantor's discretion decline any application for consent under this clause.
- 17.2 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. If the Grantor gives consent under this clause the Concessionaire is to remain liable to observe and perform the terms and conditions of this Document throughout the Term and is to procure from the transferee, sublicensee, or assignee a covenant to be bound by the terms and conditions of this Document.
- 17.3 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 17.4 The Concessionaire may at any time transfer, assign, sublicense or mortgage the Concessionaire's interest under this document or any part of it to a related company (as defined in s 2 of the Companies Act 1993) without the Grantor's consent.
- 17.5 If the Concessionaire is not a publicly listed company, then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire will be deemed to be an assignment and will require the consent of the Grantor.

18.0 Expiry of Licence

- 18.1 If the parties have not entered into a new agreement by the Final Expiry Date the Concessionaire accepts that the Grantor has no liability whatsoever for any costs incurred by the Concessionaire as a result of the expiry of this Document.
- 18.2 Upon the expiry or earlier termination of the Term all structures, facilities or land alterations of the Concessionaire are, subject to clause 18.4, to remain the property of the Concessionaire and will be deemed not to have become fixtures on the Land.

- 18.3 Subject to any conditions set out in Schedule 2, at the expiry or termination of the Term the Concessionaire must remove all the Concessionaire's structures and facilities on the Land unless the Grantor approves otherwise in writing.
- 18.4 If the Concessionaire does not remove the structures and facilities as required by clause 18.3, or as otherwise approved by the Grantor, the structures and facilities remaining on the Land will be deemed to have become fixtures and ownership in them will vest absolutely in the Grantor.
- 18.5 In that case the Grantor will not be liable to pay any compensation to the Concessionaire for the structures and facilities and may, at the Grantor's option, remove or destroy or otherwise dispose of them and recover the costs and expenses of the removal or destruction from the Concessionaire as a debt due to the Grantor.

19.0 Dispute Resolution and Arbitration

19.1 Negotiation

- 19.1.1. No Party to this Document is to commence any court or arbitration proceedings relating to any dispute arising out of this Document (including any dispute as to the validity, breach, or termination of this Document or as to any claim in tort, equity or under any statute) unless that Party has complied with the following paragraphs of this clause.
- 19.1.2. If either Party claims that a dispute has arisen under or in relation to this Document that Party must give notice to the other Party specifying the nature of the dispute.
- 19.1.3. Upon receipt of such notice by the other Party, both Parties to this Document must:
- (a) co-operate and use their best endeavours to resolve the dispute expeditiously; and, in particular,
 - (b) submit, within 14 days of receipt of such notice, the dispute to a facilitator who will have responsibility for overseeing the negotiations between the Parties and holding documentation relevant to the negotiations.
- 19.1.4. The facilitator is to be appointed by the Parties and, in the event of disagreement, the appointing authority is to be the Chair for the time being of LEADR New Zealand Inc ("Lawyers Engaged in Alternative Dispute Resolution").
- 19.1.5. The costs of the facilitator are to be shared equally between the Parties.
- 19.1.6. If the Parties are unable to resolve the dispute by negotiation within 14 days of submission to a facilitator the matter is to be referred to mediation on 5 days notice by either Party.

19.2 Mediation

- 19.2.1. The mediation is to be conducted in terms of the LEADR New Zealand Inc standard mediation agreement.

19.2.2. The mediation is to be conducted by a mediator at a fee agreed by the Parties. Failing agreement between the Parties, the mediator is to be selected and the mediator's fee is to be determined by the Chair for the time being of LEADR New Zealand Inc.

19.2.3. Any costs of the mediation are to be shared equally.

19.2.4. The mediator is not to be the same person as the facilitator.

19.3 Urgent Interlocutory Relief

19.3.1 A Party who seeks urgent interlocutory relief may, by notice to the other Party to the dispute, elect not to comply with the provisions of 19.1.1 to 19.1.4 but only to the extent of the relief sought and for the period required to dispose of the application for such interlocutory relief. Except to that extent, on the disposal of the application, the provisions of clauses 19.1.1 to 19.1.6 inclusive are once again to take effect.

19.4 Arbitration

19.4.1 In the event that the dispute has not been settled within 42 days or such other period as agreed to in writing between the Parties after the appointment of the mediator the dispute must be submitted to arbitration in accordance with the Arbitration Act 1996.

19.4.2 The arbitrator is not to be the same person as the mediator and, in the event of disagreement:

- (a) the appointing authority is to be the President of the New Zealand Law Society;
- (b) the number of arbitrators is to be one;
- (c) the place of arbitration is New Zealand.

