NSW National Parks and Wildlife Service

Parks Eco Pass general licence conditions - tours

As found in the Parks Eco Pass Tours Licence

Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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1. Definitions

In this agreement unless the contrary intention appears.

AAAS means an Australian Adventure Activity Standard.

Aboriginal Cultural Heritage means the living, traditional and historical practices, representations, expressions, beliefs, knowledge and skills (together with the associated environment, landscapes, places, objects, ancestral remains and materials) that Aboriginal people recognise as part of their cultural heritage and identity.

Aboriginal Object has the same meaning given to that term in the Act.

Aboriginal Place has the same meaning given to that term in the Act.

Act means the *National Parks and Wildlife Act 1974* (NSW) as amended from time to time and any Act replacing the same.

Activity and Location Conditions means the conditions referred to at Item 3 and set out online at the website: www.environment.nsw.gov.au/publications/parks-eco-pass-activity-and-location-conditions which are incorporated into this Licence by clause 5.2.

Annual Licence Fee means the amount payable by the Licensee in accordance with clause 3.1 and specified at Item 8 in the Licence Details.

Associated manager of a Licensee means any person involved in the management of the Licensed Activity.

Authorised Officer means any of those persons holding the positions in the Department identified at Item 6 of the Licence Details.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, New South Wales.

Child Safe and Friendly Environment Policy means the Department's policy of that name that will be provided to the Licensee, or as amended from time to time.

Claim means any action, claim, demand, proceeding, loss, damages, costs, legal costs, charges and expenses.

Client means any person participating in the Licensed Activities within the Park(s) other than the Licensee or the Licensee's Employee or Agents.

Commencement Date means the commencement date of the Term set out at Item 4 of the Licence Details.

Commercial Filming means any filming or photography for sale, hire or profit.

Contamination means any toxic or hazardous substance, gas, liquid or material, any waste or discharge (other than properly and lawfully discharged sewerage) or any pollutant.

CPI means the Consumer Price Index (All Groups, Sydney) published by the Australian Bureau of Statistics, or any index that replaces it.

Per Person Fee means the amount set out at Item 8 of the Licence Details being fees associated with the number of Clients the Licensee brings into park when conducting the Licensed Activity.

Department means the Department of Climate Change, Energy, the Environment and Water and where appropriate includes any agency or authority replacing the same.

Digital NSW Park Pass means the digital pass issued by the Department to a motor vehicle registration for entry to a Fee-collecting Park(s).

Event of Default has the meaning given to that term in clause 10.2.1.

Fee-collecting Park(s) means those Park(s) that require fees or charges payable for entry by persons by motor vehicle to a park (**Park Entry Fee**) and listed at www.nationalparks.nsw.gov.au/passes-and-fees/fee-collecting-parks or as amended from time to time.

Filming and Photography Policy means the policy found at www.environment.nsw.gov.au/topics/parks-reserves-and-protected-areas/park-policies/filming-and-photography or as amended from time to time.

Guide includes any person acting for the Licensee in conducting the Licensed Activities within the Park(s) whether receiving remuneration or otherwise.

Historic Relic has the same meaning given to the term 'relic' in the *Heritage Act 1977* (NSW).

Law means any law whether common law or any law under any statute, ordinance, regulation or code of any applicable jurisdiction.

Liabilities means each and every cost, expense, liability and loss of any kind and all damages.

Licence means this Parks Eco Pass Licence to conduct the Licensed Activity and includes all schedules to and variations of this Licence.

Licensed Activity or Licensed Activities means the activity, or the activities specified at Item 2 in the Licence Details that may be conducted by the Licensee in the Park(s) pursuant to this Licence.

Licence Details means the licence details included at the front of this Licence.

Licensee means the Licensee specified at Item 1 of the Licence Details and where appropriate includes the Licensee's Employees and Agents.

Licensee's Employees and Agents means each of the Licensee's employees, agents, officers, contractors (including subcontractors) and service suppliers (express or implied).

Licensee's Equipment means all plant, machinery, vehicles, utensils, or other articles brought onto the Park by the Licensee for the Licensed Activities.

Licensor means the Secretary of the Department of Climate Change, Energy, the Environment and Water or any person for the time being acting as such and, where the context permits, includes employees of the Licensor (including an Authorised Officer) and agents of the Licensor.

Minister means the minister administering the *National Parks and Wildlife Act 1974.*

Park(s) means the area of land reserved under the Act and named at Item 2 of the Licence Details.

Parks Eco Pass Operator Handbook means the most current version of the NSW National Parks and Wildlife Service Parks Eco Pass Operator Handbook published from time to time.

Parks Eco Pass Licence means a commercial recreation licence granted under section 152 of the Act to an operator to conduct a commercial activity on land reserved under the Act.

Plan of Management means the plan(s) of management prepared and adopted for the Park(s) under Part 5 of the Act and amended from time to time pursuant to the Act or such other plan that replaces it and fulfils in substance the same functions.

Pollution has the meaning given to that term in the *Protection of the Environment Operations Act 1997* (NSW).

Prescribed Rate means the rate prescribed under section 144A of the Act for overdue monies payable in respect to licences.

Regulations mean the Regulations, from time to time, made under the Act.

Relevant Authority means, in respect to a particular context or circumstances, any government or any governmental, semi-governmental, quasi-governmental, administrative or judicial body, department, commission, authority, tribunal or entity having jurisdiction and responsibility in respect to that context or circumstance and which may include the Licensor.

Secretary means the Secretary of the Department of Climate Change, Energy, the Environment and Water.

Selective Licence means a Parks Eco Pass Licence issued through a competitive/selective market process known as an Expression of Interest.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Licensor.

Term means the term of this Licence set out at Item 4 of the Licence Details.

Termination Date means the termination date of the Term set out at Item 4 of the Licence Details or such earlier date that the Licence is terminated in accordance with this Licence.

Tour means any organised tourism and/or recreation commercial activity undertaken on the Park(s) as part of the Licensed Activities.

Working with Children Check means a Working with Children Clearance under Part 3 of the *Child Protection (Working with Children) Act 2012* (NSW).

More information

- Apply to film and take photographs in national parks
- Fee-collecting national parks
- Parks Eco Pass program for commercial tour operators
- Policies and protocols

2. Grant of licence

2.1 Grant

2.1.1 The Licensor grants to the Licensee a Licence to conduct the Licensed Activity in the park(s) and the Licensee hereby accepts this Licence subject to the provisions of this Licence.

2.2 Term and extension of Term

2.2.1 This Licence shall be for the Term stated at Item 4 of the Licence Details commencing on the Commencement Date and ending on the Termination Date.

2.2.2 If the Licensee applies for a new licence under clause 2.5.1, then:

a. the Licensor may give the Licensee notice that the Licensor agrees to extend the term of this Licence by a period specified in the notice (Extended Term); and

b. if the Licensee gives the Licensor notice (within the timeframe for response specified in the Licensor's notice under this clause) confirming the Extended Term is agreed, then the term of this Licence will be extended for the Extended Term.

