

Audit Bureau of Circulations
Circulations Audit Board

ABA Web Audit Service Agreement

Parties

1.	Audit Bureau of Circulations and Circulations Audit Board "ABC/CAB" of Level 8, 15 Blue St, North Sydney, NSW, 2060, Australia				
Phone:	+61 2 8912 6009	Fax:	+61 2 9956 8220	ABN:	ABC: 78 449 399 715 CAB: 90 644 757 696
Contact:	Alexx Cass – Digital Services Manager	Email:	alex@auditbureau.org.au		

2.					
Phone:	+61 2	Fax:	+61 2	ABN:	
Contact:		Email:			

Effective Date of Agreement:

The Agreement

The ABC has agreed to provide the Member, and the Member has agreed to purchase, the Services and Products as described below in accordance with this Agreement, which includes the general terms and conditions (**Terms and Conditions**), the service agreement(s) between the Member and The ABC (the **Service Agreements**) and the **Schedule(s)** to the Service Agreements and any **Special Conditions** in those schedules. **This agreement does not supersede any Rules, Policies, or Terms and Conditions relating to ABC/CAB Membership.**

The Service/Product

The following Services and Products are to be supplied by the ABC in accordance with the terms of this Agreement.

1. Audited monthly website data listed alongside print figures in the **ABC/CAB's eData** portal
2. Audited monthly website data listed in public Nielsen Online **Market Intelligence (Australia Domestic)** competitive rankings
 - Only valid for websites exceeding 100 Australian Unique Browsers per day
3. Audited monthly website data listed in private **ABC/CAB Market Intelligence** listings
 - Valid for websites of any traffic level
4. **ABC/CAB Auditing** of member's digital measurement procedures to ensure compliance with industry guidelines, policies and standards

Fees

The Member will be charged the following Fees and Additional Support Fees by the ABC in accordance with the terms of this Agreement:

Total Monthly Page Impressions	Monthly Service Fee includes Nielsen data collection fee, audit fees and reporting within Market Intelligence and eData.
0 to 150,000	\$95*
150,001 – 1,000,000	\$273*
1,000,001 to 4,000,000	\$604*
4,000,001 and above	Contact webaudit@auditbureau.org.au
All amounts are Australian Dollars and exclusive of GST and are invoiced quarterly	
* (plus \$25 per extra site per month)	

Executed as an agreement:

Signed for
Audit Bureau of Circulations
 by its representative:

Authorised Representative

Name

Signed for

by its representative:

Authorised Representative

Name

Terms and Conditions

The Agreement

- 1 A reference to this "Agreement" includes:
- (a) these *Terms and Conditions*;
 - (b) any applicable *Service Agreement(s)*, *Schedules* to the Service Agreement(s) and any *special conditions* included at the time of execution or as subsequently agreed in writing between the parties; and the *Sales Agreement cover sheet* signed by the parties.

The Service

- 2 The Client must comply with all reasonable directions of ABC/CAB relating to the use of and/or access to the Service/Product.
- 3 ABC/CAB will provide the Service/Product to the Client in accordance with the Service Agreement(s).
- 4 Client acknowledges that ABC/CAB is providing the Service/Product through its third party licensor of the Service/Product, Nielsen Online ("Nielsen Online")

Security

- 5 The Client acknowledges that the security of any password and login ID provided to it by ABC/CAB is the sole responsibility of the Client. The Client authorises ABC/CAB to assume that any person using the Client's password and login ID is authorised to do so by the Client.

