

2014-2015

COMMERCIAL OPERATOR LICENCE APPLICATION

Mt Buller Mt Stirling Resort Management

This application is for a Licence to conduct organised commercial activities on Crown Land, within the Mt Buller and Mt Stirling Alpine Resorts.

CHECKLIST

An incomplete form could lead to delay in the processing of your application.

- | | Please tick |
|--|--------------------------|
| 1. If new applicant, discuss application with Resort Management. | <input type="checkbox"/> |
| 2. Read and understand the Information for Applicants (pages 2-3). | <input type="checkbox"/> |
| 3. Complete Applicant Details (page 4). | <input type="checkbox"/> |
| 4. Complete Operator Schedules (pages 5-6). | <input type="checkbox"/> |
| 5. Attach all supporting documentation (tour schedule maps, accreditation evidence etc). | <input type="checkbox"/> |
| 6. Read and understand the standard Licence Conditions (pages 7-13). | <input type="checkbox"/> |
| 7. Provide a Certificate of Currency (page 12). | <input type="checkbox"/> |

COL Applications, Mt Buller Mt Stirling Resort Management, Alpine Central, Summit Road, Mt Buller, VIC, 3723
or
ali.kirkwood@mtbuller.com.au

Please note

Do not attach payment to application. You will be invoiced upon approval of Licence.

Your application will not be processed without all completed documentation provided and correct.

I wish to apply for a Commercial Operator Licence

Licence duration

- 1 year licence = \$275 (expires Oct 31 2015)
- Up to 3 year licence (specify: _____ years)
- Up to 10 year licence (specify: _____ years)

Applicant

- New applicant
(Contact Resort Management to discuss proposed location and activity).
- Existing licensee
(Update Business Details and Operating Schedules as necessary).

Resort Management Commercial Operator Licence Number

S 1 7 - _ _ _ _

Contact Details

Name

Company

Position

Phone

Email

Date



Information for applicants

Application

A licence is required by people or businesses who conduct organised tours or recreational businesses for profit within the Mt Buller and Mt Stirling Alpine Resorts under the *Crown Land (Reserves) Act 1978*.

Before making an application for a Commercial Operator Licence, prospective licence-holders should contact Mt Buller Mt Stirling Resort Management and confirm the availability, terms and conditions of licences for the specific activity.

The decision to grant a Commercial Operator Licence, its duration and conditions remains within the discretion of Resort Management.

Licensing Process

Upon receipt of the licence application, Resort Management will process the application. Upon executive approval a licence will be generated. A licence pack will then be sent to the applicant containing the licence and invoice.

Operators are required to:

- Review the licence;
- Sign the licence;
- Process the invoice (payment); and
- Return the licence (in full) and payment to Resort Management within 14 days.

Resort Management will finalise the licence by processing payment and co-signing the document. The licence will then be forwarded to the licence holder.

The application will be processed within six to eight weeks, unless complications arise. You can assist in speeding up the process to issue the licence by:

- Ensuring that the application is completed correctly; and
- Attaching all associated documentation.

Commercial Operator Licences

Commercial Operator Licences are:

- Issued to an operator (Licensee) by Mt Buller Mt Stirling Resort Management (Licensor);
- Not transferable (to another individual or entity);
- Issued solely to the applicant specified in the application form;
- Issued for a specific term of up to 10 years and cannot be 'renewed';
- Subject to regulated state wide fees; and
- Penalties apply for operating without a licence or breaching the conditions of a licence.

The Regulations prescribing fees for operator licences ensure public land managers charge consistent state-wide fees. Mt Buller Mt Stirling Resort Management Commercial Operator Licences are issued under the provisions of Section 21B Crown Land (Reserves) Act 1978, and are consistent with the structure of Tour Operator Licences issued by Department of Environment and Primary Industries (DEPI), and Parks Victoria (PV).

Variation

Commercial Operator Licences may be varied either by the Licensee applying to Resort Management (Licensor) requesting a variation or by the Licensor giving written notice to the Licensee, pursuant to statutory powers under the enabling legislation. A variation of licence cannot be used to extend the term of a licence.

Multiple sites

If an operator is seeking a licence to operate solely within the Mt Buller and Mt Stirling Alpine Resorts, a single application can be made to Resort Management.

If an operator is seeking a licence to operate within Crown Land managed by DEPI (State Forest) or PV (National Park), they must make separate enquiries about applying for licences relevant to each land manager.

Information for applicants continued

Public liability insurance

It is a condition of a Commercial Operator Licence that the Licensee keep and maintain a public liability insurance policy covering the activities of the Licensee for the duration of the licence. The level of insurance must be at least \$10 million for any one claim, but a requirement for a higher level of coverage may be necessary if Resort Management considers it appropriate in light of the nature of the Licensee's activities.

Fees

Fees are set in accordance with the Tour Operator Licence Fee Regulations 2011. From 2014, the annual licence fees are set by 'fee units', in accordance with the *Monetary Units Act 2004*. Therefore fees will be indexed annually by adjusting the value of the fee units by an annual rate fixed by the Treasurer. The value of the fee unit is published in the Government Gazette and major newspapers.

From November 2014, fees will consist of a fixed component (Annual fee) and a variable use component (Use fee – based on visitor numbers).

Category	Fee (\$) from	
	1 Nov 14 – 31 Oct 15	1 Nov 14 – 31 Oct 15
Annual fee – Standard 1 year licence	\$275.00	20.78 fee units
Annual fee – Standard licence greater than 1 year (per year)	\$215.00	16.3 fee units
Use fee – General visitor (per day)	\$2.40	\$2.40
Use fee – School student and child (per day)	\$1.60	\$1.60
Use fee cap	\$13,488.00	1018.74 fee units

Dates are based on the Resort Management financial year being from 1 November to 31 October.

