



Concession Document (Lease and Grazing Licence) - Sample

Concession Number: XXXX

THIS CONCESSION is made this **XX** day of **XXXX**

PARTIES:

Minister of Conservation (the Grantor)

XXXX (the Concessionaire)

BACKGROUND

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

OPERATIVE PARTS

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

<p>_____</p> <p>SIGNED on behalf of the Minister of Conservation by XXXXX, acting under delegated authority</p> <p>in the presence of:</p> <p>_____</p> <p>Witness Signature</p> <p>Witness Name:</p> <p>Witness Occupation:</p> <p>Witness Address:</p> <p>A copy of the Instrument of Delegation may be inspected at the Director-General's office at 18-22 Manners Street, Wellington.</p>	<p>Select what is appropriate and delete the others</p> <p>1. Individual</p> <p>_____</p> <p>SIGNED by [insert name of Concessionaire if an individual]</p> <p>in the presence of:</p> <p>_____</p> <p>Witness Signature</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>2. Company with more than one Director</p> <p>_____</p> <p>SIGNED for [insert name of Company] Limited by:</p> <p>Director [insert name]</p> <p>AND</p> <p>_____</p> <p>SIGNED for [insert name of Company] Limited by:</p> <p>Director [insert name]</p> <p>3. if you have checked the Company records at the Company's office and have confirmed that the Company has only one Director</p> <p>_____</p> <p>SIGNED for [insert name of Company] Limited by its Director [insert name]</p> <p>in the presence of:</p>
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	<p>_____ Witness Signature</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>4. Partnership</p> <p>_____ SIGNED on behalf of [insert name of partnership] by [insert name of authorised signatory]</p> <p>in the presence of:</p> <p>_____ Witness Signature</p> <p>Witness Name: _____</p> <p>Witness Occupation: _____</p> <p>Witness Address: _____</p> <p>5. Incorporated Society</p> <p>The seal of [insert name of Incorporated Society] was affixed in the presence of:</p> <p>_____ Authorised Signatory [insert name]</p> <p>_____ Authorised Signatory [insert name]</p>
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SCHEDULE 1

1.	Land (clause 1)	<p>Approximately 180,787 ha of land being those portions of the Molesworth Recreation Reserve comprised of the Lease Land and Licence Land (defined below).</p> <p><u>Lease Land:</u></p> <p>As marked on the attached map in Schedule 4 being: XXXX</p> <p><u>Grazing Licence Land:</u></p> <p>As marked on the attached map in Schedule 4 being: XXXX</p> <p>Land Status: Recreation Reserve</p> <p>Legal Description:</p> <p>Parts Section 6, Square 70, situated in Rainbow, Wairau and Alma Survey Districts; Section 1, SO 15300 and Section 1, SO 15320 Parts Run 226 and Run 227, situated in Molesworth, Barefell, Tone and Acheron Survey Districts; Section 1, SO 7202 and Crown riverbed being parts of the Awatere, Acheron and Clarence riverbeds.</p> <p>Parts Run 345, situated in the Severn, Alma and Percival Survey Districts; Section 1, SO 19494 and Crown riverbed being parts of the Acheron and Clarence riverbeds.</p> <p>Map Reference: XXXX</p>
2.	Concession Activity (clause 2)	<p>Means the activities described below:</p> <p><u>Lease Land</u></p> <p>a) In relation to the Lease Land the following uses and activities are permitted to occur:</p> <ol style="list-style-type: none"> i. exclusive use and maintenance of buildings, structures and yards, owned by the Grantor and listed in Schedule 5, for activities associated with operating and managing a stock farm, including manager/staff accommodation; and ii. the provision of recreation/tourism activities ancillary to the farm activity, including short-term holiday accommodation and guiding activities by paying members of the public; <p>subject to the special conditions in Schedule 3.</p> <p><u>Licence Land</u></p>

		<p>b) In relation to the Licence Land the following uses and activities are permitted to occur:</p> <ul style="list-style-type: none"> i. use and maintenance of land and associated infrastructure for the general grazing of XXXX head of adult cattle ('adult' being described as greater than 12 months old as at 30 June of each year) with stocking rates set for defined areas; and ii. use and maintenance of land and associated infrastructure for the grazing of XXXX sheep and/or other stock at stocking rates set for defined areas; iii. development/improvement of parts of the reserve previously modified, and possibly other areas by agreement, to provide for effective farming; and <p>c) other ancillary activities that may be approved by the Grantor;</p> <p>subject to the special conditions in Schedule 3</p>
3.	Term (clause 4)	<p>Lease Land: 30 years commencing on XXXX</p> <p>Licence Land: 30 years commencing on XXXX</p>
4.	Renewal(s) (clause 4)	Nil
5.	Final Expiry Date (clause 4)	XXXX
6.	Concession Fee (clause 5)	<p>Activity Fee:</p> <p>Stock farm activity: \$ XXXX per annum plus GST.</p> <p>Tourism accommodation activity: \$ XXXX per annum plus GST.</p> <p>Guiding activity: \$ XXXX per annum plus GST.</p> <p>Management Fee:</p> <p>\$XXXX per annum plus GST</p>
7.	Environmental Monitoring Contribution (clause 10)	Standard Department Charge out rates for staff time and mileage required to monitor the effects of the activity and compliance with concession conditions.
8.	Community Services Contribution (clause 7)	Not required
9.	Total payments to be made per annum	Annually as specified on invoice generated by the Grantor

	(clause 5)	
10.	Total payment instalment(s) (clause 5)	Activity Fee: TBC Management Fee: TBC
11.	Concession Fee Payment Date(s) (clause 5)	As specified on invoice
12.	Penalty Interest Rate (clause 5)	Double the current Official Cash Rate (OCR). See Reserve Bank of New Zealand website
13.	Concession Fee Review Date(s) (clause 6)	1 July 2029, 1 July 2032, 1 July 2035 and every three years thereafter.
14.	Insurance (To be obtained by Concessionaire) (clause 13)	Types and amounts: Public Liability Insurance for: a) General indemnity for an amount no less than \$1,000,000.00; and b) Third party vehicle liability for an amount of no less than \$500,000.00. c) Full replacement building insurance for the buildings owned by the Grantor. Subject to review on each Concession Fee Review Date.
15.	Health and Safety (clause 14)	Audited Safety Plan: Not required for farm operation but possibly required for tourism activities.
16.	Concessionaire Identification (clause 32)	Not required for farm operation but possibly required for tourism activities.
17.	Addresses for Notices (clause 25)	The Grantor's address is: Department of Conservation Level 1 John Wickliffe House 265 Princes Street Dunedin 9016 PO Box 5244 Dunedin 9054 Email: transactioncentre@doc.govt.nz

		<p>The Concessionaire's address in New Zealand is:</p> <p>XXXX</p> <p>Phone: XXXX</p> <p>Email: XXXX</p>
18.	Guarantee (clause 30)	Not required
19.	Special Conditions (clause 35)	See Schedule 3
20.	Processing Fee (clause 5)	\$ XXXX plus GST

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

SCHEDULE 2

STANDARD TERMS AND CONDITIONS OF LEASE AND LICENCE

Interpretation

1.1 In this Document, unless the context otherwise requires:

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

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

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

“Concession” means this concession in its entirety whereas Lease or Licence refer to the respective parts of this Concession.

