

# CLIENT ADVERTISING AGREEMENT

## ORDER FORM

TONIC BOOKING CODE: OP-00008078

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## STANDARD TERMS AND CONDITIONS

All advertisements or other content accepted for broadcast by Tonic Health Media Limited (NZ NZBN 942 905 254 6570) trading as Tonic Media Aotearoa (“**Tonic**”) on any of Tonic’s products (the “**Tonic Network**”) are accepted subject to these terms and conditions. Any person and/or advertising agency (“**you**”) who submits an Order Form for advertising on the Tonic Network, agrees to these terms and conditions.

- 1. Terms of Agreement.** These Standard Terms and Conditions and your Order Form together represent the entire agreement (“Client Advertising Agreement”) with Tonic for the provision of the advertising services ordered by you. No purchase order or other document issued by you will vary these Terms and Conditions unless specifically agreed to in writing by Tonic.
- 2. License Granted to Broadcast.** You grant to Tonic a worldwide, royalty-free, non-exclusive, irrevocable license to broadcast your advertisement or other content as described in the Order Form on the Tonic Network and you warrant that you are duly authorised to grant such license to Tonic. You agree that you are the owner, creator or authorised representative able to supply the advertisement or other content to Tonic. The advertisement or other content provided to Tonic remains the property of the producer and/or supplier and Tonic retains no intellectual property rights in the advertisement or other content provided under this agreement.
- 3. Broadcasting of Advertisements or Other Content.** Tonic will, subject to availability, technical limitations and these terms and conditions, use its reasonable endeavors to broadcast your advertisement or other content in the format submitted by you and in accordance with your other instructions set out in the Order Form. The positioning or placement of your advertisement or other content will be at Tonic’s discretion unless Tonic expressly agrees otherwise in writing.
- 4. Right to Refuse Advertising or Other Content.** Tonic may, at its absolute discretion, refuse to broadcast any advertisement or other content without giving any reason. No contract is formed between you and Tonic until Tonic accepts your advertisement or other content for broadcast and issues you with a valid tax invoice. If Tonic does refuse to broadcast your advertisement or other content, no fee will be charged to you (other than in relation to any costs set out in clause 9). Even if a contract has been formed between you and Tonic, Tonic reserves the right to refuse or withdraw your advertisement or other content from broadcast at any time, without giving reasons, even if Tonic has previously broadcast the same or similar advertisement or content.
- 5. Right to Vary Format, Placement or Distribution.** Tonic reserves the right to vary the placement or positioning of your advertisement or other content and to change the format of your advertisement or other content where Tonic deems fit to do so. Tonic will endeavor to notify you of revisions, but Tonic will not be liable for any costs, expenses, losses or damages suffered or incurred by you arising from Tonic’s failure to broadcast your advertisement or other content in accordance with your request. Under no circumstances will any of the changes affect the advertisement or other content.
- 6. Advertisement or Other Content Specifications.** Any advertisement or other content supplied to Tonic must comply with Tonic’s specifications as set out in the Order Form provided to you by Tonic. Tonic may reject the advertisement or other content if it is not submitted in accordance with such specifications. Tonic does not accept any responsibility for errors in the advertisement or other content supplied by you. You acknowledge and agree in relation to any advertisement or other content provided to Tonic that:
  - 6.1. All Brochure, Poster and GP Pack advertisements must be supplied to the nominated print distribution addresses as set out in the Order Form before the 15th of the month prior to the campaign launch.
  - 6.2. Digital and Online advertisements or other content must be supplied 5 working days prior to the campaign start date set out in the Order Form.
  - 6.3. Pricing provided for EDMs includes two rounds of feedback and amendments. Any further changes will incur additional charges.
  - 6.4. A maximum of 20 unique Advertisements or creative executions may be submitted for broadcast within a single Campaign. Any additional Advertisements or creative executions submitted beyond this limit will incur additional charges.
  - 6.5. The advertisement or other content contains no commercial music or imagery used without permission. Any original composition, production music or licenced stock footage used within the advertisement has appropriate copyright and usage clearances.
  - 6.6. All talent appearing within the advertisement or other content has agreed for their image and voice to be used and/or a talent release form has been signed with the producer of the advertisement or other content.
- 7. Production of Advertisement or Other Content by Tonic.** You may engage Tonic to produce your advertisement or other content. In such case, Tonic will produce the advertisement or other content in accordance with the Production Briefing Form. The pricing for production includes two rounds of feedback and amendments. Any further changes will incur additional charges.

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**8. Research project/ campaign effectiveness study.** The research criteria and methodology will be examined and approved by both parties and confirmed via email. In addition, the parties agree as follows:

- 8.1. The research project / campaign effectiveness study may involve surveys, interviews, or other methods of data collection. You agree to cooperate with Tonic in these activities and provide any necessary information, data or other assistance as requested by Tonic.
- 8.2. Tonic will use reasonable endeavours to maintain the confidentiality of all information provided by you and will not disclose it to any third party without your prior written consent.
- 8.3. You acknowledge that the research project may involve some degree of risk or uncertainty in relation to the expected outcomes, and you agree to accept these risks in participating in the project.
- 8.4. Tonic may use the data collected in the research project to publish research papers, reports, or other academic publications, unless otherwise stated in writing by you prior to commencement of the research project or campaign effectiveness study.
- 8.5. You may use the findings of the research project in your marketing or advertising campaigns, subject to Tonic's prior written consent.
- 8.6. Tonic may use your name and logo in any publications or presentations related to the research project, unless otherwise stated in writing by you prior to commencement of the research project or campaign effectiveness study.

