

**AAP IMAGE
TERMS AND CONDITIONS
As at 13.1.2010**

1. Introduction

- 1.1 This agreement sets out the terms upon which Australian Associated Press Pty Limited (**AAP**) will allow you, (including your directors, employees, officers, contractors, agents, principals, or any related body corporate or affiliate) (**you**) to access and use the web site made available at <http://www.aapimage.com.au/> (Site) and the images made available at the Site (**Images**) by AAP Image, a department of AAP (**AAP Image**). This agreement does not apply to Royalty Free Images. Royalty Free Images are subject to the terms and conditions of a separate Royalty Free Licence. You will be required to agree to the terms and conditions of the Royalty Free Licence before accessing any Royalty Free Images.
- 1.2 If you agree to be bound by the terms of this agreement select the 'I agree to the terms and conditions' box on the registration page. You may then use the Site in accordance with this agreement. If you do not agree to be bound by this agreement you will not be able to access the Site. This agreement is in addition to any other written agreement you may have with AAP in respect of the supply and use of the Images (**Other Agreement**) and in the event of any conflict or inconsistency between this agreement and the Other Agreement, this agreement will prevail to the extent of the conflict or inconsistency, unless otherwise stated in the Other Agreement.
- 1.3 AAP reserves the right to amend this agreement at any time and you agree to be bound by such changes. If you agree to be bound by the terms of this agreement, you should periodically refer to the Terms and Conditions which are located on the Site.

2. Downloading Images from the Site

- 2.1 You may only view and download an Image from the Site if you intend to use the Image for one of the following purposes:

- (a) publish that Image in hard copy print form for editorial purposes;
- (b) subject to clause 4, use a low resolution version (no more than 72dpi) of that Image ("**Comping Image**") in your layout or comprehensive rendering of a proposed work for internal or client review or testing.

3. Editorial Use

- 3.1 For the purposes of this agreement, an "**Editorial Publication**" is a hardcopy publication distributed to the public or sections of the public which contains material created by the Editorial Publication staff, and which does not promote goods and services without any analysis.
- 3.2 For Images other than Comping Images, AAP grants you a non-exclusive, non-transferable licence to:
- (a) download an Image;
 - (b) use that Image on one computer with one user; and
 - (c) publish that Image,

for **once only** use in an Editorial Publication (or similar editorial material) for editorial purposes only in accordance with this agreement.

4. Comping Use

- 4.1 For the purposes of this agreement, "**Comping**" is the creation of a temporary test use, rough layout, sample or comprehensive rendering of a proposed work for internal or client review, proofing presentation or testing.
- 4.2 In respect of Comping Images, AAP grants you a royalty-free, non-exclusive, non-transferable licence to:
- (a) download the Comping Image; and
 - (b) use that Comping Image on one computer with one user;
- for **once only** personal, non-commercial Comping purposes.

- 4.3 The Comping Image may not be used in any materials in final form distributed within your company or in any material in any form whether in hard copy or digital distributed outside of your organisation or to the public, including but not limited to advertising and marketing the materials in any online or other electronic distribution system (except that you may transmit a Comping Image digitally or electronically to your clients for their internal review only).

- 4.4 You must not:

- (a) except as otherwise provided in clause 4.2 above, store or archive the Comping Image whether in hard copy or digital form; or
- (b) share or copy the Comping Image for example by maintaining it in a database or including it in a disc library, image storage jukebox, network configuration or other similar arrangements;
- (c) reverse engineer, modify, alter, adapt, disassemble, decompile or amend in any part the Comping Image;
- (d) post, transmit, republish, redistribute, re-disseminate, broadcast, communicate or exploit (whether commercially or otherwise)

the Comping Image; and

(e) distribute, sublicense or make the Comping Image available for use or distribution separately or individually and you must not grant rights may to the Comping Image.

5. Restrictions on Use of Images

5.1 Except for the purposes of the licences granted in clauses 3 and in respect of all Images but excluding Comping Images which are regulated under clause 4, you are not permitted to:

(a) save or copy the Image in any form, whether in hard copy or in digital storage;

(b) otherwise permit the unauthorised re-publication, transfer or any other use, whether private or commercial, of the Image;

(c) reverse engineer, modify, alter, adapt, disassemble, decompile or amend any part of the Image;

(d) archive or maintain a database in electronic or structured manual form by regularly or systematically downloading and storing any Images from the Site;

(e) post, transmit, republish, redistribute, re-disseminate, communicate or exploit (whether commercially or otherwise), any Image;

(f) frame or create a hypertext linking to or from any Image; or post or email the Image to any newsgroups or message systems;

(g) remove any copyright or trademark from any place where it appears on the Image(s) or its accompanying materials;

