

2019 COMMERCIAL OPERATOR LICENCE APPLICATION FOR VEHICLES WITH >13 SEATS



This application is for a Licence to deliver / collect passengers in a vehicle with more than 13 seats to the Village at Mt Buller or Telephone Box Junction at Mt Stirling.

OBJECTIVE

The Commercial Operator Licence for vehicles with more than 13 seats permits the delivery of a premium service that delivers passengers directly to the Village at Mt Buller or Telephone Box Junction at Mt Stirling in accordance with a published timetable.

Visitors must be delivered / collected from a designated location in the Village set by the Resort Management Board (RMB). Vehicles transporting day visitors will be allowed to park at the Horse Hill (Mt Buller) or Telephone Box Junction (Mt Stirling) day visitor parking areas subject to availability. Vehicles transporting overnight visitors must leave the mountain.

Licencees will be required to pay \$20 per adult passenger and \$15 per child to the RMB (via the agent portal nominated by the RMB). The RMB will undertake financial and spot audits to confirm passenger numbers and compliance with the Commercial Operator Licence for vehicles with more than 13 seats. No other fees are payable to deliver passengers to the Village at Mt Buller or Telephone Box Junction at Mt Stirling for the 2019 declared snow season.

APPLICATION CHECKLIST

Accurate and comprehensive information will assist in prompt application processing.

Please tick

1. If new applicant, discuss application with Resort Management.
2. Complete Application form, including Operator Schedule(s)
3. Attach all supporting documentation (tour schedule maps, accreditation evidence etc).
4. Provide a Certificate of Currency for required insurances (see page 11).

Forward complete application to:

**Sarah Egan, Customer Service Manager, RMB via
sarah.egan@mtbuller.com.au**

**Mt Buller Mt Stirling Resort Management Board, Alpine Central, 10
Summit Road, Mt Buller, VIC, 3723**

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*.

The decision to grant a Commercial Operator Licence for vehicles with more than 13 seats and any associated conditions is at the discretion of RMB.

Name

Company

Position

Mobile

Email

Date

Licensing Process

Phase 1:

- Application or renewal received by RMB for review;
- Operators should ensure a complete application is submitted in the first instance.

Phase 2:

- Application declined or approved;
- If approved, Licence and invoice created and sent to the operator for review and signing.

Phase 3:

- Licence executed by RMB;
- Executed Licence returned to operator.

Depending on the complexity and completeness of the Licence application the process may take up to 28 days. All prospective operators need to ensure that they provide enough time to become licensed prior to operating to avoid disappointment.

Commercial Operator Licence for vehicles with more than 13 seats

Licences are:

- issued to an operator (Licensee) by Mt Buller Mt Stirling RMB (Licensor);
- not transferable (to another individual or entity);
- issued solely to the applicant specified in the application form;
- issued for the declared snow season of the specified calendar year and are not automatically renewed;
- subject to meeting vehicle and licencing requirements; and
- penalties apply for operating without a Licence or breaching the conditions of a Licence. This includes fines and revocation of Licence.

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 \$20 million for any one claim, but a requirement for a higher level of coverage may be necessary if RMB considers it appropriate considering the nature of the Licensee's activities.

Please ensure details of public liability insurance are accurate as per RMB requirements outlined on page 12.

Fees

Mt Buller Mt Stirling Resort Management Commercial Licences are issued under the provisions of Section 17 Crown Land (Reserves) Act 1978.

In 2019, RMB is applying the following fees to a Commercial Operator Licence for a vehicle with more than 13 seats:

Category	7 June 2019 - 31 October 2019
Per Person Entry fee – Adult visitor (per return trip)	\$20
Per Person Entry fee – School student and child (per return trip)	\$15

GST is not payable on Commercial Operator Licence fees.

Vehicle and Driver Requirements

The following conditions apply to anyone seeking a Commercial Operator Licence for a vehicle with more than 13 seats.

- a. You must have:
 - Bus operator registration if you intend to operate one or more vehicles with 10 or more seats; or

- Commercial Passenger Vehicle Booking Service Provider registration in accordance with the Transport (Compliance and Miscellaneous) Act 1983 (Vic).
- b. Your driver must:
- Have Commercial Passenger Vehicle Driver Accreditation or Bus Driver Accreditation; and
 - Be able to fit wheel chains and be a competent driver in snow and ice-covered roads.
- c. Your vehicle must:
- Meet Commercial Passenger Vehicle or Bus Vehicle requirements;
 - All vehicles entering the Mt Buller Village must meet the Mt Buller Village Vehicle Conditions, as a minimum, which are available at:
https://cdn.mtbullercdn.com.au/assets/village_vehicle_conditions_2019.pdf;
 - Be carrying appropriately sized, diamond wheel chains;
 - Be licensed and issued with a commercial passenger Vehicle licence and display commercial passenger vehicle identification, if the Commercial Passenger Vehicle Industry Regulations apply to your operation;
 - Only be driven to and from the designated delivery/collection destination as specified by the RMB in the Operator Schedule and remain in the Mt Buller Village less than 15 minutes;
 - Only be parked in accordance with the conditions of the Commercial Operators Licence as directed by the Resort management Board's Parking Attendants; and
 - Have Mud & Sand tyres as a minimum, showing the M+S symbol (refer below) and carry appropriately sized diamond wheel-chains at all times.



