



# Terms and Conditions

Superloop Residential VoIP

Terms and conditions

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## 1. Definitions and interpretation

### 1.1 Definitions

In these terms and conditions, the following words have the meaning set out below unless the contrary intention clearly appears:

Acceptable Use Policy means Superloop's acceptable use policy (as modified from time to time) which may be found on [superloop.com/legal/acceptable-use-policy](https://superloop.com/legal/acceptable-use-policy)

Accrued Charges means all charges and fees (including usage charges and access fees) incurred by the Customer to the date on which the Customer notifies Superloop of the cancellation of a Service and any outstanding amounts that to cover installation costs or Equipment Charges where Superloop owned equipment can be used by the Customer in connection with services provided by any third party.

Agreement means the agreement between Superloop and the Customer for provision of the Service which agreement is comprised in the Application and these terms and conditions.

Business Customer means any Customer who is a business or non-profit organisation (including a body corporate, sole trader or partnership) that acquires and uses the Service for business purposes other than resale.

Business End User means any person:

- a) to whom a Business Customer asks Superloop to supply the Service directly;
- b) to whom a Business Customer (with Superloop's prior permission) re-supplies the Service or allows to distribute the Service;
- c) who a Business Customer allows to use the Service; or

- d) to whom a Business Customer supplies any goods or services which use or rely on the Service

Cancellation Date means:

- a) the date thirty (30) days after the Customer notifies Superloop that the Customer wishes to cancel the Service, unless Superloop agrees otherwise;
- b) the date at least thirty (30) days after Superloop notifies the Customer that Superloop will be cancelling the Service; or
- c) as otherwise set out in the Agreement.

Churn means to change from having a service supplied by one carrier or carriage service provider to having the service supplied by another carrier or carriage service provider in the context of ADSL1 for which the losing service provider or carrier and gaining service provider or carrier are participants of the Rapid Transfer Facility. In the context of Long Distance pre-selection for which the losing service provider or carrier and gaining service provider or carrier are participants.

Competition and Consumer Act means Competition and Consumer Act (2010).

Customer means the person who submits an Application to Superloop and who acquires and uses the Service from Superloop.

Equipment Charge means any payment to Superloop for use of equipment

Fixed-Term Agreement means an Agreement (other than a month-to-month Agreement) that has a Minimum Term.

Industry Participant means the Communications Alliance Limited, and the Telecommunications Industry Ombudsman

Insolvency Event means:

- a) bankruptcy proceedings are commenced against the Customer, or the Customer is declared bankrupt;
- b) any step that is taken to enter into any scheme of arrangement between the Customer and the Customer's creditors;
- c) any step that is taken by a mortgagee to enter into possession or dispose of the whole or any part of the Customer's assets or business;
- d) any step that is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person to the Customer or to the whole or any part of the Customer's assets or business;
- e) the Customer suspends payment of the Customer's debts generally; or

- f) the Customer is, or becomes, unable to pay the Customer's debts when they are due, or the Customer is, or is presumed to be, insolvent for the purposes of any provision of the Corporations Act 2001 (Cth).

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

Intervening Event is an event outside a party's reasonable control which interferes with the operation of the network Superloop uses to supply the Service and results in ongoing disruption to the Service. Such an event includes failure of any electrical power supply, failure of air-conditioning or humidity control, electromagnetic interference, fire, storm, flood, earthquake, accident, war, the change or introduction of any law or regulation (including the Telecommunications Legislation) or an act or omission of any third party or any failure of any equipment owned or operated by any third party (including any regulator, any supplier or any of their personnel).

Minimum Term means the period of time for which the Customer has agreed to receive the Service under a Fixed-Term Agreement. The Minimum Term begins on the Service Start Date and runs for the period of time stated on the Application, unless otherwise set out in the Agreement.

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

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

Party means a party to the Agreement.

Personal Information means information about the Customer from which the Customer's identity is apparent or can reasonably be ascertained. Personal information includes the Customer's name, address and other details (including, for example, numbers called, time of call and location of call) and the Customer's personal or commercial credit rating.

Personnel of a person means that person's employees, agents, contractors or other representatives and, in the case of Superloop, includes the employees, agents, contractors or other representatives of any Superloop Group Company.

Premises means locations:

- a) at which Superloop supply the Service, and/or
- b) to which Superloop needs to have access to supply the Service.

Pricing Plan means the terms and conditions and prices of the plan for the Service the Customer has selected in the Application.

Regulator means the Australian Communications and Media Authority, the Australian Competition and Consumer Commission, or any other relevant government or statutory body or authority.

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

Roaming means the ability to use the network of overseas mobile carriers when traveling overseas.

Service means the service, with the features requested in the Application as described in the Service Description, and any related goods (including equipment) and ancillary services provided or to be provided by Superloop to the Customer in connection with that service.

Service Description means the part of the Application which describes the Service provided or to be provided by Superloop to the Customer.

Service Start Date for the Service means the date on which Superloop starts supplying that Service to the Customer as will be notified by Superloop to the

Customer after acceptance of an Application.

Special Offer means a special promotion or offer made by Superloop in connection with the Service, including in relation to a particular pricing plan.

Superloop means Superloop Limited ABN 96 169 263 094 and Superloop (Operations) Pty Ltd ABN 21 622 829 510.

Superloop Group Company means Superloop and each of its related corporations.

Supplier means any supplier of goods or services (including interconnection services) which are used directly or indirectly by Superloop to supply the Service to the Customer.

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

Telecommunications Legislation means the Telecommunications Act 1997 (Cth), the Telecommunications (Consumer Protection and Service Standards) Act 1999 (Cth) and Part XIB, Part XIC and related provision of the Competition and Consumer Act.