(h) use the Image(s) or any part of it as part of a trademark, service mark, or logo. AAP and/or its licensors retain the full rights to the Image(s), and therefore you cannot establish your own rights over any part of it;

(i) re-sell, distribute or sub-license the Image(s) or the rights to use the Image(s) to anyone for any purpose, except as specifically provided for elsewhere in this agreement. It is the specific intent of this provision to prohibit a purchaser or licensee of the Images from using the Image(s) to enter, either directly or indirectly, a similar or competing business. It is also prohibited to use the Image(s) in a product whereby the purchaser or licensee of that product can then use the Image(s) for its own purposes;

(j) use the Image(s) in any way that could be considered defamatory, pornographic, libelous, immoral, obscene or fraudulent, either by making physical changes to it, or in the juxtaposition to accompanying text; or

(k) use the Images as part of any use involving sensitive subject matter, as determined by AAP, which shall include without limitation the following sensitive subjects, including but not limited to: all sexual issues, sexually transmitted diseases, substance abuse, alcohol, tobacco, AIDS, cancer, mental ailments, homosexual or alternative lifestyles issues, and physical or mental abuse, without advance written consent from AAP and any model in such Image. Sensitive subject usage pertains to commercial and Editorial Publication uses. The purpose of this clause 5.3(k) is to prevent uses of Images in an illegal manner (including, without limitation, in a manner which would amount to vilification of individuals or groups on the basis of the sensitive subjects set out above).

5.2 In the case of online/digital use, you are only permitted to store and display Images as follows:

5.2 (a) In the case of AAP and AP at image resolutions no greater than 800 x 600 pixels

5.2 (b) In the case of all other images at at image resolutions lower than 640 x 480 pixels and with a maximum of 256 colour palettes;.

Notwithstanding anything above the Licensee may also display AAP or AP images at resolutions greater than set out in (g)(ii) above *provided that* the resolution is no greater than 1200 x 900 pixels and the image is marked with the AAP or AP logo (as the case may be) in a prominent form.

5.3 For the avoidance of doubt, the Editorial Publication licence granted in clause 3 does not permit you or anyone else to display the Images in marketing, promotional or advertising campaigns in any medium. The restriction in this clause 5.2 does not apply to the display of an Image (excluding a Comping Image which is regulated under clause 4) in marketing, promotional or advertising campaigns as part of the relevant Editorial Publication provided a substantial part of the page containing the relevant Image is displayed (including the story in respect of which the Image is displayed). In respect of use in television, film or electronic marketing, promotional or advertising campaigns, the restriction in this clause 5.3 **does** apply to the display of an Image (excluding a Comping Image which is regulated under clause 4) contained in the relevant editorial publication as a full screen flash, including an initial full screen flash with subsequent "zoom out" displaying a substantial part of the page on which the Image is displayed.

5.4 If you intend to use an Image for any purpose other than as described in clause 3 and

4, including without limitation, in marketing, promotional or advertising campaigns, you must contact a representative of AAP Image. The AAP Image representative will discuss your specific requirements with you and, if approved by AAP, the representative can deliver Images to you in either hard or soft copy form (including via email). You will need to enter into a separate written licence agreement with AAP to cover such use before any Image is provided to you or you use the Image.

5.5 An AAP Image representative can be contacted by telephone on:

(a) outside normal business hours (Sydney, NSW) 02-93228707

(b) within normal business hours (Sydney, NSW) 02 -93228944

6. Registration

- 6.1 Before you are allowed to access the Site, you must complete the registration details located at www.aapimage.com.au. AAP may decide in its sole discretion whether to accept your registration. On acceptance of your registration by AAP, you will be issued a username and password that will enable you to access the Site.
- 6.2 You are responsible for all use of the Site and the Images made using your username and password unless you notify AAP Image that there has been an unauthorised use in which case you will not be liable for that unauthorised use which has been notified. You should therefore take care of your username and password and not give it to any person not authorised to do so, nor allow any part of the Site to be made available to persons who have not been registered by AAP as users of the Site.
- 6.3 In relation to the information that you provide for registration, AAP will keep your business records and personal details confidential in accordance with AAP's Privacy Policy, a copy of which is available at the Site.

