

Parties

QUEENSTOWN-LAKES DISTRICT COUNCIL  
*(the Council)*

SHOTOVER JET (QUEENSTOWN) LIMITED  
*(SJQ)*

Dated this 10 day of 2005

---

LICENCE AND CONCESSION AGREEMENT

---

---

MACALISTER TODD PHILLIPS BODKINS  
Solicitors  
O'Connell's Centre, cnr Beach & Camp Streets  
PO Box 653, DX ZP95001, Queenstown  
Telephone (03) 442-8110, Fax (03) 442-8116

Solicitor Acting: Kevin Phillips  
Direct Line (03) 442 2014  
Cell Phone (025) 347 372  
Residence (03) 442-2014  
Email: [kphillips@mactodd.co.nz](mailto:kphillips@mactodd.co.nz)

Date                                      day of                                      2005.

## PARTIES

- (1) QUEENSTOWN-LAKES DISTRICT COUNCIL, at Queenstown (*the Council*)
- (2) SHOTOVER JET (QUEENSTOWN) LIMITED, a duly incorporated company having its registered office at Queenstown (SJQ)

## RECITALS

### WHEREAS:

- (a) The Council has had transferred to it, by the Otago Regional Council, pursuant to Section 684(B) of the Local Government Act 1974, the maritime bylaw-making powers of the said Regional Council;
- (b) Pursuant to the transfer of such bylaw-making powers to it, the Council has passed the Queenstown-Lakes District Council (Shotover River) Bylaw 2003 (*"the Bylaw"*).
- (c) The Council, following an extensive application and hearing process, had previously resolved that it would grant a concession to Shotover Jet (Queenstown) Ltd (SJQ), over a stretch of water in the Shotover River so as to allow SJQ to exclusively carry out a commercial jet boat operation on such stretch of water.
- (d) Pursuant to the terms of such previously resolved grant of a concession, Council has now agreed to grant to SJQ an exclusive licence pursuant to Clause 4 of the Bylaw over the Restricted Zone (as such zone is defined in the Bylaw).
- (e) This Concession Agreement is the exclusive licence to SJQ and the grant of such exclusive licence and concession by the Council to SJQ is subject to the terms and conditions hereinafter appearing.

## 1. DEFINITIONS

For the purposes of this grant of a concession, the definitions set out in Schedule 1 shall apply.

## 2. GRANT OF LICENCE/CONCESSION

The Council grants to SJQ pursuant to Clause 4 of the Bylaw, a sole and exclusive Licence and Concession to carry out the Business on the River for the period set out in Clause 3 hereof.

### 3. TERM OF LICENCE/CONCESSION

- 3.1 The parties hereto agree that this Licence/Concession Agreement commenced as from the 1 December 2004 but also agree that the actual initial term of the Licence/Concession Agreement shall expire on 31 March 2009 subject to the rights of renewal set out in Clause 3.2. IT BEING FURTHER AGREED that the Council granted to SJQ a concession to operate the commercial jet boat operation as between 1 April 2004 and 1 December 2004 on the terms and conditions as outlined herein.
- 3.2. SJQ shall have the right, subject to Clause 3.3 hereof to renew the Licence/Concession for four periods of five years each, the first of such periods of renewal commencing 1 April 2009 and the last of such periods of renewal ceasing on 31 March 2029.
- 3.3. If SJQ shall wish to renew the Licence/Concession it shall give notice to the Council at least three months prior to 31 March 2009 and each five year period thereafter up to and including 31 March 2024. The Council shall renew this Licence/Concession if:
- (a) SJQ has complied with all material terms and provisions of this Licence/Concession; and
  - (b) The Council is satisfied as a result of such audit and detailed reviews as may be reasonably carried out by the Council in terms of this Licence/Concession that SJQ has operated the Business pursuant to and in accordance with a Code of Practice and Safe Operational Plan in accordance with Part 80 and approved by the Authorised Person as required by Part 80.

