

# PERISHER, MOUNT HOTHAM AND FALLS CREEK PRODUCT & SERVICE TERMS AND CONDITIONS

Version 2021.1.0, Current as at 19 April 2021

1. An indirect wholly-owned subsidiary of Vail Resorts, Inc (**Vail**), being, as applicable, Perisher Blue Pty Limited ACN 061 232 488 as trustee for Snow Trust ABN 29 420 214 757 (**Perisher Blue**), Falls Creek Ski Lifts Pty Ltd ACN 004 843 761 (**FCSL**), or Mount Hotham Skiing Company Pty Ltd ACN 004 294 697 (**MHSC**) (collectively, the **Suppliers**), owns and operates the Perisher Blue, FCSL or MHSC websites (**Websites**).
2. The Suppliers supply a range of products and services in Australia at the Perisher, Mount Hotham and Falls Creek alpine resorts (**resorts**), including products and services that provide access to and use of ski and snowboard slopes at the resorts, ski lifts (being chair lifts, t-bars, poma lifts, moving carpet and tow ropes as may be operated by the Suppliers at their respective resorts during the relevant ski season (**ski lifts**)), snowtubing, Skitube, tobogganing, snowsports (ski / snowboard) school lessons, snowsports (ski / snowboard) equipment hire, snowbikes, club and training programs (including season long programs), and other recreational activities at the resorts, with such products and services provided on a daily, multiday or season basis, or for a set period of time. These terms and conditions (the **Terms and Conditions**) apply to the sale, purchase, booking and use of all such products and services supplied by the Suppliers (including those supplied by way of package) (the **Products & Services**). For the avoidance of doubt, the Products & Services include the cards which are used for the storage of purchases of Products & Services sold and supplied by the Suppliers with respect to the resorts (**Media Card**).
3. In these Terms and Conditions, Vail and the Suppliers are referred to as “**we**”, “**us**”, “**our**” and includes our directors, employees, beneficiaries and agents, and the purchaser, holder or user of any Product or Service are referred to as “**you**”.
4. By accessing any of the Websites and / or booking, purchasing or using a Product and / or Service, you are agreeing to be bound by these Terms and Conditions and our Privacy Policy. If you choose not to be bound by these Terms and Conditions or Privacy Policy, the Suppliers will not grant you the right to so use the Websites and the Suppliers will not sell or supply you with any of the Products & Services.
5. These Terms and Conditions, including any Attachments, apply to and bind you, as purchaser, holder and / or user of any of the Products & Services supplied by the Suppliers, whether booked or purchased via any of the Websites or by any other means (including by telephone, postal order, or by visiting the relevant Suppliers' office, or through a third party).
6. If you book or purchase any Product and / or Service from the Suppliers (via any of the Websites or by any other means) on behalf of another person, both you and that other person agree that you make that purchase as the authorised agent of that other person so that he/she is bound by these Terms and Conditions and Privacy Policy (including with respect to that person's use of any Product and / or Service).

## **SPECIAL CONDITIONS APPLYING TO 2021 AUSTRALIAN SEASON DUE TO COVID-19 PANDEMIC**

7. We may need to implement a range of measures and actions to respond to the COVID-19 pandemic, including to follow social distancing and other COVID-19 related requirements, directions and guidelines, and to otherwise maintain health and safety at our resorts. These measures may **change** from time to time, and we require all guests, as a condition of access and or use of our resorts, to regularly check our resort websites and other communications to stay abreast of current measures and requirements at our resorts.
8. It is a condition of your purchase and / or use of any Product and / or Service from the Suppliers that you **follow** all directions and requirements in place from time to time to maintain health and safety at our resorts, including without limitation:
  - a. Providing, upon request, a COVID-19 health declaration;
  - b. Observing social distancing requirements;
  - c. Observing face covering requirements;

- d. Permitting us to provide personal and / or health information to public health authorities where we are required by law to do so or where the authority has a legal right to request such information to assist with contact tracing (please refer to our privacy policy).

Failure to follow such directions and requirements may result in forfeiture of the Product and / or Service, and / or associated privileges or benefits.

9. You acknowledge and agree that it is **your responsibility** to follow and observe all directions and requirements in place from time to time to maintain health and safety at our resorts, including observing social distancing requirements, and that we have no liability for any failure to do so.
10. You acknowledge and agree that, despite measures and actions taken to maintain health and safety at our resorts, we are unable to prevent or avoid all risks relating to COVID-19 in the alpine environment and you accept personal responsibility and liability for any and all risks relating to COVID-19 while at our resorts.
11. Due to social distancing and other COVID-19 requirements which need to be observed at our resorts, during some, if not all of the 2021 Australian winter season, our resorts may operate to specific capacity constraints and on the basis of inventory controlled lift ticket access which enables us to measure and manage capacity. During some, if not all of the 2021 Australian winter season, lift tickets will only be available for purchase in advance and are subject to available inventory. Until further notice, no tickets will be available for purchase at the window on the day. A lift ticket must only be used by the person to whom it is issued and must not be used by another person, resold, transferred or altered in any manner. Should this provision be breached, the lift ticket in question will be cancelled with no refund being payable for the purchase price and the respective Suppliers reserve the right to refer the matter to the police. Capacity constraints mean that we cannot guarantee that lift tickets will be available on a particular day and guests should check availability prior to finalizing any related travel or accommodation plans. We are not responsible for any costs, loss or damage resulting from or related to a lack of lift ticket availability.
12. **Fair Use policy** – Given that we may be operating to specific capacity constraints and on the basis of inventory controlled lift ticket access, to ensure that all guests have fair and equitable ticket access, a 'fair use' policy applies and guests must not seek to purchase an excessive, irrational or unreasonable number of days, or for any day(s) on which they do not, at the time of purchase, have a genuine intention to ski or snowboard, and guests must not purchase lift tickets for re-sale or transfer (or resell or transfer lift tickets). We reserve the right to suspend or cancel a lift ticket if we consider, acting reasonably, that the guest has not abided by this Fair Use policy.
13. We retain the right, acting reasonably, to vary these Terms and Conditions from time to time to further respond to the COVID-19 pandemic and its impact on the operations of our resorts and the health and safety of guests at our resorts. Any variations become effective on posting of the changes on the Websites and we encourage users to access and review this document regularly to keep abreast of such changes.

