

TOUR OPERATOR AND ACTIVITY PROVIDER LICENCE APPLICATION

Process for granting a tour operator licence

Step 1

Contact the land manager to discuss the proposal. A preliminary phone call or face to face meeting will assist both parties in understanding each other's position and may help save time.

Step 2

If the land manager supports the proposal in principle, fill in the application form and send it to the land manager. The land manager may want to discuss the application further with you before deciding whether to grant a licence, or work out additional site specific conditions which would be inserted into the licence document. A plan which shows the area of the Crown land being licensed also needs to be prepared.

Step 3

Your application will be considered on its merits by the land manager in their sole discretion. The land manager must also write to the DSE to obtain the approval of the Minister for Environment and Climate Change to the granting of the licence. This approval function has been delegated to officers in regional DSE offices.

If the application is accepted (and receives Ministerial approval under the *Crown Land (Reserves) Act 1978*), the land manager will prepare duplicate execution copies of the licence and send them to you for signing.

Step 4

Once you have signed both documents, they must be returned to the land manager for signature, together with the annual fee for the first year of the licence. Ultimately, the land manager will return a fully executed part of the licence to you for your records.

You can assist in speeding up the process to issue the licence by:

- ensuring that the application is completed correctly
- attaching all associated documentation

New application

Duration of licence sought i.e. one year or multi-year licence for a fixed term of up to 10 years.

Duration: year licence

multiple year licences are conditional on holding appropriate accreditation (see page 4)

Contact details

Please insert the contact details of the individual completing this application form.

Surname:

Given name:

Position:

Company/Association:

Phone:

Email:

Date (DD/MM/YY):

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PART 1 – INFORMATION FOR APPLICANTS

Application

A licence is required by people or businesses who conduct organised tours or recreational businesses for profit on Public land in Victoria. Public land includes land and waters managed by and on behalf of the Crown under the following legislation:

- *National Parks Act 1975*
- *Forests Act 1958*
- *Crown Land (Reserves) Act 1978*
- *Land Act 1958*
- *Wildlife Act 1975*

Further information concerning tour operator licensing on Public land can be found on the following website: www.dse.vic.gov.au/recreation-and-tourism

Completed application forms can be sent to:

Tour Operator Licences are:

- issued to a tour operator (Licensee) from the land manager (Licensor)
- not transferable (to another individual or entity) without the Licensor's (entirely discretionary) consent
- 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 tour operator licence or breaching the conditions of a licence
- issued under the provisions of the following Acts:
 - Section 21B *Crown Land (Reserves) Act 1978*
 - Section 57F *Forests Act 1958*
 - Section 140I *Land Act 1958*
 - Section 27D *National Parks Act 1975*
 - Section 21B *Wildlife Act 1975*

Variation

Tour Operator Licences may be varied either by the Licensee applying to the Licensor requesting a variation or by the Licensor giving written notice to the Licensee, pursuant to the Licensor's statutory powers under the enabling legislation. A variation of licence cannot be used to extend the term of a Licence.

Multiple Sites

If a tour operator is seeking a licence to operate over more than one area of Crown land, a single application can be made over multiple areas of land, providing all these areas are managed by the same land manager. If the tour operator is seeking a licence to operate over more than one area of Crown land and these sites are managed by different land managers, the tour operator must make separate applications for each site to the relevant land managers. If you are going to apply to another land manager for a licence, please provide details of the land manager in Part 3A.

Public Liability Insurance

It is a condition of a tour 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 the Licensor 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* – The annual licence fees set in the Regulations 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. The level of a fee unit for 2011-2012 has been set at \$12.22.

The fee regulations will be phased in over 3 years as indicated in the table below. Land managers may set the annual fee for a competitively allocated licence. The fee must be advertised in a public Expression of Interest document.

Category	Fee (\$) from		
	1 July 2011– 30 June 2013	1 July 2013	1 July 2014
Annual fee – Standard one year licence	\$110.00	\$255.00	20.78 fee units
Annual fee – Standard licence greater than one year (per year)	\$110.00	\$200.00	16.3 fee units
Use fee – General visitor (per day)	\$1.10	\$2.40	\$2.40
Use fee – School student and child (per day)	\$0.75	\$1.60	\$1.60
Use fee cap	\$5,500.00	\$12,500.00	1018.74 fee units

PART 1 – INFORMATION FOR APPLICANTS

Privacy

is committed to protecting information provided in accordance with the principles of the *Information Privacy Act 2000*. Information collected, including personal information, may be used for the purposes of issuing and administering the licence and the management of Crown land.

may disclose the information in this licence, including personal information, to the local municipality or other relevant government agencies or statutory authorities for these purposes if required to do so by law. If you wish to access this information please contact

If you do not want your information published where publication is not otherwise required by law, please let us know.

