

**COMMUNICATIONS
ALLIANCE LTD**



Family Friendly ISP
Seal Program

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1 TERMINOLOGY

In this Agreement:

"ACMA" means the Australian Communications and Media Authority and any successor, or other government agency exercising similar powers and functions.

"Agreement" means the CA Family Friendly ISP Seal Program Licence Agreement, its Schedules and any variations made in accordance with the terms and conditions of the Agreement, as executed between the Parties.

"Confidential Information" means any non-public information disclosed to the Licensee, whether written or oral, through any means of communication to by or on benefit of the Licensor.

"Date of Commencement" means the date specified at clause 5 of this Agreement.

"Designated Information Page" means a web page to be prepared by the Licensee in accordance with paragraph 3.1(b) of this Agreement, containing text and links as stipulated in Schedule 2.

"CA" means the Internet Industry Association, being the Licensor to this Agreement and developer of the CA Codes of Practice.

"CA Registered Codes" means the Internet Industry Spam Code of Practice and the Content Services Code, registered with the ACMA and as amended from time to time in accordance with applicable provisions set out in *the Broadcasting Services Act 1992, the Spam Act 2003* and *the Telecommunications Act 1997*.

"CA Family Friendly ISP" means an Internet Service Provider who is a Party to this Agreement and is compliant with the CA Codes of Practice.

"CA Codes of Practice" means Internet industry codes of practice developed and registered with the ACMA, known as CA Registered Codes, and as amended from time to time with approval from the ACMA.

"Internet Service Provider" has the same meaning as that within the CA Registered Codes.

"Ladybird Logo" – Family Friendly name for the Seal

"Parties" means the Licensor and Licensee to this Agreement.

"Seal" means the CA Family Friendly ISP seal as authorised from time to time by the Licensor.

"Seal Program" means the CA program involving the use of the Seal.

"Scheduled Filter" has the same meaning as that within the CA Registered Codes.

2 USE OF THE SEAL

Subject to the terms and conditions of this Agreement, the Licensor grants the Licensee a non-exclusive non-transferable licence to use and display the Seal on its website and on all other relevant communications and marketing materials solely for the purposes for which the Seal was designed, subject to the following conditions:

- a) if the Licensee is a member of the CA, that it is a member in good financial standing at all times during the term of this Agreement; or

- b) if the Licensee is not a member of the CA, that it pays to the CA a licence fee payable according to the scale of fees in Schedule 1 of this Agreement upon execution of this Agreement; and
- c) the Licensee has advised by way of the written declaration contained in Schedule 3 of this Agreement, that it is compliant with the CA Codes of Practice at the time of entering this Agreement and intends to remain so during the term of this Agreement.

3 LIMITATIONS ON USE

3.1 The Licensee must:

- a) at all times within the term of this Agreement, display the Seal on the home page of its official ISP public website
- b) provide a hyperlink directly from the Seal to the Designated Information Page which contains, as a minimum, the following elements:
 - mandatory text and hyperlinks as outlined in Schedule 3 of this Agreement and positioned at the top of the Designated Information Page
 - information about how users can obtain a Scheduled Filter or service, and a link to effect download, activation and use as required in the CA Registered Codes
 - information that fulfils the informational requirements of the CA Registered Codes, or links to this information which is located on the CA website
 - the Licensor's copyright and, where applicable, trademark notices pertaining to the Seal or accompanying text, as supplied by the Licensor in accordance with clause 4.1;
 - not itself or engage a third party to modify, adapt or customise all or any part of the Seal;
- c) only use the Seal in accordance with the terms and conditions of this Agreement;
- d) use the Seal in its current form and not use the Seal in any manner likely to deceive or cause confusion or jeopardise its design or distinctiveness;
- e) use its best endeavours to ensure that the website and Seal is secure from unauthorised access, denial of service or modification.

4 RIGHTS IN THE SEAL

- 4.1 All intellectual property rights and other proprietary rights in or related to the Seal are and remain the property of the Licensor.
- 4.2 Except for the terms permitted under clause 3 of this Agreement, the Licensee has no proprietary rights or title to or interest in the Seal and the Licensee acknowledges that the Licensor remains at all times the owner of all intellectual property rights in the Seal.
- 4.3 The Licensee must not alter or remove any mark of ownership, trade mark, service mark, copyright or other proprietary right which is embodied in or on the Seal.

5 DATE OF COMMENCEMENT

This Agreement will commence upon notification in writing to the Licensee or its representative that the Licensor has accepted the offer to participate in the Seal Program.

6 DESIGNATED CONTACT PERSONS

The Licensee will provide the Licensor with the contact details of two persons who will receive notices and communications on its behalf, according to the information contained in Schedule 3 to this Agreement.

7 NOTIFICATION

Notification will be by email to the Licensee's designated contact persons, as advised by the Licensee.