7. Conditions of Use

- 7.1 Your access to the Site may be restricted and you must:
- (a) abide by any limitations imposed by AAP; and
 - (b) read and abide by any additional restrictions or conditions contained within the caption or special instructions on the Images themselves.
- 7.2.1 Images must not be used in a manner or associated with material that would damage the reputation and goodwill of AAP, Associated Press (**AP**), Agence-France Presse (**AFP**), European Pressphoto Agency (**EPA**), Famous Pictures and Features Limited (**Famous**), ABACA, Graylock.com Inc (**Graylock**), Picture Perfect Photo Agency (**Picture Perfect**), Exikon Pty Limited in respect of Wildlight Images (**Wildlight**) or any other information source or the photographer.
- 7.2.2 Except where using the Image for an editorial purpose, the Customer is fully responsible for obtaining at its own cost any necessary rights clearances from third parties relating to any part/aspect of the Image which may be protected by proprietary rights, copyright, neighbouring rights (including, without limitation, moral rights and performers' rights) or privacy rights prior to the use of the Image by the Customer, including, but not limited to:
- (a) clearances from people whose Image appears; or
 - (b) clearances in respect of buildings, works of art, designs, public monuments and/or other inanimate objects contained in the Image.
- 7.3 Images must be downloaded at full resolution. **Screen copying is not permitted.**

8. Payment

- 8.1 Subject to clauses 8.4, 8.5 and 8.6, you must pay for your use of the Images in accordance with AAP Image's current prices as quoted by AAP Image and provided to you with your username and password (**Fees**). For the avoidance of doubt, there is no charge for use of Compiling Images provided that such use is in accordance with clause 4.
- 8.2 AAP will issue you with a Tax invoice on a monthly basis, setting out details of your use of Images. You must pay each invoice within 30 days of the invoice date.
- 8.3 If you publish an Image that you have copied from the Site other than by downloading, in breach of this agreement ("**Publication in Breach**"), AAP reserves the right to take whatever action it considers appropriate in respect of such breach. Notwithstanding such right, and reserving all other rights of AAP, you agree to pay an amount of twice the relevant download charge for the Image within 30 days of the date of an invoice for that amount issued by AAP. Such payment is by way of liquidated damages, which amount is agreed by the parties to represent a genuine pre-estimate of the loss or damage suffered by AAP as a result of the Publication in Breach
- 8.4 If you download an Image or Images you must notify AAP Image:
- (a) within 60 days if you are a book publisher including an Image or Images in a book to be published; or
 - (b) within 30 days in all other circumstances,

of the date of that download, by providing either a copy of the publication containing the Image or Images or a written statement describing the intended publication of the Image or Images (the "**Publication Notice**"). AAP will invoice you for your use of the Images.

- 8.5 **If you do not provide AAP Image with notice in accordance with clause 8.4, AAP will charge you the maximum price for usage set out in AAP Image's current pricing as quoted by AAP Image.**

- 8.6 If you download an Image or Images and do not use the Images, you must immediately notify AAP Image in accordance with clause 8.4 and destroy all electronic copies and working draft copies made of the Image(s) as a result of your use of the Image(s). If AAP subsequently discovered that you have published the Image(s) you must pay twice the relevant Fees.

- 8.7 If you are required to make a deduction or withholding on account of tax in respect of any payment that you are required to make to AAP under this agreement, you must:
- (a) pay the tax in accordance with applicable law;
 - (b) use its best endeavours to obtain an official withholding tax certificate from the appropriate governmental agency;
 - (c) deliver a copy of the withholding tax certificate to AAP no more than 20 calendar days after receiving it; and
 - (d) pay to AAP, at the time the payment is due, such additional amounts as are necessary to ensure that, after the making of that deduction or withholding of tax, AAP receives a sum equal to the sum which it would have received had no such deduction or withholding of tax been made.
- 8.8 You will pay any tax or duty payable in respect of the performance of this agreement or otherwise arising from payment of the Fees.
9. **GST**
- 9.1 For the purposes of this clause 10, GST means the GST as defined in the A New Tax System (Goods and Services Tax) Act 1999 (**GST Act**), and words used in this clause which have a defined meaning in the GST Act, have the same meaning as in the GST Act, unless the context otherwise requires.
- 9.2 Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include GST.
- 9.3 To the extent that any supply made under or in connection with this agreement is a taxable supply, the consideration for that supply is increased by an amount equal to that consideration multiplied by the rate at which GST is imposed in respect of that supply.
10. **Accreditation and Copyright Notices**
- 10.1 You must correctly identify each of AAP, AP, AFP, EPA, Famous, ABACA, Graylock, Picture Perfect, Wildlight and the photographer and include the following accreditation and copyright notices in connection with all uses of the Image(s):
- (a) in the case of AAP Images, in the form "AAP Image/[Photographer]";
 - (b) in the case of AFP Images, in the form "AFP/AAP/[Photographer]";
 - (c) in the case of AP Images, in the form of "AP via AAP [Photographer]";
 - (d) in the case of EPA Images, in the form "©[year] EPA [name of photographer]";
 - (e) in the case of Famous Images, in the form "[name of photographer]/FAMOUS/AAP Image";
 - (f) in the case of ABACA Images, in the form "© ABACA [name of photographer]";
 - (g) in the case of Graylock Images, "[name of photographer]/AAP Image"; and
 - (h) in the case of Picture Perfect Images, "©[year]AAP Images/Picture Perfect [name of photographer]";
 - (i) in the case of Wildlight Images, "©[year] AAP Images/Wildlight [photographer]"; and
 - (j) in the case of all other Images, in the form "[Photographer]/[Source]/AAP Image".
- 10.2 If you fail to comply with the accreditation obligations in clause 10.1, in breach of this agreement, AAP reserves the right to take whatever action it considers appropriate in respect of such breach. Notwithstanding such right, and reserving all other rights of AAP, you agree to pay AAP the amount in the manner specified in the pricing quoted to you by AAP. Such payment is by way of liquidated damages, which amount is agreed by the parties to represent a genuine pre-estimate of the loss or damage suffered by AAP as a result of your failure to comply with such accreditation obligations.
11. **Intellectual Property Rights**
- 11.1 Subject to the rights granted by these terms, AAP and its licensors reserve all rights, including copyright, in the Images and the Site and no title or rights of ownership, copyright or other intellectual property in the Images or the Site is transferred to you through your use of the Site.
- 11.2 You must not deal with any rights or other property in any Image or the Site, other than for the purpose set out in clauses 3, and 4 and 5 above, or as otherwise permitted by your licence agreement with AAP (where AAP has granted you a licence to use Images for a purpose other than in accordance with this agreement).
- 11.3 AAP warrants that the Images when used in accordance with this agreement will not infringe the copyright or any other intellectual property rights of any third party.
12. **Liability**
- 12.1 All express or implied representations, conditions or warranties and terms relating to the Site or this agreement, not contained in this agreement are excluded from the agreement to the extent permitted by law.

