



SONIC MOBILE™ | Super Charged Mobile

SONIC MOBILE™ TERMS & CONDITIONS

Please read these terms and conditions carefully. These Standard Terms and Conditions are deemed to be included in any agreement you enter into with Sonic Mobile Limited for products and services you purchase from us.

Table of Contents

1.	Definitions.....	3
2.	Entire Agreement.....	4
3.	Modification.....	5
4.	Term.....	5
5.	Termination.....	5
6.	No Warranties.....	6
7.	Limitation of Liability.....	6
8.	Intellectual Property Rights.....	7
9.	Confidentiality and Use of Your Information.....	7
10.	Enticement and Competition.....	7
11.	Your Obligation to Pay Us.....	8
12.	Use of the Products or Services.....	9
	Connection.....	9
	Delivery of Messages.....	9
	Volumes.....	9
	Audit of Content.....	9
	Archiving Content.....	9
	Suspension of Service.....	9
	Delivery in New Zealand only.....	10
	Consequences of Suspension.....	10
13.	Acceptable Use Policy.....	10
	General Responsibilities.....	10
	Damages.....	11
	Notifications.....	11
14.	Assignment and Delegation.....	11
15.	Codes.....	11
16.	Content and Advertising Approval.....	12
17.	Force Majeure.....	13
18.	Notices.....	13
19.	Governing Law.....	13
20.	Dispute Resolution.....	13
21.	Interpretation.....	14
22.	Complaints.....	14

1. Definitions

- 1.1 In these terms and conditions, "Sonic Mobile", "we", "us" and "our" means Sonic Mobile Limited, and "you", "your" and "Content Provider" means the client purchasing products and/or services from us under the Agreement for use by a Customer.
- 1.2 Sonic Mobile Limited and the Customer may each be referred to herein as a "Party" and collectively as the "Parties".
- 1.3 Unless the content otherwise requires:

"Access Code" means a Short Code, or a combination of a code and a Short Code, used by the Customer to trigger delivery of a Pull Service or participate in a particular service or application provided under this Agreement.

"Advertising" means publication, in any form, which is intended to promote the Customers' use of Content via the Message Services and includes any reference to an Access Code, Short Code or any other method of accessing content determined by us.

"Agreement" means the agreement created upon the Parties executing the Content Provider Agreement which incorporates these terms and conditions.

"Charge" means any amount chargeable by a Mobile Network Provider for delivering SMS messages.

"Commencement Date" means the commencement date of the Content Provider Agreement.

"Confidential Information" means all data and other information of whatever nature, provided by one party to the other party under or in terms of this agreement or otherwise, but excludes:

- i. information known to the other party prior to the date it was provided to it by the first party and not obtained directly or indirectly from the first party; and
- ii. information obtained bona fide from another person who is in lawful possession of the same and did not acquire the same directly or indirectly from the first party under an obligation of confidence.

"Connection" means a connection to the Mobile Network Provider either by the Content Provider passing Content into the Network for delivery to a Customer or, if applicable, where a Customer can send Pull Messages.

"Content" means data or other information and includes all text, pictures, graphics, audio, video, images, other data, functionality, computer software and code provided by the Content Provider for the use of the Customer.

"Content Provider" means the entity so named in the Content Provider Agreement.

"Content Provider Agreement" means the agreement entered into between the Parties which incorporates these terms and conditions (including the Acceptable Use Policy).

"Content Provider Charged Content" means Content, the transport of which, is charged to the Content Provider.

"Customer" means a person who is being provided with services by the Mobile Network Provider using their Networks and who pays the Mobile Network Provider (or its group) a Charge for such service (whether the Charge is paid in advance or arrears) and who has agreed to the standard terms and conditions of the Mobile Network Provider.

"Customer Charge" means the Charge payable by a Customer for successfully delivered Customer Charged Content.

"Customer Charged Content" means Content, the transport of which, is charged to the Customer.

"Fees" means the fees set out in the Appendix 2 of the Content Provider Agreement and charged in accordance with clause 11.

