

**SMSPup Mobile**  
**Standard Form of Agreement 11th July 2008**

**Reward Mobile Pty Ltd trading as SMSPup Mobile**

ACN 111 772 206 ABN 41 111 772 206

Standard Agreement for the Supply of Digital Mobile Telecommunications Services

By SMSPup Mobile

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This Agreement is the standard agreement for the supply of the SMSPup Mobile  
Telecommunications Service.

## 1. Introduction.

This Agreement sets out the terms and conditions on which:

- SMSPup Mobile will provide the Service to Customers; and
- Customers of SMSPup Mobile may use the Service provided by SMSPup Mobile.

It is composed of two sections

- PART A: General Information including a Dictionary, and
- PART B: General Terms and specific Service Conditions, associated tariffs, and other associated charges

## 2. Dictionary

<b>ACMA.</b>	means the Australian Communications and Media Authority
<b>Act (or the Act)</b>	means the <i>Telecommunications Act 1997</i> .
<b>Access Period</b>	means the time between the date a Customer Recharges and the Expiry Date, during which a Customer can use the Service.
<b>Agreement</b>	means this Standard Agreement, comprising Part A – General and this Dictionary, and Schedule 1 encompassing a Service Description, tariffs, other associated costs, and applicable tariff brochures issued by SMSPup Mobile from time to time. Together, these documents form the entire agreement between SMSPup Mobile and the Customer.
<b>Ancillary</b>	service means any service provided by SMSPup Mobile in conjunction with the Service, such as voicemail or short message service (SMS).
<b>Call Rate</b>	means the call rates for a Call Plan.
<b>Claim</b>	means any claim, action, proceeding, judgment, damage, loss, expense or liability, including legal costs, whether direct or indirect, however calculated.
<b>CLI</b>	means calling line information.
<b>Confidential</b>	means all confidential information about the Service, SMSPup

<b>Information</b>	Mobile, its Related Bodies Corporate, the SMSPup Mobile 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 was in the public domain at the time of its provision, otherwise than through a disclosure in breach of this agreement; or lawfully came into the possession of the other party otherwise than as a result of a disclosure in breach of this agreement.
<b>Connection</b>	means the activation of the Service. <b>Connected</b> has a corresponding meaning.
<b>Consequential Loss</b>	includes: <ul style="list-style-type: none"> <li>• indirect loss and special damages;</li> <li>• loss of revenue;</li> <li>• loss of profits;</li> <li>• loss of business;</li> <li>• loss of anticipated savings;</li> <li>• loss of goodwill;</li> <li>• loss of data;</li> <li>• claims of third parties; and</li> <li>• loss or costs associated with any of the above.</li> </ul>
<b>Credit Limit</b>	means the maximum credit, where applicable, provided by SMSPup Mobile to the Customer for the Service.
<b>Customer</b>	means the principal and person who uses the Service.
<b>Customer Authorisation Form</b>	means a form authorising a phone number to be ported.
<b>Disconnection</b>	means the disconnection of a Connection. <b>Disconnected</b> has a corresponding meaning.
<b>Duplicate IMEI Handset</b>	has the meaning given in clause 16.4(d)
<b>Grace Period</b>	means the period starting from the Expiry Date and ending 30 days later provided that the Customer has not Recharged during that period.
<b>GPRS</b>	means SMSPup Mobile's General Packet Radio Service.
<b>GPRS Compatible</b>	means a phone specified by SMSPup Mobile to be compatible with

