


Schedule 4 – NTAf sub-licence agreement

Part A– Your details

The capitalised terms used in this agreement have the meaning given to them in the table below or as set out in clause 10.

Item number	Description	Clause Reference	Details
General- Sub-licence details			
1.	Trade Mark	10	
2.	Goods and/or Services	2 and 14	The TQUAL mark can be used by the sub licensee as an accredited operator of ATAP for the purposes of marketing its products that meet the core criteria of the ATAP Program.
3.	Territory	2.1 and 14	Western Australia
4.	Reporting	2.2	You must complete annual renewals/reviews as per instructions from your state Program Manager.

Part B – Sub-licence standard terms and conditions

1. YOUR RIGHTS TO USE THE TRADE MARKS

- (a) ATAP grants you a non-exclusive, non-transferable, royalty-free, licence fee free licence to use the Trade Marks within the Territory during the Term, but only:
- (i) in relation to the Goods and/or Services; and
 - (ii) in accordance with the National Tourism Accreditation Framework Visual Identity Guidelines, including :
 - (A) ensuring that reproductions of the Trade Marks meet the minimum quality and size requirements; and
 - (B) using the phrase TMTrade Mark of the Commonwealth of Australia' together with the Trade Marks where possible.
- (b) You acknowledge and agree that the Commonwealth owns the Trade Marks (including any goodwill that may be created from your use of the Trade Marks) and that your only rights to use the Trade Marks are those specified in this agreement.

2. YOUR OBLIGATIONS

2.1 General

You must comply with the terms of the Australian Tourism Accreditation Program.

2.2 Reporting

You must provide annual renewal/reviews to the Program Manager as per item 4 of Part A.

Schedule 4 – NTAF sub-licence agreement

2.3 Privacy

- (a) If you have access to any Personal Information in connection with this agreement, you agree to comply with all relevant privacy laws (including not using or disclosing that information in breach of the Information Privacy Principles under the *Privacy Act 1988*).
- (b) You must immediately notify the Program Manager if you become aware:
 - (i) of a breach or possible breach of the obligations contained in clause 2.3(a); or
 - (ii) of any action taken by the Privacy Commissioner under the Privacy Act that is relevant to this agreement.
- (c) You consent to the Program Manager disclosing information or data provided by you in connection with this agreement to the Commonwealth and for inclusion on the National Tourism Accreditation Framework and Australian Tourism Database Warehouse databases (and to such persons that administer and operate those databases). This information may be reproduced, adapted, modified or communicated for the purposes of administering the NTAF Database.

3. SUB-LICENSING

You must not sub-licence or allow another person to use the Trade Marks.

4. PROTECTION OF THE TRADE MARKS

4.1 General

You must not:

- (a) use the Trade Marks in a way that would harm the name, reputation or good standing of the Program Manager, Commonwealth or Tourism Australia or the value of the Trade Marks in any way;
- (b) contribute to any situation which brings (or may bring) the Commonwealth or Tourism Australia into disrepute, contempt, scandal or ridicule;
- (c) register or attempt to register:
 - (i) any part of the name or words forming part of the Trade Marks, or any words substantially identical with or deceptively similar to the Trade Marks, as part of a business, corporate or domain name;¹ or
 - (ii) any part of the Trade Marks or any slogan, mark, design or other representation that is substantially identical with or deceptively similar to the Trade Marks, as part of a trade mark or design;
- (d) hold yourself out as having any right to use the Trade Marks other than as expressly granted in this agreement or that you have authority to represent the Program Manager or the Commonwealth;
- (e) use any slogan, mark, design or other representation that is similar to or is capable of being confused with any part of the Trade Marks; or
- (f) use the Trade Marks other than in its complete form.

4.2 Infringement

- (a) You must notify the Program Manager of any actual or suspected infringement of the Trade Marks of which you become aware. If someone makes a claim against you that your use of the Trade Marks infringes their intellectual property, you agree to allow the Commonwealth to have complete control of the defence of that action and you must not agree to any settlement without the approval of the Commonwealth. You agree to co-operate and provide the assistance reasonably required by the Commonwealth in relation to the conduct of that defence.
- (b) If required by the Commonwealth, you agree to co-operate fully in any action instituted or defended by the Commonwealth in relation to the Trade Marks, including by providing requested information and materials, procuring evidence, and providing testimony as may be required in any such action.

¹ Reflects clause 4 of Tourism Australia's standard terms and conditions.

5. RECOVERY OF COSTS AND LIABILITY

5.1 Cost recovery

If the Program Manager or the Commonwealth incurs any loss due to claims made against them as a result of your use of the Trade Marks, you agree to pay for all costs (including full legal costs) and losses that the Program Manager or the Commonwealth incur.

5.2 Exclusion

Subject to any statutory provisions that cannot be excluded:

- (a) the Program Manager and the Commonwealth are not liable to you for any claims, losses, damages, costs or expenses of any nature whatsoever, however caused (including but not limited to negligence) relating to or arising out of use of the Trade Marks or this licence; and
- (b) there are no other terms, conditions or warranties implied into this agreement that are in addition to the written provisions contained in this agreement.

6. GOVERNMENT TAXES, DUTIES AND CHARGES

You must pay all taxes, duties (including stamp duty), charges, fees and other imposts of whatever kind (including any fine or penalty imposed in connection with them) that may be levied, assessed, charged or collected in connection with this agreement.

