

# AAP Newswire Multimedia Terms & Conditions

9 December 2017

## PREAMBLE

- A. Under privacy law we are required to provide you with a collection statement setting out how we will deal with your personal information. A copy of our collection statement is contained in our privacy policy here: [aap.io/legal](http://aap.io/legal).
- B. These terms apply to licenses of images made available for online purchase via this site (**Online Purchases**) from us and/or to images and other multimedia on this site that we may agree to license to you via any other arrangement with us.
- C. Territory rights are restricted to Australia only unless we have agreed in writing to extended territory rights.
- D. If you wish to make an Online Purchase (which for the sake of clarity grants you licensing rights to images only) and do not agree to these terms do not click 'I accept/agree' during the Online Purchase process.
- E. **Online Purchasers – please note: If you agree to these terms and make an Online Purchase you must only use the image for the uses displayed in the tiles as clicked on by you during the Online Purchase (and confirmed in the tax invoice forwarded to you) and subject at all times to these terms.** You should read carefully, amongst other clauses, our terms regarding restrictions on use (clause 6), platform use including social media (clauses 2-5 and platform specific terms) and accreditation and copyright notices (clause 11). Your use of an image is for a once off use only.
- F. Not all images are available for Online Purchase. Where notified in your use of this site, you must seek consent from your AAP account manager first to use Multimedia for commercial, party political, broadcast, book use, certain digital platform use, and any non-editorial purposes. For the sake of clarity use of images on the front cover of a book is considered by us to be commercial use.
- G. Where images are made available for non-editorial use via an Online Purchase you must agree to our commercial terms notified to you during your Online Purchase. If you do not agree to them do not click 'I accept/agree'. If you do agree to the commercial terms the provisions of these terms will still apply (eg accreditation, platform use and so on) *except to the extent of any direct inconsistency.*
- H. You are responsible for obtaining clearances for images and multimedia used for any other purpose than editorial/reporting of current news use.
- I. Notwithstanding any ability to access images via Online Purchase, special provisions apply regarding:
  - a) sporting images;
  - b) use of images on the front cover of books;
  - c) use of sporting images within books.Please contact a representative of AAP Newswire Multimedia to discuss prior to use.

## AAP Newswire Multimedia Terms & Conditions

### 1. Introduction

- 1.1 This AAP Newswire Multimedia Agreement (**Agreement**) sets out the terms upon which Australian Associated Press Pty Limited ACN: 006 180 801 (**AAP**) will allow you, (including your directors, employees, officers, contractors, agents, principals, or any related body corporate or affiliate) (**you or Licensee**) to access and use the Licensed Material which is made available for download by you from AAP Newswire Multimedia, a department of AAP via AAP Newswire Multimedia Site which is branded AAP Photos and made available at [photos.aap.com.au](http://photos.aap.com.au) or as otherwise advised from time to time (**Multimedia Site**). You are acknowledging by accepting these AAP Newswire Multimedia Terms and Conditions and continuing to access the Multimedia Site that you are bound by these terms and conditions.
- 1.2 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 to the extent of any conflict or inconsistency between this Agreement and the Other Agreement, this Agreement will prevail to the extent of the conflict or inconsistency, unless otherwise stated in the Other Agreement.
- 1.3 AAP reserves the right to amend this Agreement at any time by posting an updated version of this Agreement (**Revised Terms**). If your registration is approved by AAP under clause 7.1, you should periodically refer to the address [aap.io/legal](http://aap.io/legal) to check for any changes to the terms of this Agreement. You acknowledge that your use of the Multimedia Site after the posting of the Revised Terms to the Multimedia Site constitutes your acceptance of the Revised Terms.
- 1.4 This document contains a Definition section which defines the meaning of terms in this Agreement (such as "Licensed Material"). You will also find extra terms which cover our use of our content on Digital Platforms and Broadcast Platforms. The [Digital Terms and Broadcast Terms](#) contain definitions for terminology that specifically apply to the Digital and Broadcast environment.
- 1.5 Unless otherwise notified via an Online Purchase, you may use the Licensed Material from the Multimedia Site on a one off basis 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.
- 1.6 If you intend to use any Licensed Material for any purpose other than for editorial use and/or as described in clauses 3, 4 and 5, (for example commercial, party political, merchandising, advertorial, sponsorships, endorsements, book use, marketing, promotional or advertising campaigns) you must contact a representative of AAP Newswire Multimedia unless otherwise notified to you when making an Online

Purchase. 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.

