



Version Date: 1 January 2017

## **AAP Publish**

### **AAP Text and Images Content Terms**

These AAP Text and Images Content Terms (**'Content Terms'**) apply to your use of AAP text and images on your Customer Website that you have licensed pursuant to the AAP Publish Licence Agreement you have entered into with AAP.

#### **1. Binding Contract**

1.1 You acknowledge that have read these Content Terms 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 these Content Terms for our affiliates, agents, sub-contractors, third party suppliers and related bodies corporate. In these Content Terms 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 AAP licenses the AAP text and images on a non-exclusive, non-transferable basis to Licensee for display on the Customer Websites only to enable viewing by a User accessing the approved Customer Website provided that such viewing is solely for personal, non-commercial use by a User.

3.2 Licensee acknowledges and agrees that AAP text and images from are for the personal, non-commercial use only of Users and not otherwise for copying, archiving, syndication, 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.

3.3 Licensee must inform AAP if to Licensee's actual knowledge any person is using any AAP text and images by way of no syndication republication or redissemination in broadcast, electronic or hard copy for gain or otherwise than for personal, non-commercial use.

3.4 The licence in section 3.1 does not include a right to allow hyperlinking by Users to AAP text and images for non-personal commercial use by User.

#### **4. Duration of Agreement**

4.1 Subject to all terms herein, these Content Terms will:



- (a) for lite or pro customers - commence upon the date you click 'I agree' and continue month to month;
- (b) for enterprise customers and subject to clause 16 of these Content Terms - upon the commencement date of your Enterprise Customer Term Sheet and will continue for the duration of the Initial Term (as that term is defined in the Enterprise Customer Term Sheet) and any Further Terms (as that term is defined in the Enterprise Customer Term Sheet).

## 5. **Supply and use of AAP text and images**

5.1 Subject to these Content Terms and the AAP Publish Licence Agreement, AAP will provide Licensee with access, via a dedicated username and password, to the pool of stories and images created by AAP and made available to the representatives of Licensee via the 'AAP Publish' digital interface platform.

## 6. **Charges**

6.1 In consideration of the provision of the AAP text and image content, 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.

## 7. **GST**

7.1 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 these Content Terms does not include GST. To the extent that any supply made under or in connection with these Content Terms 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.

## 8. **Sharing on social media**

8.1 Subject to any sections in these Content Terms to the contrary, Licensee may also allow Users to utilise Social Media Site features in connection with the AAP text or image, 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, as the case may be, and that the headlines or image screen shot link directly back to the main article, or image on the Customer Website and that such display is solely for personal, non-commercial use by the User.



8.2 AAP may, in its absolute discretion and without any penalty, immediately terminate the right contained in this section 8.1 at any time.

## 9. Users

9.1 Licensee must:

- (a) ensure and procure that all display of AAP text and images on the Customer Website is on User terms that are consistent with restrictions imposed on AAP text and images set out in these Content Terms;
- (b) promptly notify AAP on becoming aware of any material breach by a User of any of the restrictions;
- (c) provide reasonable assistance to AAP to stop any Users or others acting in a manner contrary to section 9.1(a).

## 10. Display/Storage Periods

10.1 Licensee must comply with any limitations contained in the special instructions or use restrictions accompanying the images (for example limits on update or display times).

10.2 Subject and any specific restrictions displayed with, marked on or accompanying an item, Licensee may display on the Customer Website and store in computer readable form, in accordance with these Content Terms, AAP text and images on a once-only basis for a period of not more than thirty (30) days, from the date upon which the AAP text and images are received by Licensee from AAP (**Storage Period**).

10.3 Licensee must delete all text and images at the end of the Storage Period. Notwithstanding this section 10, Licensee must not display any text and images that AAP has retracted, cancelled or modified under section 12.1(i).

## 11. Archiving

11.1 Licensee may not maintain any archival or historical database of any kind (whether digital or otherwise) of text and images. This prohibition includes the storage of text and images for future retrieval but does not prevent Licensee from storing such text or images:

- (a) In a temporary location in accordance with these Content Terms for access by Users; and
- (b) upon expiry of the Storage Period for Licensee's internal, non-public, legal, taxation and administrative purposes.

