

**SCHEDULE 6**  
**AAP ONE LICENCE AGREEMENT**  
**As at 30 December 2010**

**1 INTRODUCTION**

- 1.1 This AAP ONE Licence Agreement (**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 website at [www.aapone.com.au](http://www.aapone.com.au) (**Site**) and the Licensed Material made available for download at the Site by AAP ONE (**AAP ONE**), a department of AAP.
- 1.2 If you agree to be bound by the terms of this Agreement, select the 'I Agree' button below. You may then use the Site in accordance with this Agreement as soon as your registration has been approved by AAP under clause 7.1. If you do not agree to be bound by this Agreement, select the 'I Disagree' button below, in which case you will not be able to access the Site.
- 1.3 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 or other material or services (**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.
- 1.4 AAP reserves the right to amend this Agreement at any time by posting an updated version of this Agreement (**Revised Terms**) on the Site. If your registration is approved by AAP under clause 7.1, you should periodically refer to the "Terms and Conditions" page which is located on the Site to check for any changes to the terms of this Agreement. You acknowledge that your use of the Site after the posting of the Revised Terms to the Site constitutes your acceptance of the Revised Terms.
- 1.5 This Agreement *does not* apply to Royalty Free Images. Royalty Free Images are subject to the terms and conditions of a separate agreement (**Royalty Free Licence Agreement**). You will be required to agree to the terms and conditions of the Royalty Free Licence Agreement before accessing any Royalty Free Images. You should contact your account manager to discuss.
- 1.6 This Agreement may not apply to the use of images in Broadcasting/television medium. This will be subject to the terms and conditions of separate agreement. You should contact your account manager to discuss.
- 1.7 The end of this document contains a Definition section which defines the meaning of terms in this Agreement (such as "Licensed Material" and "Licensed Service").
- 1.8 You may only use the Licensed Material from the AAP One Website for **editorial use** only. Even if your intention is to use Licensed Material for editorial use, further restrictions may be placed on that Licensed Material, as set out in this Agreement, any additional Other Agreement you have with AAP or notations on the Licensed Material itself. If you are uncertain as to whether you may use the Licensed Material in the context you wish then you must contact your account manager first.
- 1.9 If you intend to use any Licensed Material for any purpose other than as described in clauses 3, 4 and 5, including without limitation, in marketing, promotional or advertising campaigns, you must contact a representative of AAP ONE. You will need to enter into a separate written licence agreement with AAP to cover such use before the relevant Licensed Material is provided to you or you use the relevant Licensed Material.

## 2 DOWNLOADING LICENSED MATERIAL FROM THE SITE

- 2.1 You may only view and download Licensed Material from the Site if you intend to use the Licensed Material for one of the following purposes:
- (a) to publish Licensed Material other than Comping Images and Videos in hard copy print form in an Editorial Publication for editorial purposes only in accordance with clause 3;
  - (b) to use a low resolution version (no more than 72dpi) of an Image, Caricature or Cartoon (Comping Image) in your layout or comprehensive rendering of a proposed work for internal or client review or testing in accordance with clause 4; or
  - (c) to use a comping hi-res Image, Caricature or Cartoon (Comping Image) in your layout or comprehensive rendering of a proposed work for internal or client review or testing in accordance with clause 4; or
  - (d) to make Licensed Material other than Comping Images available as part of the Licensed Services (online/digital use – see definitions section for full description) for editorial purposes only in accordance with clause 5.

## 3 USE OF LICENSED MATERIAL IN HARD COPY PRINT FORM

- 3.1 Subject to clause 3.2 and 6, for Licensed Material other than Comping Images and Videos, AAP grants you a non-exclusive, non-transferable licence in the Territory to:
- (a) download that Licensed Material;
  - (b) use that Licensed Material on one computer with one user; and
  - (c) publish that Licensed Material, for once only use in an Editorial Publication (or similar editorial material) for editorial purposes only in accordance with this Agreement.
- 3.2 In addition to other restrictions under the Agreement you *may not* use any sporting images in Books (including e-books) without first obtaining the prior written consent of AAP:

## 4 COMPING USE OF LICENSED MATERIAL

- 4.1 Subject to clause 6, in respect of Comping Images, AAP grants you a royalty-free, non-exclusive, non-transferable licence in the Territory to:
- (a) download the Comping Image; and
  - (b) use that Comping Image on one computer with one user,
- for once only, non-commercial, internal business Comping purposes.
- 4.2 The downloaded Comping Image may not be used in any materials in final form distributed within your organisation 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).
- 4.3 You must not:
- (a) except as otherwise provided in clause 4.1, store or archive the Comping Image, either 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; or
- (e) distribute, sublicense or make the Comping Image available for use or distribution separately or individually and you must not grant any rights to the Comping Image.

## 5 ONLINE OR DIGITAL USE OF LICENSED MATERIAL

- 5.1 Subject to clause 6, for Licensed Material other than Comping Images, AAP grants you a non-exclusive, non-transferable licence in the Territory:
- (a) where the Licensed Material is to be made available on a Web Site as part of the Licensed Services, to display and store the Licensed Material in computer readable form to enable viewing by a User, including via Wireless Devices, provided that such viewing is solely for personal, non-commercial use by the User; and
  - (b) where the Licensed Material is to be made available via WAP, MMS . SMS or plasma screen as part of the Licensed Services, to transmit to and display on a User's WAP-, MMS- or SMS-enabled devices or plasma screen provided that such transmission and display are solely for personal, non-commercial use by the User.
- 5.2 For Licensed Material comprising Videos, AAP grants you a non-exclusive, non-transferable licence to use the Videos for limited internet exhibition (non-download) and related rights as detailed in clause 5.3 solely for Web Sites located in the Territory and marketed in English.
- 5.3 For Licensed Material **comprising a Video** you are entitled to:
- (a) display, exhibit, and perform the Video in a form different to the form as delivered to you by AAP provided that such form does not materially change the substance of the relevant Video;
  - (b) reformat, digitize, compile, segment, edit, alter, adapt, enhance, index, mix, customize, add commentary, and repackage the content of the Video and any portions thereof for the purpose of incorporating the Video into, and customizing it for, your Web Site, provided that you do not materially change the substance of the relevant Video;
  - (c) promote, market, and advertise the Video or any portions thereof in accordance with the terms of this Agreement;
  - (d) use your logos in association with the Video provided that you do not insert such logos into the Video itself and otherwise comply with the credits and accreditation and copyright notice requirements under this Agreement; and
  - (e) if applicable, classify and index the Video into your Web Site's search engines and indexes.
- 5.4 For Licensed Material comprising Videos, you have the right to archive or otherwise retain each individual downloaded Video in an on-line electronically retrievable format for the maximum of 14 (fourteen) days after delivery of the Video. Upon termination of this Agreement you must immediately destroy all original archive of each individual downloaded Video.

## 6 RESTRICTIONS ON USE OF LICENSED MATERIAL

6.1 Except to the extent expressly permitted in clauses 3, 4 and 5, you are not permitted to:

- (a) save or copy the Licensed Material 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 Licensed Material;
- (c) reverse engineer, modify, alter, adapt, disassemble, decompile or amend any part of the Licensed Material;
- (d) archive or maintain a database in electronic or structured manual form by regularly or systematically downloading and storing any Licensed Material from the Site;
- (e) post, transmit, republish, redistribute, re-disseminate, communicate or exploit (whether commercially or otherwise), any Licensed Material;
- (f) frame or create a hypertext linking to or from any Licensed Material, or post or email the Licensed Material to any newsgroups or message systems;
- (g) remove any accreditation and copyright notice or trademark from any place where it appears on or in the Licensed Material or its accompanying materials;
- (h) use the Licensed Material or any part of it as part of a trademark, service mark, or logo;
- (i) re-sell, distribute or sub-license the Licensed Material or the rights to use it to anyone for any purpose, except as specifically provided for elsewhere in this Agreement, or use the Licensed Material in a product whereby the purchaser or licensee of that product can then use the Licensed Material for its own purposes;
- (j) use the Licensed Material in any way that could be considered defamatory, pornographic, libellous, immoral, obscene or fraudulent, either by making physical changes to it, or through its juxtaposition to accompanying text; or
- (k) use the Licensed Material as part of any use involving sensitive subject matter, as determined by AAP, which shall include without limitation the following sensitive subjects: 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.

