

SBS Advertising Terms and Conditions

June 2018

These terms and conditions apply to any agreement between the Special Broadcasting Service (SBS) and the customer (You) in relation to any Advertising Services, Integration Placements and/or Creative Services SBS may supply to You principally for use on one or all of the SBS Website, SBS Television channels, SBS Radio, SBS's mobile sites, SBS's applications, and any other SBS owned or operated digital platforms (together, the "SBS Network").

References to You mean the person or company that requests Services from SBS. SBS contracts with media advertising agencies and media buying agencies in their own right and not as agents of their clients. In these terms and conditions references to "You" are deemed to include references to agencies where applicable.

By agreeing to engage SBS for Services or by placing an Order with any SBS representative You agree to be bound by these terms and conditions.

1. Definitions

Advertising Copy means all advertising, marketing or other material supplied by you (including graphics, any URLs, or text) for publication by SBS on the SBS Network, in a form and manner approved by SBS.

Advertising Services means the advertising services provided by SBS to You under this Agreement.

Creative Services means design, production and promotional services provided by SBS to You, including without limitation creating, producing and marketing Custom Materials, advertising marketing campaigns, and developing and hosting integrated offerings such as competitions and associated creative services.

Custom Materials means customised content and materials in any form which SBS has produced for any particular campaign or promotion including any banner, advertisement, copy, digital property, mini-website, co-branded webpage, newsletter or e-marketing materials as set out in the Order.

Integration Placement means a placement of Custom Materials or Advertising Copy in an integrated manner across multiple entry points on the SBS Network.

Order means an order which specifies details of the Services we agree to provide to you, which:

- (a) in relation to the Creative Services includes the scope of works; and
- (b) in relation to Advertising Services or Integration Placements includes the booking(s).

Services means the Advertising Services, Integration Placements or Creative Services, or any combination of them.

Start Date means the date on which SBS is scheduled to publish any Advertising Copy or make available any Custom Materials for publication as specified in the Order.

2. Overview

- a. Your agreement (**Agreement**) with SBS comprises:
 - (i) these Network Advertising Terms and Conditions; and
 - (ii) any other special terms agreed in writing between You and SBS, including those specified in the Order (**Special Terms**).
- b. In the event of any conflict between these Network Terms and Conditions and any Special Terms, the Special Terms will prevail, unless expressly stated otherwise in these Terms and Conditions.
- c. This Agreement constitutes the entire agreement between the parties and replaces any previous discussions, communications or other documents concerning the supply of the Services.

3. Services - General

- a. SBS will provide to You, and You agree to use, the Services in accordance with the Agreement.
- b. You may request Services from us by completing an Order. SBS will not be obliged to supply to You the particular Services set out in the Order until you have signed the Order. SBS accepts Orders that are electronically signed.
- c. Unless otherwise agreed in writing, renewal or additional Services shall only be provided at SBS's sole discretion, and pricing for any renewal period is subject to change by SBS from time to time.
- d. SBS reserves the right to (i) refuse at its discretion to accept broadcast or publish any advertising material; (ii) change these advertising terms and conditions at any time, (iii) cancel, reschedule or replace any SBS program, content or advertising break; and (iv) reschedule the Advertising Services.
- e. If a booking for Services is made in connection with a particular SBS program, campaign or content and that program or content is cancelled, You may have the Services rescheduled to a mutually acceptable time or cancelled without charge.
- f. SBS gives no guarantees about the proximity of other advertising relating to rival products.
- g. Subject to the terms of the Order, the Services and the products of the Services may not be resold or sublicensed.

4. Advertising Copy – General

- a. **Form of Advertising Copy:** All Advertising Copy must comply with any guidelines provided by SBS (which may be modified from time to time), including:
 - i. for online bookings, the *SBS Online Advertising Guidelines*;
 - ii. for television, the *SBS TVC Specifications Guidelines*; or

iii. such other requirements as SBS may advise.

Failure to meet SBS's advertising guidelines or any other provision of these terms and conditions may delay or prevent placement of the Advertising Copy on the SBS Network.