2.3 Representations

2.3.1 The Licensee represents and warrants that:

a. it has power to enter into and observe its obligations under this Licence and that its obligations under this Licence are valid and binding and are enforceable against it; and

b. this Licence does not contravene its constituent documents (if the Licensee is a company) or any laws or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, if the Licensee is a company, the powers of its directors, to be exceeded.

2.4 Acknowledgements

2.4.1 The Licensee acknowledges that it will make its own arrangements to access any land owned or managed by a third party that it may require to carry out the Licensed Activity.

2.5 Additional Licence

2.5.1 The Licensee may apply for a new licence regarding some or all of the Licensed Activities for the same or shorter term up to one year prior to the expiration of the term.

2.5.2 Where this Licence is a Selective Licence, or if the Licensor determines at its discretion that any additional licence for some or all of the Licensed Activities will be a Selective Licence, the Licensee acknowledges that any new licence may only be granted following a competitive market tender process.

2.5.3 The Licensor may, in its absolute discretion, grant an additional licence to the Licensee (which may be determined on a Selective Licence basis) on such terms and conditions as the Licensor may reasonably determine. The Licensor may choose not to grant a further licence for reasons including (but not limited to) the following:

a. the Licence has been terminated prior to the expiry of the term;
b. there is one or more subsisting breaches of any term or condition of the Licence;
c. in the opinion of the Licensor (which must be reasonably formed), the Licensed Activity is no longer appropriate and permissible having regard to any matter or thing including, without limitation, the environmental impact of the Licensed Activity; and
d. the plan of management in force at the time prohibits the grant of an additional licence.

2.6 Licence transferability

2.6.1 The Licensee may apply to the Licensor to transfer this Licence to another person only if the period remaining for the term is greater than one year.

2.6.2 The Term of the Licence may not be extended through a transfer of the Licence.

2.6.3 The Licensor retains a discretionary power in relation to the approval of a transfer under clause 2.6.1.

2.6.4 For the purposes of clause 2.6.1, the Term of the Licence is specified in the Licence Details.

3. Licence payments

3.1 Annual Licence Fee

3.1.1 The Licensee will pay the Annual Licence Fee as specified in Item 8 of the Licence Details and in accordance with this Licence by or on the Commencement Date and on the anniversary of the Commencement Date for each subsequent year of the term.

3.1.2 After the final year for which the Annual Licence Fee is set out in the Parks Eco Pass Operator Handbook, the Annual Licence Fee will increase for each subsequent year in accordance with movements in CPI, but will not be reduced below the amount payable for the immediately preceding year.

3.2 The Per Person Fee

3.2.1 The Licensee will pay to the Licensor the total amount of Per Person Fee, being the amount set out at Item 8 of the Licence Details, for each client participating in each of the Licensed Activities under this Licence.

3.2.2 After the final year for which the Per Person Fee is set out in the Parks Eco Pass Operator Handbook, the Per Person Fee will increase for each subsequent year in accordance with movements in CPI, but will not be reduced below the amount payable for the immediately preceding year.

3.2.3 The Per Person Fee for the Licensed Activities shall be paid in accordance with clause 3.4.

3.3 Per Person Fee reporting

3.3.1 Quarterly reports – Within 21 days of the end of each calendar quarter the Licensee must submit to the Licensor a quarterly report that accurately specifies the number of Clients who have participated in each of the Licensed Activities for each month of that quarter, the type of Per Person Fee applicable (if relevant) to the Client (for example High-value Park Fees or Low-value Park Fees) and the name of the Park in which the Licensed Activity took place.

3.4 Payment of Annual Licence Fee and Per Person Fee

3.4.1 All money payable by the Licensee to the Licensor in respect of the Annual Licence Fee and the Per Person Fee must be paid within 7 days of the relevant invoice being given by the Licensor to the Licensee and:

a. in accordance with the terms of any invoice issued by the Licensor, and
b. free of exchange and without deduction or set-off.

3.5 Park entry fees

3.5.1 The Licensee will not be required to pay park entry fees on entry to any fee-collecting the park(s) set out in Item 2 of the Licence Details, provided that the Licensee has a Digital NSW Parks Pass issued in accordance with clause 7.8.

3.5.2 Notwithstanding clause 3.5.1, the Licensee must pay:

a. Park Entry Fees for all hire vehicles used by the Licensee (or its Employees or Agents) unless the Licensor, in its absolute discretion, confirms in writing (with or without conditions) that the Licensee does not have to pay Park Entry Fees under this clause; and

b. the scheduled fee for all other Department fee-based services, such as camping, car parking, venues, entry to museums and Department discovery programs.

3.5.3 The parties acknowledge that the exemption from Park Entry Fees set out in clause 3.5.1 does not extend to Clients of the Licensee who enter Fee-collecting Park(s) individually in order to undertake Licensed Activities with the Licensor. The Licensee will take reasonable steps to ensure that persons entering the Park(s) individually are aware of the relevant obligations with respect to Park Entry Fees.

3.6 Interest on unpaid monies

3.6.1 The Licensee must pay interest on any unpaid monies due under this Licence at the higher of the Prescribed Rate and the rate of 3% per annum above the Westpac Banking Corporation Business Overdraft Indicator Lending Rate or such other equivalent rate as may be determined by the Licensor computed from the due date for the payment of such monies until payment of such monies in full. All such monies are to be recoverable on demand by the Licensor and a certificate by the Licensor as to any amount payable by the Licensee pursuant to this clause shall be prima facie evidence thereof.

4. Fit and proper person

4.1 Requirements of Licensee

4.1.1 The Licensee must be a fit and proper person to hold this Licence.

4.1.2 The Licensor may, at any time, consider any of the following matters that are reasonably believed by the Licensor to determine whether the Licensee is a fit and proper person to hold this Licence:

a. whether the Licensee is safe and suitable to hold the Licence; and

b. whether, in the opinion of the Licensor, the business that is being carried out under this Licence is in the hands of a competent person; and

c. whether the Licensee (or an associated manager of the Licensee) has contravened any legislation; and

d. whether, in the opinion of the Licensor, the Licensee (or an associated manager of the Licensee) is of good repute, having regard to character, honesty and integrity.

5. Use of park(s)

5.1 Licensed Activities

5.1.1 The Licensee must only conduct the Licensed Activities in the park(s) specified for that Licensed Activity listed at Item 2 of the Licence Details.

5.1.2 The Licensee must not carry out any commercial activities in any area reserved under the Act other than the Licensed Activities.

