

## **OTHERSIDE**

### **USER AGREEMENT**

#### 1. Agreement

- (a) This website and its related services (together the “Services”) are provided by Scarlett Pictures Pty Limited (ABN 34 081 424 795) of Level 1, 3 Little Collins Street, Surry Hills in New South Wales 2010 (“we” or “us”).
- (b) This User Agreement and any additional terms and conditions on the website (including the *Protocols of The Otherside*) in relation to the Services (together the “Agreement”) apply in relation to your use of the Services.
- (c) We take your privacy seriously. So, your use of the Services is also governed by our *Privacy Policy*. Our *Privacy Policy* sets out how we may collect, store and disclose your personal information.
- (d) By accepting this Agreement and/or utilising the Services, you agree that:
  - (i) this Agreement forms a binding agreement between you and us; and
  - (ii) you consent to the terms of our *Privacy Policy*.

#### 2. Nature of the Services

- (a) The Services provide a forum for the publication and sharing of audio Australian Indigenous ghost stories in the spirit of oral storytelling traditions.
- (b) Our hope is that others will be inspired by your stories. If they are and wish to contact you about further developing your story (for example into a book or a film) we will put them in touch with you.
- (c) We suggest that you take note of our *Storytelling Tips* when recording and uploading your story.

#### 3. Access to the Services

- (a) You may use the Services as follows:
  - (i) by registering and uploading your story; and/or
  - (ii) without registering and enjoying other users’ stories.
- (b) You must provide and are responsible for all costs of all equipment, software and mobile or internet connectivity required to access the Services.
- (c) You must not:
  - (i) use any false information, including, a false identity if you register;
  - (ii) do anything that could jeopardise the security, confidentiality or the intellectual property of the Services.

#### 4. Use of the Services

- (a) Subject to the terms of this Agreement, we grant you a non-exclusive, revocable, limited licence to use the Services via the media and on the devices for which the Services were developed for the purposes for which the Services are intended.
- (b) You must not:
- (i) use the Services to advertise, transmit or solicit any commercial messages;
  - (ii) engage in any illegal, unethical or immoral conduct using the Services;
  - (iii) engage in any activity through the use of the Services:
    - to mine or collect information or data from the Services, users of the Services or information in transit to and from the Services;
    - to bypass any of the Services' features including any features designed to exclude robots, spiders or scraping applications;
    - to manipulate, damage, interfere with or impair the functionality any of the Services or any other computer systems or networks (including, without limitation, by way of hacking, uploading of harmful code, using cheats, exploits, automation software, bots or similar software);
    - that we consider to be in conflict with the spirit or intent of the Services;
    - that is in breach of any applicable law or any third party's rights;
    - to disrupt, overburden or assist in such disruption or overburdening of any computer server or network (including, without limitation, those used to provide the Services);
    - that is likely to harass, abuse, harm, threaten any person or group of persons (including, without limitation, any activity that degrades a person based on their race, religion, gender, age or sexuality) or incites or is likely to incite any such activity; and/or
    - that is misleading or deceptive or is intended to mislead or deceive any person.
- (c) You must:
- (i) use the Services at all times in compliance with this Agreement and any reasonable directions given by us from time to time; and
  - (ii) immediately report to us any conduct that you consider could be misuse of the Services.

## 5. Community Guidelines

- (a) In relation to the posting of any content by you through the Services (including, without limitation, your audio Australian Indigenous ghost stories):
- (i) we intend that the posting should allow all users of the Services to share and enjoy Australian Indigenous ghost stories. Without limiting sub-paragraph (vi) below, we may remove any content that we consider does not comply with this intention;

- (ii) all content must be respectful;
- (iii) you must not post content which attacks or abuses any person (including, without limitation, any content that could be considered to be “trolling”);
- (iv) no content should include any person’s personal information (see our *Privacy Policy* in relation to what is meant by personal information);
- (v) the content must not include any content that infringes any third party’s rights (including, without limitation, intellectual property rights), is defamatory, obscene, offensive, discriminatory, incites hatred, violence, sexual content of any nature, makes therapeutic claims or which we in our absolute discretion consider to be inappropriate or content that contains links to any of the material referred to in this subparagraph; and
- (vi) we may remove any content in our absolute discretion without liability to you.

6. Intellectual Property

- (a) Subject to paragraph (d) below, all intellectual property rights in and to the Services (including all virtual items, software, files, concepts and content) vest in us or our licensors.
- (b) Subject to paragraph (d) below, you acknowledge that you have no right title or interest in or to any aspect of the Services.
- (c) Unless the Services specifically permit it, you must not download, reproduce or communicate to any third party any content or materials included in the Services.
- (d) Subject to paragraph (e) below, you represent and warrant to us that you own all intellectual property rights in and to any communications, images, sounds or other material and data uploaded by you through the Services (together “Your Content”).
- (e) We acknowledge that Your Content may contain ICIP Rights and that you may not own such rights. Nothing in this Agreement is intended to assign to us or any other party any ICIP Rights.
- (f) You hereby grant us a non-exclusive, irrevocable, perpetual, royalty and fee free, unlimited licence (including the right to sub-license) to adapt, modify, communicate, exploit (in any manner) and use Your Content (including the ICIP Rights incorporated in Your Content) in connection with the development, marketing, promotion and provision of the Services or any of our other business activities.
- (f) To the maximum extent permitted by applicable law, you hereby waive your moral rights (if any) in and to Your Content. To the extent that applicable law does not permit the waiver of moral rights, you hereby consent to us and our licensees and contractors undertaking all necessary alterations to Your Content

and/or failing to attribute Your Content to you as is necessary for the operation of the Services.