Unusually High Use means high usage of the Service on a short term basis that is not consistent with a Customer's normal pattern of use, or a sustained high usage which exceeds the general average usage of customers on a similar pricing plan or who have accepted a similar Special Offer.

## 1.2 Interpretation

- a) The following words have the same meaning in the Agreement as they have in the Telecommunications Legislation:
  - i) Carriage service;
  - ii) Carriage service provider;
  - iii) Carrier; and
  - iv) Content service.

- b) A term which is defined in any part of the Agreement has the same meaning in every other part of the Agreement.
- c) The singular includes the plural and vice versa.
- d) Different grammatical forms of the same word(s) have the same meaning.
- e) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- f) A reference to A\$, \$A, dollar or \$ is to Australian currency, unless otherwise stated.

## 2. Terms

2.1 The Agreement commences when Superloop accepts the Application.

2.2 Superloop will commence providing Service to the Customer under the Agreement from the Service Start Date.

2.3 If the Agreement is not a Fixed-Term Agreement, Superloop will provide the Service to the Customer in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

2.4 If the Agreement is a Fixed-Term Agreement, Superloop will provide the Service to the Customer in accordance with the Agreement for the Minimum Term or until the Service is cancelled in accordance with the Agreement, as the case may be. If neither party cancels the Service at the end of the Minimum Term, Superloop will continue to supply the Service to the Customer on a month-to-month basis in accordance with the Agreement until the Service is cancelled in accordance with the Agreement.

2.5 Superloop may charge an amount of one dollar (\$1.00) to the Customer's bank account or credit card to make reasonably sure that the Customer has legal control over one or more of his or her payment methods. This charge will be applied in full as a credit to the first invoice of the Customer, or as soon as is practicable thereafter. If the Customer cancels the service prior to the issue of the first invoice and no other fees or charges have been levied, then Superloop will refund the verification charge in full.

## 3. Variation to Agreement

3.1 Superloop may vary any part of the Agreement:

- a) with the Customer's consent; or
- b) without the Customer's consent provided Superloop complies with the Telecommunications Legislation.

3.2 If Superloop varies a Fixed-Term Agreement under clause 3.1:

- a) Superloop must if the variation affects the Customer and it is not a change of a type listed in clause 3.3:
  - i) comply with the provisions of the Telecommunications Legislation;

- ii) giving the Customer twenty-one (21) days' notice in writing of the change before the change occurs; and
- iii) offer the Customer the right to cancel the Service (within forty-two (42) days from the date of the notice) without incurring fees or charges other than Accrued Charges.

- b) Superloop must if the variation affects the Customer and is a change of the type listed in clause 3.3, comply with any additional notice provisions in clause 3.3; and
- c) if the variation relates to the characteristics of the Service (including price) and the Customer does not agree that the change is likely to benefit the Customer or have only a neutral or minor detrimental effect on the Customer, the Customer may (if the change is not of a type described in clause 3.3), cancel the Service without incurring fees or charges other than Accrued Charges.

3.3 Superloop may vary a Fixed-Term Agreement even if the variation affects the Customer so long as it complies with the provisions of the Telecommunications Legislation, if the change is:

- a) required by law;
- b) in relation to the cost of international services or roaming;
- c) in relation to a fee or charge to account for a tax imposed by law;
- d) in relation to a fee or charge for a service ancillary to the supply of the Service provided that if the change affects the Customer, Superloop offers the Customer:
  - o i. a right to cancel the Service without incurring fees or charges other than Accrued Charges;
- e) to increase the price of a content or premium service (where the supplier who supplies the content service or premium service to Superloop to allow supply of the Service increases the price they charge Superloop for the content service or premium service) provided that if the change affects the Customer, Superloop:
  - i) gives the Customer reasonable notice of the increase in price if the Customer has used the content or premium service within the previous six (6) months; and
  - ii) allows the Customer to elect to not use the content or premium service without attracting any additional charges;
- f) as a result of another carrier or service provider varying the agreement Superloop has with it in relation to a carriage service and as a result Superloop needs to make changes to the Agreement, provided that if the change affects the Customer, Superloop gives the Customer:
  - i) notice in writing of the change; and
  - ii) forty-two (42) days from the date of the notice in which the Customer may cancel the Service

without incurring fees or charges other than  
Accrued Charges.

3.4 Unless expressly allowed in the Agreement, the Customer may not make any changes to the Agreement without Superloop's prior consent.

3.5 The Customer must ensure that any person the Customer allows to use the Service complies with the Agreement as if they were the Customer.

3.6 Superloop may give the Customer notice in writing of a changes to the Agreement by:

- a) delivering notice of the change to the Customer by mail; or
- b) sending the notice to the Customer's email address (if the Customer has agreed to communication by email); or
- c) by including a message or insert in an invoice sent to the Customer; or
- d) (in the case of a pre-paid Service) by posting the information on Superloop's website or in Superloop's retail outlets and informing the Customer through a recorded message, text message or in writing) of how to obtain the information.

## 4. Application for the supply of the Service

4.1 Superloop may refuse the Customer's Application at its sole discretion.

## 5. Privacy

5.1 Superloop may collect, use and disclose personal information about the Customer to decide whether to start, stop or limit supply to the Customer of personal credit, the Service or the products and services of other Superloop Group Companies.

5.2 Superloop may collect, use and disclose personal information about the Customer for purposes related to the supply of the Service (or for purposes which would be reasonably expected) including invoicing and account management, business planning and product development, and to provide the Customer with information about promotions, as well as the products and services of Superloop Group Companies and other organisations.

