



Think Mobile Pty Limited

ABN 33 110 992 151

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STANDARD AGREEMENT  
FOR THE SUPPLY OF  
GSM CELLULAR 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](http://www.thinkmobile.com.au)

National Relay Number

133 677

Translating & Interpreting Service (TIS)

131 450

## DICTIONARY

### 1.1 Definitions

**3G Service** means a Service provided using a public mobile telecommunications network that utilises Universal Mobile Telecommunications Service as standardised by the European Technical Standards Institute.

**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.

**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 a Call Plan.

**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.

**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 contract term specified in Part B of this Agreement.

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

**Customer** means the person who uses the Service.

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

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

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

**GSM Service Area** means the coverage area of the Vodafone Network for the Think Mobile Swift network option, or the coverage area of the Telstra Network for the Think Mobile Classic network option.

**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 or within the Monthly Cap Level for a Call Plan as the case dictates.

**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*.

**Minimum Monthly Fee** means the minimum monthly fee payable by a Customer Connected to a Call Plan which includes a Monthly Cap Level.

**Monthly Cap Level** means the level at which the call charges are capped each month for call charges incurred by a Customer during the month, up to and including the specified level of Included Call Value. For the avoidance of doubt, call charges incurred in excess of the Included Call Value for the Monthly Cap Level will be charged in addition to the Monthly Cap Level.

**Non-excludable Rights** means rights and remedies conferred on a party by the *Trade Practices Act 1974* (Cth) and similar legislation which cannot be excluded, restricted or modified.

**PIN** means the personal identification number used by a Customer 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](http://www.thinkmobile.com.au).

**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.

**Service** means the GSM Service, and for the avoidance of doubt, excludes any roaming or pre-paid service.

**Service Network** means the Vodafone Network for the Think Mobile Swift network option, or the Telstra Network for the Think Mobile Classic network option.

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

**Special Services** means special services 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.

**Telstra Network** means the GSM based telecommunications network operated by Telstra Corporation Limited used to provide the GSM Service, and which for the avoidance of doubt does not include access to 3G Services.

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

**Think Mobile Call Plan** means the Call Plan available to eligible Customers, as set out in Part B of this Agreement.

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

**Vodafone Network** means the GSM based telecommunications network operated by Vodafone Network Pty Limited used to provide the GSM Service, and which includes access to 3G Services.

## 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;
- (f) a reference to any statute includes any amendments, re-enactments or replacements to that statute from time to time, and
- (g) Roaming relies on the networks of other carriers over which Think Mobile has no control. Think Mobile cannot guarantee the quality and reliability of the mobile service when the Customer is Roaming.

## PART C - GENERAL TERMS AND CONDITIONS

### 1. THE SERVICE

1.1 Think Mobile supplies the Customer 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 the Customer can receive the Service. However, the Customer acknowledges that:

- (a) the Service is not free from faults or interruptions;
- (b) the Customer 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 quality of any information which a Customer receives or can access using the Service;
- (d) the Customer is responsible for any reliance on or use of the information which they 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 national regulatory policy on numbering:

- (a) Think Mobile may allocate a number to the Customer's Service and vary that number;
- (b) the Customer has and can claim no legal interest or goodwill in any number or PIN allocated by Think Mobile.

## **2. OBLIGATIONS OF THE CUSTOMER**

### **2.1** The Customer 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) pay Think Mobile all fees and charges which are incurred in its 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;
- (e) comply with all laws, regulations and guidelines concerning use of the Service;
- (f) give Think Mobile all information and co-operation it may require in relation to the Service;
- (g) not resell, distribute or reproduce any part of the Service;
- (h) notify Think Mobile as soon as it becomes aware of any claim it may have against Think Mobile in relation to the Service.

### **2.2** The Customer must not:

- (a) disclose to any person any Confidential Information or security number provided by Think Mobile (including but not limited to the Customer's 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 in Think Mobile's 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 the Customer thirty (30) days written notice of its intention to do so provided only that the Customer has been Connected for the Contract Term; or
- (b) the Customer exceeds the Credit Limit; or
- (c) the Customer is in breach of this Agreement; or
- (d) a regulatory authority such as the ACMA 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 might damage the Service Network; or

- (g) the Customer or someone acting on the Customer's behalf informs Think Mobile that it has lost a SIM; or
- (h) Think Mobile has an incomplete record of information about the Customer; or
- (i) Think Mobile suspects that its record of information about the Customer contains materially incorrect or incomplete information; or
- (j) the Customer:
  - (i) dies;
  - (ii) is a partner in a partnership, and the partnership dissolves; or
  - (iii) suffers an Insolvency Event;
- (k) Think Mobile believes that the Service is being used to commit unauthorised, criminal or unlawful activities; or
- (l) Think Mobile believes that a Customer has engaged in fraudulent activities in relation to a Service provided by Think Mobile; or
- (m) Think Mobile believes that a Customer has 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 to do so; 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 the Customer ports out a phone number.

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

3.3 Think Mobile will promptly suspend the Service if informed by the Customer or someone acting on the Customer's behalf that a SIM has been lost or stolen. However, the Customer is responsible for all call charges incurred up to the suspension of the Service.

