

# Commercial transport operator agreement

(Commercial Transfer Area/Commercial Wait  
Area) – Queenstown Airport

Queenstown Airport Corporation Limited

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**(OPERATOR)**

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# Parties

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(1) Queenstown Airport Corporation Limited (**Owner**)

(2) ●  
(**Operator**)

●  
(NZCN)

# Agreed

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- A. The Owner is the owner and operator of Queenstown Airport. The Airport is the private property of the Owner and is under the Owner's control. The Operator operates a business that involves transporting people to and from the Airport.
- B. The Airport is an important gateway airport to New Zealand and the Southern Lakes Region. The Owner wants to ensure that all visitors to the Airport experience a first class customer service.
- C. This Agreement is being entered into to ensure the Operator provides that level of service and to improve efficiency of transport services, pedestrian safety and pedestrian flow and function at the Airport.
- D. The Owner grants to the Operator access to the Transport Area on the terms set out in this Agreement and all attached schedules.

# Execution

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Signed by **Queenstown Airport Corporation Limited** by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

Date:

Signed by **Operator**:

\_\_\_\_\_  
Director/Authorised signatory

\_\_\_\_\_  
Name

Date:

# Schedule 1 - Reference Schedule

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## 1. Name and Address of Owner

Addresses for service	
Owner	Queenstown Airport Corporation Limited
	Level 1, Terminal Building, Queenstown Airport, Sir Henry Wigley Drive, Queenstown
	Contact      General Manager Commercial and Customer Experience

## 2. Name and address of Operator

Address for service	
Operator	Operator
	Address
	Contact

## 3. Term of Agreement

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3.1 From the Commencement Date to the Expiry Date.

## 4. Commencement Date

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4.1 The date this Agreement is signed by both parties.

## 5. Expiry Date

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5.1 30 June 2021 (unless terminated earlier in accordance with the terms of this Agreement).

## 6. Transport Area

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6.1 Means:

- (a) the commercial transfer area shown as area CTA (**CTA**); and
  - (b) the commercial wait area shown as area CWA (**CWA**),
- on the plan attached in Schedule 4 (together, the **Transport Area**).

## 7. Access Fees

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7.1 Means:

- (a) In respect of SPSVs:
  - (i) from 1 July 2019 to 30 June 2020, \$7.20 plus GST for a single Vehicle to access the Transport Area through any Barrier Arm; and

- (ii) from 1 July 2020 to 30 June 2021, \$7.40 plus GST for a single Vehicle to access the Transport Area through any Barrier Arm.
- (b) In respect of LPSVs:
  - (i) from 1 July 2019 to 30 June 2020, \$15.70 plus GST for a single Vehicle to access the Transport Area through any Barrier Arm; and
  - (ii) from 1 July 2020 to 30 June 2021, \$16.15 plus GST for a single Vehicle to access the Transport Area through any Barrier Arm.

## 8. Access Card Fees

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- 8.1 \$30 plus GST for the issue of each Access Card by the Owner for a Vehicle (which can only be used for that Vehicle), in accordance with clause 7.1 of Schedule 2 (subject to any variation in accordance with clause 16.2(g) of Schedule 2).

## 9. Length of Stay Fees

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- 9.1 **CWA:** From 1 July 2019:

- (a) For each SPSV that remains in the CWA for longer than 40 consecutive minutes, a fee of \$1.80 plus GST for every 10 consecutive minutes (or part thereof).
- (b) For each LPSV that remains in the CWA for longer than 40 consecutive minutes, a fee of \$3.90 plus GST for every 10 consecutive minutes (or part thereof).

- 9.2 **CTA:** The Owner can serve written notice on the Operator (**CTA Notice**) that it elects to charge Length of Stay Fees for the CTA. From the date of the CTA Notice, the below Length of Stay Fees are payable in respect of the CTA:

- (a) For each SPSV that remains in the CWA for longer than 20 consecutive minutes, a fee as specified in the CTA Notice for every 10 consecutive minutes (or part thereof).
- (b) For each LPSV that remains in the CWA for longer than 20 consecutive minutes, a fee as specified in the CTA Notice for every 10 consecutive minutes (or part thereof).

## 10. Authorised Services

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- 10.1 The non-exclusive right for the Authorised Drivers to pick up and deliver passengers from within the Transport Area using Vehicles.

## 11. Vehicle

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- 11.1 Means, as the context requires only, a SPSV or a LPSV, in each case operated by an Authorised Driver.

## 12. Default Interest Rate

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- 12.1 16% per annum.

## 13. Special Commercial Operator Terms

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- 13.1 In this Agreement, the following terms have the following meaning:

- (a) **Barrier Arms** means the barrier arms shown on the Plans (or as erected at the entrance and exit points to each of the CTA and the CWA from time to time).

- (b) **LPSV** has the same meaning as the term "large passenger service vehicle" (as that term is defined in the LT Act) provided it can only carry between 13 and 25 passengers (including the driver).
- (c) **SPSV** has the same meaning as the term "small passenger service vehicle" is defined in the LT Act, being any passenger service vehicle that is designed or adapted to carry up to 12 persons (including the driver).

13.2 The Access Cards operate the Barrier Arms. The Barrier Arms are located at the entry and exit points to each of the CTA and the CWA. The Access Fees apply when operating the Barrier Arms in accordance with clause 4.1, Schedule 2.

13.3 Authorised Drivers must only load and unload passengers from within the Transport Area. The Operator must not, and must procure the Authorised Drivers to not, load and unload passengers from any other location at the Airport or public land near the Airport for those passengers to then walk to the Airport to avoid paying the Fees.

# Schedule 2 – General Terms and Conditions

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## 1. Definitions and interpretation

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1.1 **Definitions:** In this Agreement unless a contrary intention appears:

