

Superloop - CyberEdge End User Licence Agreement

Updated 10 March 2023

End User License Agreement

Please read these Terms carefully. These Terms will apply to all software that you license, use or may order from time to time from Superloop (Operations) Pty Ltd ACN 622 829 510, Superloop Limited ACN 169 263 094 and Affiliates (“**Superloop**”) unless you and Superloop have executed a separate agreement that specifically states that it takes precedence over these Terms. These Terms, together with the other documents making up the Agreement, contains the entire understanding between the parties as to the subject matter of the Agreement and supersede all previous negotiations, representations, understandings or agreements. Without limitation, no terms or conditions contained on any purchase order, delivery confirmation or other document provided by you to Superloop will have any effect.

By clicking the “I Accept” button or similar, or otherwise indicating assent electronically, or by loading the Software or otherwise using the Software, you agree to these Terms. If you do not agree to these Terms, click the “I Do Not Accept” or “No” button or do not access or install the Software.

1. Definitions and interpretation

1.1 Definitions

In the Terms, unless the contrary intention appears:

- (1) **Affiliate** means 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.
- (2) **Agreement** means an agreement entered into between Superloop and the Customer, on the terms of these Terms and a Purchase Order or other form of confirmation or agreement from the Customer;
- (3) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the State of Queensland, Australia;
- (4) **Claims** means actions, suits, causes of action, proceedings, claims or demands;
- (5) **Commencement Date** has the meaning given in clause 2.1;
- (6) **Confidential Information** means, in relation to a party (**Discloser**), any information including all know-how, financial information and other valuable or sensitive information of any nature, trade secrets, formulae, graphs, drawings, proposals, purchase orders, quotations, designs, samples, devices, functional specifications and other material of whatever description provided to the other party (**Recipient**) by the Discloser for the purposes of these Terms, in any form whatsoever (including oral, written, and electronic information) of a technical, business, corporate, commercial or financial nature of or in relation to the Discloser, or which the Discloser makes the Recipient or its agents aware is considered by it to be confidential, or which is evident on its face as being confidential. The User Manual and Fees payable by the Customer are deemed to be the Confidential Information of Superloop;
- (7) **Consumer Law** means all consumer legislation, guidelines and industry standards applicable to the provision of the Services and in force in the jurisdictions in which the Software is provided.
- (8) **Control** means possessing a 50% or greater interest in an entity or the right to direct the management of that entity.
- (9) **Customer** means:
 - (a) the person or entity specified as the Customer, the client or the recipient or end user of the Software in the Purchase Order; or
 - (b) if no such person is specified, the person who accepts or agrees to these Terms in accordance with clause 1.2, provided however that if the person who accepts these Terms does so in their capacity as an employee of or contractor to another entity, including as a reseller of Superloop Software, then the Customer will be that other entity;
- (10) **CyberEdge Equipment** means computer hardware and associated equipment, as specified in the Purchase Order, that the Customer wishes to purchase;

- (11) **Fees** means the fees, charges and amounts payable by the Customer to Superloop under the Agreement, as specified in the Purchase Order;
- (12) **Force Majeure Event** means any cause or condition beyond the reasonable control of the party relying on it, including, but not limited to, fire, flood, act of God, war, insurrection, sabotage, acts of terrorism, industrial disturbance, failure of electrical or telecommunications networks, acts of vandalism and changes in legislation or regulations of any government;
- (13) **Further Term** means the period beginning on the day after the last day of the Initial Term or previous Further Term (as applicable) and continuing for:
- (a) the period specified as the Further Term or further period or duration of the Agreement (howsoever described) in the Purchase Order, Proposal or Quotation (as applicable); or
 - (b) if no such period is specified, a period equal to the duration of the Initial Term;
- (14) **Hourly Rate** means:
- (a) if any hourly rates or time and materials rates are set out in the Purchase Order, those hourly rates for those Superloop Personnel; or
 - (b) if no such rate is specified, \$250 or as otherwise notified by Superloop to the Customer in writing from time to time
- (15) **Initial Term** means the period beginning on the commencement of the implementation process and continuing for:
- (a) the period specified as the Initial Term or initial duration of the Agreement (howsoever described) in the Purchase Order, Proposal or Quotation (as applicable); or
 - (b) if no such period is specified, a period of one (1) year;
- (16) **Insolvency Event** means the happening of any of these events in relation to a party (Insolvent Party):
- (a) execution or other process of a court or authority or distress is levied for an amount exceeding \$10,000 upon any of the Insolvent Party's property and is not satisfied, set aside or withdrawn within 5 Business Days of its issue;
 - (b) an order for payment is made or judgment for an amount exceeding \$10,000 is entered or signed against the Insolvent Party which is not satisfied within 5 Business Days;
 - (c) the Insolvent Party suspends payment of its debts;
 - (d) the Insolvent Party becomes an externally-administered body corporate under the Corporations Act 2001;
 - (e) steps are taken by any person towards making the Insolvent Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within 10 Business Days);
 - (f) a controller (as defined in section 9 of the Corporations Act 2001) is appointed of any of the property of the Insolvent Party or any steps are taken for the appointment of a controller (but not where the steps taken are reversed or abandoned within 10 Business Days);
 - (g) the Insolvent Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act 2001; or
 - (h) a resolution is passed for the reduction of capital of the Insolvent Party or notice of intention to propose such a resolution is given, without the prior written consent of the other party;
 - (i) an event happens analogous to an event specified in clauses 1.1(22)(a) to 1.1(22)(h) to which the law of another jurisdiction applies and the event has an effect in that jurisdiction similar to the effect which the event would have had if the law of Australia applied;
- (17) **Intellectual Property Rights** means copyright, trade mark, moral rights, confidential information, design, patent, trade, business or company names, or other proprietary rights, or any rights to the registration of those rights and any applications to register those rights (anywhere in the world);
- (18) **Licence Restriction** means the licence restrictions (if any) set out in the Purchase Order (such as restrictions relating to the number of users, number of servers and size of the Customer organisation);
- (19) **Open Source Software Components** is software which is distributed subject to:

- (a) the licence terms known as the 'GNU General Public Licence or the 'GNU Lesser General Public Licence, 'EPL', 'BSD', 'MIT', 'Apache Software License, Apache License 2.0, ISC License, Python Software Foundation License, including any Open Source License by the Open Source Initiative (www.opensource.org), or any substantially similar terms and conditions; or
 - (b) any other terms authorising use of the software by the public generally, but also requiring modifications, adaptations or derivations of, or enhancements to, the software to be licensed or otherwise made available to the public on particular terms;
- (20) **Personnel** means, in relation to a party, the directors, officers, agents, employees and sub-contractors of that party;
- (21) **Purchase Order** means the written purchase order submitted to Superloop (in the form approved by Superloop), comprising the following (as applicable):
- (a) the quotation or proposal document issued by Superloop;
 - (b) the external documents (if any) referred to or incorporated by reference in the quotation or proposal document referred to in paragraph (a); and
 - (c) the document that indicates the Customer's acceptance of the proposal or quotation document referred to in paragraph (a) (including email orders, signed documents and the like),
- The Purchase Order excludes all other documents produced or issued by the Customer, unless Superloop expressly agrees to include such documents in writing.
- (22) **Special Conditions** means any special conditions specified in a Purchase Order, including the Superloop General Terms, if applicable, which are accessible by <https://www.superloop.com/terms/>;
- (23) **Superloop** means Superloop (Operations) Pty Ltd ACN 622 829 510, Superloop Limited ACN 169 263 094 and Affiliates, companies registered in Australia;
- (24) **Software** means the object code form of any computer program or software which is owned by or licensed to Superloop and which Superloop supplies or makes available to its Customers, which includes the CyberEdge product, as specified in the Purchase Order, together with all Updates to those computer programs or software as supplied by Superloop to the Customer;
- (25) **Taxes** 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 licensing and use of the Software, but excluding taxes based on its net income.
- (26) **Terms** means this document entitled "Superloop - CyberEdge End User Licence Agreement", which is accessible by <https://www.superloop.com/terms/> and as varied from time to time in accordance with clause 12.9, which serves as an Addendum to the Superloop Service Order;
- (27) **Update** means any updates, patches, new releases, new revisions or new versions of the Software; and
- (28) **User Manual** means the operating manuals and other documentation which is accessible via the help facility on the Software user interface.

1.2 Application of these Terms

- (1) These Terms govern the use and licensing of the Software to the Customer directly by Superloop. By submitting a Purchase Order to Superloop, or accepting a quotation or proposal issued by Superloop, or renewing an existing service or license, the Customer offers to purchase and license the Software on the terms of these Terms and the Purchase Order. The Customer's offer is accepted by Superloop on the later of:
 - (a) Superloop accepting payment of the Fees; and
 - (b) Superloop delivering the Software to the Customer.
- (2) If these Terms are displayed or provided to the Customer as part of the installation, renewal or first time execution of any software supplied by Superloop (including any Updates or new releases of existing software) (**Relevant Software**), then by continuing the installation process or the use of the Relevant Software, or by the Customer (or any of its Personnel) clicking the "I accept" button (or similar):

- (a) the Customer agrees to be bound by these Terms in relation to the use and licensing of the Relevant Software as if the Relevant Software were the Software;
 - (b) these Terms supersede all existing licence terms and agreements that would otherwise apply to the use and licensing of the Relevant Software; and
 - (c) the Relevant Software is deemed to be the “Software” for the purposes of these Terms.
- (3) To the extent of any inconsistencies between these Terms, a Purchase Order and any of the documents comprising the Purchase Order, the following order of priority will apply:
- (a) any Special Conditions in the Purchase Order;
 - (b) these Terms;
 - (c) any of the documents comprising the Purchase Order.
- (4) The Customer agrees that these Terms constitute the entire terms of each Agreement to the exclusion of all other terms and conditions (whether written or verbal), including any terms and conditions contained on printed documents issued by the Customer or Superloop (other than the documents comprising any accepted Purchase Order).