- 1.7 Special provisions apply regarding sporting images (see clause 6.4 and 6.5). Please contact a representative of AAP Newswire Multimedia to discuss.

## 2. Downloading Licensed Material from the Multimedia Site

- 2.1 You may only view and download Licensed Material from the Multimedia Site if you intend to use the Licensed Material for one of the following purposes and strictly in accordance with this agreement:
- (a) 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 3;
  - (b) 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 3; or
  - (c) to publish Licensed Material other than Comping Images in hard copy print form in an Editorial Publication only in accordance with clause 4;
  - (d) to display Licensed Material other than Comping Images on a Digital Platform or Broadcast Platform only for the purposes permitted by clause 5.
- 2.2 The uses in 2.1(a) to (d) above are collectively known as "Authorised Platforms" in this Agreement.
- 2.3 If you download Licensed Material you agree to comply with the notification obligations within the timeframe set out in clause 9.3 (under 'Payment').

## 3. Use of Licensed Material for Comping purposes

- 3.1 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.
- 3.2 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).
- 3.3 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.

## 4. Use of Licensed Material in hard copy print form (Print Platforms)

- 4.1 For Licensed Material other than Comping Images and subject to clause 3.2 and 6, 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.
- 4.2 In addition to other restrictions under this Agreement you may not use any sporting images in books (including e-books) without first obtaining the prior written consent of AAP.

## 5. Use of Licensed Materials on Digital and Broadcast Platforms

- 5.1 For Licensed Material other than Comping Images and subject to clause 5.4 to 5.7 (Videos), AAP grants you a non-exclusive, non-transferable licence in the Territory to:
- (a) download the Licensed Material;
  - (b) display the Licensed Material on a one off basis:
    - (i) via a Digital Platforms (as consented to by AAP prior to downloading); or you
    - (ii) via a Broadcast Platform (as consented to by AAP prior to downloading).
- 5.2 Your use on a Digital Platform will also be subject to our Digital Terms which may be found [here](#). These terms also cover use of the Licensed Material on Social Media sites by you or by your Users (for example through sharing buttons) and the accreditation and disclaimer requirements you must comply with. You must familiarise yourself with the [Digital Terms](#) as they form part of this Agreement.
- 5.3 Your incorporation of Multimedia in broadcasts for use on a Broadcast Platform will be subject to our [Broadcast Terms](#).
- 5.4 **Display of images:** Subject at all times to any instructions accompanying a Licensed Material (eg 'internet out' ' display period 48 hours only') and other than where the Licensed Material comprises Videos (the storage of which is dealt with below) you may display the Licensed Material on the Digital Platforms and /or Broadcast Platform as the case may be 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 thirty (30) days, subject to any other arrangement made with us, from the date upon which the Licensed Material is downloaded from the Multimedia Site (Storage Period) unless otherwise negotiated with AAP. You must delete all such Licensed Material at the end of the Storage Period. Notwithstanding this clause, you must not

display any Licensed Material that AAP has retracted, cancelled or modified.

- 5.5 Display of Video: For Licensed Material comprising Videos, AAP grants you a non-exclusive, non-transferable licence to use the Video, subject at all times to any instructions accompanying a Video for:
- (a) limited internet exhibition (non-download) and related rights via a Digital Platforms located in the Territory and marketed in English; and/or
  - (b) display via a Broadcast Platform located in the Territory provided that prior written consent from AAP has been obtained first (including the execution by you of our applicable broadcast agreement).
- 5.6 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 Digital Platform, 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 further provided that you retain the existing AAP or Information Source logos in the Video, 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 Digital Platform's search engines and indexes.
- 5.7 Storage of Videos: 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 fourteen (14) 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 Multimedia 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, 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 images in any way that could discriminate or vilify, or be considered defamatory, pornographic, libellous, immoral, obscene or fraudulent, either by making physical changes to it, or through its juxtaposition to accompanying text.

6.2 For the avoidance of doubt, the licence granted to you 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 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 You must observe and comply 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 from Authorised Platforms.

