

# Superloop General Terms - Wholesale

## 1. Definitions and interpretation

### 1.1 Defined terms

In these General Terms, unless the contrary intention appears, the following words have the following meanings indicated:

**Affiliate** in respect of an entity (the first entity), means another entity that Controls the first entity, that is Controlled by the first entity or that is under common Control with the first entity.

**Agreement** has the meaning given at clause 2.1

**Authorisations** mean all licences, declarations, permits, accreditations and approvals of any type, including all licences required by a Regulator.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday in the State or country in which the Service is provided.

**Cancellation Charge** means an amount equal to the monthly recurring charge payable for the terminated Service multiplied by the number of months, or part thereof, between the date of termination and the end of the Service Term.

**Change of Control** occurs if:

- (a) a relevant interest (as defined in the Corporations Act 2001 (Cth)) in more than 25% of Your securities that in normal circumstances entitle the holder to vote or participate at a meeting of Your members or to vote or participate in the election or appointment of Your directors, passes to a person or persons who did not have such relevant interest at the date of this Agreement; or
- (b) the ability to control or the actual control (irrespective of whether such control is exercisable on a passive or active basis and irrespective of whether such control is exercisable solely or jointly or directly or indirectly) of Your management and policies passes to a person or persons who did not have such ability or actual control at the date of this Agreement.

**Charges** means the charges (exclusive of any Taxes) in respect of a Service as set out in the relevant Service Order.

**Claim** means any claim, action, suit or demand.

**Confidential Information** of a party means all confidential information given or made available by that party to the other party including:

- (a) technology or intellectual property owned or licensed to the party;
- (b) industry information, plans, trade secrets, commercially sensitive information and confidential know-how; and
- (c) financial information.

**Consequential Loss** means any form of:

- (a) indirect, special, incidental or consequential loss;
- (b) loss of or damage to goodwill or reputation; or

- (c) loss or corruption of data, loss of profits, loss of revenue, loss of opportunity, loss of anticipated savings and pure economic loss suffered or incurred by any person,

whether arising in contract or tort (including negligence) or under any statute.

**Control** means possessing a 50% or greater interest in an entity or the right to direct the management of that entity.

**Customer Equipment** means all of the equipment used by You in connection with the Services that is not provided by Superloop.

**Customer Information** means all information that Superloop obtains as a result of Your use of a Service and may include Your, Your Affiliates' and End Users' Personal Information.

Data Breach means the misuse, loss and unauthorised access, modification and disclosure of Personal Information.

**EEA** means the European Economic Area.

**End User** means a person who acquires a service that is a resupplied version, or a derived version of the Service supplied to You by Superloop.

**Force Majeure Event** means a circumstance or event beyond the relevant party's reasonable control including but not limited to:

- (a) acts of god (including rainstorm or hail), accidents, national emergencies, insurrection, riot, hostile or warlike action in peace or war or sabotage;
- (b) strikes, lockouts, labour disputes, work stoppages, embargoes or any other labour difficulties (except where undertaken only by employees of that party);
- (c) action or inaction of any government, governmental or local authority or agency, civil or military authority or statutory authority (or any of their representatives);
- (d) malicious or negligent acts or omissions by a third party.

**General Terms** means these standard terms and conditions between Superloop and You which form part of the Agreement, which are available at <https://superloop.com/legal/>

**Intellectual Property** means any intellectual or industrial property anywhere in the world including, but not limited to, any registered or unregistered copyright, patent, trade mark, design rights, trade secret or Confidential Information relating to the Services or any licence or other right to use, or to be the registered proprietor of, any of the above.

**Insolvency Event** means in respect of a party:

- (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed (and is not removed within 15 Business Days) in respect of the party or any asset of the party;
- (b) a liquidator or provisional liquidator is appointed in respect of the party;
- (c) any application is made to a court (and not withdrawn or refused within 15 Business Days) for an order, or an order is made, or a resolution is passed, for the purpose of:
  - (i) appointing a person referred to in paragraphs (a) or (b);
  - (ii) winding up the party; or
  - (iii) proposing or implementing a scheme of arrangement in respect of the party;
- (d) a moratorium of any debts of the party or an official assignment or a composition or an arrangement (formal or informal) with the party's creditors or any similar

proceeding or arrangement by which the assets of the party are subjected conditionally or unconditionally to the control of the party's creditors is ordered, declared or agreed to, or is applied for (and not withdrawn or refused within 15 Business Days);

- (e) the party becomes, or admits in writing that it is, or is declared to be, or is deemed under any applicable law to be, insolvent or unable to pay its debts as they fall due; or
- (f) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the party.

**Interest Rate** means the lower rate per annum of:

- (a) the sum of the cash rate published by the Reserve Bank of Australia from time to time and 8% per annum; or
- (b) the highest applicable rate permitted by the local courts.

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

**Network** means the telecommunications network operated by Superloop, its Affiliates or by third parties pursuant to arrangements with Superloop or its Affiliates.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in material form or not, about an individual whose identity is apparent or can be reasonably ascertained, from the information or opinion.

