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NZ Newswire: Licensee Terms and Conditions (General Terms)

1 Definitions and Interpretation

1.1 In this Agreement:

(1) **AAP NZ Trade Mark** is as follows:



(2) **[Deliberately deleted]**

(3) **{Deliberately deleted}**

(4) **Agent** of a party includes, without limitation, lawyers, accountants and other professional advisers and banks and financiers engaged or consulted by a party.

(5) **Agreement** has the meaning given in clause 2

(6) **Authorised Brand** means the branding authorised by AAP NZ.

(7) **Authorised Platform** means any of the New Media Platforms or other platforms (such as broadcast and print):

(a) AAP NZ has confirmed that the relevant platform is authorised; and

(b) such platform is branded using the Authorised Brand(s) only.

(8) **AAP NZ Service** means:

(a) the AAP NZ newswire news and text based service supplied by AAP NZ to you;

(b) (if applicable) the AAP NZ photos or other image based service supplied by AAP NZ to you; and

(c) any further works provided by AAP NZ and:

(i) derived from either or both of the works specified in clauses 1.1(9)(a) and 1.1(9)(b) above; or

(ii) created by combining works specified in clauses 1.1(9)(a), 1.1(9)(b) or 1.1(9)(c)(i) above with other works, property or rights.

(collectively also known as 'NZ Newswire' or 'NZN')

(9) **Branding** means a distinguishing symbol, mark, logo, name, word, sentence, or a combination of these items that Licensee uses to distinguish its product, service or business from others in the market.

(10) **Business Day** means a day on which trading banks are open for general business in Sydney, New South Wales, excluding a Saturday, Sunday or public holiday.

(11) **Confidential Information** means information of every kind information in any form (including, but not limited to, models, software and computer outputs) which is not excluded under clause 14.2, whether written or oral, of a business, financial or technical nature which is marked or otherwise indicated as being or is, or ought reasonably to be, known to be confidential and which is disclosed by either party (the **Disclosing Party**) to the other party (the **Receiving Party**) through its dealings with each other.

(12) **Expired Information Source** has the meaning given in clause 3.4.

(13) **Force Majeure Event** means an event or circumstance beyond the reasonable control of a party including, without limitation, acts of terrorism, acts of God, war, flood, fire, explosion, civil disobedience, legislation not in force at the date of this Agreement, labour disputes or delays by third parties, including, without limitation, subcontractors and Information Sources.

(14) **GST** has the meaning given in *the Goods and Services Tax Act 1985 (New Zealand)*.

(15) **Information Source** means a supplier of Source Material to AAP NZ.

- (16) **Insolvency Event** means the happening of any of the following events in relation to a party:
- (a) if the party is a body corporate:
 - (i) an administrator or liquidator (as defined in parts 15A and 16 of the *Companies Act 1993*) has been appointed over any of the property of the party or any steps taken for the appointment of such a person;
 - (ii) a resolution is proposed or is passed by the shareholders or directors of the party in relation to any reduction of capital, compromise with any creditor or the appointment of any person to administer the affairs of the party;
 - (iii) the party fails to satisfy the Solvency Test under section 4 of the *Companies Act 1993*; or
 - (iv) the party has been removed from the New Zealand Companies Register, other than as part of an amalgamation in which the other party is one of the companies being amalgamated; and
 - (b) if the party is an individual:
 - (i) the party proposes or enters into a deed of assignment or deed of arrangement or a composition with any of the party's creditors;
 - (ii) a person holding a security interest in assets of the party enters into possession of or takes control of any of those assets or takes any steps to enter into possession of or take control of any of those assets; or
 - (iii) the party commits an act of bankruptcy.
- (17) **Licensee** means you the customer.
- (18) **Monthly Charge** means the monthly charges payable by you as consideration for the AAP NZ Service and payable in accordance with clause 10.
- (19) **New Media Platform** has the meaning given in the New Media Terms.
- (20) **New Media Terms** means the new media terms (if attached to these General Terms) containing the terms on which content is licensed by AAP NZ for use on new media.
- (21) **Notice** has the meaning given in clause 16.2(1).
- (22) **Platform Restrictions** means:
- (a) the requirements set out in clause 5.1;
 - (b) in respect of the New Media Platforms, the platform restrictions as defined in the New Media Terms.
- (23) **Source Material** has the meaning given in clause 3.1(1).
- (24) **Tax** means any tax, levy, charge, impost, duty (including, without limitation, stamp duty), fee, deduction, compulsory loan or withholding which is assessed, levied, imposed or collected by any governmental agency and includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in respect of the above.
- (25) **Territory** means New Zealand.
- (26) **User** means a person who accesses or reads an Authorised Platform.
- (27) Terms defined in other sections of this Agreement shall have that defined meaning throughout the Agreement.