## **YOUR CONSUMER RIGHTS**

14. THE AUSTRALIAN CONSUMER LAW PROVIDES CONSUMERS WITH A NUMBER OF CONSUMER GUARANTEES THAT CANNOT BE EXCLUDED, RESTRICTED OR MODIFIED. THESE CONSUMER GUARANTEES PROVIDE CONSUMERS WITH A BASIC, GUARANTEED LEVEL OF PROTECTION FOR PRODUCTS OR SERVICES THAT THEY ACQUIRE FROM US, INCLUDING (FOR EXAMPLE) IN THE CASE OF PRODUCTS, GUARANTEES THAT PRODUCTS ARE OF ACCEPTABLE QUALITY AND FIT FOR ANY PURPOSE MADE KNOWN BY THE CONSUMER BEFORE BUYING AND, IN THE CASE OF SERVICES, A GUARANTEE AS TO (I) DUE CARE AND SKILL (II) FITNESS FOR A PARTICULAR PURPOSE; AND (III) REASONABLE TIME FOR SUPPLY. WHERE YOU ARE ACQUIRING OUR PRODUCTS OR SERVICES AS A CONSUMER YOU ARE ENTITLED TO THE BENEFIT OF THESE GUARANTEES. IF WE FAIL TO LIVE UP TO ANY OF THESE CONSUMER GUARANTEES FOR A RELEVANT PRODUCT OR SERVICE WE PROVIDE, YOU MAY BE ENTITLED TO A REMEDY UNDER THE AUSTRALIAN CONSUMER LAW. IF THE BREACH OF THE CONSUMER GUARANTEES CANNOT BE REMEDIED OR AMOUNTS TO A MAJOR FAILURE, YOU ARE ENTITLED TO A REFUND OR OTHER REMEDIES UNDER THE AUSTRALIAN CONSUMER LAW. YOU MAY ALSO BE ENTITLED TO COMPENSATION FOR REASONABLY FORESEEABLE LOSSES CAUSED BY THE FAILURE. THESE TERMS AND CONDITIONS, AND IN PARTICULAR PROVISIONS RELATING TO REFUNDS / CANCELLATIONS, WARRANTIES AND EXCLUSION OR

LIMITATIONS OF LIABILITY , ARE THEREFORE SUBJECT TO, AND WILL NOT APPLY TO THE EXTENT THAT THEY EXCLUDE, RESTRICT OR MODIFY SUCH PROTECTIONS AND ANY CONSUMER GUARANTEES APPLICABLE TO CONSUMERS, EXCEPT TO THE EXTENT WE ARE PERMITTED BY LAW TO SO EXCLUDE, RESTRICT OR MODIFY.

## VARIATION

15. We retain the right, acting reasonably, to vary these Terms and Conditions from time to time, provided that the variation is does not materially adversely affect the nature of the Products & Services purchased. Any variations become effective on posting of the changes on the Websites. **By making a purchase through the Websites, you agree to be bound by these Terms and Conditions and our Privacy Policy and by any later variation to them when posted on the Websites. We encourage users to access and review this document regularly to keep abreast of such changes.**

## ORDERING / BOOKING, DELIVERY ETC

16. You may offer to purchase any Products & Services described in any of the Websites for the price specified on the relevant Website.
17. You are responsible for ensuring the accuracy of your order or booking for the Product and / or Service.
18. Each Product and / or Service must be assigned to individual guests at the time of purchase. Assignment of the Products & Services cannot be altered after the order or booking has been made other than where permitted under clause 14 or where accommodated under these Terms & Conditions.
19. Your submission of an order or booking of Products & Services via any of the Websites constitutes an offer subject to acceptance by us.
20. The price of the relevant Products & Services is the price displayed on the relevant Website on the date of your order (inclusive of goods and services tax and any other charges which must be mandatorily disclosed under the *Competition and Consumer Act 2010* (Cth) (**CCA**) but exclusive of any delivery charges which are payable by you).
21. All prices for the Products & Services advertised or displayed on the Websites are quoted in Australian dollars and must be paid in full, including any applicable delivery charges, except where discounts are offered as detailed on the relevant Website at the relevant time.
22. The Suppliers may vary the advertised or offered price of a Product or Service, but (subject to clause 23 and any other provision of these Terms and Conditions) once an order or booking is confirmed, the price of the Product or Service you have purchased will not change.
23. You acknowledge that, despite our reasonable precautions, Products & Services may be listed on the Websites at an incorrect price, with incorrect information, or which are unavailable due to a typographical error or other oversight. In these circumstances, we reserve the right to cancel the transaction, notwithstanding that your order has been confirmed and your credit card has been charged. We reserve this right up until the time of delivery or use of the Product or Service. If a cancellation of this nature occurs after your credit card has been charged for the purchase we will promptly, or as soon as practical, issue a credit to your credit card account for the amount.
24. Where requested, your order or booking for the Product and / or Service must contain your name, postal address, phone number, date of birth, e-mail address, a recent passport style photo, credit card details and any other ordering information specified on the relevant Website.
25. Payment for the Products & Services must be effected by credit card using the ordering facility on the relevant Website. For purchases made via one of the Websites, confirmation of your purchase will be sent to your nominated email address.
26. We will supply you, subject to availability and these Terms & Conditions, with the Products & Services set out in your order or booking.
27. Products & Services are available for sale only to persons who can make legally binding contracts.

Parents and Guardians may purchase Products & Services on behalf of a minor.