## 12. Platform Restrictions

12.1 Licensee must:

- (a) not use text and images on any other platform other than the Customer Website;

- (b) not merge the Customer Website with another platform or site for distribution of the AAP text and images through the acquisition of or merger with another distributor of content or through co-branding, except with the expressed mutual consent of AAP;
- (c) not enter into any agreement to provide text and images to libraries or media monitors, or which allows clipping in any form;
- (d) not use text and images in a manner and context that damages the reputation and goodwill of AAP or any third party supplier;
- (e) not use text and images in a manner that is reasonably likely to be obscene, defamatory, or offensive to any person or classes of persons;
- (f) not use included in the AAP text and images in conjunction with or adjacent to material of an erotic nature;
- (g) not distort the meaning of any text and images or subject any part of the text and images to derogatory or defamatory treatment;
- (h) notwithstanding any other section in these Content Terms, comply with any specific form of use or restriction marked on or accompanying an image ;
- (i) observe and comply without delay with all instructions from AAP regarding display of corrections, retractions or apologies in the form requested by AAP or in respect of the taking down of text and images obtained.

12.2 Nothing in this section 12 will restrict Licensee from reporting the news truthfully.

### 13. **Security**

13.1 Licensee and Licensee's authorised employees must ensure that any username and password used to access any part of the AAP text and images is kept secure. Licensee must take all reasonable steps to prevent unauthorised use of the username and password and unauthorised access to the AAP text and images. Licensee is responsible for all use of the AAP text and images made using such usernames and passwords unless Licensee promptly notifies AAP of a security breach in which case Licensee is not liable for unauthorised use after notification.

13.2 Licensee will use commercially reasonable means to protect the security of the AAP text and images, on the Customer Website, 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 text and images.

### 14. **Clearances and Sporting content**

#### 14.1 **Clearances**

14.2 Except where Licensee is using the AAP text and images 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 AAP text and images which may be protected by proprietary rights, copyright, neighbouring rights (including moral rights and performers' rights) or privacy rights prior to the use of such AAP text and images by Licensee, including:

- (a) clearances from people whose name, portrait or images or performance appears in the relevant AAP text and images ; or
- (b) clearances in respect of musical works, sound recordings, buildings, works of art, designs, public monuments and/or other inanimate objects contained in the relevant AAP text and images.

## 15. **Sporting content**

15.1 AAP's ability to include sporting text, data and images as part of the AAP text and images is contingent upon the terms of accreditation imposed by any relevant sporting organisations. If any sporting organisation imposes any restrictions or limitations on AAP in terms of AAP's coverage of any sporting events or fixtures, Licensee acknowledges and agrees that AAP's ability to supply the AAP text and images 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 in order to gain access to the event provided that such limitation and restrictions are notified to it by AAP.

### 15.2 **Code of Practice for Sports News Reporting**

15.3 Licensee acknowledges that AAP's sale of sporting text, data and images is subject to the Code of Practice for Sports News Reporting. Licensee must not use any sporting text, data or images it receives from AAP for Commercial Use. For the purposes of this section 15.3, "Commercial Use" means the sale or production or use of content for advertising or promotional or merchandising purposes, including:

- (a) photographs being used by a non-media organisation on a website or webpage, in a publication or via some other medium for any purpose other than publishing of news content on any technical platform including individual publications, web-pages, Customer Websites or print media where that platform or medium is or will be genuinely and ordinarily used for the publication of news content;
- (b) operating a statistics service; or
- (c) photographs being used for or in any advertisements, promotional materials, for merchandise such as memorabilia, collector's cards, calendars, clothing, packaging or competitions.

### 15.4 **Sporting Images**

15.5 Licensee must comply with any additional conditions notified by AAP to Licensee as a condition of using the sporting images. In particular, Licensee must not use such sporting

images in a manner that creates a false impression that a person or business has a sponsorship, approval or affiliation with the sport, sporting organisation or the event or any participants in the event.

15.6 AAP may immediately cancel Licensee's right to use any sporting images if AAP is requested by the relevant sporting body or authority to cease using such sporting images. In these circumstances Licensee must immediately cease using sporting images included in the AAP text and images. If AAP exercises its rights under this section AAP will refund to the Licensee any Monthly Charges which have been pre-paid and which relate solely to use of sporting images provided that the cancellation is not due to Licensee's breach of these Content Terms.

## 16. **Acknowledgements, warranties and indemnities by Licensee**

16.1 Licensee acknowledges and agrees that:

- (a) AAP includes text and images from its own sources and from third party suppliers;
- (b) AAP reserves sole editorial discretion in relation to the form and content of the AAP text and images;
- (c) AAP retains all intellectual property rights in the AAP text and images; and
- (d) telecommunications charges incurred in accessing the AAP text and images are Licensee's own responsibility and cost.