1.3 Interpretation

- (1) Reference to a party includes the party’s executors, administrators, successors and permitted assigns.
- (2) “Including” and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings are for convenience only and do not form part of the Agreement or affect its interpretation.
- (5) A provision of the Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

2. Term

2.1 Commencement and acceptance

The Agreement commences on the date specified in the Purchase Order or, if no such date is specified, in accordance with clause 1.2(1) or on acceptance of these Terms (whichever is the earlier) (**Commencement Date**). The Customer’s ongoing use of the Software constitutes acceptance of these Terms and the termination of any previous terms and conditions relating to Software.

2.2 Initial Term and renewal

- (1) This Agreement continues for the duration of the Initial Term unless terminated earlier under clause 11.
- (2) The term of this Agreement will be extended for the duration of a Further Term at the end of the Initial Term or the then-current Further Term (as applicable), unless the Customer gives Superloop a notice in writing at least 30 days before the term of the Agreement is due to expire that it does not wish to renew the Agreement (in which case the Agreement will expire at the end of the Initial Term or the then-current Further Term, as applicable).

3. Licence of Software

3.1 Grant of licence

- (1) Subject to clause 3.1(2), with effect from the Commencement Date, Superloop grants to the Customer a non-exclusive, personal, non-transferable and limited term licence to:
 - (a) install and use the Software, subject to and to the extent of the Licence Restrictions; and

- (b) use the online User Manual,
- during the Initial Term and any Further Term of the Agreement and otherwise on and subject to the terms set out in the Agreement.
- (2) To the extent that the Software incorporates any Open Source Software Components, those Open Source Software Components are licensed and distributed to the Customer by the open source software distributors and/or respective copyright and other right holders (**Right Holders**) under the Right Holder's terms and conditions. Superloop is neither a party to the Right Holder's terms and conditions nor a distributor of the Open Source Software Components. The Customer receives no express or implied patent or other licence from Superloop with respect to any Open Source Software Components.

3.2 Restrictions on licence

Except as expressly permitted under the Agreement or authorised by law where that authorisation cannot be excluded, the Customer must not, and must not allow any other person to:

- (1) modify, vary, improve, translate or adapt the Software or the User Manual;
- (2) sub-license, disclose, sell, distribute, publish, transmit or otherwise make available to any third party any part of the Software or User Manual;
- (3) permit or allow any other person access (directly or indirectly) to the Software or User Manual, except for the Personnel of the Customer who are authorised by the Customer to use the Software in accordance with the Licence Restrictions;
- (4) reverse engineer, disassemble, decompile or otherwise reduce the Software into any human-readable form, except to the extent authorised by any applicable law; or
- (5) use the Software for hire or rental, timesharing, service bureau or in any other way where a third party may use, have access to, or derive benefit from, the use of the Software.

3.3 Copies of User Manuals

- (1) The Customer may make such printed copies of the online User Manual as are reasonably required for the Customer's authorised use of the online User Manual in accordance with the Agreement.
- (2) Each copy of the User Manual made by the Customer must include the copyright notices and other notices embedded in or affixed to the User Manual.

3.4 Updates, new releases and versions

- (1) During the term of the Agreement, Superloop may provide the Customer with one or more Updates. Unless otherwise agreed by Superloop, all Updates provided by Superloop to the Customer are licensed to the Customer on the terms and conditions of the Agreement.
- (2) Superloop may remotely provide security and features updates to the Software, including Updates, as required. The Customer must permit Superloop to provide such updates and must comply with Superloop's directions to configure the Customer's network and firewall to permit the remote security and features updates.
- (3) The Customer acknowledges that Superloop may make certain new modules or specific features available for an additional Fee, and that such module(s) or features (if acquired by the Customer) may also increase the Fees payable.
- (4) At any time during the Term, Superloop reserves the right to replace any or all of the Software (or an aspect of the Software) with replacement Software with substantially similar, equivalent or greater functionality (**Replacement Software**). Superloop will provide at least 90 days' notice in writing of its intention to replace the Software with Replacement Software. If Superloop issues a notice under this clause, the Customer must allow Superloop to replace the specified Software with the Replacement Software. Superloop will provide the Customer with reasonable assistance in migrating to the Replacement Software. The Customer's rights to use the originally supplied Software will end on the date that the Replacement Software is provided to the Customer by Superloop.

