



# ADVERTISING TERMS AND CONDITIONS

*Last updated 9 November 2023*

These advertising terms and conditions apply to any agreement between Nine Entertainment Co. Pty Limited ABN 59 122 205 065 or its Related Bodies Corporate (**Nine/We**) and the customer (**Customer/You**) in relation to Advertising Services and/or Creative Services (together, the **Services**) that we may supply to you for publication and/or broadcast on one or more of the Nine TV Channels, Nine Digital Properties, Nine Radio Assets and Nine Publishing Assets (together, the **Nine Properties**). By placing an Order for Services with Nine, you agree to be bound by the terms and conditions of this Agreement.

## 2. OVERVIEW OF AGREEMENT

This Agreement comprises:

- a) any special terms we have agreed with you if you are a Preferred Agency;
- b) the terms of the applicable Order;
- c) the Creative Services Terms (if applicable)
- d) these Advertising Terms and Conditions; and
- e) any Credit Application Form.

If there is inconsistency between terms of the above contractual documents, the hierarchy of documents is as listed above (a) – (e).

## 3. DEFINITIONS

In this Agreement, the following words have these meanings, unless the context otherwise requires:

**Advertising Copy** means all advertising, marketing or other material supplied by you (including, without limitation, text, graphics, footage, musical works and URLs) for publication on the Nine Properties in the form and manner we approve;

**Advertising Services** means the provision of advertising airtime and/or digital and print inventory (or advertising integration services within such airtime/inventory) for broadcast or publication (as applicable) on the Nine Properties;

**Agreement** means these Advertising Terms and Conditions, the terms of any Credit Application Form, any special terms we have agreed with us as a Preferred Agency and the applicable Order which incorporates these Advertising Terms and Conditions by reference.

**Approved Agency** means a customer who provides advertising agency services to its customers and has been accepted by us as an approved agency who meets the requirements set out in clause 12 of these Advertising Terms and Conditions;

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

**Cancellation Fee** means the estimated charges and Fees we would have received for provision of Services but for your late cancellation including our charges for producing any Custom Materials and our Fees for publishing any Custom Materials or Advertising Copy based on the applicable Order;

**Confidential Information** means:

- a) the terms and conditions of the Agreement; and
- b) all information of a confidential nature disclosed or communicated by the disclosing party to the recipient including any financial and pricing data; 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:
  - i. 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;
  - ii. 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;
  - iii. is or has been independently developed or acquired by the recipient; or
  - iv. is approved in writing by the disclosing party for disclosure by the recipient;

**Creative Services** means any design, production and promotional services we provide for interactive media including without limitation creating, producing and marketing Custom Materials, advertising marketing campaigns, e-direct marketing, developing and hosting integrated offerings such as competitions and associated creative services;

**Creative Services Terms** means the terms and conditions of us providing Creative Services to you as referenced in clause 7;

**Custom Materials** means customised content and materials in any form which we have produced for any particular campaign, Customer or promotion including (but not limited to) any banner, advertisement, copy, mini website or co-branded webpages, podcasts, native content (including videos and articles), cross-platform sponsored content, newsletters or e-marketing materials as set out in the Order (and includes any materials which are created under the applicable Order but not ultimately used in the final campaign published or broadcast on the Nine Properties);

**Delete and Charge** means that we will not publish or broadcast (as applicable) any advertising requested in an Order but will nevertheless charge you the associated Fees for this advertising.

**Dynamically Scheduled Campaign** means an Order for which broadcast advertising inventory on Nine TV Channels will be delivered via a dynamic audience-based buy;

**Fees** means our fees and charges for the provision of Services as specified in the Order;

**Gaming Services** means any products or services which provide the means for customers to play a 'game of chance';

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Guaranteed Viewability Campaign** means Advertising Services the subject of an Order in which you elect to purchase guaranteed viewability of one or more parts of your campaign on nominated Nine Properties.

**Holdings** means the electronic holdings file containing confirmation of Bookings on Nine Radio Assets (including without limitation all spot and non-spot charges) received by us on behalf of an Agency via the *RadioMatrix* (or other Nine nominated) system and provided to you by our chosen

delivery method each weekday evening, in the form of an electronic holdings for download into a compatible media management system used by you.

**Holdings Datafile** means the electronic holdings data file that records all your Orders for Advertising Services on a Nine TV Channel that are (at the relevant date) held in Nine's traffic system.

**Indirect Losses** includes losses of profits, revenue, opportunity, anticipated savings or data or any indirect, special, incidental or consequential loss or damage;

**Launch Date** means the date at which we are scheduled to broadcast or publish any Advertising Copy or make available any Custom Materials for publication as specified in the Order;

**Nine Digital Properties** means all websites, mobile optimised websites, online applications, internet streaming services, podcasts and other digital products owned and/or operated by Nine including (but not limited to) the Nine Digital Websites, the Nine Publishing Websites and 3aw.com.au, 2gb.com.au, 4bc.com.au, 6pr.com.au (and all associated applications and products (as amended from time to time by us)).

**Nine Digital Websites** includes nine.com.au, 9now.com.au, 9honey.com.au (and all sub-domains of these websites).

**Nine Properties** includes the Nine TV Channels operated by the Nine TV Stations, Nine Radio Assets, Nine Digital Properties and Nine Publishing Assets.

**Nine Publishing Assets** mean the print newspapers published by us under the following titles: *Sydney Morning Herald, Sun Herald, The Age, The Sunday Age, The Saturday Age, Australian Financial Review, Brisbane Times, WA Today* (and including all magazine inserts such as (but not limited to) the *Good Weekend, Sunday Life* and *Life and Leisure*) (as amended from time to time by us).

