

Nova Entertainment Pty Ltd - Advertising Terms and Conditions

This document sets out the terms and conditions which apply to the provision of advertising services by any radio station owned or operated by Nova Entertainment Pty Ltd (ACN 093 553 989) or its related bodies corporate (referred to in this document as **Nova**). Neither these terms and conditions nor the Booking Form constitute an offer or agreement by Nova to provide any advertising services. Any agreement to provide advertising services is subject to approval and acceptance of the Booking Form by Nova and the Client.

1. Provision of Advertising Services

- 1.1 Upon approval by Nova of a Booking Form prepared by the Client (or by Nova at the request of the Client), Nova agrees to provide, and the Client agrees to accept, the Advertising Services in accordance with the details specified in the Booking Form and these terms and conditions.
- 1.2 The Client acknowledges and agrees that Holdings is deemed to be the final approval and acceptance of the Booking Form by the Client. It is the Client's sole responsibility to check Holdings and notify Nova of any errors in the Booking Form within two (2) Business Days of submitting the Booking Form, and subsequently on a weekly basis for the duration of the term of the Booking Form. Any errors (including, but not limited to, misplaced, duplicated or incorrectly rated bookings) in the Booking Form for spots or non-spot charges that appear in Holdings that are not queried by the Client with Nova within two (2) Business Days of submitting the Booking Form will not attract a credit and the Client will be required to make full payment for any Advertisement published, communicated or broadcast in accordance with Holdings. In the event Nova adjusts a Booking Form prior to the broadcast or publication of an Advertisement in accordance with this **Clause 1.2**, Nova will advise the Client of the relevant change to be reflected within Holdings with sufficient time prior to the broadcast or publication of the relevant Advertisement to allow the Client to review and agree to such changes.

2. Broadcast Times

- 2.1 Subject to **Clause 2.2** and these terms and conditions, Nova will broadcast each Advertisement on the Broadcast Date and Broadcast Time specified in the Booking Form.
- 2.2 If, in a Booking Form, the Client has requested an Advertisement to be broadcast at a Broadcast Time

which is not available, Nova may (with the consent of the Client) place that Advertisement on a wait list for the Broadcast Time. If the Broadcast Time becomes available, Nova may broadcast the Advertisement at that Broadcast Time without any further approval from the Client, and the Client will be required to make payment for the Advertisement at the Rate for that Broadcast Time in accordance with **Clause 3**.

3. Payment

- 3.1 The Client will pay to Nova (or as Nova directs) the amount specified as the "Total Cost" in the Booking Form for the Advertising Services in accordance with this **Clause 3**.
- 3.2 Unless the Client has a Credit Account with Nova, the Total Cost must be paid in cleared funds by electronic transfer to a bank account nominated by Nova (or by such other method agreed in writing with Nova) on or before the date which is five (5) Business Days prior to the First Broadcast Date (or another date agreed in writing with Nova). Nova may require the Client to pay any production costs and other out of pocket expenses in relation to an Advertisement prior to incurring those costs and expenses.
- 3.3 If the Client has a Credit Account with Nova, the Total Cost must be paid to Nova in accordance with the Credit Terms and Conditions.

4. Cancellations

- 4.1 The Client may cancel the broadcast or publication of an Advertisement by notice in writing to Nova not less than ten (10) Business Days prior to the relevant Broadcast Date.
- 4.2 If the Client cancels the broadcast or publication of an Advertisement less than ten (10) Business Days prior to the Broadcast Date, Nova may require the Client to pay all or any part of the Total Cost in accordance with **Clause 3**, and Nova will not be required to make good or provide the Client with any credit, rebate, refund or discount in relation to that Advertisement.

5. Changes to Broadcast Times

- 5.1 The Client may change the Broadcast Date or Broadcast Time of an Advertisement by making a request in writing to Nova not less than ten (10) Business Days prior to the relevant Broadcast Date. The revised Broadcast Date or Broadcast Time will be subject to availability and must be agreed with

Nova.

5.2 Nova may treat a change to the Broadcast Date or Broadcast Time which is made by the Client otherwise than in accordance with this **Clause 5** as a cancellation of the Advertisement under **Clause 4**.

5.3 Any change in the Broadcast Date or Broadcasting Time for an Advertisement made under this **Clause 5** at the request of the Client will be made subject to any change in the Rates applicable to the Advertisement at the new date and time.

5.4 Nova may with the consent of the Client change the Broadcast Date and Broadcast Time for an Advertisement provided that the Rate for the Advertisement does not increase as a result of that change.

6. Advertising Material

6.1 Nova will not be required to broadcast or publish an Advertisement unless the content of the Advertisement (or changes to any content) is first approved by each of Nova and the Client.