Payment and GST

- 6 ABC/CAB will invoice the Client at the end of each calendar year quarterly period (March, June, September, December) for the fees set out in the Service Agreement (**Fees**).
- 7 Unless expressly stated otherwise, all consideration for any supply under this Agreement excludes any allowance for GST payable in respect of that supply. Unless such an allowance has been made, if GST applies to any supply by either ABC/CAB or the Client under or in connection with this Agreement, the consideration for that supply shall be increased by the amount of the applicable GST.
- 8 The Client must pay each invoice within 30 days of the date of the invoice by way of cheque or electronic transfer to an account nominated in writing by ABC/CAB.
- 9 If the Client does not pay an invoice within 30 days and the payment remains outstanding for a further five (5) days after Client receiving written notice of same from ABC/CAB, ABC/CAB may suspend the provision of the Service/Product to the Client until payment is made or ABC/CAB terminates this Agreement in accordance with clause 16 below.
- 10 The Client may only withhold payment in the event of a bona fide dispute over the amount of an invoice contemplated by this Agreement until resolution of that dispute.
- 11 If an amount withheld under clause 8 is subsequently paid in whole or in part, then the Client must also pay to ABC/CAB interest on that amount calculated daily at the standard published rate of the relevant central bank.

Intellectual Property Rights

- 12 The Client acknowledges that Nielsen Online owns and retains ownership of all rights including intellectual property rights in the Service/Product, data and reports generated by the Service/Product and all other aspects of the Service/Product.
- 13 Where the Product or Service requires the use by the Client of material which is subject to Nielsen Online's intellectual property rights, Nielsen Online grants the Client permission to use the Product or Service subject to the provisions of, or any restrictions set out in, the applicable Service Agreement(s).
- 14 The Client must not use the Service/Product other than in accordance with this Agreement, including any licence given

under this Agreement, without the express written consent of ABC/CAB.

Term and Termination

- 15 The Agreement Term ("Initial Term") is as set out on the Sales Agreement. If no term is specified on the Sales Agreement then the Agreement Term will be for twelve (12) months ("Initial Term").
- 16 Either party may terminate this Agreement where the other party (defaulting party) commits a material breach of this Agreement and fails to remedy that breach within 21 days of the date of notice to the defaulting party requesting that the breach be rectified.
- 17 ABC/CAB may terminate this Agreement immediately for a failure by the Client to adhere to the privacy requirements of clause 20.
- 18 Either party may terminate this Agreement where the other party becomes insolvent, is declared bankrupt or an administrator, liquidator or similar party is appointed in respect of the other party.
- 19 After termination of this Agreement, the Client acknowledges that:
- (a) it may only continue to use the benefits of the material provided to it by or obtained from ABC/CAB prior to that termination for non-commercial and internal corporate purposes (unless that information has already been released in the public domain by someone other than the Client); and
 - (b) it must comply with the Termination Conditions set out in the Service Agreement, and the obligations of confidentiality in the Agreement.

Privacy

- 20 The Client is responsible for and warrants that it has disclosed the fact that an auditing system is being used on their website. The Client must publish Nielsen Online's website address in the privacy section or privacy policy of its website so that web users may easily gain access to further information about Nielsen Online, the Nielsen Online auditing system, and Nielsen Online's privacy policy.

Warranties

- 21 The Client warrants that it:
- (a) it has full power and authority to enter into, perform and otherwise observe its obligations under this agreement; and
 - (b) will only use the Service/Product in accordance with the terms of this Agreement.

Liability and Indemnities

- 22 Except as expressly provided in this Agreement, the Product/Service, Nielsen Online code, Data, Reports and all other items or services provided or made available to the Client hereunder are "as is" and without any warranty of any kind including, without limitation, as to condition, design, performance, accuracy, completeness, or operation.
- 23 Except in connection with a Client's indemnification obligations pursuant to clause 24 below, each party's maximum aggregate liability under any theory shall not exceed the amount payable by the Client to ABC/CAB under this Agreement.
- 24 The Client shall indemnify, hold harmless, and at ABC/CAB's and/or Nielsen Online's request, defend ABC/CAB and/or Nielsen Online, including their respective affiliates, officers, directors, agents and employees, against all claims, liabilities, damages, losses and expenses, including reasonable attorneys' fees, arising out of or relating to:
- (a) the Client's use of the Product/Service other than in compliance with this Agreement; or
 - (b) any claim by a third party against ABC/CAB or Nielsen Online resulting from or arising out of the breach by the Client of clause 20 (privacy); provided, however, that in connection with such a claim:

- (1) ABC/CAB shall provide the Client with prompt written notice of any such claim;
- (2) at the Client's request and expense, ABC/CAB shall cooperate in the investigation and defense of such claim; and
- (3) the Client shall have the sole authority to defend or settle such claim (provided that the Client may not enter into any settlement that may adversely affect the rights or obligations of ABC/CAB without ABC/CAB's prior written consent).