1.2 In this Agreement, unless the context otherwise requires:

- (1) words importing the singular include the plural and vice versa;
- (2) words which are gender neutral or gender specific include each gender;
- (3) a reference to any person includes a company and any other form of business association whether incorporated or unincorporated and further includes any such person's successors and permitted assigns;
- (4) headings are for convenience only and do not affect the interpretation of this Agreement;
- (5) a term or expression defined in *the the Companies Act 1993 The Telecommunications Act 2001; the Broadcasting Act 1989; and The Copyright Act 1994* but not defined in this Agreement has the same meaning as provided in that legislation; and
- (6) "including" and similar expression are not words of limitation.

2 Agreement

2.1 This document sets out the terms upon which Australian Associated Press NZ Pty Limited ABN 26 126 321 364 (us or AAP NZ) will allow you, (including your directors, employees, officers, contractors, agents, principals, or any related body corporate or affiliate) (you/your or Licensee) to access and use AAP NZ's NZ Newswire service.

3 Clearances

3.1 Except where Licensee is using the AAP NZ Service for the purposes of reporting current news, Licensee is fully responsible for obtaining at its own cost any necessary rights clearances from third parties relating to any part/aspect of text, images or video from the AAP NZ Service which may be protected by proprietary rights, copyright, neighbouring rights (including, without limitation, moral rights and performers' rights) or privacy rights prior to the use of such text, images or video by Licensee, including, but not limited to:

- (1) clearances from people whose name, portrait or images or performance appears in the relevant text, images or video from the AAP NZ Service; or

- (2) clearances in respect of musical works, sound recordings, buildings, works of art, designs, public monuments and/or other inanimate objects contained in the relevant text, images or video from the AAP NZ Service.

4 Sporting Content

- 4.1 AAP NZ's ability to include sporting text, data and images as part of the AAP NZ Service is contingent upon the terms of accreditation imposed by any relevant sporting organisations. If any sporting organisation imposes any restrictions or limitations on AAP NZ in terms of AAP NZ's coverage of any sporting events or fixtures, Licensee acknowledges and agrees that AAP NZ's ability to supply the AAP NZ Service will be similarly limited or restricted. Additionally, Licensee will comply with any limitations or restrictions imposed by any sporting organisation and agreed to by AAP NZ in order to gain access to the event provided that such limitation and restrictions are notified to it by AAP NZ.

5 Use of the AAP NZ Service

- 5.1 Licensee must:

- (1) not use text, images or videos from the AAP NZ Service in a manner and context that damages the reputation and goodwill of AAP NZ or any Information Source;
- (2) not use text, images or videos from the AAP NZ service in a manner that is likely to be obscene, defamatory, or offensive to any person or classes of person;
- (3) not distort the meaning of any text, images or videos or subject any part of the text, images or videos to derogatory or defamatory treatment;
- (4) observe and comply without delay with all reasonable instructions from AAP NZ regarding display of corrections, retractions or apologies in the form requested by AAP NZ or in respect of the taking down of text, images or videos obtained from the AAP NZ Service;
- (5) ensure that AAP NZ has at all times up to date contact details (including email address and phone numbers) of the current person or persons (during business hours and outside business hours) authorised by Licensee to receive and act without delay upon correction, retraction or apology notices issued by AAP NZ;
- (6) not, without the prior written consent of AAP NZ, enhance, customise or otherwise modify images from the AAP NZ Service;
- (7) notwithstanding any other provision in this Agreement, comply with any specific form of use restriction marked on or accompanying an image from the AAP NZ Service;
- (8) not use text, images or videos included in the AAP NZ Service in conjunction with any brand other the Authorised Brand without the prior written consent of AAP NZ (which consent may be withheld by AAP NZ at its absolute discretion);
- (9) not without prior consent of AAP NZ modify, alter, adapt, disassemble, decompile or amend text, images or videos included in the AAP NZ Service except to the extent reasonably necessary to reformat such text, images or videos (but not alter the content itself), to enable Licensee to display the text, images or videos in or on the relevant Authorised Platforms.

Nothing in this clause 5.1 will restrict Licensee from reporting the news truthfully.