6.2 For the avoidance of doubt, the licence granted under clause 3 does not permit you or anyone else to display the relevant Licensed Material in marketing, promotional or advertising campaigns in any medium. The restriction in this clause 6.2 does not apply to the display of the relevant Licensed Material in marketing, promotional or advertising campaigns as part of the relevant Editorial Publication provided that a substantial part of the page containing the relevant Licensed Material is displayed (including the story in respect of which the relevant Licensed Material is displayed). In respect of use in television, film or electronic marketing, promotional or advertising campaigns, the restriction in this clause 6.2 does apply to the display of the relevant Licensed Material 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 relevant Licensed Material is displayed.

6.3 In the case of online and digital use of Licensed Material under clause 5, you are only permitted to store and display Licensed Material as follows:

- (a) in the case of Licensed Material where AAP or AP is the Information Source, at image resolutions no greater than 800 x 600 pixels; and

- (b) in the case of all other Licensed Material, at image resolutions lower than 640 x 480 pixels and with a maximum of 256 colour palettes,

provided that notwithstanding the above you may also display Licensed Material where AAP or AP is the Information Source at resolutions greater than set out in clause 6.3(b) provided that the resolution is no greater than 1200 x 900 pixels and the Licensed Material is marked with the AAP or AP logo (as the case may be) in a prominent form.

- 6.4 In the case of online and digital use of Licensed Material under clause 5, you may display in the Licensed Services and store in computer readable form, in accordance with this Agreement, any Licensed Material on a once-only basis for a period of not more than 30 (thirty) days from the date upon which the Licensed Material is downloaded from the Site (**Storage Period**) other than where the Licensed Material comprises Videos, the storage of which is dealt with under clause 5.4. You must delete all such Licensed Material at the end of the Storage Period. Notwithstanding this clause 6.4, you must not display any Licensed Material that AAP has retracted, cancelled or modified under clause 6.5.
- 6.5 You must observe and comply reasonably promptly with all reasonable instructions from AAP regarding display of corrections, retractions or apologies in the form requested by AAP or in respect of the taking down of Licensed Material downloaded from the Site which you have made available through the Licensed Services.
- 6.6 AAP's ability to make available for download from the Site Images which are sporting images (**Sporting Images**) is contingent upon the terms of accreditation imposed by any relevant sporting organizations. If any sporting organization imposes any restrictions or limitations on AAP in terms of AAP's coverage of any sporting events or fixtures, you acknowledge and agree that AAP's ability to supply the relevant Sporting Images through the Site will be similarly limited or restricted. Additionally, you will comply with any limitations or restrictions imposed by any sporting organization and agreed to by AAP in order to gain access to the sporting event provided that such limitations and restrictions are notified to you by AAP.
- 6.7 You acknowledge that AAP's sale of sporting images is subject to the Code of Practice for Sports News Reporting. Any Sporting Images you download from the Site must not be used for Commercial Use and you must comply with any additional conditions notified by AAP to you as a condition of using the Sporting Images. In particular, you must not use such Sporting Images in a manner that creates a false impression that a person or business has a sponsorship, approval or affiliation with the sport, sporting organisation or the event or any participants in the event. For the purposes of this clause 6.7, "**Commercial Use**" means the sale or production or use of such Sporting Images for advertising or promotional or merchandising purposes.

## 7 REGISTRATION

- 7.1 Before you are allowed to access the Site, AAP will review the registration details which you have completed. 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.
- 7.2 You are responsible for all use of the Site and the Licensed Material downloaded using your username and password unless you notify AAP 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 use the Site on your behalf, 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.
- 7.3 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.