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

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

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

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

1.6 The covenants and powers contained in Part 2 of Schedule 3 of the Property Law Act 2007 are not to be implied in this Concession and are expressly negated.

What is being authorised?

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

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

What about quiet enjoyment?

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

How long is the Concession for - the Term?

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

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

- 5.1 The Concessionaire must pay the Processing Fee (Item 20 of Schedule 1) to the Grantor in the manner directed by the Grantor. Except where the Grantor's written consent has been given, the Concessionaire cannot commence the Concession Activity until the Processing Fee has been paid.
- 5.2 The Concessionaire must pay to the Grantor in the manner directed by the Grantor the Concession Fee and any other payment comprised in the Total Payment specified in Item 9 of Schedule 1 in the instalments and on the Concession Fee Payment Date specified in Items 10, and 11 of Schedule 1.
- 5.3 If the Concessionaire fails to make payment within 14 days of the Concession Fee Payment Date then the Concessionaire is to pay interest on the unpaid Concession Fee from the Concession Fee Payment Date until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.

When can the fee be reviewed?

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

and paid, either by the Grantor or by the Concessionaire, whichever is applicable.

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

- (a) By one party giving notice to the other requiring the new Concession Fee to be determined by the Disputes clause (clause 23) or, if the parties agree,
- (b) by registered valuers acting as experts and not as arbitrators as follows:
 - (i) Each party must appoint a valuer and give notice of the appointment to the other party within 14 days of the parties agreeing to determine the new Concession Fee by this means.
 - (ii) If the party receiving a notice does not appoint a valuer within the 14 day period the valuer appointed by the other party is to determine the new Concession Fee and that valuer's determination is to be binding on both parties.
 - (iii) Before commencing their determination the respective valuers must appoint an umpire who need not be a registered valuer.
 - (iv) The valuers are to determine the new Concession Fee which they consider to be the market value for the Concession Activity as at the Concession Fee Review Date having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date. If they fail to agree the Concession Fee is to be determined by the umpire.
 - (v) In determining the Concession Fee the valuers or umpire are to disregard the annual cost to the Concessionaire to maintain or provide access to the Land.
 - (vi) Each party is to be given the opportunity to make written or oral representations or submissions to the valuers or the umpire subject to such reasonable time and other limits as the valuers or the umpire may prescribe.
 - (vii) The valuers or the umpire must have regard to any such representations but are not bound by them.
- (c) The valuers or umpire must give written notice to the parties once they have determined the new Concession Fee. The notice is to be binding on the parties and is to provide how the costs of the determination are to be borne.

- (d) If a Concession Fee Review Date is postponed because of a moratorium imposed by law the Concession Fee Review is to take place at the date the moratorium is lifted or so soon afterwards as is practicable; and
 - (i) the Concession Fee Review is to establish the market value for the Concession Activity as at that date instead of the date fixed under clause 6.1 having regard to the matters specified in section 17Y(2) of the Conservation Act 1987 but in no case is the new Concession Fee to be less than the Concession Fee payable during the year preceding the particular Concession Fee Review Date; and
 - (ii) each subsequent Concession Fee Review is to take place in accordance with the procedure fixed in clause 6.1.

Are there any other charges?

- 7.1 The Concessionaire must pay all levies rates and other charges, including utility charges payable in respect of the Land or for the services provided to the Land which relate to the Concessionaire's use of the Land or the carrying on of the Concession Activity.
- 7.2 The Grantor is not liable for any cost incurred in re-establishing the supply of any utilities in the event of any of them becoming unavailable for any reason.
- 7.3 Where the Grantor has paid such levies, rates or other charges the Concessionaire must on receipt of an invoice from the Grantor pay such sum to the Grantor within 14 days of receiving the invoice. If payment is not made within the 14 days then the Concessionaire is to pay interest on the unpaid sum from the date payment was due until the date of payment at the Penalty Interest Rate specified in Item 12 of Schedule 1.
- 7.4 Where the Grantor or Director-General has provided a community service, benefit or facility for the benefit of the Concessionaire under section 17ZH of the Conservation Act 1987, the Concessionaire must pay the Grantor the amount specified in Item 8 of Schedule 1 as part of the Total Payment specified in Item 9 of Schedule 1 on the Concession Fee Payment Dates specified in Item 11 of Schedule 1.

When can the Concession be assigned?

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

- 8.2 The Grantor may in the Grantor's discretion decline any application for consent under clause 8.1.
- 8.3 Sections 17P, 17S, 17T, 17U, 17W, 17X, 17ZB and 17ZC of the Conservation Act 1987 apply to applications for consent under this clause unless the Grantor, in the Grantor's discretion, decides otherwise.
- 8.4 If the Grantor gives consent under this clause then the Concessionaire remains liable to observe and perform the terms and conditions of this Concession throughout the Term and is to procure from the Assignee a covenant to be bound by the terms and conditions of this Concession.
- 8.5 The Concessionaire must pay the costs reasonably incurred by the Grantor incidental to any application for consent, whether or not such consent is granted.
- 8.6 If the Concessionaire is not a publicly listed company then any change in the shareholding of the Concessionaire altering the effective control of the Concessionaire is to be deemed to be an assignment and requires the consent of the Grantor.

What are the obligations to protect the environment?

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

Grantor the Concessionaire must paint all structures and facilities in colours approved by the Grantor and with paints of a type approved by the Grantor.

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

What about Environmental Monitoring?

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

When can new structures be erected or land alterations occur?

- 11.1 The Concessionaire must not erect, alter or bring on to the Land any structure not authorised in Schedule 3 nor alter the Land in any way without the prior approval of the Grantor.
- 11.2 In giving approval under clause 11.1 the Grantor may, in the Grantor's sole and absolute discretion, impose any reasonable terms and conditions, including a review of the Concession Fee, as the Grantor considers appropriate under this clause; and may also decline the grant of such approval after consideration of the relevant conservation and environmental issues.
- 11.3 The Concessionaire must pay to the Grantor all costs associated with applications for approval under this clause determined at the standard rates then applying in the Department for cost recovery of staff time and expenses.
- 11.4 The Concessionaire must, upon request by the Grantor, submit written engineering or building plans and details to the Grantor for approval before :
- (a) erecting new structure or altering any structure on the Land
 - (b) altering the Land in any way.

- 11.5 The Concessionaire must at all times where a building warrant of fitness under the Building Act 2004 is required display a copy of the relevant current certificate showing the location of the compliance schedule in a place in each building (as defined in that Act) on the Land to which users of the building have ready access.
- 11.6 The Concessionaire must keep and maintain all building systems and any structure on the Land in accordance with the requirements of any compliance schedule.
- 11.7 The Concessionaire must retain and make available to any territorial authority and any other person with a right to inspect any structures on the Land under the Building Act 2004 a copy of the compliance schedule, together with the written reports relating to compliance with the compliance schedule over the previous two-year period.

