



Think Mobile Pty Limited

ABN 33 110 992 151

STANDARD AGREEMENT
FOR THE SUPPLY OF
3G/GSM AND SATELLITE MOBILE SERVICE

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Contact Think Mobile customer care on **1300 2 THINK (1300 2 84465)**

or visit our web site at www.thinkmobile.com.au

National Relay Number

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DICTIONARY

1.1 Definitions

3G Service means the digital mobile telecommunications network service that utilises Universal Mobile Telecommunications Service as standardised by the European Technical Standards Institute, using the Vodafone Wholesale Network for the Think Mobile Swift 3G network option, or using the Telstra Wholesale Network for the Think Mobile Classic 3G network option as described in Part A.

3G/GSM Service means the combined 3G Service and GSM Service available using the Vodafone Wholesale Network for the Think Mobile Swift 3G network option, or the combined 3G Service and GSM Service available using the Telstra Wholesale Network for the Think Mobile Classic 3G network option.

3G/GSM Service Area means the coverage area of the Vodafone Wholesale Network for the Think Mobile Swift 3G network option, or the coverage area of the Telstra Wholesale Network for the Think Mobile Classic 3G network option. The coverage area may be reduced if a compatible handset capable of accessing GSM Services at 900/1800 MHz and 3G Services at 850 MHz/2100 MHz is not used.

ACCC means the Australian Competition and Consumer Commission.

ACMA means the Australian Communications and Media Authority.

Act means the *Telecommunications Act 1997* (Cth).

Agreement means this Standard Agreement, comprising this Dictionary, Part A – Service Description, Part B – Think Mobile Call Plans, Part C – General Terms and Conditions, and Part D - Service Terms and Conditions, which forms the entire agreement between Think Mobile and the Customer.

Australian Consumer Law means Schedule 2 of the CCA.

Authorised Dealer means a channel partner of Think Mobile authorised by Think Mobile under a formal agreement to sell compatible handsets and devices to Customers, market the Services to Customers, and facilitate Connection of Customers on behalf of Think Mobile.

Call includes without limitation Voice, Messaging or Data Call Types or a combination of those Call Types as the case may dictate.

Call Plan means the call plan for the Service, as set out in Part B of this Agreement.

Call Rates means the call rates for Call Types set out in a Call Plan.

Call Type means the type of usage used in conjunction with the Service. Applicable categories of call types used in conjunction with the Service include Voice, Messaging and Data call types.

CCA means the *Competition and Consumer Act 2010* (Cth).

Claim means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.

CLI means calling line identification.

Complaint has the meaning set out in the TCP Code.

Complaint Handling Policy means the policy for handling Complaints developed by Think Mobile in accordance with the requirements of the TCP Code.

Confidential Information means all confidential information about the Service, Think Mobile, its Related Bodies Corporate, the Service Network, or the Customer, which is or has been disclosed under or in connection with this Agreement or learnt or acquired in the performance of this Agreement, other than any such information which:

- (a) was in the public domain at the time of its provision, otherwise than through a disclosure in breach of this Agreement; or
- (b) is or lawfully came into the possession of the other party otherwise than as a result of a disclosure in breach of this Agreement.

Connection means the activation of the Service. **Connected** has a corresponding meaning.

Consequential Loss includes:

- (a) indirect loss and special damages;
- (b) loss of revenue;
- (c) loss of profits;
- (d) loss of business;
- (e) loss of anticipated savings;
- (f) loss of goodwill;
- (g) loss of data;
- (h) claims of third parties; and
- (i) loss or costs associated with any of the above.

Contract Term in respect of a Call Plan means the applicable minimum contract term specified in Part B of this Agreement.

Credit Limit means the maximum credit, where applicable, provided by Think Mobile for the Service.

Critical Information Summary has the meaning set out in Chapter 4 of the TCP Code.

Customer means the person who uses the Service.

Customer Authorisation Form means a form authorising a phone number to be ported.

Data in the context of a Call Type, means a service designed to transfer data over IP between end users or applications. Data services are normally charged both for data received on the Service Network (downloads), and data sent on the Service Network (uploads). Data charges may apply in addition to the charges for use of any other Call Types which rely on data services for their operation.

Disconnection means the disconnection of a Connection. **Disconnected** has a corresponding meaning.