**Privacy Laws** means all data protection, privacy legislation, guidelines and industry standards from time-to-time in force in the jurisdictions in which the Services are provided.

**Regulator** means any foreign or domestic government or governmental, semi- governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

**Regulatory Fees** means fees charged to Superloop by any Regulator.

**Service** means a service that Superloop has agreed to supply to You under this Agreement, as specified in a Service Order and described more fully in a Service Schedule.

**Service Levels** in respect of a Service, means the service levels set out in the Service Schedule for that Service.

**Service Order** means Superloop's standard order form, which sets out the Service(s) that You have requested and Superloop has agreed to provide.

**Service Schedule** means a schedule to these General Terms which can be found at <https://superloop.com/legal/> that sets out, among other things, a description of the Service(s), any Service Levels and any other relevant information.

**Service Start Date** means, in respect of a Service, the date specified in the relevant Service Order.

**Service Term in respect of a Service**, means the minimum term for provision of that Service as set out in the relevant Service Order.

**Superloop** means Superloop (Operations) Pty Ltd (ACN 622 829 510).

**Superloop Equipment** means any equipment supplied by Superloop for use in connection with the Services.

**Tax** means all applicable VAT, GST, consumption tax, use, excise, access, bypass, franchise, regulatory or other similar taxes, fees, charges or surcharges that are imposed on or based on the provision, sale or use of the Services but excluding taxes based on its net income.

**Telecommunications Act** means all telecommunications legislation, guidelines and industry standards applicable to the provision of the Services and in force in the jurisdictions in which the Services are provided.

**Third Party** means a person other than Superloop or its Affiliates (and their respective officers, employees, agents and subcontractors).

**You or Your** means the customer described in the Service Order.

## Interpretation

In this Agreement, headings are for ease of reference only and do not affect the meaning of this Agreement and unless the contrary intention appears:

- (c) the singular includes the plural and vice versa and words importing a gender include other genders;
- (d) other grammatical forms of defined words or expressions have corresponding meanings;
- (e) a reference to a clause, paragraph, schedule, appendix or attachment is a reference to a clause or paragraph of, or schedule or appendix or attachment to, this Agreement and a reference to this Agreement includes any schedules and attachments;
- (f) a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (g) a reference to 'dollar' or '\$' is a reference to the lawful currency of the country in which the Service is provided;
- (h) a reference to a specific time for the performance of an obligation is a reference to that time in the state, territory, country or other place where that obligation is to be performed;
- (i) a reference to a person includes its successors and permitted assigns;
- (j) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (k) mentioning anything after 'include', 'includes' or 'including' does not limit anything else that might be included.

## Agreement

### 1.2 This Agreement

- (a) The Agreement between You and Superloop comprises:
  - (i) the Service Order submitted by your authorised representative;
  - (ii) the relevant Service Schedule; and
  - (iii) these General Terms and any addendums.
- (b) In the event of any inconsistency between the documents that form this Agreement, the order of priority is the Service Order, the relevant Service Schedule, any addendum and then these General Terms.
- (c) In the event, and to the extent, of any inconsistency or where intended to be a replacement rather than an addition, the most recent Service Order will prevail over any earlier Service Orders.

### 1.3 Ordering and acceptance procedures

- (a) You may request Services at any time from Superloop by submitting a Service Order to Superloop. By submitting a Service Order, You agree to be bound by this Agreement.
- (b) Superloop may accept or reject a Service Order at its discretion.

- (c) A Service Order will be effective on and from the date it is accepted by Superloop.

## Affiliates

### 1.4 Affiliate Orders

- (a) You and Your Affiliates may order Services from Superloop or its Affiliates by submitting a Service Order. Each Service Order will form a separate agreement to purchase the relevant Services subject to the terms of this Agreement.
- (b) You will be the customer of record for all Services provided under this Agreement and, together with any of Your Affiliates that submit a Service Order, will be jointly and severally liable for all obligations set out in this Agreement, notwithstanding that the Service Order may be submitted by Your Affiliate or that the invoices for a Service may be sent to Your Affiliate.
- (c) If Superloop (or a Superloop Affiliate) accepts a Service Order from Your Affiliate, then references in this Agreement to 'Customer' will be read as references to You and Your Affiliate.
- (d) If a Superloop Affiliate accepts a Service Order, the Superloop Affiliate will be solely liable for that Service Order and references in this Agreement to Superloop will be read as references to that Superloop Affiliate.

### 1.5 Addition or amendment of terms by jurisdiction

If the Services are to be provided in a jurisdiction where, in order for the Service Order to be enforceable or consistent with local law or operational practice, additional terms must be added to this Agreement or existing terms amended, those additional or amended terms will be set out in an addendum to this Agreement.

### 1.6 Application of indemnities and limitations in favour of Affiliates

In this Agreement, indemnities and limitations and exclusions of liability in favour of a party are to be construed as indemnities, limitations and exclusions in favour of each of that party's Affiliates.

## 2. Superloop's Obligations

### Services

Superloop will:

- (a) supply the Services to You in accordance with the terms of this Agreement and the relevant Service Order; and
- (b) use reasonable endeavours to commence the provision of the Services by the Service Start Date. Superloop will not be liable for any delay in installation including, but not limited to, delays in obtaining access to any property or premises.