GST is not payable on Commercial Operator Licence fees.

Accreditation for multiple year licences

The Victorian Government Policy Statement Licensing System for Tour Operators and Activity Providers on Public Land in Victoria (2008) states that **longer-term tour operator licences** should be conditional, amongst other things, on the applicant being accredited under a recognised industry certification program that encourages improved environmental, cultural and business management. The programs currently recognised as supportive of an application for a longer-term licence are:

Up to 3 year licence term

- Nature Tourism – EcoCertification IV;
- Australian Tourism Accreditation Program (formerly Better Business Tourism Accreditation Program); and
- Respecting Our Culture.

Up to 10 year maximum licence term

- Advanced Ecotourism – EcoCertification IV;
- Ecotourism – EcoCertification IV; and
- EarthCheck Benchmarking and Certification (formerly GreenGlobe Company Standard).

Accordingly, the licence terms and conditions require the Licensee to possess accreditation which is consistent with the nature of the product being offered. Accreditation must be maintained throughout the Term of the Licence.

Adventure Activity Standards

Resort Management requires all Licensees to read and understand the documented Adventure Activity Standards (AAS) for the outdoor recreation industry, which are available at www.orc.org.au (currently for abseiling, bushwalking, canoeing/kayaking, four wheel driving, horse trail riding, mountain biking, recreational angling, river rafting, rock climbing and trail bike touring, and snow recreation) which are consistent with the nature of the product being offered.

Special conditions

Special conditions specific to the proposed activity or operator may be applicable to the licence and are inserted into the licence document.

Applicant details

A. Where licence is to be issued to an individual

Surname	Given name
<input type="text"/>	<input type="text"/>

B. Where licence is to be issued to an incorporated company or incorporated association

Company / Association name	Authorised Officer Surname
<input type="text"/>	<input type="text"/>
Australian Company Number (ACN)	Given name
<input type="text"/>	<input type="text"/>
or Incorporated Association Number	Position title
<input type="text"/>	<input type="text"/>

Trading details

Trading name/s

Registered for GST	Australian Business Number (ABN)
<input type="text" value="(Y / N)"/>	<input type="text"/>

Address for correspondence	Mobile
<input type="text"/>	<input type="text"/>
Street address	Fax
<input type="text"/>	<input type="text"/>
<input type="text"/>	Email
<input type="text"/>	Website
	<input type="text"/>

Telephone (bus. hours)

Telephone (after hours)

Mt Buller Mt Stirling Resort Management will list Licensed commercial operators on

www.mtbuller.com.au. and www.mtstirling.com.au

Please tick if you **do not** want your contact details available on the Mt Buller and Mt Stirling websites.

Returns and Use Fee payment

Please tick preferred frequency of submitting Returns Form and payment of Use Fee:

Quarterly Annually

Please refer to Returns information sheet, and form for completion. These can also be downloaded from website, or requested by email.

Proposed operators schedules

- Applicants must complete a separate Operators Schedule for each new (type of) tour. A tour is any organised business activity undertaken within Mt Buller and Mt Stirling Alpine Resorts.
- If you propose to conduct more than two types of tours, please copy, or download, complete and attach additional Operator Schedules.
- **Helicopter applicants** please **also** specify a.) Date and time of landings, b.) Duration on ground, c.) Number pax, d.) Full Contact details for pilot and e.) Full contact details for owner/charter/lessee etc of aircraft.

Operator Schedule 1

Proposed location(s) (for example, Mt Stirling/ Multi-use Network Trails/ Mt Buller Village etc)

Specific area, track or road to be used during activity. *Helicopters please specify proposed landing location.*

Name of activity (for example, Stirling Summer Camp)

Description (include details such as what, where and how. Attach maps)

Specify **DATES**

--	--

Proposed frequency of tour
(for example anticipated number
of trips weekly/monthly)

Proposed duration of tour
(hours/days)

Proposed maximum
group sizes

Vehicles/Equipment to be used to undertake activities (including no. of horses)

Operator Schedule 2

Proposed location(s) (for example, Mt Stirling/ Multi-use Network Trails/ Mt Buller Village etc)

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Specific area, track or road to be used during activity. *Helicopters please specify proposed landing location.*

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Name of activity (for example, Stirling Summer Camp)

--

Description (include details such as what, when, where and how. Attach maps)

Specify **DATES**

--	--

Proposed frequency of tour
(for example anticipated number
of trips weekly/monthly)

--

Proposed duration of tour
(hours/days)

--

Proposed maximum
group sizes

--

Vehicles/Equipment to be used to undertake activities (including no. of horses)

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Licence conditions

General conditions

1. Definitions

1.1 Unless inconsistent with the context or subject matter, each word or phrase defined in this clause 1 has the same meaning when used elsewhere in these General Conditions.

1.2 When used in these Licence Conditions, the following words and phrases denote the following:

Accreditation Certification means a recognised tourism industry certification program, endorsed by TAV TQUAL and / or the Association, that encourages improved environmental, cultural and business management, including:

For a Term of **up to 3 years**:

- Nature Tourism – EcoCertification IV;
- The Australian Tourism Accreditation Program (formerly known as the ‘Better Business Tourism Accreditation Program’); and
- Respecting Our Culture.

For a Term of **between 3 and 10 years**:

- Advanced Ecotourism – EcoCertification IV;
- Ecotourism – EcoCertification IV; and
- EarthCheck Benchmarking and Certification (Formerly known as ‘GreenGlobe Company Standard’).