<b>Phone</b>	GPRS.
<b>Handset Blocking</b>	means the Special Service described as such in Section 1: General Terms and Conditions of this Agreement, and <b>block</b> or <b>blocked</b> in respect of a GSM handset has a corresponding meaning.
<b>IMEI</b>	means international Mobile equipment identity.
<b>Insolvency Event</b>	<p>means the happening of any of the following events in relation to a party:</p> <p>if a natural person;</p> <ul style="list-style-type: none"> <li>• becomes bankrupt or insolvent;</li> </ul> <p>if a company: a liquidator, provisional liquidator, official manager, company administrator, administrator, receiver, manager, or receiver and manager or similar officer is appointed in respect of it;</p> <ul style="list-style-type: none"> <li>• 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;</li> <li>• it enters into a deed of company arrangement;</li> <li>• 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;</li> <li>• it suspends payments of its debts generally; or 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 <i>Corporations Law</i>, or is presumed to be insolvent under the <i>Corporations Law</i>.</li> </ul>
<b>Network</b>	means the Vodafone Mobile Digital Network or such other network as is accessed from time to time.
<b>Non-excludable Rights</b>	means rights and remedies conferred on a party by the <i>Trade Practices Act 1974</i> and similar legislation which cannot be excluded, restricted or modified.
<b>Partnership</b>	includes all partners of the partnership, jointly and severally who are partners at any given time.
<b>Principal</b>	means the person who is contracted to meet all costs of the service

	or any special services
<b>Re-connected</b>	means the re-activation of a Connection which has been Disconnected.
<b>Related Body Corporate</b>	has the meaning given to the term in the <i>Corporations Law</i> .
<b>Roaming</b>	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.
<b>Service</b>	means the SMSPup Mobile digital service as described in Schedule 1 to this Agreement.
<b>Service Provider</b>	is Reward Mobile Pty Ltd trading as SMSPup Mobile
<b>SIM</b>	means the Subscriber Identity Module, to be used with a GSM Mobile phone handset to enable use of the Service.

## PART A: General Information

### 1. Overview

This Agreement outlines the terms and conditions upon which Customers who purchase a SMSPup Mobile Pack can use the Service. The Service provides Customers with access to a digital public Mobile telecommunication service using the Network and is used to make and receive voice calls to and from:

- Telephone numbers connected to the Mobile Network of SMSPup Mobile or another supplier;
- Telephone numbers directly connected to a local exchange of Optus or Telstra or any other telecommunications carrier; Other Australian public telephone numbers; and International public telephone numbers.

The Service is subject to interconnection arrangements between SMSPup Mobile and the relevant operator of the Network with which the number is associated. The Service includes numbers in the 04XY range. If Customers have compatible equipment, the Service can also be used to make and receive data and fax calls.

### 2. Value Added Services

The following Value-Added Services are available with the Service.

- (a) Operator Services Directory assistance: is a charged service provided by dialling 1223 whereby an operator will locate the number. For overseas directory assistance, dial 0103.
- (b) Calls to emergency services are accessed by dialling 000 (or 112) within Australia or 112 from anywhere in the world; the Customer will be connected straight to emergency services; this is a free call.
- (c) Network problem reporting: to report any difficulties or faults with the Network dial 1100 (this is a free call). Special Services Once connected to the Service, the Customer may have access to SMSPup Mobile's Special Services, which are divided into calls to certain numbers and SMSPup Mobile's Contact services.
- (d) Call Options: Customers who have SMSPup Mobile's approval may call: 18XX numbers; Maritime, remote and satellite services, provided the Customer also

has appropriate equipment; 19XX numbers; International numbers. Customers with appropriate equipment can also, on request, get access to SMS PUP Mobile's fax and data service.

### 3. SMSPup Mobile Contact Services

SMSPup Mobile's Contact services are a suite of answering and message services which are outlined in Schedule 1.