"GST" means any goods and services tax payable under the Goods and Services Tax Act 1985, as amended, varied or substituted.

"Intellectual Property Rights" means all intellectual property, including all trade secrets, rights arising from the law of copyright, trade marks, designs and know-how owned by the relevant party and whether registered or not.

"Launch Date" means the date detailed in the Content Provider Agreement as the Launch Date.

"Message" means, either the Content that is sent by Sonic Mobile to be delivered to a Customer or a Pull Message.

"Message Service" means the information delivery service where you provide Content to us for delivery to a Customer;

"Mobile Network Provider" means the wireless telecommunication provider/s detailed in the Content Provider Agreement.

"Network" means a wireless telecommunication network of a Mobile Network Provider.

"Our Intellectual Property" means

- all Intellectual Property Rights developed or owned by us to the date of execution of the Agreement and any modification, translation adaptation or development of such intellectual property;
- all Intellectual Property Rights developed by us after execution of the Agreement other than your intellectual property;
- the know-how, ideas and concepts contributed to, or developed, by us during the performance of our obligations under the Agreement; and
- the specific intellectual property contained in our products and services.

"Our Website" means <http://www.sonicmobile.com>

"Pull Service" means a Content service under which a Customer, on a case by case basis, may send an Access Code to you to trigger the delivery of an item of Content from you to that Customer.

"Push Service" means a Content service that is not a Pull Service and under which you provide the Customer certain Content on a regular or predetermined basis in accordance with an arrangement entered into between the Customer and you.

"Public Holiday" means those days listed in the Holidays Act 2003 for Wellington, New Zealand.

"Short Code" means a digit based code allocated by the Mobile Network Provider to us for use by you for the purpose of this agreement and to which a Customer may send an SMS message in order to trigger a Pull Service or participate in a particular service or application under this Agreement.

"Short Message" means an alpha numeric message comprising up to 160 characters;

"SMS" means the service provided by the Mobile Network Provider to Customers utilising the Network for a Short Message.

"Term" means the Term stated in the Content Provider Agreement.

"Working Day" means any day of the week except a Saturday, Sunday or a Public Holiday.

2. Entire Agreement

2.1 These terms and conditions together with the Content Provider Agreement, and Acceptable Use Policy, constitute the entire understanding and agreement between the Parties and supersede any and all prior oral or written communications with respect to the subject matter contained in them.

2.2 If any provision of the Agreement shall be held invalid, then such provision (to the extent it is invalid) is deemed severed from the Agreement and the remainder of the Agreement shall not be affected.

2.3 No representation made by us, our marketers, agents, employees or any other person so authorised by us shall be binding upon us if:

2.3.1 made before the existence of the Agreement and not included in the Agreement; or

2.3.2 subsequent to the date of the Agreement and not in writing.

3. Modification

3.1 We may modify any of the provisions contained in these terms and conditions and/or the Content Provider Agreement at any time. Notifications of any modification will be given to you by email or in writing. If any change or modification is material and unacceptable to you, you may terminate the Agreement immediately by notice in writing to us.

3.2 Should we not reach agreement on material modifications, and you do not terminate this agreement your continued use of the products or services following our notification of the material modifications will constitute binding acceptance of the modification.

4. Term

4.1 The Agreement will commence on the earlier of:

- i. the date we accept your application;
- ii. the Commencement Date; or
- iii. the date on which you start to use our products or services.