- 5.2 Licensee shall only use text, images or video from the AAP NZ Service on the Authorised Platform for which a licence has been granted by AAP NZ. Licensee may not merge the platform for distribution of such material through the acquisition of or merger with another online distributor of content or through co-branding, except with the expressed mutual consent of AAP NZ.
- 5.3 Licensee and Licensee's authorised employees must ensure that any username and password used to access any part of the AAP NZ Service is kept secure. Licensee must take all reasonable steps to prevent unauthorised use of the username and password and unauthorised access to AAP NZ Services. Licensee is responsible for all use of the AAP NZ Services made using such usernames and passwords unless Licensee promptly notifies AAP NZ of a security breach in which case Licensee is not liable for unauthorised use after notification.
- 5.4 Licensee may reject or exclude, in whole but not in part, any text, images or videos from the AAP NZ Service that violates any laws, violates its User Agreements (if any), or may adversely affect operations (including reputation and goodwill) of Licensee or of the Authorised Platforms.
- 5.5 Licensee acknowledges and agrees that text, images or videos from the AAP NZ Service are for the personal, non-commercial use only of Users and not otherwise for copying, archiving, storing, republication, re-distribution, re-dissemination, publication or any other commercial exploitation in any form or by any method whatsoever by Licensee, Users or any other persons.
- 5.6 AAP NZ may at any time require Licensee not to maintain any archival or historical database of any kind (whether digital or otherwise) of text, images or videos from the AAP NZ Service.
- 5.7 The prohibition in clause 5.6 if required by AAP NZ includes, without limitation, the storage of text, images or videos from the AAP NZ Service for future retrieval but does not prevent Licensee from storing such text or images in a temporary location in accordance with this Agreement for access by Users or for internal legal administrative purposes.
- 5.8 Licensee must inform AAP NZ if to Licensee's actual knowledge any person is using any text, images or videos derived from the AAP NZ Service by way of republication or re-dissemination in electronic or hard copy for gain or otherwise than for personal, non-commercial use.

6 Trade marks and marketing

- 6.1 The AAP NZ Trade Mark is the exclusive property of AAP NZ. AAP NZ reserves all rights in it. All use of the AAP NZ Trade Mark under this Agreement is for the sole benefit of AAP NZ. Licensee must not knowingly or recklessly take any action which is inconsistent with AAP NZ's rights in the AAP NZ Trade Mark.

- 6.2 AAP NZ grants Licensee a non-exclusive licence for the period authorised and advised to you by AAP NZ to you by AAP NZ to use the AAP NZ Trade Mark:
- (1) to the extent reasonably necessary to identify the AAP NZ Services as originating from AAP NZ; and
 - (2) otherwise, with the prior written permission of AAP NZ.
- 6.3 Licensee must not display the name, logo or trade mark or other identifier of any third party in such a manner as to give the User or viewer the impression that such third party is a publisher of text, images or videos from the AAP NZ Service on any pages containing such text, images or videos. This clause is not intended to prohibit conventional advertising or sponsorships that do not create such impression.
- 6.4 Licensee must not include any advertising or sponsorship in connection with text, images or videos from the AAP NZ Service that:
- (1) breaches any law or regulation where the Authorised Platforms may be used or viewed; or
 - (2) falsely implies that the advertiser or sponsor is associated with AAP NZ or its Information Sources or the text, images or videos of AAP NZ or its Information Sources.
- 6.5 Licensee must, if requested by AAP NZ, provide it with annual reports setting out:
- (1) the number of User visits to, circulation, page impressions and Users on areas within each Authorised Platform where text, images or videos from the AAP NZ Service are displayed; and
 - (2) the number of Users for each Authorised Platform during each month.
- 6.6 Licensee must, subject to the terms of this Agreement, if it undertakes any marketing, advertising or promotion of the availability of text, images or videos derived from the AAP NZ Service in the Authorised Platforms, ensure that this is done on a fair, equitable and non-discriminatory basis compared with Licensee's marketing, advertising and promotion, if any, of services provided by Licensee's other third party suppliers of similar news text, image or videos services.
- 6.7 Licensee must not:
- (1) use the AAP NZ name or the AAP NZ Trade Mark;
 - (2) use the name, logo or trade mark of any Information Source; or
 - (3) make any statement (whether oral or in writing) about AAP NZ, any Information Source or the AAP NZ Service,

in any external advertising, marketing or promotion materials without the prior written consent of AAP NZ (such consent which may be withheld by AAP NZ in its absolute discretion). Materials that are substantially identical to those previously approved need not be submitted for re-approval.

7 Acknowledgements, warranties and indemnities by Licensee

- 7.1 Licensee acknowledges and agrees that:
- (1) AAP NZ includes text, images and videos in the AAP NZ Service from its own sources and from Information Sources;
 - (2) AAP NZ reserves sole editorial discretion in relation to the form and content of the text included in the AAP NZ Service;
 - (3) AAP NZ and its Information Sources retain all intellectual property rights in the text, images or videos comprising the AAP NZ Service; and
 - (4) telecommunications charges incurred in accessing the AAP NZ Service are Licensee's own responsibility and cost.
- 7.2 Licensee warrants to AAP NZ that:
- (1) Licensee has authority to enter into this Agreement;
 - (2) the signatory to this Agreement is authorised to enter into and execute this Agreement on Licensee's behalf;
 - (3) Licensee will not through any act or omission bring the reputation of AAP NZ or any Information Source into disrepute;
 - (4) it will not use or distribute any part of the AAP NZ Service:
 - (a) in such a manner so as to harm or reduce the legal protection accorded to the copyright and all other rights of AAP NZ or its Information Sources in the AAP NZ Service; or
 - (b) for any improper or immoral purpose including, but not limited to, in transmissions or other publications which are reasonably likely to be obscene, defamatory, or offensive to any person or classes of persons;
 - (5) the primary and intended market for the Authorised Platforms is the Territory; and
 - (6) Licensee will use the text, images or videos contained in the AAP NZ Service on the Authorised Platforms solely as permitted by this Agreement.
- 7.3 Licensee indemnifies AAP NZ and its Information Sources against any loss, cost, expense, claim, liability, action, proceeding, damages or demand (including, without limitation, reasonable legal costs) that AAP NZ 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 7.2. Licensee agrees that this clause 7.3 is enforceable by and to the benefit of AAP NZ and its Information Sources.
- 7.4 Where any claims or legal or regulatory actions of a third party for defamation, are made or commenced against Licensee by any third party howsoever arising, Licensee hereby,

