

# Superloop Standard Form of Agreement

## GENERAL TERMS

**IMPORTANT CUSTOMER INFORMATION** - These General Terms set out your rights and obligations. Please read these General Terms carefully as they may have important consequences for you.

This Standard Form of Agreement is between you and Superloop. The agreement applies to your access, connection and use of the Services including the supply of any related goods or installation and maintenance services.

By accessing and using a Service you represent that you have read, understood and accepted these General Terms and agree to be bound by them. If you do not agree to these General Terms please do not use the Service or register an account.

Capitalised words in these General Terms have the meaning set out at the end of these General Terms

### 1. About Our General Terms

1.1. Telecommunications Legislation allows us to set out our standard customer terms in a "Standard Form of Agreement" (**SFOA**). Our General Terms is our SFOA. Under the legislation you and we must comply with our General Terms unless you and we have agreed differently.

1.2. The SFOA:

- (a) applies to all Services we provide you;
- (b) may be amended by us from time to time in accordance with the SFOA;
- (c) does not apply to the extent otherwise agreed between us and you.

1.3. The SFOA is made up of:

- (a) your Application;
- (b) any Service Schedule for your Service;
- (c) these General Terms;
- (d) Pricing Schedules for your Service;
- (e) any Hardware Warranty Information; and
- (f) our Acceptable Use Policy.

Where there is any inconsistency between any of the terms of the SFOA, the order of precedence will be as listed above, except that clause 16 takes precedence over all other terms in the SFOA.

## Changing the SFOA

- 1.4. We may revise, amend, or modify the SFOA (including our Acceptable Use Policy, our Service Schedules and our other policies) if:
- (a) the change will benefit or will not adversely affect you;
  - (b) you agree to the change; or
  - (c) we:
    - (i) reasonably expect the change to adversely affect you; and
    - (ii) give you reasonable notice of the change.
- 1.5. Subject to clause 1.7, we will notify you at least 30 days before we make a change to our SFOA which is likely to have a detrimental impact on you. We will notify you of the change by:
- (a) email (provided you have agreed for us to tell you about changes to the SFOA by email);
  - (b) a notice on your next bill; and
  - (c) posting the notice on our Website.
- 1.6. Subject to clause 1.7, if we make a change to our SFOA which is likely to have a detrimental impact on you, and that impact is not minor, you may cancel the affected Services by giving notice to us within 42 days after the date we give you notice under clause 1.5. You will not incur any Early Termination Fee or other charges as a result of cancellation in accordance with this clause, except for:
- (a) Usage based charges incurred up to the date of cancellation; and
  - (b) installation fees and costs of equipment we have provided to you that you have not paid for.
- 1.7. We do not need to give 30 days' notice of changes to our SFOA or give you a right to cancel the Service under clause 1.6 in relation to:
- (a) urgent changes we are required to make by law, for security reasons, or for technical reasons necessary to protect the integrity of our Network;
  - (b) the introduction of a new charge or increase in an existing charge arising,
    - (i) due to an additional tax or levy imposed by law; or
    - (ii) for ancillary services such as credit card transaction or direct debit fees;
  - (c) increases in charges due to increases imposed on us by other Suppliers for the following:
    - (i) international carriage services (including voice and data services);
    - (ii) content and premium services from a third party; or
    - (iii) for calls made to satellite services.

(d) a change to or removal of any special feature of your Service that is not expressly referred to in the relevant Service Schedule.

1.8. We will provide reasonable notice of changes made under clause 1.7 where practicable by the notice methods outlined in clause 1.5.

1.9. Where we reasonably consider a change to our SFOA is likely to benefit you or have no impact on you we may make that change immediately without notice to you. We will notify you of such changes within a reasonable time after making them by the notice methods outlined in clause 1.5

1.10. If you can demonstrate that a change made under clause 1.9 has more than a minor detrimental impact on you and the change is not of a type described at clause 1.7, you may cancel your Service in accordance with clause 1.6.

### **Authorised Representative**

1.11. You may nominate an Authorised Representative to exercise any of your rights under the SFOA. Any act by your Authorised Representative in relation to your Service is deemed to be an act done by you.

### **Obsolete Services**

1.12. We regularly change the Service plans and pricing that we offer to our customers. When any applicable Contract Term expires, we may (although we are not obliged to do so) continue to provide a Service to you in accordance with the same Service Schedule and Pricing Schedules that applied during the Contract Term, even where we no longer offer that plan and pricing to new customers (**Obsolete Services**). We will provide details of the terms of any Obsolete Service we supply to you on request.

## **2. Your Application**

2.1. You may apply for a Service (**Application**) by:

- (a) completing an online application on our Website;
- (b) telephone, by asking our customer service representative to complete the application form for you and read the Key Terms to you;
- (c) completing a written application form and submitting it to us in any manner acceptable to us; or
- (d) any other method approved by us.

2.2. The Service requested by you in your Application is described in more detail in the Service Schedule for that Service.