6.2 The Client is responsible for the content of all Advertisements and must procure and ensure that:

- (a) all necessary consents, authorisations and approvals required to prepare, produce, publish and broadcast the Advertisement have been obtained;
- (b) the Advertisement does not contain any material which is defamatory, false, misleading or deceptive or infringes the rights of any other person or any Law; and
- (c) the preparation, production, publication and broadcast of the Advertisement does not breach or infringe any rights of any other person or breach any Law.

6.3 The Client grants to Nova the right to use any Trade Marks provided by the Client to Nova in accordance with these terms and conditions.

6.4 By submitting material to Nova for, or approving the content of, an Advertisement the Client represents and warrants to Nova that the Advertisement complies with **Clause 6.2** and that the Client has the right and authority to grant the right in **Clause 6.3**.

6.5 Nova may, at any time, cease, take down or refuse to broadcast or publish any Advertisement which it considers does not comply with **Clause 6.2** or which

Nova otherwise reasonably considers to be inappropriate, undesirable or unsuitable for broadcast or publication.

6.6 The Client agrees to comply promptly with any reasonable directions of Nova in relation to the preparation, production, publication and broadcast of any Advertisement (including any directions relating to the content of an Advertisement or supply of material required to be provided by the Client to enable Nova to broadcast or publish the Advertisement (such as scripts and audio material)).

7. Impressions

Impression goals for Sponsorships are estimates only. Nova will use best endeavours to achieve 100% delivery of impressions to estimated Sponsorship goal, however if delivery of impressions reaches 90% delivery of impressions to estimated Sponsorship goal, the Sponsorship will be considered delivered in full.

8. Intellectual Property

8.1 Unless otherwise agreed in writing between the parties, if a Nova Entity creates, develops or produces any material for or in relation to an Advertisement (including scripts, copy writing, creative material), the Client acknowledges and agrees that such material and any Intellectual Property Rights arising in connection with that material will belong to and will vest absolutely in the Nova Entity, and the Client will have no rights in or in respect of that material.

8.2 The Client will not, and will ensure that the Advertiser and their respective Related Entities do not, use apply or otherwise deal with any material referred to in **Clause 8.1** or Intellectual Property Rights of a Nova Entity (including the radio station name and logo) without the prior written consent of Nova.

8.3 Without limiting **Clause 14.5**, the Client agrees that any failure on the part of Nova or a Nova Entity to exercise (or any delay in exercising) any right or remedy under **Clauses 8.1** or **8.2**, or any custom or usage, course of dealing or established practice involving any Nova Entity and the Client or any Related Entity of the Client or the Advertiser will not:

- (a) amount to a waiver by Nova or the Nova Entity of any right or remedy under **Clauses 8.1** or **8.2**;
- (b) affect the Nova Entity's absolute ownership of:
 - (i) any material referred to in **Clauses 8.1**

- or **8.2** or any Intellectual Property Rights arising in connection with that material; or
- (ii) any future material created, developed or produced by the Nova Entity for the Client or any Related Entity of the Client or the Advertiser for or in relation to any advertisement (including scripts, copy writing, creative material), or Intellectual Property Rights arising in connection with that material (**Future Material**); or
- (c) amount to the grant of any implied right or licence to the Client or any other person to use, apply or otherwise deal with:
 - (i) any material referred to in **Clauses 8.1** or **8.2** or any Intellectual Property Rights arising in connection with that material; or
 - (ii) any Future Material.

9. Events of Default

9.1 It will be an Event of Default for the purposes of these terms and conditions if:

- (a) the Credit Terms and Conditions (if applicable) are terminated by Nova as a result of an Event of Default as defined in the Credit Terms and Conditions;
- (b) the Client (or a Related Entity of the Client) commits an essential breach of these terms and conditions or any other agreement between the Client (or a Related Entity of the Client) and Nova (or a Related Entity of Nova) including without limitation, failure to make payment as and when required under **Clause 3**;
- (c) the Client (or a Related Entity of the Client) is or becomes Insolvent; or
- (d) there is a change in the effective management or control of the Client (or a person who controls the Client).

9.2 If an Event of Default arises then, without prejudice to any other rights or remedies it may have, Nova may do any or all of the following:

- (a) require the Client to immediately pay in full any and all monies unpaid by the Client (and

each Related Entity of the Client) to Nova;

- (b) suspend, terminate or otherwise amend in its absolute discretion the provision of credit to the Client or any Related Entity of the Client;
- (c) require the Client (or a Related Entity of the Client) to pay in advance all amounts in respect of subsequent requests for Advertising Services and pay any collection fees, legal and other costs and outgoings incurred as a result of the Event of Default;
- (d) recover from the Client all costs, fees and disbursements relating to any action taken by or on behalf of Nova to recover monies from the Client;
- (e) cease or refuse to provide any further Advertising Services to the Client (or a Related Entity of the Client), including cancellation of the production or broadcast or publication of any Advertisement which has not been broadcast or published on or before the date of the Event of Default; and
- (f) terminate the operation of these terms and conditions immediately by notice to the Client.

