



## Breeze Connect Standard Form of Agreement February 2020

### Agreement

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#### 1. Definitions and Interpretation

##### 1.1 Background

The background set out above forms part of this agreement and the parties agree that the background is true and accurate.

1.1.1 **'ACMA'** means the Australian Communications & Media Authority;

1.1.2 **'Agreement'** means this Agreement and any annexures, schedules, and appendices;

1.1.3 **'Authorised Representative'** means the persons as specified in **Items 2 and 3** of the Schedule or as otherwise agreed in writing by the parties from time to time;

1.1.4 **'Breeze Connect Network'** means the network relating to Breeze Connect Services, including SIP Trunking and PBX services;

1.1.5 **'Business Day'** means any day from Monday to Friday inclusive, excluding public holidays observed in South Australia;

1.1.6 **'Charges'** means the charges for the Service which are payable by the Customer in accordance with **clause 9**;

1.1.7 **'Commencement Date'** means the date specified in **Item 4** of the Schedule;

1.1.8 **'Confidential Information'** of a party means information (including this Agreement), know-how, ideas, concepts and industrial knowledge, in whatever format, of that party, other than information which:

- (a) is generally available in the public domain without a breach of confidence or unauthorised disclosure by either party
- (b) is lawfully disclosed by a third party without restriction on disclosure;
- (c) is required by law or the Australian Stock Exchange to be disclosed.

1.1.9 **'Customer'** means the customer identified in **Item 1** of the Schedule;

1.1.10 **'Customer Equipment'** means all equipment and facilities other than Breeze Connect's Equipment used in connection with the Service;

1.1.11 **'Customer Service Guarantee ('CSG') Standard'** means the standards of service under the *Telecommunications (Customer Service Guarantee) Standard 2011* (Cth);

1.1.12 **'Fixed Period Contract'** means the duration of the provision of the Service for the Minimum Service Period as specified in **Item 6** of the Schedule;

1.1.13 **'GST Law'** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

1.1.14 **'GST Rate'** has the meaning attributed in the GST Law;

- 1.1.15 **'Minimum Service Period'** means the minimum supply period or contract term (if any) specified in **Item 6** of the Schedule;
- 1.1.16 **'Personal Information'** means information that can identify an individual, including but not limited to name, contact details;
- 1.1.17 **'Services'** means the service(s) listed in **Item 5** of the Schedule;
- 1.1.18 **'Site'** means the location at which the Service is to be supplied to the Customer by Breeze Connect;
- 1.1.19 **'Taxable Supply'** has the meaning attributed in the GST Law;
- 1.1.20 **'Tax Invoice'** has the meaning attributed in the GST Law;
- 1.1.21 **'Telecommunications Act'** means the Telecommunications Act 1997 (Cth) and
- 1.1.22 **'Term'** means the period between the Commencement Date and the termination of the Service pursuant to **clause 4**.

## 2. General

- 2.1 In this Agreement unless a contrary intention is meant:
  - 2.1.1 the clause headings are for convenient reference only and do not form part of this Agreement;
  - 2.1.2 a reference to a clause number is a reference to all its subclauses;
  - 2.1.3 a reference to a clause, subclause, schedule or attachment is a reference to a clause, subclause, schedule or attachment of this Agreement;
  - 2.1.4 a word in the singular includes the plural and a word in the plural includes the singular;
  - 2.1.5 a word importing a gender includes any other gender;
  - 2.1.6 a requirement in this Agreement for liaison and consultation is a requirement for full and frank exchange and discussion and includes a requirement where necessary and appropriate for full disclosure of relevant information and material;
  - 2.1.7 a reference to a person includes a partnership and a body corporate;
  - 2.1.8 a reference to legislation includes legislation repealing, replacing or amending that legislation;
  - 2.1.9 a reference to dollars is a reference to Australian dollars;
  - 2.1.10 where a word or phrase is given a particular meaning other parts of speech or grammatical forms of that word or phrase have corresponding meanings.
- 2.2 This Agreement between the parties comprises these standard terms and conditions and all the documents comprised in, and incorporated by reference to, the Schedule and the Annexures. If any of the documents comprising this Agreement are inconsistent, they shall take priority in the following order:
  - 2.2.1 these standard terms and conditions (excluding the Schedule); and
  - 2.2.2 the Schedule;
  - 2.2.3 the Annexures.

## 3. Service

- 3.1 Breeze Connect VOIP is a service which enables you to make and receive voice calls over your broadband internet connection (ADSL or later).

- 3.2 Breeze Connect VOIP is not intended to be used as a standard telephone service. If your internet is not functioning properly for any reason, including where there is a power failure, data congestion, throttling, or other internet outage, Breeze Connect VOIP will not function or will not function correctly.
- 3.3 Breeze Connect VOIP may be used to make and receive calls to/from:
  - 3.3.1 Other Breeze Connect VOIP customers;
  - 3.3.2 Standard Australian local and national numbers;
  - 3.3.3 Australian mobile numbers in Australia;
  - 3.3.4 000 emergency services (only for plans where a service number is allocated);
  - 3.3.5 Free phone and local rate numbers such as 13, 1300 and 1800 numbers (only for plans where a service number is allocated);
  - 3.3.6 Directory assistance or operator assisted numbers (only for plans where a service number is allocated);
  - 3.3.7 Satellite phones;
  - 3.3.8 Most International destinations.

