

Part E: ADdigital Terms

1 General

1.1 Definitions

In this Part E, the following words have the following meanings:

- (a) **ADdigital Fees** means the fees payable by Customer to Adstream for the Uses as set out in the Agreement Details; and
- (b) **Authorised Users** means those employees, agents and independent contractors of Customer who are notified to Adstream by Customer from time to time as being the users of the Services and the Documentation;
- (c) **Customer Data** means the data inputted by Customer, Authorised Users, or Adstream on Customer's behalf, for the purpose of using the Services or facilitating Customer's use of the Services;
- (d) **Documentation** means the documentation made available to Customer by Adstream which sets out a description of the Services and the instructions for the use of the Services;
- (e) **Services** means the ADdigital services provided by Adstream to Customer under this Part E on a "pay-per-use" basis, as more particularly described in the Documentation;
- (f) **Software** means the online software applications hosted by Adstream the use of which is provided by Adstream to Customer as part of the Services;
- (g) **Uses** means the instances of use of the Services purchased by Customer or made available to Customer pursuant to this Part E which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

2 Uses

2.1 Permission to use the Services

Upon purchasing a Use, Adstream hereby grants to Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation solely for Customer's internal business operations.

2.2 Customer's undertakings

In relation to the Authorised Users, Customer undertakes that:

- (a) the maximum number of Authorised Users that may access and use the Services and the Documentation will not exceed the number advised to Customer from time to time by Adstream;
- (b) each Authorised User will keep a secure password for his or her use of the Services, that such password will be changed frequently and that each Authorised User will keep his password confidential;
- (c) Customer will maintain a written, up to date list of current Authorised Users and provide such list to Adstream within 7 days of Adstream's written request;
- (d) Customer will permit Adstream to audit Customer's use of the Services in order to establish the name and password of each Authorised User and otherwise to ascertain if the Services are being used in accordance with this Agreement. Such audit may be conducted no more than once per quarter, at Adstream's expense, and this right will be exercised with reasonable prior notice, in such a manner as not to substantially interfere with Customer's normal conduct of business. Customer must provide Adstream with access to all relevant books, computer and electronic records and other documents necessary to enable Adstream to conduct the audit, and must ensure that its personnel cooperate fully with Adstream and its representatives; and
- (e) if any of the audits referred to in clause 2.2(d) of this Part E reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to Adstream's other rights, Customer will promptly disable such passwords and Adstream will not issue any new passwords to any such individual.

2.3 Prohibitions

Customer must not:

- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
- (b) access all or any part of the Services or Documentation in order to build a product or service which competes with the Services;
- (c) use the Services or Documentation to provide services to third parties;
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or Documentation available to any third party except the Authorised Users; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services or Documentation, other than as provided under this Agreement.

2.4 Prevention of unauthorised access

Customer must use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services or the Documentation and, in the event of any such unauthorised access or use, promptly notify Adstream.

3 Services

3.1 Provision of Services

Adstream will provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.

3.2 Services Availability

- (a) Adstream agrees to use its reasonable endeavours to ensure that the Services have ninety-nine per cent (99%) Uptime.
- (b) For the purposes of this Part E:
 - (i) **Uptime** means the actual hours of availability of the Services in a month divided by the available hours in a month less Scheduled Downtime; and
 - (ii) **Scheduled Downtime** means scheduled downtime during which the Services will not be available to Customer as notified to Customer with at least 7 days notice.

4 Customer Data

4.1 Ownership

Customer owns all rights, title and interest in and to all of the Customer Data and has sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.

4.2 Archiving procedures

Adstream will use its reasonable endeavours to archive and back-up any Customer Data from time to time. Notwithstanding the foregoing, Customer must make adequate back-up copies of the Customer Data and any other content and data provided by Customer to Adstream and maintain such back-up copies in a secure manner.

4.3 Privacy and security policy

Adstream will, in providing the Services, comply with its Privacy and Security Policy relating to the privacy and security of its customers' data available at <http://www.adstream.com.au/assets/privacy-statement.pdf> as provided by Adstream to Customer from time to time, as may be amended from time to time in Adstream's sole discretion.

