

**SPRIGGY MOBILE
CONSUMER TERMS**
STANDARD FORM OF AGREEMENT
July 2024
V2

PLEASE READ THESE TERMS CAREFULLY AS THEY MAY HAVE IMPORTANT CONSEQUENCES FOR YOU.	4
1. ABOUT THESE CONSUMER TERMS	4
2. THE AGREEMENT	4
2.1 The <i>agreement</i>	4
2.2 When does the <i>agreement</i> apply?	4
2.3 What happens if there is an inconsistency between the different parts of the <i>agreement</i> ?	4
2.4 When does the <i>agreement</i> start?	5
2.5 When will we start providing the <i>service</i> to you under the <i>agreement</i> ?	5
2.6 For how long will we provide the <i>service</i> to you in accordance with the <i>agreement</i> ?	5
2.7 What happens at the end of the <i>minimum term</i> if the <i>agreement</i> is a <i>fixed-length agreement</i> ?	5
2.8 Responsibility for persons who you allow to use the <i>service</i>	5
2.9 <i>Bundled offer</i>	5
2.10 How we communicate with you	6
2A CHANGING THE AGREEMENT?	6
2A.1 When can we make changes to <i>fixed length</i> or <i>non fixed length agreements</i> ?	6
2A.2 What must we do if we make changes to <i>fixed length agreements</i> ?	6
2A.3 When do we consider that a change will <i>impact</i> you?	7
2A.4 What do we mean by <i>notice in writing</i> ?	7
2A.5 What do we mean by <i>fair terms</i> ?	7
2A.6 Changes that we can make to <i>fixed length agreements</i> , even if the change <i>impacts</i> you.	8
2A.7 Changes that are likely to benefit you or have a neutral or minor detrimental <i>impact</i> on you	9
2A.8 How can you change anything in the <i>agreement</i> ?	9
3. YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE	10
3.1 What is the <i>service</i> ?	10
3.2 When may we refuse your <i>application</i> ?	10
4. HOW WE DEAL WITH YOUR PERSONAL INFORMATION	10
4.1 Collection, use and disclosure	10
5. USING THE SERVICE	10
5.1 Connecting the <i>service</i>	10
5.2 Quality of the <i>service</i>	10
5.2A Blocking Calls	10
5.3 Permitted uses of the <i>service</i>	10
5.4 Unusually high use	11
5.5 Compliance with third party rules	11
5.6 No excess data charges (opt-in for eligible services)	11
5.7 Changes when moving to a plan with a lower monthly access fee	12
6. EQUIPMENT	12

6.1	What are <i>your</i> responsibilities in relation to equipment?	12
6.2	Who owns the equipment?	12
6.3	Installation of the equipment	13
6.4	Maintenance and repair of <i>our equipment or supplier owned equipment</i>	13
6.5	Lost, stolen and damaged equipment	13
7.	NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION	13
7.1	Maintenance on the <i>network</i> used to supply the <i>service</i>	13
7.2	Reporting faults	13
7.3	Assisting <i>us</i> in investigating and repairing a fault	13
7.4	<i>Our</i> responsibility for repairing faults	13
7.5	Loss of access	14
8.	FEES AND CHARGES	14
8.1	What are the fees and charges for using the <i>service</i> ?	14
8.2	Types of fees and charges (including administration charges and other charges)	15
8.3	How do <i>we</i> calculate fees and charges?	15
8.4	Specials	15
8.5	Variable charges	15
9.	BILLING AND PAYMENTS	15
9.1	How often will <i>we</i> bill <i>you</i> ?	15
9.2	What will appear on <i>your</i> bill?	16
9.3	<i>We</i> may use a billing agent to bill <i>you</i>	16
9.4	What types of payment methods may <i>you</i> use?	16
9.5	When must <i>you</i> pay <i>your</i> bill?	16
9.6	What happens if <i>you</i> do not pay <i>your</i> bill by the due date?	16
9.7	What happens if <i>you</i> have overpaid as a result of a billing error?	17
9.8	Taxes (including GST)	17
10.	COMPLAINTS AND DISPUTES	17
10.1	Making complaints	17
10.2	Suspension of payment obligations	17
10.2A	Financial Hardship Policy	17
10.3	Complaints about <i>loss</i> of access to the <i>service</i>	17
11.	CANCELLING THE SERVICE	18
11.1	<i>Your</i> right to <i>cancel the service</i>	18
11.2	<i>Our</i> right to <i>cancel the service - non fixed-length agreement</i>	18
11.3	<i>Our</i> right to <i>cancel the service - non fixed-length agreement and fixed-length agreement</i>	19
11.4	How can <i>you</i> <i>cancel the service</i> ?	19
11.5	When will the <i>service</i> be cancelled?	20
11.6	What happens when the <i>service</i> is cancelled?	20
12.	SUSPENDING THE SERVICE	21
12.1	<i>Our</i> rights to suspend the <i>service</i>	21
12.2	What happens when the <i>service</i> is suspended	22
13.	WHAT ARE YOU AND WE LIABLE FOR	22
13.1	<i>Your</i> liability to <i>us</i>	22
13.2	<i>Our</i> liability to <i>you</i>	22
14.	ASSIGNING THE AGREEMENT TO A THIRD PARTY	23
14.1	How can <i>we</i> assign <i>our</i> rights and responsibilities to a third party	23
14.2	How can <i>you</i> assign <i>your</i> rights and responsibilities to a third party	24

14.3	Domestic or family violence	24
15.	GENERAL	24
15.1	Which laws and courts govern the <i>agreement</i> ?	24
15.2	Intellectual property protections	24
15.3	What happens if <i>you</i> can't fulfil <i>your</i> obligations or <i>we</i> can't fulfil <i>our</i> obligations under the <i>agreement</i> because of an event outside <i>your</i> or <i>our</i> control?	25
15.4	What happens if <i>you</i> become a carrier or carriage <i>service</i> provider?	25
15.5	When do <i>you</i> or <i>we</i> waive a right <i>we</i> have under the <i>agreement</i> ?	25
15.6	Payment of commission by us	25
15.7	Information about <i>your</i> rights	25
16.	WHAT DO TERMS IN THE AGREEMENT MEAN?	25
16.1	Definitions	25
16.2	Interpretation	30

PLEASE READ THESE TERMS CAREFULLY AS THEY MAY HAVE IMPORTANT CONSEQUENCES FOR YOU.

1. ABOUT THESE CONSUMER TERMS

- (a) These Customer Terms are issued by Fastter Pty Ltd trading as Spriggy Mobile ABN 39 667 581 740 and are current as at the date on the front page. They may change from time to time.
- (b) These Consumer Terms set out *our* standard customer terms for *consumers*.
- (c) The meaning of the words printed *like this* is set out at the end of the *consumer terms*.
- (d) These *consumer terms*, together with *your application*, the *service description*, the *critical information summaries* and the *appendices*, forms the *agreement* with *us*. To understand *your* rights and obligations *you* need to read all of the documents that relate to *you* and the *service* *you* select.
- (e) The *service description* is a detailed description of each of the *services* *we* offer, including the different features, options and availability of a *service*.
- (f) The *critical information summaries* set out the fees or charges *we* may charge *you* for *your* use of the *service*. It also contains other information such as eligibility criteria and specific details of any *pricing plans* and some *specials* *we* offer. Please check the *critical information summaries* carefully to see what fees and charges apply to *your* use of the *service*.
- (g) The *appendices* contain further information that may apply to *your* use of the *service*, such as details of certain call charges, *our* usage policies and some *specials*. The *service description* or *critical information summaries* will refer *you* to an *appendix* if it is relevant to *your* use of the *service*.
- (h) *You* may obtain a copy of the latest version of the *consumer terms*, *critical information summaries* *critical information summaries* and *appendices* from *us* or on *our* website: www.spriggymobile.com.au/terms/.

2. THE AGREEMENT

2.1 The agreement

- (a) The *agreement* is made up of:
 - (i) *your application*,
 - (ii) these *consumer terms*,
 - (iii) the *service description*,
 - (iv) the *critical information summaries*, and
 - (v) the *appendices*.
- (b) The *agreement* is either a *fixed-length agreement* or *non fixed-length agreement*.

2.2 When does the agreement apply?

The *agreement* applies if *you* are a *consumer*.

2.3 What happens if there is an inconsistency between the different parts of the agreement?

- (a) If anything in these *consumer terms* is inconsistent with a provision in another part of the *agreement*, then unless otherwise stated, the *consumer terms* prevail to the extent of the inconsistency.
- (b) Clause 13, 'What *you* and *we* are liable for', below prevails over all other terms.

2.4 When does the *agreement* start?

The *agreement* starts when *we* accept *your application*.