OR



Additional recommendations:

- a. Watch the video prepared by Snowsafe Australia on snow safe driving <http://snowsafe.org.au/driving-in-alpine-areas/>.
- b. Use brakes gently and drive slowly. Accelerate gently to avoid wheel spin and avoid unnecessary gear changes. Use first or second gear on level ground before ascending or descending hills. If you lose traction, try to control your car by steering rather than braking.

Applicant details (please complete Part A or Part B)

A. Where Licence is to be issued to an individual

Surname	Given name

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

Company / Association name	Authorised Officer Surname

Australian Company Number (ACN)	Given name
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or Incorporated Association Number	Position title

Trading details

Trading name/s

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Registered for GST (please circle)

Australian Business Number (ABN)

Y / N

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Address for correspondence

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Mobile

--

Street address

Fax

--

Email

--

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Website

--

Telephone (bus. hours)

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Telephone (after hours)

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Mt Buller Mt Stirling Resort Management will list Licensed Commercial Operators for vehicles carrying more than 13 passengers on www.mtbuller.com.au

Proposed Operator schedules

- Applicants must complete a separate Operators Schedule for each type of transport arrangement. A transport arrangement is any organised business activity undertaken within Mt Buller and Mt Stirling Alpine Resorts.

Accurate and comprehensive information will assist in prompt application processing

Schedule 1

Proposed routes, passenger delivery/collection location(s)

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Frequency and/or proposed dates

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

Proposed duration of tour
(hours/days)

Proposed maximum
group sizes

Vehicle to be used

Schedule 2

Proposed routes, passenger delivery/collection location(s)

Frequency and/or proposed dates

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

Proposed duration of tour
(hours/days)

Proposed maximum
group sizes

Vehicle to be used

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 the Department of Environment, Land, Water and Planning, that encourages improved environmental, cultural and business planning.
- Act** means the Crown Land (Reserves) Act 1978;
- Annual Fee** means the fixed component of the standard Licence Fee.
- Association** means the Australian Tourism Accreditation Program Limited ACN 095 626 976 (or equivalent body).
- 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, Land, Water and Planning, or its successor in law.
- Entry Fee** means the component additional to the standard Licence Fee, featuring differential daily rates, depending on the number of adults and children that participate in Tours/Transit arrangements.
- Insured** means the Licensee, including the Licensee's officers, employees, agents, contractors, subcontractors, invitees and their successors and permitted assigns.
- Licence** means this Commercial Operator Licence, including all conditions.
- Licensed Area** means the Mt Buller Village at Telephone Box Junction at Mt Stirling.
- 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, **Person** includes a body corporate or individual.
- Resorts** means the Mt Buller and Mt Stirling Alpine Resorts.
- Secretary** means the Body Corporate called the Secretary to the Department of Environment, Land, Water and Planning established by the Conservation, Forests and Lands Act 1987, or any later equivalent body or person.
- Schedule** means a schedule in the Licence documentation.
- Term** means the time period described in Schedule 1 Item 6 of the Licence, beginning on the Commencement Date.
- 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 conditions 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 Entry Fees remain payable per person.
- 3.2** Subject to clause 3.3, the Licensee must pay the Annual Fee to the Licensor:
- annually in advance;
 - 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.
- The Licensee must pay the Entry Fee to the Licensor:

In accordance with standard RMB policies and procedures in compliance with the Alpine Resorts (Management) Act (1997) and Alpine Resorts (Management) Regulations (2009); available at:

[http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt4.nsf/DDE300B846EED9C7CA257616000A3571/BC32DE C64BD6D1B6CA25776100364236/\\$FILE/09-136sr001.pdf](http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/LTObject_Store/LTObjSt4.nsf/DDE300B846EED9C7CA257616000A3571/BC32DE C64BD6D1B6CA25776100364236/$FILE/09-136sr001.pdf)

- 3.3** The Licensee must:
- maintain a daily record of the number of persons who participate in the transit service in the form required by the Licensor for standard tour operator licences; and
 - provide a copy of this record to the Licensor on:
 - every day the snow limo service operates via the authenticated agent portal nominated by the RMB; and/or

