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These Terms and Conditions shall apply to all Advertising purchased by a Client and together with the Booking shall constitute the Agreement made between the Network and the Client.

By placing a Booking with the Network, the Client accepts in full these Terms and Conditions, unless the Booking expressly states otherwise.

SECTION ONE: TELEVISION

1. RATES

1.1 Variable Spot Rates:

DURATION	COST AS A PERCENTAGE OF 30 SECOND RATE	STANDARD OR NON-STANDARD DURATION
5 sec	25%	Non-Standard
10 sec	50%	Non-Standard
15 sec	60%	Standard
20 sec	85%	Non-Standard
45 sec	140%	Standard
60 sec	160%	Standard
75 sec	195%	Standard
90 sec	220%	Standard
120 sec	260%	Non-Standard

1.2 Rates for Advertising shall be the rates set by the Network from time to time.

1.3 The Network shall be entitled to change its rates effective on the date on which the change is announced.

1.4 Advertisements which are not standard durations ("**Non-Standard**") will only be accepted by the Network at the Network's sole discretion.

1.5 Non-Standard durations and durations over 90 seconds have placement restrictions and require prior approval by the Network before booking.

1.6 All 5 second, 10 second and 20 second Advertisements must be bought in units that add up to 15 seconds, 30 seconds or 60 seconds respectively within a single advertisement break.

1.7 The Network will not accept bookings for back-to-back Advertisements from one Advertiser.

2. PLACEMENT SURCHARGES

PLACEMENT	SURCHARGE	CONDITIONS
Fixed in Break	5.0%	
Fixed in Break – consecutive breaks	5.0%	Per Spot
Fixed Position in Break	10.0%	Per Spot
True First/Last in Break	20.0%	
Solus Break	Ratecard (minimum 60 seconds duration)	

- 2.1 True first/last in break and solus break placement is subject to availability and the Network's approval.
- 2.2 Where Solus Breaks are approved by the Network they will be charged at the rate card amount of the spot and must be a minimum of 60 seconds in duration.
- 2.3 The Network may run a programme promotion within a solus break.

3. CONDITIONS OF BOOKING

- 3.1 Any Booking made by a Client must be confirmed to the Network in writing and such confirmation by the Network shall be conclusive evidence of the Booking. The Network will confirm receipt of Bookings made by an Agency, through download or Client holding, however an ebooking will be considered confirmed on receipt of the ebooking.
- 3.2 All Bookings on an original broadcast channel will also be broadcast one hour later on any time shifted channel (e.g. TV3 + 1).
- 3.3 On Non Commercial Days (religious & some statutory holidays) programme sponsorship is permitted at the discretion of the Network provided there is no direct sales message or call to action.
- 3.4 Where the Client changes existing spot durations, either extending or reducing the spot duration it will be rebooked at the current published rate card amount.
- 3.5 No Airtime is to be on-sold by a Client. The Network may cancel, without notice; any Airtime booked which has been resold.
- 3.6 Should a sponsored programme be fully sold, or a limited category exclusivity apply, pre-emption may occur on a 'last in' basis. In this case, every effort will be made to offer the pre-empted Client an acceptable alternative, where the Booking may:
 - 3.6.1 be moved to another programme in the Network's schedule at current rates (subject to availability) and retain existing discounts; or
 - 3.6.2 be cancelled by the Network without penalty to the Client.

3.7 All Bookings must specify a recognised advertising Network Trading Demographic below:

NATIONAL TRADING DEMOGRAPHICS	
5-12	Males 15-34
10-19	Males 18-39
15-29	Males 18-49
15-39	Males 25-54
18-39	Males 40-64
18-49	HHS 20-44
25-54	HHS 25-54
40-64	HHS w/Kids 0-14
55+	25-54 Soc 1-3
Females 15-34	25-54 HHI \$60K+
Females 18-39	Homeowners 25-54
Females 18-49	Maori & Pacific Islanders
Females 25-54	
Females 40-64	
Females HHS 25-49	
Females 18-49 WKids 0-9yrs	

3.8 All measurement of ratings are based on the national trading demographics above and consolidated ratings (i.e. all rating within a seven day period from the initial broadcast).

4. PREMIUM (CORE) PROGRAMMES

4.1 Premium Programmes are identified when each inventory period is released to market.

4.2 Premium Programmes may be adjusted from time to time to reflect a change in audience ratings and/or demand from Advertisers. These changes will be advised by the Network in schedule updates.

4.3 Bonus Airtime is not granted during Premium Programmes.

5. BONUS AIRTIME

5.1 All Bonus Airtime, may be pre-empted from time to time, and is at the discretion of the Network.

5.2 Bonus Airtime can be placed in any programme other than Premium Programmes, must be pro-rata to cash Bookings, and is subject to availability.

5.3 Paid Airtime cannot be converted to Bonus Airtime under any circumstances.

6. CANCELLATION AND MOVEMENT

- 6.1 Cancellation deadlines are published dates released with each inventory opening period.
- 6.2 Movements may only be made within a calendar month in which the advertising was originally scheduled.
- 6.3 Movements made between 0-7 days from scheduled date of broadcast will carry 100% cancellation penalty.
- 6.4 Movements made after the published cancellation deadlines will be rebooked at the current rate.

