



## **NINE NETWORK AUSTRALIA**

### **MEDIA SERVICES TERMS AND CONDITIONS**

#### **1 OVERVIEW**

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- 1.1 Any Booking placed by Client with Nine or any Station for Media Services shall constitute agreement by Client to be bound by the terms of this Agreement.
- 1.2 The terms of this Agreement apply to all Media Services sold by any Station or Nine on behalf of any Station.
- 1.3 Client acknowledges that, subject to the terms of this Agreement, Nine may at its discretion, transmit the Copy by means of Simultaneous Online Transmission throughout Australia and, if Nine does so, the Copy may be seen by members of the public who might not be able to acquire the goods and or services mentioned in the Copy:
- (a) at or near the place where those members of the public are located; or
  - (b) for the price stated in the Copy.
- 1.4 Nine may sublicense the Media Services to any of its Related Bodies Corporate.
- 1.5 This Agreement comprises:
- (a) the terms and conditions set out in this document;
  - (b) any Order;
  - (c) any Booking Advice; and
  - (d) such other terms and conditions as agreed between the relevant parties in writing.
- 1.6 If there is any inconsistency between the documents referred to in clause 1.5, or in the event of any dispute, or termination, the following order of priority in interpretation applies:
- (a) such other terms and conditions as agreed between the relevant parties;
  - (b) the terms and conditions set out in this document;
  - (c) any Booking Advice, subject to clause 1.3;
  - (d) any Order, subject to clause 1.3;.
- 1.7 This Agreement constitutes the entire agreement between the parties.

#### **2 RELATIONSHIP OF PARTIES**

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- 2.1 Nine acknowledges and agrees that Client contracts with Nine in Client's own right.
- 2.2 Nine enters this agreement on its own behalf and as agent for each of the Stations and any Related Body Corporate that provides the Media Services.

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#### **NINE NETWORK AUSTRALIA PTY LTD**

Postal Address: PO Box 27 Willoughby NSW 2068 Street Address: 24 Artarmon Road Willoughby NSW 2068 Australia  
PH: 61 2 9906 9999 ninemsn.com.au FAX 61 2 9965 2894 ABN 88 008 685 407

### **3 ORDERS, AMENDMENT, CANCELLATION AND DISCREPANCIES OF BOOKINGS**

- 3.1 Client may place Orders with Nine or any Station from time to time. At the time the Order is placed, Client must elect by notice in writing to receive confirmation of the Booking by either Holdings Datafile or Booking Advice. If Client does not make any election at that time, Client will be deemed to have elected to receive confirmation of the booking by Booking Advice.

#### **Confirmation by Holdings Datafile**

- 3.2 If Client is an Agency and elects or is deemed to have elected to confirm a Booking by Holdings Datafile, the following paragraphs of this clause 3.2 apply and clause 3.3 does not apply;
- (a) Nine will supply the Agency with a Holdings Data file each workday evening. The Holdings Data file will record all bookings for the Agency that are (at the relevant date) held in Nine's traffic system. The Agency must check daily that it has received the Holdings Data file and must immediately advise Nine if it has not received the file.
  - (b) Nine holds an audit history of the date & time that each spot was booked into its Traffic system, as well as the date & time that any changes were made to the spot after it was booked. The dates stored in this audit history will be used to determine the date that a spot was "confirmed" to the Agency via Holdings Data.
  - (c) On completion of the buying of each media campaign the Agency must perform a check of the Holdings Data for that campaign. The Agency must advise Nine of any discrepancies between the records contained in the Holdings Data file as compared to the records held by the Agency within 48 hours of receiving the holdings data.
  - (d) If the Agency places a booking for a spot within the period commencing two weeks prior to the proposed airing date of the spot, the Agency must check the Holdings Data for that booking on the day of completion of the booking. If the Agency identifies any discrepancies in the booking for the spot, the Agency must notify Nine within 24 hours of receipt of the Holdings Data confirming the booking.
  - (e) The Agency must perform a "pre-telecast" check of all spots prior to the airing of a week's activity (a "week" is defined as commencing on a Sunday) This check is to be performed on the Monday six days prior to the commencement of a week's activity. The Agency must advise Nine of any discrepancies between the records contained in the Holdings Data file as compared to the records held by the Agency within 48 hours of receiving the holdings data supplied each Monday.
  - (f) The Agency must perform a check of the Holdings Data file in its entirety at least once per week. The Agency must advise Nine of any discrepancies between the records contained in the Holdings Data file as compared to the records held by the Agency. If any spot has been booked in Nine Traffic system for ten days or more & the Agency has not advised Nine of any discrepancies, then that Spot is deemed to be outside of the notification deadline & is subject to point 7.