16.2 Licensee warrants to AAP that:

- (a) Licensee has authority to enter into these Content Terms;
- (b) the signatory to these Content Terms is authorised to enter into and execute these Content Terms on Licensee's behalf;
- (c) it will not use or distribute any part of the AAP text and images in such a manner so as to harm or reduce the legal protection accorded to the copyright and all other rights of AAP and it will not use or distribute any part of the AAP text and images in transmissions or other publications which are reasonably likely to be obscene, defamatory, or offensive to any person or classes of person;
- (d) Licensee will use the AAP text and images contained in the AAP text and images on the Customer Website solely as permitted by these Content Terms.

16.3 Licensee indemnifies AAP and its third party suppliers against any loss, cost, expense, claim, liability, action, proceeding, damages or demand (including reasonable legal costs) that AAP or the third party supplier suffers or incurs as a result of a breach by Licensee or any User's breach of the warranties in section 16.2. Licensee agrees that this section 16.3 is enforceable by and to the benefit of AAP, its related bodies corporate and its third party suppliers.



- 16.4 Where any claims or legal actions of a third party for defamation are made or commenced against Licensee by any third party howsoever arising, Licensee,
- (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 Licensee 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.
- 16.5 Licensee acknowledges that whilst 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 and images contained in the AAP text and images AAP is not able to provide a guarantee that the material is free of such errors or material.
- 17. Warranties and indemnity by AAP**
- 17.1 AAP warrants to Licensee that:
- (a) AAP has authority to enter into these Content Terms;
  - (b) the signatory to these Content Terms is authorised to enter into and execute these Content Terms on AAP's behalf; and
  - (c) the AAP text and images, if used as permitted by these Content Terms will not infringe the copyright or any other intellectual property rights of any third party.
- 17.2 Subject to the sections below and all over terms of this Content Terms, AAP indemnifies Licensee against any liabilities, losses, expenses, damages or other costs (including, reasonable legal costs) that Licensee suffers or incurs as a result of a breach by AAP of section 17.1(c) provided that:
- (a) the relevant claim does not arise from any modification to AAP text and images made by Licensee or any person receiving AAP text and images through Licensee
  - (b) the relevant claim does not arise as a result of a combination of AAP text and images with third party text and images (ie non AAP text and/or images);
  - (c) the relevant claim does not concern AAP text and images that AAP notified Licensee should not be used;
  - (d) the relevant claim does not arise as a result of a breach by Licensee of section 12.1.
- 17.3 if Licensee wishes AAP's indemnity to apply to a claim or legal action of a third party made or commenced against Licensee then Licensee must:
- (a) promptly notify AAP that a claim or legal action has been made or commenced against Licensee in respect of which indemnity may be sought from AAP;



- (b) makes no admissions of liability in relation to the claim;
- (c) provide AAP with the opportunity to conduct settlement negotiations and/or the applicable proceedings in the place of Licensee (AAP is required to have due regard to the input and interests of Licensee);
- (d) provide AAP with all reasonable assistance requested by AAP; and

17.4 this indemnification will not apply when liabilities, losses, expenses, damages or other costs are caused or contributed to by the negligence or wilful default of the Licensee however caused or otherwise.

## 18. **Errors, Corrections and Retractions**

18.1 Licensee must ensure that AAP 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 without delay act upon corrections, retractions or apology notices issued by AAP.

## 19. **Termination**

19.1 If either or both of the Enterprise Customer Term Sheet (if any) or AAP Publish Licence Agreement is terminated, these Content Terms will automatically and immediately terminate.

19.2 AAP may terminate these Content Terms immediately on written notice to Licensee if:

- (a) Licensee suffers an Insolvency Event;
- (b) Licensee breaches a material term of these Content Terms;
- (c) Licensee breaches a material term of the AAP Publish Licence Agreement or, where applicable, Enterprise Customer Term Sheet;
- (d) Licensee is in breach of these Content Terms and that breach is not capable of remedy;
- (e) Licensee is in breach of these Content Terms, that breach is capable of remedy and has not been remedied within fourteen (14) days of AAP giving Licensee written notice to do so.

19.3 In the event of termination under clause 19.1 or 19.2 all licenses granted under these Content Terms in relation to AAP text and images immediately expire.

19.4 Licensee may terminate these Content Terms immediately on written notice to AAP if AAP is unable to supply text or Images for two (2) consecutive Business Days.

19.5 Upon termination of these Content Terms:



- (a) all licences granted for image and text under these Content Terms automatically terminate;
- (b) Licensee must cease using all AAP text and images and the AAP Trade Mark and/or the trademark of a third party supplier to AAP.
- (c) AAP will be entitled to delete or require deletion of all copies of AAP text and images from the Customer Websites, its computer systems and from any other means of storage in Licensee's its possession, power, custody or control.
- (d) Licensee must remove all references to AAP.