2.5 When will *we* start providing the *service* to *you* under the *agreement*?

We will provide the *service* to *you* under the *agreement* from the *service start date*.

2.6 For how long will *we* provide the *service* to *you* in accordance with the *agreement*?

- (a) If the *agreement* is a *non fixed-length agreement*, *we* will provide the *service* to *you* in accordance with the *agreement* until the *service is cancelled* in accordance with clause 11, '*Cancelling the service*', below.
- (b) If the *agreement* is a *fixed-length agreement*, *we* will provide the *service* to *you* in accordance with the *agreement*:
 - (i) for the *minimum term*, or
 - (ii) until the *service is cancelled* in accordance with clauses 11.1 or 11.3 below, or
 - (iii) if neither *you* nor *we* cancel the *service* at the end of the *minimum term* (see clause 2.7 below), until the *service is cancelled* in accordance with clauses 11.1 to 11.3 below.

2.7 What happens at the end of the *minimum term* if the *agreement* is a *fixed-length agreement*?

- (a) If the *agreement* is a *fixed-length agreement* and neither *you* nor *we* cancel the *service* at the end of the *minimum term*, the *agreement* becomes a *non-fixed length agreement* and *we* will continue to supply the *service to you* on a month-to-month basis in accordance with the *agreement*.
- (b) If *you* do not wish to continue to use the *service* on a month-to-month basis after the end of the *minimum term*, *you* must inform *us* (in accordance with clause 11, '*Cancelling the service*', below) by giving *us* 30 days notice before the end of the *minimum term* that *you* wish to cancel the *service* at the end of the *minimum term*.
- (c) If *we* choose not to provide the *service* to *you* after the end of the *minimum term*, *we* will give *you* notice of this (in accordance with clause 11, '*Cancelling the service*', below) by giving *you* 30 days notice before the end of the *minimum term*.
- (d) If *we* wish to change the terms of the *agreement*, including any fees or charges, at the end of the *minimum term*, *we* will give *you* notice of this (in accordance with clause 2A below) before the end of the *minimum term*.

2.8 Responsibility for persons who *you* allow to use the *service*

You must ensure that any person *you* allow to use the *service* complies with the *agreement* as if they were *you*.

2.9 *Bundled offer*

- (a) *You* must remain connected to all *services* in a *bundled offer* to receive any applicable:
 - (i) *bundled offer pricing plan* for the selected *services*; or

- (ii) *bundled offer* discount for the selected *services*.
- (b) If *you* cancel a component of a *service* in a *bundled offer* then for each remaining *service* we may:
 - (i) remove any *bundled offer* discount being applied to *your* remaining *service*; and
 - (ii) change *your* remaining *service* onto the closest alternative current *pricing plan*; or
 - (iii) *cancel your* remaining *service* if there are technical, operational or commercial constraints on *us* that prevent *us* from continuing to supply *you* the remaining *service*.
- (c) If *you* cancel a *service* in a *bundled offer* during the *minimum term*, subject to clause 2A:
 - (i) we may require *you* to pay *us* the *cancellation fee* for that *service*; and
 - (ii) *you* may also need to pay unpaid *equipment charges* (plus *handset or device credits*) as set out in the *pricing plan*.

2.10 How we communicate with you

You agree that as part of managing our relationship with *you*, we will need to communicate with *you* about or in connection with *services* *you* have acquired from *us*. This includes:

- (a) notifying *you* of changes to your *services*, including notifying *you* of increases to your data allowances or extending the term of an existing discount;
- (b) notifying *you* that your recharge is about to expire and providing *you* with an opportunity to recharge and continue your *service*;
- (c) notifying *you* if a *service* is about to be discontinued and providing *you* with information about alternative *services* to enable *you* to maintain service continuity;
- (d) notifying *you* that your data usage is about to be slowed and providing *you* with options to restore your data speeds; and
- (e) notifying *you* during times of regional or national emergencies such as COVID 19 about options to contact *us* and measures *we* are taking to support *you* during the emergency.

2A CHANGING THE AGREEMENT?

2A.1 When can we make changes to *fixed length* or *non fixed length* agreements?

We can make any type of change to a *fixed-length agreement* or a *non-fixed length agreement* if:

- (a) the change will benefit or will not adversely affect *you*;
- (b) *you* agree to the change; or
- (c) *we*:
 - (i) reasonably expect the change to adversely affect *you*; and
 - (ii) give *you* reasonable notice of the change; and,
 - (iii) if *your agreement* is a *fixed length agreement*, we also make sure that we comply with *our* obligations set out below.

2A.2 What must we do if we make changes to *fixed length* agreements?

- (a) Generally, if *we* make a change to a *fixed length agreement* which *impacts you* and clauses 2A.6 or 2A.7 below do not apply, we must give *you* *notice in writing* of the change on *fair terms* and the right to *cancel the service*.

- (b) If we make a change to a *fixed length agreement* which is of the type listed in clauses 2A.6 or 2A.7 below, we must comply with *our* obligations set out in clauses 2A.6 or 2A.7.

2A.3 When do we consider that a change will *impact* you?

We consider that a change will *impact* you if you have used or been billed for the *service* affected by the change during the 6 months before *our* notice and we consider that the change will have more than a minor detrimental *impact* on you.

2A.4 What do we mean by *notice in writing*?

- (a) When we have to give you notice in writing under clause 2A.5 below of a change to the *agreement*, we can do so by giving it to you in person, sending it to you by mail or to your email address (if you have agreed to allow us to tell you about changes to the *agreement* by email), by bill message or bill insert, and/or if it is reasonable to do so by making the information available on *our* website (www.spriggymobile.com.au) and informing you (by recorded message, text message or in writing) of how to obtain information about the change.
- (b) If you are on a *non fixed-length agreement* and we have to give you notice in writing of a change to the *agreement*, we can do so by giving it to you in person, sending it to you by mail or to your email address (if you have agreed to allow us to tell you about changes to the *agreement* by email), by bill message or bill insert, and/or if it is reasonable to do so by making the information available on *our* website (www.spriggymobile.com.au) and informing you (by recorded message, text message or in writing) of how to obtain information about the change.

2A.5 What do we mean by *fair terms*?

- (a) When we have to give you notice of a change, we will:
- I. give you 21 days notice in writing of the change before the change occurs, and
 - II. offer you the right to cancel the service within 42 days from the date of our notice in writing.
- (b) If you choose to *cancel the service* under clause 2A.5(a)(ii) above,
- I. we will *cancel the service* on the date on which you notify us that you wish to *cancel the service* (which must be within 42 days from the date of *our notice in writing*),
 - II. you will have to pay
 - (A) your usage charges or *access fees* (incurred to the date on which you notify us you wish to *cancel the service*) and
 - (B) any outstanding amounts that cover (as applicable) installation costs, or *equipment charges* (in relation to equipment that can be used in connection with *services* provided by any third party). However, if you are a *mobile equipment lease plan* customer, you can return the *mobile device* to us (without charge), although you will have to pay an additional amount if you do not return the *mobile device* to us in *good working order*. If you wish to keep the *mobile device* leased to you under a *mobile equipment lease plan*, then you must pay us the fair market value of the *mobile device*, which will be advised to you at the time of *cancellation*.
- (c) If you have overpaid for the *service* because
- I. the *service* is cancelled during a billing period; or
 - II. the change related to a price increase that became effective prior to the date your *service* was cancelled

- III. *then your account (if you continue to have any account with us) will be credited with the amount you have overpaid, or if you have stopped obtaining the service, we will use reasonable endeavours to notify you that you have overpaid and refund the overpayment.*
- (d) If you choose to *cancel the service* under clause 2A.5(a)(ii) above, we will refund you on a pro rata basis for the remainder of your *fixed-length agreement*, the upfront costs which you incurred at the commencement of your *fixed-length agreement* for:
 - I. *installation costs or establishment fees charged by us to install the service; and*
 - II. *equipment purchased from us.*

2A.6 Changes that we can make to *fixed length agreements*, even if the change *impacts you*.

