

# Superloop General Terms WIFI

## 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.

**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 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.

**End User Terms** means the terms set out in Schedule 2.

**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;  
strikes, lockouts, labour disputes, work stoppages, embargoes or any other labour difficulties (except where undertaken only by employees of that party);
- (b) action or inaction of any government, governmental or local authority or agency, civil or military authority or statutory authority (or any of their representatives);
- (c) malicious or negligent acts or omissions by a third party.

**General Terms** means these standard terms and conditions (Superloop General Terms – WIFI) 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, trademark, 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 or as per a Schedule 2 for WIFI.

**Service Levels** in respect of a Service, means the service levels set out in the Service Schedule for that Service or as per a Schedule 2 for WIFI.

**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.

**Site** means the location at which Superloop is requested to provide Services, as specified in a 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.

**Superloop Owned Equipment** means all equipment which Superloop (or its Affiliate) owns or leases and which it installs, supplies, or provides to the Customer for use in connection with a Site, and includes the equipment specified in the relevant Service Order.

**Superloop WiFi Portal** means the online End User management and service interface made available by Superloop at each Site.

**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).

**WIFI** means a WIFI related Service provided by Superloop to the Customer.

**You or Your** means the Customer described in the Service Order (whether capitalised or not).

## 1.2 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:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) other grammatical forms of defined words or expressions have corresponding meanings;
- (c) 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;
- (d) 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;
- (e) a reference to 'dollar' or '\$' is a reference to the lawful currency of Australia unless otherwise explicitly specified;
- (f) 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;

- (g) a reference to a person includes its successors and permitted assigns;
- (h) words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies; and
- (i) mentioning anything after 'include', 'includes' or 'including' does not limit anything else that might be included.

## 2. Agreement

### 2.1 This Agreement

- (a) The Agreement between You and Superloop comprises:
  - (i) the Service Order submitted by Your authorised representative;
  - (ii) any 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.

### 2.2 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.

## 3. Affiliates

### 3.1 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.

### 3.2 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.

### 3.3 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.

## 4. 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.

### 4.2 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.

## Regulatory - general

- (c) 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.
- (d) You acknowledge that Superloop may intercept, without any prior or subsequent notification to You, communications carried over the Service to meet any lawful request or direction of a domestic or international regulator, 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.

### 4.3 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.
- (c) If Superloop attends onsite and the issue wasn't caused by Superloop, a call out fee may be payable and will be specified in advance but shall be no less than \$190/hr, including where attendance is via remote access or video or phone call or both.

### 4.4 Superloop's obligations to WIFI End Users

Superloop will:

- (a) provide, manage, and maintain the Superloop Portal as the platform for each End User's acceptance of the End User Terms; and
- (b) assist the Customer in discharging its obligations under clause 5.5(a), by handling all service, fault enquiries, and complaints received from End Users, as the Customer's agent only.

## 5. Your Obligations

### 5.1 General obligations

- (a) You must:
- (i) comply with all reasonable requests made by Superloop in relation to a Service or the Network;
  - (ii) cooperate with Superloop to provide access to the site and exact location (or proposed installation location) of any Customer Equipment or Superloop Owned Equipment;
  - (iii) 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;
  - (iv) obtain and maintain all Authorisations required for You to enter into this Agreement, use the Services and to perform Your obligations under this Agreement;
  - (v) provide all assistance and information reasonably required by Superloop in order for Superloop to comply with its obligations under this Agreement;
  - (vi) comply with all laws including the Telecommunications Act;
  - (vii) notify Superloop immediately on becoming aware of any unlawful use of a Service or the Network; and
  - (viii) 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, management, and maintenance of a Service;
  - (ix) 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
  - (x) 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.
  - (xi) not allow End Users to use a Service without agreeing to the End User Terms in Schedule 1 as varied from time to time by Superloop in its absolute discretion.
- (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.

## 5.2 Customer Equipment

- (a) You are responsible for installing and maintaining any relevant Customer Equipment at Your own expense.
- (b) 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.