6.4 AAP's ability to make available for download from the Multimedia 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 Multimedia 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.

6.5 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 Multimedia 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, “**Commercial Use**” means the sale or production or use of content for advertising or promotional or merchandising purposes, including:

- (a) photographs being used by a non-media organisation on a website or webpage, in a publication or via some other medium for any purpose other than publishing of news content on any technical platform including individual publications, web-pages, digital platforms or print media where that platform or medium is or will be genuinely and ordinarily used for the publication of news content;
  - (b) operating a statistics service; or
  - (c) photographs being used for or in any advertisements, promotional materials, for merchandise such as memorabilia, collector's cards, calendars, clothing, packaging or competitions.
- 6.6 Except where you are using the Licensed material for the purposes of reporting news, you are responsible for obtaining 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.
- 6.7 Licensed Material must be downloaded at full resolution. Screen copying is not permitted.

## 7. Registration

- 7.1 Before you are allowed to access the Multimedia 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 Multimedia Site.
- 7.2 You are responsible for all use of the Multimedia 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 Multimedia Site on your behalf, nor allow any part of the Multimedia Site to be made available to persons who have not been registered by AAP as users of the Multimedia 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 [aap.io/legal](http://aap.io/legal).
- 7.4 You acknowledge that you have read our collection statement which may be found in our Privacy Policy here: [aap.io/legal](http://aap.io/legal).

## 8. Conditions of use of Multimedia Site

- 8.1 When accessing and using the Multimedia 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, EPA, PA, Mary Evans, Moodboard, Graylock, Picture Perfect, Universal Images Group, The Advertising Archives, The Noise Network, Newzulu or any other Information Source or Licensed Material owner.

## 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) or as otherwise notified in an Online Purchase. For the avoidance of doubt, there is no charge for use of Comping Images provided that such use is in accordance with clause 4.
- 9.2 Except where payment is subject to an Online Purchase for which immediate payment is required, 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 Multimedia 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 You must notify AAP within seven (7) days of the date of any download of any high resolution image or any other Multimedia by providing either a copy of the publication containing the Multimedia or a written statement describing the intended publication of the Multimedia (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 In the event of any subsequent publication or use outside of the original licence 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:
- pay the tax in accordance with applicable law;
  - use its best endeavours to obtain an official receipt from the appropriate governmental agency;
  - deliver a copy of the official receipt to AAP no more than twenty (20) days after receiving it; and
  - pay to AAP such additional amount as will ensure that AAP is in no worse position than if no deduction had been required by law.
- 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 or graphic, you must correctly identify each of AAP, AP, EPA, PA, Mary Evans, Moodboard, Graylock, Picture Perfect, Universal Images Group, The Advertising Archives, The Noise Network, Newzulu 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 and AP relating to use of Licensed Material under clause 5 – Digital Platforms):
- in the case of AAP Images, in the form “AAP Image/[Photographer]”;
  - in the case of AP Images, in the form of “AP via AAP [Photographer]”;
  - in the case of EPA Images, in the form “©[year] EPA [name of photographer]”;
  - in the case of PA Images, in the form “PA/AAP/[Photographer]”;
  - in the case of Mary Evans images, in the form “Mary Evans/AAP/[Photographer]”;
  - in the case of Moodboard images, in the form “Moodboard/AAP/[Photographer]”;
  - in the case of The Noise Network images, in the form “AAP/Noise11/[name of photographer]”;

- in the case of Graylock Images, “[name of photographer]/AAP Image”;
- in the case of Reuters for for graphics, include the word “REUTERS” immediately below the image and, as practicable with respect to caption space constraints - the byline.
- in the case of Universal Images Limited, in the form “AAP Image/UIG/[Contributor]”.
- in the case of the Advertising Archives images, in the form “AAP Image/The Advertising Archives”
- in the case of Newzulu images, in the form “AAP Image/Newzulu/[Photographer]”
- in the case of Sport the Library images, in the form “[Photographer]/Sport the Library/AAP Image”
- in the case of Invision images, in the form “©[Photographer]/Invision/AP/AAP”
- 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 accreditation, copyright and disclaimer notice requirements in respect of digital use of Licensed Material under clause 5, as set out in the [Digital Terms](#).