Act means the Crown Land (Reserves) Act 1978;

Adventure Activity Standards means specific operational standards developed and endorsed by the Outdoor Recreation Centre (Victoria) and endorsed by Victoria’s Outdoor Recreation and Adventure Tourism Sectors. Specifically applicable at the Commencement Date to the following activities:

- Rock climbing;
- Four wheel driving;
- Bushwalking;
- Snow recreation.
- Trail bike Tours;
- Canoeing and kayaking;
- Mountain biking;
- Fishing / angling;
- Horsetrail riding;
- Abseiling; and

Annual Fee means the component of the standard Licence Fee fixed and reviewed under Regulation 6 of the Fee regulations.

Association means the Tourism Accreditation Australia Limited.

Code Red Days means days classified in this manner pursuant to a fire danger rating set by the Bureau of Meteorology, based on the forecast fire danger index.

Commencement Date means the date set out in Schedule 1 Item 5 of the Licence, being the first day of this Licence.

Crown means the Crown in right of the State of Victoria, and includes the Licensor, the Licensor’s Representative and each authorised employee, officer or agent of the Crown or the Secretary.

Department means the Department of Environment and Primary Industries, or its successor in law.

Designated (Landing) Area for Helicopter operations means Horsehill Car Park (top level) and Boggy Corner Car Park. Horsehill Car Park is not to be included as a Designated Landing Area if vehicles are being parked there. Any other area may be designated by the Licensor in addition to or in substitution for any of these named Designated Landing Areas.

Fee Regulations means Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011.

Insured means the Licensee, including the Licensee’s officers, employees, agents, contractors, subcontractors, invitees and their successors and permitted assigns.

Licence means these Commercial Operator Licence conditions.

Licensed Area means the land and improvements (if any) described Annexure A of the Licence.

Licence Fee means the periodical amount described in Schedule 1 Item 7 of the Licence, as reviewed or varied during the Term.

Licensee means the entity named Schedule 1 Item 3 of the Licence and includes any permitted assigns or successors in law.

Licensor means the Mt Buller Mt Stirling Resort Management (Resort Management).

Licensor’s Representative means an employee or officer of the Licensor nominated to the Licensee from time to time, who is authorized to deal with day to day issues that arise in respect of Tours or the Licensed Area.

Minister means the Minister of the Crown for the time being administering the Act.

Other Relevant Parties means the Minister, Resort Management and any successor manager of the Licensed Area or the Resorts, the Crown in right of the State of Victoria, the Secretary, and any other authorised delegate from Resort Management.

Permitted Use means the purposes and activities that the Licensee is authorised to carry out on the Licensed Area, as described in Schedule 1 Item 12 of the Licence.

Person includes a body corporate or individual.

Regulation denotes a Regulation from the Fee Regulations.

Resorts means the Mt Buller and Mt Stirling Alpine Resorts.

Secretary means the Body Corporate called the Secretary to the Department Environment and Primary Industries established by the Conservation, Forests and Lands Act 1987, or any later equivalent body or person.

Schedule means a schedule in the Licence documentation.

TAV means that Tourism Accreditation Victoria, established by the Victorian tourism industry to oversee the progressive development and implementation of accreditation and quality assurance programs for tourism-related activities.

Term means the period of days, weeks, months or years described in Schedule 1 Item 6 of the Licence, beginning on the Commencement Date.

Tour means an activity, guided tour or recreation programme conducted or coordinated by an employee or officer of the Licensee on the Licensed Area that is consistent with the Permitted Use.

TQUAL means the national tourism accreditation and competitive merit-based grants programmes administered by the Tourism Quality Council of Australia.

Use Fee means the component of the standard Licence Fee fixed and reviewed under Regulation 8, featuring differential daily rates, depending on the number of adults and children that participate in Tours.

Vehicle has the meaning given to that term in the Road Safety Act 1986 (Vic).

2. Grant of licence - *Non-exclusive Use*

2.1 The Licensor grants the Licensee a non-exclusive contractual right to use and occupy the Licensed Area for the Term by virtue of the Act, subject to the restrictions set out in this Licence, in common with the Licensor, and other persons authorised by the Licensor.

2.2 The Licensee acknowledges that the rights created by this Licence over the Licensed Area are statutory only, and do not constitute an estate or interest in the Resorts.

