

# Discover Aboriginal Experiences Website Terms of Use

*Last Updated: 8 August 2022*

- 1.1 These Discover Aboriginal Experiences Website Terms of Use (**Terms**) create a contract between you and Tourism Australia (ABN 996 575 487 12) of Level 29, 420 George Street, Sydney, New South Wales 2000 Australia (**TA, us, we or our**). Please read the terms carefully.
- 1.2 By accessing and using the Discover Aboriginal Experiences website [www.discoveraboriginalexperiences.com](http://www.discoveraboriginalexperiences.com) (including the Trade and Media Portal) and the content contained therein (the **Site**) or any other software, services or any applications made available by us, you agree to be bound by these Terms.
- 1.3 If you are accessing the Site or Visual Assets on behalf of any entity, you represent and warrant that you are authorised to accept these Terms on such entity's behalf, and that such entity agrees to indemnify TA for violations of these Terms.
- 1.4 We may, on notice to you, change these Terms. Your continued use of the Site and/or Visual Assets following any changes indicates your acceptance of the changes. These Terms do not modify, restrict or exclude any additional rights you may have under applicable laws that cannot be so modified, restricted or excluded.

## 2. Definitions and interpretation

- 2.1 In these Terms, unless the context otherwise requires:

**Indigenous Talent** means people of Australian Aboriginal or Torres Strait Islander descent featured in Visual Assets.

**Intellectual Property Rights** means all present and future rights conferred by statute, common law or equity in or in relation to any copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, confidential information, inventions and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registered, registrable or patentable.

**Logos** means all versions of each Operator's logo (including icons, pictures and words used in such logos) available for download from the Trade and Media Portal.

**Operator** means each member of the Discover Aboriginal Experiences collective, as listed on the Site.

**Permitted Purpose** has the meaning given to that term in clause 4.2.

**Site** has the meaning given to that term in clause 1.2.

**Terms** has the meaning given to that term in clause 1.1.

**Trade and Media Portal** means the password protected, web-based interface on the Site whereby you can access zip files of Visual Assets related to Operators and/or 'Discover Aboriginal Experiences'.

**Visual Assets** means still and moving imagery, videos, maps, Logos, artworks, graphics and materials.

- 2.2 In these Terms, unless the context otherwise requires:

- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (d) references to statutes include all statutes amending, consolidating or relating such statutes;
- (e) \$ means the lawful currency of Australia;
- (f) any reference to a party to this document includes its successors and permitted assigns; and
- (g) the use of the word "includes" or "including" is not to be taken as limiting the meaning of the words preceding it.

### **3. Trade and Media Portal**

3.1 Where TA provides you with the password to the Trade and Media Portal, you are able to access the Trade and Media Portal, and download and use the Visual Assets, subject to your compliance with these Terms.

3.2 You are responsible for:

- (a) maintaining the security and confidentiality of the password to the Trade and Media Portal;
- (b) notifying TA immediately of any unauthorised use of the password or Trade and Media Portal; and
- (c) protecting and ensuring the security of Visual Assets and taking appropriate measures to protect Visual Assets from accidental, unlawful or unauthorised access, use or disclosure.

3.3 You agree and acknowledge that any information you provide TA will be true, accurate, current and complete.

### **4. Intellectual Property Rights and licence**

4.1 TA owns, or is the licensee of, the Intellectual Property Rights in the content available through the Trade and Media Portal, including the Visual Assets. These Terms do not transfer any Intellectual Property Rights from TA to you or to any third party.

4.2 Subject to your compliance with these Terms, TA grants you an 18 month (commencing on the date of download), non-exclusive, non-transferable, revocable licence to use the Visual Assets for the sole purpose of positively promoting:

- (a) travel;
- (b) Tourism;
- (c) the Operator; and/or
- (d) the Discover Aboriginal Experiences Program,

or for any other purpose approved by TA in its sole discretion (the **Permitted Purpose**).

- 4.3 Upon the expiry of the 18 month licence term, you must cease using the Visual Assets. If you wish to continue to use the applicable Visual Assets you must visit the Trade and Media Portal and may download such Visual Assets as are then available.