25 Notwithstanding anything to the contrary contained in this Agreement:

- (a) neither party is liable for any indirect loss, loss of goodwill, business interception, internet malfunction or consequential loss suffered by the other party howsoever caused; and
- (b) the Client is responsible for checking the interoperability of any code or other material with the Client's own systems and software.

Implied Terms

26 Subject to clause 21, any condition or warranty which would otherwise be implied into this Agreement is excluded to the extent that it can be excluded by law. Where any term, or condition imposing liability is implied through the operation of any law, and that term or condition cannot be excluded, ABC/CAB's liability under that term or condition will be limited to the resupply of the affected Service/Product, or the cost of having such Service/Product resupplied.

Confidential Information

27 Each party must keep the other party's confidential information confidential and may only use the confidential information of the other party solely for the purposes of performing its obligations under this Agreement, unless required to disclose such information by the operation of law, or with the other party's written consent.

28 The Client's obligations of confidentiality, including those set out in clause 27, survive termination of this Agreement.

General

29 This Agreement constitutes the entire agreement between the parties in relation to the Service.

30 Neither party is responsible for any delay or inability to perform its obligations under this Agreement where the delay or inability arises as a result of factors outside of that party's reasonable control.

31 This Agreement may only be amended by written agreement of the parties.

32 This Agreement is governed by the laws of New South Wales, Australia and the parties agree to submit the exclusive jurisdiction of the courts of New South Wales, Australia.

33 This Agreement may be assigned by ABC/CAB:

- (a) to Nielsen Online; or
- (b) in all other cases, with the consent of the Client (such consent not to be unreasonably withheld or delayed).

34 This Agreement may not be assigned by the Client and the licence may not be sub-licensed by the Client without the prior written agreement of ABC/CAB.

35 Any notice from one party to the other party under this agreement

- (a) must be in writing marked to the attention of the person(s) noted on the Sales Agreement and
- (b) may be delivered to a party by being left at, or posted by registered post or sent by facsimile or by email to that party's address as noted on the Sales Agreement cover sheet.

36 Any notice made under clause 35 will be deemed to have been served:

- (a) in the case of registered post, 2 business days after posting;

- (b) in the case of registered post where the Client is based outside the Domestic Location, 7 business days after posting (and which post must be international express post);
- (c) in the case of facsimile transmission, when transmission has been successfully completed; or
- (d) in the case of email, when a delivery report is produced by the machine from which the email was sent which indicates the emails was sent to the email address of the addressee.

37 Clauses 10, 12, 19 and 22-37 survive the termination of this Agreement.

The Service Agreement

1 This Service Agreement should be read in conjunction with the Sales Agreement.

The Service and the Fees

2 ABC/CAB has agreed to provide the Client with the web measurement service (the **Service**). In exchange for ABC/CAB providing the Client with the Service, the Client must pay ABC/CAB:

- (a) the set-up costs specified in the Sales Agreement (if any); and
- (b) the Fees, as specified in the Sales Agreement

ABC/CAB Service Obligations

3 ABC/CAB will provide the Client with the Software Code (**NASC**). ABC/CAB authorises the Client to insert the NASC into any and all of the Client's webpages (**Webpages**).