5.1.3 The Licensee represents and warrants that:

a. it has not relied on any representation by or on behalf of the Licensor as to how the Licensed Activities may be undertaken; and

b. it has made its own appraisal of the suitability of the park for the Licensed Activities; and

c. it is aware of all prohibitions and restrictions applying to the conduct of the Licensed Activities in the park in accordance with the requirements and orders of all Relevant Authorities and laws.

5.1.4 The Licensee must comply with any AAAS relevant to the Licensed Activities.

5.1.5 The Licensee acknowledges that it will not have exclusive use or occupancy of any area, site, campsite, hut or other location or facility within the park(s) in respect of the Licensed Activities.

5.2 Activity and Location Conditions

5.2.1 The Licensee must comply with any Activity and Location Conditions applicable to the Licensed Activities.

5.2.2 The Licensee acknowledges that the Activity and Location Conditions which apply to the Licensed Activity, as published online and updated from time to time, and are incorporated as conditions of this Licence.

5.2.3 The Licensor will give the Licensee 14 days' notice of any change to the Activity and Location Conditions applicable to this Licence except where any new or amended condition relates to emergency or visitor safety issues in which case the condition will have immediate effect when notice of the update is provided by the Licensor.

5.2.4 Notwithstanding 5.2.3 above, the Licensee acknowledges that it is the responsibility of the Licensee to regularly check the department's website for any updates to Activity and Location Conditions applicable to this Licence.

5.3 Conduct of Licensed Activity

5.3.1 The Licensee will:

a. ensure that the Licensed Activity is conducted and promoted at all times in good faith and in a proper, orderly, efficient, reputable and businesslike manner;

b. conduct the Licensed Activity during the usual business hours appropriate to the business, or at such other times as the Licensor may approve in writing; and

c. use any park facilities in a proper manner at all times.

5.3.2 Unless otherwise required (either express or implied) by this Licence, the Licensee must ensure that each tour group is separated by a minimum of 30 minutes for the duration of the Licensed Activity.

5.4 Reasonable directions

5.4.1 The Licensee and the Licensee's employees and agents and clients will comply with all directions given by the Licensor.

5.5 Compliance with statutory requirements

5.5.1 The Licensee will at the Licensee's expense comply with and cause to be complied with in respect to the Licensed Activities:

a. the requirements of all laws, including workers' compensation requirements, and of any Relevant Authority and all notices, orders and directions which may be given under the law or by any Relevant Authority;

b. the requirements of the *Food Act 2003* and all other applicable legislation relevant to the service or provision of any food or beverages to clients;

c. any plan of management for the park(s); and

d. the requirements of all planning instruments, controls and policies whether federal, state or local.

5.6 No unlawful or improper use or conduct

5.6.1 The Licensee will not in connection with the conduct of the Licensed Activities:

a. carry on or permit to be carried on, any unlawful or offensive conduct;

b. permit any disorderly, offensive or improper conduct or permit any person who is intoxicated or behaving in a disorderly, offensive or improper manner to participate in the Licensed Activities;

c. cause or allow to occur any annoyance, nuisance, injury, disturbance or obstruction to the Licensor or other persons rightfully using or being in the park(s), or anything that may adversely affect the use and enjoyment of the park(s) by the public; or

d. damage, deface, remove or otherwise interfere (or permit or suffer any damage, defacing, removal or other interference) with any built asset, natural feature or cultural heritage place (including any new access trails).

5.6.2 Without affecting the liability of the Licensee for damages or in relation to any other remedy available to the Licensor, the Licensee must remedy at its own expense to the satisfaction of the Licensor any damage caused to the park(s) by the Licensee in breach of this clause or otherwise.

5.7 Use of inflammables, chemicals and explosives

5.7.1 Except as may reasonably be necessary for lighting, heating, cleaning or maintenance purposes, the Licensee will not use or store inflammable liquids or gas, explosives, volatile oils, compounds or substances, insecticides, herbicides or other toxic chemicals or fertilisers within the park(s) without the prior written consent of the Licensor.

5.8 Pollution

5.8.1 The Licensee will not take any action which has the effect, whether direct or indirect, of causing any contamination or pollution of the park(s). In particular the Licensee will not permit any waste matter or fluid of any description or any fumes to emanate from the park(s) except as may be approved by the Licensor.

5.8.2 Without affecting the liability of the Licensee for damages or in relation to any other remedy available to the Licensor, the Licensee must remedy at its own expense and to the satisfaction of the Licensor any damage caused to the park(s) by the Licensee in breach of this clause or otherwise, including by the spillage of petroleum products or other pollutants or the deposition of polluting or obstructive materials within the park(s).

5.9 Fire safety

5.9.1 The Licensee will comply with all requirements of the Licensor and all other Relevant Authorities in relation to fire safety and will in particular ensure that:

a. all reasonable precautions are taken to minimise the risk of fire when conducting the Licensed Activities including compliance with the *Rural Fires Act 1997* and the Regulations;

b. any fire is lit in a properly constructed fire-place where available or in a safe location, with a clear area of at least 3 metres all round, at least 4.5 metres from any log or stump, at least 1.5 metres from any other flammable material and that the fire is completely extinguished after use. Despite this clause, fires are not permitted on any beach or any rock shelter (including caves or canyons or associated environments) where there is not a designated fire-place;

c. under no circumstances any fires, stoves or naked flames are lit (or permitted or suffered to be lit) during periods of extreme fire danger or in periods of total fire bans or park(s) fire bans;

d. no burning of timber, grass, cleared vegetation or other combustible matter is undertaken without the prior consent of the Licensor in writing and subject to such conditions as the Licensor and any Relevant Authority may determine;

e. where campfires are permitted under this clause, any firewood must be supplied from outside the park, and no wood is to be collected in park at any time;

f. the Licensee and the Licensee's employees and agents will not do any act, matter or thing within the park(s) whereby the risk of fire might be increased, and in the event of the park(s) being damaged by fire which is shown to be the result of breach of the Licensee's obligations under this Licence or of negligence in or arising from the

Licensee's activities, the Licensee will meet all reasonable and proper costs associated with suppression of the fire and all costs of making good such damage and all costs incurred, paid or arising from the death of or injury to any person as a result of the fire; and

g. the Licensee regularly checks the department website for fire updates and road closures.

5.10 Campsites and huts

5.10.1 Campsites permitted pursuant to the Licensed Activities shall be maintained and left in a tidy condition and must be located at least 20 metres from any stream, dam or aqueduct, unless stated otherwise in the plan of management for the park in question.

5.10.2 The Licensee must not without prior written consent from the Licensor camp or light fires in any rock shelter, including caves, canyons or within associated canyon environments.

5.10.3 The Licensee must not rely on any huts or campsites for accommodation unless specific prior rights have been granted for the use of the huts or campsites.

5.11 No livestock or domestic pets

5.11.1 The Licensee must not allow any animal to be brought into the park(s), unless specifically authorised under this Licence or as an ‘assistance animal’ under the *Disability Discrimination Act 1992* (Cth).