**Nine Publishing Websites** includes [www.smh.com.au](http://www.smh.com.au), [www.theage.com.au](http://www.theage.com.au), [www.watoday.com.au](http://www.watoday.com.au), [www.brisbanetimes.com.au](http://www.brisbanetimes.com.au), [www.afr.com.au](http://www.afr.com.au) (and all sub-domains of these websites).

**Nine Radio Assets** means all radio stations owned and/or operated by Nine including 2GB, 3AW, 4BC and 6PR (as may be amended from time to time).

**Nine TV Channels** means the television channels currently known as Channel 9, 9GEM, 9Go, 9RUSH, 9Life and Nine HD (as may be amended from time to time).

**Nine TV Stations** mean TCN Channel Nine Pty Limited (ABN 65 001 549 560) (TCN-9), General Television Corporation Pty Limited (ABN 24 004 330 036) (GTV-9), Queensland Television Pty Limited (ABN 77 009 674 373) (QTQ), Channel 9 South Australia Pty Limited (ABN 26 007 577 880) (NWS-9), Television Territory Pty Limited (ABN 59 009 594 987) (Darwin TV1), NBN Pty Limited (NBN) and Swan Television & Radio Broadcasters Pty Limited (ABN 50 008 689 745) (STW-9).

**Order** means a signed document (including a document in electronic format) we issue which specifies details of the Services to be provided to you on the Nine Properties and may also be referred to as:

- (a) for the Nine TV Channels – a Booking Advice or order
- (b) for the Nine Digital Properties – an insertion order or IO
- (c) for the Nine Radio Assets – a broadcast agreement or booking
- (d) for the Nine Publishing Assets – an order or booking

and which contains the agreed schedule for placement of the Advertising Services and/or creation and placement of the Creative Services.

**Partner Network** means the third party network of websites (which may include partner advertising networks which run advertising campaigns on a blind buy basis) that Nine may run your digital advertising campaigns on if requested in your Insertion Order in addition to the Nine Digital Properties, as constituted from time to time.

**Preferred Agency** means an agency with whom we have agreed to offer special trading terms;

**Rate Card** means our current standard rates and charges for the provision of Services on the Nine Properties as notified to you from time to time;

**Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cth) but, for Nine, excludes Domain Holdings Australia Limited and its subsidiaries;

**Services** means the Advertising Services or Creative Services or any combination of them we will supply to you as described in an Order;

**User** means a person who accesses a page on a Nine Digital Property;

**We/Our/Us** means Nine or its relevant Related Body Corporate;

**You/Your** means the person identified as the "Customer" or "Advertiser" in the applicable Order (and includes any advertising agency that is acting on behalf of any advertiser or client on whose behalf Services are being requested pursuant to an Order); and

**Value Credit** means a credit we may issue to you upon your cancellation of an Order under clause 9.2 of this Agreement for the supply by us of replacement services of equivalent value to the Order.

#### **4. RELATIONSHIP OF PARTIES**

We enter this agreement on our own behalf and as agent for the owner of each of the Nine Properties and any Related Body Corporate that provides the Services to you.

#### **5. SERVICES AND COMPLETING AN ORDER**

##### **5.1 General**

- (a) We will provide to you, and you agree to use, the Services in accordance with this Agreement.
- (b) You may request the Services from us by completing the applicable Order. We will not be obliged to supply to you the Services set out in the Order until you have signed the Order.
- (c) We may require you to submit a completed Credit Application Form prior to our signature of the Order.
- (d) We may undertake such steps as are commercially reasonable to establish your credit worthiness. For that purpose, you agree to supply us with any information that we may reasonably request in support of any Order including solvency statements, balance sheet and profit and loss statements and details of any insurance policies you hold.
- (e) You may not re-sell, sub-licence or sub-contract any Services we provide to you (including any airtime or inventory) to a third party unless our prior written consent is obtained. We do not guarantee the success of any advertising campaign which is the subject of the Services and booked pursuant to this Agreement. Unless otherwise agreed with us, You have no recourse against us or any of our employees, agents or representatives for failure of the Services we provide to achieve the desired result.

- (f) We reserve the right to cancel, reschedule or replace any Nine program, content or advertising break at any time.
- (g) Where we sell you advertising for broadcast on a television station owned by WIN Corporation Pty Limited (**WIN**) (or any of its Related Bodies Corporate) (**WIN Advertising Services**), we are acting as agent for WIN in our provision of sales representation services pursuant to the terms of an agreement with WIN. WIN holds the benefit of, and may exercise directly against you, all of the rights we hold under the Agreement in relation to WIN Advertising Services. These rights include, without limitation, the right for WIN to invoice you for, and to receive payment from you of all Fees payable for WIN Advertising Services we sold for broadcast by WIN on its television stations.

## 5.2 Completing an Order

### *(I) For Services on Nine TV Channels*

You may place Orders with us from time to time. At the time the Order is placed, you may elect by notice in writing to receive confirmation of the Advertising Services by either Holdings Datafile or Booking Advice. If you do not make any election at that time, you will be deemed to have elected to receive confirmation of the Order by Booking Advice.

#### *A. Confirmation by Holdings Datafile*

- (i) If you are an Agency and elect to confirm a Booking by Holdings Datafile, the following terms apply.
- (ii) We will supply the Agency with a Holdings Datafile each workday evening. The Agency must check daily that it has received the Holdings Data file and must immediately advise us if it has not received the file.
- (iii) 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 us 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 Datafile.
- (iv) 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 us 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 Datafile supplied each Monday.
- (v) The Agency must perform a check of the Holdings Datafile in its entirety at least once per week. The Agency must advise us of any discrepancies between the records contained in the Holdings Datafile as compared to the records held by the Agency. If any spot has been booked in our traffic system for ten days or more and the Agency has not advised us of any discrepancies, then that spot is outside of the notification deadline.

- (vi) If the Agency fails to advise us of any discrepancies in the Holdings Datafile within the deadlines specified in paragraphs (iv) –(v) (as relevant), we will have 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 Datafile.