28. Where a Product or Service is to be delivered to you, Australia Post is the Suppliers' usual postal agent and it will make deliveries unless otherwise instructed and in accordance with the terms and conditions stipulated by it. All Products & Services to be delivered will be delivered to the address that you have indicated on your order. Risk of damage or loss of the Products & Services passes to Australia Post when it takes possession of your order from the Suppliers. Any times quoted for delivery are approximate only and the Suppliers shall not be liable for any delay in the delivery of the Products & Services howsoever caused.
29. Where applicable, if you opt to collect your Products or Services directly from our offices you will need to provide a valid photo ID showing your date of birth and the credit card used for the purchase.
30. If you purchase Products or Services by telephone, post or by visiting one of our offices then any such purchase will be governed by these Terms and Conditions (including the terms and conditions above relating to ordering, booking, price and payment), excluding any of the Terms and Conditions that are specific or only applicable to purchases made using the Websites.

### **BOOKING CHANGES AND CANCELLATIONS**

31. These booking change and cancellation provisions apply to all Products and Services, **except** Winter Sports Club Season Long Programs, Season Passes and the Epic Australia Pass. Refer to clauses 45 through to 48 for terms and conditions relating to Winter Sports Club Season Long Programs and Season Passes and the Epic Australia Pass is subject to its own terms and conditions, which can be found on the Epic Australia Pass website.
32. **Cancellations and changes** to bookings with respect to the relevant Product or Service will only be accepted from or sent to the person in whose name the booking is made (or a parent or guardian, in the case of a booking made in the name of a minor) and will be confirmed via email. Cancellations and changes to bookings must be submitted and confirmed in **writing**, prior to the scheduled commencement or any activation (as applicable) of the relevant Product or Service. **Cancellations and changes** to a booking with respect to the relevant Product or Service:
  - a. are **free** where the change is made **seven (7) or more days** prior to the earliest scheduled commencement date of any Product or Service within the booking; and
  - b. will attract a **change fee** of \$50 where the change is made **within seven (7) days and 48 hours** of the earliest scheduled commencement dates of any Product or Service within the booking; and
  - c. will attract a **change** fee of 100% of the booking total price where the change is made **within 48 hours** of the earliest scheduled commencement dates of any Product or Service within the booking.

Changes with respect to the price of the relevant Product or Service will be based on the applicable price at the time of the change and not the price at the date of the original booking.

With the exception of private lesson booking (which are subject to clause 33 below), **cancellations** must be submitted and confirmed in **writing**, prior to the scheduled commencement or activation (as applicable) of the relevant Product or Service, to:

- a. for Products or Services supplied by Perisher, [info@perisher.com.au](mailto:info@perisher.com.au) or made in person at any Perisher Ticket Office; or
  - b. for Products or Services supplied by Mount Hotham, [tickets@hotham.com.au](mailto:tickets@hotham.com.au) or made in person at any Mount Hotham Ticket Office; or
  - c. for Products or Services supplied by Falls Creek, [info@falls creek.net](mailto:info@falls creek.net) or made in person at any Falls Creek Ticket Office.
33. Cancellations or changes to **private lesson bookings**:
    - a. must be submitted and confirmed prior to the scheduled commencement of the private lesson;
    - b. will only be accepted from the person whose name the booking is made in (or a parent or guardian, in the case of a booking made in the name of a minor); and
    - c. must be requested either in writing to:

- i. for private lesson bookings at Perisher, [privates@perisher.com.au](mailto:privates@perisher.com.au) or made in person at any Perisher Ticket Office; or
- ii. for private lesson bookings at Mount Hotham, [privates@hotham.com.au](mailto:privates@hotham.com.au) or made in person at any Mount Hotham Ticket Office; or
- iii. for private lesson bookings at Falls Creek, [privates@falls creek.net](mailto:privates@falls creek.net) or made in person at any Falls Creek Ticket Office;

34. Subject to and except as set out in clause 14, **following commencement** or activation (as applicable) of the relevant Product or Service, no cancellations or changes are permitted and no refund will be made unless we have failed to comply with the consumer guarantees under the Australian Consumer Law (see clause 14) or are otherwise required by law to provide a refund or other remedy. However, in the event of an injury or medical condition preventing a guest from making further use of:

- a. a multi-day lift ticket;
- b. multi-day Skitube only ticket;
- c. multi-day ski / snowboard school group lessons;
- d. ski / snowboard private lessons; and
- e. Winter Sports Club short term training during the current Australian ski season,

a voucher may be assigned by the relevant Supplier at the Supplier's reasonable discretion and upon presentation of a medical certificate to the guest that can be used at a future date to offset the cost of purchasing further Products & Services (a **Snow Credit**). The Snow Credit expires at the end of the Australian ski season immediately following the Australian ski season in which the injury was sustained and Product or Service used. For further details please email:

- a. for Perisher, Perisher Guest Services at [info@perisher.com.au](mailto:info@perisher.com.au)
- b. for Mount Hotham, Mount Hotham Guest Services at [info@hotham.com.au](mailto:info@hotham.com.au)
- c. for Falls Creek, Falls Creek Guest Services at [info@falls creek.net](mailto:info@falls creek.net)

#### **EXCLUSION AND LIMITATION OF LIABILITY – YOUR ASSUMPTION OF RISK – THESE CONDITIONS AFFECT AND RESTRICT YOUR LEGAL RIGHTS**

35. To the fullest extent permitted by law, subject to clause 14, we are not liable for any loss, damage or injury whatsoever (including, without limitation, direct, indirect, incidental, special and/or consequential loss or damages (including but not limited to loss of profits, revenue, expectation, business, goodwill or data), whether arising under contract, tort (including negligence) or any statutory cause of action, resulting directly or indirectly from or arising in connection with:

- a. your breach of these Terms and Conditions;
- b. your use of or access to any of the Websites, including but not limited to the electronic payment facility;
- c. the purchase or attempted purchase of any Products or Services offered provided by the Suppliers;
- d. the use by you of any Products or Services provided by the Suppliers;
- e. your failure to comply with any laws and / or the Alpine Responsibility Code; or,
- f. your infringement of the rights of any third party,

and where our liability cannot be excluded, we limit our liability to the maximum extent that we are permitted by law to do so.