#### 4. Term of Agreement

- 4.1 This Agreement commences from the Commencement Date.
- 4.2 For contracts other than Fixed Period Contracts, this Agreement will continue until it is terminated by either party on thirty (30) days written notice or otherwise in accordance with this Agreement.
- 4.3 For Fixed Period Contracts, this Agreement will continue:
  - 4.3.1 for the Minimum Service Period referred to in **Item 6** of the Schedule; or
  - 4.3.2 until it is terminated in accordance with **clause 16**.
- 4.4 If neither Breeze Connect nor the Customer cancel this Agreement at the end of the Fixed Period Contract, Breeze Connect will continue to supply the Service to you on a month-to-month basis.
- 4.5 If Breeze Connect will not continue to provide the Service to you at the end of the Fixed Period Contract or if we wish to change the terms of this Agreement, including charges, we will inform you of this no less than thirty (30) days prior to the end of the Fixed Period Contract.

#### 5. Minimum Service Period

- 5.1 The Minimum Service Period is the minimum fixed period during which you must acquire the Service. The Minimum Service Period is specified in **Item 6** of the Schedule and commences when the Service is activated.
- 5.2 If, during the Minimum Service Period, you cancel the Service or we cancel the Service because of your default, you may be liable to pay an early termination charge which is either set out in **Item 7** of the Schedule or in the Service description.
- 5.3 Once the Minimum Service Period expires, the Service will continue to renew automatically, and you will continue to be charged for the Service until such time as you or we cancel the Service by giving thirty (30) days written notice.

#### 6. Customer Obligations

- 6.1 The Customer agrees that it will not knowingly, or by any negligent act or omission:

- 6.1.1 use or permit the use of the Service in any manner which constitutes a violation or an infringement of any duty or obligation in contract, tort, or otherwise to any third person;
- 6.1.2 use or permit the use of the Service in connection with the commission of an offence against the laws of the Commonwealth or the States or Territories;
- 6.1.3 use or permit the use of the Service for the transmission of including but not limited to any defamatory, offensive, abusive, indecent, spam or menacing material or the making of any hoax call;
- 6.1.4 use or permit the use of the Service in connection with the transmission of any computer virus that may adversely affect the Breeze Connect Equipment, the Breeze Connect Network, the equipment or network of any third-party provider to Breeze Connect or any network users;
- 6.1.5 use or permit the use of the Service to engage in any activities in a manner that may expose Breeze Connect or any third-party provider to the risk of any legal or administrative action including prosecution under any law; or
- 6.1.6 interfere or attempt to interfere with the operation of: the Service, Service Number or an IP address; any Breeze Connect Equipment; the Breeze Connect Network or the equipment, network or IP Addresses of any other person.
- 6.2 The Customer will do everything reasonable to assist and cooperate with Breeze Connect and any person engaged by Breeze Connect to provide to the Customer the Service at the Site. The types of assistance that Breeze Connect may require from the Customer include but is not limited to:
  - 6.2.1 ensuring that it is possible and safe for Breeze Connect and persons engaged by Breeze Connect to obtain necessary access to a Site (including for any emergency);
  - 6.2.2 ensuring that relevant people are available and give to Breeze Connect timely instructions;
  - 6.2.3 ensuring that Customer Equipment is ready at the appropriate times;
  - 6.2.4 at the Customer's own expense and following Breeze Connect's reasonable instructions in connection with making any modifications to Customer Equipment reasonably necessary to enable Breeze Connect to provide the Service;
  - 6.2.5 obtaining and maintaining any authorisation, permission, licence, waiver, registration or consent from any person necessary for the Customer to secure to enable Breeze Connect to provide the Service;
  - 6.2.6 informing Breeze Connect of the location of Breeze Connect Equipment (if any); and
  - 6.2.7 working together with Breeze Connect to establish procedures to reduce fraud or the opportunity for fraud in relation to the Service.
- 6.3 The Customer agrees to supply Breeze Connect (or Breeze Connect's nominated representative/agent) any information reasonably requested by Breeze Connect relating to the Customer:
  - 6.3.1 for Breeze Connect to monitor and help reduce the incidence of fraud;
  - 6.3.2 to assist Breeze Connect in complying with its regulatory obligations and its obligations to report on compliance with those obligations;
  - 6.3.3 to assess whether or not the Customer has complied, is complying and will be able to continue to comply with all obligations imposed on the Customer under the Agreement; and

- 6.3.4 for other purposes reasonably required by Breeze Connect from time to time and agreed by the Customer.