## 20. Accreditation

20.1 Licensee must comply with the following accreditation, copyright and disclaimer notice requirements.

- (a) Licensee must accredit AAP for all text used by displaying the AAP logo (globe symbol) with a display resolution of at least 50 x 25 pixels in a prominent position on each page of the Customer Website where the text is displayed;
- (b) for text, include the further accreditation "AAP" at either the beginning or end of each news text item, in the same font and type size as the news text item;
- (c) for images, include the word "AAP" immediately below the image and as practicable with respect to caption space constraints - the photographer's byline;
- (d) for all text and images include a copyright notice in the form '©[year] AAP' and display in a reasonably prominent place in the legal terms and conditions of the Customer Website the following detailed notice and disclaimer set out below:

### AAP DISCLAIMER AND COPYRIGHT NOTICE

*AAP content is owned by or licensed to Australian Associated Press Pty Limited and is copyright protected. AAP content is published on an "as is" basis for personal use only and must not be copied, republished, rewritten, resold or redistributed, whether by caching, framing or similar means, without AAP's prior written permission. AAP and its licensors are not liable for any loss, through negligence or otherwise, resulting from errors or omissions in or reliance on AAP content. The globe symbol and "AAP" are registered trademarks.*


20.2 AAP may give Licensee written notice to rectify Licensee's failure to display accreditation, copyright and disclaimer notices in accordance with this section 20. Licensee must rectify such failure by the end of the Business Day following receipt of that written notice.

20.3 AAP may request reasonable changes to the requirements set out in this section 20 at any time during the Term by notice in writing to Licensee. Licensee must comply with such notice within 30 days of receipt.

## 21. Trade marks

- 21.1 The AAP Trade Mark is the exclusive property of AAP. AAP reserves all rights in it. All use of the AAP Trade Mark under these Content Terms is for the sole benefit of AAP. Licensee must not knowingly or recklessly take any action which is inconsistent with AAP's rights in the AAP Trade Mark.
- 21.2 AAP grants Licensee a non-exclusive licence during the Term to use the AAP Trade Mark:
- (a) to the extent reasonably necessary to identify the AAP text and images as originating from AAP; and
  - (b) otherwise, with the prior written permission of AAP.
- 21.3 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 a viewer the impression that such third party is a publisher of AAP text and images 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.
- 21.4 Licensee must not include any advertising or sponsorship in connection with text or that:
- (a) breaches any law or regulation where the Customer Websites may be used or viewed; or
  - (b) falsely implies that the advertiser or sponsor is associated with AAP or any third party supplier to AAP.

## 22. Definitions and Interpretation

- 22.1 These words mean as follows:
- (a) **AAP Publish Licence Agreement** means the full terms which applies to Licensee's use of the Customer Website as varied from time to time.
  - (b) **AAP Trade Mark** is as follows: 
  - (c) **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.
  - (d) **Enterprise Customer Term Sheet** means the terms that apply to enterprise customers in addition to the AAP Publish Licence Agreement and these AAP Text and Image Content Terms.
  - (e) **Customer Website** has the same meaning as in the AAP Publish Licence Agreement.
  - (f) **Code of Practice for Sports News Reporting** means the Code of Practice for Sports News Reporting (Text, News and Data) dated 30 March 2010 to which AAP is a signatory.



- (g) **Insolvency Event** means [insert AAP's usual definition].
- (h) **Social Media Sites** means social media sites that allow the creation and exchange of user-generated content and which are operated or owned by a third party and which allow a user to create their home page.
- (i) **User** means a person who views or accesses a Customer Website.

## 22.2 Interpretation

- (a) A term or expression defined in the Corporations Act 2001 (Cth), the Telecommunications Act 1997 (Cth), the Broadcasting Services Act 1992 (Cth) or the Copyright Act 1968 (Cth) but not defined in these Content Terms has the same meaning as provided in that legislation.
- (b) In the event of any inconsistency between a provision in these Content Terms and another provision in these Content Terms or an inconsistency between a provision in these Content Terms and a provision in another agreement , to the extent necessary to resolve the inconsistency:
  - (i) a specific provision takes precedence over a general provision; and
  - (ii) otherwise, the following order of precedence applies:
    - (aa) first, the Enterprise Customer Service Terms (if any);
    - (bb) second the AAP Text and Image Content Terms;
    - (cc) third, the AAP Publish Licence Agreement.