- (g) You warrant and represent that:
- (i) you have the right to use Your Content in connection with the Services;
  - (ii) to the extent that it is relevant, you have obtained appropriate consents and releases from the creator or traditional custodians of Your Content;
  - (iii) your use and/or our use of Your Content in as contemplated by this Agreement will not:
    - breach any applicable laws or regulations;
    - infringe any third party's intellectual property or other rights;
  - (iv) Your Content is accurate and not misleading or deceptive;
  - (v) Your Content is free from viruses or any form of harmful or malicious code;
  - (vi) you understand that any personal information relating to you contained in Your Content will be dealt with in accordance with our *Privacy Policy*.
- (h) You acknowledge that:
- (i) you are solely responsible for Your Content you upload via the Services;
  - (ii) we have no obligation to monitor any content posted or distributed by users of the Services;
  - (iii) if we do monitor user content uploaded via the Services or your communications using the Services:
    - you hereby irrevocably consent to such monitoring; and
    - we reserve the right in its sole discretion to delete, edit or refuse to distribute any content for any or no reason; and
  - (iv) to the extent permitted by applicable law, we have no liability whatsoever with respect to any content uploaded via the Services.
- (i) In this Agreement "ICIP Rights" means Indigenous Cultural and Intellectual Property Rights and refers to Indigenous peoples' rights to their heritage (as recorded in any form or media).

## 7. Confidentiality and Disclosures

- (a) You acknowledge that:
- (i) elements of the Services may permit you to share information and ideas with other users of the Services;
  - (ii) we have no obligation to keep such information and ideas confidential or keep, respond, use or compensate you for them; and
  - (iii) we and/or other users of the Services may use and exploit the information and ideas you share.
- (b) We may access and monitor for the purposes of providing the Services any content, information and/or data contained in Your Content, your communications with other users of the Services and any other materials provided by you via the Services. We may disclose such content, information and/or data:

- (i) if we consider it is required to make such disclosure by applicable law (including in respect of legal proceedings);
- (ii) if we consider that the Services are being used to commit a crime or infringe a party's rights;
- (iii) for the purposes of taking steps against fraud;
- (iv) in the case of an emergency that poses or may pose a threat to property or to any person or child's health or wellbeing;
- (v) to protect our rights; and/or
- (vi) to limit our liability.

8. Advertising and Updates

- (a) You acknowledge that:
  - (i) the Services may contain advertising and links to our products and services and those of third parties;
  - (ii) you are entirely responsible for any fees or obligations you incur with respect to such third parties;
  - (iii) we make no warranties or representations in respect of, and do not sponsor or endorse, such third parties or their products and services; and
  - (iv) third party websites are not under our control and your use of them will be subject to the terms and conditions and privacy policy of the relevant third party.

9. Limitation of liability and indemnity

- (a) To the maximum extent permitted by applicable law:
  - (i) we make no representations or warranties whatsoever to you;
  - (ii) we hereby exclude all representations, warranties, terms and conditions whether express or implied (and including without limitation, those implied by statute, custom, law or otherwise);
  - (iii) our cumulative liability to you for all claims made by you under or in relation to this agreement, the privacy policy or your use of the services will not exceed in aggregate \$500;
  - (iv) we will not be liable to you in respect of any claim for any loss of profit, data, goodwill or business, for interruption to business, for any failure to realise anticipated savings or for any consequential, indirect, special punitive or incidental damages.
- (b) Certain legislation may imply warranties or conditions or impose obligations which cannot be excluded, restricted or modified except to a limited extent. This agreement and the privacy policy must be read subject to those statutory provisions. If those statutory provisions apply, to the extent to which we are entitled to do so, we limit our liability in respect of any claim to, at our option:
  - (i) in relation to services:
    - the supply of the services again;
    - the payment of the cost of having the services supplied again;
    - and
  - (ii) in relation to goods:
    - the replacement of the goods or the supply of equivalent goods;
    - the repair of the goods;

- the payment of the cost of replacing the goods or acquiring equivalent goods; or
  - the payment of having the goods repaired.
- (c) You indemnify and must keep indemnified, us, our related companies, their directors, officers and employees (together “those indemnified”) against any claims, losses, liability, costs (including legal fees and expenses) incurred by those indemnified arising out of or related to any breach by you of any provision of this agreement or the rules or any improper use by you of the Services.

10. General

- (a) We may assign the benefit of this Agreement and *Privacy Policy* to any person without your consent. You may only assign this Agreement and *Privacy Policy* or a right under them with our prior written consent that may be withheld or granted in our absolute discretion.
- (b) This Agreement and *Privacy Policy* constitute the entire agreement between the parties in connection with their subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.
- (c) If the whole or any part of a provision of this Agreement and *Privacy Policy* is invalid or unenforceable in a jurisdiction it must, if possible, be read down for the purposes of that jurisdiction so as to be valid and enforceable. If however, the whole or any part of a provision of this Agreement and *Privacy Policy* is not capable of being read down, it is severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of this Agreement and *Privacy Policy* or affecting the validity or enforceability of that provision in any other jurisdiction.
- (d) A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise by a party of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- (e) This Agreement and *Privacy Policy* do not create a relationship of employment, trust, agency or partnership between the parties.
- (f) You irrevocably waive your right to seek injunctive or other equitable relief to restrain the operation of any element of the services and you agree to limit your claims against us to claims for monetary damages.
- (g) We will have no liability to you for a failure by us to perform our obligations to you or provide the Services due to any causes outside of our reasonable control including acts of God, war, acts of terrorism, riots, fire, change in laws or failure of infrastructure.

- (h) This Agreement and the *Privacy Policy* will be governed by and construed in accordance with the law for the time being in force in New South Wales, Australia and the parties, are deemed to have submitted to the non-exclusive jurisdiction of the courts of that State.