

THE MINISTER FOR CLIMATE CHANGE AND THE ENVIRONMENT

(Licensor)

and

PERISHER BLUE PTY LIMITED (ACN 061 232 488)

ATF SNOW TRUST (ABN 29 420 214 757)

(Licensee)

PERISHER SKI AREA LICENCE

DEED OF LICENCE

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Deed of Licence dated 1st day of MAY 2009

PARTIES

THE HONOURABLE CARMEL TEBBUTT, **MINISTER FOR CLIMATE CHANGE AND THE ENVIRONMENT** of the State of New South Wales being the Minister for the time being administering the *National Parks and Wildlife Act 1974* (Licensor)

and

PERISHER BLUE PTY LIMITED ACN 061 232 488 ATF SNOW TRUST ABN 29 420 214 757 of Level 3, 54 Park Street, Sydney NSW 2000 (Licensee)

RECITALS

- A) The Licensor has granted licences and leases to the Licensee over part of Kosciuszko National Park in the areas known as Perisher Valley, Smiggin Holes, Guthega, Blue Cow and Bullocks Flat.
- B) In accordance with the Deed of Agreement for Perisher Ski Area between the Licensor, the Licensee and Murray Publishers Pty Ltd, those licences and leases have been terminated and a new lease, the Perisher Ski Area Lease, for a consolidated area has been granted to the Licensee.
- C) In order to provide to the public a world class alpine tourist and visitor resort, the Licensor proposes to grant to the Licensee a licence over a parcel of land adjoining the land leased to the Licensee by the Perisher Ski Area Lease.
- D) The Licensor and the Licensee have agreed to enter into this Licence on the following terms and conditions:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Licence unless the contrary intention appears:

Aboriginal Object has the same meaning as that term has in the Act.

Act means the *National Parks and Wildlife Act 1974* (NSW).

Alpine Snowsports means the activities of downhill skiing, telemarking and snowboarding, tobogganing, snow tubing and other activities as approved by the Licensor from time to time. For the purpose of clarity, alpine snowsports do not include cross country skiing.

Assistance Animal means an animal referred to in section 9 (guide dogs, hearing assistance dogs and trained animals) in the *Disability Discrimination Act 1992* of the Commonwealth.

Australian Standards means any relevant Australian Standard developed by Standards Australia as amended, revised or replaced from time to time.

Authorised Officer means the Director-General and the Deputy Director-General and any other person performing the functions of either of them or any other person nominated by the Minister, the Director-General or the Deputy Director-General to act as an authorised officer for the purposes of this Licence.

Bank means the bank that provides the Bank Guarantee pursuant to clause 3.6 of the Perisher Ski Area Lease.

Bank Guarantee means the bank guarantee required by clause 3.6 of the Perisher Ski Area Lease.

Blue Cow means that area known as Blue Cow.

Breach means a breach, default or failure by the Licensee and/or the Licensee's People to comply with a term, covenant or obligation in this Licence including where relevant to the context, a default as described in clause 13.4.

Bullocks Flat means the area known as Bullocks Flat.

Business Day means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Sydney.

Car Parking Areas means any area within the Licence Area used for the purposes of parking motor vehicles.

Commencing Date means the commencing date of this Licence stipulated at Item 3 of the Reference Schedule.

Community Services Charge means a contribution by the Licensee as is determined by the Licensor pursuant to the Act for the cost of maintaining any community service in the Park, including but not limited to all expenses in connection with:

- a) the provision of medical services in the Perisher Range Resorts;

- b) snow clearing and road maintenance;
- c) the disposal of waste, water, sewerage; and
- d) water supply.

Consent Authority means the Relevant Authority, in each case vested with the authority and mandate to grant development consent or approval under the *Environmental Planning and Assessment Act 1979* (NSW).

Contamination means the presence in, or under the land of a substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality being a presence that presents a risk of harm to human health or any other aspect of the environment, however land is not contaminated merely because in any surface water standing or running on the land a substance is present in such concentration.

CPI means the All Groups consumer price index published by the Australian Bureau of Statistics for the capital city of the state in which the Licence Area is located, or if the Australian Bureau of Statistics stops publishing the CPI, then CPI means the index recommended by the Property Council of Australia Limited as the index that most appropriately replaces the CPI.

CPI Rate means the change upwards only in the CPI measured from the CPI for the quarter ending immediately before the last date on which:

- a) with respect to the Environmental Research and Rehabilitation Contributions, those contributions were reviewed, to the CPI for the quarter ending immediately before the relevant date of review of the Environmental Research and Rehabilitation Contributions; and
- b) with respect to the amount noted in clause 16.9(b), that amount was reviewed to the CPI for the quarter ending immediately before the relevant date of review for that amount.

Deed of Agreement for Perisher Ski Area means the agreement entered into by the Licensor, Licensee and Murray Publishers Pty Ltd terminating previous arrangements between the parties for the Perisher Range Resorts and providing for the grant of this Licence and the Perisher Ski Area Lease.

Deed of Surrender means the deed of surrender entered into by the Licensee, Murray Publishers Pty Ltd and the Licensor terminating the Perisher Valley Car Park Lease.

Department means the Department of Environment and Climate Change.

Deputy Director-General means the Deputy Director-General Parks and Wildlife Group of the Department and includes any person for the time being acting as such or in such alternative position or office as the Licensor may notify from time to time.

Director-General means the Director-General of the Department and includes any person for the time being acting as such or in such alternative position or office as the Licensor may notify from time to time.

Environmental Research and Rehabilitation Contribution means the amount at Item 12 of the Reference Schedule as a contribution to the cost of environmental monitoring, research and rehabilitation of areas in the Park.

Exclusive Activities means Alpine Snowsports tuition, Alpine Snowsports equipment hire and Alpine Snowsports equipment sales but does not include cross country ski tuition, cross country ski hire and cross country ski sales.

Exotics and Ornamentals means any exotic or ornamental plants or seeds not indigenous to the locality but excludes noxious indoor plants and weeds.

Filming Activity has the same meaning as that phrase has in the *Filming Approval Act 2004* (NSW).

Food Licence Area Charges means the amounts as are assessed by the Licensor from time to time pursuant to the Act, the *Food Act 2003* (NSW) or any other relevant legislation for the cost of food-safety inspections of the Licence Area, food safety training and consultations, guidance and advice to assist the Licensee and the Licensee's People in complying with the Law in relation to food safety and developing safe working practices in relation to food storage and preparation.

Further Licence means a lease granted by the Licensor pursuant to the exercise of the Option by the Licensee.

Further Term means the term of the Further Licence noted at Item 9 of the Reference Schedule.

Gas Reticulation System means one or more completely buried, partially buried or aboveground tanks and any pipes to and from or associated with the tanks that contain or are intended to contain gas as defined in the *Gas Supply Act 1996* (NSW).

Guthega means the area known as Guthega.

Historic Relic has the same meaning as the term "relic" as defined in the *Heritage Act 1977*.

Hydrocarbon Storage Systems means one or more completely buried, partially buried or aboveground tanks and any pipes to and from or associated with the tanks that contain or are intended to contain hydrocarbon product (for example, diesel, heating oil, petroleum).

Improvements means all buildings structures improvements erections Plant and Equipment and Services and includes any alteration or addition to the same which are constructed, installed or brought on the Licence Area, whether by the Licensee or Licensor, whether before or after the Commencing Date, whether in accordance with the covenants of this Licence or otherwise and whether completed or uncompleted, but does not include the Licensee's Fixtures.

Law means any law whether common law or any law under any statute, ordinance, regulation or code applicable in the State of New South Wales.

Licence means this deed and all annexure plans and schedules to this deed and any variations of this deed.

Licence Area means the land described as the Licence Area at Item 1 of the Reference Schedule and where this Licence provides or the context of this Licence so admits any part of that land and includes any structures and improvements on that land (and includes the Improvements and the Licensee's Fixtures) as amended from time to time in accordance with this Licence.

Licence Fee means the licence fee as determined in accordance with the Licence Fee Schedule.

Licence Fee Schedule means Schedule 2 of this Licence.

Licensee means the party stipulated under the parties section as the licensee and includes the successors and permitted assigns of the Licensee and where not repugnant to the context includes the Licensee's People.

Licensee's People means each of the Licensee's employees, agents, officers, contractors, service suppliers, sublessees, concessionaires, invitees and those persons who at any time are under the control of and in or on the Licence Area with or without the consent of the Licensee (express or implied), and does not, for the avoidance of doubt, include the Licensor's employees.

Licensee's Fixtures means all fixtures and fittings constructed or installed on the Licence Area by the Licensee or brought onto the Licence Area by the Licensee and includes plant machinery equipment furnishings and furniture utensils shelving counters safes or other articles in the nature of trade or tenant's fixtures, but does not include Plant and Equipment or Improvements.

Licensee's Roads means the roads identified on the Road Plan as "Perisher Blue Maintained Road".

Licensor means the party stipulated under the parties section as the licensor and includes his or her successors in office and where not repugnant to the context includes the servants and agents of the Licensor.

Licensor's Roads means the roads identified on the Road Plan as "NPWS Maintained Road".

Native Title has the same meaning as in the *Native Title Act (Cth) 1993*.

Object means Aboriginal Object or Historic Relic.

Option means the option to take a Further Licence as provided in clause 15.

Outgoings means all amounts, costs, expenses of any kind whatsoever assessed, incurred or levied in relation to the Licence Area or upon the Licensor or the Licensee on account thereof as if the Licensee was the owner of the Licence Area, including but not limited to:

- a) Rates, Taxes and other charges imposed by any Relevant Authority;
- b) charges for the supply (including charges for installation and connection) of Services to the Licence Area;
- c) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with requirements or orders of Relevant Authorities or any Law;
- d) Community Services Charges;
- e) Environmental Research and Rehabilitation Contribution; and
- f) Food Licence Area Charges.

Oversnow vehicle means such vehicles as snow cats, skidoos and other machines as approved by the Licensor for the transport of persons or freight over snow.

Park means the area of land permanently reserved under the Act as Kosciuszko National Park.

Perisher Range Resorts means those areas of the Park known as Bullocks Flat, Perisher Valley, Smiggin Holes, Guthega and Blue Cow.

Perisher Range Resorts Environmental Management System means the environmental management system for the Perisher Range Resorts applicable from time to time as required by the Plan of Management.

Perisher Ski Area Lease means the lease of today's date between the Licensor and Licensee for the land adjoining the Licence Area to be used by the Licensee in conjunction with this Licence and granted to the Licensee in accordance with the Deed of Agreement for Perisher Ski Area.

Perisher Valley means the area known as Perisher Valley.

Perisher Valley Car Park Lease means the lease in respect of the Perisher Valley car park dated 23 February 1987 between the Minister for Planning and Environment and Murray Publishers Pty Limited.

Permitted Use means the use prescribed at Item 2 of the Reference Schedule.

Person means any human being whether man, woman or child who has attained five (5) years of age.

Plan means the plan of the Licence Area annexed as Schedule 3 of this Licence.

Plant and Equipment means ski lifts and associated equipment, snow making equipment and infrastructure, air conditioning plant together with all ancillary machinery and apparatus required for their proper operation and other similar plant and equipment used by the Licensee for the Permitted Use.

Plan of Management means the plan of management prepared and adopted for the Park by the Licensor as amended from time to time pursuant to the Act or such other plan that replaces it and fulfils in substance the same functions.

Plumbing Facilities means the toilets, sinks and sewerage and drainage connections (including pipes, lines and connections) used in the Improvements.

Prescribed Rate means the rate prescribed under the Act for overdue monies payable in respect to leases.

Proposed Village Development has the same meaning given to it under the Deed of Surrender.

Rates means rates, land taxes, levies, assessments and other charges (including charges for services associated with water supply, waste water, garbage, waste removal, roads and ancillary services), together with any interest, fines and penalties in connection with them.

Reference Schedule means Schedule 1 of this Licence.

Regulations means the Regulations, from time to time, made under the Act.

Related Body Corporate has the same meaning as in the Corporations Act 2001 (Cth).

Relevant Authority means, in respect to a particular context or circumstances, any government, administrative or judicial body, department, commission, public authority, tribunal or entity having jurisdiction and responsibility in respect to that context or circumstance including but not limited to a Consent Authority, and may include the Licensor and the Director General where the Act or other legislation prescribes either as possessing the requisite jurisdiction and responsibility.

Road Plan means the plan attached to this Licence as Schedule 6.

Rolling Stock means vehicles for the conveyance of passengers and freight forming part of the Transit System.

Services means the services running through or servicing the Licence Area including but not limited to electricity, power, gas, oil, water, sewerage, telecommunications, fire hydrant and includes all pipes, wires, cables, ducts and other conduits in connection with them.

Skitube means the Transit System and associated works and facilities including car parks and terminal facilities within the Perisher Ski Area Lease premises as constructed in accordance with the Skitube Lease.

Skitube Lease means the lease dated 7 December 1984 between the Minister for Planning and Environment and Kumagai (NSW) Pty Ltd, Transfield Pty Ltd and Bilston Welding Engineers Pty Ltd, as amended by the supplemental deed of lease between the same parties dated 18 June 1985, the deed of agreement between the same parties dated 18 July 1986 and the deed of variation of lease between the same parties dated 4 August 1987.

Smiggin Holes means the area known as Smiggin Holes.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Licensor.

Term means the Term of this Licence stipulated at Item 13 of the Reference Schedule.

Terminating Date means the terminating date of this Licence stipulated at Item 4 of the Reference Schedule.

Transit System means the components of the Skitube directly related to the conveyance of passengers and freight within the Premises including Rolling Stock power supply communications signalling safety facilities rack and rail formations.

TSS Area means the area identified as Mount Piper tobogganing area and the adjacent area used for snowtubing.

Water and Sewerage System means the head works, pipes and connections for provision of community water and sewerage supply but does not include the Plumbing Facilities.

Winter Season means the period commencing each Year on the June long weekend and terminating on the October long weekend as varied from time to time by the Licensor.

Works means all works with respect to the Improvements (whether to the exterior or interior), and/or the Licensee's Fixtures and/or any other part of the Licence Area including, where the context of the provisions of this Licence so permits, installations, construction, repairs, renovations, maintenance, restoration, alterations (including structural alterations), additions, renovations and improvements, demolition and works to the Services.

There may also be other words, which have a prescribed meaning for the purposes of this Licence, which are set out in the Schedules to this Licence.

1.2 Interpretation

In this Licence unless the context otherwise requires:

- 1.2.1 words denoting the singular number shall include the plural and vice versa;
- 1.2.2 words denoting any gender shall include all genders;
- 1.2.3 words denoting individuals shall include corporations and vice versa;
- 1.2.4 reference to any Act of Parliament or regulation or ordinance or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefore and ordinances, by-laws, regulations and other statutory instruments issued there under;
- 1.2.5 references to clauses, annexures and schedules are references to clauses, annexures and schedules of this Licence;
- 1.2.6 references to any deed, agreement, licence, instrument or any document or register shall be deemed to include references to that deed, agreement, licence, instrument or document or register as amended, novated, supplemented or replaced from time to time;
- 1.2.7 where a Schedule contains covenants or obligations of the Licensee or the Licensor then the covenant or obligation so expressed shall be read and

construed and shall constitute a covenant or obligation on the part of the Licensee or the Licensor, as the case may be, to be performed or observed under this Licence;

- 1.2.8 a reference to any party, the Minister or to a Relevant Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of the Minister or a Relevant Authority means the person or body which at the relevant time substantially fulfils the functions of the Minister or Relevant Authority;
- 1.2.9 a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- 1.2.10 where a clause specifies that the Licensor has a right remedy action or power over or in relation to the Licensee such a clause is not to be construed as restricting limiting or prejudicing any other right remedy action or power of the Licensor arising from any Law or this Licence; and
- 1.2.11 a reference to the Minister means the Minister appointed to administer the Act from time to time or such other Minister who is authorised to exercise the functions of the Minister.

1.3 Headings

Headings are for ease of reference only and does not affect the construction of this Licence.

1.4 Currency

Unless otherwise stated all currencies referred to in this Licence are in Australian dollars.

1.5 Governing Law

This Licence is governed by, and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

1.6 Entire Agreement

This Licence, together with the Deed of Agreement for Perisher Ski Area, the Perisher Ski

Area Lease and the Deed of Surrender, constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior negotiations, understandings and discussions between the parties. No modifications to this Licence shall be effective unless in writing signed by the parties.

1.7 Performance on Next Working Day

Where under or pursuant to this Licence or anything done hereunder the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

1.8 Joint and Several Liability

Any covenant or agreement on the part of or in favour of two or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

1.9 Director-General

For the purposes of administering this Licence, the Director-General and any authorised delegate of the Minister or Director-General have authorisation to act on the Licensor's behalf and exercise the Licensor's authority pursuant to the provisions of this Licence.

1.10 Exercise of Function

1.10.1 This Licence does not in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Licensor to exercise any of its functions pursuant to any applicable laws. This clause 1.10 does not limit the contractual obligations of the Licensor pursuant to this Licence, provided that anything which the Licensor is required to do under any Law in its capacity as a Relevant Authority will not by that fact alone be deemed to be an act or omission by the Licensor under this Licence. The Licensor's failure to do or not do something required by Law in its capacity as a Relevant Authority will not entitle the Licensee to make any claim against the Licensor arising out of the subject matter of this Licence.

1.10.2 The Licensee acknowledges and agrees that the Licensor, in performing any of its duties and obligations, is not obliged to exercise any power, function or duty within the responsibility of any other Relevant Authority or to influence, override or direct any other Relevant Authority in the proper exercise of its legal duties

and functions.

1.10.3 If the Licensor is required under the terms of this Licence to exercise best or reasonable endeavours, the Licensee acknowledges that the Licensor in so acting does not agree to:

- a) interfere with or influence the exercise by any person of a statutory power or discretion;
- b) exercise a power or discretion or otherwise act in a manner that it regards as not in the public interest; or
- c) develop policy or legislate by reference only or predominantly to the interests of this Licence.

1.10.4 Where any information is to be provided by the Licensor to the Licensee or by the Licensee to the Licensor, the parties agree and acknowledge that such information may be provided to or by the Department in satisfaction of such obligation.

1.11 Licensee's People

If this Licence prohibits the Licensee from doing a thing, then:

1.11.1 the Licensee must do everything necessary to ensure that the Licensee's People do not do that thing; and

1.11.2 the Licensee must not allow or cause any person to do that thing.

2 GRANT

2.1 Grant

2.1.1 Pursuant to the provisions of Section 151 of the Act, the Licensor grants to the Licensee a non-exclusive licence to use and have access to the Licence Area on the terms and conditions of this Licence and the Licensee hereby accepts the Licence subject to the terms and conditions of this Licence.

2.1.2 The rights granted to the Licensee by this Licence, do not permit the Licensee to have exclusive access to the whole or any part of Licence Area. This Licence

only grants to the Licensee permission to undertake the activities comprising the Permitted Use in accordance with the terms and conditions of this Licence. The Licensee agrees that other parties including the Licensor, utility service providers and the public will have access to and use of the Licence Area and that it will not interfere with such access or use by such parties unless specifically authorised to do so in writing by the Licensor. The Licensee agrees that possession of the Licence Area remains at all times with the Licensor.

2.1.3 The Licensor and the Licensee have entered into this Licence for the purposes of permitting the Licensee to better perform the Permitted Use under the Perisher Ski Area Lease in order to provide to the public a world class alpine tourist and visitor resort. In the event that this Licence is terminated, the Licensor and Licensee agree that the Perisher Ski Area Lease shall also terminate at the date of termination of this Licence.