- (c) 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.
- (d) 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.
- (e) 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.

### 5.3 Superloop Owned Equipment

- (a) Superloop may install, supply or provide to the Customer Superloop Owned Equipment.
- (b) Title in Superloop Owned Equipment is not transferred to the Customer. The Customer holds the Superloop Owned Equipment as bailee for Superloop. Risk in any Superloop Owned Equipment passes to the Customer on delivery. The Customer is responsible for any damage to, or destruction or theft of, Superloop Owned Equipment except to the extent it is caused by Superloop. The Customer will keep the Superloop Owned Equipment free from any charge, lien, mortgage or encumbrance.
- (c) The Customer will:
  - (i) ensure it has all necessary consents and approvals (including building owner and building manager approvals) for Superloop to deliver, install, access and maintain Superloop Owned Equipment at each Site;
  - (ii) ensure that Superloop (and only Superloop) is provided with access to the Superloop Owned Equipment during normal business hours as Superloop may request and at such other times as the Customer and Superloop mutually agree;
  - (iii) provide adequate and suitable space, power supply and environment for all equipment used in connection with the Services and located at a Site (including a secure, air- conditioned and adequately ventilated communications room);
  - (iv) provide Superloop's employees, agents and contractors with a safe working environment at each Site; and
  - (v) not (and will ensure its End Users do not) part with possession of Superloop Owned Equipment (except to Superloop) or damage or interfere with Superloop Owned Equipment.
- (d) Superloop may, on reasonable notice to the Customer, change, modify or service the Superloop Owned Equipment.
- (e) The Customer acknowledges that Superloop's activities, including the installation, management, and maintenance of Superloop Owned Equipment at each Site, may be authorised by a relevant local law or clauses 6 and 7 of Schedule 3 to the Telecommunications Act 1997 (Act) and waives its right to receive a notice under clause 17 of Schedule 3 to the Act. The Customer agrees that this Agreement does not limit or affect the rights granted to Superloop in the Act and that Superloop Owned Equipment may remain in place and in operation at each Site following expiry or termination of this Agreement.
- (f) The Customer may purchase equipment from Superloop for use in connection with the Services. Title to that equipment passes to the Customer when the Customer pays for it in full in cleared funds. Risk in that equipment passes to the Customer on delivery.

### 5.4 Equipment Warranty

For warranty rights and claims, You must comply with the processes in Schedule 2, clause 5.

### 5.5 End User responsibility

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 (whether or not Superloop acts as your agent);
- (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.

## 5.6 End Users contracts

- (a) The parties acknowledge and agree that WIFI End Users shall be customers of Customer and not Superloop.
- (b) The Customer must enter into all contracts which involve reselling Superloop Services, with End Users on the End User Terms using the Superloop Portal (End User Contracts).
- (c) Superloop may update the End User Terms at any time on written notice to the Customer.
- (d) The Customer will obtain and maintain all necessary consents and authorisations to resupply the Services to End Users.

## 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 and may require You to contribute pro rata based on Your usage or number of users for any renewal of a license if it is required to provide You with the Services
- (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 software upgrades, new versions of the software, or different software, and You will co-operate to the extent necessary for Superloop to be able to do so, including by paying for any license pro rata based on Your usage or number of users.

## 5.7 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.

## 5.8 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.

## 5.9 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.

## 6. Charges and payment

### 6.1 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 (excluding Government entities); and/or
- (c) put in place any other reasonable credit or security arrangements.