Accreditation

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 Based Ecotourism EcoCertification
- Australian Tourism Accreditation Program (formerly Better Business Tourism Accreditation Program)
- Camping with Confidence
- Respecting Our Culture

Up to 10 year maximum licence term

- Advanced Ecotourism EcoCertification
- Ecotourism EcoCertification
- 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 Tour product being offered.

Maintaining accreditation throughout the Term is a condition of this licence.

Coastal Management Act 1995 consent

The Coastal Management Act 1995 (CMA) requires the use and development of coastal Crown land to receive the prior written consent of the Minister responsible for administering the CMA. Thus, tour operators that undertake tours on coastal Crown land must obtain CMA consent to do so.

Where this application relates to a proposed Licensed Area that is coastal Crown land, the information provided in this application will be used by the Department of Sustainability and Environment (DSE) to assess whether or not to grant CMA consent for the proposed use.

Coastal Crown land is defined as:

- any land reserved under the *Crown Land (Reserves) Act 1978* for the protection of the coastline; and
- any Crown land within 200 metres of the high water mark of the coastal waters of Victoria.

In assessing whether or not to grant CMA consent, the DSE must have regard to:

- The Victorian Coastal Strategy
- Any Coastal Action Plan applying to the land;
- Any recommendation of the Victorian Environment Assessment Council;
- The purpose for which the land is reserved.

DSE may contact you directly if further information is required to assess your application pursuant to Section 39(2) of the CMA.

Special conditions

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

PART 2 – APPLICANT DETAILS

Tour Operator Licence to be issued to: (please ✓ tick)

Individual – **(go to 1A)**

Incorporated Company/Incorporated Association – **(go to 1B)**

1A Where licence is to be issued to an INDIVIDUAL

Surname:

Given name:

1B Where licence is to be issued to an INCORPORATED COMPANY / INCORPORATED ASSOCIATION

Company/Association name:

Australian Company Number (ACN):

OR

Incorporated Association Number:

Authorised Officer

Surname:

Given name:

Position title:

Trading name/s:

Registered for GST: (please ✓ tick)

Yes

No

Australian Business Number (ABN) if applicable:

Address for correspondence or registered office address:

Street address:

Telephone (Bus hours):

Telephone (After hours):

Mobile:

Fax number:

Email:

Website:

PART 4 – 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 Licence 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 TABV TQUAL and/or the Association, that encourages improved environmental, cultural and business management, including:

For a Term of up to 3 years:

- Nature-based ecotourism;
- EcoCertification;
- The Australian Tourism Accreditation Program (formerly known as the 'Better Business Tourism Accreditation Program');
- Camping with Confidence, and
- Respecting Our Culture.

For a Term of between 3 and 10 years:

- Advanced Ecotourism EcoCertification;
- Ecotourism EcoCertification; and
- EarthCheck Benchmarking and Certification (Formerly known as 'GreenGlobe Company Standard').

Act means:

- *Crown Land (Reserves) Act 1978*;
- *Forests Act 1958*;
- *Land Act 1958*;
- *National Parks Act 1975*; or
- *Wildlife Act 1975*.

Adventure Activity Standards means specific behavioural standards developed through government funding and endorsed by the tourism industry for the outdoor recreation sector, from time to time. Specifically applicable at the Commencement Date to the following activities:

- White-water/river rafting;
- Rock climbing;
- Four wheel driving;
- Bushwalking;
- Trail bike Tours;
- Diving and snorkelling;
- Canoeing and kayaking;
- Caving;
- Mountain biking;
- Fishing/angling;
- Horsetrail riding;
- Surfing/surfing education; and
- Abseiling.

Annual Fee means the component of the standard Licence Fee fixed and reviewed under Regulation 6, or fixed under Regulation 14 for competitively allocated licences.

Association means the Tourism Accreditation Association 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 at Item 5 of the Schedule, 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 Sustainability and Environment, or its successor in law;

Fee Regulations means:

- Crown Land (Reserves) (Tour Operator Licence Fee) Regulations 2011
- Forests (Tour Operator Licence Fee) Regulations 2011
- Land (Tour Operator Licence Fee) Regulations 2011
- National Parks (Tour Operator Licence Fee) Regulations 2011
- Wildlife (Tour Operator Licence Fee) Regulations 2011

GST means the goods and services tax, as defined in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

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

Item means an item in the Schedule.