## 2.2 Variation to Services

Superloop may from time to time:

- (a) vary a Service; and/or
- (b) modify, change, upgrade or enhance the Network or any other technology, software or equipment that Superloop uses to provide a Service,

provided that the Service continues to substantially comply with this Agreement.

## 2.3 Regulatory - general

- (a) Superloop must:
  - (i) to the extent within its control, obtain and maintain all Authorisations necessary to construct the Network and otherwise to provide each Service to You for the Service Term;
  - (ii) do all things necessary in respect of the Network, including the performance of Superloop's obligations as a telecommunications provider, which are required to be done under the Telecommunications Act or as otherwise required by law; and
  - (iii) provide all reasonable assistance and information reasonably requested by You in order for You to comply with Your obligations under this Agreement.
- (b) You acknowledge that Superloop may intercept, without any prior or subsequent notification to You, communications carried over the Service in order to meet any lawful request or direction of a law enforcement or other agency which has the power to require interception and You agree to provide all reasonable assistance to Superloop in respect of Superloop's obligation to intercept communications.

## 2.4 Service Levels

- (a) Superloop will use reasonable endeavours to provide the Services in accordance with the Service Levels.
- (b) Superloop's liability for a failure to meet a Service Level will be as set out in the relevant Service Schedule and You acknowledge this is Your only remedy in relation to a failure by Superloop to meet a Service Level.

# 3. Your Obligations

## 3.1 General obligations

- (a) You must:
  - (i) comply with all reasonable requests made by Superloop in relation to a Service or the Network;
  - (ii) relinquish a Service at such times as Superloop may reasonably require to permit Superloop or another person to carry out any tests and adjustments that may be necessary for that Service to be provided efficiently and for the Network to be maintained in efficient working order;
  - (iii) obtain and maintain all Authorisations required for You to enter into this Agreement, use the Services and to perform Your obligations under this Agreement;
  - (iv) provide all assistance and information reasonably required by Superloop in order for Superloop to comply with its obligations under this Agreement;
  - (v) comply with all laws including the Telecommunications Act;
  - (vi) notify Superloop immediately on becoming aware of any unlawful use of a Service or the Network;
  - (vii) notify and seek Superloop's consent where there is a proposed Change of Control;
  - (viii) notify Superloop in writing immediately if You are affected by an Insolvency Event;
  - (ix) use best endeavours to the extent reasonably within Your control to obtain and maintain all necessary approvals for Superloop to enter all premises or land required for the installation, delivery and maintenance of a Service;
  - (x) not interfere with, damage or create hazards for:

- (A) all or part of any Service;
  - (B) any of the facilities, including the Network, by which the Service is provided, or
  - (C) persons providing maintenance to those facilities; and
- (xi) not use or allow End Users to use a Service for any purpose that may:
  - (A) impair the privacy of any communications over the Service;
  - (B) infringe any person's rights, including intellectual property rights, or defame any person; or
  - (C) infringe a law, regulatory standard, or mandatory code or instrument, or constitute the commission of an offence,

other than to comply with Your statutory obligations.
- (b) You must use best endeavours to ensure that Your use of the Services and any Customer Equipment used by You in connection with that use, will not:
  - (i) interfere with any of the facilities comprising the Network or any Services or facilities or persons providing maintenance to the Network; or
  - (ii) impair privacy of any communications over those facilities, other than to comply with Your statutory obligations.

## Equipment

- (c) You are responsible for installing and maintaining any relevant Customer Equipment at Your own expense.
- (d) You must ensure that any Customer Equipment:
  - (i) has all necessary regulatory approvals;
  - (ii) is not prohibited by a Regulator;
  - (iii) complies with all applicable regulatory standards;
  - (iv) is approved by Superloop; and
  - (v) is capable of operating with the Services and does not damage or adversely affect the Network.
- (e) If the Customer Equipment causes interference with the Services or the Network, Superloop may require You to stop using and disconnect the Customer Equipment until the problem is fixed.
- (f) You authorise Superloop and any of its personnel to disconnect, install or make changes to any Customer Equipment at Your premises in order for Superloop to provide the Services.
- (g) You will use Your best endeavours to the extent reasonably within Your control to obtain and maintain all necessary approvals for Superloop to enter all premises or land required for the installation, delivery and maintenance of the Superloop Equipment.

## 3.2 End Users

You are:

- (a) responsible for all aspects of Your provision of services to End Users, including dealing with End User fault reports or other complaints or enquiries and billing and collection;
- (b) responsible for complying with all applicable laws and regulatory obligations in supplying Your services and dealing with End Users;
- (c) not permitted to make any representation or provide any warranties or undertakings as to the Services or the Network or any other matter on behalf of Superloop to End Users, except as expressly authorised by Superloop; and
- (d) not granted any authority to act on Superloop's behalf in any capacity, or to incur any liability on Superloop's behalf.