2.1.4 The parties agree that the Licensor may from time to time amend the boundaries of the Licence Area in such manner as he or she may reasonably determine and for any reason, but not in such a way as to restrict the amenity of use which results in a material impact to the Licensee's business. In respect of any amendments to the Licence Area the Licensor will consult with the Licensee regarding any proposed change to the Licence Area for a period of one week prior to providing the Licensee with at least one months notice of the intended change and will meet with the Licensee to discuss the intended changes. Upon receipt by the Licensee of a written notice from the Licensor, identifying the amended Licence Area such Amended Licensed Area will become the Licence Area for this Licence until such time as it may be further amended by the Licensor.

2.1.5 The Licensee is not entitled to make any objection (except in accordance with its rights as a third party who may be affected by the application for Development Approval when the application is advertised or if the Minister's intention to lease under section 151AA of the Act is advertised) or claim compensation from the Licensor or to rescind or terminate this Licence nor have any other rights if the Licensor exercises its rights under this clause 2.

2.2 Term

This Licence is granted for the Term unless otherwise terminated in accordance with this Licence or the Deed of Agreement for the Perisher Ski Area.

2.3 Representations

The Licensee represents and warrants that:

- 2.3.1 it has power to enter into and observe its obligations under this Licence, and if the Licensee is a trustee, it was validly appointed as a trustee and that the trust deed, establishing the trust, gives it the authority to enter into the transaction and to carry out the obligations under this Licence; and
- 2.3.2 it has in full force and effect the authorisations necessary to enter into this Licence, observe obligations under it, and allow it to be enforced; and
- 2.3.3 its obligations under this Licence are valid and binding and are enforceable against it in accordance with its terms; and
- 2.3.4 this Licence does not contravene its constituent documents (when the Licensee is a company or trustee) or any Laws or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, when the Licensee is a company or trustee, the powers of its directors, to be exceeded.

3 LICENCE PAYMENTS

3.1 To Pay Licence Fee

The Licensee must pay to the Licensor the Licence Fee prescribed in the Licence Fee Schedule and without any deduction whatsoever.

3.2 Manner of Payment of Licence Fee

The Licensee must pay all Licence Fee and other monies payable by the Licensee to the Licensor by such means as are nominated by the Licensor from time to time and in such manner as the Licensor shall in writing direct.

3.3 Community Services Charges

The Licensee will, from time to time, pay to the Licensor the Community Services Charges and/or such amounts as may be assessed by the Department pursuant to the Act as the contribution by the Licensee to the cost of providing and maintaining the community services or facilities servicing the Licence Area.

3.4 Outgoings

3.4.1 The Licensee must pay all Outgoings as and when Outgoings become due for payment and after receipt of the relevant invoice from the Licensor.

3.4.2 The Licensee must, if required by the Licensor, produce to the Licensor receipts for payment of any Outgoings. If the Licensee fails to pay any Outgoing the Licensor may pay such amount and any amount paid by the Licensor may be recovered by the Licensor from the Licensee as if the amount was Licence Fee in arrears.

3.4.3 The Licensor may, at the cost of the Licensee, install meters on the Licence Area to determine the consumption of Services supplied to the Licence Area. Until such time as appropriate meters are installed, the Licensee must pay such amount as may be reasonably determined by the Licensor for such Services.

3.5 Unpaid Monies

3.5.1 On each and every occasion on which the Licensee omits or neglects (for a period of not less than twenty-eight (28) days from the date on which the Licensee is obliged to do the same) to pay any money which the Licensee has covenanted in this Licence to pay then the Licensor may (without prejudice to any rights and powers arising from such default) pay such money and all monies referred to in this clause 3.5.1 and 3.5.2 are recoverable on demand by the Licensor and a certificate by the Licensor as to any amount payable by the Licensee pursuant to this clause is prima facie evidence of the amount payable by the Licensee.

3.5.2 The Licensee must pay interest on any unpaid monies due under this Licence at the higher of the Prescribed Rate and the rate of three per cent (3%) per annum above the current overdraft rate from time to time charged by an Australian trading bank nominated by the Licensor, on such amounts as may be nominated by the Licensor computed from the due date for the payment of such monies until payment of such monies in full.

3.6 Bank Guarantee

The Licensee will upon execution of this Licence, provide to the Licensor the Bank Guarantee provided that:

- 3.6.1 the Bank Guarantee is a continuing obligation in favour of the Licensor until the obligations and liabilities of the Licensee under this Licence have in all respects been performed, observed and discharged to the reasonable satisfaction of the Licensor;
- 3.6.2 the Licensor may claim against the Bank under his or her guarantee for any liabilities which may be incurred by the Licensor arising from any Breach on the part of the Licensee under this Licence without the Licensor having made any claim or instituting any proceedings against the Licensee in respect to such claims and breaches;
- 3.6.3 the Licensor will return the Bank Guarantee to the Licensee within a reasonable time after the expiration or other determination of the Licence or the expiration or other determination of any extension or renewal thereof not being more than six months after the Licensee has fulfilled any obligation it may have which remains outstanding after the termination or expiration of the Licence;
- 3.6.4 the giving of the Bank Guarantee does not operate to relieve the Licensee from any of the obligations on its part under any other provision of this Licence nor does the guarantee limit the right of the Licensor to recover from the Licensee in full all monies payable to the Licensor under any other provision of this Licence;
- 3.6.5 in the event of the Bank making any payment or payments to the Licensor in full or partial discharge of the Bank Guarantee the Licensee must immediately provide to the Licensor a substitute Bank Guarantee;
- 3.6.6 the Licensee must provide a fresh Bank Guarantee for any Further Term if the Licensee exercises its right to renew this Licence prior to the grant of the Further Licence or within twenty-eight (28) days of the grant of the Further Licence provided that the Licensor returns the Bank Guarantee to the Licensee immediately on receipt of the fresh Bank Guarantee; and
- 3.6.7 the Licensor may, in circumstances where a Bank is no longer able to issue a Bank Guarantee in the form required by the Licensor, accept some other security from the Licensee that guarantees the Licensee's performance of the obligations under this Licence including but not limited to a bond or a personal guarantee.

4 GOODS AND SERVICES TAX

4.1 Consideration Exclusive of GST

Any consideration or payment obligation arising under or in connection with this Licence is exclusive of GST unless stated otherwise. Any consideration or obligation to pay an amount that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply made for the purpose of this clause 4.

4.2 Taxable Supply

4.2.1 This clause applies if a Supply made under or in connection with this Licence is a Taxable Supply.

4.2.2 If this clause applies, any party (**Recipient**) that is required to provide consideration to another party (**Supplier**) for that supply must pay an additional amount to the Supplier equal to the amount of GST payable on the supply referred to in paragraph 4.2.1.

4.2.3 The additional amount under paragraph 4.2.2 is payable in the same manner and at the same time as any other consideration is to be first provided for that supply.

4.3 Tax Invoice

A party who makes a Taxable Supply must provide a Tax Invoice within twenty-eight (28) days of the payment relating to that Taxable Supply.

4.4 Payments

Unless otherwise stated in this Licence, the following principles apply when determining the amount of a payment under this Licence:

4.4.1 if a party is entitled under this Licence to be reimbursed or indemnified by the other party for an expense, claim, loss, liability or cost incurred in connection with this Licence, the reimbursement or indemnity payment must not include any GST component of the expense, claim, loss, liability or cost for which an Input Tax Credit may be claimed; and

4.4.2 if a party sets off an amount under this Licence, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance

with paragraph 4.4.1.

4.5 Variation

If the GST payable in relation to a supply made under or in connection with this Licence varies from the additional amount paid by the Recipient under clause 4.2 then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause 4.5 is deemed to be a payment, credit or refund of the additional amount payable under clause 4.2.

4.6 GST Terms

In this clause 4:

- 4.6.1 GST means goods and services tax under the GST Law;
- 4.6.2 GST Law has the same meaning as that expression has in *A New Tax System Goods and Services Tax Act 1999*;
- 4.6.3 except where the context suggests otherwise, a term or expression starting with a capital letter which is defined in the GST Law but not defined in these terms has the same meaning as in the GST Law;
- 4.6.4 any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 4; and
- 4.6.5 a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts.

5 USE OF LICENCE AREA

5.1 Use of Licence Area

- 5.1.1 a) The Licensee shall use the Licence Area for the Permitted Use which shall comprise the activities set out in clause 5.1.1(b) in accordance with the terms and conditions of this Licence and for purposes that are reasonably incidental to the Permitted Use.

- b) Activities and infrastructures which are included in the Permitted Use are:
- i) formed vehicle tracks accessing lease areas and lockable boom gates on those roads, and walking and mountain bike tracks;
 - ii) culverts;
 - iii) weather stations, aerals and associated electronic equipment;
 - iv) temporary storage containers;
 - v) slopeworks including drainage, tree, vegetation and rock removal;
 - vi) permanent and temporary safety nets;
 - vii) winch grooming anchor points;
 - viii) flagpoles;
 - ix) bridges - skier and vehicle;
 - x) sewer pipes, underground snowmaking, power and communications cables;
 - xi) snowmaking guns and their footings;
 - xii) snowfences;
 - xiii) directional, information and advertising signs;
 - xiv) portable lifts - rope tows and magic carpets;
 - xv) terrain park infrastructure such as boxes, rails, stairs and ramps;
 - xvi) operational huts under 15 square metres - lift operators, ski patrol, race, communications, minor pump stations and any other purposes related to the operation of an alpine resort;
 - xvii) minor water storage facilities for either water supply and snowmaking under 550,000 litres in volume;
 - xviii) water pumping facilities and Hydrocarbon Storage Systems under 15 square metres;

- xix) other minor infrastructure associated with the operation of an alpine resort;
 - xx) winter snow grooming and summer slope grooming;
 - xxi) Alpine Snowsports;
 - xxii) snow play;
 - xxiii) car parking;
 - xxiv) Alpine Snowsport facilities and recreation instruction and tuition;
 - xxv) short term storage of construction material; and
 - xxvi) summer activities with the prior written approval of the Licensor.
- c) The activities set out in clause 5.1.1(b) shall only be undertaken by the Licensee on those parts of the Licence Area on which they were undertaken at the Commencing Date or in such other location approved by the Consent Authority or any Relevant Authority.
- d) Where the Licensee wishes to undertake activities on the Licence Area which are not identified in clause 5.1.1(b) and the Licensor agrees to permit the Licensee to undertake such activities, the additional terms and conditions will be agreed between the Licensor and the Licensee.
- e) In conducting the activities comprising the Permitted Use, the Licensee must at all times comply with the directions of the Licensor in particular where the Licensor considers that such activities are having a significant adverse environmental impact on the Licence Area or the Park. The Licensee must comply with such directions at its cost and no compensation shall be paid by the Licensor to the Licensee as a consequence of its compliance with such directions.

5.1.2 The Licensee will not use or permit the use of the Licence Area for any purpose other than the Permitted Use and purposes reasonably incidental thereto.

5.1.3 The Licensee represents and warrants that:

- a) it has not relied on any representation by or on behalf of the Licensor as to how the Licence Area may be used; and
- b) it has made its own appraisal of the suitability of the Licence Area for the Permitted Use; and
- c) it is aware of all prohibitions and restrictions applying to the Licence Area in accordance with the requirements and orders of all Relevant Authorities and all Laws.

5.2 Onus of Proof as to Usage

The Licensee acknowledges that, in the matter of proof of whether the Licensee is complying or has complied with the provisions of this Licence as to the Permitted Use, the onus of proof shall be on the Licensee.

5.3 Compliance with Statutory Requirements

5.3.1 The Licensee must at the Licensee's expense observe and comply with and cause to be observed and complied with in respect to the Licence Area, any business conducted on the Licence Area, the conduct of the Licensee's People on the Licence Area, or in undertaking the Permitted Use:

- a) the requirements of all Laws and of any Relevant Authority;
- b) the requirements of relevant Building Codes and applicable Australian Standards;
- c) all notices orders and directions which may be given in accordance with the Laws or by any Relevant Authority referred to in clause 5.3.1a);
- d) the Plan of Management for the Park;
- e) the Perisher Range Resorts Environmental Management System;
- f) the requirements of all planning instruments, controls and policies whether federal, state or local; and
- g) the reasonable directions, special conditions and performance standards imposed by the Licensor where they relate to furthering the objects of the Act.

5.3.2 The Licensee acknowledges and agrees that in complying with this clause and all Laws in connection with the Licence Area, the Licensee may be required to effect structural or capital works, alterations and additions to the Licence Area.

5.4 No Noxious Use

The Licensee must not:

5.4.1 carry on or permit or suffer to be carried on in or upon the Licence Area any unlawful noxious or offensive use act trade business occupation or calling;

5.4.2 permit or suffer any riotous, disorderly, offensive or improper conduct upon the Licence Area or permit or suffer any person who is drunk or behaving in a riotous, disorderly, offensive or improper manner to be or remain upon the Licence Area;

5.4.3 cause or allow any annoyance, nuisance, injury, disturbance or obstruction to the Licensor or other persons rightfully using or being upon the Licence Area or in the Park (subject to the use of the Licence Area for the Permitted Use); or

5.4.4 carry on or allow any activities of a standard or kind which are not in keeping with the Permitted Use and purposes of this Licence or may adversely affect the use and enjoyment of the Licence Area by the public.

5.5 Conduct of Business

5.5.1 The Licensee must:

a) ensure that the Licence Area are actively managed, maintained, conducted, controlled and promoted at all times in good faith and in a proper, orderly, efficient, reputable and businesslike manner for the purposes authorised by this Licence;

b) use its best endeavours to ensure that those of the Licensee's People who are employees, agents, officers, contractors, sublessees and licensees of the Licensee display courtesy and promptness in dealing with reasonable requests by the public relating to the use of the Licence Area, and courtesy and due care in controlling or directing persons using or otherwise upon the Licence Area;

- c) not use any logo or emblem of the Department without the prior approval of the Licensor;
- d) ensure that such parts of the Licence Area as may be used for commercial purposes are kept open for trade during the usual business hours appropriate to the business or at such other times as the Director-General may approve in writing recognising that such business hours may vary with seasons and demand;
- e) subject to clause 5.17 of this Licence, ensure that it or its licensees and concessionaires erects, maintains and displays appropriate signage indicating the approved trading hours of the business conducted on those parts of the Licence Area and during such hours displays an appropriate sign indicating that those parts of the Licence Area are open for business;
- f) ensure that it employs a sufficient number of trained competent staff to enable operation of the Licensee's business in a professional businesslike manner and ensure that such employees are not under the influence of or affected by liquor or drugs and will conduct themselves in a sober and proper manner and are clearly and suitably attired having regard to the nature of work to be performed;
- g) ensure that no trading names incorporating the name of the Park are used in respect to any business conducted on the Licence Area without the prior written consent of the Director-General to each name, and surrender and terminate the use of such trading names which are connected in any manner with the Park on the termination of this Licence;
- h) use reasonable endeavours to ensure that where appropriate, there is conspicuously exhibited to the public an easily legible list of prices charged for all goods and services sold on or from the Licence Area; and
- i) ensure that except with the prior written consent of the Licensor (and then only subject to such conditions as he or she may determine), it does not sell or otherwise provide any goods or services inside the Park outside the Licence Area.

5.6 Security of Licence Area

The Licensee must use reasonable endeavours to keep all doors, windows, trapdoors,

skylights and other means of access to each building on the Licence Area securely fastened when the building is not occupied by the Licensee or the Licensee's People, and will be responsible for the maintenance in good working order of any security alarm system installed on the Improvements.

5.7 Movement of Vehicles and Car Parking Areas

5.7.1 The Licensee, the Licensee's People and all persons authorised by it or them must comply with the reasonable directions of the Licensor and Relevant Authorities and his, her or their officers in relation to the movement and parking of vehicles within the Licence Area in particular the Car Parking Areas, and the Park and the operation of the Car Parking Areas generally.

5.7.2 The Car Parking Areas must be used by the Licensee for the provision maintenance and conduct of day use public car parks for use by cars and buses transporting day visitors to the Perisher Range Resorts.

5.7.3 The Licensee will supervise control and direct the entry and parking of vehicles to and upon the Car Parking Areas and in so doing will:

- a) engage sufficient personnel to undertake such supervision control and direction;
- b) keep the Car Parking Areas open to the public during such hours daily as shall be approved by the Licensor from time to time;
- c) not grant permission for any overnight car parking without the prior written consent of the Licensor;
- d) take such reasonable measures as directed by the Licensor to discourage overnight car parking;
- e) permit the orderly flow of vehicular traffic and pedestrians;
- f) implement and /or install such safety measures or devices as may be specified and considered necessary by the Licensor in the interests of public safety and traffic control;
- g) provide within the Car Parking Areas such car parking spaces as shall reasonably be prescribed by the Licensor for authorised vehicles for the

police, ambulance, officers of the Department and for such other government authorities and any other parties as shall be determined by the Licensor;

- h) must not give to the public priority of use or preferential access to any part of the Car Parking Areas except as otherwise permitted by this clause 5.7; and
- i) erect appropriate signage in the Car Parking Areas as agreed with the Licensor to assist with the directional flow of traffic and pedestrians.

5.7.4 The Licensee shall not remove or cause to be removed from the Car Parking Areas any motor vehicle not belonging to or under the control of the Licensee and in the event of the Licensee desiring to remove any such motor vehicle from the Car Parking Areas which it believes to be abandoned or a danger or obstruction to the free flow of traffic or snow clearing operations the Licensee must seek the written approval of the Licensor.

5.7.5 The Licensee must not levy or collect or cause to be levied or collected any charge or fee for the use of any Car Parking Area by the public or any other person or conduct carry out permit or engage in or cause to be conducted carried out permitted or engaged in any commercial activity or undertaking of any kind upon the Car Parking Areas.

5.8 Public Access

The Licensee must allow the public to have free unrestricted access (which includes not being charged for such access) to all parts of the Licence Area (including, without limitation, all outdoor areas and areas within commercial facilities) which have been provided or intended for the use of and enjoyment by the public except in so far as such access might prevent the Licensee from providing reasonable protection to buildings, structures, equipment, services and facilities on the Licence Area or which might prevent the Licensee from ensuring the safety and good behaviour of persons using or otherwise upon the Licence Area, except in the case of an emergency in which case the Licensee is entitled to restrict access to any part of the Licence Area for the minimum period of time required to ensure the safety of persons with that part of the Licence Area. The Licensee agrees that it is an essential term of this Licence that the public have free unrestricted access to these parts of the Licence Area. The parts of the Licence Area to which the public is to have such access include but are not limited to such parts of the Licence Area as the public had access

immediately before the commencement of this Licence. Notwithstanding the provisions of this clause it is not intended by the parties that this clause shall prevent the Licensee from erecting Improvements which by their nature will exclude the public from having access to such Improvements, nor is the clause intended to restrict the Licensee from charging for the use of the ski lifts and Skitube provided by the Licensee for access to any part of the Licence Area where such charge is collected in the normal course of the Licensee's business.

5.9 Use of Inflammables, Chemicals and Explosives

5.9.1 Except as may reasonably be necessary for lighting, heating, construction, demolition cleaning or maintenance purposes upon the Licence Area, the Licensee must not use or store inflammable liquids or gas, explosives, volatile oils compounds or substances, insecticides, herbicides or other toxic chemicals or fertilisers within the Park without the prior written consent of the Licensor.