- (a) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement* even if they *impact you*,
 - I. if the change is in relation to the cost of international services or *roaming*, where we are passing on a change in the cost charged to us by a *supplier* of those international *carriage services* or *roaming*. In this case, as our rates for international *services* or *roaming* are subject to variation, we can change the charges and will publish the current charges on our website. Before you travel overseas you should contact us or see our website for indicative pricing. Go to www.spriggymobile.com.au or call Customer Service for further information;
 - II. if the change is required by law or is in relation to a fee or charge to account for a *tax* imposed by law and it is fair and reasonable for us to do so. If we expect the change to adversely affect you, we will whenever possible, try to give you at least 21 days *notice in writing* of the change. We would consider it fair and reasonable for us to make a change to the agreement to account for a tax imposed by law, if the tax imposed is directed at you, the end-user and relates to your use of, and charges you must pay us for use of, the service. An example of this would be where we pass on to you an increase in the rate of a transaction tax, such as GST or stamp duty. We would not consider it fair and reasonable to pass on a tax imposed by law if the tax imposed is directed at us, the supplier, and affects the cost to us of supplying the service to you.
 - III. if the change is to our Fair Go Policy and is reasonably necessary in order to protect our legitimate interests. Our Fair Go Policy is designed to allow us to offer you the best possible service and rates. We would consider it fair and reasonable for us to make a change to our Fair Go Policy if such a change was necessary to address instances where customers seek to abuse this (for example SIM boxing).
- (b) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is in relation to a fee or charge for a service ancillary to the supply of the *service* (for example, a billing fee or credit card transaction fee). If the change *impacts you* we will offer you:
 - I. use of a reasonable alternative at no fee or charge, or
 - II. a right to *cancel the service* without incurring fees or charges other than usage charges and *access fees* (incurred to the date on which the *service is cancelled*, which is the date on which you notify us you wish to *cancel the service*),
- (c) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is to increase the price of a *content* or premium component of the *service* (where we are passing on an increase in the cost charged to us by the *supplier* who supplies that *content service* or premium service to us. If the change *impacts you* we will:
 - I. wherever possible, still try to give you at least 21 days *notice in writing* of the increase in price if you have used the *content* or premium *service* within the previous six (6) months, and

- II. allow *you* to elect to not use the *content* or premium service without attracting any additional charges,
- (d) If the *agreement* is a *fixed-length agreement*, we can make changes to the *agreement*, if the change is a result of another carrier or service provider varying their agreement with *us* so that we need to make changes to the *agreement*. If the change *impacts you* we will:
- I. whenever possible, still try to give you at least 21 days notice in writing of the change, and
 - II. otherwise give you 42 days from the date of the notice in which you may cancel the service on fair terms.
- (e) If *you* choose to *cancel the service* under clause 2A.6(b) or (d) above then the provisions of clause 2A.5(b) apply to that cancellation.
- (f) If the *agreement* is a *fixed-length agreement* for the *service*, we can make changes to *your pricing plan* as a result of a change in the *service* category or *access* method for *your service*. If we make any such change, we must comply with *our* obligations within the Service Description. In the telecommunications industry, technology is changing constantly. As a result, this means, for example, that if there is a change to the technology used to give access to the Internet, we can change the agreement so that we can continue to supply an Internet service to you via an alternative access method with minimum inconvenience.

2A.7 Changes that are likely to benefit *you* or have a neutral or minor detrimental *impact* on *you*

- (a) We can make changes to a *fixed length agreement* relating to the characteristics of the *service* (including price) if the change is likely to benefit *you* or have a neutral or minor detrimental *impact* on *you*.
- (b) If *you* can demonstrate that such a change has had **more than a minor detrimental *impact* on *you* and the change is not of a type described in paragraph 2A.6** we:
- I. will offer you the right to cancel the service on fair terms; and
 - II. may offer you an alternative remedy to address the impact the change has had on you.

Some examples of a change that would benefit you are:

- if we decrease a call charge or access fee; or
- if we offer a new feature of the service.

Some examples of a change that we consider would have a minor detrimental impact on you:

- Withdrawing a minor feature of the service;
- Changing the content available with your service;
- a small increase in a content charge.

An example of a change that would have a neutral impact on you would be changing the URL or website address for accessing information using the service.

2A.8 How can *you* change anything in the *agreement*?

Unless expressly allowed in the *agreement*, *you* cannot make any changes to the *agreement* without first obtaining *our* consent.

3. YOUR APPLICATION FOR THE SUPPLY OF THE SERVICE

3.1 What is the service?

Aspects of the *service* you have selected are detailed in the *service description*.

3.2 When may we refuse your application?

We may refuse your application if:

- (a) you do not provide satisfactory proof of identification,
- (b) you do not meet the eligibility criteria for the *service*,
- (c) the *service* is not available at the location where you wish to acquire the *service*, or
- (d) you do not have an appropriate *credit rating*.

4. HOW WE DEAL WITH YOUR PERSONAL INFORMATION

4.1 Collection, use and disclosure

- (a) We collect personal information directly from you, and also during our ongoing relationship with you. We use it to supply products, give you the best possible *service*, and for the other purposes described in our privacy policy. Without it, we may not be able to supply products or provide the level of *service* you expect.
- (b) As explained in our privacy policy, we share personal information within Fastter Pty Ltd trading as Spriggy Mobile and with affiliated our group of companies and with a number of other service providers and partners for these purposes, some of whom may be overseas. Their locations are listed in our privacy policy. If you'd like more info about our privacy practices, how to access or correct our records, opt out of receiving marketing materials, or make a complaint, just head over to www.spriggymobile.com.au/terms/privacy-policy/.

5. USING THE SERVICE

5.1 Connecting the service

You must reasonably co-operate with us to allow us, or a *supplier*, to establish and supply the *service* to you safely and efficiently. If you do not do so, we may be entitled to *cancel the service* under clause 1.1(a)IV or 1.1(a)V or suspend the *service* under clause 1.1(a)VI or 1.1(a)VII.

5.2 Quality of the service

We will provide the *service* to you with due care and skill. In the event of unexpected faults we will use reasonable endeavours to ensure the *service* (including our *carriage service*) is restored as soon as possible.

5.2A Blocking Calls

We may block access to a number (other than an emergency service number) if we reasonably require this to be done for technical, operational or commercial reasons.

5.3 Permitted uses of the service

- (a) When you use the *service*, you must comply with:
 - I. all laws,

- II. all directions by a *regulator*,
 - III. all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968* (Cth)),
 - IV. the Fair Go Policy, and
 - V. reasonable directions by *us*.
- (b) *You* must not use, or attempt to use, the *service*:
- I. to break any law or to infringe another person's rights (including damaging any property or injuring or killing any person or infringing someone's copyright),
 - II. to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted,
 - III. to expose us to liability,
 - IV. in any way which damages, interferes with or interrupts the service, the supplier's network used to supply the service,
 - V. to make or receive calls or send or receive content other than for your own personal use,
 - VI. to wholesale any service (including transit, refile or aggregate domestic or international traffic), or
 - VII. including any SIM, in connection with a device that switches or reroutes calls to or from the supplier network or any other network.
- (c) *We* may ask *you* to stop doing something which *we* reasonably believe is contrary to paragraph (b) above. *You* must immediately comply with any such request. If *you* do not, then *we* may take any steps reasonably necessary to ensure compliance with paragraph (b) above or the request.
- (d) *You* acknowledge that, where the *service* is or includes a *carriage service*, *our supplier* whose *network* is used to supply the *service*, may be required to intercept communications over the *service* and may also monitor *your* usage of the *service* and communications sent over it.
- (e) If *you* do not comply with this clause 5.3, *we* may be entitled to *cancel the service* under clause 1.1(a)IV or V or suspend the *service* under 1.1(a)VI or VII.

5.4 Unusually high use

We may contact *you* if *we* become aware of an *unusually high use* of the *service* by *you* (including to verify any costs or charges which *you* may have incurred) however *we* are under no obligation to do so. For example, if *you* suddenly make an unusually high volume of calls to international destinations using the *service* *we* may contact *you* to determine whether that use is likely to continue. If so, *we* may ask *you* to make a pre-payment usage charge under clause 8.2(b). Please note that *we* may also be entitled to suspend the *service* under clause 1.1(a)III for an *unusually high use* of the *service*.

5.5 Compliance with third party rules

When *you* use the *service* it is *your* responsibility to comply with any rules imposed by any third party whose *content* or *services* *you* access using the *service* or whose *network* *your* data traverses.

5.6 No excess data charges (opt-in for eligible services)

If *you* have an eligible telecommunications service *pricing plan* *you* can choose to opt-in to have no excess data charges. If *you* choose this option and exceed *your* included monthly data for use in Australia on any such eligible services, then those eligible services as well as any other telecommunications service *pricing plan* that shares data and is on the same billing account as those

eligible services will be slowed to a maximum of 1.5Mbps until the start of your next billing period unless you purchase extra data. We will endeavour to contact you if your services are eligible for this opt-in, otherwise you can contact us to confirm your eligibility.

5.7 Changes when moving to a plan with a lower monthly access fee

If *you* move from a telecommunications service *pricing plan* to another *pricing plan* with a lower monthly access fee while in a current billing period, *you* will receive the new inclusions of the new *pricing plan* immediately but will be required to pay the monthly access fee of your old *pricing plan* for the remainder of that billing period. *You* may choose for *your* new *pricing plan* to begin from the start of *your* next billing period by contacting *us*. Other fees may apply depending on your service. *You* will need to check your old *pricing plan* for details. Plan details are contained in the *critical information summaries*.