## Software

Where Superloop provides you with any software to use as part of the Services, You acknowledge and agree that:

- (e) Superloop remains the owner or licensee of the software;
- (f) You may use the software only for the purposes for which it is provided under this Agreement;
- (g) Your right to use the software may not be assigned or otherwise transferred to anyone else without our prior written consent;
- (h) You will not change or interfere with the software in any way;
- (i) You will not use the software to recreate or reverse engineer any source code or copy any part of the software except for the purposes of Superloop's approved backup or testing procedures;
- (j) You will comply with any further requirements Superloop may impose in relation to the software or, where relevant, any requirements of the owner or licensor of the software; and
- (k) Superloop may at any time install upgrades or new versions of the software and You will co-operate to the extent necessary for Superloop to be able to do so.

### 3.3 Network and Superloop Equipment

Superloop's provision of a Service to You does not give You any ownership or other property rights in the Network or Superloop Equipment.

### 3.4 Intellectual Property

- (a) Any Intellectual Property owned by either party prior to entry into this Agreement, or developed independently of this Agreement by either party, will continue to be owned by that party.
- (b) Superloop either owns the Intellectual Property in the Service provided to You or, where Superloop uses any Intellectual Property belonging to a Third Party, Superloop has a licence to do so.
- (c) None of Superloop's Intellectual Property is transferred to You and, unless specifically authorised by this Agreement, You cannot and will not use or reproduce such Intellectual Property for any purpose outside of this Agreement.
- (d) All Intellectual Property in any improvements or changes to any Service devised or made by anyone during the term of this Agreement will belong to Superloop.

### 3.5 Modern Slavery

You warrant:

- (a) that Modern Slavery practices do not exist in Your own businesses, or the businesses of Your Affiliates;
- (b) to the best of Your knowledge, that Modern Slavery practices do not exist in the businesses of Your suppliers; and
- (c) that You will promptly disclose the existence of Modern Slavery practices in Your businesses or supply chains.

## 4. Charges and payment

### 4.1 Credit approval and security

Superloop may conduct a credit check on You at any time. If Superloop, acting reasonably, is not satisfied with Your credit rating, Superloop may request that You:

- (a) pre-pay and maintain Your account in advance one month or more;
- (b) provide a deposit as security for payment; and/or
- (c) put in place any other reasonable credit or security arrangements.

### 4.2 Charges and payment



You must pay the Charges in each invoice issued by Superloop by the due date on the relevant invoice or, if no due date is specified, within 20 Business Days of the invoice date. Payments must be made by electronic transfer to an account nominated by Superloop.

#### **4.3 Interest on unpaid amounts**

Any amount payable by You under this Agreement (including interest) which is not paid when due (other than an amount withheld in accordance with clause 6.4(b)) will bear interest from (and including) the due date until (but excluding) the date of actual payment calculated on a daily basis at the Interest Rate. Interest is payable on demand.

#### **4.4 Disputed invoices**

- (a) If You wish to dispute the whole or any part of an amount stated to be payable by You in an invoice provided under clause 6.2, You must, prior to the due date of the invoice, notify Superloop that a dispute has arisen.
- (b) You may withhold payment of any amount that You dispute in good faith under clause 6.4(a), until such dispute has been resolved, but must pay the balance of any amount which is not in dispute when due.
- (c) The due date for payment of any amount withheld by You under this clause 6.4 shall be the Business Day following the resolution of the dispute.
- (d) The provisions of clause 14.1 apply to disputed invoices.

#### **4.5 Variation of Charges**

Superloop may vary the Charges on 20 Business Days' notice to You if Superloop continues to provide a Service to You after the expiry of the Service Term in accordance with clause 11.1(a).

#### **4.6 Obligation to keep Superloop informed**

You agree to inform Superloop as soon as practicable in the event that:

- (a) there is a material adverse change in Your creditworthiness, as would be ascertained by a party acting reasonably; or
- (b) for any reason You consider that You are unable to pay an invoice in accordance with clause 6.2, at any given time.

## **Taxes**

#### **4.7 Charges exclusive of Taxes**

All charges for the Services are exclusive of applicable Taxes and Regulatory Fees. Superloop is entitled to add to the amount otherwise payable an additional amount for the applicable Taxes and Regulatory Fees.

#### **4.8 No deductions for withholding Tax**

If a party must deduct or withhold Tax from a payment to the other under this Agreement, it must:

- (a) make that deduction or withholding (or both);
- (b) pay the full amount deducted or withheld as required by the relevant law;
- (c) give the other party a receipt for each payment; and
- (d) increase its payment to the other party to an amount which will result in that other party receiving the full amount which would have been received if no deduction or withholding had been required.

## **Insurance**

#### **4.9 Public liability cover**

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable public and product liability insurance policy for an insured amount of at least \$10,000,000 per occurrence.

#### **4.10 Workers' compensation cover**

Each party must effect and maintain, during the term of this Agreement, a valid and enforceable workers' compensation insurance policy which provides cover for its employees and contractors and complies with legislated requirements as to amount and type of cover in each jurisdiction in which the relevant employees and contractors are carrying out their employment for the time being.

