



Version date: 1 January 2017

AAP Publish

AAP Publish Licence Agreement

A. Welcome

Welcome to AAP Publish! We have set out below the terms of use. We have tried to make them as user friendly as possible.

B. BACKGROUND

Purpose of this Agreement

You are entering into this agreement with us because you wish to subscribe to one of our AAP Publish Subscriptions (**Publish Subscription**) to create your own website (**Customer Website**). In addition you may choose to access additional services for your Customer Website (**Additional Publish Packs**). These services are called collectively the 'AAP Services'.

C. What products and service this Agreement actually covers

Lite, Pro and Enterprise Customers

This Agreement mainly governs the terms and conditions of your licence of one of three types of Publish Subscriptions that AAP currently has on offer. These are called lite, pro and enterprise. This Agreement also covers your licence of services under the Additional Publish Packs, where applicable. If you license AAP text and images from us you must also agree to separate terms (**AAP Text and Image Content Terms**).

Enterprise Customers

Enterprise Customers must also sign additional Enterprise Customer Service Terms (**Enterprise Customer Service Terms**) which will apply in addition to the terms of this Agreement. Your AAP will set these Enterprise Customer Service Terms up for you and arrange execution directly with you.



TERMS OF THIS AGREEMENT

1. **Binding Contract**

1.1 You acknowledge that you have read this Agreement and understand it or, if you do not, you have sought legal advice prior to clicking 'I agree'. By clicking 'I agree' you have entered into a binding agreement with AAP.

2. **The contracting parties**

2.1 You are contracting with Australian Associated Press Pty Limited ACN: 006 180 801 of Level 6, 3 Rider Boulevard Rhodes, 2138. We are entitled to use the benefit of this Agreement for our affiliates, agents, sub-contractors, third party suppliers and related bodies corporate. In this Agreement we may refer to you as 'the Licensee', 'the Customer' or 'you'. We refer to ourselves as 'AAP' or 'us'.

3. **Scope of licence**

3.1 As long as you comply with the terms and conditions of this Agreement, AAP grants to you a licence to use the AAP Services on a non-exclusive, non-transferable basis for the duration of this Agreement.

3.2 Nothing in this Agreement will operate to transfer or grant to the Customer any licence, intellectual property rights or the right to use the AAP Service beyond those rights expressly given under this Agreement. AAP expressly reserves for itself and third party suppliers all intellectual property rights.

4. **AAP Service**

4.1 We will provide you with access to a white label website. We will provide you with a license to access to a variety of services applications, tools and resources to enable you to manage your Customer Website, customise, deliver and track online content.

5. **Duration of Agreement**

5.1 **Free trial period Customers**

If you have chosen to enter into a free trial period, the trial period will operate for a period of 14 days from the date you click 'I agree'. Either party may terminate the free trial period at any time during the free trial period in the party's absolute discretion. All terms of this Agreement will still apply except in relation to payment of charges.

5.2 **Lite and Pro Customers**



For lite and pro subscription Customers this Agreement will commence upon the date you click 'I agree' and continue month-to-month.

5.3 **Enterprise Customers**

For Enterprise Customers this Agreement will commence upon the commencement date of your Enterprise Customer Service Terms and will continue for the duration of the Initial Term (as that term is defined in the Enterprise Customer Service Terms) and any Further Terms (as that term is defined in the Enterprise Customer Service Terms).

6. **Your account**

6.1 We reserve the right, at our sole discretion, to refuse registration of users, or cancel accounts we deem inappropriate.

6.2 You may upgrade or downgrade your account at any time by following the prompts when you are logged into your account.

6.3 If you downgrade your account:

- (a) the downgrade will become effective immediately;
- (b) no refunds will be paid in respect of any unused portion of any higher account offering; and
- (c) you may lose data, content, features or capacity of your account and you acknowledge and agree that we are not liable for such loss.