*B. Confirmation by Booking Advice*

If you are an Agency and elect or are deemed to have elected to confirm an Order by Booking Advice, the following provisions apply and clause 5.2(I)(A) does not apply.

- (a) We will issue a Booking Advice to you with respect to each Order; and
- (b) You may amend any Booking Advice by written notice to us before 5pm on the second clear business day following sending of a Booking Advice to you. Unless the Booking Advice is so amended by you, the Booking Advice will be binding.

For clarity, failure by us to issue a Holdings Datafile or Bookings Advice (as is relevant) with respect to any Order made by you does not affect your obligations with respect to Services that are the subject of such Order if we provide the Services.

*(II) For Services on Nine Digital Properties*

You may request Services from us by completing an Insertion Order. We will not be obliged to supply to you the particular Services set out in the Insertion Order until you have signed the Insertion Order.

*(III) For Services on Nine Publishing Assets*

We will confirm all bookings for Services on Nine Publishing Assets via email to you with the details of the Order and any payment amounts due if the booking requires pre-payment. It is your responsibility to notify us via return email as soon as possible of any errors or omissions in the booking confirmation.

*(IV) For Services on Nine Radio Assets*

For an Order made by an Agency participating in the *RadioMatrix* system, we will take email confirmation as authority to book the Order and Holdings is deemed to be the final confirmation from us of the Order. It is your sole responsibility to check Holdings and notify us of any errors within 2 business days of making the Order and subsequently on a weekly basis throughout the period of the advertising campaign. Any errors (included misplaced, duplicated or incorrectly rated Bookings) for spots or non-spot charges that appear in Holdings that are not queried by you with us will not attract a credit and the Customer will be required to make full payment for advertising published, communicated or broadcast in accordance with Holdings. If we adjust an Order prior to broadcast under this clause 5.2(B)(IV), we will advise the Customer of the changes to be reflected within Holdings with sufficient time prior to the broadcast of the Advertising Services to allow you to review and agree on those changes.

If you are a non-agency Customer who wishes to place an Order directly with us for Services on Nine Radio Assets, you will need to sign a Booking Advice and may be subject to a Nine credit check prior to us confirming acceptance of the Order.

You acknowledge and agree that any bonus and/or 'best time available' advertisements cannot be guaranteed at a particular time or position in break on Nine Radio Assets.

## **6. ADVERTISING COPY**

### **6.1 General**

- (a) You must obtain all consents for the use, reproduction and communication of the Advertising Copy before Nine supplies the Services to you.
- (b) You must check for any errors in the Advertising Copy (even where we produced the Advertising Copy) and promptly notify us of any errors prior to publication. We do not accept responsibility for any errors submitted by you or your agent.
- (c) You will ensure that Advertising Copy is clearly identifiable to users as advertising material and does not contain any material which could be confused by Users with our editorial content. You acknowledge that we may label any Advertising Copy as an advertisement when we publish it.
- (d) We will use reasonable efforts to deliver the Services in accordance with the Order. However in certain circumstances we may need to vary the placement of the Advertising Copy within a title, website or program (as applicable) or change the format of the Advertising Copy. Any material variation will not occur without your prior consultation and approval.
- (e) We may refuse to accept for publication or broadcast or to withdraw from publication or broadcast any Advertising Copy at any time (even if we have previously published or broadcast the Advertising Copy) if it does not comply with the requirements of this Agreement or any other guidelines we have provided to you.

### **6.2 Advertising Copy on Nine TV Channels**

- (a) You must lodge Advertising Copy in accordance with the timing and specification requirements of each relevant Nine TV Station as available at [https://mail.google.com/mail/u/0?ui=2&ik=1b53c95210&attid=0.3&permmsgid=msg-f:1738732058061141522&th=1821379838517612&view=att&disp=inline&realattid=f\\_I5adw\\_ym2](https://mail.google.com/mail/u/0?ui=2&ik=1b53c95210&attid=0.3&permmsgid=msg-f:1738732058061141522&th=1821379838517612&view=att&disp=inline&realattid=f_I5adw_ym2) or as otherwise instructed by us in writing to you.
- (b) All Advertising Copy to be broadcast on television must be accompanied by a *ClearAds* approval number unless Nine has agreed to accept approval from an alternative advertising compliance provider. Nine may charge you additional fees for assessing Advertising Copy for broadcast if you have not obtained approval from *ClearAds*.
- (c) Nine makes no warranties in respect to the proximity of the broadcast or transmission of your Advertising Copy to the broadcast or transmission of Copy relating to competing products or services.

### **6.3 Advertising Copy on Nine Digital Properties**

- (a) All online Advertising Copy must comply with Nine's technical advertising specifications (available at <https://www.nineforbrands.com.au/ad-specs/digital/>), our advertising standards policy which is available on request or such other requirements we may advise you of.
- (b) For online banner and display advertising, You must submit creative materials and a click-through URL to us at least 3 business days (or 5 business days for non-gif material) before publication date. We may agree to accept any late Advertising Copy.
- (c) If Advertising Copy is late (as calculated in clause 6.3(b), we do not guarantee full delivery of the Order and will not issue make goods or credits for any missed activity.
- (d) You will ensure that any URL referenced in any Advertising Copy will link Users to the intended website. We may test whether the URL is functional and may remove any URL which does not meet with our approval.
- (e) If you use our Services to promote or market any Gaming Services provided by you or any third party you will implement appropriate procedures to ensure that all Users who access such services via the Nine Digital Properties are not domiciled in a country which prohibits access to Gaming Services.
- (f) We will measure online display and banner advertising (including impressions delivered and clicks achieved) through our ad-serving systems. We will not accept results from Customer or third-party ad-servers for the purposes of our billing and assessment of Services delivered.