**9. Booking Cancellation and Amendments.** Unless otherwise stipulated in this clause, you may cancel or amend a booking without penalty if written notice is given to Tonic four weeks prior to the campaign start date. If you have engaged Tonic to produce your advertisement or other content, you will reimburse Tonic for any costs incurred and not yet invoiced in connection with the production prior to the date of cancellation.

**10. Fees Payable for Tonic Services.** The rate for your Tonic services will be as agreed by Tonic and specified in your Order Form. You must pay Tonic for its services in accordance with the terms of your Order Form. If no due date for payment is specified in your Order Form, you must pay Tonic within 21 days of the date of the invoice. If you are using an advertising agency in connection with any advertising submitted to Tonic, you and such advertising agency will be jointly and severally liable for payment of the fees to Tonic. All rates and charges quoted are, unless expressly stated otherwise, exclusive of GST. Tonic will issue you with a valid tax invoice and you must pay Tonic any applicable GST in addition to the rates and charges quoted to you.

**11. Failure to Pay and Other Breaches.** If you breach these terms and such breach is not remedied within 10 days' notice from Tonic, or you fail to pay for Tonic's services or you suffer an Insolvency Event (as defined below), Tonic may (in its discretion and without limitation):

- a) cancel any provision of credit to you;
- b) require cash pre-payment for further advertising;
- c) charge interest on all overdue amounts at the current overdraft base rate of Tonic's bank;
- d) take proceedings against you for any outstanding amounts;
- e) recover all costs including all legal costs on a full indemnity basis;
- f) cease broadcasting of further advertising or terminate an agreement for advertising not broadcast.

An **"Insolvency Event"** occurs if (a) you are a natural person and you commit an act of bankruptcy; or (b) you are a body corporate and you cannot pay your debts as and when they fall due, you enter an arrangement with your creditors other than in the ordinary course of business, you pass a resolution for administration, winding up or liquidation, you have a receiver, manager, liquidator or administrator appointed to any of your property or assets or you have a petition presented for your winding up.

**12. Warranties.** You warrant that the advertisement or other content complies with all relevant laws and regulations and that its broadcast will not give rise to any claims or liabilities against Tonic, its partners, its directors, employees or agents. Without limiting the foregoing, you warrant that the advertisement submitted by you does not breach or infringe:

- a) the Commerce Act 1986, the Fair Trading Act 1986, the Consumer Guarantees Act 1993, or any equivalent, replacement or successor consumer protection or other sale of goods legislation;
- b) any copyright, trade mark, obligation of confidentiality or other personal or proprietary rights;
- c) any law of defamation, obscenity or contempt of any court, tribunal or royal commission;
- d) any applicable anti-discrimination legislation;
- e) the Privacy Act 2020; and
- f) any other law (including but not limited to any common law, statute, delegated legislation, rule and ordinance of New Zealand).

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**13. Indemnities.** You indemnify Tonic and its partners, its directors, employees and agents against all claims, demands, proceedings and other liability arising wholly or partially, directly or indirectly, from the broadcast of the advertisement or other content. Without limiting the generality of the above, you indemnify Tonic and its partners, its directors, employees and agents against any costs, expenses, losses, damages, liability and claims suffered or incurred and arising from your breach of these terms and conditions and any negligent or unlawful act or omission by you in connection with the advertising or other content.

**14. No Further Representations.** Except for any warranty or representation made expressly in writing by Tonic, you acknowledge that you have not relied on any advice given or representation made by Tonic or on its behalf in connection with the advertising or other content. Tonic has no liability to you and you indemnify Tonic in relation to any failure of telecommunications services or systems which affect Tonic's receipt of your advertisement or other content or the broadcast of your advertisement or other content.

**15. Limitation of Liability.** Tonic excludes all implied conditions and warranties from these terms and conditions to the maximum extent permitted by New Zealand law. Tonic limits its liability for any breach of any non-excludable conditions (to the extent that liability for such breach can be limited) and any other error or omission in broadcasting caused by Tonic, to (at Tonic's option) re-supply of the Tonic services affected by its breach or payment of the cost of re-supply. Subject to the above and to the extent permitted by New Zealand Law, Tonic excludes all other liability to you for any costs, expenses, losses and damages suffered or incurred by you in connection with these terms and conditions and any advertisement or content broadcast by Tonic, whether that liability arises in contract, tort (including by Tonic's negligence) or under statute. Without limitation, Tonic will not, in any circumstance, be liable for any indirect or consequential losses, including loss of profits, loss of revenue and loss of business opportunity.**16. Amendments.** Tonic may change these terms and conditions at any time without notice to you. Those changes will apply to the provision of Tonic's services after the date the change becomes effective. You and Tonic will be bound by the terms and conditions that are current as at the date of your order.

**17. Force Majeure.** Tonic will not be liable for any delay or failure to broadcast your advertisement or other content that is caused by a factor outside of Tonic's reasonable control (including but not limited to any act of God, war, breakdown of plant, industrial dispute, electricity failure, governmental or legal restraint).

**18. Privacy.** Tonic collects your personal information to provide its services and for invoicing purposes. Tonic may disclose this personal information to its related bodies corporate, to credit reporting agencies and other third parties as part of provision of its services and for overdue accounts, to debt collection agencies to recover amounts owing.

**19. Governing Law.** These terms and conditions and the relevant Order Form are governed by the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of New Zealand.