- (a) **AA Act** means the Airport Authorities Act 1966.
- (b) **Access Account** means the Operator's online account with the Owner which is credited by the Operator and from which the Access Fees and Length of Stay Fees are debited by the Owner.
- (c) **Access Card** means any access card, Radio-Frequency Identification sticker/device or similar device (including any such replacement cards or device) that is linked to the Operator's Access Account and allows access by an Authorised Driver through a Barrier Arm to provide the Authorised Services at the Airport.
- (d) **Agreement** means this Agreement (including its Schedules).
- (e) **Airport** means the Queenstown Airport situated on lands in the Town of Frankton legally described as Lot 2, Deposited Plan 4782825, Lot 22, Deposited Plans 304345 and Section 4, Survey Office Plans 407024 and Section 48-52, 108-121, 124-125 Survey Office Plans 459748 contained in Record of Title 645666 of the Otago Land Registry. It also includes any land subsequently acquired or designated (or both) for airport purposes or for other purposes of the Owner.
- (f) **Authorised Driver** means a person who is a contractor, employee, director or shareholder of the Operator who holds any required licence entitling him or her to drive a Vehicle to provide Authorised Services at the Airport.
- (g) **Authority** means any local body, government or other authority having jurisdiction or authority for the Transport Area or any business or use carried out on the Transport Area.
- (h) **Building Act** means the Building Act 2004.
- (i) **Fees** means the Access Fees, the Access Card Fees and the Length of Stay Fees and any other moneys payable by the Operator to the Owner under this Agreement.
- (j) **GST** means Goods and Services Tax or any tax in the nature of a Goods and Services Tax charged pursuant to the Goods and Services Tax Act 1985.
- (k) **HSW Act** means the Health and Safety at Work Act 2015 and any related rules, codes of practice, regulations and legislation.
- (l) **LT Act** means the Land Transport Act 1998.
- (m) **Operator and Owner** include:
  - (i) their respective successors and permitted assigns; and
  - (ii) employees, agents, contractors, invitees and any other person under their control.
- (n) **Rules** means the rules attached in Schedule 3 and as replaced, varied or amended from time to time by the Owner in accordance with clause 16.2(a) relating to the safety, care and operation of the Transport Area, Authorised Drivers, Vehicles, the Authorised Services and the Airport.

- (o) **Tout** means openly soliciting custom by visual, verbal or any other means and does not include passive advertisements which are normally displayed on SPSVs or LPSVs advertising the Operator's transport business.
- (p) **Terminal** means the passenger terminal building(s) at the Airport. For the avoidance of doubt the expression "the Terminal", where the context so requires in this Agreement, extends to and includes those parts of the Terminal which are intended to be used or are used from time to time in common with all of the tenants and other occupiers and/or their customers or invitees of the Terminal including by way of example, entrances, foyers, passages, concourses, toilet facilities and rest rooms.
- (q) **Working Day** means a day (other than a Saturday or Sunday or public holiday) on which registered banks are open for general banking business in Queenstown.

1.2 **Bold terms:** In this Agreement, the terms in bold in Schedule 1 have the respective meanings given to those terms in Schedule 1.

1.3 **Interpretation:** In this Agreement unless the context otherwise requires:

- (a) Words importing the singular will include the plural. Words importing persons will include companies.
- (b) Any covenant or agreement on the part of two or more persons will be deemed to bind them jointly and severally.
- (c) Any heading and marginal notations have been inserted for convenience only and will not limit or govern the construction of the terms of this Agreement.
- (d) Any reference to any statute or regulation is deemed to include all amendments and revisions made from time to time to that statute or regulation and any re-enactments thereof.
- (e) Where the Owner's consent or approval is required under any provision of this Agreement such consent or approval will be required for each separate occasion notwithstanding any prior consent or approval obtained for the like purpose on a prior occasion.
- (f) The word "including" shall not imply any limitation.

## 2. Term

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2.1 **Term:** Subject to clause 16, this Agreement is for the Term commencing on the Commencement Date and ending on the Expiry Date.

2.2 **No renewal:** For the avoidance of doubt this Agreement:

- (a) Is granted without any right or option for renewal.
- (b) Supersedes and replaces any prior agreements or arrangements regarding the Operator or the Authorised Drivers accessing or using the Airport for the Authorised Services.

2.3 **Holding over:** If the Operator holds over and remains in possession of an Access Card with the consent of the Owner beyond the Expiry Date, such holding over may be terminated by the Owner at any time by 20 Working Days prior written notice. In all other respects the Agreement will continue on the same terms and conditions so far as applicable to a monthly Agreement.



### 3. Agreement

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- 3.1 **Non-exclusive right:** The Operator has the non-exclusive right for its Authorised Drivers to access and use the Transport Area for the Authorised Services in accordance with the terms of this Agreement.
- 3.2 **No exclusivity:** The Operator will not have exclusive or sole rights to carry on Authorised Services anywhere at the Airport. For the avoidance of doubt, the Owner:
- (a) May enter into additional agreements at any time and from time to time with any third party.
  - (b) Gives no warranty that it will prevent third parties from the providing the same or similar services.
- 3.3 **No warranty:** The Operator acknowledges that the Owner has not given to the Operator any representation or warranty, express or implied, that:
- (a) the Transport Area is suitable, or will remain suitable or adequate, for Authorised Services by the Operator; and
  - (b) any use of the Transport Area by the Operator will comply with any laws or requirements of any Authority.
- 3.4 **No liability:** Under no circumstances will the Owner or its employees, representatives, contractors or agents be liable to the Operator (or its employees, representatives, contractors or agents) for any loss of profits, business or anticipated savings or for any indirect or consequential loss even if it has been advised of the likelihood of the losses or such losses were, or ought to have been contemplated by the Owner.
- 3.5 **Limit of liability:** Subject to clause 3.4 if for any reason the Owner is held liable to the Operator (or its employees, representatives, contractors or agents) for any loss, injury, damages or costs arising directly or indirectly from any act or omission on the part of the Owner, the maximum liability of the Owner will not exceed \$2,500.00 for any one event or circumstance or series of related events or circumstances or \$5,000.00 in the aggregate in respect of all events and circumstances in any 12 month period.

### 4. Fees

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- 4.1 **Access Fees:** No annual fees will be payable by the Operator, but the Operator shall pay, or ensure its Authorised Drivers pay, the Access Fees for every occasion an Authorised Driver or Vehicle passes through the Barrier Arms into the Transport Area by way of a pre-loaded Access Card from which the Access Fees will be debited and regardless of whether the Barrier Arms are up or down.
- 4.2 **Additional fees:** In addition to the Access Fees the Operator will pay the Owner (without set off or deduction):
- (a) the Access Card Fees; and
  - (b) the Length of Stay Fees.
- 4.3 **Retrospective fees:** If, during the Term, Access Fees and/or Length of Stay Fees are not, or are unable to be, debited from the Access Card by reason of a technological error with the Barrier Arms, or for any other reason, the Owner reserves the right to debit such fees retrospectively where they have been validly incurred by the Operator.

## 5. Goods and Services Tax

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- 5.1 **Goods and Services Tax:** The Operator will pay to the Owner or as the Owner directs the GST payable by the Owner in respect of the Fees. The GST in respect of the Fees will be payable on each occasion when the Fees fall due for payment or otherwise payable upon demand.
- 5.2 **Default:** If the Operator makes default in payment of the Fees and the Owner becomes liable to pay additional GST then the Operator will on demand pay to the Owner the additional GST.