If the Agency fails to advise Nine of any discrepancies in the Holdings Data within the deadlines specified in paragraphs (c) –(f) above (as relevant), Nine will have

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no obligation to cancel the spot or adjust the rate for the spot and the Agency must make payment for the spot in accordance with the booking recorded in the Holdings Data.

### **Confirmation by Booking Advice**

- 3.3 If Client is an Agency and elects or is deemed to have elected to confirm a Booking by Booking Advice, the following paragraphs of this clause 3.3 apply and clause 3.2 does not apply.
- (a) Nine or the relevant Station will issue a Booking Advice to Client with respect to each Booking; and
  - (b) subject to clause **Error! Reference source not found.**, Client may amend any Booking by written notice to Nine or an applicable Station before 5pm on the second clear working day following sending of a Booking Advice to Client. Unless the Booking Advice is so amended by Client, the Booking Advice will be binding on Client.

### **Cancellation**

- 3.4 Client has the right to cancel all or part of a Booking without penalty if notice is given in writing to Nine or the applicable Station before the Cancellation Date applicable to the relevant Copy.
- 3.5 Should Client cancel all or part of a Booking after the applicable Cancellation Date, Nine or the relevant Station (as appropriate) is entitled to payment for the Booking as if the Copy was broadcast in accordance with the Booking, subject to the Delete & Charge regime set out below.

### **Delete & Charge**

- 3.6 Should Client cancel all or part of a Booking after the applicable Cancellation Date, Nine or the relevant Station (as appropriate) will delete the cancelled Booking and provide Client with an airtime credit equal to the amount of the cancelled Booking. The airtime credit will not be effective until the applicable cancellation amount has been paid in full by the Client.
- 3.7 The airtime credit will expire 12 months after the date the relevant Booking was cancelled and will not entitle the Client to any refund or other payment but may be utilised on unfilled broadcast times, subject to Nine's discretion to give higher priority to other customer's actual or anticipated advertising orders.

### **General**

- 3.8 Although Nine and each Station will employ its best endeavours to broadcast Copy as per Holdings Datafile or Booking Advice (as is relevant), Client acknowledges that scheduling of programming and advertising air space by Nine and each Station is subject to exigencies such as breaking news stories and pre-emptions, and Nine or any Station may reschedule Bookings at any time.
- 3.9 Failure by Nine to issue Holdings Datafile or Bookings Advice (as is relevant) with respect to any Order made by Client does not affect Client's obligations with respect to Media Services the subject of such Booking if provided by Nine or the relevant Station.