What about advertising?

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

What are the liabilities and who insures?

- 13.1 The Concessionaire agrees to use the Land at the Concessionaire's own risk and releases to the full extent permitted by law the Grantor and the Grantor's employees and agents from all claims and demands of any kind and from all liability which may arise in respect of any accident, damage or injury occurring to any person or property in or about the Land.
- 13.2 The Concessionaire must indemnify the Grantor against all claims, actions, losses and expenses of any nature which the Grantor may suffer or incur or for

which the Grantor may become liable arising from the Concessionaire's performance of the Concession Activity.

- 13.3 This indemnity is to continue after the expiry or termination of this Concession in respect of any acts or omissions occurring or arising before its expiry or termination.
- 13.4 The Concessionaire has no responsibility or liability for costs, loss, or damage of whatsoever nature arising from any act or omission or lack of performance or any negligent or fraudulent act or omission by the Grantor, or any contractor or supplier to the Grantor, or any employee or agent of the Grantor.
- 13.5 Despite anything else in clause 13 the Concessionaire is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.6 The Grantor is not liable and does not accept any responsibility for damage to or interference with the Land, the Concession Activity, or to any structures, equipment or facilities on the Land or any other indirect or consequential damage or loss due to any natural disaster, vandalism, sabotage, fire, or exposure to the elements except where, subject to clause 13.7, such damage or interference is caused by any wilful act or omission of the Grantor, the Grantor's employees, agents or contractors.
- 13.7 Where the Grantor is found to be liable in accordance with clause 13.6, the total extent of the Grantor's liability is limited to \$1,000,000 in respect of the Concessionaire's structures, equipment and facilities.
- 13.8 Despite anything else in clause 13 the Grantor is not liable for any indirect or consequential damage or loss howsoever caused.
- 13.9 Without prejudice to or in any way limiting its liability under this clause 13 the Concessionaire at the Concessionaire's expense must take out and keep current policies for insurance and for the amounts not less than the sums specified in Item 14 of Schedule 1 with a substantial and reputable insurer.
- 13.10 After every three year period of the Term the Grantor may, on giving 10 working day's notice to the Concessionaire, alter the amounts of insurance required under clause 13.9. On receiving such notice the Concessionaire must within 10 working days take out and keep current policies for insurance and for the amounts not less than the sums specified in that notice.
- 13.11 The Concessionaire must provide to the Grantor within 5 working days of the Grantor so requesting:
 - (a) details of any insurance policies required to be obtained under this Concession, including any renewal policies if such renewal occurs during the Term; and/ or;
 - (b) a copy of the current certificate of such policies.

What about Health and Safety?

- 14.1 The Concessionaire must exercise the rights granted by this Concession in a safe and reliable manner and must comply with the Health and Safety at Work Act 2015 and its regulations and all other provisions or requirements of any competent authority relating to the exercise of this Concession. The Concessionaire must comply with its safety plan (if one is required in Item 15 of Schedule 1), and with any safety directions of the Grantor.
- 14.2 Before commencing the Concession Activity the Concessionaire must, where the Concessionaire has Qualmark or Outdoorsmark certification, provide the Grantor with a copy of that certification.
- 14.3 If the Concessionaire does not hold Qualmark or Outdoorsmark certification then before commencing the Concession Activity the Concessionaire must, if required by Item 11 of Schedule 1:
- a) prepare a safety plan;
 - b) have it audited by a suitably qualified person approved by the Grantor; and forward to the Grantor a certificate from the auditor certifying that the safety plan is suitable for the Concession Activity; and
 - c) the Concessionaire must obtain from the auditor details as to when the safety plan is to be re-audited. The Concessionaire must comply with any such requirement to re-audit and forward a copy of the re-audit certificate to the Grantor within 5 working days of the certificate being issued.
- 14.4 For any Concession Activity that is subject to the Health and Safety at Work (Adventure Activities) Regulations 2016, proof of registration with WorkSafe New Zealand will satisfy the Grantor's requirement under clause 14.3(b).
- 14.5 If clause 14.2 applies then if the Concessionaire amends or replaces the safety plan then before the amendment or replacement plan takes effect the Concessionaire must comply with 14.3(b) and (c).
- 14.4 The Grantor may at any time request the Concessionaire to provide the Grantor with a copy of the current safety plan in which case the Concessionaire must provide the copy within 10 working days of receiving the request.
- 14.5 Receipt of the certified safety plan by the Grantor is not in any way to limit the obligations of the Concessionaire under clause 14 and is not to be construed as implying any responsibility or liability on the part of the Grantor.
- 14.6 The Concessionaire must:
- (a) notify the Grantor of any natural events or activities on the Land or the surrounding area which may endanger the public or the environment;
 - (b) take all practicable steps to protect the safety of all persons present on the Land and must, where necessary, erect signposts warning the

public of any dangers they may encounter as a result of the Concessionaire's operations;

- (c) take all practicable steps to eliminate any dangers to the public and must clearly and permanently mark any that remain and of which the Concessionaire is aware;
- (d) record and report to the Grantor all accidents involving serious harm within 24 hours of their occurrence and forward an investigation report within 3 days of the accident occurring;
- (e) ensure that all contracts between the Concessionaire and any contractors contain, at a minimum, the same requirements as clause 14;
- (f) be satisfied that facilities or equipment provided by the Grantor to enable the Concession Activity to be carried out meet the safety requirements of the Concessionaire;
- (g) not bring onto the Land or any land administered by the Department any dangerous or hazardous material or equipment which is not required for purposes of the Concession Activity; and if such material or equipment is required as part of the Concession Activity, the Concessionaire must take all practicable steps at all times to ensure that the material or equipment is treated with due and proper care.

What are the compliance obligations of the Concessionaire?

15.1 The Concessionaire must comply where relevant:

- (a) with the provisions of any conservation management strategy or conservation management plan under the Conservation Act 1987 or Part IIA of the Reserves Act 1977, or any general policy statement made under the Conservation Act 1987, Reserves Act 1977, National Parks Act 1980, or Wildlife Act 1953, or management plan under section 45 of the National Parks Act 1980, whichever is appropriate to the Land, together with any amendment or review of any policy, strategy or plan whether approved before, on, or after the date on which this Concession takes effect; and
- (b) with the Conservation Act 1987, the Reserves Act 1977, the National Parks Act 1980, Wildlife Act 1953, Climate Change Response Act 2002 and any other statute, ordinance, regulation, bylaw, or other enactment (collectively the "Legislation") affecting or relating to the Land or affecting or relating to the Concession Activity, including any regulations made under the Conservation Act 1987 and Wildlife Act 1953 or bylaws made under the Reserves Act 1977 or the National Parks Act 1980; and
- (c) with all notices and requisitions of any competent authority affecting or relating to the Land or affecting or relating to the conduct of the Concession Activity; and
- (d) with all Department signs and notices placed on or affecting the Land;

and

- (e) with all reasonable notices and directions of the Grantor concerning the Concession Activity on the Land.