## 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 Multimedia Site and no title or rights of ownership, copyright or other intellectual property in the Licensed Material or the Multimedia Site is transferred to you through your use of the Multimedia Site.
- 12.2 You must not deal with any rights or other property in any Licensed Material or the Multimedia Site, other than as expressly permitted under clauses 3, 4 and 5, or as otherwise expressly permitted under an Other Agreement.

## 13. Liability

- 13.1 All express or implied representations, conditions, warranties, guarantees and terms relating to the Licensed Material, the Multimedia 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 Multimedia Site, or any inaccuracies, omissions or actionable matter in the Multimedia 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 Subject to clause 14.4, and to the extent permitted by law, the total liability in all circumstances of AAP and any Information Source to Licensee in contract, tort (including negligence) or otherwise for any loss or damage is limited to the Monthly Charges paid by Licensee to AAP under clause 11 for twelve months immediately preceding the month during which the breach occurs or liability arises or the sum of AUD\$250,000.00, whichever is the lesser amount. This limitation of liability does not apply to AAP's indemnity under clause 9.2.
- 13.7 A party's liability as determined under clause 13.6 shall be proportionately reduced to the extent that the other party or its officers, employees, agents and contractors contribute to any loss, damage, expenses, liabilities and costs (including legal costs).
- 13.8 Where any claims or legal actions of a third party (including but not limited to any claim for defamation, breach of privacy or injurious falsehood) are made or commenced against Licensee by any third party howsoever arising, Licensee hereby,
- (a) acknowledges and agrees that AAP shall have no liability in respect of any such claims or legal actions or any expenses or damages suffered or incurred by Licensee as a result of such claims or legal actions being commenced; and
  - (b) waives and releases AAP from any liability in respect of such claims or legal actions.
- 13.9 Licensee hereby acknowledges that whilst AAP will apply appropriate professional standards to verify, identify and/or correct errors or retract allegedly defamatory material or identify any third party intellectual property rights in text, images and videos contained in the AAP Service AAP is not able to provide a guarantee that the material is free of such errors or material. Licensee hereby acknowledges that whilst AAP will apply appropriate professional standards to verify, identify and/or correct errors or retract allegedly defamatory material or identify any third party intellectual property rights in text, images and videos contained in the AAP Service AAP is not

able to provide a guarantee that the material is free of such errors or material.

## 14. Indemnity

- 14.1 Licensee warrants to AAP that:
- (a) Licensee has authority to enter into this Agreement;
  - (b) the signatory to this Agreement is authorised to enter into and execute this Agreement on Licensee's behalf;
  - (c) it will not use or distribute any part of the AAP Service in such a manner so as to harm or reduce the legal protection accorded to the copyright and all other rights of AAP and it will not use or distribute any part of the AAP Service in transmissions or other publications which are reasonably likely to be obscene, defamatory, or offensive to any person or classes of person;
  - (d) the primary and intended market for the Authorised Platform is the Territory; and
  - (e) Licensee will use the text or Multimedia contained in the AAP Service on the Authorised Platform(s) and with the Authorised Brand only and solely as permitted by this Agreement and, where applicable, for Online Purchases strictly only for the uses permitted in the Online Purchase tiles clicked on and paid for by Licensee
- 14.2 Licensee indemnifies AAP and its Information Sources against any loss, cost, expense, claim, liability, action, proceeding, damages or demand (including reasonable legal costs) that AAP or the Information Source suffers or incurs as a result of a breach by Licensee or any User's breach of the terms of this Agreement and the warranties in clause 14.1. Licensee agrees that this clause 14.2 is enforceable by and to
- 14.3 AAP warrants to Licensee that:
- (a) AAP has authority to enter into this Agreement;
  - (b) the signatory to this Agreement is authorised to enter into and execute this Agreement on AAP's behalf; and
  - (c) the text or Multimedia in the AAP Service, if used as permitted by this Agreement will not infringe the copyright or any other intellectual property rights of any third party.
- 14.4 AAP indemnifies Licensee against any liabilities, losses, expenses, damages or other costs (including reasonable legal costs) that Licensee suffers or incurs as a result of a breach by AAP of clause 14.5(3) provided that:
- (a) the relevant claim does not arise from any modification to text or Multimedia from the AAP Service made by Licensee or any person receiving text or Multimedia from the AAP Service through Licensee other than as permitted by this Agreement;
  - (b) the relevant claim does not arise as a result of a combination of text or Multimedia from the AAP Service with other text or Multimedia not from the AAP Service;
  - (c) the relevant claim does not concern text or Multimedia that AAP notified Licensee should not be used;
  - (d) the relevant claim does not arise as a result of a breach by Licensee of the Platform Restrictions;
  - (e) if Licensee wishes AAP's indemnity to apply to a claim or legal action of a third party made or