4.2 The Agreement shall continue for the Term (unless otherwise terminated as provided under this Agreement).

5. Termination

5.1 Our Rights to Terminate

We are entitled to terminate the Agreement under one or more of the following events:

- 5.1.1 Immediately upon notice in writing to you at any time prior to the Launch Date if we secure adequate services (to our satisfaction) from the Mobile Network Provider to enable us to perform the Agreement with you.
- 5.1.2 By us notifying you with at least thirty (30) days notice of termination, with or without cause.
- 5.1.3 In relation to any or all products and services provided by us to you immediately if:
 - (a) we deem that you are in breach of the Agreement and have not remedied such breach within 10 Working Days of being notified of such breach by us;
 - (b) a receiver, provisional liquidator, administrator or other like person is appointed over any of your undertakings or assets or if you enter into arrangement with any of your creditors or any class of your creditors or you become insolvent or otherwise are unable to pay your debts when they fall due;
 - (c) in our sole discretion if we feel you have contravened our Acceptable Use Policy;
 - (d) if your account is unpaid and overdue; and
 - (e) we no longer have adequate rights from the Mobile Network Provider.

5.2 Content Provider Rights of Termination

You are entitled to terminate the Agreement under one or more of the following events:

- 5.2.1 By providing us at least 30 days written notice of termination, with or without cause;

- 5.2.2 Upon written notice to us if you reasonably believe we are in breach of the Agreement, and have not remedied such breach within 10 Working Days of being notified of such breach by you;
- 5.2.3 You may terminate this agreement immediately by notice in writing following written notification of a material modification to these terms and conditions over which agreement cannot be reached.

5.3 **Consequence of termination**

Upon termination:

- 5.3.1 you will immediately cease Advertising;
- 5.3.2 the Parties will perform all of their continuing obligations until actual termination. Any terms and conditions capable of remaining in force following termination will continue to do so (e.g. confidentiality).
- 5.3.3 you will cease to provide the Content service to Customers;
- 5.3.4 you will immediately inform Customers of the applicable Content Service of the termination; and
- 5.3.5 we will cease providing any products or services to you, and all amounts which you owe to us will become immediately due and payable as a liquidated debt.

6. **No Warranties**

- 6.1 Except where we have specifically agreed otherwise in writing we will utilise our reasonable efforts to maintain acceptable performance of the contracted products or services, however we do not guarantee continuous service, at any particular time, or integrity of data stored or transmitted via our systems, via the internet, or any Network.
- 6.2 The warranties in clause 6.1 replace all other representations or warranties (statutory, express or implied) and all such representations and warranties (save any which may not lawfully be excluded) are expressly excluded, including, without limitation, the implied warranties of merchantability and fitness for any particular purpose. The foregoing exclusions do not apply to rights granted to the Customer under the Consumer Guarantees Act 1993 unless the Customer is acquiring the product and services for the purposes of a business in which case the parties agree the provisions of the Consumer Guarantees Act 1993 shall not apply. You warrant to us that you are acquiring the product and services for business purposes.

7. **Limitation of Liability**

- 7.1 We assume no liability for any loss, injury, claim, liability or damage of any kind including loss of business, lost profits, lost data, or failure of security resulting in any way from your use of the services, including without limitation any errors or omissions, any content, any delay or failure of performance, or the unavailability or interruption of service.
- 7.2 We are not be liable for direct, indirect, special, incidental, consequential, punitive or exemplary damages of any kind whatsoever, whether or not foreseeable (including, without limitation, lawyers' fees) in any way due to, resulting from, or arising in connection with the services or the failure of a party to perform its obligations, regardless of any party's negligence. Termination of the Agreement shall be your sole and exclusive remedy for any and all damages or injury.
- 7.3 We are not be liable for the inadvertent disclosure of or corruption or erasure of data transmitted or received or stored on our system.
- 7.4 Without limiting any other claim we may have against you and / or any other indemnity provided by you, you will pay the Mobile Network Provider \$100 per customer complaint as liquidated damages for unsolicited SMS except that liability under this clause will be capped at \$30,000 in any 3 month period for sending of messages without gross negligence or intent.
- 7.5 Despite any other provision in the Agreement if we are determined liable to you for losses our liability is limited to a maximum amount equal to the non-revenue based Fees paid by you to us under the Agreement for the preceding three (3) months.

- 7.6 The limitations in this clause 7 equally apply to any claims against the Mobile Network Provider and to this extent you indemnify the Mobile Network Provider against any liability (including solicitor and own client costs).