### 7. Equipment

- 7.1 To use the Breeze Connect VOIP service, you must obtain and maintain:
- 7.1.1 A suitable high-speed internet connection, onsite server and/or dedicated PBX hardware that runs 3CX, IP PBX, IP enabled Phone System and other hardware as specified by Breeze Connect;
- 7.2 You acknowledge and agree that:
- 7.2.1 You and the Breeze Connect Channel Partner are responsible for all onsite hardware management;
- 7.2.2 Breeze Connect is not responsible or liable for any equipment including but not limited to:
- (a) onsite hardware or software;
  - (b) misconfigured PBX; or
  - (c) insufficient bandwidth;
  - (d) unreliable internet connections.
- 7.3 You and the Breeze Connect Channel Partner acknowledge and agree that it is the Breeze Connect Channel Partner's responsibility to:
- (a) qualify and validate the internet connection;
  - (b) ensure the server, PBX and/or other hardware/software is of sufficient quality and performance;
  - (c) ensure that the internet connection, server, PBX and required hardware/software is correctly configured and setup to perform the required function.

### 8. Not for Resale

- 8.1 Unless otherwise agreed by Breeze Connect, the Customer may not resell or re-supply the service.

### 9. Charges

- 9.1 The Customer must pay all Charges in connection with the Service and in accordance with this Agreement.
- 9.2 Breeze Connect may change a call rate at any time by giving five (5) business days' notice to the Customer.
- 9.3 The Customer must pay Breeze Connect its Charges for:
- 9.3.1 any services provided outside of Breeze Connect's usual support hours, services in connection with Customer Equipment and for provision of any additional goods and services requested by the Customer; and
- 9.3.2 to service, repair or replace the Service or equipment required because of Customer Equipment or other items or services beyond the Service Delivery Point or because of negligence, fraud, misuse or breach of this Agreement by the Customer or a user or any of their officers, employees, agents or contractors or anyone authorised by any of them.
- 9.4 The Customer must pay Breeze Connect its charges incurred in connection with any failure of the Customer to comply with its obligations.
- 9.5 You acknowledge that charges will be incurred when the Service is used. It is therefore important that you take steps to ensure that such usage does not occur without your authorisation. You should ensure that you are in control of devices that might make use of the Service, such as computers, handsets, mobile phones, and wireless devices connected to the Service and that third parties cannot access or use such equipment without your authority. You acknowledge that usage of some services can occur because of an infection of your computer with a virus or due to other unauthorised third party intrusions. You should ensure that you have appropriate

protection systems operating on your equipment to restrict or limit the possibility of unauthorised usage.

- 9.6 As Breeze Connect is not able to control access or usage of your handsets and other equipment, you are responsible for all usage charges in respect of the use of the service, whether such usage was authorised by you, unless the usage was caused by a mistake of Breeze Connect.

### 10. Payment

- 10.1 Breeze Connect may invoice and require payment of certain Charges prior to commencing provision of the Service.
- 10.2 Breeze Connect will issue itemised invoices monthly to the Customer for the Service and the Customer must pay each invoice in Australian dollars within fourteen (14) days of the invoice date unless other Payment Terms are agreed (**see Item 9 of the Schedule**).
- 10.3 To the extent that it is not precluded by regulation, if Breeze Connect has omitted Charges from an invoice for any reason, Breeze Connect may include such Charges in a later invoice.
- 10.4 If the Customer fails to pay any amount when due, Breeze Connect will be entitled to:
- 10.4.1 charge interest on the overdue amount (both before and after judgment), at the rate of 6% above the cash rate set by the Reserve Bank of Australia. This interest rate will be calculated daily and compounded every thirty (30) days;
- 10.4.2 impose a charge to recover its reasonable expenses and costs incurred in enforcing any failure or delay in the payment (including associated debt recovery agent and/or lawyer fees); and
- 10.4.3 suspend provision of the Service in accordance with **clause 15** below.

### 11. GST and Other Taxes

- 11.1 Unless otherwise stipulated in the Schedule, the Charges do not include any GST. Breeze Connect will include on each invoice a separate amount for the GST payable in respect of the Charges in the invoice and the Customer must pay the GST to Breeze Connect.
- 11.2 The Customer must pay all taxes (including any goods or services tax or any equivalent thereof), duties, stamp duties, impost, levies or government charges relating to this Agreement, the supplied Services, provision of the Breeze Connect Equipment and, where relevant, the sale of the purchased equipment. Should there be an introduction of any new tax, duty, levy or government charge relating to any charges (including Charges) under this Agreement, the Customer must pay Breeze Connect for such taxes, duty, levy or government charges imposed under such relevant legislation.

### 12. Billing Disputes

- 12.1 If the Customer reasonably opines that there is an omission or error in relation to a charge on an invoice, the Customer may within seven (7) days of the invoice date, dispute the invoice by giving written notice (**'Billing Dispute Notice'**) of a billing dispute to Breeze Connect's Authorised Representative.
- 12.1.1 The Customer is not entitled to dispute an invoice on the basis that the invoiced services included fraudulent calls.
- 12.2 The Billing Dispute Notice must include:
- 12.2.1 Date and number of disputed invoices;
- 12.2.2 Itemised details of the disputed charges;
- 12.2.3 Detailed reasons for dispute; and
- 12.2.4 Any other documentation to assist/support the Customer's claim so as to enable Breeze Connect to investigate the claim.
- 12.3 The Customer must not withhold any payment to Breeze Connect during any Billing Dispute(s), including the disputed amount.