7. CHANGES TO RATES, PROGRAMME SCHEDULE OR BROADCAST

Special Events

- 7.1 Should the rate or programme change within a specific timeslot all spots will remain at the original rate booked, unless the programme is deemed by the Network to be a programme or event which is anticipated to deliver significant audience increase to the timeslot ("**Special Event**"), and has been specified as a Special Event by the Network at its discretion. Rate protection of existing bookings does not apply to Special Events.
- 7.2 If booked Airtime is during a Special Event then the Client has two (2) Working Days after the designation of the Special Event being advised to decide whether to move or cancel from a Special Event. If notification is not received by the Network, then the new, higher rate will apply and the Client will be deemed to have accepted the new, higher rate.
- 7.3 As a result of a Special Event pre-empting the scheduled programme, the Client may either:
 - 7.3.1 accept the new, higher rate;
 - 7.3.2 move to an alternative programme; or
 - 7.3.3 cancel without penalty.
- 7.4 Bonus Airtime booked into a timeslot in which a Special Event is scheduled will be pre-empted.

Schedule Change

- 7.5 The Network reserves the right, at its discretion and without prior notice, to withdraw, amend or reschedule any programme, programme classification or Material.
- 7.6 Where the broadcast time of a programme is moved within the weekly schedule the Client, where possible, will be given the option to move the Booked Airtime with the programme at the original rate booked OR replace the Booking in an alternative programme of the same value within that week. Such transactions must be confirmed within one week of notification of the change by the Network.
- 7.7 Should the Client not wish to accept a change specified in Clause 7.6 above, the Client shall, by notice in writing to the Network made within 24 hours of any change notification from the Network, cancel or reschedule any scheduled Advertisement without penalty.

- 7.8 The Network's only liability with respect to a schedule change is to return to the Client any monies paid in advance for Advertisements cancelled out of the amended scheduled by the Client.

Screen Format Disclaimer

- 7.9 The Network will use reasonable endeavours to ensure that Advertisements are transmitted in the screen format and/or resolution that is delivered by the Client, but it is understood and accepted by the Client that for technical reasons the Network cannot guarantee this where the Advertisement does not adhere to the material specification referred to in clause 9.16, and the Client will remain liable for all fees hereunder if the Advertisements are not transmitted in the intended format.

8. FAILURE TO BROADCAST

- 8.1 For the avoidance of doubt, adherence to the times and/or dates of transmission of a Booking will be at the absolute discretion of the Network.

- 8.2 The Network shall have no liability for any act or omission by the Network except where an Advertisement is not broadcast or the incorrect Advertisement is played provided our material and instruction deadlines have been met. Where an Advertisement is not broadcast or the incorrect Advertisement is played, the Client's sole remedy (offered in consultation with the Client) will be either:

8.2.1 the return of monies paid in advance and cancellation of the billing in respect of the particular Advertisement; or

8.2.2 the incorrect Advertisement will be billed and the Network will broadcast the correct Advertisement at a later time and date as close as is reasonably possible to the circumstances of the intended original broadcast.

9. ADVERTISING MATERIAL

Advertisement Content

- 9.1 The Network will accept Advertisements for any Client that features a range of products, provided that one Fully Integrated Composite Advertisement (as defined in Clause 9.2 below) is scheduled for each spot bought. If an attempt is made to build a composite advertisements that features two or more different products quite separately, simply by putting the two existing advertisements together it will not be accepted by the Network.

- 9.2 Fully Integrated Composite Advertisement is defined as an Advertisement that incorporates the following:

9.2.1 continuous sound without abrupt changes in quality or style;

9.2.2 continuous vision i.e. not interrupted by black or unrelated frames; and

9.2.3 the overall impression must be that the viewer is watching one advertisement rather than two or more advertisements strung together.

- 9.3 The Network will not accept the scheduling of two or more separate Advertisements playing back to back within one spot purchase.
- 9.4 Advertisements shall not have the appearance of looking as if they are the result of transmission fault e.g. no audio and vision disturbances or the impression of a newsbreak, news update or television programme.
- 9.5 Any reference to a website address must provide the actual URL address, and the reference must be clear and prominent.

Approval of Material

- 9.6 Before broadcast by the Network for the first time, all Advertisements must be submitted to and be approved by CAB (Commercial Approvals Bureau). The CAB approval number must be obtained and supplied to the Network in writing. It is strongly recommended that the proposed scripts be sent for approval to CAB prior to the commencement of production.
- 9.7 Where music is used in an Advertisement, copyright and other relevant approval details must be supplied with the audition copy of the Advertisement and the Client shall meet any costs associated with obtaining these clearances and rights.
- 9.8 Material must comply with special policies applicable for any advertising in Children's Programmes. No Advertising, sponsorship or prize packs are allowed during pre-school programmes. Please refer to the Codes for full details.
- 9.9 Advertisements will only be transmitted if they are approved by the Network, satisfy all of the Network's technical requirements as may be notified by the Network to the Client from time to time and comply with the Broadcasting Act 1989, the Codes and all Relevant Laws.
- 9.10 The Network reserves the right at its absolute discretion to do any act or thing in respect of the actual transmission of any Advertisement or part thereof (including the fading, editing, or cutting thereof), where such Advertisement or part thereof is considered by the Network to be unsuitable for transmission and the Network shall not thereby incur any liability to the Client who shall have no claim whatsoever for damages or otherwise in respect of any non-transmission of any such Advertisement or part thereof but the Client shall remain liable in full to the Network for the charges payable hereunder for such Advertisement. The Network will use reasonable endeavours to contact the Client prior to any exercising its rights under this clause 9.10.

Material Deadlines

- 9.11 Written broadcast instructions must be delivered to and received by the Network not less than three (3) Working Days before the date of the intended broadcast and comply with all applicable prescribed conditions and standards. Where possible, Campaign instructions should be delivered ahead of this deadline. The Network shall not be responsible for incorrect material or broadcast if the instructions are not received in writing, this is irrespective of the delivery method.
- 9.12 Advertising Material in its final CAB approved transmission form shall be delivered to the Network no less than three (3) Working Days prior to the scheduled broadcast of that Advertisement.