6. EQUIPMENT

6.1 What are *your* responsibilities in relation to equipment?

- (a) *You* must ensure that all equipment *you* use in connection with the *service* and the way *you* use that equipment complies with:
- I. all applicable laws,
 - II. all directions by a *regulator*,
 - III. all notices issued by authorisation of or under law (for example, under the *Copyright Act 1968 (Cth)*), and
 - IV. reasonable directions by *us*.
- (b) If *you* breach paragraph (a) above, *we* may:
- I. disconnect the equipment from the *service*;
 - II. *cancel* the *service* in accordance with clause 1.1(a)IV or 1.1(a)V; or
 - III. suspend the *service* in accordance with clause 1.1(a)VI or 1.1(a)VII.
- (c) *We* will try to give *you* reasonable notice before *we* disconnect the equipment under paragraph I above, but *we* may disconnect the equipment, suspend the *service* or *cancel the service* immediately if there is an emergency.

6.2 Who owns the equipment?

- (a) *Our equipment or supplier owned equipment*:
- I. Any equipment owned by *us* or our *suppliers* remains *ours* or our *suppliers'* property or the property of *our personnel*.
 - II. Subject to *your statutory rights as a consumer*, *you* are responsible for any of *our equipment* from when *you* receive it.
 - III. *You* must not mortgage or grant a charge, lien or encumbrance over any of *our equipment* or *supplier-owned equipment*.
- (b) Equipment purchased by *you* from *us* or any of *our personnel*:
- I. *You* may purchase equipment from *us* or any of *our personnel* to use in connection with the *service*.
 - II. Subject to *your statutory rights as a consumer*, *you* will own the equipment and be responsible for the equipment from when *you* receive it.

- (c) Devices leased by *you* from *us* or *our personnel*.
- I. *You* may lease a device from *us* or *our personnel* to use in connection with the *service*.
 - II. Subject to *your statutory rights as a consumer*, and the provisions of *your mobile equipment lease plan*, *you* will have possession of the leased device during the *minimum term* and will be responsible for the leased device when *you* receive it.
 - III. The *Mobile Equipment Lease Plan* sets out when title in the device may pass to *you*.

6.3 Installation of the equipment

You must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the *service* and located on the *premises*.

6.4 Maintenance and repair of *our equipment* or *supplier owned equipment*

- (a) Unless *we* both agree otherwise, *you* must allow *our personnel* (and only *our personnel*) to *service*, modify, repair or replace any of *our* or *our supplier owned equipment* or any devices leased by *you* from *us* or *our personnel*.
- (b) After installation, if *we* make a service call at *your* request and there is no fault with the equipment supplied to *you*, *we* may charge *you* a service fee.

6.5 Lost, stolen and damaged equipment

- (a) *You* are responsible for any lost, stolen or damaged devices leased by *you* from *us* or *our personnel* or *our suppliers owned equipment*, except if it is caused by *us* or *our personnel*.
- (b) *You* will be responsible for any outstanding payments for equipment that *you* have purchased or leased from *us* or *our personnel*, even when that equipment is lost, stolen or damaged, except if it is caused by *us* or *our personnel*.

7. NETWORK MAINTENANCE, FAULT REPORTING AND RECTIFICATION

7.1 Maintenance on the *network* used to supply the *service*

- (a) *We* may conduct maintenance on our systems and maintenance may be conducted on a *supplier's network* used to supply the *service*.
- (b) *We* will try to conduct scheduled maintenance on our systems and on our supplier's *network* outside normal business hours, but *we* may not always be able to do so.

7.2 Reporting faults

- (a) *We* will provide a fault reporting service for *you* to report faults.
- (b) Before *you* report a fault to *us*, *you* must take all reasonable steps to ensure that the fault is not caused by any equipment that *we* are not responsible for such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

7.3 Assisting *us* in investigating and repairing a fault

You must provide all reasonable assistance to enable *us* or *our personnel*, or where necessary a *supplier*, to investigate and repair a fault.

7.4 *Our* responsibility for repairing faults

- (a) *We* will repair faults within our systems and will facilitate for the repair of faults in our *suppliers'* network.

- (b) Unless the *service description* expressly provides otherwise, we are not responsible for repairing any fault in the *service* where the fault arises in or is caused by:
- I. a *supplier's* network,
 - II. equipment that we are not responsible for such as equipment that is owned or leased by you or is not provided by us for you to use in connection with the *service*, or
 - III. facilities outside our *suppliers'* network.
- (c) Where:
- I. the fault arises in or is caused by a *supplier's* network,
 - II. we become aware of the fault, and
 - III. we are not responsible for the repair of that fault,

we will notify the *supplier* of the fault and request that the fault be corrected promptly, but we will not bear any further liability or responsibility.

- (d) Where the fault arises in or is caused by equipment that we are not responsible for such as equipment that is owned by you or is not provided by us for you to use in connection with the *service*, we are not responsible for the repair of that fault. If you ask us to investigate and repair such a fault:
- I. we will give you an estimate of the probable cost of investigating the fault and, if you agree to pay those costs, we will undertake an investigation and we will then charge you for the cost of investigation,
 - II. if we have investigated the fault, we will use reasonable endeavours to inform you of the fault's probable cause, and
 - III. if you request us to repair the fault and we agree to repair the fault, we will give you an estimate of the probable cost of repairing the fault and we will then charge you for the cost of repairing the fault.
- (e) If we investigate a fault and determine that the fault is attributable to an *excluded event*, then we may charge you for any costs we incur in investigating and repairing the fault.

7.5 Loss of access

If the fault results in a significant *loss* of access to, or use of the *service*, you should check if you are entitled to a refund or rebate under clause 10.3 below. You may also be entitled to *cancel the service* under clause 11.1(a)(A) below.

8. FEES AND CHARGES

8.1 What are the fees and charges for using the service?

- (a) You must pay:
- I. the fees and charges for the *service*, which are set out in the Critical Information Summaries or in any applicable *special*, and
 - II. any additional fees and charges noted in the *agreement* (including in your *application*) or notified by us in accordance with the *agreement* from time to time.
- (b) You must pay the fees and charges for the *service* even if the *service* is unavailable or you are unable to access the *service*. You may be entitled to a refund or a rebate under clause 10.3 below if:

- I. *you* suffer a significant *loss* of access to, or use of, the *service*, and
- II. the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not provided by *us* for *you* to use in connection with the *service*.

8.2 Types of fees and charges (including administration charges and other charges)

- (a) In addition to the fees and charges *you* incur in the normal use of the *service* (including an *access fee*, where applicable), *we* may charge *you* for an administration fee and other similar charges. These costs may include suspension fees or *cancellation fees*, late payment fees, payment dishonour fees and reconnection or reactivation fees. These charges are set out in the *critical information summaries* for *your service*.
- (b) *We* may also ask *you* to make a pre-payment usage charge or request that *you* make an interim good-faith payment (including, for example, if there has been an *unusually high use* of the *service* or if *you* want to activate *roaming*).

8.3 How do we calculate fees and charges?

- (a) To calculate fees and charges *we* look at billing information generated or received by *us*.
- (b) If *you* use the services of a third party, *you* will be billed at the third party's applicable rates and charges. *We* may bill *you* for *your* use of the services of a third party, acting in *our* capacity as that third party's billing agent only.

8.4 Specials

- (a) *We* may offer *you* a *special* from time to time (including a *special* in relation to a particular *pricing plan*).
- (b) *We* will notify *you* of any *specials* offered to *you* either through general advertising or by specifically advising *you*. The terms of each *special* will either be set out in the *critical information summaries* for the relevant *service*, in an appendix, in advertising material or *you* will be advised separately in writing.
- (c) A *special* may be an offer to vary the price or the terms of supply (including the *minimum term*), and it may be subject to certain conditions.
- (d) If *you* validly accept a *special*, the terms of the *special* will prevail to the extent that the terms of the *special* are inconsistent with the terms of the *agreement*. Otherwise, the terms and conditions of the *agreement* continue to apply.
- (e) After the *special* expires, *we* may end the *special* and the full terms and conditions of the *agreement* will apply.

8.5 Variable charges

- (a) Some fees and charges for the *service* are subject to variation, such as charges relating to:
 - I. international *carriage services* or *roaming*; and
 - II. *content* or premium components of the *service*.
- (b) *You* should contact *us* before travelling overseas.

9. BILLING AND PAYMENTS

9.1 How often will we bill you?

We will bill *you* on a regular basis (either in advance or in arrears), unless otherwise set out in the *service description*.