### 4. ACCESS TO RIVER

- 4.1 SJQ shall be required at all times consistent with the operation of the Business on the River in the manner set out in this Licence/Concession to:
- 4.1.1. Give access to the River to private non-commercial boat owners who wish to use the River for passage at times arranged and agreed with SJQ.
  - 4.1.2. Maintain and replace when necessary at the cost of SJQ at or near to Tucker Beach on the River a sign in a form and with wording agreed to with the Council. That wording shall give notice that access to the River above that sign is prohibited except to private boat owners who have obtained consent; that consent can be obtained from SJQ (with a contact phone number provided); and any complaints can be made to the Council.
  - 4.1.3. SJQ agrees that it will expeditiously and conscientiously continue to investigate, and in due course, to obtain Council approval for, install and operationally maintain at its cost in all things, an acceptable warning

device at Tucker Beach and when SJQ's jet boats are operating to immediately warn SJQ of any unauthorised boats entering upon the River and PROVIDED THAT SJQ will report in detail to Council at the end of each six-month period of the steps taken and the progress made in such investigations and PROVIDED THAT the Council agrees that non delivery of such a warning system by SJQ is not a ground for Council cancelling the Licence/Concession subject entirely however to the duty on SJQ to actively pursue such an acceptable warning device AND upon the acceptance and installation of such a warning system, to continue to maintain and operate such system.

- 4.2. SJQ agrees that except with the prior consent of the Council, it will at all times restrict the commercial operations of SJQ on the River to operate a maximum of four (4) commercial boats with fare carrying passengers at any one time.
- 4.3. SJQ agrees when operating under this Licence/ Concession, that boats will pass only at Big Beach on the River.
- 4.4. SJQ agrees that in respect of that part of the River upstream from Caveills Bridge to the Oxenbridge Tunnel, SJQ will:
  - (a) consult and co-operate with other commercial operators using, or wishing to use, that section of the River PROVIDED THAT such duty to consult and co-operate does not apply to other commercial jet boat operators.
  - (b) agree upon reasonable rules and procedures for the safe use of that section of the River by SJQ and the other commercial operators (excluding other commercial jet boat operators).

## 5. EXCLUSIVE LICENCE/CONCESSION

- 5.1. The Council confirms that the Licence/Concession granted to use the River is a sole and exclusive concession subject only to the provisions of Clause 4.
- 5.2. During the term of the Licence/Concession and any renewal thereof, the Council will not grant any right or enter into any agreements which could or may have the effect of derogating from the exclusive rights granted to SJQ to carry out the Business on the River.

## 6. CONCESSION FEE

- 6.1. SJQ will pay to the Council a Concession fee (such fee being levied by and under the terms of Clause 6 of the Bylaw); [REDACTED]  
[REDACTED] for activities undertaken by SJQ in providing boat and photography services in relation to jet boat rides.
- 6.2. The concession fee for each calendar month shall be payable on the 20<sup>th</sup> day of the second month following that month.

6.3. SJQ shall provide to the Council within 3-months following the date of the annual financial statements of SJQ a certificate from the auditors for SJQ (or if there is no auditor of SJQ the auditor for the parent company of SJQ) certifying the concession fees payable to the Council under this Concession for that completed financial year.

6.4. The Council may on request require SJQ to permit:

(a) the auditor for the Council to audit and check the financial records of SJQ for the purposes of determining if the concession fee has been properly paid; or

(b) an auditor appointed by the Council to inspect the financial records of SJQ for the purpose in (a) above.

AND SJQ shall give any such auditor access to all records of SJQ as may be required to ascertain the concession fee payable to the Council.

6.5. SJQ will not do any act, or make any direction or decision, either directly or indirectly by allocating or shifting revenue from jet boat rides into other revenue receipts that may allow SJQ to reduce the concession fee payable to the Council.

## 7. REQUIREMENTS OF SJQ

7.1. SJQ shall at all times during the continuance of this concession have in place procedures, plans and systems for ensuring the Business is carried on at the River with risk of injury to passengers carried on the boats operated by SJQ being minimised, consistent with the effective operation of the Business. For this purpose SJQ shall keep in place, review and update regularly and at least annually:

7.1.1. A Safe Operational Plan;

7.1.2. A Code of Practice;

Copies of the current Safe Operational Plan and Code of Practice are attached to this Concession and those documents, as updated from time to time as required under Part 80, shall form part of the terms and provisions of this Concession as if incorporated into this document in full.