36. To the fullest extent permitted by law, and subject to clause 14, you indemnify and keep indemnified us against any loss, liability, damage, cost or expense that we incur arising directly or indirectly in connection with:

- a. your breach of these Terms and Conditions;
- b. your use of or access to any of the Websites, including but not limited to the electronic payment facility;
- c. the purchase or attempted purchase of any Products or Services offered or provided by the Suppliers;
- d. the use by you of any Products or Services provided by the Suppliers;
- e. your failure to comply with any laws and / or the Alpine Responsibility Code; or,
- f. your infringement of the rights of any third party,

37. Where you seek to or do order, book, purchase or use any of the Products & Services provided by the Suppliers, then you **acknowledge the risk warning set out below** and **acknowledge and agree to the following terms**:

- a. You engage in, participate, purchase, use or make use of any recreational activity that we provide **at your own risk**. Such **recreational activity includes any and all Products & Services provided by the Suppliers** associated with the use of the snow slopes and the mountain for recreational activities, including but not limited to skiing (including alpine, nordic, freestyle and mogul skiing), snowboarding, tubing, snowbikes, mountain biking and sightseeing, the provision and operation of ski lifts, riding on ski lifts, snowmaking, snow slope design, construction, maintenance and grooming, hazard assessment and mitigation, skiing and snowboarding lessons or instruction, club, team or development skiing or snowboarding programs and training, skiing or snowboarding competitions, and clothing and equipment rental;
- b. You acknowledge that recreational activities are dangerous with many risks and hazards, and as a consequence personal injury (including serious personal injury) and sometimes death can occur;
- c. You **acknowledge the risk warning set out in bold below** and that the warning constitutes a reasonable risk warning pursuant to the *Civil Liability Act 2002* (NSW) and any equivalent legislation;
- d. You acknowledge that you will **observe and comply with the Alpine Responsibility Code** (a copy of which is included in these Terms and Conditions at Attachment A) and that you will conduct yourself in a safe and controlled manner at all times. Failure to do so, or any reckless or careless conduct, may result in us suspending or deactivating the ski lift access component of the Product or Service;
- e. **You must read and follow all signs and follow all directions given by us;**
- f. Subject to clause 14, to the maximum extent permitted by law, we exclude all liability to you, including for negligence and whether the loss or damage has occurred to person or property. Where that liability cannot be excluded, we limit our liability to you to the maximum extent permitted by law;
- g. You acknowledge that the recreational activities provided by the Suppliers constitute **"Recreational Services"** as defined in the CCA and applicable state legislation (including the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*) and that, to the maximum extent permitted by the CCA and applicable state legislation,
  - i. you assume and accept the risks associated with the recreational activities;
  - ii. except to the extent that the law (including the CCA or any equivalent state legislation) provides that liability cannot be excluded, we exclude any liability to which the *Civil Liability Act 2002* (NSW) applies that results from any breach of any express or implied warranty that the recreational services we provide will be rendered with reasonable care and skill;
  - iii. we exclude liability to you (including liability arising out of any failure by us to comply with any consumer guarantees applying to any recreational activities) for:
    - i. death;
    - ii. personal injury;
    - iii. the contraction, aggravation or acceleration of a disease; and
    - iv. the coming into existence, the aggravation, acceleration or recurrence of any other condition, circumstance, occurrence, activity, form of behaviour, course of conduct or state of affairs in relation to an individual:
      1. that is or may be harmful or disadvantageous to an individual or community; or,
      2. that may result in harm or disadvantage to an individual or community,except with respect to significant personal injury that is caused by the reckless conduct of the Suppliers;
  - iv. you waive the right to sue the Suppliers for any personal injury or death suffered by you in any way whatsoever caused by or arising from your use of or participation in any recreational activities supplied by the Suppliers, except with respect to significant personal injury that is caused by the reckless conduct of the Suppliers;

For the purposes of the *Australian Consumer Law and Fair Trading Act 2012 (Vic)*:

**WARNING:** If you participate in these activities your rights to sue the Suppliers under the **Australian Consumer Law & Fair Trading Act 2012** if you are killed or injured because the activities were not supplied with due care and skill or were not reasonably fit for their purpose, are excluded, restricted or modified in the way set out above in this notice.

**NOTE:** The change to your rights, as set out in or on this notice, does not apply if your death or injury is due to gross negligence on the Suppliers' part. **Gross negligence**, in relation to an act or omission, means doing the act or omitting to do an act with reckless disregard, with or without consciousness, for the consequences of the act or omission. See regulation 5 of the Australian Consumer Law & Fair Trading Regulations 2012 and section 23(3)(b) of the **Australian Consumer Law & Fair Trading Act 2012**.

### **IMPORTANT – RISK WARNING!**

**The terms and conditions set out in these Terms and Conditions, together with the Risk Warning displayed below, form part of the conditions of entry and use of our facilities, equipment and services, including (without limitation) any use of the Products & Services.**

#### **RISK WARNING:**

**Recreational Activities including skiing, snowboarding, using lifts, snowtubing, tobogganing and snow play involve significant risk of physical harm, including personal injury, permanent disability and/or even death. Such harm may result from your own actions, or the actions and/or omissions of others.**

**IF YOU BREACH ANY OF THESE TERMS AND CONDITIONS, WE MAY REQUIRE YOU TO FORFEIT THE LIFT ACCESS COMPONENT OF THE PRODUCT OR SERVICE, AND YOU WILL LOSE ANY PRIVILEGES ASSOCIATED WITH THE PRODUCT OR SERVICE.**

**Skiers/snowboarders must observe the Alpine Responsibility Code and ski/ride in a safe manner at all times. Failure to do so may result in a suspension or forfeiture of skiing/snowboarding privileges, and / or suspension or cancellation of you Media Card and / or access to recreational activities provided by the Suppliers.**