- b. **Deadlines:** You must submit Advertising Copy and any other material necessary to enable SBS to perform the Advertising Services, to SBS at least 3 working days or within such other deadline advised by SBS at its discretion before the Start Date.
 - c. **Distinction between advertising and editorial matter:** You acknowledge that SBS requires all advertising and sponsorship content must maintain a structural, aural and/or visual separation from SBS editorial content. You will ensure that Advertising Copy is clearly identifiable as advertising material, and does not contain any matter which might mislead, or be confused by members of the public with editorial content. You agree that SBS may take steps to clearly distinguish Advertising Copy from editorial content (such as labelling or tagging an advertisement as "advertisement").
 - d. **Promotion of competitions:** You will ensure that any Advertising Copy which references a competition (including a game of skill or lottery promotion) complies with all relevant state and territory legislation, and you have obtained all necessary permits and permissions for the conduct of the competition prior to the Start Date.
 - e. **Positioning / placement of the advertising:** Positioning of the advertising is at our sole discretion, except to the extent that positioning is specified in any Special Terms. You acknowledge and agree that we have not made any guarantees, inducements, warranties or other representations with respect to viewer numbers, usage statistics and/or levels of impressions for any advertisement. In some cases SBS may provide You with estimated usage or viewer statistics but You acknowledge that such statistics are expressly excluded from this Agreement.
 - f. **Rejection of advertising:** All contents of advertisements are subject to SBS's approval. SBS reserves the right to reject or cancel any advertisement, campaign, space reservation or position commitment at any time. Acceptance of any advertisement (including in relation to online advertising, any URL link contained or embedded in any online advertisement) shall not be deemed to be an acknowledgment by SBS that the advertising material complies with any or all relevant laws, regulations or industry codes.
5. **Advertising – SBS TV:** All Advertising Copy to be broadcast on television must be accompanied by a CAD approval number. The CAD approval number is an 8 digit code given by FreeTV Australia.
6. **Advertising – SBS Radio**
- a. Advertising Copy to be broadcast on SBS Radio Language programmes cannot be aired in English, they must be produced "In-Language". Advertising Copy in our Indian language programmes may be produced in English with an Indian Accent for authenticity.
 - b. You must provide an English script for all "In Language" Advertising Copy prior to the Advertising Copy being accepted for broadcast.

- c. Advertising Copy for radio to be broadcast on our music channels may be aired in English.

7. Advertising – SBS Online

- a. SBS shall have the absolute right to reject any URL link embodied within any online Advertising Copy.

8. Creative Services

You may only use the Custom Materials (and any other material created by SBS in the course of performing the Creative Services) outside the SBS Network in accordance with the licence terms in the Order and any other Special Terms.

9. Cancellation of Services

- a. Subject to clause 9(c), You may cancel an Order for Services at any time without charge provided that You give SBS at least forty two (42) days' notice prior to the Start Date unless agreed otherwise.
- b. In the event that You cancel an Order for Services after the date specified in clause 9(a) SBS will be entitled to full payment as if the Services had been performed.
- c. Regardless of the period of notice You have provided to SBS, if You cancel any Order for Creative Services, SBS will charge you for any production costs and charges that SBS has incurred as at the date of cancellation.
- d. SBS may cancel an Order or part of an Order at any time, without giving You any reasons. If we do this, we will at our option:
- i. refund any Fees You have paid to us; or
 - ii. reschedule the Start Date;

and You agree that this is our sole liability to you in relation to that particular Order or part Order.

10. Warranties

a. Advertiser warranties. You warrant to us that:

- i. you have all applicable licenses and consents necessary to enter into and perform your obligations under this Agreement;
- ii. you have complied and will continue to comply with all applicable laws and regulations in performing your obligations under this Agreement
- iii. you will comply with the terms of the Order and any other Special Terms in relation to use of the Custom Materials (and any other materials created by SBS in the course of performing the Creative Services) outside the SBS Network;