- 12.2 AAP and any third party source of Images are not liable to you (whether in contract, tort (including negligence) or otherwise) or any other persons for any failures (including but not limited to delays, omissions, interruptions) or faults in the provision or operation of the Site, or any inaccuracies, omissions or actionable matter in the Site.
- 12.3 Nothing in this agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.
- 12.4 If the law, including the *Trade Practices Act 1974* (Cth) (as amended) or any similar legislation, implies or imposes a non-excludable condition or warranty which can be limited, the liability of AAP to you for breach of that condition or warranty will be limited - as AAP determines - to:
- (a) supplying replacement Images; or
 - (b) the cost of supplying replacement Images.
- 12.5 In no event will either party be liable to the other party or third parties or will any third party source of Images be liable you or third parties for any consequential, special or incidental damages provided, however, that this limitation of liability does not apply to any indemnification obligations of the parties under this agreement.
- 12.6 The total liability of AAP to you in contract, tort (including negligence) or otherwise for any loss or damage (other than indirect, consequential, special or punitive loss or damage which is excluded under clause 12.5), which may be suffered or incurred or which may arise in respect of the Site or any Image, or any breach by AAP Image of a term of this agreement, will in all circumstances be limited to the total of the payments due to AAP Image pursuant to clause 8 for the three month period immediately preceding and including the month in which the liability arose or the breach occurred (as the case may be).
- 13. Indemnity**
- 13.2 AAP and its licensors are not liable to indemnify you and must not be joined by you in relation to any claim or proceedings made or brought by you arising from the use or inability to use the Site or any Image.
- 13.2 You agree to indemnify and keep indemnified AAP and its licensors against any liabilities, losses, expenses, damages or costs (including, without limitation, reasonable legal costs) that AAP or its licensors suffer as a result of:
- (a) your use or inability to use any Image or the Site; and/or
 - (b) any breach by you of this agreement.
- 13.1 The indemnities and liabilities of AAP in clauses 12 and 13 shall be proportionately reduced to the extent that you or your officers, employees, agents and contractors contribute to any loss, damage, expenses, liabilities and costs (including legal costs).
- 14. Termination**
- 14.1 Either party may terminate this agreement at any time by giving notice to the other in writing. In the event of termination of this agreement, your access to the Site will be cancelled and you are no longer authorised to access the Site. From the date of termination, the licenses provided in clauses 3 and 4 are also terminated and you must destroy all copies of the Images and cease using the Images for any purpose.
- 15. General**
- 15.1 AAP has no liability to you if AAP is prevented or delayed from performing any of its obligations under this agreement due to circumstances beyond AAP's reasonable control.
- 15.2 This agreement is governed by the laws of New South Wales, Australia, and the courts of that State have the non-exclusive jurisdiction to resolve any disputes between you and AAP.
- 15.3 You may not assign or transfer to anyone else the rights granted to you in this agreement, without our prior written consent.
- 15.4 If any part of this agreement is unenforceable, the enforceability of the other parts of the agreement is not affected.