### **PRODUCTS AND SERVICES – GENERAL**

38. Where you seek to or do order, book, purchase or use any of the Products & Services provided by the Suppliers, then you acknowledge and agree to the following terms and conditions:
- a. You agree to follow the rules of the Suppliers and Perisher, Mount Hotham and Falls Creek (as applicable) related to access and safe skiing and riding and understand that failure to adhere to such rules may result in the loss of your benefits or privileged associated with the Products and / or Services;
  - b. The Products & Services are for **personal use only** and are **non-transferable** to any other person. Use of your Product or Service by another party may result in the product being confiscated and not re-issued or services being cancelled. Fraud is a criminal offence and may invoke police action;
  - c. The relevant Product and / or Service may be confiscated and not re-issued or cancelled, if, in our reasonable judgment, you 1) act in a manner that could endanger the safety of any person; 2) violates the law; 3) provide ski lessons or related services for compensation; 4) engage in fraud (including where a party other than the individual named on the product uses the product)

- or misconduct or creates a nuisance; or 5) fail to adhere to the terms and conditions provided herein. We may decide in our discretion to re-issue the Product or Service after confiscation and the re-issue passes may be subject to a reasonable replacement fee or continue the Product or Services;
- d. The relevant Product or Service is valid only during the period for which it is sold or advertised and / or as indicated on or with the relevant Product or Service, and not in any other period;
  - e. You may only purchase a Product and / or Service for a person which is relevant for their age at the time of using the Product and / or Service (or in the case of Season Passes, at 12 June 2021), and suitable age identification (e.g. birth certificate, driver's licence etc.) is required for students and seniors. Students may be required to provide a letter of enrolment to confirm their full time attendance at High School / Secondary College;
  - f. Resort facilities (and related products and / or services) may be closed or operate in a reduced way from time to time for weather, health, safety, or other operational reasons (or as a result of government directions or guidance), as reasonably directed or determined by us;
  - g. The purchase of a Product and / or Service does not entitle you to use the resort facilities at any of the Supplier's resorts for any commercial purpose except with our prior written consent and does not entitle you to provide or receive ski or snowboard instruction except where provided by us; and
  - h. By using a Product and / or Service (including participating in any Product and / or Service), you grant us and our affiliates the right of publicity to own and use any image collected of you while using any Product or Service supplied by the Suppliers.

#### **LIFT TICKET – ADDITIONAL TERMS**

39. All references to "**lift tickets**" in the Terms and Conditions relevantly includes:

- a. any ticket media that provides access to the ski lifts operated by the Suppliers (whether it scans at a lift or Skitube platform loading area), including a Media Card and a package that comprises any combination of lift or lessons or hire products; and
- b. any other type of access to ski lifts or to Skitube that you have purchased,

40. With respect to Media Cards:

- a. A Media Card is required for every individual guest and must be purchased from the Suppliers at a cost of AUD \$5 in addition to any ski lift access purchased and are reusable each season.
- b. A Media Card does not entitle the holder of the card to any ski lift access without the purchase of a ski lift access product.
- c. A Media Card must be carried on your person at all times while you are on the ski/snowboard slopes and must be presented to the Suppliers' authorised personnel upon request.
- d. A Media Card can be only used to access the ski lifts when loaded with the purchase of ski lift access.
- e. All Media Cards remain our property and must not be resold, transferred or altered in any way.

41. You must purchase a lift ticket for the days on which you wish to ski or snowboard at Perisher, Mount Hotham and Falls Creek. The purchase of lift tickets is subject to the Fair Use policy (as set out in clause 12).

42. With the exception of specific Season Passes:

- a. all valid lift tickets issued by Perisher Blue for the Perisher resort include unlimited use of Skitube between Perisher Valley and Blue Cow but are not valid for use at Falls Creek or Mount Hotham.
- b. unless otherwise specified at the time of sale, all valid lift tickets issued by FCSL for the Falls Creek resort are valid for use at the Falls Creek resort only and are not valid for use at Perisher or Mount Hotham.
- c. unless otherwise specified at the time of sale, all valid lift tickets issued by MHSC for the Mount Hotham resort are valid for use at the Mount Hotham resort only and are not valid for use at Perisher or Falls Creek.

43. All valid lift tickets issued as Season Passes are only valid for use at the resorts specified for that specific Season Pass, which may be an individual resort or multiple resorts.



44. With respect to any Products or Service which comprises or includes a lift ticket:

- a. A lift ticket is valid only for the dates or period purchased.
- b. A lift ticket must only be used by the person to whom it is issued and must not be used by another person, resold, transferred or altered in any manner. Should this provision be breached, the lift ticket in question will be cancelled with no refund being payable for the purchase price and the respective Suppliers reserve the right to refer the matter to the police.
- c. If you become aware that any lift ticket issued to you (or to another person at your request) has been lost or stolen, you must immediately report this to the relevant Supplier by telephone or by visiting an office of that Supplier.
- d. You acknowledge and accept that any lift ticket issued to you (or to another person at your request) may be cancelled or suspended at the sole discretion of the relevant Supplier if:
  - i. an unauthorised person is found to be using it prior to you reporting it lost or stolen; or
  - ii. the user fails to comply with all signs or other direction of the Suppliers, or for reckless or careless conduct, or for breach of the Alpine Responsibility Code.
- e. The lift ticket remains our property and must not be resold, transferred, or altered in any way. A breach of this condition will result in the cancellation of your lift ticket and may invoke involvement from law enforcement. Lift ticket fraud is a criminal offence and can result in a fine or imprisonment.
- f. Subject to and except as set out in clause 14, we do not offer a refund or replacement for lift tickets if your lift ticket is lost or stolen or for any unused portion of a lift ticket. A lost, stolen or damaged Media Card will be replaced at a cost of AUD \$5;
- g. You acknowledge and accept that:
  - i. lifts may be closed or operate in a reduced way from time to time for weather, health safety, or other reasonable operational reasons (or as a result of government directions or guidance), as reasonably directed or determined by us, and / or
  - ii. the lift ticket may not entitle you to use some lifts as reasonably directed by us (including for health, safety or operational reasons), and
  - iii. subject to and except as set out in clause 14, we do not offer a refund or replacement for lift tickets or another Product or Service in these circumstances;
- h. You must carry your lift ticket on your person at all times on the snow slopes which must be presented to the Suppliers' employees or agent upon request.