## 6. Authorised Drivers

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- 6.1 **Authorised Drivers:** Only Authorised Drivers can provide Authorised Services at the Airport.
- 6.2 **Compliance with Rules:** The Operator must at all times during the term, and must procure its Authorised Drivers at all times during the term, to comply with this Agreement and the Rules. Any breach by an Authorised Driver of the provisions of this Agreement or the Rules, will be deemed to a breach by the Operator (including for the purposes of clause 13).

## 7. Access Cards and Access Account

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- 7.1 **Access Cards:** Subject to payment by the Operator of the Access Card Fees, the Owner will (at its discretion) issue each Vehicle with a single Access Card (which can only be used for that Vehicle). Each Access Card will remain the property of the Owner.
- 7.2 **Use:** The Operator will ensure that each Authorised Driver uses the Access Card for the purpose of supplying of Authorised Services strictly in accordance with the terms of this Agreement and the Owner's instructions.
- 7.3 **Credit of Access Account:** The Operator will ensure monies are credited to their Access Account using the Owner's online top up system so that there are always sufficient funds to allow the Authorised Drivers to access the Transport Area. Each top up by an Operator will be a minimum of \$50 and the balance of the Access Account shall not at any time exceed \$1,000.
- 7.4 **Credit balances:** Credit balances on an Access Account are refundable at the written request of the Operator on the closure of the Operator's Access Account at the expiration or earlier termination of this Agreement. Any credit balance on an Access Account will be forfeited (unless the Owner otherwise agrees in writing) after 6 calendar months if the Operator ceases to provide the Authorised Services or this Agreement is terminated and the Operator does not request a refund of the credit balance and the closure of its Access Account.
- 7.5 **Non-payment:** If the Operator does not pay the Fees (or any part thereof) when they are due or there is insufficient credit on an Access Account, all Authorised Drivers may (among other remedies specified in this Agreement) be denied access to the Airport to carry out the Authorised Services in accordance with clause 12.
- 7.6 **Not transferable:** Access Cards are not transferable or to be used other than in relation to the Vehicle to which they have been issued.
- 7.7 **Return:** The Operator must ensure all Access Cards are returned to the Owner when this Agreement expires or terminates. Except as provided in clause 2.3, Access Cards will be deactivated at the same time as this Agreement is suspended, expires or is terminated.
- 7.8 **Damage or loss:** The Operator must ensure its Authorised Drivers notify the Owner immediately if any Access Card is damaged, lost or stolen. The Operator and its Authorised Drivers are responsible for any loss incurred until such notification. The Operator will pay the Access Card Fees for any replacement Access Card prior to its issue. On issue of a

replacement Access Card, any remaining credit balance on the Access Account will be available on that replacement Access Card.

- 7.9 **Technology:** The Owner may change the technology used in the access control system as and when it considers such change necessary.
- 7.10 **No access:** The Owner may deny access to any or all of the Transport Area to any Authorised Driver or Vehicle which does not carry an Access Card that is registered in respect of that Vehicle, or who is in a vehicle that does not comply with this Agreement.

## 8. Use of Transport Area

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- 8.1 **Use of Transport Area:** The Operator and the Authorised Drivers must use the Transport Area only in accordance with the Authorised Services and the terms of this Agreement. To avoid doubt, the Access Fees are payable in respect of, and the Rules apply to, each of the CTA and the CWA.
- 8.2 **Time limits:** Authorised Drivers can only remain in:
- (a) the CTA for up to 20 consecutive minutes at any one time and cannot leave their Vehicle unattended at any time. If a Vehicle remains in the CTA for longer than 20 consecutive minutes, the Owner may charge Length of Stay Fees (which shall be debited from the relevant Access Account) in addition to the Access Fees, or require the Vehicle to be removed from the CTA; and
  - (b) the CWA for up to 40 consecutive minutes at any one time and may leave their Vehicles unattended for the purposes of meeting or escorting passengers inside, or directly outside the Terminal. If a Vehicle remains in the CWA for longer than 40 consecutive minutes, the Owner will charge Length of Stay Fees (which shall be debited from the relevant Access Account) in addition to the Access Fees, or require the Vehicle to be removed from the CWA.
- 8.3 **Dropping off and collection of customers:** The Operator agrees that the dropping off or collection of all customers at the Airport will take place only at the specified location within the Transport Area. The Operator agrees and acknowledges that the Authorised Drivers are not permitted to drop off or collect its customers elsewhere on the Airport other than the specified location within the Transport Area.
- 8.4 **Obligations of Operator:** The Operator must, and must procure its Authorised Drivers to, at all times:
- (a) Comply with the provisions of all statutes, ordinances, regulations and by-laws relating to the use of the Transport Area and the Authorised Services, and in particular, but without limitation, the HSW Act and the Land Transport Rule: Operator Licensing 2007.
  - (b) Comply with all Rules.
  - (c) Obtain and keep current all relevant consents and permits required for the use of the Transport Area for Authorised Services from all relevant Authorities.
  - (d) Comply with the provisions of all consents, requisitions and notices issued by any Authority for the Transport Area or their use by the Operator.
  - (e) Assist the Owner upon the Owner's request in any dealing with any Authorised Drivers and liaise closely with the Owner to ensure that all Authorised Drivers adhere at all times to this Agreement, the Rules and all other applicable laws, rules and regulations.

(f) Ensure its Authorised Drivers adhere at all times to this Agreement, the Rules and all other applicable laws, rules and regulations.

(g) Provide such reasonable required assistance and information to the Owner within a reasonable time of the Owner's request to ensure the Operator is complying with the terms of this Agreement.

8.5 **AA Act:** The Operator acknowledges and agrees that this Agreement and the Operator's rights and interests under this Agreement are subject at all times to the provisions of the AA Act and the provisions of the Civil Aviation Rules. Without limiting the provisions of clause 8.4, the Operator shall comply at all times with any requirements imposed by the Owner or by any Authority pursuant to the AA Act or the Civil Aviation Rules or as required to achieve compliance with the AA Act or the Civil Aviation Rules.

8.6 **Service levels:** The Operator shall at all times during the term of this Agreement meet those service levels advised from time to time by the Owner to ensure that the demands of incoming passengers at the Airport are met to the satisfaction of the Owner. Notwithstanding this clause, as a minimum the Operator will at all times ensure its Authorised Drivers provide the Authorised Services in a first class, professional and timely manner.

8.7 **Information:** The Operator agrees to provide (and procure all its employees, contractors and Authorised Drivers to provide) all reasonably required information (including any available audio or video footage) requested by the Owner to ensure compliance with this Agreement or to investigate any complaint made by a customer to the Owner. Such information will be provided at the Operator's cost and within a reasonable time of request.