Fair Use Policy means the policy for fair use of the Service set out in Part D.

Financial Institutions has the meaning set out in the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

Free and Local Rate Numbers means numbers which when dialled from a PSTN network in Australia are free (1800 dialled prefix), or a supplied at the rate for a local call (13/1300 dialled prefix). For the avoidance of doubt, unless expressly stated by Think Mobile calls to these numbers using the Service will be charged at the rates set out in the Call Plan.

GSM Service means the GSM based digital mobile telecommunications service provided using the Vodafone Wholesale Network for the Think Mobile Swift 3G network option, or the GSM based digital mobile telecommunications service provided using the Telstra Wholesale Network for the Think Mobile Classic 3G network option as described in Part A.

GST means any tax on goods or services and other things in force in Australia from time to time under the GST Legislation.

GST Legislation means *A New Tax System (Goods and Services Tax Imposition - General) Act 1999* (Cth) as varied or replaced from time to time.

GST Rate means the prevailing rate of GST payable in accordance with the GST Legislation.

Included Call Value means the value of Call charges included within the Minimum Monthly Fee for a Call Plan as the case dictates. For the avoidance of doubt, the Included Call Value may include various categories of usage including Voice Calls, Messaging Calls or Data Calls. In some Call Plans, the Included Call Value may be broken out into different categories based on the Call Type.

Insolvency Event means the happening of any of the following events in relation to a party:

- (a) if a natural person, it becomes bankrupt or insolvent;
- (b) if a company:
 - (i) a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, or receiver and manager or similar officer is appointed in respect of it;
 - (ii) it enters into, or resolves to enter into, a scheme of arrangement or composition with or assignment for the benefit of, or it proposes a reorganisation, moratorium or other administration, involving its creditors or a class of its creditors;
 - (iii) it enters into a deed of company arrangement;
 - (iv) it resolves to wind itself up or otherwise dissolve itself, or gives notice of intention to so resolve, except by way of bona fide solvent reconstruction or amalgamation on terms approved by the other party;
 - (v) it suspends payments of its debts generally; or
 - (vii) it is or becomes unable to pay its debts when they are due or becomes unable to pay its debts within the meaning of the *Corporations Law*, or is presumed to be insolvent under the *Corporations Law*.

International Roaming means use of a mobile service on another carrier's network outside of Australia to make or receive Calls or to access mobile services.

IP means Internet Protocol.

Law means any:

- (a) legislation, regulations, determinations, by-laws, declarations, ministerial directions and other subordinate legislation;
- (b) common law;
- (c) government agency requirement or authorisation (including any conditions of any authorisation);

- (d) mandatory codes, standards and guidelines;
- (e) writ, order, injunction or judgement; or
- (f) local government legislation including regional, district and zone plans, regulations, by-laws, declarations and other subordinate legislation.

M2M Use in the context of a Classic 3G Service, means machine-to-machine use where a device initiates a communication without the involvement of a person (for example, the delivery of wireless packet data from a vending machine to another machine or application, or the transmission of an SMS message from a burglar alarm system to another person or system). M2M Use does not include Data communication initiated by a mobile handset or wireless broadband device that is ancillary to the use of that handset or device by a person (for example, a handset checking for new e-mail messages).

Messaging in the context of a Call Type, includes without limitation short message services (SMS) and multi-media messages (MMS).

Minimum Monthly Fee means the minimum monthly fee payable by a Customer Connected to a Call Plan.

Non-excludable Rights means rights and remedies conferred on a party by the *Consumer and Competition Act 2010* (Cth) and similar legislation which cannot be excluded, restricted or modified.

PIN means a personal identification number used to access the Service, or any part of the Service.

Privacy Act means the *Privacy Act 1988* (Cth) as varied or replaced from time to time.

Privacy Policy means the privacy policy of Think Mobile as varied or replaced from time to time, and made available to Customers by contacting Think Mobile customer care on 1300 2 THINK (1300 2 84465) or by download from the website www.thinkmobile.com.au.

PSTN means a public switched telecommunications network, alternatively described as a fixed network.

Re-connected means the re-activation of a Connection which has been Disconnected.

Related Body Corporate has the meaning given to the term in the *Corporations Law*.