- 2.3. By making an Application you agree to the terms and conditions contained in the SFOA, subject to clauses 2.4(b) and 2.4(d) below.
- 2.4. We may accept your Application in our absolute discretion. Our decision on whether to accept your Application and supply Services to you is based on any factors we consider relevant, including:
- (a) the availability of that Service to you;
  - (b) your eligibility for the Service;
  - (c) your credit history;
  - (d) the information you provide to us; and
  - (e) your prior conduct or history in respect of any previous Services provided by us to you.
- 2.5. If your Application is accepted, this SFOA between you and us commences on the earlier of:
- (a) if you complete an online application on our Website, the date you submit the online application;
  - (b) if you apply by telephone, the Key Terms commence on the date you accept the Key Terms and the remainder of the SFOA terms commence on the Service Commencement Date;
  - (c) if you complete a written application form, the date you complete the written application form; or
  - (d) the Service Commencement Date.
- 2.6. You must provide us with accurate and honest information in your Application.

### **3. Accessing Your Premises**

- 3.1. In order to provide the Service to you, we may need access to your Premises. You agree to provide us with safe and prompt access to the Premises to:
- (a) deliver and install any equipment for a Service you have applied for;
  - (b) inspect, test, maintain, modify, repair or replace any equipment;
  - (c) recover our equipment after the Service is cancelled;
  - (d) and to enforce our rights under clause 7.2.
- 3.2. You will owe us the value of our equipment as a debt due if we cannot access your Premises to recover it.
- 3.3. If you do not own the Premises, you must obtain the owner's consent for us to access the Premises and install and maintain any equipment. You must inform us if you are unable to obtain the owner's consent. You indemnify us against any claim the owner makes against us or our installers relating to entry to the Premises or

doing things listed in clause 3.1 that arises from your failure to obtain the owner's consent or your failure to inform us that you were unable to obtain consent.

#### **4. Your Use of the Service**

- 4.1. You are responsible for and must pay for any use of the Service, including:
  - (a) any use by any person you have expressly or impliedly allowed to use the Service; and
  - (b) any unauthorised use (including use of a Service after you vacate the Premises where you have failed to transfer or cancel the Service), unless that unauthorised use arises as a result of our negligent or wrongful act or omission.
- 4.2. In using the Service, you must comply with all laws, all directions by Regulatory Authorities and all reasonable directions by us.
- 4.3. You and any person who accesses your Service must comply with our Acceptable Use Policy.
- 4.4. You must provide us with all information we reasonably require under the SFOA (including for the purposes of investigating a possible breach of the SFOA or misuse of your Service).
- 4.5. You acknowledge that, where permitted by law, we may intercept communications over the Service.
- 4.6. You acknowledge that we (or our Suppliers) may (although we are not obliged to) monitor your use of the Service and communications sent over it for the purposes of ensuring your compliance with this SFOA, compliance by us or our Suppliers with the law, or compliance with any direction or request by any Regulatory Authority or law enforcement authority.
- 4.7. You authorise us to (although we are not obliged to) scan and conduct testing of the security of the Network and your Service (including your equipment) for the purpose of improving the security of the use of the Service.
- 4.8. You acknowledge that any calls we make to you or you make to us may be monitored or recorded and you consent to such monitoring and recording. If you do not consent to having your calls monitored or recorded, you can email us or contact us via our Website.
- 4.9. You must advise us within a reasonable time of any changes that are relevant to your account or the Service (for example changes to your address, or changes to your credit or direct debit details).

- 4.10. You acknowledge that we are unable to offer Priority Assistance or Priority Assistance related services as part of the Services offered by us. If you require Priority Assistance, you will need to contact Telstra.

## **5. Access Information**

- 5.1. We will provide you with the access information required to use the Services that we deem reasonably necessary (if any). You must maintain the secrecy and confidentiality of all such access information (including your username and password).
- 5.2. You must notify us immediately if your username or password are lost, or you believe someone else is using them.
- 5.3. You remain liable for all charges resulting from use of the Services accessed through your access information, whether authorised by you or not.

## **6. Providing the Services and Our Obligations**

- 6.1. We will provide the Service to you with due care and skill. In the event of unexpected faults we will use reasonable endeavours to ensure the Service is restored as soon as possible.
- 6.2. We will make all reasonable efforts to ensure continuity of the services, but we make no guarantee that the services will be either uninterrupted or error-free or that your data will reach its intended destination (including electronic mail) insider or outside our Network.
- 6.3. We will comply with the Telecommunications Legislation and other laws and directives under State or Commonwealth laws including those issued by state or federal law enforcement agencies that have jurisdiction over the use of the Services.
- 6.4. We will cooperate with Regulatory Authorities, law enforcement agencies and other service providers to control and prevent unacceptable behaviour and may implement automated mechanisms to prevent behaviour which is or may be in breach of our Acceptable Use Policy. This may include removing any content or cancelling or suspending your account.

## **7. Equipment**

### **Use of Equipment**

- 7.1. You must ensure that all equipment you use in connection with the Service and the way in which you use that equipment complies with:

- (a) all laws;
- (b) all directions from Regulatory Authorities;
- (c) all notices issued by authorisation of or under law; and
- (d) all reasonable directions by us.

7.2. If you breach clause 7.1, we may:

- (a) disconnect the equipment from the Service; or
- (b) Suspend or cancel the Service under clause 12.2(b) or 12.2(c).

7.3. We will endeavour to give you reasonable notice before we undertake any of the actions under clause 7.2. However, we may disconnect equipment, or suspend or cancel the Service immediately in the case of an emergency.