#### **4.11 Co-operation**

- (a) Each party must co-operate with the other party and render to it any assistance it may reasonably request from time to time (including the provision of information which, having exercised reasonable efforts to obtain any necessary consent of a third person, the other party is permitted to provide) in order to effect and maintain any insurance policy as required by this clause 8.
- (b) Each party must, if required by the other party, produce evidence satisfactory to the other party of the existence, currency and contents of the insurance specified in this clause 8.

## **5. No reliance on warranties and representations**

Each party acknowledges that:

- (a) it has relied on its own enquiries in respect of all matters relating to this Agreement and has not relied on any representation, warranty, condition or statement made by or on behalf of the other party other than as set out in this Agreement; and
- (b) any conditions or warranties which may otherwise be implied by law into this Agreement are expressly excluded to the extent permitted by law,

and each party releases the other party from all Claims and liability (whether or not known) which it may have or claim to have, or but for this release, it might have had against the other party arising out of any representation, warranty, covenant or provision not set out or referred to in this Agreement.

## **Liability**

### **5.1 No indirect loss**

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any Consequential Loss however caused in connection with or related to this Agreement or otherwise in respect of the Services.

### **5.2 No warranty**

Superloop excludes all conditions and warranties implied into this Agreement and limits its liability for any non-excludable conditions and warranties, where permitted to do so by law, to (at Superloop's option):

- (a) repairing or replacing the relevant goods;
- (b) resupplying the relevant or equivalent services; or
- (c) in either case, paying You the cost of doing so.

### **5.3 Limitation of Superloop's liability**

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, Superloop:

- (a) excludes liability for any and all Loss suffered or incurred by You in connection with a Force Majeure Event; and
- (b) limits its maximum, aggregate liability for Loss for all Claims in connection with a Service (except under, or in respect of its liability for Loss in connection with its indemnity obligations under clause 10.6) to an amount calculated by multiplying the amount Superloop charges You each month for that Service by 12.

### **5.4 Limitation of Your liability**

Except where to do so would contravene any statute or cause any part of this Agreement to be void or unenforceable, You:

- (a) exclude liability for any and all Loss suffered or incurred by Superloop in connection with a Force Majeure Event; and

- (d) limit Your maximum, aggregate liability for Loss for all Claims in connection with a Service (except under, or in respect of Your liability for Loss in connection with Your indemnity obligations under clause 10.5 or 10.6 or Your obligation to pay a Cancellation Charge under clause 11.3(b)) to an amount calculated by multiplying the amount Superloop charges You each month for that Service by 12.

## 5.5 Indemnity for Superloop

- (a) Subject to clause 10.5(b), You indemnify Superloop from and against any Loss suffered or incurred by Superloop in connection with a Claim, including in connection with the termination of any Service, by an End User.
- (b) You will not be liable to Superloop under clause 10.5(a) to the extent that the Loss that gives rise to the Claim referred to in clause 10.5(a) could not lawfully have been excluded or reduced (regardless of whether such liability actually was excluded or reduced) by the party from whom the End User acquired the service.
- (c) You are responsible for the content of any transmission using the Service and You indemnify Superloop from and against any Loss suffered or incurred by Superloop in connection with a Claim relating to any content, data or other signal transmitted using the Service (including any transmission made by an End User), subject to Superloop:
  - (i) notifying You of the Claim (or threatened Claim) promptly upon becoming aware of it;
  - (ii) allowing You sole control of the defence of the Claim, including the right to settle the Claim;
  - (iii) not settling the Claim without Your prior written consent; and
  - (iv) giving You reasonable assistance in relation to Your defence of the Claim.

This clause 10.5(c) does not apply to any transmission made by Superloop or its employees or subcontractors (for example, when testing the Service).

- (d) Your liability to indemnify Superloop under this clause 10.5 shall be reduced proportionately to the extent that any act or omission of Superloop contributed to the Loss.

## 5.6 Mutual Indemnities

- (a) Each party (the **Indemnifying Party**) indemnifies the other party and its officers, employees, agents and contractors (the **Indemnified Party**) against any Loss incurred or sustained by any of those Indemnified in connection with a Claim for:
  - (i) a breach of clause 14;
  - (ii) personal injury to or death of any person;
  - (iii) damage to any real or tangible property of any person; or
  - (iv) any infringement or alleged infringement of any person's Intellectual Property rights,

arising out of a negligent or wilful act or omission of the Indemnifying Party or any of its officers, employees, agents or contractors.

- (b) The Indemnifying Party's liability to indemnify the Indemnified Party under clause 10.6(a) shall be reduced proportionately to the extent that any act or omission of the Indemnified Party contributed to the Loss.

## Mitigation

Superloop (in the case of clause 10.5) and the Indemnified Party (in the case of clause 10.6) must take all reasonable steps to minimise the Loss it has suffered or is likely to suffer as a result of the event giving rise to an indemnity under that clause.

# 6. Term and termination

## 6.1 Term

- (a) This Agreement begins on the date the Service Order is accepted by Superloop and continues until terminated in accordance with this clause 11.
- (b) Other than where terminated in accordance with this Agreement, a Service Order remains in force for the

Service Term.