### 4. Customer Service

Any questions or complaints in relation to the Services should be addressed to Customer Care by:

1. Calling	1300 123 PUP (1300 123 787)  Customer Service representatives are available during business hours from 08:00 to 19:00 Eastern Standard Time, Monday to Friday; and 09:00 to 13:00 Saturday for general service and account enquiries
2. Emailing to	<a href="mailto:support@smspupmobile.com.au">support@smspupmobile.com.au</a>
3. Faxing to	(02) 9922-5370
4. Posting in writing to:	SMS Pup Mobile PO Box 1138 North Sydney, NSW 2059

### 5. Coverage

There are certain restrictions on Service coverage. On request, SMSPup Mobile will provide Customers with information, including coverage maps, about the coverage of the SMSPup Mobile Network throughout Australia. Coverage maps are available on the SMSPup Mobile Website. Within certain coverage areas, local conditions could prevent or interfere with Mobile phone reception. Such areas may include basement car parks, lifts, buildings, mountains and road cuttings.

**6. Getting Started**

- 6.1 Connection to the Service requires the activation of a SIM, which when inserted into a handset activates the handset to the Network.
- 6.2 A Customer's contract with SMSPup Mobile commences on the activation of the SIM. Full details on activating the SIM are provided at the point of purchase.
- 6.3 The SIM remains SMSPup Mobile's property and must be returned on request.
- 6.4 Once connected to the Service, Customers are offered:
- (a) The use of a Mobile phone number;
  - (b) Fault rectification during SMSPup Mobile business hours;
  - (c) Access to the SMSPup Mobile Network; and
  - (d) Access to SMSPup Mobile Value-Added Services.

## PART B: General Terms and Conditions

### 1. The Service

- 1.1 SMSPup Mobile supplies Customers with the Service on the terms and conditions set out in this Agreement and the attached **Schedule 1 – Service Description**.
- 1.2 SMSPup Mobile will take all reasonable steps to make sure that Customers can receive the Service. However, each 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) SMSPup Mobile does not warrant currency, availability, accuracy, security or quality of any information that a Customer receives or can access using the Service;
  - (d) Customers are responsible for any reliance on or use of the information that they receive or can access using the Service;
- 1.3 Roaming relies on the networks of other carriers over which SMSPup Mobile has no control. Consequently, SMSPup Mobile cannot guarantee the quality and reliability of the Mobile service when a Customer is Roaming.
- 1.4 Subject to the national regulatory policy on numbering:
- (a) SMSPup 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 SMSPup Mobile.

### 2. Obligations of Customers.

- 2.1 Customers must:
- (a) Keep the SIM safe and in good condition;

- (b) Return the SIM to SMSPup Mobile immediately upon request;
- (c) Notify SMSPup Mobile immediately of loss of, or damage to, a SIM;
- (d) Pay SMSPup Mobile all fees and charges which are incurred in its use of the Service and all applicable government taxes, duties, imposts or levies;
- (e) Comply with all laws, regulations and guidelines concerning use of the Service;
- (f) Give SMSPup Mobile all information and co-operation it may require in relation to the Service; Follow SMSPup Mobile's reasonable instructions regarding the use of the Service; and
- (g) Notify SMSPup Mobile as soon as it becomes aware of any claim it may have against SMSPup Mobile in relation to the Service

2.2 Customers must not:

- (a) Disclose to any person any Confidential Information or security number provided by SMSPup Mobile(including but not limited to the Customer's enquiry number, barring number or personal identification number);
- (b) Use the Service for any improper, immoral, unauthorised or unlawful purpose or allow any other person to use the Service for such purposes;
- (c) Use the CLI or information derived from the CLI except in accordance with the Act;
- (d) Place, attempt or accept a reverse charge call using the Service.and
- (e) Resell, distribute or reproduce any part of the Service.

