

Australian Tourism Data Warehouse Distribution Licence Agreement

Last Updated: 24 June 2024

Introduction

AUSTRALIAN TOURISM DATA WAREHOUSE PTY LTD ACN 096 876 783 (**ATDW**) is the owner of all rights, title and interest (including copyright and trademarks) in the Database and the Platform.

ATDW has agreed to license access to and use of the Database to the distribution partner entering into this agreement (**Distributor**) on a limited, revocable, non-exclusive, non-transferable, and non-sublicensable basis in accordance with this Agreement.

1. Definitions

In this Agreement:

ATDW Distribution API means the API and related system and software made available by ATDW that provides the Distributor with access to the Database and the Information.

ATDW Distributor Guidelines are guidelines provided by ATDW as amended by ATDW from time to time.

Business Day means from 9am to 5pm from Monday to Friday (excluding public holidays in Queensland) Australian Eastern Standard Time.

Business Purposes means all legitimate business purposes of the Distributor including publishing Information on the Distributor Channel(s), except for business activities which although legal are licentious and/or obscene in nature.

Confidential Information means all trade secrets, software, software applications, source and object codes, ideas, know-how, concepts and information whether in writing, electronic form or otherwise relating in any way to:

- (a) either party or their employees;
- (b) the Database;
- (c) the party's affairs or businesses, sales, marketing or promotional information;
- (d) the terms of this Agreement;

but does not include information that:

- (i) is or becomes part of the public domain otherwise than by breach of this Agreement by either party;
- (ii) is lawfully obtained by either party from another party without any restriction as to use and disclosure; or
- (iii) either party can evidence was in that party's possession prior to disclosure to it by the other party.

For the avoidance of doubt, Confidential Information includes the API key (application programming interface key) provided to the Distributor (including in respect of the ATDW Distribution API) as well as any other information in connection with the Distributor's access to Database.

Consequential Loss means loss of profits, loss of revenue and loss of goodwill.

Database means the database operated by ATDW, comprising text, visual and audio content relating to the facilities, information and services of all tourism categories attractions, transport, facilities and services within Australia, known as the ATDW Platform.

Distributor Channel means a website, mobile application (app) or other consumer channel owned or operated by the Distributor from time to time.

Fees means the fees set out in clause 4.

Information means all content including the text, visual and audio content contained in the Database relating to the contact details, facilities, information and services of tourist operators, attractions, transport, facilities and services within Australia.

Insolvency Event means, in relation to the Distributor:

- (a) a receiver, receiver and manager, trustee, administrator, other controller (as defined in the *Corporations Act 2001*) or similar official is appointed over any of the assets or undertaking of the Distributor;
- (b) the Distributor suspends payment of its debts generally;
- (c) the Distributor is or becomes unable to pay its debts when they are due or becomes unable to pay its debts or is presumed to be insolvent within the meaning of the *Corporations Act 2001*;
- (d) the Distributor enters into or resolves to enter into any arrangements, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (e) the Distributor ceases to carry on business or threatens to cease to carry on business;
- (f) a resolution is passed, or any steps are taken to appoint, or to pass a resolution to appoint an administrator; or
- (g) an application or order is made up for the winding up or dissolution of the Distributor, or a resolution is passed, or any steps are taken to pass a resolution for the winding up or dissolution of the Distributor, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other party.

Loss means any loss, liability, cost, claim, expense, damage, charge, penalty, outgoing or payment however arising, whether present, unascertained, immediate, future or contingent and whether direct loss or Consequential Loss.

Real-time Method of Downloading Information means the method of searching and retrieving Information from the Database whereby the Distributor uses queries to access data each time a user of the Distributor Channel requests Information (as opposed to any other method of data extraction including the use of caching, downloading updates or total database refreshes).

Records means all original and certified copies of the books, records, documents, information, accounts and data (whether machine readable or in printed form) owned by or relating to the Distributor or the property of the Distributor and any source material used to prepare them.

Support means the support described in clause 3.

Support Material means all material brought or required to be brought into existence as part

of, or for the purpose of the Support including documents, information and data stored by any means.

Term means the duration of this Agreement provided in clause 10.1.