8 CHANGE TO LICENSEE CONTACT DETAILS

It is the responsibility of the Licensee to inform the Licensor within 14 days of a change to:

- a) one or more designated contact persons; or
- b) the email address of designated contact persons.

9 TERM OF THIS AGREEMENT

This Agreement shall continue for a period of 12 months from the Date of Commencement. The Licensee may renew the Agreement, subject to any additional or varied terms which the Licensor may stipulate, for a further period of 12 months by providing notice in writing to the Licensor 1 (one) month prior to the expiration of the term of the Agreement and paying the applicable licence fee (if any) in accordance with the terms and conditions of the Agreement.

10 INDEMNITIES AND EXCLUSION OF LIABILITY

10.1 Subject to clause 10.2 and except as expressly provided in this Agreement, all warranties, conditions, representations, indemnities and guarantees, whether express or implied, arising by law, custom, prior oral or written statements by the Licensor, its agents or representatives or otherwise (including, but not limited to any warranty of merchantability, satisfaction and fitness for purpose) are excluded and disclaimed.

- 10.2 The limitations to the Licensor's liability contained in this Agreement are made to the full extent permitted by law. Where any legislation implies or imposes any term, condition or warranty which cannot be excluded, restricted or modified at all or only to a limited extent, the term, condition or warranty will apply, except to extent it can be excluded, the Licensor's liability for any breach of any such term, condition or warranty (other than a where s64A(3) of the *Competition and Consumer Act 2010* (Cth) applies) is limited at the Licensor's option, to any one or more of the following:
- a) the supplying of the services again; or
 - b) the payment of the cost of having the services supplied again.
- 10.3 Subject to clause 10.2, the Licensor's aggregate liability to the Licensee for all claims made in connection with the subject matter of this Agreement or the use of the Seal under this Agreement, regardless of the form of action and whether in contract or tort (including negligence) or for breach of any warranty, condition, representation or statute is limited to the amount of the licence fees paid by the Licensee under this Agreement.
- 10.4 The Licensee must at all times indemnify the Licensor and its officers, employees and agents ("those indemnified") from and against any loss (including reasonable legal fees) or liability incurred or suffered by any of those indemnified arising from any proceedings against those indemnified where such loss or liability was caused by:
- a) any unlawful or negligent act or omission by the Licensee;
 - b) the Licensee's fault, including without limitation, use of the Seal other than in accordance with this Agreement.
- 10.5 Each party's liability in contract, tort, negligence, under statute or otherwise must be reduced by the extent, if any, to which the other party contributed to the loss.

11 TERMINATION BY THE LICENSOR

The following will constitute grounds for termination of this Agreement:

11.1 Non payment

- a) If a member of CA, the Licensee ceases to be a financial member of CA at any time within the relevant term of this Agreement; or
- b) If a non-member, the Licensee fails to pay the appropriate fee for renewal of the license before expiry of the term of this Agreement.

11.2 Non compliance

Where the ACMA notifies the Licensor that the Licensee is not in its view compliant with the relevant CA Registered Codes, subject to rectification by the Licensee as specified in clause 11.4 of this Agreement.

11.3 Inappropriate use of seal

The Licensee uses the Seal in a manner which breaches the terms of this Agreement, or which in the sole opinion of the Licensor is likely to bring the Seal Program into disrepute.

11.4 Rectification to Avoid Termination

Prior to termination under subclauses 11.1 and 11.2 of this Agreement, the Licensor will provide the Licensee seven days written notice to rectify the omission to the Licensor and ACMA's satisfaction.

12 TERMINATION BY THE LICENSEE

The Licensee may terminate this Agreement upon written notice to the Licensor. The Licensor reserves the right to retain, in whole or in part, any payment made to it under this Agreement.

13 ACTIONS TO BE TAKEN UPON TERMINATION

- a) Upon termination of this Agreement for any reason or upon expiry of this Agreement, all rights granted to the Licensee under this Agreement cease and the Licensor will notify the Licensee in writing to cease using the Seal or otherwise represent that it remains a "CA Family Friendly ISP" as defined.
- b) The Licensee must immediately return to the Licensor all copies of the Seal and any CA documents or related information as requested by CA and destroy or delete any copies which, for any reason, are unable to be returned.
- c) The Licensee acknowledges that unauthorised use may render it liable under the relevant provisions of the *Competition and Consumer Act 2010* or at common law, or otherwise, and that the Licensor reserves the right to seek any or all remedies available to it in those circumstances.