7. If you upgrade your account:

- (a) the upgrade will become effective upon payment of the relevant Charges;
- (b) any Charges you have paid in advance will be credited to your new upgraded account; and
- (c) we will charge your credit card for any net amount due as a result of the upgrade and your account renewal date will be reset to the next available billing day.

8. **Charges**

8.1 In consideration of the provision of the AAP Service, Customer must pay AAP the Charges. AAP will invoice Customer for the Charges monthly in advance. Customer 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's principal Australian bankers from the due date to the date of payment, calculated on a daily basis.

9. **GST**



9.1 Unless goods and services tax (“GST”) is expressly included, the consideration to be paid or provided for any supply made under or in connection with this Agreement does not include GST. To the extent that any supply made under or in connection with this Agreement is a taxable supply, the GST-exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST-exclusive consideration is otherwise to be paid or provided. A party’s right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

10. **Customer obligations**

10.1 Customer must:

- (a) comply with all Applicable Laws that may apply to your use of the Customer Website including, but not limited to privacy and spam laws and all other Applicable Laws, codes, regulations that apply wherever your Customer website may be viewed;
- (b) not reverse engineer, decompile, disassemble, copy or reconstruct the Customer Website, the source code or any associated software for the Customer Website or use on any other platform but the via platform provided by AAP;
- (c) allow AAP and/or a third party supplier to AAP the right to use Customer Website and Customers logo and business names for the purposes of showcasing, promoting and publicising third party suppliers;
- (d) not use the Customer Website as a means to hack or access without authorisation other sites, create malicious damage and interference including without limitation mail bombing, propagating viruses, worms or other types of malicious programs and/or undertake deliberate attempts to overload a computer system, undertake broadcast attacks or any other method designed to damage or interfere with the operation of website or online system; and
- (e) not use the Customer Website to store, distribute or publish racist, abusive, vindictive, inciteful, discriminatory, defamatory content or content designed to humiliate a third party, politically sensitive or which contains sexual content, content glorifying violence or other illegal content in violation of any Applicable Laws or intellectual property rights, including content that we deem in our sole discretion inappropriate.

11. **Domain names services**

11.1 AAP will if required, via a third party, assist Customer to procure internet domain name registration as part of the AAP Services. Upon registration, renewal or transfer of an existing domain name on the Customer Website the Customer must agree to the third party providers’ terms and conditions in addition to this agreement.



11.2 Customer's use of the domain name is also subject to the policies of the Internet Corporation for Assigned names and Numbers (IACCN).

11.3 If the Customer does not pay the relevant fee for the registration or renewal of a domain name AAP may terminate this agreement immediately.

12. **Third party suppliers**

12.1 Some features and functionality of the Customer Website are dependent on a number of third party services and/or products. The Customer acknowledges and agrees that AAP accepts no liability to third parties services and/or products.

12.2 AAP may vary the features and functionality of the Customer Website at any time. AAP will endeavour to provide at least seven days' notice of any material changes or improvements.

12.3 AAP may change its third party suppliers at any time in its sole discretion without notice to the Customer and Customer must comply with third party suppliers' terms and conditions where applicable. If these terms are not publicly available, Customer can request that AAP provide or make available a copy of the relevant parts only of such term.

13. **Acknowledgements, warranties and indemnities by Customer**

13.1 Customer acknowledges that:

- (a) the Customer Website is provided on an 'as is' basis and your use of the Customer Website is at your sole risk;
- (b) in order to use the Customer Website you require a modern browser such as Internet Explorer 10, Fire Fox 20, Safari 5 or Google Chrome 30 and a stable connection to the Internet. The Customer Website may work in a limited manner on other web browsers such as earlier versions of the previously mentioned browsers but the Customer Website is not designed to for use on web browsers of those recommended above;
- (c) the operation and availability of the system used for accessing the Customer Website can be unpredictable and that downtime of the Customer Website, is scheduled or unscheduled, may occur from time to time. Subject to clause 14.3 and your consumer rights you will, we will not be liable for the consequences of any downtime;
- (d) we do not guarantee that the Customer Website will be free from viruses or other conditions which could damage or interfere with data hardware or software with which it might be used. Subject to clause 14.3 and your consumer rights you acknowledge that you assume all risk of all programs and files are associated with the Customer Website and you will not hold us liable for any loss damage or liability arising from such use;