## 8 CONDITIONS OF USE OF AAP ONE SITE

- 8.1 When accessing and using the Site, you must:
- (a) abide by any restrictions and limitations imposed by AAP in addition to those set out in this Agreement; and
  - (b) read and abide by any additional restrictions or conditions contained within the caption or special instructions on the Licensed Material itself.
- 8.2 Downloaded Licensed Material must not be used in a manner which would damage the reputation and goodwill (including by associating the Licensed Material with other material) of AAP, AP, AFP, EPA, PA, NBC, Mary Evans, Moodboard, Famous, ABACA, Graylock, Picture Perfect, Wildlight, FWD or any other Information Source or Licensed Material owner.
- 8.3 Except where you are using the Licensed material for the purposes of reporting news obtain at your own cost any necessary rights clearances from third parties relating to any part/aspect of the Licensed Material which may be protected by proprietary rights, copyright, neighbouring rights (including, without limitation, moral rights and performers' rights) or privacy rights prior to your use of the Licensed Material, 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 Licensed Material.
- 8.4 Licensed Material must be downloaded at full resolution. Screen copying is not permitted.

## 9 PAYMENT

- 9.1 Subject to 9.4, 9.5 and 9.6, you must pay for your use of downloaded Licensed Material in accordance with AAP's current prices as quoted by AAP and provided to you with your username and password (**Fees**). For the avoidance of doubt, there is no charge for use of Compimg Images provided that such use is in accordance with clause 4.
- 9.2 AAP will issue you with a tax invoice on a monthly basis, setting out details of your use of downloaded Licensed Material. You must pay each invoice within 30 days of the invoice date.
- 9.3 If you publish, transmit, display or otherwise make available Licensed Material that you have copied from the Site other than by downloading it, in breach of this Agreement (**Publication in Breach**), AAP reserves the right to take whatever action it considers appropriate in respect of such Publication in 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 copied Licensed Material 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.
- 9.4 If you download an Image, Caricature or Cartoon, you must notify AAP within 60 days if you are a book publisher and intend to include the Image, Caricature or Cartoon in a book to be published by you of the date of that download, by providing either a copy of the publication containing the Image, Caricature or Cartoon or a written statement describing the intended publication of the Image, Caricature or Cartoon (the **Publication Notice**). AAP will then invoice you for your use of the relevant Licensed Material.
- 9.5 If you do not provide AAP with notice in accordance with clause 9.4, AAP will charge you the maximum price for usage set out in AAP's current pricing as quoted by AAP.
- 9.6 If you download Licensed Material and do not use it, you must immediately notify AAP ONE in accordance with clause 9.4 and destroy all electronic copies of the Licensed Material and any

working draft copies made of the Licensed Material as a result of your use of it. In the event of any subsequent publication of the Licensed Material, AAP reserves the right to take whatever action it considers appropriate in respect of such publication. Notwithstanding such right, and reserving all other rights of AAP, you agree to pay an amount of twice the relevant download charge for the copied Licensed Material 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 such publication.

## 10 GST

- 10.1 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* (Cth) (**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.
- 10.2 Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include GST.
- 10.3 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.
- 10.4 All payments made by the Licensee under this Agreement will be net of any applicable withholding tax required to be deducted. If the Licensee is required to make a deduction or withholding in connection with any tax from any payment that the Licensee is required to make to AAP under this Agreement, the Licensee must:
- (a) pay the tax in accordance with applicable law;
  - (b) use its best endeavours to obtain an official receipt from the appropriate governmental agency; and
  - (c) deliver a copy of the official receipt to AAP no more than twenty (20) days after receiving it.
- 10.5 You will pay any tax or duty payable in respect of the performance of this Agreement or otherwise arising from payment of the Fees.