3. Payment arrangements

3.1 The Licensee acknowledges that the Licence Fee is made of the Annual Fee and includes a Use Fee component.

3.2 Subject to clause 3.3, the Licensee must pay the Annual Fee to the Licensor:

- (a) annually in advance;
 - (b) to the address specified in Schedule 1 Item 14 of the Licence, or
 - (c) pursuant to such alternative arrangements as are specified by the Licensor in writing from time to time, without the need for any demand, and without any rights of deduction, set-off or abatement.
- 3.3 If the Term of this Licence is more than 1 year, the Licensee may elect to pay the Annual Fee for the Term as an upfront lump sum, on or before the Commencement Date, calculated on the basis of the value of a fee unit under the Fee Regulations in the year that the lump sum is paid.
- 3.4 The Licensee must pay the Use Fee to the Licensor:
- (a) quarterly or annually in arrears at the Licensee's election;
 - (b) to the address specified in in Schedule 1 Item 14 of the Licence, or
 - (c) pursuant to such alternative arrangements as are specified by the Licensor in writing from time to time, without the need for any demand, and without any rights of deduction, set-off or abatement other than:
 - (d) the Use Fee cap fixed under Regulation 9;
 - (e) the Licensee's right to a refund of any excess paid over the Use Fee cap at the end of the financial year under Regulation 10(2); and
 - (f) any other mechanism provided for in the balance of this Licence or the Fee Regulations.
- 3.5 In order to facilitate calculation and reconciliation of the Licensee's Use Fee obligation, the Licensee must:
- (a) maintain a daily record of the number of persons who participate in Tours in the form required under Regulation 11 for standard tour operator licences; and
 - (b) provide a copy of this record to the Licensor, on:
 - (i) a quarterly basis if the Use Fee is paid quarterly in arrears; or
 - (ii) an annual basis if the Use Fee is paid annually in arrears.
- 3.6 The Licensee must pay interest to the Licensor on any:
- (a) part of the Licence Fee or other monies payable by the Licensee to the Licensor which are outstanding for more than 14 days, or
 - (b) judgment for the Licensor in an action arising under this Licence, at the penalty interest rate for the time being payable under the Penalty Interest Rates Act 1983, calculated from the date the monies or judgment became payable until the date of actual payment (including interest) of all monies to the Licensor in full.
- 3.7 The Licensee must reimburse the Licensor on demand, for all the Licensor's legal costs and disbursements incurred in connection with:
- (a) any surrender of this Licence requested by the Licensee;
 - (b) any application for the Licensor's consent arising under this Licence;
 - (c) any failure by the Licensee to perform its obligations under this Licence; or
 - (d) any other deed or other document required to be executed in connection with this Licence.
- 4. Licensee's certification – Accreditation and First Aid**
- 4.1 On or before the Commencement Date, the Licensee must provide satisfactory documentary evidence that the Licensee:
- (a) has obtained any required Accreditation Certification (multiple year licence); and
 - (b) is currently licensed to conduct the Permitted Use by the Association or TAV, if this is required by law, to the Licensor if requested.
- 4.2 The Licensee must promptly provide documentary evidence confirming the currency of the Licensee's accreditation on each successive anniversary of the Commencement Date, to the Licensor if requested (multiple year licence).
- 4.3 The Licensor may issue supplementary requests for proof of accreditation to the Licensee during the Term, where this is reasonably required in the circumstances (multiple year licence).
- 4.4 In addition to completion of the Accreditation Certification (multiple year licence), the Licensee must ensure that:
- (a) its Tour guides have a current first aid qualification, the minimum standard requirement is Level 2 First Aid;
 - (b) an additional member of staff supervising each Tour group is also a qualified First Aider and has in their possession a suitable first aid kit; and
 - (c) evidence of this certification must be made available to the Licensor upon request.
- 5. Compliance requirements**
- The Licensee acknowledges that:
- 5.1 the licensee must comply with:
- (a) all statutes, regulations, local laws and by-laws applicable to the Licensed Area or the Permitted Use;
 - (b) all lawful orders or directions made under these ordinances; and
 - (c) observe any Resort or land management policy adopted by the Licensor or applicable to the Licensed Area.
- 5.2 **pets and firearms** are not to be taken into the Resorts, unless specifically permitted in writing by the Licensor;
- 5.3 **fires** may only be lit in established fireplaces, and must not use any flora (dead or alive) found in the Licensed Area (other than that which is sold or provided as fuel).
- 5.4 the Licensee may only:
- (a) use the Licensed Area for the Permitted Use, unless the Licensee obtains the Licensor's prior written consent to variation of the Permitted Use, which may be given or withheld in the absolute discretion of the Licensor, and if granted, may be given subject to such conditions as the Licensor sees fit to impose; and
 - (b) conduct Tours and other activities in the Licensed Area that are consistent with the Permitted Use.
- 5.5 the Licensee must not:
- (a) allow **rubbish** to accumulate in or about the Licensed Area;
 - (b) cause or permit to be done anything about, or in the vicinity, of the Licensed Area, which constitutes an actionable nuisance, annoyance or disturbance to other persons lawfully entitled to use the Licensed Area, or any land adjoining the Licensed Area;
 - (c) put up any **signs or notices** in the Licensed Area or the Resorts without prior written agreement of the Licensor.
- 5.6 the Licensee must not enter or remain in, or permit an employee, agent or Tour participant to enter or remain in, any parts of the Licensed Area or the Resorts that are permanently, temporarily or seasonally **closed** by gates, signs, electronic or written notification or public notice.
- 5.7 the Licensee must:
- (a) obtain and comply with the terms of all licences, permits, or authorisations required by law to conduct its Tours;
 - (b) ensure that such licences, permits and authorisations remain current at all times during the Term;
 - (c) observe any code of practice for outdoor activities adopted or recommended by the Licensor or applicable to the Licensed Area;
 - (d) at the end of the Term, remove from the public areas of the Licensed Area, all Licensee's property or equipment unless with the consent in writing of the Licensor or a Licensor's Representative;