5.9.2 Where the Licensee does use or store the things referred to in clause 5.9.1 in accordance with its provisions, the Licensee must comply with all Laws and requirements of Relevant Authorities relating to the storage conveyance and use of such materials and any special conditions determined by the Licensor.

5.10 Contamination

5.10.1 The Licensee must not take any action which has the effect, whether direct or indirect, of causing any Contamination of the Licence Area or the Park and in particular without limitation the Licensee must not without the prior written approval of the Licensor and Relevant Authorities:

- a) place, tip or discharge (or allow or suffer to be placed, tipped or discharged) upon any land or in any water or watercourse within the Park any refuse, garbage, night soil, petroleum products, trade waste, building material, earth fill or any offensive or polluting matter or liquid whatsoever; and
- b) place (or allow or suffer to be placed) any obstructing matter on any land or in any water or watercourse or otherwise act or fail to act so as to cause any flow of water to be restricted, obstructed or diverted and will act or comply with any requirement of the Licensor regarding a watercourse. The restrictions imposed by this subclause 5.10.1b) do not apply in relation to the extraction and use of water where that use is in accordance with the

requirements of the Licensor and any Relevant Authority.

- 5.10.2 Without affecting the liability of the Licensee for damages or in relation to any other remedy available to the Licensor the Licensee must remedy to the satisfaction of the Licensor at its own expense any damage caused to the Park by the Licensee in Breach of the provision of this clause or otherwise, including by the spillage of petroleum products or other pollutants or the deposition of polluting or obstructive materials within the Park.

5.11 Water Usage and Storage

The Licensee acknowledges and agrees that it must not without the consent of the Relevant Authorities:

- 5.11.1 extract or use any water from any water source within or outside the Licence Area whether above, on or below the ground, other than the water supplied to the Licence Area as part of the Services;
- 5.11.2 construct any water retention facility or device within or outside the Licence Area whether above, on or below the ground; or
- 5.11.3 use any of the water supplied to the Licence Area as part of the Services for the purposes of snow making.

5.12 Fire Safety

The Licensee must comply with all requirements of the Licensor and all other Relevant Authorities in relation to fire safety and must in particular ensure that:

- 5.12.1 all reasonable precautions are taken to minimise the risk of fire on the Licence Area and in particular in any Improvements located on the Licence Area;
- 5.12.2 adequate devices and appliances to prevent or retard the spread of fire are provided and maintained in good working order and condition and kept readily available for use on the Licence Area to the satisfaction of all Relevant Authorities;
- 5.12.3 no burning of timber, grass, cleared vegetation or other combustible matter is undertaken without the prior consent of the Licensor and subject to such conditions as the Licensor and any Relevant Authority may determine;

- 5.12.4 no act, matter or thing is done or suffered to be done within the Licence Area by the Licensee or the Licensee's People whereby the risk of fire might be increased and shall comply with the Laws and codes of any Relevant Authority in respect to fires, including Building Codes;
- 5.12.5 In the event of the Park or the Licence Area being damaged by fire which is shown to be caused or contributed to by a Breach of the Licensee's obligations under this Licence or of negligence in or arising from the Licensee's activities or use of the Licence Area the Licensee will meet the reasonable and proper costs associated with suppression of the fire and all costs of making good such damage and all costs and damages incurred, paid or arising from the death of or injury to any person or property as a result of the fire to the extent it is caused or contributed to by the Licensee; and
- 5.12.6 it complies, at its cost, with all requirements imposed upon it as occupier of the Licence Area or on the Licensor as owner of the Licence Area under the *Rural Fires Act 1997*.

5.13 No Domestic Pets or Livestock

The Licensee must not allow any livestock or other domestic, native or exotic animal to be brought onto or kept on the Licence Area, unless the animal is an Assistance Animal or the Licensor has given written authorisation to that person for the caring of an injured or orphaned native animal.

5.14 Removal of Native Trees

The Licensee must not, cut down, fell, injure, lop, treat with chemical, destroy or remove any living or dead native trees on the Licence Area without the prior written consent of the Relevant Authority, where that consent is required by Law.

5.15 No Exotic or Ornamental Plants and Weed Control and Eradication

- 5.15.1 The Licensee must not plant in the ground or in containers within the Licence Area any Exotics or Ornamentals without the prior approval of the Licensor except where such Exotics or Ornamentals may be approved by the Consent Authority for use in any revegetation works.
- 5.15.2 The Licensee must remove all Exotics or Ornamentals in the ground or in containers in the outdoor areas of the Licence Area unless given written approval

by the Licensor to permit such Exotics or Ornamentals on the Licence Area and subject to such conditions and/or requirements as the Licensor may from time to time impose.

5.15.3 If, in the Licensor's opinion, there are weeds on the Licence Area then the Licensor may either:

- a) direct the Licensee in the manner of the removal or control of the weeds and any costs associated with such direction must be paid by the Licensee within a reasonable time upon being notified of the same and the Licensee must comply with any such direction; or
- b) enter the Licence Area along with such employees contractors or agents as is considered by the Licensor to be reasonably necessary and remove or control the weeds and the costs incurred by the Licensor in such removal or control must be paid by the Licensee within a reasonable time upon being notified of the same.

5.15.4 Subject to clause 5.15.6, the Licensee must use all reasonable endeavours to ensure that the whole of the Licence Area are kept clear of weeds.

5.15.5 For the purpose of clause 5.15.3, a notice by the Licensor of the costs associated with the removal or control of the weeds or the costs associated with any direction to remove or control the weeds which provides details of those costs is prima facie evidence of such costs.

5.15.6 The Licensee must comply with any weed control or eradication program implemented by the Licensor in respect to weed control or eradication in relation to the Licence Area.

5.16 Fences

The Licensee must not without the prior written consent of the Relevant Authority carry out or permit the carrying out of any fencing work on or about the Licence Area other than temporary fencing erected for safety purposes or purposes associated with the sporting, gaming or recreational activities contemplated by the Permitted Use.

5.17 Signs

5.17.1 The Licensee:

- a) must not without the prior written approval of the Consent Authority where its consent is required erect display affix paint or exhibit on or to the Licence Area any sign advertisement notice or hoarding or allow or suffer any of the foregoing to be done;
- b) must not without the prior written approval of the Relevant Authority (or the Licensor where there is no Relevant Authority) make any permanent marking upon any rock in the Park;
- c) must not make any permanent marking upon any tree or plant in the Park;
- d) upon vacating the Licence Area, must remove any signs advertisements notices hoarding or markings put in place by or on behalf of the Licensee; and
- e) must make good any damage or disfigurement caused by the placement or removal of any such sign advertisement notice hoarding or marking.

5.17.2 Notwithstanding clause 5.17.1, the Licensee must display other signs in relation to the Licence Area as are required by Law or this Lease.

5.18 Amplified Sound

The Licensee must not operate or permit to be operated on the Licence Area any apparatus or device for the amplification of music announcements or other sound to a degree which is inconsistent with clause 5.1.1 or in breach of any Law or the requirements of the Relevant Authority. The Licensee must comply with the reasonable requests of an authorised delegate of the Licensor to reduce the volume level to a level allowable at Law.

5.19 Waste Management

5.19.1 The Licensee must ensure that there be available on the Licence Area adequate facilities to encourage guests and the Licensee's People to recycle materials.

5.19.2 The Licensee must take all reasonable precautions to prevent animals from scavenging through waste bins.

5.20 Maintenance of Ground Areas

The Licensee must:

- 5.20.1 keep the ground areas of the Licence Area appropriately landscaped and in good and tidy order and condition to the reasonable satisfaction of the Licensor;
- 5.20.2 adequately control exotic plants and weeds to the reasonable satisfaction of the Licensor and in accordance with all relevant Laws and by such means as approved by the Licensor and in accordance with clause 5.15 of this Lease;
- 5.20.3 take reasonable precautions to minimise damage to and to prevent soil erosion on or adjacent to the Licence Area;
- 5.20.4 remedy any erosion or other environmental damage or deterioration of the Licence Area caused as a result of its works or use of the Licence Area and rehabilitate and revegetate all disturbed ground surfaces to the satisfaction of the Licensor;
- 5.20.5 take reasonable precautions to minimise waste generated on or from the Licence Area by the Licensee; and
- 5.20.6 not undertake any excavation or other work which involves interference with the native vegetation or existing ground surface without:
 - a) the prior written consent of the Consent Authority where required;
 - b) ascertaining the location of existing underground infrastructure;
 - c) considering the likely effect of the excavation upon the stability of the Licence Area and adjacent area;
 - d) considering the environmental impact of the excavation upon the Licence Area and the Park; and
 - e) determining if development consent is required.

If the Licensee fails to comply with the requirements of the Licensor or Relevant Authority in any matter relating to environmental protection to the satisfaction of the Licensor or Relevant Authority within the time limit laid down by the Licensor or Relevant Authority or if the Licensor or Relevant Authority (whether the time limit shall have expired or not) shall be of the opinion that irreparable injury or damage will result to the Licence Area or to any other part of the Park unless remedial work or revegetation is carried out immediately, then the Licensor and his or her agents shall be entitled to carry out such remedial work and/or

revegetation at the cost and expense of the Licensee who hereby agrees to pay to the Licensor such costs and expenses upon demand.

5.21 Use of Plumbing Facilities, Water and Sewerage System

5.21.1 The Licensee must not permit the introduction or discharge of any materials which without limitation includes spa, pool or other deoxygenated or chlorinated water, into the Plumbing Facilities or the Park's Water and Sewerage System which may interfere with the proper functioning of the Plumbing Facilities or the Park's Water and Sewerage System or which may have an adverse effect upon the Park.

5.21.2 The Licensee must comply with all directions or notices given by the Licensor relating to the use of the Plumbing Facilities or the Parks Water and Sewerage System and in particular:

- a) directions or notices in respect to the discharge of spa, pool, deoxygenated or chlorinated water; and
- b) directions or notices for a staggered discharge program in respect to the water referred to in clause 5.21.2a); and
- c) directions or notices in respect to the discharge of any other materials or chemicals the Licensor reasonably considers could have an adverse affect upon the Plumbing Facilities or the Park's Water and Sewerage System or the Park.

5.21.3 The Licensee must immediately make good any damage to the Plumbing Facilities or Water and Sewerage System caused by a Breach of the provisions of this clause or by misuse or neglect of the Plumbing Facilities or Water and Sewerage System. Where the Breach, misuse or neglect to the Water and Sewerage System is contributed to by the Licensor or its servants, agents, employees, contractors, lessees (other than the Licensee), sublessees or others under the Licensor's control, the Licensor must reimburse the Licensee for the Licensee's cost of making good the damage to the extent caused by the Licensor or its servants, agents, employees, contractors, lessees (other than the Licensee), sublessees or others under the Licensor's control.

5.21.4 The Licensee indemnifies the Licensor for all damage to the Plumbing Facilities, the Park's Water and Sewerage System and the Park to the extent resulting either directly or indirectly from a Breach of this clause by the Licensee or the Licensee's People.

5.22 Infectious Illness

The Licensee must in the event of any infectious illness occurring in the Licence Area forthwith give notice thereof to the Licensor and to the Relevant Authorities and thoroughly fumigate and disinfect the Licence Area to the satisfaction of the Licensor and such Relevant Authorities and otherwise comply with their reasonable and lawful requirements in regard to same.

5.23 No Pest Affected Fittings or Furniture, Effects, Timber or Firewood

The Licensee must not bring and must use reasonable endeavours not to suffer to be brought, upon the Licence Area any pest affected fittings, fixtures, furniture, effects, timber or firewood and will forthwith remove from the Licence Area any such items, which may be affected by pests. The Licensor may remove and destroy any pest affected fittings, furniture, effects, timber or firewood at the cost of the Licensee and no compensation shall be payable to the Licensee for such removal or destruction.

5.24 Animals, Vermin and Pests

5.24.1 The Licensee must take all reasonable precautions to keep the Licence Area free of rodents, vermin and insect pests by preventing access, including through chimney and vents, keeping the Licence Area clean and securing food items.

5.24.2 The Licensee must not bait or otherwise interfere with any animal on the Licence Area without the Licensor's consent.

5.24.3 The Licensee must not trap or control animals entering or on the Licence Area, unless the Licensee traps and controls such animals in accordance with the Licensor's pest control policy in force at the time or if no such policy is in force, as directed by the Licensor.

5.24.4 The Licensee may and, if required by the Licensor in writing must, control insect pests chemically by an appropriately licensed pest exterminator and with chemicals or such other methods as may be approved by the Licensor for this purpose.

5.24.5 The Licensee must take all reasonable precautions to prevent nesting opportunities for pest bird species, including the common starling, on the Licence Area. If such pest bird species are on the Licence Area, the Licensee must remove the nests.

5.24.6 The Licensee must take all reasonable precautions to prevent the Licensee's People feeding or handling any native or exotic animals on the Licence Area.

5.25 Environmental Management System

5.25.1 The Licensee must implement from the Commencing Date an environmental management system for its activities on the Licence Area, which is consistent with the Perisher Range Resorts Environmental Management System.

5.25.2 The Licensee agrees that for the purpose of ensuring compliance with its obligations under clause 5.25.1 it must do whatever is required by the Licensor to that end, including without limitation:

- a) participating in any audits, enquiries and investigations and gather any information requested by the Licensor;
- b) ensuring the Licensee or the Licensee's People (as appropriate) participate in any activities or training requested by the Licensor in matters arising from the Perisher Range Resorts Environmental Management System;
- c) complete and return to the Licensor, any records reports forms or other documentation specified by the Licensor dealing with compliance with the Perisher Range Resorts Environmental Management System;
- d) permitting entry by the Licensor to the Licence Area for the purposes of ensuring that the Licensee is complying with the Perisher Range Resorts Environmental Management System; and
- e) complying with the environmental performance standards and procedures as set out in the Perisher Range Resorts Environmental Management System.

5.25.3 The Licensee must pay any reasonable costs contribution associated with complying with the Perisher Range Resorts Environmental Management System.

5.25.4 If the Licensee does not comply with this clause 5.25, then the Licensor may carry out the necessary enquiries, audits, investigations, engagements and training, collect the necessary records and otherwise take all necessary steps to ensure the Licensee is in compliance with the Perisher Range Resorts Environmental Management System.

5.26 Geotechnical Management Plan

5.26.1 The Licensee acknowledges and agrees that the area in which the Licence Area are located may contain geotechnical or geological faults or may otherwise be unstable or unsuitable for construction or support of the Improvements.

5.26.2 Where Improvements have been or are to be erected by the Licensee on part of the Licence Area, the Licensee must take all reasonable steps to identify any risk of geotechnical fault on that part of the Licence Area and must undertake all necessary works to remedy any geotechnical faults on the part of the Licence Area upon which Improvements have been or are to be erected by the licensee. In that regard the Licensee agrees it is solely responsible for ensuring that:

- a) the Licence Area upon which the Improvements are erected are suitable for the Permitted Use, including without limitation, to properly support the Improvements on the Licence Area or to be erected on the Licence Area;
- b) the Improvements erected on the Licence Area or to be erected on the Licence Area are or will be suitable for the Permitted Use; and
- c) any remedial works deemed necessary by the Licensor or a Relevant Authority to stabilise that part of the Licence Area on which the Improvements have been or are to be erected or otherwise remedy a fault are expeditiously carried out at the Licensee's cost, to the satisfaction of the Licensor and any Relevant Authority.

5.26.3 If the Licensee is of the reasonable opinion that a materially significant part of the Licence Area or Improvements are not suitable for the Permitted Use it must take all necessary action to ensure the safety of persons using or on the Licence Area, which may include, without limitation, arranging for the Licence Area to be vacated.

5.26.4 If the Licensor is of the opinion that the Licence Area or Improvements are not

suitable for the Permitted Use the Licensor is entitled but not obliged to issue directions to the Licensee to take the action referred to in clause 5.26.3.

5.27 No Detrimental Impact to Significant Features

5.27.1 The Licensee must ensure that it has identified any Significant Features identified as such in the Plan of Management or as otherwise identified by the Licensor from time to time such as plants or inanimate objects that are on the Licence Area.

5.27.2 The Licensee must not remove or otherwise detrimentally interfere with any Significant Features referred to in clause 5.27.1 without the Consent Authority's written consent.

5.28 Aboriginal Objects and Historic Relics

5.28.1 The Licensee shall immediately report to the Director-General the discovery of any Aboriginal Object or Historic Relic during the course of any construction work and in such event such work shall cease immediately and the Licensee shall comply with all directions made by the Director-General in relation to the Objects in accordance with the Act.

5.28.2 The Licensee shall satisfactorily carry out and perform all necessary protection or salvage works specified by the Director-General in connection with all known Objects affected by the Licensee's activities.

5.29 Occupational Health and Safety

5.29.1 The Licensee acknowledges that it is an occupier of the Licence Area, within the meaning of the *Occupational Health and Safety Act 2000 (NSW)* or any act replacing it.

5.29.2 The Licensee shall carry out the Permitted Use on the Licence Area in a safe and reliable manner and must comply with the *Occupational Health and Safety Act 2000 (NSW)*, its amendments and regulations.

5.29.3 The Licensee shall notify the Licensor of any natural events or activities on the Licence Area or the surrounding area, which it becomes aware of, which in the Licensee's reasonable opinion may endanger the public.

5.29.4 The Licensee shall take all reasonable steps to protect the safety of all persons present on the Licence Area and shall, without limitation, take all reasonable steps to eliminate any dangers to persons that may arise as a result of the Licensee's activities and, notwithstanding clause 5.17, erect signage warning the public of any dangers they may encounter where those dangers cannot be eliminated.

5.30 No Auctions

The Licensee will not without the prior written consent of the Licensor expose or offer for sale or permit to be exposed or offered for sale by auction on the Licence Area any articles goods, materials or things whatsoever.

5.31 Public Protection

The Licensee acknowledges that the public accesses and uses the Licence Area at the risk of the Licensee. The Licensee must ensure that it undertakes all reasonable and appropriate measures to safeguard the public against injury or accident which may arise from the Licensee's activities on or use of the Licence Area.

5.32 Native Fauna

The Licensee acknowledges and accepts that the Licence Area is located within a national park and that as a result, native fauna may from time to time be found on the Licence Area. The Licensee shall not be entitled to any compensation for any damage or loss caused to the Licensee or the Licensee's People (including the Licensee's business and property) attributable to such native fauna being on the Licence Area.

5.33 Filming Within Licence Area

The Licensee must not carry out a Filming Activity on the Licence Area without the approval of the Licensor in accordance with the Filming Approval Act 2004 (NSW).

5.34 Environmental Research and Rehabilitation

5.34.1 The Licensee will pay the Environmental Research and Rehabilitation Contribution. The contribution will be increased annually by the CPI Rate.

Payment of the contribution shall be made annually on the Commencing Date and each anniversary thereof.

5.34.2 The Licensee may as an alternative to the payment of the Environmental Research and Rehabilitation Contribution satisfy such obligation as follows:

- a) by preparing within twenty four months of the Commencing Date, and reviewing every ten years thereafter, a rehabilitation plan for the Licence Area and the Perisher Ski Area Lease premises to the satisfaction of the Licensor; and
- b) annually carrying out rehabilitation works in accordance with the rehabilitation plan to the value of the Environmental Research and Rehabilitation Contribution for the relevant year less \$5,000. Such works must not comprise rehabilitation or re-vegetation works which may be required as a condition of a consent from the Consent Authority and must be identified, and include the amounts spent, in a report to be prepared annually by the Licensee and provided to the Licensor at the conclusion of each year; and
- c) paying the difference between the value of the rehabilitation works undertaken in accordance with clause 5.34.2b) and the amount of the contribution identified at item 17 of the Reference Schedule.