7.2. SJQ shall at all times while operating the Business:

7.2.1. have as a primary objective the safety of those persons being carried on the River by SJQ;

7.2.2. operate in a manner to provide a reliable and professional commercial jet boat ride to the public;

7.2.3. comply with the provisions of this Licence/Concession, and all Statutory Requirements. In particular SJQ will at all times comply with the provisions of the Code of Practice and Safe Operational Plan. Where any such conflict arises the Statutory Requirements shall prevail.

7.2.4. Comply with any lawful direction given by the Council to SJQ that is either:

- (a) in accordance with the terms of this Licence/Concession; or
- (b) is required for the safe operation of the Business on the River;

and which is not inconsistent or in conflict with the Safe Operational Plan.

7.3. In operating the Business SJQ shall obtain any waivers, dispensations, consents, authorities or other approvals:

7.3.1. under the Resource Management Act 1991;

7.3.2. required under Statutory Requirements; or

7.3.3. required to operate the Business in compliance with all Statutory Requirements on the River including all waivers, dispensations and consents obtained pursuant to or under such Statutory Requirements.

7.4. SJQ agrees to maintain the existing on-shore facilities necessary to operate the Business in good order and repair and shall provide all facilities on-shore required to meet the reasonable requirements of the Business and the public. Such building and other improvements on the property leased by SJQ at the date of this Concession shall be in compliance with any requirements of the lease or Concession granted in respect of that property and shall otherwise be to the satisfaction of the Council.

7.5. In respect of all boats operated on the River, SJQ covenants that in a manner complying with Rule 80 and the Safe Operational Plan approved by an Authorised Person, the following shall apply:

7.5.1. All such boats shall be designed, operated and maintained in such a manner as to ensure a high level of comfort and safety for passengers and the driver throughout the operating life of the boats.

7.5.2. All boats shall be operated in accordance with the Safe Operational Plan.

7.5.3. The maintenance and upkeep for the boats will include a system approved by the Council and in accordance with best industry standards and practice for:

- (a) listing all critical componentry on the boat, their operating life, expiry dates, and the date on which such components are replaced for each boat;
- (b) replacing all critical operating components as they reach their use-by date;

(c) monitoring all critical componentry including the specific tracking of all such componentry;

(d) monitoring and recording all maintenance carried out on the boats.

7.5.4. All engines, jet units and other operating equipment in the boat shall be serviced and maintained in accordance with the requirements of the manufacturer of that plant and equipment and in accordance with best industry practice with full records being kept of all servicing carried out on the boats and their equipment.

7.5.5. SJQ is to maintain its Reliability Centred Maintenance process involving the computer tracking of critical jet boat plant and equipment and SJQ agrees that any modification of any such identified critical part of SJQ's plant and equipment shall be notified in writing to the Council's Harbourmaster and the proposed modification shall be accompanied by a Producer Statement signed off by a reputable engineer acceptable to Council. No such proposed modification to such Reliability Centred Maintenance identified critical part shall be undertaken by SJQ without first having been approved by Council.

7.5.6. Establish and maintain all maintenance and check procedures to ensure all boats used on the River are checked prior to use to ensure each such boat is safe for use in accordance with a system and programme under which:

(a) all known and experienced potential faults and failures will be subject to a checking system; and

(b) procedural examinations of the boats and equipment will be carried out regularly;

(c) all maintenance will be carried out as required by manufacturers in respect of supplied equipment and otherwise as required in accordance with best industry practice.

7.5.7. All boats operated on the River by SJQ will contain all required safety equipment including bow ropes.

7.6. SJQ shall not increase, or notify or publicise any increase to the price or other charge for rides on the River unless SJQ has first consulted with the Council and the Council has agreed to such increase.