2. Grant of Licence and obligations of Distributor

2.1 Licence

ATDW hereby grants to the Distributor a limited, revocable, non-transferable, and non-sublicensable, non-exclusive, royalty-free licence to use the Database for the Distributor's Business Purposes only and strictly in accordance with this Agreement using the ATDW Distribution API for the Term.

The Distributor must only use the Database on a single Distributor Channel, except where the Distributor has:

- (a) obtained the consent and additional API keys from ATDW for further Distributor Channels; and
- (b) paid the Fees for the additional Distributor Channel(s) to ATDW.

Nothing in this Agreement constitutes a grant by ATDW to the Distributor of:

- (a) any proprietary interest in the Database, the Information or the Support Material;
- (b) any right to use the Database, the Information or the Support Material for any commercial purpose, other than that permitted by this Agreement; or
- (c) any right to modify or edit content within the Database other than for legitimate sorting by category for the Business Purposes of the Distributor.

2.2 Minimum specifications

The Distributor acknowledges and agrees that the hardware and software environment used by the Distributor to access the Database, operates within, or exceeds the minimum specifications for the Database as outlined in the ATDW Distributor Guidelines. ATDW can amend the ATDW Distributor Guidelines from time to time, provided that ATDW will provide reasonable prior notice (not required to be more than 30 days) before such amendments to the ATDW Distributor Guidelines will be effective. If amendments to the ATDW Distributor Guidelines are not acceptable to the Distributor, the Distributor can terminate this Agreement by giving written notice to ATDW at any time prior to the amendments to the ATDW Distributor Guidelines becoming effective.

2.3 Distributor obligations

The Distributor:

- (a) may use the Information only for Business Purposes PROVIDED THAT such use does not bring any of the enterprises, businesses or facilities referred to in the Database into disrepute;
- (b) may use the Information only for the publication of those categories and regions permitted per the Distributor's purchased subscription plan;
- (c) must not provide any information obtained from the Database for any purpose not in connection with the Business Purposes;
- (d) must comply with the *Privacy Act 1988* (Commonwealth) and the *Spam Act 2003* (Commonwealth); and

- (e) is not entitled to send unsolicited commercial electronic messages (as that term is defined in the *Spam Act 2003*) to any email address or mobile phone number for any individual or business listed in the Database;
- (f) must either:
 - (i) use the Real-time Method of Downloading Information from the Database; or
 - (ii) comply with the scheduled download time reasonably directed by ATDW (with a frequency of no less than once per week), to ensure that the Information remains up to date and reflects the Database;
- (g) must not:
 - (i) use the Database or ATDW Distribution API in any manner that could damage, disable, overburden or impair the Database or ATDW Distribution API;
 - (ii) use the Database or ATDW Distribution API in any manner that may interfere with any other party's use and enjoyment of the Database or ATDW Distribution API;
 - (iii) access, monitor or copy any Information using any robot, spider, scraper or other automated means or any manual process for any purpose except as expressly permitted by this Agreement or with ATDW's prior express written permission.
 - (iv) do anything, or allow another to do something, which will cause illegitimate or incorrect material or code to be introduced into the Database, including:
 - incorrect, false, untruthful, misleading or defamatory information; or
 - any viruses, malicious code or other conditions which could damage or interfere with the Database or ATDW Distribution API.

The Distributor agrees to all of the following:

- (a) Prior to the Distributors Channels going live with access to the Information, the Distributor must grant ATDW access to the Distributor Channel to perform a set of tests to:
 - (i) check that integration is performing optimally;
 - (ii) check that the setup will not cause excessive load on the system;
 - (iii) identify points that might be improved;
 - (iv) ensure compliance with the following ATDW analytics tracking requirements:
 - web beacons to each ATDW profile page;
 - image URL tracking; and
 - contact and booking URL tracking.
- (b) In addition to paragraph (a), the Distributor must, if requested by ATDW, provide ATDW statistics or other such information, as is reasonably

required by ATDW for the purpose of assessing the Distributor's compliance with this agreement.

2.4 Data sharing and access

The Distributor must permit representatives of ATDW to have access to and take extracts from all data or other Records relating to:

- (a) the Database or Information (including the use and performance of the Information), and
- (b) any other information related to this Agreement as reasonably required by ATDW.

