

1. Definitions

The parties agree that the following definitions apply to these terms and conditions:

Agreement means the general terms and conditions, any schedule or directions from the Provider.

Amount means the amount of the Prize.

Business Day means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.

Commencement Date means the commencement date described in the agreement details.

Conflict of Interest means any matter, circumstance, interest or activity affecting the Participant or which may or may appear to impair the ability of the Participant participate in the Prize Draw independently of the Provider. For the purposes of clarity, any person who is an employee of or an elected Councillor for the Surf Coast Shire has a Conflict of Interest in participating in the Prize Draw.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Prize Draw means the activity the Participant is participating in to be eligible for the Prize as described on the Provider's website.

Prize Draw requirements means the requirements of the Provider for provision of the Prize including any policies, terms, obligations or conditions provided to the Participant or otherwise publicly available to the Participant.

Indemnified Parties means the indemnified persons defined in clause 9(a).

Law means the law in force in the jurisdiction in which the Project is carried out, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or any other legislative or regulatory measures, codes and standards including the requirements of any authority having jurisdiction over the parties or the Project.

Loss means all costs (including legal costs and expenses on a solicitor and own client basis), fees, expenses, losses, damages (including reputational damage), charges, taxes, outgoings, claims, liabilities, causes of action, proceedings, awards and judgments.

Parties means the Provider and the Participant.

Prize means the pre-paid gift card prize.

Provider means the Surf Coast Shire Council (ABN 18 078 461 409).

Participant means a person participating in the Prize Draw.

Safety Laws means all Laws, relating to the protection and safety of persons or property including the *Occupational Health and Safety Act 2004* (Vic) and electrical safety standards.

2. General

2.1 Interpretation

- (a) No rule of contract interpretation is to be applied to the disadvantage of the Provider on the basis that it prepared, or put forward any document comprising part of, this Agreement.
- (b) The references used in this Agreement are to be interpreted as follows except where the context otherwise requires:
 - i. a reference to this Agreement, another instrument or document includes any variation or replacement;
 - ii. a reference to any statute, code, ordinance or other law includes regulations and other instruments under it and amendments, consolidations, replacements or other instruments overruling that law;
 - iii. a reference to a person or body which has ceased to exist or has been reconstituted, amalgamated or merged, or other functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place by which its said functions have become exercisable;
 - iv. a reference to any direction, approval or requirement given by the Provider is not to be construed as the Provider participating in the supervision or control of the Project and does not infer any release of the Recipient or its obligations to appropriately carry out any supervision and control function;
 - v. a reference to where a party is required to act reasonably in the performance of this Agreement that shall be read as a requirement to act as would a party in the position of the Provider that is acting reasonably in its own best interests; and
 - vi. a reference to a group of persons is a reference to all of them collectively, any two or more of them collectively and to each of them individually.
- (c) In reading this Agreement, except where the context otherwise requires:
 - i. the headings in this Agreement are for convenience only and do not affect the interpretation of this Agreement;
 - ii. the singular includes the plural and vice versa;
 - iii. the word 'including' means 'including without limitation';

- iv. a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- v. a month is to be interpreted as a calendar month;
- vi. if any time limit under this Agreement falls on a non-Business Day then that time limit shall be deemed to have expired on the next Business Day;
- vii. a gender includes every other gender; and
- viii. where a word or phrase is given a defined meaning in this Agreement, any other part of speech or other grammatical form in respect of such word or phrase shall have a corresponding meaning.

- (d) Where a clause requires a party to form an opinion, that opinion is to be formed reasonably and based on available evidence.

2.2 Non-Merger

- (a) The warranties, undertakings and indemnities in this Agreement do not merge on the completion of any transactions contemplated by this Agreement.
- (b) Any warranties, indemnities and all other provisions which expressly or by implication from their nature are intended to survive termination, survive termination of this Agreement.

