

DISTRIBUTION LICENCE AGREEMENT

THIS AGREEMENT is made the _____ day of _____

BETWEEN: AUSTRALIAN TOURISM DATA WAREHOUSE PTY LIMITED ACN 096 876 783, a company duly incorporated and having its principal place of business at Level 20, 144 Edward Street, Brisbane in the State of Queensland (“**ATDW**”)

AND: _____,
a company incorporated in the State of _____ and having its registered office at _____ in the said State (the “**Licensee**”)

WHEREAS:

- A. ATDW is the owner of all right, title and interest (including copyright and trademarks) in the Database.
- B. ATDW has agreed to licence access to the Database to the Licensee on a non exclusive basis.

IT IS AGREED:

1. INTERPRETATION AND DEFINITIONS

In the interpretation of this Agreement unless the contrary intention appears:-

- 1.1 wording importing the singular shall include the plural and vice versa.
- 1.2 words importing the one gender shall include the other genders and vice versa.
- 1.3 references to natural persons shall extend to and include other entities and vice versa.
- 1.4 reference to currency will be deemed to mean Australian currency.

In this Agreement unless the contrary intention appears:

Additional Services means any customised data downloads, specifications, advice or support in relation to the Database required by the Licensee and described in the Schedule.

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

Business Day means from 9am to 5pm from Monday to Friday (excluding public holidays) Eastern Standard Time Australia as decreed in the State of Queensland.

Business Purposes means all legitimate business purposes of the Licensee including publishing Information on the Licensee Websites, 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, their sub-licensees or employees;
- (b) the Database;
- (c) the parties 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) was in either party's possession prior to disclosure to it by the other party.

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

Fees means the fees set out in the Schedule.

Force Majeure Event means an event specified below:

- (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.

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

Insolvency Event means, in relation to a party:

- (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 party;
- (b) the party suspends payment of its debts generally;
- (c) the party 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 party 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 party 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 party, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction that has the prior written consent of the other party.

Licensee Websites means the website(s) or consumer channel (eg. Mobile phone application) owned or operated by the Licensee from time to time.

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

Related Body Corporate means, in relation to any party, body corporate related to the party under section 50 of the Corporations Act 2001.

Schedule means the schedule to this Agreement.

Support means the support described in the Schedule.

Support Material means all material brought or required to be brought into existence as part of, or for the purpose of the Support or Additional Services 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 LICENSEE

2.1 ATDW hereby grants to the Licensee a non-exclusive, royalty-free licence to use the Database for the Licensee's Business Purposes strictly in accordance with this Agreement using the '**Australian Tourism Location Aware Search (ATLAS2)**' (ATDW Real Time API access, XML and JSON downloads) for the Term.

2.2 The Licensee acknowledges and agrees that the hardware and software environment in which the Database is installed, operates within, or exceeds the minimum specifications for the Database as outlined in the ATDW Distributor Guidelines.

2.3 ATDW hereby grants to the Licensee a non-exclusive, royalty-free licence to use the Database on one website or via one digital application unless otherwise specified in the schedule.

2.4 The Licensee:

- (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 in any way whatsoever;
- (b) must not provide any information obtained from the Database for any purpose not in connection with the Business Purposes;
- (c) must comply with the *Privacy Act 1988 (Commonwealth)* and the *Spam Act 2003 (Commonwealth)*, and 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.

2.5 Nothing in this Agreement constitutes a grant by ATDW to the Licensee 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 with the Database other than for legitimate sorting by category for the Business Purposes of the Licensee.

- 2.6 The Licensee agrees that ATDW may at any time exercise the following rights in addition to or instead of ATDW exercising its rights under clause 2.7:
- (a) The Licensee must, if requested by ATDW, immediately implement web beacons to each ATDW product listing page that exists on the Licensee Websites and must provide to ATDW all assistance and cooperation as required by ATDW in this regard.
 - (b) In addition to paragraph (a), the Licensee must, if requested by ATDW, provide to ATDW such other form of statistics or other information, as is reasonably acceptable to both the Licensee and ATDW.
- 2.7 If the Licensee is NOT using the Real-time Method of Downloading Information from the Database, the Licensee must agree to a scheduled download time in consultation with the ATDW and adhere to this schedule for the purposes of not disrupting the businesses of other licensees of the Database.

3. SUPPORT

- 3.1 ATDW will use its best endeavours to provide the Support, and Additional Services if specified, for the Database to the Licensee for the Term.