commenced against Licensee then Licensee must promptly notify AAP that a claim or legal action has been made or commenced against Licensee in respect of which indemnity may be sought from AAP;

- (f) Licensee makes no admissions of liability in relation to the claim;
- (g) Licensee provides AAP with the opportunity to conduct settlement negotiations and/or the applicable proceedings in the place of Licensee (AAP is required to have due regard to the input and interests of Licensee);
- (h) Licensee provides AAP with all reasonable assistance requested by AAP; and
- (i) this indemnification will not apply when liabilities, losses, expenses, damages or other costs are caused or contributed to by the negligence or wilful default of the Licensee however caused or otherwise.

## 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 Multimedia Site will be cancelled and you are no longer authorised to access the Multimedia Site. From the date of termination, all licenses granted 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

In this Agreement:

- 17.1 **Authorised Platform** has the meaning given in clause 2.2.

- 17.2 **AP** means Associated Press
- 17.3 **Advertising Archives** means Advertising Archive Ltd.
- 17.4 **Broadcast Platform** has the meaning given in the Broadcast Terms.
- 17.5 **Caricature** means a portrait that exaggerates or distorts the essence of a person or editorial purposes.
- 17.6 **Cartoon** means an illustration or series of illustrations with or without wording created for editorial purposes.
- 17.7 **Comping** 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.
- 17.8 **Digital Platform** has the meaning in the Digital Terms.
- 17.9 **Digital Terms** means the digital terms attached to this Agreement and which form part of this Agreement.
- 17.10 **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.
- 17.11 **EPA** means European Pressphoto Agency.
- 17.12 **Fee(s)** has the meaning set out in clause 9.1.
- 17.13 **Graylock** means Graylock.com Inc.
- 17.14 **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.
- 17.15 **Information Source** means a supplier of Licensed Material to AAP.
- 17.16 **Invision** means Invision Media Entertainment LLC
- 17.17 **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 Multimedia Site. Licensed Material may also be referred to in these terms from time to time as 'Multimedia'.
- 17.18 **Mary Evans** means Mary Evans Picture Library.
- 17.19 **Moodboard** means Mike Watson Images Ltd t/as Moodboard
- 17.20 **Multimedia Site** means the multimedia library located at photos.aap.com.au
- 17.21 **Newzulu** means Newzulu Limited.
- 17.22 **Noise Network** means the Noise Network Pty Ltd
- 17.23 **PA** means Press Association.
- 17.24 **Reuters** means Thomson Reuters (Markets) Australia Pty Ltd.
- 17.25 **Sport the Library** means Sport the Library Pty Limited
- 17.26 **Territory** means Australia or as otherwise authorised in writing by AAP.
- 17.27 **Universal Images Group** means Universal Image Limited.
- 17.28 **User** means a person who accesses the Authorised Platforms.
- 17.29 **Video** means a sequence of moving visual images and accompanying audio.