9.3 If any payment due to Nova under these terms and conditions is overdue on any amounts invoiced that are not subject to a good faith dispute, then the Client shall pay interest thereon (before and after any judgment) at an annual rate (but with interest accruing on a daily basis) of two percent (2%) above the prime rate as reported by an Australian bank selected by Nova or at the maximum rate allowed by the applicable law of the Relevant Jurisdiction. Interest shall accrue and be payable on such overdue amounts from and after the date on which they become due and payable.

9.4 The Client will be liable for recovery costs incurred in the event of an overdue account being referred to an external debt collection agency due to a default in the Client's obligation to pay under these terms and conditions, including but not limited to:

- (a) commission charged by the debt collection agency on a contingency basis, as a liquidated debt; and
- (b) any charges reasonably made or claimed by a lawyer (in the event that the overdue account is referred to them by the debt collection agency), as a liquidated debt.

9.5 The costs recoverable will be the commission percentage charged by the debt collection agency including GST, as if the agency has achieved one hundred per cent recovery of the outstanding debt. The recovery costs will applied to the account and become payable by the Client from the date that the overdue account is referred to the debt collection agency.

10. Capacity

The Client acknowledges and agrees that it contracts with Nova for the provision of Advertising Services as principal in its own right (and not as agent for or on behalf of any other person (including any Advertiser) and represents that it has full capacity and power to do so.

11. Variation

These terms and conditions as they apply to the Advertising Services may be varied only by agreement in writing between each of Nova and the Client.

12. Liability

12.1 The Client (on its own behalf and on behalf of its Related Entities):

- (a) to the extent permitted by law, unconditionally and irrevocably releases and discharges Nova and any Nova Entity in connection with any Advertisement and the provision of Advertising Services; and
- (b) unconditionally and irrevocably indemnifies Nova and any Nova Entity, from and in relation to any and all liabilities, claims, proceedings, losses, demands, damages, costs (including legal costs on a full indemnity basis), expenses, outgoings however arising or incurred (or agreed to be paid by way of settlement or compromise) whether directly or indirectly in connection with any breach of these terms and conditions by the Client or any matter or thing relating to or in connection with any Advertisement and the provision of Advertising Services.

12.2 Without limiting **Clause 12.1**, to the extent permitted by law:

- (a) no Nova Entity will be responsible or liable for the sound quality of the broadcast or publication of any Advertisement broadcast or failure to broadcast or publish any Advertisement because of cancellation, technical failure, broadcasts required by law

or emergency announcements or any cause beyond Nova's reasonable control;

- (b) Nova excludes and will not be liable for all warranties and representations in relation to or in connection with goods or services (including the Advertising Services) provided pursuant to these terms and conditions. For the avoidance of doubt, the Client acknowledges and agrees that Nova makes no representations or warranties as to the quality, fitness for purpose, results, performance, effectiveness, profitability, usefulness, reliability, timeliness or accuracy of any Advertisement or the provision of Advertising Services by Nova; and
- (c) Nova will not be liable for any loss of revenue, profits or indirect or consequential loss or damage of any kind resulting from its provision of Advertising Services or any Advertisement (including but not limited to loss of reputation, loss of business or loss of opportunity).

12.3 Where the law prohibits the exclusion of liability for an implied term, the term is included in these terms and conditions, however to the extent permitted by law, Nova's liability for any individual breach of that term will be limited to the supply of the services again or paying the cost of doing so.

13. GST

If GST is, or will be, payable in respect of any supply made by Nova pursuant to these terms and conditions and the amount quoted by Nova is exclusive of any amount payable on account of GST, the Client agrees that Nova may increase the consideration payable for the supply by an amount equal to the GST liability arising on the supply, and (subject to receipt of a valid tax invoice) the amount of the GST liability will be payable at the same time as the consideration for the supply.

14. General

14.1 These terms and conditions (including the Booking Form) constitute the entire agreement between Nova and the Client in relation to the provision of the Advertising Services. The Client expressly warrants and agrees that it has not relied upon any previous agreements, understandings, negotiations and any terms implied by trade custom, practice, course of dealing or otherwise by law in entering into these terms and conditions. These terms and conditions entirely supersede all previous agreements,

understandings, negotiations and any terms implied by trade custom, practice, course of dealing or otherwise by law in relation to the Advertising Services or the subject matter of this agreement.