#### **WINTER SPORTS CLUB – SEASON LONG PROGRAMS – ADDITIONAL TERMS**

45. For the purposes of these Terms and Conditions, a Winter Sports Club Season Long Program (**Winter Sports Club Season Long Program**) refers to:

- a. a 2021 Perisher Winter Sports Club Season Long Program, but does not include Snowsports School Group or Private Lessons, Interschool or Private Race Training, Winter Sports Club short term training or Additional Training Days or Winter Sport Club Camps and Winter Sports Club Events; and
- b. a 2021 Falls Creek Winter Sports Club Season Long Program, but does not include Snowsports School Group or Private Lessons, Interschool or Private Race Training, Winter Sports Club short term training or Additional Training Days or Winter Sport Club Camps and Winter Sports Club Events.

46. Each Winter Sports Club Season Long Program is subject to the terms and conditions below, which are to be read in conjunction with all other terms and conditions in these Terms & Conditions and any notices and signs, and you acknowledge and agree to the following terms and conditions:

- a. A Winter Sports Club Season Long Program is valid only during the period for which it is bought and not in any other period;
- b. A participant will only be granted access to a Winter Sports Club Season Long Program where the Winter Sports Club Season Long Program is paid for in full prior to the Winter Sports Club Season Long Program's commencement;
- a. By paying the initial payment or paying in full, you understand and acknowledge that you are committing to buy the Winter Sports Club Season Long Program (s) for the 2021 Australian Ski Season. When you pay the initial payment, you agree that the credit card provided will

- be authorised for the payment of the remaining amount of the Program(s) purchased on the date advised at the time of purchase. Where you fail to pay the remaining balance when it falls due, you forfeit any right to the Winter Sports Club Season Long Program;
- c. **You understand and acknowledge that once the initial payment or payment in full has been paid, you will not be able to cancel or obtain a refund on your Winter Sports Club Season Long Program purchase after the initial part payment or receive a refund of the payment (or any part thereof) unless we have failed to comply with the consumer guarantees under the Australian Consumer Law (see clause 14) or are otherwise required by law to provide a refund or other remedy. Your Winter Sports Club Season Long Program purchase (and any payment made for the product or service) cannot otherwise be cancelled or refunded, and your product or service (and any payment made for the product or service) cannot be transferred or deferred to a future season;**
  - d. By choosing to buy a Winter Sports Club Season Long Program in accordance with our payment plan conditions where it is offered, you acknowledge and agree that you are liable for the entire amount payable and that we may lawfully recover any unpaid amounts from you, and that we can pursue all avenues of collection, including the use of collection agencies, to recover all charges and other unpaid amounts due, including reasonable legal fees, resulting from failure to pay all amounts when due, including under our payment plan;
  - e. Any exceptions to the Winter Sports Club Season Long Program additional terms and conditions are at our sole discretion;
  - f. Participants in a Winter Sports Club Season Long Program are required to sign/e-sign a release of liability. Where a Participant is 17 years of age or younger, the Participant's parent or guardian is required to sign/e-sign a waiver and release of liability on their behalf.

#### **SEASON PASSES - ADDITIONAL TERMS**

47. For the purpose of these Terms and Conditions, a Season Pass refers to a lift ticket providing lift access to one or more of Perisher, Falls Creek or Mount Hotham resorts (but no other resorts owned or operated by Vail Resorts or its partners) during the 2021 Australian season (**Season Pass**) For the avoidance of doubt, for the purpose of these Terms and Conditions, a Season Pass does not include the Epic Australia Pass.
48. Each Season Pass is subject to the terms and conditions below, which are to be read in conjunction with all other terms and conditions in these Terms & Conditions and any notices and signs, and you acknowledge and agree to the following terms and conditions:
  - a. Due to the impacts of COVID-19, access to one or more of Perisher, Falls Creek or Mount Hotham resorts (as applicable) under a Season Pass in the 2021 Australian Ski Season is subject to the following:
    - i. The Season Pass Holder may be required to obtain a reservation (in advance) for each individual day that they plan to use the Season Pass, and lift access will not be provided without advance reservation
    - ii. A Fair Use policy applies – Given that we may be operating to specific capacity constraints and on the basis of inventory controlled access, and to ensure that all Season Pass Holders and other guests have fair and equitable ticket access, a 'fair use' policy applies to reservation and Season Pass Holders must not reserve an excessive, irrational or unreasonable number of days, or any day(s) on which they do not, at the time of reservation, have a genuine intention to ski or snowboard. We reserve the right to suspend or cancel the guest's Season Pass if we consider, acting reasonably, that they have not abided by this Fair Use policy.
  - b. The Season Pass Holder is responsible for promptly reporting if their Season Pass is lost, stolen or damaged by emailing [info@perisher.com.au](mailto:info@perisher.com.au) at Perisher, [info@hotham.com.au](mailto:info@hotham.com.au) at Mount Hotham and [info@falls creek.net](mailto:info@falls creek.net) at Fall Creek. In these circumstances or if you forget to bring your Media Card, you can visit a Ticket Office where, upon presentation of valid Photo ID and the payment of a AUD \$5 administration fee, our staff can reissue a Media Card. You acknowledge and accept that you are liable for any use of your Season Pass that occurs while it is not in your possession, unless you have already reported it lost/stolen.
  - c. **You understand and acknowledge that once the initial payment or payment in full has been paid, you will not be able to cancel or obtain a refund on your Season Pass purchase after the initial part payment or receive a refund of the payment (or any part thereof) unless we have failed to comply with the consumer guarantees under the**

**Australian Consumer Law (see clause 14) or are otherwise required by law to provide a refund or other remedy. Your Season Pass purchase (and any payment made for the product or service) cannot otherwise be cancelled or refunded, and your product or service (and any payment made for the product or service) cannot be transferred or deferred to a future season;**