### 6.2 Charges and payment

- (a) 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.
- (b) Payments must be made by credit card or electronic transfer to an account nominated by Superloop.
- (c) Payments are in advance unless otherwise specified.
- (d) Payments by credit card using the Superloop Merchant Facility will incur a merchant fee of 5%, which will be deducted from any payments by Superloop, and which will not be refunded if the transaction is unsuccessful or otherwise reversed or refunded.
- (e) Failure to pay in full and on time may result in the immediate suspension of the Services pending payment. This right is in addition to any other termination rights in the Agreement.
- (f) If any Services are billed based on an agreed metric, such as rooms, beds, End User numbers or similar, then You must promptly report accurate numbers each month in the format Superloop reasonably requests, from time to time, and in any case in time for the billing cycle that has been agreed. If You fail to provide such figures in time for the billing cycle, then the maximum capacity in terms of the agreed metric will be used as the basis for the invoice and will be due and payable. Any subsequent invoice correction to actual agreed metric numbers may be delayed until later billing cycles.
- (g) You are responsible for setting the charges payable by End Users and invoicing and collecting payment from the End Users, unless payment is via credit card or another method which has been provided by Superloop.

### 6.3 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.

### 6.4 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. Claims after this time will be invalid.
- (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 13.1 apply to disputed invoices.

### 6.5 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).

## 7. Taxes

## 7.1 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.

## 7.2 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.

# 8. Insurance

## 8.1 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.

## 8.2 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.

## 8.3 Co-operation

- (a) Each party must cooperate 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.

# 9. No reliance on warranties and representations

## 9.1 No Reliance

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 (excluding a warranty under clause Schedule 2 clause 5 - Hardware Warranty), covenant or provision not set out or referred to in this Agreement.

# 10. Liability

## 10.1 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.

## 10.2 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.

## 10.3 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.

## 10.4 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
- (b) 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.

## 10.5 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.

## 10.6 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 13;
  - (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.

## 11. Term and termination

### 11.1 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(c) or 11.3 to 11.4. To the extent permitted by law, the parties waive any rights to terminate a Service that are not expressly provided for in this Agreement.

### 11.2 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 20 Business Days of being requested to do so by notice from Superloop, remedy that failure, provided that Superloop has, to that date, complied with its obligations under this Agreement;
  - (ii) Superloop reasonably believes it is required to do so to comply with any lawful request or direction of a domestic or international regulator, law enforcement or other agency; or
  - (iii) Superloop reasonably believes it is impossible or not commercially viable to provide the Service for any reason, including technical reasons or the termination of any agreement with a Third Party.
- (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 and that such a termination will only be effective upon payment of the Cancellation Charge.

### 11.3 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

- (c) Superloop may immediately cease supplying a Service if:
  - (i) 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;
  - (ii) 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;
  - (iii) You use or allow End Users to use a Service in breach of clause 5.1(a)(x);
  - (iv) 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;
  - (v) 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;
  - (vi) Superloop reasonably believes it is necessary to do so:
    - (A) for Superloop to comply with any law, regulatory standard, or mandatory code or instrument; or
    - (B) 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
  - (vii) 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.
- (d) 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(a)(vi) or 11.5(a)(vii) (**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)(i) to 11.5(a)(v), You agree to pay the costs of suspending and recommencing supply of the Service.

### 11.4 Without prejudice

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

### 11.5 Continuing obligations

The obligations imposed on the parties under clauses 4.3, 5.8, 9.1, 10.1, 14, 19 and 20 are continuing obligations and survive termination of any Service.

## 12. Force Majeure

### 12.1 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.

### 12.2 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.

## 13. Confidentiality

### 13.1 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 13.1; 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.

### 13.2 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.

### 13.3 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.

## 13.4 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 13.5(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.
- (d) If a Data Breach is caused by a party's failure to comply with this Agreement, the party in breach of its obligations will indemnify the other party (Indemnified Party) in respect of any loss, liability or expense suffered or incurred by the Indemnified Party arising out of or in connection with the Data Breach.

## 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.

# 14. Dispute resolution

## 14.1 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 14 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.

## 14.2 Parties to resolve Dispute

- (a) During the 10 Business Days after a notice is given under clause 14.2 (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.

# 15. Relationship between parties

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

## 16. 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.

## 17. Assignment

- (a) Subject to clause 17(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.

## 18. 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.

## 19. Governing law and jurisdiction

### 19.1 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.



## 19.2 Submission to jurisdiction

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

## 20. Notice

### 20.1 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 written confirmation of receipt or does not receive an automated message that the email was not delivered within four hours of being sent, from the recipient to the sender.