5.34.3 The parties agree that any payment received by the Licensee under the Perisher Ski Area Lease for payment of the Environmental Research and Rehabilitation Contribution will satisfy the Licensee's obligation under this clause.

5.35 Roads

5.35.1 The Licensee must maintain the Licensee's Roads to a standard which the Licensor considers reasonable for their proposed use. Such maintenance must include carrying out any necessary upgrade to the Licensee's Roads from time to time.

5.35.2 The Licensor will maintain the Licensor's Roads in accordance with its obligations as a Relevant Authority.

5.35.3 The parties acknowledge and agree that in respect of tracks and roads that have not been identified as being the responsibility of either party on the Road Plan or

any tracks and roads not in the Licensed Area, the following will apply:

- a) the Licensee will be responsible for the maintenance of tracks or roads servicing the ski lift areas;
- b) the Licensor will be responsible for the maintenance of tracks or roads servicing the village areas;
- c) access tracks to specific lodges or facilities will be the responsibility of the lessee who is leasing the particular lodge or facility; and
- d) the parties will otherwise agree between themselves who will be responsible for the maintenance of the tracks or roads where the track or road does not relate to clauses 5.35.3a), b) or c).

5.36 Oversnow Vehicles

5.36.1 The Licensee will not:

- a) directly or indirectly operate or allow to be operated any oversnow vehicle except an oversnow vehicle authorised by the Licensor and the Roads and Traffic Authority or its successor including the requirement to prominently display on such vehicle an authorised label issued by the Licensor which is appropriate to the Licence Area;
- b) allow any oversnow vehicle to be operated by a person who does not hold a consent issued by the Licensor and a licence issued by the Roads and Traffic Authority or its successor for the operation of such vehicles;
- c) use or allow to be used any such authorised oversnow vehicle within the Park other than upon those routes specified in the consent issued by the Licensor and other than for management purposes incidental to the conduct of the Licence Area excluding recreational use; or
- d) charge a fee to any person for the use of any such authorised oversnow vehicle without the prior approval in writing of the Licensor.

6 CONSTRUCTION, MAINTENANCE, REPAIR, ALTERATIONS, ETC

6.1 Condition of Licence Area at Commencement of Licence

Notwithstanding any other provision of this Licence, but without limiting similar provisions of this Licence:

- 6.1.1 no warranty is given by the Licensor as to the condition or state of repair of the Improvements (if any) on the Licence Area as at the commencement of this Licence or the suitability of the Licence Area for the purposes for which they are to be used and the Licensee has not relied in any way upon any representations or assurance by the Licensor or on his or her behalf in entering into this Licence;
- 6.1.2 the Licensee accepts the Improvements on the Licence Area in their present condition and state of repair and subject to all defects (if any) whether latent or patent; and
- 6.1.3 the Licensor is under no obligation or liability of any kind to maintain replace repair or rebuild the whole or any part of the Improvements.

6.2 Repair and Maintenance

- 6.2.1 In accordance with clause 6 of this Licence, the Licensee must at its own cost maintain repair replace rebuild paint and renew the Improvements and the Licensee's Fixtures and keep the whole of the Licence Area in good and substantial repair order and condition but excluding damage by fire, lightning, storm, tempest and impact. Reference to repair in this clause 6.2 includes structural repair and to repair which entails capital expenditure.
- 6.2.2 Any dispute between the parties with regards to the provisions of clause 6.2.1 shall be determined in accordance with clause 16.
- 6.2.3 The Licensee agrees that the Licensor does not have any obligation to maintain, repair, replace, rebuild, paint or renew the Improvements or otherwise maintain the Licence Area during the Term of this Licence.

6.3 Repair on Termination of Licence

Subject to clause 7, the Licensee must at the expiration or sooner determination of this Licence peaceably surrender and yield up the Licence Area in good and substantial repair

order and condition and in a clean and sanitary state in all respects.

6.4 Painting

So often as the Licensor may reasonably require and, if required by the Licensor during the last three months of the Term, the Licensee at its cost and expense will colour, paint, paper, stain or treat with such materials and to such standards and colours as may reasonably be determined by the Licensor such parts of the interior and exterior of the Improvements located on the Licence Area as are normally so treated. Where in the opinion of the Licensor any part or parts of any structure upon the Licence Area can be effectively treated by painting or other special treatment to reduce visual impact the same shall be painted or treated and kept painted or treated by the Licensee in such manner as the Licensor may nominate.

6.5 Cleaning

The Licensee must:

- 6.5.1 cause the interior and exterior of the structures and Improvements located on the Licence Area to be cleaned in a proper and workmanlike manner and kept clean and free from dirt rubbish and inflammable materials;
- 6.5.2 provide and keep in good order and condition proper refuse bins and other containers; and
- 6.5.3 remove and take away or cause to be removed and taken away from the Licence Area and the adjacent areas of the Park all refuse debris ground litter and building materials in accordance with the reasonable requirements of the Licensor.

6.6 Licensee's Equipment

The Licensee must keep and maintain clean and in good order repair and condition all fittings, floor coverings, wall, floor and ceiling finishes, plant furnishings and equipment and appliances of the Licensee on the Licence Area.

6.7 Breakages

The Licensee must make good any breakage defect or damage to any facility or appurtenance of the Licensor within the Park occasioned by want of care misuse or abuse on the part of the Licensee or the Licensee's People or otherwise occasioned by any Breach

of the Licensee under this Licence.

6.8 Building, Construction and Development Works

- 6.8.1 The Licensee must, where it proposes to carry out works for which development consent or approval is required under the *Environmental Planning and Assessment Act 1979*, obtain the appropriate consent or approval from the Consent Authority and any other Relevant Authority as prescribed by Law.
- 6.8.2 The Licensee must ensure that all building, addition, alteration, modification or replacement building works are carried out in accordance with plans and specifications previously approved in writing by the Relevant Authority and in accordance with development consent or approval and to the reasonable satisfaction of the Relevant Authority and in accordance with the requirements of any applicable Building Code, Australian Standard and Relevant Authority.
- 6.8.3 The Licensee must not undertake any development or construction work road works or landscaping of any kind prior to the Relevant Authority providing approval for such works where approval for such works is required under the *Environmental Planning and Assessment Act 1979* or any other Law.
- 6.8.4 The Licensee must comply with all requirements and directions of the Relevant Authority in regard to the construction or alteration of buildings improvements and other structures, earthworks, hydraulic works, underground works, landscaping, restoration, erosion mitigation, and drainage works where compliance with such requirements and directions of the Relevant Authority for such works is required under the *Environmental Planning and Assessment Act 1979* or any other Law.
- 6.8.5 The Licensee must comply with requirements of the Act and other legislation relating to the Licence Area.

6.9 Continued Maintenance

The parties acknowledge that Improvements in the Licence Area are to be continuously maintained and upgraded by the Licensee during the Term to ensure that the Licence Area remains in good and substantial repair order and condition as a world class alpine resort.

6.10 Standard of Work

All work carried out by the Licensee or the Licensee's People must be carried out at the Licensee's expense with every reasonable care and in a proper expeditious and workmanlike manner using good quality materials and in accordance with all necessary approvals issued by the Relevant Authorities under the Law including but not limited to development consent.

6.11 Reporting of Defects, etc

The Licensee must inform the Licensor as soon as reasonably practicable, depending on the nature of the circumstance of:

- 6.11.1 any act or omission of itself or the Licensee's People, or
- 6.11.2 any defect, failure, want of repair, accident or hazard associated with or in the vicinity of the Licence Area or any Improvements thereon, or
- 6.11.3 any other circumstances,

of which it has become aware or should have known acting reasonably where any of the above has caused or may cause any danger or risk to the Licence Area or adjacent areas of the Park or any person within the Licence Area or adjacent areas of the Park or has caused or may cause any environmental damage to the Licence Area or the adjacent areas of the Park.

6.12 Licensor's Right of Entry to do Certain Works

The Licensor and his or her servants, agents and contractors may at all times upon giving to the Licensee reasonable notice (except in the case of emergency when no notice shall be required) enter upon the Licence Area for the purpose of:

- 6.12.1 carrying out any necessary enquiries and investigations, collecting any necessary records or documents, carrying out any Works, and otherwise affecting anything which the Licensee is required by this Licence to do but has failed within a reasonable time to do so; or
- 6.12.2 carrying out any Works to the Licence Area otherwise reasonably considered necessary by the Licensor; or
- 6.12.3 carrying out any Works on the Licence Area ordered, requested or required by

any public authority having jurisdiction over the Licence Area which the Licensor elects to do and for which the Licensee is not liable under this Licence, provided always that:

- 6.12.4 in the exercise of the Licensor's powers under this clause the Licensor shall endeavour to exercise its powers with minimum interference with the Licensee's business or the rights of any sublessees, concessionaires or other occupants of the Licence Area; and
- 6.12.5 the Licensee must pay, within a reasonable time, all costs and expenses (including any costs associated with engaging suitably qualified contractors and all reasonable legal costs and disbursements) associated with the Licensor otherwise exercising his or her rights under this clause 6.12 (except works carried out under clauses 6.12.2 or 6.12.3) and a certificate or notice by the Licensor as to any amount payable pursuant to this clause containing details of the works and served upon the Licensee shall be prima facie evidence thereof.

6.13 Services

- 6.13.1 The Licensee may use the Services, if any, available to the Licence Area with the approval and subject to such conditions as shall be determined by the Licensor from time to time. If there are no Services available to the Licence Area, the Licensee may provide such services as the Licensee may reasonably require subject to the approval of the Relevant Authority. For the avoidance of doubt the Licensor is not required to provide the Services.
- 6.13.2 The Licensee agrees that the Licensor shall not have any liability to the Licensee for the proper functioning of the Services or for the upgrading of any of the Services and that in the event that any or all of the Services malfunction or cease to function, the Licensee shall not be entitled to any compensation from the Licensor.
- 6.13.3 No public utility or community services constructed or laid within the Licence Area by any Relevant Authority are to be removed or interfered with in any way by the Licensee without the prior written consent of the Relevant Authority and without notifying the Licensor.
- 6.13.4 Any necessary additional public utility or community services may be constructed or provided within the Licence Area by any Relevant Authority including the

Licensors upon one (1) month's written notice to the Licensee and with no undue inconvenience to the Licensee and no compensation is payable by the Licensor or Relevant Authority to the Licensee as a result of the construction or provision of such services.

- 6.13.5 The Licensee must permit the servants and agents of any Relevant Authority in respect to the supply of electricity, water, sewerage, gas, telephone, fire sprinkler and fire alarm systems, at all reasonable times and upon reasonable notice (except in the case of an emergency when no notice is required) to enter the Licence Area with all necessary materials and appliances for the purposes of carrying out any inspections, readings, repairs, alterations, works or adjustments which any such authority may consider necessary or desirable to the ducts, wires, pipes, cables, meters, switchboards, fire sprinkler alarm systems and other installations in the Licence Area.

6.14 Gas Reticulation System

- 6.14.1 The Licensor or relevant service provider may install or expand an existing Gas Reticulation System on the Licence Area which is to provide gas for the use of the Licensee its sublessees and licensees and adjoining lessees and licensees of the Licensor subject to providing the Licensee with at least 6 months' notice.
- 6.14.2 The Gas Reticulation System will require the operator of the system to lay pipes and other infrastructure above or below ground. The location of such pipes and infrastructure shall be determined by the Licensor and the operator of the system in consultation with the Licensee and shall be installed with the least possible interference to the Licensee's business and that of its sublessees, licensees and concessionaires.
- 6.14.3 No compensation is payable to the Licensee as a result of the installation of the Gas Reticulation System and the Licensee must not object, hinder or prevent its installation and operation.

6.15 Snow Clearing of Car Park

- 6.15.1 The Licensee will at its own expense if and when reasonably necessary by 7.00 am each day during each Winter Season snowclear or cause to be snowcleared to the extent reasonably possible all Car Parking Areas within the Licence Area and the accesses thereto so that the said Car Parking Areas may

be used for the parking of motor vehicles and the Licensee will keep such Car Parking Areas and accesses cleared during the hours of normal use.

6.16 Pedestrian Access Bridge

6.16.1 The Licensee shall to the satisfaction of the Licensor and in accordance with any specifications determined by the Licensor maintain, repair and replace (if necessary) the two pedestrian access bridges across Perisher Creek between the Perisher Valley car park and the Perisher centre and shall accept full responsibility and liability in respect to the safety of persons using such bridges.

7 IMPROVEMENTS AND LESSEE'S FIXTURES

7.1 Ownership of Improvements

7.1.1 Improvements on or in the Licence Area at the Commencing Date and any alteration or addition to any such Improvements by the Licensor or the Licensee are the unfettered property of the Licensor and the Licensee shall not be entitled to any compensation in respect thereto. This clause 7.1.1 shall not merge upon the expiration, termination or surrender of this Licence.

7.1.2 All Improvements constructed, erected, located or used for the Permitted Use on or in the Licence Area after the Commencing Date of this Licence (not being additions or alterations to Improvements of the type noted in clause 7.1.1), by the Licensee and whether in accordance with the covenants of this Licence or otherwise and whether completed or uncompleted after the commencement and before the expiration or sooner determination of this Licence and any alteration or addition to any such Improvements are the unfettered property of the Licensee up until the termination of this Licence whereupon the Licensor shall become the owner of such Improvements and the Licensee shall not be entitled to any compensation in respect thereof. The Licensee must do what ever may be reasonably required to transfer such ownership to the Licensor upon request by the Licensor. This clause 7.1.2 shall not merge upon the expiration, termination or surrender of this Licence.

7.2 Placing and Removal of Licensee's Fixtures

7.2.1 The Licensee may at any time erect or place or cause to be erected or placed in

or on the Licence Area such Licensee's Fixtures as may be reasonably necessary for the Permitted Use of the Licence Area.

7.2.2 Upon the expiration or sooner determination of this Licence the Licensee may (and if required by the Licensor by notice in writing must) remove from the Licence Area all the Licensee's Fixtures brought upon the Licence Area by the Licensee.

7.2.3 The Licensee must in such removal do no damage to the Licence Area or shall forthwith make good any such damage occasioned by such removal.

7.2.4 The Licensee must ensure compliance with the following requirements when installing or replacing the following appliances and fittings:

- a) Wood burning appliances – emissions comply with any relevant Australian Standard for domestic solid fuel burning appliances;
- b) Chimneys – any chimney be constructed and maintained in accordance with all applicable Australian Standards and to encourage smoke emissions to travel vertically;
- c) Water appliances and fittings – have a star rating equivalent to a high level of water efficiency under the National Water Conservation Rating and Labelling Scheme or any scheme of a similar nature replacing the same;
- d) Electricity appliances – have a AAA star rating equivalent to a high level of energy efficiency under the National Energy Labelling Program or any program of a similar nature replacing the same; and
- e) Gas appliances - have a star rating equivalent to a high level of energy efficiency under the Australian Gas Association Gas Energy Rating and Labelling Scheme or any scheme of a similar nature replacing the same.

7.3 Repair and Maintenance

The Licensee acknowledges and agrees that notwithstanding that the Improvements may be or become the unfettered property of the Licensor, the Licensee must maintain and repair the Improvements at its own cost as provided in clause 6.

7.4 De-commissioning Plan

7.4.1 If the Licensor reasonably requires the Licensee to remove some or all of the Improvements on or before expiration or termination of the Licence, then in respect of those Improvements, the Licensee must at its cost engage a qualified expert to prepare a de-commissioning plan that is reasonably acceptable to the Licensor prior to the removal of the Improvement.

7.4.2 The Licensee must comply with the de-commissioning plan when removing any Improvement required to be removed by the Licensor under clause 7.4.1.

7.4.3 This clause 7.4 shall not merge upon the expiration, termination or surrender of this Licence.

8 TANK MANAGEMENT

8.1 Hydrocarbon Storage Systems

8.1.1 The Licensee must take all reasonable precautions to ensure that the design installation operation maintenance testing repair and re-use of operational Hydrocarbon Storage Systems:

- a) prevents product escaping from the system;
- b) enables the detection of leaks; and
- c) prevents spills and leaks during filling.

8.1.2 Leaks and spills from Hydrocarbon Storage Systems are considered Contamination for the purpose of clause 5.10.

8.1.3 The Licensee must ensure that Hydrocarbon Storage Systems no longer in use are decommissioned to the satisfaction of the Licensor and within a timeframe determined by the Licensor.

8.2 Burying and Screening of Tanks

8.2.1 The Licensee must cause all tanks on the Licence Area to be buried below the surface of the ground or to be screened in a manner and to a standard satisfactory to the Licensor and with the written consent of the Licensor.

9 NO TENANCY AND HOLDING OVER

9.1 No Tenancy

9.1.1 The Licensee acknowledges and agrees that this Licence shall not amount to or be construed as a demise nor shall it create any lease or tenancy in favour of the Licensee and it shall not give the Licensee any exclusive possession of the Licence Area. The legal possession of the Licence Area will at times remain with the Licensor.

9.1.2 This Licence will not in any way affect or prejudice the rights of the Licensor in relation to:

- a) its occupation and use of the Licence Area and/or any adjoining land;
- b) the grant of any leases, further licences or other rights for any purpose to other persons in relation to the Licence Area provided these are granted subject to the exclusivity rights granted to the Licensee under clause 20;
- c) the dedication, grant (including easements) or entry into any arrangement in relation to the Licence Area.

9.2 Holding Over

If the Licensee with the consent of the Licensor continue to use and have access to the Licence Area after the expiration of the term of this Licence, the Licensee shall remain as a licensee from month to month at the then current yearly rate of Licence Fee. Such licence shall be terminable at any time by either party giving to the other not less than six (6) month's notice in writing to the other. The same conditions of this Licence shall apply as are not inconsistent with a monthly licence.

10 INSURANCES

10.1 Required Insurances

10.1.1 The Licensee must effect and maintain in respect to the Licence Area from the Commencing Date of this Licence the following insurances:

- a) insurance of the Improvements against loss, damage or destruction from

any insurable risk reasonably required by the Licensor including (but not limited to) loss, damage or destruction by fire, lightning, storm, tempest and impact for the full reinstatement cost of the Licence Area (including extra costs reinstatement);

- b) insurance of all plate glass, fixed glass and windows in the Improvements for its reinstatement cost (including extra costs reinstatement) from loss, damage or injury caused by explosion, earthquake, aircraft, riots, civil commotion, fire, snow or ice (but only in respect of glass and windows in completed buildings and structures), lightning, storm, tempest, impact, damage and any other insurance risk reasonably required by the Licensor;
- c) a public liability policy covering personal injury and property damage, including financial, economic or consequential loss arising as a result of such personal injury or property damage (in an amount of not less than the amount noted at Item 5 of the Reference Schedule or such other higher amount as the Licensor may from time to time require, being the amount which may be paid arising out of any one single accident or event) in connection with the activities of the Licensee in relation to this Licence whereby the Licensor, the Director-General, the Department and the Crown in right of New South Wales shall be included as joint insured parties, such insurance to cover against all actions, suits, claims, demands, proceedings, losses, damages, compensation, costs, charges and expenses referred to in clause 11.2 (with the exception of clause 11.2.6c)) and 11.3 and clause 5.29 and elsewhere in this Licence;
- d) insurance against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the Licence Area; and
- e) such other special insurances as may be appropriate and required by the Licensor from time to time.