- ii. on request.
- 3.4 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.
- 3.5 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. RIGHT TO ACCESS AND AUDIT

- 4.1 The Licensor or Licensor's Representative may, during ordinary business hours, inspect and/or audit the accounts and records of the Licensee relating to the Licensee's compliance with its obligations under this Licence. The Licensor or Licensor's Representative will be entitled to take copies of or extracts from any such records.
- 4.2 The Licensee must participate promptly and cooperatively in any audits conducted by the Licensor or Licensor's Representative.
- 4.3 Except in those circumstances in which the Licensor determines that notice is not practicable or appropriate, the Licensor must give the Licensee reasonable notice of an audit and, where reasonably practicable, an indication of which documents or class of documents the auditor may require access to.
- 4.4 If the outcome of an audit does not require any corrective action, each party must bear its own costs associated with any audits. If the audit identifies any error, non-compliance or inaccuracy requiring remedial action (other than a trivial or insignificant error, non-compliance or inaccuracy), the Licensor's costs in respect of the audit will, if notified by the Licensor to the Licensee, be payable by the Licensee as a debt due to the Licensor.
- 4.5 The Licensee must promptly take corrective action in order to rectify any error, non-compliance or inaccuracy identified in any audit relating to the way the Licensee has, calculated any fees or any other amounts submitted to the Licensor.

5. LICENSEE'S CERTIFICATION – ACCREDITATION AND FIRST AID

- 5.1 On or before the Commencement Date, the Licensee must provide satisfactory documentary evidence that the Licensee
 - a. has obtained any required Accreditation Certification and
 - b. is currently licenced to conduct the Permitted Use by any relevant body, if this is required by law, to the Licensor if requested.
- 5.2 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).
- 5.3 The Licensor may issue supplementary requests for proof of accreditation to the Licensee during the Term, where this is reasonably required in the circumstances .
- 5.4 In addition to completion of the Accreditation Certification , the Licensee must ensure that:
 - a. its Licenced driver have a current first aid qualification, the minimum standard requirement is Level 2 First Aid and has a suitable first aid kit.

6. COMPLIANCE REQUIREMENTS

The Licensee acknowledges that:

- 6.1 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.
- 6.2 pets and firearms are not to be taken into the Resorts, unless specifically permitted in writing by the Licensor;
- 6.3 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 provided as fuel).
- 6.4 the Licensee may only 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
- 6.5 the Licensee must not:
 - a. litter or dispose of rubbish incorrectly;
 - 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.
- 6.6 the Licensee must not enter or remain in, or permit an employee, agent or Tour/Transit 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.
- 6.7 the Licensee must:
 - a. obtain and comply with the terms of all licences, permits, or authorisations required by law to conduct its Tours/Transit arrangements;
 - b. ensure that such licences, permits and authorisations remain current at all times during the Term;
 - c. comply with any:
 - i. additional safety requirements reasonably imposed by the Department or the Licensor, provided that in the event of any inconsistency the higher standard or requirement will prevail;
 - d. ensure that all contact and business details remain current and that the email address provided is regularly monitored for emergency communications;
 - e. keep the Licensor informed of any ongoing investigations, notice of Infraction and outcomes of investigations.
- 6.8 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. kept in compliance with the requirements of any authority that regulates storage or keeping of the hazardous substance.

7. LICENSOR'S DIRECTIONS AND TOUR INTERRUPTIONS

7.1 The Licensee and the Licensee's employees, agents and Tour/Transit 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.

7.2 Without limiting the generality of the foregoing, the Licensee acknowledges that it may be directed to cease or suspend Tours/Transit arrangements 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.

7.3 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/Transit arrangements.

7.4 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/Transit arrangements 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.

8. DEALING WITH EMERGENCIES

The Licensee must:

8.1 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/Transit arrangement (collectively, the "Emergency Response Plan") and promptly provide a copy of the Emergency Response Plan to the Licensor if requested;

8.2 ensure the safe evacuation of Tour/Transit arrangement 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;

8.3 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/Transit group; or
- b. other Tours/Transit arrangements or authorised activities being conducted on the Licensed Area or Resorts; and

8.4 file a completed incident report in the form required by the Licensor, with the Licensor as soon as is reasonably practicable, after the occurrence of the relevant event.

9. PRECAUTIONS AGAINST DAMAGE AND INJURY OF WILDLIFE

9.1 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.

9.2 Any instances of destruction or damage must be promptly reported to the Licensor's Representative.

9.3 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.

9.4 Feeding or handling of wildlife on the Licensed Area, whether during the course of a Tour/Transit arrangement or otherwise, is not permitted.

9.5 The Licensee must not drive or permit an employee, agent or Tour/Transit 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.