**3. Service Suspension, Limitation or Termination**

3.1 SMSPup Mobile may, in its absolute discretion suspend, limit or terminate the provision of the Service if:

- (a) SMSPup Mobile gives a Customer 14 days notice of its intention to do so; 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 ACA instructs SMSPup Mobile to do so; or
- (e) There are technical problems with the Network of SMSPup Mobile's Mobile network provider which require corrective action; or
- (f) The use of the Service by any person might damage the Network; or
- (g) The Customer, or someone acting on the Customer's behalf informs SMSPup Mobile that it has lost a SIM; or
- (h) SMSPup Mobile has an incomplete record of information about the Customer; or
- (i) SMSPup Mobile suspects that its record of information about the Customer contains incorrect or incomplete information;
- (j) the Customer:
  - (A) dies;
  - (B) is a partner in a partnership, and the partnership dissolves; or
  - (C) suffers an Insolvency Event;
- (k) SMSPup Mobile believes that the Service is being used to commit unauthorised, criminal or unlawful activities;
- (l) SMSPup Mobile believes that a Customer has engaged in fraudulent activities in relation to a Service provided by SMSPup Mobile;
- (m) SMSPup Mobile is required by law to do so, or is requested by a law enforcement agency to do so;
- (n) if the Customer ports out a phone number; or the Customer resells, distributes or reproduces any part of the Service.

- (o) Where SMSPup Mobile suspends, limits or terminates the Service under clause 3.1 (a)- (n) SMSPup Mobile will use its reasonable endeavours to provide notice to the Customer.
- 3.2 SMSPup Mobile will promptly suspend or disconnect the Service if informed by the Customer or someone authorised by the Customer to act on the Customer's behalf that a SIM has been lost. However, the Customer is responsible for all call charges incurred up to the suspension of the Service.
- 3.3 SMSPup Mobile may suspend or limit the Customer's Service if in SMSPup Mobile's opinion the amount of call charges accrued on the Customer's account is unusually high. In making this determination SMSPup Mobile may have regard to matters including:
  - (a) The Customer's previous daily call spend;
  - (b) The Customer's unbilled charges total; and
  - (c) Any unusual call spending patterns.
- 3.4 SMSPup Mobile reserves the right to suspend, limit or terminate the Service, or part thereof if the Service is being used in a manner deemed unusual, unreasonable, excessive or fraudulent by SMSPup Mobile. However, SMSPup Mobile will not be obliged to monitor usage of the Service.
- 3.5 When Disconnected from the SMSPup Mobile Network:
  - (a) The Customer no longer has the right to use their Mobile phone number;
  - (b) The Customer must immediately return the SIM card to SMSPup Mobile.

#### **4. Disclosure of Information by SMSPup Mobile.**

- 4.1 SMSPup Mobile and/or its agents and, if applicable, SMSPup Mobile's other service and content service providers, may collect a Customer's personal information. SMSPup Mobile collects the personal information to provide a personalised wireless telecommunications and information services. SMSPup Mobile may use a Customer's personal information for purposes that are related to providing those services that would

be reasonably expected (including purposes keeping the Customer informed about features of available services or conducting analysis in order to provide a better service).

4.2 SMSPup Mobile will provide Customers with access to their personal information in accordance with the *Privacy Act*.

4.3 SMSPup Mobile may receive and disclose personal information or documents about Customers 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) SMSPup Mobile's service and content providers, dealers and agents for purposes that are related to providing Customers with an acceptable telecommunications service.
- (d) Unless the Member consents, SMSPup Mobile will not disclose personal information to third parties, other than those who have contracted with SMSPup Mobile to keep the information confidential, or who are subject to legal obligations to protect their personal information.
- (e) The Customer acknowledges that any calls made to SMSPup Mobile's customer support centres may be recorded for quality assessment or training purposes.

## 5. Termination

5.1 In addition to SMSPup Mobile's termination rights in clause 3.1 SMSPup Mobile may, on the provision of reasonable notice, terminate this Agreement.

5.2 A Customer may terminate this Agreement at any time upon giving written notice to SMSPup Mobile. Written notice can be provided by:

- (a) Letter - posted to PO Box 1138 North Sydney 2065
- (b) Fax - 02 9922 5370

- (c) Email - [support@smspupmobile.com.au](mailto:support@smspupmobile.com.au)
- (d) Written notice must contain customer's full name, date of birth, billing address, account number, Mobile phone number and account password.