5.3 Superloop may collect, use and disclose personal information about the Customer for the purposes in clauses 5.1 and 5.2 above to or from:

- a) a credit reporting agency or credit provider;
- b) another Superloop Group Company;
- c) third parties who are not related to Superloop, including Superloop's agents, dealers, contractors, franchisees and debt recovery or mercantile agents;

- d) suppliers who need access to the Customer's personal information to provide Superloop with services to allow supply of the Service; and
- e) joint venture partners of Superloop Group Companies

5.4 Superloop may be permitted or required by applicable laws to collect, use or disclose personal information about the Customer, including to:

- a) the operator of the Integrated Public Number Database, which is an industry wide database of all listed and unlisted public numbers in Australia;
- b) emergency services organisations; and
- c) to law enforcement agencies and government agencies for purposes relating to the enforcement of criminal and other laws.

5.5 Where Superloop will be or will under the Privacy Act 1988 (Cth) be considered to be a credit provider to the Customer in relation to the Agreement, the following provisions will apply:

- a) Superloop may give information about the Customer to a credit reporting agency for the following purposes:
  - i. to obtain a consumer credit report about the Customer; and/or
  - ii. to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer
- b) Such information is limited to:
  - i) identity particulars such as the Customer's name, sex, address (and the previous two addresses), date of birth, name of employer and driver's licence number;
  - ii) the Customer's application for credit or commercial credit and the fact that the Customer has applied for credit and the amount;
  - iii) the fact that Superloop is a current credit provider to the Customer;
  - iv) loan repayments which are overdue by more than sixty (60) days and for which debt collection action has started;
  - v) advice that the Customer's loan repayments are no longer overdue in respect of any default that has been listed;
  - vi) information that, in the opinion of Superloop, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with the Customer's credit obligations); and
  - vii) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once.
- c) The Customer agrees that:
  - i) Superloop may obtain information about the Customer from a business which provides information about the commercial credit

worthiness of persons for the purpose of assessing the Customer's application for consumer credit;

- ii) Superloop may obtain a consumer credit report containing information about the Customer from a credit reporting agency for the purpose of assessing the Customer's application for commercial credit;
- iii) Superloop may exchange information about the Customer with those credit providers named in a consumer credit report issued by a credit reporting agency for the following purposes:
  - a. to assess an application by the Customer for credit;
  - b. to notify other credit providers of a default by the Customer;
  - c. to exchange information with other credit providers as to the status of the loan where the Customer is in default with other credit providers; and/or
  - d. to assess the Customer's credit worthiness; and
- iv) iv) Such information exchanged may include anything about the Customer's credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988 (Cth).

5.6 If the Customer wishes to only receive communications that are account-related or legally required, the Customer may request not to receive other communications by submitting a written request to Superloop.

5.7 If the Customer is an individual, the Customer is entitled to:

- a) gain access to the Customer's personal information held by Superloop, unless Superloop is permitted or required by any applicable law to refuse such access; and
- b) correct any personal information held by Superloop

5.8 If the Customer does not provide part or all of the personal information requested by Superloop then Superloop may refuse to supply, or limit the supply to the Customer of, personal credit or the Service.

5.9 By providing the Customer's personal information to Superloop and obtaining the Service, the Customer acknowledges and consent to the collection, use and disclosure of the Customer's personal information as set out in this clause 5 and in accordance with Superloop's privacy policy a copy of which will be made available by Superloop on request or may be viewed on Superloop's website [superloop.com/legal/privacy-policy](https://superloop.com/legal/privacy-policy)

5.10 If the Customer has authorised Superloop to give or accept verbal instructions or other communication to or from the Customer in connection with the Service and the Customer has informed Superloop of a password to be used for Superloop's

verification purposes when such verbal instructions or other communication is given or received, the Customer agrees:

- a) to keep confidential such password;
- b) that Superloop may assume that any person who quotes the password is authorised by the Customer to accept or give verbal instructions or other communication from or to Superloop in connection with the Service on behalf of the Customer;
- c) that the Customer will not hold Superloop liable in any way if any information relating to the Customer's account or any of the Customer's personal information is inadvertently disclosed to any person not authorised by the Customer to receive such information who quotes such password to Superloop; and
- d) that all calls made to or from Superloop's customer service centre(s) may be recorded for customer training, improvement programs and verification purposes.

5.11 The reference to "Customer" in this clause 5 includes a reference to and is applicable to Superloop's collection, use and disclosure of the personal information of the director or other officer of the Customer who completes or signs an Application on the Customer's behalf as he/she hereby acknowledges.

## 6. Using the Service

6.1 The Customer must reasonably cooperate with Superloop to allow Superloop, or a supplier, to establish and supply the Service to the Customer safely and efficiently.

6.2 Superloop will provide the Service to the Customer with reasonable care and skill. In the event of unexpected faults Superloop will use reasonable endeavours to ensure the Service is restored as soon as possible.

6.3 When using the Service, the Customer must comply with:

- a) all laws;
- b) all directions by a regulator;
- c) all notices issued by authorisation of or under law;
- d) the Acceptable Use Policy (unless it is stated in clause 17 to be not applicable to the Service); and
- e) reasonable directions by Superloop

6.4 The Customer must not use, or attempt to use, the Service:

- a) to break any law or to infringe another person's rights;
- b) to transmit, publish or communicate material which is defamatory, offensive, abusive, indecent, menacing, unwanted or otherwise unlawful or unauthorised
- c) in any way that may expose Superloop to liability; or
- d) in any way which or which may damage, interfere with or interrupt the Service, the Superloop network or a supplier's network used to supply the Service

6.5 Superloop may require the Customer to stop doing something which Superloop reasonably believes is in breach of clauses 6.3 or 6.4.