#### **6.4 Advertising Copy on Nine Publishing Assets**

- (a) Advertising Copy must comply with our specifications as notified to you and available at <https://www.nineforbrands.com.au/ad-specs/print-and-magazines/>. We may reject the Advertising Copy if it does not comply with such specifications.
- (b) Advertising material delivered digitally must include our booking or material identification number.
- (c) If you fail to provide the Advertising Copy for an Order by the relevant Nine Publishing print publication deadline as listed at <https://www.nineforbrands.com.au/ad-specs/print-and-magazines/>, we may choose to accept the Advertising Copy after the deadline. If the Advertising Copy is not published because of your failure to deliver the copy in time, you will be charged for the Advertising Services and have no claim against us for credit, republication or other remedy for out of deadline Advertising Copy as we will not have time to re-sell such Advertising Services prior to the applicable Nine Publishing print publication going to print.
- (d) We will publish classified Advertising Copy under the classification heading we determine is most appropriate. These headings are for the convenience of the readers.
- (e) Where we make an error in publishing the Advertising Copy in the form provided by you, you must send any claim for credit or republication in writing to us no later than 28 days after the date of publication of the Advertising Copy within the Nine Publishing Assets.
- (f) If we change the press configuration for a Nine Publishing publication, we may shrink or enlarge your Advertising Copy by up to 10% without prior notice to you or any change to the Fees.



## **6.5 Advertising Copy on Nine Radio Assets**

You must submit Advertising Copy via WAV file (unless we otherwise specify) by at least 12pm two (2) Business Days prior to publication/broadcast of the applicable Advertising Copy and in accordance with all other directions as we may provide. It is at our discretion whether we are able to accept Advertising Copy delivered after this deadline. If the Advertising Copy is not published because of your failure to deliver the copy in time, you will be charged for the Advertising Services and have no claim against us for airtime credit or other remedy for out of deadline Advertising Copy as we will not have time to re-sell such Advertising Services prior to the broadcast of the applicable Nine Radio Asset airtime.

## **7. CREATIVE SERVICES**

### **7.1 Instructions and Materials**

You will supply us with any design instructions, logos, artwork, footage or other materials which we need to carry out Creative Services for you in the manner and format we specify at the time of completion of the Order. Our detailed terms and conditions covering Creative Services are available here (**Creative Services Terms**). In the event of any inconsistency between these terms and our Creative Services Terms, the Creative Services Terms will apply to the extent of the inconsistency only.

### **7.2 Approval of Custom Content**

- (a) We will use reasonable endeavours to supply mock-ups or final versions of footage/content (as applicable) of all Custom Materials for your approval reasonably in advance of the Launch Date.
- (b) You must promptly check mock-ups/footage upon receipt and notify us of your approval or of any errors or amendments you require prior to the Launch Date. We may charge you additional fees for any amendments we estimate will take more than one business day's work to complete.
- (c) Subject to clause 7.2(a), if we do not receive your approval of the Custom Materials supplied to you at least two (2) days prior to Launch Date we may treat this as a cancellation of the applicable Order or part thereof and we may charge you a Cancellation Fee.

### **7.3 Extension of Advertising Services Timeframes**

Where we have provided Creative Services to you and committed to delivering specific page views or other audience targets for the associated Advertising Services as detailed in the applicable Order, we may consult with you to extend the duration of the Advertising Services as published or broadcast on the Nine Properties for a further period of time as agreed with you.

## **8. DYNAMICALLY SCHEDULED CAMPAIGNS, GUARANTEED VIEWABILITY CAMPAIGNS AND PARTNER NETWORK CAMPAIGNS**

### **8.1 Dynamically Scheduled Campaigns**

#### *Audience*

- (a) The audience forecasts used for planning airtime for Dynamically Scheduled Campaigns are

generated via 9Predict, Nine's proprietary audience forecasting tool. These audience forecasts form the basis of the agreed CPM for the Campaign.

(b) The audience forecasts and any audience guarantee are based on quarter hour ratings data.

- (c) Consolidated ratings data is the default currency against which any audience guarantee is measured. We may, at the time of booking, agree to use overnight ratings data for retail clients.
- (d) Dynamically Scheduled Campaigns may only be transacted against any of Nine's preferred trading demographics (currently 53, subject to change by us).

#### *Audience Guarantee*

- (e) Nine's proposed audience levels are valid for a period of two business days from the time that the proposal is sent, provided that:
  - (i) Nine's booking system is open for the proposed airing dates; and
  - (ii) There is a minimum of four weeks lead time prior to Campaign commencement, at the time that the proposal is sent.
- (f) If approval to book a proposal is granted more than two business days after the proposal is sent, we may revise the audience levels based on available inventory.
- (g) We will use best endeavours to deliver audience according to all agreed parameters subject to the following:
  - (i) Delivery by market and by commercial duration is guaranteed across the duration of the Campaign;
  - (ii) Typical variations by week, channel & daypart are as follows;
    - o By Week 10%
    - o By Daypart 5%
    - o By Channel 10%
- (h) As final audience reconciliation is not available until one week after the conclusion of the Campaign, a two-week period trailing the booked Campaign dates is required to fulfil all guaranteed audience. This total 3-week period is the "Campaign Period".

#### *Make Good*

- (i) If there is an audience shortfall of up to 10% by the end of the Campaign Period, we will work with the client on making good the audience shortfall based on mutually agreed timings. This make-good will be scheduled at our discretion.
- (ii) If the audience shortfall is greater than 10% we will provide make-goods in a future period in the channels and dayparts where the shortfall occurred and otherwise at the client's discretion.

## **8.2 Guaranteed Viewability Campaigns**

This clause applies where you elect to purchase a Guaranteed Viewability Campaign on a nominated Nine Digital Property/s as specified in your signed Order.