### **Our Equipment**

7.4. We may provide you with loan or hire equipment to enable you to use the Service (**Superloop Equipment**). Any Superloop Equipment provided to you remains our property or the property of our Suppliers.

7.5. Where we provide Superloop Equipment to you in connection with the Service you:

- (a) are responsible for the Superloop Equipment from when you receive it;
- (b) must pay us for any loss or damage to Superloop Equipment, except to the extent it is caused by fair wear and tear;
- (c) must not mortgage, or grant any charge, lien or encumbrance over any Superloop Equipment;
- (d) must comply with our reasonable directions relating to Superloop Equipment;
- (e) must use the Superloop Equipment in accordance with the manufacturer's specifications;
- (f) must not part with possession of the Superloop Equipment, other than to return it to us;
- (g) must allow us to inspect, test, service, modify, repair, remove or replace Superloop Equipment, or to recover it after the Service is cancelled;
- (h) must ensure that Superloop Equipment is not altered, repaired, serviced, moved or disconnected except as approved by us; and
- (i) must provide adequate and suitable space, power supply and environment for all Superloop Equipment located at the Premises.

### **Your Equipment**

7.6. Equipment may be purchased by you from us in connection with the Service. Subject to your rights under the Australian Consumer Law, you will own the equipment once you have paid for it in full and you will be responsible for the equipment from when you receive it.

- 7.7. You will be responsible for any outstanding payments for equipment you have purchased from us, even when that equipment is lost, stolen or damaged (unless caused by us).
- 7.8. You are responsible for:
- (a) the proper functioning and security of your equipment;
  - (b) supplying, maintaining and repairing all equipment used in connection with the Service, other than Superloop Equipment, including telephone access lines, cables, telephone and computer equipment (including modem) and other access devices necessary for us to provide the Service to you.
- 7.9. You agree to comply with all reasonable directions by us in relation to your equipment, including:
- (a) allowing us to inspect your equipment; and
  - (b) allowing us to make any necessary modifications to your equipment to avoid any danger or interference it may cause to Superloop Equipment, our other equipment, the Service or our Network.

### **Delivery of Equipment**

- 7.10. You must make all arrangements necessary to take delivery of the equipment when it has been sent by us. If you are unable to take delivery of the equipment as arranged, then we may charge a reasonable fee for re-delivery.
- 7.11. Delivery of equipment to a third party nominated by you is deemed to be delivery to you.
- 7.12. If equipment you have ordered and paid for arrives damaged or of unacceptable quality, then you may have rights under the Australian Consumer Law or other consumer laws to have the product repaired or replaced, or to a refund of the price paid.
- 7.13. We will not be liable for any loss or damage whatsoever due to failure by us to deliver any equipment promptly, or at all, where that failure is due to circumstances beyond our control.

NOTE: Please see also our Hardware Warranty Information on our Website

## **8. Charges and Billing**

### **Charges**

- 8.1. All charges for the Service are set out in our Pricing Schedule on the Website and any additional charges are set out in your Application. All prices shown on the



Website and in the Pricing Schedule are inclusive of Goods and Services Tax (GST).

- 8.2. You must pay all charges for the Service in accordance with the Service Schedule and Pricing Schedule.
- 8.3. We may charge you an additional amount to service, modify, repair, or replace the Service or any equipment used in connection with the Service where the need to do so arises from:
- (a) your breach of the SFOA;
  - (b) a negligent or fraudulent act or omission by you (or any person with your express or implied authority, or any of your employees, agents or contractors);
  - (c) a failure of any of your equipment arising out of an act or omission by you (or any person with your express or implied authority, or any of your employees, agents or contractors); or
  - (d) a failure in power supply arising out of an act or omission by you (or any person with your express or implied authority, or any of your employees, agents or contractors).

We will provide details of additional charges prior to commencing the Service, modification, repair or replacement.

- 8.4. Subject to clause 1.6, we reserve the right to correct any published price errors on our Website.
- 8.5. All portions of Usage are charged for and unused allocations are not transferable or refundable.

### **Billing**

- 8.6. If you acquire ongoing Services from us, a regular invoice/statement notification will be delivered to you by email. We may charge you a processing fee if you request us to deliver your invoices by post or facsimile.
- 8.7. The first month's service charges, any applicable set-up fees, and any equipment charges must be paid in full before the Service Commencement Date, and are non-refundable unless we are unable to provide the Service.
- 8.8. We may bill you for:
- (a) recurring or fixed charges, in advance;
  - (b) variable charges in arrears (for example excess data);
  - (c) installation or set-up fees, prior to installing your service;
  - (d) any equipment you purchase or rent from us;

- (e) any other charges in accordance with the SFOA, including the relevant Service Schedule and Pricing Schedule.
- 8.9. You must pay the charges in the bill without any set-off, counter claim or deduction.
- 8.10. We reserve the right to re-issue an invoice where any error is subsequently discovered.
- 8.11. We may include charges from previous billing periods on subsequent bills where those charges were not previously invoiced. We will not bill for any charges older than 160 days from the date the charge was incurred.
- 8.12. Your invoice will be calculated by reference to data recorded or logged by us or our Suppliers. Records held by us and our Suppliers will be conclusive evidence of the Usage of the Service and the charges payable by you.
- 8.13. If you supplied credit card details, you authorise us to debit the credit card for all valid charges when they become due, including excess data or time.
- 8.14. You are responsible for any transaction fees imposed by third parties (for example your bank) in relation to your payment.
- 8.15. Where we become liable to pay any penalties or interest due to late payment of GST due to your failure to comply with the SFOA or you obligations under any applicable law, then we may charge you an additional amount equal to any penalties or interest payable by us.
- 8.16. We may charge you for any other applicable value added taxes relating to the supply of the Service, and any other applicable taxes, levies, or fees (including where these are on-charged to us by Suppliers) charged to us on a per Service basis.