6.6 The Customer must immediately comply with any such request failing which Superloop may take any steps reasonably necessary to ensure compliance with clauses 6.3 and 6.4

6.7 The Customer acknowledges that, where the Service is a carriage service, Superloop, or any supplier whose network is used to supply the Service, may be required to intercept communications over the Service and may also monitor the Customer's usage of the Service and communications sent over it.

6.8 Superloop may (but is not obliged to) contact the Customer if Superloop becomes aware of an unusually high use of the Service by the Customer (including to verify any costs or charges which the Customer may have incurred). In such an event, Superloop may ask the Customer to make a prepayment usage charge under clause 9.5. Superloop is also entitled to suspend the Service under clause 13.1(a) for an unusually high use of the Service.

6.9 The Customer must comply with any rules imposed by any third party whose content or services the Customer access using the Service or whose network the Customer's data traverses.

## 7. Equipment

7.1 The Customer must ensure that all equipment used in connection with the Service and the way the Customer uses that equipment complies with:

- a) all laws
- b) all directions by a regulator;
- c) all notices issued by authorisation of or under law; and
- d) reasonable directions by Superloop, failing which Superloop may disconnect the equipment from the Service upon giving the Customer reasonable notice or with no notice in the event of an emergency.

7.2 In relation to equipment:

- a) any Superloop owned equipment remains Superloop's property;
- b) the Customer is responsible for any Superloop owned equipment from the time when the Customer receives it;
- c) the Customer must not mortgage or grant a charge, lien or encumbrance over any Superloop owned equipment; and
- d) the Customer may purchase equipment from Superloop to use in connection with the Service. In such an event, the Customer will own the equipment and be responsible for the equipment from when the Customer receives it.

7.3 The Customer must provide an adequate and suitable space, power supply and environment for all equipment used in connection with the Service and located on the Premises.

7.4 Unless otherwise agreed between the parties, the Customer must allow Superloop's personnel (and no other person) to

service, modify, repair or replace any Superloop owned equipment.

7.5 The Customer is responsible for any lost, stolen or damaged Superloop owned equipment, except where caused by Superloop or Superloop's personnel.

7.6 The Customer will be responsible for any outstanding payments for equipment that the Customer has purchased from Superloop, even when that equipment is lost, stolen or damaged.

## 8. Network maintenance, fault reporting and rectifications

8.1 Superloop may conduct maintenance on the Superloop network and maintenance may be conducted on a supplier's network used to supply the Service. Superloop will endeavour to conduct scheduled maintenance on the Superloop network outside normal business hours.

8.2 Superloop will provide a 24-hour fault reporting service for the Customer to report faults. Before the Customer reports a fault to Superloop, the Customer must take all reasonable steps to ensure that the fault is not caused by any equipment that is not Superloop owned equipment.

8.3 The Customer must provide all reasonable assistance to enable Superloop or Superloop personnel, or where necessary a supplier or supplier's personnel, to investigate and where applicable repair a fault including providing them with adequate and timely access to the Premises. For residential and business customers this is up to the Network Boundary Point (NBP) or Main Distribution Frame (MDF) whichever is relevant to the premises.

8.4 Superloop will repair faults within the Superloop network used to supply the Service [this means, Superloop will repair faults within the core network and any Superloop supplied equipment only]. Unless the Service Description expressly provides otherwise, Superloop is not responsible for repairing any fault in the Service where the fault arises in or is caused by:

- a) a supplier's network; [this means the network and components that exist between the point of interconnect with the Superloop core network and the supplier's network and the point of service delivery or demarcation as defined by the ACMA at the customer's premise. This is typically the MDF A-Side in an MDU or the first Phone Socket in an SDU.]
- b) equipment that is not Superloop owned equipment; or [this means any equipment required to use the service that is not owned by Superloop]
- c) facilities outside the Superloop network. [this means any facility in a network not owned or operated by Superloop, including customer premise network equipment or facilities on the customer side of the services delivery or demarcation as defined by the ACMA at the customer's premise.

This is typically the MDF B-Side (including all on-premise cabling) in an MDU or socket and cabling beyond the first Phone Socket in an SDU.]

8.5 Where:

- a) a fault arises in or is caused by a supplier's network;
- b) Superloop becomes aware of the fault; and
- c) Superloop is not responsible for the repair of that fault.

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

8.6 Where a fault arises in or is caused by equipment that is not Superloop owned equipment, Superloop is not responsible for the repair of that fault.

Nevertheless:

- a) if the Customer asks Superloop to investigate a fault or asks Superloop to request a supplier to investigate a fault, Superloop will give the Customer an estimate of the probable cost of such investigation and obtain the Customer's agreement to bear those costs before undertaking or arranging an investigation and using reasonable endeavours to identify and inform the Customer of the probable cause of the fault; and
- b) if the Customer requests Superloop to repair the fault and Superloop agrees, Superloop will give the Customer an estimate of the probable cost of repairing the fault and obtain the Customer's agreement to bear those costs before carrying out the repair.

8.7 If Superloop investigates a fault and determines that the fault is attributable to a breach of the Agreement by the Customer, a negligent or fraudulent act or omission by the Customer or any of the Customer's personnel or a failure of any of the Customer's equipment and/or premises, the Customer must pay the costs incurred by Superloop in investigating.

## 9. Fees and charges

9.1 The Customer must pay:

- a) the fees and charges for the Service, which are set out in the Agreement or in any applicable Special Offer; and
- b) any additional fees and charges noted in the Agreement (including in the Application) or notified by Superloop in accordance with the Agreement from time to time.

9.2 The Customer must pay all fees and charges which are incurred for the Service even if the Customer did not authorise its use.

9.3 The Customer must pay the fees and charges for the Service even if the Service is unavailable or the Customer is unable to access the Service. However, the Customer may be entitled to a refund or a rebate as stated in the Agreement or under the law.