## Digital Terms

### 1. Definitions and Interpretation

1.1 In these Digital Terms, the following terms shall also have the following meanings:

- (a) **Application or App** means one or more software programs developed or owned by Licensee, solely using the Authorised Brand, for specific use with a mobile phone or Tablet.
- (b) **App Platform** means the named app approved by AAP as a Digital Platform via which Licensee may display the Licensed Material.
- (c) **Digital Platform** Digital Platform means any or all of the named Website Platforms, Mobile Web Platforms, App Platforms, Social Media Platforms, Plasma Platforms, RSS Feed Platform, Email Platform (or any other digital platform agreed to from time to time) for which Licensee has obtained prior written consent from AAP to display the Licensed Material via.
- (d) **Mobile Web Platform** means the named mobile website approved by AAP as a Digital Platform via which Licensee may display the Licensed Material.
- (e) **Mobile Website** means a website designed principally for viewing on mobile devices such as cellular telephones and Tablets.
- (f) **Plasma Platform** means plasma screens approved by AAP as a Digital Platform via which Licensee may display the Licensed Material
- (g) **Platform Restrictions** has the meaning given in section 2.1.
- (h) **RSS Feed** means the delivery of limited extracts of the Licensed Material to Users in a format generally known as Really Simple Syndication (RSS), to the extent that such extracts link back to Licensee's Website Platform.
- (i) **RSS Feed Platform** the platform defined as the RSS feed approved by AAP as a Digital Platform via which Licensee may display the Licensed Material
- (j) **Social Media** means digital sites that allow the creation and exchange of user-generated content and which are operated or owned by a third party (such as Facebook, Twitter or Google plus) but which allow a user to create their home page.
- (k) **Social Media Home Page** means a page on an approved Social Media Platform which is solely branded using the Authorised Brand.
- (l) **Social Media Platform** means a named social media site approved by AAP as a Digital Platform via which the Licensee may display the Licensed Material.
- (m) **Tablet** means a tablet shaped device with colour displays and running lightweight operating systems (such as iOS and Android). It does not include e-readers or portable computers running full operating systems such as Windows.
- (n) **URL** means Uniform Resource Locator.
- (o) **Website Platform** means named website approved by AAP as a Digital Platform via which Licensee may display the Licensed Material.
- (p) **YouTube** means the video sharing site with such name operated by Google Inc.

1.2 These Digital Terms apply only to use of multimedia from the Licensed Material on Digital Platforms.

### 2. Supply and use of Licensed Materials

2.1 AAP licenses the Licensed Material on a non-exclusive, non-transferable basis to Licensee only for the following uses, and only where such platform is a Digital Platform for which AAP has given prior consent (**Platform Restrictions**):

- (a) for the Website Platform or the Mobile Web Platform, for display to and storage in computer readable form to enable viewing by a User accessing a URL provided that such viewing is solely for personal, non-commercial use by the User;
- (b) for the App Platform, for transmission to and display on User's mobile phone or Tablet (as the case may be provided that such viewing is solely for the personal, non-commercial use by the User;
- (c) subject to section 2.2 below, for the Social Media Platform;
  - (1) for images, display a low resolution thumbnail image and headline marked as being sourced from "AAP" only, on the Social Media Home Page provided that the image and any headline link directly back to the main image on Licensee's Website and that such viewing is solely for personal, non-commercial use by the User;
  - (2) for video, display a screen shot of the video and headline, marked as being sourced from "AAP" only on the Social Media Home Page provided that the screen shot and any headline link directly back to the Video on Licensee's Website and that such viewing is solely for personal, non-commercial use by the User.
  - (3) for the RSS Feed Platform, for transmission and display as part of that feed to enable viewing by the User, provided that the links in the RSS Feed link back to Licensee's Website and that such viewing is solely for the personal, non-commercial use by the User;
  - (4) for the Plasma Platform, for transmission to and display on Plasma or LCD screens in Australia, provided that such transmission and display are solely for personal, non-commercial use by the User;
  - (5) for the Email Platform, for emailing to Licensee's customers (Users) solely for personal, non-commercial use of User and subject to the following terms:
    - (i) the e-newsletter may only be emailed to subscription Users only who opt in to take receive the e-newsletter (no spamming);
    - (ii) the e-newsletter will contain an express prohibition on redistribution and commercial use by the User;
    - (iii) Licensee must not enter into any agreement to provide items from the Licensed Material to libraries or media monitors, or which allows clipping in any form;
    - (iv) Licensee may not stream news to Users or create a service that in any way replicates a breaking news streaming service.

2.2 If any changes are made to the terms and conditions of use of any Social Media Platform which are not acceptable to AAP (in its reasonable opinion), AAP may immediately cancel Licensee's right to use on the Social Media Platform or any Social Media Home Page any text or multimedia included in the Licensed Material. In these circumstances Licensee must immediately cease using text and multimedia included in the Licensed Material on the Social Media



Platform or any Social Media Home Page, and must delete from such page the Licensed Material which has been included on the page.