7. TERMINATION

7.1 Termination if the Master Licence Agreement is terminated

This agreement terminates with immediate effect on the expiry or termination of the Master Licence Agreement.

Note to clause 7.1: The Master Licence Agreement may be terminated by either the Commonwealth or the Program Manager for convenience or because of breach by the other party. The Commonwealth will terminate for convenience only if there is a decision by the Commonwealth at the relevant time to terminate, reduce or replace the NTAF.

7.2 Termination by the parties

Either party may, at any time, by providing 30 days written notice, terminate this agreement.

7.3 Termination for default

The Program Manager may terminate this agreement with immediate effect by giving you written notice if:

- (a) you breach:
 - (i) any provision of this agreement that is not capable of remedy (including clauses 4.1(a) or 4.1(b));
 - (ii) any provision of this agreement that is capable of remedy and you fail to remedy the breach within 30 days after receiving written notice requiring it to do so; or
 - (iii) in the reasonable opinion of the Program Manager you are the subject of a complaint of a very serious nature concerning the Accreditation Program;
- (b) you assign, or purport to assign, your rights under this agreement without prior written consent of the Program Manager;
- (c) there is any change in your direct or indirect beneficial ownership or control;
- (d) you dispose of the whole or part of your assets, operations or business other than in the ordinary course of business; or
- (e) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or other like person of the whole or part of your assets, operations or business.

7.4 Termination no prejudice to remedies

Termination of this agreement does not affect any accrued rights or remedies of either party.

Schedule 4 – NTAF sub-licence agreement

7.5 After termination

On expiry or termination of this agreement for any reason:

- (a) your rights in respect of the Trade Marks immediately cease; and
- (b) you must stop using the Trade Marks;
- (c) if so requested by the Commonwealth and at your cost, destroy or return to the Commonwealth all material bearing the Trade Marks that is in your possession or control;
- (d) take all available steps to minimise loss resulting from that termination; and
- (e) clauses 1(b) (interest in Trade Marks), 2.3 (Privacy), 6 (Government Taxes, duties and charges), 7 (Termination), and 8 (Dispute resolution) will continue to bind the parties.

8. DISPUTE RESOLUTION

The parties must endeavour to resolve any dispute under this agreement amicably before they commence legal proceedings (except if they are urgent).

9. MISCELLANEOUS

9.1 Alterations

This agreement may be altered only in writing signed by each party.

9.2 Assignment

A party may only transfer its rights and obligations under this agreement with the prior written consent of the other party.

9.3 Costs

Each party must pay its own costs of negotiating, preparing and executing this agreement.

9.4 Entire agreement

This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

9.5 Severability

A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.

9.6 Waiver

Waiver of any provision or right under this agreement:

- (a) must be in writing signed by the party entitled to the benefit of that provision or right; and
- (b) is effective only to the extent set out in any written waiver.

9.7 Governing law and jurisdiction

This agreement is governed by the law of the Australian Capital Territory and each party submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

9.8 Announcements

Once this agreement has been executed, you may announce that you have been accredited through the Accreditation Program to use the Trademark.

10. DEFINITIONS

In this agreement, the following definitions apply:

Accreditation Program means the program run by the Program Manager which has been approved by the TQCA.

Business Day means a day (except Saturday and Sunday) on which banks are open for general banking business.

Commencement Date means the date specified in item **Error! Reference source not found.** of Part A.

Commonwealth means the Commonwealth of Australia.

Schedule 4 – NTAF sub-licence agreement

Goods and/or Services means the goods or services listed in item 2 of Part A.

Information Privacy Principles has the same meaning as in section 6 of the *Privacy Act 1988* (Cth).

Master Licence Agreement means the agreement between the Commonwealth and the Program Manager regarding the use of the Trade Marks.

National Tourism Accreditation Framework Visual Identity Guidelines means the guidelines relating to the manner of use of the Trade Marks supplied on CD ROM or supplied on PDF by email or fax to the Sub-Licensee.

Personal Information has the same meaning as in section 6 of the *Privacy Act 1988* (Cth).

Program Manager means the party specified in item 4 of Part A.

Term means the period commencing on the Commencement Date and ending on the date this agreement is terminated in accordance with clause 7.

Tourism Australia means Tourism Australia, the Australian government agency established under *Tourism Australia Act 2004* (Cth) ABN 99 657 548 712.

Tourism Quality Council of Australia or **TQCA** means the independent body appointed by the Commonwealth Minister for Tourism that sets the overall policy for the NTAF under the direction on the Minister for Tourism and the Tourism Ministers' Council.²

Trade Marks means the marks described and illustrated at item 1 of Part A.

you or your means the person specified in item 2 of Part A.

Background

- A The Commonwealth, in consultation with the Australian tourism industry, has established a policy framework known as the National Tourism Accreditation Framework (**NTAF**) to facilitate a quality customer experience across the Australian tourism industry.
- B The Program Manager has been granted a licence by the Commonwealth including the right to sub-licence the Trade Marks to accredited businesses within its Accreditation Program.
- C You are an accredited business within the Accreditation Program and the Program Manager has agreed to sub-licence the Trade Marks to you on the terms and conditions set out in this agreement.

² Reflects item 4 of the Guidelines for Applicants.