9.4 In addition to the fees and charges the Customer incurs in the normal use of the Service (including an access fee, where applicable), Superloop may charge the Customer administration

fees and other similar charges including suspension fees, cancellation fees, late payment fees, payment dishonour fees or reconnection or reactivation fees as set out in the Agreement.

9.5 Superloop may also ask the Customer to make a prepayment usage charge or request that the Customer make an interim good-faith payment (including, for example, if there has been an unusually high use of the Service or if the Customer wishes to activate roaming).

9.6 Superloop will calculate fees based on billing information generated or received by Superloop which will be prima facie evidence of the Customer's use of the Service and the fees and charges incurred.

9.7 Superloop may offer the Customer a Special Offer from time to time. In such an event, Superloop will notify the Customer of the Special Offer and the terms of the Special Offer either through general advertising or by specifically advising the Customer. A Special Offer may be an offer to vary the pricing plan or the terms of supply (including the Minimum Term) for the Service and it may be subject to certain conditions. If the Customer validly accepts a Special Offer, the terms of the Special Offer will prevail only to the extent they are inconsistent with the terms of the Agreement. Upon the expiry or termination of the Special Offer, the full terms and conditions of the Agreement will apply.

9.8 Some fees and charges for the Service are subject to variation such as charges relating to:

- a) international services or roaming; and
- b) content or premium services and the Customer should inform Superloop before using the Service from outside Australia.

## 10. Payments

10.1 Superloop will invoice the Customer on a regular basis (either in advance or in arrears), unless otherwise set out in the Service Description. The Customer can retrieve their invoice from their Secure Users Facility and/or the Customer can request Superloop to send a copy of the invoice electronically.

10.2 If Superloop receives usage records in time from the wholesale supplier, Superloop will make all reasonable efforts to notify the Customer of the applicable usage records within the relevant billing period. In circumstances where this may not be possible, and for reasons outside the direct control of Superloop, Superloop will make all reasonable efforts to include these applicable usage charges as soon as it is able to after the relevant billing period.

10.3 Where usage records are provided by the wholesale supplier to Superloop outside the relevant billing period, Superloop will incorporate these and associated charges on a subsequent or later invoice. This is called back billing. Superloop will not backbill for usage that has occurred 160 days or more previously, if Superloop has not already advised the Customer of the charges.

10.4 Where usage records are delayed and back billing occurs, if any plan allowances or inclusions are exceeded in the previous billing periods, any applicable excess or additional charges will be applied to and payable by the Customer on the subsequent invoices.

10.5 If the Customer's payment is not honoured for any reason, Superloop may charge the Customer a \$10 Failed payment fee.

10.6 Subject to clause 11.4, the Customer must pay the entire amount invoiced by the due date specified in the payment notification, invoice or as otherwise notified by Superloop.

10.7 If the Customer does not pay the invoice by the date the payment is due, Superloop may:

- a) charge the Customer a late fee which is payable until all outstanding amounts are paid;
- b) require the Customer to provide reasonable security to Superloop to secure the payment of future amounts due under the Agreement;
- c) suspend or cancel the Service, in accordance with clauses 12 or 13 as relevant or the relevant Service Description. If Superloop suspends or cancels the Service, Superloop may charge the Customer a suspension fee, cancellation fee and/or reconnection or reactivation fee as set out in the Agreement. Reconnection or reactivation of the Service is subject to payment of the reconnection or reactivation fee;
- d) engage a mercantile agent to recover the money the Customer owes Superloop and charge the Customer a recovery fee;
- e) institute legal proceedings against the Customer to recover the money the Customer owes Superloop and recover from the Customer its legal costs; and/or
- f) on-sell any unpaid amounts to a third party.

10.8 If the Customer has overpaid as a result of an invoicing error, the Customer's account will be credited with the amount overpaid or Superloop will use reasonable endeavours to notify the Customer and refund the overpayment.

10.9 Unless otherwise indicated, the fees and charges set out in the Agreement include any amount on account of tax. Where the fees and charges do not include an amount on account of tax and tax is payable by Superloop in relation to, or on any supply under or in connection with the Agreement, Superloop will increase the tax exclusive fees and charges by an additional amount on account

of the tax. The Customer must pay the additional amount at the same time the Customer pays the fees and charges.

10.10 If the Customer requires a copy of any invoice sent by Superloop in relation to the Service after cancellation of the Service or termination of the Agreement and a copy of such invoice remains retrievable from Superloop's records, the Customer must pay Superloop's reasonable administration fee for such retrieval.

## 11. Complaints and disputes

11.1 If the Customer has any complaints in connection with the Service the Customer may complain in writing or by calling Superloop.

11.2 Superloop will handle all complaints in accordance with its complaints procedure which is available from Superloop on request or on Superloop's website: [superloop.com](https://superloop.com)

11.3 Superloop will use its best endeavours to resolve all complaints, however if Superloop is not able to resolve a complaint to the Customer's satisfaction, the Customer may take other action, such as informing the Telecommunications Industry Ombudsman, the Department of Fair Trading or Department of Consumer Affairs in the relevant state or territory.

11.4 Where a Customer's complaint is about a fee or charge for the use of the Service, Superloop may suspend payment obligations, for that fee or charge only, until the complaint has been investigated and resolved. All other fees and charges that are not in dispute remain due and payable.

11.5 Where a Customer's complaint is about a significant and sustained loss of access to, or use of, the Service which is not reasonably attributable to the Customer or non Superloop owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period in which the Customer's access or use was interrupted (including when an Intervening Event occurs) as stated in the Agreement or under the law.