5.3 The Customer acknowledges that a request to port out a phone number does not result in termination of this Agreement. Subject to SMSPup Mobile's termination rights, SMSPup Mobile will require payment of all outstanding amounts relating to the service as well as any amounts arising from the port.

## 6. Obligations on Termination

6.1 On termination of this Agreement, a Customer must:

- (a) Return all property to SMSPup Mobile which 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 SMSPup Mobile under this Agreement

6.2 On termination of this Agreement SMSPup 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 SMSPup Mobile, at its absolute discretion, may set-off any amounts payable until the Member pays SMSPup 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 SMSPup Mobile.

7.2 SMSPup 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;
- (c) Require the Customer to novate this Agreement in favour of SMSPup Mobile's nominee; or 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 it:

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

8.2 SMSPup Mobile represents and warrants that:

- (a) It is a 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. Title**

9.1 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 SMSPup Mobile.

## **10. Limitation of Liability**

10.1 To the full extent permitted by law and subject to clause 10.3, SMSPup Mobile excludes all liability including any Consequential Loss under or in connection with this Agreement or the supply of the Service.

10.2 Notwithstanding clause 10.1, SMSPup 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.

### 10.3 Non-excludable Rights

- (a) SMSPup 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) SMSPup Mobile's liability in respect of any Non-excludable Right is limited, at SMSPUP 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.

## 11. 11 Indemnity

- 11.1 The Customer indemnifies SMSPup Mobile and any Related Body Corporates against all claims, actions, damages, losses, liabilities, costs, charges, expenses, outgoings or payment which SMSPup Mobile pays, suffers or incurs, or is liable for in respect of the Customer's use of the Service or the SMSPup Mobile Network, or the Customers breach of clause 2.2.

11.2 Clause 11.1 does not apply to any claim, action, damage, loss, liability, cost, charge, expense, outgoing or payment which SMSPup Mobile pays, suffers, incurs, or is liable for as a result of the wilful misconduct or reckless act or omission of SMSPup Mobile.

11.3 The indemnity in this clause 11 is a continuing obligation of a 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 SMSPup Mobile have been paid in full.

## **12. Prohibition & Enforceability**

12.1 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.

12.2 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 12 is not limited by any other provision of this Agreement in relation to severability, prohibition or enforceability.

## **13. Waiver**

13.1 SMSPup Mobile may not waive any right under this agreement except in writing.

13.2 A Waiver by SMSPup Mobile will not prejudice its rights in respect of any subsequent breach of this agreement by the Customer.

13.3 A failure or delay in enforcing a right under this agreement does not constitute a waiver.

**14. Variation**

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

**15. GPRS Specific Terms and Conditions**

15.1 SMSPup Mobile's GPRS may only be accessed with GPRS Compatible Phones.

15.2 SMSPup Mobile does not represent, warrant or guarantee the extent to which a GPRS Compatible Phone will be able to access information on the internet or elsewhere. The ability of a Customer to access, use and download information will depend on the features and functionality of their phone, the nature and quality of the information being accessed. Customers should note that the GPRS may be subject to congestion, delays and/or loss of transmitted data.

15.3 The Customer acknowledges that the GPRS coverage area may be smaller than the coverage area for other SMSPup Mobile digital Mobile services.

15.4 The Customer must comply with all conditions imposed by the content provider when accessing content using the GPRS.

15.5 The Customer agrees that the following terms and conditions apply to their use of the GPRS: is not obligated to monitor the content of information or material available from the GPRS or the Internet and that SMSPup Mobile is not liable for loss or damage suffered by the Customer or any other person as a result of using information or material obtained using the GPRS on the internet, including, but not limited to, loss or damage caused by a virus; and

(a) The Customer is responsible for all equipment and software necessary to use the GPRS as well as for the security and integrity of any information the Customer transmits or receives.