3.5 Monitoring of use

The Customer acknowledges that the Software may include monitoring functionalities that report on the use of the Software. If Superloop has reasonable grounds to suspect that the Customer has committed a breach of the Agreement, then Superloop may remotely access the Software in order to determine whether there has been a breach of the Agreement. The Customer must permit (and must not block or disable) such remote access by Superloop.

3.6 Use on approved equipment and approved third party software

- (1) At the commencement of the Initial Term the Customer must only install and use the Software on hardware equipment approved by Superloop which is considered by Superloop to be compatible with the Software. The User Manual may list such compatible hardware equipment. At the commencement of any Further Term Superloop may require the Customer to refresh the hardware equipment on which the Software is to be used. Such equipment must be approved by Superloop.
- (2) If the Customer uses virtualization software to run an instance (or instances) of the Software, then Superloop will not be responsible for any performance degradation that may be caused or contributed to by the virtualization software or the underlying hardware platform or their set up.
- (3) The Customer must not use the Software in conjunction with any third party software except those which are considered by Superloop to be compatible with the Software. The User Manual may list such compatible third party software.
- (4) Superloop will, upon request, provide the Customer with details of third party hardware equipment and software that Superloop considers to be compatible with the Software.

3.7 Delivery and installation

- (1) If applicable, Superloop will deliver the Software in the manner specified in the Purchase Order (which may include pre-installation on Superloop equipment).
- (2) If the Software is not pre-installed on Superloop equipment, then except to the extent that Superloop is providing installation services, the Software will be delivered to the Customer in the .ISO file format.

4. Customer obligations

4.1 Third party software

Except for the Software, the Customer is responsible for obtaining all software licences in respect of all other software applications used in conjunction with the Software. The Customer is also responsible for all support of these other software applications.

4.2 Protection in relation to processed data

The Customer must take all reasonable steps to ensure that data transported, stored or processed using the Software:

- (1) does not infringe any Intellectual Property Rights or other rights of any person
- (2) does not breach any law, standards, content requirements or applicable rules or codes of conduct;
- (3) does not contain any instructions which, if implemented, might cause damage or injury to any person or property; and
- (4) without limiting clauses 4.2(1) to 4.2(3), will not expose Superloop to the risk of any Claim, loss or liability.

4.3 Security

- (1) The Customer is responsible for the supervision, management and control of the Software.
- (2) The Customer must use its best endeavours to ensure that:

- (a) the Software is protected at all times from unauthorised access or use by a third party or misuse, damage or destruction by any person; and
- (b) the security credentials used by the Customer and its Personnel to access the Software are protected at all times from unauthorised access or use.
- (3) The Customer must not share or disclose any security credentials used to access the Software
- (4) The Customer must keep complete and accurate records relating to the use, copying, modification, merging and disclosure of the Software. Upon request, the Customer must provide Superloop with copies of such records (at the Customer's own cost).
- (5) The Customer must not disable or attempt to disable telemetry data which is used to monitor and audit the Software, user subscriptions and update critical system services of the Software.

5. Fees and payment

5.1 Fees

- (1) The Fees for the supply of the Software are set out or calculated in accordance with the Purchase Order. If the Purchase Order specifies any fee review or escalation mechanism, then the Fees will be adjusted in accordance with such mechanism at the time(s) specified in the Purchase Order.
- (2) If the Purchase Order specifies that the Fees are calculated on an hourly or "time and materials" basis, then such Fees will be calculated by multiplying the number of hours (or part thereof) of work undertaken by Superloop (as evidenced by the time recording system implemented by Superloop from time to time) by the applicable Hourly Rate.
- (3) Some of the Fees may be payable on a recurring basis (such as an annual fee or a monthly fee) (**Recurring Fees**). Unless otherwise specified in the Purchase Order, the Customer must pay all Recurring Fees on an in advance basis, on or before the commencement and anniversaries of each period of payment. No refunds will be payable for any prepaid Recurring Fees in respect of any termination or expiry of the Agreement.

5.2 Invoice and payment

- (1) Superloop will invoice the Customer for the Fees on or before the date on which the Fees are due. The invoice will be a valid tax invoice in accordance with the requirements of clause 6.
- (2) The Customer must pay all relevant Fees in accordance with the payment regime set out in the Purchase Order, and if no payment regime is specified, by the due date specified in the invoice from Superloop. All invoices for Fees must be paid in full without any set-off, deduction or withholding.