2.3 The licence in section 2.1 does not include a right to conduct any of the following in relation to text or multimedia derived from the Licensed Material (**Prohibited Uses**) whether in the form in which they are displayed on the Digital Platform or otherwise:

- (a) framing the Licensed Material (except for framing by Licensee within its authorised Digital Platforms);
  - (b) using the Licensed Material on any other platform that is not an authorised Digital Platform;
  - (c) using any other functionality or application which extends or replaces the prohibited uses specified in sections 2.3(a) or 2.3(b),
- except as expressly permitted in this Agreement.

2.4 Notwithstanding section 2.3 above but subject to all other terms of this Agreement, Licensee may allow Users to utilise Social Media features in connection with the Licensed Material such as 'share', 'email', 'tagging', 'like pages' provided that this ability is limited solely to the transmission of the headline and first line of the story, low resolution thumbnail image with headline or video screenshot with headline, as the case may be, and that the headlines, image or video screen shot link directly back to the main article, image or video on Licensee's Website which must be a Digital Platform for which AAP has given prior consent and that such display is solely for personal, non-commercial use by the User. AAP may, in its absolute discretion and without any penalty, immediately terminate the right contained in this section 2.4 at any time.

2.5 For the avoidance of doubt, Licensee is not obliged to implement active measures to prevent the Prohibited Uses. Licensee's only obligations in regard to the Prohibited Uses are:

- (a) to include in its User Agreements an obligation on the Users not to engage in the Prohibited Uses;
- (b) to report all material incidents involving the Prohibited Uses within Licensee's actual knowledge to AAP;
- (c) not to encourage third parties to engage in the Prohibited Uses; and
- (d) to provide reasonable assistance to AAP to stop any Prohibited Uses by the Users or others.

2.6 Licensee must:

- (a) ensure and procure that all distribution of multimedia from the Licensed Material is on terms that Licensee's Users observe all restrictions imposed on multimedia from the Licensed Material set out in this Agreement;
- (b) promptly notify AAP on becoming aware of any material breach by a User of any of the restrictions;
- (c) provide reasonable assistance to AAP to stop any Users or others acting in a manner contrary to section 2.6(1).

### 3. Accreditation, copyright and disclaimer notices

Licensee must comply with the following accreditation, copyright and disclaimer notice requirements.

#### 3.1 Websites and Mobile Website Platform

- (a) AAP
  - (1) for images, include the word "AAP" immediately below the image and as

practicable with respect to caption space constraints - the photographer's byline;

- (2) for video, retain the AAP visual presentation on the last frame of the video;
- (3) for all Licensed Material include a copyright notice in the form '©[year] AAP' with a hypertext link from the copyright notice to the detailed notice and disclaimer set out below:

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- (b) AP

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 detailed notice and disclaimer set out below:

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- (1) for images, include the word "AP" immediately below the image and, as practicable with respect to caption space constraints - the photographer's byline;
- (2) for graphics, include a visual representation of the "AP" logo on graphic, or immediately below;
- (3) for audio, include an on-screen visual representation of "AP audio"; and
- (4) for video, include a visual representation of the "AP" logo on each frame of AAP video, or immediately below, the words "Associated Press".

#### 3.2 App Platform

Where the authorised Digital Platform is the App Platform after multimedia from the Licensed Material supplied by:

- (a) AAP, include the word "AAP" and, for images, the photographers byline;
- (b) AP, include the words "©[year] The Associated Press" and, for images, the photographers byline;
- (c) [Deliberately deleted]
- (d) subject to section 3.7 below, in respect of items from any other Information Source, "[Source]/AAP".

(e) include the copyright and disclaimer notices set out in section 3.1 above in the terms and conditions of use of the App (whether contained in the App or a link or otherwise).

3.3 Social Media Platform

Where the authorised Digital Platform is a Social Media Platform, Licensee must comply with section 3.1 above by including the relevant text where the Licensed Material appears on Licensee's Website which is an authorised Digital Platform under this Agreement.

3.4 RSS Feed Platform

Where the authorised Digital Platform is an RSS Feed Platform Licensee must comply with section 3.1 above by including the relevant text where the Licensed Material appears on Licensee's Website which is an authorised Digital Platform under this Agreement.