- (c) On expiry of the Service Term, the Service Order will continue on a month to month basis until terminated by either party giving the other not less than 20 Business Days' written notice of termination.

## Termination

A Service will be terminated if either party notifies the other party of termination under clauses 11.1(b) or 11.3 to 11.5. To the extent permitted by law, the parties waive any rights to terminate a Service that are not expressly provided for in this Agreement.

### 6.2 Termination by Superloop

- (a) Superloop may terminate a Service with immediate effect by giving notice to You if:
  - (i) You fail to pay an amount when due under this Agreement and do not, within 10 Business Days of being requested to do so by notice from Superloop, remedy that failure; or
  - (ii) You undergo a Change of Control without first obtaining the prior written consent of Superloop.
- (b) If:
  - (i) You terminate a Service other than under clause 11.4; or
  - (ii) Superloop terminates a Service under clauses 11.3(a) or 11.4,

before the end of the Service Term, without limiting Superloop's legal rights and remedies, You will be required to pay the Cancellation Charge. You acknowledge and agree that the Cancellation Charge represents a genuine pre-estimate of the loss Superloop will suffer if any Service is terminated prior to the end of its Service Term.

### 6.3 Termination by either party

Either party may terminate a Service with immediate effect by giving notice to the other party if:

- (a) the other party breaches a material provision of this Agreement and does not, within 20 Business Days of being requested to do so by notice, remedy that breach; or
- (b) an Insolvency Event occurs in relation to the other party and the other party's financiers do not, within 1 Business Day of being requested to do so by notice, cause that other party's obligations to continue to be performed.

## Suspension

Superloop may immediately cease supplying a Service if:

- (c) You are overdue with any amount payable to Superloop and do not, within 5 Business Days of being requested to do so by notice from Superloop, bring Your account up to date;
- (d) You do not, within 10 Business Days of being requested to do so by notice from Superloop, comply with a request for security made by Superloop under clause 6.1;
- (e) You use or allow End Users to use a Service in breach of clause 5.1(a)(xi);
- (f) You breach any other material provision of this Agreement and do not, within 20 Business Days of being requested to do so by notice from Superloop, remedy that breach;
- (g) an Insolvency Event occurs in relation to You and Your financiers do not, within 1 Business Day of being requested to do so by Superloop, cause Your obligations to continue to be performed;
- (h) Superloop reasonably believes it is necessary to do so:
  - (i) for Superloop to comply with any law, regulatory standard, or mandatory code or instrument; or
  - (ii) to prevent You contravening any law, regulatory standard or mandatory code or instrument, infringing another person's rights, defaming another person, or impairing the privacy of communications over a Service other than to comply with Your statutory obligations; or
- (i) to protect any person, equipment, facility or the normal operation or integrity of the Network, other parts of Superloop's network, or all or part of any Service.

Without limiting Superloop's rights under this clause 11.5, Superloop will, wherever reasonably practical in the circumstances, give You at least 5 Business Days prior notice of a suspension proposed under clause 11.5(f) or 11.5(g) (**Proposed Suspension**) and will consider any reasonable representations and requests by You in respect of a Proposed Suspension. You acknowledge that such prior notice will not always be reasonably practicable, given the urgent nature of the matters referred to in this clause 11.5 and that Your requests in respect of a Proposed Suspension may not be acted on. Superloop must, as soon as practicable, recommence the supply of a Service which has been suspended under this clause upon the matter which has given rise to the suspension under this clause being rectified. Where a Service was suspended under clause 11.5(a) to 11.5(e), You agree to pay the costs of suspending and recommencing supply of the Service.

## **6.4 Without prejudice**

Termination of a Service will be without prejudice to any accrued rights or remedies of either party.

## **6.5 Continuing obligations**

The obligations imposed on the parties under clauses 4.3, 5.5, 0, 10.1, 12, 15, 20 and 21 are continuing obligations and survive termination of any Service.

# **7. Consequences of Termination**

## **7.1 Obligations on termination**

On termination of a Service You must immediately pay to Superloop all amounts invoiced by Superloop:

- (a) prior to termination within 2 Business Days after termination; and
- (b) after termination within 5 Business Days of the invoice date.

## **7.2 Non-compliance with Clause 12.1**

If You have not complied with clause 12.1 within the required times, You must assign to Superloop a sufficient amount of Your outstanding invoices and debts for unbilled charges of the End Users to satisfy all outstanding amounts owed to Superloop.

## **7.3 End User contact by Superloop**

- (a) Upon termination of a Service under clause 11.4(b) Superloop may contact End Users individually or collectively for the purpose of informing them that Superloop will no longer be providing the Services to You.
- (b) If requested by Superloop, You will provide Superloop within 2 Business Days of such request, End User contact details necessary for Superloop to contact End Users under this clause.