- 9.13 Material arriving outside a Working Day (e.g. after hours and across weekends) is sent by the Client at its own risk and will only be accepted at the discretion of the Network.
- 9.14 Where Material is not delivered by the deadline the Network will use reasonable endeavours to meet the broadcast date; however the Client shall be liable to pay in full for the Airtime booked whether or not any Advertisement is in fact transmitted. Late changes will be accommodated where possible up to midday on the last Working Day before transmission only. Any late change to key numbers already instructed requires confirmation by phone call to the Network during a Working Day.
- 9.15 Late amendments to Advertisements which are requested by the Client and require manual amendments will only be made at the Networks sole discretion. If a request is accepted, any such change will be at the risk of the Client if any errors occur.

Material Specifications

- 9.16 All Advertisements must meet the Network's Material Specifications as detailed online:
<http://www.mediaworkstv.co.nz/Portals/0/images/insight/Material%20Specifications.pdf>

Supply of Material

- 9.17 Advertisements submitted to the Network should be supplied digitally (through Adstream/IMD(Ebus)/Dubstat), or by hard copy (dig beta tape) with each Advertisement clearly identified by the Advertiser, Agency, product, duration, CAB approval number and Key Number and must meet the Network's Material Specifications as stated in Clause 9.16.
- 9.18 Prime News Material does not need to be re-delivered if it is already in the possession of the Network.
- 9.19 In addition to the Clause 9.17 the Network does accept hardcopy material, addressed to:

Attention: Commercial Traffic MediaWorks
3 Flower Street,
Eden Terrace, Auckland 1024

Material Management

- 9.20 Advertising Material will be held by the Network for a maximum of three months after its last broadcast without further reference to the respective Client. Re-sent material is at cost to the Client.

SECTION TWO: DIGITAL

1. RATES

- 1.1 Rates charged will be according to the current rate card unless agreed in writing by the Network.
- 1.2 The rate card may change from time to time but the rate will be confirmed upon confirmation of Booking.
- 1.3 Rates do not include any form of Client category exclusivity, within a Website or page.
- 1.4 Rates are for standard ad size formats only, additional fees may be added for non-standard ad formats.
- 1.5 Rates do not include third party ad serving charges and/or production charges.
- 1.6 Cost per thousand ("CPM") is the term used to describe the price charged for 1,000 Impressions (CPM's may not be exact due to rounding).
- 1.7 Rates displayed on Programmatic Trading Systems are non-commission bearing and are inclusive of supply side platform and/or demand side Platform charges.

2. DIRECT EXECUTION DEALS

- 2.1 Where an agreement is made between the Network and Client to hold a particular amount of inventory for that Client in exchange for an agreed minimum spend (a "**Direct Execution Deal**"), it is done so on the basis that sufficient inventory is made available for purchase via the supply side platform and/or the demand side platform.
- 2.2 If any potential shortfalls in reaching the agreed minimum spend in the Direct Execution Deal are identified the Client agrees to adjust goals in the demand side platform accordingly to ensure that the scheduled spend is met within the agreed period as per the Direct Execution Deal. Delivery levels for any Direct Execution Deals will be monitored throughout the Campaign and the Network will provide interim delivery reports to the Client that evaluates any potential shortfalls.

3. ADVERTISING MATERIAL

- 3.1 The Client must complete a Booking and return it to the Network before the Advertising Material will be published on the relevant Website(s).
- 3.2 Subject to the provisions of these Terms and Conditions the Network agrees that it will place the Advertising Material specified in the Booking in the manner set out in the Booking.
- 3.3 The specific positioning of the Advertising Material shall be as determined by the Network. The Network reserves the right to redesign or modify the organisation, navigation, structure, "look and feel" and other elements of the Websites at its sole discretion at any time without prior notice.
- 3.4 Any third party served advertisements that have not been approved by the Network will be removed at the Networks discretion. The Campaign will be put on hold until the Material is updated with approved Material, and any Campaign shortfalls due to these delays will not have any monies refunded.

- 3.5 All run of site ("ROS") placements exclude sponsored websites, audio and video players.
- 3.6 Any eLetter advertising must be relevant and rewarding to the database and in line with the content of the eLetter, as determined by the Network.
- 3.7 If the load on a User's central processing unit is deemed excessive by the Network alternative Material will be requested.
- 3.8 The Client is responsible for testing supplied click through URL's to ensure that the landing pages render correctly on popular mobile device web browsers, such as Safari and Chrome.

4. DELIVERY OF ADVERTISING MATERIAL

- 4.1 Where the Client is engaged in the Programmatic Trading System the Network shall not be liable for failure to comply with the requirements of loading the necessary Material for the Campaign as required in the Programmatic Trading System.
- 4.2 For Direct Sales:
 - 4.2.1 the Material must be received by the Network at least five (5) Working Days prior to the Campaign start date, unless it is agreed otherwise. The Network shall not be liable for failure to comply with the Campaign start date if the necessary Material is not received by the Network in the times specified in the Booking or as otherwise required by the Network.; and
 - 4.2.2 any Campaigns that start late due to the late receipt of Material will be billed in full from the Campaign start date.