2.5 No contact by distributor

- (a) To the extent that the Information includes contact information of third parties (**ATDW Contributors**), the Distributor acknowledges and agrees that:
 - (i) nothing in this agreement obliges ATDW to provide a method of contacting ATDW Contributors;
 - (ii) except as expressly permitted under this Agreement, the Distributor must not make contact with any ATDW Contributor using the Information.
- (b) Should the Distributor wish to use Information to contact any business, person or entity listed in the Database by email for marketing purposes (or any other purpose where marketing is involved), the proposed email **MUST** be first approved by ATDW. In this respect the text of the proposed email communication **MUST** be forwarded to ATDW before being sent to any email address listed in the Database. ATDW will promptly consider the text of the proposed email and has absolute discretion in deciding whether or not to approve the proposed email. If the proposed email is approved by ATDW, ATDW will provide written confirmation to the Distributor.

3. Support

3.1 ATDW will use its best endeavours to provide the following Support for the Database to the Distributor for the Term:

- (a) set up of access to the ATDW Distribution API;
- (b) upgrades to the ATDW Distribution API;
- (c) provision of technical support documentation at initial installation of the ATDW Distribution API and relating to the operation of the Database; and
- (d) limited telephone support during any Business Day.

4. Fees

4.1 Content access and Support fee

The Fees are dependent on the package selected. The Fees are payable by the Distributor to ATDW for the provision of content access and support, for the Term of this Distribution Licence Agreement on an annual basis in advance. The Fees payable for the package the

Distributor selects will be as notified to the Distributor by ATDW at the time of sign up to or (where applicable) renewal of this Agreement.

The Fees are invoiced and payable annually in advance.

4.2 Invoices and payment

ATDW will issue tax invoices for the Fees annually in advance.

The Distributor must pay to ATDW the amount invoiced within thirty (30) days of the date of the invoice.

Any failure by the Distributor to pay the amount invoiced within thirty (30) days of the invoice date will result in the Distributor's distributor key being **deactivated** until such time that the total outstanding amount is paid in full.

In addition, the Distributor will be liable to pay a reconnection fee of \$300 + GST to reactivate the distributor key.

The currency for the Fees and any other amounts payable under this Agreement is Australian dollars.

4.3 GST

The consideration for any taxable supply under this Agreement is specified as GST exclusive. In addition to the Fees referred to above as consideration in relation to any taxable supply under this Agreement, the recipient of any taxable supply must pay, at the same time as it pays the consideration to ATDW, an additional amount equal to the amount of the consideration referred to in this Agreement multiplied by the rate at which GST is imposed in respect of that taxable supply. Words and expressions used in this clause 4.3 have the same meaning as in *the A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

4.4 Changing fee amount

Notwithstanding clauses 4.1 and 4.2, ATDW may change or modify the amount of the Fees for any future subscription period during the Term at any time subject to ATDW providing the Distributor with notice of the changed or modified Fees at least [30] days' before the start of the subscription period. Following a change or modification to the Fees, the Distributor is permitted to cancel its subscription and terminate this Agreement at any time in accordance with clause 10.2.

5. **No Modifications**

5.1 The Distributor will not without the prior written consent of ATDW (and then only in a manner approved by ATDW):

- (a) modify, alter, adapt, disassemble, reverse engineer, decompile or amend the Database, the Information or any other content within the Database in any way;
- (b) present the Distributor's name and/or logo on the Information in a way that suggests an endorsement, joint venture, partnership and/or other association with ATDW and/or any shareholder of ATDW and/or any content provider to the Database
- (c) present the logo of ATDW and/or of any shareholder of ATDW on their Distributor Channel or other forms of communication, and

- (d) present information about the business of ATDW and/or about any shareholder of ATDW on their Distributor Channel or other forms of communication.

5.2 Notwithstanding clause 5.1, the Distributor may edit, modify, alter and adapt any Information obtained by the Distributor from the Database for legitimate sorting by category for the Business Purposes PROVIDED EXPRESSLY THAT the said content is not rendered inaccurate or misleading or sorted in a manner which is prejudicial to any particular site in any way whatsoever.