- d. By choosing to purchase as Season Pass in accordance with our payment plan conditions where it is offered, you acknowledge and agree that you are liable for the entire amount payable and that we may lawfully recover any unpaid amounts from you, and that we can pursue all avenues of collection, including the use of collection agencies, to recover all charges and other unpaid amounts due, including reasonable legal fees, resulting from failure to pay all amounts when due, including under our payment plan;
- e. Your Season Pass is valid only during the 2021 Australian Ski Season and not in any other season or period;
- f. Where you buy or re-load a Season Pass on-line, you must upload an appropriate photograph of the Season Pass Holder;
- g. You may not change the Season Pass Holder's name or photograph;
- h. Season Passes (and any upgrades to the pass if applicable) must be paid for in full before any lift access will be activated;
- i. Season Pass Holders are required to sign/e-sign a release of liability. Where a Season Pass Holder is 17 years of age or younger, the Season Pass Holder's parent or guardian is required to sign/e-sign a waiver and release of liability on their behalf;
- j. You will provide a valid email address and mobile telephone number for the express purpose of receiving communications regarding the Season Pass (including payment of any remaining balance under our split payment option) and you acknowledge that these are the only ways by which we will communicate with you.

## **WEBSITES – GENERAL**

49. Except as set out in and subject to clause 14 and as expressly set out in the Terms and Conditions or Privacy Policy:
- a. The Website including all its pages and contents and all Products & Services provided or booked via any of the Websites are provided on an "as is" basis without any warranties or representations of any kind;
  - b. To the fullest extent permitted by law, all statutory or implied conditions or warranties of any kind relating to access to or use of the Websites are expressly disclaimed;
  - c. We will use reasonable endeavours to process electronic payment transactions involving debit and credit cards in a timely and secure manner. However we make no warranties or representations regarding the time required to initiate or complete the processing of any transaction, and do not warrant or represent that your access to and use of the Websites including but not limited to the payment facility will be continuous, uninterrupted, error free or secure, that any defects will be corrected or that any of the Websites, its servers and any network connections are free of computer viruses and other harmful data, code, components or other material;
  - d. Without limitation, we are not liable to you for any loss or liability of any kind caused by any delay or failure to provide information or perform operations (including but not limited to electronic payment processing) requested or do so correctly, including but not limited to as a result of or in connection with:
    - i. any delay or failure in any transmission or communication facilities;
    - ii. any delay, failure or malfunction of any of the Websites including but not limited to the payment facility;
    - iii. any failure or delay caused by third parties including but not limited to internet service providers, carriers or communications service providers, financial institutions, or payments service providers;
    - iv. delay, failure or malfunction of computer or network equipment, telephone lines, browsers, software, mobile phones or other handheld devices, or any related equipment or facilities;
    - v. computer viruses or other harmful data, code, components or other material; and
    - vi. any other event beyond the reasonable control of us;
  - e. We do not warrant or represent that:
    - i. we or they will be able to prevent any illegal, harmful or inappropriate access, use,

- modification or alteration of any of the Websites, including but not limited to the payment facility;
  - ii. we or they will give notice of such access, use, modification or alteration;
  - iii. any of the Websites will be continuously available or free from any delay in operation or transmission, virus, communications failure, internet access difficulties or malfunction in hardware or software;
  - iv. the Websites or any content will meet your requirements; or
  - v. the content on any of the Websites does not infringe any third party intellectual property rights;
- f. The Websites may provide links to third party websites and the products or services of third parties. If you use any of these links you leave the Websites. The Suppliers have not reviewed and do not control these websites and are not responsible for their content. We are not responsible and are not liable in any way for third party content provided on or through any of the Websites. If you access, use or purchase any goods or services via these websites you do so at your own risk;
- g. The Websites may from time to time display third party advertisements. Such advertisements may or may not contain hyperlinks to third party websites. We do not endorse or recommend the goods or services of such advertisers or their websites. If you purchase any goods or services from them or visit any of their websites, you do so at your own risk;
- h. We do not warrant or represent the correctness, accuracy, timeliness, completeness, reliability, quality or otherwise of any of the Websites including but not limited to the payment facility. The use of the Websites and any services including but not limited to the payment facility is at your own risk;
- i. If your use of any of the Websites results in the need for servicing or replacing equipment or data, we are not responsible for those costs;
- j. The Suppliers may, at any time:
- i. discontinue or limit access to any of the Websites or its content, for any reason whatsoever; or
  - ii. terminate or limit your access to any of the Websites if you breach these Terms and Conditions; and
- k. All disclaimers and limitations of liability by the Suppliers will survive termination.

#### **WEBSITES – ELECTRONIC PAYMENT**

50. You agree to use and access the electronic payment facility on the Websites strictly in accordance with the requirements and procedures set out on the relevant Website from time to time and any applicable laws. You are responsible for entering the correct account/card number and other details required by the electronic payment facility on the relevant Website, and for maintaining the security of your computer software and hardware. We may amend any such requirements or procedures at any time.
51. You are responsible for presenting the credit card used to make the purchase of the Products & Services for inspection to us at the time you redeem your purchase. Where the credit card used to make the purchase is not presented at the time of redemption of the purchase, we may cancel the purchase at our complete and absolute discretion. As soon as you become aware that the credit card used to make the purchase may not be able to be presented at the time of redemption of the purchase (for instance because it has been lost, stolen, replaced or has expired), you must promptly contact us to make alternative arrangements. You agree that you will make only legitimate bookings in good faith for use by you and your invited guests only, and not for other purposes, including without limitation, reselling, impermissibly assigning or posting on third party websites, or making speculative, false or fraudulent bookings, or any booking in anticipation of demand.

#### **WEBSITES – INTELLECTUAL PROPERTY**

52. Copyright in the content and material on all the Websites is owned by us or our licensors. You may download, store, display on your computer, view, listen to, play and print materials that we publish or broadcast on the Websites or make available for free download through the Websites subject to the following:
- a. the materials may be used by you solely for your own information and evaluation purposes relating to the Suppliers' Products and Services;
  - b. the materials may not be modified or altered in any way; and
  - c. the materials may not be redistributed or sold to other parties.