### 13. Creditworthiness and Financial Security

- 13.1 Breeze Connect's obligations to supply a Service, and to continue supplying a Service, are subject to Breeze Connect being satisfied as to the creditworthiness of the Customer.
- 13.2 Breeze Connect may, from time to time, review the Customer's creditworthiness. In doing so, Breeze Connect may seek from the Customer or an independent person such as a credit reporting agency or credit provider information or advice to assist in the creditworthiness review.
- 13.3 The Customer agrees to promptly cooperate with a review by:
  - 13.3.1 providing to Breeze Connect any information Breeze Connect reasonably requires conducting any such review; and
  - 13.3.2 giving to Breeze Connect permission to communicate with credit reference associations about the Customer's creditworthiness.

The information sought in this clause can include any information reasonably required by Breeze Connect about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers can give or receive under law.

- 13.4 The Customer warrants that all material information that it provides to Breeze Connect in any creditworthiness review will provide a true and fair view of the Customer's financial position at the time it is provided, and that all other information is accurate and complete.
- 13.5 The Customer is entitled to see and to correct any credit information that Breeze Connect holds about the Customer.
- 13.6 Following a creditworthiness review of the Customer which may occur at any time before or during the supply of the Service, Breeze Connect may give to the Customer a written notice specifying a credit limit and/or the security that the Customer is required to give to Breeze Connect, which shall be in a form and amount that is no more than reasonably required. The form of security required may be in form of a cash deposit to be held by Breeze Connect or a bank guarantee in a form approved by Breeze Connect and may be specified in **Item 10** of the Schedule.
- 13.7 If the Customer fails to provide the security required by Breeze Connect within three (3) business days or other timeframe agreed by Breeze Connect or exceeds the nominated Credit Limit, Breeze Connect may without liability suspend the supply of the Service until it receives adequate financial security.
- 13.8 Breeze Connect may access the security at any time to pay outstanding Charges owed by the Customer. Breeze Connect will refund to the Customer the security deposit less any amounts owing, without interest, within a reasonable period of the Customer satisfactorily completing the terms of the security arrangements, or termination of this Agreement.

### 14. Variation of Agreement

- 14.1 Except as set out in this clause, this Agreement may not be varied except in writing signed by the parties.
- 14.2 Breeze Connect may at any time vary this Agreement by giving to the Customer written notice of a variation (**'Variation Notice'**). If Breeze Connect gives a Variation Notice and the Customer does not accept the variation, the Customer must notify Breeze Connect within twenty (20) business days from the date of the Variation Notice. If the Customer fails to do so, the Customer will have deemed to have accepted the variation and the new terms and conditions will take effect from the next billing period after the Variation Notice was given or at the time specified in the Variation Notice.
- 14.3 If the Customer notifies Breeze Connect that it does not agree to the variation, the Customer and Breeze Connect must discuss the proposed variation in

good faith. If no agreement on a variation arises within a further ten (10) business days, either party may terminate the Service upon the giving of a further twenty (20) business days' notice. For the duration of the further notice period, the terms and conditions applicable immediately preceding the delivery of a Variation Notice will continue to apply.

### 15. Suspension of the Service

In addition to any other rights of suspension contained in this Agreement, Breeze Connect may suspend the provision of the Service to the Customer:

- 15.1 Upon giving five (5) business days written notice where the Customer is in breach of this Agreement. Such suspension will continue for so long as the breach subsists or until termination of this Agreement.
- 15.2 Immediately and, if due to the urgency of the need, without prior written notice where:
  - 15.2.1 Breeze Connect is required to undertake a repair, maintenance or service of any part of the Breeze Connect Network (or an interconnected third-party provider is required to undertake such work on its network) to attend to any emergency;
  - 15.2.2 it is reasonably required to reduce or prevent fraud or interference within the Breeze Connect Network;
  - 15.2.3 Breeze Connect believes it is necessary to do so to comply with any law or an order, instruction or request of government, the ACMA, emergency services or other competent authority;
  - 15.2.4 a Force Majeure Event occurs which materially affects Breeze Connect's ability to provide the Service.

### 16. Termination

- 16.1 Subject to any Minimum Service Period specified in **Item 6** of the Schedule, a party may, without any liability, terminate this Agreement at the end of the Term by giving the other party ninety (90) days written notice of termination prior to expiry of the Term, or at any time after the Term by giving the other party ninety (90) days written notice of termination.
- 16.2 A party to this Agreement may elect to terminate this Agreement immediately by written notice to the other party if that other party breaches any provision of this Agreement which is capable of remedy and does not rectify that breach within ninety (90) days of receiving written notice from the other party requesting it to do so.
- 16.3 A party to this Agreement may elect to terminate this Agreement immediately by written notice to the other party if a receiver, liquidator, provisional liquidator or administrator is appointed over any of that party's undertakings or assets and that appointment continues for a period of five (5) business days, or if that party enters into any arrangement with any of its creditors or any class of such creditors or if that other party ceases to carry on business.
- 16.4 Breeze Connect may immediately, by giving written notice to the Customer, terminate this Agreement if:
  - 16.4.1 following a suspension of the Service under **clause 15** the Customer fails within fourteen (14) days of the commencement of the suspension to rectify the breach subject to the suspension;
  - 16.4.2 the Customer commits persistent breaches of the Agreement;
  - 16.4.3 the Customer is in breach of a licence, permit or authorisation relating to the use of or connection of equipment relating to the Services;