- (1) acknowledges and agrees that AAP NZ 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
- (2) waives and releases AAP NZ from any liability in respect of such claims or legal actions.
- 7.5 Licensee hereby acknowledges that 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 but is not able to provide a guarantee that the material is free of such errors or material.
- 7.6 Licensee also acknowledges that it is licensing the AAP NZ Service and any other rights and materials under this Agreement for the purpose of a business, and the provisions of the Consumer Guarantees Act 1993 will not apply to those services and materials.
- 8 Warranties and indemnity by AAP NZ**
- 8.1 AAP NZ warrants to Licensee that:
- (1) AAP NZ has authority to enter into this Agreement;
- (2) the signatory to this Agreement is authorised to enter into and execute this Agreement on AAP NZ's behalf; and
- (3) the text, images or videos in the AAP NZ Service, if used as permitted by this Agreement will not infringe the copyright or any other intellectual property rights of any third party.
- 8.2 AAP NZ indemnifies Licensee against any liabilities, losses, expenses, damages or other costs (including, without limitation, reasonable legal costs) that Licensee suffers or incurs as a result of a breach by AAP NZ of clause 8.1(3) provided that:
- (1) the relevant claim does not arise from any modification to text, images or videos from the AAP NZ Service made by Licensee or any person receiving text, images or videos from the AAP NZ Service through Licensee other than as permitted by this Agreement;
- (2) the relevant claims do not arise as a result of a combination of text, images or videos from the AAP NZ Service with other text, images or videos not from the AAP NZ Service;
- (3) the relevant claim does not concern text, images or videos that AAP NZ notified Licensee should not be used;
- (4) the relevant claim does not arise as a result of a breach by Licensee of the Platform Restrictions;
- (5) if Licensee wishes AAP NZ's indemnity to apply to a claim or legal action of a third party made or commenced against Licensee then Licensee must without delay notify AAP NZ that a claim or legal action has been made or commenced against Licensee in respect of which indemnity may be sought from AAP NZ;
- (6) Licensee makes no admissions of liability in relation to the claim;
- (7) Licensee provides AAP NZ with the opportunity to conduct settlement negotiations and/or the applicable proceedings in the place of Licensee (AAP NZ is required to have due regard to the input and interests of Licensee); and
- (8) Licensee provides AAP NZ with all reasonable assistance requested by AAP NZ.
- 9 Monitoring of the Authorised Platforms**
- 9.1 Licensee must provide AAP NZ or its nominees with reasonable assistance and unrestricted and unlimited access to all areas of the Authorised Platforms at which text, images or videos from the AAP NZ Service are displayed or made available, solely for the purposes of AAP NZ monitoring the use of such text, images or videos as part of the Authorised Platforms.
- 9.2 Licensee will use commercially reasonable means to protect the security of the AAP NZ Service, on the Authorised Platform, from unauthorised access, modification or distribution. Upon becoming aware of a breach in security, Licensee will take prompt action to remedy such breach to protect the AAP NZ Service.
- 10 Monthly Charges**
- 10.1 In consideration of the provision of the AAP NZ Service, Licensee must pay AAP NZ the Monthly Charges plus GST in accordance with this clause 10.
- 10.2 AAP NZ will invoice Licensee for the Monthly Charges monthly in advance.
- 10.3 Licensee must pay each invoice not more than thirty (30) days from the date of the invoice. Late payments of any invoice carries annual interest at the business overdraft rate charged by AAP NZ's principal Australian bankers from the due date to the date of payment, calculated on a daily basis.
- 10.4 AAP NZ may, by not less than sixty (60) days prior written notice to Licensee, adjust the Monthly Charges.
- 10.5 Subject to clause 10.6, if AAP NZ notifies Licensee of an increase in the Monthly Charges, Licensee may terminate this Agreement by giving not less than thirty (30) days prior written notice to AAP NZ, with termination taking effect on the date the increased Monthly Charges would otherwise have taken effect.
- 10.6 Licensee may not terminate this Agreement in accordance with clause 10.5 where:
- (1) the increase is not more than the increase in the Consumer Price Index All Groups Index Number for the weighted average of 8 Australian capital cities for the previous calendar year plus 2%; and
- (2) the increase is in accordance with clause 10.7.
- 10.7 AAP NZ may increase the Monthly Charges immediately by giving Licensee written notice, with such an increase to take effect from the date of Licensee's written notice, where the increase is on account of an increase in GST or Taxes.