5.12 Protection of flora and fauna

5.12.1 The Licensee must not damage, destroy, intentionally disrupt or remove any native flora (live or dead) or any native fauna (live or dead) from the park(s).

5.12.2 The Licensee must not erect any temporary shelters or tarpaulins without prior written consent from the Licensor, and the Licensee must ensure that any temporary shelters or tarpaulins erected under this clause are free standing and not attached to any vegetation.

5.12.3 The Licensee must not (and will ensure that the Licensee's employees and agents and clients will not) feed or handle any wildlife without the written consent of the Licensor.

5.12.4 The Licensee must report any instance of injury to wildlife that the Licensee becomes aware of (whether that injury arose in connection to the Licensed Activity or not) to the Licensor as soon as reasonably practicable.

5.12.5 The Licensee will not (and will ensure that the Licensee's employees and agents and clients will not) cut down, fell, injure, lop or destroy any trees or vegetation in the park(s) without the prior written consent of the Licensor.

5.13 Fixtures and signs

5.13.1 The Licensee:

a. will not without the prior written approval of the Licensor erect, display, affix, paint or exhibit within the park(s) any structure, sign, advertisement, notice or hoarding or

allow or suffer any of the foregoing to be done, and any such approval may be revoked at any time by the Licensor at his or her discretion;

b. will not make any permanent marking upon any tree, plant or rock in the park(s);

c. will make good any damage or disfigurement caused by the placement or removal of any such structure, sign, advertisement, notice, hoarding or marking.

5.13.2 The Licensee must remove any such structures, signs, advertisements, notices, hoarding or markings put in place by or on behalf of the Licensee at the request of the Licensor

5.14 Liquor licence

5.14.1 The Licensee shall not without the prior written consent of the Licensor sell, offer for sale, supply or deliver any liquor in the park(s) nor apply for any licence to do so.

5.15 Amplified sound

5.15.1 The Licensee will not operate or permit to be operated in the park(s) any apparatus or device for the amplification of music, announcements or other sound to a degree which is objectionable in the opinion of the Licensor.

5.16 Park(s) closure

5.16.1 Under no circumstances will the Licensee conduct any activity within any part of the park(s):

a. which is closed to the public, as directed by the Licensor or Licensor's representative or any duly authorised person, as a result of severe fire danger or any other reason, without the specific authority of the Licensor; or

b. in any area of the park(s) which the Licensor may direct to be closed to the Licensed Activities from time to time for any reason.

5.17 Abatement for park closure

5.17.1 The Licensee is not entitled to any reimbursement or waiver of its obligation to pay the Annual Licence Fee that is attributable to any period during which the Licensed Activities cannot be carried out due to the closure of the park(s) or part of the park(s) by the Licensor.

5.17.2 The Licensee is not entitled to any compensation from the Licensor, the department or the Crown in right of New South Wales for any loss or damage attributable to any such period during which the park(s) or any part of the park(s) cannot be used under this Licence.

5.18 Access to park

5.18.1 The Licensee must ensure:

a. the Licensed Activities are restricted to existing formed tracks and modified areas; and

b. the Licensee, Licensee's employees and agents and clients adhere to the approved route on recognised walking tracks within park and do not cross or climb over safety fences or barriers.

5.18.2 The Licensee must not enter, or permit a Licensee employee or agent or client to enter, any site or area that is permanently, temporarily or seasonally closed by gates, signs or public notice, unless the Licensor grants such access in writing to the Licensee.

5.18.3 The Licensee must ensure all gates are left as found (either open or closed as applicable) when passing through unless directed otherwise by the Licensor in writing or owner of the land.

5.18.4 The Licensor reserves the right to change the areas which the Licensee may use, for any reasonable cause including visitor safety and environmental reasons, without compensation for any such change to the Licensee.

5.18.5 The Licensee must not drive, and ensure that a Licensee employee or agent or client will not drive, a vehicle in the park(s) except on public access roads and tracks constructed for the passage of vehicles with 4 or more wheels. The Licensee must abide by required vehicle size limits for respective roads within the park and give way to pedestrians at all times.

5.18.6 The Licensee must only park motor vehicles within the park(s) in areas designated by the Licensor.

5.18.7 It shall remain the responsibility of the Licensee to obtain all necessary approval(s) to transit through or undertake activities on any lands not reserved under the Act.

5.18.8 The Licensee must, and ensure the Licensee's employees or agents will, comply with the reasonable directions of the Licensor or any Relevant Authority in relation to the movement, number and parking of vehicles.

5.19 Removal of Licensee's equipment and rubbish

5.19.1 The Licensee must not leave the Licensee's equipment, or any other supplies, brought on to park by the Licensee for the purpose of the Licensed Activity.

5.19.2 All rubbish in connection with the Licensed Activities must be removed by the Licensee or placed in any provided rubbish bins at the end of each Licensed Activity.

5.20 Filming, photography and use of drones

5.20.1 The Licensee must not undertake, permit, authorise or otherwise be involved in any commercial filming or photography within the park(s) for the purposes of promotion of the Licensed Activities or any other commercial activity or product except in accordance with the *Filming Approval Act 2004* and the *Filming and Photography Policy*.

5.20.2 The Licensee is not permitted to photograph Aboriginal Cultural Heritage or publish information pertaining to Aboriginal Cultural Heritage gathered in connection with the Licensed Activity for commercial or private use without written consent from the relevant Aboriginal community.

5.20.3 The Licensee must not (and ensure that clients will not) use remotely piloted aircraft (drones) in park during or in connection with the Licensed Activity without prior written approval of the Licensor.

5.21 Use of park toilet facilities and removal of waste

5.21.1 Park toilet facilities must be used where provided. Where no facilities are provided, subject to this clause, the Licensee must otherwise ensure that any toilet area(s) are to be at least 100 metres from watercourses and 15 centimetres deep.

5.21.2 Where no park toilets are provided, the Licensee must consider using suitable containers as toilets that can be sealed and removed from park.

5.21.3 In all locations with caves or rock formations (and where there are no provided toilet facilities), the Licensee must remove all human waste from the park and dispose of it appropriately.

6. Aboriginal Places, Aboriginal Objects and Historic Relics

6.1 Discovery of Objects

6.1.1 Unless otherwise authorised by the Licensor, the Licensee must not contravene section 86 of the Act by harming or desecrating an Aboriginal Object or Aboriginal Place.

6.1.2 If the Licensee discovers any Aboriginal Object or Historic Relic during the course of any Licensed Activities, the Licensee must:

a. immediately report that discovery to the Licensor;
b. immediately cease activity or work that may impact the Object or Historic Relic; and
c. comply with all directions made by the Licensor in relation to the Objects in accordance with the Act.