8.8 **Employees and contractors of Owner:** The Operator agrees that any employee or contractor of the Owner (who is in uniform or who produces evidence of his or her identity as an employee or contractor of the Owner), as between the Operator and the Owner, may exercise the same powers in respect of the Vehicles and Authorised Drivers as those granted to enforcement officers (as defined in the LT Act) under Sections 128A and 128B of the LT Act, including (but not limited to) the power to direct Authorised Drivers who are not operating in compliance with the terms of this Agreement or the Land Transport Rule: Operator Licensing 2007 (the Transport Service Rules) to:

(a) cease making the Vehicle available for hire; and

(b) remove the Vehicle from the Airport,

until such time as the Authorised Driver and the Vehicle are in compliance with the terms of this Agreement and the Transport Service Rules.

## 9. Insurance

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9.1 **Operator's insurance:** The Operator will at all times during the term of this Agreement at its own cost:

(a) Maintain comprehensive, current and collectable policies of insurance with a reputable insurer approved by the Owner, with a limit of liability of not less than \$10 million (being the amount which may be paid by the insurer arising from each and any single event) or such other amount as may be specified by the Owner, in the joint names of the Operator and the Owner against all risks that are prudent, in accordance with best commercial practice, to insure against or as may be specified by the Owner (including, but not limited to, \$5 million public liability insurance cover).

(b) Without limiting the Operator's obligations under clause 9.1(a), ensure that each Vehicle is insured under a comprehensive vehicle insurance policy including third party cover.

- 9.2 **Evidence of insurance:** On the Commencement Date, and annually thereafter, the Operator will produce to the Owner such written evidence as the Operator may reasonably require of the currency of the specified policies with an insurance company approved by the Owner (such approval not to be unreasonably or arbitrarily withheld). The Operator shall ensure that such policy includes a provision that the policies will not be cancelled other than for non-payment of premiums and that if the policies is to be cancelled, then the relevant insurer will give the Owner notice of the proposed cancellation.
- 9.3 **Operator not to void insurance:** The Operator must not do or permit anything to be done on the Airport where:
- (a) any insurance effected by the Owner may be rendered void or voidable; or
  - (b) the premium payable on any policy of insurance may increase or an extra premium may be payable, except where in circumstances in which any increased premium is payable the Operator has:
    - (i) first obtained the consent of the Owner; and
    - (ii) made payment to the insurer of the amount of any such increased or extra premium as may be payable,
- however the carrying on by the Operator in a reasonable manner of Authorised Services or of any use to which the Owner has consented shall be deemed not to be a breach of this clause 9.3(b).
- 9.4 **Cancellation or termination:** The Operator must immediately advise the Owner in writing if any insurance required under clause 9.1 is cancelled, terminated, modified, not renewed or, for any reason, is not in effect as required in clause 9.1.

## 10. Operator's indemnity and acknowledgements

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- 10.1 **Own judgement:** The Operator acknowledges that it has entered into this Agreement in reliance upon its own judgement and not in reliance upon any representation or warranty by the Owner.
- 10.2 **Risk:** The Operator and its Authorised Drivers agree to use the Transport Area at the Operator's risk and release to the fullest extent permitted by law the Owner and its servants and agents from all claims and demands of any kind and from all liability which may arise in respect of any loss, accident, damage or injury occurring to any person or property in or about the Airport including the Terminal or the Transport Area.
- 10.3 **Indemnity:** The Operator must, to the extent permitted by law, indemnify, and keep indemnified, each of the Owner, the directors of the Owner and its employees and agents (each an **Indemnified Person**) from and against any action, claim, demand, loss, cost or other liability that:
- (a) any Indemnified Person may suffer or incur, or for which any Indemnified Person may become liable in respect of or arising from any act, omission, neglect, breach or default on the part of the Operator or its Authorised Drivers; and/or
  - (b) any Indemnified Person may suffer or incur in respect of, or arising in any way from, any claim made by any Authorised Driver or the owner of a Vehicle in connection with the exercise by the Owner of its rights under this Agreement, and/or
  - (c) arises from any accident or damage to property or persons arising from any occurrence in or near the Transport Area or the Airport wholly or in part by reason of any act or omission by the Operator or any Authorised Driver; and/or

- (d) arises from any liability incurred by the Owner whatsoever in respect of a breach by the Operator Authorised Driver of any of the provisions of any legislation, including the Land Transport Rule: Operator Licensing 2007, Resource Management Act 1991, Building Act, or the HSW Act, in respect of the Transport Area or the Airport.

10.4 **No responsibility:** The Owner accepts no responsibility to the Operator for the acts or omissions of any other tenant, licensee, customer, visitor or occupier of the Airport or their servants or agents.

10.5 **HSW Act:** The Operator must do all things necessary to comply (and ensure its Authorised Drivers comply) with the HSW Act. Without limiting the generality of this obligation, the Operator must:

- (a) take all reasonably practicable steps to ensure that any person in or on the Transport Area, or in the vicinity of the Transport Area, is not harmed by any hazard or risk arising in or on the Transport Area;
- (b) develop, maintain and implement at all times during the term of the Agreement a programme promoting health and safety of people in the Transport Area and a system of auditing that programme;
- (c) provide to the Owner, on the Owner's written request, reasonable details of the health and safety programme implemented by the Operator under this clause;
- (d) participate in the Owner's health and safety meetings on a regular basis and as reasonably required by the Owner;
- (e) ensure all of the Operator's Authorised Drivers, agents, employees, contractors and visitors comply with the Owner's reasonable health and safety protocols and procedures that relate to the Airport, as notified in writing from time to time by the Owner;
- (f) comply with any notice issued under the HSW Act; and
- (g) collaborate, communicate and co-ordinate with the Owner on matters of health and safety where the parties have overlapping duties under the HSW Act.

## 11. Repair and maintenance

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11.1 **Repair and maintenance:** The Operator will, at its own cost and expense, during the term of this Agreement:

- (a) immediately make good any damage to any part of the Transport Area or the Airport or any part thereof caused by the Operator or its Authorised Drivers;
- (b) notify the Owner immediately of any damage or any circumstances likely to cause damage or injury to the Transport Area or any other part of the Airport or the Owner's fixtures and fittings and pay to the Owner the costs of repair of any damage which was caused by the act, neglect or default of the Operator.

## 12. Suspension of Authorised Drivers

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12.1 **Suspension of Authorised Drivers:** If an Authorised Driver breaches the terms of this Agreement, the Owner may suspend that Authorised Driver from operating at the Airport (**Suspension**). The Suspension shall be for such period as the Owner (acting reasonably) considers appropriate in the circumstances. The suspended Authorised Driver's Access Card will be de-activated for the period of the Suspension.