- (a) We will specify in your signed Order advertising products on Nine Digital Properties which are eligible for purchase against a viewable impression target (**Viewable Products**). You cannot buy other advertising products, such as sponsorships as a Viewable Product (**Non-Viewable Products**).
- (b) We may change the Viewable Products made available for purchase provided that you may, at your discretion, terminate your Order without penalty if we remove or alter a Viewable Product/s that you had already purchased during the term of your Order.
- (c) If you purchase Viewable Products under a signed Order with us, the following terms apply:

- i. Unless specified in the terms of the applicable Order, the agreed definition of viewability which will apply to assess whether an individual advertisement from you is “in view” is as follows:
  - a. For standard display advertisements: 50% of the pixels of the advertisement must be in view for 1 continuous second.
  - b. For large format advertisements (defined as 242,500 pixels or over): 30% of the pixels of the advertisement must be in view for 1 continuous second.
  - c. For video advertisements: 50% of the pixels of the advertisement must be in view for 2 continuous seconds.
- ii. You and we may append a pixel from a Media Ratings Council accredited third party measurement vendor (**3PV**) to all ad creative served on impressions in Viewable Products to measure the viewability performance of your campaign. If each party is using a different 3PV, Nine will accept your 3PV’s measurement results, where they are within 10% of Nine’s.
- iii. You acknowledge that for every Viewable Product purchased in your Order, there will be some impressions served that cannot be measured by the 3PV due to no fault of ours (**Non-Measured Impressions**).
- iv. Measured Impressions recorded by a 3PV on Viewable Products will be achieved if the following thresholds are hit:
  - *For display*: a 70% viewability threshold on Nine Digital Websites and a 60% viewability threshold on Nine Publishing Websites (**Viewability Target**), meaning that for all of Your Measured Display Impressions served by us in Viewable Products nominated within your IO, no less than 70% (taken as an average across all line items of your IO that include Viewable Products) will be measured as ‘in view’ by our audience on Nine Digital Websites and no less than 60% (taken as an average across all line items of your IO that include Viewable Products) will be measured as ‘in view’ by our audience on Nine Publishing Websites.
  - *For video*: a 60% viewability threshold on Nine Digital Websites and a 50% threshold on Nine Publishing Websites (**Viewability Target**), calculated as an average across all line items of your Order that include Viewable Products consistent with the calculation for the display Viewability Target.
- v. Determination of whether the Viewability Target has been reached is based on an assessment of your total campaign impressions bought against Viewable Products in the Order (assessed collectively), not by reference to an individual assessment of each line item in the Order separately meeting the Viewability Target. Further, impressions that are bought against Non-Viewable Products in the same Order and Non-Measured Impressions will not contribute to the Viewability Target calculation.
- vi. If the applicable Viewability Target is not achieved for Measured Impressions we will make good the deficit by providing you with additional Measured Impressions (which must be recorded as being ‘in view’) until the original Viewability Target stipulated on your Order is delivered. You will be billed for all impressions purchased on Viewable Products in your Order. For clarity, we will not provide any make-goods

for failure by us to deliver on any targets or other performance metrics in respect of Non-Viewable Products.

- vii. We will only provide make-goods in the form of additional Measurable Impressions that are recorded as 'in view', not cash. We will do this in a reasonable time frame. You cannot on-sell these and must use them for the same campaign unless agreed otherwise. Make-good impressions will be generally consistent with the type/location of inventory that was initially purchased by you in the original Advertising Services.

### **8.3 Partner Network Campaigns**

In the case of digital advertising campaigns run on Nine's Partner Network the terms set out in this clause 8.3 will apply in addition to the terms set out in the remainder of this Agreement. To the extent there is any inconsistency between the terms of this clause 8.3 and any other term of this Agreement, the terms of this clause 8.3 shall prevail.

- (a) All digital advertising campaigns will be run over the Partner Network as constituted at the time each campaign runs.
- (b) You acknowledge that the Partner Network may be subject to change at any time.
- (c) The Partner Network may include partner advertising networks which will run your campaign on a blind buy basis. You acknowledge that these networks do not supply any details of the websites included in these networks and that we cannot provide you with any data or information relating to these websites or the conduct or performance of the campaign on these networks.
- (d) We make no warranty and give no guarantee about the placements for your Advertising Copy on the Partner Network, nor do we make any warranty or give any guarantee on the number of clicks, impressions or actions we will deliver during the period of an advertising campaign and/or Insertion Order unless otherwise agreed with you in the Order.
- (e) We draw your attention to the Australian Best Practice Guidelines on Online Behavioural Advertising which we support. If an Insertion Order includes a CPA metric, you must insert the action tag we provided to you on your website, and update your privacy policy to reflect the presence of the action tag. We encourage all re-messaging advertisers to provide the following on their website where our tracking or action tags are placed: (a) a disclosure of the presence of third party ad serving partners and their use of tracking tags, action tags or cookies within the website's privacy policy; (b) notice of data collection by Nine's DSP/SSP vendor services providers; and (c) a link to [www.youronlinechoices.com.au](http://www.youronlinechoices.com.au). In no event will we be liable for any failure to make such disclosures.
- (f) During each campaign period, we will either: (i) issue you with a report at the end of each campaign period which sets out the aggregate number of impressions (CPM), clicks (CPC), actions (CPA), completed views (CPCV) as relevant for that month.

### **9. CANCELLATION OF SERVICES**

## 9.1 By Nine

We may cancel an Order or part of an Order at any time, without giving you any reason. If we do this, we will (at your election) either (a) refund any Fees you have prepaid us or (b) reschedule the start date for the Order and you agree that this is our sole liability to you in relation to that Order or part of the Order.