(b) The Customer uses the GPRS accepting full risk and responsibility in doing so;

(c) The Customer acknowledges that SMSPup Mobile does not check; and

- (d) The Customer will not use the GPRS for any activities which breach any laws, standards or codes or infringe a third party's rights, or breach any statements, content requirements or codes promulgated by any relevant authority including activities which will require SMSPup Mobile to take remedial action under any applicable industry code or in a way which interferes with other users or defames, harasses, menaces, restricts or inhabits any other user from using or enjoying the GPRS or the internet or which is indecent, obscene or otherwise offensive.

15.6 The terms and conditions in Clauses 15.1 to 15.6 are the GPRS Specific Terms and Conditions. Where there is any conflict between the GPRS Specific Terms and Conditions and the other terms and conditions in the Standard Form of Agreement, the GPRS Specific Terms and Conditions prevail.

## 16. Handset Blocking Specific Terms and Conditions

16.1 Handset Blocking is only available in respect of GSM handsets.

16.2 A Customer may only request SMSPup Mobile to block a GSM handset at the time, or within one month after the time, that the Customer requests the Service to be suspended or disconnect for reason of loss or theft of the Customer's SIM.

16.3 SMSPup Mobile must as soon as reasonably practicable after being requested to do so by a Customer:

- (a) Subject to clauses 16.2 and 16.5 block a GSM handset; and
- (b) Subject to verifying to its satisfaction that a Customer has lawful possession of a GSM handset which has previously been blocked, unblock the handset.

16.4 The Customer acknowledges that:

- (a) Handset Blocking is at all times subject to technical limitations;
- (b) Handset Blocking is dependent upon the IMEI of GSM handsets;
- (c) Multiple GSM handsets may have the same IMEI; and
- (d) Where 2 or more GSM handsets connected to the SMSPup Mobile Network have the same IMEI ("**Duplicate IMEI Handset**"), the blocking of one such

Duplicate IMEI Handset will also result in the other Duplicate IMEI Handset(s) becoming blocked.

- 16.5 SMSPup Mobile reserves the right not to block a GSM handset where:
- (a) The handset is to SMSPup Mobile's knowledge a Duplicate IMEI Handset; or
  - (b) To do so would adversely impact upon another Customer's use of the Service in good faith.
- 16.6 Where SMSPup Mobile has blocked a GSM handset upon request by a Customer and is subsequently notified by another Customer that the handset is a Duplicate IMEI Handset, SMSPup Mobile will unblock the handset as soon as reasonably practicable following such notification (subject to it verifying to its satisfaction the other Customer's lawful possession of a Duplicate IMEI Handset).
- 16.7 Where a Customer's Duplicate IMEI Handset is blocked as a consequence of SMSPUP Mobile blocking the Duplicate IMEI Handset of another Customer, SMSPup Mobile will not be liable for any loss or damage incurred by the first mentioned Customer as a result of or in any way in connection with the first mentioned Customer's Duplicate IMEI Handset becoming blocked.
- 16.8 The Customer acknowledges that where SMSPup Mobile has blocked a GSM handset:
- (a) The handset will be unable to be used on the SMSPup Mobile Network only in respect of the following services:
    - (i) to make or receive voice calls (except calls to emergency "000" and "112" numbers); and
    - (ii) to make or receive SMS messages.
  - (b) The handset will be able to be used on the SMSPup Mobile Network to access all the services available on the SMSPup Mobile Network other than those referred to in paragraph 16.8 (a)(i) and 16.8 (a)(ii) and
  - (c) The handset may be able to be used to access any of the services available on the Mobile telecommunications network of any other carrier.

**17. Standard Form of Agreement**

17.1 This Agreement constitutes a Standard Form of Agreement within the meaning of the Act.

**18. Governing Law and Jurisdiction**

18.1 This Agreement is governed by the laws of the state in which the Customer ordinarily resides.

**19. Agency**

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

**20. Interpretation**

20.1 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.