Land has the meaning given to that term in Item 9.

Licence means these Tour Operator Licence Conditions.

Licensed Area means the land and improvements (if any) described at Item 10.

Licence Fee means the periodical amount described at Item 7, as reviewed or varied during the Term.

Licensee means the entity named in Item 3, and includes any permitted assigns or successors in law.

Licensor means the entity named in Item 2, and includes Committees of Management appointed by the Minister to manage the Licensed Area.

Licensor's Representative means an employee or officer of the Licensor nominated to the Licensee in writing from time to time, who is authorised 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, the Secretary to the Department, Parks Victoria, the Director of National Parks and any other authorised delegate from the Licensor.

Park means a National Park and/or State Park within the meaning of the *National Parks Act 1975* or any other form of recreational area managed by the Licensor.

Permitted Use means the purposes and activities that the Licensee is authorised to carry out on the Licensed Area, as described at Item 10.

Person includes a body corporate or individual.

Regulation denotes a Regulation from the Fee Regulations.

Schedule means the schedule at the rear of this Licence.

Secretary means the Secretary to the Department, being the body corporate established under the *Conservation, Forest and Lands Act 1987*

TABV means that Tourism Accreditation Board of 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 at Item 6, 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, or for a competitively allocated licence under Regulation 15, 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).

PART 4 – LICENCE CONDITIONS CONT'D.

2. Grant of Licence

- 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 Land.

3. Payment Arrangements

- 3.1 The Licensee acknowledges that the Licence Fee is made of the following components:
- (a) the Annual Fee; and
 - (b) the Use Fee.
- 3.2 Subject to clause 3.3, the Licensee must pay Annual Fee to the Licensor:
- (a) annually in advance;
 - (b) to the address specified in Item 15, 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 From 1 July 2014 onwards, 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 Item 15, 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 or Regulation 16 for competitively allocated licences; and
 - (b) provide a copy of this record to the Licensor or the Licensor's Representative, where he or she is authorised to receive this information on the Licensor's behalf, 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

- 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; and
 - (b) is currently licensed to conduct the Permitted Use by the Association or TABV, 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.
- 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.
- 4.4 In addition to completion of the Accreditation Certification, the Licensee must ensure that:
- (a) its Tour guides have a current first aid qualification, which is equal to or better than the standard required by law or equivalent; and
 - (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.

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; and
 - (b) all lawful orders or directions made under these ordinances;
- 5.2 pets and firearms are not to be taken into Parks, unless specifically permitted by the Licensor;
- 5.3 fires may only be lit in fireplaces if the Licensed Area is managed under the *National Parks Act 1975*;
- 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; or
 - (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;
- 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 Land that are permanently, temporarily or seasonally closed by gates, signs 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;

PART 4 – LICENCE CONDITIONS CONT'D.

- (b) ensure that such licences, permits and authorisations remain current at all times during the Term;
- (c) comply with any:
 - (i) applicable Adventure Activity Standard; and/or
 - (ii) additional safety requirements reasonably imposed by the Department or the Licensor, provided that this Licence and any applicable Adventure Activity Standard prevail over additional safety requirements imposed under clause 5.7(c)(ii) in the event of any inconsistency;

- 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 Secretary'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's Representative, 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 the Land; 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 or the surrounding Land.
- 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 without the prior consent of the Licensor.
- 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 or public notice, unless another provision of this Licence expressly permits the Licensee to do so.

9. Campsites and Vehicles

- 9.1 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.
- 9.2 If campsites are not furnished with toilets, night soil must be buried at least 100 metres from any stream, dam or aqueduct.
- 9.3 The Licensee and/or Tour participants may be required to pay additional fees for the right to use campsites.
- 9.4 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.
- 9.5 All rubbish originating from Tour operations must be removed by the Licensee or placed into receptacles on the Licensed Area provided for this purpose by the Licensor.
- 9.6 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.
- 9.7 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. Conduct of Tours

- 10.1 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, tidal conditions, 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.

PART 4 – LICENCE CONDITIONS CONT'D.

- (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; and
 - (g) submit trip return documentation to the Licensor's Representative within 21 days of the following date/s:
 - (i) [one annual date to be specified];OR [if quarterly submission of information is preferred]:
 - (ii) Quarter 1 = 1 July – 30 September;
 - (iii) Quarter 2 = 1 October – 31 December;
 - (iv) Quarter 3 = 1 January – 31 March; and
 - (v) Quarter 4 = 1 April – 30 June.
- 10.2 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 and Use Fee and other payment obligations under this Licence.