- iv. you will not breach, or cause SBS to breach, any agreement, arrangement or understanding with a third party (including talent engaged by SBS for the Creative Services) as a result of entering into or performing any part of this Agreement;
- v. the Advertising Copy complies with all applicable laws and regulations and industry guidelines;
- vi. you are fully authorised to publish the Advertising Copy, and the publication of the Advertising Copy in accordance with this Agreement and all other applicable terms and conditions will not infringe the intellectual property rights of any person;
- vii. the Advertising Copy will not include content, or (in relation to online advertising) contain a link to any content, that is illegal, obscene, violent, defamatory, pornographic, offensive or discriminatory based on considerations of race, national origin, gender, age, disability, religion, sexual orientation or expression, that facilitates or promotes the unauthorised downloading, uploading, peer-to-peer sharing or streaming of copyrighted content, or promotes any companies, products or services that are in contravention of applicable Australian law, codes or regulations;
- viii. in relation to online advertising, you will not insert any tag, code, cookie, pixel or other data tracking or collection device into the Advertising Copy without our express permission; and
- ix. you will not use or redistribute to any third party without our permission any information or reports we may supply to you relating to supply of the Services.

b. SBS warranties

SBS warrants that:

- We have the right to supply the Services to you;
- We will use reasonable care and skill in providing the Services; and
- We will comply with all applicable laws and regulations in supplying the Services.

c. Exclusion of warranties

We exclude all implied conditions and warranties from this Agreement except any conditions or warranties that cannot by law be excluded, such as those implied by the *Competition and Consumer Act 2010* (Cth).

11. Indemnity and Liability

- a. **Indemnification:** You indemnify and hold SBS harmless against any and all claims for any form of damages, losses, or harm sustained or incurred by SBS as a result of any breach of your warranties in this Agreement and any other breach by You of this Agreement, and any act or omission by you with respect of your Advertising Copy..
- b. **No Responsibility for Advertising Copy:** The parties agree that SBS is 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 the Advertising Copy and associated products and services, including any ancillary competitions and promotions

- c. **Limitation of Liability:** Neither party is responsible for any indirect loss arising out of or in connection with this Agreement. SBS's liability to You for any claims under this Agreement is to the fullest extent permitted by law, limited to resupply of the Services and/or payment of the cost of having the Services resupplied.

12. Intellectual Property

- a. Unless otherwise agreed in the Order or other Special Terms, SBS or our licensors own the intellectual property in the Custom Materials, SBS trademarks and any other material developed, created or provided by SBS under this Agreement, including in the course of performing the Creative Services.
- b. You own the intellectual property in any Advertising Copy, Your trademarks, and any other material you provide to SBS under this Agreement.
- c. Except as authorised by this Agreement, the parties agree not to reproduce or sub-licence the other party's intellectual property. In particular:
- (i) You may only use the Custom Materials (and any other material created by SBS in the course of performing the Creative Services) outside the SBS Network in accordance with the licence terms in the Order and any other Special Terms; and
 - (ii) You grant SBS a non-exclusive, non-transferable licence to use, reproduce and communicate any Advertising Copy for the purposes of this Agreement.
 - (iii) You grant SBS a non-exclusive licence to reproduce, adapt, modify and otherwise use any logos or other design materials provided to SBS by You for the purposes of SBS performing the Creative Services.

13. Payment

Unless you have approved alternative credit terms with us, all amounts payable for the Services must be paid in advance of the Start Date, or otherwise in accordance with the Special Terms.

Rates quoted are exclusive of all taxes, unless specified otherwise.

Payment must be for the amounts specified in the Special Terms.

We will invoice you monthly for fees and costs due, unless otherwise stated in the Special Terms. Payment must be made within 30 days of the date of the invoice.

SBS will measure advertising (including impressions delivered and clicks achieved) through our advertising tracking systems. Results from third party servers will not be accepted for the purpose of assessing advertising performance.

14. General

a. Force Majeure

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.

b. Applicable Law

This Agreement is governed by the laws of New South Wales.

c. Notices

A notice must be in writing to the contact person specified on the Booking Form.

d. Assignment

Neither party may transfer or assign any rights or obligations under this Agreement without the prior written consent of the other party.

e. Confidentiality

Each party must:

- (i) take all action reasonably necessary to maintain the confidentiality of the other parties confidential information, and;
- (ii) Not disclose the other party's confidential information, except as permitted below.

Permitted disclosure: a party may disclose confidential information of the other party:

- (i) to a representative of the recipient who needs to know the information for the purpose of this agreement (and subject to the recipient taking reasonable steps to maintain the confidentiality); or
- (ii) When required by law, regulation, or ministerial direction.