7.7. SJQ shall in respect of the Safe Operational Plan:

7.7.1. ensure such plan complies with all Statutory Requirements including Part 80 subject to any consents and dispensations given in accordance with those Statutory Requirements;

7.7.2. ensure the plan is prepared in a clear, legible, responsible and accountable manner;

- 7.7.3. ensure the Safe Operational Plan can be readily audited and monitored by the Authorised Person;
- 7.7.4. promptly respond to any question or enquiries from the Authorised Person in respect of the Safe Operational Plan.
- 7.8. SJQ will at all times ensure that all commercial jet boat drivers employed by it to drive under the terms of this Concession are selected, trained, supervised, reviewed and approved by SJQ with the overall prime objective being the safe operation of the jet boats and the passengers therein.
- 7.9. SJQ will ensure that all such jet boat drivers employed by it shall:
- 7.9.1. Hold such medical certificates and pass such medical examinations as may be required by the Safe Operational Plan and the Code of Practice;
- 7.9.2. Be of sufficient and acceptable character and reputation that is acceptable to the Authorised Person;
- 7.9.3. Hold such licences and approvals that may from time to time be required by the Council;
- 7.9.4. Have been trained and appropriately vetted and approved by the Authorised Person under the provisions of the "*Driver Training Template*" as contained in the Safe Operational Plan.
- 7.9.5. Any training driver employed by SJQ shall first be approved for such position by the Authorised Person and shall be subject to such further assessment and reviews as the Authorised Person may appear appropriate.
- 7.10. SJQ will ensure that all the incident reports completed by it in the terms of its Code of Practice will be recorded on a computer data base and access to such computer data bases will be made available to the Authorised Person at all times at the premises of SJQ so as to allow the Authorised Person to check and view all such incidents and the result of such investigations of such incidents as carried out by SJQ.
- 7.11. SJQ will report forthwith to the Authorised Person all incidents involving any injury to any person which injury is occasioned during the operation of the Concession (injury for the purpose of this Concession document will have the meaning of "*bodily harm*").
- 7.12. SJQ will immediately report to the Authorised Person any form of incident or accident involving damage or any malfunction that is material to the safe operation of any such jet boat. Any jet boat involved in any such incident, accident or malfunction will be immediately taken out of operation in the terms of this Concession and will not be again operated under the Concession without such jet boat first having been inspected and reapproved for operation by the Authorised Person.



- 7.13. SJQ will ensure:
- 7.13.1. it has in place at all times a communication system which allows the drivers of the boats operating on the River to be in contact with the base of SJQ;
  - 7.13.2. it reviews and updates the communication systems at all reasonable times;
  - 7.13.3. the systems allow SJQ to be aware at all times of the whereabouts on the River of all boats operating on the River;
  - 7.13.4. all employees of SJQ driving the boats on the River are aware of the communication system and have been properly trained in their use and the requirements for communicating with the base of SJQ;
  - 7.13.5. An audiotape of all radio communications between the driver and SJQ base for each trip is kept for three hours after that trip ceases. For the purposes of avoiding doubt, it is agreed that communication between driver and passengers shall not be recorded. In the event of an accident, the tape will continue to be held unerasable by SJQ and a copy thereof provided to the Council on request by the Authorised Person.
- 7.14. SJQ will provide to the Council full details of the trip to be carried out on the River and the design of the trip will be subject to the consent and approval of the Council. Such consent will be given after taking into account the nature of the trip offered by SJQ as part of its Business. Details of such trip shall be included in the Safe Operational Plan if required by Part 80.
- 7.15. SJQ will ensure that all persons embarking on a commercial boat ride on the River shall have a safety briefing in accordance with best industry practice prior to such boat trip commencing so as to ensure that all such persons have been made appropriately aware of the principal risks and issues which may arise during the course of the trip including any safety issues that need to be complied with by all passengers on that trip.
- 7.16. SJQ will at all times ensure that a procedure is implemented under which:
- 7.16.1. prior to commencing operation on the River in each day a full river check shall be carried out by a senior driver before any commercial operations commence for that day; and
  - 7.16.2. the result of that daily river check will be recorded in a form that is available to the Council upon request; and
  - 7.16.3. the drivers for that period will then determine whether or not to operate under the conditions and pertaining on the River the senior driver for that day having the right to make the ultimate decision on whether or not to operate on that day.