11. Termination

- 11.1 The Licensor may terminate this Licence, in the circumstances, and in accordance with the procedure, set out in:
- (i) section 21J of the Act [**use this language where the Crown Land (Reserves) Act 1978 or the Wildlife Act 1975 applies**];
 - (ii) section 57N of the Act [**use this language where the Forests Act 1958 applies**];
 - (iii) section 140Q of the Act [**use this language where the Land Act 1958 applies**]; or
 - (iv) section 27L of the Act [**use this language where the National Parks Act 1975 applies**].
- or otherwise 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 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.

12. Variation or Suspension of Licence

- 12.1 The terms of this Licence may be varied:
- (a) by agreement between the parties; or
 - (b) in the manner specified in:
 - (i) Section 21G of the Act [**use this language where the Crown Land (Reserves) Act 1978 or the Wildlife Act 1975 applies**];
 - (ii) Section 57K of the Act [**use this language where the Forests Act 1958 applies**];
 - (iii) Section 140N of the Act [**use this language where the Land Act 1958 applies**]; or
 - (iv) Section 27I of the Act [**use this language where the National Parks Act 1975 applies**].
- 12.2 The Licensor may temporarily suspend this Licence under:
- (a) section H and I of the Act [**use this language where the Crown Land (Reserves) Act 1978 or the Wildlife Act 1975 applies**];
 - (b) section 57L and M of the Act [**use this language where the Forests Act 1958 applies**];
 - (c) Sections 140O and P of the Act [**use this language where the Land Act 1958 applies**]; and
 - (d) Sections 27 J and K of the Act [**use this language where the National Parks Act 1975 applies**].

13. 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 11 and 12 of this Licence.

14. GST

- 14.1 In this clause, expressions set out in italics have the same meaning as those expressions in the GST Act.
- 14.2 An amount payable under this Licence by a party to the other party, in respect of a *supply* which is a *taxable supply*, represents the *GST exclusive value of the supply*.
- 14.3 The party who receives a *taxable supply* under this Licence from the *supplier* must, upon receipt of a *tax invoice* from the *supplier*, pay *GST* to the *supplier* in addition to the *GST exclusive value of the supply*.
- 14.4 Any penalty or interest payable as a result of late payment of any *GST* payable under this Licence is payable by the party who is the cause of the late payment.
- 14.5 If the *Supplier* is entitled to an *input tax credit* for any *GST* recoverable from the other party under this Licence, the amount of *GST* payable by the other party is to be reduced by the amount of the *input tax credit* which the *supplier* has received or is entitled to receive.

15. Limitation on Improvements

- 15.1 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.

PART 4 – LICENCE CONDITIONS CONT'D.

15.2 Any improvements erected by the Licensee pursuant to clause 15.1 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.

16. 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.

17. Dealing with Licence

The Licensee must not:

- 17.1 assign, sub-licence, mortgage or charge this Licence; or
- 17.2 part with or share possession of the whole Licensed Area or any part of it.

18. 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:

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

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

Activity Conditions

Where applicable Adventure Activity Standards have not been developed in respect of Tour types authorised by the Permitted Use, the following obligations apply, to the extent that they are relevant to the Permitted Use:

19. Birdwatching/Spotlight tours/Night walks/Coastal walking

- 19.1 The group size for Tours must not exceed 15 persons including leaders, unless other provisions of this Licence specifically authorise larger groups.
- 19.2 Wherever possible, groups must:
 - (a) carry and use portable stoves for cooking to reduce the amount of firewood used; and
 - (b) follow other minimal impact procedures reasonably specified by the Licensor's Representative.

20. Ski touring/Snow shoe tours

The group size for Tours must not exceed 15 persons including leaders, unless other provisions of this Licence specifically authorise larger groups.

21. Boat tours

In addition to any other licences, permits and authorisations required by law, all boats carrying passengers must have a current Certificate of Survey from Transport Safety Victoria.

22. Ballooning

- 22.1 All balloons must be registered with the Civil Aviation Safety Authority (CASA).
- 22.2 Ballooning pilots must have a Commercial Pilots Licence.
- 22.3 The Licensee must:
 - (a) maintain a CASA Air Operator's Certificate; and
 - (b) provide a copy of the certificate to the Licensor upon request.
- 22.4 The Licensee must comply with the Australian Ballooning Federation Code of Conduct and all Civil Aviation Regulations pertaining to commercial balloon operations.