8. Intellectual Property Rights

- 8.1 Both parties accept that any intellectual property, creative ideas, know-how or trade marks contained within anything introduced by either party shall remain the sole and exclusive property of the introducing party.
- 8.2 To the extent that any of our products or services contains any software that we supply to you, we licence that software to you on a non-exclusive, non-transferable basis for the term of the Agreement, solely for your use of that product or service in accordance with the Agreement.
- 8.3 We retain ownership of Our Intellectual Property at all times, whether in its original form or as modified. You must not, in whole or in part, copy, attempt to reverse-engineer or modify, or attempt to combine or incorporate in any other program or system, Our Intellectual Property.
- 8.4 You must protect Our Intellectual Property and related documents at all times from unauthorised access, use or damage.
- 8.5 You must return or delete from all media, Our Intellectual Property at our request upon termination of the Agreement.

9. Confidentiality and Use of Your Information

- 9.1 Both parties must keep any Confidential Information they provide to each other, which is marked confidential or which they ought reasonably to know is treated by us as confidential, from disclosure to any third party and use that information solely for the purposes of using the products or services.
- 9.2 As part of the registration process, you are required to provide certain information and to update this information to keep it current, complete and accurate. This information includes the name of authorised persons for contact purposes, postal address, e-mail address, voice telephone number, and fax number if available;
- 9.3 You acknowledge that wilfully providing inaccurate information or wilfully failing to update information promptly will constitute a breach of the Agreement and will be a basis for termination.
- 9.4 You acknowledge that we will make some of the information that you provide during the registration process publicly available as required by the relevant Mobile Network Provider. You consent to such disclosure.
- 9.5 We will not otherwise disclose your information to any third party unless it is required to maintain your service. You may request a copy of your information in our possession to review, modify or update such information.

10. Enticement and Competition

- 10.1 The Parties acknowledge and agree that during the term of this Agreement we will conduct sales and marketing activities (including through or in cooperation with other resellers) with respect to services that are the same as, or similar to, the services offered to you under this agreement. You agree that no agreement has been reached between the Parties to make any division of area in which they will both be conducting sales, whether by customer, industry, or geographical location and that unless otherwise agreed in writing no exclusivity exists in such regard.
- 10.2 We agree not to make any direct sales approaches to your Customers without your express written agreement except:
- 10.2.1 where you are placed into administration or receivership or are declared bankrupt; or
- 10.2.2 where your account with us becomes overdue by more than 90 days.
- 10.3 In either of the events in clause 10.2 we reserve the right to approach the Customers and offer to form a direct contractual relationship with those Customers.

- 10.4 Neither party will offer employment to an employee of the other during the term of the Agreement or for 6 months after the Agreement has ended.