5.3 Late payment

- (1) If the Customer fails to pay any amount in full by the due date under clause 5.2(2), then without limiting Superloop's rights and remedies:
 - (a) Superloop may suspend the Customer's license to use the Software without liability to the Customer; and
 - (b) the Customer must, on demand, pay Superloop interest calculated at an annual interest rate that is equal to the prime commercial lending rate charged by Westpac Banking Corporation on the due date plus 2%, calculated daily and compounded monthly, on that amount until the date of payment.
- (2) If Superloop suspends the licence of the Software under clause 5.3(1)(a) then Superloop will only be obliged to resume within a reasonable time after payment in full by the Customer of all outstanding invoices, together with the interest (if any) demanded by Superloop under clause 5.3(1)(b).
- (3) Late payment does not constitute an extension of the Initial Term or any Further Term of this Agreement, and any period (and any Fees paid for that period) where the Software was not licensed by Superloop due to suspension for non-payment is forfeited by the Customer.

6. Taxes

6.1 Fees exclusive of Taxes

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

6.2 Consideration is exclusive of Taxes

Unless Taxes are expressly included, the consideration to be paid or provided under any other clause of the Agreement for any supply made under or in connection with the Agreement does not include Taxes.

6.3 No deductions for withholding Tax

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

- (1) make that deduction or withholding (or both);
- (2) pay the full amount deducted or withheld as required by the relevant law;
- (3) give the other party a receipt for each payment; and
- (4) 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.

7. Liability

7.1 Disclaimers and exclusion of implied warranties

To the maximum extent permitted by law and subject to the remaining provision of this clause 7, Superloop excludes all representations, warranties, terms, statutory guarantees, conditions and undertakings in respect of the Software licensed in connection with the Agreement that are not expressly stated. To the extent permitted by law, where liability under any condition, guarantee or warranty which cannot legally be excluded but can be validly limited, such liability is limited, to the maximum extent permitted by law, to (at the election of Superloop):

- (1) in the case of goods (including the Software, and User Manual), the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired;
- (2) in the case of CyberEdge Equipment, if the Agreement includes the supply of any CyberEdge Equipment and if Superloop or the manufacturer of the CyberEdge Equipment offers a warranty program in respect of the supplied CyberEdge Equipment (as specified in the Purchase Order) (**Warranted Equipment**) and the Customer subscribes to the warranty program and pays the relevant Fees in respect of the Warranted Equipment (as specified in the Purchase Order), the warranties in clause 7.2 will apply to the Customer; and

This clause 7 does not affect any rights or remedies that the Customer may have at law which cannot be lawfully excluded or limited.

7.2 Warranty for CyberEdge Equipment

Superloop provides a warranty to the Customer for CyberEdge Equipment, based on the following clauses:

- (1) the Warranty Period is 36 months commencing from the date on which the Warranted Equipment has been delivered, unless a different Warranty Period is specified in the Purchase Order.
- (2) Superloop does not provide any warranty in relation to the CyberEdge Equipment after the expiry of the 36-month period referred to above
- (3) The Warranty Period automatically expires on the expiry or termination of the Agreement.
- (4) During the Warranty Period, if the Warranted Equipment is the subject of a material defect (**Faulty Equipment**), then subject to this clause 7.2, Superloop or the Warranty Provider will promptly (at its discretion):
 - (i) repair the Faulty Equipment by supplying replacement components or parts; or

- (ii) replace the Faulty Equipment with another piece of equipment with a similar level of performance and features (**Replacement Equipment**), in which case the Replacement Equipment is deemed to be the Warranted Equipment, including for the purpose of the original Warranty Period, provided that the Customer acknowledges that the Warranty Provider will ultimately be responsible for determining any dispute in relation to Faulty Equipment.
- (5) The Replacement Equipment may (at Superloop's choice) be a new unit or a refurbished unit.
- (6) Unless otherwise agreed in writing, the repair or replacement of the Faulty Equipment by Superloop does not affect the Warranty Period. The balance of the Warranty Period will apply to the repaired Warranted Equipment or the Replacement Equipment (as applicable). The Warranty Period will not renew, refresh or commence again from the date of provision of any Replacement Equipment.
- (7) Superloop's obligation under clause 7.2(4) does not include the installation of any replacement component or parts or Replacement Equipment.
- (8) Superloop does not have any obligation or liability under this clause 7.2 in respect of any of the following:
- (a) any defect or issues relating to software (other than Superloop Software) installed on the Warranted Equipment;
 - (b) any faults, damage or failures caused by events outside Superloop's control, including:
 - (i) accidental or deliberate damage;
 - (ii) any damage caused or contributed to repairs of (or attempts to repair) any Warranted Equipment by any person other than authorised Superloop Personnel;
 - (iii) the installation or use of any parts, equipment, components or consumables not supplied, recommended, approved or suggested by Superloop (including as specified in the User Manual);
 - (iv) electrical surges or lightning;
 - (v) misuse or inappropriate handling, installation or transportation of the Warranted Equipment; and
 - (vi) operating the Warranted Equipment outside the recommended environmental conditions; and any faults, damage or failures caused by use of the Warranted Equipment other than in accordance with the User Manual or Superloop's recommendations or directions.
- (9) Superloop or the Warranty Provider does not have any obligation or liability under this clause 7.2 if the outer case of the Warranted Equipment has been opened by any person other than Superloop or its authorised Personnel, or during any period in which the Customer is in breach of the Agreement.