19.4.3 Any costs of the arbitration are to be shared equally unless the arbitrator determines otherwise.

20.0 Power to Remedy Default

20.1 **The Administering Body, may elect to remedy at any time, after giving notice, if practicable, any default by the Concessionaire under this Concession.**

20.2 **The Concessionaire must pay to the Administering Body forthwith on demand all reasonable costs and expenses incurred by the Administering Body, including legal costs and expenses as between solicitor and client, in remedying such default.**

21.0 Suspension and Termination

21.1 Force Majeure / "Act of God"

21.1.1. Neither party will be liable to the other party for any delay in performance of, or failure to perform, its obligations (other than a payment of money) under this Document as a result of any cause beyond its reasonable control.

- 21.1.2. If the delay or failure continues for at least 28 days either party will be entitled to terminate this Document by notice.

21.2 Suspension by Grantor

- 21.2.1. **The Grantor, in consultation with the Administering Body, may suspend this Document if, in the opinion of the Grantor there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.**
- 21.2.2. If, in the opinion of the Grantor, the activities of the Concessionaire, its employees, contractors, agents, clients or invitees are having or may have an adverse effect on the natural and historical resources of the Land and the Grantor is of the opinion that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, the Grantor may suspend this Concession until the Concessionaire remedies, avoids or mitigates the adverse impact to the satisfaction of the Grantor.
- 21.2.3. The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 21.2.1 and 21.2.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act, of which the Grantor has become aware.
- 21.2.4. The word "investigates" in clause 21.2.3 includes the laying of charges and awaiting the decision of the Court.
- 21.2.5. During any period of temporary suspension the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 21.2.6. The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under clause 21.2, including loss of profits.

21.3 Termination by Grantor

- 21.3.1. **The Grantor, in consultation with the Administering Body, may terminate this Concession:**
- (a) by 14 days notice to the Concessionaire if the Concession Fee or any other money payable to the Grantor under this Document is in arrears and unpaid for 14 days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b) by 14 days notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Grantor if.
 - (i) the Concessionaire breaches any terms of this Document and in the Grantor's sole opinion the breach is able to be rectified; and

- (ii) the Grantor has notified the Concessionaire of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or such earlier time as specified by the grantor
- (c) by notice in writing to the Concessionaire where the Concessionaire breaches any terms of this Document and in the sole opinion of the Grantor the breach is not capable of being rectified
- (d) if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the conduct of the Concession Activity is manifestly inadequate; or
- (e) if the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act or any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Grantor's sole opinion affects or relates to the Concession Activity. or
- (f) if the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
- (g) Immediately if there is, in the opinion of the Grantor, a permanent risk to public safety or to the natural and historic resources of the Land whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Document on the part of the Concessionaire.

21.3.2. The Grantor, in consultation with the Administering Body, may exercise its power to terminate under 21.3.1(g) above without giving notice.

21.3.3. The Grantor, in consultation with the Administering Body, may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.

21.4 Rights and Liabilities of Parties

21.4.1. Suspension or termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

22.0 Variations

22.1 The provisions of section 17ZC of the Conservation Act 1987 apply to all variations sought by the Concessionaire and to any applications for extension of the Term.

22.2 **The Grantor, in consultation with the Administering Body, may, on request or on his or her own motion, vary any conditions of this Document if the variation is necessary:**

- (a) to deal with significant adverse effects of the Activity that were not reasonably foreseeable at the time this Licence was granted; or
- (b) because the information made available to the Grantor by the Concessionaire for the purposes of the Concessionaire's application contained inaccuracies which materially influenced the decision to grant the Licence and the effects of the Activity permitted by this Document require more appropriate conditions.

22.3 The Concessionaire is to be bound by every such variation.

23.0 Offences

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

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

24.0 Notices

24.1 Any notice to be given under this Document by one party to the other is to be in writing and made by personal delivery, by pre-paid post or by facsimile addressed to the receiving party at the address or facsimile number set out in Item 18 of Schedule 1.

24.2 A notice given in accordance with clause 24.1 will be deemed to have been received:

- (a) in the case of personal delivery, on the date of delivery;
- (b) in the case of a letter, on the third working day after posting;
- (c) in the case of facsimile, on the date of dispatch.

25.0 Entire Understanding

25.1 Except as provided by legislation, this Document and any written variation agreed by the parties contain the entire understanding between the parties with reference to the subject matter of this Document and there is no other agreement, representation or

warranty whether it is expressed or implied which in any way extends, defines or otherwise relates to the provisions of this Document.