## 8. REQUIREMENTS AND RIGHTS OF COUNCIL

- 8.1. The Council warrants and acknowledges that the Council will not:
- 8.1.1. alter the Bylaw prior to the 31<sup>st</sup> day of March 2014 to increase the Concession fee payable by SJQ under this Licence/Concession;
  - 8.1.2. amend or vary the terms and provisions of the Bylaw so as to alter the terms (including renewals) of this Licence/Concession.
- 8.2. The Council agrees with SJQ that if the Council shall consider making any changes or additions to the Bylaw it shall not do so unless it has entered into prior consultation with SJQ on those changes and additions.
- 8.3. The Council either itself or by an Authorised Person may for the purposes of applying the Safe Operational Plan and the Code of Practice either itself or through the Authorised Person where the Council reasonably considers the safety of any passenger carried on the River by SJQ is at risk:
- (a) suspend the operations until the matter giving rise to that view is rectified; or
  - (b) give reasonable directions to SJQ on the manner in which operations on the River by SJQ are to be carried out.

## 9. REVIEWS AND AUDITS

- 9.1. The Council by the Authorised Person and SJQ may each give written notice to the other at any time seeking changes to:
- 9.1.1. the Code of Practice;
  - 9.1.2. the Safe Operational Plan;
- to ensure these documents meet the operational requirements on the River and are consistent with Part 80.
- (The Code of Practice and the Safe Operational Plan hereinafter called the "Documents").
- 9.2. Upon such notice being given the parties shall consult on the changes to be made to the Documents and upon mutual agreement being reached on any changes which are not contrary to the provisions of Rule 80 the revised Documents shall be those applicable under this Licence/Concession.
- 9.3. In the event that the parties cannot agree on the changes to be made to either Document then the Authorised Person acting reasonably may direct that changes be made to the relevant document and such changes shall be incorporated therein from the date of such direction or such later date as may be specified by the Authorised Person.

- 9.4. Notwithstanding any reviews under Clause 9.1.1 the parties shall review, within one month of each anniversary of this Licence/Concession (and any renewals) the Documents and any changes agreed to between the parties as a result of the review and which are not contradictory to the provision of Part 80 and any other Statutory Requirements shall be included in such Documents.
- 9.5. Any review under Clauses 9.1 and 9.2 shall ensure the Documents continue to accurately reflect the intention of the parties to:
- 9.5.1. comply with Part 80 and all Statutory Requirements;
  - 9.5.2. enable SJQ to carry on the Business;
  - 9.5.3. ensure the Business is carried on in accordance with the best industry practice applying at the time of that review;
  - 9.5.4. ensure SJQ has continued to update all safety procedures and systems in respect of the operations of the Business to ensure the safe operation thereof;
  - 9.5.5. ensure passengers are carried safely on the boats with risk of injury being minimised to the extent reasonably achievable.
- 9.6. The Council may carry out or require SJQ to carry out the following audits or review by notice given by the Council to SJQ to that effect:
- 9.6.1. the maintenance carried out on the boats;
  - 9.6.2. the dates of maintenance, removal and replacement of all critical parts of the boats;
  - 9.6.3. the systems of SJQ for logging and tracking critical parts (including Reliability Centred Maintenance);
  - 9.6.4. the records of SJQ relating to incidents and/or accidents that occur in respect of boats operating on the River;
  - 9.6.5. the annual review by SJQ of the Safe Operational Plan including all operating procedures for operating boats on the River.
- 9.7. In respect of the reviews and audits carried on under Clause 9.4 and 9.6 the following provisions apply:
- 9.7.1. SJQ will supply all such records and information as may be relevant to that audit and which are held by SJQ.
  - 9.7.2. The Council may appoint an appropriately qualified independent person to carry out the audit or review on behalf of the Council.

- 9.7.3 Each such audit or review shall be carried out annually or at such other times as the Council considers appropriate to ensure SJQ meets the objectives set out in Clause 9.5.

## 10. CHANGE TO PART 80

in the event that there shall be any changes or amendments to:

- (a) Rule 80;
- (b) any Statutory Requirements;

including any changes to Rule 80 then SJQ shall forthwith make such changes to the Safe Operational Plan and Code of Practice as required by those changes and amendments or accept any new provisions as may be required by statute to ensure the tenor and purpose of the relevant provisions of this Licence/Concession continue in force and effect.