6.1.3 The Licensee must carry out and perform at its cost all necessary protection or salvage works specified by the Licensor in connection with all known Objects affected by the Licensee's activities in accordance with the directions of the Licensor and to his or her satisfaction.

6.1.4 A term or expression starting with a capital letter which is defined in the Act or the *Heritage Act 1977* but not defined in these terms has the same meaning as in the Act or the *Heritage Act 1977.*

6.2 Aboriginal Cultural Heritage interpretation

6.2.1 If the Licensee wishes to undertake detailed, rather than general, Aboriginal Cultural Heritage interpretation on country, on site or otherwise, the Licensee must:

a. obtain a letter of support for the duration of the licence from an Aboriginal organisation that represents the local Aboriginal community where the Licensed Activity or Licensed Activities are undertaken; and
b. employ or otherwise engage members of the relevant Aboriginal community to undertake the interpretation, unless the appropriate representatives of the relevant Aboriginal community have given specific authorisation to the person delivering the detailed Aboriginal Cultural Heritage interpretation and have approved the content of that interpretation.

6.2.2 General interpretation includes information in the public domain, the traditional name of a place and its meaning and the traditional name(s) of the local Aboriginal communities.

6.2.3 The Licensee may only promote or identify itself as a provider of Aboriginal heritage interpretation information if the Licensee has engaged a member of the relevant Aboriginal community to undertake that interpretation or has obtained the necessary specific authorisation and approval as outlined above.

6.3 Aboriginal cultural awareness training

6.3.1 The Licensee's employees and agents may be required to undertake Aboriginal cultural awareness training in accordance with the Licensor's directions, and the Licensee must provide evidence of this training to the Licensor within a reasonable time after any training is completed.

7. Operational provisions

7.1 Public safety

7.1.1 The Licensee acknowledges that it is a person carrying on a business or undertaking for the purposes of the *Work Health and Safety Act 2011* (NSW)

7.1.2 The Licensee must carry out the Licensed Activities in a safe and reliable manner and must comply with the *Work Health and Safety Act 2011* (NSW), its amendments and regulations.

7.1.3 The Licensee must notify the Licensor of any natural events or activities on park(s) which it becomes aware of, which may endanger the public.

7.1.4 The Licensee must take all reasonable steps to protect the safety of all persons in connection with the conduct of the Licensed Activities and must, without limitation, take all reasonable steps to eliminate any dangers, injury or accident to persons that may arise as a result of the Licensed Activities and, subject to clause 4.13, erect signage warning the public of any dangers they may encounter as a result of the Licensee's activities where those dangers cannot be eliminated.

7.1.5 Before commencing the Licensed Activities, the Licensee must make all clients aware of:

a. all potential hazards and conditions which may be encountered during the Licensed Activity (these may include, but are not limited to, heights, exposure to weather, rapid flowing water, fauna and flora); and

b. the experiences clients may encounter during the Licensed Activity.

7.1.6 The Licensee must ensure that all procedures are in place to minimise the risk of potential hazards to clients. These procedures may include, but are not limited to, pre-activity briefings, safety equipment and head counts.

7.1.7 The Licensee must not conduct the Licensed Activity, or take photos of persons during the Licensed Activity, within 2 metres of a cliff edge where safety fencing or other reasonable fall mitigation measures are not otherwise provided (except in relation to climbing related activities).

7.1.8 The Licensee must ensure that the supervision during the Licensed Activity is appropriate to the differing clients' experiences and abilities.

7.2 Child safe and friendly environment

7.2.1 The Licensee is required to meet all health and safety requirements and comply with all directions and notices issued from time to time with respect to New South Wales and Commonwealth legislation which may relate to or affect child safety.

7.2.2 Where any children participate in the Licensed Activities, the Licensee must ensure that the Licensee and the Licensee's employees and agents who are engaging in Licensed Activities with children have a valid Working with Children Check. The Licensee must produce evidence of compliance with this clause where required by the Licensor by written notice.

7.2.3 The Licensee must have regard to and comply with the *Child Safe Workplace Policy* of the department, in particular the requirement to:

a. undertake all checks required by law for all individuals involved in the Licensed Activities;

b. not employ anyone for the Licensed Activities whom they know to be a risk to children; and

c. ensure that all persons employed by them to undertake the Licensed Activities will comply with the *Child Safe and Friendly Environment Policy* and the *Child Safe and Friendly Environment Code of Conduct*.

Note: The *Child Safe Workplace Policy* referred to in this clause is the policy that lays out procedures the department will follow to foster a safe, friendly and positive environment for children and young people.

7.3 Emergency response plan

7.3.1 The Licensee must develop and maintain an emergency response plan (in such form as may be determined by the Licensor from time to time) for each Licensed Activity that outlines the procedures to be followed in the event of natural or other disaster, injury, illness or delay. This must be developed for each Licensed Activity and provided to the Licensor by the Licensee prior to the conduct of any Licensed Activity.

7.3.2 The Licensee must ensure the safe evacuation of clients and vehicles in the event of any natural disaster on or, if not possible, near approved routes.

7.3.3 The Licensee must promptly notify the Licensor of any natural or other disaster, injury, illness, vehicle accident or delay that may impact on the Licensed Activity.

7.4 Accreditation and training

7.4.1 The Licensee must ensure that all guides and employees have current first aid qualifications. The minimum standard requirement is St John Level 2 Basic First Aid or equivalent. At least one employee or agent of the Licensee present with each group carrying out a Licensed Activity must have this qualification and have in their possession a suitable first-aid kit at all times while conducting the Licensed Activity.

7.4.2 The Licensee must ensure that all guides and employees have and maintain the relevant competencies and skills for leading and guiding any Licensed Activity, including but not limited to any experience, knowledge and qualifications required, and, in particular, any applicable AAAS.

7.4.3 The Licensee must obtain and maintain throughout the term such additional certification or training as is required by the Licensor.

7.4.4 The Licensee agrees to submit satisfactory evidence of any such experience, knowledge and qualifications required under this Licence (including any training required under clause 6.3) upon the commencement of this Licence or as soon as practicable and the Licensor may require in writing the Licensee to submit further proof of any such experience, knowledge and qualification at any time.

7.5 Conservation of environment and heritage values

7.5.1 The Licensee should ensure the sustainable and culturally appropriate use of sites by, wherever possible and practicable, informing and educating clients and carrying out its operations in a sustainable manner. In particular, the Licensee will endeavour to:

a. explain to customers how negative impacts on sites can be avoided;

b. build an understanding of natural and cultural heritage conservation management;

c. provide quality visitor experiences;
d. provide good interpretation and education;
e. honour historic places;
f. promote respect for Aboriginal culture and sites;
g. minimise visitor impacts on sites;
h. observe rules to protect conservation values and public safety;
i. encourage active involvement in conservation activities;
j. adopt environmental practices which support environmental sustainability;
k. adopt minimal impact practices for all activities; and
l. report damage, illegal activities and potential problems to the Licensor.