- 15.2 The Concessionaire must comply with this Concession.
- 15.3 A breach or contravention by the Concessionaire of a relevant conservation management strategy, conservation management plan, management plan or any statement of general policy referred to in clause 15.1.(a) is deemed to be a breach of this Concession.
- 15.4 A breach or contravention by the Concessionaire of any Legislation affecting or relating to the Land or affecting or relating to the Concession Activity is deemed to be a breach of this Concession.
- 15.5 If the Legislation requires the Grantor to spend money on the Grantor's own structures, facilities or land alterations on the Land, the Grantor may charge, in addition to the Concession Fee, an annual sum equal to 15% per annum of the amount spent by the Grantor.
- 15.6 If the Legislation requires the Grantor to spend money on structures, facilities or land alterations on the Land which the Grantor considers unreasonable, the Grantor may determine this Concession and any dispute as to whether or not the amount is unreasonable is to be determined in accordance with clause 23.

What if the Grantor's structures or facilities are damaged or destroyed

- 16.1 If the Grantor's structures or facilities or any portion of them are totally destroyed or so damaged:
 - (a) as to render them untenable, the Concession is to terminate at once; or
 - (b) as, in the reasonable opinion of the Grantor, to require demolition or reconstruction, the Grantor may, within 3 months of the date of damage or destruction, give the Concessionaire 1 month's notice to terminate and a fair proportion of the Concession Fee and Other Charges is to cease to be payable according to the nature and extent of the damage.
- 16.2 Any termination under clause 16.1 is to be without prejudice to the rights of either party against the other.
- 16.3 If the Grantor's structures or facilities or any portion of them are damaged but not so as to render the premises untenable and:
 - (a) the Grantor's policy or policies of insurance have not been invalidated or payment of the policy monies refused in consequence of some act or default of the Concessionaire; and

- (b) all the necessary permits and consents are obtainable; and
- (c) the Grantor has not exercised the right to terminate under clause 16.1,

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

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

What are the Grantor's rights to remedy defaults?

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

When can the Concession be suspended?

- 18.1 If, in the Grantor's opinion, there is a temporary risk to any natural or historic resource on or in the vicinity of the Land or to public safety whether arising from natural events such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire, then the Grantor may suspend this Concession.

- 18.2 If, in the Grantor's opinion, the activities of the Concessionaire are having or may have an adverse effect on the natural, historic or cultural values or resources of the Land and the Grantor considers that the effect can be avoided, remedied or mitigated to an extent satisfactory to the Grantor, then the Grantor may suspend this Concession until the Concessionaire avoids, remedies or mitigates the adverse effect to the Grantor's satisfaction.
- 18.3 The Grantor may suspend the Concession for such period as the Grantor determines where the Concessionaire has breached any terms of this Concession.
- 18.4 The Grantor may suspend this Concession while the Grantor investigates any of the circumstances contemplated in clauses 18.1 and 18.2 and also while the Grantor investigates any potential breach or possible offence by the Concessionaire, whether or not related to the Concession Activity under the Conservation Act 1987 or any of the Acts mentioned in the First Schedule of that Act.
- 18.5 The word "investigates" in clause 18.4 includes the laying of charges and awaiting the decision of the Court.
- 18.6 During any period of temporary suspension arising under clauses 18.1 or 18.2 the Concession Fee payable by the Concessionaire is to abate in fair proportion to the loss of use by the Concessionaire of the Land.
- 18.7 The Grantor is not to be liable to the Concessionaire for any loss sustained by the Concessionaire by reason of the suspension of the Concession under this clause 18 including loss of profits.

When can the Concession be terminated?

- 19.1 The Grantor may terminate this Concession either in whole or in part:
- (a) by 14 days notice to the Concessionaire if the Concession Fee or any other money payable to the Grantor under this Concession is in arrears and unpaid for 10 working days after any of the days appointed for payment whether it has been lawfully demanded or not; or
 - (b) by 14 days notice to the Concessionaire or such sooner period as it appears necessary and reasonable to the Grantor if;
 - (i) the Concessionaire breaches any terms of this Concession and in the Grantor's sole opinion the breach is able to be rectified; and
 - (ii) the Grantor has notified the Concessionaire of the breach; and
 - (iii) the Concessionaire does not rectify the breach within 7 days of receiving notification; or such earlier time as specified by the Grantor; or

- (c) by notice in writing to the Concessionaire where the Concessionaire breaches any terms of this Concession and in the sole opinion of the Grantor the breach is not capable of being rectified; or
 - (d) immediately by notice in writing to the Concessionaire where the Concessionaire breaches clauses 13.9 and 14; or
 - (e) by notice in writing to the Concessionaire if the Concessionaire ceases to conduct the Concession Activity or, in the reasonable opinion of the Grantor, the conduct of the Concession Activity is manifestly inadequate; or
 - (f) by notice in writing to the Concessionaire if the Concessionaire is convicted of an offence under the Conservation Act 1987 or any of the Acts listed in the First Schedule to that Act or any statute, ordinance, regulation, bylaw, or other enactment affecting or relating to the Land or which in the Grantor's sole opinion affects or relates to the Concession Activity; or
 - (g) by notice in writing to the Concessionaire if the Concessionaire or the Guarantor is dissolved; or enters into any composition with or assignment for the benefit of its creditors; or is adjudged bankrupt; or being a company, has a receiver appointed; or is put into liquidation; or is placed under statutory management; or has a petition for winding up presented against it; or is otherwise unable to pay its debts as they fall due; or the estate or interest of the Concessionaire is made subject to a Writ of Sale or charging order; or the Concessionaire ceases to function or operate; or
 - (h) immediately if there is, in the opinion of the Grantor, a permanent risk to public safety or to the natural and historic resources of the Land whether arising from the conduct of the Concession Activity or from natural causes such as earthquake, land slip, volcanic activity, flood, or arising in any other way, whether or not from any breach of the terms of this Concession on the part of the Concessionaire.
- 19.2 The Grantor may exercise its power to terminate under 19.1(h) without giving notice.
- 19.3 The Grantor may exercise the Grantor's right under this clause to terminate the Concession notwithstanding any prior waiver or failure to take action by the Grantor or any indulgence granted by the Grantor for any matter or default.
- 19.4 Termination of the Concession is not to prejudice or affect the accrued rights or claims and liabilities of the parties.

What happens on termination or expiry of the Concession?

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

- (a) of a monthly tenancy only, terminable by 1 months' notice by either party; and
 - (b) at the Concession Fee then payable; and
 - (c) otherwise on the same terms and conditions, as they would apply to a monthly tenancy, as expressed or implied in this Concession.
- 20.2 On expiry or termination of this Concession, either as to all or part of the Land, the Concessionaire is not entitled to compensation for any structures or other improvements placed or carried out by the Concessionaire on the Land.
- 20.3 The Concessionaire may, with the Grantor's written consent, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition.
- 20.4 The Concessionaire must, if the Grantor gives written notice, remove any specified structures and other improvements on the Land. Removal under this clause must occur within the time specified by the Grantor and the Concessionaire is to make good any damage and leave the Land and other public conservation land affected by the removal in a clean and tidy condition and replant the Land with indigenous vegetation of a similar abundance and diversity as at the commencement of the Term. If before the expiry of the Term the Concessionaire makes an application for a further concession in respect of the same Concession Activity on the Land then the Grantor can not require such removal and reinstatement until such time as that concession application has been determined. If a new concession is granted then removal and reinstatement can not be required until the expiry or termination of the new concession.