11. Your Obligation to Pay Us

- 11.1 In return for us providing the products and services to you, you must pay us the Fees notified to you which shall be in accordance with the charges stated in the Content Provider Agreement (subject to review).
- 11.2 We may review the Fees by notice in writing to you. If you do not agree to pay any reviewed fees you must, within 20 days of receiving that written notice from us, notify us in writing or by email that you do not accept the increase and terminate the Agreement. If we do not receive any notices from you in accordance with this sub-clause and you continue to use the services after 20 days from our initial notification, you agree that you are deemed to have consented to the reviewed Fees.
- 11.4 Despite any other provisions of this clause:
- 11.4.1 You are solely responsible for the use of the products and services and for all payment of any Fees arising from the use or provision of the products or services, whether or not the user had your authority.
- 11.4.2 Records held and logging in procedures adopted by us in relation to usage by or provision of your products and services are prima facie evidence that you have used or ordered that product and service as indicated.
- 11.4.3 We will endeavour to bill you for your use or our provision of products and services (as the case may be) as follows:
- i. Monthly in advance for recurring monthly charges;
 - ii. Monthly in arrears for variable usage or volume based charges; and
 - iii. Annually in advance for annual recurring fees.
- 11.4.4 Where you agree to pay us by credit card, your credit card will be debited the due amount on the date that the account is issued.
- 11.4.5 Where you have arranged a credit account with us, payment will be due on the 20th day of the month that the account is issued. Accounts will be issued at the start of each calendar month.
- 11.4.6 If your account is unpaid (in part or whole), we reserve the right to terminate or suspend your access to the products and/or services at any time in our discretion and to refer your information to a debt collection agency or credit reference agency without notice to you. You are liable for any recovery collection costs in respect of our Fees.
- 11.4.7 Despite clauses 11.6 and 11.7 you must pay the GST (if any) payable under the Agreement. You must also pay any taxes (except our income tax), duties, stamp duties, imposts, levies or government charges relating to the Agreement or the supply or usage of the services or products.
- 11.4.8 You are responsible for the cost of any communication expenses you incur to access the products or services.
- 11.4.9 If you have a genuine dispute in relation to amounts we have charged you, you must pay the undisputed charges and notify us immediately you become aware of any disputed charges. Any disputes will then be determined by the procedures laid down in clause 20.
- 11.5 You agree that the Agreement constitutes a security agreement and we take a security interest and/or charge over your assets to secure the payment of all amounts owing by you to us. The security interest and/or charge shall continue until we give you a final release. You will sign any further documents reasonably required to perfect, register and maintain a security interest and/or charge.
- 11.6 If you are a non-resident of New Zealand you confirm to us for GST purposes:
- 11.6.1 You are a non-resident of New Zealand;
- 11.6.2 You have initiated your request outside of New Zealand;

- 11.6.3 The supply of any goods (as opposed to services) are situated outside of New Zealand; and
- 11.6.4 The performance of our services will not be received by another person in New Zealand.
- 11.7 You acknowledge and agree that we provided to you telecommunication services for GST purposes and that such supply is "zero rated". In this regard you agree that you control the commencement of supply for such services.

12. Use of the Products or Services

Connection

- 12.1 On and from the Launch Date we agree to supply you a Connection to enable you either to supply Content into the Network of the Mobile Network Provider, which will in turn supply that Content to Customers; or to allow Customers to send Pull Messages to retrieve from you.
- 12.2 You agree that you will:
 - 12.2.1 use the Connection only for the purpose of delivering Content into the Network or receiving Pull Messages from the Network; and
 - 12.2.2 follow all our directions in relation to the Connection and delivery of Content.

Content Delivery

- 12.3 You must ensure that all Content provided meets our technical and/or security requirements and is free of any errors, bugs, worms or viruses which may be harmful to our systems or the Network.
- 12.4 You must not attempt to provide or require the Mobile Network Provider to transport Content to any person that is not a Customer or Content that is unsolicited.

Delivery of Messages

- 12.5 You acknowledge and agree that the Mobile Network Provider does not offer a continuous or a fault free service to its Customers and there may be instances when Content is not deliverable. We together with the Mobile Network Provider accept no liability in such circumstances.
- 12.6 Where Content is not delivered by the Mobile Network Provider for any reason (including instances where a prepay customer having an insufficient credit balance to receive the Content or a post pay customer's service having been suspended for credit reasons) we will endeavour to advise you that the Content was not delivered, but we will not be liable if we fail to do so.

Volumes

- 12.7 You must provide us with written estimate of Message volumes on a monthly basis and will not deliver into the Network more than the volume of Messages estimated for that month.

Audit of Content

- 12.8 We may at any time, and from time to time intercept, read, store and otherwise deal with the Content for the purpose of ascertaining your compliance with the Agreement.
- 12.9 We may delete that data stored using the products or services, in our absolute discretion, if we consider that data to be inappropriate, immoral, illegal, offensive or otherwise in breach of any law, standard, regulation or code of practice.

Archiving Content

- 12.10 You must archive all Content for at least 6 months and at the end of that period you must, in a reasonable manner, make that Content available to us if required.