5. IMPRESSIONS

- 5.1 Save as otherwise provided in this Agreement, the Client acknowledges that the Network has not made any guarantees with respect to usage statistics, levels of Impressions or Referrals for any Campaign. The Network provides the Client with estimated usage statistics only as a courtesy to the Client and the Network will not be held liable (in negligence or otherwise) for any claims relating to any usage statistics however supplied.
- 5.2 Data regarding page Impressions, Referrals, inquire browsers, stream views and unique viewers is tracked by the Networks choice of analytic tools.
- 5.3 Any Impression count will not be recognised unless agreed in writing.
- 5.4 The Client acknowledges that delivery statistics provided by the Network are the official, definitive measurements of the Network's performance on delivery obligations, if any, provided in this Agreement. No other measurement or usage statistics (including those of the Client or any other person's ad server) will be accepted by the Network or have bearing on this Agreement.

6. POSITIONING AND LICENCE

- 6.1 Except as otherwise expressly provided in this Agreement, positioning of Material within the Website or on any page therein is at the sole discretion of the Network.

6.2 The Network does not warrant the date or dates of publishing of the Material(s), and does not warrant that the Material(s) will not be displayed after the Campaign end date specified. However, the Network will use reasonable efforts to comply with the Client's wishes in these regards.

7. WARRANTIES AND REPRESENTATIONS

7.1 The Client warrants and represents to the Network that:

7.1.1 they will not install or drop any cookies or ad tags or any other tracking mechanism on Advertisements;

7.1.2 the Material shall be free of any defects and/or Viruses, and shall not affect the operation of the Websites; and

7.1.3 the Material complies with the technical specifications as set out at <http://www.mediaworks.co.nz/interactiveweb/TechSpecs.aspx>

7.2 The Client understands that once the Booking is confirmed there shall be no refunds or suspension of payments even if the Client wishes to discontinue display of the Material prior to expiration of the Campaign.

8. FAILURE TO PUBLISH

8.1 If the Network fails to publish any Material for any reason whatsoever or deliver any guaranteed Impressions as provided in the Booking (or in the event of any other failure, technical or otherwise, of such Material appearing as provided in this Agreement), the Networks liability will be limited (at the option of the Network) to either:

8.1.1 publishing the Material as soon as is reasonably practicable in the period following the period during which the Material was scheduled to run on the Website or an alternative website and for such time as is necessary to generate a number of substitute Impressions equal to the shortfall; or

8.1.2 refund to the Client that proportion of the monies paid which relates to that Material and/or Impressions which were not provided or, if the relevant amounts were not paid by or on behalf of the Client, agree that such amounts will not be due or payable.

8.2 In no circumstance shall the Network be liable for any error in the Material whatsoever whether through its own act or omission (whether negligent or otherwise) or through the incorrect presentation or codes for the Material or otherwise and the Client hereby indemnifies the Network in respect of any claim, loss, damage or otherwise arising out of any error or omission in the Material.

8.3 The Network will have no liability for any failure or delay (whether negligent or otherwise) in performing any obligation hereunder resulting from any condition beyond the control of the Network affecting production or delivery in any manner, including where the a third party platform is responsible for the failure or delay. For the avoidance of doubt, any downtime of the Website for regular maintenance, upgrade or otherwise shall not constitute a breach of any obligation under this Agreement.

9. CANCELLATION OR MOVEMENT

9.1 This Clause 9 applies only to Bookings through Direct Sales or Agreements that involve Direct Execution Deals and does not apply to bookings through a Programmatic Trading System:

9.1.1 If the Booking is not confirmed by the Client within the 14 days of the date of the Booking or within 24 hours of being challenged by another Advertiser the space will be released;

9.1.2 if cancellation occurs less than 28 days' notice before the Campaign start date, the Client agrees to pay a cancellation fee of 60 percent of the total Campaign fee; or

9.1.3 if cancellation occurs with less than seven (7) days' notice before the Campaign start date, the Client agrees to pay 100 percent of the total Campaign fee.

10. PAYMENT TERMS FOR PROGRAMMATIC TRADING SYSTEMS

10.1 Where a Programmatic Trading System is used, invoicing the Client will be done via the Network's supply side platform system and the Client agrees to pay the supply side platform on their payment terms.

SECTION THREE: RADIO

1. ADVERTISING MATERIAL

- 1.1. Advertising Material for broadcast must be in the hands of the specific Station by 12pm the Working Day before time of broadcast, where Advertising Material is scheduled for broadcast on a Saturday, Sunday or Monday the Advertising Material must be in the hands of the specific Station by 12pm on the Friday before broadcast. Should the Material not be in the possession of the Station within the time specified and broadcasts are subsequently missed, the Network is entitled to charge for the missed broadcasts and is under no obligation to re schedule the missed broadcasts, although the Network may do so at its discretion.
- 1.2. Should the Client hire from the Network any programme material for use in the booked Airtime for the Client and at a rate agreed upon by the Client and the Network, such programme material and all copyright and other rights shall remain the property of the Network and such rate agreed upon will apply to playing rights for one performance only, unless otherwise stated.
- 1.3. Should the Client supply the Network with Material, such Material shall be delivered to the Network at the Client's expense the Network shall be under no liability for loss or damage to such Material while it is in the possession of the Network, whether such loss or damage is caused by negligence, breach of the Agreement or otherwise.

2. FAILURE TO BROADCAST

- 2.1. For the avoidance of doubt, adherence to the times and/or dates of broadcast will be at the absolute discretion of the Network.
- 2.2. The Network shall have no liability for any act or omission by the Network except where an Advertisement is not broadcast or the incorrect advertisement is played provided our material and instruction deadlines have been met. Where an Advertisement is not broadcast or the incorrect Advertisement is played, the Client's sole remedy will be either:
 - 2.2.1. the return of monies paid in advance and cancellation of the billing in respect of the particular Advertisement; or
 - 2.2.2. the incorrect Advertisement will be billed and the Network will broadcast the correct Advertisement at a later time and date as close as is reasonably possible to the circumstances of the intended original broadcast.