## 11 ACCREDITATION AND COPYRIGHT NOTICES

- 11.1 In respect of Licensed Material comprising an Image, you must correctly identify each of AAP, AP, AFP, EPA, PA, NBC, Mary Evans, Moodboard, Famous, ABACA, Graylock, Picture Perfect, Wildlight, FWD and the photographer and include the following accreditation and copyright notices in connection with all uses of the Image(s) (subject to clause 11.4 in respect of additional requirements of AAP, AP and AFP relating to use of Licensed Material under clause 5):
- (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 PA Images, in the form of "PA via AAP [Photographer]";
  - (e) in the case of EPA Images, in the form "©[year] EPA [name of photographer]";
  - (f) in the case of PA Images, in the form "PA/AAP/[Photographer]";

- (g) in the case of NBC Universal Images, in the form "NBC/AP/AAP[Photographer]",
- (h) in the case of Mary Evans Picture Library, in the form "Mary Evans/AAP/[Photographer]";
- (i) in the case of Moodboard, in the form "Moodboard/AAP/[Photographer]";
- (j) in the case of Famous Images, in the form "[name of photographer]/FAMOUS/AAP Image";
- (k) in the case of ABACA Images, in the form "© ABACA [name of photographer]";
- (l) in the case of Graylock Images, "[name of photographer]/AAP Image";
- (m) in the case of Picture Perfect Images, "©[year]AAP Images/Picture Perfect [name of photographer]";
- (n) in the case of Wildlight Images, "©[year] AAP Images/Wildlight [photographer]";
- (o) in the case of FWD Images, in the form of "FWD/AAP/[Photographer]"; and
- (p) in the case of all other Images, in the form "[Photographer]/[Source]/AAP Image" (unless you are notified otherwise under clause 11.2).

11.2 In respect of Licensed Material comprising an Image, if AAP indicates at the time of transmission that the relevant Licensed Material has been sourced by AAP from any Information Source other than those organisations listed in clause 11.1, you must include, after the Licensed Material, an accreditation and copyright notice either in the form required by the relevant Information Source or in an altered but reasonably similar form, as specified by AAP in relation to the Licensed Material.

11.3 In respect of Licensed Material comprising a Caricature or a Cartoon, you must include, after the Licensed Material, an accreditation and copyright notices either in the form required by the relevant Information Source or in an altered but reasonably similar form, as specified by AAP in relation to the Licensed Material.

11.4 In addition to the requirements above, you must comply with the following accreditation, copyright and disclaimer notice requirements in respect of online or digital use of Licensed Material under clause 5:

- (a) where the Licensed Material is to be made available via a web site:

**Licensed Material owned by AAP**

- (i) include a copyright notice in the form '©[year] AAP' with a hypertext link from the copyright notice to the following detailed notice and disclaimer:

"AAP content is owned by or licensed to Australian Associated Press Pty Limited and is copyright protected. AAP content is published on an "as is" basis for personal use only and must not be copied, republished, rewritten, resold or redistributed, whether by caching, framing or similar means, without AAP's prior written permission. AAP and its licensors are not liable for any loss, through negligence or otherwise, resulting from errors or omissions in or reliance on AAP content. The globe symbol and "AAP" are registered trade marks."

**Licensed Material – Information Source - AP**

- (ii) include a copyright notice in the form '©[year] The Associated Press. All rights reserved. This material may not be published, broadcast, rewritten, or redistributed.' with a hypertext link from the copyright notice to the following detailed notice and disclaimer:



"Associated Press (AP) text, photos, graphics, audio and/or video material shall not be published, broadcast, rewritten for broadcast or publication or redistributed directly or indirectly in any medium. Neither AP materials nor any portion thereof may be stored in any electronic or other system except for personal, non-commercial use. AP will not be held liable in any way to the User or to any third party or to any person who may receive information in Service or to any person whatsoever, for any delays, inaccuracies, errors or therefrom or in the transmission or delivery of all or any part thereof or for any damages arising from any of the foregoing or occasioned thereby."

- (iii) immediately below the Image, include the words "Associated Press" and as practicable with respect to caption space constraints the photographer's byline;
- (iv) [for graphics, include a visual representation of the "AP" logo on graphic, or immediately below, the words Associated Press;]
- (v) for Videos, include a visual representation of the "AP" logo on each frame of AAP video, or immediately below, the words "Associated Press".