3.5 Plasma Platform

Where the authorised Digital Platform is the Plasma Platform after multimedia from the Licensed Material supplied by:

- (a) AAP, include a copyright and disclaimer notice in the form '©[year]AAP';
- (b) AP, include a copyright and disclaimer notice in the form 'AP' or 'by the Associated Press';
- (c) [Deliberately deleted]
- (d) subject to section 3.7 below, in respect of items from any other Information Source, "[Source]/AAP".

3.6 Email Platform

Where the authorised Digital Platform is the Email Platform after text or images with accreditation in the form:

- (a) "©[year]AAP where the information source is AAP and, for images, the photographers byline;
- (b) "©[year] The Associated Press" where the information source is AP and, for images, the photographers byline;
- (c) [Deliberately deleted];
- (d) subject to section 3.7 below, in respect of items from any other Information Source, "[Source]/AAP".

3.7 If AAP indicates at the time of transmission that multimedia from the Licensed Material is sourced by AAP from any other Information Source, Licensee must after the multimedia, display the copyright and disclaimer notice required by that Information Source as notified by AAP in relation to the multimedia.

3.8 AAP may give Licensee written notice to rectify Licensee's failure to display accreditation, copyright and disclaimer notices in accordance with this clause 3. Licensee must rectify such failure by the end of the Business Day following receipt of that written notice.

3.9 AAP may request reasonable changes to the requirements set out in this section 3 at any time by notice in writing to Licensee. Licensee must comply with such notice within 30 days of receipt

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## Broadcast Terms (TV)

### 1. Definitions and Interpretation

1.1 In these Broadcast Terms, terms will have the same meaning as that set out in the General Terms. The following terms shall also have the following meanings:

- (a) **Authorised Broadcaster** means the television station(s) which is/are permitted to transmit news broadcasts which incorporate items from the Multimedia Site as approved in writing by AAP prior to customer accessing and downloading from the Multimedia Site.
- (b) **Broadcast Platform(s)** means display of audio-visual video via traditional broadcast methods namely analogue and digital television.

1.2 Subject to section 2.3 herein, these Broadcast Terms apply only to use of Multimedia from the AAP Multimedia Site on a Broadcast Platform.

### 2. Supply and use of AAP Service

2.1 You must seek consent first from AAP for use of Licensed Material on a Broadcast Platform.

2.2 AAP grants to Licensee a non-exclusive, non-transferable right and licence during the Term only to **(Platform Restrictions)**:

- (a) access and use items from the AAP Multimedia Site for the purpose of producing news bulletins in video form (**Bulletins**) and for the creation of current affairs programs (**Current Affairs Programs**);
- (b) broadcast Bulletins and Current Affairs Programs by the Authorised Broadcasters in video form direct to the viewers of Authorised Broadcaster(s); and
- (c) any other purpose as granted as agreed to in writing pursuant an executed agreement between you and AAP,

and *not otherwise* for dissemination in video, audio or text form to, or distribution via, any other television station, via electronic databases or online distribution via the internet (including social media) or similar outlets, whether now existing or to be developed in the future, or storage, copying, up or downloading, posting, transmission, republication, redistribution, redissemination, publication, broadcast, communication or exploitation (whether commercially or otherwise) by any person in any form by any method whatsoever, unless otherwise authorised by AAP in writing.

### 2.3 Broadcast via Digital Platforms

- (a) Provided that you have been granted written permission by AAP to broadcast Bulletins and Current Affairs Programs via certain Digital Platforms then the [Digital Terms](#) will apply to your broadcast of Bulletins and Current Affairs Programming incorporating AAP Multimedia on Digital Platforms. For the sake of clarity, you may not display text or images licensed for broadcast use directly via those digital platforms.

### 2.4 Accreditation

- (a) If a Bulletin or set of Bulletins was compiled using the Service and contains an acknowledgment of sources, AAP's preferred form of acknowledgment of AAP and its Information Sources is by Licensee including in the broadcast or the rolling credits words to the effect: "compiled from/with the assistance of the resources of AAP".
- (b) Where it is impracticable for Licensee to comply with these accreditation requirements, Licensee may acknowledge AAP and its Information Sources on Licensee's associated websites.

2.5 AAP may request reasonable changes to the requirements set out in this section 3 at any time by notice in writing to Licensee. Licensee must comply with such notice within 30 days of receipt.

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