7.3 No other warranties

- (1) To the maximum extent permitted by law and subject to clause 7.1, Superloop disclaims and excludes any warranty, representation or undertaking as to the purpose for which the Software may be suitable, including any purpose for which the Customer intends to use the Software.
- (2) Without limiting clause 7.3(1), while Superloop has taken due care in developing the Software, to the extent permitted by law Superloop does not warrant, and excludes all representations and warranties that:
- (a) the Software is error-free or has no defects;
 - (b) the Software is free from viruses, worms or trojans; or
 - (c) the Software meets the Customer's requirements or is compatible with the Customer's networks or computer system.
- (3) The Customer warrants that it has not relied on any representation made by Superloop that has not been stated expressly in the Agreement nor upon any descriptions or specifications contained in any document including brochures, marketing and promotional materials provided by Superloop.

7.4 Limitation and exclusion of liability

- (1) Despite any other provision of the Agreement and to the maximum extent permitted by applicable law, Superloop is not liable to the Customer under contract, tort or otherwise in any circumstances for:
- (a) any indirect, economic, punitive, special or consequential loss or damage;

- (b) any loss of revenue, loss of production, loss of use, loss of profit, loss of data or loss arising from delays or interruptions or the termination of the license by Superloop; or
- (c) the security or maintenance of any data input, stored or transmitted using the Software.
- (2) Subject to clause 7.1 and any laws the application of which may not be lawfully excluded, Superloop's aggregate liability to the Customer on any basis and in any circumstances (including liability for negligence) arising out of or in connection with the Agreement, the Software or its use will not exceed, and is expressly limited to, the total amount of Fees paid by the Customer in respect of the Software (excluding any premium features or additional services) the 12 months under the Agreement preceding the first event that gave rise to the relevant liability.
- (3) To the maximum extent permitted by law, no action, regardless of form, arising out of or pertaining to the Agreement, the Software or its use may be brought by the Customer more than one year after the cause of action has accrued.

7.5 Contributory liability

Superloop's liability to the Customer is reduced to the extent that such liability is caused by or attributable to:

- (1) a breach of contract committed by, or a negligent or malicious act or omission of, the Customer or any of its Personnel;
- (2) technical difficulties with the performance or operation of the Customer's systems and networks (other than the Software); and
- (3) congestion, network traffic or service degradation or service failures on the Internet, or failures on the Customer's network, to the extent outside the control of Superloop.

7.6 Statutory rights preserved

This clause 7 does not exclude or restrict any rights or remedies that the Customer may have in relation to a "major failure", as that term is defined in the Consumer Law.

7.7 Customer indemnity

Except to the extent of any Claims against Superloop by a third party alleging that the Software or User Manual infringes the Intellectual Property Rights of that person, the Customer indemnifies Superloop from and against all loss, damage, costs (including legal costs on a solicitor-client basis), expense, Claims or liability suffered or incurred by Superloop that arises directly or indirectly as a result of or in connection with:

- (1) a breach or non-performance of any of the Customer's obligations under the Agreement;
- (2) the use, sub-licensing or reproduction of the Software, or User Manual by the Customer;
- (3) the use of the Software in combination with any software or hardware other than in accordance with clause 3.6;
- (4) modification of the Software without the written consent of Superloop; and
- (5) any Claim against Superloop arising out of or in connection with the Customer's use or sub-licensing of the Software or User Manual.

8. Intellectual Property

8.1 Reservation of rights

The Software and User Manual are protected by intellectual property laws. Superloop reserves all rights (including Intellectual Property Rights) in relation to the Software and User Manual that are not expressly granted to the Customer in the Agreement. The Customer has no proprietary or other interest in the Software or User Manual and nothing in the Agreement transfers any right, title or interest in the Software or User Manual to the Customer.

8.2 Existing IP not affected

Nothing in the Agreement affects the ownership of any Intellectual Property Rights owned by either party prior to the date of the Agreement or developed by either party or their Personnel independently from the Agreement.