3. CANCELLATION

- 3.1. If the Client wishes to cancel a Booking 14 to 28 days before Campaign start date (first day of Advertising), the Client has the following options:
 - 3.1.1. to re-book within 6 months of the date of cancellation with no penalty; or
 - 3.1.2. the Client cancels the Booking and agrees to pay a cancellation fee of 60 percent of the Campaign fee.

3.2. If the Client wishes to cancel a Booking occurs less than 14 days' before the Campaign start date the Client agrees to pay 100 percent of the total Campaign fee.

SECTION FOUR: GENERAL TERMS AND CONDITIONS

These general Terms and Condition apply to all of the Network's television, radio and digital bookings.

1. INTERPRETATION

- 1.1. Headings are for ease of reference and shall not affect the construction or interpretation of these Terms and Conditions.
- 1.2. References to "person" shall include any individual, firm, government, state or agency of a state or any joint venture or association (whether corporate or incorporate).
- 1.3. References to a statute or regulation shall be deemed to extend to any statute or regulation passed in substitution therefore or substantially re-enacting or consolidating the same.
- 1.4. Words in the singular shall include the plural, and vice versa.

2. REPRESENTATIONS AND WARRANTIES

- 2.1. The Client warrants and represents to the Network that:
 - 2.1.1. it will be responsible for obtaining and paying for all necessary licenses, consents and approvals for the transmission of the Material across all the Network Platforms in the manner described herein;
 - 2.1.2. it holds all necessary rights to permit the use, reproduction, display, transmission and distribution of the Material in the manner specified in the Agreement and can grant to the Network such rights (which, for the avoidance of doubt, in the event that any Material contains a sound recording (the "Recording"), which shall include but not be limited to all consents and permissions from (i) the copyright owners of the musical and/or literary composition(s) reproduced on the Recording; and (ii) labour organisations for which the Client shall pay all re-use payments, royalties and other sums required for such consents and permissions);
 - 2.1.3. all intellectual property rights and other third party rights, and all appropriate consents, clearances and licences for the Material (including without limitation music rights and performance rights) have been obtained;
 - 2.1.4. that the transmission of the Material and access by viewers will not infringe any intellectual property right or other third party right;
 - 2.1.5. the Material does not contain anything which is defamatory, obscene, false or misleading;
 - 2.1.6. all Material complies with the provisions of the Advertising Standards Authority, the Broadcasting Standards Authority and any other applicable Codes. For the Avoidance of doubt VOD Material complies with the provisions of the Codes as if it constituted linear advertising;
 - 2.1.7. all Material that involves the promotion of liquor, alcohol product and any therapeutic advertisements complies with the specific industry requirements and the Advertising Standards Authority specific Advertising Codes of Practice that must be adhered to; and

2.1.8. all Material complies with all Relevant Laws.

- 2.2. The Client hereby indemnifies the Network and all officers, agents, employees of the Network against all claims, suits, demands, actions, losses, costs and expenses of whatsoever nature that may be brought against or incurred by them or any of them as a consequence of a breach by the Client in respect of any warranty or representation detailed in Clause 2.1 of this Section 4. The provision of this Clause shall survive any cancellation or termination of the Agreement by any means whatsoever.

3. LICENCE

- 3.1. Without prejudice to any rights the Network may have under law, the Client hereby grants to the Network a non-exclusive, royalty-free licence to broadcast, reproduce and publish the Material (including all contents, trademarks and brand features contained therein) across any and all of the Networks Platforms. The Client acknowledges that it will ensure such Material is cleared for transmission and/ or access by viewers across all the Network's Platforms in the manner permitted by the Network from time to time, including without limitation on a simultaneous basis across different Network Platforms.
- 3.2. The Client grants to the Network the express right to:
- 3.2.1. reproduce throughout the New Zealand and/or Australia screen shots of all or part of the Material supplied by the Client to the Network on or in any promotional or advertising material or campaign promoting or advertising, only for the purpose of promoting by way of example the Network's Platforms to potential clients (for the avoidance of doubt they will not be reproduced in a way that makes them available to the wider public); and
 - 3.2.2. include the Material within a channel (or programme) which is received by a viewer by VOD means, or by means of an onward simultaneous stream.
- 3.3. Where the Client provides the material for the Material, all intellectual property rights in such material provided by the Client and the Client's trade marks (excluding the Network's trade marks) shall remain the property of the Client.
- 3.4. Where the Network creates the material for the Material, all legal and beneficial interest in any intellectual property rights relating to the materials, video, audio, graphics, text, data or software provided by or on behalf of the Network for the purposes of the Agreement (however excluding the Client's trade marks) and all templates, formats, documents, drawings and all other items produced, developed, utilised or supported by or on behalf of the Network remain the property of the Network. For the avoidance of doubt, where the Network pays a third party to develop any Material, it shall be deemed to be supplied by or on behalf of the Network for the purposes of the Agreement.

4. ACCEPTANCE OF ADVERTISEMENTS

- 4.1. The Network reserves the right, without incurring any liability, to:
- 4.1.1. decline to accept an Advertisement within a specific programme/show and/or within a section or page of a website, regardless of approval by the CAB; or
 - 4.1.2. refuse an Advertisement from a particular Advertiser.