- (e) we may use third party suppliers to provide hardware, software, networking, connectivity, storage and the technology to provide the Customer Website and that the Customer Website may be subject to limitations, delays and other problems inherent in the use of such services. The delays, problems, acts and omissions of those third party suppliers are outside of our control and we do not accept any liability for any loss or damage suffered as a result;
- (f) the Customer Website may contain materials produced or provided by third parties or you may access links to third party websites. By accessing such content you acknowledge and agree that use of such third party websites or content may be subject to terms and conditions of the third party;
- (g) we do not represent, endorse or warrant the accuracy, or quality, reliability or nature of the content of any linked website whatsoever and you access such third party website or content at your own risk; and
- (h) you will be solely liable for any content uploaded to, accessed, displayed, sold or made available through the Customer Website.
- (i) Customer indemnifies AAP against all loss and damage incurred by us and any third parties arising directly or indirectly from or in connection with your account, use of the Customer Website and AAP Services, your use of third party websites linked through the Customer Website, any content you submit via the Customer Website and your breach of this Agreement.

13.2 Customer indemnifies AAP and third party suppliers against any loss, cost, expense, claim, liability, action, proceeding, damages or demand (including reasonable legal costs) that AAP or its third party suppliers suffers or incurs as a result of a breach by Customer or any end user's breach of the terms and warranties in this Agreement.

13.3 Where any claims or legal actions of a third party are made or commenced against Customer by any third party howsoever arising, Customer hereby,

- (a) acknowledges and agrees that AAP shall have no liability in respect of any such claims or legal actions or any expenses or damages suffered or incurred by Customer as a result of such claims or legal actions being commenced; and
- (b) waives and releases AAP from any liability in respect of such claims or legal actions.
- (c) Customer agrees that this clause 13.3 is enforceable by and to the benefit of AAP, its related bodies corporate and third party suppliers.

14. **Liability**

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



- 14.2 If the law, including the Competition and Consumer Act 2010 (Cth) (as amended) or any similar legislation, implies or imposes a non-excludable condition, warranty or guarantee which can be limited, the liability of AAP to Customer for breach of that condition, warranty or guarantee will be limited, to the extent permitted by law – as AAP determines – to:
- (a) provision of a replacement service; or
 - (b) cost of providing a replacement service.
- 14.3 To the extent permitted by law, AAP and third party suppliers are not liable for any indirect, consequential, special or punitive loss or damage in respect of the AAP 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:
- (a) such loss or damage was foreseeable or contemplated by either party; or
 - (b) AAP is advised of the possibility of such loss or damage.
- 14.4 To the extent permitted by law, the total liability in all circumstances of AAP and any third party suppliers to Customer in contract, tort (including negligence) or otherwise for any loss or damage is limited to an amount equal to the Monthly Charges paid by Customer to AAP for three months' immediately preceding the month during which the breach occurs or liability arises.
- 14.5 Customer agrees that this clause 14 is enforceable by and to the benefit of AAP, its related bodies corporate and third party suppliers.
- 15. Termination**
- 15.1 If the Enterprise Customer Service Terms (if any) are terminated, this Agreement will automatically and immediately terminate.
- 15.2 This Agreement is not terminated automatically merely because the AAP Text and Image Content Terms (if any) are terminated.
- 15.3 For lite and pro customers, AAP may terminate this Agreement at any time and for any reason. Without limiting AAP's right under this clause, AAP may terminate this Agreement immediately on written notice to Customer if:
- (a) Customer suffers an Insolvency Event;
 - (b) Customer breaches a material term of this Agreement;
 - (c) Customer breaches a material term of the AAP Text and Image Content Terms (if any) or Enterprise Customer Service Terms (if any);



- (d) Customer is in breach of these this Agreement and that breach is not capable of remedy; or
- (e) Customer is in breach of this Agreement, that breach is capable of remedy and has not been remedied within fourteen (14) days of AAP giving Customer written notice to do so.