When is the Grantor's consent required?

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

What about other concessions?

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

How will disputes be resolved?

- 23.1 If a dispute arises between the parties in connection with this Concession the parties must, without prejudice to any other rights or entitlements they may have, attempt to resolve the dispute by agreement using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution technique. The rules governing any such technique adopted are to be agreed between the parties.
- 23.2 If the dispute cannot be resolved by agreement within 14 days of written notice by one party to the other (or such further period as the parties may agree to in writing) either party may refer the dispute to the Disputes Tribunal, where relevant, or to arbitration, which arbitration is to be carried out in accordance with the provisions of the Arbitration Act 1996.
- 23.3 If the parties do not agree on an arbitrator within 10 working days of a party giving written notice of the requirement to appoint an arbitrator the President of the New Zealand Law Society is to appoint the arbitrator. In either case the arbitrator must not be a person who has participated in an informal dispute resolution procedure in respect of the dispute.
- 23.4 The arbitrator must include in the arbitration award reasons for the determination.
- 23.5 Despite the existence of a dispute, each party must continue to perform its obligations under this Concession.

What about prosecution for offences?

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

How are notices sent and when are they received?

- 25.1 Any notice to be given under this Concession is to be in writing and made by personal delivery, fax, by pre paid post or email to the receiving party at the address, fax number or email address specified in Item 17 or 18 of Schedule 1. Any such notice is to be deemed to have been received:
- (a) in the case of personal delivery, on the date of delivery;
 - (b) in the case of fax, on the date of dispatch;
 - (c) in the case of post, on the 3rd working day after posting;
 - (d) in the case of email, on the date receipt of the email is acknowledged by the addressee by return email or otherwise in writing.
- 25.2 If any party's details specified in Item 17 or 18 of Schedule 1 change then the party whose details change must within 5 working days of such change provide the other party with the changed details.

What is the scope of the Concession?

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

Can provisions be severed?

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

What about the payment of costs?

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

What is the relationship of parties?

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

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

What about a Guarantee?

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

What about Co-Siting?

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

- 31.2 The Concessionaire must not allow Co-Siting on the Land without the prior written consent of the Grantor.
- 31.3 The Grantor's consent must not be unreasonably withheld but is at the Grantor's sole discretion and subject to such reasonable terms and conditions as the Grantor thinks fit including a requirement that the Co-Sitee be liable for direct payment to the Grantor of a concession fee and any environmental premium assessed in respect of the Co-Sitee's activity on the Land.
- 31.4 In addition, the Grantor must withhold consent if:
- (a) the Co-Siting would result in a substantial change to the Concession Activity on the Land; or
 - (b) the Grantor considers the change to be detrimental to the environment of the Land.
- 31.5 Subject to clause 31.4 the Concessionaire must, if required by the Grantor, allow Co- Siting on the Land.
- 31.6 Where the Concessionaire maintains that Co-Siting by a third party on the Land would:
- (a) detrimentally interfere physically or technically with the use by the Concessionaire of the Land; or
 - (b) materially prejudice any resource consents obtained by the Concessionaire or cause more onerous conditions to be imposed on it by the relevant authority; or
 - (c) obstruct or impair the Concessionaire's ability effectively to operate from the Land; or
 - (d) interfere with or prevent future forecast works of the Concessionaire,
- the Grantor, must, as a pre-condition to consideration of an application to grant a concession to a third party, require that third party to obtain, at its own cost, a report prepared by an independent consultant acceptable to the Grantor confirming or rejecting the presence of the matters specified in this clause 31.6. The Grantor must not grant a concession to a third party where the report confirms that the proposed concession would give rise to one or more of the matters specified in this clause 31.6.
- 31.7 If the independent consultant report rejects the Concessionaire's concerns, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.
- 31.8 Where the Concessionaire is required under clause 31.5 to allow Co-Siting on the Land, the Concessionaire is, subject to clause 31.10 entitled to enter into commercial agreements with third parties for them to conduct an activity on the Land and to receive a reasonable fee from them for any agreed activity they

intend to carry out on the Land. If a dispute arises between the Concessionaire and a third party such dispute must be determined by the Grantor having regard to, but not limited to, the following matters:

- (a) any written comments or submissions of the Concessionaire and third party;
 - (b) market value for the concession activity proposed by the third party having regard to the matters specified in Section 17Y(2) of the Conservation Act 1987;
 - (c) any other matters the Grantor considers relevant.
- 31.9 If the Concessionaire does not accept the Grantor's determination, the Concessionaire may dispute this in accordance with the procedure set out in clause 23 of Schedule 2.
- 31.10 For the avoidance of doubt, a Co-Sitee permitted on the Land must enter into a separate concession with the Grantor in terms of which the Co-Sitee may be required to pay to the Grantor a concession fee and environmental premium assessed in respect of the Co-Sitee's activity on the Land. This separate concession must not contain provisions that conflict with the Concessionaire's rights and obligations in relation to the Land.
- 31.11 The Grantor must not authorise the third party to commence work on the Land until all relevant resource consents are issued, an agreement is executed between the Concessionaire and third party, and any conditions imposed by the Concessionaire have been met.

What about Identification cards?

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

What about registering the Concession?

- 33.1 The Grantor is not required to do any act or thing to enable this Concession to be registered and the Concessionaire must not register a caveat in respect of the Concessionaire's interest under this Concession.

- 33.2 Nevertheless, if the Concessionaire wishes to register this Concession under the Land Transfer Act 1952, the Grantor must take all such steps as are necessary to enable a certificate of title to issue in respect of the land against which this Concession may be registered subject to the Concessionaire being responsible for and bearing all costs of and incidental to any survey necessary to enable such issue of title and all costs incurred by the Grantor in enabling such an issue of title and in having this Concession re-executed by the parties in a form suitable for registration.

Which clauses survive termination?

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

Are there any Special Conditions?

- 35.1 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.

The Law

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

SCHEDULE 3

LEASE SPECIAL CONDITIONS

Buildings and Structures Maintenance and Restoration

- 37.1 Before the Concession Activity commences the Grantor and the Concessionaire must perform an inspection of the buildings/structures/chattels to determine, agree on and document the current state of those items ("the Condition Report"). The Condition Report will be evidence of the condition of the items as at commencement date.
- 37.2 The buildings, structures and grounds shall be maintained throughout the term of this Concession to a standard that is the same or better than its baseline condition that will be determined at the commencement of this Lease and inspected on an annual basis.
- 37.3 Any works and/or maintenance undertaken by the Concessionaire and Grantor must be consistent with the Works and Maintenance Plan, Schedule 5.
- 37.4 The Concessionaire shall keep and maintain the buildings, structures and chattels and all services in good order and repair and weatherproof (as appropriate), except where:
- a. Repair or maintenance which is not reasonably necessary for the Concessionaires use and enjoyment of the premises and the yards contained in the Lease area;
 - b. Loss suffered by the Concessionaire arising from any want of repair or defect unless the Grantor shall have received notice in writing of that from the Concessionaire and has not within a reasonable time after that taken appropriate steps to remedy the same.