## 12. Cancelling the Service

12.1 The Customer may cancel the Service at any time by:

- a. giving Superloop thirty (30) days' notice (including if the Customer does not wish to continue to use the Service after the end of the Minimum Term of a Fixed-Term Agreement); or
- b. giving Superloop notice, if Superloop breaches a material term of the Agreement and Superloop either:
  - i. cannot remedy that breach; or
  - ii. fails to remedy that breach within thirty (30) days after the Customer gives Superloop notice requiring Superloop to do so.

12.2 If the Agreement is a Fixed-Term Agreement, a Customer may also cancel the Service pursuant to clause 3.

12.3 If the Agreement is a non Fixed-Term Agreement, Superloop may cancel the Service at any time by giving the Customer at least thirty (30) days' notice.

12.4 Superloop may cancel the Service at any time, including prior to the service start date, without liability, if:

- a. there is an emergency;



- b. Superloop reasonably suspects fraud or other illegal activity by the Customer or any other person in connection with the Service;
- c. any amount owing to Superloop in respect of the Service is not paid by its due date and the Customer fails to pay that amount in full within ten (10) business days after Superloop gives the Customer a notice requiring payment of that amount, unless otherwise set out in the Agreement;
- d. Superloop reasonably consider the Customer a credit risk because the Customer has not paid amounts owing to Superloop or any Superloop Group Company in respect of any service by its due date and the Customer fails to pay that amount in full within the period stated in any notice given to the Customer requiring payment of that amount;
- e. the Customer breaches a material term of the Agreement (other than a breach which separately gives rise to rights under this clause) and the Customer either cannot remedy that breach or fails to remedy that breach within thirty (30) days after Superloop gives the Customer notice requiring the Customer to do so;
- f. Superloop is required to do so to comply with an order, instruction, request or notice of a regulator, an emergency services organisation, any other competent authority or by authorisation of or under law;
- g. the Customer suffers an insolvency event and Superloop reasonably believes Superloop is unlikely to receive payment for amounts due;
- h. the Customer dies or if the Customer is a partnership and the partnership is dissolved or an application is made to dissolve the partnership, and Superloop reasonably believes Superloop is unlikely to receive payment for amounts due;
- i. the Service is suspended for more than fourteen (14) days, unless otherwise set out in the Agreement;
- j. if Superloop reasonably determines that it is not technically or operationally feasible or commercially viable to supply the Service to the Customer;
- k. any Intervening Event prevents the supply of the Service in accordance with the Agreement for more than fourteen (14) days; or
- l. Superloop is otherwise entitled to do so under the Agreement or Acceptable Use Policy.

12.5 Superloop may cancel the Service under clause 12.4 as soon as Superloop gives the Customer notice, unless otherwise set out in the Agreement. However, Superloop may cancel the Service immediately if there is an emergency.

12.6 If the Service is cancelled:

- a) the Customer is liable for any charges incurred (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) up to, and including, the Cancellation Date;
- b) the Customer authorises Superloop to apply any overpayment on the Customer's account and/or money that the Customer has paid in advance for the Service which is being cancelled to pay for any undisputed outstanding charges (including the cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement);
- c) subject to clause 12.6(b) and unless otherwise set out in the Service Description, Superloop will refund any overpayment on the Customer's account;
- d) if the Customer is required under the Service Description to pay for the Service by direct debit payment (either from the Customer's nominated bank or credit card account), the Customer authorises Superloop to debit any undisputed outstanding charges (including any cancellation fee and outstanding Equipment Charges, if any as set out in the Agreement) from the Customer's nominated bank or credit card account;

12.7. No cancellation fee shall be payable by the Customer:

- a) if the Agreement is not a Fixed-Term Agreement; or
- b) if the Agreement is a Fixed-Term Agreement that is cancelled after the expiry of the Minimum Term.

12.8 If the Service is cancelled as a result of circumstances reasonably attributable to the Customer (including if the Customer changes the location of the Premises, or elects to churn their service to another carriage service provider):

- a) before the Service Start Date, the Customer must pay Superloop all infrastructure and installation costs incurred by Superloop in connection with preparations for supplying the Service to the Customer;
- b) during the Minimum Term, the Customer must pay Superloop a cancellation fee or such higher amount as may be provided in clause 17;
- c) the Customer must pay Superloop all costs incurred to rectify the Customer's breach of the Agreement.

12.9 If the Customer wishes to reinstate the Service at any time after cancellation the Customer must order a new service.

12.10 If the Customer is able to use the Service after the Cancellation Date, the Customer is liable for any charges incurred by the Customer for that use, in addition to any other charges under this clause 12.

## 13. Suspending the Service

13.1 Superloop may suspend the Service at any time, without liability:

- a) in any of the circumstances described in clause 12.4(a) to (h) and (l);
- b) if it is necessary to allow Superloop or a supplier to repair, maintain or service any part of the Superloop

network or a supplier's network used to supply the Service;

- c) if Superloop reasonably believes there has been an unusually high use of the Service; or
- d) problems are experienced interconnecting the Superloop network with any supplier's network used to supply the Service.

13.2 Superloop may suspend the Service under clause 13.1 as soon as Superloop gives the Customer notice, unless otherwise set out in the Agreement. However, Superloop may suspend the Service immediately if there is an emergency.

13.3 Superloop may suspend the Service if any amount owing to Superloop is not paid by its due date, Superloop gives you notice requiring payment of that amount (which Superloop may not give in respect of any amount which is validly disputed in accordance with clause 11 (Complaints and disputes) until after Superloop has completed investigations referred to in clause 11.4) and you fail to pay the amount in full within five Business Days after Superloop gives you that notice.

13.4 If Superloop suspends the Service, Superloop may later cancel the Service for the same or a different reason.

13.5 If the Service is suspended, the Customer will have to pay access fees for the Service while it is suspended.

13.6 If the Service is suspended and the suspension was not as a result of circumstances attributable to the Customer or non Superloop owned equipment, the Customer may be entitled on request to a refund or a rebate of any access fees for the period of suspension as stated in the Agreement or under the law.