## **7.4 Assignment of End Users**

If a Service is terminated by Superloop under clause 11.4(b), You must immediately:

- (a) provide Superloop with all information and assistance (including End User details and rate plans) that Superloop requires to continue to provide the Services to and invoice the End Users;

- (b) if requested by Superloop, notify all End Users that Superloop will provide the Services directly to the End Users from a time notified by Superloop and that the Services will be supplied on Superloop's then current terms and conditions;
- (c) if requested by Superloop, assign or novate to Superloop (at Superloop's discretion) at no charge to Superloop, the contractual relationship between You and all End Users including the assignment of Services of the End Users to You and Your appointment as agent for those End Users; and
- (d) do or cause or procure to be done all acts or things (including without limitation the execution of any instrument) reasonably required by Superloop to give effect to the assignment or novation contemplated by this clause.

## 8. Force Majeure

### 8.1 Suspected Force Majeure Event

If either party reasonably suspects that a Force Majeure Event may arise and prevent or hinder the performance of that party's contractual obligation, it must notify the other party immediately. The parties must then work together in good faith to resolve the issues, with the aim of avoiding the occurrence of the Force Majeure Event.

### 8.2 Occurrence of a Force Majeure Event

- (a) If a Force Majeure Event prevents or hinders performance of a party's contractual obligations (**Affected Party**), then the Affected Party must notify the other party within 5 Business Days of becoming aware of the Force Majeure Event, giving full details of:
  - (i) the Force Majeure Event;
  - (ii) the obligations that are affected and the extent to which the Affected Party is reasonably unable to perform those obligations;
  - (iii) the expected duration of any delay arising directly out of the Force Majeure Event; and
  - (iv) where possible, a proposal for avoiding the impact of the Force Majeure Event.
- (b) To the extent possible, the Affected Party must use its best endeavours to rectify or alleviate the effect of the Force Majeure Event.
- (c) For the duration of any Force Majeure Event, the parties will use and will continue to use their best endeavours to minimise the impact of any Force Majeure Event.
- (d) Upon the cessation of the delay or failure resulting from the Force Majeure Event the Affected Party must promptly notify the other party of the cessation.
- (e) Any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure Event has ended, except to the extent that such fulfilment is no longer possible or is not required by the party to whom the obligations are owed.

## 9. Confidentiality

### 9.1 Confidential Information

Each party agrees in relation to the Confidential Information of the other party:

- (a) to keep confidential the Confidential Information;
- (b) to use the Confidential Information solely for the purposes of the performance of its obligations and the exercise of its rights under this Agreement; and
- (c) to disclose the Confidential Information only to those of its employees, advisors, related entities and shareholders who have a need to know (and only to the extent each has a need to know) and who are aware and agree that the Confidential Information must be kept confidential.

## Exceptions

The obligations of confidentiality under this Agreement do not extend to information which (whether before or after this Agreement comes into force):

- (d) is disclosed to a party under this Agreement, but at the time of disclosure is rightly known to that party and not subject to an obligation of confidentiality on that party;
- (e) at the time of disclosure is within the public domain or after disclosure comes into the public domain other than by a breach or breaches of any obligation under clause 14.1; or
- (f) is required by law or the rules of any securities exchange to be disclosed and the party required to make the disclosure ensures that information is disclosed only to the extent required.

## 9.2 Existing confidentiality obligations

The obligations of confidentiality under this Agreement are in addition to, and not in substitution for the confidentiality obligations of the parties under any specific non-disclosure agreements between the parties relating to the subject-matter of this Agreement.

## 9.3 Customer Information

- (a) Each party agrees to handle Personal Information obtained from the other party in accordance with the Privacy Laws. Where You appoint Superloop as a processor of Personal Data and transfer Personal Data to Superloop from the EEA, the parties will enter into an addendum to this Agreement as provided for in clause 3.2.
- (b) Save with Your consent, Superloop will not use Customer Information for any purpose other than the purposes permitted under applicable law. Without limitation, these purposes include:
  - (i) planning requirements in relation to Network operations or Network maintenance for any Service;
  - (ii) facilitating interconnection and inter-operability between telecommunications providers for the provision of any Service;
  - (iii) providing assistance to law enforcement, judicial or other government agencies;
  - (iv) compliance with any requirement imposed by a Regulator; and
  - (v) managing bad debt and preventing fraud related to the provision of any Service.
- (c) By entering into this Agreement, You expressly consent to the use of Customer Information for the purposes of: administering, billing, providing and provisioning for any Service; Network and Service enhancement, security and risk management; to respond to any emergency which threatens life or property; or otherwise in accordance with Superloop's privacy policy (see <https://superloop.com/legal/>).
- (d) You may give Your consent to the use of Customer Information for other purposes by any form of writing or by Your acceptance of any relevant terms and conditions which refer to such consent. You may withdraw Your consent to the use of Customer Information by giving us written notice.

## 9.4 Data Breach

- (a) If a party becomes aware of a Data Breach, that party will immediately inform the other party and disclose to it all information relating to the Data Breach.
- (b) After notification of a Data Breach, You will provide all reasonable assistance to Superloop to:
  - (i) remedy the Data Breach and prevent further Data Breaches;

- (ii) determine whether the Data Breach is an “eligible data breach” for the purposes of the Privacy Laws; and
  - (iii) in the event the parties agree that there has been an eligible data breach, prepare any statements and/or notifications within the applicable timeframes required under the Privacy Laws.
- (c) Superloop will provide You with any notices it prepares under clause 14.5(b)(iii) for final approval, which must not be unreasonably withheld or delayed. Each party will not publicly use or mention the other’s name without that party’s prior written approval.