Roaming means where a Customer uses a mobile service on another carrier's network to make calls or access mobile services either within Australia or outside Australia. Roaming charges normally apply for all inbound usage (Call termination) in addition to any outbound usage (Call origination). Roaming normally incurs charges that are significantly higher than for use of the 3G/GSM Service, and Call records take can take a number of days to be made available to Think Mobile by the Roaming network. Roaming relies on the networks of other carriers over which Think Mobile has no control. Think Mobile cannot guarantee the quality and reliability of mobile services when a Customer is Roaming.

Satellite Service means the mobile satellite service network operated by Thuraya Telecommunications Company located in the United Arab Emirates, and as described in Part A.

Satellite Service Area means the coverage area of the Thuraya Mobile Satellite Service Network.

Service means the 3G/GSM Service and the Satellite Service, and for the avoidance of doubt, excludes any Roaming.

Service Network means the Vodafone Wholesale Network for the Think Mobile Swift 3G network option, or the Telstra Wholesale Network for the Think Mobile Classic 3G network option, or the Thuraya Mobile Satellite Service Network for the Satellite Service.

SIM means the subscriber identity module card, to be used with a handset to enable use of the Service.

SMS means short message service;

SMSIP Use means the use of an application to send SMS over a Data service using IP;

Special Calls means special Calls available with the Service to approved Customers, as described in Part A of this Agreement.

Standard Agreement has the meaning given to the term by Part 23 of the Act.

Tax Invoice means an invoice which complies with the requirements for such an invoice under the GST Legislation.

Taxable Supply has the meaning given in the GST Legislation.

TCP Code means C628:2012 *Telecommunications Consumer Protection Code* registered by ACMA on 1 September 2012.

Telstra Wholesale Network means the 3G/GSM based wholesale telecommunications network operated by Telstra Corporation Limited used to provide the 3G/GSM Service using part of Telstra's GSM and 3G network and capabilities.

Thuraya Mobile Satellite Service Network means the mobile satellite service network operated by Thuraya Telecommunications Company located in the United Arab Emirates.

Think Mobile means Think Mobile Pty Limited ABN 33 110 992 151.

TIO means the Telecommunications Industry Ombudsman.

Unreasonable Use has the meaning set out in Part D.

Value Added Services means the value added services available with the 3G/GSM Service generally, as described in Part A of this Agreement.

Vodafone Regional Network means the 3G/GSM based telecommunications network operated by Optus Mobile Pty Limited used to provide the 3G/GSM Service on a domestic roaming basis in the 80% to 96% population coverage area, using parts of Optus's GSM and 3G network and capabilities.

Vodafone Wholesale Network means the 3G/GSM based telecommunications network operated by Vodafone Network Pty Limited used to provide the 3G/GSM Service, using parts of Vodafone's GSM and 3G network and capabilities, and includes the Vodafone Regional Network.

Voice in the context of a Call Type, means a service designed to transfer voice over a voice channel between end users using digital or analogue voice codecs. Outbound voice Calls are usually made by direct dialling a telephone number, and inbound voice Calls are usually received by answering a voice Call which has dialled the Customer's telephone number. For the sake of doubt, VOIP and Video calls are Data Call Types.

VOIP means voice over IP, and in the context of a Call Type, is a Data service designed to transfer voice over a Data channel between end users. VOIP calls are usually made by using a software application on the handset in conjunction with a Data service to transfer voice as Data between end users.

You means the Customer entering into this Standard Form of Agreement. **Your** and **Yourself** have a corresponding meaning.

1.2 Interpretation

In this Agreement, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and visa versa;
- (c) all references to dollars, value and price are to the Australian currency;
- (d) references to a party includes its successors and permitted assigns;

- (e) references to payment to any party includes payments to another person on the direction of that party; and
- (f) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time.

PART C - GENERAL TERMS AND CONDITIONS

1. THE SERVICE

- 1.1 Think Mobile supplies You with the Service on the terms and conditions set out in this Agreement.
- 1.2 Think Mobile will take all reasonable steps to make sure that You can receive the Service. However, You acknowledge that:
- (a) the Service is not free from faults or interruptions;
 - (b) You may not be able to use the Service in some areas, or in some buildings, or at certain times;
 - (c) Think Mobile does not warrant currency, availability, accuracy, security or the quality of any information which You receive or can access using the Service;
 - (d) You are responsible for any reliance on or use of the information which You receive or can access using the Service; and
 - (e) the Service can only be used in areas where the Service Network is present.
- 1.3 Subject to the *Telecommunications Numbering Plan 1997* (Cth), and national regulatory policy on numbering:
- (a) Think Mobile may allocate a number to Your Service and vary that number; and
 - (b) You have not, and You cannot claim any legal interest or goodwill in any number or PIN allocated by Think Mobile.