15.4 If the parties have not entered into the Enterprise Customer Service Terms, Customer may terminate this Agreement at any time and for any reason.

15.5 Enterprise Customers may terminate this agreement immediately upon written notice to AAP if

- (a) AAP suffers an Insolvency Event; or
- (b) AAP is in material breach of this Agreement, that breach is capable of remedy and has not been remedied within fourteen (14) days of Customer giving AAP written notice to do so.

15.6 In the event that this Agreement is terminated:

- (a) All Enterprise Services supplied, and all licenses granted under the Customer Enterprise Agreement, shall automatically and immediately terminate;
- (b) all AAP Services supplied, and all licenses granted under this Agreement, shall automatically and immediately terminate. For the sake of clarity this includes all services being supplied under Additional Publish Packs; and
- (c) the AAP Text and Image Content Terms, and all licenses granted under those terms, shall automatically and immediately terminate.

16. **General**

16.1 Assignment

- (a) Customer may not assign or otherwise deal with its rights, obligations or remedies under this Agreement without the prior written consent of AAP, which consent must not be unreasonably withheld.

16.2 Severability

- (a) If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of the Agreement remains in force.

16.3 Surviving Clauses



- (a) The obligations in clauses 8 and 9 (Charges/GST) (Tax and GST), 13 (Acknowledgement, Warranties and Indemnities by Customer, clause 14 (Liability), clause 15 (Termination), survive the expiry or termination of this Agreement.

16.4 Entire agreement

- (a) 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.

16.5 Governing Law and Jurisdiction

- (a) The laws of New South Wales govern this Agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales.

17. Definitions and Interpretation

17.1 In this Agreement, unless the context otherwise requires:

- (a) **AAP Text and Image Content Terms** means the terms which apply to Licensees use of AAP text and images on the Customer Website, as varied from time to time.
- (b) **Customer Website** means the white label website licensed to Licensee pursuant to this Agreement.
- (c) **Applicable Laws** means any law, direction, code, regulation, rule or requirement issued by a government authority in relation to, or having application to the Customer Website and use of the Customer Website.
- (d) **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.
- (e) **Charges** means the charges for the Customer Website and expressly excludes GST.
- (f) **Enterprise Customer Service Terms** means the terms that apply to enterprise customers.
- (g) **GST** has the meaning given in A New Tax System (Goods & Services Tax) Act 1999 (Cth).
- (h) **Insolvency Event** means the happening of any of the following events in relation to a party:
 - a) the party becomes an externally-administered body corporate under the Corporations Act 2001 (Cth) or steps are taken by any person towards making the party an externally-administered body corporate;

- b) a controller (as defined in section 9 of the Corporations Act 2001 (Cth)) has been appointed over any of the property of the party or any steps taken for the appointment of such a person;
- c) the party has been served with a demand under section 459E of the Corporations Act 2001 (Cth) which the party is taken, under section 459F of the Corporations Act 2001 (Cth), to have failed to comply with;
- d) 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; or
- e) the party is insolvent; and
- f) if the party is an individual:
 - (aa) the party authorises a registered trustee or solicitor to call a meeting of the party's creditors or proposes or enters into a deed of assignment or deed of arrangement or a composition with any of the party's creditors;
 - (bb) 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
 - (cc) the party commits an act of bankruptcy.

17.2 In the event of any inconsistency between a provision in this Agreement and another provision in this Agreement or an inconsistency between a provision in this Agreement and a provision in another agreement, to the extent necessary to resolve the inconsistency:

- (a) a specific provision takes precedence over a general provision; and
- (b) otherwise, the following order of precedence applies:
 - a) first, the Enterprise Customer Service Terms (if any);
 - b) second the AAP Text and Image Content Terms (if any);
 - c) third, the AAP Publish Licence Agreement.