

## **SCHEDULE 3**

### **1. EXCLUSION OF LIABILITY AND WAIVER OF YOUR RIGHT TO SUE IMPORTANT – READ CAREFULLY - THESE CONDITIONS AFFECT AND RESTRICT YOUR LEGAL RIGHTS!**

1.1 Buller Ski Lifts (the Supplier) offers you use of recreational services (Recreational Services) at the Resort on the Conditions. The Recreational Services are all services provided by the Supplier associated with the use of the snow slopes and the mountain for recreational activities including but not limited to skiing, snowboarding, tobogganing, mountain biking and sightseeing. The Recreational Services include, but are not limited to, the provision and operation of Ski Lifts, snowmaking, snow slope design, construction, maintenance and grooming, hazard assessment and mitigation, construction and maintenance of mountain bike trails, skiing and snowboarding lessons, equipment rental, and the operation of the ski patrol.

You may accept this offer by purchasing a B-TAG, Ski Lift access product, using a B-TAG, topping up a B-TAG, hiring equipment from the Supplier, purchasing or participating in lessons offered by the Supplier or using or making use of any of the Recreational Services. If you do any of these things, you have accepted this offer and are bound by the Conditions.

#### **1.2 Purchase of B-TAG and Daily Access**

You must purchase a B-TAG and Ski Lift access product for the days on which you wish to ski, snowboard or mountain bike at the Resort. Prices are displayed at the Resort and on the Supplier's website. If you rent equipment or enrol or participate in skiing or snowboarding lessons, you must also pay the applicable price. Even if you fail to purchase a B-TAG or to pay an applicable fee, if you use any of the facilities at the Resort or make use of any of the Recreational Services, by such use you agree to and will be bound by the Conditions.

#### **1.3 Exclusion of Liability**

The Supplier, its employees, directors and agents, are not liable to you, your dependents or legal representatives, for personal injury or death suffered by you due to the negligence, breach of contract or statute or statutory duty of the Supplier, including but not limited to any liability for Recreational Services not being rendered with due care and skill or not being reasonably fit for any purpose which you made known, expressly or by implication, to the Supplier or because they failed to achieve any result reasonably expected by you which you, expressly or by implication, made known to the Supplier or for breach of any other consumer guarantee of the Australian Consumer Law (Vic) or of the Australian Consumer Law (Cth).

#### **1.4 Risk Warning and Waiver to Sue**

You acknowledge that Recreational Services and associated recreational activities are dangerous with many risks and hazards and as a consequence personal injury (including serious personal injury) and sometimes death can occur and you assume and accept all such risks and hereby waive the right to sue the Supplier, its employees, directors and agents, for any personal injury or death suffered by you in any way whatsoever caused by or arising from your use of such services or your participation in such activities.

#### **1.5 WARNING UNDER THE AUSTRALIAN CONSUMER LAW AND FAIR TRADING ACT 2012**

If you sign this form, you will be agreeing that your rights to sue the supplier under the Australian Consumer Law and Fair Trading Act 2012 are excluded, restricted or modified in

the way set out in this form, if you are killed or injured because the services provided were not in accordance with the statutory guarantees outlined below.

Under the Australian Consumer Law (Victoria), several statutory guarantees apply to the supply of certain goods and services. These guarantees mean that the supplier named on this form is required to ensure that the recreational services it supplies to you-

- are rendered with due care and skill; and
- are reasonably fit for any purpose which you, either expressly or by implication, make known to the supplier; and
- might reasonably be expected to achieve any result you have made known to the supplier.

Under section 22 of the **Australian Consumer Law and Fair Trading Act 2012**, the exclusion of these statutory guarantees is brought to your attention by this form.

**NOTE:** The change to your rights, as set out in this form, does not apply if your death or injury is due to gross negligence on the supplier's 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 and Fair Trading Regulations 2022* and section 22(3)(b) of the **Australian Consumer Law and Fair Trading Act 2012**.

1.6 You must comply with the Alpine Responsibility Code and all signs or other directions of the Supplier. It may suspend or cancel your B-TAG and access to Recreational Services at the Resort in its absolute discretion for non-compliance with the Code, the Conditions, or for reckless or careless conduct.

1.7 You must carry your B-TAG in or on your ski jacket at all times on the snow slopes which must be presented to the Supplier's agent upon request.

1.8 No B-TAG or access product can be resold, transferred or altered in any manner. They are valid only for the dates purchased. The Supplier will not refund or replace any B-TAG if you suffer any illness or injury or if any lift service is not operating.

#### 1.9 Purchases on Behalf of Another Person and Indemnity

If you purchase a B-TAG or access product or Recreational Service from the Supplier on behalf of another person, you make that purchase as the agent of that other person who is also bound by the Conditions and by using or making use of the Recreational Services, such person acknowledges and agrees to the Conditions as if that person had read clause 3 in its entirety and then made the purchase. You warrant that you have that person's authority to so bind them, unless you purchase a B-TAG or access product or Recreational Service from the Supplier on behalf a child (under 18 years) in which case you agree to fully indemnify the Supplier for all loss and damage it may suffer due to any legal proceedings being brought by or on behalf of that child against the Supplier, its employees, directors and agents, for any personal injury or death suffered by that child caused by or arising from his/her use of Recreational Services or participation in recreational activities.

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