## SCHEDULE 1: Service Description

### 1. Service Overview

#### 1.1 Contact Services.

SMSPup Mobile Contact Services consist of:

- SMSAlert: By dialling 1218 (free call), Customers also have the option of installing SMS alert. Once installed, a short “beep” will sound and/or an envelope or text message will appear on the screen of the Customer’s Mobile phone to alert Customers of new messages. Customers should delete all SMS Alerts as soon as possible to ensure there is sufficient memory on their Mobile phone to store new messages;
- CALLminder: CALLminder is a service offered free to subscribers that have elected not to use voicemail. This service allows a caller to send an SMS notification to the subscriber of the call that was missed. The caller can elect to send through the date and time of the call and the callers contact number by SMS so the subscriber is informed of who has called. For assistance with this service, dial 1300 123 787;
- CALL wait and CALL hold:These services allow Customers with certain mobile phones to switch between calls by using commands on their mobile phone keypad. For assistance with these services, dial 1300 123 787;
- Call Forwarding: This service diverts the incoming calls to another phone. For assistance with this service, dial 1300 123 787;
- Call Barring: This service is a security option which allows incoming and/or outgoing calls to be barred. For assistance with this service, dial 1300 123 787.
- Call Conference:This service enables a Customer with a conference call capable mobile handset to initiate a conference call and call multiple parties to join the conference call up to a maximum of 8 participants on a conference call. This number may be less depending on the handset model and its conference call support features. For assistance with this service, dial 1300 123 787.

All of these services can be used as required without incurring a monthly subscription fee. Customers only pay for the services used.

## 1.2 GPRS

SMSPup Mobile offers 2 services over GPRS:

- GPRS Internet Access: GPRS enables Customers to log into the Internet whilst on the Road and away from fixed services;
- GPRS WAP Access: GPRS allows the same access to WAP sites Customers currently enjoy over the GSM circuit switched network.

## 1.3 Operator Services

Directory assistance is provided by dialling 1223 and an operator will locate the number. For overseas directory assistance, dial 0103. Calls to 1223 are charged at a set rate as a one-off 30 second block, regardless of how long the caller is on the phone to the 1223 operator.

## 2. Service-Specific Terms and Conditions

### 2.1 Commencement and Termination

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

### 2.2 Fees and charges

- (a) SMSPup Mobile will invoice the Customer monthly. In the case where the Customer's account balance is less than \$10 for the month, a bill will not be sent to the Customer for that month and the charges will carry over to the next month. If the Customer's account balance is less than \$10 for 3 consecutive months, a bill will be sent to the Customer on the third month. This will apply unless otherwise agreed between the Customer and SMSPup Mobile.
- (b) All Call Cap plans only include certain call types and services within the included charge Cap. Details of included calls are available on request and posted on the SMSPup Mobile website: ([www.smspupmobile.com.au](http://www.smspupmobile.com.au)).

- (c) The Customer must pay all outstanding amounts not more than 14 days from the date of the invoice.
- (d) SMSPup Mobile may charge interest on overdue accounts.
- (e) The Customer would be responsible to pay for all calls made using the Service even if they did not make them.
- (f) The invoice which SMSPup 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.
- (g) SMSPup 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 SMSPup Mobile's current fees and charges. The Customer may obtain a copy of SMSPup Mobile's current fees and charges, by contacting SMSPup Mobile at any time.
- (h) The Customer can have their bill issued free of charge via email. Bills issued via email must be paid by either registered credit card, debit card.
- (i) If SMSPup Mobile imposes a Credit Limit and the Customer exceeds the Credit Limit, SMSPup Mobile may suspend, or limit the Service until the Customer pays all outstanding fees and charges.
- (j) SMSPup Mobile may require the Customer to pay a security deposit if the Customer intends to use Value-Added Services.
- (k) If the Customer pays SMSPup Mobile a security deposit, SMSPup Mobile may apply the deposit, or any part of it, in payment of any outstanding fees and charges for the Service.
- (l) SMSPup Mobile may pay an agent a commission for introducing the Customer to the Service.
- (m) SMSPup Mobile may disconnect the Customer's connection if the Customer does not make a chargeable call in any 365 day period.
- (n) If any amount payable by SMSPup Mobile to a Customer is not paid because: SMSPup Mobile is unable to locate the Customer; or the Customer has been notified by SMSPup Mobile but has not claimed the relevant amount; or is