### **Overdue accounts**

- 8.17. Where an account becomes in arrears Superloop will initiate actions to secure payment of delinquent accounts. A late fee (\$15.00 per default) will apply to accounts that are not paid by or on the due date. If you do not pay the arrears and late fee within 7 days of us giving you notice requiring payment, we may suspend or restrict your Service without further notice.
- 8.18. Debt recovery services will be used to recover any amount outstanding beyond this initial action. This will incur an administration fee of \$130. You will also be liable for all reasonable expenses and costs incurred in recovering payment from you (including financial institution charges, collection agent fees, solicitors costs, and court costs).

- 8.19. If your nominated method is not automated by us (credit or debit card / BPAY) you must notify us by email or telephone when you have made payments. Please include the transaction date and receipt number so we can mark your account as paid as soon as our bank records are updated. You must include the invoice number for the bill you are paying as the reference in any direct deposit payments. Failure to do so may result in an overdue account.

## 9. Fault Reporting and Rectification

- 9.1. We will repair faults within our Network.
- 9.2. Except where provided in the Service Schedule, we are not responsible for repairing any fault in the Service where the fault arises from or was caused by:
- (a) a Supplier's Network;
  - (b) equipment that we are not responsible for, such as equipment that is owned by you or is not provided by us for you to use in connection with the Service; or
  - (c) facilities outside our Network.
- 9.3. Where a fault arises from or was caused by a Supplier's Network and we are aware of the fault we will notify the Supplier of the fault and request it be repaired promptly, but we will not bear any further liability or responsibility (except where provided in the Service Schedule).
- 9.4. You may report the details of any suspected fault to us, by telephone (1800 10 12 10) or email (support@home.superloop.com). You can report a suspected fault to us 24 hours per day.
- 9.5. When reporting a fault, you must provide us with contact details, including your name, your contact points, the site contact (if applicable), contacts at both ends of the Service (if applicable) and details of the fault systems.
- 9.6. Before reporting a fault to us, you must take reasonable steps to ensure that the fault is not a fault in any of your equipment or any equipment not provided by us. We are not responsible for rectifying any fault in the Service where the fault was caused by you or your equipment.
- 9.7. If you report a fault in the Service and ask us to register a fault to repair it, we will first run through a check-list of common faults. By registering a fault for repair you acknowledge that you have carried out the actions as outlined in this check-list.
- 9.8. If we determine that:
- (a) the Service is not faulty;
  - (b) the fault is associated with your equipment; or
  - (c) a fault was found because an item in the check-list was not carried out;

we may charge you an incorrect call-out fee of \$25 and any other reasonable contractor, Telstra, NBN or other fees incurred for the repair or investigation.

- 9.9. If you ask us to investigate and/or repair a fault that arises from or is caused by equipment that we are not responsible for (that is equipment owned by you or not provided by us for you to use in connection with the Service), we will provide you with an estimate of the cost to investigate and/or repair the fault. If you request us to investigate or repair such a fault, and we agree to do so, we will charge you for the cost of the investigation and/or repair.
- 9.10. We may charge you reasonable costs for repairing a fault if the fault was caused by:
- (a) your intentional, reckless or negligent act or omission;
  - (b) an intentional, reckless or negligent act or omission by someone else using the Service with your express or implied authority; or
  - (c) an intentional, reckless or negligent act or omission by someone else using the Service without your authority (only where that unauthorised use of the Service arises from your intentional, reckless or negligent act or omission).

## 10. Variations to the Service

- 10.1. You may request a variation to the Service and we may make that variation in our absolute discretion.
- 10.2. If we make a variation under clause 10.1:
- (a) that upgrade, downgrade or change will occur on the next billing cycle;
  - (b) different charges may apply to the varied Service in accordance with the relevant Service Schedule and Pricing Schedule; and
  - (c) a Downgrade Fee may apply to the varied Service as specified in the relevant Service Description or Pricing Schedule.
- 10.3. Where you require an immediate upgrade, we may make the variation prior to the next billing cycle (subject to technical feasibility), but in doing so, you forfeit any remaining time or data for the remaining period.

## 11. Privacy

- 11.1. We collect, use and disclose your personal information as set out in our Privacy Policy which is available on our Website.