9.2 What will appear on *your* bill?

- (a) *We* will try to include on *your* bill all charges for the relevant billing period. However, this is not always possible and *we* may include these unbilled charges in a later bill(s).
- (b) *We* may place *your service* on a single bill with one or more other *services* that *you* have with *us*. At point of sale, *you* may choose to have all *services* billed individually. If *you* receive a single bill, afterwards it may not be possible to obtain individual bills for *your services*.
- (c) If *you* notify *us* that *you* prefer to receive a paper bill *we* will post a paper bill to the address provided by *you* and a *paper invoice fee* may be payable;
 - I. by default, the paper bill that *we* provide *you* with may only display a summary of charges for *your* account and *your services*; and
 - II. *you* will be able to view fully itemised and detailed charges in the Spriggy App (available to download from your favourite app store).

9.3 *We* may use a billing agent to bill *you*

We may bill *you* using a billing agent.

9.4 What types of payment methods may *you* use?

- (a) *You* may pay by one of the payment methods as set out in the "How to Pay" section of *your* bill or on *our* websites.
- (b) Unless *you* pay by direct debit *we* will charge a payment processing fee if *you* choose to use a credit, charge or debit card to pay *your* bill.

9.5 When must *you* pay *your* bill?

Subject to clause 10.2, *you* must pay the entire amount billed by the due date specified in the payment notification, bill or as otherwise notified by *us*.

9.6 What happens if *you* do not pay *your* bill by the due date?

If *you* do not pay *your* bill by the date the payment is due, *we* may:

- (a) charge *you* a late fee. *You* should see the relevant *critical information summaries* for the *service* concerned to check the late fee that applies;
- (b) suspend or *cancel the service*, in accordance with clause 11 or 12 as relevant or the relevant *service description*. If *we* suspend or *cancel the service*, *we* may charge *you* a suspension fee or *cancellation fee* (in addition to any other fees that may be payable under *your agreement* with *us*). If the *service* is cancelled and the *carriage service* disconnected or deactivated, *you* may have to pay a reconnection or reactivation fee for the reconnection or reactivation of the *service*. *You* should see the relevant *critical information summaries* for the *service* concerned to check what fees apply, and if fees do apply, what that fee is;
- (c) engage a mercantile agent to recover the money *you* owe *us*. If *we* engage a mercantile agent, *we* may charge *you* a recovery fee;
- (d) institute legal proceedings against *you* to recover the money *you* owe *us*. If *we* institute legal proceedings, *we* may seek to recover *our* reasonable legal costs reasonably incurred;
- (e) on-sell any unpaid amounts to a third party. If *we* do this, any outstanding amounts will be payable to that third party; and
- (f) in the case of some network technologies, change *your* plan to a financial hardship plan.

9.7 What happens if *you* have overpaid as a result of a billing error?

If *you* have overpaid as a result of a billing error:

- (a) *your* account will be credited with the amount *you* have overpaid, or
- (b) if *you* have stopped obtaining the *service*, *we* will use reasonable endeavours to notify *you* that *you* have overpaid and refund the over payment.

9.8 Taxes (including GST)

- (a) Unless otherwise indicated, the fees and charges set out in the *agreement* include any amount on account of *tax*.
- (b) Where the fees and charges do not include an amount on account of *tax*, if any *tax* is payable by *us* in relation to, or on any supply under or in connection with the *agreement*, *we* will increase the *tax* exclusive fees and charges by an additional amount on account of the *tax*. *You* must pay the additional amount at the same time *you* pay the fees and charges. This applies where the *tax*, such as GST, is directed at, and imposed on, *you*, the end-user.

10. COMPLAINTS AND DISPUTES

10.1 Making complaints

- (a) If *you* have any complaints in connection with the *service*, *you* may complain in writing (including by sending us an email to complaints@spriggymobile.com.au or by calling *us*).
- (b) *We* will handle *your* complaint in accordance with *our* complaints procedure. *You* may obtain a copy of this procedure from *us* or on *our* website: www.spriggymobile.com.au/terms/complaints-policy/
- (c) *We* will use *our* best endeavours to resolve *your* complaint, however if *we* are not able to resolve *your* complaint to *your* satisfaction, *you* can take *your* complaint through other avenues, such as the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in *your* state or territory.

10.2 Suspension of payment obligations

Where *your* complaint is about a fee or charge for the use of the *service*, provided *we* reasonably believe *your* complaint is bona fide, *we* will

- (a) in most cases suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved, or
- (b) if *you* pay by direct debit, protect *your* account and reverse any incorrect fees or charges that have been applied to *your* account, once the complaint has been investigated and resolved.

All other fees and charges that are not in dispute are due and payable.

10.2A Financial Hardship Policy

The Financial Hardship Policy contains information about how *we* can assist customers who are experiencing financial hardship. *You* can see and print a copy on our website or have a copy sent to *you* by calling *us*.

10.3 Complaints about *loss of access to the service*

Where *your* complaint is about a significant *loss* of access to, or use of, the *service* and the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that *we* are not responsible for, such as equipment that is owned by *you* or is not leased or provided by *us* (or *our* *personnel*) for *you* to use in connection with the *service*, *you*

- (a) will be entitled to a refund or a rebate of any *access fees* for the period in which *your* access or use was interrupted (including when an *intervening event* occurs). The *service description* may set out the way in which any rebate or refund is calculated; and
- (b) may be entitled to *cancel the service* under clause 11.1(a)(A) below.

You should contact customer *service* to lodge *your* complaint.

11. CANCELLING THE SERVICE

11.1 **Your right to cancel the service**

(a) You may *cancel the service* at any time by:

- I. giving us 30 days notice (please note that *you* are required to give us this notice if *you* do not wish to continue to use the *service* after the end of the *minimum term* of a *fixed-length agreement*, otherwise we will continue to supply the *service* to *you* - see clause 2.7(b) above), or
- II. giving us notice, if:
 - (A) we breach a material term of the *agreement* and we cannot remedy that breach, including where there are prolonged or repeated interruptions to *your* access to or use of, the *service* and the *loss* was not as a result of circumstances reasonably attributable to *you* or equipment that we are not responsible for, such as equipment that is owned by *you* or is not leased or provided by us (or *our personnel*) for *you* to use in connection with the *service*; or
 - (B) we breach a material term of the *agreement* and we can remedy that breach, but we do not remedy that breach within 30 days after *you* give us notice requiring us to do so; or
 - (C) any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days.

(b) If the *agreement* is an unsolicited *consumer agreement* regulated by the unsolicited *consumer agreement* provisions of the Australian Consumer Law, *you* may also *cancel the service*

- I. before the end of the cooling-off period which is:
 - (A) if the *agreement* was negotiated otherwise than by telephone - the period of 10 business days from and including the first business day after *you* signed *your application*; or
 - (B) if the *agreement* was negotiated by telephone - the period of 10 business days from and including the first business day after *you* received written confirmation from us of *your application*;
- I. in accordance with any additional termination rights *you* may have relating to unsolicited *consumer agreements* under the Australian Consumer Law. Details about these additional rights to cancel the *agreement* are set out in the information provided to *you* with *your application*.

(c) If the *agreement* is a *fixed-length agreement*, *you* may also *cancel the service* in accordance with clause 2A above. Clause 2A sets out the circumstances which give *you* the right to *cancel the service* if we change the *agreement*.

11.2 **Our right to cancel the service - non fixed-length agreement**

If the *agreement* is a *non fixed-length agreement*, we may *cancel the service* at any time by:

- I. giving *you* at least 30 days notice; or

- II. after the recharge grace period has elapsed if you fail to recharge a pre-paid service.

11.3 Our right to cancel the service - non fixed-length agreement and fixed-length agreement

(a) We may *cancel the service* at any time if:

- I. we reasonably suspect fraud by *you* or any other person in connection with the *service*,
- II. any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and we give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after we give *you* that notice, unless otherwise set out in the *agreement*,
- III. we reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* (which is not the subject of a valid dispute under clause 10.2 above) in respect of any *service* by its due date and *you* are given notice requiring payment of that and *you* fail to pay that amount in full within the required period,
- IV. *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Go Policy) or breach clause 6.1 above) and *you* cannot remedy that breach,
- V. *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this clause) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Go Policy) or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after we give *you* notice requiring *you* to do so,
- VI. we are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)),
- VII. *you* suffer an *insolvency event* and we reasonably believe we are unlikely to receive payment for amounts due,
- VIII. *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and we reasonably believe we are unlikely to receive payment for amounts due,
- IX. the *service* is suspended in accordance with clause 12 for more than 14 days, unless otherwise set out in the *agreement*,
- X. any *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days,
- XI. we have reasonable grounds to believe that your communications or physical interactions with our *personnel* have been menacing, threatening, amounts to harassment or have otherwise been of an unacceptable nature,
- XII. a *supplier* cancels a contract with us required to provide the *service*, or
- XIII. we are otherwise entitled to do so under the *agreement*.