5. COMPETITOR ADVERTISING

- 5.1. The Network will use reasonable endeavours to avoid conflict in the proximity of transmission and/or publishing of Advertisements featuring competitive products; however the Network is under no obligation to do so.
- 5.2. The Network reserves the right at its discretion to not accept:
 - 5.2.1. advertising from a direct competitor, or any entity which has a subsidiary or associated entity which is a direct competitor of the Network;
 - 5.2.2. any Booking or any Material, including but not limited to Network's competitor's advertisements that contain date, day or time specific or appointment to view references in either a verbal or visual context; or
 - 5.2.3. where a presenter or the programme content in an Advertisement aligns to a Network competitor, placement on the Network must be approved in advance by the Network. The Network reserves the right, at its discretion, to not accept these Advertisements.
- 5.3. If the Network accepts any competitor advertising, which is any advertising or promotion of a product or service that is in competition with any Network product or service (as determined by the Network), such competitor advertising will be subject to the Network's competitor advertising creative and placement guidelines, as updated from time to time and available on request.

6. BROADCAST AND PUBLISHING VARIATIONS

- 6.1. The Network reserves the right at any time, without incurring any liability and without notice to the Client to:
 - 6.1.1. decline to commence broadcasting and/or publishing the advertising material;
 - 6.1.2. decline to continue broadcasting and/or publishing the advertising material;
 - 6.1.3. terminate the Booking; or
 - 6.1.4. advance or delay the date and time of broadcasting and/or publishing,but will use reasonable endeavours to notify the Client prior to exercising its right under this clause.

7. TERMS OF PAYMENT

- 7.1. Payments for each Advertisement at the rate specified in the Booking shall become due and payable by the Client to the Network immediately after the broadcast is made and/or Campaign start date. Where the Client is an Agency, all payments due under the Agreement must be made by Agencies on or before the last Working Day of the month following the month of broadcast and/or Campaign start date; or where the Client is not an Agency payments are due on the twentieth (20th) of the month following the month of broadcast and/or Campaign start date. Without prejudice to the Network's other rights or remedies the Network reserves the right to discontinue any broadcast and/or Campaign if payment is overdue.

- 7.2. In the event of a Client not paying an account by the due date, the Network reserves the right without prejudice to all its other rights to:
- 7.2.1. not to accept further Bookings from the Client;
 - 7.2.2. to treat any amount due to the Network as a simple debt recoverable forthwith; and
 - 7.2.3. to charge interest on any sum outstanding, calculated and accrued daily the rate of 5% per annum above the prevailing New Zealand bank prime overdraft rate from the due date until the date payment is received in full; and
 - 7.2.4. to charge all costs and fees incurred by the Network in recovering payment from the Client including, without limitation debt collector's fees or commissions, solicitor's fees and disbursements and the Network's administration costs.
- 7.3. The existence of a query in any individual item in an account will only affect the due date of payment of that individual item. The Client must inform both the Network's invoicing department in writing of any query within fourteen (14) Working Days from receipt of the invoice. Any such query must note the invoice to which it refers together with full details of and justification for the query. No advertising spots may be brought into dispute by the Client after this time. In the event of a query being resolved in favour of the Network, the item in query will be subject to the full rate of interest as specified in Clause 7.2.3 above, subject only to the Network having dealt with the query within a reasonable time.
- 7.4. All payment accounts for Advertising placed shall be made in full and it shall not be open to the Client to make any deduction retention or to claim any rights of set off or to make any counterclaim in any proceedings brought by the Network in respect thereof.
- 7.5. All amounts payable are stated in New Zealand dollars, and are rounded up to the nearest New Zealand Dollar.
- 7.6. If the Client is based overseas they acknowledge that the payment as billed in New Zealand Dollars and will not be adjusted due to any currency fluctuations.
- 7.7. All Bookings are accepted on the understanding that they will be paid for at the rates agreed and in accordance with this Clause 7.
- 7.8. Notwithstanding Clause 7.7 above, if the Network acting in good faith considers that the financial position of the Client does not justify accepting Bookings on the terms of payment set out herein, the Network may, with immediate effect, require such Client to make full payment on account or full payment in advance of each monthly Booking as a clause of acceptance of Bookings.

8. LIMITATION OF LIABILITY

- 8.1. The Network's liability under the Agreement including without limitation any failure to provide the services specified under the Agreement will be limited to the Network broadcasting and/or publishing the Advertisement at a later time and date as close as is reasonably possible to the circumstances of the intended original broadcast and/or Campaign start date OR returning any money paid in advance for the Advertisement that was not broadcast or published in its correct form. This constitutes the Client's sole remedy in the event of failure to broadcast.

- 8.2. In no event shall the Network be liable to the Client for any direct or indirect economic loss of any kind including (without limitation) any direct or indirect loss of profits, business, contracts, revenues, goodwill, production and anticipated savings arising from any failure to publish in a timely manner or at all any Material in accordance with the Agreement or any other breach by the Network of the terms of the Agreement.
- 8.3. Without prejudice to the provisions of Clauses 8.1 and 8.2, in the event that the Network is held liable for damages or losses suffered by the Client, the maximum liability that the Network shall have towards the Client in respect of any act or omission and any related series of acts or omissions shall be the net fee paid to the Network by the Client or on its behalf under the Agreement.

9. RESALE AND ASSIGNMENT

- 9.1. The Agreement and the rights under it may not be transferred, assigned or subcontracted by the Client, without a prior written agreement from the Network. The Network shall be required to broadcast under the terms of the Agreement only advertising Material or materials which relates to the services or products of the advertiser named on this Agreement.
- 9.2. The Network may, without the prior consent of the Client, assign, novate or otherwise dispose of all or any benefits and/or obligations under the Agreement upon written notice to the other party in connection with any sale of all or substantially all of the Network's business or assets to a third party (or any similar transaction).