Suspension of Service

- 12.11 We may at any time, without notice, suspend your use or access to part or all of the products or services:

- 12.11.1 for such time as is necessary for any maintenance determined by us to be necessary from time to time, and where possible, after giving you as much advance notice as is reasonably practicable in the circumstances;
- 12.11.2 to reduce or prevent interference with our systems or the use of products or services by others;
- 12.11.3 if the Mobile Network Provider suspends its service to us; or
- 12.11.4 if required to do so, as a result of a direction from any government, law enforcement or other authorities.

Delivery in New Zealand only

- 12.12 SMS traffic will only be delivered to Customers in New Zealand and will not be sent by us to any other countries (except those with whom we may, from time to time, have an agreement to allow it to do so).

Consequences of Suspension

- 12.13 Upon suspension:
 - 12.13.1 you will cease to provide the Content Service to Customers;
 - 12.13.2 the Content Provider will inform Customers of the applicable Content service of the suspension;
 - 12.13.3 any code or Short Code associated with a Content service will remain allocated to the Content Provider during the period of suspension; and
 - 12.13.4 we will cease providing the product or service to you, and all amounts which you owe to us will immediately become due and payable.

13. Acceptable Use Policy

- 13.1 You agree that you will at all times abide by the requirements of the Acceptable Use Policy as published on Our Website (and amended by us from time to time). We have also provided you with a copy of the current Acceptable Use Policy with these terms and conditions.
- 13.2 You acknowledge that we may be obliged to provide assistance to law enforcement agencies in respect of your acquisition or use of the products and services and that you will not make any claim against us in relation to that assistance.
- 13.3 The Acceptable Use Policy ("AUP") describes the proper kinds of conduct and prohibited uses of our services as subscribed to under the Agreement.
- 13.4 The Acceptance Use Policy is not exhaustive and we reserve the right to modify the Acceptance Use Policy at any time, effective upon posting of the modified Policy to <http://www.sonicmobile.com/subscribe/terms.shtml#12>. Any breach of the Acceptance Use Policy is a deemed breach of the Agreement.

General Responsibilities

- 13.5 We expect you, and all other users of the services, to take responsibility in using the internet and Network with courtesy and responsibility, and be familiar with and practice good Internet etiquette (as deemed by us).
- 13.6 Violation of any of these guidelines is prohibited, and may result in the immediate termination or suspension of the services you receive from us.
- 13.7 You remain solely liable and responsible for your use of the services and any and all content that you display, upload, download or transmit through the use of the services.

Damages

- 13.8 You acknowledge we contract with the Mobile Network Provider to enable us to provide products and services to you together with other clients of ours. You must not do (or omit to do, as the case may be) anything that is likely to jeopardise our relationship with the Mobile Network Provider. You agree to indemnify us for any losses or damages (direct or indirect) suffered by us for any of your actions (or actions of your associates or Customers) which affects our relationship with the Mobile Network Provider.

Notifications

- 13.9 The following email addresses are provided by us to facilitate the reporting of any alleged infringements of this Acceptable Use Policy:

security@sonicmobile.com

Reporting of alleged abuses of security.

abuse@sonicmobile.com

Reporting of alleged abuse of Sonic Mobile's Services including spamming, mail bombing, and trolling.

14. Assignment and Delegation

- 14.1 We may assign, transfer or deal with any of our rights and responsibilities under the Agreement provided we give you written notice.
- 14.2 We may subcontract the performance of any of our responsibilities under the Agreement to any third party who we deem appropriate.
- 14.3 You may not assign, transfer or deal with any of your rights and responsibilities under the Agreement without our prior written consent (which may be given at our discretion). Any effective change in control or ownership of the Customer shall be a deemed assignment.

15. Codes

15.1 Short Codes

You may request Short Codes for Pull Services and we may, at our discretion, allocate to you a Short Code.

15.2 Access Codes

You may arrange for an individual Short Code to be used in relation to more than one Pull Service by allowing that Short Code to be used in combination with different Codes so that an individual Code / Short Code combination triggers delivery of an individual Pull Service.