10.1.2 Before commencement of any works in relation to the Licence Area, the Licensee must in addition to any insurances referred to above ensure that there is effected and maintained a contract works insurance policy covering the usual risks including loss or damage to:

- a) the works (including any associated temporary works); and

- b) the Licence Area; and
- c) all materials and things brought into or in storage on the Licence Area by the Licensee or the Licensee's People for the purpose of the works; and
- d) all materials and things in storage off-site or in transit to the Licence Area; occurring during the period when the Licensee is responsible for their care.

10.1.3 The insurance cover referred to in clause 10.1.2 must be for an amount of not less than the full value of the works on a full reinstatement and replacement basis (including costs of demolition and removal of debris and an amount necessary to cover fees to all consultants), which amount must be approved by the Licensor.

10.2 Required Arrangements

The following provisions must apply to all policies of insurance referred to in clause 10.1:

- 10.2.1 all such policies of insurance shall be effected with an insurance office or company approved by the Licensor (which approval shall not be unreasonably withheld and the Licensor confirms that the insurance offices or companies with which the Licensor effected its insurance as at the Commencing Date was approved by it) and shall be for such amounts and cover such risks and contain such conditions, endorsements and exclusions as are reasonably acceptable to or required by the Licensor;
- 10.2.2 no exclusions, endorsements or alterations are to be made in or to any such policy of insurance unless first approved in writing by the Licensor (which approval shall not be unreasonably withheld);
- 10.2.3 all such policies with the exception of those taken out under clause 10.1.1d) are to be taken out in the names of the Licensor and the Licensee for their respective rights and interests;
- 10.2.4 duplicate or certified copies of all such policies and all renewal certificates and endorsement slips are to be lodged by the Licensee with the Licensor as soon as practicable on receipt by the Licensee;
- 10.2.5 the Licensee must provide full true and particular information to the office or company with which such policies are effected on all matters and things the

non-disclosure of which might in any way prejudice or affect any such policy or payment of any monies there under;

- 10.2.6 the Licensee must punctually pay all premiums and other monies payable in respect to all such policies on or before the due date for payment of the same and shall in respect to any such policy of insurance upon receiving a request from the Licensor to do so produce to the Licensor receipts for the payment of each premium and any other monies payable there under (or other proof of payment to the Licensor's satisfaction);
- 10.2.7 the Licensee must not do or permit to be done any act, matter or thing upon or in the vicinity of the Licence Area whereby any insurance policy may be vitiated or rendered void or voidable or (except with the written approval of the Licensor) whereby the rate of premium for any such insurance shall be liable to be increased;
- 10.2.8 the Licensee must include as a condition in all such policies, with the exception of those taken out under clause 10.1.1d), a requirement that the insurer notify the Licensor at least 30 business days before it terminates any insurance policy;
- 10.2.9 the Licensee must promptly provide the Licensor with a copy of any notice it receives from its insurer in respect to the termination of any of the policies under this clause, with the exception of those taken out under clause 10.1.1d);
- 10.2.10 all insurance agreements and endorsements (with the exception of limits of indemnity) named as insureds and operate as if there was a separate policy of insurance covering the Licensor and the Licensee for their respective rights and interests;
- 10.2.11 failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured;
- 10.2.12 the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
- 10.2.13 notice of a claim by any insured will be accepted by the insurer as notice by all insureds.

10.3 Licensor May Insure

In default of the Licensee effecting any or all of the insurances referred to in clause 10.1 the Licensor may effect such insurances and charge the Licensee for the costs of the premiums and the Licensee must upon demand reimburse the Licensor for such costs.

10.4 Licensor's Entitlement to Insurance Monies

In the event that the Licence Area are destroyed or damaged by fire, lightning, storm, tempest, impact or other occurrence the whole of the monies which shall be recovered or received for or in respect to any insurance policy referred to in 10.1.1 must be paid to the Licensor and subject to clause 10.5 may be retained by him or her for his or her own use absolutely.

10.5 Reinstatement

10.5.1 Total Destruction of an Improvement

In the event of an Improvement being totally destroyed or damaged so extensively as to render the repair of or making good such damage impractical or undesirable the following alternatives shall apply:

a) **First Alternative - Rebuild to Original Design**

The Licensee may and must if so required by the Licensor from the insurance monies available (and to the extent that the same may be insufficient, from its own monies) reinstate the Improvement, as soon as reasonably possible having regard to the Improvement to be reinstated, in accordance with the original design within two (2) years (to the extent that time frame is rendered impossible due to restrictions under the Law at the time or as otherwise agreed by the parties acting reasonably given the extent and scale of the damage) from the date of such damage or destruction. If the Licensee is to rebuild or reinstate the Improvement pursuant to this clause, the provisions of clause 6 applies.

b) **Second Alternative - Rebuilding to Different Design**

If the Licensor and the Licensee agree that the Improvement is to be rebuilt to a different design then the Licensee must from the insurance monies available and (to the extent the same may be insufficient) from its own monies proceed with the rebuilding of the Improvement, as soon as reasonably possible having regard to the Improvement to be re-built, in accordance with the agreed plans and

specifications and clause 6. The Licensee and the Licensor acknowledge that such different design will, if relevant to the nature of the Improvement, incorporate sleeping accommodation for the same number of Persons as permitted by this Licence for that Improvement unless the parties are prevented from so doing by statutory regulations and ordinances applicable at the time. Such rebuilding will be completed within two (2) years (to the extent that time frame is rendered impossible due to restrictions under the Law at the time or as otherwise agreed by the parties acting reasonably given the extent and scale of the damage) of the date of such destruction.

c) Third Alternative – Improvement not to be Rebuilt

If the Licensor and the Licensee agree that the Improvement need not be reinstated by the Licensee and the Second Alternative is not adopted the Licensee must promptly remove the remaining structures and any debris and restore the area to the satisfaction of the Licensor and all Relevant Authorities.

10.5.2 Partial Damage to an Improvement

In the event of an Improvement being partially destroyed or damaged the Licensee must, as soon as reasonably possible having regard to the Improvement to be repaired replaced or made good, from the insurance monies available and (to the extent that the same may be insufficient) from its own monies and in accordance with clause 6 repair, replace and make good the whole of the destroyed or damaged portion of the Improvement as nearly as possible to the condition in which it was immediately prior to such damage or destruction with such modifications as the Licensee may seek and the Licensor approve or as may be required by Relevant Authorities.

10.5.3 Timeframe for Reinstatement

If the Licensor notifies the Licensee that it requires the Licensee to reinstate the Improvements in accordance with clause 10.5.1a), or if the parties agree that clause 10.5.1b) applies, or if clause 10.5.2 applies, then the Licensee must carry out the reinstatement or rebuilding as soon as reasonably possible having regard to the Improvement to be reinstated or rebuilt, and:

- a) if the Licensee fails to commence or carry out the reinstatement or rebuilding within a reasonable time (having regard to the nature and extent of the damage or destruction and the time expected to commence and to carry out the necessary works) after allowing for all approvals from Consent Authorities, the

Licensor may notify the Licensee of its intention to determine this Licence; and

- b) unless the Licensee, after receiving that notice, proceeds with reasonable expedition and diligence to commence or carry out the necessary works, the Licensor may determine this Licence by giving not less than one month's notice to the Licensee. At the end of that second notice this Licence will be at an end.

10.5.4 Application of Insurance Monies

All monies received by the Licensor and the Licensee in settlement of any claim under the insurances referred to herein shall be applied in the following order of priority:

- a) first, in payment to the Licensor on account of expenditure by the Licensor in respect to any work due to be done by the Licensee but not commenced and completed within a reasonable time; and as to any balance;
- b) second, in payment to the Licensor of all expenditure whether direct or indirect associated with the completion of the Improvement or demolition and removal work; and as to any balance;
- c) third, in payment progressively to the Licensee in reimbursement of the Licensee's costs as work progresses in the rebuilding or demolishing and clearing or repair, replacement and making good as the case may be of the Improvement on the Licence Area such progress payments to be made within not more than 5 Business Days after receipt of insurance monies and details of the Licensee's costs aforesaid provided that a minimum of at least 10% of the amount of insurance monies held by the Licensor shall not be paid to the Licensee until final completion of all work to the Licensor's satisfaction; and as to any balance;
- d) fourth, such amount shall be credited to any other amounts owing by the Licensee to the Licensor under the provisions of this Licence; and as to any balance;
- e) fifth, such balance shall be equitably apportioned between the Licensor and the Licensee having regard to their respective interests in the Licence Area at the day immediately prior to the incident giving rise to the insurance claim and to the terms and conditions of this Licence.

10.6 Park Closures

The Licensee shall not be entitled to any compensation from the Licensor, the Director-General, the Department or the Crown in right of New South Wales or any abatement of Licence Fee for any loss or damage attributable to any period during which the Licence Area cannot be used under this Licence due to the closure of the Park by the Licensor or a Relevant Authority.

11 INDEMNITIES AND RELEASE

11.1 Acknowledgment

The Licensee acknowledges that the exercise of its rights under this Licence is at the risk of the Licensee.

11.2 Release

11.2.1 The Licensee releases to the full extent permitted by law the protected persons from all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of the Licensee's operation from, occupation or use of the Licence Area the subject of this Licence.

11.2.2 The Licensee's release under this clause continue after the termination, expiration or other determination of this Licence in respect to any matter or thing happening before such termination, expiration or determination.

11.2.3 In this clause:

'protected person(s)' means:

- a) the Licensor;
- b) the Director-General;
- c) the employees or officers of the Director-General;
- d) any other person acting under the direction or control of the Licensor or the Director-General for any purpose; and
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of the Licensee, financial or economic loss, loss of opportunity or other consequential loss of the Licensee, injury to or death of any person claiming through the Licensee of any kind and however sustained and whether sustained on or outside the Licence Area the subject of this Licence.

11.2.4 It is immaterial to the obligations of the Licensee under this clause that a claim or demand arises out of any act, event or thing that the Licensee is authorised or obliged to do under this Licence or that any time waiver or other indulgence has been given to the Licensee in respect to any such obligation under this Licence.

11.2.5 The obligations of the Licensee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person except as provided in subclause 11.2.6.

11.2.6 The obligations of the Licensee under this clause do apply to loss, damage, injury or death arising from or contributed to or occurring in connection with:

- a) the carrying out of any fire management activity by or on behalf of the protected persons;
- b) the failure to carry out any fire management activity by or on behalf of the protected persons; or
- c) any other act or omission of the Licensor or any protected person, whether or not negligent, in respect to the management of fire hazards in the Park.

11.3 Indemnity

11.3.1 The Licensee indemnifies and will keep indemnified the protected persons from and against all claims and demands as set out in this clause arising out of, in connection with, in respect to or as a consequence of:

- a) the Licensee's operation from, occupation or use of the Licence Area the subject of this Licence; or

- b) any wilful or negligent act, default or omission by the Licensee, the Licensee's employees or officers or any person acting under the control or at the direction of the Licensee either in the Licence Area the subject of this Licence or in the Park.

11.3.2 The Licensee's obligations under this clause continue after the termination, expiration or other determination of this Licence in respect to any matter or thing happening before such termination, expiration or determination.

11.3.3 In this clause:

'protected person(s)' means:

- a) the Licensor;
- b) the Director-General;
- c) the employees or officers of the Director-General;
- d) any other person acting under the direction or control of the Licensor or the Director-General for any purpose; and
- e) the Crown in right of New South Wales.

'Claims and demands' means all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses to which the protected persons or any one thereof is or may become liable in respect to loss of or damage to the fixtures or property of any person, financial or economic loss, loss of opportunity or other consequential loss of any person, injury to or death of any person of any kind and however sustained and whether sustained on or outside the Licence Area the subject of this Licence.

11.3.4 It is immaterial to the obligations of the Licensee under this clause that a claim or demand arises out of any act, event or thing that the Licensee is authorised or obliged to do under this Licence or that any time waiver or other indulgence has been given to the Licensee in respect to any such obligation under this Licence.

11.3.5 The obligations of the Licensee under this clause do not apply to the extent that the loss, damage, injury or death arises from or is contributed to by any wilful or negligent act, default or omission on the part of any protected person.

11.4 Licensee to Pay Compensation in Event of Disturbance to Others

11.4.1 The Licensee in the exercise of the rights hereby granted under this Licence will not:

- a) cause any undue interference or disturbance to any person, body, authority or visitor in or to the Park and in the event of any such interference or disturbance occurring the Licensee shall be solely responsible for compensation of the aggrieved party except and only to the extent the undue interference or disturbance arises from or is contributed to by any wilful or negligent act, default or omission on the part of the Licensor or its employees and agents;
- b) cause any undue interference or disturbance to any lessee, licensee or occupant in the Park or any person or persons lawfully claiming by, from, or under any such lessee, licensee or occupant and in the event of any activity originating on the Licence Area or any part thereof or any other activity carried out or controlled by the Licensee encroaching upon or interfering with or disturbing the Licence Area or occupation of any lessee, licensee or occupant in the Park as aforesaid or where such encroachment interference or disturbance has caused loss of business or income or has generally affected the quiet enjoyment of any lessee, licensee or occupant in the Park as aforesaid or any person or persons lawfully claiming by from or under any such lessee, licensee, or occupant the Licensee shall be solely responsible for compensation of the aggrieved party except and only to the extent the undue interference or disturbance arises from or is contributed to by any wilful or negligent act, default or omission on the part of the Licensor or its employees and agents;
- c) cause any material damage or disturbance to any building structure erection, road, car-park, pipeline, powerline, cable or other installation in the Park and in the event of any such damage or disturbance the Licensee shall immediately make good such damage or disturbance or pay compensation in respect thereof to the satisfaction of the Licensor and (where applicable) of the appropriate person body or authority claiming an interest or title in any of the aforesaid installations,

AND FURTHER in the event of any interference, disturbance or damage as

referred to in this sub-clause occurring the Licensee shall fully indemnify the Licensor against any actions or claims in accordance with the provisions of sub-clause 11.3 of clause 11 of this Licence (including, for the avoidance of doubt, the exception in clause 11.3).

- 11.4.2 The Licensor and the Licensee agree that this clause 11.4 is not intended to derogate from or diminish the ability of the Licensee to undertake the full range of activities contemplated by clause 5.1.1 of this Licence in accordance with standard operating procedures, restrict the time periods of normal resort operational activity as existing at the Commencement Date, or otherwise unreasonably hinder the purpose of this Licence in providing to the public a world class alpine tourist and visitor resort.

12 ASSIGNMENT

12.1 General Restrictions on Assignment

Subject to this Licence, the Licensee must not deal with, assign, transfer (legal, equitable or economic interest), mortgage, charge, demise, licence or part with possession of the Licence Area or any part thereof or deal with, assign, transfer, mortgage, charge, demise or create any legal equitable or economic interest in the Licence ("*Transfer*") or by any act or deed procure any of the foregoing without first:

- 12.1.1 producing to the Licensor such particulars and information, documentary or otherwise to the Licensor's reasonable satisfaction, evidencing or relating to the transaction and the proposed assignee or incoming party as may be required by the Licensor in particular as regards the proposed assignee's or incoming party's ability and financial capacity to conduct the business of the Licensee on the Licence Area and perform the Licensee's obligation under this Licence;
- 12.1.2 complying with all reasonable requirements of the Licensor in respect to such transaction and the Licensee's application for consent thereto;
- 12.1.3 complying with any covenant or essential condition of this Licence and any other leases and licences relating to the Park, of which the Licensee is the lessee or licensee (including the Perisher Ski Area Lease), which is in default at the date of the Licensee's application;

- 12.1.4 procuring lodgement with the Licensor of a Bank Guarantee by or for the proposed assignee or incoming party of its performance of the Licensee's covenants under this Licence as the Licensor may require;
- 12.1.5 receiving the prior written consent of the Licensor thereto, such consent to be given in the absolute discretion of the Licensor;
- 12.1.6 procuring the proposed assignee or incoming party to enter into a deed with the Licensor and Licensee in the form reasonably required by the Licensor, which includes in the case of an assignment or Transfer:
- a) a provision that the proposed assignee or incoming party promises to be bound by this Licence as if the proposed assignee or incoming party was the Licensee;
 - b) an acknowledgement by the Licensee that it is bound to comply with this Licence up to and including the Transfer Date;
 - c) an acknowledgment by the Licensee that it remains liable to the Licensor for any Breach of this Licence occurring on or before the Transfer Date even if the Licensor does not discover a Breach or make a claim in connection with the Breach until after the Transfer Date;
 - d) an acknowledgement by the Licensee that the indemnities set out in the Licence by the Licensee in favour of the Licensor will continue to apply in respect of claims and liabilities arising on or before the Transfer Date so that the Licensor will at all times continue to be indemnified by the Licensee in accordance with the terms and conditions of those indemnities;
 - e) a release of the Licensor by the Licensee from the Licensor's obligations to the Licensee on and from the Transfer Date; and
 - f) subject to clause 12.1.6c), a release of the Licensee by the Licensor from the Licensee's obligations to the Licensor on and from the Transfer Date;
- 12.1.7 procuring the proposed assignee or incoming party to enter into a deed of novation of the Deed of Agreement for Perisher Ski Area with the Licensor and Licensee in the form reasonably required by the Licensor;
- 12.1.8 seeking the consent of the Licensor to the assignment of all the leases and

licences relating to the Park, of which the Licensee is the lessee or licensee, to the proposed assignee or incoming party including but not limited to the Perisher Ski Area Lease; and

- 12.1.9 procuring payment of the Licensor's reasonable legal and administrative costs of and incidental to the giving of such consent.

12.2 Terms of sublicences

Any sublicence entered into by the Licensee must be made in such terms as to enable the Licensee to freely discharge the obligations imposed upon the Licensee by this Licence.

12.3 Company Changes

- 12.3.1 For the purposes of clause 12.1, if the Licensee is a corporation which is not listed on any recognised stock exchange, or if applicable, the holding company of which corporation is not listed on any recognised stock exchange, then any Change in Control of the corporation will be deemed a Transfer of this Licence. The parties agree and acknowledge that none of the members of the CPH Group, the members of the Transfield Group or the Licensee are a corporation listed on any recognised stock exchange as at the date of this Licence.

- 12.3.2 Notwithstanding anything else in this clause 12.3, subject to written notification being provided to the Licensor within 20 Business Day of a Change in Control, the following will not constitute or be deemed a Transfer of this Licence:

- a) any Change in Control equal to or less than 10% in aggregate of the Licensee's shareholding or any company's shareholding that makes up the CPH Group or the Transfield Group over the Term of this Licence;
- b) subject to clause 12.3.2(c), any change within the CPH Group's shareholding or any change with the Transfield Group's shareholding for the purposes of corporate reconstruction; or
- c) any transfer of shares in the Licensee between the CPH Group and the Transfield Group that is less than or equal to 27% in aggregate of a corporation's shareholding over the Term of this Licence.

- 12.3.3 The Licensee acknowledge that as at the date of this Licence the corporate structure of the Licensee is as disclosed in Schedule 4.

12.3.4 The Licensee acknowledge and agree to provide the Licensor with an updated chart of the Licensee's corporate structure similar to that disclosed in Schedule 4 within 20 Business Day's request by the Licensor.