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#### 4 RATES AND PAYMENT

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- 4.1 Client will be charged for provision of Media Services by Nine or the relevant Station according to rates quoted in the Booking Advice or Holdings Datafile (as the case may be). Rates quoted are exclusive of all taxes, including, but not limited to the GST.
- 4.2 Rates do not vary based upon whether or not the Copy is transmitted by means of Simultaneous Online Transmission unless otherwise agreed between the parties.
- 4.3 If Client has a credit account with Nine, Nine or the relevant Station will provide to Client an invoice on a monthly basis for the value of Media Services provided during the preceding month by Station and Client agrees to pay in accordance with each such invoice. If Client does not have a credit account, payments for Media Services must be made on lodgement of Copy.
- 4.4 Client will be liable as principal debtor for payment for amounts invoiced by Nine or the relevant Station less any rebate subject to the terms of this Agreement.
- 4.5 If Client is an Agency and payment for Media Services is made by Client within 45 days of the date of an invoice issued under clause 4.3, Client will be entitled to a rebate (of 10% unless otherwise specified) on the amount invoiced (such amount being the GST-exclusive value of Media Services).
- 4.6 If payment for Media Services is not made when due, Nine or the relevant Station may in its discretion:
  - (a) disentitle Client from all entitlements to rebate on the invoiced amount and any subsequent orders placed with Nine or any Station;
  - (b) require Client to pay Nine or any Station interest on the amount which is not paid on the due date for payment at the rate charged by the Australia and New Zealand Banking Group Limited as its Index Rate from time to time plus 3% until such amount is paid; and/or
  - (c) suspend broadcast of any Copy lodged by Client with Stations until all outstanding payments are received by Nine or the relevant Station.
- 4.7 Client acknowledges and agrees that loss of entitlement to rebate and payment of interest in accordance with clause 4.6 is a reasonable assessment of the loss and damage that Nine and each Station will suffer as a result of Client failing to pay according to payment terms stipulated in this agreement.
- 4.8 Client agrees to pay for any Media Services ordered by it and which have been provided by Nine and each Station but which for any reason have not been invoiced by Nine or the relevant Station in accordance with the terms of the invoice in which such Media Services should have been included.
- 4.9 Time is of the essence with respect to all payment obligations of Client.
- 4.10 If a GST is imposed on the supply of Media Services made under or in connection with this agreement, Nine or the relevant Station may, in addition to any amount or consideration

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expressed as payable by Client under this agreement for Media Services, recover from Client an additional amount on account of the GST. Client agrees to pay the additional amount on account of the GST in respect of Media Services to Nine or the relevant Station, in the same manner and at the same time as required for the payment of Media Services. Nine or the relevant station agrees to issue Tax Invoices to Client in accordance with the Act. Nine or the relevant Station also agrees to issue Adjustment Notes in accordance with the Act to Client, for rebates Client is entitled to, and other adjustments.

- 4.11 Client is responsible for disclosing to Client's own clients all arrangements and benefits Client receives or is entitled to receive.

## **5 CONDITIONS ON PROVISION OF MEDIA SERVICES**

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- 5.1 Nine reserves the right to undertake such steps as are commercially reasonable in order to establish the credit worthiness of Client. For that purpose, Client agrees to supply Nine with any information that Nine may reasonably request in support of any Order including solvency statements, balance sheet and profit and loss statements and details of any insurance policies Client holds.
- 5.2 Nine and each Station reserves the right to refuse, at its discretion, to accept for broadcast or to broadcast any Copy.
- 5.3 Nine and each Station reserve the right to charge Client additional fees for assessing and approving Copy for broadcast if the Client has not obtained assessment and approval from Commercials Advice.
- 5.4 Nine and each Station may, at its discretion refuse Media Services to Client if Client is in breach of any term contained in these conditions or any other agreement with Nine or any Station.
- 5.5 Nine and each Station may, at its discretion and at any time, cancel, reschedule or replace any programming or advertising slots or breaks within or between programming.
- 5.6 Allocated commercial airtime may not be resold or sub-licensed by Client.
- 5.7 Each of Nine and each Station makes no warranties in respect to the proximity of the broadcast or transmission of Copy relative to the broadcast or transmission of Copy relating to competing products or services.
- 5.8 Each of Nine and each Station makes no warranties in respect to providing Media Services without interruption.
- 5.9 Should Nine or any Station be unable to perform an obligation under this agreement because of an event outside Nine's or any Station's reasonable control, performance of the obligation is suspended.

## **6 LODGEMENT OF COPY**

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- 6.1 Client must lodge Copy in accordance with the requirements of each relevant Station.
- 6.2 No responsibility will be taken by Nine or the relevant Station for any Copy left uncollected after 3 months from the last day of broadcast.