(b) In most circumstances, we will give *you* as much notice as we reasonably can before we *cancel the service*. However, in some circumstances, for example in an emergency or if we consider *your* use of the *service* is unreasonable and in breach of Fair Go Policy, we may *cancel the service* without notice to *you*.

11.4 How can you cancel the service?

- (a) You can ask us to *cancel the service* by using your Spriggy app, by emailing us or by calling us. Your request will be taken as notice to *cancel the service*.
- (b) You may also be able to *cancel the service* by electing to have an equivalent *service* to the *service* supplied by another carrier or carriage service provider (including, by churning). That carrier or carriage service provider will inform us that you have elected to have the relevant *service* supplied by them or have churned to them and we will *cancel the service* immediately.

11.5 When will the service be cancelled?

The *service* will be cancelled on the *cancellation date*. You will not be able to use the *service* after the *cancellation date*.

11.6 What happens when the service is cancelled?

- (a) The *agreement* terminates when the *service* is cancelled.
- (b) If the *service* is cancelled:
 - I. you are liable for any charges incurred (including the *cancellation fee*, and outstanding *equipment charges* if any) to the end of the billing period in which the *service* is cancelled (you should check the *service description* and *critical information summaries* for your *service* for details of any applicable *cancellation fee*). You will not be liable for any such charges under this subsection if you *cancel the service* in accordance with section 1.1(a)I above. You will only be liable for any charges incurred to the date on which the *service* is cancelled if you are in the *minimum term* of your *fixed-length agreement* and you cancel the *service* in accordance with clauses 11.1(a)(ii)(A), 11.1(a)(ii)(B) or 11.1(c) above.
 - II. because an *intervening event* prevents the supply of the *service* in accordance with the *agreement* for more than 14 days (under clause 11.1(a)(C) or 1.1(a)X above), you are liable for any charges incurred (including outstanding or *equipment charges* if any) to the end of the billing period in which the *service* is cancelled. However, unless it is fair and reasonable for us to do so, we will not charge you any *cancellation fee* and/or you will only be liable for charges you incurred to the date on which the *service* is cancelled, in these circumstances.
 - III. you authorise us to apply any over payment on your account and/or money that you have paid in advance for the *service* which is being cancelled to pay for any undisputed outstanding charges (including the *cancellation fee*, if any),
 - IV. subject to paragraphs (i), (ii) and III above and unless otherwise set out in the *service description* (for example we may not refund or redeem for cash any unused prepaid credits on a pre-paid *service*), we will refund any over payment on your account and any money that you have paid in advance for the *service* which is being cancelled on a pro-rata basis to you, and
 - V. if you are required under the *service description* to pay for the *service* by direct debit payment (either from your credit card or from your nominated bank account), you authorise us to debit any undisputed outstanding charges (including any *cancellation fee*, if any) from your credit card or bank account.
- (c) If the *service* is cancelled as a result of circumstances reasonably attributable to you:
 - I. before the *service start date*, you must pay us all infrastructure and installation costs incurred by us in connection with preparations for supplying the *service* to you, and
 - II. during the *minimum term*, subject to clause 2A, you must pay us the *cancellation fee*.
- (d) If you wish to reinstate the *service* you should contact us. If the *service* is cancelled as a result of circumstances reasonably attributable to you and we reinstate the *service*, then you may have to pay us a reconnection or reactivation fee.

- (e) If *you* are able to use the *service* after the *cancellation date*, *you* are liable for any charges incurred by *you* for that use, in addition to any other charges under this clause 11.6.
- (f) In addition to the charges mentioned above, *you* may be liable for other fees and charges upon cancellation (including in relation to equipment obtained or leased from *us* or *our personnel*), depending on the terms of *your agreement*.

12. SUSPENDING THE SERVICE

12.1 *Our rights to suspend the service*

- (a) *We* may suspend the *service* at any time, if:
 - I. doing so is necessary to allow *us* or a *supplier* to repair, maintain or *service* any part of *our systems* or a *supplier's network* used to supply the *service*,
 - II. *we* reasonably suspect fraud by *you* or any other person in connection with the *service*,
 - III. *we* reasonably believe there has been an *unusually high use* of the *service*,
 - IV. any amount owing to *us* in respect of the *service* (which is not the subject of a valid dispute under clause 10.2 above) is not paid by its due date and *we* give *you* notice requiring payment of that amount and *you* fail to pay that amount in full within ten (10) business days after *we* give *you* that notice, unless otherwise set out in the *agreement*,
 - V. *we* reasonably consider *you* a credit risk because *you* have not paid amounts owing to *us* (which is not the subject of a valid dispute under clause 10.2 above) in respect of any *service* by its due date and *you* are given notice requiring payment of that amount and *you* fail to pay that amount in full within the required period,
 - VI. *you* breach a material term of the *agreement* (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Go Policy) or breach clause 6.1 above) and *you* cannot remedy that breach,
 - VII. *you* breach a material term of the *agreement* (other than a breach which separately gives rise to rights under this paragraph) (including for the avoidance of doubt, but not limited to, clauses 5.1 and 5.3 above or *your* obligations relating to the use of the *service* set out in the *service description* or otherwise misuse either the *service* (for example in breach of the Fair Go Policy) or breach clause 6.1 above) and *you* can remedy that breach, and *you* do not remedy that breach within 30 days after *we* give *you* notice requiring *you* to do so,
 - VIII. *we* are required to do so to comply with an order, instruction, request or notice of a *regulator*, an emergency *services* organisation, any other competent authority or by authorisation of or under law (for example, under the Copyright Act 1968 (Cth)),
 - IX. problems are experienced interconnecting *our systems* with any *supplier's network*,
 - X. *you* suffer an *insolvency event* and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
 - XI. *you* die or if *you* are a partnership and the partnership is dissolved or an *application* is made to dissolve the partnership, and *we* reasonably believe *we* are unlikely to receive payment for amounts due,
 - XII. *we* have reasonable grounds to believe that your communications or physical interactions with our *personnel* have been menacing, threatening, amounts to harassment or have otherwise been of an unacceptable nature,
 - XIII. a *supplier* suspends a contract with *us* required to provide the *service*,

XIV. you fail to recharge a pre-paid service on the recharge due date and fail to make the payment for the next recharge period within 24 hours; or

XV. we are otherwise entitled to do so under the *agreement*.

(b) In most circumstances, we will give you as much notice as we reasonably can before we suspend the service. However, in some circumstances, for example in an emergency or if we consider your use of the service is unreasonable and in breach of our Fair Go Policy we may suspend the service without notice to you.

(c) If we suspend the service, we may later cancel the service under clause 11 for the same or a different reason.

12.2 What happens when the service is suspended

(a) If the service is suspended, you will have to pay access fees and equipment charges for the service while it is suspended.

(b) If the service is suspended and the suspension was not as a result of circumstances reasonably attributable to you or equipment that we are not responsible for, such as equipment that is owned by you or is not provided or leased by us (or our personnel) for you to use in connection with the service, you will be entitled to a refund or a rebate of any access fees or equipment charges for the period of suspension. You should contact customer service for your refund or rebate.

(c) If the service is suspended as a result of circumstances reasonably attributable to you, you may have to pay us a suspension fee. You should check the relevant critical information summaries for the service concerned to see if a suspension fee applies.

(d) If you wish to lift the suspension you should contact us.

13. WHAT ARE YOU AND WE LIABLE FOR

13.1 Your liability to us

(a) You are liable to us for any breach of the agreement by you that causes foreseeable substantial loss to us.

(b) You are not liable to us for any consequential losses we suffer or for any costs, expenses, loss or charges that we incur which are not a direct result of something you have done.

13.2 Our liability to you

(a) We have responsibilities and obligations under the law, including under:

- I. the *Telecommunications Legislation*,
- II. the *Competition and Consumer Act*, including the *Australian Consumer Law*,
- III. applicable laws, regulations and codes.

Nothing in the agreement removes or limits any rights that you have under existing laws or regulations.

Your statutory rights as a consumer

Under the *Australian Consumer Law*, if you enter into an agreement to purchase goods or services from us which cost less than \$100,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by you, certain consumer guarantees apply to those goods and services in relation to acts or omissions that occur on or after 1 January 2011 (consumer guarantees).

Consumer guarantees apply regardless of any express warranties to which *you* may be entitled under this *agreement*.

