



Tuks FM Trust

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ADVERTISEMENT BROADCAST AGREEMENT

Between

TUKS FM TRUST

(a radio station service provider of the University of Pretoria)

"TUKS FM"

And

THE ADVERTISER

(who's further and full particulars appear on the client information sheet of TUKS FM as completed by the advertiser and who's details are confirmed in the commercial broadcasting schedule signed by the advertiser)

"THE ADVERTISER"

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1. DEFINITIONS

In this agreement, unless the context requires otherwise:

- 1.1. words importing any one gender shall include the other two genders.
- 1.2. the singular shall include the plural and vice versa.
- 1.3. a reference to natural persons shall include created entities (corporate and unincorporated) and vice versa.
- 1.4. when any number of days is prescribed in this Agreement, that number of days shall be reckoned exclusively of the first and inclusively of the last day unless the last day falls on a day which is not a business day, in which event the last day shall be the next succeeding business day.
- 1.5. any reference in this agreement to a day shall be a reference to any day which is not a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.6. The headings in this agreement have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.
- 1.7. Unless the context indicates otherwise, the words and expressions set out below shall have the meanings assigned to them and cognate expressions shall have a corresponding meaning.
- 1.8. "Effective Date" means the date on which the advertiser signed this agreement.
- 1.9. "Broadcasting schedule" means the schedule, a copy which is annexed hereto marked as Annexure A, signed by the advertiser in which it confirms the commercial broadcasting time of the advertisement to be aired and in which it is confirmed that the terms and conditions of this agreement has been read and understood and wherein the required payment of TUKS FM for the broadcast of the advertisement campaign within the stated payment terms, is accepted.
- 1.10. "Product" means the product and/or services which the ADVERTISER instructed TUKS FM to advertise.
- 1.11. "Territory" means the broadcasting territory of TUKS FM.
- 1.12. "The ADVERTISER" means any ADVERTISER who completed TUKS FM's client information sheet and signed a broadcasting schedule as provided by TUKS FM.

2. APPOINTMENT

THE ADVERTISER, on signing the broadcasting schedule appoints TUKS FM to advertise and promote the Product in the Territory, subject to the terms and conditions set forth in this agreement.

3. PERIOD

3.1 This agreement shall commence on the Effective Date and shall continue in force and effect indefinitely until such time as the parties may give notice to terminate this agreement.

3.2 This agreement expressly allows for varying and recurring Broadcasting Schedules within different timeslot allocations as may be indicated by the Broadcasting Schedule(s) and expressly allows for the parties to exchange information within the scope of this agreement which would facilitate the administration of various, different advertising campaigns as may be agreed upon in future by the parties by the acceptance of new and/or revised broadcasting schedule(s).

4. DUTIES OF TUKS FM

TUKS FM shall:

4.1. Broadcast the product for the ADVERTISER in accordance with the Broadcasting Schedule.

4.2. not incur any liability on behalf of THE ADVERTISER when broadcasting the advertisement.

4.3. only make representations with reference to the Product on instruction of the ADVERTISER if it is in line with the codes of conduct, license stipulations as well as the rules and regulations of the Broadcasting Complaints Commission and/or the Advertising Standards Authority of South Africa and the Broadcasting Act.

5. DUTIES OF THE ADVERTISER

THE ADVERTISER shall:

5.1. deliver to TUKS FM in writing, the information of the advertisement to be broadcast or shall deliver to TUKS FM an audio copy of the advertisement as created by the ADVERTISER and/or its agents.

5.2. be responsible for the correctness and truthfulness of the advertisement and TUKS FM shall neither be responsible to verify the correctness and truthfulness thereof nor in any way whatsoever be held liable should such information be incorrect.

- 5.3. Inform TUKS FM if the advertisement to be broadcast is less than or more than the standard duration of 30-seconds for both live read and recorded adverts where the following table will be taken into account to adjust the rate per advertisement accordingly:

SPOT LENGTH:	5s	10s	15s	20s	25s	30s	35s	40s	45s	50s	55s	60s
REGULAR RATE MULTIPLIED BY:	0.5	0.6	0.7	0.8	0.9	1	1.1667	1.333	1.5	1.667	1.833	2