10.8 AAP NZ may only increase the Monthly Charges in accordance with clause 10.4 once in any twelve (12) month period.

11 Tax and GST

11.1 Words used in this clause which have a defined meaning in the Goods and Services Tax Act 1985 (New Zealand) have the same meaning as in that Act, unless the context otherwise requires.

11.2 Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include GST or any other Tax.

11.3 The supplier must provide a tax invoice for any supply made under or in connection with this Agreement.

11.4 If a party is entitled under this Agreement to be reimbursed or indemnified for a loss, cost or expense by the other party, that loss, cost or expense does not include any amount in respect of GST for which that other party is entitled to claim an input tax credit.

11.5 All payments made by Licensee under this Agreement will be (to the extent permitted by law) without deduction or withholding for or on account of, any Taxes. If a law requires Licensee to deduct an amount in respect of Tax from any payment under this Agreement, Licensee must:

- (1) pay the tax in accordance with applicable law;
- (2) use its best endeavours to obtain an official receipt from the appropriate governmental agency;
- (3) deliver a copy of the official receipt to AAP NZ no more than twenty (20) days after receiving it; and
- (4) pay to AAP NZ such additional amount as will ensure that AAP NZ is in no worse position than if no deduction had been required by law.

12 Termination

12.1 AAP may immediately suspend the supply of the AAP Service to the Licensee if Licensee is in breach of these terms.

12.2 AAP NZ may terminate this Agreement immediately on written notice to Licensee if:

- (1) Licensee breaches any terms of a term sheet or letter agreement it has with AAP NZ or if Licensee has not executed any term sheet or letter agreement with AAP NZ and AAP NZ uses its discretion to terminate the AAP NZ Service;
- (2) Licensee suffers an Insolvency Event;
- (3) Licensee breaches the Platform Restrictions
- (4) Licensee breaches clause 3 or clause 4.2 of this Agreement;
- (5) any money which Licensee must pay AAP NZ under this Agreement remains outstanding for more than thirty (30) days after the date on which it became payable and Licensee has not paid the outstanding moneys within seven (7) days of AAP NZ giving it written notice to do so;
- (6) Licensee is in breach of this Agreement and that breach is not capable of remedy;
- (7) Licensee is in breach of this Agreement, that breach is capable of remedy and has not been remedied within fourteen (14) days of AAP NZ giving it written notice to do so; or
- (8) AAP NZ's business is materially affected by a substantial change in either the ownership of Licensee or the manner in which the Authorised Platforms are branded or operated.

12.3 Licensee may terminate this Agreement immediately on written notice to AAP NZ if:

- (1) AAP NZ is in breach of this Agreement, that breach is capable of remedy and AAP NZ has not rectified that breach within fourteen (14) days of Licensee giving AAP NZ written notice to do so;
AAP NZ is unable to obtain text, images or videos necessary to provide the AAP NZ Service for two (2) consecutive Business Days; or
- (2) AAP NZ suffers an Insolvency Event.

12.4 Upon termination of this Agreement:

- (1) all licences granted under this Agreement automatically terminate;
- (2) Licensee must cease using all text, images or videos from the AAP NZ Service and the AAP NZ Trade Mark;
- (3) upon written request from AAP NZ, Licensee must remove and delete all copies of text, images or videos from the AAP NZ Service from the Authorised Platforms, its computer systems and from any other means of storage in its possession, power, custody or control; and
- (4) Licensee must remove any reference to AAP NZ from the Authorised Platforms.

13 Liability

13.1 All statutory or implied conditions, warranties and guarantees are excluded to the extent permitted by law.

13.2 If the law, including the *Fair Trading Act 1986* and *Consumer Guarantees Act 1993* (as amended) or any similar legislation, implies or imposes a non-excludable condition, warranty or guarantee which can be limited, the liability of AAP NZ to Licensee for breach of that condition, warranty or guarantee will be limited, to the extent permitted by law - as AAP NZ determines - to:

- (1) provision of replacement text, images or videos; or
- (2) cost of providing replacement text, images or videos.

13.3 While AAP NZ will take, or cause to be taken, reasonable precautions of the type generally accepted in the information processing industry to arrange and protect the devices subject to AAP NZ's control in which text, images or videos included in the AAP NZ Service are stored and made available for transmission, to the extent

permitted by law neither AAP NZ or its Information Sources make any warranty and are not liable to Licensee or any other person for any failures (including but not limited to delays, omissions, interruptions) or faults in delivery of the AAP NZ Service.