2.3 Costs

Each Party must bear its own costs, fees and expenses including those incurred:

- (a) to give effect to the provisions of and performance, under this Agreement;
- (b) in complying with Laws whether they existed at the time of the Commencement Date or not;
- (c) regarding stamp duties and other duties, taxes, fees or charges payable to any Government body in respect of, arising from, or in connection with this Agreement;
- (d) for mediation and/or court proceedings;
- (e) for rectification of any audit findings applicable to the party; and
- (f) to exercise or enforce its rights under this Agreement unless otherwise agreed or determined by an expert, arbitrator or the courts.

2.4 Compliance with legislation

The Participant:

- (a) Acknowledges and agrees that the Provider has certain statutory rights and obligations including the *Charter of Human Rights and Responsibilities Act 2006* (Vic); and
- (b) Must comply with any reasonable directions issued and/or take any actions reasonably directed by the Provider to enable the Provider to comply with such obligations.

2.5 Entire Agreement

- (a) Subject to variations as provided for in this Agreement, this Agreement constitutes the entire agreement and understanding between the Parties as to the subject matter of this Agreement.
- (b) Any prior arrangements, agreements, representations or undertakings as to the particular subject matter of this Agreement are superseded except where explicitly stated in this Agreement.

2.6 Governing Law

- (a) This Agreement is governed by and must be construed in accordance with, the Laws in force in Victoria.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in Victoria and the courts of appeal therein.

2.7 Representations and Warranties

- (a) The Participant acknowledges and warrants that, in entering this Agreement, the Participant:
 - i. has the power to enter into and observe its obligations under this Agreement;
 - ii. is capable of participating in the Prize Draw;
 - iii. has familiarised itself with the Provider's policies and obtained all relevant information necessary to enable it to participate in the Prize Draw;
 - iv. did not in any way rely upon the information which may have been provided by, or on behalf of, the Provider which has been provided for convenience only;
 - v. entered into this Agreement based on its own investigations and determinations and has used its own endeavours and efforts to verify the accuracy of all information relied on by the Participant; and
 - vi. entered into this Agreement without contravention of the provision of:
 - I. any of its licences or other agreements with third parties;
 - II. its constituent documents;
 - III. any Law; or