## 12. Our Rights to Cancel or Suspend the Service

- 12.1. We may, without liability, cancel the Service:

- (a) where there is no Contract Term specified in your Application or the Service Schedule, at any time on giving you 30 days' notice in writing to you, in which case we will provide you with a refund in respect of the Services for which you have paid in advance but which have not been provided by us, calculated at the applicable monthly rate;
- (b) where a Contract Term is specified in your Application or Service Schedule, at any time after the end of the Contract Term on giving you 30 days' notice in writing to you; or
- (c) at any time before the Service Commencement Date if we determine it is not feasible (technically, commercially or operationally) to supply the Service to you.

12.2. We may immediately suspend, cancel or restrict (including by means of Shaping) the supply of the Service to you if:

- (a) we are entitled to under another clause of our SFOA;
- (b) without limiting our other rights under this clause 12.2, you are in breach of any material term of the SFOA (including any policy) which is capable of remedy and such breach is not remedied within 14 days of us notifying you to remedy that breach;
- (c) without limiting our other rights under this clause, you are in breach of any material term of the SFOA (including any Policy) which is not capable of remedy;
- (d) you are in breach our Acceptable Use Policy;
- (e) you have breached any of clauses 3.1, 3.2, 4.2, or 4.3;
- (f) you have breached any of your obligations relating to the use of the Service stated in the Service Schedule;
- (g) we reasonably believe you have provided us with false or misleading information;
- (h) we reasonably suspect fraud or other illegal conduct by you or any other person in connection with the Service;
- (i) we reasonably believe a threat to the security of the Service or our Network (or a Supplier's Network) exists and that threat is caused directly or indirectly by you;
- (j) it is necessary to comply with our legal obligations;
- (k) we discover or reasonably believe that you are a minor;
- (l) an authority such as the ACMA or enforcement agency instructs us to do so;
- (m) you vacate the premises in which you are provided the Service without notifying us beforehand;
- (n) you, being a natural person, die;
- (o) you abuse, threaten, attempt to or cause harm to, equipment or Network infrastructure of ours or any of the service networks;
- (p) your behaviour towards us or our representatives has been verbally or physically abusive, threatening or inappropriate, or amounts to bullying or harassment; or
- (q) you have made multiple complaints without a reasonable basis for doing so and you continue to make such complaints after we have asked you to stop;
- (r) we reasonably believe you are an unacceptably high credit risk;
- (s) an Insolvency Event occurs, or we reasonably believe an Insolvency Event is about to occur, in relation to you, your business, or a Related Body Corporate;

- (t) you being a partnership, dissolve, threaten or resolve to dissolve or are in jeopardy of dissolving;
- (u) we reasonably believe there has been an Excessive Use of the Service;
- (v) you cease or threaten to cease conducting business in the manner you were conducting business at the Service Commencement Date; or
- (w) you resell the Service or otherwise act as a Carriage Service Provider.

12.3. Without limitation our rights under any other terms of the SFOA, we may immediately suspend, cancel or restrict (including by means of Shaping) the supply of the Service to you if:

- (a) there are technical problems with our Network or a Supplier's Network, our Network or a Supplier's Network requires repairs or maintenance, or for other operational reasons;
- (b) there is an emergency;
- (c) a Supplier cancels an agreement with us, or stops supplying services to us, and we are unable to provide the Service to you using Services from an alternative Supplier on terms reasonably acceptable to us;
- (d) we are required by law or in order to comply with an order, notice, direction or request from a Regulatory Authority, law enforcement agency or emergency services;
- (e) where a Force Majeure Event prevents us from supplying the Service to you for more than 14 days; or
- (f) we reasonably suspect a threat to the security of the Service or our Network (or a Supplier's Network) exists and that threat is not caused directly or indirectly by you.

12.4. Where possible in the circumstances, we will provide you with reasonable notice of any suspension, cancellation, or restriction of the Service under this clause.

### **13. Cancellation by You**

13.1. Except as otherwise provided in the Service Schedule for your Service, you may cancel the Service, without liability, by giving us notice:

- (a) at any time, where there is no Contract Term specified in the Service Schedule or your Application;
- (b) if a Contract Term is specified in the Service Description or your Application, at any time after the end of the Contract Term;
- (c) at any time, if we have breached a material term of the SFOA and the breach is not capable of remedy;
- (d) if we have breached a material term of the SFOA which is capable of remedy and such breach is not remedied within 14 days of you notifying us to remedy that breach;
- (e) of 14 days, where there has been a significant interruption to the Service (more than 14 days, or more than three interruptions of 2 days or more in a 12-month period), unless that interruption occurs due to:

- (i) a permitted cancellation, suspension or restriction of the Service under clause 12.2;
- (ii) a fault or other event reasonably attributable to your acts, omissions, or equipment.

13.2. You may cancel the Service for any reason before the end of the Contract Term by giving notice to us, but we may require you to pay an Early Termination Fee in accordance with clause 14.1(a).

#### **14. Consequence of Suspension and Cancellation**

14.1. If the Service is cancelled in accordance with our SFOA (other than under clause 12.1(c), 12.3, 13.1(c), 13.1(d), 13.1(e)):

- (a) during the Contract Term, you must pay us an Early Termination Fee;
- (b) before the Service Commencement Date, we may charge you any costs reasonably incurred by us in preparing to provide the Service to you.