13.7 If the Service is suspended as a result of circumstances attributable to the Customer, the Customer may have to pay Superloop a suspension fee.

13.8 If the Customer wishes to reactivate the Service at any time after suspension the Customer may make a request to Superloop provided that if the Service is suspended as a result of circumstances attributable to the Customer and Superloop reactivates the Service, the Customer may have to pay Superloop a reconnection or reactivation fee or such higher amount as may be set out in clause 17.

## 14. Liability

14.1 The Customer is liable to Superloop for any breach of the Agreement that causes foreseeable loss to Superloop.

14.2 Except as in the Agreement otherwise expressly provided (including under clause 14.3), the Customer is not liable to Superloop for any consequential losses Superloop suffers or for any costs, expenses, loss or charges that Superloop incurs which are not a direct result of something the Customer has done.

14.3 Superloop is not in any way liable to any Business End User (whether in contract or tort (including negligence), under any legislation or otherwise). A Business Customer must indemnify and keep Superloop fully indemnified against any loss or

damage incurred in connection with any claim against Superloop by a Business End User in relation to:

- a) the use (or attempted use) of the Service; or
- b) the equipment used in connection with the Service.

14.4 Superloop has responsibilities and obligations under the law, including under:

- a) the Telecommunications Legislation;
- b) the Competition and Consumer Act; and
- c) applicable laws, regulations and codes.

Nothing in the Agreement removes or limits any rights that the Customer has under existing laws or regulations.

14.5 Superloop may be liable to the Customer for:

- a) any damage to the Customer's property which has been caused by the fault, negligence or fraud by Superloop or Superloop's personnel during installation, repair or maintenance;
- b) interruptions in the Customer's use of the Service as a result of a fault or negligence of Superloop or Superloop's personnel, to the extent of a refund or rebate for the period of the interruption and compensation for any reasonable loss incurred as stated in the Agreement and where required by law;
- c) death or personal injury caused by Superloop or Superloop's personnel; or
- d) breach of terms that are implied by the Competition and Consumer Act and other laws into contracts for the supply of goods and services. If any condition or warranty is implied into the Agreement under the Competition and Consumer Act or other laws then Superloop's liability (if any) for breach of that condition or warranty in connection with any goods or services Superloop supplies under the Agreement are (in relation to a Business Customer) limited to re-supply, repairing or replacing the goods or services, where those goods or services are not of a kind ordinarily acquired for personal, domestic or household use and where it is reasonable and fair to do so.

14.6 Other than as provided in clauses 14.4 and 14.5, Superloop is not liable to the Customer under this Agreement.

14.7 If the Customer has contributed to any loss or damage the Customer is claiming against Superloop, Superloop's liability is reduced to the extent of the Customer's contribution.

14.8 Superloop is not liable to the Customer for any consequential losses the Customer suffers or for any costs, expenses, loss or charges that the Customer incurs which is not a direct result of something Superloop has done.

14.9 In relation to a Business Customer, to the extent permitted by law, Superloop's total liability for loss is limited in aggregate for any claim or series of connected claims to \$5 million to the extent that the exclusions or limitations in clauses 14.4 to 14.7 do not apply.

## 15. Assignment and transfer

15.1 Superloop may:

- a) assign some or all of its rights under the Agreement to any person;
- b) transfer some or all of its obligations under the Agreement to any Superloop Group Company that is able to perform those obligations; and/or
- c) perform any of its obligations under the Agreement by arranging for them to be performed by another person, including a supplier or another Superloop Group Company provided Superloop remains responsible for the performance of the obligations, and the Customer irrevocably authorises Superloop to execute on their behalf all such documents that may be required to be executed by the Customer to effect such assignment or transfer.

## 16. General

16.1 The Agreement is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which the Customer normally resides and the parties submit to the exclusive jurisdiction of the courts of the Commonwealth and its states and territories.

16.2 Superloop owns all material (including intellectual property rights) developed by Superloop or Superloop's personnel, at Superloop's direction.

16.3 Superloop may permit the Customer to use this material, or other material licensed by Superloop, as part of the Service. This permission is subject to any conditions which Superloop may impose from time to time and will cease when the Service is cancelled.

16.4 The Customer must not infringe any person's intellectual property rights (such as by using, copying or distributing data or software without the permission of the owner) in using the Service. If the Customer breaches this clause, Superloop may suspend or cancel the Service without notice.

16.5 If an Intervening Event occurs which affects a party (the said party) from performing any of the said party's obligations under the Agreement (other than an obligation to pay money), then the said party will not be liable for failing to perform that obligation provided:

- a) the said party must notify the other party of the Intervening Event and use its best efforts to resume performance in accordance with the Agreement as soon as reasonably possible; and
- b) the said party's obligations continue during the Intervening Event unless it is not able to perform its obligations due to the other party being unable to perform its obligations due to the Intervening Event.

16.6 The Customer represents that the Customer is not a carrier or carriage service provider. If the Customer is or becomes a

carrier or carriage service provider, Superloop may immediately cancel the Service by giving the Customer notice.

16.7 If the Customer breaches the Agreement and Superloop does not exercise a right that Superloop has because of the Customer's breach, Superloop does not waive:

- a) that right unless Superloop gives the Customer notice in writing confirming that Superloop have waived that right; or
- b) Superloop's right to insist that the Customer perform any obligation the Customer has under the Agreement.

16.8 Superloop may pay a commission to any of Superloop's personnel in connection with the Agreement.

16.9 Each party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from the other party to effectively carry out and give full effect to the Agreement and the rights and obligations of the parties under it.