15.3 Ownership of Codes

All Short Codes and Access Codes will remain the property of the Mobile Network Provider at all times. Short Codes and Access Codes are allocated for use in respect of specific Pull Services and may not be assigned or transferred without our written consent (which may be withheld at our discretion). The allocation of any Short Code or Access Code will cease on the termination of the Agreement, if not before.

15.5 Non Use of Codes

If during any period of 7 consecutive days a Short Code is not used by Customers more frequently than 5 times per day, we may withdraw the allocation of that Short Code from you.

16. Content and Advertising Approval

- 16.1 We (together with the Mobile Network Provider) reserve the right to review all Content and Advertising for every proposed or existing Content service. In this regard, all such Content and Advertising is required to:
- 16.1.1 Be submitted to us for approval by the Mobile Network Provider (in its discretion) and in respect of Advertising be accompanied by an indication of the media, publications and times at which it is intended that the Advertising will be made public;
 - 16.1.2 comply with the Advertising Code of Practice and the Advertising Code of Ethics published by the Advertising Standards Authority;
 - 16.1.3 comply with all laws of New Zealand and those of any other relevant jurisdictions; and
 - 16.1.4 in respect of Advertising, be consistent with the nature of the Content service to which it relates.
- 16.2 Subject to our specific written authorisation to the contrary, Content and Advertising for a Content service must not:
- 16.2.1 infringe any Intellectual Property Rights;
 - 16.2.2 detrimentally affect the brand or reputation of Sonic Mobile or the Mobile Network Provider;
 - 16.2.3 be placed under the heading of adult entertainment or similar headings;
 - 16.2.4 be misleading as to the nature, type or price of the Content service or the benefits the Content service can provide;
 - 16.2.5 contain inaccurate, ambiguous, exaggerated, defamatory, untrue or out of date information;
 - 16.2.6 encourage, counsel, incite or suggest:
 - (i) committing of a criminal offence or unlawful act; or
 - (ii) the use of harmful and/or illegal substances.
 - 16.2.7 target individual groups who, by virtue of their circumstances, may place unreasonable faith and / or reliance in the Content;
 - 16.2.8 contain vulgar and/or suggestive language or images or innuendo or slang of a sexual, immoral or violent nature;
 - 16.2.9 promote or provide inflammatory or demeaning opinions of any individual or group, nor demean, debase or disparage any individual or group on any grounds including religious, political, ethnic, racial, gender, sexual orientation, disability, occupational status or age.
 - 16.2.10 promote the competitors of the Mobile Network Provider.
- 16.3 All Advertising placed in any media (including print, radio, television, billboards, teletext, internet or in any other media) must contain:
- 16.3.1 the name of the Content Provider;
 - 16.3.2 the Contact Number of the Content Provider;
 - 16.3.3 a disclaimer of any liability for the Mobile Network Provider in relation to any Content or service provided to the Customer;

And, in relation to Customer Charged Content, must contain:

- 16.3.4 the cost of the service and whether the price includes or excludes GST;
- 16.3.5 a warning to those not responsible for paying for the service to seek the permission of the person who pays the bill; and
- 16.3.6 be clear, legible, presented horizontally and in a way that does not require close scrutiny.

- 16.4 Any approval of Content or Advertising under this clause 16 should not be construed as a warranty or endorsement that the Content or Advertising (as applicable) complies with all relevant laws.
- 16.5 Sonic Mobile or the Mobile Network Provider may review any consent granted under this clause 16 at any time.

17. Force Majeure

- 17.1 Neither Party shall be deemed in default of the Agreement to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, war, fire, natural disaster, accident, act of government, strikes, unavailability of material, Telecommunication capacity or supplies, any failure of a Third Party Provider (including the Mobile Network Provider) to supply goods or services associated with or comprising a Sonic Mobile product or service, shortages of or failure to deliver hardware and / or software not attributable to an act or failure to act of the Party seeking the protection of the force majeure or any other cause beyond the reasonable control of such Party ("Force Majeure"), provided that such Party gives the other Party written notice of the event promptly and, in any event, within fifteen (15) days of discovery of the event.
- 17.2 In the event of such a Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure.