## 9.2 By Customer

### *I. For Advertising Services on Nine TV Channels*

- (a) You may cancel all or part of an Order without penalty if you give notice in writing to us before the TV Cancellation Date applicable to the relevant Advertising Copy. The “**TV Cancellation Date**” means 6 weeks prior to scheduled telecast of such Advertising Copy or such other period as Nine notifies you.
- (b) Should you cancel all or part of an Order after the applicable TV Cancellation Date, Nine is entitled to payment for the Order as if the Advertising Copy was broadcast in accordance with the Order, subject to the Delete & Charge regime set out below.
- (c) Should you cancel all or part of an Order after the applicable TV Cancellation Date, Nine will delete the cancelled Order and provide you with an airtime credit equal to the amount of the cancelled Order. The airtime credit will not be effective until you have paid the applicable payment for the cancelled Order in full.
- (d) The airtime credit will expire 12 months after the date the relevant Order was cancelled and will not entitle you to any refund or other payment but may be utilised on unfilled broadcast times, subject to our discretion to give higher priority to other customers’ actual or anticipated advertising orders.
- (e) For a Dynamically Scheduled Campaign, you may cancel without penalty if you give notice in writing to us at least 6 weeks before the scheduled broadcast dates of the Campaign. Should you cancel all or part of a Dynamically Scheduled Campaign within the 6 -week period prior to the campaign commencing, we will delete that part of the Campaign and provide you with an airtime credit.
- (f) The value of the airtime credit will be calculated at the time of the cancellation based on the amount of audience that has not been delivered at that date and valued according to the agreed CPM/CPT for the relevant channel, spot duration, week and daypart. At the time of cancellation, we will provide an estimate of the value of the airtime credit, based on predicted ratings. The actual value of credit will be confirmed once consolidated ratings for all aired spots have been published. Other conditions of the airtime credit for Dynamically Schedules Campaigns are:
  - (i) The airtime credit will not be effective until you have paid the applicable credit amount in full.

- (ii) The airtime credit may be redeemed subject to availability at the time of booking and delivery of audience for the Delete and Charge activity will be guaranteed to 80%; and
- (iii) The airtime credit will expire 12 months after the date of cancellation and will not entitle you to any refund or other payment but may be utilised on unfilled broadcast times, subject to our discretion to give higher priority to other customers' actual or anticipated advertising orders.

*II. For Advertising Services on Nine Digital Properties*

- (a) You may cancel an Order for any Services without charge provided that you give us at least:
  - (i) thirty (30) days' notice prior to the Launch Date for Orders on the Nine Digital Properties (together, **NDP Bookings**); and
  - (ii) forty-five (45) days' notice prior to Launch Date for Orders on the homepage of any Nine Digital Property ("**NH Bookings**");
- (b) If you cancel an Order for Services within 72 hours of the Launch Date for either NDP Bookings or NH Bookings, we will bill your NDP Booking or NH Booking (as applicable) as booked and you will be charged the full Fees for the Order. We will not issue any Value Credit or other compensation to you as we will suffer financial loss as a result of your late cancellation by being unable to re-sell the inventory either at all or for the same value sold to you originally.
- (c) If you cancel:
  - (i) your NDP Booking between 3-30 days prior to the Launch Date; or
  - (ii) your NH Booking between 3-45 days prior to the Launch Date,we will bill your Order as booked and you will be liable to pay the full amount of Fees owed for your NDP Booking or NH Booking (as applicable). We will, however, issue you with a Value Credit equivalent to the total Fees paid by you for your cancelled Order. We will provide details of the Value Credit in an Inventory Cancellation form.
- (d) All Value Credits issued pursuant to clause 8.2(II)(c) must be used within twelve (12) months of the issue date. You must alert us to the redemption of any Value Credit by you at the time of completing a new Order for Services.
- (e) You acknowledge that using any Value Credit is subject to the availability of replacement services.

*(III) For Advertising Services on Nine Radio Assets*

- (a) You may cancel, vary or reschedule an Order with 28 days' prior written notice, without penalty. If you cancel an Order between 3-28 days prior to the broadcast date for that Order, we will nonetheless charge you for the associated Fees for the cancelled Order but issue you with an airtime credit equal to the amount of the cancelled Order. The airtime credit will not be effective until you have paid the applicable payment for the cancelled Order in full.
- (b) The airtime credit will expire 12 months after the date the relevant Order was cancelled and will not entitle you to any refund or other payment but may be utilised on unfilled broadcast times, subject to our discretion to give higher priority to other customers' actual or anticipated advertising orders.
- (c) If you cancel an Order less than three (3) days prior to the broadcast date for that Order,

we will nonetheless charge you the full Fees for that cancelled Order and will not provide you with any credit or other form of remedy given the late notice of your cancellation.

(IV) *For Advertising Services on Nine Publishing Assets*



If You cancel any Order for Advertising Services on Nine Publishing Assets prior to the deadline for delivery of Advertising Copy for that particular publication (which are detailed at <https://www.nineforbrands.com.au/ad-specs/print-and-magazines/>), you will not be charged any Fees for such Advertising Services. If you cancel your Order or part of your Order after the applicable deadline for delivery of Advertising Copy for that publication, we may:

- (a) charge you the full Fees for the cancelled Order but provide you with a credit of equivalent value to the cancelled Order for use within twelve (12) months if you cancel more than twenty-four (24) hours prior to the applicable Nine Publishing Asset going to print; or
- (b) charge you the full Fees for the cancelled Order and provide you with no credit or other form of remedy if you cancel the Order within twenty-four (24) hours of the applicable Nine Publishing Asset going to print, as Nine may suffer loss as a result of your late cancellation.

(V) *For Creative Services*

If you cancel any Order for Creative Services we will charge you for any production costs and charges we have incurred as of the date of the cancellation.

## **10. INTELLECTUAL PROPERTY**

### **10.1 Ownership of IP**

Unless otherwise agreed in the Order, We or our licensors own the intellectual property in the Custom Materials, our trademarks and any other material developed or provided by us under this Agreement.