## 11. ASSIGNMENT, SUBLETTING AND CONSENTS

- 11.1. SJQ acknowledges that it is a term of the Licence/Concession that Ngai Tahu Holdings Corporation Limited or any related Company (as that term is defined in Section 2(3) of the Companies Act 1993) of Ngai Tahu Holdings Corporation Limited continues to hold or control the shares in SJQ by holding (directly or indirectly) more than 50% of the shares in SJQ or the Company which controls SJQ. The intent of the parties is that Ngai Tahu Holdings Corporation Limited or a related Company (as defined in Section 2(3) of the Companies Act 1993) having the same controlling shareholders as exists at the date of this Licence/Concession continue to control SJQ by holding more than 50% of the shares in SJQ, or the company which controls SJQ, and the continuance of Ngai Tahu Holdings Corporation Limited as the controlling shareholder is material to the decision of the Council in entering into this Licence/Concession so as to achieve the safety objectives of the Council. If there shall be any change in control of SJQ without the prior written consent of the Council (which consent may be withheld at the discretion of the Council) this shall be a deemed assignment of the Licence/Concession in breach of this clause. SJQ agrees to consult with the Council if there should be any intention to change the shareholding of SJQ as aforesaid.
- 11.2. SJQ shall not sublet, mortgage or dispose in any way, except with the prior consent in writing of the Council, the rights under this Licence/Concession document. Notwithstanding this provision SJQ will be entitled to enter into a debenture in favour of the trading bank of SJQ under which will be secured financial accommodation on normal commercial lending terms or secure or financial accommodation provided by such bank to the group of companies within SJQ.
- 11.3. The Concession is assignable only on the following terms and conditions:
- 11.3.1 That such right to assign the Concession is only exercisable on limited terms and conditions.

11.3.2. Prior to any assignment being consented to by the Council the proposed transferee must establish to the Council's satisfaction in all respects that:

- (a) the transferee is of good character and is financially solvent; and
- (b) the transferee can meet and comply with all of the safety and operational conditions contained within this Concession including the Code of Practice and Safe Operational Plan; and
- (c) the transferee can demonstrate that it will ensure a culture of safety exists in the operation of the Concession; and
- (d) the transferee has the ability to operate the Business as a profitable business to ensure appropriate concession fees are payable to the Council.

11.4. Under any consent for assignment under Clause 11.3 the following provisions shall apply:

11.4.1. The Council need not give any reason for refusing to consent to any such proposed assignment;

11.4.2. The Council can decide on any grounds which in the opinion of the Council are reasonable to refuse to give such consent to an assignment.

## 12. CONFLICT

In the event that any conflict shall arise between the requirements under Part 80 or any other Statutory Requirement and the requirements of the Council under this Licence/Concession then the former shall prevail. In such event of conflict SJQ shall use its best endeavour to meet the reasonable requirements of the Council consistent with the obligations of SJQ to meet the Statutory or Rule Requirements.

## 13. FORCE MAJEURE

13.1. Notwithstanding any other provision of this agreement, non-performance by either of the parties of any of its obligations (other than to pay money) under this agreement shall be excused, without liability for non-performance, during the time and to the extent that such performance is prevented, wholly or substantially, by Force Majeure.

13.2. The party claiming the benefit of this clause shall promptly give written notice to the other party specifying the cause and extent of its inability to perform any of its obligations under this agreement and the likely duration of such non-performance. In the meantime such party shall take all reasonable steps to remedy or abate the Force Majeure.

13.3. No party shall, by virtue of this clause, be required against its will to settle any strike, lockout or other industrial disturbances.

- 13.4. Performance of any obligation affected by Force Majeure shall be resumed as soon as reasonably possible after the termination or abatement of the Force Majeure. If by reason of Force Majeure the continuance of the Business in the foreseeable future is improbable the other party may on giving ten (10) Business Days written notice to that party cancel this Licence/Concession.
- 13.5. Cancellation of this Licence/Concession under this clause shall not prejudice the rights of either party against the other in respect of any matter or thing occurring under this Licence/Concession before cancellation.