We guarantee that:

- goods are of acceptable quality (unless *we* specifically drew to *your* attention the reasons why the goods are not of acceptable quality);
- any express warranties will be honoured;
- *you* are buying goods that have clear title, that do not have undisclosed securities and with a right to undisturbed possession;
- *you* are buying goods that are fit for any disclosed purpose;
- *you* are buying goods that match the description, sample or demonstration model; and
- the *services* we supply are provided with due care and skill, are fit for any specified purpose (as are any products resulting from the *services*) and are provided within a reasonable time, if no time is fixed for supply of the *services*.

If the goods or *services* we supply fail to meet a *consumer* guarantee, *you* may have rights against *us*. This may include the right to a repair, replacement or refund. In certain circumstances *we* may choose how *we* remedy *our* failure. In other circumstances, *you* may choose how the failure should be remedied.

You may not be entitled to a refund or replacement under the *Australian Consumer Law* if the good is not rejected within a reasonable period; *you* have lost, destroyed or disposed of the good; or the good has been damaged after delivery. *You* may be entitled to recover reasonably foreseeable *loss* or damage suffered for *our* failure to meet a *consumer* guarantee.

You may also have rights against *us* in relation to acts or omissions occurring before 1 January 2011 that amount to a breach of an implied condition and/or warranty under the *Trade Practices Act*, in respect of goods or *services* purchased from *us* which cost less than \$40,000 or are normally acquired for personal, domestic or household use and, in the case of goods, the goods are not re-supplied by *you*.

(b) *We* are liable to *you* for:

- I. any damage to *your* property which has been caused by the fault, negligence or fraud by *us* or *our personnel* during installation, repair or maintenance,
- II. interruptions in *your* use of the *service* as a result of a fault or negligence of *us* or *our personnel*, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable *loss* incurred, and
- III. death or personal injury caused by *us* or *our personnel*.

(c) If *you* have contributed to any *loss* or damage *you* are claiming against *us*, *our* liability is reduced to the extent of *your* contribution.

(d) Subject to *your statutory rights as a consumer*, *we* are not liable to *you* for any *consequential losses* *you* suffer or for any costs, expenses, *loss* or charges that *you* incur.

(e) The *supplier network provider* is not liable to *you* in contract, tort (including negligence) or otherwise in relation to any *service* we provide to *you*, or any delay or failure to provide the *service* to *you*.

14. ASSIGNING THE AGREEMENT TO A THIRD PARTY

14.1 How can we assign our rights and responsibilities to a third party

- (a) *We* may transfer, assign or novate some or all of *our* rights and responsibilities under the *agreement* to any person including the *supplier network provider* at any time.
- (b) On receipt of a notice from *us* (or the *supplier network provider*) under clause 14.1(a) *you* agree to novate the *agreement* in accordance with this clause 14.1 and acknowledge that the rate plan applicable to the provision of *services* to *you* may be altered to the nearest applicable *supplier network provider* rate plan (although on terms no less favourable than the terms of the *agreement* immediately prior to the novation).
- (c) *We* may perform any of *our* responsibilities under the *agreement* by arranging for them to be performed by a *supplier*. *We* will still be responsible for the performance of the obligations.

14.2 How can you assign your rights and responsibilities to a third party

- (a) *You* may assign *your* rights and responsibilities under the *agreement* so long as *you* have *our* prior written consent.
- (b) *You* may transfer *your* responsibilities under the *agreement* if:
 - I. the person to whom *you* are transferring the responsibilities:
 - (A) provides satisfactory proof of identification,
 - (B) meets the eligibility criteria for the *service*,
 - (C) has an appropriate credit rating, and
 - II. the *service* is available at the location where they wish to acquire the *service*.

14.3 Domestic or family violence

- (a) *We* may assign *your* rights under the *agreement* where an end user of a service is a victim of domestic or family violence, without *your* consent, where:
 - I. *we* are satisfied that the person to whom *we* are transferring the *service* is an end-user of a public number connected to a *service* and that end-user is affected by a situation involving potential or actual domestic or family violence and the transfer is reasonably necessary to address that situation and minimise the risk of harm; and
 - II. the end-user of the *service* to whom *we* are transferring the *service*:
 - (A) provides satisfactory proof of identification,
 - (B) meets the eligibility criteria for the *service*,
 - (C) has an appropriate credit rating, and
 - (D) the *service* is available at the location where they wish to acquire the *service*.

15. GENERAL

15.1 Which laws and courts govern the agreement?

- (a) The *agreement* is governed by the laws of the Commonwealth of Australia and the laws New South Wales.
- (b) *You* and *we* submit to the exclusive jurisdiction of the courts of the Commonwealth, and New South Wales.

15.2 Intellectual property protections

- (a) We own all material (including *intellectual property rights*) developed by us or our personnel, or at our or their direction.
- (b) We may permit you to use this material, or other material licensed by us, as part of the service. This permission is subject to any conditions which we may impose from time to time and will cease when the service is cancelled.
- (c) You must not infringe any person's *intellectual property rights* (such as by using, copying or distributing data or software without the permission of the owner) in using the service. If you breach this paragraph, we may suspend the service under clause 1.1(a)VI or VII or cancel the service under clause 1.1(a)IV or V.

15.3 What happens if you can't fulfil your obligations or we can't fulfil our obligations under the agreement because of an event outside your or our control?

- (a) If an *intervening event* occurs which prevents you from performing any of your obligations under the agreement (other than an obligation to pay money), then you will not be liable for failing to perform that obligation. You must notify us of the *intervening event* and use your best efforts to resume performance in accordance with the agreement as soon as reasonably possible. Our obligations continue during the *intervening event*, except if we are not able to perform our obligations because you are unable to perform your obligations due to the *intervening event*.
- (b) If an *intervening event* occurs which prevents us (or any of our personnel) from performing any of our obligations under the agreement (other than an obligation to pay money), then we will not be liable for failing to perform that obligation. We must notify you of the *intervening event* and use our best efforts to resume performance in accordance with the agreement as soon as reasonably possible. Your obligations continue during the *intervening event*, except if you are not able to perform your obligations because we are unable to perform our obligations due to the *intervening event*.

15.4 What happens if you become a carrier or carriage service provider?

- (a) You represent that you are not a carrier or carriage service provider.
- (b) If you are or become a carrier or carriage service provider, we or the supplier network provider may immediately cancel the service by giving you notice.
- (c) If we or the supplier network provider cancel the service under this clause, we or the supplier network provider will negotiate in good faith with you to enter into an alternative agreement governing supply of the service, on terms to be agreed.

15.5 When do you or we waive a right we have under the agreement?

If a party breaches the agreement and the other party does not exercise a right that it has because of the breach, the second party does not necessarily waive its entitlement to exercise that right because of the breach at any later time.

15.6 Payment of commission by us

We may pay a commission to any of our personnel in connection with the agreement.

15.7 Information about your rights

Information and advice about your rights can be obtained by contacting the Australian Communications and Media Authority, the Telecommunications Industry Ombudsman, the Australian Competition and Consumer Commission or the relevant Department of Fair Trading or Department of Consumer Affairs in your state or territory.

16. WHAT DO TERMS IN THE AGREEMENT MEAN?

16.1 Definitions

access fee means the fixed payment for access to the *service* payable on a regular basis (often monthly). The *access fee* is payable regardless of the actual usage of the *service*. A minimum monthly charge and minimum monthly service charge are also *access fees*.

agreement means the terms and conditions on which we supply the *service* to you.

appendices means the *appendices* containing information relevant to the *service*.

application means the part of the *agreement* which is the written or verbal *application* you complete to request that we supply the *service* to you.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

bundled offer means where the terms applying to a *service* require you to select more than one *service* according to the terms of the offer.

cancel the service means that the *service* is cancelled and the *agreement* is terminated.

cancel the service for convenience means to *cancel the service* in circumstances where you have not breached the *agreement* and there is no other event which triggers the right to *cancel the service*.

cancellation date means:

- (a) the date 30 days after you notify us that you wish to *cancel the service*, unless we agree otherwise,
- (b) the date at least 30 days after we notify you that we will be cancelling the *service*, or
- (c) as otherwise set out in the *agreement* including the Critical Information Summaries.

cancellation fee means the *cancellation fee* or termination charge which may be payable on cancellation of the *service*. Unless otherwise indicated in the *pricing description*, any *cancellation fee* payable is set out in the *critical information summaries*.

charging zone refers to the geographic zone within which a particular *service* number can be used, which in turn determines the applicable *charging zone*, as prescribed by ACMA's Telecommunication Numbering Plan 1997.

churn means to change from having a *service* supplied by one carrier or carriage *service* provider to having the *service* supplied by another carrier or carriage *service* provider.