otherwise unable to be paid by SMSPup Mobile, and is not claimed by the relevant Customer within 365 days from the due date, that amount ceases to be owed by SMSPup Mobile except on demand by the relevant Customer.

- (o) If the Customer has a credit balance of \$5 or less in any SMSPup Mobile account, that amount will only be forwarded to the Customer if they make a request in writing. Written notice must contain all customer details outlined in PART B – clause 5.2..

### **2.3 Call Types and Charges:**

There are a number of different call types and Value-Added Services available with the Service.

### **2.4 Categories of Charges**

There are 3 general categories of charges for the Service:

- Call charges;
- Value-Added Services and Special Services; and
- Other charges

Customers will only be charged for connected calls. For example, there is no charge for calls to an engaged number. SMSPup Mobile may waive any charge in its absolute discretion. Charges for calls are the responsibility of the Customer who is contractually responsible to SMSPup Mobile for the Service, irrespective of whether those calls were made by the Customer or another person.

All charges are inclusive of GST (where applicable). Actual charges may vary on your statement as all charges are rounded up to the nearest cent before GST is included. All prices are subject to change.

### **2.5 Call Charges**

Charges for outgoing calls using the Service are billed at individual call tariff rates

- Standard Calls are charged as per the contracted headline rates for the Plan to which the Customer has subscribed.
- Other call types are charged as per the detailed schedule of rates referred to in the connected call plan starter pack.

## **2.6 Other Charges:**

In certain circumstances, SMSPup Mobile will charge Customers additional charges. These charges are subject to change. Additional charges include:

- unbarring fee: \$27.50, which will be incurred where the Service has been previously barred and a Customer requests that it be unbarred;
- replacement SIM: \$15.00, which will not be applied when the damage was caused by SMSPup Mobile;
- Customer telephone number (CTN) change: \$71.50;
- toll ticket enquiry: \$27.50;
- transfer of ownership within 30 days of original connection: \$0;
- transfer of ownership after 30 days of original connection: \$71.50;
- refer to drawer fee: \$22;
- late payment fee: \$3.30;

SMSPup Mobile reserves the right to require any Customer to pay a security deposit before being Connected to access some Special Services which may be used against any outstanding fees and charges for the Service should the Customer fail to pay any due amounts.

SMSPup Mobile reserves the right to charge Customers the total or a proportion of the merchant fee that SMSPup Mobile incurs for the Customers chosen method of payment for airtime bills and any other supplied service.

## **2.7 Roaming**

Additional charges apply if the Customer is Roaming.

## **2.8 National Roaming**

Customers have the ability to roam onto Telstra's network when national roaming. Customers granted access to National Roaming are charged as follows:

- Standard calls:

As per the detailed schedule of rates referred to in the connected call plan starter pack.

- Other calls:

Special charges apply for other services including Value Added Services and Special Services. Some services are not available whilst national roaming. To activate national roaming please contact SMSPup Mobile Customer Care. Offer available until withdrawn.

## **2.9 International Roaming**

Customers granted access to the international SMSPup Mobile Network while overseas are charged at the rate levied by the overseas carrier plus a SMSPup Mobile charge. All incoming calls while roaming will also incur these roaming charges. To activate global roaming please contact SMSPup Mobile Customer care at least 72 hours prior to departure. A security deposit may be required. If a Customer already uses International Roaming, the Customer will automatically have access to National Roaming.