2. YOUR OBLIGATIONS

- 2.1 You must:
- (a) keep the SIM safe and in good condition;
 - (b) return the SIM to Think Mobile immediately upon request;
 - (c) notify Think Mobile immediately of loss of, or damage to, a SIM;
 - (d) use the spend control tools provided by Think Mobile, and otherwise diligently monitor Your Call usage so that You do not overcommit Yourself financially;
 - (e) pay Think Mobile all fees and charges which are incurred in Your use of the Service, as set out in Part A and Part B of this Agreement and all applicable government taxes, duties, imposts or levies such as GST;

- (f) comply with all Laws concerning use of the Service;
- (g) give Think Mobile all information and co-operation it may require in relation to the Service;
- (h) not resell, distribute or reproduce any part of the Service;
- (i) notify Think Mobile as soon as You becomes aware of any claim You may have against Think Mobile in relation to the Service.

2.2 You must not:

- (a) disclose to any person any Confidential Information or security number provided by Think Mobile (including but not limited to Your enquiry number, barring number or PIN); or
- (b) use the Service for any improper, immoral, unauthorised or unlawful purpose or allow any other person to use the Service for such purposes; or
- (c) resupply the Service to any other person without Think Mobile's prior written approval, which approval may be withheld by Think Mobile in its sole discretion; or
- (d) use the CLI or information derived from the CLI except in accordance with the Act; or
- (e) place, attempt or accept a reverse charge call using the Service.

3. SERVICE SUSPENSION, LIMITATION OR TERMINATION

3.1 Subject to applicable Law, Think Mobile may, in its absolute discretion suspend, limit or terminate the provision of the Service if:

- (a) Think Mobile gives You thirty (30) days written notice of its intention to do so, provided only that You have been Connected for a period exceeding the Contract Term; or
- (b) You exceed the Credit Limit; or
- (c) You are in breach of this Agreement; or
- (d) a regulatory authority such as the ACMA or ACCC instructs Think Mobile to do so; or
- (e) there are technical problems with the Service Network which require corrective action by Think Mobile; or

- (f) the use of the Service by any person including You might damage the Service Network; or
- (g) You, or someone acting on Your behalf, informs Think Mobile that You have lost a SIM; or
- (h) Think Mobile has an incomplete record of information about You; or
- (i) Think Mobile reasonably suspects that its record of information about You contains materially incorrect or incomplete information; or
- (j) You:
 - (i) die;
 - (ii) are a partner in a partnership, and the partnership dissolves; or
 - (iii) suffer an Insolvency Event;
- (k) Think Mobile reasonably believes that the Service is being used to commit unauthorised, criminal or unlawful activities; or
- (l) Think Mobile reasonably believes that You have engaged in fraudulent activities in relation to a Service provided by Think Mobile; or
- (m) Think Mobile reasonably believes that You have resupplied the Service to another person without Think Mobile's prior written approval; or
- (n) Think Mobile is required by law to do so, or is requested to do so by a law enforcement agency; or
- (o) Think Mobile is required to do so under any agreement with a third party or because a telecommunications service is unavailable from a third party; or
- (p) if You port out a phone number.

3.2 Where Think Mobile suspends, limits or terminates the Service under clause 3.1 (b)-(o), Think Mobile will use its reasonable endeavours to provide notice to You.

3.3 Think Mobile will promptly suspend the Service if informed by You or someone acting on Your behalf that a SIM has been lost or stolen. However, You are responsible for all Call charges incurred up to the suspension of the Service.

3.4 Think Mobile may suspend or limit the Service provided to You if, in Think Mobile's reasonable opinion, the amount of Call charges accrued on Your account is unusually high. In making this determination, Think Mobile may have regard to matters including:

- (a) Your previous average daily Call spend;

- (b) the total of Your unbilled Call charges; and
- (c) any unusual Call spending patterns.