## Publicity

You consent to Superloop listing You as a customer of Superloop and use Your logo (in accordance with Your reasonable guidelines provided by You to Superloop) in any press release, marketing, sales or securities exchange reporting materials. Any other reference to You by Superloop requires Your prior written consent.

## 10. Dispute resolution

### 10.1 No arbitration or court proceedings

If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), a party must comply with this clause 15.1 before commencing legal proceedings (except proceedings for interlocutory relief).

## Notification

A party claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### 10.2 Parties to resolve Dispute

- (a) During the 10 Business Days after a notice is given under clause 15.2 (or longer period if the parties to the Dispute agree in writing) (**Period**), each party to the Dispute must use its reasonable efforts to resolve the Dispute or to agree that the Dispute will be submitted to mediation.
- (b) If the parties cannot resolve the Dispute or agree to mediation within that Period, or if there is a submission to mediation, but there is no resolution within 20 Business Days of the submission, or such extended time as the parties may agree in writing before the expiration of the 20 Business Days, either party may commence legal proceedings.

## 11. Relationship between parties

This Agreement does not create a relationship of employment, agency or partnership between the parties.

## 12. Sub-contracting

Superloop may perform its obligations under this Agreement by procuring a third party to perform them. Superloop will inform You of the identity of the principal sub-contractors it retains in connection with the performance of this Agreement. Arrangements which Superloop may have with a third party will not limit Superloop's liability to You for performance of Superloop's obligations under this Agreement.

## Assignment

- (a) Subject to clause 18(b), neither party (**Assignor**) may assign or otherwise deal with (or purport to do so) any right or obligation under this Agreement to a third party (**Assignee**), including without limitation to an Affiliate without the prior written consent of the other party, with such consent not to be unreasonably withheld or delayed.
- (b) Superloop may assign, novate or transfer any of its rights or obligations under this Agreement to any of its Affiliates without Your consent or to a purchaser of the whole or any part of the Superloop business.

## Waiver

The failure of a party at any time to require performance of any obligation under this Agreement is not a waiver



of that party's right:

- (a) to insist on performance of, or claim damages for breach of, that obligation unless that party acknowledges in writing that the failure is a waiver; and
- (b) at any other time to require performance of that or any other obligation under this Agreement.

## 13. Governing law and jurisdiction

### 13.1 Governing law

This Agreement and any Dispute arising out of or in connection with it or its subject matter or formation (including non-contractual Disputes) shall be governed by and construed in accordance with the laws of Queensland, Australia.

### 13.2 Submission to jurisdiction

Each party submits to the non-exclusive jurisdiction of the courts of Queensland, Australia.

## Notice

### 13.3 Method of service

A notice, consent or communication under this Agreement is only effective if it is:

- (a) in writing in English;
- (b) addressed to the person to whom it is to be given; and
- (c) given as follows:
  - (i) delivered by hand to the recipient's address as specified in the Service Order, as varied by any notice;
  - (ii) sent to the recipient's address by professional courier, if that address is overseas; or
  - (iii) sent by email to the recipient's email address as specified in Service Order where the sender receives an email receipt or other written confirmation or verbal confirmation from the recipient to the sender which indicates that the email was received at the email address of the recipient.

A party may from time to time by notice to the other party vary its address for service of notices under this clause.

### 13.4 Time of service

A notice given in accordance with clause 21.1 is taken to be received (at the local time in the place of receipt):

- (a) if hand delivered, on delivery during business hours of the recipient;
- (b) if sent by professional courier to an address within the same country, 3 Business Days after the date of sending;
- (c) if sent by professional courier to an address within another country, 7 Business Days after the date of sending;
- (d) if delivered by email, that day if delivered by 5:00 pm on a Business Day; or the next Business Day, in any other case.

## Amendment

Superloop may amend the terms of this Agreement at any time by giving You 20 Business Days' written notice (**Notice Period**) but only if such amendments do not materially reduce Your rights or increase Your obligations (excludes amendments required or suggested by a law or a Regulator or a pass through of amendments made by an essential third-party supplier to Superloop to provide the Services). If You dispute the validity of an amendment made under this clause 22 acting reasonably, You must provide written notice of your objection within the Notice Period. If Superloop does not accept your objection, the amendment will be effective, but you can engage the Dispute Resolution mechanism in clause 14. If You do not provide notice of an objection within the Notice Period, You will be deemed to have accepted the amendment.

## 14. Entire agreement

This Agreement including its schedules and any appendices, annexures or attachments:

- (a) constitutes the entire agreement between the parties as to its subject matter; and
- (b) in relation to that subject matter, supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed, given or made by a party, whether orally or in writing.

## Severability

Any provision in this Agreement which is invalid or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and is otherwise capable of being severed to the extent of the invalidity or unenforceability, without affecting the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.