12.2 **Appeal:** If the Operator considers that a Suspension, or the period of a Suspension, of an Authorised Driver is unjustified, the Operator may query the Suspension by notice in writing to the Owner. The Owner will provide a written response to the Operator's query within 10 Working Days of receiving it. The Owner's response to the Operator's query is final and the dispute resolution provisions in clause 18 of this Agreement do not apply.

## 13. Termination

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13.1 **Termination:** If, at any time:

- (a) There is a default by the Operator in respect of any obligation of the Operator under this Agreement (other than a breach of the Rules) and:
  - (i) Such breach is capable of being remedied, then the Owner may serve written notice on the Operator requiring it to remedy such breach within 5 Working Days. If the Operator does not remedy the breach within the time specified in the Owner's notice, then the Owner may terminate this Agreement on 5 Working Days written notice to the Operator.
  - (ii) Such breach is not capable of being remedied, then the Owner may terminate this Agreement on 5 Working Days written notice to the Operator.
- (b) There is a breach of the Rules by the Operator, then the Owner may serve a written notice (**Breach Notice**) on the Operator detailing the nature and extent of the breach and that a further Breach Notice may be issued if the Operator breaches the Rules again.

13.2 **Consecutive Breach:** If three or more Breach Notices have been served on the Operator during any consecutive 12 month period (and regardless that any such breaches have been remedied), it will be considered a breach of this Agreement (referred as a **Consecutive Breach**). A Consecutive Breach is not capable of being remedied and the Owner can terminate this Agreement on the expiry of 5 Working Days after service of a third Breach Notice to the Operator.

13.3 **Deemed service:** To avoid doubt, if a notice or Breach Notice is served on an Authorised Driver by the Owner under this clause 13.2, such notice is deemed to have been served on the Operator.

13.4 **Termination on notice:** Notwithstanding any other provision of this Agreement, the Owner can terminate this Agreement without reason on 20 Working Days prior written notice. The dispute resolution provisions in clause 18 do not apply in respect of the termination of this Agreement under this clause.

13.5 **Consequences of termination:** On and from the date of termination of this Agreement in accordance with this clause 13.5:

- (a) any Fees payable by the Operator under this Agreement shall immediately become due and payable;
- (b) the Operator, all Authorised Drivers and Vehicles must vacate the Transport Area and without claim for compensation (whether for interruption to business, loss of profits, relocation costs or otherwise; and
- (c) no Authorised Drivers or Vehicles shall be entitled to enter the Transport Area or carry out the Authorised Services at the Airport.

13.6 **Without prejudice:** Without limiting any other rights the Owner may have under this Agreement or at law, any termination of this Agreement shall be without prejudice to the rights of either party against the other and will not in any way affect the liability of the Operator to

perform all of its obligations under this Agreement up to that date including payment of the Fees up to the date of termination.

## 14. Assignment

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- 14.1 **No assignment:** The Operator must not assign, transfer, mortgage, charge, sub-licence, or part with possession of its interest under this Agreement or in any Access Card.
- 14.2 **Change of control:** Where the Operator for the time being under this Agreement is a company not listed on the New Zealand Stock Exchange, any change in the partnership, membership or shareholding of the Operator or any reclassification of the rights attaching to any shares or any other arrangement altering the effective control of the Operator (if a partnership or a company) must be deemed a proposed assignment of this Agreement and is prohibited in accordance with clause 14.1.

## 15. Owner's covenants

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- 15.1 **Owner's covenants:** The Operator upon paying the Fees and other moneys payable to the Owner and upon performing the Operator's obligations under this Agreement will and may peaceably use the Transport Area during the term of this Agreement without any undue interruption or disturbance from the Owner.

## 16. Rights reserved by the Owner

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- 16.1 **Remedy of default:** The Owner may elect to remedy at any time, without notice, any default by the Operator or an Authorised Driver under this Agreement and all costs and expenses incurred by the Owner (including all legal costs and expenses) in remedying such defaults must be paid by the Operator to the Owner immediately on demand.
- 16.2 **Owner's rights:** The Owner may at any time do the following in its sole discretion:
- (a) promulgate or amend the Rules, or the rules for the management and control of the Transport Area and/or the Airport and amend any such rules. The Rules that apply as at the Commencement Date are attached in Schedule 3. The Owner will serve a copy of any new or amended rules so promulgated upon the Operator and such rules will take effect 20 Working Days after the date of service (or will take effect immediately if the new or amended rules promote health and safety) and will be deemed to form part of this Agreement in the same manner as if they had been set out fully in this Agreement;
  - (b) change the direction of flow of pedestrian or vehicular traffic into, out of or through the Airport or the Terminal;
  - (c) carry out any works in the Terminal or Airport or limit access to parts of the Airport;
  - (d) permit functions, displays, parades and other activities at the Airport;
  - (e) give 20 Working Days prior written notice to the Operator (provided such notice is not required in an emergency) to temporarily close or suspend the use of all or any part of the Transport Area. Upon expiry of that notice, this Operator must cease to use such part of the Transport Area and must vacate the same and without claim for compensation (whether for interruption to business, loss of profits, relocation costs or otherwise);
  - (f) control vehicles (including the number of vehicles) accessing the Transport Area, for the purposes of the better and safer management and control of vehicles. Without limiting this (and despite clause 16.2(e)), the Owner may close or restrict access to the Transport Area should it consider that too many vehicles are requesting access to those areas at any particular time, and such closure or restriction is required for the better and safer management of the Transport Area;



- (g) give 20 Working Days written notice (**Variation Notice**) to the Operator that it will:
  - (i) change or relocate all or any part of the Transport Area (including reducing the area or number of spaces in the Transport Area); and
  - (ii) otherwise change the terms and conditions (including the Access Card Fees and Length of Stay Fees, but excluding the Access Fees) of this Agreement,

provided that if the Operator does not wish to be bound by the amended terms and conditions it may, within 20 Working Days of the Owner serving the Variation Notice, give written notice to the Owner to terminate the Agreement (**Termination Notice**). On the date being 10 Working Days following service of the Termination Notice, this Agreement shall terminate and the Operator must vacate the Transport Area and without claim for compensation (whether for interruption to business, loss of profits, relocation costs or otherwise). Such determination will not in any way affect the liability of the Operator to perform all of its obligations under this Agreement up to that date including payment of the Fees up to the date of termination. In the event the Operator does not serve a Termination Notice within 20 Working Days of the Owner giving the Variation Notice, then this Agreement will be deemed to be varied to record the terms stated in the Variation Notice.