4. DISCLOSURE OF INFORMATION BY THINK MOBILE

- 4.1 Think Mobile and/or its agents and service providers may collect Your personal information. Think Mobile collects Your personal information to provide You with personalised mobile telecommunications and information services. Think Mobile may use Your personal information for purposes that are related to providing You with those services which would be reasonably expected by You (including for the purpose of keeping You informed about the features of Think Mobile's services or conducting analysis in order to provide a better service to You).
- 4.2 Think Mobile will provide You with access to Your personal information in accordance with the Privacy Act and the Privacy Policy.
- 4.3 Think Mobile may receive and disclose personal information or documents about You to or from:
 - (a) credit providers or credit reporting agencies for purposes permitted under the Privacy Act;
 - (b) law enforcement agencies to assist them in the prevention of criminal activity; or
 - (c) Financial Institutions for the purpose of preventing fraud and to assist in fraud investigation; or
 - (d) our service and content providers, Authorised Dealers, distributors and agents, the operators of our Service Networks located in Australia and overseas, or any company within the Think Mobile group for purposes that are related to providing you with a telecommunications service which would be reasonably expected.
- 4.4 Unless You consent, Think Mobile will not disclose Your personal information to third parties, other than those who have contracted with Think Mobile to keep the information confidential, or who are subject to obligations to protect Your personal information.
- 4.5 You acknowledge that any calls made to Think Mobile's customer call centre may be recorded for quality assurance purposes.

5. TERMINATION

- 5.1 Think Mobile can terminate this Agreement in accordance with clause 3.1.
- 5.2 Subject to Part D, You may terminate this Agreement at any time upon giving written notice to Think Mobile. If You wish to terminate the Agreement before the completion of the Contract Term, You must pay an early termination fee as set out in Part A.

5.3 Subject to Part D, when issued a notice of a material adverse change by Think Mobile, You may terminate this Agreement during the period specified in the material adverse change notice.

5.4 You acknowledge that a request to port out a phone number does not result in termination of this Agreement. Subject to Think Mobile's termination rights, Think Mobile may assign a new number to the relevant Connection.

6. OBLIGATIONS ON TERMINATION

6.1 On termination of this Agreement, You must:

- (a) return all property to Think Mobile to which Think Mobile has rights (including but not limited to the SIM), whether under this Agreement or under the general law; and
- (b) pay all amounts due to Think Mobile under this Agreement.

6.2 On termination of this Agreement, Think Mobile must refund to You any monies held on account for You after any of Your debts and liabilities have been met under clause 6.1. Think Mobile, in its absolute discretion, may set-off any amounts payable to You until You pay Think Mobile all due amounts.

7. ASSIGNMENT

7.1 You must not transfer or assign any rights and obligations under this Agreement without the prior written permission of Think Mobile.

7.2 If Think Mobile sells or otherwise reorganises its business such that the Services will be supplied by a substantially different Supplier, or using a different Service Network (**Transfer**), Think Mobile must issue notice to You before Your Service is Transferred informing You:

- (a) that the Service will be Transferred to a new Supplier or Service Network, and the contact details for that new Supplier if relevant;
- (b) any material adverse impact to Your use of the Services, or any equipment used to access the Services expected as a result of the Transfer;
- (c) when the Transfer is likely to be effected;
- (d) the contact details for lodging an enquiry or Complaint about the Transfer; and
- (e) Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.

7.3 Think Mobile will use reasonable efforts to notify you of the completion of the Transfer on the day on which it occurs.

8. REPRESENTATIONS & WARRANTIES

8.1 You represent and warrant that:

- (a) You have provided full and accurate personal information to Think Mobile in connection with this Agreement;
- (b) You have full power and authority to enter into this Agreement; and
- (c) You will take all necessary action to execute, deliver and perform this Agreement in accordance with the terms.

8.2 Think Mobile represents and warrants that:

- (a) it is a carriage service provider under the Act; and
- (b) subject to the terms and conditions of this Agreement, it will provide the Service with all reasonable care and in a timely manner.

9. YOUR RIGHTS

9.1 You have rights including the Non-excludable Rights.

9.2 If You have a complaint about the Service (the **Complaint**), You must in the first instance attempt to resolve the Complaint with Think Mobile by contacting Think Mobile customer care on 1300 2 THINK (1300 2 84465) [free call when using the Service], or by email to mail@thinkmobile.com.au, or by writing addressed to Think Mobile Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.

