

TONIC CLICK-THROUGH TERMS OF USE (Sandbox Free Evaluation Only)

Last Modified: July 26th 2021

BY CLICKING "I ACCEPT," YOU AGREE, AND AGREE ON BEHALF OF YOUR COMPANY (YOU AND YOUR COMPANY, COLLECTIVELY, "YOU"), TO THE FOLLOWING TERMS OF USE ("AGREEMENT") GOVERNING YOUR USE OF TONICAI, INC.'S LIMITED WEB-BASED TEST ENVIRONMENT SERVICES (THE "SERVICES").

1. **Log-In Information.** Tonic AI, Inc. ("Tonic") will provide access to the Services in a test environment only, via a browser interface, which may only be viewed once you log in. You are responsible for maintaining the confidentiality and security of the log-in ID and password provided (the "Log-In Information"), and will be fully responsible for all activities that occur as the result of access using the Log-In Information. You agree to notify Tonic at security@tonic.ai of any actual or suspected unauthorized use of your Log-in Information or similar breach of security.

2. **Proprietary Rights.** You agree that you have been granted only the right to use the Services, and do not acquire any rights of ownership whatsoever in or to the Services, or any technology used to provide the Services. All rights, title, and interest in and to the Services and to any material on the Tonic website, including without limitation all intellectual property rights therein, will remain at all times exclusively with Tonic. All rights not expressly granted under this Agreement are reserved to Tonic and its licensors.

3. **Restrictions on Use.** The software used to provide the Services will be installed, accessed, and maintained only by or for Tonic; no license is granted in it. You will not, and will not allow anyone else to, directly or indirectly: reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code or underlying structure, ideas, or algorithms of the Services or of any software or documentation related to the Services ("Software"); modify, translate, or create derivative works based on the Services or any Software; copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Services or any Software; or use the Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party. You may not access the Services if you are a direct competitor of Tonic, except with Tonic's prior written consent. In addition, you may not access the Services for purposes of monitoring their availability, performance, or functionality, or for any other benchmarking or competitive purposes.

4. **Compliance with Applicable Laws.** You agree that, in using the Services, you will comply with all laws and regulations applicable to the Services ("Applicable Laws") including but not limited to all data privacy laws. You understand and agree that Tonic will have no responsibility or liability of any kind relating to the dissemination or use of any data or any material derived from any data once it leaves the direct control of Tonic (e.g., by screen shot, export, report, etc.). You will not remove or export from the United States or allow the export or re-export of the Services, or any direct product thereof, in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority.

5. **Limitation of Liability.** NEITHER TONIC NOR ITS OFFICERS, AFFILIATES, REPRESENTATIVES, SUPPLIERS, CONTRACTORS, OR EMPLOYEES SHALL BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; OR (B) FOR ANY DIRECT, INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

6. **Warranties and Disclaimers of Warranties.** Each party represents and warrants that it has the power and authority to enter into and fully perform its obligations under this Agreement. You understand and agree that the Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Tonic or by third-party providers, or due to other causes beyond Tonic's reasonable control. Tonic does not warrant that the Services will be uninterrupted or error free, or that defects in the Services will be corrected; nor does Tonic make any warranty as to the results that may be obtained from use of the Services. THE SERVICES

ARE PROVIDED "AS IS" AND TONIC DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT.

7. **Modification to Terms.** Tonic reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Services at any time, notice of which may be communicated via the Services, e-mail communication or such other method as Tonic may in its sole discretion determine. Continued use of the Services after any such modifications or notices have been made available or directly communicated will constitute your consent to such changes.

8. **Equipment.** You are responsible for obtaining and maintaining all equipment and ancillary services needed to connect to, access or otherwise use the Services (collectively, "Equipment"), and for ensuring that the Equipment is compatible with the Services and complies with the specifications in Tonic's then-current published policies. You also are responsible for maintaining the security of the Equipment, your account, all passwords and files, and for all use of the Services through your registered account.