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

### 20.2 Time of service

A notice given in accordance with clause 20.1 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.

## 21. 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 21 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.

## 22. 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.

## 23. 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.

# Schedule 1

## End User Terms

### Service Terms

#### 1. Agreement documents

These Service Terms and Your Order(s) set out the terms and conditions that apply to Your access to and use of the Services and forms an agreement (this **Agreement**) between the provider of the Services (**we, us, our**) and You, the End User.

#### Account

- a) To access the Services, You must create an account using the process and web page specified by us and provide a valid email address if requested.
- b) We may assume that any request in relation to the Services we receive from Your account is authorised by You.
- c) You must notify us in writing immediately if You believe that there has been unauthorised use of the Services or Your account or if Your account information is lost or stolen.

#### 2. Ordering Services

By submitting an Order to us You are making a binding offer to acquire the Services described in the Order on the terms set out in this Agreement, which we may accept at our discretion. An agreement to supply a Service is formed on the date we provision that Service.

#### Services

- a) You may register devices on Your user account up to the maximum we specify.
- b) We may replace or vary an existing Service at any time provided that the variation does not result in any material deterioration in the quality of the Service.
- c) We may intercept data that is transmitted using the Service in order to comply with our obligations pursuant to law or as set out in a court order or subpoena. We may investigate any misuse of the Services by You, including in conjunction with law enforcement agencies.

#### 3. Important acknowledgements about the Service

You acknowledge that:

- a) **(No service level)** We make no service level promises for this service. The service may encounter faults and errors including interruptions, timeouts and low speeds. We cannot promise that faults or errors will be fixed in any timeframe;
- b) **(No security)** We make no promises about the security of the service. You transfer and receive data at Your own risk. You are responsible for encrypting the data You transfer and protecting Your computer from unauthorised access. Wireless connections may be significantly less secure than wired connections;
- c) **(No compatibility)** We make no promises that the Services will be compatible with Your devices, systems, or software.
- d) **(No content filter)** We are not responsible for content that You access; and
- e) **(Traffic control)** We may at any time and as we think is necessary to give all guests an optimum experience, apply network traffic engineering methods, such as rate shaping, that may reduce the speed of Your connection.

#### 4. Your responsibilities

- a) You must:
  - i comply with all applicable laws, regulations and codes of conduct;

- ii comply with our reasonable directions concerning Your use of the Service;
  - iii not resell or resupply the Service; and
  - iv be responsible for all information and data transmitted or accessed using the Service.
- b) You must not use the Services:
  - i to break any law or to infringe another person's rights;
  - ii to expose us or our third-party suppliers to liability;
  - iii to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing or unwanted; or
  - iv in any way which damages, interferes with, or interrupts the Services, the network on which the Services are supplied, or any other network.
- c) You are responsible for implementing and maintaining the security of Your account and devices.
- d) You must pay all charges in connection with the usage of a Service, even if that usage was not authorised by You, unless that usage was caused by our mistake.
- e) You indemnify us and will keep us indemnified for any Loss suffered or incurred by us due to a breach of this Agreement by You. This indemnity is not limited by Clause 9b) but is reduced to the extent that the Loss is caused by our negligence.

## 5. Charges and payment

- a) Charges for the Services may be specified on Your Order and are payable in advance. Payment may be made by credit card, debit card or Paypal.
- b) All charges for the Services are exclusive of applicable Taxes, Regulatory Fees, and merchant or credit card fees and charges. We are entitled to add to the amount otherwise payable an additional amount for the applicable Taxes, Regulatory Fees, and merchant or credit card fees and charges.

## 6. Service Suspension

- a) Subject to applicable laws, we may temporarily suspend or restrict Your Services:
  - i on 3 days' written notice, if You fail to comply with this Agreement, provided that we may immediately suspend Services without notice if You materially fail to comply with this Agreement;
  - ii if we believe it is necessary to do so to comply with any law or an order of any government or regulatory body;
  - iii if we believe it is necessary to do so to protect any person, equipment, network or to attend to any emergency; or
  - iv where there are technical problems with the Service or where we are maintaining or maintenance is required.
- b) If we suspend a service, we will extend the expiry date of Your service period to account for the suspension, unless the suspension is due to Your failure to comply with this Agreement. This will be Your only remedy in the event of a service suspension.