12.3.5 In this clause 12:

Affiliate means with respect to any person, any member of the PBPL Group to which it belongs.

Change in Control means in respect of a corporation:

- a) the person or persons that have Control of that corporation as at the date of this Licence cease(s) to have Control; or
- b) a person or persons who did not have Control of that corporation as at the date of this Licence gain(s) Control of that Corporation; or
- c) there is a change (directly or indirectly) in the legal, beneficial or economic interests in this Licence, the Licensee or any trust that has an interest in this Licence.

A person "**Controls**":

- (c) a body corporate or other entity if:
 - (i) the person (alone or with its Affiliates) determines the composition of the board of directors or managers (or a similar body or person) of the entity;
 - (ii) the board of directors or managers (or similar body or person) of the entity is accustomed to act in accordance with the instructions, directions or wishes of the person; or
 - (iii) the person holds or owns (alone or with its Affiliates):
 - (A) the majority of the issued voting shares of the entity;
 - (B) the majority of the issued voting shares or other voting interests of the Ultimate Holding Company of the entity; or
 - (C) the majority of any securities or other rights granted by the entity entitling holders to distributions based on the profits, earnings or net liquidation proceeds of the entity; and

- (d) a trust if:
- (i) the person is the trustee, manager, responsible entity, sole general partner, sole managing partner or adviser of the trust (provided however that the term "adviser" means an entity which provides a trust with advice in relation to the management of investments in the trust which, other than in relation to actually making decisions to implement such advice, is substantially the same as the services which would be provided by a manager of the trust and does not include the provision of corporate advisory or similar advice in the capacity of a corporate or financial adviser);
 - (ii) the composition of the board of directors or managers of any corporate trustee of the trust is determined by the person (alone or with its Affiliates);
 - (iii) the board of directors or managers of any trustee of the trust is accustomed to act in accordance with the instructions, directions or wishes of the person; or
 - (iv) the person holds or owns (alone or with its Affiliates):
 - (A) the majority of the issued voting shares of any corporate trustee of the trust; or
 - (B) the majority of the issued voting shares of the ultimate holding company of any corporate trustee of the trust,

and the word "**Controlled**" has a corresponding meaning.

PBPL Group means:

- (a) Consolidated Press Holdings Limited ABN 64 008 394 509;
- (b) a Related Body Corporate of Consolidated Press Holdings Limited; and
- (c) any Ultimate Holding Company of Consolidated Press Holdings Limited and all Subsidiaries of either Consolidated Press Holdings Limited or the Ultimate Holding Company of Consolidated Press Holdings Limited.

Related Body Corporate has the meaning given in the Corporations Act.

Transfer Date means 11.59 pm on the date on which the Transfer becomes binding on each of the parties.

Transfield Group means:

- (a) Transfield Pty Ltd ABN 80 000 305 813;
- (b) a Related Body Corporate of Transfield Pty Ltd; and
- (c) any Ultimate Holding Company of Transfield Pty Ltd and all Subsidiaries of either Transfield Pty Ltd or the Ultimate Holding Company of Transfield Pty Ltd.

Ultimate Holding Company has the meaning given in the Corporations Act.

Subsidiary has the meaning given in the Corporations Act.

12.4 Transfer of Perisher Ski Area Lease

12.4.1 In the event that the Perisher Ski Area Lease is to be Transferred by the lessee of the Perisher Ski Area Lease with the approval of the lessor in accordance with the terms of the Perisher Ski Area Lease then the Licensor must offer and the proposed assignee must accept an assignment or transfer of this Licence. A Transfer of this Licence will only be effective where there has been a simultaneous transfer of the Perisher Ski Area Lease.

13 DEFAULT AND TERMINATION

13.1 Licensee's Obligation to Yield up Licence Area

The Licensee agrees, immediately upon the expiry or legally effective termination of this Licence, to yield up possession and control over the Licence Area to the Licensor, in the condition and state of repair as required under this Licence.

13.2 Essential Terms of this Licence

13.2.1 The following clauses are essential terms of this Licence:

- a) the covenant to pay Licence Fee, Community Services Charge, Outgoings and charges throughout the Term of this Licence at a date not later than twenty-eight (28) days after the due date for the payment of each yearly instalment of Licence Fee (clause 3);
- b) the covenant to continuously provide and keep up to date a Bank Guarantee (clause 3.6);

- c) the covenant dealing with the use of the Licence Area (clause 5);
- d) the covenant dealing with assignment and subletting (clause 12); and
- e) any further terms that are stated to be essential terms in a Schedule to this Licence.

13.2.2 This clause does not limit other terms being essential terms in this Licence.

13.3 Repudiation of this Licence

13.3.1 The Licensee repudiates this Licence if the Licensee is unwilling or unable to perform an essential term of this Licence or otherwise defaults under this Licence.

13.3.2 The Licensor may, in his or her absolute discretion, not accept the Licensee's repudiation of this Licence in which case this Licence will not be terminated. Where the Licensee has repudiated this Licence and the Licensor has not accepted such repudiation the Licensee must perform all the obligations contained in this Licence and remains liable to the Licensor for any loss or damage to person or property caused by actions or omissions that constituted the repudiation. Further, any non-acceptance of the Licensor of the Licensee's repudiation does not amount to a waiver of the Licensor's right to accept any subsequent repudiation by the Licensee.

13.4 Termination of Licence for Default

Each of the following constitutes a default by the Licensee under this Licence:

- 13.4.1 the Licence Fee hereby reserved or any part thereof is unpaid for a period of twenty-eight (28) days after any day on which the same ought to have been paid in accordance with this Licence (whether or not a formal demand has or has not been made); or
- 13.4.2 any serious, persistent and continuing Breach by the Licensee of its covenants and obligations under this Licence; or
- 13.4.3 failure to comply with an essential term of this Licence; or
- 13.4.4 (the Licensee being a company) an order is made or a resolution is effectively passed for the winding up of the Licensee (except for the purpose of

reconstruction or amalgamation with the written consent of the Licensor which consent shall not be unreasonably withheld); or

- 13.4.5 the Licensee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Licensee and is not discharged within thirty (30) days; or
- 13.4.6 the Licensee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankrupts; or
- 13.4.7 the termination through a breach by the Licensee of the Deed of Agreement for Perisher Ski Area, the Perisher Ski Area Lease, Deed of Surrender or any other leases or licences relating to the Park, of which the Licensee is the lessee or licensee but only to the extent such leases or licences were granted pursuant to the provisions of this Licence or the Deed of Surrender.

13.5 Termination after Default

The Licensor may terminate this Licence after a default under clause 13.4 by the Licensee after the Licensor has served a legally effective notice of Breach of covenant in accordance with clause 13.6 and to effect the termination of this Lease, the Licensor may:

- 13.5.1 re-enter and take possession of the Licence Area, using reasonable force to secure possession; and/or
- 13.5.2 serve on the Licensee written notice terminating this Licence; and/or
- 13.5.3 institute proceedings for possession against the Licensee; and/or
- 13.5.4 take such actions and/or proceedings as the Licensor may deem appropriate.

13.6 Notice of Breach of Covenant

- 13.6.1 The Licensor must not terminate this Licence unless the Licensor serves on the Licensee a notice:
 - a) specifying the particular Breach complained of; and
 - b) if the Breach is capable of remedy, requiring the Licensee to remedy the

Breach; and

- c) in case the Licensor claims compensation in money for the Breach, requiring the Licensee to pay such compensation.

13.6.2 If the Licensee fails within a reasonable time (as determined by the Licensor having regard to the nature of the Breach) of receipt of that notice by the Licensee to remedy the Breach to the reasonable satisfaction of the Licensor, if it is capable of remedy, or fails to pay that compensation where compensation in money is required to be paid, then the Licensor may terminate this Licence in accordance with clause 13.5.

13.6.3 On each and every occasion on which the Licensee omits or neglects to pay any money or to do or effect anything which the Licensee has herein covenanted to pay, do or effect within the period it was required, so to pay or do then the Licensor may (without prejudice to any rights and powers arising from such default) pay such money or do or effect such thing as if he or she was the Licensee and for that purpose the Licensor, his or her servants, agents and contractors may enter upon the Licence Area and there remain for the purpose of doing or effecting any such thing AND the Licensor may recover from the Licensee the amount of reasonable expenses and costs of any such action and a certificate or notice by the Licensor as to any amount payable by the Licensee pursuant to this clause providing details of the expenses and costs and served upon the Licensee shall be prima facie evidence thereof.

13.7 Damages

13.7.1 a) In the event that the Licensee's conduct (whether acts or omissions) constitutes:

- i) a repudiation of this Licence (or of the Licensee's obligations under this Licence);
- ii) a Breach of any Licence covenant; or
- iii) a Breach of an essential term of this Licence,

the Licensee covenants to compensate the Licensor for the loss or damage suffered by the Licensor as a consequence of the repudiation or Breach, whether this Licence is or is not terminated for the repudiation, Breach or

on any other ground.

- b) The Licensor's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Licence to which the Licensor is entitled at Law.
- c) The Licensor is entitled to recover damages against the Licensee in respect to the repudiation or Breach of covenant or essential term for the loss suffered by the Licensor in connection with such repudiation or Breach (including reasonable legal costs and disbursements) during the Term of this Licence, as well as other monies that would have become due and payable to the Licensor under this Licence for the unexpired residue of the Term of this Licence.
- d) The Licensor's entitlement to recover damages is not affected or limited by any of the following:
 - i) if the Licensee abandons or vacates the Licence Area;
 - ii) if the Licensor elects to re-enter or to terminate the Licence;
 - iii) if the Licensor accepts the Licensee's repudiation; or
 - iv) if the parties' conduct constitutes a surrender by operation of Law.

13.7.2 The Licensor's entitlement to damages is in addition to:

- a) the entitlement to recover Licence Fee, Rates, Taxes, Outgoings and operating expenses until the date of expiry or termination of this Licence;
- b) interest on payments in accordance with this Licence; and
- c) costs of any Breach, including the costs of termination.

13.7.3 The Licensor must take all reasonable steps to mitigate his or her loss.

13.8 Power of Attorney by Licensee to Licensor

13.8.1 The Licensee appoints the Licensor (and its successors and assigns, being the owner of the Licence Area for the time being) the Licensee's attorney with the powers contained in this clause.

13.8.2 This power of attorney is:

- a) irrevocable by the Licensee; and
- b) granted by the Licensee for valuable consideration (the grant of this Licence by the Licensor), to secure the performance of the Licensee's obligations and the Licensor's proprietary interest over the Licence Area.

13.8.3 The Licensor as the Licensee's attorney and in the name and on behalf of the Licensee may:

- a) remove from the Licence Area, store and sell, any of the Licensee's Fixtures or any other property owned by the Licensee, left on the Licence Area by the Licensee, after the Licensee has vacated the Licence Area and this Licence is terminated or has expired;
- b) surrender this Licence, after:
 - i) the Licensor has become entitled to terminate this Licence; and
 - ii) the Licensee vacates or abandons the Licence Area; or
 - iii) the Licensor terminates this Licence by serving notice of termination; and
- c) withdraw any caveat lodged by the Licensee in respect to this Licence, after the Licensor effectively terminates this Licence.

13.8.4 The Licensor may:

- a) act as attorney under this clause during the continuance of this Licence and during the period of the six (6) months after the termination of this Licence;
- b) register this Licence (or Licence provision) as a power of attorney, at any time including after the termination of this Licence, if that is required for the exercise of any power; and
- c) ratify and confirm any power when exercised under this clause, as attorney and agent for the Licensee.

13.9 Waiver

After the Licensee is in default or Breach under this Licence, including in Breach of an essential term of this Licence, the demand or acceptance from the Licensee by the Licensor of arrears or of any late payment of Licence Fee, Taxes, Outgoings, charges, operating expenses, or other financial obligations does not:

- 13.9.1 preclude the Licensor from exercising any rights or remedies under this Licence, including enforcing or terminating this Licence;
- 13.9.2 constitute a waiver of the essentiality of the Licensee's obligation to make those payments; or
- 13.9.3 waive the Licensee's continuing obligation to make those payments during the Term.

13.10 Licensor's Entitlements after Licensee Vacates during Term

If the Licensee vacates or abandons the Licence Area during the Term of this Licence in Breach of the Licensee's obligations under this Licence, the Licensor may:

- a)
 - i) accept the keys to the Improvements on the Licence Area from the Licensee;
 - ii) renovate, restore and clean the Improvements on the Licence Area;
 - iii) change the locks and secure such Improvements; and
 - iv) permit prospective tenants to inspect the Licence Area; and
- b) take any action in paragraph a) without the Licensor's conduct constituting:
 - i) a re-entry or termination of this Licence; or
 - ii) the acceptance of a surrender of this Licence.

13.11 Removal of Improvements

- 13.11.1 Notwithstanding anything in clause 7.1 of this Licence, the Licensor, at his or her election, may by notice given to the Licensee at any time within ninety (90) days

after the expiration or termination of this Licence require the Licensee within the time stated in such notice to remove any of the Improvements and/or to fill in all or any excavations made by the Licensee and in such case the Licensee must in accordance with such notice effect such removal and fill in such excavations in accordance with clause 7.4.

13.11.2 The Licensee must not cause any damage to standing timber or to the surface of the ground while removing the Improvements and must leave the Licence Area clean and tidy after the removal.

13.11.3 The Licensee must make good to the satisfaction of the Licensor any damage caused to the Licence Area or Park as a result of the removal of the Improvements and any earthworks and correct any condition likely to result in soil erosion to the Licence Area or Park.

13.11.4 The Licensee is responsible for and indemnifies the Licensor in respect to any loss or damage caused by the Licensee or the Licensee's People arising from the removal of the Improvements.

13.12 Licensee to Accept Responsibility for Licensee's People

The Licensee accepts full responsibility for the acts and omissions of the Licensee's People within the Licence Area and in the event of Breach by any such person or body or any covenant term or condition of this Licence the provisions of this Licence shall apply against the Licensee as if such Breach was a Breach by the Licensee itself and the Licensee shall remedy any such Breach or where applicable, indemnify the Licensor in respect to such Breach.

13.13 Native Title

13.13.1 The Licensee acknowledges that this Licence is validly granted under Part 2, Division 3, Subdivision J of the *Native Title Act 1993* (Cth) (CNTA), but acknowledges that in the event that native title rights and interests are, or would be, affected by the grant of this Licence and this Licence is not authorised by Subdivision J, or otherwise under the CNTA, such may be invalid within the meaning of the CNTA. If the Licence is invalid the parties agree that the valid parts of this Licence continue in force unaffected by the invalid parts.

13.13.2 If there is or is likely to be a native title claim over or in relation to the Licence

Area or Park, the Licensee must continue to perform the obligations of this Licence and must carry on the business or other operation of the Licence Area for the Permitted Use unless otherwise:

- a) directed by the Licensor;
- b) ordered by any Court or Tribunal; or
- c) required by Law.

14 PROCEDURAL MATTERS

14.1 Time for Determining Rights and Obligations

This Licence for the purpose of determining the rights and obligations of the parties shall be construed as if it had been executed on the date from which the Term is expressed to run.

14.2 Variation or Waiver

None of the provisions of this Licence shall be taken either at law or in equity to have been varied waived discharged or released by the Licensor unless by his or her express consent in writing. No waiver by the Licensor of any Breach of any condition contained or implied in this Licence shall operate as a waiver of another Breach of the same or of any other condition in this Licence.

14.3 Provisions to be Construed as Covenants

Such of the provisions and conditions herein contained as require or prescribe anything to be done or not to be done by the Licensee shall in addition to being read and construed as conditions of the Licence hereby granted be also read and construed as covenants and agreements whereby the Licensee for itself and its assigns covenants with the Licensor to observe and perform such provisions and conditions.

14.4 Consents Permissions or Approvals

Where anything in this Licence may be done with the approval, permission or consent of the Licensor (including where such approval, permission or consent may be revoked by the Licensor) the Licensor may:

- 14.4.1 unless otherwise expressly provided in this Licence, give, withhold or revoke his or her approval, permission or consent in his or her unfettered discretion; and

14.4.2 impose conditions on that approval, consent or revocation.

Unless otherwise provided the consent, permission or approval may be given by the Director-General or an Authorised Officer.

14.5 Opinions by Licensor

Any opinion to be formed by the Licensor for the purposes of this Licence may be formed by the Licensor on such grounds and material as the Licensor determines to be sufficient unless otherwise especially provided in this Licence.

14.6 Licensee Not Agent of Licensor

The Licensee will not directly or indirectly hold out or permit to be held out to any member of the public any statement act deed matter or thing indicating or tending to indicate that the Licence Area or any business conducted thereon is being conducted managed or supervised by the Licensor, the Director-General, the Department or the Crown in right of New South Wales nor shall the Licensee act as or represent itself to be the servant or agent of the Licensor, the Director-General, the Department or the Crown in right of New South Wales.

14.7 Communication with Licensee

The Licensee's contact details are set out at Item 7 of the Reference Schedule. The Licensee must at all times inform the Licensor of any amendment to the contact details set out at Item 7 of the Reference Schedule as soon as practicable after the Licensee's contact details have been changed.

14.8 Notices

Any notice or other communication to be given under this Licence must be:

- 14.8.1 in writing;
- 14.8.2 served on the Licensee signed by an Authorised Officer for the time being of the Licensor; and
- 14.8.3 forwarded by post or facsimile or left addressed to the Licensee at the address set out at Item 6 of the Reference Schedule or the principal office of the Licensee last known to the Licensor as advised in writing by the Licensee,

and shall be sufficiently served on the Licensor if addressed to the Licensor and left at or sent by post or facsimile addressed to the Licensor at the Licensor's address specified in this

Licence at Item 8 of the Reference Schedule or such other address that the Licensor may notify to the Licensee from time to time. A notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post and a notice sent by facsimile shall be deemed to be given upon confirmation of the transmission.

14.9 Costs of Licence

The Licensee must pay:

- 14.9.1 the Licensor's reasonable legal costs and all duties fees charges and expenses of or incidental to:
- a) the preparation completion stamping and registration of the Deed of Agreement for Perisher Ski Area, Perisher Ski Area Lease, Deed of Surrender and this Licence; and
 - b) any variation thereto; and
 - c) any application for the consent of the Licensor hereunder, and of or incidental to any Breach by the Licensee hereunder, and of or incidental to the exercise or attempted exercise of any right power privilege authority or remedy of the Licensor hereunder; and
 - d) any new or future leases or licences granted pursuant to the Deed of Agreement for Perisher Ski Area, Perisher Ski Area Lease, Deed of Surrender and this Licence;
- 14.9.2 the fees of all professional consultants properly incurred by the Licensor in consequence of or in connection with any Breach by the Licensee hereunder;
- 14.9.3 all expenses reasonably incurred by the Licensor in any entry inspection examination consultation or the like which discloses a Breach by the Licensee of any provision of this Licence;
- 14.9.4 all expenses reasonably incurred by the Licensor in the examination of plans drawings and specifications for any building structure or improvement constructed or to be constructed or other work to be carried out on the Licence Area and the inspection thereof both during and after completion;
- 14.9.5 all surveys, plans, identification surveys and site valuation fees incurred by the Licensor in connection with the Licence Area for the purposes of this Licence

including valuation fees incurred by the Licensor in connection with the Licence Area for any Licence Fee review;

14.9.6 any stamp duty and registration fees and any related fines and penalties payable as a result of this Licence; and

14.9.7 all costs of carrying out any requirement or obligation imposed upon the Licensee by this Licence.