- (e) ensure that all contact and business details remain current and that the email address provided is regularly monitored for emergency communications.
- 5.8 the licensee must not keep any **hazardous materials** on the Licensed Area unless it obtains the Licensor's prior written consent, (which may be granted or withheld in the Licensor's absolute discretion), except for a reasonable quantity of any hazardous material which is:
- (a) normally used in connection with the Permitted Use; and
 - (b) kept in compliance with the requirements of any authority that regulates storage or keeping of the hazardous substance.
- 6. Licensor's directions and tour interruptions**
- 6.1 The Licensee and the Licensee's employees, agents and Tour participants must obey all reasonable directions given by the Licensor, the Licensor's Representative or the Licensor's other authorised officer, employee, agent or delegate, in respect of the Licensed Area.
 - 6.2 Without limiting the generality of the foregoing, the Licensee acknowledges that it may be directed to **cease or suspend Tours** for a period specified by the Licensor that is reasonable and proportionate in the circumstances, as a result of any of the following causes:
 - (a) fires, floods, severe storms and other natural disasters;
 - (b) fuel reduction burns;
 - (c) Code Red Days; and
 - (d) any other cause reasonably specified by the Licensor, which is directed at the preservation of human health and / or the environment.
 - 6.3 Except in an emergency, when the Licensor will give the Licensee as much notice as is reasonably practicable in the circumstances, the Licensor will give the Licensee at least 7 days' notice of the need to cease or suspend Tours.
 - 6.4 The Licensee is not entitled to any compensation from the Licensor whatsoever for loss or damage caused or contributed to by the need to suspend, cancel or cease Tours under the provisions of this clause 6, save that the Licensee may be granted a proportionate set-off against future Licence Fee payments, as determined in the Licensor's absolute discretion.
- 7. Dealing with emergencies**
- The Licensee must:
- 7.1 develop and maintain an emergency response plan that:
 - (a) complies with the law; and
 - (b) outlines procedures to be followed in the event of natural or other disaster, injury, illness or delay on the Licensed Area; for each Tour (collectively, the "Emergency Response Plan") and promptly provide a copy of the Emergency Response Plan to the Licensor if requested;
 - 7.2 ensure the safe evacuation of Tour participants and vehicles from the Licensed Area in the event of any natural or other disaster adjacent or near to approved routes in accordance with the Emergency Response Plan;
 - 7.3 notify the Licensor as soon as is reasonably practicable, of any natural or other disaster, injury, illness, Vehicle accident or delay that may impact upon:
 - (a) the Tour group; or
 - (b) other Tours or authorised activities being conducted on the Licensed Area or Resorts; and
 - 7.4 file a completed incident report in the form required by the Licensor, with the Licensor (or the Licensor's Representative if he or she has been authorised to receive such a document) as soon as is reasonably practicable, after the occurrence of the relevant event.
- 8. Precautions against damage and injury of wildlife**
- 8.1 Except as expressly authorised by this Licence, the Licensee must not damage, destroy, disrupt or remove any native flora (live or dead) or any native fauna, or any built asset, natural feature or cultural heritage place (including creating new **access trails** without the Licensor's consent) from the Licensed Area.
 - 8.2 Any instances of destruction or damage must be promptly reported to the Licensor's Representative.
 - 8.3 In the event of such damage or destruction, at the Licensor's option, the Licensee must:
 - (a) undertake and complete remedial action specified by the Licensor, at the Licensee's cost; or
 - (b) reimburse the Licensor for the cost of repairing such damage or destruction within 14 days of demand.
 - 8.4 Feeding or handling of wildlife on the Licensed Area, whether during the course of a Tour or otherwise, is not permitted.
 - 8.5 The Licensee must not drive or permit an employee, agent or Tour Participant to drive a Vehicle on the Licensed Area, except on roads and tracks constructed by, or with the authority of the Licensor, for the passage of Vehicles with four or more wheels.
 - 8.6 At no time may the Licensee drive, or permit an employee, agent or Tour Participant to drive, a Vehicle on **roads and tracks** that are permanently, temporarily or seasonally closed by gates, signs, notification or public notice, unless another provision of this Licence expressly permits the Licensee to do so.
- 9. Access**
- 9.1 This Licence does not authorize, and expressly prohibits vehicles (including motorbikes and mountain bikes), horses or camels entering that part of the Mt Stirling Alpine Resort above Telephone Box Junction during the **declared ski season** without the consent of the Licensor.
 - 9.2 When gates at the following locations are closed by the Licensor, vehicular (including motorbike and mountain bike) access to areas beyond the gates is prohibited;
 - (a) Telephone Box Junction, Howqua Gap (giving access to Circuit Road) and Razorback turnout: these gates are closed from the Friday prior to the Queen's Birthday Weekend in June to the Thursday prior to Melbourne Cup Day in November unless otherwise specified by the Licensor.
 - (b) Howqua Gap Trail and the Monument Track: these gates are closed from the 1st of May to 30th of November or at the discretion of the Licensor.
 - 9.3 Gates to **management tracks** and **cross country ski trails** are locked at all times. Unauthorised opening of these gates or use of the management tracks is prohibited.
 - 9.4 The Licensor reserves the right to close any of the above gates or restrict access to any tracks within the Resorts at any time.
- 10. Campsites**
- 10.1 Campsites located on the Licensed Area must be:
 - (a) maintained and left in a tidy condition; and
 - (b) sited at least 20 metres from any stream, dam or aqueduct.
 - 10.2 If campsites are not furnished with toilets, night soil must be buried at least 100 metres from any stream, dam or aqueduct.
 - 10.3 The Licensee and / or Tour participants may be required to pay additional fees for the right to use campsites.
 - 10.4 The Licensee **must not rely on huts** or campsites on the Licensed Area to provide accommodation for Tour participants, unless the Licensee has been granted specific prior permission to do so.
 - 10.5 All **rubbish** originating from Tour operations must be removed by the Licensee.

10.6 Camping is prohibited within the Mt Buller Alpine Resort (designated campsite at Mirimbah excluded).

11. Vehicles

11.1 All Vehicles carrying passengers within, to or from the Licensed Area must be licensed by VicRoads or equivalent interstate road traffic authority as passenger vehicles and driven in a manner that accords with the licence terms.

11.2 All drivers of passenger vehicles must hold a current driver's licence appropriate for that vehicle, including any necessary endorsement for the Vehicle type, copies of which must be promptly provided to the Licensor for review upon request.

11.3 All bus operators of Vehicles that have more than 9 seats and are used for the carriage of passengers within, or to and from, the Licensed Area, must be accredited by Public Transport Safety Victoria on behalf of the Department of Transport in the State of Victoria. Proof of this accreditation must be supplied to the Licensor upon request.

(a) please note the Vic Roads regulations regarding buses in **Alpine (Hazardous) Areas**.