Breakages and minor replacements

- 38.1 The Concessionaire must repair or replace glass breakages with glass of the same or better weight and quality, repair breakage or damage to all doors, windows, light fittings and power points on the Land and replace light bulbs, tubes and power points that wear out with items of the same or better quality and specification.

Damage or loss

- 39.1 The Concessionaire must, to the Grantor's reasonable satisfaction, make good any loss or damage to the Grantor's buildings, structures and chattels caused by improper, careless or abnormal use by the Concessionaire or those for whom the Concessionaire is responsible including users of the accommodation situated on the Lease Land.

Outgoings

- 40.1 Clause 7.1 of Schedule 2 is amended by adding:

For the avoidance of doubt, the following outgoings are payable under this clause:

- (a) Rates and levies payable to the local or territorial authority;
- (b) Charges for water, gas, electricity, telephones, and other utilities including line charges;
- (c) Rubbish collection and recycling charges;
- (d) Fire and Emergency New Zealand service in respect of all fire detection and fire fighting equipment;
- (e) Service charges for air conditioning, building services and security services charges;
- (f) The costs incurred and payable by the Grantor in supplying to the territorial authority a building warrant of fitness and obtaining reports required by sections 108 and 110 of the Building Act 2004.

Crown revenue fees

- 41.1 The Concessionaire acknowledges that a portion of the Concession Activity Fee may, at the Grantor's discretion, be applied for the purposes of maintaining, repairing or improving the structures and facilities administered by the Department upon the Land.

Residential Tenancies Act 1986

- 42.1 The Concessionaire acknowledges the arrangement in this Concession does not constitute an arrangement under the Residential Tenancies Act 1986, in particular the activities are excluded from the Residential Tenancies Act under section 5(1)(b) of that Act. The Concessionaire is prohibited from using the Buildings on the site to form any kind of Residential Tenancy agreement with the paying guests and is not authorised to operate the Concession Activity as buildings to let as contemplated under the Residential Tenancy Act 1986 for both the Grantor's buildings or the private buildings forming part of the Lease.

Surrender of concession

- 43.1 The Concessionaire must give the Grantor at least 6 months notice in writing prior to surrendering the Concession.

Legal compliance

- 44.1 Clause 15 of Schedule 2 requires the Concessionaire to comply with all relevant laws when undertaking the Concession Activity. The Concessionaire's attention is particularly drawn to the need for the Concessionaire to comply with the following legislation and the Concessionaire must co-operate with all reasonable instructions or requests of the Grantor in relation to these provisions:
- a) The requirements of the Residential Tenancies Act 1986. The Concessionaire must avoid activities that create a residential tenancy obligation on the Grantor. Where the Concessionaire intends to enter into

a residential tenancy agreement with a third party in respect of any of the Lease Land the Concessionaire must first obtain the Grantor's approval and will conduct its affairs to ensure the Grantor does not become subject to the obligations imposed on landlords under that Act.

LICENCE SPECIAL CONDITIONS

Livestock controls

- 45.1 The Concessionaire may graze up to a maximum of XXXX head of adult cattle (adult' being described as greater than 12 months old as at 30 June of each year) and XXXX sheep/other stock. Calves/lambs TBC.
- 45.2 The Concessionaire must not exceed stocking rates set for defined areas, unless a higher number is mutually agreed upon by both the Grantor and the Concessionaire from time to time.
- 45.3 The Concessionaire must not graze any other stock on the Land, unless prior written approval is obtained from the Grantor. Sheep and chickens kept at farm bases for the Concessionaire's own consumption are permitted.
- 45.4 The Concessionaire shall not graze stock in Biodiversity Areas and Areas of High Natural Value as defined on map [X] attached as Schedule [X]. Grazing of Long Term Protection Areas will be reduced over time (potentially 5-10 years) as guided by expert advice and as agreed between the Grantor and Concessionaire.
- 45.5 The Concessionaire must not develop wintering pads, stand-off pads or silage pits on the Land.
- 45.6 The Concessionaire must not graze, nor permit to be grazed on the Land, any stock, which the Concessionaire knows or ought to have reasonably known, would be dangerous to any person entering the Land.

Sustainable land management

- 46.1 The Concessionaire shall use and farm the Land in a good and husband like manner generally observing all principles of good husbandry and shall not impoverish or waste the soil thereof.
- 46.2 The Concessionaire must monitor stock at regular intervals to ensure that:
 - a. they are contained within the Land; and
 - b. there is sufficient feed available on the Land; and
 - c. they do not graze to a level resulting in damage to, or pugging of, the Land.
- 46.3 The Concessionaire shall not cultivate, crop, drain or plough any part of the Land or cut down or burn any native tree or bush without the prior written consent of the Grantor.
- 46.4 The Concessionaire shall not burn or permit to be burnt any tussock scrub fern or grass upon the Land without the prior written consent of the Grantor;
- 46.5 The Concessionaire is only permitted to fertilise the soil in areas agreed with the Grantor in accordance with annual soil fertility reports.

- 46.6 The Concessionaire will not oversow or top-dress the Land without the prior written consent of the Grantor;
- 46.7 The Concessionaire will take reasonable measures to manage and harvest existing exotic forest plantations on the Land provided that the Concessionaire:
 - i. Takes reasonable measures to control any re-seeding following harvest;
 - ii. Restores any harvested areas to the satisfaction of the Grantor acting reasonably; and
 - iii. Does not replant any harvested area with exotic trees.
- 46.8 The Concessionaire will not introduce any new biological control organisms on to the Land without the prior written consent of the Grantor which consent shall not be unreasonably withheld if the control methods are a recognised means of controlling problem plants or pests and will not have any adverse effects on conservation values.
- 46.9 In the event that the Concessionaire obtains the Grantor's consent under clauses 46.3, 46.4 or 46.5 above, to burn vegetation, cultivate land or to crop land whether improved or not, then the Grantor may require as a condition of that consent that the Concessionaire will undertake at the termination of the Concession to leave the whole of that area so cultivated, cropped or burned revegetated as agreed between the Grantor and the Concessionaire acting reasonably.
- 46.10 The Concessionaire shall use reasonable endeavours to use and manage the Land in a good, sufficient and diligent manner so as to promote soil conservation and minimise erosion of the soil by slip, wind or other cause, natural or otherwise, and shall at all times comply with the provisions of and any notices or directions given pursuant to the relevant legislation.
- 46.11 The Concessionaire shall not construct any significant new works, including airstrips, drains, fences, or ditches or other structures or facilities without the prior written consent of the Grantor (not to be unreasonably refused unless contrary to the Management Plan or other conditions of this Concession).
- 46.12 The Concessionaire shall not construct any new roads without prior written consent of the Grantor (not to be unreasonably refused unless contrary to the Management Plan or other conditions of this Concession) except under emergency conditions for access purposes in which case the Concessionaire shall give the Grantor prior notification where practicable.
- 46.13 The Concessionaire shall use reasonable endeavours to clean and clear from weeds and keep open all significant constructed drains and ditches upon the Land, including any drains or ditches which may be constructed after the Commencement Date and shall not at any time without the prior written consent of the Grantor alter the channel of any natural wetland, drain, ditch, creek or watercourse or stop or divert the water flowing therein.