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## 7 WARRANTIES

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7.1 Client warrants that Copy lodged with Nine or any Station by Client:

- (a) complies with all laws, statutes, regulations, codes of practice and any standards determined by any relevant regulatory agency or industry self-regulatory body applicable to free-to-air commercial broadcast and internet transmission of Copy;
- (b) complies with any standard or requirement specified by Nine and each Station and notified to Client from time to time;
- (c) does not infringe copyright, trademark or other legal rights of any person;
- (d) is not false or misleading and is true in substance and in fact;
- (e) without limiting (a) and (b) above, does not infringe the *Competition and Consumer Act 2010* (Cth) (as amended); and

does not contain anything which may give rise to any cause of action by a third party against Nine or any of its Related Bodies Corporate including any Station, including without limitation material which is defamatory or obscene or which infringes any right of privacy or personality or which otherwise causes injury or damage to any person.

7.2 Client warrants that Client

- (a) has all applicable licenses and consents necessary to enter and perform its obligations under this agreement;
- (b) is fully authorised to act on behalf of any advertiser or client on whose behalf Client is requesting Media Services;
- (c) has complied and will continue to comply with all applicable laws and regulations in performing its obligations under this Agreement;
- (d) will not breach any agreement, arrangement or understanding with a third party as a result of entering or performing any part of this Agreement.

7.3 Nine and the Stations exclude all implied conditions and warranties from this agreement except any conditions or warranties (such as those implied by the *Competition and Consumer Act 2010* (Cth)) which cannot by law be excluded.

7.4 Nine holds the benefit of the warranties in clauses 7.1 and 7.2 as trustee for each of its Related Bodies Corporate including the Stations.

## 8 INDEMNITIES

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8.1 Client indemnifies Nine and its Related Bodies Corporate including each Station, and each of their respective officers, employees, agents and affiliates against any action, claim, loss or expense arising from the broadcast and Simultaneous Online Transmission of Copy lodged with Nine or any Station by Client and all costs, losses and expenses suffered or incurred by Nine or any of its Related Bodies Corporate as a result of any breach by Client of any of the warranties set out in clause 7.1.

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- 8.2 Nine holds the benefit of the indemnity in clause 8.1 as trustee for each of its Related Bodies Corporate.

## **9 LIABILITY**

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- 9.1 Neither Nine or any of its Related Bodies Corporate including any Station will be liable under this agreement and Client acknowledges that Nine and each its Related Bodies Corporate excludes liability under this agreement, or otherwise in law for any indirect, special, economic or consequential loss or damage suffered or incurred by Client or loss of revenue, profits, goodwill, data or opportunities or loss of anticipated savings whether caused by negligence or otherwise and whether or not Nine or any of its Related Bodies Corporate was aware or should have been aware of the possibility of such damage.
- 9.2 To the extent permitted by law, all other representations, conditions or warranties, whether based in statute, common law or otherwise, are excluded. Liability of Nine or one or more Station for any breach of a term or condition implied by law is limited, at Nine's option, to the supply of any service again or the payment for the cost of having any service supplied again.

## **10 CONFIDENTIAL INFORMATION**

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- 10.1 Each party must:
- (a) take all action reasonably necessary to maintain the confidentiality of Confidential Information;
  - (b) not disclose Confidential Information to any person except as permitted under clauses 10.2 and 10.3 below;
- 10.2 A party ("**recipient**") may disclose Confidential Information:
- (a) to a representative of the recipient who needs to know the Confidential Information for the purposes of this agreement and subject to the recipient taking reasonable steps to ensure that any such representative is fully aware of the confidential nature of the Confidential Information before the disclosure is made; or
  - (b) which is required or authorised to be disclosed by virtue of any law.
- 10.3 Nine may disclose and make available Confidential Information to Nine's Related Bodies Corporate on the condition that it takes reasonable steps to ensure that such Related Bodies Corporate are made fully aware of the confidential nature of the Confidential Information before the disclosure is made. Client consents to Nine Related Bodies Corporate contacting Client in connection with their provision to Client of advertising, content integration, creative services and/or other products or services to Client.