## Liability

- c) To the extent permitted by law, we exclude all statutory or implied conditions or warranties, including without limitation, any implied warranties or conditions of merchantability or fitness for a particular purpose. We do not warrant that the Services will be continuous, error-free or secure. Our liability for non-excludable conditions and warranties is limited (where it can be limited) to:
  - i supplying the Services again;
  - ii refunding You the amount You spent on the Services in the prior 24 hour period; or
  - iii paying You the cost of having the Services supplied again.
- d) To the extent permitted by law, each party's total liability in respect of all claims in connection with this Agreement (whether in contract, negligence or any other tort, under any statute or otherwise) will be the sum of the charges paid or payable by You under this Agreement in the 12-month period preceding the date of the event that gave rise to the claim. This limitation of liability does not apply in respect of indemnity obligations or obligation to pay charges under this Agreement.
- e) Neither party will be liable to the other (under the law of contract, tort, equity or otherwise) for:
  - i any damages of any kind arising out of or in connection with this Agreement that are indirect or consequential;
  - ii any loss or corruption of any data, interruption to business, loss of revenue, loss of sale, loss of profit, loss of business or any other economic loss or any loss of goodwill; or
  - iii any failure to perform this Agreement if that failure is caused by an event which is an Intervening Event.

## 7. Intellectual Property

- a) This Agreement does not transfer any of our Intellectual Property to You, or any of Your Intellectual Property to us.
- b) If any improvements or changes are made by anyone to the Services at any time, we will own the Intellectual Property in those improvements or changes and You must do all things reasonably within Your power to assign to us all Intellectual Property in such improvements or changes.

## 8. Personal Information

- a) As part of the registration process, or in connection with providing Services to You, we may collect Personal Information from You, including:
  - i the IP and MAC address of Your device;
  - ii the time You use the service and the amount of data You transfer;
  - iii other technical information about Your device; and
  - iv the sites and locations You visit or transfer data with.
- b) We shall collect, use, disclose and store Your Personal Information in accordance with the Privacy Policy and applicable laws.
- c) You agree that we may collect and disclose Your Personal Information from or to:
  - i any third-party supplier for the purpose of providing the Services;
  - ii law enforcement agencies to assist them with criminal prosecution or crime prevention activities; and
  - iii otherwise in accordance with the Privacy Policy and as permitted under applicable law.
- d) Each party agrees to handle Personal Information obtained from the other party in accordance with applicable privacy laws.
- e) If we have issued IP addresses to You in connection with a Service, You agree that on termination of that Service, Your right to use those IP addresses also terminates.

## Termination

You may terminate a Service at any time. If You terminate a Service, You will not be entitled to a refund or any unused data on Your account or any part of Your payment. All unused data and all payments are forfeited on termination.

## Notices

- f) we may provide any notices under this Agreement by:
  - i) posting a notice on Your user account; or
  - ii) sending an email to the email address associated with Your user account.
- g) Notices will take effect upon posting to Your user account or upon sending to Your email address. You are responsible for keeping our email address current.
- h) You must provide notices under this Agreement by contacting or emailing us as specified on our main website, being the website or portal that You accessed to find these terms.

## General

- i) You may not transfer Your rights and responsibilities under this Agreement unless we agree in writing. Where we reasonably consider there will be no adverse effect on You, we may transfer our rights and responsibilities under this Agreement without Your consent and without notice.
- j) These Service Terms are governed by the law of the jurisdiction in which the relevant Service is provided.
- k) You and we agree to submit all disputes in connection with these Service Terms to the non-exclusive jurisdiction of the courts of the jurisdiction where the Service is provided.
- l) No failure, delay or indulgence by either party in exercising any power or right conferred by the Agreement on that party will operate as a waiver of that power or right.
- m) If a provision of the Agreement is void, voidable, unenforceable or the invalid part severed, the remainder of this Agreement will not be affected.
- n) This Agreement constitutes the entire agreement between the parties as to our subject matter and supersedes all prior representations and agreements in connection with that subject matter.
- o) Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties.