4.4 Customer Data to comply with laws

Customer remains solely responsible for ensuring that all content and data made available to Adstream pursuant to this Agreement, including Customer Data, complies with all applicable laws. Customer warrants that the provision of content and data by Customer to Adstream and the use of it by Adstream in providing the Services complies with all applicable laws, including but not limited to the *Privacy Act 1988* (Cth).

4.5 Licence

Customer grants Adstream a worldwide, transferable, perpetual, sub-licensable and royalty free licence to publish, communicate, modify, copy and adapt all Customer Data and other content and data (including all intellectual property rights subsisting therein) that Customer posts, uploads or provides to Adstream for the purposes of Adstream providing the Services.

5 Third Party Providers

Customer acknowledges that the Services may enable or assist Customer to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that Customer does so solely at its own risk. Adstream makes no representation or commitment and will have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between Customer and the relevant third party, and not Adstream. Adstream recommends that Customer refer to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. Adstream does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

6 Adstream's obligations

6.1 Standard of Services

Adstream undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care. If the Services do not conform with the foregoing undertaking, Adstream will, at its expense, use its reasonable endeavours to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes Customer's sole and exclusive remedy for any breach of the undertaking set out in this clause 6.1.

6.2 Non-conformance contrary to Adstream's instructions

The undertaking at clause 6.1 of this Part E will not apply to the extent of any non-conformance which is caused by use of the Services contrary to Adstream's instructions, or modification or alteration of the Services by any party other than Adstream or Adstream's duly authorised contractors or agents.

6.3 No liability

- (a) Customer acknowledges the technical difficulty of engineering failsafe online software applications, and Customer agrees that Adstream can give no, and that Adstream does not give any:
 - (i) guarantee that the Software will work as desired on every occasion; or
 - (ii) warranty regarding: A) suitability of the Software for the uses to which Customer puts them; C) compatibility of the Software with any of the systems in conjunction with which Customer uses them; or C) accuracy or completeness of any database or other information accessible through using the Services.

- (b) Customer warrants that it has not relied on any representation made by Adstream in relation to the Services or the Software other than as expressly set out in this Part E.
- (c) To the maximum extent permitted by applicable law, Adstream will not be liable for any losses or damages whatsoever or any other remedy (whether in negligence, contract or otherwise) in any way related to the Services or the Software, or any other services supplied by Adstream (or an agent or sub-contractor of Adstream) in relation to them, or any material submitted through, or altered by, them, regardless of any fault of Adstream (or an agent or sub-contractor of Adstream) and even if Adstream has been advised of the possibility of such losses or damages.

7 Customer's obligations

Customer must:

- (a) provide Adstream with all reasonably necessary:
 - (i) assistance and co-operation; and
 - (ii) access to such information,
 as may be required by Adstream in order to perform the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with Adstream's reasonable directions in relation to the Services;
- (c) not circumvent, disable or otherwise interfere with:
 - (i) security-related features of the Services; or
 - (ii) any features that prevent or restrict use or copying of any content on or available from the Services or enforce limitations on use of, or any content on or available from, the Services;
- (d) ensure that its network and systems comply with any relevant specifications provided by Adstream from time to time; and

- (e) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Adstream's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to Customer's network connections or telecommunications links or caused by the Internet.

8 Fees

8.1 ADdigital Fees

Customer must pay Adstream the ADdigital Fees for the Uses in accordance with this Agreement.

8.2 Failure to receive payment

If Customer has not paid the ADdigital Fees within 30 days from the date of the Invoices Statement in accordance with clause 3.3 of the General Terms, without prejudice to any other rights and remedies of Adstream, Adstream may, without liability to Customer, disable Customer's password, account and access to all or part of the Services and Adstream will be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid.

8.3 Excess data storage fees

If, at any time whilst using the Services, Customer exceeds the amount of disk storage space specified in the Documentation, Adstream will notify Customer of such fact and will be entitled to, at its reasonable discretion, charge Customer, and Customer must pay, Adstream's then current excess data storage fees.