7.5.2 The Licensee must ensure that the Licensee's equipment, and take all reasonable steps to ensure any footwear of the Licensee's employees and agents and clients, is cleaned of any dirt, mud and attached seeds prior to entering the park. The Licensee must also take reasonable steps to ensure clients follow an appropriate footwear cleaning technique.

7.6 Use of 'Parks Eco Pass' logo

7.6.1 The Licensee may use the department's 'Parks Eco Pass' logo on its promotional material, including its brochures and website, provided the logo is accompanied by a statement identifying the Licensee as a licensed Parks Eco Pass operator and the Licensee's licence number. A template of the 'Parks Eco Pass' logo in the permitted size may be obtained from the Licensor and the Licensee may not use any alternative copy. Neither the Licensee nor the Licensee's employees and agents may make any representation that they are an officer or agent of the department.

7.6.2 The Licensee must not use the 'Parks Eco Pass' logo on any of its staff uniforms or vehicles.

7.6.3 The Licensee must not use any other department logos or brands (including but not limited to NSW National Parks and Wildlife Service 'NPWS' and/or the lyrebird motif) on any of its promotional material, including its brochures and website, staff uniforms or vehicles.

7.7 Personal identification tags

7.7.1 Personal identification tags will be issued by the Licensor to the Licensee. Personal identification tags must be carried by the Licensee and the Licensee's employees and agents at all times while in the park(s) conducting the Licensed Activities.

7.8 Digital NSW Parks Pass

7.8.1 At the commencement of this Licence, the Licensor may issue the Licensee up to 5 Digital NSW Parks Passes for its registered motor vehicles used to carry out the Licensed Activities.

7.8.2 The Digital NSW Parks Pass issued under clause 7.8.1 can only be used:

a. by the Licensee and the Licensee's employees and agents;
b. when conducting the Licensed Activity in any fee-collecting park(s) listed at Item 2 in the Licence Details; and
c. for the term of this Licence.

7.8.3 If, during the term of this Licence, the Licensee requires any changes to, or any additional, Digital NSW Parks Passes issued in accordance with clause 6.8.1, it must apply to the Licensor. The Licensor may, in its absolute discretion, determine whether to make any changes or issue any additional Digital NSW Parks Passes.

7.8.4 A Digital NSW Parks Pass will not be issued for hire vehicles.

7.8.5 The Licensor, in addition to its rights to terminate or suspend under this Licence, may revoke any issued Digital NSW Parks Pass, if the opinion of the Licensor, the Licensee is in breach of its obligations under clause 7.8.2.

7.9 Vehicle and vessel licensing

7.9.1 All vehicles carrying passengers in New South Wales must be appropriately licensed and registered by Transport for NSW or equivalent interstate road traffic authority as passenger vehicles and abide by the specific conditions of that licence. All drivers of passenger vehicles must hold a current driver's licence appropriate for that vehicle, including any necessary vehicle endorsement for the vehicle type.

7.9.2 All commercial vessels must be appropriately licensed and registered by Transport for NSW or an equivalent authority and abide by the specific conditions of that licence. All drivers and crew of passenger vessels must hold a licence appropriate for that vessel, including any necessary vessel endorsement or certificates.

7.10 Performance monitoring

7.10.1 The Licensor or its nominee may conduct a review of the Licensee's compliance with its obligations under this Licence, which may include access to the Licensee's records and all materials relevant to:

a. the Licensed Activities; and
b. the performance of obligations under this Licence.

7.10.2 The Licensee must cooperate fully with any review the Licensor or its nominee undertakes under this clause, and where the Licensor or its nominee requests access to the Licensee's records and materials, the Licensee must grant the person conducting the review reasonable access to inspect and copy the records and materials.

7.10.3 The Licensor must, and procure that its nominee must:

a. provide the Licensee reasonable notice before making a request for access to the Licensee's records and materials under this clause; and
b. use its reasonable endeavours to minimise disruption and interference to the Licensee's performance of its obligations under this Licence arising from a review.

7.10.4 Where a review under this clause identifies, in the Licensor's opinion, that the Licensee is in breach of the Licence, then the Licensor may recover from the Licensee any reasonable external costs incurred in conducting that review.

7.11 Marketing and promotion

7.11.1 The Licensee will not use any document or image in the promotion or marketing of the operations which is inconsistent with the terms of the Licence.

7.11.2 If the Licensor is of the opinion that any document or image used by the Licensee in the promotion or marketing of the operations is in any way inconsistent with the terms of the Licence, the Licensor may direct the operator to cease using such document or image.

7.11.3 If the Licensor directs the operator to cease using any document under this clause, the operator shall comply with such direction within a period of 5 days and provide such evidence as the Licensor may require to demonstrate the operator's compliance.

7.11.4 The Licensee shall promote the recreation and conservation values of the land which are the subject of the Licensed Activities.

8. Insurances

8.1 Required insurances

8.1.1 The Licensee must effect and maintain in respect to the Licensed Activities from the Commencement Date of the Term the following insurances:

a. a public liability policy covering personal injury and property damage including financial, economic or consequential loss arising as a result of such personal injury or property damage (in an amount of not less than the amount noted at Item 5 of the Licence Details being the amount which may be paid arising out of any one single accident or event) in connection with the activities of the Licensee in relation to this Licence;

b. insurance against any liability which may arise at common law or by virtue of any relevant workers' compensation legislation in connection with the Licensed Activities; and

c. such other special insurances as may be appropriate and required by the Licensor from time to time, including but not limited to product liability insurance.

8.2 Required arrangements

8.2.1 Each insurance policy in clause 8.1 must:

a. be taken out in the name of the Licensee, and note the Licensor department and the Crown in right of New South Wales as an interested party and insure each for their insurable interests;

b. be effected with a reputable insurer approved by the Licensor;

c. note that it shall not lapse, terminate, vary or forfeit without at least a month's prior written notice to the Licensor;

d. bear endorsement that notice of any occurrence given by one insured party is deemed to be notice given by all insured parties and that breach of duty or failure by one insured to observe the conditions of the policy does not prejudice the rights of any other insured; and

e. provide that the insurer waives all claims against the Licensor, its agents, contractors, employees and officers (except to the extent that the claim being waived is caused by the negligence or wrongful act or omission of the Licensor, its agents, contractors, employees or officers).

8.2.2 The Licensee must deliver to the Licensor adequate written evidence of the existence and contents of each policy and of its currency on the Commencement Date and on each anniversary of the Commencement Date and when reasonably required by the Licensor.

8.2.3 The Licensee must do all things necessary to provide any information to enable the Licensor to promptly recover any money due to the Licensor under any policy referred to in the Licence.

8.2.4 The Licensee must not do or permit to be done anything whereby any policy of insurance is or may be vitiated or rendered void or voidable.