## Dictionary

**Intellectual Property** means all industrial and intellectual property rights, including registered or unregistered trademarks, patents, copyright, rights in circuit layouts, trade secrets, confidential know-how and information and any application or right to apply for registration of any of those rights.

**Intervening Event** means an event or cause which is beyond the reasonable control of the person claiming that an intervening event has occurred including, without limitation, acts or omissions of third party network suppliers, fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes or lockouts, or quarantine restriction.

**Loss** means all losses, damages, liabilities, claims, costs and expenses (including reasonable attorneys' fees).

**Order** means an order or request that sets out the Services that You ask us to provide.

**Personal Information** means any information or an opinion, whether true or not, and whether recorded in a material form or not, about an identified individual, or an individual who is reasonably identifiable.

**Privacy Policy** means our privacy policy, a copy of which is available on our main website, being the website or software portal You accessed to find these terms.

**Regulatory Fees** means fees charged to us by any foreign or domestic government or governmental, semi-governmental, administrative, fiscal, regulatory or judicial body, department, commission, authority, tribunal, agency or entity.

**Service(s)** means the service(s) ordered by You and which we agree to provide to You under an Order.

## Schedule 2

### Service Schedule

#### 1. Definitions

Unless defined in this Service Schedule, capitalised terms have the meaning given to them in the Agreement. In this Service Schedule:

**Downtime** means the period of time commencing when the Customer notifies Superloop WiFi that the Service is not operative and ending when the Service is restored (less Excused Downtime).

**Excused Downtime** means Downtime caused or contributed to by:

- (a) the Customer's acts or omissions or the acts or omissions of the Customer's agents, contractors or anyone the Customer is responsible for;
- (b) the acts or omissions of any third party or a fault on a third party's network;
- (c) any failure, incompatibility or error in the configuration of the Customer's equipment or cabling;
- (d) Superloop WiFi suspending the Service in accordance with the Agreement; or
- (e) a Force Majeure Event.

**Help Desk** means a support service offered by Superloop WiFi accessed by a telephone number or email address, as advised by Superloop WiFi from time to time, which may be used to convey potential fault information to Superloop WiFi.

**HPE** means Hewlett-Packard Australia PTY LTD or its related entities.

**Internet Traffic – Australia** means the traffic that originates on the Superloop WiFi network within Australia and terminates within the borders of Australia on major ISP networks (eg. Telstra and Optus).

**Internet Traffic – USA** means the traffic that originates on the Superloop WiFi network within Australia and terminates in the USA on major ISP networks (eg Verizon and UUnet).

**Internet Traffic – UK** means the traffic that originates from the Superloop WiFi network within Australia and terminates in the UK on major ISP networks (eg British Telecom).

**Network Traffic Flow** is the percentage of related traffic that flows on the circuit.

**Service Delivery Point** means the location at the relevant Site to which Superloop WiFi is delivering the Services.

## 24. Service description

### 1.1 Internet Services

Superloop WiFi's role is limited to what is specified on the Service Order. In many cases, internet connectivity may be provided separately by a third party. If internet connectivity is provided by Superloop, it will be governed by the relevant Superloop Internet Service Schedule found at: <https://superloop.com/legal/>

### 1.2 Design and installation

Superloop WiFi may provide the following design and installation services if specified on the Service Order:

- (a) pre-site inspection and development of the Site equipment specification and network design, including any minimum equipment specifications that must be met by the Customer in order for Superloop to provide the Services;
- (b) procurement, configuration and installation of network switches, firewalls, wireless access points and all other hardware and software necessary to provide End Users with an internet connection (excluding data cabling infrastructure);
- (c) network testing and troubleshooting; or
- (d) Customer training and End User briefing.