## **5. Licence limitations**

The licence granted to you pursuant to clause 4 is subject to you ensuring that:

- (a) the applicable Operator is credited in all use of the corresponding Visual Assets;
- (b) the Visual Assets are used solely for the Permitted Purpose;
- (c) you do not modify or alter the Visual Assets in any way not expressly permitted by these Terms;
- (d) you do not distribute the Visual Assets to third parties without TA's prior written consent;
- (e) you do not reproduce, loan, sell or licence the Visual Assets or use the Visual Assets to produce materials for sale without TA's prior written consent; and
- (f) you maintain at all times, in TA's view, a reputation of high standing, within the tourism industry and other related industries.

## **6. Acknowledgements**

You acknowledge that:

- (a) TA may in its absolute discretion, and without notice, instruct you to cease using and/or permanently remove Visual Assets, including removal from your digital sites and physical materials; and
- (b) TA does not make any representation or warranty with respect to the use of names, likenesses, trademarks, logos, uniforms, buildings, signs, registered or copyrighted designs, or works of art depicted in the Visual Assets.

## **7. Conditions of use**

### ***Presentation requirements***

- 7.1 You may, if necessary, crop Visual Assets.
- 7.2 You must limit all Visual Elements displayed on a website to a maximum of 72 dots per inch (DPI).

### ***Incorporation into artwork***

- 7.3 You must ensure, where you incorporate Visual Assets into any artwork or other material that:
- (a) the final artwork and other material is of a professional standard;
  - (b) the Visual Assets are not demeaned or disparaged in any way by the incorporation; and
  - (c) the Visual Assets are used in their entirety (subject to clause 7.1) and in their original colours.

### ***Attribution requirements***

- 7.4 When using or presenting Visual Assets in any medium, you must:
- (a) attribute the Operator, and the copyright owner (if applicable) as the source and owner of the Visual Asset in a reasonably prominent location;
  - (b) attribute the photographer if the photographer is referenced in the Visual Asset file title; and
  - (c) use reasonable endeavours to credit Discover Aboriginal Experiences.

***Context requirements***

- 7.5 You must at all times, when using or presenting the Visual Assets in any medium ensure:
- (a) Visual Assets are captioned appropriately and accurately; and
  - (b) Visual Assets are used in relevant context i.e. imagery is appropriate and relevant to the body of text where it is placed. For example, an image from one Operator cannot be used to promote another Operator.

**8. Use of specific Visual Assets**

***Uluru-Kata Tjuta National Park***

- 8.1 Visual Assets featuring Uluru-Kata Tjuta National Park have been approved for use related to tourism only. For any queries or further information please contact TA.

***Indigenous Talent***

- 8.2 Visual Assets may feature Indigenous Talent. In the event of the Indigenous Talent's death, their family can contact TA to arrange removal of the Indigenous Talent's image from Visual Assets and the Trade and Media Portal. This means that TA may, in its absolute discretion, and without notice, instruct you to permanently remove any Visual Assets featuring the Indigenous Talent from your material, regardless of whether the material is in electronic or hardcopy format. Please refer to <https://www.indigenous.gov.au/stories/cultural-protocols-relating-to-deaths-in-indigenous-communities/> for more information.

**9. Data**

- 9.1 You acknowledge and agree that TA may:
- (a) collect aggregated information about your activities, and details of how you and your users use the Site, the types of content you and your users engage with and/or the frequency and duration of activities;
  - (b) collect metadata, which is technical data that can describe the details of how content was collected and how that content is formatted; and
  - (c) automatically store in log files, including IP addresses, browser type and language, Internet service provider (ISP), referring and exit websites and applications, operating system,

date/time stamp, and clickstream data to analyse trends, to administer the Site, to generally improve the Site and for marketing.

- 9.2 Use of the website is subject to our Privacy Policy, which is available at <https://www.australia.com/en/privacy-policy.html>.