8.2.5 The Licensor may in its own name and as the attorney of the Licensee, in the name of the Licensee or otherwise, institute all proceedings against any insurer to recover from it any amount for loss, damage, destruction or injury or other monies payable under any indemnity in favour of the Licensor.

9. Indemnities and risk

9.1 Release of Licensor

9.1.1 The Licensee releases the Licensor from all actions, claims, demands and Liabilities arising from any damage, loss, death or injury arising out of, in connection with, or as a consequence of the conduct of the Licensed Activities, except to the extent that the damage, loss, death or injury is caused or contributed to by any wrongful or negligent act or omission of the Licensor.

9.1.2 Without limiting or being limited by clause 9.1.1:

a. the Licensee acknowledges and accepts that the Licensed Activities occur within a natural environmental setting and that as a result native fauna may from time to time be found on the park(s); and

b. the Licensor is not liable to the Licensee for any damage or loss caused to the Licensee or the Licensee's employees and agents (including to the Licensee's business and property) attributable to dangers of the natural environmental setting or the presence of native fauna in the vicinity of the Licensed Activities.

9.2 Indemnities by the Licensee

9.2.1 The Licensee indemnifies the Licensor against all Liabilities which the Licensor suffers or incurs arising out of:

a. the Licensee's Licensed Activities; and/or

b. the Licensee's act or omission or any faulty Licensee's Equipment during the operation of the Licensed Activities or in the park(s); and/or

c. any wrongful or negligent act or omission of the Licensee's employees and agents or any person acting under the control of or at the direction of the Licensee in the park or during the operation of the Licensed Activities, except to the extent that the liability arises from or is contributed to by any wrongful or negligent act or omission of the Licensor.

9.2.2 The indemnities given under this clause 9.2 survive any termination of the Licence.

9.3 Fire management activities are not wrongful or negligent

9.3.1 Despite clauses 9.1 and 9.2, the Licensee acknowledges and agrees that none of the following comprises a wrongful or negligent act or omission of the Licensor for the purpose of the Licence:

a. carrying out of any fire management activity by or on behalf of the Licensor;

b. the failure to carry out any fire management activity by or on behalf of the Licensor; and

c. any other act or omission of the Licensor, whether or not negligent, in respect to the management of fire hazards in the park(s).

9.4 Licensee's obligations at own risk and expense

9.4.1 Unless the Licence expressly provides otherwise in a particular provision, any act, matter or thing which the Licensee is obliged, required or permitted to do or effect under the Licence, the Licensee's equipment and Licensed Activities are all at the sole risk, cost and expense of the Licensee.

9.4.2 Without limiting or being limited by clause 9.4.1:

a. the Licensee accepts full responsibility for the acts and omissions of the Licensee's employees or agents when undertaking the Licensed Activities; and

b. in the event of breach of the Licence by any of the Licensee's employees or agents the provisions of the Licence shall apply against the Licensee as if such breach were a breach by the Licensee itself and the Licensee must immediately remedy any such breach.

10. Default and termination

10.1 Essential terms

10.1.1 The following obligations of the Licensee are essential terms of this Licence:

a. the obligations to make payment and provide reports under clause 3 and 7;
b. the obligations under clauses 5.1, 5.7, 5.8, 6.1, 7.1, 7.9 and 8.

10.1.2 This clause 10.1 does not prevent any other obligation under this Licence from being an essential term.

10.2 Events of Default

10.2.1 For the purposes of this clause 10, an Event of Default occurs if:

a. the Licensee breaches an essential term of this Licence; or
b. the Licensee does not comply with any obligation under this Licence, other than an essential term and, if the non-compliance can be remedied, it is not remedied within 14 days after the Licensor issues the Licensee with a written notice to remedy it; or
c. the Licensee fails to comply with any notice given by the Licensor; or
d. (the Licensee being a company) an order is made, or a resolution is effectively passed for the winding up of the Licensee (except for the purpose of reconstruction or amalgamation with the written consent of the Licensor which consent shall not be unreasonably withheld); or
e. the Licensee goes into liquidation or makes an assignment for the benefit of or enters into an arrangement or composition with its creditors or stops payment or is unable to pay its debts or if execution is levied against the Licensee and is not discharged within 30 days; or
f. the Licensee (being an individual) becomes bankrupt or commits an act of bankruptcy or brings his or her estate within the operation of any law relating to bankrupts.

10.2.2 The Licensee must ensure that no Event of Default occurs.

10.3 Licensor's right to terminate

10.3.1 If an Event of Default occurs the Licensor may terminate this Licence by notice but without prejudice to any action or other remedy which the Licensor has or may have for arrears of the Annual Licence Fee or the Per Person Fee or breach of any covenant or damages or any other remedy as a result of any such event.

10.3.2 The Licensee agrees that the Licensor is not liable for and releases the Licensor from liability or loss arising from, and costs, charges and expenses incurred in connection with, anything done by the Licensor under clause 10.3.1.

10.4 Licensor’s right to suspend

10.4.1 If in the Licensor’s reasonable opinion:

a. the Licensee has breached any condition of this Licence; and

b. the Licensor has provided written notice of that breach to the Licensee specifying what action the Licensee must take or cease (as relevant in the circumstances) by a specified time; and

c. the Licensee has, in the reasonable opinion of the Licensor, failed to comply with that notice,

d. the Licensor may by written notice suspend this Licence until such time as specified in the notice provided in clause 10.4.1(b).

10.4.2 Any action taken under this clause is without prejudice to any right or other remedy which the Licensor has or may have under this Licence.

10.5 Licensor may remedy

10.5.1 On each and every occasion on which the Licensee omits or neglects (for a period of not less than 14 days from the date on which the Licensee is obliged to do the same) to pay any money or to do or effect anything which the Licensee has herein covenanted to pay, do or effect then the Licensor may (without prejudice to any rights and powers arising from such default) pay such money or do or effect such thing as if he or she was the Licensee and the Licensor may recover from the Licensee the amount of expenses and costs of any such action and a certificate or notice by the Licensor as to any amount payable by the Licensee pursuant to this clause and served upon the Licensee shall be prima facie evidence thereof.

10.6 Termination for public or community purposes

10.6.1 If in the opinion of the Licensor it is essential for any public or community purpose or any works subsidiary or ancillary to any such work or for the purpose of the care, control and management of the park(s) to put an end to this Licence, the Licensor may terminate the Licence.

10.6.2 The Licensor must give to the Licensee at least 3 calendar months' notice in writing where the Licensor determines to terminate the Licence under this clause. Termination under this clause will not affect any existing remedy which the Licensor may have against the Licensee for the breach of any covenant to be observed or performed by the Licensee.