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

16.11 Any notice or demand given pursuant to this Agreement shall be in writing and shall be delivered, posted, e-mailed or transmitted by facsimile:

- a) to the Customer at the Customer's email address, address and/or facsimile number indicated on the Application or the Customer's latest email address, address and facsimile number notified to Superloop in writing; and
- b) to Superloop at Superloop's latest address and facsimile number indicated on Superloop's website at [superloop.com](https://www.superloop.com)

Any such notice shall be deemed to be received:

- a) in the case of delivery, at the time of delivery;
- b) if served by post, at the expiration of forty-eight (48) hours from time of posting (if sent to a local address) or ten (10) days from the time of posting (if sent to an overseas address), notwithstanding that it may subsequently be returned through the post office unclaimed; or
- c) in the case of a facsimile transmission, on production of a transmission control report indicating transmission without error.
- d) in the case of an email, on production of a email header indicating delivery without error

16.12 The Agreement sets out the entire agreement and understanding between the parties in relation to the Service

and no party has entered into the Agreement in reliance upon any representation, warranty or undertaking of any party which is not set out or referred to in the Agreement.

16.13 In the event of any inconsistency between a provision in these terms and conditions and another part of the Agreement, then unless otherwise stated, these terms and conditions prevail to the extent of the inconsistency.

## 17. Special terms and conditions applicable to the Service

17.1 If at the time of Application the Customer does not have an existing agreement with Superloop for the provision of a fixed or mobile broadband service, then the Customer must provide Superloop with a \$300.00 security bond to secure the Customer's obligations under the Agreement prior to the Service Start Date. Such security bond:

- a) may be paid to Superloop by direct debit from the Customer's nominated bank or credit card account if the Customer has a direct debit arrangement in place with Superloop; and
- b) may be used by Superloop from time to time and at any time to pay any amounts due from the Customer under the Agreement in which event the Customer must immediately pay Superloop such amount as may be necessary to maintain the amount of security bond at \$300.00; and
- c) will be released by Superloop to the Customer within five (5) business days after the earlier of:
  - i) the end of six (6) months from the Service Start Date provided the Customer has been making all payments due to Superloop under the Agreement on time; or
  - ii) the date the Agreement is cancelled (provided all amounts due from the Customer Superloop under the Agreement have been fully paid).

17.2 Provision of the Service and the Customer's ability to use the Service is conditional upon the Customer having an internet connection of at least 512Kbps/128Kbps and either:

- a) a voice over internet protocol (VOIP) telephone handset connected to an Superloop Internet connection; or
- b) a soft phone capability on the Customer's computer; or
- c) an Analogue Telephone Adapter (ATA) that is either used as a stand-alone device connected to an Superloop Internet connection, or built into a router provided by Superloop or a third party.

17.3 The Customer acknowledges and agrees that:

- a) The telephone lines (for DSL) used for the Customer's internet connection that will carry VOIP traffic to and from Superloop switches, are not provided by Superloop under the Agreement, and
  - i) under the Agreement Superloop does not provide a maintenance service for the Customer's line; and

- ii) Superloop does not have any control over the quality or availability of those lines;
- b) any person who the Customer allows to make telephone calls using the Service is deemed to be authorised by the Customer to make those calls and the Customer will be responsible for all charges incurred by such person;
- c) as Superloop may calculate fees based on billing information generated by third parties, any delay by such third parties in providing the relevant billing information which causes a delay by Superloop in issuing an invoice for the Service does not in any way affect Superloop's right to payment of such invoice;
- d) if the Customer does not pay an invoice by the date payment is due, Superloop may charge the Customer late payment fee and interest on the amount payable under the invoice calculated at the rate of three percent (3%) per annum above the base lending rate of Superloop's bank until the amount is paid in full; and
- e) Superloop may from time to time and at any time (including, for example, if there has been an unusually high use of the Service) in addition to Superloop's right to request for a pre-payment usage charge under clause 9.5:
  - i) impose a credit limit on the Customer's account; and/or
  - ii) require the Customer to provide within a reasonable time and maintain with Superloop a cash security bond of a reasonable amount to secure the Customer's obligations under the Agreement which security bond:
    - a. may be used by Superloop from time to time and at any time to pay any amounts due from the Customer under the Agreement in which event the Customer must immediately pay Superloop such amount as may be necessary to maintain the amount of security bond at the original amount; and
    - b. will be released by Superloop to the Customer within five (5) business days after the date the Agreement is cancelled (provided all amounts due from the Customer to Superloop under the Agreement have been fully paid).
- f) a failure to comply with this provision is a material breach of the Agreement and Superloop shall be entitled to:
  - i) cancel the Service under clause 12.4(e) and charge the Customer a cancellation fee under clause 12.8(b); or
  - ii) suspend the Service under clause 13.1(a).

17.4 Payment for VoIP services:

- a) a. is due on the first business day of each calendar month and is for the period of the first to last of the previous calendar month; except
- b) b. for customers who were sent an email dated 14th February 2011 advising them of the change to their billable period, where Payment for this VoIP services is due on the 28th of the month and is for the period 28th of the last month to the 27th of the current month.

17.5 If any Superloop customer assigned a VoIP number (DID) does not connect and configure the DID within 30 days of allocation, Superloop has the right to re-issue or cancel it.

17.6 If the customer chooses to port-in their PSTN or ISDN numbers to the Superloop VoIP service using the Local Number Portability (LNP) process, Superloop and its suppliers will host these numbers to facilitate making and receiving calls to and from the PSTN via the Superloop VoIP service. If the customer then chooses to port-out their PSTN or ISDN number to another gaining carrier using the Local Number Portability (LNP) process, Superloop and its suppliers will facilitate this process according to industry normal practise.