- 16.3 **Developments:** The Operator acknowledges that the Owner may from time to time carry out developments or expansion works in respect of any Terminal or the Airport generally (in addition to those specified in clause 16.2(c) above) and the Owner shall not be liable to the Operator for any claim arising out of, or in connection with, such developments or expansion works.
- 16.4 **No waiver:** No omission or failure by the Owner to charge the Operator for any money payable by the Operator under this Agreement at the time such charge should have been made shall constitute a waiver of the Owner's rights, and the Owner may, in the event of such an omission or failure, backdate the charge to the time when it should have been made.

## 17. Confidentiality and media

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- 17.1 **Confidential information:** All information which is communicated by the Owner in confidence under this Agreement will be treated by the Operator as confidential unless and until the same is published by the Owner or is in the public domain or generally known in the industry otherwise than by a breach of this Agreement.
- 17.2 **Return of confidential information:** The Operator must ensure that all Authorised Drivers and all employees, contractors, agents and other persons under its control return to the Owner, immediately on the termination of their duties, all identification, access cards, records, papers and other documents relating to the Owner.
- 17.3 **No announcements:** The Operator shall not, and shall ensure that none of its Authorised Drivers, officers, employees, agents, contractors or representatives (whether or not such persons are Authorised Drivers), make any media statement or public announcement in respect of either this Agreement or the Airport generally, nor attract any adverse media attention or publicity which may impact on the Airport or the Owner.

## 18. Dispute resolution

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- 18.1 **Disputes:** In the event of any dispute, difference or claim arising out of or in connection with this Agreement or the subject matter of this Agreement (**Dispute**) but excluding any dispute of matters the subject of clause 12.2, the parties will first seek to resolve the Dispute through discussion between the Owner's General Manager – Commercial and Customer Experience (or similar position) and the Operator's contact person (as specified in Schedule 1). If the Dispute cannot be so resolved, the parties must refer the Dispute for discussion directly between the

Chief Executive of the Owner and the Chief Executive of the Operator with a view to resolving the Dispute.

- 18.2 **Mediation:** If the parties are unable to resolve the Dispute by discussion within 10 Working Days from the date on which the Dispute is directed to the Chief Executive of the Owner and the Chief Executive of the Operator in accordance with clause 18.1 above, and subject to clause 18.5 below, either party may give notice to the other party (**Dispute Notice**), stating the subject matter and details of the Dispute and requiring the Dispute to be referred to a single mediator to be appointed by the parties.
- 18.3 **Arbitration:** The mediator must be agreed between the parties or, if the parties cannot agree within 5 Working Days of the service of the Dispute Notice, appointed at the request of either party by the president or vice president for the time being of the Arbitrators and Mediators Institute of New Zealand Inc. (AMINZ), or the nominee of such president or vice president. The mediation shall be conducted in accordance with the AMINZ Mediation Protocol. All costs of the mediator shall be borne equally by the parties.
- 18.4 **Failure to participate:** For the avoidance of doubt, if either party fails to participate in discussions envisaged by clause 18.1 above, the other party shall be entitled to proceed to issue a Dispute Notice.
- 18.5 **Continued performance:** Pending resolution of the matter, the parties shall continue to perform their respective obligations pursuant to the provisions of this Agreement.
- 18.6 **Interlocutory relief:** Nothing in clause prevents either party from applying to the Courts for urgent interlocutory relief.

## 19. Miscellaneous

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- 19.1 **Operator's warranties:** The Operator warrants to the Owner as follows:
- (a) It has full power and authority to enter into this Agreement and has taken all necessary corporate and other action to authorise the performance of this Agreement.
  - (b) All information supplied by it under this Agreement is, and will at all material times remain, true and correct and not complete and not misleading by omission. The Operator will notify the Owner immediately of any change to the information provided pursuant to this Agreement or of any material change in its circumstances that may be relevant to the Operator's operation, and the operations of the Operator's Authorised Drivers, at the Airport.
- 19.2 **Breach by Operator:** The Operator will pay all costs, charges and expenses for which the Owner shall become liable in consequence of or in connection with any breach or default by the Operator in the performance or observance of any of the terms of this Agreement.
- 19.3 **Default interest:** If the Operator fails to pay any amount to the Owner on its due date the Operator will pay to the Owner, upon demand, interest on that amount at the Default Interest Rate calculated on a daily basis from its due date for payment until the date payment is made in full.
- 19.4 **Costs:** Where the costs incurred by the Owner are in respect of fees incurred by the Owner with its solicitors, those costs will be paid on a solicitor/client basis. Where the costs incurred by the Owner represent a charge by the Owner to the Operator for its own administration or other expenses, then such charge will in all the circumstances be reasonable. If any dispute or difference arises as to what is a reasonable charge, such dispute or difference will be determined by the dispute resolution procedure set out in clause 18.

- 19.5 **Personal right:** It is expressly declared and agreed that the Operator's right to use the Transport Area is a personal right only, and this Agreement:
- (a) is subject to the Airport Authorities Act 1966 and other relevant legislation, regulations and bylaws;
  - (b) is not intended to be and will not be or deemed to be a document creating or enduring any tenancy;
  - (c) grants to the Operator a personal right to use the Transport Area and does not give the Operator any legal or equitable interest in the Transport Area, or any part of the Terminal;
  - (d) does not create any partnership between the parties to this Agreement and the Owner shall not be responsible for the operation of Authorised Services;
  - (e) does not prevent the Owner from granting to any other person or persons the right to establish or operate services similar to or the same as Authorised Services; and
  - (f) is not a licence for the purposes of section 206 of the Property Law Act 2007.
- 19.6 **Notices:** All notices must be in writing and must be served by one of the following means:
- (a) In the case of a notice under sections 245 or 246 of the Property Law Act 2007 in the manner prescribed by section 353 of that Act; and
  - (b) In all other cases, unless otherwise required by sections 352 to 361 of the Property Law Act 2007:
    - (i) in the manner authorised by sections 354 to 361 of the Property Law Act 2007; or
    - (ii) by personal delivery, or by posting by registered or ordinary mail, or my facsimile, or by email.
- 19.7 **Addresses for service:** The addresses for service of the Owner and the Operator are specified in Schedule 1 or at such other address in New Zealand as either Party may specify for such purpose by notice in writing to the other
- 19.8 **Service:** In respect of the means of service in clause 19.6(b)(ii), a notice is deemed to have been served:
- (a) In the case of personal delivery, when received by the addressee.
  - (b) In the case of posting by mail, on the second working day following the date of posting to the addressee's last known address in New Zealand.
  - (c) In the case of facsimile transmission, when sent to the addressee's facsimile number.
  - (d) In the case of email, when acknowledged by the addressee orally or by return email or otherwise in writing except that return emails generated automatically shall not constitute an acknowledgement.
- 19.9 **Representatives:** A notice shall be valid if given by any director, general manager, lawyer or other authorised representative of the party giving the notice.
- 19.10 **More than one notice:** Where two or more notices are deemed to have been served at the same time, they shall take effect in the order in which they would have been served but for clause 19.12.