- 16.4.4 Breeze Connect reasonably suspects that the Customer has suspended payment of its debts generally;
- 16.4.5 Breeze Connect reasonably suspects fraud in respect of, or misuse of, the Service by the Customer;
- 16.4.6 a Force Majeure Event continues for more than twenty (20) business days.
- 16.5 Each party must notify the other party immediately if any event referred to in clause 14.2 occurs or any step towards the occurrence of such event occurs.

### 17. Effects of Termination

- 17.1 On termination of this Agreement;
  - 17.1.1 the Customer's right to use the Service ceases;
  - 17.1.2 the Customer must immediately inform Breeze Connect of the specific equipment it holds, if so requested by Breeze Connect;
  - 17.1.3 the Customer must immediately cease using and return to Breeze Connect the Breeze Connect Equipment. If the Customer does not comply, Breeze Connect is entitled to remove the Breeze Connect Equipment (subject to any usual security arrangements);
  - 17.1.4 the Customer must immediately pay to Breeze Connect, without deduction or set off, all outstanding Charges and any other amounts payable to Breeze Connect under this Agreement at the date of termination; and
  - 17.1.5 Breeze Connect will refund to the Customer the balance (if any) of any Charges or other money paid in advance to Breeze Connect under this Agreement after deducting all amounts payable to Breeze Connect.
- 17.2 Termination of this Agreement does not affect the accrued rights or liabilities of either party, nor does it affect the provisions which expressly or by implication are intended to operate after termination.

### 18. Customer Rights to Cancel the Service

- 18.1 The Customer may cancel a Service:
  - 18.1.1 where this Agreement has no Minimum Service Period, or the Minimum Service Period has expired, by giving thirty (30) days' notice to Breeze Connect;
  - 18.1.2 where this Agreement has a Minimum Service Period, by giving Breeze Connect thirty (30) days' notice prior to expiry of the Minimum Service Period;
  - 18.1.3 where this Agreement has a Minimum Service Period.
- 18.2 The Customer may cancel a Service immediately by giving notice to Breeze Connect if Breeze Connect commits a material breach of this Agreement and fails to correct such breach within thirty (30) days of receiving notice of such breach, or if such breach of Breeze Connect is incapable of being rectified.
- 18.3 The Customer may cancel a Service immediately by giving notice to Breeze Connect if the Service has been unable to be supplied to the Customer for a continuous period of fifteen (15) business days due to a Force Majeure Event and continues not to be supplied.

### 19. Service Faults

- 19.1 While we will endeavor to make the Service available to customers twenty-four (24) hours a day, seven (7) days a week, the Service is not fault free and we cannot guarantee uninterrupted Service, or the performance or quality of the Service. There are many factors outside of our control which affect the Service, such as the performance of third-party suppliers (including overseas telephone companies) and equipment, force majeure

- events, the amount of bandwidth available for use by the voice service, and quality of the copper pair.
- 19.2 Breeze Connect limits its liability to you for interruptions to the Service or for any resulting damage or loss suffered by you or any third party to a maximum of twelve (12) months charges paid by you to Breeze Connect for the Service.
- 19.3 We reserve the right to perform maintenance work from time to time, which may temporarily interrupt your access to the Service. Where possible, we will perform this work during non-peak times.
- 19.4 Any faults to the Service must be logged with the Breeze Connect Channel Channel Partner prior to contacting Breeze Connect or any of its representatives. The Breeze Connect Channel Partner will then determine if the fault is PBX related or Breeze Connect related.
- 19.5 If the Breeze Connect Channel Partner determines that the fault is Breeze Connect related, it is the Breeze Connect Channel Partner's responsibility to submit all required information for fault diagnostics to Breeze Connect, including but not limited to call logs and trunk details.
- 19.6 If Breeze Connect determines on reasonable grounds that the fault is not related to the Breeze Connect infrastructure (for example faulty socket, modem, internal wiring) you may incur charges from the Breeze Connect Channel Partner or nominated partner for their call out and service fee.
- 19.7 If Breeze Connect determines on reasonable grounds that the fault is not related to the Breeze Connect infrastructure (for example faulty socket, modem, internal wiring) an incorrect callout fee may apply.