### 1.3 Superloop WiFi Portal

Superloop WiFi will supply an online End User service and management interface supporting user authentication,

ordering, account management, billing and payment functionality.

## 1.4 End User management

- (a) Superloop WiFi will manage the End User customer life-cycle including on-boarding, provisioning, billing, payment, account management, complaint handling and technical support.
- (b) Superloop will be responsible for managing legal interception, metadata retention and other related compliance requirements.
- (c) Superloop WiFi will provide a customised online management portal to allow Site staff to administer End User accounts and to access live and historic reporting.

## 1.5 Help Desk services

Superloop WiFi will provide a 24 x 7 Help Desk but Level 2 technical assistance is only available during normal business hours, as specified by Superloop WiFi from time to time.

# 25. Service levels

## 1.6 Performance Targets

- (a) Help Desk Support – End User Queries

Support Level	Support Team	Response Target	Resolution Target
Level 1 Support	Customer Service Team	5 minute wait time in phone queue	If not resolved, issue escalated to Level 2 Support during business hours
Level 2 Support	Level 2 Support Engineers	10 minutes from the time of escalation	Dependent on issue

- (b) Help Desk Support – Managed Network Hardware

Support Level	Support Team	Response Target	Resolution Target
Level 1 Support	Customer Service Team	5 minute wait time in phone queue	If not resolved, issue escalated to Level 2 Support during business hours
Level 2 Support	Level 2 Support Engineers	10 minutes from the time of escalation	4 hours. If not resolved, issue escalated to Level 3 Support
Level 3 Support	Level 3 Support Engineers or Onsite Engineer	4 hours	Replacement hardware within 72 hours depending on location*

*\*Hardware owned by the Customer will be replaced on a best-efforts basis and, if not covered by warranty, the replacement cost will be invoiced to the Customer plus a handling fee, freight costs, and applicable taxes (plus GST).*

## 1.7 Service Level Exceptions

Superloop will not be liable for any delay or failure to meet the Service Level where such failure is caused by:

- (a) the acts or omissions of the Customer or its Affiliates or their respective employees, agents, contractors or anyone else the Customer or its Affiliates are responsible for (including End Users);
- (b) the acts or omissions of any third party (which for the avoidance of doubt does not include any employee, agent, contractor or anyone else Superloop or its Affiliates are responsible for) or a fault on a third party's network (including a utility provider);
- (c) any failure, incompatibility, or error in the configuration of the Customer's equipment or cabling; or
- (d) a Force Majeure Event.



## 26. Service credits

### 1.8 Service credits

Subject to the Service credit conditions listed at 4.2, in the event of Downtime the following Service credits will apply:

Total Monthly Downtime	Service credit
0 – 5 hours	0%
>5 and ≤ 10 hours	2.5% of the recurring charges applicable to the affected Service in the relevant month
>10 and ≤ 24 hours	5% of the recurring charges applicable to the affected Service in the relevant month
>24 hours	10% of the recurring charges applicable to the affected Service in the relevant month

### 1.9 Service credit conditions

The following conditions apply to Service credits:

- (a) Service credits apply from the first full calendar month that the eligible Service is operational;
- (b) where the credit is available, the credit is the only remedy in the event of any failure to meet the defined target (where a credit is not available, no remedy is available);
- (c) the Customer must apply for the credit by contacting the Help Desk and following the prescribed process for obtaining credits within 30 calendar days of the end of the month to which the credit applies;
- (d) the Service credit may only be applied by way of a credit, and cannot be redeemed for cash;
- (e) the maximum Service credit available for each eligible Service in any month will not exceed 100% of the total recurring charges payable for that eligible Service in that month; and

Service credits are not available if the Customer has failed to pay service fees to Superloop WiFi when due and payable.