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

- (a) the Customer's previous daily call spend;
- (b) the Customers unbilled charges total; 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 a Customer's personal information. Think Mobile collects the personal information to provide you with personalised wireless telecommunications and information services. Think Mobile may use a Customer's personal information for purposes that are related to providing the Customer with those services which would be reasonably expected (including purposes keeping the Customer informed about features of Think Mobile services or conducting analysis in order to provide a better service to the Customer).

- 4.2 Think Mobile will provide a Customer with access to their 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) our service and content providers, dealers and agents, 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 the Customer consents, Think Mobile will not disclose the Customer's 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 their personal information.
- 4.5 The Customer acknowledges 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, the Customer may terminate this Agreement at any time upon giving written notice to Think Mobile. If the Customer wishes to terminate the Agreement before the completion of the Contract Term, the Customer must pay an early termination fee as set out in Part A.
- 5.3 The Customer acknowledges 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, the Customer 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 the Customer any monies held on account for the Customer after any debts and liabilities of the Customer have been met under clause 6.1. Think Mobile, in its absolute discretion, may set-off any amounts payable to the Customer until the Customer pays Think Mobile all due amounts.

## **7. ASSIGNMENT**

- 7.1 The Customer may not transfer or assign any rights and obligations under this Agreement without the prior written permission of Think Mobile.
- 7.2 Think Mobile may, without notice to the Customer:
- (a) transfer its rights and obligations under this Agreement to its nominee;
  - (b) temporarily or permanently delegate its obligations under this Agreement;

- (b) require the Customer to novate this Agreement in favour of Think Mobile's nominee; or
- (c) act with the Customer's irrevocable power of attorney to sign any necessary documents to enable any such transfer, delegation or novation.

## 8. REPRESENTATIONS & WARRANTIES

8.1 The Customer represents and warrants that:

- (a) it has provided full and accurate personal information to Think Mobile in connection with this Agreement;
- (b) it has full power and authority to enter into this Agreement; and
- (c) it 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. CUSTOMER RIGHTS

9.1 The Customer has rights including the Non-excludable Rights.

9.2 Where a Customer has a complaint about the Service (the **Complaint**), the Customer should 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](mailto:mail@thinkmobile.com.au), or by writing addressed to Think Mobile Pty Limited, Locked Bag 100, Southport, Queensland, 4215, Australia.

9.3 If the Complaint is not resolved after contacting Think Mobile in accordance with clause 9.2, the Customer may contact the Telecommunications Industry Ombudsman (TIO) 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 the Customer takes possession of under this Agreement passes to the Customer on the first payment by the Customer 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 the Customer suffers 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 the Customer 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) Think Mobile does not exclude any Non-excludable Rights but does exclude and the Customer cannot rely on all other conditions, representations and warranties implied by custom, law or statute other than those expressly contained in this Agreement.
- (b) 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 The Customer indemnifies 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 Customer's 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 the Customer 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 the Customer 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**

Think Mobile may vary any term of this Agreement at any time in writing. To the extent required by the Act, Think Mobile will notify the Customer of any such variation.

### **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 Queensland.
- 17.2 Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

### **18. AGENCY**

- 18.1 The Customer appoints Think Mobile as its agent for the purposes of completing a Customer Authorisation Form on the Customer's behalf.

## PART D – SERVICE SPECIFIC TERMS AND CONDITIONS

### 1. COMMENCEMENT AND TERMINATION

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

### 2. FEES AND CHARGES

- 2.1 Think Mobile will invoice the Customer once every month, and the Customer 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 the Customer will be in a standard form. If the Customer requires a different form of invoice, the Customer must pay any applicable charges.
- 2.3 Think Mobile may vary its fees and charges from time to time. The Customer acknowledges that before entering into this agreement it has seen a copy of Think Mobile's current fees and charges. The Customer may obtain a copy of Think Mobile's current fees and charges, by contacting Think Mobile at any time.
- 2.4 The Customer 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 the Customer exceeds the Credit Limit, Think Mobile may suspend, or limit the Service until the Customer pays all outstanding fees and charges.
- 2.6 Think Mobile may require the Customer to pay a security deposit if the Customer intends to use Value-Added Services. If the Customer pays 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 the Customer does not pay Think Mobile's invoices on time for two successive months, Think Mobile may require the Customer to pay its accounts by direct debit or registered credit card for the term of this Agreement. The Customer must not cancel a direct debit or credit card authority. If the Customer cancels a direct debit or credit card authority in breach of this clause, it must pay Think Mobile extra charges as determined by Think Mobile.
- 2.8 Think Mobile may pay an agent a commission for introducing the Customer to the Service.

### 3. CUSTOMER DISCONNECTION FROM THINK MOBILE

- 3.1 The Customer must not Disconnect from the Service Network until:
  - (a) the Contract Term has expired, or the Customer has given written notice of termination and paid the early termination fee set out in Part A; and
  - (b) the Customer has otherwise satisfied the terms of this Agreement.
- 3.2 If the Customer wishes to be Disconnected from the Service Network at the end of the Contract Term, or at any time after the Contract Term, the Customer must provide Think Mobile with written notice. On receipt of such notice, the Connection will be Disconnected at the conclusion of the Customer's current monthly billing cycle for the Service.