You and your licensors own the intellectual property in any Advertising Copy, your trademarks and any other material you provide to us under this Agreement.

Except as authorised by this Agreement, the parties agree not to:

- (a) reproduce the other party's intellectual property; or
- (b) sub-license, on-supply or further syndicate the other party's intellectual property on any platform or end-destination other than the Nine Properties.

### **10.2 Licence of Intellectual Property**

You grant us a limited, non-exclusive and non-transferable licence to reproduce and communicate to the public the Advertising Copy on the Nine Properties in accordance with the Agreement.

You grant us a limited non-exclusive right to copy, adapt, modify and otherwise use any logos or other design materials you supply to use for the purposes of supplying you with Creative Services.

For any Custom Materials we may create for you as part of Creative Services requested in an Order, we will agree the terms of the intellectual property licence in the Order with you otherwise they will be as specified in the Creative Services Terms.

## **11. PAYMENT**

### **11.1 Rates and Fees**

You will pay the Fees for the Services as set out in the applicable Order. Fees quoted are exclusive of all taxes, including, but not limited to GST. Our Fees will be charged at the applicable Rate Card or as otherwise negotiated and agreed with you.

## **11.2 Changes to Rates**

We may change our Rate Cards for the Nine Properties from time to time without notice (however any existing Orders booked by you at the time of any rate change will be subject to the Rate Card (or other agreed rates with you) in place at the time of your booking).

## **11.3 Costs and Charges**

We may charge you additional costs we incur in the provision of Services including (without limitation):

- (a) the cost of obtaining any necessary licences for any competitions which form part of Creative Services; and
- (b) any additional costs we incur in providing any talent, photography, filming, special effects or other special services which you request be supplied for the Creative Services.

## **11.4 Invoices**

- (a) Unless specified otherwise in your Order, we will invoice you monthly for fees and costs due under this Agreement (calculated and payable on Services booked under the Order rather than Services delivered).
- (b) If you are an Approved Agency who has passed our credit application process, You must pay the Fees invoiced within forty-five (45) days of the end of the month in which the Services invoice was issued (unless otherwise agreed).
- (c) If you are purchasing Services directly from us and not via an agency (and have passed Nine's credit application process), you must pay the Fees invoiced within thirty (30) days of the end of the month in which the Services the subject of the invoice were provided and issued.
- (d) If you do not have a credit account with us, you must make payment for Services on lodgement of Advertising Copy or otherwise by the due date shown in the invoice.
- (e) You must make payment by electronic funds transfer to our nominated account unless we pre-approve another payment method with you.

## **11.5 Late payment**

If Nine's invoice is not paid when due, we may, without limiting our other rights: (a) charge interest on the unpaid amount at the Reserve Bank cash rate at the time plus 2% until such amount is paid (b) suspend publication or broadcast of any Advertising Copy lodged by you until we receive all outstanding amounts; (c) if the unpaid amount exceeds 90 days, charge an administration fee of 2% per month, from date of invoice, on the unpaid amount (in addition to the interest charged in (a)); (d) cease to provide, or impose conditions on, the provision of credit to you and require pre-payment for any subsequent Order; and (e) not pay or deduct any applicable agency rebate, discount or commission, and the amount of such rebate, discount or commission shall be treated as an unpaid amount and immediately due and payable.

## **11.6 GST and Taxes**

If a GST is imposed on the supply of Services made under or in connection with this agreement, we may, in addition to any amount or consideration expressed as payable by you under this agreement for Services, recover from you an additional amount on account of the GST. You agree to pay the additional amount on account of the GST in respect of Services to us, in the same manner and at the same time as required for the payment of Services. We will issue Tax Invoices to you in accordance with the GST Act. We will issue Adjustment Notes in accordance with the GST Act to you, for rebates you are entitled to, and other adjustments.

## **11.7 Credit Facilities**

On at least thirty (30) days prior notice to you, we may at any time without notice alter, cancel, suspend or impose conditions on credit facilities.

## **12. APPROVED AGENCIES**

### **12.1 Commission Payments**

Where you are an Approved Agency you will be entitled to receive a commission equal to ten per cent (10%) of the total amount of your monthly invoiced Fees (but expressly excluding any fees paid for Creative Services).

Our payment of any commission is conditional upon the following:

- (a) you must fully disclose to your clients the amount of commission you receive from us;
- (b) you must fully comply with this Agreement;
- (c) no more than fifty per cent (50%) of the Fees we invoice in any month will be attributable to Services supplied to you on behalf of a single client; and
- (d) your payment in full of invoices within forty-five (45) days of the end of the month in which the invoice was issued.

### **12.2 Status as an Approved Agency**

You must supply us with any information we may reasonably request in support of your application to be registered with us as an Approved Agency including solvency statements, balance sheet and profit and loss statements and details of any insurance policies you hold.

If we have notification of any breach by you of this Agreement, or of your insolvency or non-compliance with any applicable laws relating to your performance as an Approved Agency, we may revoke your status as an Approved Agency at any time upon written notice.

### **12.3 Disclosure**

You warrant to us that you have disclosed to your clients all benefits you may receive from us as a result of you being an Approved Agency.

## 13. WARRANTIES

### General Customer Warranties

13.1 You warrant that you:

- (a) have all applicable licenses and consents necessary to enter and perform your obligations under this Agreement;
- (b) will comply with all applicable laws and regulations in performing your obligations under this Agreement;
- (c) are fully authorised to act on behalf of any advertiser or customer on whose behalf you are requesting Services; and
- (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.