- 19.11 **Exclusion of date of service:** Any period of notice required to be given under this agreement shall be computed by excluding the date of service.
- 19.12 **Deemed service:** Notices served after 5pm on a Working Day, or on a day that is not a Working Day, shall be deemed to have been served on the next succeeding Working Day.
- 19.13 **No waiver:** No waiver by the Owner of any breach of this Agreement shall operate as a waiver of any similar or subsequent breach. No custom or practice which may exist or develop between the parties shall be construed to waive or lessen any rights, powers or privileges at law or in equity for the Owner to insist upon the strict observance by the Operator of this Agreement. Any waiver by the Owner under this Agreement must be in writing.
- 19.14 **Information:** The Operator agrees that any information about it and the Authorised Drivers provided at any time to the Owner may be used by the Owner for any purpose connected with its business including (but not limited to) management of the Agreement, the operation of the Airport and to monitor the Operator's and the Authorised Driver's compliance with the requirements of the Agreement. The Operator and the Authorised Drivers agree to authorise this use for the following purposes:
- (a) monitoring the Operator's performance to ensure the Operator and the Authorised Driver's compliance with the terms of this Agreement and as part of the Owner's internal quality assurance programs undertaken from time to time;
  - (b) assisting the Owner in its management of the Airport and for facilities, maintenance and planning purposes; and
  - (c) responding to requests from government bodies for compliance and investigation purposes including but not limited to the Inland Revenue Department, New Zealand Transport Agency, the New Zealand Police and New Zealand Customs.
- 19.15 **Surveillance:** The Owner has in use at the Airport, CCTV surveillance and future plans to use licence plate recognition software for the purpose set out in clause 19.14.
- 19.16 **Provision of information:** By entering into this Agreement, the Operator and the Authorised Drivers agree that the Owner is authorised to provide information to any external agency and third party for credit and information assessment purposes, for the purpose of management and operation of the Operator's and the Authorised Driver's activities under this Agreement, or for any other purpose for which disclosure is required by law.
- 19.17 **Personal information:** The personal information that the Operator and/or the Authorised Drivers provide to the Owner will be securely held by the Owner. The Operator and/or the Authorised Drivers may request access to that information and that it be corrected.
- 19.18 **Acknowledgements:** The Operator confirms that it is authorised to make these acknowledgements on behalf of each Authorised Driver.
- 19.19 **Amendments:** No amendment to this Agreement will be effective unless it is in writing and signed by all the parties.
- 19.20 **Governing law:** This Agreement is governed by New Zealand law, and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.
- 19.21 **Counterparts:** This Agreement may be executed in two or more counterparts (including by electronic means), all of which will together be deemed to constitute one and the same agreement.
- 19.22 **Sustainability:** The Owner will work with the Operator to establish a sustainability contract including benchmarks and program KPIs during the Term.

# Schedule 3 – Rules

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## 1. Operator's obligations

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- 1.1 **Rules:** The Operator must at all times during the term, and must procure its Authorised Drivers at all times during the term, to comply with the following rules (and as amended from time to time by the Owner).

## 2. What Authorised Drivers must do

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- 2.1 **Authorised drivers must:** Authorised Drivers must at all times during the term:
- (a) Drive their Vehicles safely and in accordance with this Agreement and all rules, regulations, bylaws and legislation in force from time to time which at any time affect passenger services, SPSVs, LPSVs and their operation at the Airport including, the Land Transport Rule: Operator Licensing 2007 and the HSW Act.
  - (b) Display current Certificates of Fitness on the Vehicles and a current label/number plates.
  - (c) Use all appropriate receptacles at the Airport for disposing of rubbish.
  - (d) Except as otherwise directed by a police officer, traffic enforcement officer or any employee or contractor of the Owner, not enter or exit the Transport Area other than through the designated entry barrier for the relevant class of Vehicle, and then only after activating the barrier by Access Card.
  - (e) Provide helpful assistance in loading and unloading passengers and luggage from their Vehicles.
  - (f) Do not park their Vehicles for a period in excess of any regulatory signage at the Airport including the Transport Area.
  - (g) Comply at all times with the directions of a police or traffic enforcement officer, or any employee or contractor of the Owner and produce for inspection any New Zealand Transport Authority supplied unique ID on demand by any such person.
  - (h) Communicate effectively, be pleasant, helpful, well groomed and have a good knowledge of the Queenstown region.
  - (i) Return any property left in their Vehicles by a passenger to that passenger or deliver it to a police station within twenty-four (24) hours of its discovery.
  - (j) Where an additional charge is payable for pick up or drop off to or from the Airport these may only be referred to by reference to the actual amount of the Agreement Fees payable and when a passenger requests an explanation of the same.
  - (k) Deliver an outstanding customer experience reflecting the best in the region.
  - (l) Not encourage or recommend any passenger travelling to or from the Airport to be picked up or set down outside of the Transport Area.
  - (m) Obey the Rules and all other rules, regulations and reasonable requests that the Owner may make with regard to conducting affairs at the Airport.
  - (n) Ensure only Vehicles registered in the Operators Access Account may be used in the provision of the Authorised Services.

- (o) Hold any required passenger service licence and/or a P Endorsement and any appropriate exemptions entitling them to operate a SPSV or LPSV (as applicable) under the Land Transport Rule: Operator Licensing 2007.
- (p) Give the Owner any information that it reasonably requires relating to the Authorised Drivers from time to time and the Operator undertake that the Operator has written consent from such Authorised Drivers to do so.
- (q) Comply with the Agreement.

### **3. Vehicles**

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#### **3.1 Vehicles:** All Vehicles must be (unless otherwise agreed with the owner):

- (a) Of a good standard, well maintained, and in a good state of cleanliness and repair;
- (b) "Clean", meaning Vehicles will not display third party advertising;
- (c) Free from any offensive or distasteful branding or advertising (where such advertising has been agreed with the Owner; and
- (d) Compliant with all relevant statutes, regulations and bylaws which apply from time to time to them.

#### **3.2 Age of Vehicles:**

- (a) As at the Commencement Date, the average age of all Vehicles used by the Operator to provide the Authorised Services at the Airport must be less than 10 years in age from the date of manufacture.
- (b) Any new Vehicle acquired by the Operator during the Term must be less than 10 years in age from the date of manufacture on the date on which it is acquired by the Operator.