- 13.4 To the extent permitted by law, AAP NZ and any Information Source are not liable for any indirect, consequential, special or punitive loss or damage in respect of the AAP NZ Service or any act or omission on its part in relation to its obligations under this Agreement or for any payments to third parties, loss of revenue, loss of profits, loss of goodwill or data however caused, whether or not:
- (1) such loss or damage was foreseeable or contemplated by either party; or
 - (2) AAP NZ is advised of the possibility of such loss or damage.
- 13.5 Subject to clause 13.4, and to the extent permitted by law, the total liability in all circumstances of AAP NZ 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 10 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 NZ's liability under clause 8.2.
- 13.6 AAP NZ is not liable to Licensee or any other person if AAP NZ terminates this Agreement under clause 12.2, other than liabilities accrued or accruing up to the date of termination. Licensee is not liable to AAP NZ or any other person if Licensee terminates this Agreement pursuant to clause 12.3, other than liabilities accrued or accruing up to the date of the termination.
- 13.7 A party's liability under this Agreement will be proportionately reduced to the extent the other party, its officers, employees, Agents and contractors contribute to any loss, damage, expenses, liabilities and costs (including legal costs).
- 13.8 Licensee agrees that this clause 13 is enforceable by and to the benefit of AAP NZ and its Information Sources.

14 Confidentiality

- 14.1 Each party acknowledges that Confidential Information of the other may be disclosed to it in the course of negotiating and performing this Agreement. Each party must hold such Confidential Information in strictest confidence and must not, without the consent of the other, disclose it to any person other than those of the party's employees, officers and Agents who are required to receive and consider the Confidential Information in the course of (and solely for) the purpose of the performance of this Agreement.
- 14.2 The obligations in clause 14.1 do not apply to information:
- (1) already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party;
 - (2) that is in the public domain through no breach of this clause 14; or
 - (3) obtained from a third party without breach by that third party of any obligation of confidence concerning that information.
- 14.3 Notwithstanding clause 14.1, a party may disclose Confidential Information of the other where such disclosure is required by law due to the mandatory requirement of a competent court, governmental agency or regulatory authority.
- 14.4 Notwithstanding any other provision in this clause 14, Licensee acknowledges and agrees that AAP NZ may disclose the terms of this Agreement and the fact that Licensee is receiving text, images or videos sourced from its Information Sources, to its Information Sources.

15 Force majeure

Neither party will be in breach of this Agreement and will not be liable to the other party or any other person for delay or failure to perform an obligation due to a Force Majeure Event. Where affected by a Force Majeure Event, the affected party will be granted a reasonable extension of time to perform the obligation, unless the delay or failure exceeds sixty (60) days in which case either party may immediately terminate this Agreement on notice to the other party.

16 General

16.1 Assignment

- (1) Subject to clause 16.1(2), Licensee may not assign or otherwise deal with its rights, obligations or remedies under this Agreement without the prior written consent of AAP NZ, which consent must not be unreasonably withheld.
- (2) AAP NZ's consent to a proposed assignment is not required where the proposed assignee is a related body corporate of the Licensee, however the Licensee must notify the AAP NZ prior to effecting the assignment.

16.2 Notices

- (1) A notice or other communication given under this Agreement (**Notice**) must be addressed to the addressee at the address, email address or facsimile number advised in writing to the other party.
- (2) Without limiting any other means by which a party may be able to prove that the Notice has been received by another party, a notice is deemed to be received:
 - (a) if sent by hand, upon delivery to the addressee;
 - (b) if sent by post within Australia to an address in Australia, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (c) if sent by post to an address outside Australia or sent by post from outside Australia, on the 5th Business Day (at the address to which it is posted) after posting; or

- (d) if by facsimile or email before 5pm on a Business Day at the place of receipt, except as provided in clause 16.2(3), on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (3) Notwithstanding clause 16.2(2)(d):
 - (a) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
 - (b) an email is not treated as given or received if the sender's computer reports that the message has not been delivered; and
 - (c) a facsimile or email is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12.00pm on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 16.3 Further assurances
Each party must do all things necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.
- 16.4 Severability
If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Agreement remains in force.
- 16.5 Waiver
 - (1) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
 - (2) 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.
 - (3) A waiver is not effective unless it is in writing.
 - (4) 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.
- 16.6 Surviving Clauses
The obligations in clauses 7, 8, 11, 12, 13, 14 and 16 survive the expiry or termination of this Agreement.
- 16.7 Counterparts
This Agreement may be signed in any number of counterparts. All those counterparts together make one instrument.
- 16.8 Entire agreement
This Agreement supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. Except as specified by an express term of this Agreement, this Agreement may be amended only by written agreement of the parties.
- 16.9 Governing Law and Jurisdiction
The laws of New Zealand govern this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New Zealand.