**Licensed Material – Information Source - AFP:**

- (vi) include a copyright notice in the form '©[year] AFP' and include the following notice adjacent to the Image 'AFP/AAP', together with '[name of photographer]' if there is sufficient space adjacent to the image (in your reasonable opinion), with a hypertext link from the copyright notice to the following detailed notice and disclaimer:

"AFP stories and photos shall not be published, broadcast, rewritten for broadcast or publication or redistributed directly or indirectly in any medium. AFP news material may not be stored in whole or in part in a computer or otherwise except for personal and non-commercial use. AFP will not be held liable for any delays, inaccuracies, errors or omissions in any AFP news material or in transmission or delivery of all or any part thereof or for any damages whatsoever. As a newswire service AFP does not obtain releases from subjects, individuals, groups or entities contained in its photographs, graphics or quoted in its texts. Further, no clearance is obtained from the owners of any trademarks or copyrighted materials whose marks and materials are included in AFP photos or materials. Therefore you will be solely responsible for obtaining any and all necessary releases from whatever individuals and/or entities necessary for use of AFP stories, photos or graphics."

- (b) where the Licensed Material is to be made available via WAP, MMS, SMS or plasma screen, where practicable:

**Licensed Material – Information Source - AP:**

- (i) include a copyright and disclaimer notice in the form '(AP)' or 'by the Associated Press';

**Licensed Material – Information Source - AFP:**

- (ii) include a copyright notice in the form '©[year] AFP'.

## 12 INTELLECTUAL PROPERTY RIGHTS

- 12.1 Subject to the rights granted under this Agreement, AAP and its licensors reserve all rights, including copyright, in the Licensed Material and the Site and no title or rights of ownership,

copyright or other intellectual property in the Licensed Material or the Site is transferred to you through your use of the Site.

- 12.2 You must not deal with any rights or other property in any Licensed Material or the Site, other than as expressly permitted under clauses 3, 4 and 5, or as otherwise expressly permitted under an Other Agreement.
- 12.3 AAP warrants that the Licensed Material when used in accordance with this Agreement will not infringe the copyright or any other intellectual property rights of any third party.

## 13 LIABILITY

- 13.1 All express or implied representations, conditions, warranties, guarantees and terms relating to the Licensed Material, the Site or this Agreement, not contained in this Agreement are excluded from this Agreement to the extent permitted by law.
- 13.2 Neither AAP nor any Information Source is 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.
- 13.3 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.
- 13.4 If the law, including *Competition and Consumer Act 2010* (Cth) (as amended) or any similar legislation, implies or imposes a non-excludable condition, warranty or guarantee which can be limited, the liability of AAP to you for breach of that condition, warranty or guarantee will be limited, to the extent permitted by law - as AAP determines - to:
- (a) supplying replacement Licensed Material; or
  - (b) the cost of supplying replacement Licensed Material.
- 13.5 To the extent permitted by law, in no event will AAP or any Information Source be liable to you or any third parties for any loss of profits or indirect or other consequential loss or damage (including any loss of business income, profits, revenue, customers, goodwill or loss or corruption of data and additional finance or interest costs) in relation to the provision of the Licensed Material or otherwise under this Agreement, provided, however, that this limitation of liability does not apply to any indemnification obligations of the parties under this agreement.
- 13.6 To the extent permitted by law, the total liability of AAP to you in contract, tort (including negligence) or otherwise for any loss or damage (other than loss or damage which is excluded under clause 13.5), which may be suffered or incurred or which may arise in respect of the Site or any Licensed Material, or any breach by AAP of a term of this Agreement, will in all circumstances be limited to the total of the payments due to AAP pursuant to clause 9 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).
- 13.7 AAP's liability to you as determined under clause 13.6 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 INDEMNITY

- 14.1 AAP and its Information Sources 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 Licensed Material.

14.2 You agree to indemnify and keep indemnified AAP and its Information Sources against any liabilities, losses, expenses, damages or costs (including, without limitation, reasonable legal costs) that AAP or its Information Sources suffer as a result of:

- (a) your use of, or inability to use, the Site or any Licensed Material; and/or
- (b) any breach by you of this Agreement.

## 15 TERMINATION

15.1 AAP may terminate this Agreement at any time by giving you notice in writing.

15.2 You may terminate this Agreement at any time by giving AAP notice in writing.

15.3 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 granted under clauses 3, 4 and 5 automatically terminate and you must destroy all copies of the Licensed Material (including permanently deleting any electronic copies held on any media whatsoever including Licensed Material stored on your computer systems) and cease using the Licensed Material for any purpose.