10.7 No compensation

10.7.1 In the event of termination of this Licence howsoever occurring no compensation will be payable to the Licensee.

10.8 Native title

10.8.1 In the event that native title rights and interests are, or would be, affected by the grant of this Licence and this Licence is not authorised under the *Native Title Act 1993* (Cth) so that the Licence may be 'invalid' within the meaning of the *Native Title Act 1993* (Cth), then:

a. the Licensee agrees that it will not seek to recover any compensation, damages, costs, losses or expenses whatsoever resulting from the invalidity from the Licensor;

b. the parties agree that the valid parts of this Licence continue in force unaffected by the invalid parts.

11. Procedural matters

11.1 Time for determining rights and obligations

11.1.1 This Licence for the purpose of determining the rights and obligations of the parties will be construed as if it had been executed on the date from which the term is expressed to run.

11.2 Variation and waiver

11.2.1 Any variation of this Licence must be in writing and signed by the parties.

11.2.2 No waiver expressly agreed in writing by the Licensor will operate as a waiver of another breach of the same or of any other condition in this Licence.

11.3 Consents or approvals

11.3.1 Where anything in this Licence may be done with the approval or consent of the Licensor, the Licensor may:

a. unless otherwise expressly provided in this Licence, give or withhold his or her approval or consent in his or her unfettered discretion; and

b. impose conditions on that approval or consent.

11.4 Onus of proof

11.4.1 The Licensee acknowledges that in the matter of proof of whether the Licensee is complying or has complied with the provisions of this Licence as to the Licensed Activities, the onus of proof shall be on the Licensee.

11.5 Opinions by Licensor

11.5.1 Any opinion to be formed by the Licensor for the purposes of this Licence may be formed by the Licensor on such grounds and material as the Licensor determines to be sufficient.

11.6 Licensee does not represent the Licensor

11.6.1 The Licensee will not directly or indirectly hold out or permit to be held out to any member of the public any statement, act, deed, matter or thing indicating or tending to indicate that the Licensed Activities are being conducted, managed or supervised by the Licensor, the department or the Crown in right of New South Wales nor shall the Licensee act as or represent itself to be the servant or agent of the Licensor, the department or the Crown in right of New South Wales.

11.7 Communication with Licensee

11.7.1 The Licensee must at all times keep the Licensor informed of names, addresses and telephone numbers sufficient for the purpose of communication with the Licensee.

11.8 Notices

11.8.1 A notice or other communication connected with this Licence ('Notice') has no legal effect unless it is in writing, in English and:

a. delivered at the address for service as set out in the Licence Details or as otherwise advised in writing to the other party from time to time; or

b. sent by email to the email address as set out in the Licence Details or as otherwise advised in writing to the other party from time to time.

11.8.2 Where the Notice is delivered or sent in a manner provided by clause 11.8.1, it is deemed given to and received by the party to which it is addressed:

a. if delivered, upon delivery;

b. if mailed, on actual delivery to that address as evidenced by Australia Post documentation;

c. if sent by an email, the earlier of when the email is opened by the recipient and the next business day after the time at which it enters the recipient's system (provided that the sender does not receive a delivery failure or out of office).

11.8.3 The parties' address for service and email as at the date of this Licence are:

a. Licensor Item 7 of the Licence Details

b. Licensee Item 1 of the Licence Details

11.9 Licences

11.9.1 The Licensee will apply for and take all steps required to obtain all such licences, permits or authorisations and renewals thereof as may in the opinion of the Licensor be necessary for the proper conduct of the Licensed Activities and the Licensee will not do or suffer to be done any act, matter or thing whereby any such licence, permit or authorisation may be or become liable to be forfeited or suspended or the renewal thereof refused.

11.10 No partnership

11.10.1 Nothing contained in this Licence shall be deemed to constitute a partnership between the Licensor and the Licensee.

12. Goods and services tax

12.1 Consideration

12.1.1 If a supply made under or in connection with this Licence is a Taxable Supply, then the consideration for the supply is increased by an additional amount equal to the amount of that consideration multiplied by the relevant goods and services tax (GST) rate.

12.2 GST terms

12.2.1 In clause 12.1:

a. GST means goods and services tax under the GST Law;

b. GST Law has the same meaning as that expression has in *A New Tax System (Goods and Services Tax) Act 1999*; and

c. a term or expression starting with a capital letter which is defined in the GST Law but not defined in these terms has the same meaning as in the GST Law.

13. Interpretation

13.1 Interpretation

In this Licence unless the context otherwise requires:

13.1.1 words denoting the singular number shall include the plural and vice versa;

13.1.2 words denoting any gender shall include all genders;

13.1.3 words denoting individuals shall include corporations and vice versa;

13.1.4 reference to any Act of Parliament or regulation or ordinance or to any section or provision thereof shall include any statutory modification or re-enactment thereof or any statutory provision substituted therefore and ordinances, by-laws, Regulations and other statutory instruments issued thereunder;

13.1.5 references to clauses, annexures and schedules are references to clauses, annexures and schedules of this Licence;

13.1.6 references to any deed, agreement, licence or instrument shall be deemed to include references to that deed, agreement, licence or instrument as amended, novated, supplemented or replaced from time to time;

13.1.7 where a Schedule contains covenants or obligations of the Licensee or the Licensor, then the covenant or obligation so expressed shall be read and construed and shall constitute a covenant or obligation on the part of the Licensee or the Licensor, as the case may be, to be performed or observed under this Licence;

13.1.8 a reference to any party or to a Relevant Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of a Relevant Authority means the body which at the relevant time substantially fulfils the functions of the Relevant Authority; and

13.1.9 a reference to anything (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any 2 or more of them collectively and to each of them individually.

13.2 Headings

13.2.1 Headings are for ease of reference only and shall not affect the construction of this Licence.

13.3 Currency

13.3.1 Unless otherwise stated all currencies referred to in this Licence are in Australian dollars.

13.4 Governing law

13.4.1 This Licence is governed by and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

13.5 Licence constitutes entire agreement

13.5.1 This Licence constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior negotiations, understandings and discussions between the parties. No modifications to this Licence shall be effective unless in writing signed by the parties.

13.6 Performance on next working day

13.6.1 Where under or pursuant to this Licence or anything done hereunder the day on or by which any act, matter or thing is to be done is a Saturday, a Sunday or a public holiday in New South Wales, such act, matter or thing may be done on the next succeeding day which is not a Saturday, Sunday or public holiday.

13.7 Joint and several liability

13.7.1 Any covenant or agreement on the part of or in favour of 2 or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

13.8 Counterparts

13.8.1 This Licence may consist of counterparts and the counterparts taken together constitute one and the same instrument.

13.9 Licensee's employees and agents

13.9.1 If this Licence prohibits the Licensee from doing a thing, then:

a. the Licensee must do everything necessary to ensure that the Licensee's employees and agents do not do that thing; and
b. the Licensee may not allow or cause any person to do that thing.