## **10. Indemnity**

- 10.1 You indemnify and hold TA, its directors, officers, employees, affiliates, agents, contractors, and licensors harmless with respect to any claims arising out of your and/or your personnel's breach of these Terms and your and/or your personnel's use or misuse of the Visual Assets

## **11. Warranties and Liabilities**

- 11.1 To the extent permitted by law:

- (a) the Site and all Visual Assets are (except as expressly stated by TA) provided "as is" and "as available" for you without warranties of any kind, either express or implied, including all implied warranties of merchantability, fitness for a particular purpose, title, and non-infringement; and
- (b) TA, its directors, officers, employees, affiliates, agents, contractors, or licensors will not be liable for any direct, indirect, incidental, punitive, special, or consequential damages arising from your use of any of the content available via the Site or for any other claim related to your use of the Visual Assets, including any errors or omissions in any content, or any loss or damage of any kind incurred as a result of the use of any content posted, transmitted, or otherwise made available via the Site.

- 11.2 You acknowledge that the use of the Site is at your sole risk. You are responsible for backing up your own system, including any Visual Assets acquired or downloaded through the Site.

- 11.3 TA does not guarantee, represent, or warrant that your use of the Site will be uninterrupted or error-free, free from loss, corruption, attack, viruses, interference, hacking, or other security intrusion.

## **12. Maintenance**

- 12.1 We may at any time and without notice, modify, suspend or terminate the operation of, or access to the Site, or any part of, for any reason, to interrupt the operation of the Trade and Media Portal, or any part of, as necessary to perform maintenance, error correction or other changes.

## **13. Links**

### ***Links to the Trade and Media Portal***

- 13.1 You may not link to the Trade and Media Portal without our express written permission.

### ***Links within the Site***

- 13.3 TA makes no claim or representation regarding, and accepts no responsibility for, directly or indirectly, the quality, content, nature or reliability of third-party websites accessible by hyperlink from the Site. TA provides these links to you only as a convenience, and the inclusion of any link does not imply affiliation, endorsement or adoption by TA of any site or any information contained therein. When you leave the Site you should be aware that TA's terms and policies no longer

govern. You should review the applicable terms and policies of any site to which you navigate from the Site.

- 13.4 Your participation, correspondence or business dealings with any third party found on or through the Site, is at your sole risk and TA is not responsible or liable for any loss or damage incurred as a result.

#### **14. Termination**

- 14.1 If you breach these Terms, TA may terminate immediately on notice.

- 14.2 Upon termination of this agreement:

- (a) the licence and rights granted to you immediately ceases;
- (b) you must cease using all copies Visual Assets and cease accessing the Trade and Media Portal; and
- (c) you must delete or destroy all copies of Visual Assets held by it in any form, unless otherwise agreed by TA.

#### **15. General**

- 15.1 A notice, consent or other communication under these Terms is only effective if it is in writing, signed by or on behalf of the party giving it and it is received in full and legible form at the addressee's address or email address.
- 15.2 These Terms constitute the entire agreement between the parties, with all other agreements or understandings previously existing between you and us hereby replaced.
- 15.3 Any warranty, indemnity, or obligation of confidentiality in these Terms will survive termination. Any other term which by its nature is intended to survive termination of these Terms survives termination of these Terms.
- 15.4 These Terms are governed by the laws of New South Wales, Australia. You agree to submit to the non-exclusive jurisdiction of the courts of the State of New South Wales to resolve any dispute or claim arising from these Terms.
- 15.5 If any term or provision of these Terms are held by a court to be illegal, invalid or unenforceable under the applicable law, that term or provision will be severed from these Terms and the remaining terms and conditions will be unaffected.
- 15.6 A failure to enforce any right or provisions in these Terms will not constitute a waiver of such or any other provision.
- 15.7 A party may not assign or otherwise deal with this agreement or any right under this agreement without the prior written consent of the other party.
- 15.8 If a court determines that a word, phrase, sentence, paragraph or provision in this arrangement is unenforceable, illegal or void then it shall be severed and the other provisions of this arrangement shall remain operative.