15.4 Any termination of this Agreement shall be without prejudice to the accrued rights and liabilities of AAP and you as at the date of termination.

## 16 GENERAL

16.1 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.

16.2 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.

16.3 You may not assign or transfer to anyone else the rights granted to you in this Agreement, without AAP's prior written consent.

16.4 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

16.5 If any part of this Agreement is unenforceable, illegal or void, then it is severed and the enforceability of the other parts of the agreement is not affected.

## 17 DEFINITIONS

17.1 In this Agreement:

- (a) **Caricature** means a portrait that exaggerates or distorts the essence of a person or editorial purposes.
- (b) **Cartoon** means an illustration or series of illustrations with or without wording created for editorial purposes.
- (c) **Compiling** means 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.
- (d) **Compiling Image** has the meaning set out in clause 2.1(b).

- (e) **Deep Hyperlinking** means a direct hypertext link or hypertext linking, established by a third party for purposes other than non-commercial personal use, from a Web Site to an area within the Licensed Services where Licensed Material downloaded from the Site is displayed, which bypasses the homepage or main portal of the Licensed Services or the homepage(s) or main portal(s) of the sections of the Licensed Services where the downloaded Licensed Material is displayed.
- (f) **Editorial Publication** means a hardcopy publication distributed to the public or sections of the public which contains material created by the staff of the publishing organisation and which does not promote goods and services without any analysis.
- (g) **EPA** means European Pressphoto Agency.
- (h) **Famous** means Famous Pictures and Features Limited.
- (i) **Fees** has the meaning set out in clause 9.1.
- (j) **FWD** means Fashion Wire Daily.
- (k) **Graylock** means Graylock.com Inc.
- (l) **Images** means the transparencies, negatives, prints, discs or any other medium (including but not limited to electronic media) for the recording of a visual image.  
**Information Source** means a supplier of Licensed Material to AAP.
- (m) **Licensed Material** means Images, Comping Images, Cartoons, Caricatures, Graphics, slideshows , Videos and any other material from time to time that are available for download from the Site.
- (n) **Licensed Services** means:
  - (i) the services marketed and provided by you primarily to users of the internet, SMS, MMS , WAP or plasma screen (as applicable) in Australia and branded solely or predominantly with your own branding; and
  - (ii) caches or other forms of transitory storage of these services established by third parties for more efficient transmission of services referred to in (i) above.
- (o) **Mary Evans** means [Mary Evans Picture Library].
- (p) **MMS** means the multimedia messaging service which enables the transmission of audio-visual, textual and graphical works over mobile telecommunications networks.
- (q) **Moodboard** means Mike Watson Images Ltd t/as Moodboard
- (r) **Other Agreement** has the meaning set out in clause 1.3.
- (s) **PA** means Press Association.
- (t) **Picture Perfect** means Picture Perfect Photo Agency.
- (u) **Royalty Free** means a right to use copyright in an image for an unlimited number of times subject to the conditions contained in AAP's Royalty Free License Agreement .
- (v) **Site** has the meaning set out in clause 1.1.
- (w) **SMS** means short messaging service technology which enables the transmission of messaging text to and between mobile devices.
- (x) **Territory** means Australia.

- (y) **User** means a person who accesses the Licensed Services.
- (z) **Video** means a sequence of moving visual images and accompanying audio.
- (aa) **WAP** means wireless application protocol – an international standard to allow cellular/wireless devices to access the Internet
- (bb) **Web Site** means any collection of web pages on the internet intended to be viewed in relation to each other and which may be accessed using extension of the same URL.
- (cc) **Wildlight** means Exikon Pty Limited in respect of Wildlight Images.
- (dd) **Wireless Device** means any mobile, wireless or internet device, such as a cellular phone, palmtop or handheld computer, a wireless modem used with a mobile personal computer, a personal digital assistant, a pager, an in-vehicle device, a set top box, plasma screen or any device performing similar functions existing now or developed in the future.