- 5.4. Takes note that a minimum of five adverts, either live reads or recorded adverts, or an amount no lower than R3'000 excluding VAT needs to be booked in order for the campaign to be considered for placement.
- 5.5. render payment to TUKS FM strictly within the terms as indicated by the invoice as issued by TUKS FM.
- 5.6. In the event that the ADVERTISER wishes to cancel an advertisement which is to be aired as scheduled in the Broadcast Schedule, then the ADVERTISER shall only be entitled to cancel such advertisement in writing within 48 (forty-eight) hours before the time which the advertisement is due to be aired. Failing which, the ADVERTISER shall be liable in respect of payment towards TUKS FM regardless of the fact that the advertisement was not aired.
- 5.7. The rescheduling (i.e. change of date and time) of any advertisement by the ADVERTISER from date of confirmation of the Broadcasting Schedule will also be regarded as a cancellation and the above clause 5.4 shall be applicable and must be complied with.
- 5.8. In the event that the ADVERTISER wishes to cancel an on-campus activation which is scheduled to be held at the University of Pretoria, then the ADVERTISER shall only be entitled to cancel such activation in writing within 10 (ten) working days before the time which the activation is due to be held. Failing which, the ADVERTISER shall be liable in respect of payment of 50% of the total amount for the activation towards TUKS FM regardless of the fact that the activation was not held.

6. INDEMNITY OF TUKS FM

- 6.1. TUKS FM shall not be held liable in any way whatsoever in regard to the contents, layout, information or message of the advertisement.
- 6.2. The ADVERTISER unconditionally and irrevocably indemnifies TUKS FM against any and all demands, claims, suits, actions, damages, liabilities, losses costs and expenses which may be made or brought against or suffered or incurred by TUKS FM as a result of the broadcasting of the advertisement.

7. LIABILITIES OF THE ADVERTISER

- 7.1. The ADVERTISER shall be held liable and is responsible towards any entity and/or person submitting or instituting a claim and/or action and/or complaint against TUKS FM as a result of the broadcast of the advertisement;
- 7.2. The ADVERTISER unconditionally and irrevocably accepts responsibility for all demands, claims, suits, actions, damages, liabilities, losses, costs and expenses which may be made or brought against or suffered or incurred by TUKS FM as a result of the broadcasting of the advertisement.

8. VIS MAJOR

Should the advertisement not be aired as a result of vis major, and/or sudden power failure at TUKS FM and/or any other mechanical failure not in their control, the ADVERTISER shall remain liable for payment of the account as set out in the broadcasting schedule.

9. SURETY

The directors, members and trustees of the ADVERTISER as well as the authorised representative of the ADVERTISER, herewith bind themselves as surety and co-principal debtor, under renunciation of the legal exceptions of excussion and division, for the due and prompt performance by the ADVERTISER of all and each of its obligations under this agreement.

10. ACCOUNT PAYMENT BY ADVERTISER

- 10.1. After signing the broadcasting schedule, the ADVERTISER shall remain liable for the payment of its account towards TUKS FM in respect of all advertisements which has been aired as set out in the broadcasting schedule.
- 10.2. Should the ADVERTISER wish to change the advertisements to be aired, or should the ADVERTISER wish to adjust the Broadcasting Schedule, this notification should be done within 48 (forty eight) hours before the advertisement is due to be aired, failing which the signed Broadcasting Schedule will remain and the ADVERTISER will remain liable towards TUKS FM.
- 10.3. Payment terms by the ADVERTISER are strictly 30 (thirty) days from the date of the invoice.
- 10.4. The ADVERTISER undertakes to pay interest at the prime rate of ABSA Limited plus 2% (two per centum) per month on accounts older than 30 (thirty) days.
- 10.5. The ADVERTISER takes note that all accounts which are older than 90 (ninety) days will be handed over to for legal collection procedure.

- 10.6. The ADVERTISER accepts liability for all and any costs payable to TUKS FM's attorneys, on an attorney-and-client scale which liability will be incurred as from the date when the account is handed over for legal collection, which amount shall include all expenses and collection commission. The ADVERTISER accepts that all payments made to TUKS FM or its attorneys will first be allocated as to expenses, fees, interest and then principal debt amount.