#### 14. DISPUTE RESOLUTION

- 14.1. *Initiating Resolution:* Except as otherwise provided in this Licence/Concession, if a dispute arises concerning the construction or performance of this Licence/Concession, or the rights and liabilities of the parties under this Licence/Concession, the parties, using the procedures set out in this clause, agree to make a genuine effort to resolve the dispute without resorting to litigation before using the procedures set out in this clause. Either party may initiate these resolution procedures by giving written notice to the other party.
- 14.2. *Negotiations:* The party who initiates the resolution procedures must name its representative in the negotiations when giving written notice to the other party. A party receiving such written notice must then give written notice to the other party, within 2 Business Days of receiving the initiating party's notice, naming its representative in the negotiations. Each representative must have authority to settle the dispute. Within 5 Business Days after both parties have been so advised of each other's representatives, the representatives must enter into negotiations to try to resolve the dispute.
- 14.3. *Other means:* If the dispute has not been settled within ten (10) Business Days from the date of entering into negotiations under clause 14.2 then the parties may pursue any other course of action to resolve the dispute, including instigating proceedings.

#### 15. DEFAULT AND TERMINATION

- 15.1. In the event that there is any breach of the terms and provisions of this Licence/Concession which in the reasonable opinion of the Council is critical to safety of passengers being carried in boats on the River then the Council may forthwith give notice to SJQ that:
- 15.1.1 all operations on the River are to cease until that safety issue has been resolved to the satisfaction of SJQ and the Council; and/or
- 15.1.2 may suspend operations on the River until an independent audit report has been received by the Council from an appropriate qualified person confirming that operations on the River may recommence.
- 15.2 In the event that there is a default under the terms and provisions of this Agreement which is not fundamental to the safety of operations on the River then:
- 15.2.1. the Council shall give notice to SJQ of that default; and

15.2.2. SJQ shall have thirty (30) Business Days within which to remedy the matter in default of which notice has been given by the Council; or

15.2.3. if such matter cannot be remedied then SJQ will take such actions as may be necessary to ensure that such default does not reoccur.

15.3. In the event that there are material and continuing breaches of the terms and provisions of this Licence/Concession, and SJQ has not, after due notice, remedied its breaches or remedied the matter in respect of which such breaches arose, and such defaults have continued for a period of sixty (60) Business Days, then the Council may by notice to SJQ terminate this Licence/Concession, provided that at the absolute discretion of Council, Council may agree to an extension of the sixty (60) Business Day period in which to rectify the breach.

## 16. COSTS AND EXPENSES

SJQ acknowledges that all services provided to SJQ by the Council pursuant to any statutory requirement under which a person or persons nominated or agreed to by the Council is to provide services for the purposes of implementing the terms and provisions of the Concession then such costs shall be recoverable by the Council from SJQ. For the avoidance of doubt, the provision of this Clause 16 applies only where SJQ is in default of a term (or terms) of this Licence/Concession.

## 17. AUTHORISATION OF PERSONS

17.1. The Council may from time to time authorise a person or persons to:

17.1.1 give any notice or notices to SJQ pursuant to the terms and provisions of this Concession; and

17.1.2 nominate a person holding a particular position (such as the Council Harbourmaster) to be authorised to give directions and make decisions pursuant to the terms of this Concession for and on behalf of the Council.

17.2. The decision or direction of any such person so nominated or determined by the Council in respect of any matter under this Licence/Concession shall be final and binding on the Council.

## 18. GOVERNING LAW

This agreement shall be governed by and construed in accordance with New Zealand law.

## 19. NOTICES

19.1. Any notice or other communication given under this agreement to a party shall be in writing addressed to that party at the address or facsimile number from time to time notified by that party in writing to the other party. Until any other address or facsimile number of a party is notified, they shall be as set out below.

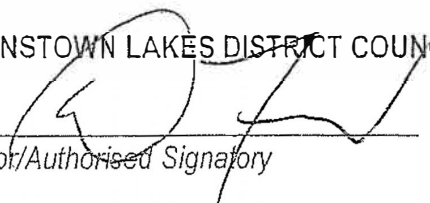
19.2 Delivery may be effected by hand, by post with postage prepaid, or by facsimile. A notice or other communication delivered by hand shall be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 5.00 p.m. on a Business Day, then the notice or other communication will be deemed to have been received on the next Business Day. A notice or other communication delivered by pre-paid post shall be deemed to have been received on the 2nd Business Day after posting. A notice or other communication sent by facsimile shall be deemed to have been received on the day of transmission. However, if the date of transmission is not a Business Day or the transmission is sent after 5.00 p.m. on a Business Day then the notice or other communication will be deemed to have been received on the next Business Day after the date of transmission.