9. **CONFIDENTIAL INFORMATION.**

a. **Definitions and Obligations.** Each party (the "Receiving Party") understands that the other party (the "Disclosing Party") has disclosed or may disclose business, technical, or financial information relating to the Disclosing Party's business (the "Confidential Information" of the Disclosing Party). Confidential Information of Tonic includes non-public information regarding features, functionality, and performance of the Services. Your Confidential Information includes data provided by it in connection with the Services or data collected by Tonic or the Software in connection with providing the Services (collectively, "Your Data"). The Receiving Party will: (i) take reasonable precautions to protect all Confidential Information, and (ii) not use (except as expressly permitted herein) or divulge it to any third person. Except with respect to Your Data (which will never be disclosed, except as set forth below), the Disclosing Party agrees that the foregoing will not apply 3 years after disclosure or if the Receiving Party can document that the information (a) is or has become generally available to the public; (b) was in its possession or known by it, prior to receipt from the Disclosing Party; (c) was rightfully disclosed to it by a third party; or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Despite the foregoing, the Receiving Party may disclose the Disclosing Party's Confidential Information to the extent required by law or regulatory or judicial order, provided that the Receiving Party will promptly notify the Disclosing Party and will cooperate, at the Disclosing Party's sole expense, in any efforts of the Disclosing Party seeking relief from such order.

b. **Use of Customer Data.** Tonic has no right to access Your Data without your prior written consent, which you may grant or withhold in your sole discretion. You acknowledge that Tonic may collect and analyze the data identified at <https://docs.tonic.ai/app/sharing-logs-and-telemetry-with-tonic> (the "Telemetry Data") about the provision, use, and performance of the Software and Services, but such data may be used solely for diagnostic, correction, and related troubleshooting purposes, and to improve and enhance your use of the Software and Services, provided however that (i) permitted access under this subpart (b) will not include access to any of Your Data or any of your systems; and (ii) you will at all times have visibility into what usage data is being and has been sent to Tonic.

10. **Termination.** Either party may terminate this Agreement in the event of any breach of a material obligation by the other party, if such breach remains uncured to the reasonable satisfaction of the non-breaching party ten (10) days after written notice specifying the breach. Either party may terminate this Agreement immediately upon written notice if the other party becomes insolvent, is dissolved or liquidated (except for reorganization), makes a general assignment for the benefit of its creditors, files or has filed against it a petition for bankruptcy, or has a receiver appointed for a substantial part of its assets. Upon termination or expiration of this Agreement, the following clauses will survive: Sections 3 through 6, inclusive, and Sections 9 through 11, inclusive. Upon termination, Tonic may, but is not obligated to, delete Your Data (to the extent permitted under Applicable Laws).

11. Indemnity. You will indemnify, defend, and hold harmless Tonic, and its parents, subsidiaries, affiliates, officers, directors, and employees, from all losses, liabilities, costs, damages, penalties, fines, and expenses, including reasonable attorneys' fees (collectively, "Losses") arising from any third-party claims, allegations, demands, threats, suits, or proceedings (each, a "Claim") arising from alleging that your use of the Software or Services other than as authorized under this Agreement violates Applicable Law or any consent or other third-party agreement relating to your handling, management or use of any data in connection with the Services.

12. General. Tonic is and will remain an independent contractor. Nothing in this Agreement will be construed to create an employer/employee, joint venture, agency, or partnership relationship between the parties. Neither party may assign or otherwise transfer its rights under this Agreement without the prior written consent of the other party (which may be given via email), provided however that either party may assign this Agreement with written notice (which may be via email) to any Affiliate or to its successor by way of a merger, sale, or acquisition of the party, or a sale of substantially all its assets relating to this Agreement. Neither party will issue any press release or other publicity without the prior written consent of the other (which may be given via email), provided however that Tonic will be permitted to use your name and/or logo in its list of current customers used for marketing purposes. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited to the minimum extent necessary. This Agreement is the complete and exclusive statement of the mutual understanding of the parties, superseding and canceling all previous written and oral agreements, communications, and other understandings relating hereto. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. This Agreement will be governed by the laws of California, excluding any conflict of laws principle that would require the application of the laws of another jurisdiction. Each party irrevocably submits to the personal jurisdiction of the courts located in San Francisco County, California, which it agrees will have exclusive jurisdiction over this Agreement and the parties; venue will be proper in any such court. If there is any dispute under this Agreement, the parties will work in good faith, for a period of no less than 30 days from the date of written notice of the dispute, to resolve the matter informally, before initiating any formal proceeding. All notices under this Agreement will be in writing and will be deemed to have been duly given upon receipt, or when electronically confirmed, as applicable. All notices to Tonic will be sent by e-mail to notices@tonic.ai. If your contact information, or other information related to your account, changes, you will promptly notify Tonic of such changes.