4. FEES

- 4.1 Subject to clause 4.2, the Fees are payable by the Licensee to ATDW for the provision of Support, and Additional Services if specified, for the Term of this Agreement on receipt by the Licensee of a tax invoice from ATDW.
- 4.2 The Licensee must pay to ATDW the initial set-up fee that is specified in the schedule of this Agreement and must make payment to ATDW within the timeframe specified in the tax invoice.
- 4.3 ATDW will issue tax invoices for the Fees quarterly in advance. If this Agreement is terminated, Fees for the final period prior to termination will be payable on pro rata basis.
- 4.4 The consideration for any taxable supply under this Agreement does not include GST. 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 4.4 have the same meaning as in *the A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth).

- 4.5 The currency for the Fees and any other amounts payable under this Agreement is Australian dollars.
- 4.6 The 30 day free trial offered by ATDW to all Licensees prior to signing this agreement allows time for adequate testing and integration before tax invoices are issued to the Licensee.

5. NO MODIFICATIONS

- 5.1 The Licensee will not without the prior written consent of ATDW (and then only in a manner approved by ATDW in ATDW's sole discretion):
- (a) modify, alter, adapt, disassemble, reverse engineer, decompile or amend the Database, the Information or any other content within the Database in any way other than for legitimate sorting by category for the Business Purposes of the Licensee;
 - (b) present the Licensee'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 providing that this will not prohibit the Licensee from acknowledging the source of the information obtained from the Database;
 - (c) present the logo of ATDW and/or of any shareholder of ATDW on their Website or application or other forms of communication, and
 - (d) present information about the business of ATDW and/or about any shareholder of ATDW on their Website or application or other forms of communication.
- 5.2 Notwithstanding clause 5.1, the Licensee may edit, modify, alter and adapt any Information obtained by the Licensee 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

- 6.1 Each party warrants that:
- (a) it has authority to enter and to perform its obligations under this Agreement; and
 - (b) it has the ability to perform its obligations under this Agreement.
- 6.2 ATDW represents and warrants to the Licensee 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.

- 6.3 ATDW does not represent and does not warrant to the Licensee that the Database will provide any function for which it is not specifically designed.
- 6.4 ATDW does not represent and does not warrant to the Licensee that the Database will provide any minimal level of performance.
- 6.5 ATDW does not represent and does not warrant to the Licensee that the Database will be virus free or free of performance anomalies. ATDW will use its reasonable endeavours to implement adequate virus protection measures.
- 6.6 The Licensee represents, warrants and undertakes to ATDW that:
- (a) where necessary, it has obtained 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;
 - (c) it will take reasonable steps to refresh and update any Information as and when made available to the Licensee by ATDW, but no less frequently than once a week;
 - (d) it will not sub-licence the Licence; 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 LICENSEE'S ACKNOWLEDGMENT

7.1 The Licensee 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 Licensee 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, ATDW logo and ATDW trademarks.

8. LIABILITY AND INDEMNITY

8.1 Licensee's Indemnity

The Licensee 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 Licensee other than in strict accordance with this Agreement; and
- (b) any other breach of this Agreement by the Licensee including any breach of the Licensee’s warranty set out in Clause 6.6; and
- (c) use by the Licensee, its employees and/or agents of the Confidential Information, other than as permitted by this Agreement.

8.2 **Notification of Claims**

The Licensee will notify ATDW in writing as soon as practicable and in any event within two (2) Business Days of any claim or demand made, or action, suit or proceeding threatened or brought against the Licensee as a result of any matter arising out of any breach of the Licensee’s warranties in this Agreement.

8.3 **Keep ATDW Informed**

After notice has been given under Clause 8.2, the Licensee will:

- (a) continue to keep ATDW informed of all developments; and
- (b) to the extent permitted by law, act in accordance with the reasonable directions of ATDW, at the Licensee’s own cost, in respect of those developments including in relation to the settlement of any claims or demands.

9. **CONFIDENTIALITY**

9.1 **Confidential Information**

The Licensee acknowledges that the Licensee, its employees or agents, may be given access to Confidential Information of ATDW in the course of negotiating or performing this Agreement.

9.2 **No Disclosure**

The Licensee will keep the Confidential Information confidential and will ensure that its employees and agents keep the Confidential Information confidential and neither will disclose it to any third party or use it otherwise than:

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

9.3 **No Unauthorised Copying**

The Licensee will not copy any document or data containing confidential information except as strictly necessary to perform this Agreement.

9.4 **Return of Materials**

Upon termination of this Agreement, the Licensee will return all data including multi-media and images, discs, tapes, documents or copies of same containing information, which is at the date of termination, Confidential Information to ATDW.

9.5 **Employees**

The Licensee will ensure that its employees, agents, contractors and other persons to whom they have given access to the Confidential Information will comply with this Clause 9.