## 20. Liability and Indemnity

- 20.1 During the term of this Agreement the Customer must obtain and maintain a valid and enforceable public liability insurance policy that provides coverage of minimum of twenty million dollars (\$20,000,000.00) per occurrence, and upon request of Breeze Connect, immediately provide Breeze Connect with a certificate of currency with respect to that policy.
- 20.2 The Customer acknowledges and agrees that:
- 20.2.1 Breeze Connect does not warrant that Breeze Connect will be able to supply the Service uninterrupted or fault free;
- 20.2.2 except for any rebate that must be paid as a result of a failure by Breeze Connect to achieve a Service, Breeze Connect is not liable to the Customer or any other person for any failure for any reason to supply the Service in accordance with this Agreement.
- 20.3 To the maximum extent permitted by law, Breeze Connect:
- 20.3.1 excludes all conditions and warranties implied into this Agreement;
- 20.3.2 excludes any liability to the Customer for any indirect, special or consequential loss, costs or damage (including but not limited to loss of profits, loss of revenue, loss of data, loss of bargain, damage to reputation and expectation loss) arising out of this Agreement, whether arising as a result of any act, omission or negligence of Breeze Connect or otherwise.
- 20.4 Each party's liability under this Agreement is diminished to the extent that the other party's acts or omissions contribute to or cause the loss or liability.
- 20.5 Nothing in this **clause 20** is intended to limit Breeze Connect's liability for claims relating to personal injury (including sickness, disability or death) of the Customer or the Customer's employees directly resulted from Breeze Connect's negligent acts or omissions arising under this Agreement.

- 20.6 The Customer indemnifies Breeze Connect on demand against any claim or liability arising from the Customer's acts or omissions, or the acts or omissions of a third party acting on the Customer's behalf or engaged by the Customer in any capacity, relating to the use of the Service.

### 21. Confidentiality

- 21.1 Each party acknowledges that the Confidential Information of the other party is confidential and secret, and each party must preserve the confidential and secret nature of the other party's Confidential Information.
- 21.2 A party must not:
- 21.2.1 disclose or copy the other party's Confidential Information (including the terms and conditions of this Agreement) for any purpose other than as contemplated by this Agreement;
- 21.2.2 make the other party's Confidential Information available to any third party, other than to its employees with a need to know the information to enable the Service to be used in the manner contemplated by this Agreement (but only to the extent that the employee needs to know), or
- 21.2.3 use the other party's Confidential Information for any purpose other than as contemplated by this Agreement.
- 21.3 Neither party may use in any way any the name, logo, trade mark, registered design, or copyright material of the other party without having first obtained the written consent of the owner of the property to such use. Neither party will issue a press release, or make any public announcement, concerning the existence of, or any fact arising out of, or connected to, this Agreement or the other party without first having obtained the prior written consent of the other party to the terms of such press release or announcement.
- 21.4 The Customer must immediately notify Breeze Connect if it becomes aware of any actual, suspected or threatened unauthorised disclosure or use of the Confidential Information.
- 21.5 Each party acknowledges that damages are not a sufficient remedy for breach of this **clause 21** and that in addition to any other remedies that may be available to a party, may also seek injunctive relief against such a breach or threatened breach

### 22. Privacy

- 22.1 Each party must comply with all applicable laws, regulations and industry codes related to data privacy including those related to telecommunications services in respect of Personal Information provided by one party to the other,
- 22.2 The Customer authorises Breeze Connect to collect, use and disclose Personal Information for the purpose of supplying the Service and related purposes as permitted by law.
- 22.3 If the Customer fails to provide Personal Information which Breeze Connect reasonably requires to perform its obligations, Breeze Connect may choose not to supply, or to cancel or suspend supply of the Service to the Customer.

### 23. Dispute Resolution

- 23.1 **Procedure**
- 23.1.1 Before recourse to arbitration or litigation (other than to enforce payment due under this Agreement or an application for urgent interlocutory or declaratory relief) the parties must endeavour to resolve any dispute or claim arising out of or relating to this Agreement or its performance ('**Dispute**') in accordance with the procedures set out in this **clause 23**
- 23.1.2 All procedures set out in this **clause 23** will occur in Adelaide, South Australia.

23.1.3 The timeframes set out in this **clause 23** may be varied with the consent of all parties.

23.1.4 This **clause 23** shall continue indefinitely.

### 23.2 **Negotiation**

23.2.1 A party may at any time deliver to the other parties notice of a Dispute ('**Dispute Notice**'). The date upon which the Dispute Notice is delivered is referred to as the Dispute Notice Date.

23.2.2 The parties must deliver to each other a written response ('**Answer**') within ten (10) business days after the Dispute Notice Date. The Dispute Notice and the Answer must include a statement of each party's position and a summary of arguments supporting that position.

23.2.3 The parties must negotiate in good faith to resolve the Dispute.

### 23.3 **Mediation**

23.3.1 If the Dispute has not resolved within twenty (20) business days of the Dispute Notice Date it will be mediated in accordance with the Australian Commercial Disputes Centre Guidelines for Commercial Mediation current at the Dispute Notice Date. Those Guidelines are incorporated into this Agreement. Where there is any inconsistency between those Guidelines and this Agreement, this Agreement will prevail.

## 24. **Transferring our rights**

We may transfer assign or sublicense any or all of our rights, duties or obligations in this Agreement to, or share them with, a third party on notice to you.