6. Warranties and Limitations

6.1 ATDW

ATDW represents and warrants to the Distributor that it has used its best endeavours to secure the rights to licence the distribution of the Information and that to the knowledge and belief of ATDW, use of the Information in accordance with this Agreement will not infringe the rights of any person or company.

ATDW does not represent and does not warrant to the Distributor that the Database will provide any function for which it is not specifically designed.

ATDW does not represent and does not warrant to the Distributor that the Database will provide any minimal level of performance.

ATDW does not represent and does not warrant to the Distributor that the Database will be virus free or free of performance anomalies. ATDW will use its reasonable endeavours to implement adequate virus protection measures.

Nothing in this agreement should be interpreted as attempting to exclude, restrict or modify the application of any rights which cannot be excluded under law (including the Australian Consumer Law).

6.2 Distributor

The Distributor represents, warrants and undertakes to ATDW that:

- (a) where necessary, it has obtained any necessary authorizations from government and other agencies and authorities to distribute the Database and will, throughout the Term, continue to have any necessary authorisations to distribute the Database;
- (b) it will not market, produce, promote a database on Australian tourism in competition with the Database, or use the content forming part of the Database in any form or for any purpose other than as envisaged in this Agreement;
- (c) it will take reasonable steps to refresh and update any Information as and when made available to the Distributor by ATDW, but no less frequently than once a week;
- (d) it will not sub-licence the Licence or the use of the Database or Information; and
- (e) it will not hyperlink or otherwise connect the Database or any part of the Database to any site which is in direct or indirect competition with the Database or any part of the Database or any content provider within the Database.

7. The Distributor's Acknowledgement

7.1 The Distributor acknowledges and agrees that:

- (a) it will not, as a result of entering into this Agreement, acquire any rights in the Database, its source code or object code other than the non-exclusive right to distribute expressly granted to the Distributor herein;
- (b) use of the Database may be interrupted by failure of phone or internet services which are beyond ATDW's control; and
- (c) ATDW is the owner of the Database, Intellectual property embedded in the Database, ATDW logos or trademarks and copyright, whether registered or not.

8. Liability and Indemnity

8.1 Distributor's Indemnity

The Distributor will at all times indemnify and keep indemnified ATDW, its officers, employees and agents and content providers (in this clause 8.1 referred to as **those indemnified**) from and against any loss (including reasonable legal costs and expenses on a solicitor/client basis) or liability incurred by any of those indemnified arising from any claim, demand, suit, action or proceeding by any person against any of those indemnified where such loss or liability arose out of:

- (a) any use of the Database by the Distributor other than in strict accordance with this Agreement; and
- (b) any other breach of this Agreement by the Distributor including any breach of the Distributor's warranty set out in clause 6.2; and
- (c) use by the Distributor, its employees and/or agents of the Confidential Information, other than as permitted by this Agreement.

8.2 Keep ATDW Informed

After notice has been given under clause 8.1, the Distributor will continue to keep ATDW informed of all developments.

8.3 Limitation of liability

Without limiting the above and subject to clause 8.4:

- (a) the maximum aggregate liability of a party to the other party for any Loss or claim arising under or in connection with this Agreement will not exceed the higher of the fees for the annual period or any regulatory penalty that may be imposed by regulators for breaches of legislation; and
- (b) neither party will be liable to the other for any Consequential Loss.

8.4 Exclusions to limitation of liability

The limitations and exclusions on liability in clause 8.3 will not apply to liability:

- (a) relating to non-payment of the Fees;
- (b) under any indemnity provided in this Agreement;
- (c) relating to a breach by the Distributor of the intellectual property rights of

ATDW; or

- (d) for a breach of an obligation under clause 9.

9. Confidentiality

9.1 Confidential Information

Each party acknowledges that the party, its employees or agents, may be given access to Confidential Information of the other party in the course of negotiating or performing the arrangement that is the subject of this Agreement.