*Queenstown Lakes District Council:* if to the Council to:  
Local Government Offices  
Queenstown-Lakes District Council  
10 Gorge Road  
Queenstown  
Attention: Chief Executive Officer  
Telephone: (03) 442 7333  
Fax: (03) 442 7334  
By Email: [www.qldc.govt.nz](http://www.qldc.govt.nz)

*Shotover Jet (Queenstown) Limited:* if to SJQ to:  
Arthurs Point  
PO Box 660  
Queenstown  
Fax: 03 442 7259  
Attention: Chief Executive Officer

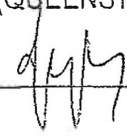
EXECUTION

QUEENSTOWN LAKES DISTRICT COUNCIL by:

  
\_\_\_\_\_  
*Director/Authorised Signatory*

\_\_\_\_\_  
*Director/Authorised Signatory*

SHOTOVER JET (QUEENSTOWN) LIMITED by:

  
\_\_\_\_\_  
*Director*

\_\_\_\_\_  
*Director*



## SCHEDULE 1: DEFINITIONS

*Application Document* means that part of the document attached as Appendix I submitted by Shotover to the Council when applying for the Licence/Concession;

*Authorised Person* means any person duly authorised under warrant or delegation by the Council to act as the Authorised Person for the purpose of this Licence/Concession;

*Business* means the business of operating commercial jet boats giving a thrilling ride through the canyons of the River incorporating 360 degree turns in a manner which minimises the risk of injury for passengers by implementation of the appropriate safety measures and Safe Operational Plan;

*Business Day* means any day (other than a Saturday or Sunday) on which registered banks are open for business in Christchurch and Queenstown;

*Business Days:* anything required by this agreement to be done on a day which is not a Business Day may be done effectually on the next Business Day;

*Bylaw* means the Queenstown-Lakes District Council (Shotover River) By-law 2003 (a copy of which is attached hereto as Appendix II;

*Code of Practice* means a code implemented by SJQ for the operation of the Business, such code being attached as Appendix III;

*Licence/Concession* means the exclusive right to operate the Business on the River;

*Licence/Concession Agreement* means this document;

*Crisis Management Plan* means the plan attached hereto as Appendix IV for response to and management of operational emergencies while operating the Concession;

*Documents* means the Safe Operational Plan and the Code of Practice;

*Force Majeure* means any:

- (1) act of God, fire, earthquake, storm, flood, or landslide;
- (2) strike, lockout, work stoppage or other labour hindrance;
- (3) explosion, public mains electrical supply failure, failure of essential services, or nuclear accident;
- (4) sabotage, riot, civil disturbance, insurrection, epidemic, national emergency (whether in fact or law) or act of war (whether declared or not);
- (5) requirement or restriction of, or failure to act by, any government semi-governmental or judicial entity;
- (6) unavoidable accident, or inability to obtain or delay in obtaining adequate labour, contractors, equipment, materials, transport or supplies; and

(7) any other similar cause beyond the reasonable control of the party claiming the benefit of the Force Majeure clause in this agreement and which that party is unable to overcome by the exercise of reasonable diligence and at a reasonable cost;

but does not include:

(8) any event which the party affected could have prevented or overcome by exercising a standard of reasonable care; or

(9) a lack of funds for any reason.

*Part 80* means "Part 80 Maritime Rules Marine Craft used for Adventure Tourism" as promulgated under the Maritime Transport Act 1994 and any such rule or rules as may be amended or substituted therefor from time to time.

*Queenstown District* means the district of Queenstown-Lakes District Council as defined in accordance with the Local Government Act 1974;

*River* means that part of the Shotover River between Tucker Beach and the waters of the Shotover River at the east end of the Oxenbridge Tunnel, such part of the Shotover River being defined in the Bylaw as the "Restricted Zone".

*Safe Operational Plan* means the plan attached as Appendix V for operating commercial jet boats on the River and includes:

- (a) the jet boat driver training programme; and
- (b) the Crisis Management Plan.

*Statutory Requirements* means the requirements of any Act, Regulation, Bylaw or other statutory direction affecting the operation of the Business on the River.