11.4 If you provide a transport service carrying passengers for hire or reward, you are undertaking commercial passenger Vehicle work as described in the Transport (Compliance and Miscellaneous) Act 1983 (Vic). Any Vehicle used for commercial passenger Vehicle work must be licensed and issued with a commercial passenger Vehicle licence certificate.

11.5 Any driver providing commercial passenger Vehicle services must carry valid driver accreditation.

11.6 This licence does not carry or convey any automatic entitlement to the use or parking of an over-snow vehicle or four wheel drive vehicle within the Resorts. A permit for the use or parking of such a vehicle is still required.

12. Conduct of tours

12.1 The Licensee must:

(a) plan, prepare and conduct Tours using all **reasonable care and skill**;

(b) make all Tour participants aware before the Tour commences, of:

(i) potential hazards and conditions that may be encountered during the Tour including, but not limited to, heights, exposure to weather, risk of fire, open water, rapid flowing water, fauna and flora; and

(ii) the nature of the experiences that participants may encounter during the Tour;

(c) ensure procedures are in place to minimise the risk of potential hazards to Tour participants, including, but not limited to, pre-tour briefings, appropriate safety equipment and head counts.

(d) ensure that all Tour participants comply with all conditions of licence.

(e) ensure that all guides and employees have:

(i) obtained any necessary Accreditation Certification; and

(ii) the relevant competencies and skills for leading and guiding a Tour;

(f) ensure that Tour supervision is appropriate to the differing clients' experiences and abilities;

(g) submit trip return documentation to the Licensor within 21 days of the following date/s:

(i) one annual date (21 November annually);

OR if quarterly submission of information is preferred:

(ii) Quarter 1 = 1 November – 31 January

Quarter 2 = 1 February – 30 April

Quarter 3 = 1 May – 31 July

Quarter 4 = 1 August – 31 October

(g) The Licensee acknowledges that the Licensor's **evaluation of future** Licence applications submitted by the Licensee will be influenced by the Licensee's prior compliance with nominated trip return documentation relating to Use Fee and other payment obligations under this Licence.

13. Termination

13.1 The Licensor may terminate this Licence if:

(a) any component of the Licence Fee is in arrears for more than 30 days (without need for a demand for payment);

(b) the Licensee **breaches this Licence in any other way** and fails to rectify the breach within a reasonable time (which will not be less than 14 days) of receipt of a written notice setting out details of the breach from the Licensor,

(c) with immediate effect, where the Licensor considers that a serious threat to Tour participants' safety and / or environmental sustainability has been precipitated by the Permitted Use;

(d) the Licensee is a company and the Licensee:

(i) enter into any compromise or arrangement with any of its creditors or if an application is made to any court for an order summoning a meeting of creditors; or

(ii) has a receiver or receiver and manager or an administrator or controller appointed for any of its assets; or

(iii) is wound up or dissolved or notice is given of intention to propose a resolution for winding up or an order is made or resolution passed or an application is made for winding up or dissolution; or

(iv) has a resolution of the directors passed that in their opinion the company can no longer continue its business; or

(v) calls a meeting of its creditors pursuant to the Corporations Act 2001 (Cth); or

(vi) is placed under official management or if the members determine to convene a meeting of creditors for the purpose of placing the company under official management; or

(vii) has an inspector appointed pursuant to the Australian Securities Commission Act 1989; or

(viii) is unable to pay its debts as and when they fall due; or

(ix) makes an assignment for the benefit of or enters into an arrangement or composition or a moratorium whether formal or informal with its creditors or financiers; or

(x) has a provisional liquidator or a liquidator by any means appointed;

(e) if the Licensee is a natural person and becomes or is made bankrupt or makes any assignment of their estate or any part of it for the benefit of creditors or otherwise seeks relief under or takes advantage of any law for the time being in force relating to bankruptcy or insolvent debtors or causes or permits their goods to be levied on or under any execution or other legal process.

14. Variation or suspension of licence

14.1 The terms of this Licence may be varied:

(a) by agreement between the parties; or

(b) in the manner specified in Section 21G of the Crown Land Reserves Act 1978 Act.

14.2 The Licensor may temporarily suspend this Licence under Section 21H of the Crown Land Reserves Act 1978.

15. No compensation

The Licensee is not entitled to any compensation from the Licensor for loss or damage sustained by the Licensee, caused or contributed to by variation, suspension or termination of this Licence pursuant to the Licensor's rights under clauses 13 and 14 of this Licence.

16. Limitation on improvements

16.1 The Licensee must not erect, or permit the erection, of **any improvement** on the Licensed Area, without the Licensor's prior written consent, which may be given or withheld in the absolute discretion of the Licensor, and if given, may be given subject to

such conditions as the Licensor sees fit to impose, which may include an obligation to demolish the improvements and reinstate the Licensed Area to the condition that it was in prior to the erection of such improvements, upon the expiration or earlier determination of this Licence.

16.2 Any improvements erected by the Licensee pursuant to clause 16.1 of this Licence must be **maintained in good order** and repair by the Licensee throughout the Term, including attending to all structural repairs and capital replacements as and when they are required.

17. Condition at termination

Upon the expiration or earlier determination of this Licence, the Licensee must return the Licensed Area to the Licensor in good order and condition, and otherwise in a condition consistent with compliance by the Licensee with its obligations under this Licence.

18. Dealing with licence

The Licensee must not:

18.1 Assign or deal with the Licence, part with or share the Permitted Use with any other person without the consent of the Licensor. If the Licensee is a corporation, any change in the shareholding of the Licensee during the Term shall be deemed an assignment unless with the prior written consent of the Licensor.