- IV. any of its obligations or undertakings by which its assets are bound or cause a limitation on its powers.
- (b) Any failure on the part of the Participant to do what it has warranted shall not relieve the Participant from any of its responsibilities or obligations under the Agreement nor will it entitle the Participant to claim any adjustments to the Amount or other monetary compensation.
- (c) acknowledges and agrees that the Participant may rely on any statement, material or information made or provided by the Provider to the Participant in relation to the Prize Draw which the Provider expressly states is a statement, material or information on which the Participant may rely in participating in the Prize Draw.
- 3. Conditions Precedent**
- It is a condition precedent to this Agreement that the Participant has:
- (a) examined and taken into consideration all information pertaining to the risks, contingencies and other circumstances that could in any way affect the Participant's decision to participate in the Prize Draw; and
- (b) disclosed in writing to the Provider all matters that may adversely affect, from the Provider's perspective, the Participant's ability to participate in the Prize Draw or otherwise perform any of its obligations under this Agreement including all possible Conflicts of Interest.
- 4. Obligations**
- 4.1 General**
- (a) The Participant must, in each case in accordance with this Agreement not use the Amount for an illegal purpose or purpose which, in the Provider's opinion, brings the Provider's reputation into disrepute.
- (b) The Provider must provide the Participant with the Prize within a reasonable time after the Prize Draw has completed.
- (c) Time will be of the essence in the performance of this Agreement.
- 4.2 Standards for performance**
- The Participant must conduct itself with courtesy and professionalism at all times in its participation in the Prize Draw and will not do or omit to do anything that may damage, bring into disrepute or ridicule the Provider's name, messages or reputation, or attract public or media attention which may be prejudicial or otherwise detrimental to the Provider's name, messages or reputation.
- 4.3 Compliance with Safety Laws**
- (a) The Participant warrants to the Provider that it understands and has the capability and resources to comply with all applicable Safety Laws.
- (b) The Participant must
- comply with all applicable Safety Laws; and
 - In the event of an incident, co-operate with the Provider in respect of any public statement which the Provider may, at its sole discretion, issue in respect of the incident.
- 8 GST**
- 8.6** Unless otherwise specified, all amounts payable in this Agreement include any amount for GST.
- 8.7** If a party is entitled to be reimbursed or indemnified under this Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.
- 9 INDEMNITY AND LIMITS ON LIABILITY**
- (a) Subject to clause 9(b), the Participant indemnifies the Provider (**Indemnified Parties**) from and against all Losses incurred by or sustained by the Indemnified Parties (including Losses incurred or sustained as a result of a third party claim against the Indemnified Parties) arising out of or in connection with:
- a breach of this Agreement (including any express or implied warranty or representation) by the Participant;
 - injury to or death of any person caused or contributed to by the Participant in connection with this Agreement and its participation in the Prize Draw; or
 - Loss of any property caused or contributed to by the Participant in connection with this Agreement and its participation in the Prize Draw.
- (b) The Participant is not liable under clause 9(a) to an Indemnified Party to the extent to which any Losses in respect of which the Participant would otherwise be liable to indemnify that Indemnified Party arise directly from any negligent act or omission or wilful misconduct of that Indemnified Party.
- 10 DISPUTE RESOLUTION**
- 10.1** Disputes can be raised by the Parties. The Parties recognise that resolving disputes between the two Parties is the preferred method of resolution rather than requiring a third party intermediary.
- 10.2** The following disputes management procedures will be conducted:
- the Party raising the dispute will provide notice of the dispute (**Dispute Notice**) to the other Party;
 - the Dispute Notice will be in writing, be expressed to have been issued in accordance with this clause 10(b) and set out brief details of the dispute; and
 - the Party will use reasonable endeavours to resolve the dispute within 10 Business Days of the Dispute Notice having been received.
- 10.3** Should any dispute not be resolved by the due date, or the resolution not be able to be agreed at the time the disputes is discussed by the Parties in accordance with clause 10(b), the Parties can agree on alternative forms of external dispute resolution.
- 10.4** Monies owing to a party as a result of dispute resolution will be paid by the owing Party within 30 days of the relevant Party having received a written notice of the resolution of the dispute.
- 10.5** Unless a party has complied with the provisions in this clause 10, that party may not commence court proceedings relating to any dispute under this Agreement, except where that party seeks urgent interlocutory relief.
- 11 NOTICES**
- 11.1 Form of notice**
- A notice, approval, consent or other communication under this Agreement will not be considered valid unless:
- it is in writing; and
 - sent or copied to the Representative of the party.
- 11.2 Delivery**
- Such notice must be either:
 - left at the property address of the receiving Party;
 - sent by express post with delivery tracking to the property address of the receiving Party; or
 - sent by email to the email address of the receiving Party.
- 11.3 Receipt**
- Such notice is taken to be received:
- if given or served by hand, at the time of delivery;
 - if express posted, on the Business Day (seventh Business Day if posted to or from a place outside Australia) after posting; or
 - if emailed, on received date displayed by the receiving Party's system.
- 12 CONFLICT OF INTEREST**
- The Recipient warrants that, as at the commencement, to the best of its knowledge after making diligent inquiry, no Conflict of Interest exists or is likely to arise in the participation of the Prize Draw.
 - If, during its participation in the Prize Draw, a Conflict of Interest arises, or appears likely to arise, the Participant must:
 - notify the Provider immediately;
 - make full disclosure of all relevant information relating to the Conflict of Interest; and
 - take such steps as the Provider may reasonably require to resolve, avoid or otherwise deal with the Conflict of Interest.
 - Where a Conflict of Interest arises, and cannot be avoided or managed to the satisfaction of the Provider, the Provider may in its absolute discretion either:
 - Accept a nominated party to take the place of the Participant; and/or
 - Disqualify the Participant from participation in the Prize Draw.
 - Where an alternate nominated party takes the place of the Participant, the original Participant will have no rights to any Prize.