9.6 At no time may the Licensee drive, or permit an employee, agent or Tour/Transit 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.

10. VEHICLES

10.1 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.

10.2 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.

10.3 All operators must have legally required accreditations or registrations to operate the service and vehicles. Proof of this accreditation must be supplied to the Licensor upon request.

10.4 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 separate permit for the use or parking of such a vehicle is required.

11. CONDUCT OF TOURS/TRANSIT ARRANGEMENTS

11.1 The Licensee must:

- a. plan, prepare and conduct Tours/Transit arrangements using all reasonable care and skill;
- b. make all Tour/Transit participants aware before the Tour/Transit commences, of:
 - i. potential hazards and conditions that may be encountered during the Tour/Transit arrangement 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/Transit arrangement;
- c. ensure procedures are in place to minimise the risk of potential hazards to Tour/Transit participants, including, but not limited to, pre-tour briefings, appropriate safety equipment and head counts;
- d. ensure that all Tour/Transit participants comply with all conditions of licence;
- e. ensure that all guides and employees have obtained any necessary Accreditation and the relevant competencies and skills for undertaking, leading and guiding a Tour/Transit arrangement;
- f. ensure that Tour/Transit arrangement supervision is appropriate to the differing clients' experiences and abilities;

- 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 the conditions and obligations of this licence.

12. TERMINATION

- 12.1 The Licensor may terminate this Licence if they are satisfied on reasonable grounds that:
 - a. the Licensor is found guilty of any offence against the Act; or
 - b. the Licensee has contravened a condition of this Licence.
- 12.2 If the Licensor seeks to terminate this Licence, they must first:
 - a. notify the Licensee that they propose to cancel the Licence; and
 - b. allow the Licensee opportunity to make a written submission within 7 days.
- 12.3 In making a decision whether or not to cancel the Licence, the Licensor must have regard to any submission made under clause 13.2.

13. VARIATION OR SUSPENSION OF LICENCE

- 13.1 The terms of this Licence may be varied:
 - a. by agreement between the parties; and
 - b. has effect, on the Licensor giving written notice of the variation to the Licensee.
- 13.2 The variation of this Licence cannot be used to extend the Term.
- 13.3 If the Licensor is satisfied that there are reasonable grounds to do so, the Licensor may suspend the Licence by giving written notice to the Licensee, noting that:
 - a. the Licensee may make a written submission within 7 days;
 - b. in making a decision whether or not to continue, revoke or amend the suspension, the Licensor must have regard to any submission made under clause 14.3.a; and
 - c. a period of suspension must not exceed 90 days.

14. 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.

15. LIMITATION ON IMPROVEMENTS

The Licensee must not erect, or permit the erection, of **any improvement** on the Licensed Area.

16. DEALING WITH LICENCE

The Licensee must not:

- 16.1 Assign, sub-licence, mortgage or charge this Licence; or
- 16.2 part with or share possession of the whole Licensed Area or any part of it.

17. NOTICES

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:

- 17.1 In writing;
- 17.2 signed by the Licensor or a person authorised by the Licensor (including, without limiting the generality of the foregoing, the Licensor's Representative); and
- 17.3 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.
- 17.4 The Licensee must give prompt Notice to the Licensor of any change in their business contact details or street address.

18. INSURANCE

- 18.1 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 \$20 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. a 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.
- 18.2 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.
- 18.3 The Licensee must ensure that the Licensor is notified of any changes to the Policy.
- 18.4 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.
- 18.5 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.
- 18.6** 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.
- 18.7** 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.
- 18.8** The Licensee will deliver upon request to the Licensor, copies of any policies entered into by the Licensee pursuant to clause 21.7.
- 18.9** 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.

19. RELEASE

- 19.1** 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/Transit arrangements.
- 19.2** 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 or omission of the Licensor.
- 19.3** References in this clause 22 to the Licensee, the Licensor and the Other Relevant Parties, include their respective officers, employees, authorised agents, contractors, subcontractors, invitees and their successors and permitted assigns.

20. INDEMNITY

- 20.1** The 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.
- 20.2** References 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.
- 20.3** The 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.

21. SPECIAL CONDITIONS

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

22. WAIVER

The 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.

23. ACKNOWLEDGEMENT

All representations, communications and prior discussions in relation to the subject matter are merged in and superseded by this Licence.

24. COUNTERPARTS

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

25. GOVERNING LAW

- 25.1** This Licence is governed by the law of the State of Victoria.
- 25.2** The Licensor and Licensee submit to the nonexclusive 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 \$20 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 Licensor (Mt Buller Mt Stirling Resort Management) as a relevant party. This 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)

This text must also appear on the insurance certificate:

- 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 DELWP and PV Tour Operator Licence requirements. Please ensure correct spelling and wording on your Certificate of Currency.