## **11 MISCELLANEOUS**

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- 11.1 This Agreement does not create a joint venture, legal partnership, employment or agency relationship between Nine and Client
- 11.2 No party may transfer or assign this agreement without the other party's/party's prior written consent (not to be unreasonably withheld)

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- 11.3 No party will be liable for its failure to perform any of its obligations under this agreement due to any contingency beyond its reasonable control.
- 11.4 The invalidity or unenforceability of any provision of these terms does not affect the validity of enforceability of the remaining provisions.
- 11.5 This Agreement supersedes all prior representations, arrangements, understandings and agreements between the parties relating to the subject matter of this Agreement and sets forth the entire and exclusive understanding between the parties relating to the subject matter of this Agreement.
- 11.6 A provision of or right created under this Agreement may not be waived or varied except in writing signed by the party or parties to be bound by the waiver or variation.

## 12 DEFINITIONS

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- 12.1 In this agreement, unless the context requires otherwise:

**Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended, supplemented, consolidated or replaced from time to time, and associated Regulations and Rulings.

**Adjustment Notes** has the meaning given in the Act.

**Agency** means any Client who provides advertising agency services to its customers

**Booking** means allocation of commercial airtime for broadcast of Copy.

**Booking Advice** means details of scheduled advertising airtime in a written form and containing such information as are specified by Nine or Stations from time to time, including, without limitation, the programs in which Copy is to appear and the rate that will be charged for each advertising spot.

**Cancellation Date** means the cancellation date as specified by Nine or Station from time to time which until further notice is 6 weeks prior to scheduled telecast of such Copy.

**Client** includes an Agency lodging Copy on behalf of an advertiser and any other person who lodges copy directly with Nine or a Station.

**Confidential Information** means:

- (i) the terms and conditions of the Agreement; and
- (ii) all information of a confidential nature disclosed or communicated by the disclosing party to the recipient not including total spend by Client but including any financial and pricing data including rate cards; business plans; policies; suppliers; inventions; product information and information about a party's marketing and/or promotional activities

but excludes any information which the recipient can establish:

- (iii) is or becomes generally available in the public domain otherwise than through a breach of this agreement or any obligation of confidence owed to the disclosing party;
- (iv) is or becomes known to the recipient from a source other than the disclosing party otherwise than through a breach of an obligation of confidentiality owed to the disclosing party;

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- (v) is or has been independently developed or acquired by the recipient; or
- (vi) is approved in writing by the disclosing party for disclosure by the recipient;

**Copy** means advertising material.

**Copy Lodgement Requirements** means requirements for lodgement of Copy specified by Stations from time to time.

**GST** has the meaning given in the Act.

**Holdings Datafile** means the electronic holdings data file that records all Bookings of Client that are (at the relevant date) held in Nine's traffic system.

**Media Services** means the provision of advertising airtime on one or more channels for:

- (i) broadcast by one or more Stations; and
- (ii) at Nine's discretion, Simultaneous Online Transmission.

**Nine** means Nine Network Australia Pty Limited (ABN 88 008 685 407).

**Order** means an order for Media Services to be provided by Nine or any Station.

**Related Body Corporate** has the same meaning as given to that term in the Corporations Act 2001 (Cth) and **Related Bodies Corporate** has a corresponding meaning.

**Simultaneous Online Transmission** means transmission and communication of the terrestrial broadcast of a Station over the internet throughout any part of, and up to the whole of, Australia simultaneously with that terrestrial broadcast.

**Stations** mean TCN Channel Nine Pty Limited (ABN 65 001 549 560) (TCN-9), General Television Corporation Pty Limited (ABN 24 004 330 036) (GTV9), Queensland Television Limited (ABN 77 009 674 373), Channel 9 South Australia Pty Limited (ABN 26 007 577 880) (NWS-9) and Swan Television & Radio Broadcasters Pty Limited (ABN 50 008 689 745) (STW-9).

**Tax Invoices** has the meaning given in the Act.

## 13 GOVERNING LAW

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These terms and any agreement between Client, Nine and each Station will be governed by the laws in force and in New South Wales and each party submits to the jurisdiction of courts exercising jurisdiction in that State.

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