10. **TERM AND TERMINATION**

10.1 Subject to clause 10.2, this Agreement commences on the date of this Agreement for a period of twelve (12) months. After the twelve (12) month period concludes, this Agreement will automatically roll-over unless otherwise terminated under the terms of this Agreement.

10.2 Either party may terminate this Agreement upon two (2) months written notice to the other party without cause.

10.3 Notwithstanding Clause 10.1 and 10.2, ATDW may terminate the Agreement immediately if:

- (a) the Licensee is in breach of this Agreement, and ATDW has given the Licensee notice:
 - (i) specifying the breach and requiring the Licensee to rectify the breach within fourteen (14) business days of the date it receives the notice; and
 - (ii) the Licensee has failed to rectify the breach within the specified period of time;
- (b) an Insolvency Event occurs in relation to the Licensee;

- (c) a Force Majeure Event continues for more than twenty-eight (28) Business Days; or
- (d) a warranty made by the Licensee proves to be false, incorrect or misleading.

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

11. RELATIONSHIP OF THE PARTIES

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

11.2 The Licensee may not enter into any Agreements or incur any liabilities on behalf of ATDW without ATDW's prior written consent and may not represent to any person that it has any authority to do so.

12. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties relating to the subject matter and supersedes all prior agreements and understandings.

13. 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.

14. SUCCESSORS AND ASSIGNS

The obligations imposed and the benefits conferred on the Licensee under this Agreement shall survive and be binding upon the Licensee 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 Licensee (including the sale of the controlling interest in the shares of the Licensee which shall be deemed an assignment) without the prior written consent and approval of ATDW.

15. VARIATION

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

16. GOVERNING LAW & DISPUTE RESOLUTION

- 16.1 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.
- 16.2 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) 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:
- 16.2.1 A party claiming that a dispute has arisen must give written notice to the other party specifying the nature of the dispute;
- 16.2.2 On receipt of the notice specified in Clause 16.2.1, the parties shall use their best endeavours to resolve the dispute within fourteen (14) days;
- 16.2.3 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;
- 16.2.4 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;
- 16.2.5 In the event that the dispute has not been 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 language to be used in the arbitral proceedings shall be English and the governing law of this Agreement shall be the law as specified in Clause 16.1 above and the decision of the arbitrator shall be binding and final upon the parties;
- 16.2.6 Despite the existence of a dispute, each party shall continue to perform its obligations under this Agreement; and
- 16.2.7 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.

17. COUNTERPARTS

This Agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

18. SURVIVAL OF REMEDIES

18.1 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.

18.2 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.

19. NOTICES

Without prejudice to any other means of giving notice, any notice or demand required or intended to be given under or pursuant to this Agreement shall be sufficiently given if 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.

20. FORCE MAJEURE EVENT

A party shall not be deemed in breach of this agreement if that party's performance of its obligations herein is prevented by a Force Majeure event.

21. INDEPENDENT ADVICE

The parties acknowledge and agree that they each have sought and obtained independent legal advice in relation to their respective obligations and liabilities pursuant to this Agreement.

SIGNED AS AN AGREEMENT

SIGNED for and on behalf of
AUSTRALIAN TOURISM DATA)
WAREHOUSE PTY LIMITED)
ACN 096 876 783 in the presence of:)

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Authorised Officer

.....
Name of Authorised Officer

SIGNED for and on behalf of)
_____)
ABN _____ in the presence of:)

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Authorised Officer

.....
Name of Authorised Officer

SCHEDULE

Support:

- Set up of access to the system and related software that provides the Licensee with access to the Database and the Information, known as the Australian Tourism Location Aware Search (ATLAS2)
- Upgrades to the Australian Tourism Location Aware Search (ATLAS2)
- Provision of technical support documentation at initial installation of the Australian Tourism Location Aware Search (ATLAS2) and relating to the operation of the Database
- Limited telephone support during any Business Day
- Provision of sample source code for searching and retrieving data from the Database

Additional services:

Not Applicable

Special Conditions:

For the publication of the **accommodation, attractions, events, tours, hire, transport, destination information, food & drink, information services and destination information** categories (Australia Wide)

FEES

Once Off Set-up Fee:

Monthly Fees for the provision of Support:

Fees for Additional Services (if applicable):

Not applicable

AUSTRALIAN TOURISM DATA WAREHOUSE PTY LIMITED
ACN 096 876 783

and

DISTRIBUTION LICENCE AGREEMENT

An Agreement where ATDW agrees to licensee access to the Australian Tourism Data Warehouse Database (ATDW) to the Licensee on a non-exclusive basis