14.2. Where the Service is cancelled you must pay us all charges incurred prior to cancellation.

14.3. If we reconnect a Service that has been cancelled or suspended, we may require you to pay a reconnection fee. We will not require payment of a reconnection fee where the Service was cancelled or suspended under clauses 12.3, 13.1(c), 13.1(d) and 13.1(e).

14.4. When your Service is cancelled:

- (a) you must immediately cease using the Service;
- (b) you must return to us all other material of ours, including any software, on the Premises or in your possession or control;
- (c) each party's accrued rights and obligations are not affected (unless otherwise stated in the SFOA);
- (d) we may delete all of your data from any storage media (it is your responsibility to back-up any of your data);
- (e) all parts of our SFOA which are intended to survive cancellation will continue unaffected, including clauses 3.1, 3.2, 8, 12, 14 to 17.
- (f) under clauses 12.2, 13.1(a) or 13.1(b), you must pay any outstanding amount for any purchased equipment which you have not fully paid for at the date of cancellation;
- (g) under clauses 12.3, 13.1(c), 13.1(d) or 13.1(e), and where the equipment may be used with another telecommunications provider, you must pay any outstanding amount for any purchased equipment which you have not fully paid for;
- (h) under clauses 12.3, 13.1(c), 13.1(d) or 13.1(e), and where the equipment cannot be used with another telecommunications provider, you must return any



equipment you have purchased but not fully paid for to us, and on return of equipment in an acceptable condition, we will refund any amounts you have already paid; and

- (i) under clause 13.2, where we supplied equipment on the condition that you acquire the Service for the full Contract Term then:
  - (i) where we supplied equipment free of charge you must either return the equipment to us, or retain the equipment or pay us for it in full; or
  - (ii) where we supplied equipment at a discount you must either return the equipment to us (and we will refund the amount paid) or retain the equipment and pay us an amount equivalent to the discount.

## 15. Liability

### Our Liability to You

- 15.1. We provide the Service to you subject to the terms, conditions and warranties contained in the SFOA. You also have certain non-excludable rights under the Australian Consumer Law and other laws, which may imply certain conditions and warranties into this agreement (including applicable Consumer Guarantees).
- 15.2. The Customer Service Guarantee (CSG) provided under the Telecommunications Legislation also proscribes minimum performance standards for certain telecommunications services, breach of which entitles you to certain compensation. We will comply with such standards to the extent that they apply to the Services offered.
- 15.3. Subject to the rights, implied conditions and warranties referred to in clauses 15.1 and 15.2, any liability we may otherwise have to you in connection with the SFOA or the Service is expressly excluded.
- 15.4. Where we are liable for any loss or damage in connection with or arising from the breach of any term, condition, warranty or remedy implied by the Australian Consumer Law, our liability is limited to resupplying, repairing or replacing the relevant service or equipment (or paying the cost of resupplying, repairing or replacing the relevant service or equipment). This limitation does not apply:
  - (a) if you can establish that it is not fair and reasonable for us to limit our liability;
  - (b) where the service or equipment is of a kind ordinarily acquired for personal, domestic or household use or consumption;
  - (c) to personal injury or death;
  - (d) to loss, destruction or damage to, or loss of use of tangible property; or
  - (e) to a breach of Consumer Guarantees relating to clear title, undisturbed possession and undisclosed securities under sections 51, 52 and 53 of the Australian Consumer Law.



- 15.5. You must let us know as soon as you become aware of or believe that you have a claim against us.

#### **Internet Content**

- 15.6. We are not liable for any defamatory, offensive or illegal conduct or material found in using our Services, including such conduct or material transmitted by any means by any other person.

#### **Contributory Loss**

- 15.7. Our liability for any loss, cost, liability or damage suffered by you under or in connection with the Service is reduced to the extent that your acts, omissions or equipment (or a third party's acts, omissions or equipment) caused or contributed to that loss, cost, liability or damage.

#### **Third Party Acts and Omissions**

- 15.8. We are not liable to you or any other person for the acts or omissions of any third party (other than our agents), including any Supplier who is not acting as our agent and any person who provides goods or services directly to you for use in connection with the Service.

#### **Consequential Loss**

- 15.9. We exclude any liability to you for any Consequential Loss suffered or incurred by you, except to the extent you are entitled to recover reasonably foreseeable losses under the Australian Consumer Law.

#### **Service Interruption**

- 15.10. Subject to clause 15.11, where your Service is subject to an Interruption you may be entitled to a refund or rebate for the period of the Interruption. The Service Schedule may set out a formula for calculating the relevant refund or rebate. You may also be entitled to cancel the Service under clause 13 above.
- 15.11. You will not be entitled to any refund or rebate under clause 15.10 where Interruption occurs because of:
- (a) a cancellation, suspension or restriction to your Service in accordance with clause 12.2;
  - (b) a fault or other event which may reasonably be attributed directly or indirectly to your equipment;
  - (c) your acts or omissions; or
  - (d) scheduled maintenance (lasting less than 10 hours) to our Network, a Supplier's Network, our equipment or equipment supplied by us to you; or

- (e) an outage caused by a natural disaster, or severe thunderstorm or weather; or
- (f) an outage caused by third parties, such as a vehicle accident or vandalism.