### **4. What Authorised Drivers must not do**

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#### **4.1 Authorised Drivers must not:** Authorised Drivers must not:

- (a) Sleep at the Airport.
- (b) Bring or permit to be brought onto the Airport any goods or things of a flammable, volatile or explosive nature.
- (c) Do, allow, or carry on in or upon any part of the Airport any offensive, noxious, noisy, illegal or dangerous act or business occupation.
- (d) Do or fail to do anything in or upon any part of the Airport which may cause damage to or allow damage to occur to the Airport or which may cause contamination to the Airport or become an annoyance, nuisance or disturbance to the Owner or any other user or occupier of the Airport (including causing interference to any telecommunication system).
- (e) Operate or permit to be operated within the Airport any wireless systems, devices or radio frequency devices, other than those specified in the Rules, without obtaining the Owner's prior written consent.
- (f) Cause or allow any noise including amplified music that is a nuisance or annoyance to the Owner or to the occupiers or users of the Airport. Whether any noise is or is not a nuisance will be determined solely by the Owner.

- (g) Tout for, or solicit, customers.
- (h) Pick up passengers for any form of passenger service other than the Authorised Services.
- (i) Drive in a careless or dangerous manner at the Airport or in breach of any Airport by-laws.
- (j) Smoke at the Airport.
- (k) Spit on the ground at the Airport.
- (l) Do anything that could be detrimental to the Owner or to the Airport or to the Airport's public image and reputation.
- (m) Obstruct or impede other Vehicles using either the Transport Area or other areas set aside for SPSV or LPSV services at the Airport.
- (n) Effect any signage on Airport property.
- (o) Carry out any maintenance to, or wash any Vehicle or spill oil, or other damaging substances, anywhere on the Airport.
- (p) In respect of the CTA, leave their Vehicle unattended or be parked in that area for longer than 20 minutes or length of stay fees may apply.
- (q) In respect of the CWA, be parked in that area for longer than 40 minutes or length of stay fees will apply.
- (r) Interfere with the use or smooth and safe operation of the Transport Area.
- (s) The Operator agrees it is a breach of this Agreement if it encourages any of its Authorised Drivers to encourage or recommend to any passenger travelling to or from the Airport to be set down or picked up outside of the Transport Area.

## 5. Authorised Wireless Systems and Devices

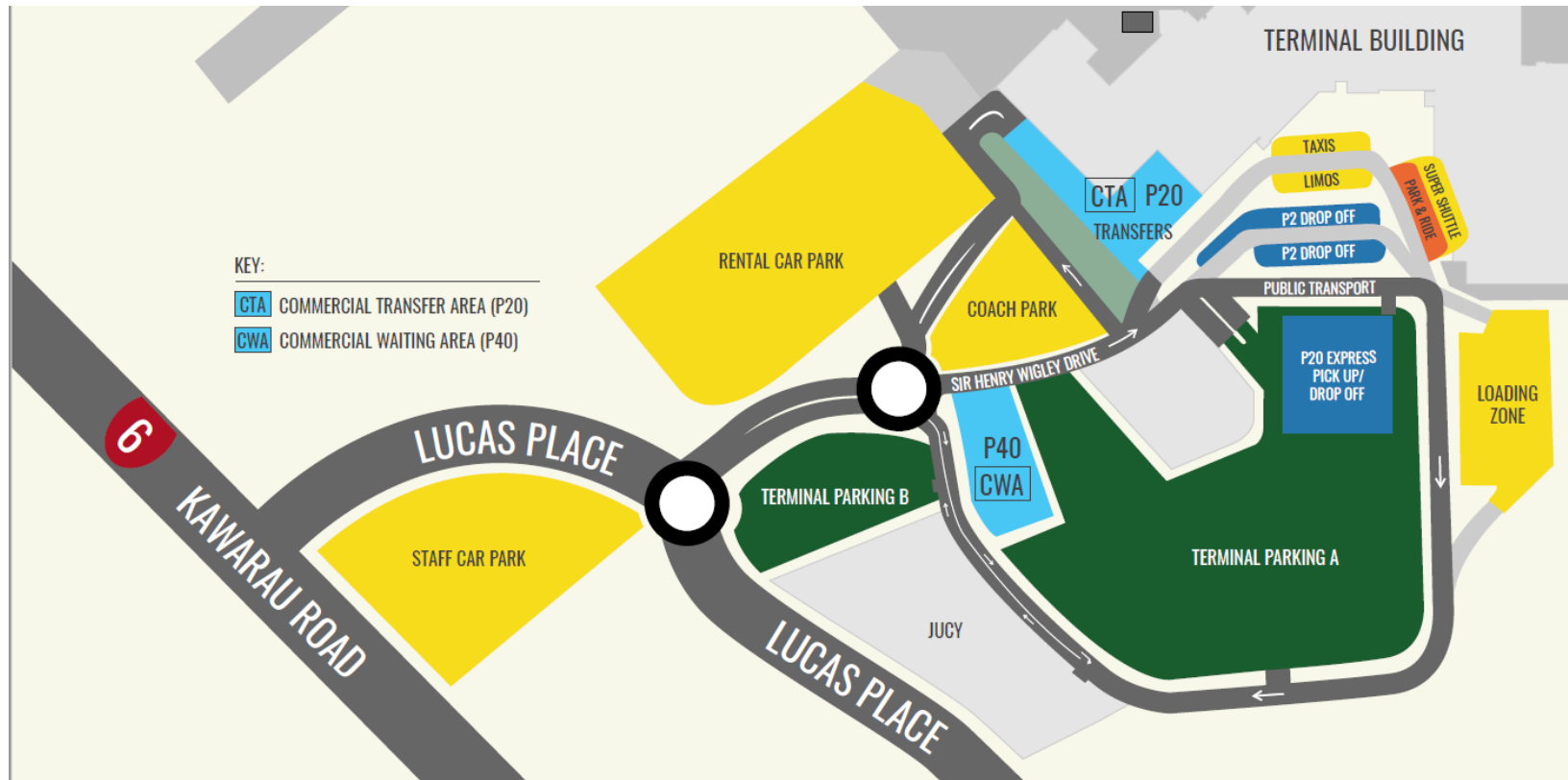
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5.1 **Authorised wireless systems and devices:** The following are authorised wireless systems and devices:

- (a) Commercially available Cellular telephones.
- (b) Short range (max 100 metres) indoor cordless telephones.
- (c) Licensed radio frequency systems or devices already installed or in operation at the Airport, providing they do not cause interference to other existing aviation or Airport operational services.
- (d) Receive only devices, eg, Sky aerials, etc.

5.2 **Compliance:** All mechanical or electrical devices that are to be installed must comply with all NZ Radio Emissions Standards and should not cause interference with any existing RF installation.

# Schedule 4 – Plans







## 2. Owner Details (if the Vehicle is not owned by the Operator)

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Rego Number	Name	Address	Contact phone no.