## 27. Hardware Warranty

### 1.10 Making a Claim

- (a) To make a claim under our warranty, You must first contact us by phone (1300 738 353) or email ([wifisupport@superloop.com](mailto:wifisupport@superloop.com)). We will then assess Your claim in line with the equipment manufacturer's warranty procedures.
- (b) If after the consideration in clause 5.1(a) above we instruct You to return Your faulty equipment, You will need to safely box up the faulty equipment (including original power pack, cables, disks, manuals, and other components, and with the box sealed by clear tape) and ship it back to us. We will then send the equipment to the manufacturer for further assessment.
- (c) If the faulty equipment (including original power pack, cables, disks, manuals, and other components) is not returned to us within 14 days or arrives damaged or with components missing and we have sent You warranty replacement equipment under a valid claim, You will be charged for the replacement equipment.
- (d) If the faulty equipment is deemed by the manufacturer to not be eligible for replacement under warranty, subject to availability and approval to proceed, suitable replacement equipment can be supplied and invoiced to You.

### 1.11 Consumer Rights

- (a) Our warranty is in addition to the rights and remedies You may have at law.
- (b) Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

## 1.12 Warranty

- (a) We will repair, replace, or provide credit for faulty equipment provided by us, at no cost to You, if You make a valid claim within the relevant Warranty Period.
- (b) Goods presented for repair may be replaced by refurbished equipment of the same type instead of being repaired. Refurbished parts may be used to repair the equipment. Where refurbished equipment is supplied, the warranty in relation to that equipment applies for the remainder of the original warranty period or 30 days, whichever is longer.
- (c) Equipment models may change over the course of the warranty. Any replacement equipment provided to You under warranty will meet the same functional requirement as the original equipment.
- (d) Repairing or replacing Your equipment may result in lost data (for example, telephone numbers). It is Your responsibility to back-up any data and record any settings You may require.

## 1.13 Excluded Events

- (a) Our warranty does not apply to:
  - (i) Any faults caused by accident, abuse, storms, lightning, power surge, exceeding voltage specifications, fire, flood, hacking, liquid damage, or other external events;
  - (ii) Any faults caused by modification of the equipment, unauthorised maintenance or repair, or failure to use equipment in accordance with instructions;
  - (iii) Any damage caused by You or someone else who has used the equipment (for example, abuse, liquid damage, or damage caused by excessive heat); or
  - (iv) Any equipment not supplied by us.
- (b) On return of faulty equipment, we may inspect the equipment to determine if the fault was caused by an Excluded Event.
- (c) If we determine the fault was caused by an Excluded Event, You will be charged for the repair or replacement equipment.
- (d) We will not charge You for replacement equipment under clause 5.4(b) above if You have not used the replacement equipment and You return it to us in its original, unopened packaging.

## 1.14 Warranty Period

The Warranty Period for equipment supplied by us commences on the day You purchased the equipment and extends for a period of 12 calendar months.

## 1.15 Superloop Antennas (Fixed Wireless only)

Superloop antennas installed by us for Superloop WDSL customers are covered by a hardware warranty for the lifetime of Your account with us. The antenna remains the property of Superloop.

## Routers

12-month Superloop warranty (An extended manufacturer warranty option may be available from the router's manufacturer - see equipment packaging for details).

## 1.16 HPE Pass Through Limitation of Liability

- (a) To the extent that HPE is liable to the Customer under the Australian Consumer Law in relation to its goods or services not complying with a consumer guarantee, and the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, HPE's liability to the Customer is limited as follows:
  - (i) in connection with the provision of service: to any one or more of the following: re-supply of the services or payment of the costs of having the services re-supplied;
  - (ii) in connection with the provision of products: to any one or more of the following: replacement of the products or the supply of equivalent products; repair of the goods; payment of the costs of replacing the goods or of acquiring equivalent goods; or payment of the costs of having the products repaired.
- (b) Subject to sub-section (a). above and to the extent permitted by law, HPE will not be liable to the Customer for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages.
- (c) The Customer acknowledges and agrees that:
  - (i) sub-sections b. and c. above are for the benefit of HPE;
  - (ii) HPE may enforce sub-sections b. and c. above directly against the Customer despite HPE not being a party to this Customer contract; and HPE will have no direct liability to the Customer under this Customer contract.