26.0 Severability

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

27.0 Costs

27.1 The Concessionaire must pay the Grantor's legal costs and expenses of and incidental to preparing and executing this Document or any extension or variation of this Document.

27.2 The Concessionaire must pay in full immediately on demand all costs and fees (including but not limited to solicitors' costs and the fees of debt collecting agencies engaged by the Grantor) arising out of and associated with steps taken by the Grantor:

- (a) to enforce or attempt to enforce the Grantor's rights and powers under the Document if the Concessionaire is in breach or default;
- (b) to recover outstanding money owed to the Grantor.

28.0 Relationship of Parties

28.1 Nothing expressed or implied in this Document shall be construed as:

- (a) constituting the parties as partners or joint venturers;
- (b) conferring on the Concessionaire any right of exclusive occupation or use of the Land;
- (c) granting any exclusive estate or interest in the Land to the Concessionaire;
- (d) preventing the Grantor from granting other concessions, whether similar or not, to other persons;
- (e) derogating from the rights of the Grantor and the public to have access across the Land.

29.0 Guarantee

29.1 The Grantor may, by item 16 of Schedule 1, require this Document to be guaranteed by a third party.

29.2 If the Grantor requires a guarantor above, the following clauses are to apply:

29.3 In consideration of the Grantor entering into this Document at the Guarantor's request the Guarantor:

- (a) guarantees payment of the Concession Fee and the performance by the Concessionaire of the covenants in this Document; and
- (b) indemnifies the Grantor against any loss the Grantor might suffer should the Document be lawfully disclaimed or abandoned by any liquidator, receiver or other persons.

29.4 The Guarantor covenants with the Grantor that:

- (a) no release, delay, or other indulgence given by the Grantor to the Concessionaire, to the Concessionaire's successors or assigns, or any other thing whereby the Guarantor would have been released had the Guarantor been merely a surety is to release, prejudice, or affect the liability of the Guarantor as a Guarantor or as indemnifier;
- (b) as between the Guarantor and Grantor the Guarantor may, for all purposes, be treated as the Concessionaire and the Grantor is under no obligation to take proceedings against the Concessionaire before taking proceedings against the Guarantor;
- (c) the guarantee is for the benefit of and may be enforced by any person entitled for the time being to receive the Concession Fee;
- (d) any assignment of this Document and any Concession Fee Review in accordance with this Document are not to release the Guarantor from liability;
- (e) should there be more than one Guarantor the liability of each Guarantor under this Guarantee is to be joint and several.

30.0 Co-Siting

30.1 **The Concessionaire must, if directed by the Administering Body, allow Co-Siting except when a Concessionaire demonstrates to the reasonable satisfaction of the Administering Body that the Co-Siting by a third party:**

- (a) would impact on the ability of the Concessionaire to conduct its Concession Activity; or
- (b) would result in a substantial change to the Concession Activity carried out by the Concessionaire on the Land.

30.2 **The Administering Body will be entitled to direct the Concessionaire to obtain at the Concessionaire's expense a report prepared by an independent consultant acceptable to the Administering Body confirming the matters specified in clause 30.1.**

30.3 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate agreement with the Grantor in terms of which the Co-Sitee will be required to pay a fee to the Grantor to conduct an Activity on the Land. This separate agreement will not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.

31.0 Concessionaire Identification Cards

31.1 Before commencing the Concession Activity the Concessionaire must, if required by the Grantor in Item 17 of Schedule 1, obtain Concessionaire Identification cards from the Grantor. The Grantor will supply such cards to the Concessionaire on a cost recovery basis. The Concessionaire, its employees and any person acting under the authority of the Concession must carry and display a Concession Identification card when carrying out the Concession Activity. The Concessionaire must obtain sufficient cards to ensure all its employees and people acting under the authority of the concession can carry and display such cards when undertaking the Concession activity.

32.0 Powers, Rights and Authorities

32.1 All powers, rights and authorities of the Grantor under this Document and any notice required to be given by the Grantor may be exercised and given by the Director-General.

33.0 Survival

33.1 Clauses 11 and 24 survive the termination of this Document.

34.0 Special Conditions

34.1 Any special conditions agreed between the parties are set out in schedules 1 and 2.

34.2 The standard conditions in this Document must be read subject to any special conditions.

35.0 Law

35.1 This Document shall be governed by New Zealand law.