14.10 Authorities

14.10.1 The Licensee must apply for and take all steps required to obtain all such authorities and licences or renewals thereof as may be necessary for the proper conduct of the Permitted Use on the Licence Area and the Licensee will not do or suffer to be done any act matter or thing whereby any such authority or licence may be or become liable to be forfeited or suspended or the renewal thereof refused.

14.10.2 The Licensee must provide to the Licensor copies of any documentation and certificates from the Relevant Authorities evidencing the grant of such authorities or licences obtained by the Licensee in accordance with clause 14.10 within a reasonable time after written demand by the Licensor. The Licensor acknowledges that the Licensee will only be required to provide copies of each authority or licence once in each year of the Term except where the renewal or expiration of such authority or licence granted by the Relevant Authority will expire within a period of less than 12 months, in which case the Licensor may require the Licensee to provide a copy of the relevant documentation at any time after the renewal or expiration date.

14.10.3 The Licensee must advise the Licensor within a reasonable time whenever it is in breach of, or is refused by a Relevant Authority, the authorities or licences which it is required to obtain in accordance with clause 14.10.1 and provide to the Licensor copies of all breach or refusal notices forwarded to the Licensee by a Relevant Authority.

14.10.4 The Licensee must at the expiration or sooner determination of this Licence sign and give such notice or notices and allow such notice or notices of renewal or transfer of any licence to be affixed to the Licence Area and generally do and perform all such further acts matters and things as shall be necessary to enable

the Licensor or any person authorised by him or her to obtain the renewal of any licence or licences or any new licence or licences or the transfer of any licence or licences then existing and in force.

14.11 Not used

14.12 Not used

14.13 Disclosure of Information

14.13.1 The Licensee acknowledges that the Licensor may be required under the Act to maintain a register on which certain information concerning this Licence is to be recorded and made publicly available and consents to the disclosure of such information if required by the Act.

14.13.2 If required by the Act, the Licensee agrees that the Licensor may after consulting with the Licensee, but without the consent of the Licensee, disclose to an incoming lessee of the Licence Area such financial information of the Licensee as has been provided to the Licensor by the Licensee but only for the purposes of disclosing to any incoming lessee the nature and scope of the commercial operation conducted on the Licence Area by the Licensee.

15 OPTION

15.1 Further Licence

15.1.1 This clause 15 operates only if at Item 9 of the Reference Schedule a Further Term is identified.

15.1.2 If the Licensee wishes to take a lease of the Licence Area for any Further Term specified at Item 9 of the Reference Schedule and:

- a) not less than twelve (12) months and not more than twenty-four (24) months before the expiration of the then current Term gives notice in writing to the Licensor to that effect and at the same time gives, and is entitled to give, the relevant notices required under the Perisher Ski Area Lease and all other leases and licences relating to the Park, of which the Licensee is the lessee or licensee, exercising the option to renew under the

Perisher Ski Area Lease and all those leases and licences; and

- b) as at the date of the notice the Licensee is not in subsisting breach of an essential term of this Licence or such other form of Breach as to constitute a default under clause 13.4 such that the Licensor has served a notice in respect of such default under clause 13.6

then the Licensor must grant the Further Licence for the Further Term at an annual Licence Fee as determined by the Licence Fee Schedule and otherwise on the same conditions as are contained in this Licence, except as provided by clause 15.2.

- 15.1.3 Notwithstanding anything else in this clause 15, if the Licensee exercises its option for a Further Term under the Perisher Ski Area Lease the Licensee is deemed to have exercised at the same time its option for a Further Term under this Licence.

15.2 Terms of Further Licence

The Further Licence must be amended as follows:

- 15.2.1 the Commencing Date shall be the date immediately following the Terminating Date of this Licence;
- 15.2.2 the Terminating Date shall be inserted, given the term of the Further Licence;
- 15.2.3 the number of Options contained in the Reference Schedule shall be reduced by one; and
- 15.2.4 if no further Options for a Further Term are stipulated at Item 9 of the Reference Schedule, clause 15.1 and 15.2 shall be omitted from the Further Licence.

16 DISPUTE RESOLUTION

16.1 Notification

If a dispute or difference between the Licensor and the Licensee arises out of or in connection with this Licence (except in respect of a dispute or differences relating to a review of the Licence Fee under Schedule 2), the subject matter of this Licence, (including, without limitation, a dispute concerning a claim in tort,

under statute, for restitution based on unjust enrichment, or for rectification or frustration), then either party may give to the other party a notice of dispute in writing identifying and providing details of the dispute.

16.2 Meeting of Senior Representatives

Within 21 Business Days after receipt of a notice under clause 16.1, senior management representatives of the parties must meet and within 15 Business Days attempt, acting in good faith, to resolve the dispute or difference. The reply may reject the whole claim or may reject it in part and accept it in part and may in either case make a without prejudice offer of settlement of the claim. If the party to whom a notice of dispute is given does not reply within this 21 Business Day period that party is deemed to have rejected the claim.

16.3 Meeting of Chief Executive Officers

If the dispute or difference remains unresolved after the procedure in clause 16.2 has been followed, the persons designated as Chief Executive Officers (or an equivalent if no such position exists) of both parties must meet promptly at the request of either party and within 21 Business Days attempt, acting in good faith, to resolve the dispute or difference.

16.4 Settlement of dispute

If the party making the claim remains dissatisfied after the meeting convened under clause 16.3 to settle the dispute, then the dispute may be submitted to an expert agreed on between the parties.

16.5 Expert Determination

Failing agreement to the contrary, where any dispute is referred for determination the expert must be appointed by the President of whichever one of the following institutes or associations as is appropriate in the circumstances. If the parties cannot agree on which institute or association is appropriate in the circumstances either party may refer the selection of the institute or association of the expert to the President in clause 16.5h) to select the most appropriate President. The institutions or associations from which the expert may be appointed are:

- a) if an architect:
by the President for the time being of the Royal Australian Institute of

Architects, New South Wales Chapter; or

- b) if a valuer:
by the President for the time being of the Australian Property Institute, New South Wales Division; or
- c) if an expert in insurance:
by the President for the time being of the Insurance Institute of New South Wales; or
- d) if a real estate agent:
by the President for the time being of the Real Estate Institute of New South Wales; or
- e) if a quantity surveyor:
by the President for the time being of the Australian Institute of Quantity Surveyors, New South Wales Division; or
- f) if a barrister:
by the President for the time being of the Bar Association of New South Wales; or
- g) if an accountant:
by the President for the time being of the Institute of Chartered Accountants, New South Wales Division; or
- h) if a mediator:
by the President for the time being of the New South Wales Law Society Inc.

16.6 Expert not an Arbitrator

The person agreed or appointed is to act as an expert and not as an arbitrator.

16.7 Written Submissions

Both parties are entitled to make written submissions to the expert so appointed upon the matter the subject of the dispute.

16.8 Best Endeavours

When any dispute or difference referred to in this clause has been referred for

determination the parties will each use their best endeavours to make available to the expert all facts and circumstances which the expert may require in order to settle or determine such dispute or difference and shall ensure that their respective employees agents or consultants are available to appear at any hearing or enquiries called for by the expert.

16.9 Final determination of Expert

The parties agree that the final determination by the expert is final and binding upon them except in the case of:

- a) a manifest error of fact or in the case of a matter of law on the fact of the determination; or
- b) where the determination involves a cost (excluding the costs incurred by a party in the course of the mediation or determination) to either party (whether by way of compensation or the carrying out of work) exceeding \$500,000.00 (adjusted annually by the CPI Rate) and, within 20 Business Days of notification of the determination, either party has objected to such determination by written notice to the other party and the expert,

in either of which circumstances the final determination will not be final and binding, and a party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

16.10 Continue to Perform

Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Licence.

16.11 Summary Relief

Nothing will prejudice the right of a party to institute proceedings to enforce payment due under the Licence or to seek injunctive or urgent declaratory relief in respect of a dispute under this clause 16 or any matter arising under this Licence.

17 FUTURE INFRASTRUCTURE

17.1 Notification of Development Application

- a) The Licensee agrees and acknowledges that:
 - i) it must, where required by Law, seek the consent of the landowner under the Environmental Planning and Assessment Act 1979 (NSW) or any other applicable Law prior to lodging the development application in respect of the Future Infrastructure; and
 - ii) where the consent of the Licensor is required for the lodgement or processing of the development application, such consent may or may not be granted by the Licensor, at its discretion, as landowner and not as the Relevant Authority.

- b) If at any time during the Term:
 - i) the Licensee proposes to use land within the Licence Area for the purposes of constructing and occupying buildings, improvements, infrastructures and other fixtures of a permanent nature (**Future Infrastructure**) in connection with the Perisher Range Resorts; and
 - ii) the Licensee seeks development consent under the Environmental Planning and Assessment Act 1979 (NSW) or any other applicable Law for the Future Infrastructure,

the Licensee must notify and provide a copy of the application for development consent to the Licensor of the proposed Future Infrastructure simultaneously with the lodgement of the application for development consent.

- c) The Licensor may require the Licensee to provide clarification in respect of any matters reasonably required by the Licensor in respect of understanding the Licensee's proposal to construct the Future Infrastructure and the Licensee must use all reasonable endeavours to provide any such information.

- d) The parties agree that:
 - i) the Licensee will not be required to obtain the grant of a lease from the Licensor for the following Future Infrastructures pursuant to this clause 17:

- (A) formed vehicle tracks accessing lease areas and lockable boom gates on those roads, and walking and mountain bike tracks;
- (B) culverts;
- (C) weather stations, aerals and associated electronic equipment;
- (D) temporary storage containers;
- (E) slopeworks including drainage, tree, vegetation and rock removal;
- (F) permanent and temporary safety nets;
- (G) winch grooming anchor points;
- (H) flagpoles;
- (I) bridges - skier and vehicle;
- (J) sewer pipes, underground snowmaking, power, water and communications cables;
- (K) snowmaking guns and their footings;
- (L) snow fences;
- (M) directional, information and advertising signs;
- (N) portable lifts - rope tows and magic carpets;
- (O) terrain park infrastructure such as boxes, rails, stairs and ramps;
- (P) operational huts under 15 square metres - lift operators, ski patrol, race, communications, minor pump stations and any other purposes related to the operation of an alpine resort;
- (Q) minor water storage facilities for either water supply and snowmaking under 550,000 litres in volume;
- (R) water pumping facilities under 15 square metres; and
- (S) other minor infrastructure associated with the operation of an alpine resort; and

- ii) the Licensee must, where required by Law, seek development consent under the Environmental Planning and Assessment Act 1979 (NSW) or any other applicable Law in respect of the Future Infrastructures listed in clause 17.1d)i).

17.2 Licensee request for lease

Subject to the Licensee meeting the requirements of clause 17.1, if the Licensee has received development consent under the Environmental Planning and Assessment Act 1979 (NSW) or any other applicable Law in respect of the proposed Future Infrastructure, the Licensee may request the Licensor to grant a

lease registrable at the Department of Lands to the Licensee for such land constituting the footprint and curtilage for that Future Infrastructure provided the Licensee submit to the Licensor at the same time a plan in registrable form identifying the land required by the Licensee (Future Lease).

17.3 Licensor to consider

The Licensor agrees to consider reasonably any request by the Licensee for a Future Lease, but may decide, in its absolute discretion, prior to or following any procedure of referral, approval requirements and notification required under the National Parks and Wildlife Act 1974 (NSW) or any other applicable Law, whether to agree to or refuse such a request. The Licensor may in its absolute discretion agree to grant the Future Lease subject to conditions reasonably required by the Licensor. The Licensor agrees to provide a response, whether positive or negative, within three months of receipt of the request for a Future Lease under clause 17.2 and all necessary documentation required to assess properly the request, subject to any notification or consultation periods required at law that extend beyond this period. The Licensee will have no recourse or claim against the Licensor if the Licensee's request for a Future Lease is refused. For the avoidance of doubt, the Licensor may in its absolute discretion determine that the proposed site for the Future Infrastructure continue to be licensed to the Licensee under this Licence and that a lease is not required to be granted, in which case the Licensee's request may be refused as a lease will not be required for the Future Infrastructure.

17.4 If Licensor agrees to new lease

If the Licensor agrees to the Licensee's request under clause 17.2:

- a) the parties will enter into a Future Lease for the relevant area based on the terms and conditions contained in Schedule 5, subject to any amendments agreed between the parties;
- b) the commencing date of the Future lease will be the earlier of:
 - i) the date of commencement of the development works for construction of the relevant Future Infrastructure; and
 - ii) the date of registration at the Department of Lands of a relevant plan of subdivision creating the premises under the Future Lease;

- c) the terminating date of the Future lease will be the same as the Terminating Date of the Perisher Ski Area Lease;
- d) the Lessee must pay all costs reasonably incurred by the Lessor in relation to considering and granting such request, including legal costs, survey costs and any costs incurred by the Licensor in converting the land forming the premises of the Future Lease to Torrens Title; and
- e) the Lessor must effect the grant, including all necessary survey work to create the premises under the Future Lease, expediently and within a reasonable time of the Lessee's request.

18 FUTURE GRANT OF LEASE OVER LICENCE AREA

18.1.1 The Licensee acknowledges that the Licensor has advised it that, as at the date of this Deed, it does not have the power to grant a lease over the whole Licence Area to the Licensee.

18.1.2 The Licensor agrees to grant to the Licensee a lease over the majority of the Licence Area (excluding a reasonable area as determined by the Licensor around those third party leases that are in existence and had commenced as at the date of the grant of the new lease under this Deed for the purpose of allowing those third party lessees to expand their premises if and when required during the Term) if and when:

- a) the Licensor acquires the power to do so in accordance with the Act or any other law;
- b) the obligations and requirements under the Act and any relevant Law are satisfied;
- c) all necessary consents and approvals from all Relevant Authorities are obtained;
- d) all breaches by the Licensee, if any, under this Deed have been remedied or if not capable of being remedied, adequate compensation has been paid to the Licensor for the breach;
- e) the Licensee agrees to surrender this Deed; and
- f) written notice is received from the Licensee requesting the Licensor to grant a lease to the Licensee in accordance with this clause 18.

18.1.3 If the requirements under clause 18.1.1 are satisfied, and the Licensor is obliged to grant the Licensee a lease in accordance with this clause 18, then the following terms will form the essential terms of the lease to be entered into by the parties:

- a) the commencement date of the lease will be a date agreed between the parties;
- b) the terminating date of the lease will be the same as the terminating date of the Perisher Ski Area Lease;
- c) the payment of such rental amount will be agreed between the parties;
- d) the permitted use will be the same as the Perisher Ski Area Lease;
- e) if the Perisher Ski Area Lease is terminated before the expiration of the term the lease will terminate on the same day as the date the Perisher Ski Area Lease is terminated; and
- f) the terms and conditions will otherwise be the same as the Perisher Ski Area Lease, subject to any amendments agreed between the parties, however:
 - i) without limiting the number of clauses, the following clauses in this Deed will form part of the lease:
 - (A) clause 20 (Exclusive Rights);
 - (B) clause 19 (Tobogganing, Snowplay and Snowtubing);
 - (C) clause 6.16 (Pedestrian Access Bridge); and
 - (D) clause 5.35 (Roads); and
 - ii) without limiting the number of clauses that will be omitted, the following clauses under the Perisher Ski Area Lease will not form part of the new lease:
 - (A) clause 3.7 (Payment of Additional Amount);
 - (B) clause 16 (Work Schedule); and

(C) clause 18 (Skitube).

18.1.4 The Licensee must pay all costs reasonably incurred by the Licensor in relation to considering and granting the lease, including but not limited to legal costs, survey costs and any costs incurred by the Licensor in converting the relevant parts of the Licence Area to Torrens Title.

19 TOBOGGANING AND SNOWTUBING

19.1.1 The Licensee will provide and maintain at its cost during the Term the TSS Area or such area(s) reasonably approved by the Licensor within the Licence Area for tobogganing and snowtubing so as to meet the requirements of the public visiting the Perisher Range Resorts.

19.1.2 The Licensee will conduct and manage the operation of the tobogganing and snowtubing areas and other activities reasonably incidental thereto in a proper, quiet, safe, orderly and lawful manner in all respects to the satisfaction of the Licensor and in accordance with this Licence.

19.1.3 The Licensee will be permitted to levy or collect or cause to be levied or collected a reasonable charge or fee for the use of the tobogganing and snowtubing area by the public or any other person.

19.1.4 The Licensee will, subject to adequate snow cover, conduct and manage the TSS Area during each day of the Winter Season to meet the public demand however the Licensee may seek the consent of the Licensor (which shall not be unreasonably withheld or delayed) to close the area allocated to tobogganing during any period because of low demand for the service.

19.1.5 The Licensee will fully comply with the Law and all directions from Relevant Authorities responsible for the safe conduct and management of the TSS Area and will be responsible for and institute and observe a sufficient system of safe operation of the those areas.

19.1.6 The Licensee must obtain the prior written consent of the Licensor if the Licensee wants to ban tobogganing and, or snowtubing in the TSS Area. However, the Licensee may ban tobogganing and, or snowtubing in any other areas within the Licence area in which the Licensee deems it appropriate to do so for safety reasons provided it notifies the Licensor of any such decision.

20 EXCLUSIVITY RIGHTS

- 20.1.1 Provided that in the reasonable opinion of the Licensor the Licensee is providing the Exclusive Activities in a satisfactory manner so as to meet the requirements of the public visiting the Perisher Range Resorts, the Licensor will not permit any other person, to provide the Exclusive Activities during the Term in the area falling within the external boundary of the Licensed Area, which, for the avoidance of doubt, includes areas not forming part of the Licensed Area within that external boundary, including areas leased and licensed to third parties ("**Exclusivity Area**").
- 20.1.2 The exclusive rights granted to the Licensee in accordance with clause 20.1.1 does not however prohibit other people from providing Alpine Snowsports tuition within the Exclusivity Area provided the tuition is not undertaken on a commercial basis.
- 20.1.3 In the event any dispute arises between the Licensor and Licensee the provisions of clause 16 will apply.
- 20.1.4 In the event clause 16 applies, in considering whether in any particular set of circumstances the Licensee has in fact met or continues to meet the requirements of the public in respect to the provision of the Exclusive Activities the expert must take into account the following:
- a) the public demand for the supply of additional facilities and/or services, and the likelihood that such a demand will be sustained over a reasonable period of time and whether the supply of additional facilities and/or services is likely to be commercially sustainable;
 - b) any proposals by persons who are willing and able to provide facilities and/or services which the Licensee may or has refused to provide and for which there is in the reasonable opinion of the Licensor public demand; and
 - c) whether the provision of additional facilities and/or services would result in a material adverse impact on the Licensee's business having regard to the facilities or services already provided by the Licensee and having further regard to the fact that the object of the exclusivity right under this clause is to give the Licensee reasonable protection for the capital investment made

by the Licensee and the Rent paid by the Licensee to the Licensor under this Licence and the Perisher Ski Area Lease.

20.1.5 The Licensee acknowledges and agrees that:

- a) any third party challenge to the exclusivity right granted under this clause and the resultant loss arising from such a challenge will be at the sole risk of the Licensee;
- b) the Licensee will have no recourse or claim against the Licensor if the Licensee's exclusivity rights under this clause are challenged and lost due to any such third party challenge; and
- c) that in the event of such a third party challenge, the Licensor will not be obliged to do anything to enforce (including but not limited to instituting any legal proceedings against third parties) the exclusivity right granted to the Licensee under this clause.