New Media Terms

1 Definitions and Interpretation

- 1.1 **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.
- 1.2 **App Platform** means the named app approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.3 **Email Platform** means electronic communication via the method known as "email" and approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.4 **Facebook** means the social networking service and Website operated by Facebook, Inc. known as "Facebook".
- 1.5 **Facebook Home Page** means a page on Facebook which is solely branded using the Authorised Brand.
- 1.6 **Facebook Platform** means the Facebook Home Page approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.7 **General Terms** means AAP NZ's NZ Newswire: Licensee Terms and Conditions (General Terms).
- 1.8 **Google Plus** means the social network and mobile blogging service and website operated by Google Inc.
- 1.9 **Google Plus Home Page** means a page on Google Plus which is solely branded using the Authorised Brand.
- 1.10 **Google Plus Platform** means the Google Plus Home Page approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.11 **IPTV** means an internet enabled television device.
- 1.12 **Mobile Web Platform** means the named mobile website approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.13 **Mobile Website** means a website designed principally for viewing on mobile devices such as cellular telephones and Tablets.
- 1.14 **MySpace** means the social networking service known as "MySpace".
- 1.15 **Multimedia** refers to any or a combination of images, photos, video/audio, cartoons, caricatures, graphics and similar material licenced to the Licensee by AAP NZ.
- 1.16 **New Media 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 New Media platform agreed to from time to time) for which Licensee has obtained prior written consent from AAP NZ to display the AAP NZ Service on.
- 1.17 **Plasma Platform** means plasma screens approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service
- 1.18 **Platform Restrictions** has the meaning given in section 2.1 of the New Media Terms.
- 1.19 **RSS Feed** means the delivery of limited extracts of the AAP NZ Service to Users in a format generally known as Really Simple Syndication (RSS), to the extent that such extracts link back to Licensees Website Platform.
- 1.20 **RSS Feed Platform** the platform defined as the RSS feed approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service
- 1.21 **Social Media** means New Media 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.
- 1.22 **Social Media Home Page** means a page on an approved Social Media Platform which is solely branded using the Authorised Brand.
- 1.23 **Social Media Platform** means a named social media site approved by AAP NZ as a New Media Platform via which the Licensee may display the AAP NZ Service.
- 1.24 **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.
- 1.25 **Twitter** means the social network and mobile blogging service and Website operated by Twitter, Inc known as "Twitter".
- 1.26 **Twitter Home Page** means a page on Twitter which is solely branded using the Authorised Brand.
- 1.27 **Twitter Platform** means the Twitter Home Page approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.28 **URL** means Uniform Resource Locator.
- 1.29 **Website Platform** means named website approved by AAP NZ as a New Media Platform via which Licensee may display the AAP NZ Service.
- 1.30 **YouTube** means the video sharing site with such name operated by Google Inc.
- 1.31 These New Media Terms apply only to use of text, images and videos from the AAP NZ Service on New Media Platforms.
- ## 2 Supply and use of AAP NZ Services
- 2.1 AAP NZ licenses the text, images or videos included in the AAP NZ Service on a non-exclusive, non-transferable basis to Licensee during the Term only for the following uses, and only where such platform is an New Media Platform (**Platform Restrictions**):

- (1) for the Web Site Platform or the Mobile Web Platform, for display to and storage in computer readable form to enable viewing by a User accessing the a URL as authorised by AAP NZ provided that such viewing is solely for personal, non-commercial use by the User;
 - (2) for the App Platform, for transmission to and display on User's mobile phone or Tablet (as the case may be) to enable viewing by the User, provided that such viewing is solely for the personal, non-commercial use by the User;
 - (3) for the MMS/SMS Platform, for transmission to and display on User's MMS or SMS enabled devices provided that such transmission and display are solely for personal, non-commercial use by the User;
 - (4) subject to section 2.2 below, for a Social Media Platform:
 - (a) for text, for display of the headline and first sentence of text only, marked as being sourced from "AAP NZ" only, on the Social Media Home Page provided that the headline and first sentence link directly back to the main article on the Website Platform and that such viewing is solely for personal, non-commercial use by the User;
 - (b) for images, display of a low resolution thumbnail image and headline only, marked as being sourced from "AAP NZ" only, on the Social Media Home Page provided that the image and headline link directly back to the main image on the Website Platform and that such viewing is solely for personal, non-commercial use by the User;
 - (c) for video, display of a screen shot of the video a special conditions nd headline only, marked as being sourced from "AAP NZ" only on the Social Media Home Page provided that the screen shot and headline link directly back to the Video on the Website Platform and that such viewing is solely for personal, non-commercial use by the User
 - (5) for the RSS Feed Platform, for transmission and display as part of that feed to enable viewing by the User, provided that such viewing is solely for the personal, non-commercial use by the User and that the links in the RSS Feed must link back to Licensee's Web Site or Mobile Web Site which are in each case Authorised Platforms under this Agreement; and
 - (6) for the Plasma Platform, for transmission to and display on Plasma/LCD authorised by AAP, provided that such transmission and display are solely for personal, non-commercial use by the User.
- 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 NZ (in its reasonable opinion), AAP NZ may immediately cancel Licensee's right to use on the Social Media Platform any text, images or videos included in the AAP NZ Service. In these circumstances Licensee must immediately cease using text, images and videos included in the AAP NZ Service on the Social Media Platform, and must delete from such page any such text, videos or images which have been included on the page.
- Sharing on Social Media by Users**
- 2.3 Subject to all other terms of this Agreement, Licensee may also allow Users to utilise social media site features in connection with the AAP text, image or video, 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 the Website Platform and that such display is solely for personal, non-commercial use by the User. AAP NZ may, in its absolute discretion and without any penalty, immediately terminate the right contained in this section 2.3 at any time.
- 2.4 The licence in section 2.2 does not include a right to conduct any of the following in relation to text, images or videos derived from the AAP NZ Service (**Prohibited Uses**) whether in the form in which they are displayed on the Authorised Platform or otherwise:
- (1) framing the text, images or videos by third parties or Users;
 - (2) hyperlinking by Users to text, images or videos from the AAP NZ service for non-personal commercial use.
- except as expressly permitted in this Agreement.
- 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:
- (1) to include in its User Agreements an obligation on the Users not to engage in the Prohibited Uses;
 - (2) to report all material incidents involving the Prohibited Uses within Licensee's actual knowledge to AAP NZ;
 - (3) not to encourage third parties to engage in the Prohibited Uses;
 - (4) to provide reasonable assistance to AAP NZ to stop any Prohibited Uses by the Users or others; and
 - (5) any other obligations imposed by applicable law.
- 2.6 Licensee may display on the New Media Platforms and store in computer readable form, in accordance with this Agreement, any text, images or videos supplied as part of the AAP NZ Service on a once-only basis for a period of not more than 30 days from the date upon which the text, images or videos are received by Licensee from AAP NZ (**Storage Period**). Licensee must delete all text, images or videos derived from the AAP NZ Service at the end of the Storage Period. Notwithstanding this section 2.6, Licensee must not display any text, images or videos that AAP NZ has retracted, cancelled or modified under clause 5.1(4) of the General Terms.
- 2.7 Licensee:
- (1) may only store and display images from the AAP NZ Service, in the case of:
 - (a) AAP NZ image resolutions lower than 800 x 600 pixels; and
 - (b) all other images at image resolutions lower than 640 x 480 pixels and with a maximum of 256 colour palettes,