8.3 Developed IP

- (1) Subject to clause 8.3(2), the parties acknowledge and agree that any Intellectual Property Rights in any materials created or developed by Superloop or its Personnel in the course of providing the Software or performing its obligations under the Agreement (**Developed IP**) will be retained and owned by Superloop or its licensors.
- (2) The Developed IP does not include any Confidential Information of the Customer or any other material provided by the Customer that is incorporated into or forms part of the deliverables produced by Superloop as part of the Software, or data which is processed, filtered or redirected by the Software (**Customer Material**). The Intellectual Property Rights in the Customer Material will continue to be owned by the Customer or its licensors. The Customer grants to Superloop a non-exclusive, royalty-free licence to use and exercise any Intellectual Property Rights in the Customer Material for the duration of the term of the Agreement for the purpose of allowing Superloop and its Personnel to perform their obligations under the Agreement.

8.4 Ownership of modifications and improvements

- (1) Superloop owns all improvements, adaptations and modifications to the Software and User Manual made by or on behalf of the Customer or its Personnel (whether authorised or not) and all related Intellectual Property Rights. The Customer assigns any and all the rights that the Customer or its Personnel may have in those improvements and modifications to Superloop and must execute all additional documents requested by Superloop to give effect to such assignment.
- (2) To the extent that Superloop (or its licensees or assignees) develops any Updates, they will be owned exclusively by Superloop.

9. Confidentiality

9.1 Obligation of confidence

- (1) Where a party has received or been given access to the Confidential Information of the other party under or in connection with this Agreement, that party must take all reasonable precautions to maintain the confidentiality of the other party's Confidential Information and protect it from unauthorised access, use and disclosure.
- (2) A party must not, without the prior written approval of the other party, disclose the other party's Confidential Information or use the other party's Confidential Information other than for the purposes of the Agreement.

9.2 Exceptions to obligation of confidence

A party is not in breach of clause 9.1 if:

- (1) it is required by law or a regulator to disclose the other party's Confidential Information;
- (2) the information disclosed is generally available to the public (other than as a result of the wrongful disclosure by the party);
- (3) the party obtained the Confidential Information from a third party on a non-confidential basis without breach by that third party of any obligation of confidence concerning the Confidential Information; or
- (4) the Confidential Information was already in the party's possession (as evidenced by written records) when provided by or on behalf of the other party.

9.3 Permitted disclosures

Each party:

- (1) may disclose the other party's Confidential Information to its Personnel and any subcontractors engaged for the purposes of the Agreement for the purpose of performing that party's obligations under the Agreement;
- (2) must take all reasonable steps to ensure that its Personnel and any subcontractors engaged for the purposes of the Agreement do not make public or disclose the other party's Confidential Information or use the other party's Confidential Information other than for the purposes of the Agreement; and
- (3) agrees that a breach by that party's Personnel or subcontractors of such obligations of confidence will be deemed to be a breach of the Agreement by that party.

9.4 Disclosure to advisors

Despite any other provision of this clause 9, each party may disclose the Confidential Information of the other party (other than Confidential Information of a technical nature) to its solicitors, auditors, insurers or accountants, but must ensure that each such person to whom that disclosure is made uses that information solely for the purposes of advising or reporting to that party.

9.5 Acknowledgements

Each party acknowledges that:

- (1) a breach of this clause 9 would be harmful to the business interests of the party whose Confidential Information is disclosed;
- (2) monetary damages alone would not be a sufficient remedy for a breach of this clause 9; and
- (3) in addition to any other remedy which may be available in law or equity, the party whose Confidential Information is disclosed is entitled to interim, interlocutory and permanent injunctions or any of them to prevent breach of this clause 9 and to compel specific performance of it.

9.6 No disclosure of benchmarks

The Customer must not disclose or publish any benchmark or feature test of the Software without the prior written consent of Superloop.

10. Dispute resolution

10.1 Injunctive or interim relief

Nothing in this clause 10 prevents a party seeking urgent injunctive or similar interim relief from a court.

10.2 Resolution of dispute in good faith

- (1) The parties must use best endeavours to resolve in good faith any dispute arising out of or in connection with this Agreement (**Dispute**). Each party must follow the procedures in this clause before starting court proceedings (except for urgent injunctive or declaratory relief).
- (2) Despite the existence of a Dispute, the parties must continue to perform their other obligations under this Agreement that are not affected by the Dispute.

10.3 Initial procedure to resolve a Dispute

- (1) A party (**Initiating Party**) claiming that a Dispute has arisen must give the other party (**Recipient Party**) a notice setting out brief details of the Dispute (**Dispute Notice**). Within 14 days of service of a Dispute Notice, the

Recipient Party must give the Initiating Party a notice setting out brief details of the Recipient Party's position on the Dispute (**Reply Notice**).

- (2) If a Dispute Notice and Reply Notice are given, the parties must make representatives with authority to settle the Dispute available for the purpose of meeting in an effort to resolve the Dispute. At least one meeting of the authorised representatives must take place within 21 days of service of a Reply Notice.