SCHEDULE 1
REFERENCE SCHEDULE

Item 1 (clause 1.1)	Licence Area	The land outlined in pink on the Plan attached to this Licence as Schedule 3 but excluding those areas forming the premises under the Perisher Ski Area Lease and any other areas leased or licensed to a third party.
Item 2 (1.1 and clauses 5.1.1)	Permitted Use of Licence Area	The conduct of those sporting, tourist and associated activities suitable to a world class alpine tourist and visitor resort as described in clause 5.1 of the Licence.
Item 3 (clauses)	Commencing Date	1 July 2008
Item 4 (clauses)	Terminating Date	30 June 2048
Item 5 (clause 10.1)	The minimum amount which may be paid arising out of any one single accident or event	\$50 million
Item 6 (clause 14.8)	Licensee's address for service	PO Box 42 Perisher Valley NSW 2624 and if service is to be in person: Level 3, 54 Park Street Sydney NSW 2000
Item 7	Licensee's contact details	Facsimile: (02) 6457 5485 Attention: Chief Executive Officer
Item 8 (clause 14.8)	Licensor's address for service	Address: 43 Bridge Street, Hurstville NSW 2220 Facsimile: (02) 9585 6601 Attention: Deputy Director-General Parks and Wildlife Group
Item 9 (clause 15)	Further Term	1 term of 20 years
Item 10 (schedule 2)	Licence Fee Percentage	2%
Item 11	Not Used	
Item 12 (clause 5.34)	Environmental Research and Rehabilitation Contributions	\$55,000 per annum
Item 13 (clause 1.1)	Term	Forty (40) years

SCHEDULE 2
LICENCE FEE SCHEDULE

1. DEFINITIONS

Audited Gross Revenue means Gross Revenue the amount of which has been duly audited and certified in accordance with Schedule 2 of the Perisher Ski Area Lease.

Gross Revenue means the "Gross Revenue" as defined under Schedule 2 of the Perisher Ski Area Lease however any references to "Premises" will be read as a reference to "Licence Area".

Perisher Ski Area Gross Revenue means the "Gross Revenue" as defined under the Perisher Ski Area Lease.

Licence Fee means the amount determined by multiplying the Audited Gross Revenue for that Year by the Licence Fee Percentage applicable to that Year.

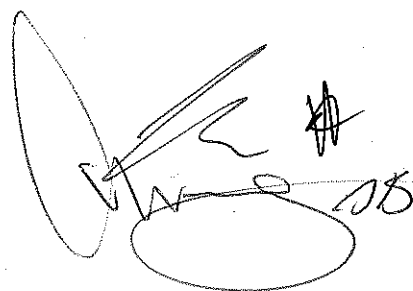
Licence Fee Percentage means the percentage specified at Item 10 of the Reference Schedule.

Turnover Rent has the meaning set out under the Perisher Ski Area Lease.

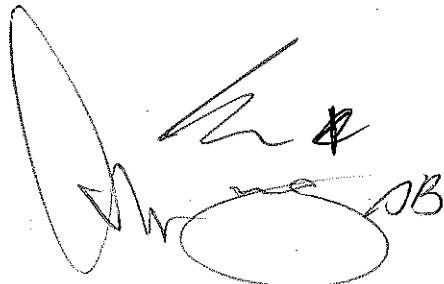
Year means in this Schedule a period of twelve months commencing on the Commencing Date and each anniversary thereof.

2. LICENCE FEE

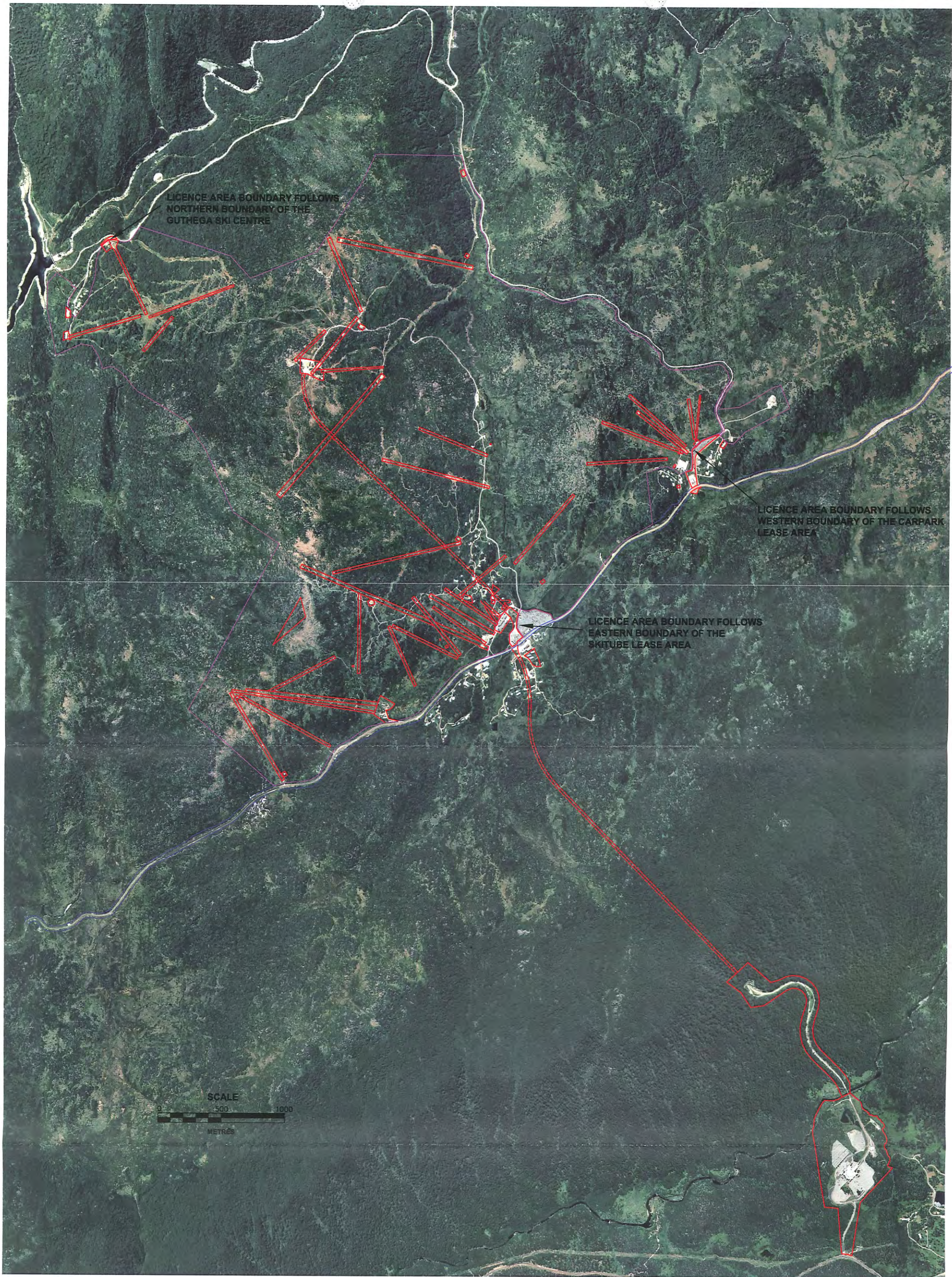
- (a) The Licensee will pay the Licence Fee to the Licensor for each Year of the Term.
- (b) For the first Year of the Term and each and every Year thereafter, the Licence Fee Percentage shall be the figure set out in Item 10 of the Reference Schedule.
- (c) The parties agree that:
 - (i) the Licence Fee payable by the Licensee to the Licensor shall be determined and payable at the same time as the Turnover Rent under the Perisher Ski Area Lease;
 - (ii) if in any Year, the Gross Revenue is included as part of the Perisher Ski Area Gross Revenue in the calculation of the Turnover Rent under the Perisher Ski Area Lease then the Licence Fee is deemed to have been paid by the Licensee for that Year; and
 - (iii) the obligations set out in clauses 6 to 9 (inclusive) of Schedule 2 of the Perisher Ski Area Lease will apply in relation to the Licence Fee.

A large, stylized handwritten signature is written over a large, hand-drawn oval. To the right of the signature, there are initials that appear to be 'JB'.

**SCHEDULE 3
PLAN OF LICENCE AREA**



Handwritten signature and initials, possibly including 'OB'.



G.N.
M.G.A.

NOTE
(i) WHERE LICENCE BOUNDARY IS NOT VISIBLE, LEASE BOUNDARY IS INDICATIVE OF LICENCE BOUNDARY

LEGEND

- · — · — · — EXISTING R.T.A. ROAD BOUNDARY
- — — — — PROPOSED PERISHER BLUE LEASE BOUNDARIES
- — — — — EXTENT PERISHER BLUE LICENCE AREA

REV	DESCRIPTION	DATE
L	FINAL PLAN FOR APPROVAL	30/4/09



HEIGHT DATUM	N/A
AZIMUTH	M.G.A.
DRAWN	A.S.
DATED	30/4/2009
DATE OF SURVEY	
REFERENCE	3292/2

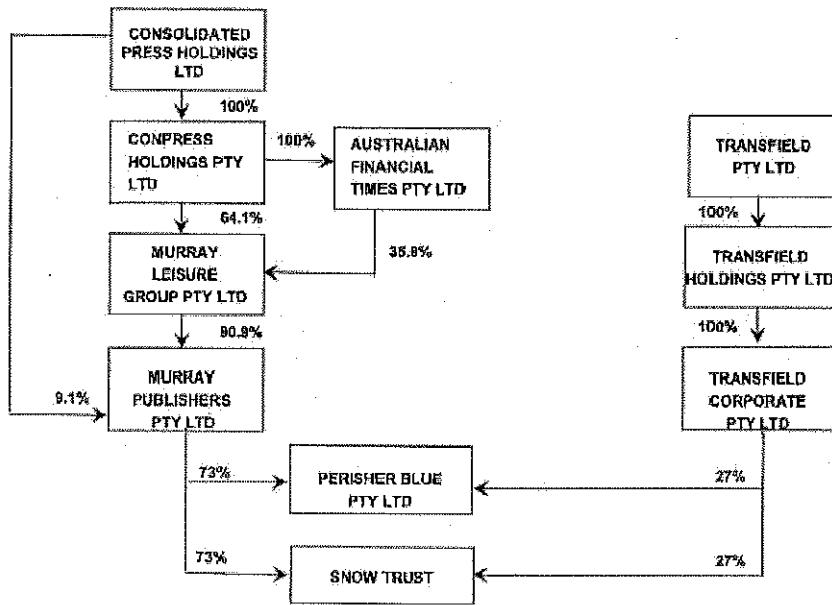
PETER W. BURNS PTY LIMITED
 REGISTERED LAND & ENGINEERING SURVEYORS
 ABN 64 102 303 391
 OFFICE: 6452 3221
 PO BOX 737 COOMA NSW 2630
 Ph (02) 6452 3221 Fax (02) 6452 4220
 Email: survey@pburns.com.au

DRAWING TITLE
**PROPOSED LEASE/LICENCE BOUNDARIES
 RESORT OVERVIEW**

PROJECT
**PERISHER RANGE RESORTS
 TORRENS TITLING PROJECT**

SCALE	1:15000
SHEET	1 OF 1
DRAWING No.	3292_2 PML02
SHEET A1	REV L

SCHEDULE 4
PERISHER BLUE PTY LTD CORPORATE STRUCTURE



SCHEDULE 5
FUTURE LEASE TERMS AND CONDITIONS

The terms and conditions of the Future Lease will be the same as the Perisher Ski Area Lease, subject to any amendments agreed between the parties, however:


1. there will be no Base Rent payable;
2. the definition of "Bank Guarantee" will be amended to read "means the bank guarantee required by clause 3.6 of the Perisher Ski Area Lease";
3. clauses 2.1.7, 2.1.8 and 2.1.10 of the Perisher Ski Area Lease will be deleted;
4. clause 3.7 will be deleted;
5. clauses 5.19, 5.20 and 13.8 of the Perisher Ski Area Lease will be replaced with a provision to the effect that the provisions of clauses 5.19, 5.20 and 13.8 of the Perisher Ski Area Lease apply to the new lease;
6. a new clauses 5.40.3 is to be inserted as follows;

"The parties agree that any payment received by the Lessee under the Perisher Ski Area Lease for payment of the Environmental Research and Rehabilitation Contribution will satisfy the Lessee's obligation under this clause."

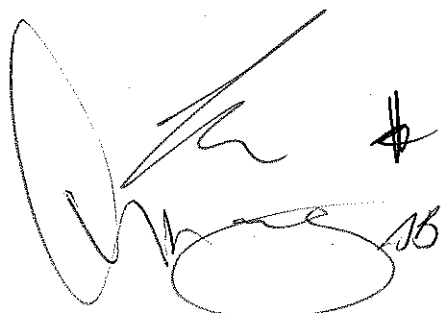
7. a new clause 12.5 is to be inserted as follows:

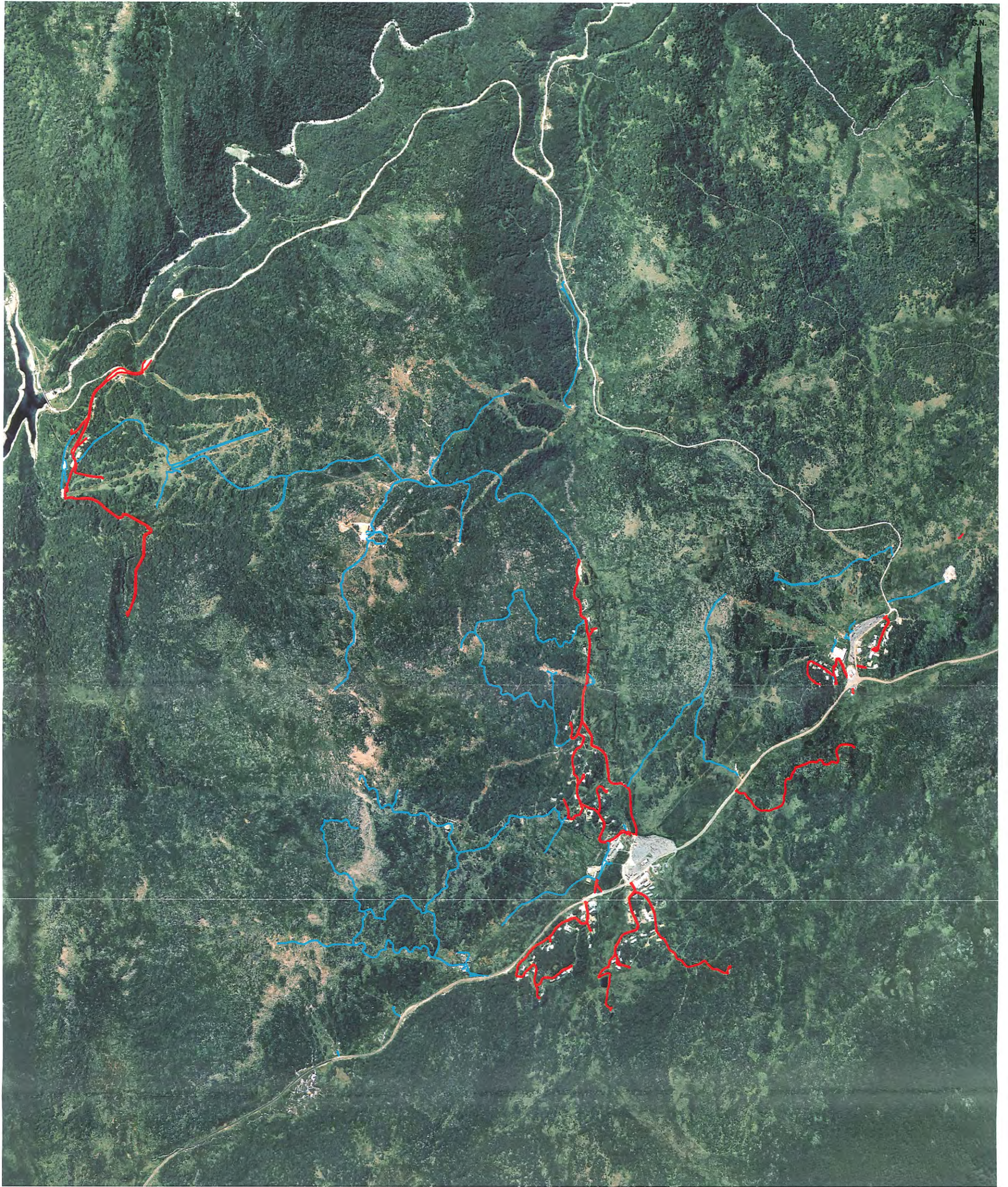
"Assignment or Transfer of Perisher Ski Area Lease



In the event the Perisher Ski Area Lease is to be assigned or transferred by the lessee of the Perisher Ski Area Lease with the approval of the lessor, the Lessee must also assign or transfer this Lease to the assignee or transferee of the Perisher Ski Area Lease if required by the Lessor."

Handwritten signature and initials in black ink, including a large loop and the number '10'.

**SCHEDULE 6
ROAD PLAN**

Handwritten signature and initials in black ink, including a large stylized 'M' and the number '16'.



LEGEND	
	NPWS MAINTAINED ROAD
	PERISHER BLUE MAINTAINED ROAD

REV	DESCRIPTION	DATE
C	VARIOUS AMENDMENTS	19/12/08
B	VARIOUS AMENDMENTS	2/12/08
A		



HEIGHT DATUM	N/A
AZIMUTH	M.G.A.
DRAWN	A.S.
DATED	2/12/2008
DATE OF SURVEY	
REFERENCE	3282/2


PETER W. BURNS PTY LIMITED
 REGISTERED LAND & ENGINEERING SURVEYORS
AMB 41 883 983 381
 PO BOX 737 COOMA NSW 2630
 Ph (02) 6462 3221 Fax (02) 6462 4220
 Email: survey@pburns.com.au

DRAWING TITLE	ROAD MAINTENANCE
PROJECT	PERISHER RANGE RESORTS TORRENS TITLING PROJECT

SCALE	1:12000
SHEET	1 OF 1
DRAWING No.	3282_2 RDM01
SHEET A1	REV C


 AS

EXECUTED as a Deed

EXECUTED for and on behalf of **THE MINISTER FOR CLIMATE CHANGE AND THE ENVIRONMENT** by his or her duly appointed officer in the present of:

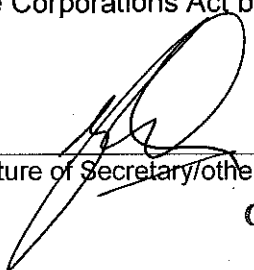
N. Robinson
Witness

Sally Barnes
Officer

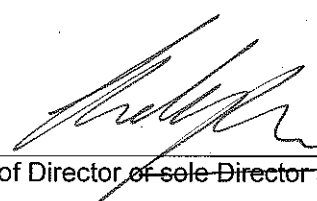
NIKKI ROBINSON
Name of Witness (print)

SALLY BARNES
Name of Officer (print)

Executed by **Perisher Blue Pty Ltd ACN 061 232 488** in accordance with section 127 of the Corporations Act by or in the presence of:


Signature of Secretary/other Director
Glenn Wein

Glenn Wein
Name of Secretary/other Director in full


Signature of Director or sole Director and sole Secretary

LUCA BELGIORNO-NETTIS
Name of Director or sole Director and sole Secretary in full