10. SPECIAL PACKAGES

- 10.1. The Network may offer special packages which carry terms and conditions that supersede those published in these Terms and Conditions. Such terms and conditions will be advised in writing in conjunction with package offers.

11. AGENCIES

- 11.1. Where the Client is an Agency, the Agency warrants that:
- 11.1.1. it contracts with the Network as principal notwithstanding that it may be acting as an Advertising Agency or media buyer or in some other representative capacity;
 - 11.1.2. it is authorised to represent and bind the Advertiser(s) named in the Booking;
 - 11.1.3. the Advertiser(s) agree to be jointly and severally bound by this Agreement; and
 - 11.1.4. it undertakes to indemnify the Network against any loss arising from any claim by the Advertiser that it should not be bound.

12. CHANGE OF AGENCY

- 12.1. If an Agency named on a Booking changes, or a Client engages a new or additional Agency they shall give the Network 28 days' notice in writing, including advice on products/service involved.

- 12.2. A letter of appointment must be supplied to the Network on the Client's letterhead and must be signed by an appropriate office holder of the Advertiser stating effective date of change and confirming new Agency appointment.
- 12.3. The Network will action any Agency changes within 28 days after advice is received unless a different time frame has been negotiated and agreed by all parties.

13. TERM AND TERMINATION

- 13.1. The Term of the Agreement shall commence when the Booking has been made by the Client and the Agreement shall continue in force and effect until the end date specified in the Booking unless terminated earlier pursuant to this Clause 13.
- 13.2. Without prejudice to its other rights and remedies the Network shall be entitled to terminate the Agreement in whole or in part forthwith at any time by giving notice in writing to the Client if:
 - 13.2.1. the Client fails to observe or perform any of its obligations hereunder and, where such failure is capable of remedy, does not remedy such failure within 7 days after being served notice to do so;
 - 13.2.2. the Client fails to comply with its obligations to pay the fee as set out in the Terms of Payment at Clause 7 of these General Terms and Conditions;
 - 13.2.3. the Client becomes insolvent, a person passes a resolution for either of winding up or dissolution, an administration order is made against the Client or a receiver is appointed over, or takes possession of the assets of the Client;
 - 13.2.4. the activities or conduct of the Client or activities relating to the Client's business are of such a nature that the Network reasonably considers that the continued provision of advertising and/or sponsorship services would be detrimental to the reputation of the Network and/or the programme or otherwise damaging to the Network's brands; and/or
 - 13.2.5. the Client undergoes a change of control (for the purposes of this paragraph "change of control" shall occur where (i) a person who is not an associate of the Client gains Control of the Client; or (ii) any person obtains any form of influence over the management of the Client and the Network reasonably believes such influence would be harmful to the Network's business or the business of any of its associates).
- 13.3. On termination of the Agreement by reason of any of the foregoing, the Network shall be entitled without affecting any other rights which it may have, to charge, in addition to all other sums due under the Agreement, any costs associated with removing the Material from the relevant Network Platforms.
- 13.4. In the event that the Agreement is terminated for any reason then without prejudice to its rights and remedies:
 - 13.4.1. the Network shall be under no obligation to transmit any Advertisement or to refund any net fee or other amounts paid by or on behalf of the Client to the Network in respect of such Advertisement;

13.4.2. the Client shall remain liable for any amount due under a Booking and such an obligation to pay shall survive the termination of the Agreement; and

13.4.3. at the request of the Network, the Client shall return all of the Network's statistics and measurement data from the Campaign provided under the Agreement.

14. CONFIDENTIALITY

14.1. Each party undertakes to the other party that it will treat as confidential the terms of this Agreement together with all information it obtains about the other party concerning the business, finances, revenues / prices, technology and affairs of the other party generally and each party's respective obligations hereunder or otherwise in connection with this Agreement and regardless of its nature ("**Confidential Information**"), and will not disclose such information to any person except where required so by law and will not use such Confidential Information other than for the purposes of this Agreement subject always to any prior specific authorisation in writing by the party from whom such information originated to such disclosure or use.

14.2. The provisions of this Clause 14 shall expressly survive any termination, completion or assignment of the Agreement.

15. CHANGE TO TERMS AND CONDITIONS

15.1. The Network's practice is to give two weeks' notice in respect of material changes of terms and clauses in the Terms and Conditions and the Network reserves the right to make such material changes at shorter notice. Unless otherwise agreed between the parties in writing, in the event of such material change, the terms and clauses applicable shall be those in force at the time of broadcast and/or publishing. The Client shall (by serving written notice on the Network within one week of receiving notice of such a change) be entitled to cancel any order for an Advertisement to which the material change of terms and clauses would otherwise be applicable.

16. GENERAL

Entire Agreement

16.1. The Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all other prior understandings, commitments, agreements and (unless made fraudulently) representations, whether written or oral, between the parties. Further, the Client acknowledges and agrees that it has not relied upon any representation or otherwise of the Network when entering into the Agreement.

Force Majeure

16.2. If the terms of this Agreement cannot be fulfilled due to any Act of God, accident, power failure, mechanical or electrical breakdown, earthquake, fire, war, strikes, riot, injunction, weather conditions, or any like circumstances beyond the control of the Network, the Network shall not be under any liability to make good the broadcasts and/or publishing at another date and time and refund monies paid in advance in respect of such advertising Material that were not broadcast and/or published. The Agreements affected in this way may also be cancelled at the discretion of the Network without prejudicing any other rights the Network may have under the terms of the Agreement.