53. No content of any of the Websites may be used, reproduced, distributed, stored in an electronic or other retrieval system, adapted, uploaded to a third party location, framed, performed in public or transmitted in any form by any process whatsoever without our written permission except:
- a. as expressly permitted in these Terms and Conditions, or
  - b. as permitted under the *Copyright Act 1968* (Cth) or other applicable laws.
54. The Websites may contain our trademarks or logos, or the trademarks or logos other companies or organisations, and these are proprietary to the owner(s) of such marks. No use of the trademarks or logos without our prior written permission is permitted.

## **PRIVACY**

55. The Vail Resorts Global Privacy and Cookie Policy (**Privacy Policy**) sets out our policies on the collection and management of personal information. For information regarding the kind of personal information collected, how information is collected, the purposes for which the information is collected, and how you can access, delete or correct personal information, please read our Privacy Policy.
56. Our Privacy Policy is displayed on the Websites. You can also get a copy of our relevant Privacy Policy, or contact us in relation to our Privacy Policy, as follows:
- a. write to: Privacy Officer, Perisher Blue Pty Limited, PO Box 42, Perisher Valley, NSW 2624; or
  - b. telephone us on 1300 655 822; or
  - c. send an e-mail to [privacy@perisher.com.au](mailto:privacy@perisher.com.au).

## **FORCE MAJEURE**

57. To the extent permitted by law, we will not be liable to you for any loss or damage (whether direct or consequential), nor be in default under these Terms and Conditions, for failure to observe or perform any of our obligations under these Terms and Conditions for any reason or cause which could not, with reasonable diligence, be controlled or prevented. These reasons or causes include any act of God, strike, lockout or other industrial disturbance or labour difficulty, act of public enemy, war (whether declared or not), blockade, revolution, riot, insurrection, civil commotion, pandemic, epidemic, outbreaks of infectious disease or any other public health crisis or any governmental measures imposed to address such public health crisis, including quarantine or any other social restrictions, lightning, storm, flood, fire, earthquake or any other natural disaster, explosion, any action, inaction, demand, order restraint, restriction, change in law, requirement, prevention, frustration or hindrance by or of any person, government or competent authority, embargoes, unavailability of any essential equipment, chemicals or other materials, unavoidable accident, lack of transportation and any other cause whether specifically referred to above or otherwise which is not within our reasonable control.

## **TRUSTEE LIMITATION OF LIABILITY**

58. Unless otherwise specifically contemplated in these Terms and Conditions, Perisher Blue Pty Limited only enters into these Terms and Conditions in its capacity as trustee of the Snow Trust and in no other capacity. A liability arising under or in connection with these Terms and Conditions can be enforced against Perisher Blue Pty Limited only to the extent to which it is actually indemnified for the liability out of the assets of the Snow Trust. The limitation of Perisher Blue Pty Limited's liability applies and extends to all liabilities and obligations of Perisher Blue Pty Limited in any way connected with any representations, warranties, conduct, omission, agreement, or transaction related to these Terms and Conditions.
59. Unless otherwise specifically contemplated in these Terms and Conditions, you may not sue Perisher Blue Pty Limited other than as trustee in respect of the Snow Trust, including seeking the appointment to Perisher Blue Pty Limited of a receiver (except in relation to property of the relevant trust), a liquidator, administrator or any similar person or proving in any liquidation, administration or arrangement of or affecting Perisher Blue Pty Limited (except in relation to the relevant trust).
60. The provisions of clauses 58 and 59 do not apply to any obligation or liability of Perisher Blue Pty Limited to the extent that it is not satisfied because under the constitution or trust deed (as the case may

be) of the relevant trust, or by operation of law, there is a reduction in the extent, or elimination of, Perisher Blue Pty Limited's right of indemnification out of the assets of the Snow Trust, or such right does not exist at all, as a result of:

- a. having incurred the obligation or liability as a result of fraud, gross negligence, willful default or breach of trust by Perisher Blue Pty Limited; or
- b. the failure of Perisher Blue Pty Limited to exercise any right of indemnity it has under the constitution or trust deed (as the case may be) of the relevant trust in respect of that obligation or liability.

## **GENERAL**

61. These Terms and Conditions (and where applicable, your signed waiver and release of liability) comprise the entire agreement between you and us in relation to its subject matter and supersede any prior agreement or understanding on anything connected with its subject matter.
62. These Terms and Conditions are governed by:
  - a. in respect of Perisher, the laws of New South Wales, Australia; and
  - b. in respect of Mount Hotham and Falls Creek, the laws of Victoria, Australia.
63. In respect of Perisher, you irrevocably submit to the exclusive jurisdiction of the courts of New South Wales, Australia.
64. In respect of Mount Hotham and Falls Creek, you irrevocably submit to the exclusive jurisdiction of the courts of Victoria, Australia.

## ATTACHMENT A: ALPINE RESPONSIBILITY CODE

# YOUR ALPINE RESPONSIBILITY CODE

There are inherent risks in all snow recreational activities. Common sense, staying in control and personal awareness can reduce these risks. Risks include rapid changes in weather, visibility and surface conditions, as well as natural and artificial hazards such as rocks, trees, stumps, vehicles, lift towers, snow fences and snowmaking equipment. Observe the code and ski and ride with courtesy to others.

1. Stay in control and avoid other people and hazards.
2. Use appropriate protective equipment, especially helmets, to minimise the risk of injury.
3. You must have the ability to use each lift safely. If in doubt ask the lift attendant.
4. Obey all signs and warnings, and keep off closed trails and areas.
5. It is your responsibility to avoid and give way to people below and beside you.
6. Do not stop where you are not visible from above or where you obstruct a trail.
7. Before starting downhill, or merging into a trail, look uphill and give way to others.
8. Use care to prevent runaway snowboards.
9. If you are involved in or see an accident, alert and identify yourself to Resort Staff.
10. Be aware that it is dangerous to ski, board or ride lifts if your ability is impaired by drugs or alcohol.

**KNOW THE CODE.  
IT'S YOUR RESPONSIBILITY.**

**Failure to observe the code may result in cancellation  
of your ticket or pass by Resort Staff.**