9.3 In all cases, Think Mobile will acknowledge the Complaint in accordance with Chapter 4 of the TCP Code, and issue a unique reference number to enable You and Think Mobile to track the subject matter of the Complaint to resolution.

9.4 Think Mobile must attempt to resolve the Complaint in accordance with the Complaint Handling Policy, and the requirements of the TCP Code.

9.5 If the Complaint is not resolved after contacting Think Mobile in accordance with clause 9.2, You may contact the TIO by calling 1800 062 058, or visiting their website at www.tio.com.au, by sending a fax to 1800 630 614, or by writing the TIO at PO Box 276, Collins Street West, VIC 8007, or You can contact the ACCC or the Office of Fair Trading in the Customer's relevant State or Territory.

10. TITLE

Except for any SIM, property in any goods which You take possession of under this Agreement passes to You on the first payment by You of monies to Think Mobile unless otherwise provided by the Part D.

11. LIMITATION OF LIABILITY

11.1 To the full extent permitted by law and subject to clause 11.3, Think Mobile excludes all liability including any Consequential Loss under or in connection with this Agreement or the supply of the Service except to the extent that You suffer direct loss or damage (excluding Consequential Loss) as a result of any negligent act or omission of Think Mobile under or in connection with this Agreement.

11.2 Notwithstanding clause 11.1, Think Mobile's maximum liability under or in connection with this Agreement or the supply of the Service will not exceed the total of the fees and charges paid by You under this Agreement:

- (a) if the time between the commencement date of this Agreement and the date of the Claim is 6 months or more - during the 6 month period immediately preceding the date of the Claim; or
- (b) if the time between the commencement date of this Agreement and the date of the Claim is less than 6 months - during the period from the commencement date of this Agreement to the date of the Claim.

11.3 Non-excludable Rights

- (a) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
- (b) Think Mobile does not exclude any Non-excludable Rights including without limitation the guarantees set out in clause 11.3(a), but does exclude and You cannot rely on all other conditions, representations and warranties implied by custom, law or statute other than those expressly contained in this Agreement.
- (c) Think Mobile's liability in respect of any Non-excludable Right is limited, at Think Mobile's option, to:
 - (i) in the case of goods,
 - A. the replacement of the goods or the supply of equivalent goods;
 - B. the repair of the goods;
 - C. the payment of the cost of replacing the goods or acquiring equivalent goods;
 - D. the payment of the cost of having the goods repaired.

- (ii) in the case of services,
 - A. the supply of the services again; or
 - B. the payment of the cost of having the services supplied again.

12. INDEMNITY

- 12.1 You indemnify Think Mobile against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which Think Mobile pays, suffers or incurs, or is liable for in respect of the Your use of the Service or the Service Network.
- 12.2 Clause 12.1 does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which Think Mobile pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of Think Mobile.
- 12.3 The indemnity in this clause 12 is a continuing obligation of You which will continue despite:
 - (a) any settlement of account;
 - (b) the termination of this Agreement; or
 - (c) the occurrence of any other thing,

and remains in full force and effect until all monies owing by You to Think Mobile have been paid in full.

13. PROHIBITION & ENFORCEABILITY

- 13.1 Any provision of, or the application of any provision to, this Agreement or a right, power, authority, discretion or remedy of a party under this Agreement which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- 13.2 Any provision of, or the application of any provision of, this Agreement which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of the remaining provisions in that or in any other jurisdiction. The application of this clause 13 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

14. WAIVER

- 14.1 Think Mobile may not waive any right under this Agreement except in writing.
- 14.2 A waiver by Think Mobile will not prejudice its rights in respect of any subsequent breach of this Agreement by the Customer.
- 14.3 A failure or delay in enforcing a right under this Agreement does not constitute a waiver.

15. VARIATION

- 15.1 Think Mobile may vary any term of this Agreement at any time in writing.
- 15.2 In circumstances where a variation of this Agreement is likely to have a material adverse change, Think Mobile will notify You in advance of any such variation. The notice given by Think Mobile for a material adverse change to your Service will set out Your rights to terminate the Agreement, any charges for terminating the Agreement, and the period during which notice of termination can be given by You.
- 15.3 If you do not terminate the Agreement within the material adverse change notice period, you will be deemed to have accepted the variation and be bound by the terms of the Agreement as varied.