Public Recreation Use

- 47.1 The Grantor shall allow public access to the Licence Land for the purposes of Public Recreation Use subject to the terms and condition of this Concession.

- a) The public may undertake hunting, including the carrying of firearms or other weapons, within recreational hunting blocks as shown on the Grantor's website XXX and with the written consent of the Grantor.
 - b) Bringing animals, birds or other creatures on to the Land shall not be permitted, except that the public may bring dogs onto the Land for hunting purposes, with the written consent of the Grantor. The member of the public permitted to bring dogs onto the Land shall be informed by the Grantor that they are required to inform the Grantor of any dogs that a member of the public fails to take with them when they leave the Land and comply with the Care Code that shall include requirements for controlling the spread of animal diseases.
 - c) Access by helicopter is not permitted.
 - d) Access to and use of the Grantor's huts (excluding the Concessionaire's staff accommodation and buildings areas used in connection with the farming operation) in areas that are open to the public.
 - e) Access to the Grantor's huts and buildings located in areas which are not open to the public may be permitted with the written consent of the Grantor in agreement with the Concessionaire.
 - f) The public shall not be permitted access to the Concessionaire's lease buildings, yards and their immediate surrounds unless the Concessionaire consents.
- 47.2 The Grantor shall take reasonable steps to ensure that the public has adequate information on Public Recreation Use opportunities, protocols, restrictions and hazards on the Land.
- 47.3 The Grantor and Concessionaire agree to open further areas for Public Recreation Use.
- 47.4 For public safety, avoidance of unreasonable interference with farming operations and maintenance of conservation values the Grantor shall take all practicable steps to inform members of the public entering the Licence Land of, and require compliance with, the Care Code attached as Schedule [X] and as subsequently updated by agreement between the Grantor and the Concessionaire in writing from time to time.
- 47.5 The Grantor and Concessionaire may agree to temporarily suspend Public Recreation Use to any part or parts of the Land when closure is necessary for the protection and well being of the Land and for the protection and control of the public.
- 47.6 To avoid doubt, the Concessionaire's obligations under clause 13.2 of Schedule 2 shall not include responsibility for the actions or omissions of any persons permitted access to the Licence Land for the purposes of Public Recreation Use.

Commercial Recreation

- 48.1 The Grantor may following consultation and agreement with the Concessionaire (not to be unreasonably withheld and only for reasons relating the farming operation) enter into new arrangements for any commercial undertaking involving the use of Licence Land and for any recreational, tourism, or other

purpose and as if any statute authorising the same applied to this Concession. The Grantor shall inform all such commercial operators of and take all practicable steps to ensure that they and their customers comply with, the Care Code.

- 48.2 To avoid doubt, the Concessionaire's obligations under clause 13.2 of Schedule 2 shall not include responsibility for the actions or omissions of any persons permitted access to the Grazing Land for the purposes of commercial recreation use.

Weed Control

- 49.1 The Concessionaire and the Grantor shall jointly prepare a biennial weed control plan that shall include plans to monitor and control broom, gorse, briar and wilding conifers and precautions to avoid the introduction of new weed species.
- 49.2 The Concessionaire shall take all reasonable measures to control weeds as part of normal farming operations, including in areas of High Biodiversity and Long Term Protection Areas (subject to methodology approval by the Grantor), valley floors, riverbeds and steepland areas.

Pest Control

- 50.1 The Concessionaire and the Grantor shall jointly prepare a biennial pest control plan that includes reasonable measures to control pests, including goats.
- 50.2 The Concessionaire shall take all responsible measures to control agricultural pests, including rabbits and TB vectors, in accordance with the Bovine TB pest management strategy.

Biodiversity controls

- 51.1 The Concessionaire shall not graze or modify the High Biodiversity Areas, shown as red hatched areas on Map XX, attached as schedule XXX.
- 51.2 The Concessionaire shall reduce stock grazing in the Long-Term Protection Areas, shown as turquoise hatched areas on Map XX, attached as schedule XXX, over a period of 5-10 years and as guided by an expert.
- 51.3 The Grantor shall be responsible for carrying out biodiversity assessment surveys on Molesworth, following consultation with the Concessionaire.

GENERAL SPECIAL CONDITIONS

Management Plan

- 52.1 Subject to, and where they are not inconsistent with, the conditions of this Concession, the Grantor and Concessionaire shall act in accordance with the goals, objectives and policies of the [Molesworth Management Plan](#) (2013). In the circumstances of inconsistency, the terms of the Lease and Licence will prevail.
- 52.2 In the event that a new Conservation Management Plan approved pursuant to section 40B of the Reserves Act shall replace the Existing Management Plan and become the Management Plan for the purposes of the Lease and Licence, the

Conservation Management Plan shall only bind the Concessionaire to the extent that it is not inconsistent with the terms of the Lease and Licence and does not derogate from its rights therein.

- 52.3 The Grantor acknowledges that the special circumstances of the Land are such that the Grantor shall consult with the Concessionaire prior to approval of any Conservation Management Plan.
- 52.4 Except in the circumstances of inconsistency and/or derogation as provided for in clauses 52 and 52.2 above, any breach of the Management Plan shall be treated as a breach of the terms of this Lease and Licence.

Quiet Enjoyment

- 53.1 Provided that the Concessionaire pays the rent reserved and duly observes and performs all covenants and agreements expressed or implied in this Concession, the Concessionaire shall be entitled to quietly hold and enjoy the Land throughout the term of the Concession without interruption by the Grantor or any person claiming under the Grantor, subject always to the provisions of this Concession.

Grantor Access onto the Land

- 54.1 The Grantor, and its servants, contractors, or agents, may enter the Land at all reasonable times for the purpose of inspecting its condition and for developing, implementing, or ensuring compliance with the Management Plan and the terms and conditions of this Concession. Entry must be preceded by reasonable prior notice to the Concessionaire. However, access to the areas marked by [yellow boxes] on map [X], attached as Schedule [X], requires a minimum of 48 hours' prior notice to the Concessionaire.
- 54.2 The Grantor shall take all practicable steps to require persons entering onto the Land for Departmental purposes avoid any undue interference with the Concessionaire's farming operations on the Land, comply with the Care Code and the Grantor's and the Concessionaire's health and safety requirements.