19. Notices

19.1 Any notice, consent or demand or other communication to be served upon or given to the Licensee by the Licensor under this Licence will be deemed to have been duly served or given, if it is:

- (a) in writing;
- (b) signed by the Licensor or a person authorised by the Licensor (including, without limiting the generality of the foregoing, the Licensor's Representative); and
- (c) emailed, or delivered or sent by prepaid post to the Licensee's address set out in Schedule 1 Item 4 of the Licence, or any subsequent replacement address that the Licensee notifies to the Licensor in writing.

19.2 The Licensee must give prompt Notice to the Licensor of any change in their business contact details or street address.

20. Activity Standards

20.1 The Licensor requires all Licensees to read and understand the documented Adventure Activity Standards (AAS) for the outdoor recreation industry, which are available at www.orc.org.au (currently for abseiling, bushwalking, canoeing/kayaking, four wheel driving, horse trail riding, mountain biking, recreational angling, river rafting, rock climbing, trail bike touring and snow recreation) which are consistent with the nature of the product being offered.

Insurance, release and indemnity provisions

21. Insurance

21.1 The Licensee must effect and maintain throughout the Term with an insurer approved by the Licensor, which approval will not be unreasonably withheld:

- (a) a public, and if relevant given the nature of the Permitted Use, a products liability insurance policy for not less than \$10 million (or any greater amount required by the Licensor) in respect of any single claim arising out of the activities of the Insured, covering all third party claims arising out of:
 - (i) loss, destruction or damage to real or personal property and ensuing loss of use of that property;
 - (ii) death, injury to, or disease of persons; and
- (b) an employer's liability and workers' compensation policy which covers any damage, loss or liability suffered or incurred by any person engaged by the Licensee arising:-
 - (i) by virtue of any statute relating to workers' or accident compensation or employers' liability; or
 - (ii) at common law, (collectively referred to in the balance of this Licence as the "Policy").
- (c) any other insurance policies that a reasonable person conducting the activities of the licensee would maintain

21.2 The Licensee must effect and maintain the Policy in the name of the Insured, noting the interests of the Other Relevant Parties, and include all activities authorised by the Permitted Use as insured activities for the entire Term with respect to the insurances required under 21.1.

21.3 The Licensee must ensure that the Licensor is notified of any changes to the Policy.

21.4 The Licensee must provide the Licensor with:

- (a) a certificate of currency for the Policy which clearly confirms satisfaction of the requirements of the preceding clauses 21.1 and 21.2-
 - (i) prior to the Commencement Date;
 - (ii) within 14 days of each successive anniversary of the Commencement Date throughout the Term and any renewed terms (if applicable);
 - (iii) at any other time upon request by the Licensor; but not more than twice in any calendar year, unless extenuating circumstances apply; and
- (b) a copy of the Policy upon request.

21.5 The Licensee must promptly notify the Licensor if:

- (a) an event occurs which may give rise to a claim under or prejudice the Policy; or
- (b) the Policy is cancelled.

21.6 The Licensee must not do anything or allow anything to be done which may:

- (a) prejudice any insurance held in connection with the Licensed Area; or
- (b) increase the premium payable for any insurance held in connection with the Licensed Area.

21.7 The Licensee must effect and maintain all other insurances in a manner and to such extent as is reasonable and customary for an organisation engaging in the Permitted Use.

21.8 The Licensee will deliver upon request to the Licensor, copies of any policies entered into by the Licensee pursuant to clause 21.7.

21.9 If there is any damage or destruction to any building or improvement on the Licensed Area or the Resorts, caused by the Licensee or their Tour participants, the Licensee must pay on demand to the Licensor, on a full indemnity basis, the costs incurred by the Licensor in rectifying any such damage or destruction.

22. Release

22.1 The Licensee:

- (a) occupies and uses the Licensed Area at its own risk;
- (b) acknowledges that it has inspected the Licensed Area, and is of the opinion that the Licensed Area is safe and suitable for the Permitted Use, including the Licensee's Tours.

22.2 The Licensee releases the Licensor and the Other Relevant Parties from:

- (a) all claims and demands resulting from:

- (i) any accident, damage, death or injury occurring at the Licensed Area, the Land or any other area used by the Licensee in connection with this Licence; or
 - (ii) the pollution or contamination of the Licensed Area, the Land and any bodies of water included therein, and any loss, cost, damage, liability or other detriment incurred in connection with these circumstances;
 - (b) all loss, cost, damage, liability or other detriment (whether direct or consequential) suffered or incurred by the Licensee, as a direct or indirect result of the Licensee's occupation and use of the Licensed Area, the Resorts, or other areas used in connection with this Licence, except to the extent caused or contributed to by the negligent or unlawful act of omission of the Licensor.
- 22.3References in this clause 22 to the Licensee, the Licensor and the Other Relevant Parties, include their respective officers, employees, authorized agents, contractors, subcontractors, invitees and their successors and permitted assigns.

23. Indemnity

- 23.1The Licensee indemnifies the Licensor and the Other Relevant Parties against all actions, claims, demands, losses, damages, costs, expenses and liability (whether direct or consequential) for which any of the Licensor or the Other Relevant Parties is or may be or become liable concerning:
- (a) the default of the Licensee under this Licence;
 - (b) the Licensee's use of the Licensed Area, the Resorts or any other area used by the Licensee in connection with this Licence; and
 - (c) loss, damage, or injury to property or persons caused or contributed by the Licensee's fraudulent, negligent or unlawful act or omission or default under this Licence, except to the extent caused or contributed to by the negligent or unlawful act or omission of the Licensor.
- 23.2References in this clause 23 to the Licensee, the Licensor and the Other Relevant Parties include their respective officers, employees, authorised agents, contractors, subcontractors and invitees.
- 23.3The Licensee must ensure that the Licensor and the names of the **'Other Relevant Parties' are included** in its Policies in accordance with clause 23.2 and documented in any certificate of currency for such insurance.