9.2 No Disclosure

Each party will keep the Confidential Information of the other party confidential and will ensure that its employees and agents keep such Confidential Information confidential and will not disclose it to any third party or use it otherwise than:

- (a) for the purposes of this Agreement;
- (b) as authorised in writing by the other party;
- (c) as required by any law, judicial body or governmental agency; or
- (d) by way of disclosure to that party's professional advisors that have agreed to keep the Confidential Information confidential;

9.3 No Unauthorised Copying

Each party will not copy any document, content or data containing Confidential Information of the other party except as strictly necessary to perform this Agreement.

9.4 Removal of Materials

Upon termination of the Agreement, the Distributor must within thirty (30) days of the date of termination remove ALL published and/or stored Information from its Distributor Channel(s), local databases and other digital platforms.

The distributor must also:

- Certify in writing to ATDW that the above actions have been taken.
- Cease representation as being an ATDW distributor.

9.5 Employees and others

Each party will ensure that its employees, agents, contractors and other persons to whom they have given access to the Confidential Information of the other party will comply with this clause 9 (and each party agrees to be responsible for and liable to the other party for any breach by such employees, agents, contractors and other persons).

9.6 API key

In addition to clauses 9.1 to 9.5, the Distributor agrees not to disclose or provide the API key provided to the Distributor (and any other information in connection with the Distributor's access to the Database) other than to its employees and/or their developers if external parties, that need to know this information.

The Distributor and/or their developer are prohibited from sharing, copying, or using the provided API key for any purposes beyond the scope of the single domain registered with ATDW. The API key must remain confidential and may not be used, disclosed, or distributed to any other domain, individual, or entity outside of the specified registered

domain.

10. Term and Termination

10.1 12-month initial term

Subject to clause 10.2, this Agreement commences on the date of the Distributor's acceptance of this Agreement for a period of twelve (12) months. After the twelve (12) month period concludes, this Agreement will, if the Distributor elects for automatic renewal to apply, automatically continue for a further period of twelve (12) months - unless otherwise terminated under the terms of this Agreement. If the Distributor does not elect for automatic renewal to apply, renewal of the Agreement will be by agreement between the parties.

10.2 Termination at will

- (a) The Distributor can terminate the subscription and this Agreement at any time prior to the end of the current twelve (12) month subscription period, by using the functionality within the ATDW Platform. If the Distributor terminates the subscription and this Agreement under this clause 10.2(a) then this Agreement will end at the end of the then current Subscription Period and the Distributor will not be refunded any annual Fees.
- (b) The Distributor's licence to the ATDW Platform under these terms will last for the remainder of the then current Term. When the Term ends or the Agreement is otherwise terminated, the Distributor is required to have all Information removed from the Distributor Channel(s).
- (c) The Distributor's access to the Platform will be revoked at the end of the Term or earlier termination of this Agreement.

10.3 Termination by ATDW for breach

Notwithstanding Clause 10.1 and 10.2, either party (**First Party**) may terminate the Agreement immediately if:

- (a) the other party (**Second Party**) is in material breach of this Agreement and:
 - (i) the breach is not capable of remedy; or
 - (ii) the breach is capable of remedy and the First Party has given the Second Party notice:
 - (A) specifying the breach and requiring the Second Party to rectify the breach within fourteen (14) business days of the date it receives the notice; and
 - (B) the Second Party has failed to rectify the breach within the specified period of time;
- (b) an Insolvency Event occurs in relation to the Second Party, subject to the First Party complying with any requirements in the *Corporations Act 2001* (Cth).

10.4 Survival

The termination of this Agreement is without prejudice to any rights which have accrued to a party before the date of termination.

11. General

11.1 Relationship of the parties

This Agreement does not create any partnership, joint venture or agency relationship between the parties.

Neither party may enter into any Agreements or incur any liabilities on behalf of the other party without the other party's prior written consent and may not represent to any person that it has any authority to do so.

11.2 Exercise and Powers

Each of the parties to this agreement shall exercise all such powers as are available to it to do all such acts and things and sign, execute and deliver all such documents and instruments as may be necessary or reasonably required to give full effect to the provisions of this Agreement.