provided that Licensee may also display AAP NZ images at resolutions greater those set out in section 2.7(1)(a) provided that the resolution is no greater than 1200 x 900 pixels and the image is marked with the AAP NZ logo (as the case may be) in a prominent form.

- (2) must ensure and procure that all distribution of text, images or videos from the AAP NZ Service is on terms that are consistent with restrictions imposed on text, images or videos from the AAP NZ Service set out in this Agreement;
- (3) must promptly notify AAP NZ on becoming aware of any material breach by a User of any of the restrictions;
- (4) must, in the case of use of any text, images or videos from the AAP NZ Service in any MMS, SMS or Apps, provide AAP NZ at no cost with the device necessary for the purpose of monitoring the New Media Platforms in accordance with clause 9.1 of the General Terms;
- (5) must provide reasonable assistance to AAP NZ to stop any Users or others acting in a manner contrary to section 2.7(2).

2.8 Legal Stories (Webpool users)

- (1) Licensee acknowledges that all NZN court stories and other stories with potential legal issues carry the master keyword Legal (Legal Stories) in the keyword field which allows Licensee to block such stories if they choose. Licensee can choose to block Legal Stories from direct internet publication so the Licensee can review and make their own determination about whether or not they wish to publish Legal Stories.
- (2) Notwithstanding the terms of this Agreement relating to delivery of stories, if Licensee elects to block Legal Stories, the Licensee acknowledges and agrees that:
 - (a) it will not receive any Legal Stories as part of its subscription and will be solely responsible for selecting Legal Stories for publication on its website;
 - (b) any manual publication of Legal Stories must be still in accordance with the terms of this Agreement; and
 - (c) AAP NZ has no liability whatsoever for any failure to supply Legal Stories as part of this Agreement.

3 Accreditation, copyright and disclaimer notices

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

- (1) AAP NZ
 - (a) accredit AAP NZ for all text used from the AAP NZ Service by displaying the NZN Trademark with a display resolution of at least 50 x 25 pixels in a prominent position on each page of the Web Site (or in the case of a Mobile Web Site, in an appropriate size provided that the AAP NZ logo remains prominent and recognisable) where the text is displayed;
 - (b) provide the further accreditation "NZN" at either the beginning or end of each news text item, in the same font and type size as the news text item;
 - (c) include a copyright notice in the form '@[year] NZN' and display in a reasonably prominent place in the Licensee's websites terms and conditions on the website the following detailed disclaimer and copyright notice set out below:

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- (2) where the New Media Platform is the App Platform then Licensee must comply with sections 3.1(1) by including the relevant text in the terms and conditions of use of the App (whether contained in the App or a link or otherwise);
- (3) where the New Media Platform is an RSS platform, Licensee must comply with section 3.1(1) above by including the relevant text where the text, image or video appears on Licensee's Website Platform.

3.2 AAP NZ 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.