15.12. Except for the liability expressly accepted under this clause (and any liability we have under the Australian Consumer Law and Consumer Guarantees that cannot be excluded), we exclude all other liability to you (whether based in contract, tort (including negligence), statute or otherwise) for suspending, cancelling or restricting the Service in accordance with this SFOA.

15.13. To receive any rebate or refund under clause 15.10, you must contact us and inform us of the Interruption.

### **Force Majeure**

15.14. Subject to your non-excludable rights under the Australian Consumer Law, we are not liable for:

- (a) any delay in installing any Service.
- (b) any delay in correcting any fault in any Service.
- (c) any failure or incorrect operation of any Service, or
- (d) any other delay or default in performance under this SFOA, if it is caused by any Force Majeure Event.

### **Your Liability to Us**

15.15. Where you are two or more persons your liability will be joint and several and each of you is jointly and individually responsible for all charges and obligations in relation to the Service.

15.16. You indemnify us from and against all actions, claims, suits, demands, liabilities, loss, damage, costs and expenses arising out of, or in any way connected with, your (or any person acting with your express or implied authority):

- (a) use of the Service, or equipment used in connection with the Service, in any manner contrary to the terms of the SFOA; or
- (b) negligent acts or omissions.

15.17. You indemnify us from and against all actions, claims, suits, demands, liabilities, loss, damage, costs and expenses arising out of or in any way connected with the suspension or cancellation of your Service (unless the suspension or cancellation arose under clause 12.3 (suspension not caused by your default)), including those arising from a claim against us by any third party that relates to the suspension or cancellation of your Service.

15.18. You must ensure that any person who you allow to use the Service complies with the terms the SFOA.

## 16. Assignment and Subcontracting

- 16.1. You must not assign or transfer or otherwise deal with any of your rights or obligations under this SFOA without our prior written consent.
- 16.2. We may perform any of our obligations under the SFOA by arranging for them to be performed by another person, including a Supplier or subcontractor. We will remain responsible for the performance of the obligations.
- 16.3. We may assign some or all of our rights under our SFOA to any other person.
- 16.4. We may transfer some or all of our obligations under the SFOA to:
  - (a) another Superloop Entity; or
  - (b) a purchaser of our business,provided that the transferee agrees to provide the service to you on terms substantially the same as the terms and conditions of the SFOA.
- 16.5. Otherwise we may transfer, or otherwise deal with our obligations under the SFOA on any terms to which you consent.

## 17. General

### Governing Law

- 17.1. This SFOA is governed by the laws of the Commonwealth of Australia and the laws of the state or territory in which you normally reside.
- 17.2. You and we agree to submit to the exclusive jurisdiction of the courts of the Commonwealth, and its states and territories.

### Severance

- 17.3. If any part of this SFOA is void, voidable or unenforceable in any jurisdiction, it will be severed and the remainder of the SFOA will continue in force unaffected.

### No waiver

- 17.4. If you breach the SFOA and we do not exercise a right arising from that breach, we do not waive our entitlement to exercise that right, unless we do so expressly in writing.

### **Intellectual Property and Software Licences**

- 17.5. We own all material (including intellectual property rights) developed by (or at the direction of) us, our staff or other personnel. We may allow you to use this material, or other material licenced by us, as part of the Service. Your use of this material is subject to any terms and conditions we impose and will cease when the Service is cancelled.
- 17.6. You do not own or have any legal interest in our intellectual property or any personal identifier issued by us to you, including any IP address, domain name, personal identification number, or telephone number.

### **No reliance**

- 17.7. While we make reasonable efforts to ensure the information on our Website is correct and up to date, we do not warrant the accuracy of that information.
- 17.8. Our staff may provide you with advice in good faith to assist your use of the Service. However, we do not represent that our staff are experts in your particular computer hardware or software. Subject to your non-excludable rights under the Australian Consumer Law (which we do not exclude), you acknowledge that any action you take on advice given by any of our staff is taken at your own risk.

### **Further Information About Your Rights**

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

## **18. Definitions and Interpretation**

- 18.1. In the SFOA:

**Acceptable Use Policy** means the document forming part of the SFOA that sets out our policies on responsible, unreasonable, excessive, prohibited, and unacceptable use of the Service.

**Application** means your application as referred to in clause 2.

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

**Authorised Representative** means any person nominated by you to exercise any of your rights under the SFOA.

**Carriage Service Provider** has the meaning given by section 87 of the Telecommunications Act 1997.

**Consequential Loss** means any liability which:

- (a) does not arise directly, or naturally in the usual course of things, from the breach, action or inaction in question; or
- (b) constitutes or arises from or in connection with loss of profit, loss of anticipated profit, loss of opportunity or anticipated savings, loss of revenue, loss of income, loss of production, loss of impairment of credit rating, loss of data, loss of management time, loss of business opportunities and loss of or damage to reputation or goodwill even if such loss arises naturally or in the usual course of things from the breach, action or inaction in question.

**Consumer Guarantee** has the meaning given in Division 1 of Part 3-2 of the Australian Consumer Law.

**Contract Term** means the minimum contract term stated in your Application, which commences on the Service Commencement Date.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Critical Information Summary** means the document describing the critical information relating to the Service.

**Customer Service Guarantee** means the performance standards under Part 5 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth).

**Downgrade** means a variation to the Service which reduces the capacity, Usage or utility applicable to the Service and results in a reduction in charges payable for the Service.