## 25. **Notice**

### 25.1 **Deemed to have been given**

A notice under this Agreement is deemed to have been given if it is in writing and is:

25.1.1 delivered or sent by pre-paid post to the address on page one of this Agreement (or any other address notified to all parties in writing);

### 25.2 **When Received**

A notice given in accordance with this clause is deemed to have been received:

25.2.1 if delivered by email;

(a) on the day the email is sent if the email is sent and delivered before 5.00 pm on a Business Day;

(b) otherwise, on the next Business Day.

25.2.2 If delivered by post;

(a) if sent by pre-paid post, on the third Business Day after posting;

(b) if sent by express post, on the next day after posting.

### 25.3 **Two or More Persons**

Where two or more persons comprise a party, notice to one is effective notice to all.

## 26. **Force Majeure**

### 26.1 **Obligations Suspended**

An obligation under this Agreement shall be suspended to the extent and for so long as the performance of that obligation is prevented or delayed by an event or circumstance which:

### 26.2 **Notification**

The party whose obligation is suspended under clause 26.1 must:

- 26.2.1 notify the other parties as soon as it becomes aware of the effect of the Force Majeure upon its obligations;
- 26.2.2 use its best endeavours to work around or overcome the effect of the Force Majeure;
- 26.2.3 keep the other parties informed of any changes in the Force Majeure and of the measures taken to comply with this clause; and
- 26.2.4 recommence performance of its obligations as soon as possible without delay.

### 27. Authorised Representatives

- 27.1 The Authorised Representative nominated by each party is specified in **Items 2 and 3** of the Schedule. Either party may change its Authorised Representative at any time by giving notice to the other party.
- 27.2 The Authorised Representative of a party has authority to represent that party in connection with this Agreement.
- 27.3 Breeze Connect may also rely on the authority of any Breeze Connect Channel Partner employee who gives direction or consent on behalf of the Customer and the Customer is bound by such an order, direction or consent.

### 28. Telephone Numbers and IP Address

- 28.1 The Customer acknowledges and agrees that any telephone number or IP address used in connection with the Service is allocated and regulated by law and the right to use it may cease on cancellation of the Service or if the number or address is required by law or regulatory authority to be changed.

### 29. Customer Service Guarantee

- 29.1 The Customer Service Guarantee (CSG) is a guarantee that is prescribed under the Telecommunications Act 1997 and gives consumers certain rights in connection with standard telephone services. These rights include:
  - 29.1.1 The right to be provided with information about the CSG and the performance standards applicable under it;
  - 29.1.2 The right to receive compensation if a standard telephone service is not connected within a specified timeframe;
  - 29.1.3 The right to receive compensation if a fault or service difficulty exists on a standard telephone service and is not rectified within a specified timeframe;
  - 29.1.4 The right to receive compensation if the Breeze Connect Channel Partner misses an appointment with a customer with whom the Breeze Connect Channel Partner has made an appointment in connection with the standard telephone service.
- 29.2 The specified timeframes and the amounts of compensation vary based on the customer location, the nature of the infrastructure available at the customer site and the length of time during which default has occurred. Full detail of the compensation can be found with a search of the ACMA website (<http://www.acma.gov.au/>)
- 29.3 The Service is supplied on the basis that you waive the CSG. The charges for Breeze Connect plans are typically cheaper than the charges for other plans in the market which may include the CSG but you should make your own assessment as to whether the Breeze Connect plans represent sufficient value for you to waive the rights given to you under the CSG.
- 29.4 If you wish to acquire a Breeze Connect VOIP plan in respect of which Breeze Connect requires that the CSG be waived, you must agree to waive the CSG and complete the CSG Waiver Form we can provide on request.

- 29.5 Breeze Connect VOIP may perhaps be a standard telephone service. It is therefore a condition of these plans that you also waive rights to the CSG.
- 29.6 If you give a CSG waiver and withdraw that waiver within five (5) working days of giving it, the waiver will not be effective and you agree that we may terminate the agreement for the supply of the Breeze Connect VOIP Service.

### 30. General

#### 30.1 Compliance with Laws

- 30.1.1 The Contractor must comply with the laws in force in any State or Territory in Australia when performing its obligations under this Agreement. The Contractor undertakes to comply with all of Breeze Connect's policies of which Breeze Connect informs the Contractor which relate to the performance of the Contractor's obligations under this Agreement.
- 30.1.2 The Contractor acknowledges and agrees that it is solely responsible for compliance with any legal and regulatory obligations of a Carrier or Carriage Service Provider in respect of the Service beyond the Service Delivery Point including interception and monitoring.

#### 30.2 Time is of the essence

Unless otherwise specified, time is of the essence in this Agreement.

#### 30.3 Counterparts

This Agreement may be executed in any number of counterparts each of which is taken to be an original. All of those counterparts taken together constitute one instrument. An executed counterpart may be delivered by facsimile or email.

#### 30.4 Failure to enforce rights

The failure or omission of a party to enforce or require strict compliance with a provision of this Agreement does not affect or impair that party's right to subsequently enforce or require strict compliance with that provision or to avail itself of any remedies it may have in respect of any breach of that provision.

#### 30.5 Governing Law

- 30.5.1 This Agreement is governed by the laws in the State of South Australia.
- 30.5.2 The courts of the State of South Australia have exclusive jurisdiction in connection with this Agreement.