4 ABC/CAB grants the Client a non-exclusive right to use the NASC as part of the Webpages for the term of this Service Agreement, provided that the Client complies with its obligations under this Agreement and does not:

- (a) sub-licence or otherwise transfer to a third party the NASC;
- (b) reverse engineer, decompile, disassemble, modify, adapt or remove the NASC, except as permitted by law;
- (c) do anything to prejudice or interfere with Nielsen Online's rights in the NASC; or
- (d) remove or change any logo, notice or trade mark (whether registered or not) from any of the web pages or any product containing such notice or trade mark.

5 ABC/CAB will provide access to website metrics reports based on data received as a result of the Service, (the **Reports**). The Reports are accessible at a website accessible via the provided Client login ID and password.

6 If the Client discloses information contained in the Reports then the Client must use its best endeavours to credit Nielsen Online, by name, as the source of such Reports.

7 ABC/CAB will not provide the Client with any raw data collected and/or used to generate the Reports (the **Data**). The Client is not entitled to access or use the Data.

8 Nielsen Online, at its sole discretion, may regularly review and improve, and may alter the look and feel of, the website and layout of the Reports. Nielsen Online may provide new features or enhancements, and rectify any website or system defects.

9 The Client will designate a representative as stated in the Sales Agreement authorised to instruct ABC/CAB on issues such as Client login IDs, passwords, and Reports.

10 At the Client's request and subject to ABC/CAB's resource availability and timing, ABC/CAB will provide the training services, as detailed in the Schedule.

11 ABC/CAB will provide customer support and administrative services as detailed in the Schedule. ABC/CAB will provide customer support to the Client only, not its partners or affiliates.

12 Wherever reasonably possible, and subject to its discretion, ABC/CAB will inform the Client when material changes to the

Service have been made via a message or posting on the main log-in webpage.

Client Service Obligations

- 13 The Client acknowledges that:
- (a) the Internet is not owned or controlled by ABC/CAB and that ABC/CAB cannot guarantee that the website, or any other website necessary for the collection of data or generation of Reports, will be available at all times; and
- 14 Notwithstanding any obligations of confidentiality as contained in the Terms and Conditions, the Client acknowledges and agrees that Nielsen Online may use the "top line" data collected as part of or in the course of providing the Service, as part of Nielsen Online's business or marketing activities.
- 15 The Client must use its best endeavours to keep the Client login ID and password for access to Reports provided to it by ABC/CAB confidential, and must immediately notify ABC/CAB if it believes the confidentiality or security of the login ID or password has been breached.
- 16 If the Client fails to comply with any of its obligations under this Agreement, and if as a result ABC/CAB is unable to meet any of its service obligations under this Agreement, then ABC/CAB is excused from complying with any of its obligations under this Agreement.

Term

- 17 ABC/CAB may terminate the Agreement or this Service Agreement immediately for a failure by the Client to adhere to the NASC obligations of clause 4 herein or the privacy requirements of clause 20 of the Terms and Conditions.

18 ABC/CAB may terminate the Agreement immediately if the Client breaches clause 2 of the Terms and Conditions and:

- a) does not begin rectifying such breach within 7 days of being given notice in writing of same; or
- b) does not complete rectifying such breach within a further 7 days or such other period of time as the parties may agree in writing.

Termination Conditions

- 19 On termination of the Agreement, the Client:
- (1) must remove the NASC from the Webpages;
- (2) must immediately pay to ABC/CAB the unpaid portion, if any, of the total amount of Fees due under the Agreement up to and including the date of termination; and
- (3) notwithstanding anything to the contrary in this Agreement, ABC/CAB will continue to invoice the Client for the Fees, and the Client will continue to pay the Fees, in accordance with the Terms and Conditions until the NASC is removed from all Webpages and data ceases to be posted to the data collection service; and
- (4) Unless otherwise agreed with the Client in writing ABC/CAB will cease to provide the Client with access to the Reports.

General

- 20 The Schedule contains any special conditions which apply to this Agreement.
- 21 Clauses 6, 7 and 1 survive the termination of this Service Agreement