**Downgrade Fee** means the fee for Downgrade specified in the Service Schedule or Pricing Schedule.

**Download** means data that is inbound to your internet connection.

**Excess Usage Charges** means the charges payable for use over and above your Monthly Usage Allowance.

**Excessive Use** means high out of pattern use of the Service in a short term period or a sustained high usage which exceeds the general average usage of customers on a similar Service Schedule or Pricing Schedule.

**Force Majeure Event** means any event or circumstance reasonably beyond our

control, including but not limited to; war, accident, civil commotion, riot, military action, sabotage, act of terrorism, vandalism, embargo, judicial action, labour dispute, an act of a government or a government authority, acts of God, earthquake, fire, flood, storm, plague or other natural calamity, computer viruses, hacker attacks, failure of the internet, failure in electrical power supply, failure of air-conditioning or humidity control, cut cables, or delay, failure or default by any other supplier.

**Handling Fee** means a fee incurred by us in providing you with a refund.

**Hardware Warranty Information** means the document forming part of this SFOA which states your rights with respect to some equipment we supply to you, the warranty periods that apply and how to make a warranty claim.

**Insolvency Event** means you:

- (a) become bankrupt;
- (b) become unable to pay your debts as and when they are due;
- (c) suspend payment of any of your debts;
- (d) become insolvent or are under administration (each as defined in the Corporations Act);
- (e) have a controller or administrator appointed (each as defined in the Corporations Act), or
- (f) are in liquidation, in provisional liquidation, or have a receiver appointed to any part of your property (as defined in the Corporations Act).

**Interruption** means a material delay in supplying, a failure to supply for a significant period, or a major error or defect in the supply of, goods or services.

**Key Terms** means, in context of clause 2 only, the terms and conditions we read out to you over the telephone.

**Monthly Usage Allowance** means the Usage that is provided per month in accordance with the plan chosen in your Application.

**NBN Co** means NBN Co Limited (ACN 136 533 741) or an entity that is related to NBN Co Limited in any of the ways specified in section 50 of the Corporations Act.

**Network** means a telecommunications network, including equipment, facilities or cabling.

**Off Peak** means the hours in the day where your data usage counts toward your Off Peak quota allowance.

**Peak** means the hours in the day where your data usage counts toward your Peak quota allowance.

**Premises** means the locations where we supply the Service, and locations where we require access to supply the Service.

**Pricing Schedule** means the pricing information specified on the Website in relation to the Service.

**Priority Assistance** means a service offered to persons who are diagnosed with a life-threatening medical condition and whose life may be at risk if they don't have access to a working telephone line.

**Privacy Policy** means our Privacy Policy that appears on our Website, as updated from time to time.

**Regulatory Authority** includes the Australian Communications and Media Authority (ACMA), the Australian Competition and Consumer Commission (ACCC), Communications Alliance, the Telecommunications Industry Ombudsman (TIO) or any other government or statutory body or authority.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Service** means the service requested by you in your Application and described in the relevant Service Schedule and Pricing Schedule, and any related goods and ancillary services provided to you by us in connection with that Service.

**Service Commencement Date** means the date on which the Service is ready for use.

**Service Schedule** means the Critical Information Summary or CIS describing the Service and setting out specific terms and conditions for the Service.

**Shaping** means the Download speed will be slowed to a maximum shaped speed specified in the relevant Service Schedule, Pricing Schedule, or Critical Information Summary.

**Superloop, we, us, our** means the Superloop Entity named in your Application.

**Superloop Entity** means Superloop (Operations) Pty Ltd (ABN 21 622 829 510), Superloop Broadband Pty Ltd (ABN 31 125 849 621), Superbb Pty Ltd (ABN 32 158 560 671), or an entity related to Superloop Ltd (ABN 96 169 263 094) pursuant to section 50 of the Corporations Act.

**Superloop Equipment** has the meaning set out in clause 7.4.

**Supplier** means any supplier of goods or services that may be used directly or indirectly by us to supply the Service.

**Telecommunications Legislation** means the *Telecommunications Act*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) and Parts XIB and XIC of the *Competition and Consumer Act 2010* (Cth), each as amended from time to time.

**Usage** means the amount of time generated or data Downloaded or uploaded by your Internet access.

**you** means the customer whom makes the Application, or where two or more persons have applied, means those persons jointly and individually (and 'your' has the corresponding meaning)

**Website** means our website (<http://www.superloop.com>).

18.2. Unless the context otherwise requires:

- (a) a reference to a clause is to a clause in these General Terms;
- (b) a term which is defined in any part of our SFOA has the same meaning in every other part of the SFOA;
- (c) different grammatical forms of the same word have the corresponding meaning;
- (d) the singular includes the plural and vice versa;
- (e) the terms 'we', 'us', 'our', 'you', and 'your' will include their respective successors and permitted assigns and novates;
- (f) a reference to a person includes a reference to a person, partnership, corporation or other legal entity;
- (g) the words 'including', 'includes' or 'for example' or similar expressions are not words of limitation;
- (h) 'reasonable' notice means a period which is reasonable in the circumstances taking into account technical, operational and commercial factors.

Information is current as of 14 November 2019