14 GENERAL

- 14.1 This Agreement is the entire agreement of the Parties about the subject matter of this Agreement and supersedes all other representations, negotiations, arrangements, understandings or agreements and all other communications. No Party has entered into this Agreement relying on any representations made by or on behalf of the other, other than those expressly made in this Agreement.
- 14.2 This Agreement may be amended only by a document signed by all Parties.
- 14.3 If any provision of this Agreement is held invalid, the remainder of this Agreement shall continue in full force and effect.
- 14.4 The provisions of these clauses 10, 11, and 13 will survive the termination or expiry of the Agreement for any reason.
- 14.5 This Agreement is governed by the laws of New South Wales. Each party irrevocably and unconditionally:
 - a) submits to the non-exclusive jurisdiction of the courts of New South Wales; and
 - b) waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

Schedule 1

Scale of Fees for Non-Communications Alliance Member Licensees

The Licensor wishes to make the Seal available at a cost which is in accordance with the capacity of ISPs to reasonably pay, so as to encourage the widest possible uptake of the scheme. The fee will be based on a self-assessment of the ISP as to their current financial year revenues and will be calculated as follows:

Level	Relevant Commercial Interest	Member Contribution (ex. GST)
A <input type="checkbox"/>	Under to \$5 million pa	\$865
B <input type="checkbox"/>	\$5 million - \$20 million pa	\$1925
C <input type="checkbox"/>	Over \$20 million pa	\$5285

Upgrading to a Communications Alliance Membership

Licensees who are not members of Communications Alliance are eligible to upgrade to Communications Alliance membership upon payment of the difference between the relevant Communications Alliance membership fee and the license fee paid plus an administration fee of \$55.00 (ex. GST).

Schedule 2

Mandatory Text and Links for Designated Information Page

Unless otherwise notified in writing by the Licensor to Designated Contact Persons during the course of the term of this Agreement, the Licensee will ensure that the following text and hyperlinks are displayed at the top of the Designated Information Page. Square brackets indicate text or link information to be provided by the Licensee.

Communications Alliance Family Friendly ISP Program

[Insert Licensee name] is pleased to be a participant in Communications Alliance Ltd's "Family Friendly ISP" program. Australian ISPs bearing this Seal have agreed to comply with the Communications Alliance Codes of Practice. Communications Alliance Codes of Practice are registered with and monitored by the Australian Communications and Media Authority (ACMA). For more information on the Family Friendly ISP program, please go to this page

<http://www.commsalliance.com.au/Activities/ispi/ffisp>

How to obtain a Scheduled Filter

[ISPs add here information about how users can obtain a scheduled filter, (or activate an optional filtered service), and, a link or links to

<http://www.commsalliance.com.au/Activities/ispi/fff>

Schedule 3

Declaration of Compliance

(to be completed at the time of application to the Seal Program)

I [.....Name.....], being an authorised

representative of [.....Name of prospective Licensee entity.....]

do hereby declare that:

- i) the Australian ISP operations of the business are fully compliant with the Communications Alliance Codes of Practice as currently in force, and that we intend to remain compliant for the term of the Agreement; and
- ii) that the internet related revenue on which the license fee (if applicable) is based is a true estimate of revenues in the financial year in which the Agreement will commence.

[.....dd/yy/2014.....]

Signed

Date

Designated Contact Persons

The Licensee hereby advises that the following people shall be Designated Contact Persons for the purposes of this Agreement:

Name

Position [.....Title.....]

Email address [.....Email.....]

Telephone no [.....Contact Number.....]

Name [.....Name.....]

Position [.....Title.....]

Email address [.....Email.....]

Telephone no [.....Contact Number.....]

Communications Alliance 'Family Friendly ISP' Seal Program

Agreement

This Agreement is made/signed on the [.....] day of [.....]. 2014

Between

Communications Alliance Ltd (ACN 078 026 507) PO Box 444, Milsons Point NSW 1565

and

[.....Name of Entity.....] (ACN) [.....ACN.....] of [.....Address.....]

Executed as an agreement

Signed for and on behalf of)
Communications Alliance Ltd)
("Licensor") by its duly authorised representative)
in the presence of:)

[.....Name.....]

Name of authorised representative (print)

Signature of authorised representative

Signed for and on behalf of)
[])
("Licensee") by duly authorised representative)
in the presence of:)

[.....Name.....]

Name of authorised representative (print)

Signature of authorised representative

Recitals

A. The Licensor:

- a) is the national industry body representing businesses with commercial interests in the internet in Australia, including but not limited to Internet Service Providers;
- b) has developed and registered with the ACMA Internet Codes of Practice in an attempt to define and support the implementation of industry best practice in assisting with the protection of public users on the Internet, particularly families and children;
- c) is concerned that the public is made aware of the existence of such codes; and
- d) wishes to provide compliant Internet Service Providers with a means by which they can designate their compliance with the Communications Alliance Codes of Practice.

B. The Licensee:

- a) is an Internet Service Provider offering services within Australia; and
- b) wishes to demonstrate its compliance with the Communications Alliance Codes of Practice.



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