23. Fossicking/prospecting/goldpanning

- 23.1 If the Licensee conducts fossicking, goldpanning or prospecting Tours, the Licensee must require Tour participants to understand and comply with the Acts and regulations protecting archaeological and historic artefacts.
- 23.2 In Parks, fossicking may only occur in areas specifically set aside for this activity, listed in section 32D of the *National Parks Act 1975*.
- 23.3 If the Licensee conducts gold fossicking Tours, the Licensee must obtain either a Tourist Fossicking Authority or require all Tour participants to possess a miner's right.

24. Sea kayaking

- 24.1 In addition to complying with the Adventure Activity Standards for Canoeing / Kayaking activities, the Licensee must discuss the use of camping areas with the Licensor's Representative and other relevant land managers prior to the commencement of any Tour.
- 24.2 Emergency campsites may only be used if weather conditions make it impossible or unsafe to reach planned sites.

25. Bus / Coach Tours

- 25.1 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.
- 25.2 Proof of this accreditation must be supplied to the Licensor upon request.
- 25.3 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.
- 25.4 Any driver providing commercial passenger Vehicle services **must** carry valid driver accreditation.

PART 4 – LICENCE CONDITIONS CONT'D.

Details of public liability insurance

It is a condition of a tour operator licence that the licensee keep and maintain a public liability insurance policy covering the activities of the licensee. 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 applicant must provide evidence of insurance (Certificate of Currency) with this application which confirms the following:

- 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 relevant to the operation of the licence.

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.

Amount of coverage (minimum \$10,000,000 for any one claim):

Expiry date (DD/MM/YY):

Insurance, Release and Indemnity Provisions

26. Insurance

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

- a 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:
 - loss, destruction or damage to real or personal property and ensuing loss of use of that property;
 - death, injury to, or disease of persons; and
- 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:-
 - by virtue of any statute relating to workers' or accident compensation or employers' liability; or
 - at common law,

(collectively referred to in the balance of this Licence as the "Policy").

26.2 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 .

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

26.4 The Licensee must provide the Licensor with:

- a certificate of currency for the Policy which clearly confirms satisfaction of the requirements of the preceding clauses 26.1 and 26.2-
 - prior to the Commencement Date;
 - 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.

26.5 The Licensee must promptly notify the Licensor if:

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

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

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

26.7 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.

26.8 The Licensee will deliver upon request to the Licensor, copies of any policies entered into by the Licensee pursuant to clause 26.7.

26.9 If there is any damage or destruction to any building or improvement on the Licence Area or the Land, 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.

27. Release

27.1 The Licensee:

- occupies and uses the Licensed Area at its own risk;
- 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.

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

- all claims and demands resulting from:
 - 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

PART 4 – LICENCE CONDITIONS CONT'D.

(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 Land, 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.

27.3 References in this clause 27 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.

28. Indemnity

28.1 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 Land 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.

28.2 References in this clause 28 to the Licensee, the Licensor and the Other Relevant Parties include their respective officers, employees, authorised agents, contractors, subcontractors and invitees.

28.3 The Licensee must ensure that the Licensor and the names of the 'Other Relevant Parties' are included in its Policies in accordance with clause 28.2 and documented in any certificate of currency for such insurance.

29. Special Conditions

29.1 Any special condition set out in Item [insert]:

- (a) binds the parties; and
- (b) if there is an inconsistency between a special condition in Item [insert] and any other provision of this Licence, the special condition prevails.

30. Waiver

30.1 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.

31. Entire Agreement

- 31.1 This Licence is the entire agreement of the Licensor and Licensee on the subject matter.
- 31.2 The 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.
- 31.3 All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this Licence.

32. Counterparts

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

33. Governing Law

- 33.1 This Licence is governed by the law of the State of Victoria.
- 33.2 The 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.

CHECKLIST

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

Have you: Please ✓ tick

- Discussed the Tour Operator Licence application with the relevant land manager?
- Read and understood the Information for Applicants contained in Part 1?
- Completed the Applicant Details in Part 2?
- Completed the Tour Details in Part 3?
- Attached all supporting documentation this licence application (tour schedule maps, accreditation evidence)?
- Read and understood the standard terms and conditions of licence set out in Part 4?
- Provided a Schedule of Insurance in accordance with the requirements set out in Part 4?