Competition and Consumer Act means the *Competition and Consumer Act 2010* (Cth), (named the *Trade Practices Act* before 1 January 2011) as amended or replaced from time to time

consequential loss means any *loss* of revenue or profits, *loss* of anticipated savings, *loss* of data, *loss* of value of equipment, any penalties or fines imposed by a *regulator* and any *loss* that is an indirect *loss*.

consumer means a person who acquires and uses the *service* for personal, domestic or household use only.

consumer terms means this document.

content means:

- (a) all forms of information, including text, pictures, animations, video, sound recordings, software, separately or combined, and
- (b) any *content service*,

sent and received across a *network*. For the avoidance of doubt, *content* includes, but is not limited to, SMS and MMS.

credit rating means information about *your* credit worthiness, credit standing, credit history or credit capacity that credit providers are entitled to give to each other under the *Privacy Act 1998* (Cth) as amended from time to time.

critical information summaries means documents which each summarise the terms and conditions, pricing and inclusions for a plan for a telecommunications service.

equipment charges means any payment for equipment obtained (including equipment that is purchased or leased) from *us*, including for example phones or modems, and includes the cost of any software or licences supplied to operate in conjunction with that equipment, as may be set out in *your application, pricing plan* and / or the relevant *appendix*.

excluded event means:

- (a) a breach of the *agreement* by *you*,
- (b) a negligent or fraudulent act or omission by *you* or any of *your personnel*, or
- (c) a failure of any of *your* equipment.

Fair Go Policy means our Fair Go Policy published at www.spriggymobile.com.au/terms/fair-go-policy/.

fair terms has the meaning set out in clause 2A.5

fixed-length agreement means an *agreement* that has a *minimum term*, during which time neither *you* nor *we* are free to change the terms of the *agreement* or to *cancel the service*, other than as specifically provided for in the *agreement*. A *fixed-length agreement* does not include a month-to-month *agreement*.

good working order means equipment (such as a *mobile device*) that:

- (a) can power on and off,
- (b) has a battery and touchscreen that are fully functional,
- (c) is not physically damaged (e.g. does not have liquid damage, cracked, discoloured or bleeding screen (LCD) or casing, does not have any missing buttons or damage to other components such as charging ports, or SIM tray,
- (d) has no missing or customized parts or non-genuine parts (other than parts used for repair under a manufacturer's warranty or under the *Australian Consumer Law*),
- (e) is not cracked (including the touchscreen) and does not have any severe scratches (normal wear and tear such as light marks and scratches are okay),
- (f) has any locking features disabled (for example, find my iPhone on an iOS device),
- (g) is not IMEI blocked, and
- (h) is the equipment *you* obtained from *us*, pursuant to *your agreement* with *us*.

impact has the meaning set out in clause 2A.3

insolvency event means:

- (a) bankruptcy proceedings are commenced against *you*, or *you* are declared bankrupt,

- (b) any step is taken to enter into any scheme of arrangement between *you* and *your* creditors,
- (c) any step is taken by a mortgagee to enter into possession or dispose of the whole or any part of *your* assets or business,
- (d) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to *you* or to the whole or any part of *your* assets or business,
- (e) *you* suspend payment of *your* debts generally, or
- (f) *you* are, or become, unable to pay *your* debts when they are due or *you* are, or are presumed to be, insolvent for the purposes of any provision of the *Corporations Act 2001* (Cth).

intellectual property rights means any intellectual or industrial property rights (including any registered or unregistered trademarks, patents, designs, or copyright).

intervening event is an event outside *your* or *our* reasonable control which interferes with the operation of the *network* we use to supply the *service* and results in ongoing disruption to the *service*. An *intervening event* includes the following events where those events are outside *your* or *our* reasonable control: failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the *Telecommunications Legislation*) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any *regulator*, any *supplier* or any of their *personnel*).

minimum term means the period of time for which *you* have agreed to receive the *service* under a *fixed-length agreement*. The *minimum term* begins on the *service start date* and runs for the period of time stated on the *application*, unless otherwise set out in the *agreement*. For a *non fixed-length agreement*, there is no *minimum term*.

mobile equipment lease plan means the terms under which we agree to lease *you* a *mobile device*, as set out in the *Mobile Equipment Lease Plan* and the applicable *pricing plan*.

month-to-month agreement means an *agreement* that has no fixed *term* or commitment excepting the calendar month immediately following the pre-payment of the pre-paid plan during which time neither *you* nor *we* are free to change the terms of the *agreement* or to *cancel the service*, other than as specifically provided for in the *agreement*.

loss means any *loss*, cost, liability or damage, including reasonable legal costs.

network means any interconnected telecommunications equipment, facilities, or cabling.

non fixed-length agreement means an *agreement* that does not have a *minimum term*, or a *fixed-length agreement* where the *minimum term* has expired. A *non fixed-length agreement* includes a month-to-month *agreement*.

our equipment means any equipment or cabling we, or *our personnel*, may provide or lease to *you* to use in connection with the *service*.

supplier network means the *network* supplied by the *supplier network provider* used to supply the *service*, as set out in the *service description*.

supplier network provider means Optus Wholesale Pty Limited (ABN 86 092 227 551).

paper invoice fee means the fee charged in accordance with clause 9.2(c) and set out in the *critical information summaries* for *your service*.

personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of *us*, includes the employees, agents, contractors or other representatives of any *Fastter group company*.

premises means locations:

- (a) at which *we* supply the *service*, and/or
- (b) to which *we* need to have access to supply the *service*.

pricing plan contains information about the terms and conditions and prices of the plan *you* have selected in *your application*. *You* may also hear a *pricing plan* referred to as a 'rate plan' or 'plan'. The *pricing plan* details can be found in the *critical information summaries*.

regulator means the Australian Communications and Media Authority and the Australian Competition and Consumer Commission or statutory body or authority.

related corporation of a company means another company that is related to that entity in any of the ways specified in section 50 of the *Corporations Act 2001* (Cth).

roaming means the ability to use the *network* of overseas mobile carriers when travelling overseas.

service means (a) the service with the features requested in the *application* and as described in the *service description*, plus any related goods (including equipment) and ancillary services which *we* supply to *you* in connection with that service, and (b) any aspect of that *service* or collection of services as the context requires.

service description means the part of the *agreement* entitled '*service description*', which is *our* standard *service description* for *consumers* describing the *service*.

service start date for the *service* means the date on which *we* start supplying that *service* to *you*, unless otherwise specified in the *service description*.

special means a *special* promotion or offer made by *us* in connection with the *service*.

Spriggy Mobile is the trading name under which *we* market and provide the *services*.

pricing description means the part of the *agreement* entitled '*pricing plan*', which is *our* description of the general terms and conditions for all plans, pricing and charges list for *consumers* of the *service*.

supplier means any *supplier* of goods or services (including interconnection services) which are used directly or indirectly by *us* to supply the *service* to *you* and includes the *supplier network provider*. Where a *supplier* supplies goods or services to *you* directly, that *supplier* is not acting in its capacity as *supplier*, but rather is a third party providing services directly to *you*.

tax means any value-added or goods and *services tax*, withholding *tax*, charge (and associated penalty or interest), rate, duty or impost imposed by any authority at any time but does not include any *taxes* on income or capital gains.

Telecommunications Legislation means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provisions of the *Competition and Consumer Act*, including the Australian Consumer Law.

tethered modem refers to the use of a mobile phone as a modem when connected to a computer or laptop, enabling connection to the internet over a mobile network. The connection to the computer or laptop may be either with cables or wireless. Use of a mobile phone as a *tethered modem* requires both an active mobile service together with a *tethered modem* data plan.

Trade Practices Act means the *Trade Practices Act 1974* (Cth).

you means the person who fills out the *application* (and **your** and **yours** is to be construed accordingly). Only one person may fill out the *application*.

your statutory rights as a consumer means *your* rights and remedies as a *consumer* under the *Australian Consumer Law* (see the explanatory box at clause 13.2 of these *consumer terms*).

we means Fastter Pty Ltd trading as Spriggy Mobile ABN 39 667 581 740 (and **us** and **ours** is to be construed accordingly).

unusually high use means high out of pattern usage of the *service* on a short term basis or a sustained high usage which exceeds the general average usage of customers on a similar *pricing plan* or who have accepted a similar *special*.

16.2 Interpretation

- (a) The following words have the same meaning in the *agreement* as they have in the *Telecommunications Legislation*:
 - (i) carriage service,
 - (ii) carriage service provider,
 - (iii) carrier,
 - (iv) content service, and
 - (v) facility.
- (b) A term which is defined in any part of the *agreement* has the same meaning in every other part of the *agreement*.
- (c) The singular includes the plural and vice versa.
- (d) Different grammatical forms of the same word(s) have the same meaning.
- (e) Examples or words of inclusion are illustrative only and do not limit what else might be included.
- (f) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- (g) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.