Terms and Conditions and Waiver

- 16.3. Terms or conditions other than those set forth herein or any variation thereof shall not be binding on the Network or the Client as applicable unless agreed to in writing and signed on behalf of both parties.
- 16.4. No waiver of any breach of the Agreement is effective unless in writing and signed by the parties to the Agreement.

Survive termination

- 16.5. There shall survive the expiry or termination of the Agreement any term of the Agreement which in order to give effect to its provision needs to survive the expiry or termination. The provisions of those clauses intended to have continuing effect shall continue in full force and effect following the termination for any reason or expiry of the Agreement.

Severability

- 16.6. Each of the provisions of the Agreement are to be construed separately and independently of the other and, if any provision or clause of the Agreement is found by any court or other judicial body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision or clause will not affect the other provisions of the Agreement or any other clause herein which will remain in full force and effect.

Governing Law

- 16.7. The Agreement shall be governed by and construed in accordance with the laws of New Zealand and the parties hereby submit to the exclusive jurisdiction of the New Zealand courts.

Notice

- 16.8. Any notice given or made under or in connection with this Agreement must be in writing and shall be deemed to have been given if delivered personally (including by courier), by email or sent by tracked mail within New Zealand. Notice so given will be deemed to have been duly given and received as follows:

- 16.8.1. If personally delivered, on the date of delivery;

- 16.8.2. If sent by tracked mail within New Zealand, on the date that is 2 business days after the date of posting;

- 16.8.3. If sent by email, at the time the email is successfully transmitted to the recipient (but excluding where the sender receives a notification that the email has not been successfully delivered to the recipient).

17. DEFINITIONS

In this Agreement, the following words and expressions shall have the following meanings unless the context otherwise requires:

“Advertisement”	means the Material in respect of which advertising space has been sold for broadcast and/or publishing in the manner prescribed in a Booking, and Advertising shall be construed accordingly;
“Advertiser”	means the advertiser specified in the Booking;
“Agency”	means the media buying agency acting on behalf of the Advertiser specified;
“Agreement”	means these Terms and Conditions and the Booking and (where relevant) any deal agreement;
“Airtime”	means a spot within an advertisement break available to an Advertiser for the transmission of its Material;
“Associate”	means any company in respect of which MediaWorks Holdings Limited provides advertisement sales services;
“Bonus Airtime”	means additional placement on one of the Networks’ TV channels or shows at no additional cost to the Client (and does not include placement during Premium Programmes);
“Booking”	means a commitment to the Network from the Advertiser or Agency to buy advertising space and/or Airtime at an agreed rate and on agreed terms and “Booked” shall be construed accordingly. The Booking becomes legally binding when confirmed by the Network.
“CAB”	means the Commercial Approvals Bureau;
“Campaign”	means the Advertisers advertising campaign specified in the Booking;
“Children’s Programmes”	means all expenditure that buys the Audience of children and/or any other children demographic;
“Client”	means (a) the Agency acting on behalf of the Advertiser; (b) where there is no Agency, the Advertiser; or (c) both the Agency and the Advertiser together;
“Code” or “Codes”	means the ASA Code from the Advertising Standards Authority, the Broadcasting Standards Authority code and accompanying guidance, all as amended or superseded by revised codes from time to time;
“Direct Sales”	means sale of advertising inventory where the Advertiser books directly with the Network. (i.e. not through a Programmatic Trading system or a Direct Execution Deal);
“Impressions”	means each time a User accesses a page on a website that displays the Material regardless of whether or not the user is required to scroll to view the Material;
“Key Number”	means a unique series of number not exceeding 12 characters used to identify the Advertisement intended for broadcast;

“Material”	means any material intended for broadcast and/or publishing by the Network on behalf of the Client, Material shall be deemed to have been delivered only when all of the Network’s material and/or technical specifications have been met and the Network has been given the Campaign instructions;
“Network”	MediaWorks Holdings Limited its subsidiary companies and Associates including but not limited to MediaWorks TV Limited and MediaWorks Radio Limited;
“Network Platform”	means any platform by which the Network makes any content available to a viewer or listener, including but not limited to satellite, cable, online, radio, internet and VOD.
“Non Commercial Days”	means certain days/times where advertising is prohibited which for radio and television includes but is not limited to Christmas Day, Good Friday and Easter Sunday, and for television also includes Sunday mornings and until midday on ANZAC day;
“Premium Programmes”	means those that are detailed when each inventory period is released to market and usually include but are not limited to those programmes that attract high rating and/or high demand from Clients;
“Programmatic Trading System”	means the systems used by the Network to sell digital advertising space on a programmatic basis;
“Referrals”	means any User that has visited the Website and clicked through to the Client’s Website directly from the Material;
“Relevant Laws”	means any applicable laws, statutes, regulations and as may be updated from time to time, including without limitation the Fair Trading Act 1986;
“Station”	means any broadcasting Radio station owned by the Network;
“Terms and Conditions”	means these standard terms and conditions;
“Transmission”	means all forms and methods of transmission across all Network Platforms.
“User”	means any person visiting the Website;
“Virus”	means any computer code, programming instruction or set of instructions that is intentionally and specifically constructed with the ability to damage, interfere with or otherwise adversely affect computer programs, data files or hardware;
“VOD”	means video on demand and includes without limitation subscription video on demand and advertising video on demand; and
“Website”	means the websites operated by the Network from time to time;

“Working Day”

means Monday to Friday inclusive in each week except any bank or public holiday in Auckland. Material delivered after 5pm on a Working Day shall be deemed to have been received on the next Working Day.