10.4 Compulsory mediation

If the Dispute remains unresolved 30 days after the first meeting of the authorised representatives referred to in clause 10.3(2) has taken place, then the parties must refer the Dispute to mediation, to be conducted in Brisbane, Queensland and administered by the Australian Commercial Disputes Centre according to its Mediation Guidelines. These Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.

11. Termination

11.1 Termination for breach

- (1) The Customer may terminate the Agreement immediately by notice in writing to Superloop if an Insolvency Event occurs in relation to Superloop.
- (2) Superloop may terminate the Agreement immediately by notice to the Customer if:
 - (a) the Customer fails to comply with any provision of the Agreement and fails to remedy that failure to the satisfaction of Superloop within 10 Business Days after notice requiring it to be remedied;
 - (b) an Insolvency Event occurs in relation to the Customer;
 - (c) the Customer fails to pay an amount due and payable under the Agreement on the due date and the amount remains unpaid for 10 Business Days or longer;
 - (d) the Customer commits a breach of clause 3.2; or
 - (e) the Customer assigns or otherwise disposes of any interest or right it has under the Agreement in breach of clause 12.4(1).

11.2 Effect of termination

- (1) Upon termination of the Agreement for any reason:
 - (a) Superloop's obligation to provide the Software immediately ceases;
 - (b) all rights and licences granted under the Agreement terminate immediately;
 - (c) the Customer must immediately cease to use the Software and User Manual, and must return to Superloop or destroy all copies of the Software and User Manual and all other Confidential Information of Superloop;
 - (d) Superloop may, at its discretion, remotely disable the use of the Software;
 - (e) Superloop may retain all Fees paid by the Customer; and
 - (f) all outstanding Fees that have not been paid by the Customer become immediately due and payable.
- (1) Clauses 1, 5, 6, 7, 9, 10, 11.2 and 12 survive termination of the Agreement.

12. General

12.1 Force Majeure

Superloop will not be liable to the Customer or to any third party for any failure to perform or delay in performing any obligations under the Agreement to the extent caused by a Force Majeure Event or impact of any change in arrangements with any third party who licenses any software or other Intellectual Property Rights to Superloop. The obligations of

Superloop are suspended to the extent to which they are affected by the relevant Force Majeure Event or impact of any change in arrangements with any Licensor to Superloop as long as the Force Majeure Event continues.

12.3 Exclusion of Vienna Convention

The application of the United Nations Convention on Contracts for the International Sale of Goods (known as the Vienna Sales Convention 1980) is excluded.

12.4 No Assignment

- (1) The Customer must not transfer or assign any benefit or obligation under the Agreement to any third party without the prior written consent of Superloop.
- (2) Superloop may, at its discretion, assign, transfer or novate its rights and obligations under the Agreement to any person. The Customer must, upon request, do such things and execute such documents as are required by Superloop to give effect to such assignment, transfer or novation.

12.5 Subcontract

Superloop may subcontract all or any part of its obligations under the Agreement without prior notice to the Customer.

12.6 Severability

If any provision in the Agreement is unenforceable, illegal or void or makes the Agreement or any part of it unenforceable, illegal or void, then that provision is severed and the rest of the Agreement remains in force.

12.7 Further assurance

Each party must promptly at its own cost do all things (including executing and if necessary delivering all documents) necessary or desirable to give full effect to the Agreement.

12.8 Entire understanding

- (1) The Agreement is the entire agreement and understanding between the parties on everything connected with its subject matter and supersedes any prior agreement or understanding on anything connected with that subject matter.
- (2) Each party has entered into the Agreement without relying on any information or advice given or statement made (whether negligently or not) by any other party or any person purporting to represent that party.

12.9 Variation

Superloop may vary these Terms from time to time by notice in writing to the Customer or by posting the new Terms on Superloop's website and notifying the Customer that revised terms have been posted. The updated Terms will apply to the Customer's use of the Software after the effective date of the variation (including all Updates and new releases) and will apply for any Further Term.

12.10 Waiver

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right. The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing. Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

12.11 Notices

- (1) A notice or other communication connected with the Agreement (**Notice**) has no legal effect unless it is in writing.
- (2) In addition to any other method of service provided by law, the Notice may be sent by prepaid post, facsimile or delivered at the address of the addressee set out in the Purchase Order.
- (3) If the Notice is sent or delivered in a manner provided by clause 12.11(2), it must be treated as given to and received by the party to which it is addressed:
 - (a) if sent by post, on the 3rd Business Day (at the address to which it is posted) after posting; or
 - (b) if sent by email or notice to the administrator of the Software, on the next day after is communicated; or
 - (c) if sent by facsimile or otherwise delivered before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (4) Despite clause 12.11(3)(d) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice.

12.12 Governing law and jurisdiction

The law of the State of Queensland governs the Agreement. The parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland and of the Commonwealth of Australia.