#### 30.6 Relationship Between the Parties

- 30.6.1 The parties acknowledge and agree that nothing in this Agreement:
- (a) constitutes a partnership or joint venture of any kind between the parties; or
  - (b) constitutes any relationship of employer and employee or principal and agent Breeze Connect and the Contractor or between Breeze Connect and any employees, agents, sub-contractors, members or volunteers of the Contractor.
- 30.6.2 No party has any authority to bind the other party in any manner whatever except with the express approval by notice in writing of the other party.

#### 30.7 No Waivers by Breeze Connect

- 30.7.1 Breeze Connect waives a right under this Agreement only by written notice to that effect.
- 30.7.2 Nothing else done or omitted to be done by Breeze Connect in relation to Breeze Connect's rights under the Agreement will have the effect of a waiver.

#### 30.8 Entire Agreement



This Agreement constitutes the entire agreement between the parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings and negotiations in respect of the matters dealt with in this Agreement.

**30.9 Legal Costs**

Each party must bear its own legal and other costs in relation to the negotiation, preparation and execution of this Agreement and any document required by this Agreement.

**30.10 No Assignment**

The Contractor must not assign or encumber any of its rights under this Agreement.

**30.11 Modification**

No addition to or modification of any provision of this Agreement will be binding upon the parties unless made by written instrument signed by the parties.

### 1. Freephone / Local Rate Number (FLRN) Hosting & Call Origination

1.1. Freephone /Local Rate Number (FLRN) Hosting and Call Origination is available in:

- 1.1.1. Australia – 13, 1300, 1800
- 1.1.2. New Zealand 0800 – pricing on application
- 1.1.3. Other Countries as requested, pricing on application

1.2. These services can be delivered via SIP to the Customer or routed directly to the end user, on behalf of the Customer.

1.3. Number Hosting can originate calls on the Customer's behalf. This requires the use of service numbers that can either be purchased from Breeze Connect or numbers ported to Breeze Connect from another Carrier.

1.4. '1800' and '0800' numbers:

- 1.4.1. are known as free-phone or free-call numbers and are ten (10) digits long.
- 1.4.2. callers are not usually charged by their service provider.

1.5. '13' and '1300' numbers:

- 1.5.1. are generally known as local rate numbers. '13' numbers are six (6) digits long and '1300' numbers are ten (10) digits long.
- 1.5.2. callers usually pay what is known as a local or connection fee.
- 1.5.3. Depending on the arrangement the caller has with their provider for calls, charges are sometimes bundled in as part of their monthly service charge.

1.6. Number Hosting Charges

**Refer to Breeze Connect website.**

1.7. Number Utilisation Charges

**Refer to Breeze Connect website.**

1.8. In addition to the variation rights set out in the terms of this Agreement, Breeze Connect may vary the non-recurring and recurring charges at any time by giving the Customer twenty (20) business days' notice prior to the rate change, except in the case of international or Australian domestic rates in which case Breeze Connect may vary the charges by giving five (5) days notice. Such notices will be sent via email to the Customer's nominated email address.

### 2. Local Number Porting (LNP)

2.1. The Service provides Local Number porting (LNP) from PSTN, ISDN and VoIP Services to the Breeze Connect Network in Australia, as ordered from time to time by the Customer.

2.2. The Service is provided in respect of local numbers.

2.3. The Service is available in respect of simple and complex ports, classified as follows:

- 2.3.1. Simple of 'CAT A' Ports' – these are single number ports.

2.3.2. Complex or 'CAT C' Ports – these generally involve two (2) or more numbers, number blocks, all ports from speci

2.4. Porting Charges (Non-Recurring Charges)

2.5. In addition to the variation rights set out in the terms of this Agreement, Breeze Connect may vary the non-recurring and recurring charges at any time by giving the Customer twenty (20) business days' notice prior to the rate change, except in the case of international or Australian domestic rates in which case Breeze Connect may vary the charges by giving five (5) days notice. Such notices will be sent via email to the Customer's nominated email address.

### 3. Mobile Service Number (MSN) Hosting

3.1. MSN Hosting is only provided in Australia.

3.2. These services will be delivered via Sip to the Customer. Number Hosting can originate calls on the Customer's behalf. This requires the use of service numbers that can either be purchased from Breeze Connect or numbers ported to Breeze Connect from another Carrier or Service Provider.

3.3. Mobile Service Number Charges (Recurring Charges)

3.4. In addition to the variation rights set out in the terms of this Agreement, Breeze Connect may vary the non-recurring and recurring charges at any time by giving the Customer twenty (20) business days' notice prior to the rate change, except in the case of international or Australian domestic rates in which case Breeze Connect may vary the charges by giving five (5) days notice. Such notices will be sent via email to the Customer's nominated email address.

### 4. Invoicing

4.1. In addition to the payment and invoicing terms in the Agreement, the following is applicable:

4.1.1. Invoices will be provided on a monthly basis;

4.1.2. Recurring charges are invoiced in advance; and

4.1.3. Non-recurring usage charges, such as per minute call collection charges, will be invoiced in arrears.