16. STANDARD FORM OF AGREEMENT

This Agreement constitutes a Standard Form of Agreement with the meaning of the Act.

17. GOVERNING LAW AND JURISDICTION

- 17.1 This Agreement is governed by the laws of New South Wales.
- 17.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.

18. AGENCY

- 18.1 You appoint Think Mobile as Your agent for the purposes of completing a Customer Authorisation Form on Your behalf.

PART D – SERVICE SPECIFIC TERMS AND CONDITIONS

1. COMMENCEMENT AND TERMINATION

- 1.1 This Agreement starts when Your Service is first Connected to the Service Network, and terminates when Your Service is Disconnected from the Service Network.

2. FEES AND CHARGES

- 2.1 Think Mobile will invoice You once every month, and You must pay all outstanding amounts not more than 14 days from the date of the invoice.
- 2.2 The invoice which Think Mobile provides to You will be in a standard form. If You require a different form of invoice, You must pay any applicable charges. To enable You to verify Your use of the Service, Call records and other relevant billing information will be clearly itemised on the invoice in accordance with the billing requirements set out in Chapter 5 of the TCP Code.
- 2.3 Think Mobile may vary its fees and charges from time to time. You acknowledge that before entering into this Agreement You have seen a copy of Think Mobile's current fees and charges. You may obtain a copy of Think Mobile's current fees and charges, by contacting Think Mobile at any time.
- 2.4 You must remain Connected to the Service Network for the Contract Term or pay an early termination fee set out in Part A.
- 2.5 If Think Mobile imposes a Credit Limit and You exceed the Credit Limit, Think Mobile may suspend, or limit the Service until You pay all outstanding fees and charges.
- 2.6 Think Mobile may require You to pay a security deposit if You intend to use Value-Added Services. If You pay Think Mobile a security deposit, Think Mobile may apply the deposit, or any part of it, in payment of any outstanding fees and charges for the Service.
- 2.7 If You do not pay Think Mobile's invoices on time for two successive months, Think Mobile may require You to pay its accounts by direct debit or registered credit card for the term of this Agreement. You must not cancel that direct debit or credit card authority, without Think Mobile's agreement in writing. If You cancel the direct debit or credit card authority in breach of this clause, Think Mobile may exercise its rights under Part C, and You will become liable for any extra charges determined by Think Mobile in accordance with Part A.
- 2.8 Think Mobile may pay an Authorised Dealer or agent a commission for introducing You to the Service.

3. YOU ARE RESPONSIBLE FOR MONITORING CALL CHARGES

- 3.1 You have a personal responsibility to monitor Your use of the Service to ensure that You do not overcommit yourself financially. You are liable for all Calls made or received using Your Service.
- 3.2 In accordance with the requirements of the TCP Code, Think Mobile will issue You spend alerts by email or by SMS, or by both methods when you have exceeded 50%, 85% and 100% of Your Included Value or Included Data allowance as set out in Your Call Plan. As Think Mobile may only receive Call records up to 48 hours after Your use of the Service, You may have already have exceeded a spend alert threshold before we are able to notify You. You remain liable for all Calls made or received using Your Service, regardless of whether or not we have issued you a spend alert.
- 3.3 To assist You to monitor Your own use of the Service, Think Mobile provides a 24x7 secure online facility providing You with access to Your billed and unbilled Call usage. The facility is known as Selfcare, and can be accessed at www.thinkmobile.com.au/info/selfcare.
- 3.4 Alternatively You can contact Think Mobile customer care on 1300 2 THINK (1300 2 84465) [free call when using the Service], or by email to mail@thinkmobile.com.au, or by writing addressed to Think Mobile Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.
- 3.5 Think Mobile will use reasonable efforts to contact You when we discover abnormal usage or a significantly higher pattern of usage. In accordance with Part C and this Part D, we may suspend or limit Your Service if we cannot contact You promptly. You should not rely solely on Think Mobile to contact You about high Call usage, as You have a personal responsibility to control Your financial commitment to Think Mobile.
- 3.6 Call records are normally received within 48 hours of the Calls being made or received. In some circumstances, such as temporary system delays, the Call records may take longer to process and appear in Think Mobile's billing system. Call records for Special Calls and International Roaming may take up to seven (7) days before they are available in Think Mobile's billing system. You must monitor Your ongoing use of the Services, keeping in mind the normal delays in Think Mobile receiving and processing Call records from the Service Networks, from premium services providers, and from overseas networks.