Fences and Gates

- 55.1 The Concessionaire must at its cost ensure that stock is adequately contained within the land.
- 55.2 The Concessionaire must at its cost maintain all fences, gates, stiles, bridges, culverts and drains in good condition.
- 55.3 If any upgrade of any existing fence is required or additional fences are required to give effect to the requirement to contain stock, then the costs of so doing is to be the responsibility of the Concessionaire.
- 55.4 If any upgrade of any existing fence is required or additional fences are required to give effect to the requirement to contain stock, then the costs of so doing is to be the responsibility of the Concessionaire.
- 55.5 The Concessionaire must place on a prominent position on any electric fence placed on the Land a warning sign advising that the fence is electric.

- 55.6 The Grantor shall be primarily responsible for the construction and maintenance of fences required by it for conservation purposes.
- 55.7 The Concessionaire may lock any gates located on the Land. Where gates are to be locked the Concessionaire must give the Grantor a key so where necessary the Grantor can unlock the gates. Where any gate is so locked the Grantor may require the Concessionaire to erect a stile near the locked gate.

Historic Heritage

- 56.1 The Concessionaire shall take all reasonable steps to maintain any buildings or structures that are identified as having historic significance and shall take account of the measures recommended by the historic assessment survey, any consequent management plans and Grantor's Heritage Advisor.

Roads and Bridges

- 57.1 The Concessionaire must at its own cost ensure all roads and bridges that are primarily used for the farming operations on Molesworth are maintained to such standard (including weight limits) the Concessionaire reasonably requires for those operations and no less than the standard existing at the commencement date.
- 57.2 The Grantor shall take all practical steps to maintain all other roads and bridges (excluding those sections of road maintained by Local Authority) to a standard that is safe and suitable for their use (including weight limits) and no less than the standard existing as at the commencement date.

No Right to Minerals

- 58.1 The Concessionaire shall have no right to any mineral, including stone, gravel or sand, on or under the Land and shall not work or use any such mineral without the prior written consent of the Grantor. For the purposes of this condition the expression "mineral" shall have the meaning given in section 2 of the Crown Minerals Act 1991.
- 58.2 Notwithstanding the above, the Concessionaire shall subject to Grantor consent (not to be reasonably refused) be entitled to reasonable use of existing farm gravel extraction pits or areas (and such replacement pits or areas) for normal; day to day farm track and other farm maintenance or construction purposes on the Land.

Public Communication

- 59.1 The Concessionaire and the Grantor shall collaborate to jointly agree upon public or media statements or the publication of any material related to the Concession or the interest of either party thereunder prior to release.

Partnering Concept

- 60.1 The Concessionaire and Grantor agree that in their day-to-day interaction and in performing their respective obligations under this Concession, they will conduct themselves in a manner consistent with the following objectives and principles:
- a) The establishment of a relationship based on mutual trust;
 - b) The shared intention to achieve (by constructive and harmonious working together) a maximising of the parties' respective benefits;
 - c) Openness, promptness, consistency and fairness in all dealings and communication between parties and their agents and representatives;
 - d) Non-adversarial dealings between the parties and constructive mutual steps both to avoid differences and to identify solutions; and
 - e) Open, prompt and fair notification and resolution between the parties of any differences or disputes which may arise.

Grantor's Consent and Concessionaire's Consent

- 61.1 Unless expressly provided otherwise, where the Grantor or the Concessionaire consent or approval is required pursuant to any provision of this Concession such consent or approval shall be promptly given or declined as the case may be but shall not be reasonably or arbitrarily withheld.

Vehicles, firearms, dogs and horses

- 62.1 The Concessionaire may use farm vehicles for the purposes of the Concession Activity and for pest management.
- 62.2 The Concessionaire may use firearms for the purposes of the Concession Activity and for pest management.
- 62.3 The Concessionaire may use dogs and horses for the purposes of the Concession Activity and for pest management.

Fire Control

- 63.1 The Concessionaire shall implement the fire control policies on Molesworth as part of the agreed Department of Conservation Rural Fire Authority Control Plan attached as Appendix XX.
- 63.2 The Concessionaire shall use reasonable endeavours to provide fire extinguishers, a fire truck and bulldozer and to require its permanent employees to be available as and when reasonably required for fire fighter training. The Grantor shall use reasonable endeavours to provide such other equipment as is reasonably necessary to enable the Grantor to undertake an effective first attack response to any wildfire on Molesworth.

Didymo/Freshwater Pests

- 64.1 The Concessionaire must comply and ensure its clients comply with the Ministry for Primary Industry (MPI)'s "Check, Clean, Dry" cleaning methods to prevent the spread of didymo (*Didymosphenia geminata*) and other freshwater pests

when moving between waterways. “Check, Clean, Dry” cleaning methods can be found at - <https://www.mpi.govt.nz/outdoor-activities/boating-and-watersports-tips-to-prevent-spread-of-pests/check-clean-dry/>. The Concessionaire must regularly check this website and update their precautions accordingly.

Myrtle Rust

- 65.1 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 pōhutukawa, mānuka, kānuka, and ramarama. See <https://myrtlerust.org.nz/>.
- 65.2 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.

Mycoplasma Bovis (M-bovis)

- 66.1 The Concessionaire must comply with all M-bovis guidelines and notices issued by the Ministry of Primary Industry, available on their website <https://www.mpi.govt.nz/biosecurity/mycoplasma-bovis/>. This includes following MPI's recommended three elements of on-farm hygiene:
- a) Separate – reasonably limit the movement of people and equipment on to the farm
 - b) Clean – before disinfecting
 - c) Disinfect – according to the manufacturer's instructions.
- 66.2 The Concessionaire must review the MPI M-bovis webpages and guidelines on a regular basis, to ensure they remain up to date. The Concessionaire also agrees to follow any additional M-bovis guidance provided by the Grantor during the term of the concession.

Adverse effects

- 67.1 If, in the opinion of the Grantor, stock effluent discharge occurring as a result of the Concession Activity is having an adverse effect on any adjoining or downstream river, stream, waterway or wetland, then the Grantor may require the Concessionaire to modify the Concession Activity or the manner in which it is carried out so as to avoid, remedy or mitigate that adverse effect. The Grantor, at

the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

- 67.2 If, in the opinion of the Grantor, the Concession Activity is having or may have an adverse effect on the Land or adjoining bush or riparian margins administered by the Grantor, the Grantor may require the Concessionaire to comply with all reasonable notices and directions by the Grantor concerning the activities conducted by the Concessionaire including but not limited to notices or directions regarding the numbers of stock that may be grazed on the Land or any part of the Land. The Grantor, at the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

Suspension for plant and / or animal control

- 68.1 The Grantor by giving one month's written notice to the Concessionaire may suspend the carrying out of the Concession Activity while plant or animal control is carried out by or on behalf of the Grantor on the Land or on adjoining land. The Grantor, at the sole discretion of the Grantor, may adjust the Concession Fee payable or refund any Concession Fee paid in advance.

Schedule 4 – Lease and Licence Maps

TBC

Schedule 5 – Assets List

TBC

Schedule 6 – Condition Report

TBC

SAMPLE