11 BREACH

- 11.1 If either Party commits a breach of any provision of this agreement, all of which shall be deemed to be material, the other Party may call in writing on the party in breach to remedy the breach within a period of 7 (seven) calendar days, except where such breach is due to a cause beyond control of either Party.
- 11.2 If the breach remains unremedied after the aforesaid notice period has expired, the Party calling on the Party in breach will be entitled but not compelled, in addition to any rights it may have in terms of this agreement, to terminate this agreement with the Party in breach with immediate effect in writing to the Party in breach.
- 11.3 The ADVERTISER acknowledges that it will have committed a material breach of the agreement if its account is not paid within 90 (ninety) days from the date of invoice. TUKS FM shall not be obliged to submit such a breach notice to the advertiser when the ADVERTISER fails to pay the account within the 90 (ninety) days period.
- 11.4 Should the ADVERTISER at any time attempt to cancel this agreement or breach any of the provisions thereof, then the full amount outstanding in terms of the agreement for advertisements already aired by TUKS FM will become immediately due and payable forthwith.

12 JURISDICTION

The parties agree that any dispute arising out of this agreement or the interpretation hereof, both while in force and after its termination, shall be submitted to the Magistrate's Court of Pretoria which will have jurisdiction to decide upon the merits of the case as well as any performance, including any payment to be made by the defaulting party as well as a relevant judgement as to damages to be awarded with an applicable order as to costs.

13 DOMICILIUM AND NOTICES

- 13.1. Each party chooses the address set out below as the address at which all notices and other communications must be delivered for the purposes of this agreement:

13.1.1 TUKS FM

PO Box 13762
Hatfield, Pretoria, 0028
1st Floor Student Centre
University of Pretoria
Lynnwood Road, Pretoria

Tel: 012 420 3805
Fax: 086 699 1072
E-mail: info@tuksfm.co.za

13.1.2 THE ADVERTISER

Details as specified in the client information sheet completed by the ADVERTISER, its agent and/or representative.

13.2. Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but it shall be competent to give notice by telefax, electronic mail or per hand delivery.

13.2.1 Any notice to a party contained in a correctly addressed envelope; and

13.2.2 sent by normal or registered post to the chosen address; or

13.2.3 delivered by hand to a responsible person during ordinary business hours at the chosen address, shall be deemed to have been received, in the case of clause 13.2.2, on the 5th (fifth) business day after posting (unless the contrary is proved) and, in the case of clause 13.2.3 on the day of delivery.

13.2.4 Any notice sent by telefax or electronic mail to a party at its telefax number or E-mail address shall be deemed (unless the contrary is proved) to have been received on the date of transmission, or if the transmission occurred outside normal business hours, on the next business day thereafter.

13.3. The parties shall be entitled at any time to change their addresses for the purposes of this clause 13 to any other address in the Republic of South Africa by giving written notice to that effect to the other party.

14 DISPUTE RESOLUTION

Should there be any dispute of any nature whatsoever between the Parties with regards to any aspect, matter or thing related to this agreement, the advertisements and whether or not TUKS FM has executed its obligations, such dispute shall be resolved by means of joint cooperation or discussion between the Parties directly involved with the execution of this agreement, within one week after a dispute arises or such extended time period as the Parties may agree.

If the Parties are unable to resolve any dispute as mentioned above, then such dispute shall be submitted to the most senior executives of the Parties who shall endeavour to resolve such dispute within 5 (five) calendar days after it having been referred to them.

Without affecting the generality of the clauses above, the ADVERTISER shall not be entitled to withhold payments of any amounts, by reason of any disputes with TUKS FM, whether in relations to TUKS FM's performance in terms of the agreement, lack of performance, or otherwise.

In any dispute between the ADVERTISER and TUKS FM, TUKS FM shall be deemed to have performed its obligations in a proper and workmanlike manner and strictly in accordance with the agreement between it and the ADVERTISER, until such time as the ADVERTISER proves the contrary.

15 GENERAL

- 15.1. This document contains the entire agreement between the parties with regard to the subject matter hereof.
- 15.2. No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 15.3. No failure by a party to enforce any provision of this agreement shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 15.4. No agreement to vary, add to or cancel this agreement shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this agreement.
- 15.5. No party may cede any of the rights or delegate any of its obligations under this agreement without the prior written consent of the other.
- 15.6. Each party warrants that it is acting as a principal and not as an agent for an undisclosed principal.

SIGNED by TUKS FM at _____ on the ____ day of _____ 20__

Sales Manager, duly authorised

SIGNED for and on behalf of _____ (Company Name)

at _____ on the ____ day of _____ 20__

Name, Designation, who warrants that he/she is duly authorised thereto.