4. CUSTOMER DISCONNECTION FROM THINK MOBILE

- 4.1 You must not Disconnect from the Service Network until:
- (a) the Contract Term has expired, or You have given written notice of termination and paid the early termination fee set out in Part A; and
 - (b) You have otherwise satisfied the terms of this Agreement.

4.2 If You wish to be Disconnected from the Service Network at the end of the Contract Term, or at any time after the Contract Term, You must provide Think Mobile with written notice. On receipt of such notice, the Connection will be Disconnected at or prior to the conclusion of the Customer's current monthly billing cycle for the Service.

5. PROHIBITION ON RESUPPLY

5.1 You must not resell or resupply the Service to any person.

6. USE OF THE SERVICE

6.1 You must not use the Service:

- (a) in contravention of any Law; or
- (b) in any manner that is indecent, obscene or otherwise offensive, menacing, threatening or abusive; or
- (c) in any manner that is defamatory or tortious or infringes the rights of any third party; or
- (d) in a way that interferes with the use of the Service by other customers of Think Mobile, or the relevant Service Network.

6.2 You agree that the following terms and conditions apply to Your use of the relevant Service Network:

- (a) You are responsible for all equipment and software necessary to use the relevant Service Network, as well as for the security and integrity of any information You transmit or receive; and
- (b) You acknowledge that Think Mobile does not check and is not obligated to monitor the content of information or material available from the relevant Service Network or the Internet, and that Think Mobile is not liable for Loss suffered by You or any other person as a result of using information or material obtained using the relevant Service Network or the Internet, including, but not limited to, Loss caused by a virus.

7. SPECIFIC USE LIMITATION OF CLASSIC 3G SERVICE

7.1 You agree that You must not use the Classic 3G Service for:

- (a) M2M Use;
- (b) Mobile VOIP Use, being the initiation of VOIP Calls from a handset using the 3G/GSM Service; and
- (c) SMSIP Use, being the use of an application to send SMS from a handset using an IP Data Service.

8. IMMEDIATE DISCONNECTION OF SERVICE

- 8.1 You agree that Think Mobile may immediately disconnect Your SIM if Think Mobile has reason to suspect that:
- (a) the SIM is being used in a device that is not approved by Think Mobile (such as a SIM box or similar device); or
 - (b) fraudulent or illegal activity is, or will be, conducted using the relevant SIM.

9. FAIR USE POLICY

- 9.1 It is important that all Think Mobile customers are able to access the Service. Accordingly, this Fair Use Policy applies to:
- (a) use of either the 3G/GSM Service or the Satellite Service; and
 - (b) any promotions or services which are advertised by us as subject to the Fair Use Policy (Fair Use Promotion).
- 9.2 Think Mobile reserves the right to vary the terms of the Fair Use Policy from time to time.
- 9.3 Think Mobile may rely on the Fair Use Policy where:
- (a) Your use of the Service represents Unreasonable Use; or
 - (b) Your participation in a Fair Use Promotion represents Unreasonable Use.

10. UNREASONABLE USE

- 10.1 Unreasonable Use means the use of the Service where Your use of the Service is reasonably considered by Think Mobile to be fraudulent, or to adversely affect a Service Network, or other Customers' use of or access to a service or a Service Network.
- 10.2 Unreasonable Use in respect of a Fair Use Promotion is where Your participation in a Fair Use Promotion is reasonably considered by Think Mobile to be fraudulent, or to adversely affect a Service Network, or another Customer's use of or access to a service or a Service Network.
- 10.3 Without limitation, fraudulent use includes resupplying the Service without Think Mobile's consent so that someone else may access or use the Service or take advantage of a Fair Use Promotion.

11. CONSEQUENCES OF UNREASONABLE USE

- 11.1 Where there is a breach by You of this Fair Use Policy, Think Mobile may contact You to discuss how to change Your use of the Service so that it conforms to the Fair Use Policy.
- 11.2 If, after we have contacted You, and Unreasonable Use continues, Think Mobile may, without further notice to You:

- (a) suspend or limit the Service (or any feature of it) for any period Think Mobile believes is reasonably necessary; or
- (b) terminate the Service Agreement and Disconnect the SIM.