24. Special conditions

- 24.1Any special condition set out in Annexure B of the Licence:
- (a) binds the parties; and
 - (b) if there is an inconsistency between a special condition in Annexure B of the Licence and any other provision of this Licence, the **special condition prevails**.

25. Waiver

- 25.1The non exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right operate to preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

26. Entire agreement

- 26.1This Licence is the entire agreement of the Licensor and Licensee on the subject matter.
- 26.2The only enforceable obligations and liabilities of the Licensor and Licensee in relation to the subject matter are those that arise out of the provisions contained in this Licence.
- 26.3All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Licence.

27. Counterparts

- 27.1This Licence may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

28. Governing law

- 28.1This Licence is governed by the law of the State of Victoria.
- 28.2The Licensor and Licensee submit to the non exclusive jurisdiction of the courts of the law governing this Licence and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Licence.

Details of public liability insurance

It is a condition of a Commercial Operator Licence that the Licensee keep and maintain a public liability insurance policy covering the activities of the licensee for the term of the licence. The level of insurance must be at least \$10 million for any one claim, but a requirement for a higher level of coverage may be imposed if the Licensor considers it appropriate. The Licensor may also request any other insurance policies that a reasonable person conducting the activities of the licensee would maintain.

The applicant must provide evidence of public liability insurance (**Certificate of Currency**) with this application which confirms the following:

- The Licensor (Mt Buller Mt Stirling Resort Management) as a relevant party, the following text **must** appear on insurance certificate;

"Mt Buller and Mt Stirling Resort Management and Other Relevant Parties"

(Other Relevant Parties means the Minister, Resort Management and any successor manager of the Resorts, the Crown in right of the State of Victoria, the Secretary, and any other authorised delegate from Resort Management)

- the name of the insured;
- the name of the insurer;
- the scope of the activities covered by the insurance;
- the period of insurance
- limits of indemnity; and
- any other policy condition, endorsement or exclusion relevant to the activities and operation of the licence.

Please note this differs from DEPI and PV Tour Operator Licence requirements.

Please ensure correct spelling and wording on your COC.

If the licence is for a term of more than 12 months, production of the policy schedule is required on an annual basis throughout the licence term upon renewal of the insurance cover, within 14 days of renewal of the policy.

Helicopter Specific Conditions

1. Helicopter Operations

- 1.1 A Commercial Operator Licence for Helicopter operations authorises the Licensee to enter the Resort, including the air space above the Resort, subject to the terms and conditions of the Licence. The Licensee may land and take off only from a Designated Area unless otherwise expressly specified in writing by the Licensor.
- 1.2 When approaching, or departing the Designated Area, or whilst in the air space above the Resort, the Licensee must not unreasonably disturb and must not endanger any residential area of the Resort and shall, as far as practicable, avoid low flying over residential areas of the Resort.
- 1.3 The Licensee must not, without the express written consent of the Licensor, refuel or store any fuel on or near any Designated Landing Area.
- 1.4 A Commercial Operator Licence for Helicopter operations is not a sole or exclusive authority or licence and the Licensee, including any pilot or operator of any helicopter or aircraft of the Licensee, must itself, him/herself:
 - (a) ensure that it is safe for landing or take off;
 - (b) comply with all aviation laws, procedures, regulations, protocol, good practice and requirements of the Civil Aviation Safety Authority, or any equivalent body;
 - (c) check the whereabouts of any other aircraft within or above the Resort when approaching or departing or flying above the Resort.
- 1.5 Any information provided by or on behalf of the Licensor to the Licensee or any operator or pilot of the Licensee shall be provided in good faith but shall not exempt the Licensee, operator or pilot from taking all precautions and complying with the obligations in the last preceding paragraph. The pilot/operator of any aircraft approaching, landing or taking off from any part of the Resort must him/herself assume responsibility at all times for his/her own safety, and the safety of any passengers and the aircraft itself.
- 1.6 The Licensee and any operator or pilot of any aircraft of the Licensee must satisfy it, him or herself that the Designated Landing Area, and the air space immediately above and adjacent to it are safe for approach, landing or take off on each and every occasion of its use or intended use by any aircraft owned or operated by the Licensee.

2. Release and Indemnity by Helicopter Licensee

The Licensee's use of the Designated Landing Area and the approach, landing and takeoff of any aircraft of the Licensee is at the Licensee's own risk. The Licensee will release, discharge, indemnify and hold harmless:-

- 2.1 The Crown in right of the State of Victoria and its employees, agents and independent contractors; and
- 2.2 The Licensor in its own capacity as well as in its capacity as Committee of Management for the Resort;
From:-
- 2.3 Any legal liability arising from the use of any Designated Landing Area or the approach, landing or takeoff of any aircraft used by the Licensee within the Resort; and
- 2.4 Any loss or liability for property damage or the injury or death of any person which arises directly or indirectly out of negligence, tort, contract, or breach of statutory duty, by the Licensee, the Licensee's employees or agents, or any person for whom the Licensee is legally responsible, consequential to the use of any Designated Landing Area (other than the act, default or negligence of the Licensor, the Crown or their respective employees or agents) and any costs, charges and expenses incurred in connection therewith.

3. Helicopter Specific Insurance

- 3.1 Throughout the Term or any over-holding after the Term, the Licensee must effect and keep current in respect of the use authorised by the Licence a public risk insurance policy or policies for an amount in respect of any single accident or event for no less than \$20 million, and such insurance shall insure against any legal liabilities arising out of the authorised use or by reason of the use by the Licensee of any Designated Landing Area and in respect of any damage or loss to any Property on or adjacent to the Designated Landing Area or any injury or death arising out of any act or omission by the Licensee, its employees, agents, customers or visitors to any Designated Landing Area.