### Customer warranties for Advertising Copy

13.2 You warrant that any Advertising Copy that you provide to us (or approve for publication on the Nine Properties):

- (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, internet transmission, radio broadcast or print publication of advertising material as applicable in the jurisdiction/s for which the Advertising Copy is published or broadcast. This includes (without limitation) the *Competition and Consumer Act 2010* (Cth), the *Broadcasting Services Act 1992* (Cth), *Therapeutic Goods Act 1989* (Cth), the *Betting and Racing Act 1988* (NSW) (and the equivalent legislation in other Australian states and territories) and the *Privacy Act 1988* (Cth);
- (b) complies with any standard or requirement we specify and notify to you;
- (c) does not infringe any copyright, trademark, obligation of confidentiality or other personal or proprietary right;
- (d) is not false or misleading and is true in substance and in fact;
- (e) does not breach or infringe any law of defamation, obscenity or contempt of any court, tribunal or royal commission;
- (f) where the Advertising Copy contains the name or photographic or pictorial representation of any living person and/or any copy by which any living person can be identified, You have obtained the authority of that person to make use of his/her name or representation or the copy;
- (g) is published or broadcast only in circumstances where you have obtained all consents, approvals or permissions required for our publication or broadcast of such Advertising Copy on your behalf, whether required by law or otherwise;
- (h) does not contain anything which may give rise to any cause of action by a third party against us or any of our Related Bodies Corporate, 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; and

- (i) where the Advertising Copy promotes a competition or trade promotion, you have obtained all relevant permits and indemnify us against any loss in connection with the Advertising Copy.

13.3 We hold the benefit of the warranties in clauses 13.1 and 13.2 as trustee for each of our Related Bodies Corporate.

#### **Nine Warranties**

13.4 We warrant to you that:

- (a) we have the right to supply the Services to you;
- (b) we will use reasonable care and skill in supplying the Services; and
- (c) we will comply with all applicable laws and regulations in supplying the Services.

#### **Excluded Warranties**

13.5 Nine and its Related Bodies Corporate 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.

### **14. INDEMNITIES**

14.1 You indemnify us and our Related Bodies Corporate, and each of their respective officers, employees, agents and affiliates against any action, claim, loss or expense arising from a third-party claim brought against us relating to the publication of your Advertising Copy on the Nine Properties or any breach by you of any of the warranties set out in clause 13 of this Agreement.

14.2 We hold the benefit of the indemnity in clause 14.1 as trustee for each of our Related Bodies Corporate.

14.3 We indemnify you and your Related Bodies Corporate (if applicable), and each of your respective officers, employees, agents and affiliates against any action, claim, loss or expense arising from a third party claim brought against you relating to our delivery of Advertising Services to you on the Nine Properties in accordance with the terms of this Agreement (unless caused or contributed to by an act or omission of you in breach of the Agreement) or any breach by us of the warranties set out in clause 13 of this Agreement.

### **15. LIABILITY**

15.1 Neither party is liable for any Indirect Loss incurred by the other party or by any other person arising out of or in connection with this Agreement.

15.2 Excluding each party's indemnification obligations under clause 14, each party's liability to the other party for any claims made under this Agreement (whether such liability arises in contract, tort (including negligence) or otherwise) is, to the fullest extent permitted by law, limited to either resupplying the Services (if applicable) or paying the cost of having the Services resupplied.

15.3 You acknowledge and agree that we are not liable for any aspect of the Advertising Copy

including any products or services referred to in the Advertising Copy. You are solely responsible for the content of all Advertising Copy and associated products and services, including any ancillary competitions and promotions.

## **16. CONFIDENTIAL INFORMATION**

16.1 Each party must:

- (a) take all action reasonably necessary to maintain the confidentiality of the other party's Confidential Information; and
- (b) not disclose the other party's Confidential Information to any person except as permitted under clause 16.2.

16.2 A party ("recipient") may disclose the Confidential Information of the other party:

- (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 of the disclosing party before the disclosure is made; or
- (b) if it is required or authorised to be disclosed by any law.

16.3 Each party may disclose and make available the other party's Confidential Information to their Related Bodies Corporate and/or nominated third party service providers on the condition that the disclosing party take reasonable steps to ensure that such entities are made fully aware of the confidential nature of the Confidential Information before the disclosure is made. You consent to our Related Bodies Corporate or nominated third party service providers contacting you in connection with their provision to you of Services and/or other products or services to you.

## **17. GENERAL**

17.1 This Agreement is governed by the laws of New South Wales, Australia. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia.

17.2 Neither party may issue any press release or make other public statement in relation to this Agreement or the relationship established between us by this Agreement without the other party's prior written permission. We may, however, make informational references to you being a customer of our Services in press releases without obtaining your consent.

17.3 This Agreement will not create a joint venture, legal partnership, employment or agency relationship between you and us.

17.4 Subject to any rights you may have at law (including under the Australian Consumer Law), the terms and conditions of the agreement between us and you are set out exhaustively in this Agreement (including the associated Order) or any variation thereof and comprise the entire agreement of the parties. This Agreement supersedes and excludes any prior representations, negotiations, arrangements, understandings, communications or agreements between you and us relating to the subject matter of the Agreement.

17.5 We may vary these Advertising Terms and Conditions by giving you notice in writing. If we vary these terms materially and such variation will have an adverse impact on you, you may elect to terminate the Agreement (including any existing Order) on written notice to us. Other components



of the Agreement can only be varied by agreement in writing by both parties.

17.6 Neither party may transfer or assign this Agreement without the other party's prior written consent (not to be unreasonably withheld).

17.7 Neither party will be liable for its failure to perform any of its obligations under this Agreement due to any contingency beyond its reasonable control.

17.8 Nine and its Related Bodies Corporate may collect your and/or your nominated representative's personal information to provide the Services to you and for payment purposes. The collection, use or disclosure of any personal information provided to us by you in connection with your use of the Services is subject to the Nine Privacy Policy available [here](#). You agree to store and use all personal information which we may provide to you in accordance with the requirements of the *Privacy Act 1988* (Cth) and the *Spam Act 2003* (Cth).