18. Notices

- 18.1 Notices under the Agreement shall be in writing and shall be deemed given when delivered:
- 18.1.1 personally - when they are received;
 - 18.1.2 by e-mail - upon confirmation of receipt;
 - 18.1.3 by overnight mail or conventional mail (registered or certified, postage prepaid with return receipt requested) - two (2) Working Days after sending; or
 - 18.1.4 by facsimile – upon receipt of a successful transmission report.
- 18.2 Notices shall be addressed to us at:
- Postal: Level 4 Anvil House, 138-140 Wakefield St, PO Box 9879, Wellington, New Zealand
Email: notices@sonicmobile.com
Facsimile: +64 4 389 9570
- 18.3 Notices shall be addressed to you at the postal, email or facsimile addresses currently held by us and as supplied by you. It is your responsibility to ensure that we have up-to-date records of your details at all times. Failing which we may serve notices on you at your last notified address, email address or facsimile number.

19. Governing Law

- 19.1 The Agreement shall be governed by, and construed in accordance with, the laws of New Zealand, and the Parties submit to the non-exclusive jurisdiction of the Courts of New Zealand who shall have sole jurisdiction to hear and determine any disputes arising under or in connection with the Agreement.

20. Dispute Resolution

- 20.1 Neither Party will commence any court or arbitration proceedings relating to a question, difference or dispute relating to the Agreement ("Dispute") unless the Party has first complied with this clause 20.

- 20.2 Where any Dispute arises, the representatives of the Parties will meet and negotiate in good faith in an attempt to resolve the Dispute amicably by good faith discussion.
- 20.3 Where the representatives of the Parties do not resolve the Dispute within 5 Working Days (or as agreed) of initiating negotiations, the senior executives of each Party will meet to try to settle the Dispute. If they are unable to settle the Dispute within 5 Working Days (or as agreed) of first meeting, the Parties agree for directors of their board to meet to try to settle the Dispute. If they are unable to settle the Dispute within 3 Working Days (or as agreed) of first meeting, the Parties agree to mediate any Dispute in terms of the LEADR New Zealand Incorporated Standard Mediation Agreement. The mediation will be conducted by a mediator and at a fee paid by the Parties.
- 20.4 If the parties fail to settle the Dispute by mediation then either Party may initiate arbitration (but not litigation) in accordance with the Arbitration Act 1996 to resolve the Dispute.
- 20.5 Nothing in this clause will preclude either party from taking immediate steps to seek urgent injunctive or equitable relief before an appropriate court

21. Interpretation

Unless a contrary intention appears:

- 21.1 words importing one gender include the other;
- 21.2 words importing the singular or plural number include the plural and singular number respectively;
- 21.3 references to Sections, Clauses, and Schedules are references to sections, clauses and schedules in the Agreement;
- 21.4 the Schedules, and the provisions and conditions contained in such Schedules;
- 21.5 will have the same effect as if set out in the body of the Agreement. In the event of any conflict between the Schedules and the body of the Agreement, the provisions and conditions of the body of the Agreement will prevail;
- 21.6 all amounts are expressed in New Zealand Dollars (\$NZ) unless otherwise stated; and
- 21.7 headings and marginal notes are inserted for the sake of convenience of reference only and do not affect the interpretation of the Agreement

22. Complaints

- 22.1 Where any Customer contacts us or the Mobile Network Provider with a complaint regarding any Content services, we may provide the Customer with your contact details and inform them that the Content service was provided by you.
- 22.2 You will have a contact number available to Customers and will maintain suitable information and helpdesk services that are available during business hours to assist any Customer that contacts you with a complaint or requiring any information regarding any Content service.
- 22.3 Where any government or regulatory body commences an investigation in respect of a Content service, you must actively assist and co-operate with any such investigation. We may also assist and co-operate with any such investigation by providing some or all relevant information requested by such bodies.