11.3 Successors and assigns

The obligations imposed and the benefits conferred on a party under this Agreement shall survive and be binding upon the party and each of its respective successors in title, legal personal representatives, transferees and assigns PROVIDED THAT such obligations and benefit shall not be sold, assigned, transferred to otherwise dealt with or disposed of by the party (including the sale of the controlling interest in the shares of the party which shall be deemed an assignment) without the prior written consent and approval of the other party.

11.4 Variation by ATDW

This Agreement shall not be changed or modified in any way subsequent to its execution except in writing signed by the parties.

ATDW may from time to time vary or modify any provision of this Agreement provided that ATDW will provide reasonable prior written notice to the Distributor (not required to be greater than 30 days) before such variation or modification will be effective. If any such variation or modification is not acceptable to the Distributor, the Distributor can terminate this Agreement by giving written notice to ATDW at any time prior to the variation or modification becoming effective.

11.5 Governing Law

This Agreement shall be construed in accordance with and governed by the laws of Queensland, Australia and the parties submit to the jurisdiction of the Courts of Queensland.

11.6 Dispute Resolution

Any matters in dispute (providing any matters to do with alleged misuse of Confidential Information or alleged breach of any propriety rights by either party in which case the aggrieved party may in its discretion elect to pursue court action and not comply with this clause 11.6) which cannot be resolved within a reasonable time by the parties to this Agreement shall be referred to mediation before having recourse to determination by a court as follows:

- (a) A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute.
- (b) On receipt of the notice specified in clause 11.8(a), the parties shall use their best endeavours to resolve the dispute within fourteen (14) days.

- (c) If the dispute is not resolved within fourteen (14) days or within such further period as the parties may agree in writing, then the dispute shall be referred to a mediator selected from a list nominated by the Law Society of Queensland and agreed by the parties.
- (d) The mediation of the dispute shall be conducted in accordance with the Mediation Guidelines issued by the Law Society of Queensland (for the time being), which shall be hereby deemed incorporated in this Agreement and which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within twenty-eight (28) days or such other period as agreed to in writing between the Parties hereto after the appointment of the mediator the dispute shall be submitted to arbitration under the Arbitration Guidelines issued by the Law Society of Queensland (for the time being), which shall be hereby deemed incorporated in this Agreement. The arbitrator shall not be the same person as the mediator. The number of arbitrators shall be one (1). The place of arbitration shall be Brisbane, Australia. The decision of the arbitrator shall be binding and final upon the parties.
- (f) Despite the existence of a dispute, each party shall continue to perform its obligations under this Agreement.
- (g) The costs of the mediation shall be paid in equal amounts by the parties and if there is arbitration the costs of the arbitration shall be paid in accordance with the direction of the arbitrator.

11.7 Survival of remedies

Any termination of the obligations of the parties under this Agreement shall not prejudice or nullify any claim for damages which the party or any other party may have against any other party hereto arising out of any breach of the terms of this Agreement.

The representations, warranties, covenants, indemnities, agreements and other statements of the parties hereto made in or pursuant to this Agreement shall remain operative and in full force and effect regardless of the termination of the obligations of the party or any other party herein.

11.8 Notices

Any notice or demand required or intended to be given under or pursuant to this Agreement shall be given if:

- (a) delivered personally to the party to whom such notice or demand is being given or left at or posted by prepaid registered mail addressed to such party at the address of such party set out in this Agreement or otherwise previously notified in writing to the other party and if posted in such manner shall be deemed to have been given at the expiration of four (4) business days after such posting whether such notice or demand is in fact delivered within that time or at all.
- (b) Sent by email to that party's email address (being the email address that the parties have chosen to use with respect to the Distribution subscription).

11.9 Force Majeure Event

A party shall not be deemed in breach of this agreement to the extent that party's

performance of its obligations herein is prevented by a Force Majeure event. Force Majeure Event means:

- (a) any act of God;
- (b) any outbreak or escalation of hostilities (whether or not war has been declared) or any other unlawful act against public order or authority;
- (c) any industrial dispute;
- (d) any governmental restraint;
- (e) unavailability or shortage (not caused by ATDW) of essential equipment, lack of communication, breakage of facilities or machinery and electricity supply failure;
- (f) any shut down, interruption to or corruption of the internet and the server;
or
- (g) any other event which is not within the reasonable control of the parties.