- 14.2 Nova, acting reasonably and in its legitimate interests, may at any time assign, transfer, sell, mortgage, charge, pledge or otherwise deal with all or any part of its rights and obligations under this agreement in its absolute discretion without the need to obtain the consent of the Client. The Client may not (and must not attempt to) assign, transfer, sell, mortgage, charge, pledge or otherwise deal with all or any part of its rights and obligations under this agreement.
- 14.3 This agreement is governed by the Law in force in the place of the radio station operated by Nova providing Advertising Services and the Client submits to the non-exclusive jurisdiction of that place.
- 14.4 Any provision of these terms and conditions which is void, unenforceable or inconsistent with any Law, with the effect that it is void and of no effect, is severed to the extent necessary to avoid that result.
- 14.5 Nova's failure to exercise (or delay in exercising) a right or remedy under these terms and conditions will not constitute a waiver of the right or remedy. A variation of, or waiver of a right or remedy under these terms and conditions is only effective if it is in writing, signed by the party or parties to be bound.
- 14.6 Notices and documents may be served upon a party at the address specified in the Booking Form.
- 14.7 The Client agrees to do all things necessary (including execution and delivery of documents) to give effect to these terms and conditions.

15. Definitions

In these terms and conditions, the following definitions apply unless the contrary intention appears or the context requires otherwise:

Advertiser means any person whose goods or services are the subject to an Advertisement.

Advertisement means each advertisement to be broadcast or published by Nova (regardless of media format), specified in the Booking Form (whether produced by Nova or any other person).

Advertising Services means the services to be provided by Nova in relation to the Advertisements specified in the Booking Form.

Booking Form means the advertising booking form provided by Nova in connection with the provision of Advertising Services and Advertisements to the Client (or Related Entity of Client).

Broadcast Date means, in relation to an Advertisement, the date on which the Advertisement is to be broadcast.

Broadcast Time means, in relation to an Advertisement, the times on the Broadcast Date during which the Advertisement is to be broadcast.

Business Day means a day that is not a Saturday or Sunday or a public holiday in the Relevant Jurisdiction.

Client means the person referred to as "the Client" in the Booking Form.

Credit Account means an agreement between Nova and the Client pursuant to which Nova agrees to provide credit to the Client in connection with the purchase of advertising services.

Credit Terms and Conditions means the terms and conditions relating to a Credit Account as determined from time to time by Nova and notified to the Client.

Corporations Act means the *Corporations Act 2001* (Cth).

Nova means Nova Entertainment Pty Ltd (ACN 093 553 989) and its Related Bodies Corporate.

Nova Entity means a Related Body Corporate of Nova and an officer, director, agent, employee, adviser, representative or contractor of Nova or Related Body Corporate of Nova.

Each of **Controller, Related Body Corporate and Related Entities** have the meaning given to those terms in the Corporations Act.

First Broadcast Date means the earliest Broadcast Time specified in the Booking Form.

GST has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Holdings means the electronic confirmation of all bookings (including all spot and non-spot charges) held by Nova on behalf of the Client and provided to the Client via Radio Matrix each night Monday to Friday, in the form of a Holdings file, which is to be compatible with the Mediaocean SMD system used by the Client.

A person is **Insolvent** if the person is (or states that it is) unable to pay its debts as and when they fall due, is the subject of any act of bankruptcy or insolvency application, arrangement, scheme or proceeding, or the appointment of any administrator, controller, receiver or liquidator, a winding up or any analogous event.



Intellectual Property Rights means any and all current and future intellectual property rights of any kind (whether registered or unregistered) including without limitation any trade mark, copyright, moral right, design right, circuit layout, trade secret, know-how, confidential information, invention, discovery or patent.

Law includes any legislation, regulation or principle of common law or equity and also includes any program standards determined by any government authority or any industry code of practice.

Rate means, in relation to an Advertisement, the rate payable for the broadcast of the Advertisement, as specified in the Booking Form.

Relevant Jurisdiction means the place of the radio station

operated by Nova referred to in **Clause 14.3**.

Sponsorship means a time-based audio booking delivered against a specified podcast, with 100% share of voice in the designated sponsorship position, dependent on the individual podcast.

Total Cost means the aggregate amount payable for the Advertising Services, as specified in the Booking Form (and includes the Schedule Costs and the Production Costs specified therein).

Trade Marks means any mark, whether unregistered or registered under the *Trade Marks Act 1995* (Cth) which forms part of an Advertisement.

Last Updated: 1 March 2021